

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION
NOTIFICATION OF ASSISTANCE APPROVAL
(COOPERATIVE AGREEMENT)

PROJECT NUMBER: DTMA1H10005

TITLE: Military Prep School For Prospective Midshipmen

EFFECTIVE DATE: September 30, 2010

TOTAL AMOUNT OF THE AGREEMENT: \$140,000.00

ESTIMATED FEDERAL FUNDING: \$140,000.00

CURRENT FEDERAL OBLIGATION: \$140,000.00

OBLIGATION DATE:

APPROPRIATION DATA: ^{SEP 29 2010} 70104 750MA.2010.1PDA000015.0000510300
25305.61006600 - ADM 10-093

This Agreement is entered into between the United States of America, hereinafter called the Government, represented by the Maritime Administration, and the Recipient, New Mexico Military Institute as defined in Article 1 pursuant to and under U.S. Federal law.

The parties to this Agreement execute it by signing in the spaces provided below, as evidence and in acknowledgment of their intention to observe all the provisions hereof.

FOR THE RECIPIENT:

FOR THE UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION:

Ruby Schanman
(Signature)

Delores Bryant
(Signature)

Ruby Schanman
(Name & Title) VP of Finance
(Date) 9/28/10

DELORES BRYANT
(Name & Title) Contracting Officer
(Date) 9/28/10

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ARTICLE 1 - PARTIES

This COOPERATIVE AGREEMENT (Agreement) is entered into by and between the United States of America represented by the Maritime Administration (MARAD), and the New Mexico Military Institute, (Recipient).

ARTICLE 2 - AUTHORITY

MARAD enters into this Agreement pursuant to the authority in SEC. 3508 COOPERATIVE AGREEMENTS, ADMINISTRATIVE EXPENSES, AND CONTRACTING AUTHORITY, SECTION 109 OF TITLE 49.

ARTICLE 3 - SCOPE OF THE AGREEMENT

To provide the United States Merchant Marine Academy (USMMA), Kings Point, NY sponsored midshipmen, to attend the one year Academy Prep Program at the New Mexico Military Institute.

ARTICLE 4 - DEFINITIONS

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

1. The term "head of the agency" or "Secretary" as used herein means the Secretary, the Under Secretary, any Assistant Secretary, or the Maritime Administrator or Deputy Maritime Administrator of the Department of Transportation; and the term "duly authorized representative" means any person or persons or board (other than the Agreement Officer) authorized to act for the head of the agency.
2. The terms "Agreement Officer" and/or "Agreement/ Contracting Officer" means the person executing this Agreement on behalf of MARAD, and any other employee who is a properly warranted Federal Contracting Officer.
3. Except as otherwise provided in this Agreement, the term "subcontracts" includes purchase orders.
4. The term "MARAD" means the Maritime Administration.
5. The term "Recipient" means the commercial organization(s) participating in and legally responsible for this Agreement.
6. The term "subcontractor" means a contractor to the Recipient and all tiers of subcontractors there under.
7. The term "Project Partners" refers to the Recipient's partners in the agreement.

ARTICLE 5 - MODIFICATIONS

1. Minor project changes do not require prior Government approval. The following are changes that would require Government approval by written modification:
 - a. Major changes to the Statement of Work that effect Task/Sub-Task Deliverable Milestones.
 - b. Changes to the budget that affects Payable Milestones.
 - c. Changes to the schedule that would necessitate an extension to the Period of Performance.
 - d. Changes to the Teaming Agreement, if such changes substantially alter the relationship or responsibilities between the Recipient and the Project Partners originally agreed upon when the Agreement was executed. This includes the replacement of any Project Partners.
3. Changes that would substantially affect either party's contributions to the project from that which was originally agreed upon when the Agreement was executed.
2. Recommendations for modifications, including justifications to support any changes to the Statement of Work and/or the Payable Milestones will be documented in a letter and submitted by the Recipient to the Agreement Officer with a copy to the Agreement Officer's Technical Representative. This documentation letter will detail the technical, chronological, and financial impact of the proposed modification to the research program. The Agreement Officer shall be responsible for the review and verification of any recommendations to revise or otherwise modify the Agreement, or other proposed changes to the terms and conditions of this Agreement.
3. The Government is not obligated to pay for additional or revised Payable Milestones until the Payable Milestone Schedule is formally revised by the Agreement Officer and made a part of this Agreement.
4. For minor or administrative Agreement modifications (e.g., changes in the paying office or appropriation data, changes to the Government personnel identified in the Agreement, etc.), the Recipient requires no signature.

ARTICLE 6 - AGREEMENT ADMINISTRATION

Administrative and contractual matters under this Agreement shall be referred to the following representatives of the parties:

MARAD: Delores Bryant, Contracting/Agreement Officer
DOT/Maritime Administration
Office of Acquisition, MAR-380
1200 New Jersey Avenue, SE-W26/420
Washington, DC 20590
(202) 366-2660

Technical matters under this Agreement shall be referred to the following representatives:

USMMA: CDR Michael E. DeRosa
Agreement Officer's Technical Representative
DOT/Maritime Administration
United States Merchant Marine Academy
300 Steamboat Road
Kings Point, NY
(516) 773-5801

Recipient: For Administrative, Contractual and Technical matters

TBD

Each party may change its representatives named in this Article by written notification to the other party.

ARTICLE 7 - PERIOD OF PERFORMANCE

The period of performance of this Agreement shall commence as of August 1, 2010 as indicated on the front of this document and shall remain in full force and effect for twelve (36) consecutive months in accordance with its provisions, unless sooner terminated as provided for herein or extended by mutual agreement.

ARTICLE 8 - CONSIDERATION OF THE PARTIES

(a) The Government will make payments in two installments of (1) \$2,000 per student (cadet) for the Fall 2010 Semester (August 2010 to December 2010) (2) \$2,000 per student (cadet) for the Spring 2011 Semester (January 2011 to May 2011).

ARTICLE 9 - AGREEMENT OFFICER'S TECHNICAL REPRESENTATIVE (AOTR)

- (a) CDR Michael E. DeRosa is hereby designated as the AOTR for this Agreement and is located at the address given above.
- (b) The AOTR is responsible for the technical aspects of the project and technical liaison with the Recipient.
- (c) The AOTR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes, which affect the price, terms or conditions of this Agreement. Any Recipient request for changes shall be referred to the Agreement/ Contracting Officer directly or through the AOTR. No such changes shall be made without the expressed prior authorization of the Agreement/Contracting Officer. The AOTR may designate assistant AOTR(s) to act for him by naming such assistants in writing and transmitting a copy of such designation through the Agreement Officer to the Recipient.

ARTICLE 10 - PAYMENT REQUIREMENTS

For information purposes, if this Agreement is modified and Government funding is provided:

1. Prior to the submission of invoices to MARAD by the Recipient, the Recipient shall have and maintain an established accounting system, which complies with Generally Accepted Accounting Principles, and with the requirements of this Agreement, and shall ensure that appropriate arrangements have been made for receiving, distributing, and accounting for Federal funds. OMB Circular A-110 is incorporated herein by reference and establishes the requirements for financial management and financial reporting to the Government. If the Recipient is a Consortium, the Consortium shall not incur or allocate any direct or indirect costs of its own pursuant to this Agreement.
2. In no case shall the Government's financial liability exceed the amount obligated under this Agreement. No legal liability on the part of the Government for any payment may arise for performance under this Agreement beyond the funds obligated unless and until funds are made available to the Agreement Officer for performance and until the Recipient receives written notice of availability from the Agreement Officer.
3. The Recipient shall maintain adequate records to account for Federal funds received under this Agreement, as well as Recipient funds contributed under this Agreement. The Recipient's relevant financial records are subject to examination or audit by the Government. The Agreement Officer or designee shall have direct access to sufficient records and information of the Recipient, to ensure full accountability for all funding under this Agreement. Such audit, examination, or access shall be performed during normal business hours on normal business days.

ARTICLE 11 - METHOD OF PAYMENT

(a) MARAD will make payments under this Agreement either by check or electronic funds (EFT) transfer through the Treasury Financial Communications System at the option of the Government. Payment will be due on the 30th calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice. The date of the EFT issued in payment shall be considered to be the date payment is made.

b. Invoices shall be submitted monthly in an original and one copy to DOT/Enterprise Services Center (ESC), MARAD A/P Branch, AMZ-15, Oklahoma City, OK 73125. To constitute a proper invoice, the following information and/or attached documentation must be included, attached to Standard Form (SF270): Invoices can also be email to: Maradinvoices@faa.gov

(b) The Recipient shall forward the following information in writing to the Agreement Officer not later than 7 days after receipt of notice of award.

(1) Cooperative Agreement Number.

(2) Full name (where practicable), title, phone number, Recipient's IRS Taxpayer ID number, Duns number and complete mailing address of responsible official(s), (i) to whom checks are to be sent, and (ii) who may be contacted concerning the bank account information requested below.

(3) The following bank account information required to accomplish wire transfers:

(i) Name, address, and telegraphic abbreviation of the receiving financial institution.

(ii) Receiving financial institution's 9-digit American Bankers Association (ABA) identifying number for routing transfer funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(iii) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide:

(A) Address and telegraphic abbreviation of the correspondent financial institution.

(B) The correspondent financial institution's 9-digit ABA identifying number for routing transfer of funds.

(c) Any changes to the information furnished under paragraph (b) of this article shall be furnished to the Agreement Officer in writing at least 30 days before the effective date of change.

It is the Recipient's responsibility to furnish these changes promptly to avoid payments to erroneous addresses or bank accounts.

(d) The document furnishing the information required in paragraph (b) and (c) must be dated and contain the signature, title, and telephone number of the Recipient official authorized to provide it, as well as the Recipient's name and Agreement number.

(e) Failure to submit information required by this article could result in delay in processing of invoices for payment.

ARTICLE 12 - INDEMNITY

The Recipient agrees to hold the Government harmless from all liability for the Recipient's own acts and omissions and the results thereof. The Recipient assumes all risk, responsibility, and liability for itself, its agents, staff, employees for monetary or other losses to persons, properties or entities resulting in any manner from the conduct of its operations in which the products and services identified herein are utilized and/or furnished to others.

ARTICLE 13 - SUSPENSION OR TERMINATION

As prescribed by OMB Circular A-110, the following definitions apply under this Article:

Termination - The termination of a grant or other agreement means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

Suspension - The suspension of a grant or other agreement is an action by a Federal sponsoring agency that temporarily suspends Federal sponsorship under the grant or other agreement, pending corrective action by the Recipient or pending a decision to terminate the grant or other agreement by the Federal-sponsoring agency.

When the Recipient has failed to comply with the terms of this agreement, MARAD may, on reasonable notice to the Recipient, suspend the grant or other agreement, pending corrective action by the Recipient, or a decision by MARAD or the Recipient to terminate in accordance with the provisions listed below for termination for cause or termination for convenience. MARAD shall allow all necessary and proper costs that the Recipient could not reasonably avoid during the period of the suspension provided that they meet the provisions of the applicable Federal cost principles.

MARAD's provisions for the systematic settlement of terminated grants or other agreement include the following:

- (1) Termination for Cause - MARAD may reserve the right to terminate any grant or agreement in whole or in part at any time before the date of completion, whenever it is determined that the Recipient has failed to comply with the conditions of the agreement. MARAD shall promptly notify the Recipient in writing of the determination and the reasons for the termination, together with the effective date. Payments made to the Recipient or recoveries by MARAD under grants or other agreements terminated for cause shall be in accordance with the legal rights and liabilities of the parties.
- (2) Termination for Convenience - MARAD or Recipient may terminate grants and agreements in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds by either party. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. MARAD shall allow full credit to the Recipient for the Federal share of the non-cancelable obligations, properly incurred by the Recipient prior to termination.

ARTICLE 14 - DISPUTES

The Agreement/Contracting Officer who shall reduce the decision to writing and mail a copy thereof to the Recipient shall decide all disputes of fact or of interpretation under this Agreement not disposed of by mutual agreement. Within thirty- (30) days of receipt of such written decision, the Recipient may appeal in writing to the Associate Administrator for Administration, Maritime Administration. The Associate Administrator for Administration will fix a date for written submissions or oral presentations, or both, by the Recipient and the Agreement/ Contracting Officer, or their representatives. The Associate Administrator for Administration shall hand down a written decision, which shall be final and conclusive upon the parties as to questions of fact. The Contract Disputes Act of 1977 does not apply to this Agreement. Compliance with this Article does not preclude use of any other legal remedies by the Parties.

ARTICLE 15 - INSPECTIONS

The Government, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder and the premises on which it is being performed. If the Government on the premises of the Recipient or the subcontractor makes any inspection or evaluation, the Recipient shall provide and shall require all subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as to not unduly delay the work.

ARTICLE 16 - RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS

- a. Financial records, supporting documents, statistical records, and all other records pertinent to this Agreement including those of the Recipient and any subcontractors shall be retained for a period of 3 years, following expiration of this Agreement. If any

litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

- b. The retention period starts from the date of the submission of the final expenditure report.
- c. The head of the Federal sponsoring agency and the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any pertinent books, documents, papers, and records of the Recipient and its subcontractors to make audits, examinations, excerpts and transcripts.
- d. Unless otherwise required by law, MARAD shall not place restrictions on the Recipient that will limit public access to the records of the Recipient that are pertinent to this Agreement
- e. Except when MARAD can demonstrate that such records must be kept confidential and would have been accepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal-sponsoring agency.

ARTICLE 17 - OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit arising from it. However, this provision does not apply to this Agreement to the extent that this Agreement is made with a corporation for the corporation's general benefit.

ARTICLE 18 - COVENANT AGAINST CONTINGENT FEES

The Recipient warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Recipient for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this Agreement without liability or in its discretion to recover the full amount of such commission, percentage, brokerage or contingent fee.

ARTICLE 19 - PAYMENT OF INTEREST ON RECIPIENT'S CLAIMS

If an appeal is filed by the Recipient from a final decision under the Disputes Article, above, denying a claim arising under this Agreement, interest on the amount of the claim finally determined by the Associate Administrator for Administration to be owed by MARAD shall be payable to the Recipient. Such interest shall be at the rate determined pursuant to Public Law 103-160 and shall be computed from the date of the request for decision by the Associate Administrator for Administration.

ARTICLE 20 - EQUAL OPPORTUNITY

During performance of this Agreement, the Recipient agrees as follows:

(1) The Recipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) The Recipient shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Recipient shall, in all solicitations or advertisement for employees placed by or on behalf of the Recipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(4) The Recipient shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(5) The Recipient shall permit access to its books, records, and accounts by the Government for the purposes of investigation to ascertain the Recipient's compliance with the applicable rules, regulations, and orders.

(6) If the Government determines that the Recipient is not in compliance with this Article or any rule, regulation, or order of the Secretary of Labor, this Agreement may be canceled, terminated, or suspended in whole or in part and the Recipient may be declared ineligible for further Government assistance, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Recipient as provided in Executive Order 11246, as amended the rules, regulations, and orders of the Secretary of Labor or as otherwise provided by law.

(7) The Recipient shall include the terms of this Article in every subcontract that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor.

ARTICLE 21 - DRUG-FREE WORKPLACE

The Certification regarding a Drug-Free Workplace is contained in Attachment 4 and is incorporated into this Agreement. The Recipient shall abide by the rules set forth in 49 CFR Part 29 Subpart F, incorporated herein by reference, with regard to maintaining a drug-free workplace and shall implement this requirement in all sub-awards under this Agreement.

ARTICLE 22 - DEBARMENT AND SUSPENSION

The Recipient shall comply with the non-procurement debarment and suspension common rule implementing Executive Orders 12549 and 12689, "Debarment and Suspension." This common rule restricts sub-awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

ARTICLE 23 - LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(a) Definitions.

"Agency," as used in this article means executive agency as defined in 2.101.

"Covered Federal action," as used in this article, means any of the following Federal actions:

- (a) The awarding of any Federal contract.
- (b) The making of any Federal grant.
- (c) The making of any Federal loan.
- (d) The entering into of any cooperative agreement.
- (e) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this article, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this article, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this article, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this article, includes the following individuals who are employed by an agency:

(a) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

(c) A special Government employee, as defined in section 202, title 18, United States Code.

(d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act; title 5, United States Code, appendix 2.

"Person," as used in this article, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this article, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this article, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this article, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this article, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as such person employs him or her for 130 working days.

"State," as used in this article, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions. (1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this article, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this article, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action -

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b) (3) (i) (A) of this article are permitted under this agreement.

(ii) Professional and technical services. (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this article, does not apply in the case of -

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this article, professional and technical services shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable.

Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action.

Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b) (3) (ii) (A) (1) and (2) of this article are permitted under this article.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure. (1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB Standard Form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this article, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this article. An event that materially affects the accuracy of the information reported includes -

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

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(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or received any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the subcontractor submits the disclosure form. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this article.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b) (3) (ii) (A) (1) and (2) of this article are permitted under this article.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure. (1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB Standard Form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this article, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this article. An event that materially affects the accuracy of the information reported includes -

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered

Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or received any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the subcontractor submits the disclosure form. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this article.

(e) Penalties. (1) Any person who makes expenditure prohibited under paragraph (a) of this article or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this article shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this article makes allowable or reasonable any costs that would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this article will not be made allowable under any other provision.

- **MARAD Position:** Based on the initial funds the MARAD Program Office and Office of Acquisitions designated to fulfill the minimum requirement of the project, there is currently \$132,697.41 remaining to fund the entire Hawaii Port Development Project; however, we are going to deobligate \$1,000,000 set aside to be used once the minimum guarantee has been met through other existing efforts. Therefore, the total actual remaining budget is currently \$1,132,697.41.

PRIME CONTRACTOR TEC INC ISSUES/CONCERNS

- **ISSUE #1 Expediting Task Orders (TO) and Task Order Modifications (TO Mods)**

Option 1: TEC Principal Jim Hunt has expressed concerns with the timeliness of MARAD's processing TOs and TO Mods. Has stated on numerous occasions, *how can he fix the process.*"(Tracey's version....Bob which one do you want.)

- Option 2: Expediting Task Orders and Task Order Modifications on *his* timeline: TEC Principal Jim Hunt has had qualms with how fast TOs and TO Mods have been processed by MARAD. Despite them never having to operate at risk, MARAD operating in line with standard acquisition timelines and procedures, and in a rare instances being given verbal approvals to proceed when necessary, he expresses an unfounded sense of urgency to the matter. For a brief moment earlier this year during the initial planning phases of the Project, MARAD's electronic system needed some modifications and inhibited us from promptly processing TOs. His concerns may be grounded in that prior instance, but have been hyperbolized since. (Anthony's version)

MARAD Position: Majority of MARAD's timeliness issues occurred during the transition from the Office of Acquisition's Automated Contract Writing System (IDEAS-PD) to the department's mandated system PRISM. As a result, some of the fully executed TOs were very slow to get processed by MAR-380. It should be noted, all technical reviews and approvals were completed by MAR-510 and Harbors and documented in the CMS system. TEC constantly complained that these delays were going to start impacting the project's construction schedule.

Despite all the delays, MAR-510 believes that TEC never operated at risk. Although these actions were delayed, MARAD was operating in line with standard acquisition timelines and procedures; and in rare instances, TEC has been given verbal approvals to proceed with work to keep the project moving.

- **ISSUE #2 Relationship with Hawaii DOT Harbors**

During weekly telecons, TEC has expressed a need to increase communication and participation of TEC, MARAD, and Harbors at the weekly project status review telecons. Only TEC and MARAD actively participate in these telecons; therefore, it is difficult for all stakeholders to have a clear understanding of the overall project, work activities, current issues, approvals needed etc. Over the past

personal family reasons he relocated back to his permanent residence in Seattle, WA. Robert Wardwell was appointed as the Honolulu project manager.

MARAD's Position: MARAD is in the process of having its HQ engineers review the project management staffing levels and level of effort for all open task orders to determine if two project managers are warranted under the contract. Once this is determined, MARAD will brief Harbors and determine the appropriate course of action.

- **ISSUE #2 Contractor Billing**

On a few occasions early in the contract, Harbors discovered billing issues with TEC. James (Jim) Reed was improperly billing hours to the contract. For example, Jim would bill the contract for a full eight (8) hours per task instead of detailing how he segmented an eight-hour workday to address each task. This action has caused a slight distrust of TEC and has encouraged an even more vigil eye to such instances by Hawaii DOT Harbors and MARAD.

MARAD Position: MARAD's position remains unchanged. This unfortunate action occurred during the infancy stages of the contract. MARAD and Harbors caught the errors, adjusted the invoices accordingly, and the Contracting Officer counseled TEC on proper billing procedures. MARAD continues to thoroughly review invoices in according with invoicing procedures and approved contract costs.

- **ISSUE #3 – Available Funding**

Harbors (Jadine Urasaki) has required the overall project funding status of the project in terms of the amount of funds transferred to MARAD and the amount of funds expended on the Hawaii Infrastructure Program to date.

MARAD Position: MARAD is collaborating with the Office of the Chief Financial Officer and the Office of Acquisition to validate this information prior to submitting to Hawaii Harbors. According to Delphi reports (accounting system), approximately \$7,746,000 in funding was transferred to MARAD to implement the Hawaii Port Infrastructure Program, a total of \$7,613,303 has been expended leaving approximately \$132,000 available for the project. **(THIS INFORMATION IS FOR MARAD USE ONLY UNTIL VERIFIED)**

The Hawaii Port Infrastructure Program crosses over 3 separate contracts. MAR-500 is in the process of verifying these numbers with the Contracting Officer and does not feel confident in releasing this information until its validated.

- **ISSUE #4 - Kalaeloa Harbor Fuel Pier project:**

Harbors has worked with TEC to develop a scope of work for this project. Project is pending MARAD's response on funding availability.

two months, weekly telecons have decreased to monthly telecons. TEC has indicated that they would like the weekly telecons to resume.

MARAD Position: MARAD concurs with TEC's assessment of increased communication being a must; and have had several conversations with Harbors regarding participation in the telecons. In response to the decrease in weekly telecons to monthly telecons, this approach was implemented due to Harbors suggestions to find ways to decrease PM costs.

RECOMMENDATION

I recommend you travel to Hawaii for a meeting in June to discuss existing project task orders issued under the Hawaii Port Infrastructure Expansion and future project tasks under consideration.

Attachments:

Attachment I Hawaii Port Infrastructure Expansion Program Team Organization Chart

Attachment II Weekly Progress Report

Attachment III Brief Bio of Hawaii DOT

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Attachment III Brief Bio of Hawaii DOT

Glenn Okimoto (DOT Director) is the Budget Director of the University of Hawaii System. Dr. Okimoto, 57, has extensive experience in state government, including in the Department of Transportation as the Airports Administrator and Harbors Administrator; and in the Department of Accounting and General Services as State Comptroller. From 1994 to 2001, Dr. Okimoto served as Deputy Director for the state Transportation Department for the Administration Division. Dr. Okimoto received his BA, MA and Ph.D. in agricultural and resource economics from UH-Manoa.

Randy Grune (DOT Deputy for Harbors) is Principal of Next Generation Consulting Company, providing business advice, strategic planning, and project management services. Until 2007, Mr. Grune was President & CEO of Hawaii Stevedores, Inc., where he worked for 16 years. Mr. Grune, 54, began his career in land surveying and real estate development. He attended Iolani School, University of Colorado at Boulder, and received his MA in urban and regional planning from UH-Manoa.

Jadine Urasaki (DOT Deputy for CIP) is the Public Works Manager for the Department of Education Facilities Development Branch. Ms. Urasaki, 41, has 17 years of administrative management and engineering experience in the private and public sectors. Majority of her work has been with capital improvement and special maintenance projects with the state Transportation Department. Ms. Urasaki, who holds a BS in civil engineering from UH-Manoa, is a licensed professional civil engineer and an accredited professional in Leadership in Energy and Environmental Design (LEED).