

11/25/08

DDG 51 RE-START

ERRATA SHEET to DDG 51 APPENDIX A, E2357, dated 01/04

Article 1 ASSIGNMENT

Add the following paragraph:

1.2.3 All rights of the Buyer with respect to this P.O. may be assigned by the Buyer to the Government, or to such other party as the Government may designate without change in the P.O. price except for any equitable adjustment that may arise due to changes in the place of delivery, or to any other party, without the Seller's consent.

Article 4 CONDITIONAL ACCEPTANCE OF SUPPLIES

Add the following paragraph:

4.3 Buyer's acceptance of the Supplies or Services and its subsequent use thereof shall not constitute a waiver of any claim based upon the delivery of improper or defective materials or workmanship, or for delayed deliveries, or of Buyer's rights and remedies conferred with respect thereto. Any and all of the rights and remedies conferred upon the Buyer under the P.O. shall be cumulative and in addition to, and not in lieu of, the rights and remedies granted by law for Seller's breach of contract.

Article 5 CONFIDENTIALITY

5.2 Line 7, Add "or DDG 51 Program Team Members" between "suppliers" and "to"

Article 6 DEFAULT

6.1 Add the following:

(D) declares bankruptcy, suspends its business operation, or initiates any reorganization and/or arrangement for the benefit of its creditors.

Article 7 DEFINITIONS

7.1 (A) After the word "Maine", add "or NGSS having its principle place of business in Pascagoula, MS."

Article 8 DELIVERY DATE AND EXCUSABLE DELAY

Add the following paragraph:

8.6 In the event Seller does not deliver acceptable items in accordance with the delivery schedules set forth in the purchase order, Seller shall be liable to Buyer for all damages and liability, not otherwise excluded herein, of Buyer resulting therefrom.

Article 9 DISPUTES

Replace with the following:

9. Disputes:

9.1 "Dispute" as used herein shall mean any and all claims or disputes that in any way arise out of or relate to this Agreement, the negotiation or execution thereof, its performance, or the breach or enforcement thereof. Buyer and Seller intend that the definition of "Dispute" shall have the broadest scope permitted by law and that, without limiting the generality of the

foregoing, shall be deemed to include all claims between the parties including, but not limited to, any claims for fraud, misrepresentation, negligence, libel and slander, unfair competition, unfair trade practices, or other tort law claims. The foregoing notwithstanding, the parties also intend and agree that, because of the nature of such matters, the following claims are not subject to the agreement to negotiate set forth herein: (1) claims regarding ownership, validity, infringement, or misappropriation of either party's intellectual property; (2) claims regarding a breach of obligations relating to the Nondisclosure Agreement(s), if any, or Confidentiality clause herein.

9.2 This Agreement shall be interpreted and the rights and obligations of the Parties shall be determined in accordance with the laws of the State of Maine without reference to that state's conflicts of laws. Except for the right of either party to apply to a court of competent jurisdiction for equitable relief necessary to preserve the status quo or prevent irreparable harm as established below, the parties agree that any Dispute between them or against any agent, employee, successor, or assign of the other shall be settled, to the extent possible by good faith negotiations. Any dispute, controversy or claim arising out of or in connection with this Agreement, including without limitation any dispute regarding the enforceability of any provision, which cannot be resolved through good faith negotiations within sixty (60) days or such longer period of time as may be mutually agreed between the Parties, shall be submitted to and finally resolved by a court of competent jurisdiction in the State of Maine.

9.3. Until final resolution of any Dispute hereunder, Seller shall proceed diligently with the performance of this Agreement unless otherwise directed by Buyer in writing. Each party acknowledges that the other party will suffer irreparable harm and that there is no adequate remedy at law if, pending settlement or any controversy or claim, the other party fails to diligently perform its obligations under this Agreement. The non-breaching party shall be entitled to interim equitable relief or injunctive relief. In such an event, both parties hereby expressly consent to the jurisdiction of the courts in the State of Maine.

9.4. Buyer's rights under the terms and conditions of this Agreement are cumulative and in addition to any other rights available at law or equity.

9.5. This provision is not applicable to, and does not in any way limit any remedies available to a party with respect to, any dispute between either party to this Agreement and a third-party.

9.6. Disputes Related to Prime Contract:

Except for changes identified as such in writing and signed by Buyer, the Seller shall notify Buyer, in accordance with the Notices requirement, in writing promptly, within forty-five (45) days from the date that the Seller identifies any conduct (including actions, inactions, and written or oral communications) on the part of the Buyer that Seller regards as a change to or inconsistency with the contract terms and conditions.

9.7 Notwithstanding the previous paragraph, any Dispute arising under or related to this Agreement, which Buyer could include in a claim or other demand under the disputes provisions of the prime contract, shall be resolved in accordance with Paragraph 9.6 above and as follows:

(i) Seller shall provide Buyer with a fully supported written claim, properly certified as prescribed by FAR 33.207, within sixty (60) days after the claim accrues; (ii) Seller shall

cooperate with Buyer in prosecuting Seller's timely made claim or demand and will be bound by the resulting decision of the Contracting Officer; and (iii) Seller shall pay its proportional costs in pursuing the claim. If Seller fails to provide Buyer with a written claim for any Dispute within the time frame prescribed hereunder, Seller is deemed to have waived the claim.

9.8 Buyer's entire liability to Seller with respect to any matter prosecuted under the prime contract disputes clause shall be limited to the recovery obtained against the Government for Seller's claim, exclusive of Buyer's related markups. If Seller is affected by the resulting decision and Buyer elects to appeal, Seller shall pay to Buyer Seller's proportion of the appeal costs. If Buyer elects not to appeal the decision, Buyer shall notify Seller of that decision within ninety (90) days. If Seller submits a timely request to Buyer to appeal such decision, Buyer shall file and sponsor Seller's appeal, at Seller's sole cost, if Buyer may do so in good faith. Buyer has the right to review, prior to submission, any pleadings or other papers Seller may file in such appeal. Seller agrees to delete any admissions or statements in the pleadings or papers to which Buyer objects. If Buyer appeals such decision, whether or not at Seller's request, any decision regarding such appeal shall be binding on Buyer and Seller as it relates to this Agreement. The choice of law specified in the prime contract shall not apply to Disputes and appeals prosecuted under the prime contract.

9.9. Until final resolution of any Dispute hereunder, Seller shall proceed diligently with the performance of this Agreement unless otherwise directed by Buyer in writing.

Article 19 LIMITATION OF LIABILITY

Replace entire clause with the following:

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES ARISING FROM ANY PROVISION OF THIS AGREEMENT, SUCH AS, BUT NOT LIMITED TO, LOSS OF USE, INCOME OR PROFITS, OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOSS OF DATA OR SYSTEM USE.

Article 30 RISK OF LOSS

Add the following paragraph:

30.3 The Seller shall bear the risk of loss or damage to any property of the Buyer in Seller's possession or care, and shall maintain adequate insurance so as to cover any such loss or damage, and shall name the Buyer as the additional insured and beneficiary of any payments there from with waiver of any right of subrogation.

Article 31 SAFETY AND SECURITY

Replace with the following:

31.1 When the Seller is performing any of its obligations on Buyer's premises or on a vessel in Buyer's care or custody, the Seller and its subcontractors shall comply with all Buyer plant rules and regulations and Buyer Safety and Security policies and procedures including, but not limited to, the use of personal protective equipment as required. At a minimum, the Seller and its subcontractors shall have in their possession a suitable hardhat, safety glasses with side shields, hearing protectors, and ANSI Z41 approved steel-toed safety shoes. A copy of Buyer's

Environmental, Health and Safety Regulations Handbook outlining said policies and procedures can be located at GDBIW.com; select Purchasing, then Forms/Appendices, then Safety Regulations.

31.2 If Seller's personnel are to have access to classified material or classified vessel compartments, such personnel will be required to obtain all necessary security clearances prior to their access to such material or compartments.

31.3 Seller shall utilize only U.S. citizens in execution of its obligations on Buyer property or on a vessel in Buyer's care or custody unless specific prior approval from Buyer is obtained.

31.4 By accepting this Subcontract/Delivery Order, the Seller acknowledges that the following is applicable to any work performed on this Subcontract/Delivery Order:

31.4.1 Only trained authorized personnel will operate or service equipment, and then only in accordance with manufacturer's recommendations,

31.4.2 Seller is responsible for properly managing hazardous waste generated by Seller in accordance with applicable Federal, State and local regulations. Disposal of hazardous waste shall be coordinated and approved through the Buyer's Environmental Operations Department, and

31.4.3 Seller has reviewed the Environmental, Health and Safety Regulations Handbook referenced above, and has duly disseminated it to any applicable personnel performing work on Buyer's property or vessels.

Article 35 TERMINATION FOR CONVENIENCE

Add the following:

Buyer may terminate performance of work under this P.O. in whole or in part, from time to time, if a termination is reasonably required to implement any Government termination, change or direction under the Prime Contract. The Buyer shall terminate by delivering to Seller the extent of termination and the effective date.

Article 40 WARRANTY

40.2 Add the following after (C):

(D) furnish such materials or parts and installation instructions as may be required to successfully accomplish the required correction or replacement. The Seller shall also prepare and furnish to the Buyer data and reports applicable to any correction or replacement required under this Clause.

40.3 Line 4 Add "or until expiration of the original warranty period, whichever is longer." After the word "Services"

40.6 and 40.7 Delete and replace with the following:

Any limitations to Seller's warranty obligations expressed in this Clause shall not apply when the defects or deficiencies in such Supplies or Services or the Buyer's final acceptance of such Supplies resulted from the willful misconduct or lack of good faith on the part of the Seller's QA

representatives, or its officers, directors, managers or other equivalent representatives who had supervision or direction of production and/or inspection of such Supplies or Services.

ADD THE FOLLOWING AFTER ARTICLE 40 WARRANTY:

Article 41. EXPORT COMPLIANCE

41.1 Exports of Data exchanged under this Subcontract and/or Delivery Order may be subject to the export laws of the United States, including, but not limited to, the U.S. International Traffic in Arms Regulations (ITAR), the Export Administration Act (EAA), the regulations issued by the Office of Foreign Assets Control (OFAC), the Foreign Corrupt Practices Act (FCPA) as codified at 15. U.S.C. §78m & §78dd(1) et seq., the Trading With the Enemy Act (TWEA), and the International Economic Emergency Powers Act (IEEPA). The Parties shall not export, disclose or transfer any such data directly or indirectly without compliance with these and any other applicable laws and regulations.

Article 42. OFFSETS

42.1 Should all or part of the item(s) supplied under this Subcontract/Delivery Order be provided by sources outside the United States or its territories, Seller must inform Buyer of the country of origin and percentage of foreign content. Buyer reserves exclusive right to apply the equivalent value of foreign content in the item(s) provided by the Seller to the Offset Program of the Buyer's choice. Buyer may, at Buyer's discretion, provide written notice waiving its claim to offset credits accruing from this Subcontract/Delivery Order, thereby allowing Seller use and discretionary application of such credits. Seller agrees to assist Buyer in securing Offset Credits from respective foreign government authorities in an amount equal to the value of foreign content in the item(s) provided.

Article 43. LIABILITY

Seller shall save harmless and indemnify Buyer and the Government from and against all claims, suits (including counsel fees and other expenses of suits, whether groundless or not), judgments and awards on account of any damage to property; or injury (including death) to persons (including any damage or injury to the property or person of any employee of Seller or of Buyer) which may occur or be alleged to have occurred due to the negligence or other fault of Seller however arising out of or in connection with the performance of this P.O. on part of Seller. Seller shall also save harmless and indemnify Buyer from and against any and all costs, damages, fines, penalties and liabilities incurred by Buyer (including counsel fees and other expenses) as a result of Seller's or any of Seller's subcontractors failure to comply with the provisions of this P.O. and with all applicable laws or regulations as set forth in this P.O.

ADD THE FOLLOWING TO GOVERNMENT "FLOW-DOWN" CLAUSES:

NOTE: These clauses shall only be applicable in the event they are included in BIW's Prime Contract with the Government

252.227-7015 Rights in Technical Data – Commercial Items

252.225-7014 Preference for Domestic Specialty Metals (JUN 2005)(DEVIATION)

52.203-13 Business Ethics

ADDITIONAL NOTE:

In the event additional or revised clauses are invoked into Buyer's Prime Contract upon Award, such clauses shall be flowed down to and accepted by Seller as applicable.

