

APPLICABLE JOB CODE: DD1000
Prime Contract No.: N00024-06-C-2303
Priority Rating: DOA3
Specialty Metals Invoked
April 2008

1. **DEFINITIONS**

1.1 The following words and expressions shall have the meaning hereby assigned to them for the purposes of this SUBCONTRACT except where otherwise specifically stated or the context so requires:

- (a) "Buyer" shall mean Village Marine Tec. (VMT) having its principal place of business in Gardena, CA.
- (b) "Conditional Acceptance" means initial acceptance of the product as stipulated in Clause 5 below.
- (c) "Contracting Officer" means the Government contracting officer(s) for the Prime Contract. But see subparagraph (n) below.
- (d) "Contractor" means Buyer in its capacity as the legal entity which contracts with the Seller by this SUBCONTRACT . But see subparagraph (n) below.
- (e) "Cure Notice" refers to notification given by Buyer informing Seller of a possible default situation. Refer to Clause 7.
- (f) "Days" means calendar days unless otherwise stated.
- (g) Intentionally left blank.
- (h) "Delivery" or "Delivered" means the receipt at the F.O.B. Point of all Supplies ordered under the SUBCONTRACT, including all submittals, certifications, documentation and any other Supplies to be furnished under the terms of this SUBCONTRACT .
- (i) "Delivery Order" refers to the ordering instrument by which Buyer procures the supplies and / or services contracted for through this Requirements Subcontract.
- (j) "Dispute" refers to any situation where the Buyer and Seller disagree on an issue involving this SUBCONTRACT . Resolution of a Dispute is covered herein.
- (k) "FAR" means the Federal Acquisition Regulation. "DFARS" means the Defense FAR Supplement. "NAPS" means Navy Acquisition Regulation Procedure Supplement.
- (l) "Final Acceptance" means the act by which the Buyer assumes for itself ownership of the Supplies as further described in Clause 11.
- (m) "F.O.B." means F.O.B. Destination, unless otherwise stated.
- (n) Intentionally left blank.
- (o) "Intentionally left blank.
- (p) "Government" refers to the Government of the United States.

1. **DEFINITIONS** (Continued)

- (a) Intentionally left blank.
- (b) Intentionally left blank.
- (c) "Latent Defect" means a defect which is hidden from the knowledge as well as from the sight of the inspector and which could not be discovered by ordinary and reasonable care or by the inspection under the test procedures of this SUBCONTRACT . (Reference Geranco Mfg. Corp., ASBCA No. 12376, March 4, 1968, 68-1 BCA 6898 at p. 31,861).
- (d) "National Stock Numbers" Whenever the term Federal Item Identification Number and its acronym FIIN or the term Federal Stock Number and its acronym FSN appear in the SUBCONTRACT 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 Federal Supply Class (FSC) plus the applicable nine positions National Item Identification Number (NIIN) assigned to the item of supply.
- (e) Intentionally left blank.
- (f) "Procurement Specification (PS)" means Buyer's statement of specifications for the Supplies or Services being acquired.
- (g) "Purchasing Representative" refers to Buyer's authorized representative
- (h) "Seller" or "subcontractor", means the legal entity that sells or contracts to sell Supplies or Services to Buyer by this SUBCONTRACT .
- (i) "Services" means all or any part of the Services described in this SUBCONTRACT and includes any incidental Supplies therein.
- (j) "Subcontract" refers to this contractual instrument and includes changes and/or modifications hereto and is comprised of the Requirements Subcontract and all Attachments thereto.
- (k) "SUBCONTRACT Price" means the total sum of the Supplies or Services prices which individually may be called unit price(s).
- (l) "Supply" or "Supplies" shall mean all or any part of the Supplies, articles, goods, or products contracted for by Buyer through this and any subsequent SUBCONTRACT .
- (m) "Sellers" Prices" means the F.O.B. prices for the Supplies.

1. **DEFINITIONS** (Continued)

- (n) In the Government Flow-down and FAR, DFARS, NAVSEA and NAPS Clauses contained in these terms and conditions, and incorporated herein, the cited terms shall have the following meanings: the term "Contractor" shall be deemed to refer to the Seller; the term "subcontractor" shall be deemed to refer to the Seller's subcontractors; the terms "Contracting Officer" and "Government" or "Navy" shall be deemed to refer to Buyer; and the term "Contract" refers to this SUBCONTRACT except where the context of such Clauses demand otherwise. Unless otherwise stated, the FAR, DFARS, NAVSEA and NAPS Clauses incorporated herein shall be those in effect on the issuance award date of the applicable prime contract issued by the Government to the Buyer and they shall be interpreted in accordance with the definitions set forth at FAR 2.1 and DFARS 202.1. Further, any references to the FAR Disputes clause in such provisions shall instead mean and only be interpreted to mean the "Disputes" clause contained herein.

PLEASE NOTE THAT ALL CLAUSES PRESENTED HEREAFTER APPEAR IN ALPHABETICAL ORDER

2. **ASSIGNMENT**

- 2.1 Neither this SUBCONTRACT nor any interest herein, may be assigned in whole or in part by the Seller without the prior written consent of Buyer. Any assignment or attempted assignment by the Seller without said prior written consent shall be null and void; provided, however, Seller may assign its rights to be paid amounts due as a result of performance of this SUBCONTRACT to a bank, trust company, or other financing institution.
- 2.2 Nothing contained in this Clause shall prohibit any Party to this SUBCONTRACT from assigning any or all of its respective rights, title and interest in and to this SUBCONTRACT to the assigning Party's successor-in-interest by way of corporate merger, consolidation or acquisition, or assignment by operation of law. Such successor expressly assumes, agrees to be bound by, and undertakes to perform each and every one of the provisions of this SUBCONTRACT, and further assumes all obligations and liabilities hereunder of the original Party to this SUBCONTRACT.
- 2.3 All rights of the Buyer with respect to this SUBCONTRACT may be assigned by the Buyer to the Government, or to such other party as the Government may designate without change in the SUBCONTRACT price except for any equitable adjustment that may arise due to changes in the place of delivery, or to any other party, without the Seller's consent.

3. **CHANGES**

- 3.1 Buyer may make changes within the general scope of this SUBCONTRACT in any one or more of the following (at any time by written order):
- (a) drawings, designs or specifications where the Supplies to be furnished are to be specifically manufactured for the Buyer in accordance with the drawings, designs or specifications;
 - (b) method of shipment or packaging;
 - (c) place or time of Delivery in the United States of the Supplies to be furnished under the SUBCONTRACT;
 - (d) description of Services to be performed;

3. **CHANGES** (Continued)

(e) time of performance (i.e., hours of the day, days of the week, etc.);

(f) place of performance of the Services;

3.2 If any such change causes an increase or decrease in the cost of performance, or the time required for performance of the work under this SUBCONTRACT , an equitable adjustment shall be made in the SUBCONTRACT price or Delivery schedule, or both, and this SUBCONTRACT shall be modified in writing accordingly. The Seller must submit any proposal for adjustment to the SUBCONTRACT price or Delivery schedule or both as provided under this Clause within forty-five (45) days from the date of receipt by Seller of the change from Buyer.

3.3 Where the cost of property made obsolete or excess as a result of the change is included in the settlement of Seller's proposal for adjustment, Buyer shall have the right to prescribe the manner of disposal of such property.

3.4 Buyer's engineering and technical representatives may from time to time render assistance to Seller concerning the Supplies or Services to be furnished pursuant to this SUBCONTRACT . Such representatives are not authorized to initiate a change as herein provided. No change will be binding unless issued in writing by the Buyer's authorized purchasing representative and received by Seller.

3.5 Upon Seller's receipt of the written change order, nothing contained in this Clause shall relieve Seller from proceeding without delay in the performance of this SUBCONTRACT as changed.

4. **COMPLIANCE WITH LAWS**

Seller warrants that in the performance of this SUBCONTRACT, Seller shall comply with all applicable Federal, State and local laws, orders, rules and regulations of government entities, whether or not such provisions are references elsewhere in this SUBCONTRACT. Seller covenants to indemnify and hold Buyer and its assignees harmless from, any and all loss, costs, damages, expenses or liability (including reasonable attorney's fees) incurred by Buyer and its assignees, by reason of Seller's violation of this warranty, or as a result of any failure of Seller to comply with any such laws and regulations.

5. **CONDITIONAL ACCEPTANCE OF SUPPLIES**

5.1 Upon Delivery to the F.O.B. Destination point, the Supplies shall be conditionally accepted by the Buyer ("Conditional Acceptance"). If Buyer does not provide written notification of non-acceptance to the Seller within sixty (60) days of Delivery above the Supplies shall be deemed conditionally accepted.

5.2 Any Services rendered in support of this SUBCONTRACT shall be performed in a professional and workmanlike manner in accordance with the specifications referenced in the SUBCONTRACT . Between Conditional Acceptance and Final Acceptance, if any Supply(s)/Services are found not to conform with the requirements of the SUBCONTRACT , the Buyer shall have the right to (i) reject such Supply(s) and return it at Seller's expense, or (ii) require its correction, or in the case of services, re-performance.

5.3 Buyer's acceptance of the Supplies or Services and its subsequent use thereof shall not constitute a waiver of any claim based upon the delivery of improper or defective materials or workmanship, or for delayed deliveries, or of Buyer's rights and remedies conferred with respect thereto. Any and all of the rights and remedies conferred upon

the Buyer under the SUBCONTRACT shall be cumulative and in addition to, and not in lieu of, the rights and remedies granted by law for Seller's breach of contract.

6. **CONFIDENTIALITY**

- 6.1 The Seller and Buyer recognize that information disclosed to and/or acquired by each other hereunder may be confidential and/or proprietary to the disclosing Party, the disclosure of which to third Parties could result in irreparable harm to the Party furnishing such information. The Parties agree that each Party has the right to seek and obtain temporary, preliminary and permanent injunctive relief to restrain any unauthorized use or disclosure of its proprietary information in addition to all other remedies available to that Party in law or equity.
- 6.2 All information of a proprietary nature disclosed by one Party to the other Party hereto in connection with this SUBCONTRACT and designated by the disclosing Party by an appropriate stamp, marking, or legend as being proprietary to the disclosing Party, shall be held in strict confidence by the receiving Party and shall not be duplicated, used or disclosed in whole or in part for any purpose except by the Seller under equivalent conditions of confidentiality, and to the extent strictly necessary to obtain Supplies or Services in the normal course of trade for the performance of this SUBCONTRACT and to comply with other terms of this SUBCONTRACT ; and except by Buyer to the extent strictly necessary for its intended use as required by the Government under the Prime Contract. Buyer may disclose such information subject to equivalent conditions of confidentiality to their Sellers or prospective Sellers to the extent necessary for defining interface characteristics of Supplies to be delivered hereunder provided that they make such disclosure and restrictions on use as contained in this Clause.
- 6.3 The information to be held in confidence as provided in Paragraphs 6.1 and 6.2 hereof shall not include:
- (a) any information that is in the public domain at the time of disclosure to the receiving Party or thereafter comes into the public domain other than by breach by the receiving Party of this SUBCONTRACT ; or
 - (b) any information in the possession of the receiving Party prior to its receipt from the disclosing Party (except through prior disclosures in confidence), or which is independently developed by the receiving Party without resort to the disclosed proprietary information; or
 - (c) any information which the receiving Party rightfully obtains from a third Party without restriction; or
 - (d) any information for which the disclosing Party by written agreement authorizes its restricted use or disclosure.

If any portion of the Party's information falls within any one of the above exceptions, the remainder shall continue to be subject to the restrictions of this Clause.

- 6.4 To the extent reasonably necessary for the purpose of this SUBCONTRACT or the Prime Contract, a Party may disclose the information described in paragraphs 6.1 and 6.2 of the other Party to the Government provided that the disclosing Party makes such disclosure subject to like conditions of confidentiality and to any applicable restrictions set forth in Sections (b)(1), (b)(2) as applicable, of DFARS 252.227-7013 RIGHTS IN TECHNICAL DATA – NONCOMMERCIAL ITEMS and/or DFARS 252.227-7014, RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION, or such later version as the Parties may agree, as appropriate, and marks the information so disclosed with the appropriate restrictive legends as provided in the said DFARS Clauses and such other marking of an industrial property right nature as the Party owning the information may require, provided that such marking is not disallowed under the provisions of the Prime Contract. Buyer may furnish to the U.S.

Government form, fit and function data, manuals and instructional materials as those expressions are defined in said DFARS Clause with Unlimited Rights subject to the conditions pursuant to subdivisions (b)(1) of said DFARS Clause to the extent required under the Prime Contract.

6. **CONFIDENTIALITY** (Continued)

6.5 Either Party disclosing or reproducing another Party's information hereunder shall replicate in any reproductions made any copyright and other intellectual or industrial property right marks and legends as appear on and/or in such information. Notwithstanding anything to the contrary in the foregoing sentence, in the case of a composite work created by Buyer containing any of the said information, the copyright in which vests in the Seller, the Seller hereby agrees to waive the said replication requirement if such composite work is marked with the legend:

"This is an unpublished work, the copyright in which vests in Buyer. All rights reserved."

6.6 Nothing contained herein shall be construed to prevent either Party from complying with the requirement of a court or other regulatory body acting within its jurisdiction to compel disclosure, provided that in the event that either Party receives a demand or any other form of compulsory process from any such court or other regulatory body requiring the disclosure of the other Party's information, it shall promptly so advise the other Party, in writing, and cooperate to limit the disclosure to the minimum necessary to comply with the requirements of such demand or process as required by law.

7. **DEFAULT**

7.1 Buyer may, by written notice, terminate this SUBCONTRACT in whole or in part, if the Seller:

- (a) fails to deliver the Supplies or to perform the Services within the time specified in the SUBCONTRACT or any extension thereof; or
- (b) fails to make progress so as to endanger performance of this SUBCONTRACT ; or
- (c) fails to perform any of the other provisions of this SUBCONTRACT ; or
- (d) declares bankruptcy, suspends its business operation, or initiates any reorganization and/or arrangement for the benefit of its creditors.

Buyer's right to terminate this SUBCONTRACT under subparagraphs (b) and (c) above shall be exercised if the Seller does not cure such failure within ten (10) days after receipt of a "Cure Notice" from Buyer specifying the failure.

7.2 If Buyer terminates this SUBCONTRACT in whole or in part by reason of Seller's default, Buyer may acquire (reprocure) under the terms and conditions and in the manner Buyer considers reasonable and appropriate such similar Supplies or Services to those terminated. The Seller shall be liable to Buyer for any excess costs for Supplies or Services so acquired, it being understood that the Seller shall continue to work on that portion not terminated. With regard to the Seller's liability for excess costs:

- (a) except for defaults by Seller's subcontractors at any tier, the Seller shall not be liable for any excess costs if the failure to perform under the SUBCONTRACT arises from causes beyond the control and without the fault or negligence of the Seller. Examples of such causes include acts or omissions on the part of Buyer; acts of God; civil strife; labor strikes; actions of the Government, or any sovereign government in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; or freight embargoes.

7. **DEFAULT** (Continued)

(b) if the delay or failure is caused by the delay or failure of a subcontractor of the Seller, and if such delay or failure arises out of causes beyond the reasonable control of both the Seller and the Seller's subcontractor, and without the fault or negligence of either of them, the Seller shall not be liable to Buyer for excess costs unless the subcontracted Supplies or Services to be furnished by the subcontractor were reasonably obtainable from other known sources in sufficient time to permit the Seller to meet the required Delivery schedule.

7.3 If the SUBCONTRACT is terminated for default, Buyer may require the Seller to transfer title and deliver to Buyer or to the Government, any (i) completed Supplies and (ii) partially completed Supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively referred to as "manufacturing materials" in this Clause), that the Seller has specifically produced or acquired for the terminated portion of the SUBCONTRACT. Seller shall also protect and preserve property in its possession in which Buyer has an interest.

7.4 Buyer shall pay the SUBCONTRACT price for completed Supplies and Services previously delivered and accepted. The Parties shall agree on the amount of payment for manufacturing material delivered and accepted and for the production and preservation of the property. Failure to agree shall be deemed a dispute under the "Disputes" Clause contained herein. The Seller may not withhold Supplies, or partially completed Supplies, materials, parts, tools, dies, jigs fixtures, etc pending a resolution of any such dispute.

7.5 If, after termination for Seller's default, it is determined that the Seller was not in default, or that the default was excusable, the rights and obligations of the Parties shall be the same as if the termination had been for the convenience of Buyer under the Clause entitled "Termination for Convenience" of this SUBCONTRACT.

7.6 The rights and remedies of Buyer in this Clause are in addition to any other rights and remedies provided by law or under this SUBCONTRACT.

8. **DELIVERY DATE AND EXCUSABLE DELAY**

8.1 The Delivery Date(s) shall mean the date(s) as set forth in the SUBCONTRACT , or any modification thereto for the Delivery of the Supplies or performance of the Services specified in the SUBCONTRACT .

8.2 Notwithstanding any other provision in this SUBCONTRACT to the contrary, the Seller shall not be liable for failure to perform any of its obligations under this SUBCONTRACT arising out of causes beyond its reasonable control without Seller's fault or negligence, including, but not limited to, acts or omissions on the part of Buyer; acts of God; civil strife; labor strikes; actions on the part of the Government or sovereign government in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; or freight embargoes.

8.3 If the delay or failure is caused by the delay or failure of a subcontractor of the Seller and if such delay or failure arises out of causes beyond the reasonable control of both the Seller and the Seller's subcontractor, and without the fault or negligence of either of them, the Seller shall not be liable to Buyer for damages occasioned by delays in Delivery unless the Supplies or Services to be furnished by the subcontractor were reasonably obtainable from other known sources in sufficient time to permit the Seller to meet the required Delivery schedule.

8.4 In the event of an excusable delay under this Clause, the time of performance shall be extended by such period as may be deemed reasonable by the Buyer.

8. DELIVERY DATE AND EXCUSABLE DELAY (Continued)

8.5 If and whenever it becomes apparent that progress in the furnishing of Supplies and Services is being or is likely to be delayed (whether or not such delay is excusable), the Seller shall within ten (10) working days of becoming aware of such delay give written notice to Buyer of the material circumstances including the cause or causes of the delay and shall give particulars of the expected effects thereof and estimate the extent of the expected delay in Delivery of the Supplies and Services beyond the Delivery date or dates set out in this SUBCONTRACT . Seller shall give such further written notices to Buyer as may be necessary or as Buyer may reasonably require to maintain awareness on the status of the delay in order to mitigate impact of the delay to Buyer's operation.

9. ENVIRONMENTAL, SAFETY, AND OCCUPATIONAL HEALTH

The Seller shall provide work in accordance with the SUBCONTRACT scope of work that ensures the Supplies or Services can be tested, operated, maintained, repaired, and disposed of in accordance with Environmental, Safety, and Occupational Health (ESOH) statutes, regulations, policies, and, as applicable, environmental treaties and agreements (collectively termed regulatory requirements) and the requirements of this Clause. The Seller shall conduct ESOH analyses as described below:

9.1 ESOH Compliance. The Seller shall regularly review ESOH regulatory requirements and evaluate their impact on the Program's life-cycle cost, schedule, and performance.

9.2 Safety & Health. The Seller shall identify and evaluate safety and health hazards, define risk levels, and establish a safety program that manages the probability and severity of all hazards associated with development, use and disposal of the Supplies or Services.

9.3 Hazardous Material. The Seller shall establish a hazardous materials management program to consistently reduce or eliminate the use of hazardous materials in Supplies or Services processes and products (Executive Order 13148). The Seller shall evaluate and manage the selection, use, and disposal of hazardous materials consistent with Environmental Safety and Occupational Health (ESOH) regulatory requirements and program cost, schedule, in the Supplies or Services and performance goals. Where the Seller cannot avoid, within schedule and cost constraints, using a hazardous material, the Seller shall develop and implement plans and procedures for identifying, minimizing use of, tracking, storing, handling, packaging, transporting, and disposing of such material. As alternate technologies become available, the Seller shall replace hazardous materials in the Supplies or Services through changes in their design, manufacturing, and maintenance processes, where technically and economically practicable. If any such change will cause an increase or decrease in the price, cost and/or delivery schedule, Seller shall first seek Buyer's consent to such a change before implementing the same.

9.4 Pollution Prevention. The Seller shall identify and evaluate environmental and occupational health hazards and establish a pollution prevention program.

9.5 Explosives Safety. The Seller shall comply with Department of Defense (DoD) and Department of Navy (DoN) explosives safety requirements. The Seller shall ensure that munitions, explosives, and energetic are properly transported, handled, loaded, stored, and maintained.

9. ENVIRONMENTAL, SAFETY, AND OCCUPATIONAL HEALTH (Continued)

9.6 Environmental Impact. The Seller shall identify the impacts of the Supplies or Services on the environment during its life (including disposal), the types and amounts of pollution from all sources (air, water, noise, etc.) that will be released into the environment, actions needed to prevent or control the impact, ESOH risks associated with using the new Supplies or Services, and other information needed to identify source reduction, alternative technologies, and recycling opportunities. The pollution prevention program shall serve to minimize impacts on the environment and human health, as well as environmental compliance impacts on program Total Ownership Cost (TOC). A fundamental purpose of the pollution prevention program is to identify and quantify impacts, such as noise, as early as possible during system development, and to identify and implement actions needed to prevent or abate the impacts. In developing contract documents such as work statements, specifications, and other product descriptions, the Seller shall eliminate the use of virgin material requirements, as practicable. The Seller shall further consider life-cycle costs, recyclability, the use of environmentally preferable products, waste prevention (including toxicity reduction or elimination), and disposal, as appropriate.

10. EXAMINATION OF RECORDS

10.1 Seller agrees that Buyer, the Contracting Officer or other duly authorized Government Employee shall, until the expiration of three (3) years after final payment under this SUBCONTRACT , have access to and the right to examine any directly pertinent books, documents, papers, and records involving transactions pertaining to this SUBCONTRACT .

10.2 The periods of access to and right of examination of records which relate to (i) Buyer's appeals under the "Disputes" Clause of the Prime Contract, (ii) litigation or settlement of claims arising out of the Prime Contract, or, (iii) cost and expenses of the Prime Contract or this SUBCONTRACT shall continue until such appeals, litigation, or claims have been disposed of.

11. FINAL ACCEPTANCE

11.1 As used in this Clause, "Final Acceptance" means the act by which the Buyer assumes for itself ownership of the Supplies. In accordance with the Clause entitled "Conditional Acceptance," the Buyer shall provide written notification to the Seller of the acceptability of the Supplies. If the Buyer does not provide written notification to the Seller within the sixty (60) days following successful completion of Charlie Trial, as defined in Clause 34 Trials of this document, the Supplies shall be deemed finally accepted, subject to the provisions of the Clause entitled "Warranty." Payments made under this SUBCONTRACT shall not be considered as an indication of the acceptability of the Supplies.

11.2 Any Services rendered in support of this SUBCONTRACT shall be performed in a professional and workmanlike manner, and in accordance with the specifications referenced in the SUBCONTRACT . If, at the time of Final Acceptance, defects are known to exist in a Supply or any Services performed, the Supply/Service may be accepted in writing by Buyer with either a reservation of the Buyer's right to have the Seller correct the known defect(s), re-perform the Service in the event services were provided, or an equitable reduction in price, or both, as may be appropriate under the circumstances. Failure to agree to such reduction in price shall be a dispute concerning a question of fact within the meaning of the Disputes clause.

12. **FINAL SETTLEMENT**

Upon final settlement of the work, Seller shall be entitled to receive any balance owed under this SUBCONTRACT . Such payment to be made within (30) thirty days after the amount of such balance is determined; provided appropriate documentation has been received and approved by Buyer. Seller and each assignee of the Seller, under an assignment in effect at the time of final settlement, shall execute and deliver at the time of and as a condition precedent to any final payment from Buyer, a release of claims and liens from Seller and Seller's subcontractors and from liabilities, obligations, and claims arising under this SUBCONTRACT in form and substance satisfactory to Buyer, its officers, agents, and employees. If this SUBCONTRACT shall have been terminated in whole or in part, any such release shall also contain a release of all claims against Buyer arising out of, or by virtue of, such termination.

13. **GOVERNING LAW**

The Parties agree that irrespective of the place of performance of this SUBCONTRACT , the SUBCONTRACT shall be construed and interpreted, and the rights and obligations of the Parties shall be determined, according to Federal Common Law and the Federal Contract Law as enunciated and applied by the Federal courts, boards of contract appeals and other administrative and quasi-judicial bodies of the Federal Government. To the extent the Federal Common Law and Federal Contract Law is not determinative, the laws (both substantive and procedural) of the State of California for the SUBCONTRACT issued by VMT, in effect at the time of the execution of this SUBCONTRACT shall apply as the same would be applied to transactions between residents of the State to be fully performed within the State and without regard to the State's conflict of laws principles. The exclusive jurisdiction for any action by either Party against the other shall be brought before any Federal district court where venue is appropriate: (a) in the State of California for SUBCONTRACTs. In the event state courts have proper jurisdiction for any action by either Party against the other, the governing law for SUBCONTRACTs s shall be (a) the laws of the State of California for SUBCONTRACTs s issued by VMT.

14. **BUYER FURNISHED PROPERTY**

- 14.1 Buyer Furnished Property. The Buyer shall deliver to the Seller, for use in connection with and under the terms of this SUBCONTRACT , the property described as Buyer-Furnished Property (BFP), together with such related data and information as the Seller may request and as may reasonably be required for the intended use of such property. The delivery or performance dates for the Supplies or Services to be furnished by Seller under this SUBCONTRACT are based upon the expectation that BFP suitable for use (except for such property furnished "as is") will be delivered to the Seller at the times stated in the SUBCONTRACT or, if not so stated, in sufficient time to enable Seller to meet such delivery or performance dates. In the event that BFP is not delivered to Seller by such time or times, Buyer shall, upon timely written request made by Seller, make a determination of the delay, if any, occasioned the Seller thereby, and shall equitably adjust the delivery or performance dates or the SUBCONTRACT price, or both, and any other contractual provision affected by any such delay, in accordance with the procedures provided for in the Clause of this SUBCONTRACT entitled "Changes." Except for BFP furnished "as is," in the event the BFP is received by Seller in a condition not suitable for the intended use the Seller shall, upon receipt thereof, notify Buyer of such fact and, as directed by Buyer, either (i) return such property at Buyer's expense or otherwise dispose of the property, or (ii) effect repairs or modifications. Upon the completion of (i) or (ii) above,

Buyer upon written request of Seller shall equitably adjust the Delivery or performance dates or the SUBCONTRACT price, or both, and any other contractual provision.

14. BUYER FURNISHED PROPERTY (Continued)

affected by the rejection or disposition, or the repair or modification to BFP, in accordance with the procedures provided for in the Clause of this SUBCONTRACT entitled "Changes." The foregoing provisions for adjustment are exclusive and Buyer shall not be liable to suit for breach of contract by reason of any delay in delivery of BFP or delivery of such property in a condition not suitable for its intended use, a decrease in or substitution of BFP.

14.2 Changes in BFP

- (a) By notice in writing, Buyer may (i) decrease the property provided or to be provided by the Buyer under this SUBCONTRACT , or (ii) substitute other Buyer owned property for property to be provided by the Buyer , or to be acquired by Seller for the Buyer under this SUBCONTRACT . Seller shall promptly take such action as Buyer may direct with respect to the removal and shipping of property covered by such notice.
- (b) In the event of any decrease in or substitution of property pursuant to subparagraph (a) above, or any withdrawal of authority to use property provided under any other contract or lease, which property Buyer had agreed in the Schedule to make available for the performance of this SUBCONTRACT , Buyer, upon the written request of Seller (or, if the substitution of property causes a decrease in the cost of performance, on its own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution, or withdrawal, in accordance with the procedures provided for in the Clause entitled "Changes."

14.3 Title. Title to all property furnished by the Buyer shall remain with the Buyer respectively. In order to define the obligations of the Parties under this Clause, title to each item of facilities, special test equipment, and special tooling (other than that subject to a "Special Tooling" Clause) acquired by the Seller for the Buyer pursuant to this SUBCONTRACT shall pass to and vest in the Buyer, respectively, when its use in the performance of this SUBCONTRACT commences, or upon payment therefore by the Buyer, whichever is earlier, whether or not title previously vested. All BFP, together with all property acquired by Seller title to which vests in the Buyer under this Paragraph is subject to the provisions of this Clause and is hereinafter collectively referred to as "Buyer property." Title to Buyer property shall not be affected by the incorporation or attachment thereof to any property not owned by the Buyer, nor shall such Buyer property, or any part thereof, be or become a fixture or lose its identity or personality by reason of affixation to any realty.

14.4 Property Administration.

- (a) Seller shall comply with the provisions of Subpart 45.5 of the Federal Acquisition Regulation, as in effect on the date of the SUBCONTRACT , which is hereby incorporated by reference and made a part of this SUBCONTRACT .
- (b) If damage occurs to Buyer property, the risk of which has been assumed by the Buyer under this SUBCONTRACT , the Buyer shall replace the items or the Seller shall make such repairs as the Buyer directs. However, if the Seller cannot effect such repairs within the time required, the Seller shall dispose of the property as directed by the Buyer.
- (c) The Seller represents that the subcontract price does not include any amount of repairs or replacement for which the Buyer is responsible. Repair or replacement of property for which the Seller is responsible shall be accomplished by the Seller at its own expense.

14. **BUYER FURNISHED PROPERTY** (Continued)

- 14.5 Use of BuyerProperty. Buyer property shall, unless otherwise provided herein or approved by the Buyer , be used only for the performance of this SUBCONTRACT . In the event the Seller is permitted to use Government-owned facilities, special tooling or test equipment which are provided on a no-charge basis, the Seller agrees that he will not directly or indirectly, through overhead charges or otherwise, include in the cost of the SUBCONTRACT , or seek reimbursement under this SUBCONTRACT , for any rental charge paid by the Seller for the use on other contracts of the facilities, special tooling and test equipment referred to herein. Any subcontract let by the Seller which authorizes its subcontractors to use Government facilities, special tooling and test equipment on a no-charge basis shall contain a provision to the same effect as this clause.
- 14.6 Utilization, Maintenance and Repair of Buyer Property. Seller's subcontractors shall be required to maintain and administer, in accordance with sound industrial practice, and in accordance with applicable provisions of Subpart 45.5 of the FAR, a program for the utilization, maintenance, repair, protection and preservation of Buyer property until disposed of by the Seller in accordance with this Clause. In the event that any damage occurs to Buyer property, the risk of which has been assumed by the Buyer under this SUBCONTRACT , the Buyer shall replace such Supplies or the Seller shall make such repair of the property as Buyer directs; provided, however, that if Seller cannot effect such repair within the time required, the Seller shall dispose of such property in the manner directed by Buyer. The subcontract price includes no compensation to Seller for the performance of any repair or replacement for which the Buyer is responsible, and an equitable adjustment will be made in any contractual provisions affected by such repair or replacement of Buyer property made at the direction of Buyer, in accordance with the procedures provided for in the Clause of this SUBCONTRACT entitled "Changes." Seller shall accomplish any repair or replacement for which the Seller is responsible under the provisions of this SUBCONTRACT at its own expense.
- 14.7 Risk of Loss. Unless otherwise provided in this SUBCONTRACT , the Seller assumes the risk of, and shall be responsible for, any loss of or damage to Buyer property provided under this SUBCONTRACT upon its Delivery to Seller or upon passage of title thereto to the Buyer as provided in Paragraph 14.3 hereof except for reasonable wear and tear and except to the extent that such property is consumed in the performance of this SUBCONTRACT .
- 14.8 Access. The Buyer , and any persons designated by them, shall at all reasonable times have access to the premises wherein any Buyer property is located, for the purposes of inspecting the Buyer property.
- 14.9 Final Accounting and Disposition of Buyer Property. Upon the completion of this SUBCONTRACT , or at such earlier dates as may be fixed by Buyer, the Seller shall submit, in a form acceptable to Buyer, inventory schedules covering all Supplies of Buyer property not consumed in the performance of this SUBCONTRACT (including any resulting scrap) or not theretofore delivered to the Buyer and shall prepare for shipment, deliver F.O.B. origin, or dispose of the Buyer property, as may be directed or authorized by Buyer. The net proceeds of any such disposal shall be credited to the SUBCONTRACT price or shall be paid in such other manner as Buyer may direct.

14.10 Restoration of Seller's Premises and Abandonment. Unless otherwise provided herein, Buyer:

- (a) may abandon any Buyer property in place and thereupon all obligations of Buyer regarding such abandoned property shall cease;

14. **BUYER FURNISHED PROPERTY** (Continued)

- (b) has no obligation to Seller with regard to restoration or rehabilitation of the Seller's premises, neither in case of abandonment (Paragraph 14.10 (a) above), disposition on completion of need or of the SUBCONTRACT (Paragraph 14.9 above), nor otherwise, except for restoration or rehabilitation costs which are properly included in an equitable adjustment under Paragraph 14.1 and 14.2 above.

14.11 Communications. All communications issued pursuant to this Clause shall be in writing.

15. **INSPECTION**

For the purposes of this Clause the term "Supplies and Services" includes without limitation raw materials, components, intermediate assemblies, and end products.

15.1 Inspection Authority

- (a) Buyer may designate an individual as the Quality Assurance Representative (QAR) to whom all matters concerning Buyer's quality requirements on each SUBCONTRACT shall be referred by the Seller. The designated QAR and his QAR staff shall possess the necessary Governmental and Company security clearances to be admitted to Seller's facilities and to inspect and test Supplies and review related quality assurance documentation.
- (b) If required, deliverable Supplies will be tested and approved for shipment at the location specified in the SUBCONTRACT .
- (c) Deliverable data as required by the Purchase Specification or as otherwise specified for the Supply(s), shall be inspected and accepted by the Buyer at the Buyer's facilities.

15.2 Notice of Testing

Seller shall inform the QAR by written notice the date of any testing required by this SUBCONTRACT . Such notice shall be provided at least thirty (30) days prior to the actual test date.

15.3 Inspection

- (a) All Supplies shall be subject to inspection and test by the QAR (and/or the Government) at all reasonable times including the period of manufacture and performance and, in any event prior to Final Acceptance.
- (b) In case any Supplies and Services or lots of Supplies or Services are defective in material or workmanship or otherwise not in conformity with the requirements of the SUBCONTRACT , the QAR shall have the right to reject them, to require their correction or, in the case of Services, their reperformance.
- (c) All inspections and tests by the Buyer at Seller's facilities shall be performed in such a manner as not to unduly delay the work. Should the performance of such inspection or test unduly delay the work of Seller, such delay shall be excusable within the meaning of the Clause entitled "Delivery Date and Excusable Delays," and Seller shall be entitled to an equitable adjustment in price and/or Delivery pursuant to the Clause entitled "Changes." Buyer reserves the right to charge to the Seller any additional cost to Buyer for inspection and testing when Supplies and Services are not ready at the time stipulated for such inspection or test by Seller's aforementioned notice or if reinspection or retest is necessitated by prior rejection.

15. **INSPECTION** (Continued)

- (d) Final acceptance or rejection of the Supplies or Services shall be made in accordance with the Final Acceptance Clause contained herein. Failure by Buyer to inspect and accept or reject Supplies or Services shall not relieve the Seller of responsibility for supply of such Supplies or Services in strict accordance with the SUBCONTRACT requirements.
- (e) The inspection or test by the Buyer of any Supplies or Services or lots thereof does not relieve the Seller from any responsibility regarding defects or other failures to meet the requirements of this SUBCONTRACT , which may be discovered prior to Final Acceptance. Except as otherwise provided in the SUBCONTRACT , Final Acceptance shall be conclusive except in regard to Latent Defects, fraud, or such gross mistakes as amount to fraud or negligence.
- (f) The Seller shall provide and maintain an inspection system in accordance with the Specifications covering the Supplies and Services hereunder. Records of all inspection work by the Seller shall be kept complete and available to the designated QAR during the performance of this SUBCONTRACT and for such longer period as may be specified elsewhere in this SUBCONTRACT .
- (g) Notwithstanding the requirements for any inspection and test contained in Specifications applicable to this SUBCONTRACT , except where inspections or tests are specified for performance solely by the Buyer, the Seller shall perform or have performed the inspection and test required to substantiate that the Supplies and Services provided under this SUBCONTRACT conform to the drawings, Specifications and SUBCONTRACT requirements listed herein.

16. **LIABILITY**

Seller shall save harmless and indemnify Buyer from and against all claims, suits (including counsel fees and other expenses of suits, whether groundless or not), judgments and awards on account of any damage to property; or injury (including death) to persons (including any damage or injury to the property or person of any employee of Seller or of Buyer) which may occur or be alleged to have occurred due to the negligence or other fault of Seller however arising out of or in connection with the performance of this SUBCONTRACT on part of Seller. Seller shall also save harmless and indemnify Buyer from and against any and all costs, damages, fines, penalties and liabilities incurred by Buyer (including counsel fees and other expenses) as a result of Seller's or any of Seller's subcontractors failure to comply with the provisions of this SUBCONTRACT and with all applicable laws or regulations as set forth in Clause 4, Compliance with Laws.

17. **LOGISTIC SUPPORT REQUIREMENTS**

- 17.1 This Clause applies whenever the specifications, by reference to a military specification or otherwise, specify repair parts or stock components (hereinafter called "repair parts") for a component or item of equipment. The acquisition of such repair parts shall be subject to the terms and conditions of this SUBCONTRACT .

17. LOGISTIC SUPPORT REQUIREMENTS (Continued)

- 17.2 With respect to components or equipment manufactured other than in the United States or Canada, the Seller agrees that, in addition to any other Data required by this SUBCONTRACT , it will furnish under this SUBCONTRACT sufficient Data so that the repair parts can be reproduced in the United States or Canada unless the Sellers of the components or equipment shall have made arrangements satisfactory to Buyer and approved by the Government for the manufacturing of repair parts in the United States or Canada. For the purpose of this Clause, "sufficient data" shall mean detail drawings and other technical information sufficiently extensive in detail to show design, construction, dimensions and operation or function, manufacturing methods or processes, treatment or chemical composition of materials, plant layout, and tooling. All data shall be in the English language and, to the maximum extent practical, the metric system of measurement, and drawings for components, assemblies, subassemblies, and parts protected by U.S. patents shall contain a prominent notation to that effect fully identifying the patent or patents involved, and bearing the number of this SUBCONTRACT .
- 17.3 With respect to all data required to be furnished under this Clause, there shall be granted to the Government, its officers, agents, and employees acting within the scope of their official duties for a period of seven (7) years from subcontract close out, "Government Purpose Rights" as defined in Paragraph (a) (12) of the flowdown Clause of this SUBCONTRACT entitled "RIGHTS IN TECHNICAL DATA—NONCOMMERCIAL ITEMS" (DFARS 252.227-7013) in all technical data necessary to manufacture spare and repair parts for such components or equipments.

18. NOTICES

Whenever any notice is required or authorized to be given hereunder, such notice shall be sent by registered mail or confirmed by receipt of a facsimile transmission to the respective individuals identified in the SUBCONTRACT .

19. NOTIFICATION OF CHANGES

- 19.1 The purpose of this Clause is to provide Buyer with the prompt reporting of any conduct which the Seller considers would constitute a change to this SUBCONTRACT and/or Buyer's Prime Contract. The Parties acknowledge potential changes are to be identified and resolved as they arise. Therefore, except for written change orders issued by Buyer, Seller shall notify Buyer of any conduct which Seller considers constitutes or requires a change to this SUBCONTRACT and/or Buyer's Prime Contract. Such notice shall be provided promptly and in any event within twenty (20) calendar days from the date the Seller identifies any such conduct. As used in this Clause, the term "conduct" includes both actions and failures to act, and the furnishing of, or the failure to furnish, any Supply under any provision of this SUBCONTRACT . The notice shall be written and shall state, on the basis of the most accurate information available to the Seller:
- (a) the date, nature and circumstances of the conduct regarded as a change;
 - (b) the name, function and activity of the individuals directly involved in or knowledgeable about such conduct;
 - (c) the identification of any documents and the substance of any oral communication involved in such conduct;

19. **NOTIFICATION OF CHANGES** (Continued)

- (d) the particular elements of SUBCONTRACT performance for which the Seller might seek an equitable adjustment under this Clause, including:
 - 1. what Supplies and Services 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 Seller'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 SUBCONTRACT requirements regarded as changed.

19.2 Except as provided in Paragraph 19.5 below, following submission of notice the Seller shall take no action to implement a potential change until advised by Buyer in writing as provided in Paragraph 19.3 below, unless the potential change was previously directed by Buyer, in which case the Seller shall conform therewith. Nothing in this Clause shall excuse the Seller from proceeding with SUBCONTRACT work in accordance with directions issued by Buyer.

19.3 Buyer shall promptly, and in any event within twenty (20) calendar days after receipt of notice, respond thereto in writing. In such response, Buyer shall either:

- (a) confirm that the conduct of which the Seller gave notice would constitute a change, and when necessary, direct the mode of further performance, or;
- (b) countermand any conduct regarded by Seller as a change, or;
- (c) deny that the conduct of which Seller gave notice would constitute a change and, when necessary, direct the mode of further performance, or;
- (d) in the event Seller's notice information is inadequate to make a decision under (a), (b), and (c) above, advise Seller what additional information is required.

Failure of Buyer to respond within the time required above shall be deemed a countermand under Paragraph 19.3(b).

19.4 Equitable adjustments for changes confirmed by Buyer shall be made in accordance with the Clause entitled "Changes" or any other provision of this SUBCONTRACT which provides for an equitable adjustment.

19.5 Paragraph 19.2 above provides that Seller is to take no action to implement a potential change pending Buyer's response to Seller's notice of the potential change except where specifically directed by Buyer. In special situations, however, where:

- (a) the circumstances do not allow sufficient time to notify Buyer of the facts prior to the need to proceed with the work, and;

19. **NOTIFICATION OF CHANGES** (Continued)

(b) the work must proceed to avoid hazards to personnel or property or to avoid additional cost to Buyer, Seller may proceed with work in accordance with the potential change. Seller shall advise Buyer in writing within five (5) days of the conduct giving rise to the potential change that Seller has proceeded and shall describe the nature of the special situation which required proceeding prior to notification. Within twenty (20) days of the conduct giving rise to the potential change, the Seller shall provide notice as required in Paragraph 19.1 above. Buyer shall respond as set forth in Paragraph 19.3 above. If Buyer determines that the conduct constitutes a change and countermands it, Seller shall be entitled to an equitable adjustment for performance in accordance with that change prior to the countermand including performance resulting from the countermand.

19.6 When Seller identifies any conduct, which may result in delay to delivery of the Supplies and Services, Seller shall promptly so inform Buyer thereof prior to providing the notice required by Paragraph 19.1 above.

20. **ORDER OF PRECEDENCE. INTERPRETATION AND EXCLUSIVE AGREEMENT, AND SEVERABILITY**

20.1 In the event of any inconsistency between provisions of this SUBCONTRACT , the inconsistency shall be resolved by giving precedence in the following order:

- (a) Special Provisions of Delivery Orders issued pursuant to this SUBCONTRACT;
- (b) Special Provisions of this SUBCONTRACT;
- (c) Attachments (excluding the Specifications/Buyer Material Ordering Catalog and Statement of Work); and,
- (d) Buyer Material Ordering Catalog, Procurement Specifications, and/or Statement of Work

20.2 This SUBCONTRACT contains and constitutes the entire understanding and agreement between Buyer and the Seller, and supersedes all previous understandings and agreements relative to the subject matter contained herein.

20.3 If any provision of this SUBCONTRACT is declared or found to be illegal, unenforceable or void, then the Parties shall be relieved of all obligations under that provision. In such case the remainder of this SUBCONTRACT shall be held in full force and effect.

21. **PERFORMANCE**

The Parties acknowledge that Seller has special skills, knowledge and ability in the work to be performed under this SUBCONTRACT , and that Buyer is relying on Seller's skills, knowledge and ability in all matters related to Seller's Delivery of the Supplies and Services ordered under this SUBCONTRACT . Seller will use such skills, specific knowledge, ability, best efforts, ingenuity, and due diligence in delivering the Supplies and Services in accordance with the requirements of this SUBCONTRACT.

22. **PRIORITY RATINGS**

The U.S. Government priority rating for the Supplies and Services to be delivered under this SUBCONTRACT is DO-A3. This priority rating is applicable to this SUBCONTRACT with respect to all work of the Seller performed in the United States. Seller shall follow the provisions of Defense Materials System Regulation 1 or Defense Priority System Regulation 1 (see 15 C.F.R. Part 700) and all other applicable regulations and orders of the Office of Industrial Resource Administration, Department of Commerce, in obtaining controlled materials and other products and materials needed to fulfill this SUBCONTRACT.

23. **PRODUCT ORIENTED SURVEY**

In accordance with DFARS Subpart 246.103, the Buyer and/or appropriate Government Representative, as deemed necessary, shall have the right to conduct a product-oriented survey(s) of Seller to determine compliance with the requirements of this SUBCONTRACT , and Seller shall insert a substantially similar Clause in all of its lower tier subcontracts awarded pursuant to this SUBCONTRACT .

24. **PROBLEM IDENTIFICATION REPORTS**

Problem Identification Reports (PIR) shall be used by Seller to alert Buyer to actual or potential problems and to establish an early dialogue between Seller and Buyer with regard thereto. As used in this Clause, a problem is a fact or circumstance of which Seller is aware that does, will, or may (1) have an impact on the Delivery Schedule, completion or performance for the cost of this SUBCONTRACT (increase or decrease), or (2) require a modification of this SUBCONTRACT . Seller shall provide Buyer with a written report of each problem within ten (10) days after Seller identifies such problem. Each PIR shall be dated, reference this SUBCONTRACT , and describe the nature of the problem; the date the problem arose; and, anticipated effects of the problem including, but not limited to, Delivery, and cost of performance, and Seller's recommended resolution of the problem.

25. **QUALITY ASSURANCE REQUIREMENTS**

25.1 Seller shall establish and maintain a Quality Assurance Program which is subject to audit and approval of Buyer. All Supplies provided under this SUBCONTRACT shall be inspected by Seller as part of such Program prior to submission for Government or ABS inspection and/or prior to shipment to verify conformance with all requirements and Specifications. Seller shall comply with quality requirements when such requirements are invoked by the Specification applicable to the Supplies or Services being purchased. If a Material Ordering Catalog page is invoked, Seller shall examine the page for quality program requirements

25.2 Seller shall establish and maintain, subject to Buyer's right to audit, a system of material identification that ensures the use of specified materials and components. Supplies shipped shall be in such a manner as to permit verification of the use of such specified materials and components upon receipt by Buyer. Raw materials used by Seller in the fabrication or processing of the Supplies shall conform to the physical, chemical and other technical requirements of the applicable material Specification and Seller shall employ laboratory testing as necessary to confirm the identity of raw materials.

25 **QUALITY ASSURANCE REQUIREMENTS** (Continued)

- 25.3 Government Procurement Quality Assurance (PQA) or Government Source Inspection (GSI). The Government reserves the right to inspect all Supplies. If Government Source Inspection is invoked by the SUBCONTRACT , Government inspection is required prior to shipment of the Supplies by Seller. Upon receipt of this notification, Seller must promptly notify and furnish a copy of the SUBCONTRACT to the Government Representative who normally services Seller's plant. If Seller's plant does not have a Government Representative, Seller must notify the nearest Army, Navy, Air Force or Defense Supply Agency inspection office. In the event the representative or office cannot be located, Buyer should be notified immediately. When the SUBCONTRACT invokes Government Procurement Quality Assurance, it is by authority of the Supervisor of Shipbuilding, Gulfcoast or Supervisor of Shipbuilding, Conversion and Repair; Bath, Maine, and Seller is required to furnish to the Government Representative at Seller's facility any subsequent modifications to the SUBCONTRACT and to make available all referenced data applicable to the SUBCONTRACT .
- 25.4 When specified by the SUBCONTRACT , Seller shall furnish verifiable test data, including the names of witnessing inspectors and present any other verifiable quality data required by the SUBCONTRACT or at any time up to and after final payment under the SUBCONTRACT .
- 25.5 Documentation and Other Verifiable Data. Quantitative, semi-quantitative or functional test results must be forwarded to Buyer when specified by the SUBCONTRACT and/or invoked by Military or Purchase Specifications. Documentation must reflect actual test results and not merely that the minimum requirements of the SUBCONTRACT or Military Specification have been met. Seller must retain a copy of such documentation for a minimum period of three (3) years after final acceptance of the Supplies.
- 25.6 Non-Conforming Products. Supplies which are received by Buyer and are found to be nonconforming by virtue of the fact that they are not in accordance with this SUBCONTRACT or that the documentation or verifiable data are missing, incomplete or incorrect, may be returned to Seller at Seller's expense. Prior to returning the non-conforming Supplies, Buyer will notify Seller of the nature of the discrepancy such that, if possible, the discrepancy may be rectified at Seller's expense without returning the material to Seller.

26. **RECOGNITION OF ELECTRONIC DELIVERABLES**

Data required to be delivered under the Subcontractor Data Requirement List (SDRL) of this SUBCONTRACT , that would be deemed Technical Data under DFARS 252.227-7013, if it were delivered in written form, shall not lose its status as Technical Data because access by the Buyer or Government, or delivery by the Seller, is by electronic means. The rights of the Parties in said Technical Data shall be as specified in DFARS 252.227-7013.

27. **REGULATORY BODIES, STANDARDS, CERTIFICATIONS**

The Supplies and Services that are produced, if any, under this SUBCONTRACT , shall comply with all the applicable laws, orders, rules, and regulations of the Federal, State and local government agencies in effect at the time of the Prime Contract award date. The Seller shall obtain all necessary certifications or documents that cover the approval and indicate compliance with the American Bureau of Shipping (ABS) Rules, DOD and Navy's Weapons System Explosive Safety Review Board (WSESRB), and other certification authorities. The Seller shall also provide data necessary for their subcontractor, if applicable, to obtain the required certifications, classifications, or statements of voluntary compliance. Additionally, the Seller shall accomplish all work necessary to comply with those applicable laws of the Federal, State, and local agencies, the requirements of the various regulatory bodies and imposed rules. All regulatory requirements, which are imposed as a requirement subsequent to subcontract award must be accomplished in order to obtain certification prior to delivery. Copies of all correspondence between the Seller or their subcontractor and government agencies and/or regulatory bodies shall be provided to the Buyer, Supervisor of Shipbuilding, Gulfcoast or Bath and PMS 500 within ten days of receipt and delivery.

28. **RISK OF LOSS AND INSURANCE**

- 28.1 Risk of loss of or damage to Supplies shall remain with Seller until, and shall pass to the Buyer upon, Delivery of the Supplies to the F.O.B. Destination point specified in the SUBCONTRACT and the Buyer's acceptance of the Supplies, regardless of whether that acceptance is conditional or final.
- 28.2 The Seller shall not be liable for loss of or damage to Supplies caused by the negligence of officers, agents, or employees of the Buyer acting within the scope of their employment.
- 28.3 The Seller shall bear the risk of loss or damage to any property of the Buyer in Seller's possession or care, and shall maintain adequate insurance so as to cover any such loss or damage, and shall name the Buyer as the additional insured and beneficiary of any payments there from with waiver of any right of subrogation.

29. **SHIPPING AND DELIVERY**

- 29.1 Delivery of each item or group of items ordered shall be made no later than the last day of the Delivery time(s) set forth in the SUBCONTRACT . No deliveries shall be made earlier than the designated Delivery time(s) unless authorized in writing by the Buyer's Purchasing Representative.
- 29.2 Supplies shall be delivered to the locations indicated on the SUBCONTRACT , F.O.B. Destination, unless otherwise specified.

30. **STOP WORK**

The provisions of the Clause contained in STOP-WORK ORDER FAR 52.242-15 are hereby incorporated by reference with the following change: The words "Contracting Officer" and "Government" shall mean Buyer; the word "Contractor" shall mean Seller; the words "ninety (90) days" are hereby changed to "one hundred (100) days"; and the words "thirty (30) days" are hereby changed to "twenty (20) days" wherever they appear; and the reference to the "Termination for Convenience" shall be deemed to refer to the Clause entitled herein "Termination for Convenience". In subdivision (2) of Paragraph (B), the expression "asserts a claim for the adjustment within twenty (20) days after the end of the period of work stoppage" shall be understood to mean "shall, within twenty (20) days after the end of the work stoppage, state its intention to make a claim for adjustment".

31. **TERMINATION FOR CONVENIENCE**

Buyer may terminate performance of work under this SUBCONTRACT in whole or in part, from time to time, if a termination is reasonably required to implement any Government termination, change or direction under the Prime Contract. The Buyer shall terminate by delivering to Seller the extent of termination and the effective date.

In the event of such termination, Seller shall immediately cease all work terminated hereunder and cause any and all of its suppliers and subcontractors to cease work. Seller must submit all claims within sixty (60) days after the effective date of termination. Buyer shall determine the amount due Seller on the Termination in accordance with FAR 52.249-2. In no event shall Buyer be obligated to pay Seller any amount in excess of the SUBCONTRACT price. Seller shall continue work not terminated.

32. **TITLE**

Unless otherwise stated in the Clause entitled "Progress Payments," title to the Supplies covered by the SUBCONTRACT shall pass from the Seller to the Buyer upon the Buyer's acceptance of the Supplies, regardless of whether the acceptance is conditional or final, at the F.O.B. Destination point.

33. **WAIVER**

No waiver by either Buyer or the Seller, whether written or oral, expressed or implied, of any rights under or arising from this SUBCONTRACT shall be binding on any subsequent occasion and no concession by either Buyer or the Seller shall be treated as a variation of this SUBCONTRACT unless specifically agreed in writing.

34. **WARRANTY**

34.1 The Seller warrants that all Supplies and Services furnished under this SUBCONTRACT will be in accordance with all contract requirements and free from defects or inferior Supplies or Services for twelve (12) months after Final Acceptance of the Supplies and Services.

34.2 If, within the warranty period, the Buyer finds that the warranted Supplies or Services are inferior, defective or not in accordance with the terms of the SUBCONTRACT, insofar as it is practicable the Buyer shall so inform the Seller in writing and the Seller, if so directed, shall promptly and without additional expense to the Buyer:

- (a) place in satisfactory condition the warranted work;
- (b) satisfactorily correct direct damage to equipment, the site, the compartment or contents thereof, which is the result of such unsatisfactory warranted work;

- (c) satisfactorily correct the work, materials and equipment that are disturbed in fulfilling the warranty, including the disturbed work, materials and equipment that may have been warranted under another contract; or
- (d) furnish such materials or parts and installation instructions as may be required to successfully accomplish the required correction or replacement. The Seller shall also prepare and furnish to the Buyer data and reports applicable to any correction or replacement required under this Clause.

The decision as to whether the Seller or Buyer will perform the warranty work shall be at the discretion of Buyer provided, however, that insofar as is practicable, the Seller shall be afforded a reasonable opportunity to inspect and correct the supplies or services prior to the performance of the warranty work by the Buyer. When the Buyer directs the Seller to perform the warranty work, if the Seller fails to proceed promptly in accordance with the warranty, Buyer may have such work performed at the expense of the Seller.

34.3 Any Supplies, Services or parts thereof corrected, repaired, replaced or otherwise placed in a satisfactory condition shall also be subject to the conditions of this Clause to the same extent as the Supplies or Services initially accepted. The warranties for such Supplies, Services or parts thereof shall be for twelve (12) months to run from the date of Buyer's final acceptance of such corrected, repaired or replaced Supplies or Services or until expiration of the original warranty period, whichever is longer.

34. **WARRANTY** (Continued)

- 34.4 The Buyer and/or the Government shall have the right to purchase parts for installation, either from the Seller, or directly from the Actual Parts Manufacturer (APM), without voiding this warranty. Any special warranty that may be required under this SUBCONTRACT shall be subject to the stipulations set forth above, insofar as they do not conflict with the provisions of such special warranties.
- 34.5 Seller shall obtain each transferable guaranty or warranty of equipment, material or installation thereof which is furnished by any manufacturer, Seller or installer in the ordinary course of the manufacturer's, Seller's or installer's business or trade. In addition, the Seller shall obtain and furnish to the Buyer all information which is required in order to make any such guaranty or warranty legally binding and effective, and shall submit both the information and the guaranty or warranty to the Buyer to meet any time limit requirements specified in the guaranty or warranty, or if no time limit is specified in the guaranty or warranty, prior to completion and acceptance of all work under the SUBCONTRACT .
- 34.6 Any limitations to Seller's warranty obligations expressed in this Clause shall not apply when the defects or deficiencies in such Supplies or Services or the Buyer's final acceptance of such Supplies resulted from the willful misconduct or lack of good faith on the part of the Seller's QA representatives, or its officers, directors, managers or other equivalent representatives who had supervision or direction of production and/or inspection of such Supplies or Services.

35. **GOVERNMENT "FLOW-DOWN" CLAUSES**

35.1 FULL TEXT CLAUSES

Pursuant to Buyer's Prime Contract with the U.S. Government and Buyer's acquisition policies, the following Clauses are included in this SUBCONTRACT in full text. As stated in the definitions Clause, "Contractor" shall mean Seller, "subcontractor" shall mean Seller's subcontractor, "Contracting Officer" and "Government" or "Navy" shall mean Buyer and "Contract" refers to this SUBCONTRACT except where context of Clause otherwise demands and any reference to "Disputes" in these clauses shall be construed to only mean the clause entitled "Disputes" contained herein.

35.2 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).

35. **GOVERNMENT "FLOW-DOWN" CLAUSES** (Continued)

- (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 ventures, 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.

35.3 **ASSIGNMENT AND USE OF NATIONAL STOCK NUMBERS (NAVSEA) (MAY 1993)**

To the extent that National Stock Numbers (NSNs) or preliminary NSNs are assigned by the Government for the identification of parts, pieces, items, subassemblies or assemblies to be furnished under this contract, the Contractor shall use such NSNs or preliminary NSNs in the preparation of provisioning lists, package labels, packing lists, shipping containers and shipping documents as required by applicable specifications, standards or Data item Descriptions of the contract or as required by orders for spare and repair parts. The cognizant Government Contract Administration Office shall be responsible for providing the Contractor such NSNs or preliminary NSNs which may be assigned and which are not already in possession of the Contractor.

35.4 **COMPUTER SOFTWARE AND/OR COMPUTER DATABASE(S) DELIVERED TO AND/OR RECEIVED FROM THE GOVERNMENT (NAVSEA) (APR 2004)**

- (a) The Contractor agrees to test for viruses all computer software and/or computer databases, as defined in the clause entitled "RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION" (DFARS 252.227-7014), before delivery of that computer software or computer database in whatever media and on whatever system the software is delivered. The Contractor warrants that any such computer software and/or computer database will be free of viruses when delivered.
- (b) The Contractor agrees to test any computer software and/or computer database(s) received from the Government for viruses prior to use under this contract.

35. **GOVERNMENT "FLOW-DOWN" CLAUSES** (Continued)

- (c) Unless otherwise agreed in writing, any license agreement governing the use of any computer software to be delivered as a result of this contract must be paid-up and perpetual, or so nearly perpetual as to allow the use of the computer software or computer data base with the equipment for which it is obtained, or any replacement equipment, for so long as such equipment is used. Otherwise the computer software or computer database does not meet the minimum functional requirements of this contract. In the event that there is any routine to disable the computer software or computer database after the software is developed for or delivered to the Government, that routine shall not disable the computer software or computer database until at least twenty-five calendar years after the delivery date of the affected computer software or computer database to the Government.
- (d) No copy protection devices or systems shall be used in any computer software or computer database delivered under this contract to restrict or limit the Government from making copies. This does not prohibit license agreements from specifying the maximum amount of copies that can be made.
- (e) Delivery by the Contractor to the Government of certain technical data and other data is now frequently required in digital form rather than as hard copy. Such delivery may cause confusion between data rights and computer software rights. It is agreed that to the extent that any such data is computer software by virtue of its delivery in digital form, the government will be licensed to use that digital-form with exactly the same rights and limitations as if the data had been delivered as hard copy.
- (f) Any limited rights legends or other allowed legends placed by a Contractor on technical data or other data delivered in digital form shall be digitally included on the same media as the digital-form data and must be associated with the corresponding digital-form technical data to which the legends apply to the extent possible. Such legends shall also be placed in human-readable form on a visible surface of the media carrying the digital-form data as delivered, to the extent possible.

35.5 EXCLUSION OF MERCURY (NAVSEA) (MAY 1998)

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

35.6 SPECIAL AGREEMENT REGARDING SWITCHBOARD SUBCONTRACTS (NAVSEA) (JUN 2000)

The Government has an interest in maintaining a competitive market for switchboards to be used on U.S. Naval vessels. The requirements of 10 U.S.C. 2534 result in a major component of certain switchboards (i.e., air circuit breakers) being available from a single domestic source who is also a competitor for such switchboards. Therefore, the Contractor shall evaluate subcontract proposals for such switchboards exclusive of air circuit breaker content or on some other basis that ensures an equitable switchboard competition.

35.7 METRIC SYSTEM

The Contractor is required to the maximum extent practical to use the metric system of measurement throughout the design of the DDG 1000 System. The Contractor is required to deliver its metrication policy describing the extent to which its design, will comply with metrication within 90 days of the contract award. In areas in which the use of metric measure is determined to be impractical or non-cost effective, a justification shall be provided.

35.8 **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.

36. **DFARS 252.211-7003 ITEM IDENTIFICATION AND VALUATION (JUN 2004)**

36.1 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.

“Commonly accepted commercial marks” means any system of marking products for identification that is in use generally throughout commercial industry or within commercial industry sectors. Some examples of commonly accepted commercial marks are: EAN, UCG Global Trade Item Number. Automation Industry Action Group B-4 Parts Identification and Tracking Application Standard, and B-2 Vehicle Identification Number Bar Code Label Standard; American Trucking Association Vehicle Maintenance Reporting Standards; Electronic Industries Alliance EIA 802 Product Marking Standard; and Telecommunications Manufacturers Common Language Equipment Identification Code.

“Concatenated unique item identifier” means—

- (a) 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
- (b) For items that are serialized within the original part number, the linking together of the unique identifier data elements in order of the issuing agency code, enterprise identifier, original part number and serial number within the part 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/uid>.

“DoD unique item identification” means an item with unique item identifiers that has machine-readable data elements to distinguish it from all other like and unlike items. In addition -

- (a) For items that are serialized within the enterprise identifier, the unique, identifier shall include the data elements of the issuing agency code enterprise identifier, and unique serial number.
- (b) For items that are serialized within the part number within the enterprise identifier, the unique identifier shall include the data elements of the issuing agency code, enterprise identifier, the original part number, and the serial number.

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

36. **DFARS 252.211-7003 ITEM IDENTIFICATION AND VALUATION (JUN 2004)**

(Continued)

“Enterprise identifier” means a code that is uniquely assigned to an enterprise by a registration for controlling authority.

“Government’s unit acquisition cost” means

- (a) For fixed-price type line, subline, or exhibit line items, the unit price identified in the contract at the time of delivery; and
- (b) For cost-type line, subline, or exhibit line items, the Contractor’s estimate fully burdened unit cost to the Government for each item at the time of delivery.

“Issuing agency code” means a code that designates the registration (or controlling) authority.

“Item” means a single hardware article or unit formed by a grouping of subassemblies, component or constituent parts required to be delivered in accordance with the terms and conditions of this contract.

“Machine-readable” means an automatic information 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 asset creation to a class of items with the same form, fit, function, and interface.

“Registration (or controlling) authority” means an organization responsible for assigning a non-repeatable identifier to an enterprise (i.e., Dun & Bradstreet’s Data Universal Numbering System (DUNS) Number, Uniform Code Council (UCC)/EAN International (EAN) Company Prefix, or Defense Logistics Information System (DLIS) Commercial and Government Entity (CAGE) Number).

“Serial number within the enterprise identifier” or “unique serial number” 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 number” or “serial 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 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 number” means each item of a particular part number is assigned a unique serial number within that part number assignment. The enterprise is responsible for ensuring unique serialization within the part number within the enterprise identifier.

“Unique item identifier” means marking an item with machine-readable data elements to distinguish it from all other like and unlike items.

“Unique item identifier” means a set of data marked on items that are globally unique unambiguous and robust enough to ensure data information quality throughout life and to support multi-faceted business applications and users.

“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/uid>.

36. **DFARS 252.211-7003 ITEM IDENTIFICATION AND VALUATION (JUN 2004)**

(Continued)

36.2 The Contractor shall deliver all items under a contract line, subline, or exhibit line item.

36.3 Unique item identification.

- (a) The Contractor shall provide unique item identification marking, or a DoD recognized unique identification equivalent, for--
 - 1. All items for which the Government's unit acquisition cost is \$5,000 or more; and
 - 2. All items for which the Government's unit acquisition cost is less than \$5,000:

Contract Line, Subline, or
Exhibit Line Item Number

Item Description

- 3. Subassemblies, components, and parts embedded within items as specified in Exhibit Number or Contract Data Requirements List Item Number.
- (b) The unique item identifier and the component data elements of the unique item identifier shall not change over the life of the item.
- (c) Data syntax and semantics. The Contractor shall
 - 1. Mark the encoded data elements (except issuing agency code) on the item using any of the following three types of data qualifiers, as specified elsewhere in the contract:
 - (i) Data Identifiers (DIs) (Format 06).
 - (ii) Application Identifiers (AIs) (Format 05), in accordance with ISO/IEC International Standard 15418, Information Technology – EAN/UCC Application Identifiers and ASC MH 10 Data Identifiers and ASC MH 10 Data Identifiers and Maintenance.
 - (iii) Text Element Identifiers (TEIs), in accordance with the DoD collaborative solution “DD” format for use until the final solution is approved by ISO JTC1/SC 31. The DoD” collaborative solution is described in Appendix D of the DoD guide to Uniquely Identifying Tangible Items, available at <http://www.acg.osd.mil/uid>; and
 - 2. Use high capacity automatic identification devices in unique identification that conform to ISO/IEC International Standard 15434, Information Technology – Syntax for High Capacity Automatic Data Capture Media.
- (d) Marking Items
 - 1. Unless otherwise specified in the contract, data elements for unique identification (enterprise identifier, serial number, and, for serialization within the part number only, original part number) shall be placed on items requiring marking by paragraph (c)(1) of this clause in accordance with the standard practice of MIL-STD-130, Identification Marking of U.S. Military Property, cited in the contract schedule.

36. **DFARS 252.211-7003 ITEM IDENTIFICATION AND VALUATION (JUN 2004)**

(Continued)

2. The issuing agency code—
 - (i) Shall not be placed on the item; and
 - (ii) Shall be derived from the data qualifier for the enterprise identifier.
- 36.4 Commonly accepted commercial marks. The Contractor shall provide commonly accepted commercial marking for items that are not required to have unique identification under paragraph (c) of this clause.
- 36.5 Material Inspection and Receiving Report. The Contractor shall provide report at the time of delivery, as part of, the Material Inspection and Receiving Report specified elsewhere in the contract; the following information:
 - (a) Description.*
 - (b) Unique item identifier; **consisting of-
 1. Concatenated DD unique item identifier; or
 2. DoD recognized unique identification equivalent.
 - (c) Unique item identifier type.
 - (d) Issuing agency code (if DoD unique item identifier is used).**
 - (e) Enterprise identifier (if DoD unique item identifier is used).**
 - (f) Original part number.**
 - (g) Serial number.**
 - (h) Quantity shipped.*
 - (i) Unit of measure.*
 - (j) Government's unit acquisition cost.*
 - (k) Ship to code.
 - (l) Shipment date.
 - (m) Contractor's CAGE code or DUNS number.
 - (n) Contractor number.
 - (o) Contract line, subline, or exhibit line item number.*
 - (p) Acceptance code.

* Once per contract line, subline, or exhibit line item.
** Once per item.
- 36.6 Material Inspection and Receiving Report for embedded subassemblies, components, and parts requiring unique item identification. The Contractor shall provide report at the time of delivery, as part of the Material Inspection and Receiving Report specified elsewhere in this contract; the following information:
 - (a) Unique item identifier of the item delivered under a contract line, subline, or exhibit line item that contains the embedded subassembly, component, or part.
 - (b) Unique item identifier of the embedded subassembly, component, or part, consisting of-
 1. Concatenated DoD unique item identifier; or
 2. DoD recognized unique identification equivalent.
 - (c) Unique item identifier type. **
 - (d) Issuing agency code (if DoD unique item identifier is used). **
 - (e) Enterprise identifier (if DoD unique item identifier is used). **

36. **DFARS 252.211-7003 ITEM IDENTIFICATION AND VALUATION (JUN 2004)**

(Continued)

(f) Original part number. **

(g) Serial number. **

(h) Unit of measure. *

(i) Description.

* Once per contract line, subline, or exhibit line item.

** Once per item.

36.7 The Contractor shall submit the information required by paragraphs (e) and (f) of this clause in accordance with the procedures at <http://www.acq.osd.mil/uid>.

36.8 Subcontracts. If paragraph (c)(1)(iii) of this clause applies, the Contractor shall include this clause, including this paragraph (h), in all subcontracts issued under this contract.

37. **NAVSEA 5252.227-9113 GOVERNMENT-INDUSTRY DATA EXCHANGE PROGRAM (AUG 1997)**

(a) The Contractor shall participate in the appropriate interchange of the Government-Industry Data Exchange Program (GIDEP) in accordance with 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 this 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 charge from:

GIDEP Operations Center

P.O. Box 8000

Corona, CA 91718-8000

Phone: (909) 273-4677 or DSN 933-4677

FAX: (909) 273-5200

Internet: <http://www.gidep.corona.navy.mil>

38. **REFERENCED CLAUSES**

Pursuant to Buyer's Prime Contract with the U.S. Government and Buyer's acquisition policies, the following Clauses are included in this SUBCONTRACT , unless by their express provisions they are not applicable to this particular Seller or SUBCONTRACT . "FAR" refers to the Clauses in Part 52 of the Federal Acquisition Regulation (FAR), Chapter 1, Title 48 of the Code of Federal Regulations (CFR). "DFARS" refers to the Clauses at Part 252 of the DOD FAR Supplement (DFARS), Chapter 2, Title 48 of the CFR. "NAPS" refers to the Clauses at Part 5252 of the Navy Acquisition Procedure Supplement (NAPS), Chapter 52, Title 48 of the CFR. The FAR/DFARS/NAPS Clauses incorporated herein are those in effect as of the effective date of the Buyer's prime contract under which this order is placed, unless a date notation appears in the Clause title. When the date is so indicated, the Clause in effect on that date is incorporated into the SUBCONTRACT. Further, any reference in any of these Clauses to any Disputes Clause or provision shall be read instead to only mean the Clause entitled "Disputes", contained herein.

<u>FAR</u>	<u>TITLE</u>
52.203-3	GRATUITIES
52.203-5	COVENANT AGAINST CONTINGENT FEES
52.206-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT
52.203-7	ANTI-KICKBACK PROCEDURES
52.203-8	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY
52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY
52.203-12	LIMITATION OF PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS
52.204-2	SECURITY REQUIREMENTS
52.204-4	PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER
52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT
52.211-5	MATERIAL REQUIREMENTS
52.211-15	DEFENSE PRIORITY AND ALLOCATION REQUIREMENT
52.215-2	AUDIT AND RECORDS NEGOTIATION
52.215-9 Alt II	CHANGES OR ADDITIONS TO MAKE-OR-BUY PROGRAM – ALTERNATE II

FAR**TITLE**

52.215-10

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING
DATA

52.215-12

SUBCONTRACTOR COST OR PRICING DATA

52.215-14 Alt 1

INTEGRITY OF UNIT PRICES - ALTERNATE I

38. **REFERENCED CLAUSES** (Continued)

<u>FAR</u>	<u>TITLE</u>
52.215-15	PENSION ADJUSTMENTS AND ASSET REVERSIONS
52.215-18	REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS OTHER THAN PENSIONS
52.215-19	NOTIFICATION OF OWNERSHIP CHANGES
52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS
52.219-9 Alt II	SMALL BUSINESS SUBCONTRACTING PLAN AND ALTERNATE II
52.219-16	LIQUIDATED DAMAGES - SUBCONTRACTING PLAN
52.219-25	SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM - DISADVANTAGED STATUS AND REPORTING
52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES
52.222-3	CONVICT LABOR
52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION
52.222-19	CHILD LABOR - COOPERATION WITH AUTHORITIES AND REMEDIES
52.222-20	WALSH - HEALEY PUBLIC CONTRACTS ACT
52.222-21	PROHIBITION OF SEGREGATED FACILITIES
52.222-26	EQUAL OPPORTUNITY
52.222-29	NOTIFICATION OF VISA DENIAL
52.222-35	EQUAL OPPORTUNITY FOR DISABLED VETERANS, VETERANS OF THE VIET NAM ERA, AND OTHER ELIGIBLE VETERANS
52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES
52.222-37	EMPLOYMENT REPORTS ON DISABLED VETERANS, VETERANS OF THE VIET NAM ERA, AND OTHER ELIGIBLE VETERANS
52.222-38	COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS

38. **REFERENCED CLAUSES** (Continued)

<u>FAR</u>	<u>TITLE</u>
52.222-39	NOTIFICATION OF EMPLOYEES RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES
52.223-5	POLLUTION PREVENTION AND RIGHT -TO-KNOW AND ALT I AND II INFORMATION
52.223-6	DRUG-FREE WORKPLACE
52.223-11	OZONE-DEPLETING SUBSTANCES
52.223-12	REFRIGERATION EQUIPMENT AND AIR CONDITIONERS
52.223-13	CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING
52.223-14	TOXIC CHEMICAL RELEASE REPORTING
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES
52.227-1 Alt I	AUTHORIZATION AND CONSENT AND ALTERNATE 1
52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT
52.227-10	FILING OF PATENT APPLICATIONS - CLASSIFIED SUBJECT MATTER
52.227-11	PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SHORT FORM)
52.227-12	PATENT RIGHTS - RETENTION BY THE CONTRACTOR (LONG FORM)
52.230-2	COST ACCOUNTING STANDARDS
52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS
52.232-9	LIMITATION ON WITHHOLDING OF PAYMENTS
52.234-1	INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III
52.237-2	PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION
52.239-1	PRIVACY OR SECURITY SAFEGUARDS
52.242-1	NOTICE OF INTENT TO DISALLOW COSTS
52.242-12	REPORT OF SHIPMENT

38. **REFERENCED CLAUSES** (Continued)

<u>FAR</u>	<u>TITLE</u>
52.242-13	BANKRUPTCY
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS
52.246-24	LIMITATION OF LIABILITY – HIGH VALUE ITEMS (ONLY APPLIES TO THESE ITEMS: SHIPS AND ALL EQUIPMENT THEREIN)
52.246-25	LIMITATION OF LIABILITY – SERVICES
52.247-64 Alt I	PREFERENCE FOR PRIVATELY OWNED US - FLAG COMMERCIAL VESSELS
52.248-1 Alt II	VALUE ENGINEERING AND ALTERNATE II
52.249-2	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE)
52.249-14	EXCUSABLE DELAYS
52.251-1	GOVERNMENT SUPPLY SOURCES
52.253-1	COMPUTER GENERATED FORMS
<u>DFARS</u>	<u>TITLE</u>
252.203-7001	PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT RELATED FELONIES
252-203-7002	DISPLAY OF DOD HOTLINE POSTER
252-204-7000	DISCLOSURE OF INFORMATION
252.204-7005	ORAL ATTESTATION OF SECURITY RESPONSIBILITIES
252.209-7000	ACQUISITION FROM SUBCONTRACTORS SUBJECT TO ON-SITE INSPECTION UNDER THE INTERMEDIATE RANGE NUCLEAR FORCES (INF) TREATY
252-209-7004	SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY
252.211-7000	ACQUISITION STREAMLINING
252.215-7000	PRICING ADJUSTMENTS
252.215-7002	COST ESTIMATING SYSTEM REQUIREMENTS

DFARS**TITLE**

252.219-7003	SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN
252.223-7002	SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES
252.223-7003	CHANGE IN PLACE OF PERFORMANCE - AMMUNITION AND EXPLOSIVES
252.223-7004	DRUG-FREE WORK FORCE
252.223-7006	PROHIBITION OF STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS
252.225-7001	BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM
252.225-7002	QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS
252.225-7004	REPORTING OF CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES

38. **REFERENCED CLAUSES** (Continued)

<u>DFARS</u>	<u>TITLE</u>
252.225-7006	QUARTERLY REPORTING OF ACTUAL CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES
252.225-7012	PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES
252.225-7013	DUTY-FREE ENTRY
252.225-7014 Alt I	PREFERENCE FOR DOMESTIC SPECIALTY METALS AND ALTERNATE I
252.225-7014	PREFERENCE FOR DOMESTIC SPECIALTY METALS (JUNE 2005)(DEVIATION) AND ALT. 1
252.225-7016	RESTRICTIONS ON ACQUISITION OF BALL OR ROLLER BEARINGS
252.225-7019	RESTRICTION OF ACQUISITION OF ANCHOR AND MOORING CHAIN
252.225-7025	RESTRICTION ON ACQUISITION OF FORGINGS
252.225-7031	SECONDARY ARAB BOYCOTT OF ISRAEL
252.225-7033	WAIVER OF UNITED KINGDOM LEVIES
252.225-7038	RESTRICTION ON ACQUISITION OF AIR CIRCUIT BREAKERS
252.226-7001	UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS
252.227-7013	RIGHTS IN TECHNICAL DATA - NONCOMMERCIAL ITEMS
252.227-7014	RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION
252.227-7015	RIGHTS IN TECHNICAL DATA - COMMERCIAL ITEMS
252.227-7016	RIGHTS IN BID OR PROPOSAL INFORMATION
252.227-7019	VALIDATION OF ASSERTION RESTRICTIONS - COMPUTER SOFTWARE
252.227-7025	LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS

38. **REFERENCED CLAUSES** (Continued)

<u>DFARS</u>	<u>TITLE</u>
252.227-7027	DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE
252.227-7030	TECHNICAL DATA - WITHHOLDING OF PAYMENT
252.227-7037	VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA
252.228-7005	ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES
252.231-7000	SUPPLEMENTAL COST PRINCIPLES
252.239-7000	PROTECTION AGAINST COMPROMISING EMANATIONS
252.242-7004	MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM
252.243-7002	REQUESTS FOR EQUITABLE ADJUSTMENTS
252.244-7000	SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS)
252.247-7023	TRANSPORTATION OF SUPPLIES BY SEA (10 U.S.C. 2631)
252.247-7024	NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (10 U.S.C. 2631)
252.249-7002	NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION

1.0 DISPUTES

1.1 Disputes:

- 1.1.1 "Dispute" as used herein shall mean any and all claims or disputes that in any way arise out of or relate to this Agreement, the negotiation or execution thereof, its performance, or the breach or enforcement thereof. Buyer and Seller intend that the definition of "Dispute" shall have the broadest scope permitted by law and that, without limiting the generality of the foregoing, shall be deemed to include all claims between the parties including, but not limited to, any claims for fraud, misrepresentation, negligence, libel and slander, unfair competition, unfair trade practices, or other tort law claims. The foregoing notwithstanding, the parties also intend and agree that, because of the nature of such matters, the following claims are not subject to the agreement to negotiate set forth herein: (1) claims regarding ownership, validity, infringement, or misappropriation of either party's intellectual property; (2) claims regarding a breach of obligations relating to the Nondisclosure Agreement(s), if any, or Clause 6 – Confidentiality of Form SSF P8587.

- 1.1.2 This Agreement shall be interpreted and the rights and obligations of the Parties shall be determined in accordance with the laws of the State of Maine without reference to that state's conflicts of laws. Except for the right of either party to apply to a court of competent jurisdiction for equitable relief necessary to preserve the status quo or prevent irreparable harm as established below, the parties agree that any Dispute between them or against any agent, employee, successor, or assign of the other shall be settled, to the extent possible by good faith negotiations. Any dispute, controversy or claim arising out of or in connection with this Agreement, including without limitation any dispute regarding the enforceability of any provision, which cannot be resolved through good faith negotiations within sixty (60) days or such longer period of time as may be mutually agreed between the Parties, shall be submitted to and finally resolved by a court of competent jurisdiction in the State of Maine.
- 1.1.3 Until final resolution of any Dispute hereunder, Seller shall proceed diligently with the performance of this Agreement unless otherwise directed by Buyer in writing. Each party acknowledges that the other party will suffer irreparable harm and that there is no adequate remedy at law if, pending settlement or any controversy or claim, the other party fails to diligently perform its obligations under this Agreement. The non-breaching party shall be entitled to interim equitable relief or injunctive relief. In such an event, both parties hereby expressly consent to the jurisdiction of the courts in the State of Maine.
- 1.1.4 Buyer's rights under the terms and conditions of this Agreement are cumulative and in addition to any other rights available at law or equity.
- 1.1.5 This provision is not applicable to, and does not in any way limit any remedies available to a party with respect to, any dispute between either party to this Agreement and a third-party.
- 1.2 Disputes Related to Prime Contract:
 - 1.2.1 Except for changes identified as such in writing and signed by Buyer, the Seller shall notify Buyer, in accordance with Clause 18 – Notices of Form SSF P8587, in writing promptly, within forty-five (45) days from the date that the Seller identifies any conduct (including actions, inactions, and written or oral communications) on the part of the Buyer that Seller regards as a change to or inconsistency with the contract terms and conditions.

- 1.2.2 Notwithstanding the previous paragraph, any Dispute arising under or related to this Agreement, which Buyer could include in a claim or other demand under the disputes provisions of the prime contract, shall be resolved in accordance with Paragraph 1.2 and as follows: (i) Seller shall provide Buyer with a fully supported written claim, properly certified as prescribed by FAR 33.207, within sixty (60) days after the claim accrues; (ii) Seller shall cooperate with Buyer in prosecuting Seller's timely made claim or demand and will be bound by the resulting decision of the Contracting Officer; and (iii) Seller shall pay its proportional costs in pursuing the claim. If Seller fails to provide Buyer with a written claim for any Dispute within the time frame prescribed hereunder, Seller is deemed to have waived the claim.
- 1.2.3 Buyer's entire liability to Seller with respect to any matter prosecuted under the prime contract disputes clause shall be limited to the recovery obtained against the Government for Seller's claim, exclusive of Buyer's related markups. If Seller is affected by the resulting decision and Buyer elects to appeal, Seller shall pay to Buyer Seller's proportion of the appeal costs. If Buyer elects not to appeal the decision, Buyer shall notify Seller of that decision within ninety (90) days. If Seller submits a timely request to Buyer to appeal such decision, Buyer shall file and sponsor Seller's appeal, at Seller's sole cost, if Buyer may do so in good faith. Buyer has the right to review, prior to submission, any pleadings or other papers Seller may file in such appeal. Seller agrees to delete any admissions or statements in the pleadings or papers to which Buyer objects. If Buyer appeals such decision, whether or not at Seller's request, any decision regarding such appeal shall be binding on Buyer and Seller as it relates to this Agreement. The choice of law specified in the prime contract shall not apply to Disputes and appeals prosecuted under the prime contract.
- 1.2.4 Until final resolution of any Dispute hereunder, Seller shall proceed diligently with the performance of this Agreement unless otherwise directed by Buyer in writing.

2. EXPORT COMPLIANCE

Exports of Data exchanged under this Subcontract and/or Delivery Order may be subject to the export laws of the United States, including, but not limited to, the U.S. International Traffic in Arms Regulations (ITAR), the Export Administration Act (EAA), the regulations issued by the Office of Foreign Assets Control (OFAC), the Foreign Corrupt Practices Act (FCPA) as codified at 15. U.S.C. §78m & §78dd(1) et seq., the Trading With the Enemy Act (TWEA), and the International Economic Emergency Powers Act (IEEPA). The Parties shall not export, disclose or transfer any such data directly or indirectly without compliance with these and any other applicable laws and regulations.

3. INVOICES AND PAYMENTS

3.1 Invoices

- 3.1.1 An invoice is a written request for payment under this Subcontract/Delivery Order for Supplies or Services provided by the Seller. In order to be properly prepared and valid, an invoice must include (as applicable):
- 3.1.1.1 Invoice date and Seller's invoice number;
 - 3.1.1.2 name of Seller;
 - 3.1.1.3 the Subcontract/Delivery Order number, line item number, description of Supplies and Services, quantity, unit of measure, unit price, and extended total for the Supplies or Services being invoiced;
 - 3.1.1.4 shipment number, date of shipment and shipping point for the Supplies or Services being invoiced;

- 3.1.1.5 name and address to which payment is to be sent in accordance with the terms specified in this Subcontract/Delivery Order;
 - 3.1.1.6 name, title, phone number and address of person to be notified in the event of a defective invoice;
 - 3.1.1.7 any other information or documentation required by other provisions of the Subcontract/Delivery Order;
 - 3.1.1.8 any prompt payment discounts available; and
 - 3.1.1.9 the invoice amounts for individual Supplies shall be shown separately on any invoice.
- 3.1.2 Invoices shall be prepared and submitted in duplicate, unless otherwise specified, and sent to the address below:

Village Marine Tec.
2000 W. 135th St.
Gardena, CA 90732
Attn: Invoice

- 3.1.3 Invoices may not be submitted by facsimile transmission.

3.2 Payments

- 3.2.1 Buyer shall pay the Seller, upon the submission of properly prepared and valid invoices, the prices stipulated in this Subcontract/Delivery Order as may be adjusted.
- 3.2.2 Seller's valid invoices are payable by Buyer no later than thirty (30) days after receipt thereof. The invoice will be deemed to have been received five (5) days after the invoice date.
- 3.2.3 Payment shall be considered to have been made on the date which appears on the payment check.
- 3.2.4 Payment shall not be considered as an indication of the acceptability of the Supplies or Services for which payment is made.

4. **INTELLECTUAL PROPERTY RIGHTS**

4.1 Copyright

All specifications, drawings, technical descriptions and other data ("Data") acquired from the Seller in connection with this Subcontract/Delivery Order are the copyright of the Seller, except where expressly stated otherwise on such Data, and shall be treated as unpublished works.

4.2 Notice of Applicable FAR and DFAR Clauses.

The following FAR and DFAR clauses are incorporated herein by reference and form a part of this Subcontract/Delivery Order:

FAR 52.227-1: AUTHORIZATION AND CONSENT AND ALTERNATE;

FAR 52.227-2: NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT;

FAR 52.227-10: FILING OF PATENT APPLICATIONS – CLASSIFIED SUBJECT MATTER;

FAR 52.227-12: PATENT RIGHTS – RETENTION BY THE CONTRACTOR (LONG FORM);

DFAR 252.227-7013: RIGHTS IN TECHNICAL DATA – NONCOMMERCIAL ITEMS;

DFAR 252.227.7014: RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION; and

DFAR 252.227.7015: RIGHTS IN TECHNICAL DATA – COMMERCIAL ITEMS.

4.3 Patent Indemnity

The Seller shall indemnify Buyer against claims by owners or licensees of patents and registered designs of the United States for infringement thereof by use of sale of the Supplies or Services, PROVIDED:

4.3.1 This Indemnity shall not extend to infringements resulting from use by the Seller of Buyer's parts, designs or specific instructions or from use or sale in combination with other Supplies where infringements would not have otherwise occurred; and

4.3.2 Buyer shall immediately inform the Seller of claims, shall make no settlement or admission and shall permit the Seller alone (and at the Seller's expense) to deal with claims;

5. **LIABILITY INSURANCE FOR ACCIDENTS OR DAMAGE**

5.1 When Seller is performing any of its obligations on Buyer's premises or on a vessel in which the Seller's Supplies and Services are being used, Seller shall purchase and maintain such insurance as will protect Buyer from claims which may arise out of or as a result from Seller's operations under this Subcontract/Delivery Order, whether such operations be by Seller or by any of Seller's subcontractors or by anyone directly or indirectly employed by either of them, or by anyone for whose acts they may be liable. Said coverage shall include, but not be limited to any insurance required by State, Federal, and local laws, and contractual coverage and completed operations coverage and: (i) Statutory Workers' Compensation as may be required by the locality where the work is being performed, including Longshoremen's and Harbor Worker's Compensation Act; (ii) Employers' Liability - \$1,000,000 per occurrence; (iii) Commercial General Liability - the minimum limits shall be \$1,000,000/\$2,000,000 Personal & Bodily Injury and Property Damage combined single limit per occurrence; and (iv) Automobile Liability - the minimum limits shall be \$1,000,000/\$2,000,000 Bodily Injury and Property Damage combined single limit per occurrence.

5.2 As respects policies under (i) above, the insurance carrier must agree in writing to waive its right to subrogation. Likewise, as respects policies under (iii) and (iv) above, Buyer must be listed as an additional insured. A certificate of insurance evidencing such coverage and conditions must be provided to Buyer prior to the commencement of work and upon renewal of any policies during the course of work. All policies shall provide 30 days advanced written notice of any coverage suspension or material changes, must be written by carriers with A.M. Best's rating of "A-, VII", and licensed to do business in the state where services are to be performed, and shall be primary as respects any coverage which Buyer may carry.

6. **MARKING. PACKING. AND PACKAGING**

6.1 Unless otherwise specified, material must be packaged to meet or exceed American Society for Testing and Materials (ASTM) Designation D3951-98. When shipping on pallets, material or equipment must be adequately secured to meet ASTM Designation D3951-98, Part 5.1.5, Unitization.

6.2 All shipments shall be marked with the following information:

6.2.1 Buyer Subcontract/Delivery Order number for the product being shipped

6.2.2 Buyer line item number for the product being shipped

- 6.2.3 Buyer catalog number (or NSN, if applicable) for the product being shipped
- 6.2.4 Quantity shipped for the product being shipped
- 6.2.5 MSDS # (if applicable) for the product being shipped
- 6.2.6 QPL Source (if applicable) for the product being shipped
- 6.2.7 Shelf Life (if applicable) for the product being shipped

Markings shall be on the face of each container (i.e., crates, boxes, cartons, etc.) or securely tagged to soft-sided containers.

- 6.3 All packing lists shall minimally contain the information in paragraph 6.2. The packing list shall be secured to the external surface of each container, or readily accessible upon entry to each container.

The Seller's commercial shipping document/packing list for Subcontract/Delivery Order items shall include proof that Government Source Inspection has been performed (if required) and the following Procurement Quality Audit (PQA) statement beneath Seller's statement:

"Required PQA of listed items has been performed. (Signature of Auth. Seller Rep.), (date)
(Typed name)_____."

6.4

- 6.4.1 Tags and labels, when required, shall be Seller's tags or labels conforming to the requirements of the Specification MIL-STD 129. Labels are authorized to be used on metal containers. Supplies requiring special certification shall be annotated on inner and outer container tags or labels indicating special certification compliance. Where the size of the shipping container allows, four address labels must be attached to the containers at the following location: (i) one (1) each on top of container, (ii) one (1) each on each side of the container, and (iii) one (1) each on front of container. For the purposes of this Clause the top, bottom, front and back of the container are not considered sides.
- 6.4.2 Within each container, each Buyer catalog number (or NSN, if applicable) shall be segregated (i.e., bagged, boxed, layered or partitioned) and readily identifiable with tags/labels reflecting information stated in paragraph 6.2 above. If multiple loose Supplies are required to fulfill one Buyer catalog number, mark one item per paragraph 6.2 above and mark all remaining Supplies as "part of" the Buyer catalog number.
- 6.4.3 Multiple orders shall not be shipped within a single container.
- 6.4.4 Multiple shipments to one (1) specified delivery location on any given day shall be consolidated under one (1) Bill of Lading.
- 6.4.5 Where different delivery locations are specified by the Buyer, each container shall include only material for one delivery location. Multiple delivery locations require separate Bills of Lading.
- 6.5 MSDS Requirements
 - 6.5.1 General
 - 6.5.1.1 The Seller shall provide information for each item of Hazardous Material to be delivered pursuant to this Subcontract/Delivery Order in the form of a current, updated Material Safety Data Sheet (MSDS) in accordance with 29 CFR 1910.1200

Hazard Communication Standard, to the Buyer prior to Subcontract/Delivery Order award and in advance of any shipment. The MSDS Sheet shall include a statement (if applicable) that the product contains a toxic chemical or chemicals, by name, subject to the reporting requirements of EPCRA Section 313 (40CFR372).

- 6.5.1.2 In addition, each Material Safety Data Sheet provided by the Seller must contain specific disposal procedures for hazardous waste pursuant to and in accordance with all Resource Conservation Recovery Act (RCRA) Laws and Environmental Protection Agency/Department of Environmental Protection (EPA/DEP) Regulations.
- 6.5.1.3 Buyer will then provide Seller with an MSDS number. The MSDS Number must appear on all packing slips, containers and packing containers and must be written as:
MSDS Number #####
- 6.5.1.4 The use of Buyer provided MSDS Labels (Fluorescent Orange) is mandatory. Labels shall be applied directly to the product.
- 6.5.2 Changes: For any change in the product the Seller shall submit a revised/updated MSDS Sheet to Buyer in advance of any shipment.
- 6.5.3 Reporting Requirements for 313 Chemicals:
 - 6.5.3.1 On an annual basis (not later than 30 September of each calendar year) the Seller must provide either an updated MSDS Sheet with any changes or a Certification Statement that the current MSDS Sheet is accurate and complete.
 - 6.5.3.2 At a minimum the following must be included in each annual submittal: Name of each chemical substance, the Chemical Abstracts Service Registry Number (CAS#); and the percentage of weight of each hazardous substance or chemical in the mixture or trade name product.
 - 6.5.3.3 Notification is also required within 30 days of the following events if the Supplier; (1) changes a mixture or trade name product by adding, removing, or changing the percentage by weight of a listed toxic chemical; or (2) discovers that previous notification did not properly identify the toxic chemicals in the mixture or correctly indicate the percentage by weight.
 - 6.5.3.4 The reports shall be forwarded to:
Village Marine Tec
2000 W. 135th Street
Gardena, CA 90249
Attn: Safety Department
 - 6.5.3.5 The shipment of all material or equipment to Buyer or another Buyer designated destination must comply with the Hazardous Materials Transportation Act (Title CFR 49 Parts 170-178).

7. **OFFSETS**

Should all or part of the item(s) supplied under this Subcontract/Delivery Order be provided by sources outside the United States or its territories, Seller must inform Buyer of the country of origin and percentage of foreign content. Buyer reserves exclusive right to apply the equivalent value of foreign content in the item(s) provided by the Seller to the Offset Program of the Buyer's choice. Buyer may, at Buyer's discretion, provide written notice waiving its claim to offset credits accruing from this

Subcontract/Delivery Order, thereby allowing Seller use and discretionary application of such credits. Seller agrees to assist Buyer in securing Offset Credits from respective foreign government authorities in an amount equal to the value of foreign content in the item(s) provided.

8. SAFETY AND SECURITY

- 8.1 When the Seller is performing any of its obligations on Buyer's premises in Buyer's care or custody, the Seller and its subcontractors shall comply with all Buyer plant rules and regulations and Buyer Safety and Security policies and procedures including, but not limited to, the use of personal protective equipment as required. At a minimum, the Seller and its subcontractors shall have in their possession a suitable hardhat, safety glasses with side shields, hearing protectors, and ANSI Z41 approved steel-toed safety shoes.
- 8.2 If Seller's personnel are to have access to classified material such personnel will be required to obtain all necessary security clearances prior to their access to such material or compartments.
- 8.3 Seller shall utilize only U.S. citizens in execution of its obligations on Buyer property unless specific prior approval from Buyer is obtained.
- 8.4 By accepting this Subcontract/Delivery Order, the Seller acknowledges that the following is applicable to any work performed on this Subcontract/Delivery Order:
 - 8.4.1 Only trained authorized personnel will operate or service equipment, and then only in accordance with manufacturer's recommendations,
 - 8.4.2 Seller is responsible for properly managing hazardous waste generated by Seller in accordance with applicable Federal, State and local regulations. Disposal of hazardous waste shall be coordinated and approved through the Buyer's Environmental Operations Department, and

9. SURVIVABILITY

The obligations of the Parties under this Subcontract/Delivery Order, which by their nature continue beyond the expiration of this Subcontract/Delivery Order, shall survive any termination or cancellation of this Subcontract/Delivery Order.

10. GOVERNMENT "FLOW-DOWN" CLAUSE

Pursuant to Buyer's Prime Contract with the U.S. Government and Buyer's acquisition policies, the following Clause is included in this SUBCONTRACT and/or DELIVERY ORDER in full text. As stated in the definitions Clause, "Contractor" shall mean Seller, "subcontractor" shall mean Seller's subcontractor, "Contracting Officer" and "Government" or "Navy" shall mean Buyer and "Contract" refers to this SUBCONTRACT and/or DELIVERY ORDER except where context of Clause otherwise demands and any reference to "Disputes" in this clause shall be construed to only mean the clause entitled "Disputes" contained in Paragraph 1 herein.

252.225-7014 Preference for Domestic Specialty Metals (Jun 2005) (Deviation)

(a) *Definitions.* As used in this clause –

- (1) "Qualifying country" means any country listed in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

- (2) "Specialty metals" means any of the following:
 - (i) Steel –
 - (A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or
 - (B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten or vanadium.
 - (ii) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent.
 - (iii) Titanium and titanium alloys.
 - (iv) Zirconium and zirconium base alloys.
- (b) Any specialty metals delivered under this solicitation/purchase order shall be melted or produced in the United States or its outlying areas or a qualifying country.

Alternate I

- (a) *Definitions.* As used in this clause –

- (1) "Electronic component" means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections of electrical devices such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits. An item can be an "electronic component" regardless of the tier of the end product at which it is installed.
- (2) "End Product" means supplies delivered under a line item of this solicitation/purchase order.
- (3) "Qualifying country" means any country listed in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.
- (4) "Specialty metals" means any of the following:
 - (i) Steel –
 - (A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or
 - (B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten or vanadium.
 - (ii) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent.
 - (iii) Titanium and titanium alloys.
 - (iv) Zirconium and zirconium base alloys.
- (b) Any specialty metals incorporated in articles delivered under this solicitation/purchase order shall be melted or produced in the United States or its outlying areas.
- (c) This clause does not apply to specialty metals –
 - (1) Melted in a qualifying country or incorporated in an article manufactured in a qualifying country; or
 - (2) Incorporated in a commercially available electronic component, if the value of the specialty metal content in the electronic component does not exceed 10 percent of the overall value of the lowest level electronic component, containing specialty metal, that is – (i) Produced by the Offeror; or (ii) If the Offeror does not produce the electronic component, produced by the Offeror's subcontractor from which the electronic component was acquired.

(d) The offeror shall insert the substance of this clause, including this paragraph (d), in all subcontracts for items containing specialty metals.

"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".

