

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
MARITIME ADMINISTRATION

COOPERATIVE AGREEMENT

PROJECT NUMBER: **DTMA1H05004**

TITLE: Education and Training for Port and Maritime Security

EFFECTIVE DATE: September 1, 2005

MAXIMUM FEDERAL OBLIGATION: \$225,750.00

CURRENT FEDERAL OBLIGATION: \$225,750.00

OBLIGATION DATE:

FUNDING DATA: S 750 1 05 ST 140000 GAL188 2522

RECIPIENT NAME & ADDRESS: The Research Foundation of State University of New York  
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Albany, New York 12207

PRINCIPAL INVESTIGATOR: Dr. Joseph Puglisi  
Chief Information Officer  
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AGENCY NAME & ADDRESS: DOT/Maritime Administration  
Office of Acquisition, MAR-380  
400 Seventh Street, SW., Room 7310  
Washington, DC 20590

**CONTENTS**

- ARTICLE 1 - PARTIES
- ARTICLE 2 - AUTHORITY
- ARTICLE 3 - SCOPE OF THE AGREEMENT
- ARTICLE 4 - PERIOD OF PERFORMMANCE
- ARTICLE 5 - CONSIDERATION AND METHOD OF PAYMENT
- ARTICLE 6 - STANDARDS OF WORK
- ARTICLE 7 - INDEMNITY
- ARTICLE 8 - AGREEMENT OFFICER'S TECHNICAL REPRESENTATIVE
- ARTICLE 9 - ADDRESS OF CORRESPONDENCE
- ARTICLE 10- RECIPIENT'S KEY PERSONNEL
- ARTICLE 11- SUSPENSIONS OR TERMINATION
- ARTICLE 12- CHANGES
- ARTICLE 13- DISPUTES
- ARTICLE 14- ORDER OF PRECEDENCE
- ARTICLE 15- INVOICE REQUIREMENTS
- ARTICLE 16- PERFORMANCE REQUIREMENTS
- ARTICLE 17- RIGHTS IN DATA
- ARTICLE 18- DEFINITIONS
- ARTICLE 19- INSPECTIONS
- ARTICLE 20- RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS
- ARTICLE 21- OFFICIALS NOT TO BENEFIT
- ARTICLE 22- COVENANTS AGAINST CONTINGENT FEES
- ARTICLE 23- PERMITS, LICENSES AND RESPONSIBILITIES
- ARTICLE 24- PAYMENT OF INTEREST ON RECIPIENT'S CLAIMS
- ARTICLE 25- TRAVEL
- ARTICLE 26- EQUAL OPPORTUNITY
- ARTICLE 27- DRUG-FREE WORKPLACE
- ARTICLE 28- AVAILABILITY OF FUNDS
- ARTICLE 29- PROCUREMENT STANDARDS
- ARTICLE 30- ADMINISTRATION OF COOPERATIVE AGREEMENT
- ARTICLE 31 - LIMITATIONS ON PAYMENTS TO INFLUENCE CERTAIN  
FEDERAL TRANSACTIONS
- ARTICLE 32 - ACKNOWLEDGMENT AND EXECUTION

ATTACHMENT A - OMB CIRCULAR A-110

ATTACHMENT B - CERTIFICATION REGARDING A DRUG FREE WORKPLACE

ATTACHMENT C - SF-424

ATTACHMENT D - DISCLOSURE OF LOBBYING ACTIVITIES SF-LLL

**ARTICLE 1 - PARTIES**

This **COOPERATIVE AGREEMENT** (Agreement) is entered into by and between the United States of America, represented by the Maritime Administration (MARAD), and the Six State Maritime Academies Port and Maritime Security Working Group (PMSWG). The PMSWG is currently represented by the following academies which are collectively referred to as the Recipient:

1. California Maritime Academy
2. Great Lakes Maritime Academy
3. Maine Maritime Academy
4. Massachusetts Maritime Academy
5. State University of New York (SUNY) Maritime College
6. Texas Maritime Academy

**ARTICLE 2 - AUTHORITY**

The Maritime Administration (MARAD), under Section 1304 (46 App. U.S.C. 1295c (2003)), shall cooperate with and assist any State maritime academy in providing instruction to individuals to prepare them for service in the merchant marine of the United States, under this authority MARAD will support the PMSWG to strengthen port and maritime security curriculum.

**ARTICLE 3 - SCOPE OF THE AGREEMENT****A. The Challenge**

The port and maritime security environment is exceedingly dynamic with on-going changes in threats, technology, organizations, language, economics, and ideas. Curriculum development, proof testing teaching with students, re-design of teaching materials, and incorporation of these best practices into existing educational & training program must also be dynamic. Otherwise, first generation standards will become rigid, and we will be preparing today's and tomorrow's professionals for yesterday's maritime security challenges. The proposal by the consortium formed among the six state maritime academies in the United States will address education and training challenges associated with port and maritime security.

After 9/11/01, the U.S. Congress passed the Maritime Transportation Security Act (P.L. 107-295), the International Maritime Organization produced model courses for port and maritime security, and the Maritime Administration established its MTSA Section 109 voluntary course approval system. Thus, first generation port and maritime security education and training classes have been introduced into the field both in the United States and abroad, in parallel, the Department of Homeland Security's Transportation Security Administration (TSA), under Public Law 107-206, has initiated a multi-year program to conduct 40 table top training exercises due to be completed in October 2007. These activities make important improvements, but they are

incomplete if one looks at the homeland security environment from the perspective of the next decade.

The challenge for the country is to create a cost effective mechanism to update, validate, and introduce into classrooms and training ships 2<sup>nd</sup>, 3<sup>rd</sup> and 9<sup>th</sup> generation integrated curriculum in the port and maritime security field.

#### **B. Program Objectives**

To update, validate, and introduce into classrooms 9<sup>th</sup> generation integrated curriculum in the port and maritime security field.

#### **C. Institutionalization**

A consortium has been established between six State Maritime Academies (SMA) in the United States to form the Port and Maritime Security Working Group (PMSWG) the first priority for the consortium will be to develop and implement on each of the six campuses an integrated national program to strengthen curriculum for port and maritime security. The results will be shared with MARAD and the maritime community through a dedicated website. Partnerships with other relevant maritime educational institutions will be established, as appropriate, after the PMSWG is up and running. Thus, the work of the PMSWG will contribute to strengthened national homeland and maritime security preparedness.

#### **D. Responsibilities**

One state academy will be selected by a majority of the voting members of the PMSWG to serve as Secretarial for the PMSWG and will be entitled to receive an administrative fee of 15 percent of the total PMSWG budget to cover costs associated with providing administrative services to the collective PMSWG. The Secretariat will receive funds from MARAD on a quarterly basis after it has submitted an invoice for progress payments as outlined in the July 8, 2005 Final Proposal presented to MARAD by the PMSWG. The Secretariat will distribute funds on a quarterly basis to each academy for fees and expenses associated with work completed by its participating members of the PMSWG as recommended by the Coordinator. A Coordinator of the PMSWG will be selected by a majority of the voting members of the PMSWG. He or she need not be associated with the state academy elected to serve as the Secretariat of the PMSWG. MARAD will nominate one individual to serve as liaison with the PMSWG. He or she will be free to participate in all PMSWG activities at MARAD's expense.

#### **E. Structure and Function**

Voting members of the PMSWG will include one member from each of the following six state maritime academies: California Maritime Academy, Great Lakes Maritime Academy, Maine Maritime Academy, Massachusetts Maritime Academy, State University of New York (SUNY) Maritime College, and the Texas Maritime Academy. Non-voting participating members of the PMSWG shall include additional faculty, staff and students from each of the six state

maritime academies working to improve maritime security curriculum.

#### **F. Process**

The PMSWG will meet monthly and produce a net assessment memo. The PMSWG will work on a quarterly basis to complete each of the ten deliverable tasks described in its final proposal to MARAD. The PMSWG will hold a virtual conference after six months of operation of assess progress and make mid-course corrections.

#### **G. Records**

All final deliverables produced by the PMSWG will be posted on its dedicated web site. All administrative records will be maintained by the PMSWG secretariat and will be accessible to MARAD.

#### **H. Scope**

The PMSWG will produce ten deliverables that will be integrated into the curriculum at each of the six colleges.

**Deliverable One:** An initial report will be produced on all courses taught, faculty involved, and curriculum used in port and maritime security in each of the six state academies, for cadets, graduate students and professionals taking continuing education. This report will represent a base line snap shot of the state of port and maritime curriculum being used to train the vast majority of mariners in the United States in the 2005-2006 academic years. It will be repeated at the end this academic year to document improvements made in curriculum for port and maritime security.

**Deliverable Two:** A collaborative working paper will be produced on the current status of regulations and organizations relating to port and maritime security education. This working paper will be updated on a semi-annual basis to assure that PMSWG participants, cadets, and students at each of the schools are aware of the most current relevant information that shape the port and maritime security education environment.

**Deliverable Three:** A Master glossary of terms and abbreviations relevant to port, maritime, and homeland security education will be produced and updated on a collective basis. While FEMA and other organizations, such as NYC Office of Emergency Management, have produced glossaries that cover many elements of the homeland security field, to our knowledge none has been produced that captures both the maritime and homeland security worlds.

**Deliverable Four:** One page net assessment memos will be produced for each monthly video and voice conference calls among participating faculty at each of the six academies. These Conferences will be devoted to three tasks. The first will be to discuss state of the art research in the port and maritime security field. The second will be to share information and coordinate curriculum development among the six schools. The

third will be to discuss ways to incorporate improve maritime security with seem-less, just in-time transportation.

**Deliverable Five:** Annual characterization of threat relevant to domestic port and maritime security in the U.S. It's the assumption of the PMSWG that the maritime threat environment will change. We believe it is essential that faculty and students be able to monitor the changing threat environment in a time efficient manner. The PMSWG will form a threat working group to keep the whole group updated and will develop materials that can be introduced into the classroom.

**Deliverable Six:** Semi-annual assessments of next generation technology for port and maritime security with an emphasis on how this technology should be incorporated into the classroom or demonstrated on annual training cruises. The goal of this deliverable will be to facilitate the implementation of new technology into port and maritime security operations by new cadets as they enter the field. The PMSWG wan employers throughout the industry to know that new graduates are familiar with the contributions technology can offer in the security area.

**Deliverable Seven:** Semi-annual assessments of lessons learned from real world events and from port and maritime security exercises conducted either with individual USCG Area Maritime Security Committees (AMSC) or conducted by TSA's multi-year table-top exercise program. The emphasis will be how lessons should be incorporated into teaching curriculum.

**Deliverable Eight:** Semi-annual reports based on regular meetings at each college with private sector entities to gage their assessment of the utility of port and maritime security training. We believe it important for industry to be able to make a systematic contribution to improvement of port and maritime education.

**Deliverable Nine:** An annual gap analysis will be produced by the PMSWG and incorporated into curriculum so students will develop an ability to think critically about the ever-present gaps between existing operational capabilities, realistic threat potential, and the need to ensure cargo moves effectively.

**Deliverable Ten:** An annual report based on graduating student's assessment of the curriculum related to port and maritime security based on a synthesis of individual reports to be completed by each campus.

**Information Sharing:** The PMSWG will establish a dedicated web site to post its materials. At a minimum they will link this site to each of the home pages of the six state academies and to the Garret A. Morgan site on the home page of the U.S. Department of Transportation.

**Accountability:** After six months of PMSWG operation, the consortium will hold a virtual conference to critically evaluate whether the ten building blocks cited above are the right ones to strengthen port and maritime security curriculum. The consortium

will invite MARAD officials and a few outside observers to participate in this meeting to give a perspective outside of the PMSWG. This meeting will discuss a draft report on web site hits, a summary of comments and results of a survey of users.

**Measures:** Each of the ten building blocks listed above will be evaluated using the following three indicators: a) degree of faculty and staff participation at each college; b) the degree to which each building block is incorporated into existing curriculum; and c) the degree to which integration of each building block improves the overall curriculum.

#### **ARTICLE 4 - PERIOD OF PERFORMANCE**

The period of performance shall commence as of September 1, 2005 and shall remain in full force and effect for twelve (12) consecutive months in accordance with its provisions, unless sooner terminated as provided for herein or extended by mutual agreement.

#### **ARTICLE 5 - CONSIDERATION AND METHOD OF PAYMENT**

- (a) The Maritime Administration will make progress payments on the ten deliverables. The following table outlines how the Progress Payment Schedule is associated with each off the ten deliverables described above. The PMSWG will submit an invoice to MARAD on or before the following dates:

Date	Deliverables
11/30/05	Selection of PMSWG Secretariat and Coordinator as specified in the PMSWG Charter
	Catalog of courses taught (Deliverable One)
	Working paper on regulations and organizations (Deliverable Two)
	First set of three monthly net assessment memos (Deliverable Four)
2/28/06	Second set of three monthly of net assessment memos (Deliverable Four)
	Draft master glossary (Deliverable Three)
	First assessment of next generation technology (Deliverable Six)
	Fast assessment of lessons learned (Deliverable Seven)
	First private sector assessment of port and maritime security training (Deliverable Eight)
	Six month virtual conference of the PMSWG
5/31/06	Third set of three monthly of net assessment memos (Deliverable Four)
	Final master glossary (Deliverable Three)
	Draft threat assessment materials (Deliverable Five)
	Draft student assessment (Deliverable Ten)

	Second working paper on regulations and organization (Deliverable Two)
8/31/06	Fourth threat assessment materials (Deliverable Four)
	Second assessment of next generation technology (Deliverable Six)
	Second assessment of lessons learned (Deliverable Six)
	Second private sector assessment of port and maritime security training (Deliverable Eight)
	Final gap analysis (Deliverable Nine)
	Final student assessment (Deliverable Ten)
	Second catalog of courses taught and innovations implemented (Deliverable One)

**Budget:** The following proposed budget lists how the PMSWG anticipate funds will be distributed among the six academies that form the PMSWG. Actual expenditures will be made according to performance in accordance with provisions of the PMSWG Charter.

School	PMSWG Activities	Point of Contact
California Maritime Academy	\$30,000	CAPT William Schmid
Great Lakes Maritime Academy	\$30,000	Michael Surgalski
Maine Maritime Academy	\$30,000	Dr. John Barlow
Massachusetts Maritime Academy	\$30,000	CAPT Brad Lima
SUNY (New York) Maritime College	\$30,000	Dr. Thomas W. Graham
Texas A & M Galveston	\$30,000	CAPT Karl Fanning
Central PMSWG Coordinator	\$20,000	TBD
Wed site registration, hosting and Maintenance	\$15,000	Dr. Thomas W. Graham
Administrative Fee 5%	\$10,750	TBD
<b>Total</b>	<b>\$225,750</b>	

The Coordinator of the PMSWG and the Secretariat will be selected in accordance with provisions in the PMSWG Charter by September 15, 2005.

#### **ARTICLE 6 - STANDARDS OF WORK**

The Recipient agrees that the performance of work and services pursuant to the requirements of this Agreement shall conform to high professional standards.

**ARTICLE 7 - INDEMNITY**

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

**ARTICLE 8 - AGREEMENT OFFICER'S TECHNICAL REPRESENTATIVE (AOTR)**

- (a) Mr. Christopher E. Krusa is hereby designated as the AOTR for this Agreement. The AOTR is located at the Maritime Administration, Department of Transportation, 400 7th Street, S.W., Room 7302, Washington, DC 20590. He may be reached at telephone number (202) 366-2648.
- (b) The AOTR is responsible for the technical aspects of the project and technical liaison with the Recipient.
- (c) The AOTR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the contract price, terms or conditions. Any Recipient request for changes shall be referred to the Agreements Officer through the AOTR. No such changes shall be made without the expressed prior authorization of the Agreements Officer. The AOTR may designate assistant AOTR(s) to act for him by naming such assistants in writing and transmitting a copy of such designation through the Agreements Officer to the Recipient.
- (d) The AOTR may be changed by the Government at any time, but notification of the change, including the name and address of the successor AOTR, will be promptly provided to the Recipient by the Agreements Officer in writing.

**ARTICLE 9 - ADDRESS OF CORRESPONDENCE**

All correspondence except as otherwise specified shall be directed to the Agreements/Contracting Officer at the following address:

Department of Transportation  
Maritime Administration  
Office of Acquisition, MAR-380  
400 Seventh Street, SW, Room 7310  
Washington, DC 20590

**ARTICLE 10 - RECIPIENT'S KEY PERSONNEL**

The Recipient's representatives are considered essential to the work being performed under this Agreement. The Recipient shall notify the AOTR in advance if there is intent to change or

replace any representative in advance thereof, and shall replace such departed individual with an equally qualified person.

#### **ARTICLE 11 - SUSPENSION OR TERMINATION**

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

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

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

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

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

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

obligations as possible. MARAD shall allow full credit to the Recipient for the Federal share of the noncancellable obligations, properly incurred by the Recipient prior to termination.

**ARTICLE 12 - CHANGES**

- (a) The Agreements Officer may make changes requested by the Recipient, within the general scope of this Agreement, in the services to be performed.
- (b) The Agreements Officer may at any time, by a written order and without notice to the sureties, make changes, within the general scope of this Agreement, in the services to be performed, including reporting requirements related thereto. No oral statement of any person, and no written statement of anyone other than the Agreements Officer, shall modify or otherwise affect the terms of this Agreement.
- (c) If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any services under this Agreement whether changed or not changed by any such order, an equitable adjustment shall be made in the estimated cost, fee, if any, and performance period, and this Agreement shall be modified in writing accordingly.
- (d) The Recipient shall, within thirty (30) days after receipt of a written change order, or within such additional period or periods as may be allowed by the Agreements Officer, submit a written statement with supporting details as to whether or not the change order has increased or decreased or will increase or decrease the cost of or the time required for the performance of any part of the work under this Agreement, whether changed or not changed by any such order. The Recipient shall promptly provide such additional, supporting details as may be requested by the Agreements Officer. In the event of failure of the Recipient to submit such written statement or details, the Agreements Officer may determine, on the basis of available information, the extent of applicable equitable adjustment, if any, but the reservation of such right or determination shall not excuse the Recipient from complying with the submission requirement.
- (e) Subject to the provisions of paragraph (d) above, the Recipient and the Agreements Officer may agree upon the equitable adjustment to be made in the price or performance period, or both, and this Agreement shall be modified in writing accordingly. In the event of their failure to agree upon the equitable adjustment, the Agreements Officer shall determine, on the basis of information available to him, the equitable adjustment, if any.
- (f) Failure to agree to any equitable adjustment shall be a dispute concerning a question of fact within the meaning of the Disputes Article contained herein. However, nothing in this Article shall excuse the Recipient from proceeding with this Agreement as changed.
- (g) Notwithstanding the provisions of paragraphs (b) and (c) above, the estimated cost of this Agreement shall not be increased or deemed to be increased except by specific

written modification of this Agreement indicating the new estimated cost.

#### **ARTICLE 13 - DISPUTES**

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

#### **ARTICLE 14 - ORDER OF PRECEDENCE**

This Agreement, in its entirety, is comprised of these Provisions and the attached OMB Circular A-110. In the event of inconsistency, these Provisions shall control.

#### **ARTICLE 15 - INVOICE REQUIREMENTS**

(a) MARAD will make payment by check under this agreement. Payment will be due on the 30th calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice. The date of the check issued in payment shall be considered to be the date payment is made.

(b) Invoices shall be submitted quarterly in an original and three copies to DOT/Maritime Administration, MAR-333, Room 7318, 400 Seventh Street, SW., Washington, DC 20590. To constitute a proper invoice, the following information and/or attached documentation must be included:

- (1) Name of the business concern and invoice date;
- (2) Agreement number;
- (3) Cumulative, cost-reimbursable invoice reflecting expenditures for each quarter; and
- (4) Other substantiating documentation or information as required by the Agreements Officer.

(c) The Recipient shall forward the following information in writing to DOT/Maritime Administration, MAR-333, Room 7325, 400 Seventh Street, SW., Washington, DC 20590, not later than seven (7) days after receipt of notice of award, with one copy to the Agreements Officer:

- (1) Cooperative Agreement Number; and
- (2) Full name, Title, phone number, company IRS Taxpayers ID number, and complete mailing address of responsible official (s), to whom check payments are to be sent and who may be contacted concerning invoices.

#### **ARTICLE 16 - PERFORMANCE REQUIREMENTS**

The performance of this Agreement shall be in accordance with the Provisions contained herein and OMB Circular A-110 (Attachment A).

#### **ARTICLE 17 - RIGHTS IN DATA**

The Government shall have non-exclusive rights to computer software and data first produced in the performance of this Agreement including manuals or instructional material. Rights as used in this clause, means the right to use, disclose, prepare derivative works, and perform publicly and display publicly, and to have or permit others to do so. "Computer software" as used in this clause, means computer programs including source code, computer data bases, and documentation thereof. The Recipient shall have the same rights to computer software and data produced under this Agreement, and in addition, may sell computer software and data to the public for the purpose of generating revenue for the SOCP.

#### **ARTICLE 18 - DEFINITIONS**

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

- a. The term "head of the agency" or "Secretary" as used herein means the Secretary, the Under Secretary, any Assistant Secretary, or the Maritime Administrator or Deputy Maritime Administrator of the Department of Transportation; and the term "duly authorized

representative" means any person or persons or board (other than the Agreements Officer) authorized to act for the head of the agency.

- b. The terms "Agreements Officer" and/or "Agreements Officer" means the person executing this Agreement on behalf of MARAD, and any other employee who is a properly warranted Federal Contracting Officer.
- c. Except as otherwise provided in this Agreement, the term "subcontracts" includes purchase orders.
- d. The term "MARAD" means the Maritime Administration.
- e. The term "subcontractor" means a contractor to the Recipient and all tiers of subcontractors there under.

#### **ARTICLE 19 - INSPECTIONS**

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

#### **ARTICLE 20 - RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS**

- a. Financial records, supporting documents, statistical records, and all other records pertinent to this Agreement including those of the Recipient and any subcontractors shall be retained for a period of three (3) years, following expiration of this Agreement:
  - 1. If any litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.
  - 2. When records are transferred to or maintained by the Federal sponsoring agency, the 3-year retention requirement is not applicable to the Recipient.
- b. The retention period starts from the date of the submission of the final expenditure report.
- c. MARAD shall request transfer of certain records to its custody from the Recipient when it determines the records have long-term retention value. However, in order to avoid duplicate record-keeping, a Federal sponsoring agency may make arrangements with the Recipient to retain any records that are continuously needed for joint use.

- d. The Head of the Federal sponsoring agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Recipient and its subcontractors to make audits, examinations, excerpts and transcripts.
- e. Unless otherwise required by law, MARAD shall not place restrictions on the Recipient that will limit public access to the records of the Recipient that are pertinent to this Agreement except when MARAD can demonstrate that such records must be kept confidential and would have excepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal sponsoring agency. FAR 52.204-2, Alternate 1, Security Requirements apply to Recipient if such classification of information is claimed by MARAD.

#### **ARTICLE 21 - OFFICIALS NOT TO BENEFIT**

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

#### **ARTICLE 22 - COVENANT AGAINST CONTINGENT FEES**

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

#### **ARTICLE 23 - PERMITS, LICENSES AND RESPONSIBILITIES**

The Recipient shall, without expense to the Government, be responsible for obtaining any necessary licenses and permits and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to performance of any work accomplished under this Agreement. The Recipient shall also be responsible for all damages to persons or property that occur, and shall take proper safety and health precautions to protect the work, the workers, the public and the property of others.

#### **ARTICLE 24 - PAYMENT OF INTEREST ON RECIPIENTS CLAIMS**

If an appeal is filed by the Recipient from a final decision under Article 15, above, denying a claim arising under this Agreement, interest on the amount of the claim finally determined by the Associate Administrator for Administration to be owed by MARAD shall be payable to the Recipient. Such interest shall be

at the rate determined pursuant to Public Law 95-563 and shall be completed from the date of the request for decision by the Associate Administrator for Administration.

**ARTICLE 25 - TRAVEL**

All travel in connection with this Agreement shall be performed in accordance with the prevailing Federal Travel Regulations. Travel will be reimbursed on an actual, allowable basis. Copies of travel receipts must be maintained by Recipient for purposes of audit.

**ARTICLE 26 - EQUAL OPPORTUNITY**

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

- (1) The Recipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (2) The Recipient shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.
- (3) The Recipient shall, in all solicitations or advertisement for employees placed by or on behalf of the Recipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (4) The Recipient shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (5) The Recipient shall permit access to its books, records, and accounts by the Government for the purposes of investigation to ascertain the Recipient's compliance with the applicable rules, regulations, and orders.
- (6) If the Government determines that the Recipient is not in compliance with this Article or any rule, regulation, or order of the Secretary of Labor, this Agreement may be canceled, terminated, or suspended in whole or in part and the Recipient may be declared ineligible for further Government assistance, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Recipient as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (7) The Recipient shall include the terms of this Article in every subcontract that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor.

**ARTICLE 27 - DRUG-FREE WORKPLACE**

The Certification regarding a Drug-Free Workplace is contained in Attachment B and is incorporated into this Agreement.

#### **ARTICLE 28 - AVAILABILITY OF FUNDS**

Funds are not presently available for performance under this Agreement beyond the initial program year. The Government's obligation for funding beyond the obligation for the initial program year is contingent upon the availability of appropriated funds from which payment for this purpose can be made. No legal liability on the part of the Government for any payment may arise for performance under this Agreement beyond the initial program year until funds are made available to the Agreements Officer for performance and until the Recipient receives notice of availability, to be confirmed in writing by the Agreements Officer.

#### **ARTICLE 29 - PROCUREMENT STANDARDS**

The Recipient, and the Recipient's subcontractors, shall comply with the standards listed in OMB Circular A-110, for all procurement actions pursuant to this agreement. The Government has the right to review records of the Recipient and the Recipient's subcontractor's for the purposes of determining compliance with the standards set forth in OMB Circular A-110.

If any of the following cases apply, the Recipient shall forward the proposed contract to the Agreements Officer for review and approval prior to award:

- (1) The proposed contract is to be awarded on a sole source basis or where only one bid or proposal is received in which the aggregate expenditure exceeds \$5,000. (All proposed contracts specifying "brand name" products shall be considered sole source procurements.)
- (2) All proposed contracts in which the aggregate expenditure exceeds \$100,000.
- (3) All proposed contracts if it has been determined that the Recipient does not comply with the standards listed in Attachment O of OMB Circular A-110.

#### **ARTICLE 30 - ADMINISTRATION OF COOPERATIVE AGREEMENT**

After award of this cooperative agreement the Contracting Officer shall be provided with copies of the following information for review and approval.

- (1) Detailed invoices submitted in accordance with Article 17.
- (2) Financial status report that are submitted quarterly.
- (3) Technical status reports (review only).

#### **ARTICLE 31 - LIMITATIONS ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

**a. Definitions**

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

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

The awarding of any Federal contract.

The making of any Federal grant.

The making of any Federal loan.

The entering into of any cooperative agreement.

The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

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

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (3) A special Government employee, as defined in Section 202, Title 18, United States Code.

- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2.

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

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

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

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

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

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

**b. Prohibitions**

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

grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

- (2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
- (3) The prohibitions of the Act do not apply under the following conditions:

**A. Agency and Legislative Liaison By Own Employees**

- (1) The prohibition on the use of appropriated funds, in subparagraph b. (1) of this clause, does not apply in the case of payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
- (2) For purposes of subdivision b. (3) A. of this clause, providing any information specifically requested by agency or Congress is permitted at any time.
- (3) The following agency and legislative liaison activities are permitted at any time where they are not related to specific solicitation for any covered Federal action:
  - (A) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.
  - (B) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- (4) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action
  - (A) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

- (B) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
  - (C) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.
- (4) Only those services expressly authorized by subdivision (b) (3) A. (1) of this clause are permitted under this clause.

**B. Professional and Technical Services**

- (1) The prohibition on the use of appropriated funds, in subparagraph b. (1) of this clause, does not apply in the case of--
- (A) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
  - (B) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (2) For purposes of subdivision b. (1) A. of this clause, professional and technical services shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered

directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her clients proposal, but generally advocate one proposal over another are not allowable under this action because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but is not directly involved in the preparation, submission or negotiation of a covered federal action.

- (3) Requirements imposed by or pursuant to law as a condition for receiving a covered federal award include those required by law or regulation and any other requirements in the actual award documents.
- (4) Only those services expressly authorized by subdivisions b. (3) B. (1) (A) and (B) of this clause are permitted under this clause.
- (5) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

#### **C. Disclosure**

- (1) The Contractor who requests or receives from an agency a federal contract shall file with the agency a disclosure form, OMB Standard Form DLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using non appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph b. (1) of this clause, if paid for with appropriated funds.
- (2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of

the information contained in any disclosure form previously filed by such person under subparagraph c.(1) of this clause. An event that materially affects the accuracy of the information reported includes--

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

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

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

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

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

D. **Agreement.** The Contractor agrees not to make any payment prohibited by this clause.

E. **Penalties -**

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

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

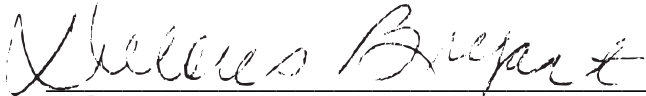
F. **Cost Allowability.** Nothing in this clause makes allowable or reasonable any costs which would

otherwise be unallowable or unreasonable.  
Conversely, costs made specifically unallowable by  
the requirements in this class will not be made  
allowable under any other provision.

**ARTICLE 32 - ACKNOWLEDGMENT AND EXECUTION**

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

MARITIME ADMINISTRATION  
DEPARTMENT OF TRANSPORTATION



Delores Bryant  
Agreements/Contracting Officer

Date: September 6, 2005

For THE RESEARCH FOUNDATION  
OF STATE UNIVERSITY OF NEW YORK:

\_\_\_\_\_  
Mr. Robert S. Mason  
Sr. Contract & Grant Specialist

Date: \_\_\_\_\_