

GENERAL CONDITIONS
for
CMGC CONSTRUCTION SERVICES



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PRELIM

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SECTION 1 Acronyms, Definitions & Usage Notes

1.1 Acronyms: When used in the Contract, the acronyms below have the following meaning:

AAC	Alaska Administrative Code
ABS	American Bureau of Shipping
ADA	Americans with Disabilities Act
AGMA	American Gear Manufacturers Association
AISC	American Institute Steel Construction
AISI	American Iron & Steel Institute
AMCA	Air Movement and Control Association
AMHS	Alaska Marine Highway System
ANSI	American National Standard Institute
AS	Alaska Statutes
ASHRAE	American Society of Heating, Refrigeration and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers Boilers and Pressure Vessel Code
ASTM	American Society for Testing & Materials
AWS	American Welding Society
CFR	Code of Federal Regulations
CMGC	Contract Manager/General Contractor
COAR	Contracting Officer's Authorized Representative
CPM	Critical Path Method
DEC	Department of Environmental Conservation, State of Alaska
DEMA	Diesel Engine Manufacturer's Association
DOT&PF	Alaska Department of Transportation and Public Facilities
FHWA	Federal Highway Administration, U.S. Department of Transportation
GCs	General Conditions
GHS	General Hydro Statics

GMP	Guaranteed Maximum Price
GPs	General Provisions for CMGC Preconstruction Services
IEEE-45	Institute of Electrical and Electronic Engineers Standard No. 45
IFP	Instructions for Proposers
IMO	International Maritime Organization (also IMCO)
ISM	International Safety Management
ISO	International Standards Organization
ITB	Invitation to Bid
MARAD	Maritime Administration
MSC	Marine Safety Center, USCG Headquarters
MSS	Manufacturers Standardization Society of the Valves and Fittings Industry
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Agency
NTP	Notice to Proceed
NVIC	Navigation and Vessel Inspection Circular, USCG
OSHA	Occupational Safety and Health Administration
QA	Quality Assurance
RFI	Request for Information
RFP	Request for Proposals
SAE	Society of Automotive Engineers
SAR	Search and Rescue
SNAME	Society of Naval Architects and Marine Engineers
SOLAS	International Conventions for the Safety of Life at Sea
SSPC	Steel Structures Painting Council
STCW	Standards of Training Certifications and Watchkeeping

SWBS	Ship Work Breakdown Structure
UL	Underwriters Laboratory
USC	United States Code
USCG	United States Coast Guard
USPHS	United States Public Health Service
VEP	Value Engineering Proposal
WHO	World Health Organization

1.2 Definitions: When used in the Contract, the terms identified below having the following meaning:

Application for Payment: Contractor's request for progress or final payment for satisfactory performance of Work.

Business day: Any Monday, Tuesday, Wednesday, Thursday, or Friday, except if a legal holiday falls on any of these days, in which case that day is not Business day. If a State-observed holiday falls on a Saturday, then Saturday and the preceding Friday are both legal holidays. If the holiday falls on a Sunday, then Sunday and the following Monday are both legal holidays. The following is a list of legal holidays recognized in Alaska:

- New Year's Day - January 1
- Martin Luther King, Jr. Day - Third Monday in January
- Presidents' Day - Third Monday in February
- Seward's Day - Last Monday in March
- Memorial Day - Last Monday in May
- Independence Day - July 4
- Labor Day - First Monday in September
- Alaska Day - October 18
- Veteran's Day - November 11
- Thanksgiving Day - Fourth Thursday in November
- Christmas Day - December 25 and
- Any day designated by proclamation by the President of the United States or the Governor as a legal holiday.

Change Order: A formal written contract modification, by which the Parties agree to an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Time, or other Contract change issued on or after the Effective Date of the Contract.

Change Proposal: A written request by Contractor, submitted in compliance with Contract requirements, seeking an adjustment in Contract Price or Contract Time, or both, through means of a Change Order.

Commissioner: Commissioner of the Alaska Department of Transportation & Public Facilities.

Construct: To build, alter, repair, refurbish, maintain, improve, or demolish.

Construction Manager/General Contractor (CMGC) Method: A project delivery method whereby an owner generally awards two separate contracts to a contractor: one for Preconstruction Services and another for Construction Services. The General Provisions for CMGC Preconstruction Services (GPs) address the principal terms and conditions concerning the Preconstruction Phase of the Project and the General Conditions for CMGC Construction Services (GCs) address the principal terms and conditions of the Construction Phase of the Project. Yet, either document may incorporate portions of the other by reference.

Construction Phase: The segment of the project that generally follows the successful negotiation of a Guaranteed Maximum Price and the conclusion of the Preconstruction Phase, during which Contractor constructs its contracted Work through performance of Construction Services. (However, on certain projects, Early Work Package(s) may precede conclusion of the Preconstruction Phase.)

Construction Services: The work undertaken by a construction manager/general contractor, a/k/a CMGC construction contractor, to construct its contracted Work or a portion thereof (including an Early Work Package). Construction Services include all procurement of Material, Equipment, and other items and all labor, services, and costs to perform, supervise, and administer physical construction of the Work and tender it for acceptance. The Department may authorize Construction Services through a single contract for a Project or through a combination of contracts covering portions of a Project. Depending on the Project, the Department may obtain Construction Services from more than one CMGC construction contractor.

Contract: The Construction Services Contract Form, its incorporated documents, and subsequent Change Orders, if any, which comprise the terms and conditions regarding Contractor's performance of Construction Services for the Project. Depending on the Project, the Department may issue more than one Contract for Construction Services.

Contract Documents: The constituent documents that make up the Contract, which are enumerated in the Construction Services Contract Form.

Contract Drawings: Those Drawings developed by the Design Consultant during the Preconstruction Phase, with input from the CMGC Project Team, that contain certain design specifications and illustrate systems, aspects, or features of the Vessel, from which Contractor may not deviate unless the Department expressly approves such deviation in writing. Contract Drawings are intended to represent a cohesive, integrated design, they do not depict all features and details of the systems or structures, and hence are not final design drawings.

Contract Performance Allowance: That part of Contract Price allocated to Contractor's final execution and fulfillment of responsibilities during the correction period. See also Section 12.2.7 and Section 14.

Contract Price: The compensation payable to Contractor for performance of its contracted Work.

Contract Time: The time allowed under the Contract, including any extension authorized by Amendment, for Contractor's completion of its contracted Work.

Contracting Officer: The State official authorized to enter and administer the Contract. The term includes authorized representatives of the Contracting Officer acting within the limits of his/her authority as delegated by the Contracting Officer.

Contractor: Unless the context otherwise indicates, the person(s) or entity(s) whom the Department has engaged to provide Construction Services concerning the Project.

Contractor's Contingency: A Cost of the Work component that compensates the CMGC construction contractor for Direct Costs that might result from incomplete design, unforeseen and unpredictable conditions, or uncertainties within the defined project scope. Unused Contractor's Contingency belongs to the Department. Unused Contractor's Contingency, along with its proportionate allocation of Fixed Fee, are deducted from the GMP via deductive Change Order after the Department's operational acceptance of the Vessel.

Cost of the Work: Direct Costs that a CMGC construction contractor necessarily incurs in proper performance of the Work. Cost of the Work comprises only those incurred items identified in Section 13.2 of the General Provisions for CMGC Preconstruction Services.

Critical Path Method (or CPM): A mathematically based algorithm for scheduling a set of project activities, used as a tool for effective project management. It involves constructing a model of the project including a list of all activities required to complete the project, the duration that each activity will require for completion, and the dependencies between the activities.

Day: A calendar day of 24 hours measured from midnight to the next midnight. Unless the Contract identifies a day as a Business day, all references to "day" mean a calendar day.

Delivery Port: The port where Contractor shall deliver the Vessel and tender it to the Department for operational acceptance. Ketchikan, Alaska is the Delivery Port for the Vessel.

Department (or Owner): The State of Alaska, Department of Transportation & Public Facilities (DOT&PF).

Design Consultant: The design professional with whom the Department has contracted to provide Design Services for the Project.

Design Services: Architectural and engineering services provided by the Design Consultant.

Direct Costs: In accordance with federal cost principles, those costs that can be specifically identified with a particular project function, activity, or task, *e.g.*, Material, Equipment, labor, etc.

Directive: The Department's written communication to Contractor that enforces or interprets a Contract requirement or directs Contractor to commence or suspend an item of work within the general scope of the Contract.

Drawing: A document that graphically depicts the scope, extent, and character of the Work that Contractor is to perform.

Early Work Package: A portion or phase of physical construction work that is procured before all design work for the Project is complete. The Department may procure an Early Work Package when construction risks have been addressed and the scope of work is defined sufficiently for the Department and Contractor to reasonably determine price.

Effective Date of the Contract: Unless otherwise stated in the Contract, the date on which the Contracting Officer signs the Construction Services Contract Form.

Equipment: Unless the context otherwise indicates, all machinery, electronics, appliances, and other components installed on the Vessel that enable it to operate and function in a manner that fulfills the Vessel's intended purpose as a safe, reliable, and efficient public ferry vessel.

Federal Aid Project: A Project on which the Department uses participating federal monies to fund the Work, either in whole or in part.

Fixed Fee: The fee that the Department pays to a CMGC construction contractor for Construction Services performed during the Construction Phase or an Early Work Package. It represents compensation for profit plus the portion of Indirect Costs allocated to the Project.

Stated as an equation: $\text{Fixed Fee} = \text{Fixed Fee Percentage} \times \text{Cost of the Work}$.

Functional Design: The Project design that generally results from Design Consultant's provision of Design Services during the Preconstruction Phase and defines all material aspects of the Project to a sufficient degree that enables the Contractor to construct a product that satisfies the Department's specified requirements, features, and functions. The Functional Design process will culminate with the Design Consultant's generation of Contract Drawings.

Funding Agency: An agency of a federal, state, or local government that provides funds for the Project.

General Provisions for CMGC Preconstruction Services (or GPs): The Department's general contract provisions that prescribe terms and conditions for performance of Preconstruction Services during the Preconstruction Phase.

Good Shipbuilding Practice: Those soundly conceived, designed, and implemented details and practices that have proven to be effective and reliable in the maritime industry for construction, repair, rehabilitation, and maintenance of seaworthy vessels and that will meet the details and performance requirements of the Department's specifications or that are required to obtain and/or maintain Regulatory Body approval with no restrictions. ASTM International's Volume 01.07, Ships and Marine Technology is an acknowledged but not exclusive resource regarding Good Shipbuilding Practice.

Guaranteed Maximum Price (or GMP): The not-to-exceed dollar amount for which Contractor agrees to accomplish all Work required by its Construction Services contract during the Construction Phase or an Early Work Package. GMP is the sum of two components, namely negotiated Cost of the Work plus Contractor's Fixed Fee.

Indirect Costs: In accordance with federal cost principles, those costs not readily identified with a specific project or organizational activity but incurred for the benefit of multiple projects or activities. Indirect costs might include costs that are frequently referred to as overhead expenses, e.g., home office rent and utilities, officers' salaries, accounting department costs and personnel department costs.

Interim Work Authorization (or IWO): A Directive that the Department issues to Contractor, instructing it to initiate change in the Work before the Parties are able to negotiate a Change Order that amends the Contract Price or the Contract Time resulting from the IWO-directed change, if any.

Material: Item or substance incorporated into construction of the contracted Work.

Milestone: A point along the Project continuum that signifies a change or stage in Work performance.

Non-Participating (or Non-Par): A term used by the Funding Agency to indicate that a Project cost item or items are ineligible for funding by the Agency. Among other reasons, a Non-Par determination may result from noncompliance with the Funding Agency's Regulatory Requirements.

Notice to Proceed (or NTP): Department's written notification that authorizes Contractor to initiate performance of Work in accordance with the NTP and Contract requirements.

Owner Furnished: Instance where the Department purchases, obtains and delivers to Contractor's facility Material, Equipment, or the like for Contractor for use or installation in the Work.

Parties: The Department and Contractor(s).

Product Data: Illustrations, standard schedules, performance charts, instructions, brochures, cutsheets, diagrams, communications, and other information furnished by the Contractor to illustrate Equipment, Material, product, or system for some portion of the Work.

Production Design: Contractor's design responsibility that starts once the Department has completed relevant Functional Design and has entered a construction contract (or Early Work Package) with Contractor. It is design work that is necessary to directly support the production processes and construction of the Project. Production Design is often multi-purposed. It may:

- Demonstrate how Contractor intends to implement the design concepts expressed in the Department's completed Functional Design, *e.g.*, implementation of Contractor's means, methods, techniques, sequences, and procedures of construction;
- Provide a process for revising or supplementing the completed Functional Design, subject to the Department's prior approval; and
- Serve as a means of guidance for and coordination of the Work by Contractor, Subcontractors, and Suppliers.

Production Documents: Shop drawings, diagrams, computer imagery, and other data prepared during the Production Design process by Contractor (or its Subcontractor of any tier or Supplier, manufacturer, or distributor) to illustrate some portion of the Work.

Project: The organized undertaking to complete a specific set of predetermined objectives for the planning, design, and construction of a State asset, property, or facility. The Department's Request for Proposal identifies in greater detail the subject and nature of the Project.

Project Schedule: Using the Critical Path Method, a schedule that Contractor(s) prepares and the Department and Contractor(s) use during the Construction Phase for their respective purposes, which may include Project coordination, evaluating construction progress, assessing proposed Contract changes, and processing Applications for Payment.

Quality Control Plan: Contractor's program intended to ensure that its contract performance and the results of that performance meet the quality and compliance standards of the Contract and Regulatory Requirements.

Reasonable Efforts: With respect to a given goal, the efforts that a reasonable person in the position of the promisor or obligated person would use to achieve that goal as expeditiously as possible.

Regulatory Body: Any international, national, state, or local government agency or any public or private organization having regulatory, auditing, or enforcement jurisdiction over any aspect of the Work.

Regulatory Requirements: Relevant laws, statutes, regulations, rules, ordinances, codes, and standards of any Regulatory Body.

Request for Information (or RFI): Written question that Contractor directs to the Department seeking to clarify any uncertainties or to fill in any gaps in information concerning Contract Documents or related materials.

Request for Proposal (or RFP): The Department's published solicitation that identifies its needs concerning the subject Project and has invited proposals from offerors to meet those needs. During Phase II construction, the Resident Engineer may also issue RFP's for specific desired changes from the original executed contract plans and specifications.

Resident Engineer: Authorized, on Site representative of the Contracting Officer.

Samples: Physical example that illustrates Material, Equipment, or workmanship, and establishes standards by which item or work shall be judged.

Submittal Schedule: A schedule, prepared and maintained by Contractor, of required Submittals and the time requirements for the Department's review of the Submittals and the performance of related activities.

Schedule of Values: A schedule, prepared and maintained by Contractor, that allocates the appropriate portion of the GMP to its corresponding element of the Work. Further, for each such allocation, Contractor must break the GMP portion down to its constituent parts, *i.e.*, the Cost of the Work and Fixed Fee sums that, when added together, equal the apportioned GMP.

Set-off: The Department's withholding or reduction of payment to Contractor based upon deductive change in the Work, an assessment of delay damages, an unfulfilled obligation that Contractor owes to the Department that has caused the Department to incur an expense, or as otherwise provided in the Contract.

Ship Work Breakdown Structure (or SWBS): A deliverable-oriented grouping of project elements that aids in organizing and identifying the Scope of Work for a vessel construction project. Each descending level represents an increasingly detailed definition of a project component or phase. Project components or phases may be products or services.

Shop Drawings (a/k/a Working Drawings): See Production Documents.

Site: The general area where Contractor performs its contracted Construction Work.

Specifications: Written statement of particulars, standards, requirements, or instructions, regarding construction, performance, Material, Equipment, systems, workmanship, and the like issued by an authoritative source such as a Regulatory Body, Supplier, etc., to which Contractor shall adhere in rendering Construction Services.

State: State of Alaska.

Subcontractor: A person or entity to whom Contractor has sublet a portion of the Contract and who provides services, Work Product, and/or items to Contractor as identified in the subcontract.

Substantial Completion: The point at which the Work is sufficiently complete in the Department's estimation so that it can safely and effectively use the Work or a portion thereof for its intended purpose, even though Contractor has not fully completed contract performance. Substantial Completion of the Vessel is a prerequisite operational acceptance.

Submittal: Document, information, or Sample that Contractor furnishes to the Department for approval before an item is purchased, fabricated, delivered, incorporated, or otherwise adopted in connection with Contractor's contract performance. A Submittal may take different forms, such as Product Data, Sample, or Production Document. Generally, Submittals enable the Department to confirm that Contractor's proposed articles, systems, etc. comply with the Contract.

Submittal Schedule: A schedule, prepared and maintained by Contractor, of required Submittals and the time requirements for the Department's review of the Submittals and the performance of related activities.

Superintendent: Contractor's authorized, on Site representative in responsible charge of the Work who receives and executes the Department's orders and directives and otherwise serves as Contractor's point of contact for the Department's Resident Engineer.

Supplemental Agreement: A negotiated, formal written agreement in which the Department identifies additional work that is beyond the general scope of the parties' initial Contract that Contractor agrees to perform.

Supplementary Conditions: The Contract Document that amends or supplements these General Conditions.

Supplier: A manufacturer, fabricator, vendor, distributor, or materialman having a direct contract with Contractor or a Subcontractor to furnish Material or Equipment for incorporation in the Work and who, either individually or through its employees, engages in no more than an incidental amount of construction activity, if any, on Site.

Supplier: A manufacturer, fabricator, vendor, distributor, or materialman having a direct contract with Contractor or a Subcontractor to furnish Material or Equipment for incorporation in the Work and who, either individually or through its employees, engages in no more than an incidental amount of construction activity, if any, on Site.

Technical Specifications: The Contract Document(s) that prescribe requirements for Material, Equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work. The Technical Specifications may include both design specifications and performance specifications.

Vessel: The ship that Contractor is constructing, repairing, refurbishing, or maintaining under the Contract.

Work: The labor, services, procurement, Material, Equipment, deliverables and all other items and tasks provided or to be provided by Contractor to fulfill its obligations under the Contract.

Work Product: Research, studies, calculations, estimates, schedules, charts, models, registers, matrices, plans, drawings, drafts, diagrams, opinions, instructions, reports, data, digital images, videos, photographs, audio files, memoranda, communications, and other materials prepared or revised by Contractor, its Subcontractor(s) or Supplier(s) in the performance of its obligations under the Contract.

1.3 Usage Notes: When used in the Contract, these rules apply unless the context otherwise requires:

1.3.1 The word *includes* or *including* means *including, but not limited to*.

1.3.2 *Defective*: The words *defect*, *defective*, and *deficiency* when modifying the word Work, refers to Work that is substandard, faulty, or unsatisfactory in that:

- (a) It does not conform to the Contract;
- (b) It has been damaged prior to Substantial Completion;
- (c) It does not meet the requirements of any applicable inspection, reference standard, test, or approval referenced in or incorporated by the Contract;
- (d) It does not satisfy Regulatory Requirements, including the Buy America Act; or
- (e) Contractor has not performed it in a proper manner, or the Work does not otherwise meet the standards of Good Shipbuilding Practice.

1.3.3 *Furnish, Install, Perform, Provide*

- (a) The word *furnish*, when used in connection with services, Material, or Equipment, means to supply and deliver the services, Material, or Equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
- (b) The word *install*, when used in connection with services, Material, or Equipment, means to put into use or place in final position the services, Material, or Equipment complete and ready for intended use.
- (c) The words *perform* or *provide*, when used in connection with services, Material, or Equipment, means to furnish and install the services, Material, or Equipment complete and ready for intended use.
- (d) If the Contract Documents establish an obligation of Contractor with respect to specific services, Material, or Equipment, but do not expressly use any of the four words *furnish*, *install*, *perform*, or *provide*, then Contractor shall furnish and install the services, Materials, or Equipment complete and ready for intended use.

1.3.4 If a provision within these General Conditions refers to a Section number, then the referenced Section resides within these GCs unless otherwise stated.

1.3.5 If a word or phrase is defined, its other derivative forms have a corresponding meaning.

1.3.6 Words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract in accordance with such recognized meaning.

SECTION 2 General Terms

2.1 Intent

2.1.1 The Contract comprises more than one document. The documents are complementary. As a rule, what is required by any one document shall be as binding as if required by all. The intent of the Contract is to include all data, information, and illustrations necessary for Contractor's proper execution and completion of the Work. A work-item not explicitly addressed in the Contract shall be required unless it is not consistent therewith and is not reasonably inferable therefrom as being necessary to produce the intended results.

2.1.2 The Contract incorporates the Required Contract Provisions for Federal-Aid (FHWA) Construction Contracts - Form 25D-55 H (Form FHWA-1273).

2.1.3 Contractor shall provide all services, labor, facilities, Material, Equipment, tools, power, transportation, storage, and supplies required to complete the Work in accordance with the terms of the Contract.

2.1.4 In rendering contract performance, Contractor shall provide prompt and efficient business administration, project management, and superintendence.

2.2 Reference Standards

2.2.1 Reference in the Contract to specifications, manuals, or codes of any technical society, organization, or association, or to Regulatory Requirements, whether such reference be specific or by implication, means the specification, manual, reference standard, code, or Regulatory Requirements in effect on the Effective Date of the Contract, except if the Contract expressly states otherwise.

2.2.2 No provision of any such specification, manual, or code, or any instruction of a Supplier is effective to change the duties or responsibilities of the Department, Contractor, or any of their Subcontractors, consultants, agents, or employees, from those set forth in the Contract. No such provision or instruction is effective to assign to the Department or any of its agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the terms of the Contract.

2.3 Clarification Regarding Contract

2.3.1 During the performance of the Work and until final payment, Contractor shall submit to the Department a Request for Information regarding all matters in question concerning the requirements of the Contract, or relating to the acceptability of the Work under the Contract, as soon as possible after such matters arise.

2.3.2 As soon as practicable, the Department will provide a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract. The Department's written clarification, interpretation, or decision is final and binding on Contractor.

2.4 Precedence of Documents

2.4.1 Except if the Contract expressly states otherwise, provisions of the Contract take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract and:

- (a) The provisions of any specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); and
- (b) The provisions of any Regulatory Requirements applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract would result in violation of such Regulatory Requirements).

2.4.2 When conflicts, errors, or discrepancies exist within the Contract Documents, the order of precedence from most governing to least governing is as follows:

- (a) Supplementary Conditions,
- (b) General Conditions,
- (c) Technical Specifications, and
- (d) Contract Drawings, regarding which arrangement drawings take precedence over structural drawings.

SECTION 3

Initial Administrative Matters

3.1 Delivery of Executed Contract, Bonds, & Evidence of Insurance

3.1.1 Unless the Department otherwise requires, Contractor shall duly sign and return to the Contracting Officer the Construction Services Contract Form within 10 days of submission to Contractor. After the Contracting Officer receives the document, s/he will finalize the Construction Services Contract Form applying his/her signature.

3.1.2 Along with the Construction Services Contract Form, Contractor shall deliver to the Department:

- (a) Such bonds and evidence of insurance as required by the Contract and identified in the Supplementary Conditions; and
- (b) Any other documents that the Department reasonably requests.

3.2 Owner's Provision of Contract Documents

The Department will provide Contractor with a copy of the fully executed Construction Services Contract Form, as well as one printed copy and one copy in electronic portable document format (PDF) of the Contract Documents. The Department will provide Contractor additional printed copies of Contract Documents upon request at the cost of reproduction.

3.3 Contractor Deliverables Before Start of Construction

3.3.1 Within 10 days after the Effective Date of the Contract or as otherwise specified by the Department, Contractor shall submit to the Department:

- (a) The finalized version of the Project Schedule developed during the Preconstruction Phase;
- (b) A Submittal Schedule; and
- (c) A Schedule of Values for all the Work that:
 - (1) Includes quantities and prices of items which, when added together, equal the GMP;
 - (2) Subdivides the Work into detailed, component parts and allocates the entire GMP among those component parts. And within each component part of the Work, Contractor shall break the allocated GMP down further to its two constituent parts, namely: (i) Cost of the Work and (ii) the Fixed Fee payable on that Cost of the Work item;
 - (3) Lists the Contractor's Contingency account(s) as separate item(s); and
 - (4) Is accompanied by any supporting data or documentation the Department may require to validate the Schedule.

3.3.2 Within 10 days after the Effective Date of the Contract, Contractor shall submit to the Department its quality assurance program plan, which Section 3.4 addresses in further detail.

3.4 Quality Assurance Program

- 3.4.1 Contractor's quality assurance (QA) program plan shall outline the manner in which Contractor will meet the QA requirements in this Section.
- 3.4.2 Contractor shall utilize a QA program that assures that all aspects of its performance of the Work comply with Contract requirements. The program shall ensure that the latest applicable drawings, requirements, specifications, and instructions defined in the Contract, as well as authorized changes, are communicated to employees, as well as Subcontractors and Suppliers at all tiers, and used in the Work and its performance.
- 3.4.3 The program shall also include sequential and well-documented inspections and tests of completed elements of Work. The intent of these inspections and tests is to identify and resolve all deficiencies before presentation of the Work to the Department for Substantial Completion. Contractor shall coordinate the QA program and its implementation with the inspection and test requirements of the Contract, as well as the weight control program, noise control program, and other programs required by the Contract or otherwise developed by Contractor to control the Work.
- 3.4.4 Contractor's personnel assigned to develop and administer the QA program shall have independent authority and organizational freedom to identify and evaluate quality problems and initiate and recommend timely and positive solutions.
- 3.4.5 Implementation of QA procedures by a Subcontractor or Supplier does not relieve Contractor of its responsibility to assure that the furnished Work or items fully comply with the requirements of the Contract.
- 3.4.6 At a minimum, the Quality Assurance program must include provision for the following:
- (a) A monthly status report that lists all deficiencies identified during the preceding month and all deficiencies previously identified that remain unresolved.
 - (b) An acceptable QA form that enables the Department to communicate potential issues and problems to Contractor in a prompt and effective manner. The form shall include:
 - (1) The subject issue or problem;
 - (2) Independent tracking number assigned by the Department;
 - (3) Date of issue initiated or identified by the Department;
 - (4) Reference drawings/Materials and revisions;
 - (5) Requirement references;
 - (6) Issue or problem description;
 - (7) Signature column by Resident Engineer and date; and
 - (8) Response area for Contractor, sign off and date.
 - (c) Contractor is responsible for tracking and providing an acceptable resolution of all issues raised by the Department.
 - (d) If Contractor wishes to modify its QA program plan before Contract completion, it shall submit its proposed changes to the QA program plan to the Department for review and approval.
 - (e) Part of the QA program plan shall address the process of compartment close-outs. It shall:
 - (1) Describe the inspection procedures used to prepare compartments for inspection by the Department,
 - (2) Identify any excepted items,
 - (3) Explain the process to limit access to the spaces previously inspected, the controls to be put in place to ensure that only authorized Work is accomplished in the closed spaces, and the time frame for the completion of all remaining Work and outfitting.

PRELIMINARY

3.5 Initial Construction Conference

3.5.1 Before Contractor commences performances of Construction Services, it shall schedule a conference attended by the Department, Contractor, and others as appropriate to address any outstanding issues regarding Contract Performance.

3.5.2 At or before this conference the Department and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party

3.6 Management Review Meetings

3.6.1 Contractor shall conduct management review meetings for the Department's representatives at monthly intervals, or at such other intervals as the Department may direct. It will convene the first review within 30 days of the Department's issuance of the Notice to Proceed. The reviews shall include a status update regarding the following subjects, as well as any anticipated delays, corrective actions, and related action requested or required by the Department:

- (a) Progress regarding design and engineering issues for which Contractor is responsible, if any;
- (b) Equipment and Material status;
- (c) Quality assurance issues;
- (d) Completed and upcoming testing and inspection;
- (e) Regulatory Body approval and certification;
- (f) Schedule of Values and payment;
- (g) Change Order status and any contractual issues;
- (h) Upcoming events (prior to next management review); and
- (i) Test program status report

3.6.2 One week before the meeting, Contractor will submit a proposed agenda for the Department's review and comment. The Department will provide Contractor with agenda comments and requests within two Business days of receipt. The Department may request additional topics for the management review, which Contractor shall address during the management review. Contractor shall prepare minutes of that accurately summarize salient points discussed and agreed during the review meeting and provide the Department with a copy.

SECTION 4

Commencement & Progress of Work

4.1 Commencement of Contract Time

4.1.1 Contract Time will start running on the day indicated in the Notice to Proceed. The Department may issue a Notice to Proceed at any time within 30 days after the Effective Date of the Contract.

4.1.2 Contractor shall commence performance of Construction Services once Contract Time starts to run, and not sooner.

4.2 Project Schedule; Progress Meeting

4.2.1 Contractor shall adhere to the latest Project Schedule incorporating all approved changes and modifications.

4.2.2 Contractor shall not delay or postpone any Work pending resolution of any dispute or disagreement, or during any appeal process, except as the Department and Contractor may otherwise agree in writing.

4.2.3 Contractor shall schedule and conduct weekly progress meetings, starting on the date specified by the Resident Engineer in writing. Contractor's and the Department's respective representatives and consultants will attend the meetings.

4.2.4 Not less than 24 hours before each meeting, Contractor shall distribute to the Department a summary that addresses:

- Progress made since the last meeting,
- Current and pending Work activities,
- Current and potential problem areas that could affect project cost or scheduling,
- Inspections planned for the ensuing week,
- Test program status report,
- Safety issues,
- Review of the status of the Schedule of Deliverables, Project Schedule, Drawing Schedule, Material Control Schedule, and - during the 30 days prior to anticipated Substantial Completion - compartment close-outs; and
- Other topics as the Department may direct.

4.3 Delay

4.3.1 If the Department, or anyone for whom the Department is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor is entitled to an equitable adjustment in the Contract Time and Contract Price, as appropriate.

4.3.2 Contractor's entitlement to an adjustment of Contract Time is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Time.

4.3.3 Contractor is not entitled to an adjustment in Contract Price or Contract Time for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier is deemed to be within the control of Contractor.

4.3.4 If Contractor's performance or progress is delayed, disrupted, or interfered with by a cause that is beyond its control and without its fault or negligence, then Contractor is entitled to an equitable adjustment in Contract Time, but not Contract Price. Contractor's entitlement to an adjustment of the Contract Time is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Time. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference identified in this Section 4.3.4. Examples of such causes include the following:

- Acts of war or terrorism,
- Acts of the federal or state government in its sovereign capacity,
- Governmental quarantine restrictions,
- Severe and unavoidable natural catastrophes such as floods, epidemics, and earthquakes,
- Trade embargoes, and
- Delay of a Subcontractor or Supplier at any tier arising from a cause noted immediately above that is beyond the control and without the fault or negligence of both the Contractor and the relevant Subcontractor or Supplier.

4.3.5 The following is a non-exclusive list of events or causes that do not fall within the scope of Section 4.3.4:

- An increase in prices or other change in general economic conditions,
- and
- Circumstance resulting in Contractor's insufficiency of funds to comply with an obligation to pay money.

4.3.6 Contractor is not entitled to an adjustment in Contract Price or Contract Time for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.

4.3.7 Contractor shall submit any Change Proposal seeking an adjustment in Contract Price or Contract Time within 30 days of the commencement of the delaying, disrupting, or interfering event. Otherwise, no equitable adjustment is due.

SECTION 5

Contractor Responsibilities

Contractor shall provide timely and professional Construction Services in accordance with the Contract, Regulatory Requirements, and other applicable standards and otherwise fulfill its contractual responsibilities to the Department, which are addressed in this Section 5 and elsewhere in the Contract.

5.1 Supervision & Superintendence; Means & Methods

5.1.1 Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract.

5.1.2 At all times during the progress of the Work, Contractor shall assign a competent resident superintendent, whom Contractor shall not replace without written notice to the Department except under extraordinary circumstances. Contractor shall provide the Department with written notice of the superintendent's name, local address, and telephone number and provide prompt updates of any change in this information. The superintendent is Contractor's authorized, on Site representative and has full authority to act and sign documents on behalf of Contractor.

5.1.3 Contractor is solely responsible for the means, methods, techniques, sequences, and procedures of construction.

5.2 Labor; Working Hours

5.2.1 Contractor shall provide a sufficient number of competent, suitably qualified personnel to perform the Work required by the Contract. At all times, Contractor shall maintain good discipline and order at the Site. The Department may require Contractor to remove from the Work any employee it deems incompetent, careless, or otherwise detrimental to the progress of the Work, but the Department has no duty to exercise this authority.

5.2.2 Except as the Department may otherwise specify in the Supplementary Conditions, Contractor will maintain working hours for performance of the Work as it sees fit, while having due regard for occupational safety of those working on the Project.

5.3 Safety, Protection, & Emergencies

5.3.1 Contractor is solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with its contracted Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable Regulatory Requirements. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

- (a) All persons on the Site or who may be affected by the Work;
- (b) All Work, and the Materials and Equipment to be incorporated therein, whether in storage on or off the Site;
and
- (c) Other property at the Site or adjacent thereto.

5.3.2 Contractor shall comply with all applicable Regulatory Requirements relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; it shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify the Department and other contractors performing work at or adjacent to the Site when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

5.3.3 Contractor shall inform the Department of the specific requirements of Contractor's safety program with which the Department's employees, contractors, and representatives must comply while at the Site.

5.3.4 At its own expense, Contractor shall remedy all damage, injury, or loss to any property referenced in Section 5.3.1(b) and (c) caused, in whole or in part, by Contractor, a Subcontractor, a Supplier, or any other person employed by any of them to perform any of the Work. Contractor's liability does not include damage or loss that is attributable to the fault of Contract Drawings or Technical Specifications or to the acts or omissions of the Department or anyone employed by it and not attributable to the fault or negligence of Contractor or any Subcontractor, Supplier, or other person employed by any of them.

5.3.5 Contractor's duties and responsibilities for safety and protection shall continue until all the Work is completed and the Department has issued a notice of operational acceptance to the Vessel Constructor Contractor (except as otherwise expressly provided in the Department's written terms of operational acceptance).

5.3.6 Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill remedial obligations during the one-year correction period or under its warranty obligation, or to conduct other tasks required by the Contract.

5.3.7 In an emergency affecting the safety or protection of persons or the Work or property at the Site, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give the Department prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract have been caused thereby or are required as a result thereof. If the Department determines that a change in the Contract is required because of the action taken by Contractor in response to such an emergency, it will issue an Interim Work Authorization or Change Order.

5.4 Services, Materials, & Equipment

5.4.1 In performing its Construction Services, Contractor shall provide and assume full responsibility for all services, labor, Material, Equipment, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telecommunications, water, utilities, sanitary facilities, temporary facilities, storage facilities, and all other facilities, items, and incidentals necessary for the performance, testing, start up, and completion of the contracted Work, whether or not the Contract expressly calls for such items.

5.4.2 If the Department provides Owner Furnished Material or Equipment to Contractor for its use on or incorporation into the Work, Contractor shall store and safeguard the Material or Equipment at its own expense. If Owner Furnished Material or Equipment is lost or damaged while in Contractor's possession, then, at the Department's election, Contractor shall compensate the Department for the item or replace the item at its own expense.

5.4.3 Except for Equipment that the Department has expressly approved during the Preconstruction Phase or in its Technical Specifications by identification of manufacturer, model number, and capacity (if pertinent), Contractor shall submit for the Department's approval the name of the manufacturer of Equipment that it proposes to incorporate into the Work, together with the Equipment's technical description, and if applicable, installed

weight with and without fluids, provided and certified by Equipment manufacturer. When the Department requests, Contractor shall also provide relevant information concerning the Material and other articles that it proposes to incorporate in the Work. Contractor shall furnish representative samples for the Department approval when requested. If Contractor installs Equipment, Material, or articles without such approval, the Department may declare the Work defective.

5.4.4 Except as otherwise expressly provided in the Contract, all Material and Equipment that Contractor incorporates into the Work shall be new, of good quality, of current production, of the specified or most suitable grade, and all workmanship must satisfy Good Shipbuilding Practice. All special warranties and guarantees required by the Contract shall run to the benefit of the Department. If required by the Department, Contractor shall furnish at its own expense satisfactory evidence (including reports of required tests) as to the source, kind, and quality of Material and Equipment.

5.4.5 If Material, Equipment, or Work component requires Regulatory Body approval, Contractor shall provide the Department with a certificate, letter, or affidavit evidencing such approval before incorporating the item in the Work. Contractor shall provide the Department with copies of Material certifications, test reports, metal analyses, welding inspections, and other data, including non-destructive test data, welding procedures, test schedules, as well as correspondence between Contractor and Regulatory Bodies, within 2 days of receipt.

5.4.6 Contractor shall store, apply, install, connect, erect, protect, use, clean, and condition all Material and Equipment in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract. Contractor shall store, handle, and protect all Material and Equipment to ensure their quality and fitness for the Work.

5.5 Brand Name “or Equal”

5.5.1 Whenever the Contract identifies or describes an item of Material or Equipment by using the name of a proprietary item or the name of a particular Supplier, the specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description expressly prohibits use of a like, equivalent, or an “or equal” item, Contractor may request that the Department authorize the use of other items of Material or Equipment, or items from other proposed Suppliers under the circumstances described below.

5.5.2 If the Department in its sole discretion determines that an item of Material or Equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, the Department will deem it an “or equal” item. For the purposes of this Section, the Department will consider a proposed item of Material or Equipment functionally equal to an item so named if:

- (a) In the exercise of its reasonable judgment the Department determines that:
 - (1) It is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - (2) It will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - (3) It has a proven record of performance and availability of responsive service; and.
- (b) Contractor certifies that, if approved and incorporated into the Work:
 - (1) There will be no increase in cost to the Department or increase in Contract Time; and
 - (2) It will conform substantially to the detailed requirements of the item identified in the Contract Documents.

5.5.3 Contractor shall provide all data in support of any proposed “or equal” item at Contractor’s expense.

5.5.4 The Department will use Reasonable Efforts to evaluate and respond each “or equal” request. It may require that Contractor furnish additional data about the proposed “or equal” item. The Department will be the sole judge of acceptability. Contractor will not order, furnish, install, or utilize any “or equal” item until the Department’s review is complete and the Department determines that the proposed item is an “or equal”, which will be evidenced by a Department-approved Production Document or other written communication. The Department will advise Contractor in writing of any negative determination.

5.5.5 The Department’s denial of an “or equal” request is final and binding.

5.6 Authorizations, Fees, & Taxes

5.6.1 Contractor shall promptly obtain necessary permits, licenses, certifications, authorizations, and endorsements and shall comply with all Regulatory Requirements applicable to the performance of the Work. Contractor shall pay all Regulatory Body charges, inspection fees, and taxes that are necessary for, or are a consequence of, prosecution of the Work.

5.6.2 If any Work under the Contract is performed in such a manner or place as to cause imposition of any lien, sales tax, or duty assessment, foreign or domestic, against the Work or the State of Alaska, Contractor, and not the Department, is responsible for payment of the same.

5.6.3 Contractor shall pay all federal, state, and local taxes incurred by Contractor in the performance of the Contract. Proof of payment of these taxes is a condition precedent to final payment by the under the Contract

5.6.4 If the subject of the Project is a newly constructed Vessel, Contractor shall comply with all Regulatory Requirements necessary for the Vessel to obtain a certificate of documentation with a coastwise endorsement.

5.7 Patent Fees & Royalties

5.7.1 Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract for use in the performance of the Work and if, to the actual knowledge of the Department, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, then the Department shall disclose existence of such rights in the Contract.

5.7.2 Contractor shall defend, indemnify and hold harmless the Department, its employees, and agents from and against all claims, actions, and liabilities (including all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any alleged infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device that the Department did not specify for Contractor use in the Contract.

5.8 Regulatory Requirements

5.8.1 Contractor shall comply with all Regulatory Requirements related to the performance of the Work. Except as applicable Regulatory Requirements expressly require, the Department is not responsible for monitoring Contractor’s compliance with any Regulatory Requirement.

5.8.2 If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Regulatory Requirements, Contractor shall bear all resulting costs and losses, and shall defend, indemnify, and hold harmless the Department, its employees, and agents from and against all claims, actions, and liabilities (including all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. However, Contractor is not responsible for verifying that the Work identified in the Contract accords with Regulatory Requirements.

5.9 Federal Aid Project

5.9.1 The Work that is the subject of the Contract is a Federal Aid Project. Contractor shall familiarize itself and comply with Regulatory Requirements of the Funding Agency, the Federal Highway Administration.

5.9.2 During the Construction Phase or an Early Work Package, Contractor must comply with the Buy America Act (Act), 23 U.S.C. §313, its implementing regulations, 23 CFR §635.410, and related Regulatory Requirements. Among other things:

- (a) Before award of the Contract, Contractor shall certify in writing that all iron and steel that it will incorporate into the Project is domestically manufactured in compliance with the Act. If an item is not domestically manufactured, Contractor must identify the item in a Material Origin Certificate (Form 25D-60).
- (b) Once Contractor has started the Work, it must provide the Department with seven days advance notice of delivery of Material and Equipment subject to the Act.
- (c) At delivery, Contractor must provide Department with:
 - (1) manufacturers' certificates that verify the Material's and Equipment's compliance with Act, e.g., Certified Mill Test Reports, and
 - (2) a reasonable opportunity to cross-reference the certificates with Material heat numbers, serial numbers, or other means of enabling the Department to confirm Contractor's compliance with the Act.
- (d) If Contractor fails to provide Department with manufacturers' certificates and/or an opportunity to confirm compliance with the Act, the relevant Material or Equipment will be deemed nondomestic and noncompliant with the Buy America Act, unless Contractor promptly demonstrates that the Act's nondomestic allowance permits use of the Material or Equipment.
- (e) Contractor must retain manufacturers' Buy America compliance certificates in an organized fashion in accordance with Section 5.10.

5.9.3 Contractor shall pay prevailing wages and comply with all associated requirements in accordance with 23 U.S.C. §113 and other applicable federal and state laws.

5.10 Accounts/Records Management; Audit

5.10.1 Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper operational and financial management under the Contract. Contractor's accounting and control systems shall meet Generally Accepted Accounting Principles issued by the Financial Accounting Standards Board.

5.10.2 Among the Project-related records Contractor must properly compile and maintain are those relating to:

- (a) Contract performance, including drawings, Work specifications, contracts, Subcontracts, Change Orders, work orders, purchase orders, invoices, receipts, certifications, Directives, written interpretations and clarifications, approved Production Documents, Equipment Owner's manuals, and Equipment warranty information;
- (b) Project costs, pricing, expenses, including payroll records that identify the name and address of each employee, his/her correct job classification, rate of pay, daily and weekly number of hours of work, deductions made, and actual wages paid;
- (c) Project funding;
- (d) Regulatory compliance, including Buy America Act certifications; and
- (e) Written communication generated and received sent regarding the Project.

Contractor shall preserve these records for a period of three years after the final payment in connection with the Project, or final resolution of any settlement proposal or claim resulting from contract termination or contract dispute, or for such further period as may be necessary to resolve any matters that may be pending.

5.10.3 Contractor shall afford full access to and shall permit any authorized representatives of the Department and the Funding Agency to investigate, examine, audit, and copy Project-related records referenced in Section 5.10.2.

5.10.4 Circumstances giving rise to the Department's investigation, examination, auditing, and copying of Contractor's records include evaluation and verification of Contractor's:

- (a) Pending or past contract modifications, invoices, applications for payment, or claims submitted by Contractor or any of its Subcontractors at any tier, and Suppliers;
- (b) Direct and Indirect Costs, including overhead and payroll tax and fringe benefit allocations;
- (c) Acquisition of Subcontractor or Supplier warranties;
- (d) Compliance with Contract provisions; and
- (e) Contract claim

5.10.5 Upon request, Contractor shall promptly deliver to the Department, the Funding Agency, or their respective designee copies of all records in the manner and format requested.

5.10.6 Upon reasonable notice, Contractor shall provide the Department with access to its facilities, permit the Department to interview current employees regarding matters under investigation, and provide the Department with adequate workspace to interview employees and to examine such records.

5.10.7 If an investigation reveals cumulative Contractor overcharges to the Department more than one-quarter percent of the Contract Price, Contractor shall immediately reimburse the Department for the overcharges. Contractor shall also reimburse the Department for the documented cost of its investigation.

5.10.8 If Contractor fails to comply with any conditions in this Section, the Department may retain a maximum of 10% of the amount of each payment request submitted until such deficiencies are corrected.

5.10.9 The requirements in this Section do not mitigate, lessen, or change any other requirements in the Contract or under applicable law regarding audits, payment submissions, records, records retention, misrepresentation, or fraud.

5.11 Workmanship

5.11.1 Contractor shall perform all Work to the standards of the Contract and Good Shipbuilding Practice and with the degree of diligence, attention, and skill that is adequate to properly complete the task at hand. All aspects of Work including Work relating to structure, machinery, Equipment, electrical, piping, insulation, joiner, furnishings, and outfitting, shall be sufficient to ensure that the requisite integrity and strength are obtained, exposed surfaces are smooth, proper fit and alignment are accomplished, and stress concentrations are minimized.

5.11.2 Defects appearing at any stage of construction through delivery of the Vessel and subsequent correction period shall be cause for rejection of the item or work in question even though the item or work had been previously approved as satisfactory.

5.11.3 There shall be no sharp edges or projections in the work that constitute a hazard to passengers, crew, or contractors. Structural sections such as plates, angle, tubing or pipe and fasteners in public or crew areas, under seating, tables, benches, fixture bases, and other amenities shall be ground smooth, covered, or otherwise treated to prevent snagging, cutting, or tearing human flesh.

5.12 Warranty

5.12.1 Contractor warrants to the Department that all Material and Equipment will be new and of good quality and that all Work will be in accordance with the Contract and not defective.

5.12.2 Contractor's warranty excludes defects or damage caused by:

- (a) Abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
- (b) Wear and tear under normal usage.

5.12.3 Contractor's obligation to perform and complete the Work in accordance with the Contract is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract or a release of Contractor's obligation to perform the Work in accordance with the Contract:

- (a) Observations of the Work by the Department;
- (b) The Department's review and approval of a Submittal;

- (c) Payment any progress or final payment;
- (d) Any inspection, test, or approval;
- (e) The Department's use or occupancy of the Work or any part thereof;
- (f) The Department's issuance of a certificate of operational acceptance or the Department's payment related thereto; or
- (g) Any correction of defective Work by the Department.

5.13 Design Services by Contractor

Proper performance of Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures may require that Contractor (or its qualified design professional) perform design services in the form of Production Design and the generation of Production Documents. The purpose of this requirement is for Contractor to demonstrate the manner in which it proposes to conform its Work to the design criteria and Project information, e.g., Contract Drawings, Technical Specifications, etc. provided by the Department.

- (a)

SECTION 6

Submittals

6.1 General Requirements

Contractor's performance during the Construction Phase requires that it furnish Submittals for the Department's review and approval. In such case, the following requirements apply:

6.1.1 With reasonable promptness and in such sequence as to cause no unreasonable delay in the Work, Contractor shall prepare and submit to the Department all Submittals required by the Contract. Contractor shall use the Submittal portal provided by the Department for all Submittals, e.g., Submittal Exchange[®], unless otherwise directed.

6.1.2 Before furnishing the Department with a Submittal, Contractor shall ensure that it is complete and furnishes sufficient, detailed information that enables the Department's informed assessment of the Submittal.

6.1.3 As appropriate for the particular Submittal, Contractor shall:

- (a) Review and coordinate the Submittal with requirements of the Contract, the Work, and any prior approvals by the Department;
- (b) Furnish the Submittal to the Department in a timely manner to enable detailed review, taking into account the possibility of rejection, revisions, and resubmission;
- (c) Determine and verify all measurements, quantities, dimensions, values, specified performance and design criteria, installation requirements, and any additional details that the Department may request;
- (d) Determine and verify the suitability and availability of all Material and Equipment offered with respect to the indicated application, fabrication, installation, operation, lifecycle, Buy America requirements, and any additional details relevant thereto;
- (e) Determine and verify all information regarding Contractor's responsibilities for means, methods, techniques, sequences, timeliness, and procedures of construction, safety precautions, and any additional details relevant thereto; and
- (f) Include a clear written statement identifying the manner in which the Submittal deviates from requirements of the Contract, if at all. Contractor shall provide this written notice in a communication separate from the Submittal, e.g., a transmittal email accompanying the Submittal.

6.2 Submittal Review Process

6.2.1 The Department will review Contractor's Submittal to determine whether the subject of a Submittal will, after installation or incorporation in the Work, conform to the information provided in the Contract and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract. Following its review, the Department will respond to Contractor with the results of the review and approval status of the Submittal. It will include further written details that require Contractor's attention, supplementation, revision, etc., if applicable.

6.2.2 The time that the Department will require to review any given Submittal depends on a number of variables,

e.g., complexity of the Submittal, number of Submittals provided in a given time frame, the degree of Departmental review, etc. Generally, the Department will require ten business days to review a Submittal, after which it will furnish its response to Contractor.

6.2.3 If the Department approves a Submittal, Contractor shall apply a written notation on the relevant document(s), certifying that the Department has approved the Submittal and identifying the date of approval.

6.2.4 If the Department returns a Submission for revision and resubmission Contractor shall make additions, revisions, etc. required by the Department and furnish its re-Submittal for review and approval. If Contractor modifies the re-Submittal in a manner that differs from the addition, revision, etc. that the Department identified in writing, then Contractor shall clearly identify those modifications to the Department in a separate written document accompanying the re-Submittal.

6.2.5 Contractor's provision of a noncompliant Submittal will not suspend or extend an applicable deadline pertaining to the subject Submittal. Contractor must furnish a compliant re-Submittal within the scheduled deadline.

6.2.6 The Department's review and approval of a Submittal does not:

- (a) Extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto;
- (b) Absolve Contractor of responsibility for an error or omission it has committed regarding the Submittal; or
- (c) Result in the Submittal becoming a Contract Document.

6.2.7 The Department's approval of a Submittal containing a deviation that Contractor has properly identified in accordance with Section 6.1.3(f) does not relieve Contractor of the responsibility for satisfactory installation, performance, function, or operation of the associated Material, Equipment, or System.

SECTION 7

Subcontracting

7.1 General Requirements

7.1.1 Contractor may not sublet, assign, sell, or otherwise dispose any portion of the Contract, or of its right or interest therein, without written consent of the Department.

7.1.2 Regarding each subcontract, Contractor shall:

- (a) Include clauses in which Contractor commits to pay the Subcontractor:
 - (1) For satisfactory performance within eight working days after receiving payment from which the Subcontractor is to be paid;
 - (2) All retainage due under the subcontract within eight working days after final payment is received from the Department, or after the notice period under AS 36.25.020(b) expires, whichever is later;
 - (3) Interest in accordance with AS 45.45.010(a), for the period beginning the day after the required payment date and ending on the day payment of the amount due is made; and
 - (4) Interest on retainage withheld from the Subcontractor at a rate that is equal to the amount set out in AS 45.45.010(a).
 - (b) Include the requirement in the subcontract that the Subcontractor:
 - (1) Pay prevailing wages to sub-tier subcontractors and comply with all associated requirements in accordance with 23 U.S.C. §113 and other applicable federal and state laws;
 - (2) Comply with the Buy America Act and all associated requirements in accordance with 23 U.S.C. §313, 23 C.F.R §635.410, and other applicable federal laws; and
 - (3) Include the requirements of Section 7.1.2(b)(1)-(2) in all sub-tier subcontracts.
 - (c) Provide the Department with a completed and fully executed:
 - (1) Form 25D-042 “Contractor Self Certification for Subcontractors and Lower Tier Subcontractors”, before it or any Subcontractor proposes to sublet any portion of the Contract; and
 - (2) Bidder Registration Form 25D-6;
 - (d) Upon receipt of a request for more information regarding lower tier subcontracts, the requested information is provided to the Department within 5 days.
- 7.1.3 Contractor shall perform a minimum percentage of the construction work with its own organization. This percentage shall be not less than 30 percent of the total original contract price excluding any identified specialty items.

- (a) Specialty items may be performed by subcontract and the amount of any such specialty items so performed may be deducted from the total original contract before computing the amount of work that Contractor must perform with its own personnel. The contract amount upon which the above requirement is computed includes the cost of materials and manufactured products that Contractor purchases or produces in accordance with Contract requirements.
- (b) “Specialty items” means work that requires highly specialized knowledge, craftsmanship, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract

7.1.4 Contractor shall not delete, substitute, or change the role of any Subcontractor without the prior written approval of the Department.

7.1.5 Contractor is solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.

7.1.6 Contractor shall restrict Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with the Department, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.

7.1.7 Contractor is responsible to the Department for the acts and omissions of (i) its Subcontractors, Suppliers, and agents performing Work under a contract with Contractor and (ii) lower tier subcontractors, suppliers, and agents with whom its Subcontractors or Suppliers have contracted in connection with the Project.

7.2 “Flow Down” Obligations

7.2.1 Contractor shall require each Subcontractor to be bound to Contractor by the terms of the Contract, and to assume toward Contractor all the obligations and responsibilities that Contractor assumes toward the Department. The subcontract agreement shall preserve and protect the rights of the Department under the Contract with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof does not prejudice the Department’s rights.

7.2.2 Contractor shall require that each Subcontractor abide by the obligation addressed in Section 7.2.1 regarding agreements with its sub-tier subcontractors, if any.

7.2.3 Before execution of a subcontract, Contractor shall make available to each proposed Subcontractor a copy of the Contract. Similarly, the Subcontractor shall make a complete copy of the Contract available to any sub-tier subcontractors.

7.3 Third Party Beneficiary Rights

7.3.1 Each Subcontract shall clearly state: (i) the Department is a third-party beneficiary of the Subcontract and shall have the right to enforce all terms of the Subcontract for its own benefit; and (ii) all guarantees and warranties, express and implied, shall inure to the benefit of the Department as well as Contractor.

7.3.2 Nothing contained in the Contract creates any third-party beneficiary or other rights inuring to the benefit of any Subcontractor, Supplier, or any other third person as against the Department.

7.4 Subcontract Review/Approval

7.4.1 Upon request, Contractor shall furnish the Department with a copy of each proposed subcontract. Contractor and Subcontractor must sign the agreement, which includes the subcontract sum, before Contractor submitting the subcontract to the Department.

7.4.2 The Department will review proposed subcontracts as to form and sufficiency or inform Contractor in writing of any matter requiring rectification.

SECTION 8

Owner Personnel & Responsibilities; Owner's Work

8.1 Owner Personnel

8.1.1 Contracting Officer: The Contracting Officer serves as the Department's representative regarding this Contract and possesses authority to make findings, determinations, and decisions with respect to the Contract, including:

- Quality and acceptability of Material, Equipment, and Work performed;
- Compliance with the Project Schedule;
- Interpretation of Contract Documents; and
- Contractor's fulfillment of Contract requirements.

The Contracting Officer may designate a Resident Engineer to serve as his/her on Site representative during the Construction Phase. S/he may appoint other personnel to assist the Resident Engineer on Site.

8.1.2 Resident Engineer: At appropriate times during the Construction Phase, the Resident Engineer, if appointed, will be present at the Project Site at appropriate times to observe and inspect the progress and the quality of Contractor's Work. Based on observations and information obtained during such visits, the Resident Engineer will determine, in general, if the Work is proceeding in accordance with the Contract. The intent of the Resident Engineer's efforts is to provide the Department with an assurance that the completed Work will conform to the Contract.

8.1.3 The Resident Engineer possesses authority to suspend Work, in whole or in part, due to safety concerns for persons or property, due to Contractor's failure to abide by the Contract, or for any reason in the State's best interest, but s/he has no duty to exercise this authority.

8.1.4 At reasonable times, the Resident Engineer, or such other person(s) designated by the Department, may inspect that part of the plant or place of business of Contractor, its Subcontractors, or Suppliers that is related to the performance of the Contract. S/he may review and obtain copies of relevant documents from Contractor, its Subcontractors, and its Suppliers that relate to Contract performance, Material, Equipment, services, billing, payroll, and other matters relevant to the Project.

8.1.5 The Resident Engineer, or such other person(s) designated by the Department, will be given the opportunity to review all work as part of the Contractors established QA process. The Department's presence during QA activities does not constitute final approval of any work.

8.1.6 The Resident Engineer's observations and inspections are subject to the limitations regarding the Department's authority and responsibility set forth in Section 8.3.

8.2 Owner Responsibilities

8.2.1 The Department will compensate Contractor for Work performed as prescribed by the Contract.

8.2.2 While on Site, the Department's employees and representatives will comply with the applicable requirements of Contractor's safety programs of which Contractor has informed the Department.

8.2.3 Other sections of the Contract prescribe the Department responsibilities regarding individual subjects, which the Department will perform in good faith.

PRELIMINARY

8.3 Limitations Regarding Responsibilities

8.3.1 The Department will not supervise, direct, control, be responsible for, or have authority over Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Regulatory Requirements applicable to the performance of the Work.

8.3.2 The Department is not responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

8.4 Other Work

8.4.1 The Department reserves the right to contract for and perform other or additional work on Site with its employees or its other contractor(s) (Other work). If the Department intends to conduct Other work on a Project, it will set forth the following information in the Supplementary Conditions or provide it to Contractor at a reasonable time before the start of any such Other work:

- (a) The identity of the individual or entity that has authority and responsibility for coordination of the activities among the various contractors;
- (b) An itemization of the specific matters covered by such authority and responsibility; and
- (c) The extent of such authority and responsibilities.

Unless the Department provides otherwise in the Supplementary Conditions, it has sole authority and responsibility for such coordination.

8.4.2 Contractor shall afford the Department and each other contractor that performs such Other work timely, proper, and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of Materials and Equipment and the execution of such Other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such Other work. Contractor shall not endanger any Other work by altering such work; provided, however, that Contractor may alter Other work with the written consent of the Department and the others whose work will be affected.

8.4.3 When separate contracts are let within the limits of the Project, Contractor shall conduct its Work so as not to interfere with or hinder performance of Other work. Contractor when working on the same Project with other contractors shall cooperate with such other contractors. Contractor shall join its Work with that of the others in an acceptable manner and shall perform it in proper sequence to that of others.

8.4.4 If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Section 8, Contractor shall inspect such Other work and promptly report to the Department in writing any delays, defects, or deficiencies in such Other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such Other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such Other work.

8.4.5 If, in the course of performing Other work, the Department's employees or its other contractor(s) cause damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor is entitled to an equitable adjustment in Contract Price or Contract Time, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in Contract Price or Contract Time under this Section within 30 days of the damaging, delaying, disrupting, or interfering event. Otherwise, no equitable adjustment is due concerning that disputed Other work. Contractor's entitlement to an adjustment of Contract Time is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Time.

8.4.6 Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with Other work of the Department or any other contractor performing Other work. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with such Other Work, then the Department may impose a set-off against payments due to Contractor.

SECTION 9 Contract Change

9.1 Amending and Supplementing the Contract

The Parties may amend or supplement the Contract only by Change Order or Supplemental Agreement.

9.1.1 The Parties may use a Change Order to amend the Contract Price or the Contract Time, or to effect other contract change that does not affect Contract Price or Contract Time.

9.1.2 If the Department wishes to have Contractor perform work that is outside the scope of the original Contract, it may implement the change by setting forth the relevant contract terms in a Supplemental Agreement.

9.2 Unauthorized Work

Contractor is not entitled to compensation or an extension of the Contract Time regarding any work it performs that the Contract, as amended, modified, or supplemented, does not require. Limited exception to this rule applies to certain instances when Contractor performs services in response to an emergency as provided in Section 5.3.8 or as provided in Section 11.5.3(b) regarding uncovered Work that proves non-defective.

9.3 Owner Directed Change in the Work

9.3.1 Without invalidating the Contract and without notice to any surety, the Department may add, delete, or revise Work that is in the general scope of the Contract. The Department may cause Contractor to initiate such addition, deletion, or revision by a Change Order if the Department and Contractor have agreed to the effect, if any, of the changes on Contract Price or Contract Time, or by an Interim Work Authorization if they have not.

9.3.2 Upon receipt of a Directive, Contractor shall promptly proceed with the additional or revised Work; or, in the case of a deletion in the Work, promptly cease activities with respect to the deleted Work.

9.3.3 At the Department's request, Contractor will provide a proposal for equitable adjustment that conforms to the requirements of Section 10.

9.4 Compensation for Change Order Work

If Contractor is entitled to compensation for Work rendered per Change Order, the Department will determine the amount of such compensation in accordance with principles contained in Section 10.

9.5 Execution of Change Orders

9.5.1 The Department and Contractor will execute appropriate Change Orders covering:

- (a) Mutually agreed changes in the Contract Price or Contract Time, including any undisputed sum or amount of time for Work performed in accordance with an Interim Work Authorization;
- (b) Changes in the Work directed by the Department per to Section 9.3, subject to any rights Contractor has reserved in accordance with Section 9.5.3;
- (c) Deduction of unused Contractor's Contingency and its proportionate allocation of Fixed Fee; and

(d) Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off.

9.5.2 By accepting and signing a Change Order, the Department and Contractor agree that the Contract modification effected by the Change Order is a fair and equitable adjustment for Contractor's Direct and Indirect Costs; that it provides full compensation and adequate adjustment for the changed Work, including Contract Price and Contract Time; and that Contractor releases the Department from all liability under the Contract for further equitable adjustment in connection with the Work that is the subject of the Change Order.

9.5.3 If Contractor does not agree with the terms of a proposed Change Order, it may note its disagreement and preserve its right under Section 15 to pursue a claim for equitable adjustment of Contract Price or Contract Time by signing the change document as "Acknowledged" (and not as "Accepted"). Nevertheless, Contractor shall promptly and faithfully perform the Work as indicated in the Change Order.

SECTION 10

Equitable Adjustment

10.1 Application

This section governs the determination of equitable adjustment to which Contractor may be entitled under Section 9 or other basis for equitable adjustment.

10.2 Submission of Equitable Adjustment Proposal

10.2.1 At the Department's written request, Contractor shall submit a proposal in accordance with the requirements set forth in this Section for an equitable adjustment to the Contract for changes or other conditions that may entitle a Contractor to an equitable adjustment.

10.2.2 If Contractor deems an oral or written order to be a change to the Contract, it shall promptly submit to the Department a proposal for equitable adjustment attributable to such deemed change. The proposal shall also conform to the requirements set forth in this Section. If Contractor does not submit the Change Proposal within 30 days of the deemed Contract change, then no equitable adjustment is due.

10.3 Proposal Content

A proposal for equitable adjustment, including no-cost requests for adjustment of the Contract's required completion date, shall include a detailed breakdown of the following elements, as applicable:

- Direct Costs;
- Mark-ups; and
- Change to the time for completion specified in the Contract.

10.4 Direct Costs

Contractor shall separately identify each item of deleted and added Work associated with the change or other condition giving rise to entitlement to an equitable adjustment, including increases or decreases to unchanged Work impacted by the change. For each item of Work so identified, the Contractor shall propose for itself and, if applicable, its first two tiers of subcontractors, the following Direct Costs that Contractor shall prepare in accordance with Cost of the Work principles set forth in Section 13.2 of the General Provisions for CMGC Preconstruction Services (GPs):

- (a) Payroll cost broken down by trade, employer, occupation, quantity of labor hours, and burdened hourly labor rate that accounts for compensated fringe benefits;
- (b) Material and Equipment cost broken down by trade, supplier, Material description, quantity of Material units, and unit cost, if applicable;
- (c) Supplemental Costs identified in Section 13.2.5 of the GPs;
- (d) Time-related costs not separately identified as Direct Costs, and not included in Contractor's or Subcontractors' Indirect Cost rates, as specified in Section 10.5 below; and

- (e) Marked-up costs of subcontractors below the second tier may be treated as Direct Costs of a second-tier subcontractor unless the Department requires a detailed breakdown under Section 10.7.

10.5 Extensions of Time and Time-Related Costs

Contractor shall propose a daily rate for each firm's time-related costs during the affected period, and, for each firm, the increase or decrease in the number of work days of performance attributable to the change or other condition giving rise to entitlement to an equitable adjustment, with supporting analysis. Entitlement to time and time-related costs shall be determined as follows:

- (a) Increases or decreases to a firm's time-related costs shall be allowed only if such increase or decrease necessarily and exclusively results from the change or other condition giving rise to entitlement to an equitable adjustment;
- (b) Contractor shall not be entitled to an extension of time or recovery of its own time-related costs except to the extent that such change or other condition necessarily and exclusively causes its duration of performance to extend beyond the completion date specified in the Contract;
- (c) Costs may be characterized as time-related costs only if they are incurred solely to support performance of this Contract and the increase or decrease in such costs is solely dependent upon the duration of a firm's performance of work
- (d) Costs may not be characterized as time-related costs if they are included in the calculation of a firm's Indirect Cost rate;
- (e) Equitable adjustment of time and time-related costs shall not be allowed unless the analysis supporting the proposal complies with provisions specified elsewhere in this Contract regarding the Contractor's Project Schedule;
- (f) As used in this Section 10, the term "firm" includes Contractor and the first two tiers of subcontractors. The term does not include any subcontractor below the second tier.

10.6 Mark-ups

For each firm whose Direct Costs are separately identified in the equitable adjustment proposal, Contractor shall propose an Indirect Cost rate, profit rate, and where applicable, a bond rate and insurance rate. Mark-ups shall be determined and applied as follows:

- (a) Indirect Cost rates shall be negotiated, and may be subject to audit and adjustment;
- (b) Profit rates shall be negotiated, but shall not exceed ten percent, unless entitlement to a higher rate of profit may be demonstrated;
- (c) Contractor and its Subcontractor(s) are not allowed Indirect Costs or profit on the Indirect Costs or profit received by a second tier subcontractor, except to the extent that the second tier subcontractor's costs are properly included in Direct Costs as specified in Section 10.4(e) above;

- (d) Indirect Cost rates shall be applied to the Direct Costs of work performed by a firm, and shall not be allowed on the Direct Costs of work performed by a subcontractor to that firm at any tier except as set forth below in Sections 10.6(f) and (g) below;
- (e) Profit rates shall be applied to the sum of a firm's Direct Costs and the Indirect Costs allowed on the Direct Costs of work performed by that firm.
- (f) Indirect Costs and profit shall be allowed on the Direct Cost of work performed by a subcontractor within two tiers of a firm at rates equal to only fifty percent of the Indirect Cost and profit rates negotiated per Section 10.6(a) and (b) above, but not in excess of ten percent when combined;
- (g) Indirect Costs and profit shall not be allowed on the Direct Costs of a subcontractor more than two tiers below the firm claiming Indirect Costs and profit for subcontractor Direct Costs;
- (h) If changes to Contractor's or a subcontractor's bond or insurance premiums are computed as a percentage of the gross change in Contract Price, mark-ups for bond and insurance shall be applied after all Indirect Costs and profit is applied. Bond and insurance rates shall not be applied if the associated costs are included in the calculation of a firm's Indirect Cost rate; and
- (i) No mark-up shall be applied to a firm's costs other than those specified herein.

10.7 Additional Information

At the Department's request, Contractor shall provide such other information as may be reasonably necessary to allow evaluation of the equitable adjustment proposal. If the proposal includes costs incurred by a subcontractor below the second tier that represents more than 5% of the Direct Costs identified in the proposal, the Department may require the same detail for those costs as required for the first two tiers of subcontractors, and mark-ups shall be applied to these subcontractor costs in accordance with Section 10.6 above.

10.8 Furnishing Proposal Preparation Costs

If performed by the firm claiming them, proposal preparations costs shall be included in the labor hours proposed as Direct Costs. If performed by an outside consultant or law firm, proposal preparation costs shall be treated as other Direct Costs to the firm incurring them. Requests for proposal preparation costs shall include the following:

- (a) A copy of the contract or other documentation identifying the consultant or firm, the scope of the services performed, the manner in which the consultant or firm was to be compensated, and if compensation was paid on an hourly basis, the fully burdened and marked-up hourly rates for the services provided;
- (b) If compensation was paid on an hourly basis, documentation of the quantity of hours worked, including descriptions of the activities for which the hours were billed, and applicable rates; and
- (c) Written proof of payment of the costs requested. The sufficiency of the proof shall be determined by the Department.

10.9 Entitlement to Proposal Preparation Costs

Proposal preparation costs shall be allowed only if:

- (a) The nature and complexity of the change or other condition giving rise to entitlement to an equitable adjustment warrants estimating, scheduling, or other effort not reasonably foreseeable at the time of contract award;
- (b) Proposed costs are not included in a firm's time-related costs or Indirect Cost rate;
- (c) Proposed costs were incurred prior to the Department's unilateral determination of an equitable adjustment under the conditions set forth in Section 10.12, or were incurred prior to the time the request for equitable adjustment otherwise became a matter in dispute; and
- (d) The proposed Direct Costs, mark-ups, and proposal preparation costs are reasonable and otherwise consistent with federal cost principles. Characterization of costs as Direct Costs, time-related costs, or Indirect Costs must be consistent with the requesting firm's accounting practices on other work under the Contract, as well as Contractor's other contracts.

10.10 Unilateral Contract Modification

If the Department determines that it is in the Department's interest that Contractor proceed with a change before negotiation of an equitable adjustment is completed, the Department may order the Contractor to proceed on the basis of a unilateral modification to the Contract, increasing or decreasing the Contract Price by an amount to be determined later. In such case, the Department will issue an Interim Work Authorization.

10.11 Unilateral Price Determination

If the parties cannot agree to an equitable adjustment, the Department may determine the equitable adjustment unilaterally.

10.12 Preclusion of Proposal Preparation Costs

Contractor shall not be entitled to any proposal preparation costs incurred after the date of a unilateral determination or denial of the request if the Department issues a unilateral determination or denial under any of the following circumstances:

- (a) Contractor fails to submit a proposal within the time required by the Contract or such time as may reasonably be required by the Department;
- (b) Contractor fails to submit additional information requested by the Department within the time reasonably required; or
- (c) Agreement to an equitable adjustment cannot be reached within 30 days of submission of Contractor's proposal or receipt of additional requested information, despite the Department's good faith efforts to negotiate the equitable adjustment.

SECTION 11

Testing; Defective Work & Responsive Action

11.1 Access to Work & Facilities

11.1.1 The Department, its consultants, representatives, and personnel, as well as Regulatory Bodies, will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and inform them of Contractor's safety procedures and programs so that they may comply.

11.1.2 The Department and Regulatory Bodies may require inspection or testing of Material or Equipment (or witnessing thereof) at the source of production or shipment. In such case, the Department and Regulatory Bodies shall have full access to areas of the facility as may concern the production, manufacture, assembly, cleaning, painting, and packaging of the Material or Equipment.

11.2 Tests, Inspections, & Approvals

11.2.1 Unless the Contract expressly provides otherwise, before incorporation into the Work, Contractor must inspect and test all Materials and Equipment for which the Department has prescribed quality standards or tests.

11.2.2 Whether at the Site or at the source of production or shipment, Contractor shall give the Department and Regulatory Bodies timely notice of readiness of the Work, Material, and Equipment for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

11.2.3 Contractor is responsible for coordinating, obtaining, and paying for all related costs concerning inspections, tests, and resulting approvals or certifications that are required:

- (a) By the Contract, unless the Contract expressly allocates responsibility for a specific inspection or test to the Department;
- (b) To attain Regulatory Bodies' or the Department's acceptance of Work, Material or Equipment, when Regulatory Requirements or the Contract require such acceptance;
- (c) By a Supplier of Material or Equipment to be used on or incorporated into the Work;
- (d) For testing, adjusting, and balancing of mechanical, electrical, hydraulic, and other Equipment to be incorporated into the Work; and
- (e) For acceptance of Material or Equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to the Department shall perform such inspections and tests.

11.2.4 If, without the Department's written authorization, Contractor covers any Work (or the work of others) that is to be inspected, tested, or approved, Contractor shall uncover such Work for observation, if the Department requests. Such uncovering is at Contractor's expense unless Contractor had given the Department timely written

notice of Contractor's intention to cover the same and the Department did not respond with reasonable promptness in response to the notice.

11.3 Defective Work

11.3.1 Contractor is responsible for ensuring that the Work is not defective.

11.3.2 The Department possesses authority to determine whether Work is defective and to reject defective Work – authority that it will not unreasonably exercise.

11.3.3 The Department will promptly notify Contractor in writing of defective Work of which it has actual knowledge. Promptly after receipt of written notice, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if the Department has rejected the defective Work, remove it and replace it with Work that is not defective.

11.3.4 When correcting defective Work, Contractor shall take no action that would void or otherwise impair the Department's special warranty and guarantee, if any, on the Work.

(b) 11.3.5 In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including:

- The cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work,
- Fines levied against the Department and Project costs disallowed due to Non-Par determination by Regulatory Body(s) because the Work is defective, and
- The costs of repair or replacement of work of others resulting from defective Work.

Prior to final payment, if the Department and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then the Department may impose a reasonable set-off against payments due under Section 12.

11.4 Acceptance of Defective Work

11.4.1 Instead of requiring correction or removal and replacement of defective Work, the Department may elect to accept it. In such case, Contractor shall pay all claims, costs, losses, and damages attributable to the Department's evaluation of and determination to accept the defective Work, and for the diminished value of the Work to the extent not otherwise paid by Contractor.

- (a) If the Department accepts defective Work before issuing final payment, the Parties will make any necessary revisions to the Contract via Change Order. If the Parties are unable to agree as to the decrease in the Contract Price reflecting the diminished value of Work so accepted, then the Department may impose a reasonable set-off against payments due under Section 12.
- (b) If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to the Department that compensates for all claims, costs, losses, and damages attributable to the Department's evaluation of the defective Work, and for the diminished value of the Work.

11.5 Uncovering Work

11.5.1 Throughout the duration of the Project, the Department has authority to require special inspection or testing of the Work, whether the Work is fabricated, installed, or completed.

11.5.2 If Contractor covers any Work contrary to the provisions of the Contract or the Department's written notice, Contractor shall uncover such Work for the Department's observation, if requested, and then replace the covering, all at Contractor's expense.

11.5.3 In its discretion, the Department may instruct Contractor to uncover, expose, or otherwise make available for observation, inspection, or testing covered Work. In such case, Contractor will promptly provide all necessary labor, material, and equipment and comply with the Department's instruction.

- (a) If the Department concludes that the uncovered Work is defective, Contractor is responsible for all claims, costs, losses, damages, and delays arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including all costs of repair or replacement of work of others). Pending Contractor's full discharge of this responsibility, the Department may impose a reasonable set-off against payments due under Section 12.
- (b) If the Department concludes that the uncovered Work is not defective, Contractor is entitled to an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the Parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the Department's determination that the Work is not defective. No equitable adjustment is due if Contractor does not submit the Change Proposal within 30 days.

11.6 Owner Cessation of Work

If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable Material or Equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract, then the Department may order Contractor to stop the Work, or any portion thereof, until Contractor has eliminated the cause for such order. However, the Department's right to stop the Work does not give rise to any duty on the part of the Department to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

11.7 Owner's Corrective Action in Response to Defective Work

11.7.1 After receipt of the Department's written notice, if Contractor fails within a reasonable time to correct defective Work, or to remove and replace rejected Work as required by the Department, after 7 days written notice to Contractor, the Department may remedy any such deficiency.

11.7.2 In exercising its rights under this Section 11.7, the Department shall proceed expeditiously. In connection with such remedial action, the Department may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all Material and Equipment stored at the Site or for which the Department has paid Contractor, but which are stored elsewhere. Contractor shall allow the Department, the Department's representatives, agents and employees, the Department's other contractors, and the Department's consultants access to the Site to enable the Department to exercise the rights and remedies under this Section. If the Department concludes that judicial intervention is reasonably necessary to promptly enforce its rights and proceeds accordingly, the prevailing party in any related legal proceeding is entitled to recover actual reasonable costs and attorneys' fees.

11.7.3 The Department may charge all claims, costs, losses, and damages incurred or sustained by the Department in exercising the rights and remedies under this Section 11.7 against Contractor as set-offs against payments due under Section 12. Such claims, costs, losses, and damages will include all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

11.7.4 Contractor is not allowed an extension of Contract Time because of any delay in the performance of the Work attributable to the exercise by the Department of the Department's rights and remedies under this Section 11.7.

SECTION 12

Payments to Contractor; Set-Offs

12.1 Progress Payment

Contractor is responsible for furnishing Contract-compliant documents and information necessary for the Department to determine the extent of actual progress of the Work and Contractor's entitlement to proportionate progress payment.

12.2 Application for Payment

12.2.1 At least 10 days before the date established in the Contract for each progress payment (but not more often than once a month), Contractor shall submit to the Department for review a completed Application for Payment, the current Schedule of Values, and an up-to-date Project Schedule, an invoice reflecting physical progress by pay item number, including both labor and installed Material/Equipment, and any other documentation that the Department requests.

12.2.2 If Contractor is requesting payment on the basis of Material and Equipment not incorporated in the Work but delivered and suitably stored at the Site or at another agreed location, Contractor shall include a bill of sale, invoice, or other documentation warranting that the Department will receive the Material and Equipment free and clear of all Liens, and evidence that the Material and Equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect the Department's interest therein, all of which must be satisfactory to the Department. Additionally:

- (a) This provision applies only when the total value of Material or Equipment on hand for which payment is sought is more than \$100,000.
- (b) No payment for stored Material will be made for perishable materials such as paint, underlayment, joiner panels, and others that could be rendered useless because of long storage periods.
- (c) Payment for Material and Equipment on hand will not constitute final acceptance. Contractor is solely responsible for protecting the Material and Equipment from damage or loss while in storage.
- (d) In its records, Contractor shall deduct stored Material/ Equipment quantities as Contractor incorporates them into the Work.
- (e) Contractor shall reimburse the Department for payments made for stored Material and Equipment that are damaged or otherwise rendered unsuitable for incorporation in the Work while in Contractor's possession. This provision applies whether or not the Material or Equipment is already installed at the time of deficiency determination.

12.2.3 The progress payment sum for Contractor's Fixed Fee is calculated as a proportionate amount of the reimbursable costs that the Department is obligated to pay Contractor for that Application for Payment.

12.2.4 The Department will review Contractor's submitted Application and determine whether it reflects actual physical percentage of completion of Work. If the Department and Contractor cannot agree concerning the percentage of Work completion, the Department has discretion to estimate the percentage of completed Work and authorize progress payment based on this estimate. The Department's use of Contractor-submitted progress

payment estimate and its discretionary estimate, if used, serves to establish the value of progress payment; these estimates are not determinative of the actual percentage of completion.

12.2.5 Beginning with the second Application for Payment, each Application shall include Contractor's certification attesting that:

- (a) Contractor has applied all previous progress payments received from the Department on account of Work done under the Contract to discharge Contractor's obligations incurred in connection with the Work covered by prior Applications for Payment;
- (b) Title to all Work, Materials and Equipment incorporated in the Work or otherwise listed in or covered by the Application for Payment will pass to the Department at time of payment free and clear of all Liens, security interests, and encumbrances; and
- (c) All the Work covered by the Application for Payment is in accordance with the Contract and is not defective.

12.2.6 For all payment requests after the initial Application for Payment, Contractor shall transmit cost reports as the Department may request from Contractor's automated cost accounting system that detail and substantiate actual expenses incurred during the prior Application for Payment period, together with the current payment request. Contractor shall make adjustments up or down when actual expenses are higher or lower than the corresponding amount requested in the prior Application for Payment. Contractor shall retain accounting records that document monies paid by Contractor on account of the Cost of the Work during the period involved, along with copies of payroll for labor, records of equipment used, and copies of invoices. Contractor shall keep these records at its shipyard office and shall be available for audit by the Department.

12.2.7 In lieu of a retainage, the Contract establishes a pay item for a Contract Performance Allowance (CPA). The purpose of the CPA is to provide for the execution and fulfillment of Contractor's responsibilities during the correction period in the event Contractor fails to perform. The Department may release the CPA in part during the Correction Period. If Contractor fully satisfies its obligations under Section 14.6, the Department will include the remaining balance of the CPA in its final payment to Contractor

12.3 Review of Payment Application

12.3.1 Generally, within 10 business days after receipt of each Application for Payment, including each resubmittal, the Department will either approve the Application or return the Application to Contractor indicating in writing the Department's reasons for denying the Application. In the latter case, Contractor will make the necessary corrections and resubmit the Application.

12.3.2 Generally, the Department will approve an Application if, based on its observations of the executed Work and review of the Application for Payment and the accompanying data and schedules, the Department concludes:

- (a) The Work has progressed to the point indicated;
- (b) The quality of the Work is generally in accordance with the Contract (subject to an evaluation of the Work as a functioning whole prior to or upon operational acceptance, the results of any subsequent tests called for in the Contract); and
- (c) Contractor appears to have fulfilled the conditions precedent to entitlement to such payment.

12.3.3 If the Department concludes the Application for Payment is not Contract-compliant, it may take appropriate action, which includes:

- (a) Rejecting the Application and requiring correction of deficient items and submittal of a corrected Application;
- (b) Calculating and issuing a progress payment in accordance with Section 12.2.4; or
- (c) Issuing Contractor a progress payment for the amount requested in its Application, without prejudice or waiver of the Department's legal rights.

12.3.4 The Department's approval of an Application does not constitute evidence that:

- (a) Its review of the quality or the quantity of the Work during Contractor's performance has been exhaustive or extended to every aspect of the Work in progress, or involved inspections of the Work beyond the Resident Engineer's scope of responsibilities addressed in Section 8.1; or
- (b) There may not be other matters or issues between the Parties that might entitle Contractor to additional payment or entitle the Department to apply a set-off against a Contractor payment.

12.4 Set-Off or Withholding Payment

12.4.1 The Department is entitled to apply a set-off or withhold payment for any permissible reason, which include the following:

- (a) Claim is made against the Department or its property on account of Contractor's conduct in the performance or furnishing of the Work, or the Department has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Regulatory Requirements, and patent infringement;
- (b) Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
- (c) Contractor has failed to provide and maintain required bonds or insurance;
- (d) The Department was required to remove or remediate a hazardous condition for which Contractor is responsible;
- (e) The Department has incurred extra charges or engineering costs related to excessive submittal reviews and subsequent resubmissions, evaluations of proposed substitutes, tests, and inspections, or return visits to manufacturing or assembly facilities;
- (f) The Work is defective, requiring correction or replacement;
- (g) The Department was required to correct defective Work in accordance with Section 11.7, or has accepted defective Work under to Section 11.4;
- (h) The Parties reduced the Contract Price by Change Order;

- (i) Contractor has been assessed liquidated delay damages; and
- (j) There are other items entitling the Department to a set off against the amount recommended.

12.4.2 If the Department imposes any set-off against payment it will give Contractor written notice within 7 days of receipt of an Application for Payment. The notice shall identify the amount of the withholding, the reason therefor, and the remedial action the Contractor may take to receive the withheld portion. The Department shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by the Department and Contractor, if Contractor remedies the reasons for such action.

12.4.3 Upon a subsequent determination that the Department's withholding was not justified, the amount withheld shall be treated as an amount due as determined by Section 12.3.1 and subject to interest as provided by state law.

12.5 Liquidated Delay Damages

12.5.1 Contractor and its surety are jointly liable for damages resulting from Contractor's failure or refusal to complete the Work within the Contract Time, regardless of whether the Department terminates for cause Contractor's right to proceed with the Work.

12.5.2 The Parties acknowledge that at the time of contracting, the amount of actual damages the Department will incur if Contractor fails to timely complete the Work is difficult to know and that stipulated or liquidated damages assessed in the Contract are not a penalty but rather a reasonable estimate of anticipated harm the Department will likely suffer if Contractor fails to complete the Work within the Contract Time.

12.5.3 Contractor, its surety, or both shall pay liquidated delay damages to the Department for each additional day beyond the prescribed Contract Time that the Work remains incomplete.

12.5.4 The Department may apply a set-off for any monies due the Department for liquidated damages from any monies owed to Contractor. If the Department owes no money, then it is entitled to recover the sum from Contractor, its surety or both.

12.5.5 The liquidated delay damages do not compensate the Department for additional costs it may incur in the event of Contractor default, such as solicitation for completion of construction, shifting or transporting the Vessel, Material, Equipment, etc. to a new location, having construction completed by a substitute contractor, or other costs identified in Section 13.2.3. In such event, Contractor and its surety are liable to the Department for these additional costs, as well as the liquidated damages.

12.5.6 The corresponding section of Supplementary Condition prescribes the liquidated delay damages applicable to the present Contract.

12.6 Final Payment

12.6.1 After: (i) Contractor satisfactorily completes all corrections, if any, identified during the final inspection referenced in Section 14.6.4; (ii) Contractor has delivered all contractually required documents, including maintenance and operating instructions, schedules, guarantees, bonds, extended warranties, certificates, affidavits, releases, Contractor Records, proof of payment of Subcontractors, Suppliers, required taxes, and the

like, and (iii) the Department has taken final acceptance of the Vessel, the Resident Engineer will prepare the final estimate of Work performed. All prior partial estimates and progress payments shall be subject to correction in the final estimate and payment.

12.6.2 If Contractor approves the estimate, or if it files no claim within ninety (90) days of receiving the final estimate, the Department will process the estimate for final payment. After approval of such final estimate by Contractor, the Department will pay Contractor the entire sum found to be due after deducting all previous payments and all amounts to be retained, deducted, or set-off in accordance with the Contract.

12.6.3 Contractor's written acceptance of the final estimate constitutes its acceptance of the total amount shown as payment in full for the amount due under the Contract. Contractor's written acceptance, however, does not exclude any claim(s) that Contractor timely filed in accordance with the terms of the Contract before its signing of the final estimate. Any timely filed claims must be listed as exceptions to the final estimate. Any claims that Contractor has not timely filed before signing the final estimate are null, void, and not subject to further consideration or legal action.

12.6.4 If Contractor fails or declines to approve the final estimate within ninety (90) days and files no claim, the estimate is deemed approved, and the Department will process the estimate for final payment.

12.6.5 Once the Parties have executed the final estimate and all claims, if any, have been settled, Contractor shall furnish the Department with a "Release on Contract", which releases the State of Alaska from all claims in connection with the Contract.

SECTION 13

Contract Suspension; Termination

13.1 Suspension of Work

13.1.1 At any time and without cause, the Department may suspend the Work or any portion thereof for a period of not more than 90 consecutive days. The Department will notify Contractor in writing of the suspension and include the date on which Contractor shall resume the Work.

13.1.2 If the Department has suspended Work for its convenience or need, Contractor may be entitled to an equitable adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to the suspension. Contractor shall submit any Change Proposal seeking such adjustments no later than 30 days after the date fixed for resumption of Work. No equitable adjustment is due if Contractor does not submit the Change Proposal within 30 days.

13.1.3 Contractor is not entitled to an equitable adjustment if the suspension is due to Contractor's fault or negligence, if the suspension is necessary for Contractor's Contract compliance, or if Contractor's performance would have been suspended, delayed, or interrupted by any other cause, including the fault or negligence of Contractor.

13.1.4 If the Department suspends Work, Contractor is responsible for preventing damage to or loss of any of the Work already performed and of all Material and Equipment whether stored at Contractor's facility or approved remote storage sites.

13.2 Termination for Cause

13.2.1 The Department may terminate the Contract for cause if:

- (a) Contractor's repeated failure to perform the Work in accordance with the Contract, including failure to supply sufficient skilled workers or suitable Material or Equipment or failure to adhere to the Project Schedule;
- (b) Contractor's insolvency, except that if Contractor declares bankruptcy, the Department will terminate in accordance with applicable requirements of the bankruptcy code. Contractor's bankruptcy does not relieve its surety of any obligations to assume the Contract and complete the Work in a timely manner.
- (c) Contractor makes a general assignment for the benefit of its creditors;
- (d) A receiver is appointed to take over Contractor's affairs;
- (e) Contractor's failure to procure and maintain required bonds or insurance from sureties or insurers whom the Department deems responsible.
- (f) Contractor is a party to fraud, deceit, misrepresentation, or malfeasance in connection with the Contract;
- (g) Contractor disregards or fails to comply with Regulatory Requirements; or
- (h) Contractor fails to comply with or perform one or more contractual obligation without justification.

13.2.2 If grounds for termination exist, the Department will serve Contractor with written notice of default that identifies the basis for the Department's conclusion. If the Department believes Contractor possesses the means to cure the default without prejudice to the Department, its default notice will identify the necessary corrective action that Contractor must take and the date by which the Contractor must accomplish the corrective measure(s). If Contractor cures the default within the prescribed deadline, the Department will rescind the notice of default and refrain from terminating the Contract. Otherwise, it may:

- (a) Declare Contractor to be in default and give Contractor and its surety notice that the Contract is terminated; and
 - (b) Consistent with bond provisions set forth in Section 16, enforce its rights against Contractor's performance bond and surety.
- (c) 13.2.3 If the Department declares a default, it may take the prosecution of the Work out of the hands of Contractor. Contractor acknowledges that the Department may enter Contractor's facility, exclude Contractor from access to the Work, including the Vessel itself, take possession of and remove all Work, Material, Equipment, and Owner Furnished items for which the Department has paid or in which it has a legal interest, wherever they may be located, with or without judicial intervention.
- (a) If the Department concludes that judicial intervention is reasonably necessary to promptly enforce its rights, then the prevailing party in any related legal proceeding is entitled to recover actual reasonable costs and attorneys' fees.
 - (b) The Department may relocate all Work, Material, Equipment, and the Owner Furnished items to another facility designated by the Department to complete the Work. If it elects to have all or part of the Work completed at another location, Contractor will, upon the Department's request, assign to the Department all of its rights under subcontracts and orders for Work, Material, Equipment, services and supplies to be used in the performance of the Work.

13.2.4 Subject to the terms and operation of bond provisions set forth in Section 16, if the Department declares a default, Contractor and its surety are jointly and severally liable for delay damages as provided by Section 12.5 and for all costs and expenses incurred by the Department in securing and completing the Work, including costs incurred in connection with:

- (d) Action undertaken per Section 13.2.3;
- (e) Assessment of Contractor's previous Work and determination of future Work necessary for Contract completion, including associated consultant work;
- (f) Project re-solicitation; and
- (g) Performance and fulfillment of outstanding Contract requirements.

13.2.5 If the Department declares default, Contractor is not entitled to receive any further payment until the Work is completed and accepted by the Department. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages sustained by the Department, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor and/or its surety shall pay the difference to the Department.

When exercising any rights or remedies under this Section, the Department is not required to obtain the lowest price for the Work performed.

13.2.6 The Department's termination of Contractor's services does not affect any of the Department's rights or remedies against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by the Department will not release Contractor from liability.

13.2.7 The Contracting Officer shall make any determination regarding default and termination for cause on behalf of the Department. In making such determination, the Contracting Officer shall not abuse his/her discretion. In any legal review of the Contracting Officer's determination, the abuse of discretion standard will apply.

13.3 Termination for Convenience

13.3.1 When in the State's interest, the Department may terminate the Contract for convenience, in whole or in part, by furnishing Contractor with written notice of the same. Unless otherwise stated in the Department's notice, the termination is effective immediately.

13.3.2 Upon termination for convenience, Contractor shall:

- (a) Stop Work as specified in the Department's notice of convenience termination;
- (b) Place no further orders or subcontracts for Materials, Equipment, services, or facilities except as is necessary for completion of any portion of Work that the Department has not terminated;
- (c) Terminate all orders and subcontracts to the extent that they relate to performance of terminated Work;
- (d) As directed by the Department, either:
 - (1) Assign to the Department all right, title, and interest of the Contractor in any Subcontracts and Supply contracts, in which case the Department shall have the right to settle or to pay any termination settlement proposal arising out of those terminations; or
 - (2) Settle all outstanding liabilities and all claims arising out of such termination of Subcontracts and Supply contracts, the cost of which would be reimbursable, in whole, or in part, in accordance with the provisions of the Contract.
- (e) Submit to the Contracting Officer a list, certified as to quantity and quality, of all Material, Equipment, and other Project items in Contractor's possession or control at all tiers. In accordance with the Department's instructions, Contractor shall either:
 - (1) Transfer title and deliver the Material, Equipment, and other items to the Department. The Department will pay Contractor for the Material, Equipment, and items at the actual cost delivered to the Project or storage site, including transportation charges, to which cost the Department will add 15 percent; or
 - (2) Sell the Material, Equipment, and items, or, with the Department's written approval, purchase them for Contractor's own use. At the Department's sole discretion, proceeds of any sale, transfer, or disposition of Materials or Equipment may be:
 - (A) Applied to reduce any payments to be made by the Department to Contractor, or
 - (B) Credited or Disbursed in any other manner as the Department shall direct.

- (f) Transfer to the Department the completed or partially completed Work Product that Contractor and the Subcontractors and Suppliers at all tiers would have provided to the Department if it had not terminated the Contract for convenience;
- (g) Use Reasonable Efforts, or as the Department may direct, to protect and preserve Material, Equipment, Work Product, and the Work.
- (h) Complete performance of Work not terminated.

Contractor shall promptly proceed with performance of the obligations stated in Section 13.3.2 despite any delay in determining or adjusting the amount of any item or reimbursable cost.

13.3.3 Within 90 days after the effective date of the termination notice, Contractor shall submit to the Department its termination claim that addresses all cost elements for which Contractor seeks payment as a result of the termination. The Department has discretion to extend the submission deadline if Contractor makes a timely written request and reasonable grounds exist for an extension.

13.3.4 The following principles apply in determining monies payable to Contractor:

- (a) Without duplication of any amount otherwise paid, the claim may be for the total of:
 - (1) Direct Costs incurred in performing the terminated Work from the date of Contract award to the effective date of the termination, subject to the provisions of Section 13.3.4(b) regarding reimbursement of equipment costs and Section 13.3.4(c) regarding unallowable items.
 - (2) Payments approved by the Contracting Officer under Subsection 13.3.2(d)(2) to settle the termination claims of Subcontractors and Suppliers.
 - (3) Reasonably incurred costs for accounting, legal, clerical, and other costs reasonably necessary for negotiating settlement of Subcontractor and Supplier termination claims and for preparation of the settlement claim and negotiations, but excluding all costs and fees incurred in connection with any contract claim that may result from the inability of the Department and Contractor to reach a negotiated settlement concerning the termination for convenience.
 - (4) Reasonable profit on the costs included in Subsection 13.3.4(a)(1) based on Contractor's bid rate for profit or as determined under any other reasonable accounting method. However, if the Department concludes that Contractor would have sustained a loss on the entire Contract had it been completed, it will allow no profit and will reduce the claim settlement to reflect the indicated rate of loss under Subsection 13.3.4(d). The Department will not pay profit on costs identified in Subsections 13.3.4(a)(2) and 13.3.4(a)(3).
- (b) Contractor may seek reimbursement for construction equipment costs only in accordance with the following principles. Contractor is not entitled to reimbursement if it fails to present necessary supporting evidence:
 - (1) For Contractor-owned equipment usage that is necessary to effect orderly and efficient termination of the Work, the Department will pay Contractor based on its ownership and operating costs for each piece of equipment as determined from Contractor's accounting records. Under no circumstance is Contractor entitled to payment based on published rental rates.
 - (2) The Department will pay for idle or stand-by time for Contractor-owned equipment based on Contractor's internal ownership and depreciation costs. Idle or stand-by equipment time is limited to the actual period of time equipment is idle or on stand-by as a direct result of the termination, not to exceed 30 days. Operating expenses will not be included for payment of idle or stand-by equipment time.
 - (3) The Department will pay for rented equipment, based on reasonable, actual rental costs. The Department will consider equipment leased under "capital leases" as defined in the current version of Standard

No. 13, issued by the Financial Accounting Standards Board to be Contractor-owned equipment. The Department will deem equipment leased from a “related party” as defined in GP Section 13.2.6 to be Contractor-owned equipment, unless the lessor has an established record of leasing to unaffiliated lessees at competitive rates consistent with the rates Contractor has agreed to pay and no more than 40 percent of the lessor’s leasing business, measured in dollars, is with organizations affiliated with the lessor.

- (c) Contractor shall not recover any of the following items when the Department has terminated a contract for convenience:
- (1) Loss of anticipated profits or consequential or compensatory damages;
 - (2) Unabsorbed home office Indirect Costs related to ongoing business operations;
 - (3) Bidding and project investigative costs;
 - (4) Direct costs of repairing equipment to render it operable for use on the terminated work; or
 - (5) Any cost or expense not expressly identified in this Section.
- (d) If the Department concludes that Contractor would have sustained a loss on the entire Contract had it been completed, it will not pay Contractor more than the total of the amounts in subsections (1)-(2) immediately below, less all disposal credits and all unliquidated advance and progress payments previously made under the Contract:
- (1) The amount due for termination settlement costs under Subsection 13.3.4(a)(3);
 - (2) Contractor’s Direct Costs, as adjusted, for acceptable completed end items per Subsection 13.3.4(a)(1).

13.3.5 If the Contractor fails to submit a termination claim within the time allowed, or if parties cannot reach an agreement on the amount due, the Department may determine the amount due Contractor for the Department’s termination based on information available to the Department and issue a decision accordingly. The Contracting Officer’s decision is final and conclusive unless, within 14 days of receipt of the decision, Contractor delivers a written notice of appeal to the Commissioner in accordance with AS 36.30.625.

13.3.6 The Department’s convenience termination does not affect or extinguish any rights of the Department against Contractor or its Surety then-existing or that may thereafter accrue. The Department’s retention or payment of monies, if any, due under the terms of the Contract will not release the Contractor or its Surety from obligations or warranties existing by law or by Contract.

SECTION 14

Acceptance; Correction Period

14.1 Partial Use or Occupancy

14.1.1 During Contractor's prosecution of the Work, the Department may use or occupy any substantially completed part of the Work that the Department has specifically identified in the Contract or that the Department and Contractor agree constitutes a separately functioning and usable part of the Work that the Department can use for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

- (a) If the Department wishes to use or occupy part of the Work that it considers substantially complete, it may provide Contractor with a written request to allow such use or occupancy. If Contractor agrees that the referenced Work is substantially complete, the Parties will follow the same general procedures of Sections 14.4.1 - 14.4.3, as applicable to the circumstances.
- (b) If Contractor considers part of the Work substantially complete, it may request that the Department issue a certificate of Substantial Completion for that part of the Work. In its sole discretion, the Department may elect to pursue Contractor's request or deny it because it has no interest in exercising partial use or occupancy of the Work.
- (c) If the Department elects to pursue Contractor's request, or in pursuing its own request as noted in Section 14.1.1(a), the Parties will promptly inspect that part of the Work to determine its status of completion. If the Department does not consider that part of the Work to be substantially complete, it will notify Contractor in writing giving the reasons therefor. If the Department considers that part of the Work to be substantially complete, the provisions of Sections 14.4.4 - 14.4.6 will apply with respect to the division of responsibility in respect thereof and access thereto.

14.2 Sailaway Acceptance

14.2.1 The purpose of the sailaway acceptance process is to enable the Department to inspect the Vessel under functioning conditions, to assess whether the Contractor is at or near Substantial Completion, and to identify any remaining measures Contractor must complete or satisfy before operational acceptance can occur. Sailaway acceptance is a prerequisite to operational acceptance.

14.2.2 By providing written acknowledgement to Contractor that the Vessel is in a condition meriting sailaway acceptance, the Department agrees that it will accept Contractor's later tender of the Vessel for operational acceptance when presented at the Vessel's Delivery Port in Alaska, provided:

- (a) The Vessel remains in the substantially same condition in Material, Equipment, operation, and performance as found at the conclusion of the sailaway survey and trials; and
- (b) Contractor promptly addresses issues that the Department has identified during the sailaway inspection process,

14.2.3 The sailaway acceptance process comprises two principal components: a survey and Vessel trials. Representatives of the Department, Contractor, and Regulatory Bodies will attend the sailaway survey and trials.

- (a) Generally, the sailaway survey occurs while the Vessel is at Contractor's facility and precedes Vessel trials. However, in its discretion, the Department may elect to conduct the survey during or after trials. The survey enables the Department to determine whether Contractor has completed construction of the Vessel; that form, fit and function of installed Material and Equipment are satisfactory; and that the Vessel is clean and clear of rubbish, excess material, etc. In conjunction with the survey, Contractor shall inform the Department of the status of required compartment close-outs. Contractor shall perform any remaining closeouts before completion of the survey.
- (b) Sailaway acceptance trials, including dock trials and sea trials, occur both at Contractor's facility and in adjacent waters. The trials enable the Department to assess the Vessel and its equipment in operation and aid the Department in determining whether the Work meets Contract requirements. Contractor retains full responsibility for the Vessel both during and after sailaway acceptance trials, which includes responsibility for crewing and operating the Vessel, for procuring necessary insurance coverage as identified in the Supplementary Conditions, and for security, safety, and maintenance of the Vessel.

14.2.4 At least 60 days before the sailaway survey, Contractor shall develop survey check-off sheets and related documentation and submit them for the Department's approval. Contractor shall develop survey documentation under logical organizational categories, e.g., deck department, engineering department, etc., and subcategories, e.g., main propulsion, navigation system, etc., to facilitate representation during surveys by persons knowledgeable and experienced with the surveyed category/subcategory of Work and familiar with the requirements applicable to the category and subcategory. The Department will review Contractor's proposed survey documentation and respond to Contractor with its approval or its requirement for development/revision of the documentation

14.2.5 Contractor initiates the sailaway acceptance process by providing written notice to the Department certifying that it has completed all required Work to date, including cleanup, testing, and preparation of sailaway assessment procedures/documents, and requesting commencement of the acceptance process. Contractor must identify the individuals who will attend the survey and trials and serve as its representative. In its written response, the Department will identify its corresponding representatives. If the Department agrees that the Vessel is in a condition warranting sailaway survey and trials, the respective representatives will develop a schedule for all related tasks

14.2.6 Sailaway acceptance is contingent upon the Department's affirmative determination regarding the following:

- (a) Contractor has completed all shop and installation tests and inspections;
- (b) Sailaway acceptance survey and trials are concluded;
- (c) Excepting an allowance for a small quantity of minor deficiencies at the Owner's discretion, Contractor has completed all Work, obtained all requisite regulatory approvals, certifications, and letters of compliance, and provided the Vessel in a condition ready for service in full compliance with the Contract to the satisfaction of the Department; and
- (d) In accordance with the Technical Specifications: stability test has been completed, stability documents have been provided, and final vessel weight report has been prepared.

14.2.7 Upon completion of the sailaway acceptance survey and trials, the Department will issue a letter addressing its determination regarding sailaway acceptance of the Vessel.

- (a) If Work is complete and satisfactory, the Department will acknowledge that Contractor has satisfied the sailaway acceptance Milestone.
- (b) Alternatively, the Department will identify any incomplete or unsatisfactory Work that Contractor: (i) must correct or complete before the Department will signify sailaway acceptance of the Vessel and (ii) may defer for completion or correction after sailaway acceptance, but before operational acceptance of the Vessel. Regardless of foregoing, the Parties expressly acknowledge that Contractor is contractually obligated to deliver a complete Vessel that is free of all deficiencies, and that deferral of corrective Work is not a waiver by the Department of its entitlement to a complete Vessel that is free of deficiencies.

14.2.8 Contractor shall immediately take appropriate action to complete and correct all Work called out by the Department for responsive action and is responsible for any delay in the project associated with correcting deficiencies. The cost of such delay shall be at Contractor's expense.

14.2.9 Sailaway acceptance does not constitute acceptance of any defects that may develop or are identified after sailaway acceptance. Sailaway acceptance will not stop the count of Contract Time, nor will such acceptance be the basis for starting the count of time for the correction period addressed in Section 14.6.

14.3 Delivery

14.3.1 After Contractor's satisfactory performance of responsive action required under Section 14.2.7(b), if any, and the Department's sailaway acceptance, Contractor may notify the Department in writing that the entire Work is sufficiently complete to permit Contractor to undertake the delivery voyage from its facility to the Vessel's Delivery Port. It will provide the Department with: (i) the schedule and route of its intended delivery voyage and (ii) proof of insurance against any loss to or damage or injury caused to or by the Vessel during the delivery voyage that complies with the insurance requirements set forth in the Supplementary Conditions.

14.3.2 Contractor shall provide and arrange for all services needed to deliver the Vessel to its Delivery Port from the Contractor's facility. These services include required fuel, stores, crewing, pilotage, tugs, transit fees, longshoring, and oil-spill contingency fees.

14.4 Operational Acceptance

14.4.1 After arrival at the Vessel's Delivery Port, Contractor will tender the Vessel for the Department's operational acceptance. Contractor shall make its tender by written document delivered to the Contracting Officer.

14.4.2 After the Vessel's arrival, the Department, Contractor, and, if required, representatives from Regulatory Bodies, will inspect the Vessel.

14.4.3 Following inspection, if the Department concludes that the Vessel meets Contract requirements, it will execute and deliver to Contractor written acknowledgment of its operational acceptance, along with a punch list of items for Contractor to complete or correct, if any. If, on the other hand, it concludes that the Vessel fails to meet Contract requirements, it will notify Contractor in writing, provide the basis for its conclusion, and decline operational acceptance until Contractor remedies such matters.

14.4.4 After the Department receives Contractor's request to take operational acceptance (or when the Parties are considering partial use or occupancy under Section 14.1) the Department and Contractor will review the Builders Risk insurance policy with respect to the end of the Builders Risk coverage, and, if applicable, confirm

the transition to coverage of the Work under the Department's insurance coverage or self-insured program. Unless the Department and Contractor agree otherwise in writing, the Department will bear responsibility for security, operation, protection of the Work, property insurance, maintenance, fuel, upon the Department's operational acceptance (or acceptance of partial use or occupancy).

14.4.5 After the Department's operational acceptance, Contractor shall promptly begin work on the punch list of items, if any, to be completed or corrected before final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth in these General Conditions.

14.4.6 The Department shall have the right to exclude Contractor from the Vessel after operational acceptance and begin unrestricted use of the Vessel, subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

14.5 Contractor's Warranty of Title

14.5.1 Contractor warrants and guarantees that, simultaneous with the Department's operational acceptance, title to all Work, Material, and Equipment furnished under the Contract will pass to the Department free and clear of: (i) all liens and other title defects, and (ii) all patent, licensing, copyright, or royalty obligations.

14.5.2 Consistent with Section 5.6.4, Contractor shall provide the Department with all necessary assistance to document the vessel in the United States with a coastwise endorsement.

14.6 Correction Period

14.6.1 If, within 365 days, i.e., one year, after the date of the Department's operational acceptance (or such longer period of time as may be prescribed by the terms of the Contract), the Department finds any Work to be defective or finds the repair of any damages to the Work to be defective, then Contractor shall promptly, without cost to the Department and in accordance with the Department's written instructions:

- (a) Correct such defective Work;
- (b) If the Department has rejected the defective Work, remove it from the Vessel and replace it with Work that is not defective,
- (c) Correct the defective repairs to the Work and affected areas; and
- (d) Satisfactorily correct or repair or remove and replace any damage to the work of others resulting therefrom.

14.6.2 If Contractor does not promptly comply with the terms of the Department's written instructions, or in an emergency where delay would cause serious risk of loss or damage, the Department may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including all costs of repair or replacement of work of others).

14.6.3 In special circumstances where a particular item of Equipment is placed in continuous service before operational acceptance of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Technical Specifications. Where Contractor has corrected or removed and replaced defective

Work (and damage to other Work resulting therefrom) under this Section, the correction period hereunder with respect to such Work will be extended for an additional period of one year after Contractor has satisfactorily completed such correction or removal and replacement.

14.6.4 Before expiration of the correction period, and before final acceptance and payment on the Contract, the Department may conduct a final inspection to determine whether remaining deficiencies exist that require Contractor's correction. The Department will set the time, date, and place of the inspection, having due consideration for the Vessel's schedule and commitments. Representatives of the Department, Contractor and Regulatory Bodies will attend. Contractor is responsible for payment of all costs and fees billed by the Regulatory Bodies in connection therewith. If the inspection reveals Contractor has not completed punch list items or Work requires further correction, the Department will notify Contractor in writing and Contractor shall immediately remedy the matter.

14.6.5 When the correction period expires, all product warranties and guarantees obtained by Contractor on Contractor furnished Material and Equipment automatically transfer to the Department. If requested, Contractor will provide written confirmation of this transfer. However, the automatic transfer occurs even in the absence of such written confirmation.

14.6.6 The State retains its full legal right to pursue additional or alternative remedies against Contractor as a result of defective Work, even when the defect appears within one year of operational acceptance.

14.6.7 The provisions of this Section 14.6 shall not be construed as a substitute for, or a waiver of the provisions of any applicable statute of limitation or repose or other remedies afforded to the State by law or equity.

14.7 Final Acceptance

14.7.1 The Department will take final acceptance of the Vessel, and issue a confirming letter to Contractor, once the following have occurred:

- (a) The correction period identified in Section 14.6 has expired;
- (b) Contractor has satisfactorily fulfilled all obligations arising under Section 14.6; and
- (c) Contractor provides the Department with its application for final payment, which the Department has reviewed and approved;

14.7.2 Neither the Department's final acceptance nor final payment under Section 12.6 constitutes a waiver of its claims or rights against Contractor. The Department expressly reserves its claims and rights not otherwise expressly compromised and settled that arise from: (i) Contractor's defective Work detected after final acceptance and payment; (ii) Contractor's failure to comply with the Contract; and (iii) Contractor's continuing obligations under the Contract.

SECTION 15

Claims

15.1 Claim Notice; Supporting Proof; Conditions Precedent

15.1.1 If Contractor knows or has reason to know of any act or occurrence that might form the basis of a claim for adjustment of Contract Price or Contract Time, or for other relief, it shall immediately provide the Department with written notice of the potential claim, identifying the nature of the claim and the basis therefor.

15.1.2 If Contractor believes it is entitled to an adjustment of Contract Price or Contract Time, or any other relief, it shall immediately begin keeping complete, accurate, and specific daily records regarding facts, information, and data that are material to its potential claim, including actual costs and losses incurred. It shall provide the Department timely access to and copies of all such documents.

15.1.3 In computing and presenting a claim concerning adjustment of Contract Price, Contract Time, or any other matter, Contractor must establish actual damages or loss based on its internal costs. Contractor may not rely on shorthand damage calculation methods such as total cost, modified total cost, or jury verdict.

15.1.4 If Contractor and the Department cannot resolve the matter by negotiated agreement within 14 days of Contractor's timely written notice required by Section 15.1.1, then within 30 days of its submission of the written notice, Contractor shall provide the Department with additional written notice of its intent to claim, which accurately summarizes the intended claim.

15.1.5 If Contractor has fulfilled the conditions precedent set forth in Sections 15.1.1 and 15.1.4 and has not succeeded in resolving the matter, then no later than 90 days after the date Contractor became aware of the basis of its claim or should have known of the basis of the claim, whichever is earlier, it may file a written contract claim with the Contracting Officer. The claim shall conform to the requirements of Section 15.2.

15.2 Requirements of Filed Claim

15.2.1 When submitting its written claim to the Contracting Officer, Contractor shall:

- (a) Identify the item or items of Work that are the subject of the claim;
- (b) Identify the act, event or condition giving rise to the claim;
- (c) Identify the Contract provisions that apply to the claim and that provide Contractor's requested relief;
- (d) State the specific relief requested, including adjustment of Contract Time if applicable, and the manner in which the requested relief was calculated;
- (e) Provide supporting documents relevant to Contractor's claim; and
- (f) Include a statement signed by Contractor's authorized representative certifying that the claim is made in good faith, that the supporting cost and pricing data are accurate and complete to the best of Contractor's

knowledge and belief, and that the amount requested accurately reflects the Contract adjustment that Contractor believes is due.

15.3 Claim Validity; Additional Production

15.3.1 To be valid, a claim must demonstrate:

- (a) Contractor is entitled to an equitable adjustment of Contract Price, Contract Time, or other requested relief;
- (b) Contractor's alleged entitlement to adjustment or other requested relief arises as a result of the act, event or condition alleged in the claim; and
- (c) The Contract entitles Contractor to adjustment or relief for such act, event, or condition alleged in the claim.

15.3.2 The Contracting Officer may obtain additional information and documents from Contractor regarding the claim. Contractor shall furnish such information and documents to the Contracting Officer within 30 days of receipt of such a request.

15.3.3 If Contractor: (i) fails to produce timely, responsive information or documents in reply to the Contracting Officer's request and (ii) when afforded a reasonable opportunity by the Contracting Officer, does not demonstrate that it has made Reasonable Efforts to furnish the requested information or documents, then the Contracting Officer may regard Contractor's production failure as a waiver of its claim and dismiss the claim with prejudice.

15.4 Contracting Officer's Decision; Appeal

15.4.1 The Contracting Officer may dismiss a claim if s/he concludes that Contractor has not satisfied the conditions precedent identified in Section 15.1 and 15.4.

15.4.2 The Contracting Officer will issue a decision on Contractor's claim within 90 days of receipt, unless the Contracting Officer requests additional information from Contractor or extends the deadline as permitted by statute or regulation. The Contracting Officer's decision is final and conclusive unless, within 14 days of receipt of the decision, Contractor delivers a written notice of appeal to the Commissioner in accordance with AS 36.30.625. In such case, Contractor must contemporaneously serve the Contracting Officer with a copy of the notice.

15.4.3 If material facts are not in dispute and the matter is subject to disposition as a matter of law, the Commissioner may issue an appeal decision without convening a hearing.

15.4.4 If material facts are in dispute or a hearing is otherwise appropriate, the Commissioner may refer the matter to a private hearing officer or to the Office of Administrative Hearings (OAH) per AS 44.64.030(b) for hearing and a recommended or final decision.

15.5 Other Legal Provisions

15.5.1 Contractor is subject to criminal and civil penalties under AS 36.30.687 (including forfeiture of all claimed amounts) if it makes or uses a misrepresentation in support of a claim, or defrauds or attempts to defraud the Department at any stage of proceedings relating to a procurement or contract claim.

15.5.2 AS 36.30.620 – AS 36.30.690, as comprised on the effective date of the Contract, are incorporated by reference.

SECTION 16

Bonds

16.1 General Requirements: The provisions of Section 16.1 apply to both performance and payment bonds.

16.1.1 Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the amount specified in the Supplementary Conditions as security for the faithful performance and payment of all of Contractor's obligations under the Contract. The bonds shall remain in effect until one year after the date of operational acceptance or until completion of the correction period specified in Section 14.6, whichever is later.

16.1.2 Contractor shall provide all bonds that are in the form prescribed by the Contract and executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

16.1.3 Contractor shall obtain the required bonds from surety companies that are duly licensed and authorized to issue bonds in the state(s) where Vessel construction is located.

16.1.4 If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in the state(s) where any part of the Vessel construction is located, or the surety ceases to meet the Contract requirements, then Contractor shall promptly notify the Department and, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with Contract requirements.

16.1.5 If Contractor fails to obtain or maintain a required bond, the Department may, at its election, withhold payment to Contractor until Contractor cures the issue or exercise the Department's termination rights under Section 13.

16.1.6 The Department will copy the surety with its notice of any potential default by or liability of the Contractor. The Department will deliver notice and claims to the surety at the service address identified in the bond or as provided by Alaska law. Yet, surety's actual receipt of notice or claims, however accomplished, will be sufficient compliance as of the date received.

16.1.7 When Contractor has furnished a bond to comply with a statutory or other legal requirement that applies in the state where Contractor is performing the Work, any bond provision that conflicts with the statutory or legal requirement is deemed deleted and provisions conforming to the statutory or other legal requirement are deemed incorporated in the bond. When so furnished, the intent is that the bond shall be construed as a statutory bond and not as a common law bond.

16.1.8 The surety waives notice of any change, including changes of time, to the Contract or to related subcontracts, supply contracts, and other obligations.

16.2 Performance Bond: Obligation, Rights, & Procedure

16.2.1 Contractor and surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Department for the performance of the Contract. If Contractor performs the

Contract, the surety and Contractor shall have no obligation under the performance bond, except when applicable to participate in a conference as provided in this Section.

16.2.2 If there is no Department Default under the Contract, the surety's obligation under the performance bond shall arise after:

- (a) The Department first provides notice to Contractor and the surety that the Department is considering declaring a Contractor Default. Such notice shall indicate whether the Department is requesting a conference among the Department, Contractor, and surety to discuss Contractor's performance. If the Department does not request a conference, the surety may, within 5 business days after receipt of the Department's notice, request such a conference. If the surety timely requests a conference, the Department shall attend. Unless the Department agrees otherwise, any conference requested under this Section shall be held within 10 business days of the surety's receipt of the Department's notice. If the Department, Contractor, and the surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the Department's right, if any, subsequently to declare a Contractor Default;
- (b) The Department declares a Contractor Default, terminates the Contract and notifies the surety; and
- (c) The Department has agreed to pay the Balance of the Contract Price in accordance with the terms of the Contract to the surety or to a substitute contractor whom the surety has selected with the Department's concurrence to perform and complete the Contract.

16.2.3 Failure on the part of the Department to comply with the notice requirement in Section 16.2 2(a) will not constitute a failure to comply with a condition precedent to the surety's obligations, or release the surety from its obligations, except to the extent the surety demonstrates actual prejudice.

16.2.4 Within 21 days of the Department's completion of the requirements outlined in Section 16.2.2, the surety shall take one of the following actions at its own expense:

- (a) Arrange for Contractor, with the consent of the Department, to perform and complete the Contract;
- (b) Undertake to perform and complete the Contract itself, through its agents or independent contractors;
- (c) Obtain bids or negotiated proposals from qualified contractors acceptable to the Department for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the Department and a substitute contractor selected with the Department's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to the Department the amount of damages identified in Section 16.2.6 in excess of the Balance of the Contract Price incurred by the Department as a result of the Contractor Default; or
- (d) Waive its right to perform and complete, arrange for completion, or obtain a substitute contractor, and with reasonable promptness under the circumstances:
 - (1) Determine the amount for which it is liable to the Department and promptly pay the Department such amount; or
 - (2) Deny liability in whole or in part and notify the Department, citing the reasons for denial.

16.2.5 If the surety does not proceed as provided in Section 16.2.4 within the prescribed time, the surety will be in default on the performance bond 7 days after receipt of an additional written notice from the Department to the surety demanding that the surety perform its obligations under the bond, and the Department shall be entitled to

enforce any remedy available to the Department. If the surety proceeds as provided in Section 16.2.4(d) , and the Department refuses the payment or the surety has denied liability, in whole or in part, the Department is entitled to enforce any remedy available to the Department without the need for further notice.

16.2.6 If the surety elects to act under Section 16.2.4(a), (b), or (c), then the responsibilities of the surety to the Department shall not be greater than those of Contractor under the Contract, and the responsibilities of the Department to the surety shall not be greater than those of the Department under the Contract. Subject to the commitment by the Department to pay the Balance of the Contract Price, the surety is obligated, without duplication for:

- (a) The responsibilities of Contractor for correction of defective work and completion of the Contract;
- (b) Additional legal, design professional, and delay costs resulting from Contractor's default, and resulting from the actions or failure to act of the surety under Section 16.2.4; and
- (c) Liquidated delay damages and actual damages caused by delayed performance or non-performance of Contractor.

16.2.7 If the surety elects to secure performance under Section 16.2.4(c) or pays the Department under Section 16.2.4(d)(1), the surety's financial liability is limited to the amount of the performance bond.

16.2.8 The surety shall not be liable to the Department or others for obligations of Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on the performance bond to any person other than the Department or its heirs, executors, administrators, successors, and assigns.

16.2.9 All claims, actions, and suits arising in connection with the performance bond shall be brought in Alaska Superior Court, to the exclusion of all other courts, except that an administrative body entertaining a contract claim under the Alaska Procurement Code may exercise jurisdiction over a bond-related claim and the surety if the interests of the Department, Contractor, and justice are thereby served.

16.3 Payment Bond: Obligations, Rights, & Procedure

16.3.1 Contractor and surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Department to pay for labor, Material, and Equipment furnished for use in the performance of the Contract. If Contractor promptly makes payment of all sums due to claimants, and defends, indemnifies, and holds harmless the Department from and against all claims, actions, and liabilities regarding payment for labor, Materials, or Equipment furnished for use in the performance of the Contract, then the surety and Contractor shall have no obligation under the payment bond.

16.3.2 If there is no the Department Default under the Contract, the surety's obligation to the Department under the payment bond shall arise after the Department has (i) promptly notified Contractor and the surety of claims, demands, liens, or suits against the Department or the Department's property by any person seeking payment for labor, Material, or Equipment furnished for use in the performance of the Contract, and (ii) tendered defense of such claims, demands, liens, or suits to Contractor and the surety.

16.3.3 When the Department has satisfied the conditions in Section 16.3.2, the surety shall promptly and at the surety's expense defend, indemnify, and hold harmless the Department against a duly tendered claim, action, or liability.

16.3.4 The surety's obligations to a claimant under the bond shall arise after the following:

- (a) Claimant who does not have a direct contract with Contractor:
 - (1) Has furnished a written notice of non-payment to Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom claimant furnished or supplied Material or Equipment, or for whom it performed labor, within the time prescribed by law; and
 - (2) Has sent a claim to the surety.
- (b) Claimant who is employed by or has a direct contract with Contractor has sent a claim to the surety.
- (c) For purposes of Section 16.3.4, to be valid, a claim should include the following:
 - (1) Name of claimant;
 - (2) Name of the person for whom the labor was done, or Material or Equipment furnished;
 - (3) Copy of the agreement or purchase order under which claimant furnished labor, Material, or Equipment for use in the performance of the Contract;
 - (4) Brief description of the labor, Material, or Equipment furnished;
 - (5) Date on which claimant last performed labor or last furnished Material or Equipment for use in the performance of the Contract;
 - (6) Total amount earned by claimant for labor, Material, or Equipment furnished as of the date of the claim;
 - (7) Total amount of previous payments received by claimant; and
 - (8) Total amount due and unpaid to claimant for labor, Material, or Equipment furnished as of the date of the claim.

16.3.5 If the Department gives a notice of non-payment required by Section 16.3.4(a) to Contractor, that notice is sufficient to satisfy a claimant's obligation to furnish a written notice of non-payment to Contractor.

16.3.6 When a claimant has satisfied the conditions of Section 16.3.4(a) or (b), whichever is applicable, the surety shall promptly take the following actions at the surety's expense:

- (a) Send an answer to claimant, with a copy to the Department, within 30 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
- (b) Pay or arrange for payment of any undisputed amounts.

The surety's failure to discharge its obligations under Section 16.3.6(a) or (b) shall not be deemed to constitute a waiver of defenses the surety or Contractor may have or acquire as to a claim, except as to undisputed amounts. If, however, the surety fails to discharge its obligations under Section 16.3.6(a) or (b), the surety shall indemnify claimant for the reasonable attorney's fees that claimant incurs thereafter to recover any sums found to be due and owing to claimant.

16.3.7 The surety's total obligation shall not exceed the amount of the payment bond, plus the amount of reasonable attorney's fees provided under Section 16.3.6, and the amount of the bond shall be credited for any payments made in good faith by the surety.

16.3.8 Upon request by any person appearing to be a potential beneficiary of a bond, Contractor shall promptly provide that person with a copy of the bond. Additionally, the Department may provide a copy of bond(s) to any person who claims to be a potential beneficiary.

16.3.9 Contractor shall use monies owed by the Department to Contractor under the Contract to perform the Work and satisfy claims, if any, under the performance bond. By Contractor furnishing and the Department accepting the payment bond, they agree that monies that Contractor earns in performing the Contract are dedicated to satisfying Contractor's and surety's obligations under the payment bond, subject to the Department's superior right to have the monies used for completion of the Work.

16.3.10 The surety is not liable to the Department, claimants, or others for Contractor's obligations that are unrelated to the Contract. The Department is not liable for the payment of any costs or expenses of any claimant under the payment bond, and shall have no obligation under the bond to make payments to or give notice on behalf of claimants, or otherwise have any obligations to claimants under the bond.

16.4 Section Definitions

16.4.1 As used in this Section, these terms have the following meanings:

Balance of the Contract Price: The total amount payable by the Department to Contractor under the Contract after all proper adjustments have been made including allowance for Contractor for any amounts received or to be received by the Department in settlement of insurance or other claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.

Contractor Default: Failure of Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Contract.

Department Default: Failure of the Department, which has not been remedied or waived, to pay Contractor as required under the Contract or to perform or otherwise to comply with a material term of the Contract.

SECTION 17

Insurance; Indemnification

17.1 General Requirements

The provisions of Section apply to all insurance coverages that Contractor must procure under the Contract.

17.1.1 Contractor shall obtain and maintain insurance as required in this Section and in the Supplementary Conditions.

17.1.2 Contractor shall purchase and maintain all insurance required by the Contract from insurance companies that are duly licensed and authorized to issue insurance policies for the required limits and coverages in the state(s) where the Work is principally located. Unless otherwise specified in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VIII or better.

17.1.3 All insurance policies, including insuring forms and underwriting security, that Contractor intends to furnish to satisfy the requirements of this Contract are subject to the Department's prior review and approval.

17.1.4 Contractor shall deliver to the Department, with copies to each named insured and additional insured (as identified in this Section, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. The certificate must include the following language:

This statement certifies that the policies described herein comply with all aspects of the insurance requirements of [Project Name and Number]. The insurance carrier agrees that it shall notify the State of Alaska, Department of Transportation & Public Facilities, in writing, at least 30 days before cancellation of any coverage or reduction in any limits of liability.

Upon request by the Department or any other named insured, Contractor shall also furnish other evidence of such required insurance, including copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may redact any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

17.1.5 The Department's failure, if any, to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or to identify a deficiency in Contractor's compliance does not constitute a waiver of Contractor's obligation to obtain and maintain such insurance.

17.1.6 If Contractor does not purchase or maintain all the insurance required by the Contract, it shall notify the Department in writing of: (i) a failure to purchase before the start of the Work and (ii) a pending failure to maintain prior to any change in the required coverage.

17.1.7 If Contractor fails to obtain or maintain required insurance, or if it fails to provide substitute insurance if an insurance carrier becomes insolvent, is placed in receivership, declares bankruptcy, or cancels a policy, then the Department may, at its election, withhold payment to Contractor until Contractor cures the issue or exercise the Department's termination rights under Section 13.

17.1.8 Without prejudice to any other right or remedy, if Contractor has failed to obtain required insurance, the Department may elect to obtain equivalent insurance to protect its interests at the expense of Contractor and apply a set-off to any monies owed Contractor.

17.1.9 The Department does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.

17.1.10 The insurance and insurance limits required herein are not a limitation on Contractor's liability to the Department and other individuals and entities in the Contract.

17.2 Contractor's Insurance

Contractor shall procure and maintain all insurance coverages as specified in the Supplementary Conditions.

17.3 Builders Risk Insurance

The Department will procure and maintain Builders Risk insurance as specified in the Supplementary Conditions.

17.4 Indemnification

Contractor shall defend, indemnify, and hold harmless the Department, its employees, and agents from and against all claims, actions, and liabilities for injuries or damages sustained by any person or property arising directly or indirectly from the construction or the performance in the course of this Contract by Contractor, its consultants, Subcontractors, or Suppliers, including any of their agents or employees. However, this provision has no effect if the sole proximate cause of the injury or damage is the Department's negligence.

SECTION 18

Miscellaneous

18.1 Giving Notice

Whenever any provision of the Contract requires written notice, it will be deemed validly given if delivered in person or sent by registered or certified mail, postage prepaid, to:

- The Contracting Officer (for the Department) and
- Contractor's signatory on the Construction Services Contract Form (for Contractor).

18.2 Computation of Time

When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day that is a legal holiday under Alaska law, such day will be omitted from the computation.

18.3 Cumulative Remedies

The duties and obligations imposed by the Contract and the rights and remedies available to the Parties thereunder are in addition to any legal rights and remedies otherwise available to them.

18.4 No Waiver

Except as provided in Section 15.3.3, no waiver of satisfaction of a condition or nonperformance of an obligation under the Contract will be effective unless it is in writing and signed by the party granting the waiver and no such waiver will constitute a waiver of satisfaction of any other condition or nonperformance of any other obligation.

18.5 Survival of Obligations

All representations and indemnification obligations made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

18.6 Controlling Law; Forum

18.6.1 The Contract and the rights and obligations inhering therein are governed by Alaska law.

18.6.2 If Contractor has a claim arising in connection with the Contract that it cannot resolve with the Department by mutual agreement, it shall pursue the claim, if at all, in accordance with Section 15 and the provisions of the Alaska Procurement Code, AS 36.30.005 *et seq.*

18.6.3 In the event Section 15 and Section 18.6.2 do not otherwise compel Contractor to pursue its claim in an administrative forum, it shall pursue its claim, its appeal, and any associated litigation in the appropriate court for the State of Alaska, and not elsewhere.

18.7 Captions

The captions and headings in the Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

18.8 Integrated Contract

18.8.1 The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.

18.8.2 The Contract is an integrated document and contains the complete agreement and understanding of the Parties. There are no unwritten agreements or understandings between the Parties. Changes ordered or agreed upon, Directives given, or equitable adjustments issued under the Contract, and all other matters affecting the Contract, must be in writing to be binding and effective.

18.8.3 No oral statement of any person shall, in any manner or degree, modify or otherwise affect, change, or amend the terms of the Contract.

18.9 Legal Authority

Contractor warrants that it possesses the legal authority to enter the Contract with the Department and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute the Agreement and to bind Contractor to its terms. The person(s) executing the Contract on behalf of the Contractor warrant(s) that such person(s) have full authorization to execute the Contract.

18.10 Assignments and Subcontracts

Contractor's rights and obligations under the Contract are personal and may not be transferred, assigned, or subcontracted without the prior written consent of the Department. Any attempt at assignment, transfer, subcontracting without such consent is void.

18.11 Ownership & Reuse of Documents

18.11.1 The Department's payment to Contractor for Construction Services compensates Contractor for all Work Product that it and its Subcontractors and Suppliers at all tiers generate through Contract performance. As such, the Work Product becomes property of the Department, except items that have pre-existing copyrights. The Department's ownership rights include the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the Work Product. Contractor shall provide digital and native files of all Work Product, and "hard copies" if requested. Contractor may, at its own expense, keep copies of all its Work Product for administrative recordkeeping purposes. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of Contractor's obligations under the Contract without the prior written consent of the Department.

18.11.2 The provisions of this Section 18.11 survive final payment or termination of the Contract.

18.12 Binding Effect

All provisions of the Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

18.13 Counterparts

The Contract may be executed in multiple identical original counterparts, all of which shall constitute one agreement.