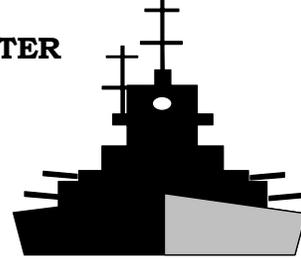


# DESC-PHB--COMMERCIAL SHIPS' BUNKERS



**DEFENSE ENERGY SUPPORT CENTER**  
**ATTN: DESC-PHB**  
**8725 John Kingman Rd**  
**Ft. Belvoir, Virginia 22060-6222**

**SHIPS BUNKERS**



## OPEN MARKET CLAUSES

TITLE:	OPEN MARKET CLAUSES
DESCRIPTION:	Below are the clauses incorporated by reference into Ships' Bunkers Open Market/ Simplified Acquisitions. Clauses for Domestic or Overseas procurements only are annotated as such.
SPECIAL NOTES:	

### DOCUMENTS

DD Form 1155

### CLAUSES PDF

### General Clauses

*SPECIFICATIONS:*

[C16.23-2 for Marine Gas Oil](#)

[C36 for Fuel Oil, Intermediate, IFO 180 & 380](#)

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**C16.23-2 COMMERCIAL MARINE GAS OIL MINIMUM SPECIFICATION REQUIREMENTS (DESC MAY 2002)**

(a) Offered product shall conform to the following requirements that define a fuel suitable for Marine Gas Turbine engines:

<u>FUEL PROPERTY</u>	<u>TEST METHOD</u>	<u>LIMITS</u>
1. Cetane Number <sup>1</sup> or Cetane Index	ASTM D 613 ASTM D 976	42 min. 43 min.
2. Appearance @ 21°C or ambient temperature (whichever higher) or Water & Sediment	Visual ASTM D 2709	Clear & Bright 0.05 vol. % max.
3. Distillation, 90% point	ASTM D 86	357°C max.
4. Flash Point <sup>2</sup>	ASTM D 93	60°C min.
5. Cloud Point <sup>3</sup>	ASTM D 2500	-1°C (30°F) max.
6. Viscosity @ 40°C	ASTM D 445	1.7 - 4.5 cSt
7. Color <sup>4</sup>	ASTM D 1500	3 max.
8. Density @ 15°C	ASTM D 1298	876 kg/m max.
9. Carbon Residue on 10% bottoms <sup>5</sup>	ASTM D 524	0.35 mass % max.
10. Ash	ASTM D 482	0.01 mass % max.
11. Sulfur <sup>6</sup>	ASTM D 4294	1.0 mass % max.
12. Corrosion	ASTM D 130	3 max.
13. Composition	None	100% distillate fuel (fuel shall contain no residual)

**(b) NOTES TO THE REQUIREMENTS ABOVE.**

1. If the Cetane number is reported, the reported value shall apply to the base fuel without Cetane improving additives.

2. The flash point value is absolute and no value less than 60°C is permissible.

3. Cloud point results will be evaluated based upon bunkering location.

4. For deliveries in the United States, the color test requirement is deleted if red dye has been added in compliance with the U.S. Environmental Protection Agency or Internal Revenue Service regulations; however, the resulting fuel/dye blend must have a red tint. It shall not be visually brown or dark in appearance. For deliveries outside the United States, the offerors must submit information on the composition, color and desired concentration of any dye to be used in order to obtain approval.

5. For carbon residue on 10% bottoms, ASTM D 189 is an acceptable alternate method.

6. For total sulfur content, ASTM D 1552 and ASTM D 2622 are acceptable alternate methods.

**(c) REDUCED SULFUR REQUIREMENT FOR EUROPEAN UNION PORTS.**

(1) In support of European Commission Directive 1999/32/EC, "Sulphur Provisions for Marine Gas Oils", MGO delivered in European Union ports vice this contract shall contain no more than 0.20 mass percent maximum sulfur.

(2). Specific ports where DESC requires low sulfur MGO include Algeciras, Spain; Alicante, Spain; Antwerp, Belgium; Augusta Bay, Italy; Barcelona, Spain; Bremerhaven/Nordenham, Germany; Cagliari, Italy; Cartagena, Spain; Catania, Italy; Genoa, Italy; Gibraltar, United Kingdom; La Maddalena, Italy; Killingholme, United Kingdom; Lisbon, Portugal; Livorno, Italy; Malaga, Spain; Marseilles, France; Naples, Italy; Palma de Mallorca, Spain; Portland, United Kingdom, Rotterdam, Netherlands; Southampton, United Kingdom; Toulon, France; and Trieste, Italy.

(DESC 52.246-9FAQ)

**C36 FUEL OIL, INTERMEDIATE, GRADES RMB-10 (IFO 60)/RME-25 (IFO 180)/RMG-35 (IFO 380)  
(DESC NOV 2001)**

(a) Product shall conform to ISO 8217:1996 or ASTM D 2069-91. Product conforming to ASTM D 2069-91 shall meet the following additional requirements:

<u>REQUIREMENTS</u>	<u>GRADE RMB-10 (IFO 60)</u>	<u>GRADE RME-25 (IFO-180)</u>	<u>GRADE RMG-35 (IFO 380)</u>	<u>TEST METHOD</u>
Density @15°C, kg/m <sup>3</sup> , max	981.0	991.0	991.0	ISO 3675/12185
Aluminum plus silicon, mg/kg, max	80	80	80	ISO 10478
Total Sediment, potential, %(m/m), max	0.10	0.10	0.10	ISO 10307-2

(b) **ALTERNATE TEST METHODS.** The test methods below can also be used to determine the following requirements:

<u>REQUIREMENTS</u>	<u>TEST METHOD</u>
Density @15°C, kg/m <sup>3</sup>	ASTM D 4052
Carbon Residue	ASTM D 4530
Vanadium, mg/kg	ASTM D 5863
Aluminum plus silicon, mg/kg	ASTM D 5184

(c) **FOR THE BULK PROGRAM.** RME-25 (IFO 180) purchased under the DESC Bulk Purchase Program must meet a revised sulfur weight percent limit of 3.5 maximum.

(DESC 52.246-9FFE)

**E5.01 INSPECTION AND ACCEPTANCE OF SUPPLIES (SHIPS' BUNKERS) (DESC MAY 2001)**

**(a) INSPECTION.**

(1) The Contractor shall provide and maintain an inspection system acceptable to the Government covering supplies under this contract and shall tender to the Government, for acceptance, only supplies that have been found by the Contractor to be in conformity with contract requirements. A system meeting International Organization for Standardization (ISO) 9001 or 9002 Quality Systems series documents is an acceptable inspection system. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Government during contract performance and for as long afterwards as the contract requires. The Government may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract delivery. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.

(2) The Government has the right to inspect and/or test all supplies called for by the contract.. Unless otherwise noted, inspection will be performed by the receiving activity based on documents required to be supplied by the Contractor at the time of delivery. The Government assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.

(3) The Government may require the Contractor to provide the following types of samples of product being supplied under each line item under this contract, free of cost to the Government, to a testing location to be identified at the time of the request. Any testing performed would be at the expense of the Government.

(i) A one-gallon sample of fuel being delivered under each line item under the contract. Requests for this type of sample shall be limited to no more than one per month (per line item) during the life of the contract.

(ii) A five-gallon sample for each line item shall be requested for purposes of gathering data on world-wide bunker quality. This request would be limited to no more than twice (per line item) per contract period and shipped to the following address when requested:

ATTN: AIR 4.4.5 FUEL SAMPLE  
 NAVAL AIR STATION PATUXENT RIVER  
 HAZMART BUILDING 2385  
 22680 HAMMOND ROAD  
 PATUXENT RIVER, MD 20670-1534

(4) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(5) The Government may perform quality validation on samples taken at the point of acceptance, i.e., ships' manifold. One representative sample will be taken and split into three sealed test specimens. One test specimen sample will be offered to the Contractor's representative. One test specimen sample will be submitted to a Government approved laboratory for analysis. Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the Contractor's or subcontractor's premises. In the event the sample test results do not conform to contract specifications, the Government may exercise its post-acceptance rights and direct the Contractor to immediately remove the fuel at the Contractor's expense. Detainment of the Government vessel for the fuel removal will be at the Contractor's expense.

(6) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test. The Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

(7) If this contract provides for the performance of Government quality assurance at source, and if requested by the Government, the Contractor shall furnish advance notification of the time when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract and when the supplies will be ready for Government inspection. The Government's request shall specify the period and method of the advance notification and the Government representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the Government representative is in residence in the Contractor's plant, nor more than 7 workdays in other instances.

(8) A copy of the latest full specification analysis for the shore tank shall be provided to the receiving activity at the time of each delivery. Additionally, when product is supplied by barge, the following analysis results shall be provided on a barge composite sample: Appearance, Color, Density, Distillation, Flash Point, and BS&W.

(b) **ACCEPTANCE.** Acceptance of the supplies furnished hereunder will take place at destination notwithstanding that inspection by the Government may take place elsewhere prior to acceptance.

(c) **SPECIFICATION WAIVERS.**

(1) Requests for waivers and deviations shall be submitted by the Contractor to the Contracting Officer with a copy to the Quality Representative (QR). Each request shall provide the following information:

- (i) Contractor name;
- (ii) Contract number;
- (iii) Contract line item and product, if applicable;
- (iv) Clause number;
- (v) Paragraph and subparagraph, as appropriate;
- (vi) The nature of the request;
- (vii) The reason for the request;
- (viii) The corrective action being taken by the Contractor to correct and prevent recurrence of the condition(s) causing the nonconformance; and
- (ix) An equitable price adjustment offered over the administrative fee.

(2) In extraordinary situations, the Contractor may initially submit the request for a deviation or waiver through the cognizant QR to the Contracting Officer or the Contracting Officer's Representative (COR) in the Bulk Fuels Business Unit, Product Technical and Standardization Division, Defense Energy Support Center (DESC). Extraordinary situation requests shall be submitted formally to the Contracting Officer prior to close of business of the next DESC normal workday. As used in this clause, the term extraordinary situation means the matter cannot await resolution until the DESC normal workday (0800 to 1630 hours), Monday through Friday - Federal holidays excluded. In addition, if either the Contracting Officer or the COR cannot be reached, the Duty Officer shall be contacted and provided the necessary information to forward to the proper individuals as soon as possible. **The Duty Officer's telephone number is (800) 286-7633, (703) 767-8420, or (DSN) 427-8420.**

(3) If the waiver is granted, the contract will be modified to provide an equitable price reduction or other adequate consideration commensurate with the waiver being granted. If the situation dictates, a waiver may be granted without prior agreement on price adjustment or other consideration subject to agreement by the Contractor, or its representative, to subsequent negotiation. Such agreement shall be documented on the receiving document or other appropriate correspondence. After negotiations, failure to agree on adequate consideration shall be a dispute concerning a question of fact within the meaning of the Disputes section of the CONTRACT TERMS AND CONDITIONS -- COMMERCIAL ITEMS clause of this contract.

(4) If the waiver is granted and the nonconforming supplies are accepted, then in no event will consideration be less than \$250 to cover administrative costs, plus any additional cost of Government inspection or tests if reinspection or retest is necessary.

(5) If the waiver is granted modifying this contract but the supplies accepted are nevertheless determined to be in conformity with contract specifications, the Contractor shall still be obligated to pay the consideration originally agreed upon in support of the waiver. If, however, this consideration exceeds \$500, a second contract modification shall be issued reducing the Contractor's obligation to \$500 (the administrative cost of issuing the two required modifications).

(6) When notification of nonconforming supplies is received after the supplies have been accepted, and the Government determines not to exercise its right to reject or to require correction under paragraph (a)(5) above, then in no event will consideration be less than \$250 to cover administrative costs. This \$250 fee is in addition to consideration commensurate with the extent of nonconforming supplies; and the cost of Government inspection or tests if reinspection or retest is necessary. The administrative fee will apply to each claim letter issued for off-specification product delivered to an activity.

**(d) SOURCE RESTRICTION.**

(1) If the Contractor delivers any product that is determined to be off-specification, the Contracting Officer shall thereafter have the right, upon giving 10 days' written notice, to require the Contractor to designate a single source of supply for each destination where the problem occurs as set forth in the contract. This shall coincide with the inspection procedures identified above.

(2) The Contractor must provide the new address of the terminal or loading point to be used in drawing the requirements for each affected item in the contract in addition to the name of the single source of supply.

(3) When paragraph (d)(1) has been enforced, the Contractor may change suppliers only after requesting and receiving the express written approval of the Contracting Officer. Prior to approval by the Contracting Officer, the Contractor must also submit a supply commitment letter and product specification from any new supplier, and a quality site inspection must be performed.

(DESC 52.246-9F85)

**E35 NONCONFORMING SUPPLIES AND SERVICES (DESC JUL 2002)**

(a) It is the policy of the Government that supplies or services that do not conform in all respects to the contract requirements should be rejected. However, there may be circumstances when acceptance of such nonconforming supplies or services is in the interest of the Government. No deviation will be granted unless specifically approved by the Contracting Officer or duly authorized representative.

(b) The following procedures apply to requests for specification waivers.

(1) Requests for deviations and waivers shall be submitted by the Contractor to the Contracting Officer with a copy to the Quality Representative (QR). Each request shall provide the following information: Contractor name; contract number; contract line item and product, if applicable; clause number, paragraph and subparagraph, as appropriate; the nature of the request; the reason for the request; the corrective action being taken by the Contractor to correct and prevent recurrence of the condition(s) causing the nonconformance; and equitable price adjustment offered over the administrative fee. In extraordinary situations, the Contractor may initially submit the request for a deviation or waiver through the cognizant QR to the Contracting Officer or the Contracting Officer's Representative (COR) in the Quality Operations Division (DESC-BQ) of the Defense Energy Support Center (DESC). Extraordinary situation requests shall be submitted formally to the Contracting Officer prior to close of business of the next DESC normal workday. As used in this clause, the term "extraordinary situation" means the matter cannot await resolution until the DESC normal workday (0800 to 1630 hours), Monday through Friday - Federal holidays excluded. In addition, if either the Contracting Officer or the COR cannot be reached, the Duty Officer shall be contacted and provided the necessary information to forward to the proper individuals as soon as possible. The Duty Officer's telephone number is **(800) 286-7633, (703) 767-8420, or (DSN) 427-8420**.

(2) If the waiver is granted, the contract will be modified to provide an equitable price reduction or other adequate consideration commensurate with the waiver being granted. If the situation dictates, a waiver may be granted without prior agreement on price adjustment or other consideration subject to agreement by the Contractor, or its representative, to subsequent negotiation. Such agreement shall be documented on the receiving document or other appropriate correspondence. After negotiations, failure to agree on adequate consideration shall be a dispute concerning a question of fact within the meaning of paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS -- COMMERCIAL ITEMS clause of this contract.

(3) If the waiver is granted and the nonconforming supplies are accepted, then in no event will consideration be less than \$250 to cover administrative costs, plus any additional cost of Government inspection or tests if reinspection or retest is necessary.

(4) If the waiver is granted modifying this contract but the supplies accepted are nevertheless determined to be in conformity with contract specifications, the Contractor shall still be obligated to pay the consideration originally agreed upon in support of the waiver. If, however, this consideration exceeds \$500, a second contract modification shall be issued reducing the Contractor's obligation to \$500 (the administrative cost of issuing the two required modifications).

(c) When notification of nonconforming supplies is received after the supplies have been accepted, and the Government determines not to exercise its right to reject or to require correction under the INSPECTION OF SUPPLIES - FIXED-PRICE or INSPECTION AND ACCEPTANCE OF SUPPLIES clause, then in no event will consideration be less than \$250 to cover administrative costs. This \$250 fee is in addition to—

- (1) Consideration commensurate with the extent of nonconforming supplies; and
- (2) Cost of Government inspection or tests if reinspection or retest is necessary.

The administrative fee will apply to each claim letter issued for off-specification product delivered to an activity.

(d) Contractors shall be held responsible for payment of any fines or penalties imposed on a receiving activity by an environmental enforcement agency, resulting from the delivery of nonconforming supplies under a DESC contract.

(e) Repeated tender of nonconforming supplies or services, including those with only minor defects, will be discouraged by appropriate action such as rejecting the supplies or services whenever feasible and documenting the Contractor's performance records. (DESC 52.246-9FQ5)

**F3.01 TRANSPORT TRUCK, TRUCK AND TRAILER AND/OR TANK WAGON FREE TIME AND DETENTION RATES (BUNKERS) (DESC MAR 1997)**

(a) Upon arrival of Contractor's transport truck, truck and trailer, or tank wagon, the receiving activity shall promptly designate the delivery point into which the load is to be discharged. The Contractor shall be paid for detention beyond free time for delays caused by the Government. A minimum of one hour free time is required per item requiring transport truck, truck and trailer, or tank wagon delivery.

(1) Additional free time per item for unloading a transport truck, truck and trailer, or tank wagon in excess of the required one hour: \_\_\_\_\_.

(2) Rate per item for detention beyond required, plus any additional, free time: \_\_\_\_\_.

NOTE: The above will not be considered in the evaluation of offers for award.

(b) Notwithstanding the above, the Government is entitled to at least as much free time as is allowed by the common carrier or that the Contractor normally allows its regular commercial customers, whichever is greater. In addition, the Government will not pay more in detention rates than the actual rate charged by the common carrier or the rate the Contractor normally charges its regular commercial customers, whichever is lower. UNLESS THE OFFEROR OTHERWISE INDICATES IN PARAGRAPH (a)(1) and (2) ABOVE, FREE TIME WILL BE CONSIDERED UNLIMITED.

(c) **DETENTION COSTS.** Detention costs will be the sole responsibility of the activity incurring them. Any invoices for detention costs will be forwarded directly to the activity receiving the product. (DESC 52.247-9FE1)

**F16.03 BARGE UNLOADING CONDITIONS (SHIPS' BUNKERS) (DESC AUG 1999)**

(a) **ORDERING PROCESS.** The supplies ordered hereunder shall be delivered to the destination specified in a verbal order and/or DD 1155, SF 44, SF 1449, OF 347, or CD 404 (to be referred to in this clause as the "ordering document"), in accordance with the contract schedule, unless mutually agreed to by the parties. Unless otherwise specified in the contract, orders placed for bunkers for delivery (anchorage and/or pier-side) by means of barge will be furnished to the Contractor at least 48 hours, in advance of the date/time on which delivery is to be made, which date is hereinafter referred to in this clause as the "scheduled delivery date". Each order will specify the quantity to be delivered, the scheduled delivery date, and location.

(b) **SCHEDULED DELIVERY DATE.** The scheduled delivery date may be changed by mutual agreement of the parties. If an agreement on a new scheduled delivery date cannot be reached, the previous scheduled delivery date will be maintained.

(c) **EXPECTED TIME OF ARRIVAL.** The Contractor must provide to the receiving Government vessel a notice of readiness to bunker at least 1 hour prior to the scheduled bunkering. The Government shall provide a safe and assessable berth for the Contractor's bunkering vessel, not later than 1 hour after receipt of the Contractor's bunkering vessel's notice of readiness to bunker.

(d) **LAYTIME.** Unless otherwise provided in the ordering document, the Government shall be allowed and will complete receipt of the bunkers within laytime determined as follows:

(1) One hour for each 1,500 barrels of supplies to be bunkered. (Example: Quantity to be bunkered is 4,000 barrels, laytime will be 2 hours and 40 minutes.) This assumes the barge delivering bunkers is capable of pumping into the receiving vessel at a rate of 1,500 barrels per hour (BPH). Laytime will be extended by the appropriate additional time when the pumping rate is less than 1,500 BPH.

(2) Laytime shall commence as follows:

- (i) At Notice of Readiness (NOR) plus 1 hour; or
- (ii) Immediately upon arrival in berth of the Contractor's bunkering barge (i.e., all fast) provided that the Contractor provided notice of readiness to bunker at the proper time. (See paragraph (c) above.)
- (iii) Laytime shall continue 24 hours a day, 7 days a week, without interruption, unless port authority regulations require differently, from its commencement until bunkering of the barge is completed and the hoses have been disconnected.

(e) **LAYTIME CREDIT.**

- (1) If regulations of the Port Authority prohibit bunkering at any time, time so lost shall be added to the amount of allowed laytime.
- (2) Delays after commencement of laytime attributed to the condition of the bunkering barge or delays caused by a failure of the bunkering barge will be added to the allowed laytime. In the event of Contractor delay, if total adjusted laytime is not fully utilized and/or is exceeded due to further Contractor delays, the provisions of paragraph (e), Contractor Delivery Delays, of the BUNKERING PROVISIONS clause may be utilized.
- (3) Delays, after commencement of laytime, attributed to causes beyond the control and without the fault or negligence of the Contractor or the Government will result in increasing basic allowed laytime for one half of the delay.
- (4) Delays caused solely by the Government, due to late arrival of the vessel, late commencement, and/or late continuation of the delivery, will be deducted from allowed laytime and/or freetime after coordination with the Chief Engineering and/or Ordering Officer. In the event of Government delay, if total allowed laytime and freetime are exceeded, the Contractor may bill for detention charges in accordance with paragraph (i) below. Evidence of such delay must be provided.

(f) **DELAYS.** In the event of a breakdown of the Contractor's equipment, which prohibit bunkering for at least 2 hours, the Contractor will be required to remove the equipment from the Government-provided berth, unless permission is granted by the Government to allow the equipment to remain at berth. When the Government grants permission for the Contractor's equipment to remain at berth, the Contractor will be responsible to reimburse the Government for any cost incurred by the Government for furnishing personnel to remain with the barge during repair. If the Contractor removes the equipment from the Government-provided berth, notice of readiness to bunker will be again required as provided in paragraph (b) above.

(g) **EQUIPMENT.** Hoses for bunkering a barge shall be provided by the Contractor. However, the Government shall be responsible for connecting and disconnecting the hoses at the flange of the receiving Government vessel.

(h) **TITLE.** Title to the supplies delivered, and risk of loss thereof, shall pass from the Contractor to the Government when the supplies cross the receiving Government vessel's manifold.

(i) **DETENTION RATE.** The detention rate payable per hour by the Government for detainment of the Contractor's barge will be specified below. The detention payable to the Contractor shall in no event exceed the actual detention expense incurred by the Contractor's bunkering barge. Free time allowed and detention rates are not considered in evaluation of offers for awards although rates and times may be addressed during negotiations.

<u>Item</u>	<u>Free Time Allowed</u>	<u>Barge</u>	Detention Beyond Free Time Per Hour	<u>Other (explain)</u>
			<u>Tug</u>	

**NOTE:** Exceptions to laytime are not allowed.

(DESC 52.247-9FG1)

**F18 F.O.B. DESTINATION (NOV 1991)**

- (a) The term "f.o.b. destination," as used in this clause, means--
  - (1) Free of expense to the Government, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and
  - (2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the




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(DO NOT EXCEED 153 CHARACTERS)

(DESC 52.232-9F55)

**THIS CLAUSE APPLIES ONLY TO DESC-FUNDED ITEMS.**

**G9.07 ELECTRONIC TRANSFER OF FUNDS PAYMENTS - CORPORATE TRADE EXCHANGE (DESC JUN 2000)**

(a) The Contractor shall supply the following information to the Contracting Officer no later than 5 days after contract award and before submission of the first request for payment.

NAME OF RECEIVING BANK: 

--

↓

(DO NOT EXCEED 29 CHARACTERS)

CITY AND STATE OF RECEIVING BANK: 

--

(DO NOT EXCEED 20 CHARACTERS)

AMERICAN BANKERS ASSOCIATION NINE DIGIT IDENTIFIER OF RECEIVING BANK: 

--

ACCOUNT TYPE CODE: (Contractor to designate one)

CHECKING TYPE 22

SAVINGS TYPE 32

RECIPIENT'S ACCOUNT NUMBER ENCLOSED IN PARENTHESES: 

--

(DO NOT EXCEED 15 CHARACTERS)

RECIPIENT'S NAME: 

--

(DO NOT EXCEED 25 CHARACTERS)

STREET ADDRESS: 

--

(DO NOT EXCEED 25 CHARACTERS)

CITY AND STATE: 

--

(DO NOT EXCEED 25 CHARACTERS)

**NOTE:** Additional information may be entered in **EITHER** paragraph (b) **OR** paragraph (c) below. Total space available for information entered in (b) **OR** (c) is 153 characters.

**(b) SPECIAL INSTRUCTIONS/OTHER IDENTIFYING DATA:**


\_\_\_\_\_

\_\_\_\_\_

↓

(DO NOT EXCEED 153 CHARACTERS)

OR

(c) **THIRD PARTY INFORMATION:** Where payment is to be forwarded from the receiving bank to another financial institution for deposit into Contractor's account, the following information **must** be supplied by the Contractor: Second Bank Name, City/State and/or Country, Account Number, and Account Name.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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(DO NOT EXCEED 153 CHARACTERS)

**(d) CONTRACTOR'S DESIGNATED OFFICIAL SUBMITTING ELECTRONIC FUNDS TRANSFER INFORMATION.**

NAME: \_\_\_\_\_  
(DO NOT EXCEED 25 CHARACTERS)

TITLE: \_\_\_\_\_  
(DO NOT EXCEED 25 CHARACTERS)

TELEPHONE NUMBER: \_\_\_\_\_  
(DO NOT EXCEED 25 CHARACTERS)

SIGNATURE: \_\_\_\_\_

(e) Any change by the Contractor in designation of the bank account to receive electronic transfer of funds in accordance with this clause must be received by the Contracting Officer no later than 30 days prior to the date the change is to become effective.

(f) The electronic transfer of funds does not constitute an assignment of such funds in any form or fashion.

(g) In the event corporate trade exchange (CTX) payments cannot be processed, the Government retains the option to make payments under this contract by check.

**(h) NOTICE TO FOREIGN SUPPLIERS.**

(1) Payment may be made through the Federal Reserve Wire Transfer system. The bank designated as the receiving bank must be located in the United States and must be capable of receiving Automated Clearing House (ACH) transactions. The appropriate American Bankers Association nine-digit identifier must be supplied in order for payments to be processed through CTX.

(2) If your account is with a foreign bank that has an account with a bank located within the United States, the U.S. bank may be designated as the receiving bank. The recipient's name and account number shall identify the foreign bank, and transfer instructions to supplier's account must be specified in (b) and (c) above.

(3) The Third Party Information supplied in (c) above will be located in the first RMT segment of the CTX payment information sent to the receiving bank.

(i) Notwithstanding any other provision of the contract, the requirements of this clause shall control.

**G9.09 PAYMENT BY ELECTRONIC FUNDS TRANSFER - CENTRAL CONTRACTOR REGISTRATION (MAY 1999)**

**(a) METHOD OF PAYMENT.**

(1) All payments by the Government under this contract, shall be made electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term EFT refers to the funds transfer and may also include the information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either--

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

**(b) CONTRACTOR'S EFT INFORMATION.** The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

**(c) MECHANISMS FOR EFT PAYMENT.** The Government shall make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210.

**(d) SUSPENSION OF PAYMENT.** If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

**(e) CONTRACTOR EFT ARRANGEMENTS.** The Contractor has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

**(f) LIABILITY FOR UNCOMPLETED OR ERRONEOUS TRANSFERS.**

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and--

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously direct funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment and the provisions of paragraph (d) of this clause shall apply.

**(g) EFT AND PROMPT PAYMENT.** A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

**(h) EFT AND ASSIGNMENT OF CLAIMS.** If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require a condition of any such assignment that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect within the meaning of paragraph (d) of this clause.

**(i) LIABILITY FOR CHANGE OF EFT INFORMATION BY FINANCIAL AGENT.** The Government is not liable for errors resulting from changes in EFT information made by the Contractor's financial agent.

**(j) PAYMENT INFORMATION.** The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the

latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

(FAR 52.232-33)

**G9.11 DESIGNATION OF OFFICE FOR GOVERNMENT RECEIPT OF ELECTRONIC FUNDS TRANSFER INFORMATION (MAY 1999)**

(a) As provided in paragraph (b) of the PAYMENT BY ELECTRONIC FUNDS TRANSFER - OTHER THAN CENTRAL CONTRACTOR REGISTRATION clause, the Government has designated the office cited in paragraph (c) of this clause as the office to receive the Contractor's electronic funds transfer (EFT) information, in lieu of the payment office of this contract.

(b) The Contractor shall send all EFT information and any changes to EFT information to the office designated in paragraph (c) of this clause. The Contractor shall not send EFT information to the payment office or any other office than that designated in paragraph (c). The Government need not use any EFT information sent to any office other than that designated in paragraph (c).

**(c) DESIGNATED OFFICE.**

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number(s): \_\_\_\_\_

Person(s) to Contact: \_\_\_\_\_

Electronic Address: \_\_\_\_\_

(FAR 52.232-35)

**G150.01 SUBMISSION OF INVOICES FOR PAYMENT (SHIPS' BUNKERS) (DESC OCT 2001)**

**(a) SUBMISSION OF INVOICES.**

(1) **ELECTRONIC INVOICING/DESC MAGNETIC STRIP FUEL CARDS.** The provisions of this section apply onto to DoD and USCG deliveries using the Magnetic Strip Card/Reader. **NOTE:** The Magnetic Strip Reader will only accept/read the magnetic strip cards for bunkering vessels. No other card may be employed through the reader. Documentation must be maintained by the Contractor.

(i) The Contractor, or its invoicing designee, will key the following into the contract-specific reader:

- (A) Customer vessel's account number;
- (B) Date of completion of delivery as cited on the commercial bunker receipt (delivery date);
- (C) Contract line item number;
- (D) Net quantity delivered and accepted by the Government per the commercial receipt. Quantity will be expressed in metric tons (MT), not to exceed 2 decimal places (rounded up), for overseas items; and U.S. gallons, whole numbers only, for domestic items;
- (E) Unit price in effect on the date of **completion** of delivery;
- (F) **TAXES.**

(a) Tax applicable to domestic distillate fuels if not dyed in accordance with EPA/IRS requirements for sulfur content distinction when prompted by the reader. All receiving reports, bills of lading, etc., must correspond to the extent that product delivered did not contain any dye.

(b) Tax not included in the contract unit price (other than as described above) and authorized under the terms of the contract. DFAS Columbus may coordinate with DESC for tax applicability. After-imposed taxes and/or tax rate changes will follow the provisions of the FEDERAL, STATE, AND LOCAL TAXES (DEVIATION) and FEDERAL, STATE, AND LOCAL

TAXES/FEES EXCLUDED FROM CONTRACT PRICE clauses, and/or the TAXES - FOREIGN FIXED-PRICE CONTRACTS clause; and

(G) Discount offer (if applicable).

(ii) The Contractor will upload the stored transaction(s) to the Defense Finance and Accounting Service - Columbus Center (DFAS-CC) for payment, via the DESC-designated clearinghouse, by utilizing the END OF DAY procedures directed in the reader manual. The call will be at the ship's bunker contract expense. Estimated uploading time is approximately one minute. Successful transmission of the data will be confirmed by a response of "EOD (8 digit #)". The uploaded information will represent the order, receipt, and invoice. The date the transaction is transmitted to the clearinghouse will prevail as the date of the invoice receipt for prompt payment purposes.

(iii) Use of the magnetic strip procedure, is required, except in the cases indicated below. In such instances, the provisions of paragraph (2), MANUAL INVOICES FOR FUEL DELIVERIES, below, will control.

(A) The reader malfunctions, the ship has not been issued a card, or there is no record of a card account number at DESC.

(B) Retroactive price changes and/or unit price errors result in moneys due the Contractor.

(C) The Contractor incurs additional charges while delivering fuel. In such instances, paragraph (c) below applies for the additional charges.

**(2) MANUAL INVOICES FOR FUEL DELIVERIES.**

(i) The Contractor shall submit an original of the invoice, plus a signed copy of the delivery order and a signed commercial receipt, to the responsible paying office. A copy of the order, certified for receipt as specified in the SUPPLIES TO BE FURNISHED (SHIPS' BUNKERS) clause, may be submitted in lieu of the commercial receipt.

(ii) Quantities invoiced for domestic deliveries shall be expressed in U.S. gallons as whole numbers. Quantities invoiced for overseas deliveries shall be expressed in metric tons and shall not exceed 2 decimal places (rounded up).

(iii) The appropriate paying office shall return incomplete and/or incorrect invoice and commercial receipt data (as described above) to the Contractor for correction. The paying office shall forward incorrect order forms to the ordering activity for correction.

(iv) Invoices for all U.S. Navy, U.S. Army, U.S. Army Corps of Engineers, U.S. Military Sealift Command, and U.S. Coast Guard fuel deliveries shall be submitted to--

ATTN: DFAS-BVDFB/CC  
DEFENSE FINANCE AND ACCOUNTING SERVICE - COLUMBUS CENTER  
FUELS ACCOUNTING AND PAYMENTS DIVISION  
P.O. BOX 182317  
COLUMBUS, OH 43218-6251

(v) **TAXES.** DFAS Columbus is responsible for paying allowable taxes excluded from the unit price and listed under the SUPPLIES TO BE FURNISHED (SHIPS' BUNKERS) clause. **NOTE:** The Federal Excise Tax (FET) shall **NOT** be paid when the Contractor clearly annotates on the invoice and commercial bunker receipt or bill of lading "DYED DIESEL FUEL. NONTAXABLE USE ONLY. PENALTY FOR TAXABLE USE." Undyed diesel fuel shall not be annotated as such on the invoice when the FET is charged as a separate item by the Contractor and shall be paid by the paying office accordingly at the rate in effect per the contract. After-imposed taxes and/or tax rate changes will follow the provisions of the FEDERAL, STATE, AND LOCAL TAXES (DEVIATION) and FEDERAL, STATE, AND LOCAL TAXES/FEES EXCLUDED FROM CONTRACT PRICE clauses, and/or the TAXES - FOREIGN FIXED-PRICE CONTRACTS clause.

(vi) Invoices for all other Federal/Civil Agency deliveries (including, but not limited to, NASA, NOAA, and Maritime Administration (MARAD) and their agents) shall be submitted to the paying office designated in Block 21 of the OF 347, the block entitled AGENCY NAME AND BILLING ADDRESS of the SF 44, block D of CD Form 404, or block 18a or b of the SF 1449. **NOTE:** The provisions of (v) above concerning payment of taxes shall apply when DFAS Columbus is **NOT** the paying office. **FURTHER NOTE:** NASA and MARAD may utilize ship managers to make fuel invoice payments. Payment procedures described herein for manual invoices shall still apply.

(vii) **INSTRUCTIONS FOR SUBMITTING INVOICES VIA FACSIMILE.**

(A) When the Contractor has elected to transmit invoices by FAX for the life of the contract, it is responsible for validating receipt of its FAXED invoice. Because the applicable payment office cannot be held accountable for transmissions not received, the Contractor may verify transmission/receipt of its FAX by retaining the facsimile confirmation.

<u>Payment Activity</u>	<u>Facsimile Number</u>	<u>Customer Service</u>	<u>Email Address</u>
DFAS-BVDFB/CC	(614) 693-0670	(614) 693-1832	FRANKLIN.MALICK@DFAS.MIL

NASA Cape Canaveral (407) 867-3785

(407) 867-3801

For DFAS-BVDP/CC, personnel are available to verify receipt of FAXED transmissions between 8:00 a.m. and 5:00 p.m., EST/EDT, Monday through Friday, excluding Federal holidays.

(B) The Contractor shall include its FAX number on each document transmitted.

(C) After transmitting the original invoice, the Contractor shall mark that invoice "**Original Invoice - FAXED**" and retain it. The hard copy is not required for payment and shall not be mailed to the payment office unless the payment office specifically requests it.

(D) A signed copy of the delivery order and a signed commercial receipt must accompany the invoice FAXED for payment. A copy of the order, certified for receipt as specified in (a)(2)(i) above, may be submitted in lieu of the commercial receipt.

(viii) **COURIER DELIVERY OF INVOICES.** Couriers, acting on behalf of Contractors, must deliver Contractor invoices being submitted for payment to the following mailroom street address:

DEFENSE FINANCE AND ACCOUNTING SERVICE - COLUMBUS CENTER  
DFAS-BVDFB/CC  
3990 EAST BROAD STREET, BLDG 21  
COLUMBUS, OH 43213-1152

(b) **PAYMENT OF INVOICES** shall be made in accordance with the provisions herein. No credit card, check, or cash issued by the receiving vessel/activity, Defense Attaché Office, U.S. Embassy nor any other field office shall be used to fund a delivery under this contract. Payment shall only be made by the payment office designated on the order form.

(1) **FOR FIRM-FIXED PRICE CONTRACTS WITHOUT ECONOMIC PRICE ADJUSTMENT:** The unit price listed on the invoice or the unit price stated in the contract, whichever is less.

(2) **FOR FIXED-PRICE CONTRACTS WITH ECONOMIC PRICE ADJUSTMENT:** The unit price listed on the invoice or the unit price on the modification in effect at the completion delivery date, whichever is less.

(3) **FOR QUANTITY:** The invoiced net quantity or the net quantity certified on the receipt document, whichever is less.

(4) **CURRENCY.** All payments shall be made in U.S. dollars.

(c) **INVOICING FOR ADDITIONAL COST(S) (DETENTION, OVERTIME, ALTERNATE MODES OF DELIVERY, ETC.).** Contractors may submit claims for additional charges to the DESC Contracting Officer for review. The Contracting Officer will issue a contract modification for all approved additional charges, which authorized payment. Once approved, hard copies of the invoice, order, or receipt are not required with the invoice unless requested by the paying office.

(d) **PAYMENT INQUIRIES** should be directed to the paying office applicable to the delivery. For those payment issues not successfully resolved between the Contractor and the payment office, the Contractor shall contact the DESC Contracting Officer for resolution.

(DESC 52.232-9F80)

#### 11.03-5 **CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (BUNKERS) (DESC DEC 2001)**

(a) **INSPECTION/ACCEPTANCE.** The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item. **Also see Addendum.**

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

(c) **CHANGES.** See the **CHANGES – FIXED-PRICE clause in the Addendum.**

(d) **DISPUTES.** This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, DISPUTES, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) **DEFINITIONS.** The clause at FAR 52.202-1, DEFINITIONS, is incorporated herein by reference.

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

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

- (1) Name and address of the Contractor;
- (2) Invoice date;
- (3) Contract number, contract line item number, and, if applicable, the order number;
- (4) Description, quantity, unit of measure, unit price, and extended price of the item delivered;
- (5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (6) Terms of any prompt payment discount offered;
- (7) Name and address of official to whom payment is to be sent; and
- (8) Name, title, and phone number of person to be notified in event of defective invoice.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Contractors are encouraged to assign an identification number to each invoice. **Also see the Addendum.**

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

(i) **PAYMENT.** Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Prompt payment discount will be applied to the total amount of each invoice. If the Government makes payment by Electronic Funds Transfer (EFT), see 52.212-5(b) for the appropriate EFT clause. In connection with any discount offered for early payment, time shall be computed from the date the invoice was received. For the purposes of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the date on which an EFT was made.

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

- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- (2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) **TAXES.** The contract price includes all applicable Federal, State, and local taxes and duties. **Also see the Addendum.**

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

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

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

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

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

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

(r) **COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS.** The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327 et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986, 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistle blower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) **ORDER OF PRECEDENCE.** Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

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

(FAR 52.212-4, **tailored**/DESC 52.212-9F45)

#### **11.04 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS - COMMERCIAL ITEMS (DEC 2001)**

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

- (1) 52.222-3, Convict Labor (E.O. 11755);
- (2) 52.233-3, Protest After Award (31 U.S.C. 3553).

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

**[Contracting Officer must check as appropriate.]**

[ ] 52.203-6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).

[ ] 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999).

[ ] 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer).

[ ] 52.219-5, Very Small Business Set-Aside (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994). [ ] Alt I. [ ] Alt II.

[ ] 52.219-8, Utilization of Small Business Concerns (15 U.S.C. 637(d)(2) and (3)).

[ ] 52.219-9, Small Business Subcontracting Plan (15 U.S.C. 637 (d)(4)).

[ ] 52.219-14, Limitations on Subcontracting (15 U.S.C. 637(a)(14)).

[ ] 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer). [ ] Alt I.

[ ] 52.219-25, Small Disadvantaged Business Participation Program - Disadvantaged Status and Reporting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

[ ] 52.219-26, Small Disadvantaged Business Participation Program - Incentive Subcontracting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

[ ] 52.222-19, Child Labor – Cooperation with Authorities and Remedies (E.O. 13126).

[ ] 52.222-21, Prohibition of Segregated Facilities (Feb 1999).

[ ] 52.222-26, Equal Opportunity (E.O. 11246).

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

[ ] 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

[ ] 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).

[ ] *52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (42 U.S.C. 6962(c)(3)(A)(ii)). [ ] Alt I (42 U.S.C. 6962(i)(2)(C)).*

[ ] 52.225-1, Buy American Act - Balance of Payments Program - Supplies (41 U.S.C. 10a - 10d).

[ ] 52.225-3, Buy American Act - North American Free Trade Agreement - Israeli Trade Act - Balance of Payments Program (41 U.S.C 10a - 10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note). [ ] Alt I. [ ] Alt II.

[ ] 52.225-5, Trade Agreements (19 U.S.C 2501, et seq., 19 U.S.C. 3301 note).

[ ] 52.225-13, Restriction on Certain Foreign Purchases (E.O.'s 12722, 12724, 13059, 13067; 13121, and 13129).

[ ] 52.225-15, Sanctioned European Union Country End Products (E.O. 12849).

[ ] 52.225-16, Sanctioned European Union Country Services (E.O. 12849).

[ ] 52.232-33, Payment by Electronic Funds Transfer -- Central Contractor Registration (31 U.S.C. 3332).

[ ] 52.232-34, Payment by Electronic Funds Transfer -- Other than Central Contractor Registration (31 U.S.C. 3332).

[ ] 52.232-36, Payment by Third Party (31 U.S.C. 3332).

[ ] 52.239-1, Privacy or Security Safeguards (5 U.S.C. 552a).

[ ] 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241). [ ] Alt I.

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

**[Contracting Officer must check as appropriate.]**

[ ] 52.222-41, Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).

**Subcontracts for certain commercial services may be exempt from coverage if they meet the criteria in FAR 22.1103-4(c) or (d) (see DoD Class Deviation number 2000-O0006).**

[ ] 52.222-42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351 et seq.).

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

[ ] 52.222-44, Fair Labor Standards Act and Service Contract Act - Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351 et seq.).

[ ] 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351 et seq.).

(d) **COMPTROLLER GENERAL EXAMINATION OF RECORD.** The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, AUDIT AND RECORDS - NEGOTIATION.

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

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

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

(e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) and (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by any addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components:

52.222-26, Equal Opportunity (E.O. 11246);

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

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

52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(FAR 52.212-5)

**11.20-2 CLAUSES AND PROVISIONS INCORPORATED BY REFERENCE (PC&S & SHIPS' BUNKERS) (DESC NOV 2002)**

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

FAR/DFARS: <http://farsite.hill.af.mil>

FAR/DFARS: <http://www-far.npr.gov>

DLAD: <http://www.procregs.hq.dla.mil/icps.htm>

(b) All clauses included in the PC&S or SHIPS' BUNKERS Open Market Clauses package are available in full text for review on the DESC Ground Fuels or SHIPS PROPULSION homepage at

<http://www.desc.dla.mil/DCM/DCMSolic.asp?SolicID=88> for PC&S and at

<http://www.desc.dla.mil/DCM/DCMPage.asp?pageid=228> for SHIPS' BUNKERS and are hereby incorporated by

reference into the purchase order issued by DESC. In the event any of the terms and conditions change, a copy of the change(s) will be made available for you to download at the above DESC web site.