

**GENERAL PROVISIONS FOR CONSTRUCTION PROJECTS**

NNS: Appendix A – Construction

INGALLS: Form SBF P9613

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## 1. DEFINITIONS. [\(back to top\)](#)

- A. The term “Buyer” or “Purchaser” means Huntington Ingalls Incorporated (“HII”), a subsidiary of Huntington Ingalls Industries, acting through its authorized purchasing representative at its Ingalls Shipbuilding division or its Newport News Shipbuilding division.
- B. The term “Contractor” means the person or entity named as such in this Order.
- C. The term “Subcontractor” means those parties having a direct lower-tier contract with Contractor that furnish labor or material to Contractor in support of Contractor’s Work under the Order.
- D. The term “Architect” or “Engineer” means the Architect or the Engineer, as the case may be, named in this Order as the party who prepared the specifications and plans for the Work to be performed.
- E. The term “Party” means Buyer or Contractor, and the term “Parties” means Buyer and Contractor.
- F. The “Project Engineer,” “Project Manager,” or “Field Engineer” (collectively “Buyer’s Engineering Representatives”) means one or more individuals designated by Buyer in this Order to make inspections, accept the Work, render assistance, give technical advice, validate work progress, or discuss or affect an exchange of information with Contractor’s personnel concerning the Work and otherwise manage the Work.
- G. The term “Order” means the instrument of contracting including the order form and all documents it references (including but not limited to these General Provisions, special conditions (if any), plans, drawings, specifications).
- H. The term “Work” of Contractor or Subcontractor means labor or materials or both provided under this Order.
- I. The term “days” shall mean calendar days unless indicated otherwise herein.

## 2. COMPLIANCE WITH LAWS. [\(back to top\)](#)

Contractor shall comply with all applicable foreign and United States federal, state and local laws, statutes, rulings, ordinances, orders, and regulations in performing this Order.

- A. Contractor shall obtain and pay all fees and charges for: (i) use of or connection to outside services, and (ii) use of property other than space provided by Buyer at the site of the Work for storage of materials and other purposes.
- B. Contractor shall comply with all laws, ordinances, regulations and building code requirements applicable to the Work unless in conflict with the provisions of the Order. If Contractor ascertains at any time that any provisions of this Order are in conflict with applicable laws, regulations or building code requirements, it shall promptly provide written notice to Buyer’s Engineering Representatives, and any adjustment of the Order, where deemed appropriate by Buyer, shall be made as specified under the “Changes” provision of this Order.
- C. Upon Buyer’s request Contractor shall furnish Buyer copies of affidavits giving the original dates, renewal dates and expiration dates of all labor contracts related to any phase of the Work to be performed on the project site under this Order.
- D. Unless otherwise specified in this Order, Contractor shall apply for all required permits at its own expense within 15 days of the award of this Order, and no work shall begin until all required permits are issued. Contractor shall deliver to Buyer’s Engineering Representatives copies of all permits issued to Contractor or any Subcontractor that relate to the Work within seven days of issuance. The copies shall be annotated with Buyer’s purchase order number, building number (if applicable) and project title. Upon completion of the Work, Contractor shall furnish Buyer’s Engineering Representatives with written certification that the Work was inspected and accepted by the applicable government codes inspector.

## 3. HEADINGS. [\(back to top\)](#)

The descriptive headings contained in this Order are for convenience or reference only and in no way define, limit or describe the scope or intent of this Order.

**4. LANGUAGE AND CURRENCY. [\(back to top\)](#)**

All communications and submittals shall be in English and all payments, rebates, credits, other financial transactions or dollar amounts related to or referenced in this Order shall be in United States Dollars.

**5. BUYER AUTHORIZATION. [\(back to top\)](#)**

- A. Buyer's authorized purchasing representative has sole authority to make contractual commitments on behalf of Buyer, to provide contractual direction, and to change contractual requirements defined in this Order.
- B. Buyer's Engineering Representatives may accept the Work and from time to time render assistance or give technical advice or discuss or affect an exchange of information with Contractor's personnel concerning the Work. No such action shall be deemed to be a change under the "Changes" provision of this Order.

**6. ACCEPTANCE OF OFFER. [\(back to top\)](#)**

- A. This Order is Buyer's offer to Contractor. Acceptance of this offer is strictly limited to the terms and conditions in this offer. Modifications hereto, to be binding, must be in writing and issued by Buyer's authorized purchasing representative.
- B. The Order shall be signed by Buyer and Contractor in as many original counterparts as may be mutually agreed.
- C. Contractor shall return signed copies of this Order to Buyer within ten days of issuance of this Order.
- D. Buyer hereby objects to any additional or different terms contained in Contractor's acceptance.

**7. ORDER OF PRECEDENCE. [\(back to top\)](#)**

- A. In the event of any inconsistency between any parts of this Order, the inconsistency shall be resolved by giving precedence in the following order:
  - (i) The Order and any modifications or changes thereto exclusive of items (ii) through (vi).
  - (ii) Any HII division supplement or other special provisions to these General Provisions (also referred to as terms and conditions) as invoked in this Order.
  - (iii) These General Provisions.
  - (iv) Statement of Work.
  - (v) Specification/Drawing.
  - (vi) Other documents referenced in this Order.
- B. Contractor shall immediately bring any inconsistencies to the attention of Buyer in writing, and any inconsistencies in or among any of the foregoing shall not be the basis for any defense of a breach of contract claim brought by Buyer against Contractor for Contractor's failure to perform under this Order, nor shall any such inconsistencies be the basis for any claim of any kind by Contractor against Buyer unless Contractor has first timely brought such inconsistencies to Buyer's attention and Buyer has failed to resolve such inconsistencies.

**8. ASSIGNMENT. [\(back to top\)](#)**

Neither this Order nor the benefits or obligations thereof shall be assigned by Contractor except with the prior written consent of Buyer, such consent not to be unreasonably withheld. Prior to any sale or merger of Seller with a third party that results in the transfer of any rights or obligations arising under this Order, Seller shall notify Buyer and execute any documents requested by Buyer in connection with such transfer.

**9. ENTIRE AGREEMENT. [\(back to top\)](#)**

This Order constitutes written confirmation of the entire agreement between the Parties. The Parties shall not be bound by any other statements or understandings, oral or written, not set forth in this Order.

## **10. SEPARATE CONTRACTS. [\(back to top\)](#)**

Buyer reserves the right to let other contracts in connection with the project, the work under which will proceed simultaneously with the performance of this Order. Contractor shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and Contractor shall take all reasonable action to coordinate its Work with theirs. If the work performed by the separate contractor is defective or so performed as to prevent Contractor from carrying out its Work according to the plans and specifications, Contractor shall immediately notify Buyer's Engineering Representatives in writing upon discovering such conditions.

## **11. LIENS. [\(back to top\)](#)**

All Work and property furnished under this Order shall be free of all liens, claims, charges, and encumbrances of any kind. Upon request, Contractor shall furnish Buyer with formal releases from all Subcontractors. Buyer may discharge any lien, claim, charge, or encumbrance if Contractor, at Buyer's request, fails to do so and Contractor shall reimburse Buyer for the reasonable costs thereof. Contractor shall deliver to Buyer a complete release of all liens arising out of this Order before the final Request for Payment is paid. If any lien remains unsatisfied after all payments are made, Contractor shall refund to Buyer such amounts as Buyer may have been compelled to pay in discharging such liens including all costs and reasonable attorneys' fees.

## **12. INSPECTION AND ACCESS TO WORK. [\(back to top\)](#)**

- A. Except as otherwise provided in this Order, Contractor shall maintain and use a commercially reasonable inspection and quality control system to inspect Work delivered under this Order. Buyer's Engineering Representatives may inspect Work in progress at all times and places including audits of Contractor's inspection and quality control system. Buyer's Engineering Representatives shall have the right to perform reviews and evaluations as reasonably necessary to ascertain Contractor compliance with its inspection or quality control system. The right of review, whether exercised or not, does not relieve Contractor of its obligations under this Order.
- B. All material and workmanship, if not otherwise designated by the specifications, shall be subject to inspection, examination and test by Buyer's Engineering Representatives and other designated representatives of Buyer at any and all times during manufacture and/or construction. Buyer's Engineering Representatives shall have the right to reject defective material and workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefor, and Contractor shall promptly segregate and remove the rejected material from Buyer's premises. If Contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, Buyer may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to Contractor, or may terminate this Order for default.
- C. The removal of Work and materials rejected in accordance with this provision and the re-execution of unacceptable Work by Contractor shall be at the expense of Contractor, and it shall pay the cost of replacing the Work of other contractors destroyed or damaged by the removal of the rejected Work or materials and the subsequent replacement of unacceptable Work, including Buyer's cost of re-inspection. Removal of rejected Work or materials and storage of these materials by Buyer, in accordance with this paragraph C, shall be paid for by Contractor within 30 days after written notice to pay is given by Buyer. If Contractor does not pay the expenses of such removal and after ten days written notice being given by Buyer of its intent to sell the materials, Buyer, in addition to any other remedies provided herein or in law or equity, may sell the materials at auction or at private sale and will pay to Contractor the net proceeds therefrom after deducting all the costs and expenses that should have been borne by Contractor and other amounts owed by the Contractor to Buyer under this Order or otherwise.

- D. Contractor shall furnish promptly without additional charge all reasonable facilities, labor, and materials necessary and convenient for making reasonable and customary tests and such additional tests as may be designated in the specifications.
- E. Should it be considered necessary or advisable by Buyer's Engineering Representatives at any time before final acceptance of the entire Work to make an examination of Work already completed, by removing or tearing out same, Contractor shall on request promptly furnish all necessary facilities, labor, and material. If such Work is found to be defective in any respect due to the fault of Contractor or its Subcontractors, Contractor shall pay all the expenses of such examination and of satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Order, the actual cost of labor and material necessarily involved in the examination and replacement shall be allowed Contractor and it shall, in addition, if completion of the Work has been delayed thereby, be granted a suitable extension of time on account of the additional Work involved.
- F. Buyer's Engineering Representatives or safety personnel may suspend Work, by written notification, when in its sole discretion and judgment the Contractor is not following the intent of the plans and specifications. Any such suspension shall be continued only until the matter in question is settled to the satisfaction of Buyer. The cost of any such Work stoppage shall be borne by Contractor unless Buyer later determines that no fault existed in Contractor's Work.
- G. Should Buyer direct Contractor not to correct Work that has been damaged or that was not performed in accordance with the Order, an equitable deduction from the Order Amount may be made to compensate Buyer for the uncorrected Work.
- H. Contractor shall, at all times, be responsible for the conduct and discipline of its employees and/or any Subcontractor or persons employed by Subcontractors. All workmen must have sufficient knowledge, skill, and experience to perform properly the Work assigned to them. Any foreman or workman employed by Contractor or Subcontractor who does not perform Work in a skillful manner or appears to be incompetent or to act in a disorderly or intemperate manner shall, at the written request of Buyer, be removed from the site immediately and shall not be employed again in any portion of the Work without the approval of Buyer.
- I. Neither Buyer's in-process inspection nor Buyer's approval of any of Contractor's drawings, procedures or other submittals shall (i) constitute acceptance of any Work, or (ii) relieve Contractor of complying fully with all of the requirements of this Order.

### **13. TAXES. [\(back to top\)](#)**

Contractor shall not collect any sales or use taxes inasmuch as Buyer has direct pay permits for Louisiana, Mississippi and Virginia. Contractor shall pay all other State, Federal and Local taxes, assessments and duties that may be applicable to Work or Contractor's performance hereunder.

### **14. UNIT PRICE WORK. [\(back to top\)](#)**

This provision applies only to Work for which a Unit Price applies as set forth in this Order:

- A. The Unit Price set forth in this Order includes the furnishing by Contractor of all supervision, labor, tools, materials, machinery, appliances, plant and equipment appurtenant to and necessary for the construction in every detail and the completion of all the Work to be done under this Order. The Unit Price also includes all permanent protection of overhead, surface and underground structures, clean up and finish; overhead expense, bond, insurance, patent fees, royalties, risk due to the elements, delay, profit, injuries, damages, claims, and all other items not specifically mentioned that may be required to construct fully each item of the Work, complete in place.
- B. The determination of quantities of Work acceptable under the terms of this Order will be made by Buyer's Engineering Representatives, based on measurements made by Buyer's Engineering Representatives and agreed upon by Contractor. These measurements will be taken according to the U.S. standard measurements used in common practice and will be the actual length, area, solid contents, numbers, and weights.

- C. Contractor and Buyer recognize that, in the performance of this Order, there may be either over-runs or under-runs in the estimated quantities of Work and materials. Buyer agrees to make payment to Contractor for the actual quantities of Work performed and the material furnished at the unit prices set forth herein. The unit prices quoted by Contractor in its bid, shall apply to over-runs and/or under-runs of up to 25% of the estimated quantities. In the event the over-runs and/or under-runs exceed 25%, the new unit prices shall be mutually agreed upon by Buyer and Contractor.

## 15. INVOICES. [\(back to top\)](#)

- A. Except in cases where unit prices form the basis of payment under this Order, Contractor shall, prior to any payment becoming due under this Order, develop and submit for Buyer's approval, a complete breakdown of the Order price broken out separately into material and labor costs in increments as determined by Buyer. That breakdown shall be used as the basis for all requests for payment. The values in the schedule will be used for progress payments as hereinafter provided, and the Contractor will be required to certify that invoiced amounts are commensurate with the value of the work accomplished.
- B. Unless otherwise directed by Buyer, Contractor may submit to Buyer a request for payment once a month in the form approved by Buyer for Work done and materials delivered to and stored either on-site or off-site. Contractor shall furnish all reasonable information required for obtaining the necessary data for Buyer to determine the progress and execution of Work. Unless otherwise provided in this Order, payment for materials will be conditioned upon evidence submitted to establish Contractor's payment and receipt of such materials. Each request for payment shall be computed on the basis of Work completed on all items listed in the detailed breakdown of the Order (or on unit prices, as the case may be), less amounts to be retained and less previous payments. Request for payment shall be submitted on the first of the month unless otherwise agreed thereto.
- C. In making such progress payments there shall be retained ten percent of the amount requested until 50% of the Work has been completed and, if in the opinion of Buyer satisfactory progress is being maintained on the Work, thereafter no retention shall be made so that upon final completion and acceptance of the Work the retainage shall be reduced to not less than five percent for the period remaining until final payment.
- D. Within 35 days after receipt of a request for payment Buyer shall:
- (i) Pay the request for payment; or
  - (ii) Pay such other amount as Buyer shall decide is due Contractor, informing Contractor in writing of Buyer's reasons for paying the amended amount; or
  - (iii) Withhold payment as provided for herein, informing Contractor of the reasons for withholding payment.
- E. Buyer may withhold payment, in whole or in part, of a Request for Payment to the extent necessary to protect it from loss on account of any reason including, but not limited to, any of the following:
- (i) Failure to perform to the terms of this Order or other contractual obligations to Buyer.
  - (ii) Evidence indicating the probable filing of claims by other parties against Contractor or Buyer that are related to Contractor's Work and that may adversely affect Buyer.
  - (iii) Failure of Contractor to make payments due to Subcontractors, material suppliers or employees.
  - (iv) Damage to the work of Buyer or another contractor of Buyer by Contractor or any of its Subcontractors in performance of the Work under this Order.
- F. All Work covered by partial payments made shall thereupon become the sole property of Buyer, but this provision shall not be construed as relieving Contractor from (i) the risk of loss of and responsibility for all Work upon which payments have been made, (ii) the restoration of any damaged Work, or (iii) as a waiver of the right Buyer to require the fulfillment of all of the terms of this Order.
- G. When Contractor has completed the Work in accordance with the terms of this Order, it shall certify completion of the Work, and the Work of any Subcontractors, to Buyer and submit a final Request for Payment, which shall be the Order amount for retentions only.
- (i) Within 60 days after the filing of the final Request for Payment and fulfilling of all the requirements of this Order by the Contractor, Buyer shall pay to Contractor the amount therein stated.



- (ii) The final Request for Payment shall include an Affidavit of Payment of Claims that all Subcontractors and suppliers of either labor or materials have been paid all sums due them for work performed or materials furnished in connection with this Order or that satisfactory arrangements have been made by Contractor with such Subcontractors and suppliers with respect to the payment of such sums as may be due them by Contractor.
- (iii) The acceptance by Contractor of the final payment shall be and operate as a release to Buyer of all claims and liability of Contractor for all things done or furnished in connection with this Order. No payment, final or otherwise, or partial or entire use or occupancy of the Work by Buyer, shall be an acceptance of Work not in accordance with this Order, nor shall the same relieve Contractor of responsibility for faulty materials or workmanship or operate to release Contractor, or its surety (if applicable) from any obligation under this Order. Upon receipt of final payment, Contractor shall execute, in a form acceptable to Buyer, an appropriate release of claims.

#### **16. AUDIT RIGHTS. [\(back to top\)](#)**

In addition to any other audit rights provided for in this Order, Buyer or its duly authorized representative shall have access at all reasonable times to such personnel of Contractor and its Subcontractors as Buyer may designate, and to books, records, correspondence, instructions, plans, drawings, receipts, vouchers, and memoranda of every description pertaining to the Order for the purpose of auditing and verifying the costs of the Work.

#### **17. WARRANTY. [\(back to top\)](#)**

- A. Contractor warrants that all materials, supplies, equipment, and workmanship furnished under this Order shall be new unless otherwise specified, of good quality, in conformance with this Order and free from defects.
- B. Contractor's warranty shall commence on the date of final acceptance of the entire project by Buyer in writing, provided that if prior to the acceptance of the entire project Buyer occupies or uses any separate unit of the Work, the warranty period shall, as to the unit so occupied or used, commence on the date of such occupancy or use, with the further provision that Buyer shall have first agreed in writing that the separate unit is complete to such a degree as to permit its use for occupancy. No such separate unit shall be occupied or used by Buyer until such certificate has been given. The warranty for equipment that has seasonal limitations on its operation will commence on the date of test and written acceptance by Buyer.
- C. Contractor shall immediately notify Buyer of any deficiencies during the performance of this Order and the warranty period. Contractor shall promptly provide a written notice to Buyer describing the deficiency and Contractor's plan to remedy the deficiency. For the purposes of this provision, a defect or deficiency occurs when Work provided under the Order fails to meet any of the performance obligations set forth in paragraph A of this provision. Contractor's notice shall in no way affect the rights and remedies of Buyer.
- D. Promptly upon receipt of notice from Buyer and without expense to Buyer, Contractor shall correct all materials, supplies, equipment and workmanship provided under this Order which proves to be defective within one year from the commencement date of the warranty period. In correcting defective Work, Contractor further agrees at no expense to Buyer to:
  - (i) Repair all damage to the structure or site or equipment or contents thereof, which, in the opinion of Buyer was caused by the defect; and
  - (ii) Repair any Work or materials or the equipment and contents of structures or site disturbed in correcting the defect.
- E. In fulfilling the requirements of this Order or of any warranty provided hereunder, if Contractor disturbs any Work warranted under another Order, Contractor shall, at no expense to Buyer, restore such disturbed Work to a condition satisfactory to Buyer and warrant such restored Work to the same extent as it was warranted under such other Order.

- F. If Contractor, after notice, fails to proceed promptly to comply with any of the terms of this provision, Buyer may perform Contractor's obligations and Contractor and its surety shall be liable for all expenses incurred by Buyer.
- G. Buyer's approval of any documentation prepared by Contractor or Buyer's participation in design reviews or similar reviews shall not relieve Contractor of any obligation under this provision.
- H. All special warranties applicable to definite parts of the Work that may be stipulated in the specifications or other papers forming a part of this Order shall be subject to the terms of this provision during the first year of the life of such special warranty.
- I. With respect to materials or equipment furnished but not manufactured by Contractor, Contractor shall assign and deliver to Buyer whatever warranty Contractor receives from the manufacturer. These warranties shall be in addition to the warranty provided by Contractor under this provision.
- J. Buyer's rights under this provision shall, at Buyer's option, be assignable to and enforceable by Buyer's successors and customers.

## **18. CHANGES. [\(back to top\)](#)**

- A. Buyer may at any time and without notice to the sureties, make changes in the drawings, specifications and other requirements of the Order and within the general scope thereof. For the purposes of this provision the term "Changed Work" shall mean Work that is either directly or indirectly affected, delayed, added, deducted or disrupted by a change order.
- B. Contractor will perform no Changed Work unless authorized and identified as such in writing by Buyer and until there is mutual agreement on the price adjustment or the method of determining the price adjustment is established in writing.
- C. If in Buyer's sole judgment, agreement cannot be reached in a timely manner, or for any other reason at its sole option, Buyer may issue a written directive to Contractor to proceed with Changed Work and Contractor agrees to perform same without regard to whether a mutual agreement has been reached as to an equitable price or time adjustment for the Changed Work. Contractor must submit a request for equitable price or time adjustment for the Changed Work within ten days upon receipt of the written directive and the methods to determine the price adjustment for Changed Work will be in accordance with paragraph E.
- D. If Contractor claims that any instructions, by drawings or otherwise, involve Changed Work, Contractor shall give Buyer written notice thereof within ten days after the receipt of such instructions and before proceeding to execute the Work, except in emergencies endangering life or property. If it is later determined that the Work involved in such instructions constituted Changed Work, the Order adjustments, if any, shall be determined by one of the three methods provided in paragraph E as may be selected by Buyer in its sole and absolute discretion. Except as otherwise specifically provided, no claims for Changed Work shall be allowed unless the notice specified by this paragraph D is given by Contractor or unless such Work is performed pursuant to the written order of Buyer issued in accordance with this provision.
- E. Except as provided elsewhere in this provision, a change order will stipulate the mutually agreed price adjustment for any Changed Work. The method(s) of determining the price adjustment for Changed Work shall be established before the Changed Work starts by one of or a combination of the following methods as selected by Buyer.
  - (i) Unit Price. The number of unit quantities of each part of the Work that is changed shall be estimated and multiplied by the applicable unit price (if any) set forth in this Order or by another mutually-agreed to unit price.
    - (a) If Changed Work is ordered by Buyer and the change order calls for the deletion or addition of item(s) of Work or material of the same type as those for which unit prices have been quoted in the proposal, the compensation to be paid therefore will be computed on the basis of the unit prices.
    - (b) For those items for which Contractor proposes a different unit price than the unit price in the proposal, Contractor shall furnish a detailed, itemized breakdown of each differing unit price used in computing



the value of any change and shall also submit its unit price work up and in addition, the proposal unit price breakdown.

- (ii) Cost-Basis. If this method is selected, Buyer shall order Contractor to proceed with the Changed Work and to keep and present in such form as Buyer may direct a correct account of the cost of the Changed Work together with all related vouchers. The cost shall include an allowance for overhead and profit, to be mutually agreed upon by Buyer and Contractor but subject to the limitations contained in paragraph F. Buyer shall have the right to verify such cost by audit of Contractor's books and records as provided in the "Audit Rights" provision of this Order.
  - (iii) Time-and-Material Basis.
    - (a) Compensation for Changed Work on a time and material basis will be used only when the scope and extent of the Changed Work cannot be readily determined or negotiated before the changed Work is performed, or as provided for under paragraph C.
    - (b) In the event Buyer determines to compensate Contractor for changes on a time and material basis, Contractor shall, within 24 hours of completion of that day's work or at such other intervals as Buyer may direct in writing, furnish to Buyer's Engineering Representatives: (1) daily time slips showing the name of each employee on such Work, the number of hours which he was employed thereon, and the character of his duties and supporting data (e.g., purchase orders, rental invoices, invoices on dump charges, payment records) showing the amount and character of the materials furnished in the performance of changed Work, apparatus rented in connection therewith, from whom they were purchased or rented, and the amount paid therefore; and (2) a memorandum detailing payments made to approved Subcontractors (with copies of Subcontractor invoices attached supported by documentation – purchase orders, rental invoices, invoices on dump charges, payment records, etc.). The failure of Contractor to furnish time slips and other supporting documentation with respect to any particular labor, equipment, materials, apparatus or subcontract as specified shall constitute a waiver by Contractor of claim for compensation (time or payment) based thereon.
- F. The following methodology shall apply to price adjustment proposals submitted by Contractor or its Subcontractors' for Changed Work when the "cost" and "time-and-materials" methods specified in paragraphs (E)(ii) and (E)(iii) are used in determining the price adjustment.
- (i) Labor
    - (a) Actual Wages – by craft, but excluding premium pay, paid to all employees directly engaged in the Work below general foreman level.
    - (b) Labor Burden – to be established as a percent of actual wages paid pursuant to contractual obligation and paid for each craft and shall include: Vacation allowance, Health and Welfare, Pension, Apprenticeship Programs and other programs as required for each craft, Social Security, Unemployment Insurance and Worker's Compensation insurance.
  - (ii) Subsistence and/or Mileage – if required in union agreements.
  - (iii) Materials – all materials incorporated in the Work at Contractor's net cost.
  - (iv) Overhead – percent of labor and provides for: all delay and disruption, supervision and administration above and including the Superintendent, Engineers, Accountants, Clerks, Timekeepers, Office Managers, and all others on staff; office supplies; drinking water; temporary heat, light and power; field toilets; costs of services; material and/or equipment not incorporated in the Work or directly associated with the Work; premiums for all insurance (including fire, personal, general and public liability); bonds; and all home office costs. The requested compensation for shall be submitted with the Request for Proposal.
  - (v) Profit – maximum of 10% of the sum of labor, excluding any material, unless lower percentages have been stated in the Request for Proposal.
  - (vi) Premium Time – actual premium costs paid, plus paid Social Security taxes, unemployment insurance, Workers' Compensation insurance and union fringe benefits, if required by union agreements.

- (vii) Freight – actual freight of materials used (cost may be calculated by weight and rate if the actuals are not available).
  - (viii) Equipment Rental – total compensation for equipment shall be as follows:
    - (a) Contractor owned equipment – per latest edition of Rental Rate Blue Book published by Equipment Guide-Book Company calculated as follows:
      - 1. Hourly Rate = 85% of monthly rate divided by 176 hours plus operating costs indicated.
      - 2. Daily Rate = 85% of monthly rate divided by 22 days plus eight times the hourly operating cost indicated.
      - 3. Where the equipment is used on double or triple shifts, rates will be calculated at 50% of the foregoing base rate for each additional eight-hour shift period.
    - (b) Equipment leased specifically for the Work involved, at Contractor’s net invoice cost.
    - (c) Transportation cost for equipment will be paid if it is allocable solely to a specific change.
  - (ix) Subcontractor Cost – shall be quoted in the same manner prescribed for Contractor.
  - (x) Contractor’s Overhead and Profit on Subcontractor’s Work – 5% of the net amount of the aggregate of all acceptable Subcontractors’ cost for the change; unless a lower percentage has been stated in the Request for Proposal.
- G. Other Requirements
- (i) In all cases, the costs and percentages detailed in paragraph F shall cover any and all costs and profit. The sum of these costs with the applicable percentages will be the only cost used to determine the Order price adjustment (increase or decrease). After Contractor and Buyer negotiate a price adjustment, Contractor will have no further or future right to demand or claim any additional compensation based on that change or on any alleged contribution to any delay or disruption that change may have on other Work being performed by Contractor.
  - (ii) Payment for Changed Work shall be subject to all of the conditions, approvals, and other terms set forth in the “Payments to Contractor” provision of this Order.
- H. Buyer reserves the right to delete any item of Work in whole or in part. Should an item of Work be partially or totally deleted, the contract price shall be decreased. The price adjustment for the deleted Work will be determined pursuant to paragraph E above and the “Audit Rights” provision of this Order.
- I. If Contractor does not agree with any decision of Buyer, it shall nonetheless, when so directed by Buyer, not allow the dispute to delay the Work. In such an instance, it shall notify Buyer in writing within 72 hours that it is proceeding with the Work under protest.
- J. All modifications to this Order that include Changed Work will indicate that the completion date of the Work is either not extended or is extended by a specific number of days. The old and new date (if applicable) will be stated.
- K. Buyer reserves the right to ask for bids on any and all changes in the Work involving additions or alterations thereto and/or to award said Work to others.
- L. Contractor shall assert its right to a price or schedule adjustment under this provision within ten days after: (1) receipt of a written change order from Buyer; or, (2) the furnishing of a written notice under paragraph D, by submitting to Buyer a written statement describing the general nature and amount of Contractor’s proposal. Contractor shall not be entitled to an adjustment under this provision for a change if Contractor fails to assert its right to an adjustment within the time period specified above.
- M. Payments for extra work shall be subject to the conditions, approvals, and other terms set forth herein.

## 19. TERMINATION FOR DEFAULT. [\(back to top\)](#)

- A. If Contractor should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or if it should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or fail to provide a qualified Superintendent, or if it should fail to

make prompt payment to Subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of Buyer's Engineering Representatives, or otherwise violate any other provisions of the Order, then Buyer, may without prejudice to any other right or remedy, and after giving Contractor and its surety (if applicable) 14 days written notice, terminate this Order and take possession of the premises and of all materials, tools and appliances thereon and finish the Work by whatever method Buyer deems expedient. In such case Contractor shall not be entitled to receive any further payment. In addition to any other remedies that Buyer may have either under this Order or at law, if the expense of finishing the Work, including compensation for additional managerial and administrative service, exceeds the unpaid balance of the Order price, Contractor shall pay the difference to Buyer.

- B. The cost of the Work performed by Buyer, in removing construction equipment, tools and supplies of Contractor or its Subcontractors and in correcting deficiencies in accordance with this provision, shall be paid by Contractor.
- C. Upon termination of this Order by Buyer in accordance with this provision, no further payments shall be due Contractor until the Work is completed. If the unpaid balance of this Order amount exceeds the cost of completing the Work including all overheads, delay and disruption costs, the excess shall be paid to Contractor. If the cost of completing the Work exceeds the unpaid balance, Contractor shall pay the difference to Buyer.

## **20. TERMINATION FOR CONVENIENCE. [\(back to top\)](#)**

- A. Buyer may terminate this Order in whole or in part at any time for its sole convenience. Buyer will terminate by delivering to Contractor a Notice of Termination specifying the extent of termination and the effective date. After receipt of a Notice of Termination, Contractor shall immediately proceed with the following obligations:
  - (i) Stop work as specified in the notice;
  - (ii) Place no further subcontracts or orders (referred to as subcontracts in this provision); and
  - (iii) Terminate all subcontracts to the extent they relate to the Work terminated.
- B. Buyer's sole obligation to Contractor in the event of a termination for convenience shall be to pay Contractor a percentage of the Order price corresponding with the percentage of the terminated Work actually performed prior to the notice of termination, plus Contractor's reasonable expenses incurred as a direct result of the termination. No amount will be allowed for anticipated profit on the terminated work. The amount paid shall be reduced by the reasonable resale or salvage value of any undelivered Work or uncompleted Work in progress. Contractor shall submit to Buyer supporting documentation in sufficient detail to justify any termination payments requested from Buyer. Contractor will not be paid for any Work performed or costs incurred that could reasonably have been avoided.
- C. In no event shall Buyer's total liability exceed the total Order price as reduced by the amount of payments otherwise made and as further reduced by the Order price of Work not terminated.

## **21. SUSPENSION OF WORK. [\(back to top\)](#)**

Buyer may, by written notice, suspend Work under this Order at any time. Upon receipt of such notice, Contractor shall immediately comply with its terms and, during the Work suspensions, take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the suspension notice. If the suspension of Work ordered under this provision results in an increase in the time required for, or in Contractor's cost properly allocable to the performance of any part of this Order, Buyer shall make an adjustment in the schedule or Order price or both. Contractor shall assert its right to an adjustment no later than ten days after the Work suspension is lifted.

## **22. EXTENSION OF TIME, DAMAGES FOR DELAYS. [\(back to top\)](#)**

- A. All Parties expressly agree that time is and shall remain of the essence in performing this Order and no acts of Buyer, including without limitation, modifications to this Order or acceptance of late deliveries, shall constitute a waiver of this provision.

- B. Whenever it appears Contractor will not meet the construction schedule or enumerated milestones, Contractor shall immediately notify Buyer in writing of the reason and estimated length of the delay. This notice shall be informational only, and shall in no way affect the rights or remedies available to Buyer. Contractor shall make every effort to avoid or minimize the delay to the maximum extent possible. Any additional cost incurred by Buyer or Contractor because of delays shall be borne by Contractor unless specifically authorized in writing by Buyer.
- C. If Contractor is unable to meet the required schedule for any reason, Buyer shall have the option to: (i) terminate this Order, or (ii) fulfill this Order or any portion thereof, from sources other than Contractor and to reduce Contractor's Order scope of Work accordingly at no increase in price, without any penalty to Buyer. The rights accorded Buyer pursuant to paragraph C shall not limit Buyer's rights under the "Termination for Default" provision of this Order.
- D. If Contractor fails to complete the Work within the time fixed by the Order for the completion of the same, Contractor shall be liable to Buyer for liquidated damages as fixed and as set forth in this Order for each day of delay until the Work is completed. If liquidated damages are not specified in this Order or otherwise not allowable under the law, Contractor shall be liable for any actual damages occasioned by such delay.
- E. Contractor shall notify Buyer, in writing, not later than 48 hours after an occurrence or event that may cause a delay of the Work. In the case of a continuing cause of delay, only one notice of delay is necessary.
- F. This provision does not exclude the recovery of damages for delay by either Party under other provisions in this Order.
- G. Any change in the completion date shall be accomplished only by issuance of a change order.

### **23. FINAL INSPECTION. [\(back to top\)](#)**

When the Work is substantially complete, Contractor shall notify Buyer in writing that the Work will be ready for final inspection and test on a definite date which shall be stated in such notice. The notice shall be given at least 14 days in advance of said date and shall be forwarded through Buyer's Engineering Representatives who will attach his endorsement as to whether or not he concurs in Contractor's statement that the Work will be ready for final inspection or test on the date given, but such endorsement shall not relieve Contractor of its responsibility in the matter. Contractor is required to furnish access for final inspection as provided in the "Access to Work" provision of this Order.

### **24. PROSECUTION, SCHEDULING, PROGRESS. [\(back to top\)](#)**

- A. Contractor shall commence the Work within the time specified, and the rate of progress shall be such that the whole Work will be performed and the premises cleaned up in accordance with the Order and within the time limit specified in the Order, unless an extension of time is made in accordance with this Order.
- B. Contractor shall begin the Work to be performed under this Order within 14 days following the notice of award, and shall conduct the Work in such a manner and with such sufficient equipment, material and labor as is necessary to ensure its completion within the time limit. It is the intent of this requirement to obtain a continuous construction operation without delay, except as occasioned by unforeseeable causes beyond the control and without the fault or negligence of Contractor, and it will be Contractor's responsibility to prosecute the Work in the most expeditious manner. Should Contractor discontinue work for any reason, it shall immediately notify Buyer's Engineering Representatives in writing of the reason for the discontinuance and shall also notify Buyer at least 24 hours in advance of resuming operations.
- C. Contractor shall furnish all labor and materials necessary to complete the Work and shall be responsible for and shall provide all methods, techniques, sequencing operations, and all analyses and reports required to complete the Work. In order to avoid conflict of operations or delay in completion of the Work, Buyer's Engineering Representatives may furnish Contractor with written direction with respect to the methods, sequencing, and priority of effort of the operations or Work; whereupon Contractor shall take immediate steps to comply with such direction.

- D. During the progress of the Work there may be several contractors performing work simultaneously. Contractor shall cooperate and coordinate its work with other contractors in order that a minimum of interference will occur during construction operations. Should any interference occur that hampers the overall performance of the Work, Buyer's Engineering Representatives may furnish Contractor with written instructions designating priority of effort or change in methods; whereupon Contractor shall take immediate steps to comply with such instructions.
- E. Scheduling and Progress
- (i) Contractor shall, 14 days following the date of notice of award, submit for Buyer's Engineering Representatives approval a Microsoft Project or other Buyer-approved format schedule outlining construction events, which shall thereafter be updated monthly by Contractor and submitted with Contractor's payment requests. After each submission, Contractor shall add additional items as may be requested and approved by Buyer. The schedule approved by Buyer's Engineering Representative will become a part of this Order. If Contractor fails to submit an acceptable schedule within the prescribed time, Buyer may withhold progress payments until such time as Contractor submits an acceptable schedule.
  - (ii) Within 30 days after receiving a notice of award, Contractor shall submit to Buyer's Engineering Representatives a schedule showing dates when shop drawings, certificates of compliance, physical and performance data for equipment and other engineering data related to selection of equipment or fabrication of structures will be submitted for approval. The schedule shall show actual as well as scheduled dates. Contractor shall update and resubmit the schedule monthly. The schedule will provide adequate time for review and approval of submitted material and shall be coordinated with the construction schedule.

## **25. DISPUTES. [\(back to top\)](#)**

- A. Any dispute arising under or related to this Order shall be submitted in writing for resolution to equivalent ascending levels of management of the respective Parties up to Buyer's Vice President of Supply Chain Management, and Contractor's equivalent executive level.
- B. If a dispute cannot be resolved to both Parties' mutual satisfaction, after good faith negotiations, within 90 days from the date the written dispute is received by the other Party in accordance with the notice provisions set forth herein, or such additional time as the Parties agree upon, in writing, either Party may only bring suit in the appropriate court specified in the "Choice of Law" provision of this Order.
- C. Pending any informal resolution, law suit, appeal, or final decision referred to in this provision, or the settlement of any dispute, Contractor shall proceed diligently, as directed by Buyer, with performance of this Order.
- D. Contractor shall commence an action for breach or any other dispute arising under or related to this Order within two years after the cause of action accrues, or by the otherwise applicable statute of limitations, whichever period is shorter.

## **26. INSURANCE. [\(back to top\)](#)**

- A. Contractor shall not commence any Work until it obtains, at its own expense, all required insurance. Such insurance must have the approval of Buyer as to limit, form, and amount. Contractor will not permit any Subcontractor to commence Work on this project until the same insurance requirements have been complied with by such Subcontractor. All coverages required by this Order shall be primary and not contributory to any other insurance available to Buyer, and Contractor's insurers shall provide a waiver of subrogation in favor of Buyer for each required coverage hereunder.
  - (i) The types of insurance Contractor is required to obtain and maintain for the full period of the Order will be Workers' Compensation Insurance, Comprehensive General Liability Insurance, Builder's Risks, "All-Risk" Insurance, Automobile Liability Insurance, and Marine Insurance as detailed in the following portions of this "Insurance" provision.
  - (ii) As evidence of specified insurance coverage, Buyer may, in lieu of actual policies, accept certificates of insurance (COI) issued by the insurance carrier showing such policies in force for the specified period. For



Orders issued by the Newport News Shipbuilding division, when evidence of a COI is required, the Parties mutually agree that Buyer's third party insurance compliance provider, Avetta, LLC, is hereby authorized on behalf of Buyer to request, acquire and audit Certificates of Insurance in accordance with this provision's insurance requirements. In connection therewith, Seller shall take all steps necessary to register and maintain an active account with Avetta at the following website: <http://pages.avetta.com/Newport-News-Shipbuilding.html>.

- (iii) For Orders issued by the Newport News Shipbuilding division, renewal insurance certificates, if applicable, shall be provided to Avetta at least 15 days prior to the expiration date of the insurance under each required coverage.
  - (iv) The COI shall provide for 30 days' prior written notice should any of the specified coverages be cancelled or materially changed. Should any policy be cancelled before final payment by Buyer to Contractor and Contractor fail immediately to procure other insurance as specified, Buyer reserves the right to procure such insurance and to deduct the cost thereof from any sum due Contractor under this Order.
  - (v) Any insurance bearing on adequacy of performance shall be maintained after completion of the Work for the full guarantee period. Should such insurance be cancelled before the end of the warranty period and Contractor fail immediately to procure other insurance as specified, Buyer reserves the right to procure such insurance and to charge the cost thereof to Contractor.
  - (vi) Nothing contained in these insurance requirements is to be construed as limiting the extent of Contractor's responsibility for payment of damages resulting from its Work under this Order.
- B. Workers' Compensation Insurance: Before Work under this Order commences, Contractor shall submit written evidence that it and all Subcontractors have obtained, for the period of this Order, full Workers' Compensation Insurance coverage including a United States Longshore and Harborworkers' Compensation Act (the "Act") endorsement applicable to all Work within coverage of the Act, for all persons employed in carrying out the Work under this Order. This insurance shall be in strict accordance with the requirements of the most current and applicable state Workers' Compensation Insurance Laws. Contractor must also provide written evidence of Employers' Liability Insurance coverage in the amount of at least \$1,000,000. Contractor is an independent contractor, and shall have exclusive control and direction over its employees' performance of the Work. No persons employed by Contractor or Contractor's Subcontractors shall be deemed employees of Buyer for any purpose.
- C. Comprehensive General Liability Insurance: Before commencement of the Work, Contractor shall submit written evidence that it and all its Subcontractors have obtained for the period of this Order, full Comprehensive General Liability Insurance coverage. This coverage shall provide for both bodily injury and property damage. The Comprehensive General Liability Insurance will include as an Additional Insured with respect to third party liability: Buyer; the Architect or Engineer and its consultants; and each of their respective directors, officers, agents, and employees.
- (i) Bodily Injury portion shall include coverage for injury, sickness or disease, and death, arising directly or indirectly out of, or in connection with, the performance of Work under this Order, and shall provide for a limit of not less than \$2,000,000 for damages arising out of bodily injury, sickness or disease and death in any one occurrence.
  - (ii) Property Damage portion will provide for a limit of not less than \$2,000,000 for all damages arising out of injury to or destruction of property of others arising directly or indirectly out of or in connection with the performance of Work under this Order and in any one occurrence including explosion, collapse and underground exposure.
  - (iii) Indemnity: Included in such insurance will be contractual coverage sufficiently broad to insure the provisions of the "Indemnification – Government Requirements" and "Indemnification – Third Party Claims" provisions of this Order.
  - (iv) Included in such insurance will be products/completed operations coverage with limits of not less than \$2,000,000 for both bodily injury and property damage. Products and completed operations coverage shall



be maintained for a minimum of five years from the date of acceptance of Contractor's work by Buyer. Contractor is required to provide evidence of maintenance of continued coverage by providing annual certificate(s) of insurance.

**D. Builder's Risk "All-Risk" Insurance:**

- (i) Before commencement of the Work, Contractor shall submit written evidence that it has obtained, for the period of this Order, Builder's Risk "All-Risk" Insurance coverage (on a replacement cost value basis) upon the entire project which is the subject of this Order, including completed Work and Work in progress. Such insurance shall include as additional insured: Buyer and each of their directors, officers, employees and agents; and any other persons with an insurable interest designated by Buyer as an additional insured.
- (ii) The loss, if any, is to be made adjustable with and payable to Buyer for whom it may concern. Written evidence of the insurance required herein shall be filed with Buyer not later than 30 days following the date of the award of this Order.

**E. Automobile Liability Insurance:** Contractor agrees to maintain during the performance of the Work under this Order, Automobile Liability Insurance on owned, non-owned, hired, and rented equipment (anything that travels on public roads) for bodily injury and property damage with combined single limits not less than \$2,000,000. Such insurance shall include as additional insured Buyer and each of its directors, officers, employees and agents; and any other persons with an insurable interest designated by Buyer as an Additional Insured.

**F. Marine Insurance:**

- (i) Contractor shall insure all marine equipment to be utilized in the completion of this Order, subject to the following policy terms and conditions:
  - (a) Hull insurance subject to the American Institute Hull Clauses, 1970, subject to a deductible not exceeding \$10,000 with the amount insured and value of each vessel being the market value thereof.
  - (b) Protection and Indemnity Insurance subject to P & I SP23 with a limit the same as applicable for hull for each vessel and subject to a deductible not exceeding \$5,000.
  - (c) Excess Collision Liability and P & I Insurance with limits necessary to achieve a total of \$ 1,000,000 each vessel, each loss, accident, or occurrence.
- (ii) It is understood that the following special arrangements are to apply with respect to the above coverages:
  - (a) Huntington Ingalls Incorporated, and/or all consolidated, affiliated and subsidiary companies and their authorized representatives are to be included as additional insured thereunder.
  - (b) The so-called Charterer's Limitation Clauses thereunder are to be deleted with respect to Huntington Ingalls Incorporated and/or all consolidated, affiliated and subsidiary companies and their authorized representatives.
- (iii) Workers' Compensation and Employer's Liability Insurance will be supplemented by United States Longshore and Harbor Workers' Compensation Act endorsement and Maritime endorsements, where appropriate, for operations under the Jones Act.

**G. Professional Liability Insurance:** Whenever Seller provides design and/or engineering services, Seller shall, in addition to the above requirements and at their sole cost and expense, procure and maintain professional liability (errors and omissions) insurance coverage in the minimum limits of \$1,000,000.

**27. BUYER PROPERTY. ([back to top](#))**

- A. If Buyer property is furnished in conjunction with this Order, it shall be furnished "as is." Unless otherwise noted in this Order, Contractor shall assume the risk of, maintain adequate insurance, and be responsible for, any loss, destruction of or damage to property provided to Contractor by Buyer while such property is in Contractor's possession or control. Excluding property authorized to be consumed in the performance of this Order, Contractor shall return such property in as good a condition as when received except for reasonable wear and tear, or in the case of property to be overhauled or repaired, in such better condition as may be required by the terms of this Order.

- B. Contractor shall use Buyer-furnished property only for performing this Order, unless otherwise provided for in this Order or approved by Buyer. Contractor shall not modify, cannibalize, or make alterations to Buyer furnished property unless this Order specifically identifies the modifications, alterations or improvements as work to be performed.
- C. Buyer shall retain title to all Buyer-furnished property. Title to such property shall not be affected by its incorporation into or attachment to any property not owned by Buyer, nor shall Buyer-furnished property become a fixture or lose its identity as personal property by being attached to any real property.
- D. Contractor shall immediately discharge any lien, other than a lien held by Buyer, on Buyer-furnished property.

**28. REPRESENTATIONS AND CERTIFICATIONS. [\(back to top\)](#)**

- A. As of the time of award of this Order, Contractor represents and warrants that:
  - (i) Contractor has submitted to Buyer SBF P9152, Huntington Ingalls Incorporated Supplier Data & Certifications, which is incorporated herein by reference;
  - (ii) Contractor's information disclosed on SBF P9152 is current, accurate and complete;
  - (iii) Neither Contractor nor any of its principals is debarred, suspended, or proposed for debarment by the Government.
- B. If Contractor's information as disclosed in the SBF P9152 has changed, Contractor shall complete and submit to Buyer a revised SBF P9152 prior to acceptance of this Order.
- C. If Contractor's information as disclosed on the SBF P9152 changes during performance of this Order, Contractor shall complete and submit to Buyer a revised SBF P9152.

**29. SECURITY. [\(back to top\)](#)**

- A. Unless approved in writing by Buyer, only citizens of the United States will be permitted to work on Buyer's property. Contractor shall provide proof of citizenship of its employees, agents, and Subcontractors.
- B. Contractor and its employees, agents, and Subcontractors shall follow and comply with all of Buyer's rules and security requirements when on Buyer's property.
- C. Contractor shall cause to have performed background investigations on all of its employees, and the employees of its agents and Subcontractors, requiring or having access to Buyer's property for two or more consecutive days. Background investigation requirements are included in NN Form 9327 for Work performed at Newport News Shipbuilding sites and form SSF J8953 for Work performed at Ingalls Shipbuilding sites.

**30. ACCESS TO UNCLASSIFIED NAVAL NUCLEAR PROPULSION INFORMATION. [\(back to top\)](#)**

- A. As applicable, appropriate safeguards must be used by Contractor for the safeguarding from actual potential or inadvertent release by Contractor, or any Subcontractor of any Naval Nuclear Propulsion Information in any form.
- B. Access by non-U. S. citizens to Buyer's facility is prohibited unless approved in writing by Buyer. If such access is provided, these personnel will have special badges and hard hats that make them stand out, and their access to areas of Buyer's facility will be limited to just the project site. They shall also remain within certain access areas while entering and leaving Buyer's facility. There may be times that these personnel will need to leave Buyer's facility for special procedures, and there may also be times when a project reaches a stage where it becomes an area of increased security. These personnel will then be escorted out of Buyer's facility, and their badges removed.

**31. PROPRIETARY INFORMATION. [\(back to top\)](#)**

- A. Contractor will treat all Proprietary Information transferred in connection with this Order, including all copies of Proprietary Information; and all improvements, modifications, and derivations of Proprietary Information as Buyer's property regardless of the medium on which such Proprietary Information is stored or communicated.

- B. “Proprietary Information,” for purposes of this Order, means all knowledge no matter how communicated or stored that Buyer furnishes to Contractor, including, but not limited to, any item identified in writing at the time of disclosure as proprietary and marked with an appropriate legend, marking, or stamp identifying the data as Buyer’s Proprietary Information.
- C. Contractor may disclose Proprietary Information to its Subcontractors as required for the performance of this Order, provided each such Subcontractor first assumes by written agreement the same obligations imposed on Contractor under this Order relating to Buyer’s Proprietary Information.
- D. If a separate proprietary information or non-disclosure agreement relating to the subject matter of this Order exists between the Parties, all data, knowledge and information furnished by one Party to the other Party shall be protected pursuant to such proprietary information or non-disclosure agreement.
- E. If no separate proprietary information or non-disclosure agreement exists between the Parties, Contractor will keep Buyer’s Proprietary Information confidential and not disclose Buyer’s Proprietary Information to any other person without first obtaining Buyer’s written authorization, except as provided herein. Contractor will use Buyer’s Proprietary Information only for purposes necessary for performing this Order and will return Proprietary Information to Buyer upon completion of the work to be performed under this Order unless Buyer expressly agrees to the contrary in writing.
- F. If no separate proprietary information or non-disclosure agreement exists between the Parties, no information furnished to Buyer (whether documentary, oral, visual or otherwise) shall be considered confidential or proprietary or require any particular handling or precaution or have any restriction on Buyer’s right to use, modify, reproduce, perform, display, release, or disclose such information in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

### **32. PATENT, TRADEMARK, TRADE SECRET AND COPYRIGHT INDEMNITY. [\(back to top\)](#)**

In addition to any other warranty by Contractor to Buyer against intellectual property infringement, statutory or otherwise, express or implied, Contractor will indemnify and hold harmless Buyer, Buyer’s parent and affiliates and their respective officers, directors, employees, and customers (“Indemnified Parties”) from and against any and all liabilities, claims, losses and expenses arising out of any allegation of patent, copyright, or trademark infringement or allegation of trade secret misappropriation (collectively or individually, “Claim”) resulting from Indemnified Parties’ use, manufacture, or sale (including any re-sale) of any product or service Contractor provides to Buyer that Contractor authorizes expressly or impliedly under this Order. Contractor shall, at its own cost, defend Buyer against such Claims, and, it shall pay Buyer’s reasonable attorney fees and expenses, related to carrying out and enforcing the terms of this provision, as those costs are incurred. Buyer has the right to conduct such defenses if it so chooses.

### **33. INTELLECTUAL PROPERTY RIGHTS. [\(back to top\)](#)**

- A. **Rights in Original Works, Inventions, Discoveries, and Improvements.** Any original work Contractor produces under this Order is a work for hire and Buyer solely owns all rights therein and Contractor assigns all right, title, and interest in such original works to Buyer. All (i) improvements, (ii) discoveries, (iii) works, (iv) inventions, (v) patents (including patent applications and their progeny), (vi) copyrights, (vii) trademarks, and (viii) trade secrets made or created using resources (including, but not limited to, money, credit, or Buyer’s obligation to pay Contractor under this Order), facilities, material, supplies, information, data, equipment, personnel, direction, or instructions that Buyer furnishes Contractor during the performance of this Order (“Covered Intellectual Property”) are the sole property of Buyer, and Contractor (i) assigns all right, title, and interest in all such Covered Intellectual Property to Buyer; (ii) will assist Buyer in preparing and will execute all instruments necessary to perfect all right, title, and interest to Covered Intellectual Property in Buyer; and (iii) grants to Buyer a nonexclusive, paid-up, irrevocable, world-wide, perpetual license to any Contractor (1) improvements, (2) discoveries, (3) works, (4) inventions, (5) patents (including patent applications and their progeny), (6)

copyrights, (7) trademarks, and (8) trade secrets necessary for Buyer to make, use, or sell any product or service incorporating or using Covered Intellectual Property.

- B. No Transfer of Intellectual Property Rights from Buyer to Contractor.** Unless expressly stated otherwise in this Order, Buyer does not transfer any right, title, and interest in any of Buyer's (i) improvements, (ii) discoveries, (iii) works, (iv) inventions, (v) patents (including patent applications and their progeny), (vi) copyrights, (vii) trademarks, or (viii) trade secrets to Contractor or anyone else whatsoever for any purpose whatsoever except that Buyer grants to Contractor such license to Buyer's (i) improvements, (ii) discoveries, (iii) works, (iv) inventions, (v) patents (including patent applications and their progeny), (vi) copyrights, (vii) trademarks, and (viii) trade secrets to the minimum extent such license is reasonably necessary for Contractor to meet Contractor's obligations to Buyer arising under this Order. Buyer and Contractor each retain all their respective title to all (i) improvements, (ii) discoveries, (iii) works, (iv) inventions, (v) patents (including patent applications and their progeny), (vi) copyrights, (vii) trademarks, and (viii) trade secrets that Buyer and Contractor each respectively held before the last date Buyer and Contractor execute this Order and nothing in this Order is intended to affect any transfer, sale, or assignment of such title.

### **34. EXPORT AND IMPORT COMPLIANCE. [\(back to top\)](#)**

- A. Contractor is advised that its performance of this Order may involve the use of or access to articles, technical data or software that is subject to export controls under 22 United States Code 2751 – 2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 – 2420 (Export Administration Act) and 15 Code of Federal Regulations 768 – 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the "Export Laws and Regulations"). Contractor represents and warrants that it is either:
- (i) A U.S. Person as that term is defined in the Export Laws and Regulations; or
  - (ii) That it has disclosed to Buyer's Representative in writing the country in which it is incorporated or otherwise organized to do business, or if a natural person, all citizenships and U.S. immigration status.
- B. Contractor shall comply with any and all Export Laws and Regulations, and any license(s) issued thereunder.
- C. Contractor shall not give any Foreign Person (including Contractor's own non-U.S. employees or affiliates) access to Technical Data, software or Defense Articles, or provide an unauthorized Defense Service as those terms are defined in the applicable Export Laws and Regulations without the prior written consent of Buyer. Any request for such consent must state the intended recipient's citizenship(s), and status under 8 U.S.C. 1101 and 8 U.S.C. 1324 (the "Immigration and Naturalization Act"), and such other information as Buyer may reasonably request. No consent granted by Buyer in response to Contractor's request under this paragraph C shall relieve Contractor of its obligations to comply with paragraph B of this provision or the Export Laws and Regulations, nor shall any such consent constitute a waiver of the requirements of paragraph B, nor constitute consent for Contractor to violate any requirement of the Export Laws and Regulations.
- D. Contractor shall indemnify and hold harmless Buyer, Buyer's parent and affiliates and their respective officers, directors, and employees from and against any and all liabilities, claims losses, and expenses arising out of the failure of Contractor, its employees, Subcontractors, or agents to comply with the requirements of this provision and breach of the warranty set forth in paragraph A. Contractor shall, at its own cost, defend Buyer against such claims, losses, and liabilities, and, it shall pay Buyer's reasonable attorney fees and expenses, related to carrying out and enforcing the terms of this provision, as those costs are incurred. Buyer has the right to conduct such defenses if it so chooses. Any failure of Contractor to comply with the requirements or any breach of the warranty contained in this provision shall be a material breach of this Order.
- E. The substance of this provision, including this paragraph E, shall be incorporated into any lower-tier subcontract entered into by Contractor for the performance of any part of the Work under this Order.

### **35. INFORMATION SECURITY. [\(back to top\)](#)**

- A. Seller shall implement administrative, physical and technical safeguards to adequately protect Buyer-provided information (“Buyer Information”) in accordance with any law, regulation or contractual obligations applicable to such information. For Buyer Information stored in an electronic database or transmitted electronically, Seller shall comply with any Buyer-specified safeguards set forth in this Order, or if no such safeguards are specified herein, Seller’s safeguards shall be no less rigorous than the Center for Internet Security’s CIS Controls™, found at <https://www.cisecurity.org/controls/>.
- B. If Seller becomes aware of any compromise of Buyer Information (an “Incident”), Seller shall take appropriate immediate actions to investigate and contain the Incident and any associated risks, including notification to Buyer within seventy-two (72) hours after learning of the Incident. As used in this clause, “compromise” means that information has been exposed to unauthorized access, inadvertent disclosure, known misuse, loss, destruction, or alteration other than as required to perform this Order.
- C. Upon request, Seller shall provide reasonable assurances to Buyer of compliance with the requirements of this provision, and reasonable cooperation in connection with an investigation regarding the nature and scope of any Incident. Any costs incurred by Buyer or Seller in investigating or remedying Incidents shall be borne by Seller.
- D. All Buyer Information shall be encrypted (i) if transmitted externally by Seller via any electronic network, or (ii) during electronic storage if potentially accessible by any electronic network external to Seller or otherwise by non-authorized users.
- E. This provision is intended to set forth minimum information security requirements and does not alter, change or supersede any more stringent information security requirements found in other contractual obligations agreed to between the parties.

### **36. SITE CONDITIONS. [\(back to top\)](#)**

- A. Prior to award of this Order, Contractor was required to visit the site and shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the site or building, and the character and extent of existing work within or adjacent to the site.
- B. If in the performance of this Order, Contractor discovers (i) subsurface or latent conditions at the site are found to be materially different from those indicated by the drawings and specifications or (ii) unknown conditions of unusual nature are disclosed differing materially from the conditions usually inherent in work of the character shown and specified or apparent from a site inspection, Contractor shall immediately notify Buyer’s Engineering Representatives of such conditions before they are disturbed. Upon such notice or upon their separate observation of such conditions, Buyer’s Engineering Representatives will coordinate with Buyer for such changes in drawings and specifications as are reasonably necessary to conform to the different conditions, and any increase or decrease in the cost of the Work resulting from such changes may, where appropriate, be adjusted as provided under the Changes provision. No claim by Contractor will be considered if not timely asserted under the Changes provision and in no event after final payment under this Order.

### **37. INDEMNIFICATION – THIRD PARTY CLAIMS. [\(back to top\)](#)**

Contractor shall indemnify and hold harmless Buyer, Buyer’s parent and affiliates, and their respective directors, officers, and employees (collectively, for the purposes of this provision, “Buyer”), from and against any and all liabilities, claims, losses, and expenses, arising from the acts and omissions of Contractor, its employees, Subcontractors, or agents, in their performance of this Order, except where Buyer is solely negligent. Contractor shall, at its own cost, defend Buyer against such claims, losses, and liabilities, and, it shall pay Buyer’s reasonable attorneys’ fees, and expenses, related to carrying out and enforcing the terms of this provision, as those costs are incurred. Buyer has the right to conduct such defenses if it so chooses.



**38. INDEMNIFICATION – GOVERNMENT REQUIREMENTS. ([back to top](#))**

In addition to any other remedies provided for in this Order, Contractor shall indemnify and hold harmless Buyer, Buyer’s parent and affiliates, and their respective officers, directors, and employees (collectively, for the purposes of this provision, “Buyer”) from and against any and all liabilities, claims, losses and expenses arising out of the failure of Contractor, its employees, Subcontractors or agents, in conjunction with this Order to comply with any laws, regulations or ordinances. Contractor shall, at its own cost, defend Buyer against such claims, losses, and liabilities, and, it shall pay Buyer’s reasonable attorney fees and expenses, related to carrying out and enforcing the terms of this provision, as those costs are incurred. Buyer has the right to conduct such defenses if it so chooses.

**39. FORCE MAJEURE. ([back to top](#))**

Neither Party shall be liable to the other for delays resulting from causes beyond its control and without its fault or negligence, including but not restricted to acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, inability of the Government to pay Buyer timely, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Contractor shall not be liable for delays of subcontractors or suppliers of Contractor only when arising from causes beyond the control and without the fault or negligence of both Contractor and such subcontractors or suppliers and only when Contractor could not have obtained the supplies or services from other sources in sufficient time to permit Contractor to meet the required schedule. Upon the happening of any circumstances or causes described in this provision, the affected Party shall notify the other Party as soon as possible in writing. Any relief shall be limited to an extension of schedule or times of performance to the extent caused thereby.

**40. INDEPENDENT CONTRACTOR. ([back to top](#))**

Contractor is an independent contractor. Contractor shall:

- A. Have exclusive control and direction over its employees’ performance of the Work; and
- B. Be responsible for all payroll functions for its employees. No persons employed by Contractor or Contractor’s Subcontractors shall be deemed an employee or agent of Buyer for any purpose.

**41. RELEASE OF INFORMATION AND ADVERTISING. ([back to top](#))**

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Order or the subject matter, will be made by Contractor without the prior written approval of Buyer. Additionally, Contractor shall not use Buyer’s name or in any other way identify Buyer in any advertisement, display, news release, or other public disclosure without Buyer’s prior written consent.

**42. CHOICE OF LAW. ([back to top](#))**

Both Parties agree that, irrespective of the place of performance of this Order, unless otherwise specifically provided herein, this Order will be construed and interpreted according to the law of the state of the Huntington Ingalls Incorporated facility issuing this Order, as identified in the Order, excepting that state’s laws on conflicts of law. Exclusive venue for suits at law or equity arising under or related to this Order shall be:

- A. United States District Court for the Eastern District of Virginia or Newport News Circuit Court for Orders issued by Huntington Ingalls Incorporated-Newport News Shipbuilding division.
- B. United States District Court for the Southern District of Mississippi or the Circuit Court of Jackson County, Mississippi for Orders issued by Huntington Ingalls Incorporated-Ingalls Shipbuilding division.

**43. BUSINESS CONDUCT. ([back to top](#))**

Buyer has implemented a comprehensive Ethics and Business Conduct Program, which includes a “Supplier Code of Conduct,” or expectations that Buyer holds for its suppliers. The “Supplier Code of Conduct” is available at this website: <http://www.huntingtoningalls.com/wp-content/uploads/2016/07/ethicsba.pdf>. Commensurate with the size and nature of Seller’s business, Buyer expects Seller to have management systems in place to support



compliance with laws, regulations, and the expectations related to or addressed expressly within the Supplier Code of Conduct. In the event of a violation of any of the expectations set forth in the Supplier Code of Conduct, Buyer may pursue corrective actions to remedy the situation, up to and including termination of this Order.

**44. CONTINUING TERMS AND SEVERABILITY. [\(back to top\)](#)**

The “Proprietary Information,” “Intellectual Property Rights,” “Indemnification – Government Requirements,” “Indemnification – Third Party Claims,” “Patent, Trademark, Trade Secret, And Copyright Indemnity,” “Disputes,” “Choice of Law,” “Information and Advertising” and “Warranty” provisions and the indemnification provisions in the “Export And Import Compliance,” provision shall survive termination or cancellation of this Order. If any provision in this Order is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

**45. NON-WAIVER. [\(back to top\)](#)**

Buyer’s failure at any time to enforce any provision of this Order shall not constitute a waiver of the provision or prejudice Buyer’s right to enforce that provision at any subsequent time against Contractor. No payment made shall be deemed an acceptance or approval of any defective or unsatisfactory material or workmanship, or a waiver of Buyer’s right to later reject the same.

**46. BANKRUPTCY. [\(back to top\)](#)**

In the event Contractor enters into proceedings relating to bankruptcy or insolvency, whether voluntary or involuntary, Contractor agrees to furnish to Buyer, by certified mail, written notification of the bankruptcy or insolvency proceeding. This notification shall be furnished within five days of the initiation of such proceedings, and shall include the date of filing, the identity of the court in which the petition was filed, and a listing of all of Buyer’s Orders against which final payment has not been made. This obligation remains in effect until final payment under this Order. In the event Contractor enters into proceedings relating to bankruptcy or insolvency, whether voluntary or involuntary, ceases operations, or fails to respond to notices under this Order, Buyer may, at Buyer’s sole discretion, pay to Contractor’s Subcontractors at any tier those amounts Contractor owes to such Subcontractors under this Order to obtain such Subcontractor’s performance owed to Contractor in connection with this Order and Buyer shall be entitled to set-off such amounts that Buyer pays to such Subcontractors from any amount owed to Contractor under this Order.

**47. ACCEPTANCE. [\(back to top\)](#)**

Buyer will accept Work under this Order, or give Contractor notice of rejection, within a reasonable time after completion of all required performance and deliveries, notwithstanding any prior payments made or prior tests or inspections performed. Determination of a reasonable time shall take into consideration the nature and complexity of the services performed or goods delivered, but in no event shall such time be less than 30 days. Notice of rejection may be given in any reasonable form, including but not limited to noncompliance notification, quality notifications, discrepancy reports, inspection reports, annotations on shipping instructions, or communications via telephone, e-mail, facsimile, or other correspondence. No inspection, test, delay, failure to inspect or test, or failure to discover any defect or other nonconformance shall relieve Contractor of any of its obligations under this Order or impair any rights or remedies of Buyer.

**48. COMPLIANCE/COOPERATION. [\(back to top\)](#)**

Contractor shall render to Buyer (or such others as Buyer may reasonably direct) such cooperation, assistance, and information Buyer reasonably requests from Contractor to enable Buyer to comply with existing or future requirements any federal, state, local, or foreign statute, regulation, ordinance, directive, or other lawful command imposes upon Buyer as a direct or indirect consequence of Buyer’s purchase of Work from Contractor under this Order.

**49. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA. [\(back to top\)](#)**

*"Hazardous material"* means any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of this Order). Contractor must notify Buyer in writing within 30 days of this Order of any hazardous material to be delivered under this Order. Contractor shall identify hazardous material and include any applicable identification number, such as Special Item Number. Contractor shall update this notice whenever Contractor determines that any other material to be delivered is hazardous. Contractor shall include this information on a GHS Compliant Safety Data Sheet meeting the requirements of 29 CFR 1910.1200(g), which Contractor shall submit at least 30 days prior to any shipment containing hazardous material, and as otherwise required by Federal Standard 313, regardless of whether Contractor is the actual manufacturer of the items. Neither the requirements of this provision, nor any act or failure to act by Buyer, shall relieve Contractor of any responsibility or liability for the safety of any person or property, or of any obligation to comply with applicable federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

**50. TOXIC SUBSTANCES/HAZARDOUS MATERIAL. [\(back to top\)](#)**

- A. Contractor shall be fully responsible for the cost of proper management, handling, processing, storage, packaging, transportation and disposal (in accordance with applicable federal, state, and local laws and regulations) of each and every hazardous or toxic material, waste and/or other such substance, if any, that arises out of or results from the Work. In no event shall title to any such material, waste or substance pass to Buyer. Any and all hazardous/toxic materials/wastes/substances that arise out of or result from any Work shall be removed from Buyer's property by Contractor or its representative(s) in accordance with applicable laws and regulations. Upon request, Contractor shall submit to Buyer upon work completion a summary report which shall detail all waste generated at Buyer's property.
- B. Buyer shall not be liable for any personal injury, disease or death, loss or damage, or any claim of any party, including, but not limited to Contractor's employees or agents, in any way arising out of or resulting from any exposure or claimed exposure to any hazardous or toxic material (for example, without limitation, asbestos) that is present at the Work site.
- C. Buyer will not accept, store or dispose of any toxic substances or hazardous material except as and to the extent, if at all, expressly provided for in this Order. In particular, paints, primers, or coatings on products required by this Order that contain the following constituents shall not be shipped without prior written approval by Buyer: arsenic, mercury, methylene chloride, methylethylketone (MEK), lead, and chromium, their compounds, or organo-metallic material. Materials known or suspected of containing or coming in contact with asbestos, polychlorinated biphenyls (PCBs), or mercury or mercury containing compounds shall not be provided without Buyer's prior written permission. If invoked specifications and standards permit other materials in lieu of these materials, they shall be used.

**51. DRAWINGS AND SPECIFICATIONS. [\(back to top\)](#)**

- A. The general character and scope of the Work are illustrated by the drawings and specifications. Any additional detail and other information deemed necessary by Buyer's Engineering Representatives will be furnished to Contractor when and as required by the Work.
- B. In case of difference between small and large-scale drawings, the large-scale drawings shall govern.
- C. If a portion of the Work on any of the drawings is drawn out and the remainder is indicated in outline, the parts drawn out shall apply also to all other like portions of the Work.
- D. Where the word "similar" or "equal" appears on the drawings, it shall be interpreted in its general sense and not as meaning identical and all details shall be worked out in relation to their location and their connection with other parts of the Work.

- E. The specifications are divided into several parts for convenience only because all specifications must be considered as a whole. The divisions of the specifications are not intended to control Contractor in dividing the Work among Subcontractors or to limit the Work performed by any trade. Contractor shall be responsible for the coordination of the trades, Subcontractors, and vendors engaged in this Work.
- F. Measurements or dimensions shown on the drawings shall be verified at the site by Contractor. Where there are discrepancies, Buyer's Engineering Representatives shall be consulted.
- G. Contractor shall keep on the Work site a copy of the drawings and specifications including all authorized change orders, and shall at all times give Buyer, Buyer's Engineering Representatives, and their authorized representatives access thereto. Except for the signed Order, which Contractor may retain, all drawings and specifications shall be returned to Buyer upon completion of the Work.
- H. Whenever national standards (ASTM, AASHTO, ANSI, ACI, etc.) are referenced, they shall be considered to be the current issue, or the latest revision thereof and all amendments and supplements thereto in effect on the date of opening bids, except where a particular issue is indicated. These standards shall be considered as part of the specifications, and as such will be used to ensure quality and compliance with the drawings.

**52. DETAIL DRAWINGS AND INSTRUCTIONS. [\(back to top\)](#)**

- A. If so provided in the special conditions or specifications, Buyer will furnish Contractor additional instructions and detail drawings as may be necessary to carry out the Work included in the Order. Contractor shall carry out the Work in accordance with such additional detail drawings and instructions.
- B. If Buyer is required to provide additional detail drawings or instructions, Contractor shall prepare for Buyer's approval:
  - (i) A schedule fixing the dates at which special detail drawings will be required; and
  - (ii) A schedule fixing the respective dates for the submission of shop or setting drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment and the completion of the various parts of the Work. Each such schedule may be subject to change from time to time in accordance with the progress of the Work. Proposed changes shall be promptly transmitted in writing to Buyer's Engineering Representatives for approval by Buyer.

**53. SURVEYS AND LAYOUTS. [\(back to top\)](#)**

- A. Buyer shall furnish necessary drawings showing property lines and the location of the Project. Contractor shall provide competent engineering service to execute the Work in accordance with the Order requirements and shall be responsible for the accuracy of its Work.
- B. Buyer has established or will establish such general reference points and benchmarks on the project site as will enable Contractor to proceed with the Work. If Contractor finds that any previously established reference points have been destroyed or misplaced, it shall promptly notify Buyer.
- C. Contractor shall protect and preserve the established benchmarks and monuments and shall make no changes in locations without the written approval of Buyer. Any of these, which may be lost or destroyed or which require shifting because of necessary changes in grades or locations shall, subject to prior approval of Buyer, be replaced and accurately located by Contractor.
- D. Contractor is responsible for all detailed surveys necessary for the performance of the Work.

**54. SUPERVISION BY CONTRACTOR. [\(back to top\)](#)**

- A. Contractor shall provide overall supervision of the Work and have a Superintendent satisfactory to Buyer on the work site at all times during progress of the Work. The Superintendent shall efficiently supervise the Work until its completion. The Superintendent shall have full authority to act on behalf of Contractor, and all instruction given by Buyer to the Superintendent shall be considered as given to Contractor. It shall be the responsibility of this Contractor's Superintendent to coordinate the Work of its Subcontractors. Within ten days following contract award, Contractor will submit the name of its proposed Superintendent for Buyer's approval.

B. Contractor shall, at all times, enforce strict discipline and good order among the workers assigned to the Work, and shall not employ on the Work any unfit person or anyone not skilled in the Work assigned.

**55. MATERIALS, SERVICES AND FACILITIES. [\(back to top\)](#)**

Unless otherwise stated in the Order documents, Contractor shall provide all necessary construction supervision, inspection material, labor, tools, equipment, water, light, power and other services, and facilities to complete the Work within the specified time.

**56. MATERIALS APPROVAL. [\(back to top\)](#)**

Contractor shall obtain Buyer's Engineering Representative's approval of the materials, machinery and mechanical and other equipment to be incorporated into the Work. When requesting approval, Contractor shall furnish to Buyer's Engineering Representatives the name of the manufacturer, the model number, and other information covering the performance capacity, nature, and rating of the machinery and mechanical and other equipment. Machinery, equipment, material and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

**57. EQUALS. [\(back to top\)](#)**

References in the specifications, plans or other Order documents to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Unless otherwise specifically provided in this Order, Contractor may, at its option, use any equipment, material, article or process that, in the sole discretion of Buyer's Engineering Representatives is equal to that named for the purpose intended considering quality, workmanship and economy of operation.

**58. SUSPECT/COUNTERFEIT PARTS. [\(back to top\)](#)**

Contractor represents and warrants that it has policies and procedures in place to ensure that none of the supplies furnished to Buyer under this Order are "suspect/counterfeit parts" and certifies, to the best of its knowledge and belief that no such parts have been or are being furnished to Buyer by Contractor. "Suspect/counterfeit parts" are parts that may be of new manufacture, but are misleadingly labeled to provide the impression they are of a different class or quality or from a different source than is actually the case. They also include refurbished parts, complete with false labeling, that are represented as new parts or any parts that are designated as suspect by the U. S. Government. If Buyer reasonably determines that Contractor has supplied suspect/counterfeit parts to Buyer, Buyer shall promptly notify Contractor and Contractor shall immediately replace the suspect/counterfeit parts with parts acceptable to Buyer. Notwithstanding any other provision of this Order, Contractor shall be liable for all costs incurred by Buyer to remove and replace the suspect/counterfeit parts, including without limitation Buyer's external and internal costs of removing such counterfeit parts, of reinserting replacement parts and of any testing necessitated by the reinstallation of Contractor's goods after counterfeit parts have been exchanged. Contractor's warranty against suspect/counterfeit parts shall survive any termination or expiration of this Order.

**59. VEHICLE AND PERSONNEL MOVEMENT. [\(back to top\)](#)**

Contractor's access to the project site shall be through Buyer's designated gates and over designated roads within Buyer's property. Workmen and other personnel shall enter only through designated gates as directed by Buyer's Engineering Representatives. All Contractor personnel and all Subcontractor personnel shall wear Buyer-issued access badges at all times within Buyer's property in a visible and safe manner. All personnel shall drive, when authorized by Buyer, and walk to the designated gates in the most direct path, and all personnel shall not be in unauthorized areas.

**60. USE OF PREMISES AND REMOVAL OF DEBRIS. [\(back to top\)](#)**

Contractor expressly undertakes either directly or through its Subcontractor:

- A. To clean up frequently all refuse, rubbish, scrap materials and debris caused by its operations, to the end that at all times the site of the Work shall present a neat, orderly and workman-like appearance.
- B. Before final payment, to remove all surplus material, false work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from its operations and to put the site in a neat, orderly condition. Buyer's Engineering Representative, acting on Buyer's behalf during the construction of the Work, shall assign a Buyer's owned or contracted trash dumpster for the use by Contractor or Subcontractor during the duration of this Order. Under certain conditions, determined and approved by Buyer, Contractor or Subcontractor will be directed to supply their own waste unit. All waste material resulting from the Work will be deposited in the trash dumpster assigned to Contractor or Subcontractor and the Work.

To the extent Contractor fails, or is slow to act in compliance with the requirements in this provision, Buyer reserves the right to stop work and have the area(s) cleaned and/or correct any deficiencies by Buyer's employees and/or a third party at Contractor's expense.

**61. GROUNDWATER. [\(back to top\)](#)**

Contractor is responsible for pumping of groundwater, storm-water and/or other runoff regardless of source from any excavations or low areas made as a result of construction. Water is to be conveyed by hose to an approved outlet as designated by Buyer's Engineering Representatives. Contractor shall filter any sediment-bearing groundwater, storm-water and/or other runoff through a sediment barrier prior to discharge.

**62. SANITARY PROVISIONS. [\(back to top\)](#)**

Contractor shall provide and maintain such sanitary accommodations for the use of its employees and those of its Subcontractors as may be necessary to comply with the requirements and regulations of local and state departments of health and with applicable OSHA regulations.

**63. BUYER SUPPLIED SERVICES. [\(back to top\)](#)**

- A. Buyer may supply electricity, potable water, compressed air, oxygen and propane at designated locations, in the vicinity of the project site, when reasonably available at Buyer's sole discretion, at no charge to Contractor.
- B. Contractor shall be responsible and pay for piping and service lines from designated hookup locations to the point where the service provided by Buyer is consummated, and shall remove all connections when the Work is completed.
- C. Buyer reserves the right to withdraw the privileges mentioned in this provision at Buyer's sole discretion. Contractor shall receive no additional compensation in the event of such withdrawal.

**64. TEMPORARY ROADS. [\(back to top\)](#)**

Temporary roads, if required, shall be established and maintained by Contractor until permanent roads are accepted, then removed and the area restored to the conditions as required by the drawings and specifications. The location of any such temporary roads is subject to prior written approval of Buyer.

**65. SIGNS. [\(back to top\)](#)**

With approval of Buyer, Contractor may, at its option and without cost to Buyer, erect signs at the site of the Work for the purpose of identifying and giving directions to the job. No such signs shall be erected without prior approval of Buyer as to design, size, and location.

**66. SAFETY, HEALTH, ENVIRONMENTAL AND RADIOLOGICAL REQUIREMENTS. [\(back to top\)](#)**

While performing work under this Order, Contractor, its Subcontractors, and their suppliers at all tiers that are performing at Buyer's site, must submit a company safety program and project safety plan that meet's Buyer's



safety requirements, and while performing the Work, Contractor, Subcontractors, and their respective suppliers must comply with the safety, health, environmental and radiological requirements of Buyer, and all other applicable state and federal Regulations. Buyer will make available the latest requirements that affect construction through a “Contractors’ EH&S Resource Manual,” which is available at this web site:

[http://supplier.huntingtoningalls.com/sourcing/Contractor\\_Safety/index.html](http://supplier.huntingtoningalls.com/sourcing/Contractor_Safety/index.html). Contractor shall maintain an accurate record of, and shall report to Buyer in the manner and in the form prescribed by Buyer’s Engineering Representatives, exposure data and all accidents resulting in death, traumatic injury, occupational disease, and damage to property, materials, supplies and equipment incident to Work performed under this Order.

**67. PROTECTION OF WORK AND PROPERTY. ([back to top](#))**

- A. Contractor shall continuously maintain adequate protection of all its Work from damage and shall protect Buyer’s property from injury or loss arising in connection with this Order. It shall repair any such damage injury or loss, without charge. It shall adequately protect adjacent property as provided by law and this Order. It shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by public authority, local conditions, or this Order.
- B. In an emergency affecting the safety of life, or of the Work, or of adjoining property, Contractor, without special instruction or authorization from Buyer’s Engineering Representatives or Buyer, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury, and it shall so act, without appeal, if so instructed or authorized. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.
- C. When necessary for the proper protection of the Work, temporary heating of a type approved by Buyer’s Engineering Representatives must be provided unless otherwise specified.

**68. SHOP DRAWINGS. ([back to top](#))**

- A. Catalog cuts, pamphlets and manufacturer’s literature where required to demonstrate compliance with the specifications shall be treated as shop drawings.
- B. Contractor shall submit for the approval of Buyer’s Engineering Representatives, shop and setting drawings and schedules required by the specifications or that may be requested by Buyer’s Engineering Representatives. No Work shall be fabricated by Contractor, save at its own risk, until such approval has been given.
- C. Index: Each shop drawing in the submission shall be indexed according to Order drawing and/or specification section and paragraph for easy reference.
- D. Drawings and schedules shall be submitted as directed by Buyer’s Engineering Representatives accompanied by a letter of transmittal that shall give a list of the numbers and dates of the drawings submitted. Drawings shall be complete in every respect and bound in sets.
- E. Contractor shall submit all drawings and schedules sufficiently in advance of construction requirements to allow ample time for checking, correcting, resubmitting and checking.
- F. If a drawing, as submitted, indicates a deviation from the Order requirements that Buyer’s Engineering Representative finds to be in the interest of Buyer and to be so minor as not to involve a change in the Order price or time for performance, such representative may approve the drawing.
- G. The approval of shop and setting drawings will be general and except as otherwise provided in paragraph E, shall not be construed:
  - (i) As permitting any departure from the Order requirements;
  - (ii) As relieving Contractor of the responsibility for any error in details, dimensions or otherwise that may exist; and
  - (iii) As approving departures from additional details or instructions previously furnished by Buyer’s Engineering Representatives.



**69. AS-BUILT DRAWINGS. [\(back to top\)](#)**

- A. During Work performance, Contractor shall keep a complete and accurate record of all changes or deviations from this Order including the plans, specifications and shop drawings, indicating the Work as actually installed. All such changes shall be neatly and correctly shown on blackline prints of the Order drawings affected or in the Specifications with appropriate supplemental notes. This record set of prints of the plans, shop drawings, and specifications shall be kept at the job site.
- B. Upon completion of the Work, Contractor shall furnish one complete set of all final construction and shop drawings, bearing Contractor's certification and signature, corrected to show all changes and deviations so as to correctly reflect "as built" conditions.
- C. Certification of "As Builts": The above-referenced drawings shall be arranged in order, in accordance with the various sections of the Specifications and properly indexed. At the completion of the Work Contractor shall certify, by endorsement thereof, that each of the revised construction drawings and shop drawings is complete and accurate. Prior to Contractor's application for final payment, and as a condition to its approval by Buyer, Contractor shall deliver the certified record plans, as specified above, to Buyer, indexed and marked for each division of the Work.

**70. EQUIPMENT DATA, MANUALS, PARTS LISTS, AND MANUFACTURER'S INSTRUCTIONS. [\(back to top\)](#)**

Contractor shall submit for Buyer's Engineering Representatives review complete catalog data for every manufactured item of equipment and all components to be used in the Work, including specific performance data, material description, rating, capacity, working pressure, material gage or thickness, brand name, catalog number and general type. This submission shall be compiled by Contractor, submitted in both hard-copy and electronic format (Microsoft Office compatible format preferred), and reviewed by Buyer's Engineering Representatives before any of the equipment is ordered. If Contractor intends to submit electronic formats that are not compatible with Microsoft Office applications, Contractor must make prior arrangements with Buyer's Engineering Representatives to ensure that Buyer can read Contractor's format. Documents delivered in electronic formats that Buyer cannot read shall be unacceptable.

- A. Each data sheet or catalog in the submission shall be indexed according to specification section and paragraph for easy reference.
- B. Catalog data for equipment reviewed by Buyer's Engineering Representatives shall not supersede this Order. The review of the data shall not relieve Contractor from responsibility for deviations from Drawings or Specifications, unless it has in writing called Buyer's attention to such deviations at the time of submission, nor shall it relieve it from responsibility for errors of any sort in the items submitted. Contractor shall check the work described by the catalog data with Buyer's Order documents for deviations and errors.
- C. Equipment data shall be submitted by Contractor with a covering letter indicating that it has reviewed, checked and approved the data submitted, that they are in harmony with the requirements of the Work and with the provisions of the Order documents and that it has verified all field measurements and construction criteria, materials, catalog numbers and similar data. Contractor shall also certify that the Work represented by the shop drawings is recommended by Contractor and that its warranty will fully apply.
- D. At the conclusion of the Work, Contractor shall provide to Buyer all pertinent manuals, parts lists and manufacturer's instructions as they pertain to the Work.
- E. Catalogs shall be submitted as directed by Buyer's Engineering Representatives accompanied by letter of transmittal, which shall give a list of the numbers and dates of the catalogs submitted. Catalogs shall be complete in every respect and bound in sets.
- F. Contractor shall submit all catalogs sufficiently in advance of construction requirements to allow ample time for checking, correcting, resubmitting and checking.
- G. If a catalog as submitted indicates a deviation from the Order requirements that Buyer's Engineering Representatives find to be in the interest of Buyer and to be so minor as not to involve a change in the Order price or time for performance, Buyer may approve the catalog.

- H. The approval of catalogs will be general and except as otherwise provided in “Equipment Data, Manuals, Parts Lists and Manufacturer’s Instructions,” paragraph G shall not be construed:
- (i) As permitting any departure from the Order requirements;
  - (ii) As relieving Contractor of the responsibility for any error in details, dimensions or otherwise that may exist; and
  - (iii) As approving departures from additional details or instructions previously furnished by Buyer’s Engineering Representatives. Payments made shall thereupon become the sole property of Buyer, but this provision shall not be construed as relieving Contractor from the risk of loss of and responsibility for all materials and work upon which payments have been made or the restoration of any damaged work or as a waiver of the right of Buyer to require the fulfillment of all of the terms of the Order.

**71. CRANE SAFETY. [\(back to top\)](#)**

Contractor shall exercise extreme caution and care when working in the vicinity of all Buyer cranes and crane services. Many of the cranes are served with open third rail, and Contractor shall lock out and tag out all crane operations and services when working in close proximity to the cranes. See the “Safety Sense Handbook” for additional clarifications, or notify Buyer’s Engineering Representatives if uncertain about working around Buyer’s cranes. Safety concerns applicable to contractor cranes are detailed in the Buyer’s Crane Program Manual and in the attached Contractor crane section of this Order. Contact Buyer’s Engineering Representatives for the required manuals and the Certificate of Compliance that must be in all Contractor cranes before they can enter Buyer’s facility. All Contractor cranes are subject to inspection by Buyer’s qualified crane inspection personnel, and all discrepancies shall be repaired prior to operation. All Contractor cranes shall be inspected and certified as required by the applicable state or local jurisdiction, and all records shall be kept with the crane.

**72. EQUAL EMPLOYMENT OPPORTUNITIES. [\(back to top\)](#)**

Buyer, Contractor, and Contractor’s subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.