

**GENERAL PROVISIONS**  
**for**  
**CMGC PRECONSTRUCTION SERVICES**



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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 for CMGC Construction Services
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

For purposes of the Contract, the terms identified in this Section are defined as follows:

*Amendment:* A formal written contract modification used during the Preconstruction Phase, 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.

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

*Bid Package:* A substantially complete set of Construction Documents from which a prospective Subcontractor or Supplier may submit a bid for services, Material, or Equipment.

*Biddability:* The clarity of procurement documents, the soundness of the Department's evaluation and selection criteria for acquisitions, and the ease of prospective bidders or proposers to understand the Department's requirements, thereby enabling the submission of a competitive bid or proposal that is responsive to the Department's requirements.

*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 used during the Construction Phase, 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.

*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 an Amendment.

*Constructability Review:* Review of industry capability to determine if the required level of tools, methods, techniques, and technology are available to permit a competent and qualified construction contractor to build the project feature in question to the level of quality required.

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

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

*Construction Documents:* Documents developed by the Design Consultant that contain drawings, standards, specifications, requirements, and information regarding Project design, Material, Equipment, systems, construction, performance, and/or workmanship. During the Preconstruction Phase, Construction Documents may undergo progressive, collaborative development by the Project Team.

*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. In the Department's Contract, its General Provisions for CMGC Preconstruction Services (GPs) address the principal terms and conditions concerning the Preconstruction Phase of the Project and its General Conditions CMGC Construction Services (GCs) address the principal terms and conditions of the Construction Phase of the Project.

*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 the Subject of the Project 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 the Subject of the Project or a portion thereof (including an Early Work Package). Construction Services include all procurement, 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 or through a combination of contracts covering portions of a Project.

*Contract (or Agreement):* The Preconstruction Services Contract Form, its incorporated documents, and subsequent Amendments, if any, that comprise the terms and conditions regarding Contractor's performance of Preconstruction Services for the Project.

*Contract Drawings:* Those Drawings developed by the Design Consultant during the Preconstruction Phase, with input from the Project Team, that contain certain design specifications and illustrate systems, aspects, or features of the Vessel, from which Contractor may not deviate during the Construction Phase 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 Price:* The compensation payable to Contractor for performance of the Work.

*Contract Time:* The time allowed under the Contract, including any extension authorized by Amendment, for Contractor's completion of all 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:* The person or entity providing Preconstruction Services to the Department concerning the Project.

*Contractor's Contingency:* A component of Cost of the Work that, when used, compensates the CMGC construction contractor for Direct Costs resulting 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 Model:* An open and transparent breakdown of the Project's scope of work into discrete components with corresponding costs assigned to each component. The Cost Model's purpose is to validate the Department's construction budget and to enable pricing of various alternatives during Functional Design in a manner that directly reflects how and when the alternatives may be built. The Cost Model identifies Contractor's Direct Costs, Indirect Costs, estimates, assumptions, methodology, and components used in developing and refining its Opinion of Probable Construction Cost and, ultimately, its Cost of the Work proposal. Contractor verifies resulting cost projections through the Open Book Accounting process.

*Cost of the Work:* Direct Costs that the CMGC construction contractor will necessarily incur in proper performance of the Work. Cost of the Work comprises only those items identified in Section 13.2.

*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.

*Department (or Owner):* The 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.

*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.

*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 Contractor for Construction Services performed during the Construction Phase or an Early Work Package. It represents compensation for Contractor's profit plus the portion of Indirect Costs allocated to the Project.

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

*Fixed Fee Percentage:* The numeric value that Contractor identifies in its price proposal in response to the Department's Request for Proposals, whereby Contractor proposes that the Department multiply that numeric value, or percentage, by the Cost of the Work to derive Contractor's Fixed Fee for performance of Construction Services.

*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 furnishes funds for the Project.

*General Conditions for CMGC Construction Services (or GCs):* The Department's general contract provisions that prescribe terms and conditions for performance of Construction Services during the Construction Phase and for Early Work Packages.

*Guaranteed Maximum Price (or GMP):* The not-to-exceed dollar amount for which Contractor agrees to accomplish all Work required by the Construction Services Contract and Construction Documents 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.

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

*Independent Cost Estimate:* A construction cost estimate for the Project that is prepared independently from any cost estimates of the Department, the Design Consultant, and Contractor.

*Independent Cost Estimator (or ICE):* The person or entity with whom the Department contracts to perform the Independent Cost Estimate and to advise the Department on cost-related issues.

*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,

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accounting department costs and personnel department costs.

*Material:* Item or substance incorporated into construction of the Subject of the Project.

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

*Milestone Meeting:* Principal interval along in the Project development continuum when the Project Team assembles to review and address Project objectives, which include:

- Ensuring a constructible and cost-effective design that is consistent with the design intent and design standards;
- Confirming that all Work has been included and described in sufficient detail for that stage of design to ensure complete pricing of Work;
- Discussing assumptions on means and methods, and construction staging or sequencing of Work that affects cost;
- Reconciling quantity and cost differences between the Parties' respective estimators;
- Identifying any errors, omissions, ambiguities, or other items that need to be corrected;
- Addressing other prescribed topics; and
- Fostering constructive discussion between the parties concerning Project-related issues.

*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.

*Open Book Method:* The cost accounting process by which Contractor discloses to the Department and the Independent Cost Estimator all relevant data and information upon which it relies in formulating its Opinion of Probable Construction Cost and, later, its Cost of the Work/GMP proposal.

*Opinion of Probable Construction Cost (or OPCC):* Contractor's estimate of the cost to construct the Subject of the Project. With the aid of its Cost Model, Contractor develops and refines its OPCC during the Preconstruction Phase. Ultimately, this iterative process results in Contractor's Cost of the Work proposal, which is a component of its GMP proposal.

*Owner's Estimate:* The Department's estimate used for comparison with and evaluation of each OPCC. The Department may elect to have the Independent Cost Estimate serve as the Owner's Estimate.

*Parties:* The Department and Contractor.

*Preconstruction Phase:* The period of the Project that precedes the Construction Phase, during which Contractor, the Department, the Design Consultant, and the Independent Cost Estimator collaborate and perform their respective preconstruction responsibilities.

*Preconstruction Services:* The information, research, advice, and related tasks that the construction manager/general contractor provides to the Department and its Design Consultant concerning the impacts of design on the physical construction of a Project, including scheduling work sequencing, cost engineering, constructability, cost estimating, risk identification, project innovations, and Early Work Packages. These varied services are addressed in greater detail throughout the Contract.

*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:* The CMGC construction contractor's design responsibility that starts once the Department has completed relevant Functional Design and has entered a Construction Services Contract with the contractor or issued an Early Work Package. 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 the CMGC construction contractor intends to implement the design concepts expressed in the Department's completed Functional Design, *e.g.*, implementation of the 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 the CMGC construction contractor, subcontractors, and suppliers.

*Production Documents:* Shop drawings, diagrams, computer imagery, and other data prepared during the Production Design process by the CMGC construction contractor (or its subcontractor of any tier, supplier, manufacturer, or distributor) to illustrate some portion of construction 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 prepares and the Department and Contractor 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.

*Project Team:* Representatives from the Design Consultant, Contractor, and Department, including the ICE, working in collaboration during the Preconstruction Phase on any given Project task. Respective members of the Project Team may vary depending upon the task at hand.

*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 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.

*Risk Management Plan:* The plan that includes Project risk identification, assessment, and completion of a Risk Register detailing risks, mitigation, and the assigned responsibility for each risk.

*Risk Register:* A listing of Project risks and opportunities, risk assessments, and an evaluation of mitigation and responsibility for those risks.

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

*Schedule of Bid Items:* Part of the Construction Documents that includes an itemized identification of the Work by division and section of the Specifications.

*Schedule of Values:* A detailed schedule prepared and updated by a contractor during the Construction Phase that apportions the construction contract sum and all Change Orders among all cost code divisions or portions of the Work and used as the basis for reviewing Contractor's Application for Payment

*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.

*Specifications:* Written statement of particulars, standards, requirements, and specifications for Material, Equipment, systems, and workmanship, as well as certain administrative requirements and procedural matters applicable to the Project, to which the contractor shall adhere in construction of the Project.

*State:* State of Alaska.

*Subcontracting Plan:* The plan developed by Contractor that outlines Contractor's expected approach to subcontracting in the Construction Phase of the Project, if awarded the construction contract.

*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.

*Subject of the Project:* The State asset, property, or facility to be constructed through performance of the Work.

*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, including a Production Document, image, Product Data, or a Sample. Generally, Submittals enable the Department to confirm that Contractor's proposed articles, systems, etc. comply with the Construction Documents.

*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.

*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 Provisions:* The Contract Document that amends or supplements these General Provisions.

*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.

*Work:* Depending on the context, the labor, services, procurement, and deliverables provided or to be provided by Contractor to fulfill its obligations during the Preconstruction or Construction Phase, as applicable.

*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:** Unless the context otherwise requires:

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

1.3.2 If a provision within these General Provisions refers to a Section number, then the referenced Section resides within these GPs unless otherwise stated.

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

1.3.4 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 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 items and services necessary for the 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.

2.2 Contractor represents to the Department that by executing the Contract, it has reviewed and considered Project information, including the Project goals, the Contract, the Construction Documents prepared to date, and the Department's budgetary and scheduling constraints. Based upon its review and assessment, Contractor represents to the Department that it can and will devote all resources, services, and effort necessary to properly fulfill the requirements of the Preconstruction Services Contract.

2.3 Contractor will take its direction from the Department in performance of Preconstruction Services. Contractor shall perform the Work as required by the Contract and as authorized by sequentially numbered Notices to Proceed (NTP). Contractor shall not perform services or incur billable expense except as authorized by a corresponding NTP.

2.4 In rendering contract performance, Contractor shall exercise its skill and judgment and fully cooperate with the Department and its Design Consultant in furthering the Department's Project interests and goals. Contractor shall furnish prompt and efficient business administration, project management, and superintendence, and shall use Reasonable Efforts to provide Preconstruction Services in a prompt, economical manner. Among other things, Contractor shall attend all required meetings and provide review, verification, comments, estimates, and recommendations concerning the planning, design, procurement, and construction of the Project.

2.5 Contractor acknowledges that the Work is in the developmental stage and not fully defined. If an ambiguity, duplication, overlap, or conflict of the responsibilities appears to exist between the Design Consultant and Contractor, the Department will decide the matter. Contractor shall abide by the decision of the Department provided it does not require the performance of Work beyond what is objectively reasonable.

2.6 Contractor shall use reasonable care in performing Preconstruction Services. The Department and the Design Consultant are entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of Contractor's information and services. However, Contractor does not warrant or guarantee estimates or schedules preceding a negotiated Guaranteed Maximum Price and execution of a contract for Construction Services.

2.7 Contractor is not responsible for furnishing architectural or professional engineering services during the Preconstruction Phase. Yet, if awarded a contract for Construction Services, Contractor is responsible for Production Design.

2.8 The Department's award of the Preconstruction Services Contract provides no assurance or basis for reliance that the Department will award Contractor a contract for Construction Services. Rather, an award of a contract for Construction Services to Contractor will depend, in part, upon the Parties' successful negotiation of a Guaranteed Maximum Price.

2.9 Regardless of the Department's award of the Preconstruction Services contract to Contractor, it reserves the right to pursue other project delivery methods not involving Contractor or to terminate the Project.



2.10 If the Department does not award a contract for Construction Services to Contractor and, instead, solicits competitive bids or proposals for construction of the Project, it may bar Contractor from making a bid or proposal on the grounds that its Work during the Preconstruction Phase has likely provided it with a competitive advantage.

2.11 The Parties acknowledge that this Project is subject to and contingent upon continued availability of federal and state funds.

## **SECTION 3**

### **Contractor Responsibilities**

Contractor shall provide proper and appropriate Preconstruction 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 Section 3 and elsewhere in the Contract.

#### **3.1 Administration**

3.1.1 Within 45 days of the initial Project Team meeting, Contractor shall submit a Construction Management Plan (CMP) to the Department. Thereafter, Contractor shall submit updated CMPs to the Department each month until the Department otherwise directs in writing. The CMP shall include the following:

- (a) Organizational chart of Contractor's Project team;
- (b) Communications protocol;
- (c) Project Milestone dates and initial Project Schedule;
- (d) Strategies for fast-tracking or phasing the construction;
- (e) A list of possible work segments amenable to construction under Early Work Packages, if any, along with supporting justification;
- (f) Anticipated sub-agreements to be awarded to Subcontractors and Suppliers in connection with Project construction;
- (g) Permitting/certification finalization and compliance strategy;
- (h) Safety and training programs;
- (i) Construction quality control;
- (j) Construction security plan; and
- (k) List of Contractor's deliverables and Submittals during the Preconstruction Phase.

Contractor shall update and add detail to its previous version of the CMP to keep it current throughout the Preconstruction Phase so that the CMP is ready for implementation at the start of the Construction Phase, if Contractor is awarded the construction contract. As applicable, the update/revisions shall account for such matters as:

- (l) Revisions in Construction Documents;
- (m) Contractor's examination of the results of any additional investigatory assessment, whether obtained by the Department, the Design Consultant or Contractor;
- (n) Unresolved permitting/certification issues;
- (o) Status of the procurement of long-lead time Material or Equipment;

(p) Funding issues identified by the Department; and

(q) Input from any public involvement process.

3.1.2 The experience and skill of key individuals that Contractor identified in its response to the RFP (collectively, “Key Personnel”) was a material factor in the Department’s determination to award the Contract to Contractor. Accordingly:

(a) The Department will include the identity of Key Personnel to the Supplementary Provisions.

(b) The Key Personnel shall be available to complete the Work on the Project at whatever level the Project requires. Contractor may not change Key Personnel without the Department’s written approval. Examples of the Department’s grounds for approval include death of a team member, change in employment status, organizational conflict of interest, or other such significant cause.

(c) To secure the Department’s approval, Contractor must submit a written request to the Department for consideration as soon as possible after the status-affecting event. The request must identify the nature of the desired change, the reason therefor, and an explanation of how the desired change will meet the required qualifications for the position/responsibility.

(d) Unless the Department otherwise directs in writing, all Key Personnel shall attend the initial Project Team meeting, which will promptly follow Contract award and the Department’s issuance of a Notice to Proceed.

(e) In advance of the initial Project Team meeting, the Department will provide Contractor with the current iteration of the Construction Documents for its review and general collaboration with the Department and Design Consultant.

### **3.2 Accounts/Records Management; Audit**

3.2.1 Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract. Contractor’s accounting and control systems shall meet Generally Accepted Accounting Principles issued by the Financial Accounting Standards Board. Among the Project-related records Contractor must properly compile and maintain are those relating to:

(a) Contract performance, including drawings, Work specifications, contracts, Subcontracts, Amendments, work orders, purchase orders, invoices, receipts, Directives, written interpretations, and clarifications;

(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; 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.

3.2.2 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 3.2.1.

3.2.3 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 or 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

3.2.4 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.

3.2.5 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.

3.2.6 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.

3.2.7 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.

3.2.8 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.

### **3.3 Design-Related Preconstruction Services**

After the Design Consultant completes 35% Functional Design, and at designated Milestones thereafter, the Department will provide a corresponding set of Construction Documents to Contractor and Contractor will render Preconstruction Services in accordance with its Contract responsibilities.

3.3.1 Contractor shall review and assess the Construction Documents. Contractor is responsible for determining

if the Project as described in the Construction Documents is constructible using commercially practicable means and methods; that the construction work is described in the Construction Documents with sufficient completeness to enable pricing of a complete project within a Guaranteed Maximum Price; and that the manner of presentation and organization of information in the Construction Documents enables accurate estimation of the Cost of the Work. Contractor shall bring to the Department's attention all design errors and omissions it has discovered that might affect Contractor's ability to accurately estimate the Cost of the Work or that may adversely impact proper construction.

3.3.2 Contractor shall evaluate the Department's design, compare it to the construction scope of work, the Department's allotted construction budget and construction schedule, and determine whether the scope can be executed within those constraints. A validated design is one that a qualified contractor can construct within the Department's budget and schedule constraints.

3.3.3 If Contractor's review of the Construction Documents suggests that the Department's scope of work for the Project exceeds budgetary or schedule constraints, it shall assist the Department in refining the scope to ensure that the work conforms to the budget and schedule constraints.

3.3.4 Consistent with any Department-issued NTP, Contractor shall conduct systematic review of a design element, a system, or a process with the goal of improving performance, quality, safety, and life-cycle costs.

3.3.5 Contractor shall:

- (a) Advise the Department regarding current construction industry practices and any concerns regarding timely availability of Material or Equipment;
- (b) Furnish the Department with recommendations concerning alternative Material and Equipment, if any; and
- (c) Provide current pricing data and availability for specified Material and Equipment as well as any alternative Material and Equipment options.

3.3.6 Contractor shall develop a construction plan including module or unit breakdowns and assembly procedures based on its facility capabilities.

### **3.4 Weight Related Preconstruction Services**

3.4.1 Contractor shall prepare a detailed weight control plan and weight estimate for the lightship of the vessel in accordance with Technical Specification (TS) 1D.8, TS 1E.4, and TS 1E.5. Contractor shall continually update lightship weight estimates and submit them on the same schedule as the cost estimates.

3.4.2 By the end of the Preconstruction Phase, the Project Team must arrive at an accepted weight estimate, whereby the Team agrees that the lightship characteristics in the weight estimate are achievable, that the weight estimate includes an acceptable construction margin and an Owner change margin, and that the resulting lightship weight and vertical center of gravity are less than the required values.

### 3.5 Opinion of Probable Construction Cost

3.5.1 Before development of the first Opinion of Probable Construction Cost (OPCC), but no later than 7 days after the initial Project Team meeting, the Department, the ICE, and Contractor will resolve necessary details regarding the Cost Model, *e.g.*, specific cost coding structure, estimating guidelines, assumptions, etc., to ensure that the OPCC and the Independent Cost Estimate are developed in a consistent manner and the Department and ICE can readily compare competing estimates and work toward reconciling differences. Lump sum estimates are unacceptable.

3.5.2 Contractor shall develop and submit to the Department an initial OPCC estimate within 45 days of the date that the Parties resolved Cost Model details per Section 3.5.1. Thereafter, Contractor shall provide the Department with updated OPCCs at 35%, 60% and 80% Functional Design Milestones, unless the Department otherwise directs.

3.5.3 Contractor shall consult with the Design Consultant to determine what Material, Equipment, and other construction items the Construction Documents will require for Project construction. Contractor shall base its estimates on quantitative take-offs whenever possible.

3.5.4 On a Federal-Aid Project, Contractor's costs and cost estimates in the OPCC shall comply with federal cost principles.

3.5.5 When preparing its OPCC, Contractor shall:

- (a) Maintain an up-to-date Cost Model that includes all details underlying the OPCC, when submitted. These details shall include all Cost of the Work, Subcontractor and Supplier quotes, as well as assumptions, calculations, risk pools, and any other agreed items.
- (b) Produce the OPCC through use of the Open Book Method, enabling assessment of Contractor's assumptions, costs, and calculations;
- (c) Acquire multiple quotes from potential Subcontractors and Suppliers. Contractor shall share this information in the open Cost Model and require that its prospective Subcontractors and Suppliers share their information, quotes, and Product Data with the ICE, the Department, and the Design Consultant, if requested; and
- (d) Not include Contractor's Indirect Costs or anticipated Profit, Contractor's Preconstruction Services compensation, the Design Consultant's compensation, or any cost for which the Department is independently responsible.

3.5.6 The Department will retain the ICE's Independent Cost Estimate and the Owner's Estimate for its own use. It will not furnish Contractor with either estimate, although the Department may permit the ICE to share discrete cost items during the reconciliation process.

3.5.7 During the Preconstruction Phase, Contractor may not communicate with the ICE outside the Department's presence. Contractor will channel all communications with the ICE through the Department.

3.5.8 The Department will compare Contractor's OPCC with the ICE's Independent Cost Estimate and any Owner's Estimate using a unified line-item format prescribed by the Department that will enable line-by-line comparison and interpretation of estimates. If Contractor's OPCC and the Independent Cost Estimate are not within the acceptable margin, the Department will conduct a review to determine the cause for such difference.

3.5.9 If disparity exists between estimates, the Parties and the ICE shall attend a cost reconciliation meeting. Typically, the cost reconciliation meeting will be a component of the Milestone Meeting. However, Contractor will attend cost reconciliation meetings at such additional or alternative times as the Department may require upon 3 days written notice.

- (a) The purpose of the meeting is to review cost assumptions and attempt to reconcile cost differences between Contractor's OPCC and the ICE's Independent Cost Estimate.
- (b) The Department will not share the Independent Cost Estimate or Owner's Estimate with Contractor.
- (c) If the Department and Contractor agree upon changes to cost assumptions, Contractor will make necessary adjustments to the Cost Model and OPCC to reflect these changes and resubmit them to the Department for review and approval. Contractor shall carry forth such changes in any ensuing OPCC.

3.5.10 Seven business days before a Milestone Meeting, Contractor shall submit to the Department its OPCC, the supporting Cost Model, a summary that identifies all documents and assumptions that Contractor used to develop the OPCC, and a pre-Meeting variance report. The variance report shall identify differences, if any, between Contractor's current and previously furnished OPCC.

3.5.11 As part of, or prior to, each Milestone Meeting the Department and Contractor will review all cost variances between the OPCC and the ICE's estimate. The Preconstruction Phase will not advance to the next milestone until identified variances are resolved or determined to be within an acceptable margin by the Department.

3.5.12 After each Milestone Meeting, Contractor shall prepare a post-Meeting variance report that identifies changes, if any, to the information it had reported in its pre-Meeting variance report and the reason(s) for the changes. Also, the report shall identify any known quantitative difference that exists between (i) an OPCC line-item estimate and (ii) the corresponding line-item in the ICE's estimate, the amount of the difference, and whether the difference is caused by a difference in labor quantity, labor unit price, Material/Equipment, or other cost component. Contractor shall furnish the Department with the report within 14 days after the Milestone Meeting. If Contractor does not report of any changes, the Department will conclude that none exist.

3.5.13 Between OPCC submissions, Contractor shall provide and update a construction cost report on a monthly basis or such other interval designated by the Department that identifies the upward or downward movements of anticipated costs due to value engineering, scope changes, and any causes the Department may request. Contractor shall keep the Department informed as to the changes in costs relative to previous estimate versions and the Department's construction budget.

3.5.14 At any time Contractor has reason to believe that the OPCC will likely exceed the construction budget, it shall promptly notify the Department. Additionally, Contractor shall demonstrate the accuracy of its estimate in such detail as the Department reasonably requires and make recommendations for corrective action consistent with the construction budget.

3.5.15 The Department will cooperate with Contractor to keep the Work within the construction budget, for instance by giving of appropriate and reasonable consideration to Contractor's recommendations, approving redesign, providing constructability reviews and reports, deductive alternatives or reductions in Work, requesting additional value engineering, or making modifications to the Construction Documents. Also, the Department may exercise other rights or remedies, *e.g.*, terminate the Contract for convenience.

3.5.16 Contractor and the Design Consultant are mutually obliged to cooperate and use Reasonable Efforts to

permit Contractor's timely development of OPPCs and, ultimately, Contractor's GMP proposal. Similarly, Contractor and the ICE are mutually obligated to cooperate and use Reasonable Efforts to reconcile their respective cost estimates at agreed Milestone intervals so as not to unduly delay prosecution of the Preconstruction Phase.

### **3.6 Schedule-Related Preconstruction Services**

The Project Schedule shall be a rational, reasonable, and realistic plan for completing the Work, and conform to the requirements specified in this Section and elsewhere in the Contract. Contractor acknowledges that the preparation and proper management of the Project Schedule is a material component of the Preconstruction Services contract and, later, the Construction Services contract, if awarded. Within 45 days of the initial Project Team meeting, Contractor shall submit to the Department a preliminary Project Schedule using the Critical Path Method (CPM). The schedule duration shall span the Construction Phase and account for all construction-related activities.

#### **3.6.1 Technical Requirements:**

- (a) Contractor shall develop the Project Schedule using commercially available CPM scheduling software as approved by the Department. The level of detail of the Contractor's schedule shall be a function of the complexity of the Work involved. At a minimum, the CPM schedule shall be developed to the Specification Section (pay item) level.
- (b) The Project Schedule shall include all activities necessary to successfully perform the Construction Services and incorporate Milestone events specified by the Department, including Notice to Proceed, keel laying, launch, post-launch drydocking, builder's sea trials, Substantial Completion, operational acceptance, and other Milestones related to specified work phases. The Project Schedule shall also include Contractor-defined Milestones to identify target dates for critical events based upon Contractor's chosen sequence of work. The incorporated schedule content, *e.g.*, work activities, deadlines, etc. is subject to the Department's approval.
- (c) Activities shall be sufficiently detailed and limited in duration to enable proper planning and coordination of the Work, effective evaluation of the reasonableness and realism of the Project Schedule, accurate monitoring of progress, and reliable analysis of schedule impacts.
- (d) Activity durations shall be based upon reasonable and realistic allocation of the resources required to complete each activity, given physical and logistical constraints on the performance of the Work. All logic shall validly reflect physical or logistical constraints on relationships between activities. Except for the first and last activities in the Project Schedule, each activity shall have at least one predecessor and one successor relationship to form a logically connected network plan from notice to proceed to the contract completion date.
- (e) Contractor shall cost-load activities that it enters in the Project Schedule. The assigned dollar value of each activity of the network shall cumulatively equal the total of Contractor's current OPCC. The activities and resource loading must correspond with data contained in Contractor's Cost Model. Costs for mobilization, bonds, permits, insurance costs may be shown separately from cost-loaded Schedule activities. Contractor shall not include Indirect Costs or profit within the cost loading. Rather, the Department compensates for these items through Contractor's Fixed Fee, which is a component of the GMP.
- (f) Critical path work (pay) items shall be broken down to the sub-task level.



(g) Contractor shall assign manpower loading for each activity of the network. In addition, Contractor shall prepare and submit a separate manpower summary analysis in graphic format depicting manpower by Subcontractor and aggregate. The graph(s) shall show the number of man-days of effort, by month, over the duration of the Project Schedule.

(h) For each Project Schedule activity, the following requirements apply:

- (1) Activity durations shall be whole working days with a maximum duration of the 21 days each, unless otherwise approved by the Resident Engineer;
- (2) Contractor shall identify all activities on a 5-day workweek calendar and shall provide a list of all planned holidays or other periods of shutdown and anticipated periods of overtime or multiple shift work.

3.6.2 Contractor shall recommend logical sequencing of work to promote schedule compliance and project efficiency.

3.6.3 Seven business days before each Milestone Meeting, and at such other intervals as the Department may direct, Contractor shall provide the Department with the current iteration of the Project Schedule for the Construction Phase.

3.6.4 If the Department finds that the Project Schedule does not comply with any Contract requirement, it will provide written notice to Contractor. Within 3 business days of written notice, or such other time as the Department specifies, Contractor shall take one of the following actions:

- (a) Revise the Project Schedule; or
- (b) Provide sufficient information demonstrating compliance.

If Contractor fails to adequately address the Department's exceptions to the Project Schedule, the Department may withhold a sum of up to 10% from all future payments to Contractor until the Preconstruction Services Phase is complete or until Contractor has complied with Project Schedule requirements; alternatively, it may terminate the Contract for cause.

3.6.5 The Project Schedule is subject to Department review and may require revision. Contractor acknowledges that the purpose of the review and resolution of exceptions is to maximize the usefulness of the Project Schedule for planning and performance of the Construction Phase.

3.6.6 If Contractor proposes a revision to the version of the Project Schedule that the Department has most recently approved, Contractor shall submit a written narrative to the Department that identifies the substance of the revision, the rationale for the revision, and the impact of the revision on the projected substantial completion date and the available float for all activities.

### **3.7 Risk-Related Preconstruction Services**

3.7.1 Contractor shall develop a Risk Management Plan. The intent of this Plan is to establish a framework that enables effective identification, management, and communication of Project risks and mitigation opportunities throughout the Construction Phase. The Plan shall include risk management team roles and responsibilities.

3.7.2 In collaboration with the Department and Design Consultant, Contractor shall:

- (a) Develop a risk register applicable to the Construction Phase. This register shall detail all identified risks, including description, cause, probability of occurring, impact(s) on objectives, proposed mitigation measures, risk probability after mitigation measures, and the party(s) responsible for implementation of mitigation measure(s); and
- (b) Develop a risk matrix that identifies the importance of each risk based on its probability and consequence levels

3.7.3 Contractor shall provide the Department with a copy of the current risk register and matrix seven business days before each Milestone Meeting, at which the Project Team will review and update the register, as appropriate.

### **3.8 Procurement Related Preconstruction Services**

3.8.1 Contractor shall review and compare the Department's bid schedule against the Construction Documents and other furnished materials for proper bid item breakdown, appropriate choices of lump sum versus unit price items, and accurate bid descriptions. The goal is to provide clear documents for prospective subcontractors and other bidders, if any.

3.8.2 Contractor shall establish competitive bidding procedures for subcontracts that include details regarding advertising, pre-bid meetings, bid administration, bonding requirements, bid closing and bid protest procedures. Contractor shall work closely with the Department to establish bidder qualification and selection criteria. This effort will focus on a common goal of promoting the best interests of the Project while insuring there is adequate competition and competitive pricing.

3.8.3 Contractor shall develop a bid package strategy and schedule to support the design and construction schedule. Contractor shall advise the Department and its Design Consultant on design concepts and a bid package schedule to facilitate meeting that schedule. The strategy shall identify the division of the work to facilitate bidding and award of subcontracts, considering such factors as the sequence of construction, improving or accelerating construction completion, and other relevant issues.

3.8.4 As approved by the Department, Contractor shall obtain subcontractor bids based upon Construction Documents issued by the Department expressly for this purpose. Contractor shall present to the Department a list of the bids submitted by approved subcontractors and identify the bid intended for award. Contractor shall use the identified bid to develop and refine its OPCC. If Contractor considers a low bidder nonresponsive or believes other grounds exist for not awarding to the lowest bidder, Contractor will present detailed findings to the Department and seek its assent before taking further action concerning the matter.

3.8.5 Contractor shall assist in the development of a labor-relations policy for the project, if requested.

3.8.6 Contractor shall develop purchase technical specifications (PTS) and, consistent with Submittal requirements in Section 4, furnish each proposed PTS to the Department for approval. Equipment requiring a PTS includes that listed below:

- Propulsion diesel generator sets
- Propulsion switchboard and phase transformers
- Propulsion drive motors
- Propulsion azimuthing podded electric propulsors and attached propellers
- Ship Service Diesel Generators and switchgear
- PTO-driven alternators and switchgear
- Emergency Diesel Generator and switchgear
- Vehicle elevator and turntable systems
- Passenger and services machinery systems
- Passenger boarding ladder systems
- Life/rescue boat and davit system
- Service boat and davit system
- Marine evacuation system
- Fin stabilizer system
- Steering gear system
- Bow thrusters
- Oil-Fired Hot Water Heater
- Stern Door
- Electro-Hydraulic Sliding Watertight Doors
- HVAC Air handlers
- Marine sanitation device
- Anchor windlass

Each PTS shall contain a full technical description of the Material or Equipment to be ordered. Contractor will ensure that the Supplier has identified installed weight (with and without fluids, if applicable), and has certified that these values are within the manufacture's specified tolerances. Contractor shall provide the Department with the manufacturer's Product Data that lists all characteristic and optional items for the product.

Consistent with Section 4, Contractor shall submit for the Department's approval a PTS for any item that Contractor requests a substitution of Material or Equipment from that which the Department has specified or Contractor has previously proposed. The PTS shall clearly identify the salient characteristics of the proposed item to enable comparison to the previous item.

3.8.7 Contractor shall furnish information regarding Material and Equipment that have the greatest probability of increase during the Project, the range of likely increase expressed in percentage, and proposed strategies for avoiding cost escalation for such items.

3.8.8 Contractor shall identify Material and Equipment that require long lead-time, make all Supplier inquiries necessary, and verify delivery times of all Material and Equipment necessary to ensure timely order, purchase, and delivery of such items and enable Contractor's compliance with any later-adopted Project Schedule.

### **3.9 Preconstruction Services Matrix**

Through Supplementary Provisions or other means, the Department may adopt a Preconstruction Services Matrix that further identifies tasks and deliverables for which Contractor is contractually responsible during the Preconstruction Services Phase.

### **3.10 Federal Aid Project**

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.

3.10.1 In rendering Preconstruction Services, Contractor shall be mindful of restrictions imposed by the Buy America Act, 23 U.S.C. §313, as well as its implementing regulations, 23 C.F.R §635.410, and shall not propose any Material or Equipment for use or incorporation into the project that may result in violation of the Act.

3.10.2 During the Construction Phase or an Early Work Package, the CMGC construction contractor must comply with the Buy America Act (Act). Among other things:

- (a) If the contractor uses steel or iron in construction of the Project, all manufacturing processes (as determined under the Act) must occur domestically in the United States, except that the contractor may use a minor amount of nondomestic steel or iron so long as the aggregate cost of the nondomestic steel does not exceed the Act's maximum allowance. At the contractor's expense, it shall remove all impermissible nondomestic steel or iron incorporated in the Work and replace it with domestic steel or iron.
- (b) Before award of the construction contract, the selected contractor shall certify in writing that all iron and steel incorporated into the Project is domestically manufactured in compliance with the Act. If an item is not domestically manufactured, the contractor must identify the item in its certification.
- (c) Once the CMGC construction contractor has started the Work, it must provide the Department with reasonable advance notice of delivery of Material and Equipment subject to the Act.
- (d) At delivery, the CMGC construction 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 confirmation. If the 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 the contractor promptly demonstrates that the Act's nondomestic allowance permits use of the Material or Equipment.
- (e) The CMGC construction contractor must retain manufacturers' Buy America compliance certificates in an organized fashion for the duration prescribed in the construction contract.

### **3.11 Infringement of Intellectual Property**

Contractor shall indemnify, hold harmless, and defend the State from all claims for infringement by reason of the use of any patented design, device, material, process, any trademark, or copyright.

## **SECTION 4**

### **Submittals**

#### **4.1 General Requirements**

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

4.1.1 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 and the Construction Documents. Contractor shall use software acceptable to the Department that provides prompt access to a furnished Submittal, that tracks date and time of that Contractor lodged the Submittal and enables the Department to lodge its Submittal response through the same software.

4.1.2 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.

4.1.3 As appropriate for the particular Submittal, Contractor shall:

- (a) Review and coordinate the Submittal with requirements of the Contract, Construction Documents, 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, 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 or Construction Documents, if at all. Contractor shall provide this written notice in a communication separate from the Submittal, *e.g.*, a transmittal email accompanying the Submittal.

#### **4.2 Submittal Review Process**

4.2.1 The Department will review Contractor's Submittal and respond to Contractor in writing, noting that the Submittal is "approved," "conditionally approved subject to comments," or "returned for revision and resubmission." It will include further written details that require Contractor's attention, supplementation, revision, etc., if applicable.

4.2.2 The time that the Department will require to review any given Submittal depends on a number of variables, *e.g.*, complexity of the Submittal, 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. If it requires

additional time, the Department will notify Contractor in writing.

4.2.3 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.

4.2.4 Approval of a Submittal does not absolve Contractor of responsibility for an error or omission it has committed regarding the Submittal.

4.2.5 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.

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

4.2.7 The Department's review and approval of a Submittal does not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.

## **SECTION 5**

### **Department Responsibilities**

#### **5.1 DOT&PF Responsibilities**

5.1.1 The Department will provide Contractor with detailed Project requirements, Construction Documents, and the budget figure established for fulfillment of the Construction Phase.

5.1.2 The Department will compensate Contractor for its Preconstruction Services as prescribed by the Contract.

5.1.3 The Department will designate an 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 on behalf of the Department and render day-to-day decisions regarding to administration of the Contract.

5.1.4 Under separate contract, the Department has retained a Design Consultant to prepare the Functional Design of the Vessel and design-related Construction Documents required for the Project. The Department is responsible for ensuring the Design Consultant collaborates with Contractor in refining the Functional Design and Construction Documents.

5.1.5 The Department is the interpreter of the requirements of the Contract (as well as any ensuing construction contract) and the judge of the performance in relation thereto. It will provide interpretations consistent with the intent of, and reasonably inferable from, the Contract, and may issue resulting instructions necessary for the proper, timely execution or progress of the Work. Contractor may make written requests to the Department for such interpretations and decisions.

## **SECTION 6**

### **Compensation**

#### **6.1 Contract Price**

The Department will compensate Contractor for proper performance of Preconstruction Services as addressed in Articles 2 and 4 of the accompanying Preconstruction Services Contract Form. The parties may alter the terms of compensation, if at all, only through Contract Amendment.



## **SECTION 7**

### **Time**

#### **7.1 Contract Time**

The Contract Time provided by the Agreement is addressed in Article 3 of the accompanying Preconstruction Services Contract Form. The parties may alter the Contract Time, if at all, only through Amendment.

#### **7.2 Delay**

7.2.1 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. 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.

7.2.2 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.

7.2.3 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 7.2.3. 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.

7.2.4 The following is a non-exclusive list of events or causes that do not fall within the scope of Section 7.2.3:

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

7.2.5 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.

7.2.6 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, Contractor will not receive any such adjustment.

## **SECTION 8**

### **Subcontracting**

#### **8.1 Subcontracting**

8.1.1 If Contractor wishes to use a Subcontractor, it shall notify the Department in writing of the name and address of the proposed Subcontractor. Contractor shall obtain the Department's written approval before subcontracting any Work under the Contract. This includes any Subcontractor specified as required by the Contractor Scope of Services.

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

#### **8.2 "Flow Down" Obligations**

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 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. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with its sub-tier subcontractors, if any. 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.

#### **8.3 Third-Party Beneficiary Rights**

8.3.1 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.

8.3.2 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.

#### **8.4 Subcontract Review/Approval**

Contractor shall provide the Department with proposed subcontracts for review and approval as to form.

#### **8.5 Contractor Responsible for Subcontractors**

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.

## **SECTION 9**

### **Contract Change**

#### **9.1 Amending and Supplementing the Contract**

9.1.1 The Parties may amend or supplement the Contract only by Amendment or Supplemental Agreement.

9.1.2 The Parties will use an Amendment to revise the Contract Price or the Contract Time, or to effect other contract change that does not affect Contract Price or Contract Time.

9.1.3 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 or supplemented, does not authorize or require.

#### **9.3 Owner Directed Work**

9.3.1 The Department may add, delete, or revise Work that is in the general scope of the Contract. If the change causes an increase or decrease in Contractor's costs or Contract Time, then the Parties will make an equitable adjustment in the Amendment, so long as the increase or decrease necessarily and exclusively results from the change.

9.3.2 For Work prescribed by the Contract, Contractor is not entitled to Contract Price or Contract Time beyond that set forth in the Contract.

#### **9.4 Change Proposal**

9.4.1 If the Department requests or instructs Contractor to perform Work that Contractor believes is not required under the Contract, requires Work that exceeds Contract requirements, or conflicts with the Contract, then within 30 days of receipt of the request or instruction, and before performing such Work, Contractor shall notify the Department in writing of this belief and submit a Change Proposal.

9.4.2 If Contractor does not provide written notice and the Change Proposal within 30 days, no equitable adjustment or Amendment is due.

9.4.3 The Change Proposal shall specify any proposed change in Contract Price or Contract Time and explain the basis for its belief, with citations to any applicable provisions of the Contract. Contractor shall include all supporting cost and pricing data, as well as a written statement certifying that, to the best of Contractor's knowledge and belief, the supporting data and documents are accurate, complete, and current; that they and will continue to be accurate and complete during the performance of the Contract; and that any requested price or time adjustment is the entire adjustment to which Contractor believes it is entitled concerning the submitted Change Proposal.

9.4.4 The Department will review Contractor's Change Proposal and supporting material. It may request additional data and documents from Contractor to make an informed decision. Once the Department possesses sufficient information, it may deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. The Department shall furnish its determination to Contractor in writing.

9.4.5 If the Department denies Contractor's Change Proposal, in whole or in part, Contractor may pursue relief in accordance with Section 12 of these General Provisions.

## **9.5 Execution of Amendment**

By accepting and signing an Amendment, the Department and Contractor agree that the Contract change effected by the Amendment 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 addressed in the Amendment.

## **SECTION 10**

### **Insurance and Indemnification**

#### **10.1 Contract Requirements for Insurance & Indemnification**

Article 4 of the Preconstruction Services Contract Form identifies the Contract's governing requirements regarding insurance and indemnification.

## **SECTION 11**

### **Contract Suspension; Termination**

#### **11.1 Suspension of Work**

11.1.1 The Department may suspend Work, either in whole or in part, as it deems necessary due to:

- (a) Unavailability of Project funding;
- (b) Contractor's material and substantial failure to carry out orders or to capably perform any provision of the Contract;
- (c) Conditions that it considers unfavorable for the prosecution of the Work; or
- (d) Any other reason that it is in the State's interest.

11.1.2 If the Department suspends the Work for an indefinite period, Contractor shall archive all Work Product, store any procured Material or Equipment, and preserve from damage or deterioration all Work performed under an Early Work Package.

11.1.3 The Department will issue any notice of suspension of Work and any notice of resumption of suspended Work in writing. If either Party believes an adjustment in Contract Price or Contract Time is warranted due to the suspension/resumption, the Parties shall attempt to resolve that matter through good faith negotiations. If the parties cannot reach an agreement, Contractor may pursue a claim in accordance with Section 12.

#### **11.2 Termination for Cause**

11.2.1 The Department may terminate the Contract for cause if:

- (a) Contractor's repeated failure to perform the Work in accordance with the Contract;
- (b) Contractor's insolvency, except that if Contractor declares bankruptcy, the Department will terminate in accordance with applicable requirements of the bankruptcy code.;
- (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 is a party to fraud, deceit, misrepresentation, or malfeasance in connection with the Contract;
- (f) Contractor disregards or fails to comply with Regulatory Requirements; or
- (g) Contractor fails to comply with or perform one or more contractual obligation without justification.

11.2.2 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 will terminate the Contract as stated in the notice of default or any amendment thereto.

11.2.3 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.

### **11.3 Termination for Convenience**

11.3.1 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.

11.3.2 Contractor shall abide by instructions in the notice, and any supplement thereto, regarding contract termination.

11.3.3 If the Agency terminates for convenience, it will pay Contractor:

- (a) Compensation earned for services completed before the effective termination; and
- (b) Other reasonable expenses directly attributable to the convenience termination.

Contractor is not entitled to payment, and the Department will not pay, for loss of anticipated Indirect Costs, profits, or revenue, or other economic loss arising out of or resulting from such termination.

11.3.4 Upon termination, Contractor shall deliver to the Department all Work Product.

## **SECTION 12**

### **Claims**

#### **12.1 Claim Notice; Supporting Proof; Conditions Precedent**

12.1.1 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.

12.1.2 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.

12.1.3 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.

12.1.4 If Contractor and the Department cannot resolve the matter by negotiated agreement within 14 days of Contractor's timely written notice required by Section 12.1, then within 28 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.

12.1.5 If Contractor has fulfilled the conditions precedent set forth in Sections 12.1.1 and 12.1.4 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 12.2.

#### **12.2 Requirements of Filed Claim**

12.2.1 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.



## **12.3 Claim Validity; Additional Production**

12.3.1 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.

12.3.2 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.

12.3.3 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 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.

## **12.4 Contracting Officer's Decision; Appeal**

12.4.1 The Contracting Officer may dismiss a claim if s/he concludes that Contractor has not satisfied the conditions precedent identified in Sections 12.1 and 12.4.

12.4.2 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.

12.4.3 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.

12.4.4 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.

## **12.5 Other Legal Provisions**

12.5.1 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.

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

## SECTION 13

### Guaranteed Maximum Price Principles

#### 13.1 GMP Formulation & Proposal

13.1.1 The Guaranteed Maximum Price (GMP) is the contract pricing arrangement used for the Construction Phase of a CMGC contract. The GMP sum is the total, not-to-exceed dollar amount for which Contractor has agreed to properly fulfill its obligations under the Construction Services Contract. At times, this document will refer to the GMP sum in shorthand as “the GMP”.

13.1.2 Contractor is entitled to the following compensation and no other for satisfactory performance of the Work required by the Contract:

- (a) Subject to provisions of the Contract, reimbursement of the Cost of the Work that Contractor actually incurs in performance of the Contract; and
- (b) A Fixed Fee equal to the Fixed Fee Percentage multiplied by the Cost of the Work component of the GMP.

13.1.3 If, during the Preconstruction Phase, Contractor believes any documentation or information developed is not sufficiently complete to clearly define the anticipated construction work and enable development of its GMP proposal, it shall make all necessary and immediate requests to the Department to develop the same.

13.1.4 Unless otherwise agreed, at 85%-95% Functional Design Contractor shall deliver to the Department a Guaranteed Maximum Price proposal, comprising two components: (i) the total Cost of the Work required to perform the Construction Services and (ii) Contractor’s Fixed Fee. If the Construction Documents are not complete at the time Contractor must submit its GMP proposal, Contractor shall exercise reasonable care and judgment to determine the intent of the design and shall formulate its proposal based on the quality and quantity of Cost of the Work items reasonably inferable from the existing Construction Documents.

13.1.5 Contractor’s GMP proposal shall include:

- (a) Its current Cost Model along with a detailed statement of the cost of all Material, Equipment, labor, Contractor’s Contingency, and other items that constitute the total Cost of the Work;
- (b) Costs for all Project-required Performance Bonds, Payment Bonds and insurance coverages;
- (c) Adequate documentation substantiating the costs contained in the proposal;
- (d) Contractor’s Fixed Fee;
- (e) An aggregate dollar amount for items (a) through (d) above;
- (f) An updated Schedule of Bid Items, which shall be consistent with Schedules of Bid Items that the Department approved during its preceding OPCC review;
- (g) A list of the subcontractors that Contractor proposes to use during performance of the Construction Phase. The list must include the name and location of the place of business for each subcontractor, evidence of each subcontractor's valid Alaska business license.

- (h) An affirmation signed by Contractor's authorized representative attesting that:
- (1) Contractor is satisfied that the Project as described in the Construction Documents is constructible using commercially practicable means and methods;
  - (2) Contractor is satisfied that the Department has sufficiently identified and outlined the construction work to enable it to estimate the Cost of the Work with reasonable accuracy;
  - (3) Contractor has disclosed to the Department all design errors and omissions of which it is aware that may affect the Cost of the Work; and
  - (4) Contractor acknowledges that the Department will not adjust the GMP or contract time established for Construction Phase due to design errors or omissions of which Contractor knew during the Preconstruction Phase. However, the Department may approve a Change Order to address the effect, if any, that unknown design errors or omissions have on the scope of work

13.1.6 After receiving reasonable cooperation by the Department and Design Consultant, if Contractor submits a GMP proposal that does not comply with Section 13.1.5, the Department may reject the proposal and terminate the Contract for cause in accordance with Section 11.

## **13.2 Cost of the Work**

Cost of the Work component is the cumulative total of reimbursable Direct Costs that Contractor will incur to properly construct the Subject of the Project or an Early Work Package. Once the Department accepts Contractor's Cost of the Work proposal, the Cost of the Work is not subject to price adjustment unless the Department has changed the scope of work by Change Order or Supplemental Agreement or the Parties have executed a deductive Change Order in accordance with Section 13.2.7(f).

Except as the Department may otherwise agree in writing, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Section 13.2.8, and shall include only the following items:

### **13.2.1 Labor Costs, comprising:**

- (a) Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by the Department and Contractor. Such employees shall include foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned based on their time spent on the Work. Payroll costs shall include salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto.
- (b) Wages or salaries of the contractor's shipyard superintendent when performing Work, with the Department's prior approval;
- (c) Wages or salaries of Contractor's employees at offsite workshops or other locations when expediting the production or transportation of Material or Equipment required by the construction contract;

### **13.2.2 Subcontract Costs:**

Payments made by Contractor to subcontractors for Work performed by subcontractors. If required by the Department, Contractor shall obtain competitive bids from prospective subcontractors acceptable to the Department and Contractor and shall deliver such bids to the Department, who will then determine which bids, if any, will be acceptable. If any subcontract provides that the subcontractor is to be paid on the basis of Cost of the

Work plus a fee, the subcontractor's Cost of the Work and fee shall be determined in the same manner as the contractor's Cost of the Work and fee as provided in this Section 13.2.

#### 13.2.3 Special Consultants:

Costs of special consultants employed for services specifically related to the Work, use of which the Department has provided its written approval.

#### 13.2.4 Material & Equipment Costs:

- (a) Cost of all Material and Equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and suppliers' field services required in connection therewith.
- (b) All cash discounts shall accrue to Contractor unless the Department deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to the Department. All trade discounts, rebates, and refunds and returns from sale of surplus Material and Equipment shall accrue to the Department, and Contractor shall make provisions so that they may be obtained.

#### 13.2.5 Supplemental Costs:

- (a) The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
- (b) Cost, including transportation and maintenance, of all Materials, Equipment, supplies, machinery, appliances, office, and temporary facilities at the Project site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of the contractor.
- (c) Costs of Material and Equipment properly stored off the Project site at an acceptable location, subject to the Department's prior written approval;
- (d) Rental charges for temporary field office facilities, construction equipment, machinery, and hand tools not customarily owned by construction workers that are provided by Contractor at the project site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, construction equipment, machinery, and hand tools. Rates and quantities of construction equipment and machinery owned by the contractor, or a related party as defined in Section 13.2.6, shall be subject to the Department's prior approval. The total rental cost of any such items may not exceed the purchase price of any comparable item. The rental of any such items shall cease when the use thereof is no longer necessary for the Work.
- (e) Sales, use, or similar taxes, imposed by a governmental authority that are related to the Work and for which the contractor is liable;
- (f) Fees and assessments for permit, licenses, certifications, and inspections for which the construction contract assigns responsibility to Contractor;
- (g) Fees for laboratory or forensic analysis if required by the construction contract, but not those fees related to defective or nonconforming work by Contractor, its subcontractors, or suppliers;
- (h) Royalties and license fees paid for the use of a particular design, process, or product required by the construction contract

- (i) Deposits lost for causes other than negligence of Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- (j) Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with contract requirements), provided such losses and damages have resulted from causes other than the negligence of Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of the Department. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining the contractor's Fixed Fee.
- (k) The cost of utilities, fuel, and temporary sanitary facilities at the Project site.
- (l) Costs for communications services, computer equipment, and software properly allocable to the Work;
- (m) Premiums for that portion of required insurance and bonds that are properly allocable to the construction of the subject of the Project;

#### 13.2.6 Related Party

- (a) As used in this Section, "related party" means: (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, Contractor; (2) any entity in which any stockholder in, or management employee of, Contractor holds an equity interest in excess of 10% in the aggregate; (3) any entity that has the right to control the business or affairs of Contractor; or (4) any person or any member of the immediate family or any person, who has the right to control the business or affairs of Contractor.
- (b) If any of the costs to be reimbursed arise from a transaction between Contractor and a related party, Contractor shall notify the Department of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred before any such transaction is consummated or cost incurred. If the Department, after such notification, authorizes the proposed transaction in writing, then the cost incurred will be included as a cost to be reimbursed, and Contractor shall procure the Work, goods, or services from the related party as a subcontractor. If the Department does not authorize the transaction in writing, then Contractor shall procure the Work, goods, or services from a person or entity other than the related party.

#### 13.2.7 Contractor's Contingency

During the Preconstruction Phase, Contractor and the Department will work collaboratively to better understand, manage, and reduce risks on the Project, thereby lowering contingency costs. Negotiation of the contingency sum and its subcomponents, if any, will occur during GMP negotiations. Nevertheless, the Department may request contingency information, input, etc. at any point throughout the Preconstruction Phase.

- (a) The Contractor's Contingency addresses costs that Contractor might incur due to incomplete design, unforeseen and unpredictable conditions, or uncertainties within the defined Project scope. The amount of the contingency will depend on the status of design, procurement, and construction, as well as the complexity and uncertainties concerning elements of the Project.
- (b) The Contractor's Contingency may comprise more than one contingency subcomponent and corresponding contingency sum for that subcomponent. When establishing the sum of any single contingency subcomponent, Contractor must provide the Department with adequate justification for that subcomponent.

- (c) Use of the Contractor's Contingency, and any constituent subcomponent, is permissible only to address the particular event, risk, work item, etc. that the contingency or subcomponent is intended to cover. The contingency and each contingency subcomponent are item-specific and not interchangeable.
- (d) Contractor's compensation for Contractor Contingency Work is reimbursement for Cost of the Work items it incurs in connection with that Contingency item. However, Contractor's compensation for any given Contractor's Contingency item will not exceed the agreed sum for that Contingency item or subcomponent, regardless of the costs Contractor ultimately incurs.
- (e) Contractor is not entitled to compensation drawn from Contractor's Contingency unless the Department has provided Contractor with an executed contingency authorization form that identifies the approved Contingency Work or cost. Once Contractor commences authorized Contingency Work, it will provide the Department with periodic progress reports as directed by the Resident Engineer.
- (f) If not used, the Contractor's Contingency belongs to the Department, which is entitled to a corresponding reduction of the GMP. Upon operational acceptance of the Vessel, the Parties will execute a Change Order to reduce the GMP by deducting: (i) all unused Contractor's Contingency and (ii) the corresponding portion of the Fixed Fee allocated to the unused Contractor's Contingency.

#### 13.2.8 Excluded Costs:

Cost of the Work does not include the items listed below:

- (a) Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Project site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Section 13.2.1 or specifically covered by Section 13.2.3. The payroll costs and other compensation excluded here are to be considered administrative costs covered by Contractor's Fixed Fee, if appropriate.
- (b) Expenses of Contractor's principal and branch offices other than the Contractor's temporary field office at the Project site.
- (c) Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against the contractor for delinquent payments.
- (d) Costs due to the negligence of Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including the correction of defective Work, disposal of Materials or Equipment wrongly supplied, and making good any damage to the subject of the Project.
- (e) Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Section 13.2.1 - 13.2.5

### 13.3 Fixed Fee

13.3.1 The Fixed Fee compensates Contractor for: (i) Indirect Costs allocable to the Project during performance of Construction Services; and (ii) its profit for Construction Services rendered.

13.3.2 The dollar value of the Fixed Fee is derived by multiplying Contractor's Fixed Fee Percentage that Contractor submitted in response to the Department's Request for Proposals for the Project by the Cost of the Work component of the negotiated GMP.

## **SECTION 14**

### **Miscellaneous**

#### **14.1 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 Preconstruction Services Contract Form (for Contractor).

#### **14.2 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.

#### **14.3 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.

#### **14.4 No Waiver**

Except as provided in Section 12.3.3, 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.

#### **14.5 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.

#### **14.6 Controlling Law; Forum**

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

14.6.2 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 12 and the provisions of the Alaska Procurement Code, AS 36.30.005 *et seq.*

14.6.3 In the event Section 12 and Section 14.6.2 does 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.

#### **14.7 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.



## **14.8 Integrated Contract**

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

14.8.2 The Contract comprises integrated documents 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 must be in writing to be binding and effective.

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

## **14.9 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.

## **14.10 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.

## **14.11 Ownership & Reuse of Documents**

14.11.1 The Department's payment to Contractor for Preconstruction 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 writings 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.

14.11.2 The provisions of this Section 14.11 survive final payment, or termination of the Contract.

## **14.12 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.

## **14.13 Counterparts**

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