

**Attachment A-2 - BIW – DDG 1000 SHIPYARD SPECIFIC TERMS AND CONDITIONS**

TO BE USED IN CONJUNCTION WITH Form SSF P8587 – DDG 1000

Class Common Equipment (CCE) SUBCONTRACT DELIVERY ORDER TERMS AND CONDITIONS

**1. DISPUTES****1.1. Disputes:**

1.1.1. "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 Clause 6 – Confidentiality of Form SSF P8587.

1.1.2. 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.

1.1.3. 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.

1.1.4. 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.

1.1.5. 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.

**1.2. Disputes Related to Prime Contract:**

1.2.1. Except for changes identified as such in writing and signed by Buyer, the Seller shall notify Buyer, in accordance with Clause 18 – Notices of Form SSF P8587, 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.

- 1.2.2. 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 1.2 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.
- 1.2.3. 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.
- 1.2.4. Until final resolution of any Dispute hereunder, Seller shall proceed diligently with the performance of this Agreement unless otherwise directed by Buyer in writing.

## **2. EXPORT COMPLIANCE**

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.

## **3. INVOICES AND PAYMENTS**

### **3.1. Invoices**

- 3.1.1. An invoice is a written request for payment under this Subcontract/Delivery Order for Supplies or Services provided by the Seller. In order to be properly prepared and valid, an invoice must include (as applicable):
- 3.1.1.1 invoice date and Seller's invoice number;
  - 3.1.1.2 name of Seller;
  - 3.1.1.3 the Subcontract/Delivery Order number, line item number, description of Supplies and Services, quantity, unit of measure, unit price, and extended total for the Supplies or Services being invoiced;
  - 3.1.1.4 shipment number, date of shipment and shipping point for the Supplies or Services being invoiced;
  - 3.1.1.5 name and address to which payment is to be sent in accordance with the terms specified in this Subcontract/Delivery Order;
  - 3.1.1.6 name, title, phone number and address of person to be notified in the event of a defective invoice;
  - 3.1.1.7 any other information or documentation required by other provisions of the Subcontract/Delivery Order;
  - 3.1.1.8 any prompt payment discounts available; and
  - 3.1.1.9 the invoice amounts for individual Supplies shall be shown separately on any invoice.

- 3.1.2. Invoices shall be prepared and submitted in duplicate, unless otherwise specified, and sent to the address below:

Bath Iron Works  
700 Washington Street  
Bath, ME 04530  
Attn: Invoice Audit

- 3.1.3. Invoices may not be submitted by facsimile transmission.

## 3.2. Payments

- 3.2.1. Buyer shall pay the Seller, upon the submission of properly prepared and valid invoices, the prices stipulated in this Subcontract/Delivery Order as may be adjusted.
- 3.2.2. Seller's valid invoices are payable by Buyer no later than thirty (30) days after receipt thereof. The invoice will be deemed to have been received five (5) days after the invoice date.
- 3.2.3. Payment shall be considered to have been made on the date which appears on the payment check.
- 3.2.4. Payment shall not be considered as an indication of the acceptability of the Supplies or Services for which payment is made.

## 4. **INTELLECTUAL PROPERTY RIGHTS**

### 4.1. Copyright

All specifications, drawings, technical descriptions and other data ("Data") acquired from the Seller in connection with this Subcontract/Delivery Order are the copyright of the Seller, except where expressly stated otherwise on such Data, and shall be treated as unpublished works.

### 4.2. Notice of Applicable FAR and DFAR Clauses.

The following FAR and DFAR clauses are incorporated herein by reference and form a part of this Subcontract/Delivery Order:

FAR 52.227-1: AUTHORIZATION AND CONSENT AND ALTERNATE;

FAR 52.227-2: NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT;

FAR 52.227-10: FILING OF PATENT APPLICATIONS – CLASSIFIED SUBJECT MATTER;

FAR 52.227-12: PATENT RIGHTS – RETENTION BY THE CONTRACTOR (LONG FORM);

DFAR 252.227-7013: RIGHTS IN TECHNICAL DATA – NONCOMMERCIAL ITEMS;

DFAR 252.227.7014: RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION; and

DFAR 252.227.7015: RIGHTS IN TECHNICAL DATA – COMMERCIAL ITEMS.

### 4.3. Patent Indemnity

The Seller shall indemnify Buyer against claims by owners or licensees of patents and registered designs of the United States for infringement thereof by use of sale of the Supplies or Services, PROVIDED:

- 4.3.1. This Indemnity shall not extend to infringements resulting from use by the Seller of Buyer's parts, designs or specific instructions or from use or sale in combination with other Supplies where infringements would not have otherwise occurred; and
- 4.3.2. Buyer shall immediately inform the Seller of claims, shall make no settlement or admission and shall permit the Seller alone (and at the Seller's expense) to deal with claims;

**5. LIABILITY INSURANCE FOR ACCIDENTS OR DAMAGE**

- 5.1. When Seller is performing any of its obligations on Buyer's premises or on a vessel in which the Seller's Supplies and Services are being used, Seller shall purchase and maintain such insurance as will protect Buyer from claims which may arise out of or as a result from Seller's operations under this Subcontract/Delivery Order, whether such operations be by Seller or by any of Seller's subcontractors or by anyone directly or indirectly employed by either of them, or by anyone for whose acts they may be liable. Said coverage shall include, but not be limited to any insurance required by State, Federal, and local laws, and contractual coverage and completed operations coverage and: (i) Statutory Workers' Compensation as may be required by the locality where the work is being performed, including Longshoremen's and Harbor Worker's Compensation Act; (ii) Employers' Liability - \$1,000,000 per occurrence; (iii) Commercial General Liability - the minimum limits shall be \$1,000,000/\$2,000,000 Personal & Bodily Injury and Property Damage combined single limit per occurrence; and (iv) Automobile Liability - the minimum limits shall be \$1,000,000/\$2,000,000 Bodily Injury and Property Damage combined single limit per occurrence.
- 5.2. As respects policies under (i) above, the insurance carrier must agree in writing to waive its right to subrogation. Likewise, as respects policies under (iii) and (iv) above, Buyer must be listed as an additional insured. A certificate of insurance evidencing such coverage and conditions must be provided to Buyer prior to the commencement of work and upon renewal of any policies during the course of work. All policies shall provide 30 days advanced written notice of any coverage suspension or material changes, must be written by carriers with A.M. Best's rating of "A-, VII", and licensed to do business in the state where services are to be performed, and shall be primary as respects any coverage which Buyer may carry.

**6. MARKING, PACKING, AND PACKAGING**

- 6.1. Unless otherwise specified, material must be packaged to meet or exceed American Society for Testing and Materials (ASTM) Designation D3951-98. When shipping on pallets, material or equipment must be adequately secured to meet ASTM Designation D3951-98, Part 5.1.5, Unitization.
- 6.2. All shipments shall be marked with the following information:
- 6.2.1. Buyer Subcontract/Delivery Order number for the product being shipped
  - 6.2.2. Buyer line item number for the product being shipped
  - 6.2.3. Buyer catalog number (or NSN, if applicable) for the product being shipped
  - 6.2.4. Quantity shipped for the product being shipped
  - 6.2.5. MSDS # (if applicable) for the product being shipped
  - 6.2.6. QPL Source (if applicable) for the product being shipped
  - 6.2.7. Shelf Life (if applicable) for the product being shipped
- Markings shall be on the face of each container (i.e., crates, boxes, cartons, etc.) or securely tagged to soft-sided containers.
- 6.3. All packing lists shall minimally contain the information in paragraph 6.2. The packing list shall be secured to the external surface of each container, or readily accessible upon entry to each container.

The Seller's commercial shipping document/packing list for Subcontract/Delivery Order items shall include proof that Government Source Inspection has been performed (if required) and the following Procurement Quality Audit (PQA) statement beneath Seller's statement:

"Required PQA of listed items has been performed. (Signature of Auth. Seller Rep.),      (date)  
(Typed name)\_\_\_\_\_."

- 6.4.
- 6.4.1. Tags and labels, when required, shall be Seller's tags or labels conforming to the requirements of the Specification MIL-STD 129. Labels are authorized to be used on metal containers. Supplies requiring special certification shall be annotated on inner and outer container tags or labels indicating special certification compliance. Where the size of the shipping container allows, four address labels must be attached to the containers at the following location: (i) one (1) each on top of container, (ii) one (1) each on each side of the container, and (iii) one (1) each on front of container. For the purposes of this Clause the top, bottom, front and back of the container are not considered sides.
- 6.4.2. Within each container, each Buyer catalog number (or NSN, if applicable) shall be segregated (i.e., bagged, boxed, layered or partitioned) and readily identifiable with tags/labels reflecting information stated in paragraph 6.2 above. If multiple loose Supplies are required to fulfill one Buyer catalog number, mark one item per paragraph 6.2 above and mark all remaining Supplies as "part of" the Buyer catalog number.
- 6.4.3. Multiple orders shall not be shipped within a single container.
- 6.4.4. Multiple shipments to one (1) specified delivery location on any given day shall be consolidated under one (1) Bill of Lading.
- 6.4.5. Where different delivery locations are specified by the Buyer, each container shall include only material for one delivery location. Multiple delivery locations require separate Bills of Lading.
- 6.5. MSDS Requirements
- 6.5.1. General
- 6.5.1.1 The Seller shall provide information for each item of Hazardous Material to be delivered pursuant to this Subcontract/Delivery Order in the form of a current, updated Material Safety Data Sheet (MSDS) in accordance with 29 CFR 1910.1200 Hazard Communication Standard, to the Buyer prior to Subcontract/Delivery Order award and in advance of any shipment. The MSDS Sheet shall include a statement (if applicable) that the product contains a toxic chemical or chemicals, by name, subject to the reporting requirements of EPCRA Section 313 (40CFR372).
- 6.5.1.2 In addition, each Material Safety Data Sheet provided by the Seller must contain specific disposal procedures for hazardous waste pursuant to and in accordance with all Resource Conservation Recovery Act (RCRA) Laws and Environmental Protection Agency/Department of Environmental Protection (EPA/DEP) Regulations.
- 6.5.1.3 Buyer will then provide Seller with an MSDS number. The MSDS Number must appear on all packing slips, containers and packing containers and must be written as:  
MSDS Number #####
- 6.5.1.4 The use of Buyer provided MSDS Labels (Fluorescent Orange) is mandatory. Labels shall be applied directly to the product.
- 6.5.2. Changes: For any change in the product the Seller shall submit a revised/updated MSDS Sheet to Buyer in advance of any shipment.
- 6.5.3. Reporting Requirements for 313 Chemicals:
- 6.5.3.1 On an annual basis (not later than 30 September of each calendar year) the Seller must provide either an updated MSDS Sheet with any changes or a Certification Statement that the current MSDS Sheet is accurate and complete.
- 6.5.3.2 At a minimum the following must be included in each annual submittal: Name of each chemical substance, the Chemical Abstracts Service Registry Number (CAS#); and the percentage of weight of each hazardous substance or chemical in the mixture or trade name product.
- 6.5.3.3 Notification is also required within 30 days of the following events if the Supplier; (1) changes a mixture or trade name product by adding, removing, or changing the percentage by weight of a listed toxic chemical; or (2) discovers that previous notification did not properly identify the toxic chemicals in the mixture or correctly indicate the percentage by weight.

6.5.3.4 The reports shall be forwarded to:

Bath Iron Works  
700 Washington Street  
Bath, ME 04530  
Attn: Safety Department, Mail Stop 2240

or

By facsimile at 207-442-3356  
Attn: Safety Department

6.5.3.5 The shipment of all material or equipment to Buyer or another Buyer designated destination must comply with the Hazardous Materials Transportation Act (Title CFR 49 Parts 170-178).

## **7. OFFSETS**

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.

## **8. SAFETY AND SECURITY**

- 8.1. 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.
- 8.2. 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.
- 8.3. 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.
- 8.4. By accepting this Subcontract/Delivery Order, the Seller acknowledges that the following is applicable to any work performed on this Subcontract/Delivery Order:
  - 8.4.1. Only trained authorized personnel will operate or service equipment, and then only in accordance with manufacturer's recommendations,
  - 8.4.2. 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
  - 8.4.3. 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.

**9. SURVIVABILITY**

The obligations of the Parties under this Subcontract/Delivery Order, which by their nature continue beyond the expiration of this Subcontract/Delivery Order, shall survive any termination or cancellation of this Subcontract/Delivery Order.

**10. GOVERNMENT "FLOW-DOWN" CLAUSE**

Pursuant to Buyer's Prime Contract with the U.S. Government and Buyer's acquisition policies, the following Clause is included in this SUBCONTRACT and/or DELIVERY ORDER in full text. As stated in the definitions Clause, "Contractor" shall mean Seller, "subcontractor" shall mean Seller's subcontractor, "Contracting Officer" and "Government" or "Navy" shall mean Buyer and "Contract" refers to this SUBCONTRACT and/or DELIVERY ORDER except where context of Clause otherwise demands and any reference to "Disputes" in this clause shall be construed to only mean the clause entitled "Disputes" contained in Paragraph 1 herein.

**252.225-7014 Preference for Domestic Specialty Metals (Jun 2005) (Deviation)**

- (a) *Definitions.* As used in this clause –
- (1) "Qualifying country" means any country listed in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.
  - (2) "Specialty metals" means any of the following:
    - (i) Steel –
      - (A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or
      - (B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten or vanadium.
    - (ii) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent.
    - (iii) Titanium and titanium alloys.
    - (iv) Zirconium and zirconium base alloys.
- (b) Any specialty metals delivered under this solicitation/purchase order shall be melted or produced in the United States or its outlying areas or a qualifying country.

**Alternate I**

- (a) *Definitions.* As used in this clause –
- (1) "Electronic component" means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections of electrical devices such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits. An item can be an "electronic component" regardless of the tier of the end product at which it is installed.
  - (2) "End Product" means supplies delivered under a line item of this solicitation/purchase order.
  - (3) "Qualifying country" means any country listed in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.
  - (4) "Specialty metals" means any of the following:
    - (i) Steel –
      - (A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

- (B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten or vanadium.
- (ii) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent.
- (iii) Titanium and titanium alloys.
- (iv) Zirconium and zirconium base alloys.
- (b) Any specialty metals incorporated in articles delivered under this solicitation/purchase order shall be melted or produced in the United States or its outlying areas.
- (c) This clause does not apply to specialty metals –
  - (1) Melted in a qualifying country or incorporated in an article manufactured in a qualifying country; or
  - (2) Incorporated in a commercially available electronic component, if the value of the specialty metal content in the electronic component does not exceed 10 percent of the overall value of the lowest level electronic component, containing specialty metal, that is – (i) Produced by the Offeror; or (ii) If the Offeror does not produce the electronic component, produced by the Offeror’s subcontractor from which the electronic component was acquired.
- (d) The offeror shall insert the substance of this clause, including this paragraph (d), in all subcontracts for items containing specialty metals.

**11. PROGRESS PAYMENTS**

**General:** Progress payments will be available to the Seller upon Seller's request prior to Subcontract/Delivery Order award and on condition that the Seller submits and has approved by the Buyer, a Progress Payment Plan prior to or within 30 days of Subcontract/Delivery Order award. Progress payments will be paid to the Seller upon the completion of physically verifiable milestones defined and scheduled in the plan, and submittal to Buyer of a properly prepared invoice. Payment will be made at ninety percent (90%) of the assigned value of the milestone(s) achieved or the Seller's incurred cost, whichever is less. Payment for any milestone will not be made until after the scheduled date of milestone completion. Progress payments may only be made monthly unless the eligible amount is five thousand dollars or less, in which case the amount shall be included in the Seller's next invoice.

**Progress Payment Invoice Request Format:** Each invoice must be accompanied by Exhibits A, B, and C as described elsewhere in this Clause. Exhibit C must be duly executed by a Company Officer of the Seller. All Exhibits must be updated to include the current billing.

**Progress Payment Suspension:** The Buyer may reduce or suspend progress payments at any time if there is substantial evidence that the Seller has failed to comply with any material provision of the Subcontract/Delivery Order.

**Release of Claims:** The Seller's final invoice must be accompanied by an acceptable release of claims. The Seller and each assignee under assignment at the time of final payment shall execute and deliver as a condition precedent to final payment, a release in form attached as Exhibit C, discharging the Buyer and the Government, their officers, agents and employees from liabilities, obligations and claims arising under this Subcontract and / or Delivery Order. Buyer may withhold final payment hereunder until the requirements of this paragraph have been fulfilled.

**Liquidation:** The Seller shall be entitled to invoice the difference between the Subcontract/Delivery Order amount and the cumulative total payments made, less any amount set aside for any provision of the Subcontract/Delivery Order providing for monetary retentions by the Buyer, at delivery of the Product(s).

**Title:** Title for Subcontract/Delivery Order Products is vested in the Buyer as payment is made. Disposition of property shall be determined by other applicable clauses of the Subcontract/Delivery Order (e.g. Termination). The Seller must obtain approval of the Buyer before acquiring for its own use or disposing of any property for which title is vested in the Buyer under this Clause.



**Property Identification:** The Seller shall clearly identify, by marking and segregating, all property subject to any liens or title in favor of the Buyer, and shall maintain reasonable control over such property.

**Reservation of Rights:** The rights and remedies of Buyer provided in this Clause shall not be exclusive, and are in addition to any other rights and remedies provided under this Subcontract/Delivery Order or at law.

**BIW Program Milestone Plan & Progress Report****Description/Purpose:**

Program milestones consistent with the Subcontract/Delivery Order schedule will be identified by the Seller with the proposal or within thirty (30) days after award of the Subcontract/Delivery Order as mutually agreed to by the Seller and Buyer. The milestones will represent events which are physically measurable and completion of which is clearly verifiable. A percentage will be assigned to each milestone based on the labor, material, and other resources required to achieve the milestone. If provided before Subcontract/Delivery Order award, these percentages may be adjusted to reflect the results of negotiations between BIW and the Seller. The milestones and/or percentages may be revised to reflect the effects of scope changes in the Subcontract/Delivery Order.

The Program Milestone Plan & Progress Report (Exhibit A) is to be submitted either with the Seller's proposal or within thirty (30) days after award of the Subcontract/Delivery Order, as well as with each request for progress payments.

**Preparation Instructions for Exhibit A- BIW Program Milestone Plan & Progress Report:**

**Item 1 and 1a.** Provide a brief description of the Product(s) being procured (include Procurement Specification number if applicable).

**Item 2. Seller:** Enter the company name of the Seller.

**Item 3. Subcontract/Delivery Order:** Enter the Subcontract/Delivery Order number.

**Item 4a. BIW Hull Number:** Enter the BIW hull number the milestones are applicable to. A separate plan and progress report must be submitted for each ship.

**Item 4b. Current Total Value:** Enter the current value of this Subcontract/Delivery Order.

**Item 5. Milestone Description:** Enter a short description of the milestone.

**Item 6. Milestone Percentage of Contract:** Identify the progress percentage that each milestone represents. The sum of all milestones should equal 100%.

**Item 7. Cumulative Milestone Percentage:** This is the cumulative total of the individual milestone percentages listed in item 6.

**Item 8. Milestone Planned Completion Date:** Enter the date the milestone is scheduled to be complete.

**Item 9. Actual Milestone Completion Date:** Enter the date the milestone was actually completed.

**Item 10 Milestone Planned Invoice Date:** Enter the date the invoice is scheduled to be submitted.

**Item11 Actual Milestone Invoice Date:** Enter the date the invoice was actually submitted.

**Item 12. Dollar Value of Milestone:** Identify the dollar value of the milestone. This is computed by multiplying the milestone percentage value in item 6 by the "Current Total Value" found in Item 4b.

**Item 13. Cumulative Dollar Value of Milestones:** This is the cumulative total of the individual milestone dollar values listed in item 12.

**Item 14. Invoice Dollar Value of Milestone:** Identify the dollar value of the invoice to be submitted. (90% of the value of milestone(s) achieved or the incurred cost, whichever is less.)

**Item 15. Cumulative Invoice Dollar Value of Milestones:** This is the cumulative total of the individual invoice dollar values listed in item 14.

**BIW Program Milestone Plan & Progress Report**

1. Product:	1a. Specification
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3. Subcontract/Delivery Order:
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2. Seller:
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4a. BIW Hull Number:
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4b. Current Total Value:
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REF. NO.	5. Milestone Description	6. Milestone Percentage of Subcontract/Delivery Order	7. Cumulative Milestone Percentage	8. Milestone Planned Completion Date	9. Actual Milestone Completion Date	10. Milestone Planned Invoice Date	11. Actual Milestone Invoice Date	12. Dollar Value of Milestone	13. Cumulative Dollar Value of Milestones	14. Invoice Dollar Value of Milestone	15. Cumulative Invoice Dollar Value of Milestones
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**EXHIBIT B****BIW Progress Payment Request****Description/ Purpose:**

Requests for progress payments based on progress made against the milestones on the Program Milestone Plan.

**Preparation Instructions for Exhibit B- BIW Progress Payment Request:**

**Item 1. Product:** Provide a brief description of the Product(s) being procured (include Procurement Specification number if applicable).

**Item 2. Request Period:** Enter the period for which progress payments are being requested.

**Item 3. Seller:** Enter the company name of the Seller.

**Item 4. Request Date:** Enter the date of this request.

**Item 5. Subcontract/Delivery Order Number:** Enter the Subcontract/Delivery Order number.

**Item 6. Request Number:** Enter the number of this request. The request number should be the same as the cumulative number of progress payments requested to date for the Subcontract/Delivery Order.

**Item 7. Current Total Value:** Enter the current total value of the Subcontract/Delivery Order.

**Item 8. Total Not Subject to Progress Payments:** Enter the total value of any Products/Services, included in the Subcontract/Delivery Order, which are not subject to progress payments (ex., data).

**Item 9. Total Subject to Progress Payments:** Subtract Item 8 from Item 7. This is the total amount of the Subcontract/Delivery Order that is subject to progress payments.

**Item 10. Percent Value Earned:** Enter the cumulative percentage of completion as shown on Exhibit A, Item 7.

**Item 11. Cumulative Dollar Value of Milestones Earned:** Enter the cumulative dollar value of completed milestones as shown on Exhibit A, Item 13.

**Item 12. 90% of Earned Value:** Enter 90% Item 11 above.

**Item 13. Cumulative Incurred Cost:** Enter the cumulative cost incurred to date on the Subcontract/Delivery Order for Products/Services subject to progress payments.

**Item 14. Amount Eligible for Billing:** Enter the lesser of Items 12 and 13.

**Item 15. Cumulative Previous Progress Payments to Date:** Enter the cumulative dollar value of all previous progress payments applied for prior to this request.

**Item 16. Value of Present Request:** Subtract Item 15 from Item 14 and enter the results here.

**Item 17. Certificate of Inspection:** Must be executed by an Officer of the Seller.

**Item 18. Release of Claims:** Must be properly prepared, endorsed and submitted with Seller's final invoice, Exhibit C.

## BIW Progress Payment Request

1.	Product:	2.	Request Period:
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3.	Seller:	4.	Request Date:
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5.	Subcontract / Delivery Order Number:	6.	Request Number:
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7.	Current Total Value: \$
8.	Total Not Subject To Progress Payments: \$
9.	Total Subject To Progress Payments: \$
10.	Percent Value Earned: \$
11.	Cumulative Dollar Value Milestones Earned: \$
12.	90% Of Earned Value: \$
13.	Cumulative Incurred Cost: \$
14.	Amount Eligible For Billing: \$
15.	Cumulative Progress Payments To Date: \$
16.	Value Of Present Request: \$
17.	<p style="text-align: center;"><b>Certificate of Inspection:</b></p> <p>I certify that I am familiar with the construction of the _____ and that the above bill is correct and reasonable and that payment thereof has not been received and that this bill is presented with the knowledge that the amount paid hereunder will become the basis for a charge against the United States Government for costs incurred under prime contracts with the Government.</p>
18.	Release of Claims (Exhibit C) For Final Payment Only.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Company Officer

**EXHIBIT C**

**RELEASE OF CLAIMS**

Progress Payment Invoice #: \_\_\_\_\_ Subcontract/Delivery Order #: \_\_\_\_\_

Seller \_\_\_\_\_

Assignee (if applicable) \_\_\_\_\_ Date \_\_\_\_\_

**AFFIDAVIT OF NO LIEN**

\_\_\_\_\_, being duly sworn, deposes and says:

That he/she is \_\_\_\_\_ (position/title) of \_\_\_\_\_ (Seller's Name), contractor for furnishing of the \_\_\_\_\_. It is his/her duty to know, and he/she does know and is thoroughly familiar with (a) the conduct of the business of said company, (b) its financial condition and the stature of its business transactions, and (c) the provisions of the Subcontract/Delivery Order identified above.

That in connection with Invoice No. \_\_\_\_\_ made by the Seller for partial payment under said Subcontract/Delivery Order, he/she has made due and diligent personal inquiry and has ascertained that there are no liens or rights in rem of any kind whatsoever against said \_\_\_\_\_ (work or equipment furnished), or material construction thereof, other than claims and liens of the \_\_\_\_\_.

That no laborer or mechanic in the employ of said contractor has been permitted or required to work upon any part of the \_\_\_\_\_ (work or equipment furnished) in violation of the provisions of the Subcontract/Delivery Order identified above.

That title to all material and equipment included as part of the value of work done and delivered to the Seller on which payments are made shall immediately be vested in BIW and that all other conditions of said Subcontract/Delivery Order are being observed by the Seller in the prosecution of said Subcontract/Delivery Order.

\_\_\_\_\_  
Signature