

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

Form 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the Quarterly Period Ended October 31, 2023

Or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the Transition Period From _____ to _____

Commission file number: 001-33417

OCEAN POWER TECHNOLOGIES, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

*(State or Other Jurisdiction
of Incorporation or Organization)*

22-2535818

*(I.R.S. Employer
Identification No.)*

28 ENGELHARD DRIVE, SUITE B, MONROE TOWNSHIP, NJ 08831

(Address of Principal Executive Offices, Including Zip Code)

(609) 730-0400

(Registrant's Telephone Number, Including Area Code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock \$0.001 par value	OPTT	NYSE American
Series A Preferred Stock Purchase Right	N/A	NYSE American

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of December 11, 2023, the number of outstanding shares of common stock of the registrant was 58,788,718.

OCEAN POWER TECHNOLOGIES, INC.
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Special Note Regarding Forward-Looking Statements

We have made statements in this Quarterly Report on Form 10-Q that are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements convey our current expectations or forecasts of future events. Forward-looking statements include statements regarding our future financial position, business strategy, pending, threatened, and current litigation, liquidity, budgets, projected revenue and costs, plans and objectives of management for future operations. The words “may,” “continue,” “estimate,” “intend,” “plan,” “will,” “believe,” “project,” “expect,” “anticipate”, and similar expressions may identify forward-looking statements, but the absence of these words does not necessarily mean that a statement is not forward-looking.

The forward-looking statements contained in or incorporated by reference are largely based on our expectations, which reflect estimates and assumptions made by management. These estimates and assumptions reflect our best judgment based on currently known market conditions and other factors. Although we believe such estimates and assumptions to be reasonable, they are inherently uncertain and involve several risks and uncertainties that are beyond our control, including:

- our ability to develop, market and commercialize our products, and achieve and sustain profitability;
- our continued development of our proprietary technologies, and expected continued use of cash from operating activities unless or until we achieve positive cash flow from the commercialization of our products and services;
- our ability to obtain additional funding, as and if needed, which will be subject to several factors, including market conditions, and our operating performance;
- our history of operating losses, which we expect to continue for at least the short term and possibly longer;
- our ability to manage challenges and expenses associated with communications and disputes with activist shareholders, including litigation;
- our ability to manage and mitigate risks associated with our internal cyber security protocols and protection of the data we collect and distribute;
- our ability to protect our intellectual property portfolio;
- the impact of inflation related to the U.S. dollar on our business, operations, customers, suppliers and manufacturers and personnel;
- our ability to meet product development, manufacturing and customer delivery deadlines and the potential impact due to disruptions to our supply chain, as a result of, among other things, staff shortages, order delays, and increased pricing from vendors and manufacturers;
- our acquisitions and our ability to integrate them into our operations which may be unsuccessful or expose us to unforeseen liabilities, and may use significant resources;
- our estimates regarding future expenses, revenues, and capital requirements;
- our ability to identify and penetrate markets for our products, services, and solutions;
- our ability to effectively respond to competition in our targeted markets;
- our ability to establish relationships with our existing and future strategic partners which may not be successful;
- our ability to maintain the listing of our common stock on the NYSE American;
- the reliability of our technology, products and solutions;
- our ability to increase or more efficiently utilize the power available from our product lines;
- changes in current legislation, regulations and economic conditions that affect the demand for, or restrict the use of our products;
- the risks related to the actions of Paragon Technologies, Inc. in connection with its threatened proxy contest against us and the related litigation brought against us, including the amount of related costs incurred by us and the disruption caused to our business activities by these actions;
- our ability to hire and retain key personnel, including senior management, to achieve our business objectives; and
- our ability to establish and maintain commercial profit margins.

Any or all of our forward-looking statements in this report may turn out to be inaccurate. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. They may be affected by inaccurate assumptions we might make or unknown risks and uncertainties, including the risks, uncertainties and assumptions described in Item 1A “Risk Factors” of our Annual Report on Form 10-K for the year ended April 30, 2023, and in our subsequent reports under the Exchange Act. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this report may not occur as contemplated and actual results could differ materially from those anticipated or implied by the forward-looking statements.

Many of these factors are beyond our ability to control or predict. These factors are not intended to represent a complete list of the general or specific factors that may affect us. You should not unduly rely on these forward-looking statements, which speak only as of the date of this filing. Unless required by law, we undertake no obligation to publicly update or revise any forward-looking statements to reflect new information or future events or otherwise.

PART I — FINANCIAL INFORMATION

Item 1. Financial Statements

Ocean Power Technologies, Inc. and Subsidiaries
Consolidated Balance Sheets
(in \$000's, except share data)

	<u>October 31, 2023</u>	<u>April 30, 2023</u>
	(Unaudited)	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 3,292	\$ 6,883
Short term investments	15,427	27,790
Restricted cash, short-term	219	65
Accounts receivable	516	745
Contract assets	326	152
Inventory	2,546	1,044
Other current assets	1,505	994
Total current assets	<u>23,831</u>	<u>37,673</u>
Property and equipment, net	1,806	1,280
Intangibles, net	3,898	3,978
Right-of-use asset, net	1,550	1,751
Restricted cash, long-term	—	155
Goodwill	8,537	8,537
Total assets	<u>\$ 39,622</u>	<u>\$ 53,374</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 1,754	\$ 952
Earnout payable	—	1,500
Accrued expenses	2,094	2,346
Contingent liabilities	1,117	1,202
Right-of-use liabilities, current portion	579	529
Contract liabilities	1,164	1,378
Total current liabilities	<u>6,708</u>	<u>7,907</u>
Deferred tax liability	203	203
Right-of-use liabilities, less current portion	1,060	1,311
Total liabilities	<u>7,971</u>	<u>9,421</u>
Commitments and contingencies (Note 14)		
Shareholders' Equity:		
Preferred stock, \$0.001 par value; authorized 5,000,000 shares, none issued or outstanding; 100,000 designated as Series A	—	—
Common stock, \$0.001 par value; authorized 100,000,000 shares, issued 58,833,758 shares and 56,304,642 shares, respectively; outstanding 58,788,770 shares and 56,263,728 shares, respectively	59	56
Treasury stock, at cost; 44,988 shares and 40,914 shares, respectively	(357)	(355)
Additional paid-in capital	326,342	324,393
Accumulated deficit	(294,348)	(280,096)
Accumulated other comprehensive loss	(45)	(45)
Total shareholders' equity	<u>31,651</u>	<u>43,953</u>
Total liabilities and shareholders' equity	<u>\$ 39,622</u>	<u>\$ 53,374</u>

See accompanying notes to unaudited consolidated financial statements.

Ocean Power Technologies, Inc. and Subsidiaries
Consolidated Statements of Operations
(in \$000's, except per share data)
Unaudited

	Three months ended October 31,		Six months ended October 31,	
	2023	2022	2023	2022
Revenues	\$ 889	\$ 303	\$ 2,161	\$ 1,017
Cost of revenues	401	264	1,010	784
Gross margin	488	39	1,151	233
Gain from change in fair value of consideration	(23)	(90)	(86)	(221)
Operating expenses	7,995	6,409	16,100	12,727
Operating loss	(7,484)	(6,280)	(14,863)	(12,273)
Interest income, net	270	234	610	375
Other income, employee retention credit	—	1,202	—	1,202
Foreign exchange gain	1	—	1	—
Loss before income taxes	(7,213)	(4,844)	(14,252)	(10,696)
Provision for income taxes	—	—	—	—
Net loss	\$ (7,213)	\$ (4,844)	\$ (14,252)	\$ (10,696)
Basic and diluted net loss per share	\$ (0.12)	\$ (0.09)	\$ (0.24)	\$ (0.19)
Weighted average shares used to compute basic and diluted net loss per common share	58,781,505	55,898,528	58,752,291	55,894,090

See accompanying notes to unaudited consolidated financial statements.

Ocean Power Technologies, Inc. and Subsidiaries
Consolidated Statements of Comprehensive Loss
(in \$000's)
Unaudited

	<u>Three months ended October 31,</u>		<u>Six months ended October 31,</u>	
	<u>2023</u>	<u>2022</u>	<u>2023</u>	<u>2022</u>
Net loss	\$ (7,213)	\$ (4,844)	\$ (14,252)	\$ (10,696)
Foreign currency translation adjustment	—	—	—	—
Total comprehensive loss	<u>\$ (7,213)</u>	<u>\$ (4,844)</u>	<u>\$ (14,252)</u>	<u>\$ (10,696)</u>

See accompanying notes to unaudited consolidated financial statements.

Ocean Power Technologies, Inc. and Subsidiaries
Consolidated Statements of Shareholders' Equity
(in \$000's, except share data)
Unaudited

Six Months Ended October 31, 2023

	<u>Common Shares</u>		<u>Treasury Shares</u>		<u>Additional Paid-In Capital</u>	<u>Accumulated Deficit</u>	<u>Accumulated Other Comprehensive Loss</u>	<u>Total Shareholders' Equity</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>				
Balances at May 1, 2023	56,304,642	\$ 56	(40,914)	\$ (355)	\$ 324,393	\$ (280,096)	\$ (45)	43,953
Net loss	—	—	—	—	—	(14,252)	—	(14,252)
Share-based compensation	—	—	—	—	673	—	—	673
Common stock issued related to bonus and earnout payments	2,403,846	3	—	—	1,247	—	—	1,250
Common stock issued upon vesting of restricted stock	69,666	—	—	—	—	—	—	—
Issuance of common stock - Cantor At The Market offering, net of issuance costs	55,604	—	—	—	29	—	—	29
Shares withheld for tax withholdings	—	—	(4,074)	(2)	—	—	—	(2)
Balances at October 31, 2023	<u>58,833,758</u>	<u>\$ 59</u>	<u>(44,988)</u>	<u>\$ (357)</u>	<u>\$ 326,342</u>	<u>\$ (294,348)</u>	<u>\$ (45)</u>	<u>\$ 31,651</u>

Six Months Ended October 31, 2022

	<u>Common Shares</u>		<u>Treasury Shares</u>		<u>Additional Paid-In Capital</u>	<u>Accumulated Deficit</u>	<u>Accumulated Other Comprehensive Loss</u>	<u>Total Shareholders' Equity</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>				
Balances at May 1, 2022	55,905,213	\$ 56	(23,352)	\$ (341)	\$ 322,932	\$ (253,770)	\$ (46)	\$ 68,831
Net loss	—	\$ —	—	—	—	(10,696)	—	(10,696)
Share-based compensation	—	\$ —	—	—	632	—	—	632
Common stock issued upon vesting of restricted stock units	16,667	\$ —	—	—	—	—	—	—
Balances at October 31, 2022	<u>55,921,880</u>	<u>\$ 56</u>	<u>(23,352)</u>	<u>\$ (341)</u>	<u>\$ 323,564</u>	<u>\$ (264,466)</u>	<u>\$ (46)</u>	<u>\$ 58,767</u>

Three Months Ended October 31, 2023

	<u>Common Shares</u>		<u>Treasury Shares</u>		<u>Additional Paid-In Capital</u>	<u>Accumulated Deficit</u>	<u>Accumulated Other Comprehensive Loss</u>	<u>Total Stockholders' Equity</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>				
Balance at August 1, 2023	58,776,654	\$ 59	(44,680)	\$ (357)	\$ 326,041	\$ (287,135)	\$ (45)	38,563
Net loss	—	—	—	—	—	(7,213)	—	(7,213)
Share-based compensation	—	—	—	—	272	—	—	272
Common stock issued upon vesting of restricted stock	1,500	—	—	—	—	—	—	—
Issuance of common stock - Cantor At The Market offering, net of issuance costs	55,604	—	—	—	29	—	—	29
Acquisition of treasury stock	—	—	(308)	—	—	—	—	—
Balances at October 31, 2023	<u>58,833,758</u>	<u>\$ 59</u>	<u>(44,988)</u>	<u>\$ (357)</u>	<u>\$ 326,342</u>	<u>\$ (294,348)</u>	<u>\$ (45)</u>	<u>\$ 31,651</u>

Three Months Ended October 31, 2022

	<u>Common Shares</u>		<u>Treasury Shares</u>		<u>Additional Paid-In Capital</u>	<u>Accumulated Deficit</u>	<u>Accumulated Other Comprehensive Loss</u>	<u>Total Stockholders' Equity</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>				
Balance at August 1, 2022	55,921,880	\$ 56	(23,352)	\$ (341)	\$ 323,265	\$ (259,622)	\$ (46)	63,312
Net loss	—	—	—	—	—	(4,844)	—	(4,844)
Share-based compensation	—	—	—	—	299	—	—	299
Balances at Balance, October 31, 2022	<u>55,921,880</u>	<u>\$ 56</u>	<u>(23,352)</u>	<u>\$ (341)</u>	<u>\$ 323,564</u>	<u>\$ (264,466)</u>	<u>\$ (46)</u>	<u>\$ 58,767</u>

See accompanying notes to unaudited consolidated financial statements.

Ocean Power Technologies, Inc. and Subsidiaries
Consolidated Statements of Cash Flows
(in \$000's)
Unaudited

	Six months ended October 31,	
	2023	2022
Cash flows from operating activities:		
Net loss	\$ (14,252)	\$ (10,696)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation of fixed assets	172	117
Foreign exchange gain	1	—
Amortization of intangible assets	80	79
Amortization of right of use asset	201	152
(Accretion of discount)/amortization of premium on investments	(211)	191
Change in contingent consideration liability	(86)	(221)
Stock based compensation	673	632
Changes in operating assets and liabilities:		
Accounts receivable	229	(105)
Contract assets	(174)	85
Inventory	(1,502)	(586)
Other assets	(511)	(2,180)
Accounts payable	802	(316)
Earnout payable	(500)	—
Accrued expenses	(2)	680
Change in lease liability	(201)	(166)
Contract liabilities	(214)	1,333
Net cash used in operating activities	<u>\$ (15,495)</u>	<u>\$ (11,001)</u>
Cash flows from investing activities:		
Redemptions of short term investments	20,600	33,433
Purchases of short term investments	(8,026)	(20,108)
Purchases of property and equipment	(698)	(179)
Net cash provided by investing activities	<u>\$ 11,876</u>	<u>\$ 13,146</u>
Cash flows from financing activities:		
Cash paid for tax withholding related to shares withheld	(2)	—
Proceeds from issuance of common stock - Cantor At The Market offering, net of issuance costs	\$ 29	\$ —
Net cash provided by financing activities	<u>\$ 27</u>	<u>\$ —</u>
Net (decrease) / increase in cash, cash equivalents and restricted cash	<u>\$ (3,592)</u>	<u>\$ 2,145</u>
Cash, cash equivalents and restricted cash, beginning of period	\$ 7,103	\$ 8,362
Cash, cash equivalents and restricted cash, end of period	<u>\$ 3,511</u>	<u>\$ 10,507</u>
Supplemental disclosure of noncash investing and financing activities:		
Issuance of common stock for Marine Advanced Robotics earnout	\$ 1,000	\$ —
Bonus paid through stock issuance	\$ 250	\$ —

See accompanying notes to unaudited consolidated financial statements.

Ocean Power Technologies, Inc. and Subsidiaries
Notes to Unaudited Consolidated Financial Statements

(1) Background, Basis of Presentation and Liquidity

(a) Background

Ocean Power Technologies, Inc. (the “Company”) was founded in 1984 in New Jersey, commenced business operations in 1994 and re-incorporated in Delaware in 2007. We provide ocean data collection and reporting, marine power, offshore communications and Domain Awareness Systems (“MDA” or “MDAS”) products, integrated solutions, and consulting services. Our solutions focus on four major service areas: Data as a Service (“DaaS”), which includes data collected by our Wave Adaptive Modular Vessel (WAM-V®) autonomous vehicles or our PowerBuoy® product lines; Robotics as a Service (“RaaS”), which provides a lower cost subscription model for our customers to access use of our WAM-V’s®; Power as a Service (“PaaS”), which includes our PowerBuoy® products; and our Strategic Consulting Services. We offer our products and services to a wide-range of customers, including those in government and offshore energy, oil and gas, construction, wind power and other industries. We are involved in the entire life cycle of product development, from product design through assembly, testing, deployment, maintenance and upgrades, while working closely with partners across our supply chain. Our solutions are based on technologies that enable autonomous, zero or low carbon emitting, and cost effective data collection, analysis, transportation and communication. Our solutions are primarily suited to ocean and other offshore environments, and support generation of actionable intelligence on a standalone basis or working with other data sources. We then channel the information we collect, and other communications, through control equipment linked to edge computing and cloud hosting environments. Our goal is to generate most of our revenues from the sale or lease of our products and solutions. As we continue to commercialize our products and services, we expect to have a decrease in cash to fund operating activities until we achieve positive cash flow from the meaningful progress we have made in orders, pipeline, and backlog across our business.

(b) Basis of Presentation

The accompanying unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”) and for interim financial information in accordance with the Securities and Exchange Commission (“SEC”), instructions to Form 10-Q and Article 8 of Regulation S-X. Accordingly, they do not include all the information and footnotes required by GAAP for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. The interim operating results are not necessarily indicative of the results for a full year or for any other interim period. Further information on potential factors that could affect the Company’s financial results can be found in the Company’s Annual Report on Form 10-K for the year ended April 30, 2023, as filed with the SEC and elsewhere in our subsequent Exchange Act filings, including this Form 10-Q. Certain amounts have been reclassified to conform to current period presentation. This reclassification had no impact on the previously reported net loss and comprehensive loss.

(c) Liquidity

For the six months ended October 31, 2023, the Company incurred net losses of approximately \$14.3 million, used cash in operations of approximately \$15.5 million and had an accumulated deficit of approximately \$294.3 million. Cash used in operations includes cash payments of the MAR earnout payable of \$0.5 million and payment of the fiscal 2023 bonus for all employees. The Company has continued to make investments in ongoing product development efforts and to build inventory in anticipation of, and to support, future growth. The Company’s future results of operations involve significant risks and uncertainties. Factors that could affect the Company’s future operating results and could cause actual results to vary materially from expectations include, but are not limited to, performance of its products, its ability to market and commercialize its products and new products that it may develop, access to capital, technology development, scalability of technology and production, ability to attract and retain key personnel, concentration of customers and suppliers, pending or threatened litigation (including recent litigation with Paragon Technologies, Inc.), and deployment risks and integration of acquisitions. For the six months ended October 31, 2023 and through the date of filing of this Form 10-Q, management has not obtained any material additional capital financing. Management believes the Company’s current cash balance at October 31, 2023 of \$3.5 million and short term investments balance of \$15.4 million is sufficient to fund its planned expenditures through at least December 2024.

(2) Summary of Significant Accounting Policies

(a) Consolidation

The accompanying consolidated financial statements include the accounts of the Company and its majority-owned subsidiaries, Marine Advanced Robotics Inc. (CA), 3dent Technologies LLC (TX), Oregon Wave Energy Partners I LLC (DE), ReedSport OPT WavePark, LLC (OR) and Ocean Power Technologies Ltd. in the United Kingdom. ReedSport OPT WavePark, LLC (OR) and Oregon Wave Energy Partners I, LLC (DE) were dissolved during the first quarter of fiscal 2024. All significant intercompany balances and transactions have been eliminated in consolidation.

(b) Use of Estimates

The preparation of the consolidated financial statements requires management of the Company to make several estimates and assumptions relating to the reported amounts of assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the period. Significant items subject to such estimates and assumptions include, among other items, stock-based compensation, over time revenue recognition, valuation consideration related to business combinations, including contingent consideration, and other assumptions and estimates used to evaluate the recoverability of long-lived assets, goodwill and other intangible assets. Actual results could differ from those estimates.

(c) Business Combinations

The Company accounts for business combinations in accordance with Financial Accounting and Standards Board (“FASB”) Business Combinations (Topic 805). The Company allocates the fair value of consideration transferred in a business combination to the estimated fair value at the acquisition date of the tangible and intangible assets acquired as well as the liabilities assumed. Acquisition costs are expensed as incurred. Any excess consideration transferred is recorded as goodwill and in instances where the fair value of consideration transferred is less than the estimated fair value of tangible and intangible assets acquired less liabilities assumed, such amounts are recorded as a gain on the bargain purchase.

(d) Cash, Cash Equivalents, Restricted Cash and Security Agreements and Short Term Investments

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original maturity of three months or less when purchased, to be cash equivalents. The Company invests excess cash in a money market account or in short term investments that are held-to-maturity. The Company had cash and cash equivalents of approximately \$3.3 million as of October 31, 2023 and \$6.9 million as of April 30, 2023.

Restricted Cash and Security Agreements

The Company has a letter of credit agreement with Santander Bank, N.A. (“Santander”). Cash of \$156,000 is on deposit at Santander and serves as security for a letter of credit issued by Santander for the lease of warehouse/office space in Monroe Township, New Jersey. This agreement cannot be extended beyond July 31, 2025 and is cancellable at the discretion of Santander.

Santander also issued a letter of credit to subsidiaries of Enel Green Power (“EGP”) pursuant to the Company’s contracts with EGP. This letter of credit was originally issued in August 2020 and has a remaining amount of \$65,000 which will be released in January 2024.

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The following table provides a reconciliation of cash, cash equivalents and restricted cash reported within the Consolidated Balance Sheets that total to the same amounts shown in the Consolidated Statements of Cash Flows.

	October 31, 2023		April 30, 2023	
	(in thousands)			
Cash and cash equivalents	\$	3,292	\$	6,883
Restricted cash- short term		219		65
Restricted cash- long term		—		155
	<u>\$</u>	<u>3,511</u>	<u>\$</u>	<u>7,103</u>

Short Term Investments

As of October 31, 2023 and April 30, 2023, the carrying value was approximately \$15.4 million and \$27.8 million, respectively. All short term investments consist of corporate bonds, government agency bonds, or U.S. Treasury Notes and Bonds, are investment grade rated or better, and mature within 12 months. The Company has the ability and the intention to hold all investments to maturity, and as such are classified as held-to-maturity investments and carried at amortized cost.

The total accretion of discounts (amortization of premium) recognized for the six month periods ended October 31, 2023 and 2022 is approximately \$0.2 million and \$(0.2) million, respectively. The total accretion of discounts (amortization of premium) on investments for the three month period ended October 31, 2023 and 2022 was \$0.1 million and \$(0.06) million, respectively. Additionally, there has been no impairment on these investments.

The following table summarizes the Company's short term investments as of October 31, 2023 and April 30, 2023:

Category	October 31, 2023			April 30, 2023		
	Amortized Cost	Unrealized Gains	Market Value	Amortized Cost	Unrealized Gains	Market Value
	(in thousands)			(in thousands)		
Corporate Bonds	\$ 6,911	\$ 56	\$ 6,967	\$ 14,776	\$ 100	\$ 14,876
Government Bonds & Notes	6,692	\$ 35	6,727	9,188	\$ 33	9,221
Government Agency Bonds	1,824	\$ 23	1,847	3,826	25	3,851
Total Short Term Investments	<u>\$ 15,427</u>	<u>\$ 114</u>	<u>\$ 15,541</u>	<u>\$ 27,790</u>	<u>\$ 158</u>	<u>\$ 27,948</u>

(e) Inventory

In accordance with Accounting Standards Codification 330 (ASC 330), inventory is stated at the lower of costs or net realizable value applicable to goods on hand remaining after the matching of absorbed costs with concurrent revenues. The Company has three classes of inventory; raw materials, work in process, and finished goods. Items remain in inventory until they are shipped to the customer, at which time the costs are transferred on a FIFO basis to cost of revenue, or moved to leased assets as applicable.

(f) Accounts Receivable

Accounts receivable are stated at the net amount expected to be collected. Amounts are ordinarily due between 30 and 90 days after the issuance of the invoice. We are exposed to credit losses primarily on our accounts receivable and contract assets related to our sales to customers. If applicable, an allowance for credit losses is established to provide for the expected lifetime credit losses by evaluating factors such as customer creditworthiness, historical payment and loss experiences, current economic conditions (including geographic and political risk), and the age and status of outstanding receivables. Based on these factors, management has determined the allowance for credit losses was immaterial. Expected credit losses are written off in the period in which the financial asset is no longer collectible.

The Company grants credit to its customers, generally, without collateral, under normal payment terms (typically 30 to 90 days after invoicing). Generally, invoicing occurs after the services are performed or control of the product has transferred to the customer. Accounts receivable represent an unconditional right to consideration arising from the Company's performance under contracts with customers.

(g) Property and Equipment, net

Property and equipment is stated at cost, less accumulated depreciation and amortization. Depreciation and amortization is calculated using the straight-line method over the estimated useful lives (three to ten years) of the assets. Leasehold improvements are amortized using the straight-line method over the shorter of the estimated useful life of the asset or the remaining lease term. Expenses for maintenance and repairs are charged to operations as incurred. Property and equipment is also reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of the asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of the asset exceeds its estimated future cash flows, then an impairment charge is recognized in the amount by which the carrying amount of the asset exceeds the fair value of the asset.

Description	Estimated depreciable life
Equipment	5-7 years
Computer equipment & software	3 years
Office furniture & fixtures	3-7 years
Leasehold improvements	Shorter of the estimated useful life or lease term
Leased Power Buoys assets	10 years
Leased WAM-V assets	10 years

(h) Foreign Exchange Gains and Losses

The Company maintains cash accounts that are denominated in British pound sterling. These amounts are included in cash, cash equivalents and restricted cash on the accompanying Consolidated Balance Sheets. Transactions denominated in a foreign currency may result in realized and unrealized foreign exchange gains or losses from exchange rate fluctuations, which are included in "Foreign exchange (loss)/gain" in the accompanying Consolidated Statements of Operations.

(i) Concentration of Credit Risk

Financial instruments that potentially subject the Company to credit risk consist principally of trade accounts receivable, short term investments and cash equivalents. The Company believes that its credit risk is limited because the Company's current contracts are with entities with a reliable payment history. The Company invests its excess cash in a money market fund and short term held-to maturity investments and does not believe that it is exposed to any significant risks related to its cash accounts, money market fund, or held-to maturity investments. Cash is also maintained at foreign financial institutions. Cash in foreign financial institutions as of October 31, 2023 was immaterial.

For the six months ended October 31, 2023 and 2022, the Company had three and four customers whose revenues accounted for at least 10% of the Company's consolidated revenues, respectively. These revenues accounted for approximately 55% and 69% of the Company's total revenues for the respective periods. For the three months ended October 31, 2023 and 2022, the Company had four and five customers whose revenues accounted for at least 10% of the Company's consolidated revenues, respectively. These revenues accounted for approximately 71% and 80% of the Company's total revenues for the respective periods.

(j) Share-Based Compensation

Costs resulting from all share-based payment transactions are recognized in the consolidated financial statements at their fair values. The aggregate share-based compensation expense recorded in the Consolidated Statements of Operations for the six months ended October 31, 2023 and 2022 was approximately \$0.7 million and \$0.6 million, respectively. For the three months ended October 31, 2023 and 2022, share-based compensation expense was approximately \$0.3 million and \$0.3 million, respectively. The Company's policy is to account for forfeitures of share-based compensation as they occur.

(k) Revenue Recognition

The Company accounts for revenue in accordance with Accounting Standards Codification 606 (ASC 606) for contracts with customers and Accounting Standards Codification 842 (ASC 842) for leasing arrangements. In relation to ASC 606, which states that a performance obligation is the unit of account for revenue recognition, the Company assesses the goods or services promised in a contract with a customer and identifies as a performance obligation as either: a) a good or service (or a bundle of goods or services) that is distinct; or b) a series of distinct goods or services that are substantially the same and that have the same pattern of transfer to the customer. A contract may contain a single performance obligation or multiple performance obligations. For contracts with multiple performance obligations, the Company allocates the contracted transaction price to each performance obligation based upon the relative standalone selling price, which represents the price the Company would sell a promised good or service separately to a customer. The Company determines the standalone selling price based upon the facts and circumstances of each obligated good or service. When no observable standalone selling price is available, the standalone selling price is generally estimated based upon the Company's forecast of the total cost to satisfy the performance obligation plus an appropriate profit margin.

The nature of the Company's contracts may give rise to several types of variable consideration, including unpriced change orders, liquidated damages and penalties. Variable consideration can also arise from modifications to the scope of services. Variable consideration is included in the transaction price to the extent it is probable that a significant reversal of cumulative revenue recognized will not occur once the uncertainty associated with the variable consideration is resolved. Our estimates of variable consideration and determination of whether to include such amounts in the transaction price are based largely on our assessment of legal enforceability, performance, and any other information (historical, current, and forecasted) that is reasonably available to us. There was no variable consideration as of October 31, 2023 or 2022. The Company presents shipping and handling costs, that occur after control of the promised goods or services transfer to the customer, as fulfillment costs in costs of goods sold and regular shipping and handling activities charged to operating expenses.

The Company recognizes revenue when or as it satisfies a performance obligation by transferring a good or service to a customer, either (1) at a point in time or (2) over time. A good or service is transferred when or as the customer obtains control. The evaluation of whether control of each performance obligation is transferred at a point in time or over time is made at contract inception. Input measures such as costs incurred are utilized to assess progress against specific contractual performance obligations for the Company's services. The selection of the method to measure progress towards completion requires judgment and is based on the nature of the services to be provided. For the Company, the input method using costs or labor hours incurred best represents the measure of progress against the performance obligations incorporated within the contractual agreements. If estimated total costs on any contract project a loss, the Company charges the entire estimated loss to operations in the period the loss becomes known. The cumulative effect of revisions to revenue, estimated costs to complete contracts, including penalties, change orders, claims, anticipated losses, and others are recorded in the accounting period in which the events indicating a loss are known and the loss can be reasonably estimated. These loss projections are re-assessed for each subsequent reporting period until the project is complete. Such revisions could occur at any time and the effects may be material. During the six-month period ended October 31, 2023 the Company recognized approximately \$1.2 million in revenue related to performance obligations satisfied at a point in time and approximately \$0.9 million in revenue related to performance obligations satisfied over time. During the three-month period ended October 31, 2023, the Company recognized approximately \$0.5 million in revenue related to performance obligation satisfied at a point in time and approximately \$0.4 million in revenue related to performance obligations satisfied over time.

The Company's contracts are either cost-plus contracts, fixed-price contracts, time and material agreements, lease or service agreements. Under cost plus contracts, customers are billed for actual expenses incurred plus an agreed-upon fee.

The Company has two types of fixed-price contracts, firm fixed-price and cost-sharing. Under firm fixed-price contracts, the Company receives an agreed-upon amount for providing products and services specified in the contract, and a profit or loss is recognized depending on whether actual costs are more or less than the agreed upon amount. Under cost-sharing contracts, the fixed amount agreed upon with the customer is only intended to fund a portion of the costs on a specific project. Under cost sharing contracts, an amount corresponding to the revenue is recorded in cost of revenue, resulting in gross profit on these contracts of zero. The Company's share of the costs is recorded as product development expense. The Company reports its disaggregation of revenue by contract type since this method best represents the Company's business. For the six-month periods ended October 31, 2023 and 2022, the majority of the Company's contracts were classified as firm fixed-price and the remainder were cost-sharing.

The Company's contract assets and liabilities primarily relate to the timing differences between cash received from a customer in connection with contractual rights to invoicing and the timing of revenue recognition following completion of performance obligations. The Company's accounts receivable balance is made up entirely of customer contract related balances.

The Company's revenue also includes revenue from certain contracts which do not fall within the scope of ASC 606, but under the scope of ASC 842. At inception of a contract for those classified under ASC 842, the Company classifies leases as either operating or financing in accordance with the authoritative accounting guidance contained within ASC Topic 842, "Leases". If the direct financing or sales-type classification criteria are met, then the lease is accounted for as a finance lease. All others are treated as operating leases. The Company recognizes revenue from operating lease arrangements generally on a straight-line basis over the lease term, or as agreed upon in-use days are utilized, which is presented in Revenue in the Consolidated Statement of Operations. The Company also enters into lease arrangements for its PowerBuoys® and Wave Adaptive Modular Vessels ("WAM-V®") with certain customers. Revenue related to multiple-element arrangements is allocated to lease and non-lease elements based on their relative standalone selling prices or expected cost plus a margin approach. Lease elements generally include a PowerBuoy®, WAM-V®, and components, while non-lease elements, which the Company expects to become more prevalent, generally include engineering, monitoring and support services. In the lease arrangement, the customer may be provided with an option to extend the lease term or purchase the leased buoy or WAM-V® at some point during and/or at the end of the lease term.

As of October 31, 2023, the Company's total remaining performance obligations, also referred to as backlog, totaled \$4.5 million. The Company expects to recognize approximately 70%, or \$3.2 million, of the remaining performance obligations as revenue over the next twelve months.

Existing customers are subject to ongoing credit evaluations based on payment history and other factors. If it is determined that collectability of any portion of the contract value is not probable, an analysis of variable consideration will be performed using either the most likely amount or expected value method to determine the amount of revenue that must be constrained until the scenario causing the variability has been resolved.

The Company has elected to record taxes collected from customers on a net basis and does not include tax amounts in revenue or costs of revenue.

The below table represents the total revenue recognized under ASC 606 and ASC 842 for the three and six months ended October 31, 2023 and 2022.

	Six months ended October 31, 2023			Six months ended October 31, 2022		
	ASC 606	ASC 842	Total	ASC 606	ASC 842	Total
	(in thousands)			(in thousands)		
Product Line:						
WAM-V	\$ 540	\$ 509	\$ 1,049	\$ 420	\$ 15	\$ 435
Buoy	630	—	630	50	—	50
Services	482	—	482	532	—	532
Total	\$ 1,652	\$ 509	\$ 2,161	\$ 1,002	\$ 15	\$ 1,017
Region:						
North and South America	\$ 1,652	\$ 509	\$ 2,161	\$ 770	\$ 15	\$ 785
Asia and Australia	—	—	—	232	—	232
Total	\$ 1,652	\$ 509	\$ 2,161	\$ 1,002	\$ 15	\$ 1,017
	Three months ended October 31, 2023			Three months ended October 31, 2022		
	ASC 606	ASC 842	Total	ASC 606	ASC 842	Total
	(in thousands)			(in thousands)		
Product Line:						
WAM-V	\$ 81	\$ 266	\$ 347	\$ 98	\$ —	\$ 98
Buoy	380	—	380	38	—	38
Services	162	—	162	167	—	167
Total	\$ 623	\$ 266	\$ 889	\$ 303	\$ —	\$ 303
Region:						
North and South America	\$ 623	\$ 266	\$ 889	\$ 249	\$ —	\$ 249
Asia and Australia	—	—	—	54	—	54
Total	\$ 623	\$ 266	\$ 889	\$ 303	\$ —	\$ 303

(l) Net Loss per Common Share

Basic and diluted net loss per share for all periods presented is computed by dividing net loss by the weighted average number of shares of common stock and common stock equivalents outstanding during the period. Due to the Company's net losses, potentially dilutive securities, consisting of options to purchase shares of common stock, warrants on common stock and unvested restricted stock units ("RSU") issued to employees and non-employee directors, were excluded from the diluted loss per share calculation due to their anti-dilutive effect.

In computing diluted net loss per share on the Consolidated Statement of Operations, warrants on common stock, options to purchase shares of common stock and unvested RSUs issued to employees and non-employee directors, totaling 7,294,852 and 6,242,465 as of October 31, 2023 and 2022, respectively, were excluded from each of the computations as the effect would have been anti-dilutive due to the net loss for the period. Share purchase rights, which include a contingency, are not included in the calculation until the contingency is resolved.

(m) Intangibles

Intangible assets acquired in a business combination are recognized separately from goodwill and are initially recognized at their fair value at the acquisition date (which is regarded as their cost). Intangible assets, including patents, are amortized over the estimated useful life of the asset on a basis that approximates the pattern of economic benefit. The patents, trade name and customer relationship intangibles are being amortized over 20, 12 and 10 years respectively, which is consistent with the estimated pattern of economic benefit of the assets. The trademark is not subject to amortization.

Intangible assets are reviewed for impairment if indicators of potential impairment exist. There were no indications of potential impairment of intangible assets for the six months ended October 31, 2023 and 2022.

(n) Goodwill

Goodwill is assessed for impairment using a qualitative or quantitative approach. The Company performs an annual impairment test of goodwill and further periodic tests to the extent indicators of impairment develop between annual impairment tests. There were no indications of potential impairment of goodwill identified for the six months ended October 31, 2023 and 2022. Where the Company use a qualitative analysis, it considers factors that include historical financial performance, macroeconomic and industry conditions, and the legal and regulatory environment. If the qualitative assessment indicates that it is more likely than not that an impairment exists, then a quantitative assessment is also performed. The quantitative assessment requires an analysis of several estimates including future cash flows or income consistent with management's strategic business plans, annual sales growth rates and the selection of assumptions underlying a discount rate (weighted average cost of capital) based on market data available at the time to determine fair value of the Company. If the fair value is less than the carrying amounts, an impairment charge for the difference is recorded. The Company acquired goodwill as part of its purchase of MAR. Management performed its annual qualitative assessment in fiscal year 2023 and determined that it is more likely than not that no goodwill impairment existed as of April 30, 2023.

(o) Income Taxes

Income taxes are accounted for under ACS 740 utilizing the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carry forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences and operating loss and tax credit carry forwards are expected to be recovered, settled or utilized. In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all the deferred tax assets will not be realized. If such event occurs, a valuation allowance is recorded. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

The Company recognizes the effect of income tax positions only if those positions are more likely than not of being sustained upon examination. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs. The Company records interest related to unrecognized tax benefits in interest expense and penalties in selling, general, and administrative expenses, to the extent incurred. Refer to Note 15 for additional disclosure.

(p) Accumulated Other Comprehensive Loss

The functional currency for the Company's foreign operations is the applicable local currency. The translation from the applicable foreign currencies to U.S. dollars is performed for balance sheet accounts using the exchange rates in effect at the balance sheet date and for revenue and expense accounts using an average exchange rate during the period. The unrealized gains or losses resulting from such translation are included in Accumulated Other Comprehensive Loss within Shareholders' Equity. For the six months ended October 31, 2023 and 2022, there were no amounts recorded to other comprehensive (income) loss due to limited foreign operations.

(q) Warranty

The Company does not include a right of return on its products other than rights related to standard warranty provisions that permit repair or replacement of defective goods.

(r) Research and Development

Costs related to research and development activities by the Company are expensed as incurred. The Company had approximately \$4.0 million and \$4.7 million in product development expense for the six months ended October 31, 2023 and 2022, respectively. The Company had approximately \$2.1 million and \$2.3 million in product development expense for the three months ended October 31, 2023 and 2022, respectively.

(s) Recently Issued Accounting Standards

There have been no recently issued accounting standards in the current period that would significantly affect the Company's financial statements, that have not been address in prior periods.

(3) Accounts Receivable, Contract Assets and Contract Liabilities

The following provides further details on the balance sheet accounts of accounts receivable, contract assets and contract liabilities from contracts with customers:

	October 31, 2023		April 30, 2023		April 30, 2022
			(in thousands)		
Accounts receivable	\$ 516	\$	745	\$	482
Contract assets	\$ 326	\$	152	\$	386
Contract liabilities	\$ 1,164	\$	1,378	\$	129

Contract Assets

Contract assets include unbilled amounts typically resulting from arrangements whereby the right to payment is conditional on completing additional tasks or services for a performance obligation. The increase in contract assets is primarily a result of consulting services projects for which revenue was recognized in the current period but has not yet been billed due to the terms of the project agreements. No impairments to contract assets were incurred during the six months ended October 31, 2023 and 2022.

Significant changes in the contract assets balances during the period were as follows:

	Six months ended October 31, 2023	Six months ended October 31, 2022
	(in thousands)	
Transferred to receivables from contract assets recognized	\$ (745)	\$ (132)
Revenue recognized and not billed	919	47
Net change in contract assets	<u>\$ 174</u>	<u>\$ (85)</u>

Contract Liabilities

Contract liabilities consist of amounts invoiced to customers in excess of revenue recognized. The decrease in contract liabilities is primarily due to recognizing revenue on the DOE Phase II contract for which the Company was paid in prior periods.

Significant changes in the contract liabilities balances during the period are as follows:

	Six months ended October 31, 2023	Six months ended October 31, 2022
	(in thousands)	
Revenue recognized	\$ (762)	\$ (129)
Payments collected for which revenue has not been recognized	548	1,462
Net change in contract liabilities	<u>\$ (214)</u>	<u>\$ 1,333</u>

(4) Inventory

The Company holds inventory related to the production of its WAM-V® and PowerBuoy® products.

	October 31, 2023	April 30, 2023
	(in thousands)	
Raw Materials	\$ 1,812	\$ 1,044
Work in Process	723	—
Finished Products	\$ 11	\$ —
	<u>\$ 2,546</u>	<u>\$ 1,044</u>

(5) Other Current Assets

Other current assets consisted of the following at October 31, 2023 and April 30, 2023:

	October 31, 2023	April 30, 2023
	(in thousands)	
Prepaid insurance	\$ 559	\$ 358
Prepaid software & licenses	108	190
Prepaid sales & marketing	99	122
Prepaid project costs	427	46
Prepaid expenses- other	312	278
	<u>\$ 1,505</u>	<u>\$ 994</u>

(6) Property and Equipment, net

The components of property and equipment, net as of October 31, 2023 and April 30, 2023 consisted of the following:

	October 31, 2023	April 30, 2023
	(in thousands)	
Equipment	\$ 1,040	\$ 783
Computer equipment & software	728	700
Office furniture & equipment	422	386
Leasehold improvements	628	611
Leased WAM-V's	620	371
Leased Buoys	111	—
	<u>3,549</u>	<u>2,851</u>
Less: accumulated depreciation	(1,743)	(1,571)
	<u>\$ 1,806</u>	<u>\$ 1,280</u>

Leased WAM-V's represent fixed assets that are part of underlying operating leases with customers as discussed in the revenue recognition section of ASC 842 policy disclosure. Depreciation expense was approximately \$172,000 and \$117,000 for the six-month periods ended October 31, 2023 and 2022, respectively. Depreciation expense was approximately \$101,000 and \$74,000 for the three-month periods ended October 31, 2023 and 2022, respectively.

(7) Intangible Assets

The components of intangible assets, net as of October 31, 2023 and April 30, 2023 consisted of the following:

	October 31, 2023	April 30, 2023
	(in thousands)	
Patents	\$ 2,729	\$ 2,729
Trademarks	2,769	2,769
Tradenname	130	130
Customer Relationships	150	150
	<u>5,778</u>	<u>5,778</u>
Accumulated amortization	(1,880)	(1,800)
	<u>\$ 3,898</u>	<u>\$ 3,978</u>

Amortization expense was approximately \$80,000 and \$79,000 for the six-month periods ended October 31, 2023 and 2022, respectively. Amortization expense was approximately \$40,000 and \$40,000 for the three-month periods ended October 31, 2023 and 2022, respectively.

(8) Goodwill

Goodwill in the amount of \$8.5 million was recognized in November 2021 related to the acquisition of MAR. There have been no additions to or any impairment of goodwill during the six-month periods ended October 31, 2023 and 2022.

(9) Leases*Lessor Information*

As of April 30, 2023 and October 31, 2023, the Company had three and nine WAM-V's leased to customers which have been classified as operating leases per accounting guidance contained within ASC Topic 842, "Leases", respectively. The remaining term on these operating leases is less than 2 years.

Lessee Information

Right-of-use asset and operating lease liabilities are recognized based on the present value of future minimum lease payments over the lease term at commencement date. When the implicit rate of the lease is not provided or cannot be determined, the Company uses the incremental borrowing rate based on the information available at the effective date to determine the present value of future payments. Lease terms may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise those options. The renewal options have not been included in the lease term as they are not reasonably certain of exercise. The Company's operating leases consist of leases for office facilities and warehouse space. Lease expense for minimum lease payments is recognized on a straight- line basis over the lease term and consists of interest on the lease liability and the amortization of the right of use asset.

The Company has a lease for its facility located in Monroe Township, New Jersey that is used as warehouse/production space and the Company's principal offices and corporate headquarters. The lease includes an initial lease term of seven years which is set to expire on October 31, 2024, and contains an option to extend the lease for another five years. The lease is classified as an operating lease and is included in right-of-use assets, right-of-use liabilities on the Company's Consolidated Balance Sheets.

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The Company also has a lease for office space located in Houston, Texas for office space. The lease term is for 1 year, and expires on January 2024. This lease will not be renewed. ASC 842 allows a company an accounting policy election to recognize lease payments within the Consolidated Statement of Operations on a straight-line basis if the lease term is equal to or less than 12 months and not recognize a right-of use asset and lease liability. The accounting policy election is made on the commencement date of the lease. The Company has chosen this election for the Houston lease and has classified it as a short-term lease.

The Company also has a lease for office space located in Richmond, California for MAR. This lease commenced in April of 2023 and will continue for 62 months. The lease is classified as an operating lease and is included in right-of-use assets, right-of-use liabilities- current and right-of-use liabilities- long-term on the Company's Consolidated Balance Sheets.

Variable lease expenses, if any, are recorded as incurred. The operating lease cash flow payments for the three months ended October 31, 2023 and 2022 were \$186,000 and \$108,000, respectively. The operating lease cash flow payments for the six months ended October 31, 2023 and 2022 were \$371,000 and \$215,000, respectively.

The components of lease expense in the Consolidated Statement of Operations for the three and six months ended October 31, 2023 and 2022 were as follows:

	Three months ended October 31,		Six months ended October 31,	
	2023	2022	2023	2022
	(in thousands)		(in thousands)	
Operating lease cost	\$ 159	\$ 92	\$ 316	\$ 184
Short-term lease cost	20	8	40	16
Total lease cost	\$ 179	\$ 100	\$ 356	\$ 200

Information related to the Company's right-of use assets and lease liabilities as of October 31, 2023 was as follows:

	October 31, 2023
	(in thousands)
Operating lease:	
Operating right-of-use asset, net	\$ 1,550
Right-of-use liabilities- current	\$ 579
Right-of-use liabilities- long term	1,060
Total lease liabilities	\$ 1,639
Weighted average remaining lease term- operating leases	3.80 years
Weighted average discount rate- operating leases	8.4%

Total remaining lease payments under the Company’s operating leases are as follows:

	October 31, 2023
	(in thousands)
Remainder of fiscal year 2024	\$ 358
2025	514
2026	338
2027	329
2028	333
thereafter	28
Total future minimum lease payments	\$ 1,900
Less imputed interest	(261)
Total	\$ 1,639

(10) Accrued Expenses

Accrued expenses consisted of the following at October 31, 2023 and April 30, 2023:

	October 31, 2023	April 30, 2023
	(in thousands)	
Project costs	\$ 141	\$ 181
Employee incentive payments	901	1,948
Accrued salary and benefits	486	52
Professional fees	450	—
Other	116	165
	\$ 2,094	\$ 2,346

(11) Warrants

Equity Classified Warrants

The underwritten public offering from April 2019 included the issuance of common stock warrants to purchase up to 4,927,680 shares of common stock that have an exercise price of \$3.85 per share and expire five years from the issuance date. As of October 31, 2023, common warrants to purchase 732,500 shares of the common stock had been exercised.

(12) Share-Based Compensation

In 2015, upon approval by the Company’s shareholders, the Company’s 2015 Omnibus Incentive Plan (the “2015 Plan”) became effective. A total of 1,332,036 shares were authorized for issuance under the 2015 Omnibus Incentive Plan, including shares available for awards under the 2006 Stock Incentive Plan remaining at the time that plan terminated, or that were subject to awards under the 2006 Stock Incentive Plan that thereafter terminated by reason of expiration, forfeiture, cancellation or otherwise. If any award under the 2006 Stock Incentive Plan or 2015 Plan expires, is cancelled, terminates unexercised or is forfeited, those shares become again available for grant under the 2015 Plan. The 2015 Plan will terminate ten years after its effective date, in October 2025, but is subject to earlier termination as provided in the 2015 Plan. At subsequent shareholder meetings, including most recently in January 2023, the shareholders approved an aggregate increase to the 2015 Plan of 3,050,000 shares resulting in total shares authorized for issuance of 4,382,036 as of January 2023. As of October 31, 2023, the Company had approximately 684,000 shares available for future issuance under the 2015 Plan.

On January 18, 2018, the Company’s Board of Directors adopted the Company’s Employment Inducement Incentive Award Plan (the “2018 Inducement Plan”) pursuant to which the Company reserved 25,000 shares of common stock for issuance under the Inducement Plan in accordance with Rule 711(a) of the NYSE American Company Guide. On February 9, 2022, the 2018 Inducement Plan was amended to increase the authorized shares by 250,000 to 275,000. As of October 31, 2023, there were approximately 111,000 shares available for grant under the 2018 Inducement Plan. The 2015 Plan and the 2018 Inducement Plan together comprise the “Stock Incentive Plans”.

Stock Options

The Company estimates the fair value of each stock option award granted with service-based vesting requirements, using the Black-Scholes option pricing model, assuming no dividends, and using weighted average valuation assumptions. The risk-free rate is based on the U.S. Treasury yield curve in effect at the time of grant commensurate with the expected life of the award. The expected life (estimated period of time outstanding) of the stock options granted was estimated using the “simplified” method as permitted by the SEC’s Staff Accounting Bulletin No. 110, *Share-Based Payment*. Expected volatility is based on the Company’s historical volatility over the expected life of the stock option granted. The Company did not grant any stock options during the three and six months ended October 31, 2023 and 2022.

A summary of stock options under our Stock Incentive Plans is detailed in the following table.

	Shares Underlying Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (In Years)
Outstanding as of April 30, 2023	1,529,185	\$ 1.75	8.8
Granted	—	\$ —	
Exercised	—	\$ —	
Cancelled/forfeited	(345,694)	\$ 1.57	
Outstanding as of October 31, 2023	1,183,491	\$ 1.80	8.2
Exercisable as of October 31, 2023	417,211	\$ 3.34	7.1

As of October 31, 2023, the total intrinsic value of outstanding and exercisable options was approximately zero. As of October 31, 2023, approximately 766,000 options were unvested, which had an intrinsic value of zero and a weighted average remaining contractual term of 8.8 years. There was approximately \$98,000 and \$168,000 of total recognized compensation cost related to stock options during each of the six months ended October 31, 2023 and 2022, respectively. There was approximately \$20,000 and \$72,000 of total recognized compensation cost related to stock options during each of the three months ended October 31, 2023 and 2022, respectively. As of October 31, 2023, there was approximately \$0.4 million of total unrecognized compensation cost related to non-vested stock options granted under the plans. This cost is expected to be recognized over a weighted-average period of 1.8 years.

Performance Stock Options

As of October 31, 2023, there were no performance stock options outstanding. As of April 30, 2023 there were 66,667 shares outstanding which were all canceled during the quarter ended July 31, 2023. There was approximately \$43,000 and \$101,000 of total recognized compensation cost related to performance stock options during the six months ended October 31, 2023 and 2022, respectively. There was approximately zero and \$48,000 of total recognized compensation cost related to performance stock options during the three months ended October 31, 2023 and 2022, respectively.

Restricted Stock Units

Compensation expense for RSUs is generally recorded based on the market value on the date of grant and recognized ratably over the associated service and performance period. During the six months ended October 31, 2023 and 2022, the Company granted 58,000 and 52,500 shares, respectively, that were subject to both service-based and market-based vesting requirements.

A summary of unvested RSU's under our Stock Incentive Plans is as follows:

	Number of Shares	Weighted Average Price per Share
Unvested at April 30, 2023	1,985,994	\$ 0.89
Granted	58,500	\$ 0.53
Vested and issued	(69,666)	\$ 1.41
Cancelled/forfeited	(58,647)	\$ 2.01
Unvested at October 31, 2023	<u>1,916,181</u>	<u>\$ 0.86</u>

There was approximately \$532,000 and \$364,000 of total recognized compensation cost related to RSUs for the six months ended October 31, 2023 and 2022, respectively. There was approximately \$252,000 and \$180,000 of total recognized compensation cost related to restricted stock units for the three months ended October 31, 2023 and 2022, respectively. As of October 31, 2023, there was approximately \$554,000 of unrecognized compensation cost remaining related to unvested restricted stock units granted under our plans. The primary driver of unrecognized compensation cost for RSU's is related to RSU grants in accordance with the Company's stock holding guidelines for Named Executive Officers ("NEO's"). This cost is expected to be recognized over a weighted-average period of 1.2 years.

(13) Fair Value Measurements

ASC Topic 820, "*Fair Value Measurements*" states that fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Assets and liabilities that are measured at fair value are reported using a three-level fair value hierarchy that prioritizes the inputs used to measure fair value. This hierarchy maximizes the use of observable input and minimizes the use of unobservable inputs. The following is a description of the three hierarchy levels.

- Level 1 Unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.
- Level 2 Inputs other than quoted prices in active markets that are observable for the asset or liability, either directly or indirectly.
- Level 3 Inputs that are unobservable for the asset or liability.

Disclosure of Fair Values

The Company's financial instruments that are not re-measured at fair value include cash, cash equivalents, restricted cash, accounts receivable, contract assets and liabilities, deposits, accounts payable, and accrued expenses. The carrying value is equal to their fair value due to the short term nature of these accounts.

Additionally, there is a Level 3 contingent liability related to earnout payable as part of the MAR acquisition in the amount of \$1.1 million as of October 31, 2023. The fair value of this contingent liability has decreased by approximately \$0.1 million from the fair value of \$1.2 million as of April 30, 2023.

In June 2023, the Company paid \$500,000 in cash and issued 1,923,077 in shares worth \$1.0 million to satisfy the achievement of the first earnout period.

Transfers into or out of any hierarchy level are recognized at the end of the reporting period in which the transfers occurred. There were no transfers between any hierarchy levels during each of the three and six months ended October 31, 2023 and 2022.

(14) Commitments and Contingencies

Spain Income Tax Audit

The Company underwent an income tax audit in Spain for the period from 2011 to 2014, when its Spanish branch was closed. On July 30, 2018, the Spanish tax inspector concluded that although there was no tax owed in light of losses reported, the Company's Spanish branch owed penalties for failure to properly account for the income associated with the funding grant. During the year ended April 30, 2022, the Company received notice from the Spanish Central Economic and Administrative Tribunal ("Spanish Tax Administration") that it agreed with the inspector and ruled that the Company owes the full amount of the penalty in the amount of €279,870 or approximately \$331,000. On January 25, 2021, the Company paid the Spanish Tax Administration €279,870. Notwithstanding that payment, on April 30, 2022, the Company filed its appeal of the decision of the Central Court to the Spanish National Court. The Company is awaiting the results of the appeal.

Shareholder Proxy Contest

On June 16, 2023, a stockholder of the Company, Paragon Technologies, Inc., a Delaware corporation ("Paragon"), informed the Company that Paragon was planning a proxy contest against the Company and intended to nominate candidates for election to the Company's Board of Directors (the "Board") at the Company's 2023 Annual Meeting of Stockholders (the "2023 Annual Meeting"). Paragon would later disclose that it is seeking to replace a majority of the six-member Board and, thereby, seek control of the Company. In connection with Paragon's threatened proxy contest, the Company is currently defending against two litigation matters brought by Paragon in the Delaware Court of Chancery.

On July 27, 2023, Paragon filed a complaint against the Company in the Delaware Court of Chancery to enforce the demand that Paragon had made on July 17, 2023, to inspect the Company's confidential books and records pursuant to Section 220 of the Delaware General Corporation Law. On October 20, 2023, a Magistrate of the Delaware Court of Chancery issued a telephonic report regarding this matter and indicated that Paragon had asserted a proper purpose for its inspection demand. On October 25, 2023, the Company filed a Notice of Exceptions with the Delaware Court of Chancery to take exceptions to the Magistrate's report. In its Notice of Exceptions, the Company detailed the areas of the Magistrate's report that the Company took exception to, including, but not limited to: (i) the report's conclusion that Paragon had stated a proper purpose for its books and records demand; (ii) the report's conclusion that the primary purpose motivating Paragon's demand was Paragon's stated purpose; (iii) the report's conclusion that Paragon's stated purpose for its demand was not pretextual and that Paragon did not have improper ulterior motives; and (iv) the report's conclusion as to the scope of inspection to be permitted pursuant to Paragon's demand. On November 14, 2023, the Company filed its opening brief with respect to this matter. As of the date hereof, Paragon has not filed its answering brief, and the Delaware Court of Chancery has not scheduled any further action with respect to this matter.

On October 9, 2023, Paragon initiated litigation in the Delaware Court of Chancery against the Company and the Board alleging claims for breach of fiduciary duty and seeking declaratory and injunctive relief, including an injunction to (i) prevent the Company from rejecting the purported nominating notice that Paragon submitted to the Company on August 25, 2023 to notify the Company of its intention to nominate a majority slate of nominees at the 2023 Annual Meeting (the “Purported Nominating Notice”), and (ii) require the Company to approve Paragon’s request for an exemption from the Company’s Section 382 Tax Benefits Preservation Plan so that Paragon could purchase up to 19.9% of the Company’s common stock without triggering the dilution that would otherwise apply to the holder of 4.99% or more of the Company’s common stock. On November 30, 2023, the Delaware Court of Chancery denied Paragon’s request for injunctive relief to (i) block the Board from continuing to reject Paragon’s Purported Nominating Notice, and (ii) require the Board to grant Paragon the exemption it had requested from the Company’s Section 382 Tax Benefits Preservation Plan. Further, the Delaware Court of Chancery indicated that factual issues remain that would need to be resolved at a trial. On November 30, 2023, the Delaware Court of Chancery also granted, in part, a motion for sanctions against Paragon relating to the purported spoliation of text messages. As of the date hereof, the Delaware Court of Chancery has not scheduled any further action with respect to this matter, other than directing counsel for the Company and the Board to submit an affidavit detailing the reasonable fees and expenses incurred in filing their motion for sanctions and providing Paragon with an opportunity to respond.

General Legal Matters

From time to time, the Company is involved in legal and administrative proceedings and claims of various types. The Company records a liability in its consolidated financial statements for these matters when a loss is known or considered probable and the amount can be reasonably estimated. The Company reviews these estimates each accounting period as additional information is known and adjusts the loss provision when appropriate. If a matter is both probable to result in a liability and the amounts of loss can be reasonably estimated, the Company estimates and discloses the possible loss or range of loss to the extent necessary to make the consolidated financial statements not misleading. If the loss is not probable or cannot be reasonably estimated, a liability is not recorded in its consolidated financial statements.

(15) Income Taxes

Uncertain Tax Positions

We account for income taxes in accordance with ASC 740. The guidance requires the Company to recognize in its consolidated financial statements the impact of a tax position if that position is more likely than not to be sustained upon examination, based on the technical merits of the position. The Company has no current or deferred tax due to current and projected losses for the year. The Company has appealed the results of the income tax audit in Spain for the period from 2011 to 2014, when the Company’s Spanish branch was closed (see Note 14). At October 31, 2023, the Company had no uncertain tax positions. The Company does not expect any material increase or decrease in its income tax expense or benefit in the next twelve months, related to examinations or uncertain tax positions. Net operating loss and credit carry forwards since inception remain open to examination by taxing authorities and will continue to remain open for a period of time after utilization.

Tax Preservation Plan

In June 2023, in order to protect the Company’s valuable tax assets related to its net operating losses from being limited or lost under Section 382 of the Internal Revenue Code, the Company adopted a Tax Benefits Preservation Plan (the “Plan”). Pursuant to the Plan, the Board declared a dividend of one preferred share purchase right (each, a “Right”) for each outstanding share of common stock of the Company. The dividend was distributed to stockholders of record as of the close of business on July 11, 2023. The Plan substantially diminishes the risk that the Company’s ability to utilize its net operating loss carryovers to reduce potential future federal income tax obligations may become substantially limited. The Plan is intended to act as a deterrent to any person or group acquiring beneficial ownership of 4.99% or more of the outstanding common stock without approval by potentially subjecting any such person or group to significant dilution.

The Company determined the grant date fair value of the Rights using an option-pricing model. The amount was immaterial to the consolidated financial statements and deemed to be de minimis, and accordingly was not recorded to the financial statements.

(16) Operating Segments and Geographic Information

The Company’s business consists of one reportable segment as the revenues associated with its different business lines are not material enough to justify segment reporting or to make it meaningful to investors, and our chief operating decision maker does not view the Company’s operations on a segment basis. The Company operates worldwide, with its U.S. operations in New Jersey, California, and Texas, and one operating subsidiary in the UK. Revenues and expenses are generally attributed to the operating unit that bills the customers. During each of the three and six months ended October 31, 2023 and 2022, the Company’s primary business operations were in North America and the Middle East.

(17) Subsequent Events

On November 9, 2023 the Company entered into an agreement to divest its wholly owned subsidiary 3dent Technologies LLC, for nominal consideration back to its former owners from whom it was originally acquired in February 2021. This divestiture was done so that the Company can more fully focus its efforts and resources on the commercialization of its cutting-edge pipeline of products – particularly for the national security and defense markets.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis should be read in conjunction with the accompanying unaudited consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q. Some of the information contained in this management’s discussion and analysis is set forth elsewhere in this Form 10-Q, including information with respect to our plans and strategy for our business, pending and threatened litigation and our liquidity, includes forward-looking statements that involve risks and uncertainties. You should review the “Risk Factors” section of our Annual Report on Form 10-K for the year ended April 30, 2023 for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis. References to a fiscal year in this Form 10-Q refer to the year ended April 30 of that year (e.g., fiscal 2024 refers to the year ended April 30, 2024).

Overview

Our solutions focus on four major service areas: Data as a Service (“DaaS”), which includes data collected by our Wave Adaptive Modular Vessel (WAM-V®) autonomous vehicles or our PowerBuoy® product lines; Robotics as a Service (“RaaS”), which provides a lower cost subscription model for our customers to access use of our WAM-V’s®; Power as a Service (“PaaS”), which includes our PowerBuoy® products; and our Strategic Consulting Services.

Our mission is to provide intelligent maritime solutions and services that enable more secure and more productive utilization of our oceans and waterways, provide clean energy power services, and offer sophisticated surface and subsea maritime domain awareness solutions. We achieve this through our proprietary, state-of-the-art technologies that are at the core of our clean and renewable energy platforms, autonomous systems, solutions and services.

We provide ocean data collection and reporting, marine power, offshore communications, and Maritime Domain Awareness System (“MDA” or “MDAS”) products, integrated solutions, and consulting services. We offer our products and services to a wide range of customers, including those in government and offshore energy, oil and gas, construction, wind power and other industries. We are involved in the entire life cycle of product development, from product design through manufacturing, testing, deployment, maintenance and upgrades, while working closely with partners across our supply chain. We also work closely with our third-party partners that provide us with, among other things, software, controls, sensors, integration services, and marine installation services. Our solutions are based on proprietary technologies that enable autonomous, zero or low carbon emitting, and cost-effective data collection, analysis, transportation and communication. Our solutions are primarily suited to ocean and other offshore environments, and support generation of actionable intelligence on a standalone basis or working with other data sources. We channel the information we collect, and other communications, through control equipment linked to edge computing and cloud hosting environments.

In November 2023 we announced that we have substantially completed our research and development phase and are primarily focused on commercial activities. We have built a suite of products (more fully described below) that we believe will be the basis for our current and future commercial success resulting in meaningful progress in orders, pipeline, and backlog, with backlog increasing from \$3.1 million at July 31, 2023 to \$4.5 million at October 31, 2023. This pivot to commercial activities has enabled reallocation of headcount, the divestiture of 3dent Technologies LLC, and a material reduction in third-party expenditures. As a result, the majority of our employees are now dedicated to customer delivery.

We were incorporated under the laws of the State of New Jersey in April 1984 and began commercial operations in 1994. On April 23, 2007, we reincorporated in Delaware.

Our Solutions

Data as a Service

Our DaaS solution is at the forefront of our strategic plan to be a leader in offshore data collection, integration, analytics and real time communication for a variety of important applications. For example, our solutions can track surface vessel movement for maritime border enforcement and illegal fishing interdiction, provide security for offshore wind farms and oil and gas fields, or provide harbor or port security as well as logistics support. We have the ability to support aquaculture and gather information on ocean currents, water quality, wind and other weather metrics, and map shorelines or subsurface areas. We also offer 24/7 monitoring solutions that can provide meaningful real time information, and long-term data collection and analytics for sophisticated applications across many industries and scientific applications. Additionally, the stability of our WAM-V® platform makes it an ideal solution to produce high quality sonar data in many sea conditions for subsea surveys. WAM-V's® can also be outfitted with various equipment for the performance of marine infrastructure surveys, berth clearance surveys, dredging surveys, and mining pit surveys.

In October 2020, the Company launched its DaaS offering in support of the U.S. Navy's Naval Postgraduate School's NPS Field Experimentation (formerly Sea, Land, Air, Military Research Initiative). We have further expanded our DaaS offering through field demonstration such as ANTX Coastal Trident 2022, as well as the Naval Task Force 59 for the Digital Horizon field exercise and the International Maritime Exercise (IMX) in Bahrain, Sulmara for survey services with our WAM-V® platform, and Phase I funding through National Oceanic and Atmospheric Administration's (NOAA) Small Business Innovation Research (SBIR) program.

Additionally, during fiscal 2023 the Company was awarded a contract to provide scientific hardware delivery, training, and integration services under a subcontract for a U.S. government agency. This project seeks to identify and integrate sensors and systems and share data suitable for the full spectrum of maritime operations. We will provide the required hardware, hardware deployment support, software, software deployment support, integration services, surveillance and telemetry data, and associated training in support of a PB3 PowerBuoy® equipped with our MDA solution. The project will be deployed in support of security efforts to detect illegal, unreported, and unregulated ("IUU") fishing, dark vessels, and human/drug trafficking in operation 24/7/365 and is scheduled to begin during fiscal 2024. As further discussed under "Commercial Activities," in October 2023 the Company was awarded a contract in support of foreign law enforcement partners. This collaboration aims to protect vital marine species and combat IUU fishing activities in critical habitats using our state-of-the-art uncrewed technologies and demonstrates unprecedented, networked surveillance capabilities and evidence collection. In September 2023, the Company received an award of three separate Indefinite Delivery Indefinite Quantity (IDIQ) Multiple-Award Contracts (MAC) from the National Oceanic and Atmospheric Administration (NOAA). NOAA has selected us as one of several Multiple Award IDIQ contract holders to provide Uncrewed Maritime Systems (UMS) Services to NOAA's Office of Marine and Aviation Operations (OMAO), Uncrewed Systems Operation Center (UxSOC).

Maritime Domain Awareness Solution (“MDAS”)

The International Maritime Organization defines Maritime Domain Awareness (“MDA”) as the effective understanding of any activity that could impact the security, safety, economy, or environment related to and within our oceans and seas. Since 2002, the U.S. has had an active strategy to secure the maritime domain, primarily through the U.S. Navy. Furthermore, in 2020 the U.S. Coast Guard elevated Illegal, Unreported and Unregulated (IUU) fishing, one aspect of MDA security, as the leading global maritime threat.

We have designed our solution to provide detailed, localized maritime domain awareness that can be utilized for a wide range of applications across market segments. Our MDAS base hardware consists of a high-definition radar, a stabilized high-definition optical and thermal imaging camera, and a vessel Automatic Identification System (“AIS”) detection module. This hardware can be customized or supplemented by other solutions, depending on the requirements of our customers. These devices can be mounted on our products, such as our PB3 or WAM-V®, and then, utilizing integrated command and control software, data is sent to us and to our customers via secure communications channels. Multiple sensors can be used on a single unit based on the comprehensiveness of the needs of our customers.

Our MDAS processes data onboard our platforms (i.e., edge computing) and transmits the results to our cloud-based analytics platform via secure Wi-Fi and cellular and satellite communications. We anticipate integrating our MDAS solution into our WAM-V’s® to add mobile assets for patrols or interdiction and utilizing satellite communication to expand the availability of our data service. Surveillance data can be integrated with third party marine monitoring software or with our own MDA software solution to provide command and control features of a multi-platform surveillance network. As an example, one or more WAM-Vs® can be networked to our self-powered buoy, which acts as a central data and communication hub. These WAM-Vs® can significantly increase the range of our MDAS network solutions. The data can also be integrated with satellite, weather, bathymetric, and other third-party data feeds to form a detailed surface and subsea picture of a monitored area. All vessel video, radar, and track data are securely stored in our cloud, or the customer’s cloud environment and is accessible for as long as required by the customer for further analysis and reference.

During fiscal 2023, the Company launched the first commercially ready MDAS on a test buoy off the coast of New Jersey. The system includes our proprietary integration of sensors, hardware and software, supported by cloud infrastructure as well as having a web-based user interface that displays camera, radar, AIS and live chart data. We have successfully demonstrated the system multiple times for potential customers, including a showcase in San Diego Bay at the U.S. Navy’s Advanced Naval Technology Exercise. While we continue to develop our MDAS with hardware optimization and feature enhancements, we are currently preparing for our first commercially funded MDAS deployments.

Autonomous Vehicles (“WAM-V®”)

On November 15, 2021, the Company acquired all of the outstanding equity interest of Marine Advanced Robotics, Inc. (“MAR”) and it is now part of our Autonomous Vehicles business. Our Autonomous Vehicles business incorporates the patented Wave Adaptive Modular Vessel (WAM-V®) technology, which enables roaming capabilities for unmanned maritime systems in waters around the world. The first WAM-V® was launched in 2007 as a new vehicle class to deliver reliable autonomous surface vehicles to customers that could provide robust, real-time data collection and reporting. Our Autonomous Vehicles business also provides RaaS, allowing customers to lease WAM-V® robotics and access information from our WAM-Vs® while we maintain ownership and maintenance and repair responsibilities. Today, WAM-Vs® operates in 11 countries for commercial, military and scientific uses. Our WAM-Vs® exist in three primary sizes of 8, 16, and 22 feet, however, many of the design components are common across the sizes, allowing for integration of different payloads and adaptation of the payload platforms for larger equipment. All sizes can be adapted to suit electric or liquid fuel propulsion methods.

The WAM-V® product line highly complements the Company’s business strategy and can be used inshore, nearshore, and offshore. This business continues to grow and is further expanding into core marine survey and maritime security markets in Europe, Asia, Oceania and the Americas. We continue to find ways to integrate MAR technology with the Company’s existing platforms and service offerings and expect to take advantage of new synergistic opportunities as they arise. In addition, we plan to integrate the MDAS platform onto the WAM-V® to expand our MDA offering to provide a roaming MDA solution to our customers.

As demonstrated in August 2023, we are commercializing the ability to remotely charge our WAM-V® from our PowerBuoy® platforms, enabling persistent, resident and roaming capabilities.

Robotics as a Service

During fiscal 2023 the Company introduced the RaaS subscription model for our customers to access our WAM-V’s®. Under this model we lease our WAM-V’s to our customers over a fixed time period or provide a specified number of use days, typically with a guaranteed minimum. This model provides a lower cost entry point for our customers to access our products, provides a try before buying opportunity, and allows our customers increased access during periods of increased need. The Company expects to benefit from the growing RaaS trend, providing greater visibility into predicting revenue and planning supply for demand, while providing our customers with flexibility and a lower cost of entry.

Power as a Service

PaaS solutions deliver value to customers by utilizing our managed power platforms. We continue to develop and commercialize our proprietary power platforms that generate electricity primarily by harnessing the renewable energy of ocean waves. We continue to offer our commercial PB3 and are adding solar power options to our next generation PowerBuoy® (the “NextGen PB”) and have the option of adding small wind turbines to supplement power generation. The NextGen PB includes versions with and without a wave energy converter (WEC), with the non-WEC version replacing our previous hybrid PB. Our focus for these solutions is on bringing autonomous clean power to our customers wherever it is required. Moreover, offshore data and communications networks require power to function, and our solution solves this need without requiring ongoing battery replacement or older technologies such as shore station power cables. Many of the lessons learned from the deployments of both our PB3 and PB 2.0 are being used to develop the next generation of PowerBuoy® systems that are based on modularity for WEC and non-WEC applications. The PB3 will continue to be available and supported in addition to the support provided to the NextGen PB once launched.

PB3 PowerBuoy®

The PB3 uses proprietary technologies that convert the hydrokinetic energy of ocean waves into electricity. The PB3 features a unique onboard power take-off (“PTO”) system which incorporates both energy storage and energy management and control systems. The PB3 generates a nominal nameplate capacity rating of up to 3 kilowatts (“kW”) of peak power. Power generation is deployment-site dependent, as wave activity impacts power generation. Our Energy Storage System (“ESS”) has a capacity of up to a nominal 150 kW-hours to meet specific application requirements.

The PB3 is designed to generate power for use independent of the power grid in offshore locations. The hull consists of a main spar structure compliantly moored to the seabed and surrounded by a floating annular structure that can freely move up and down in response to the passage of the waves. The PTO system includes a mechanical energy conversion system, an electrical generator, a power electronics system, our control system, and our ESS which is sealed within the hull. As ocean waves pass the PB3 the mechanical stroke action created by the rising and falling of the waves is converted into rotational mechanical energy by the PTO, which in turn, drives the electric generator. The power electronics system then conditions the electrical output which is stored within the ESS.

The operation of the PB3 is controlled by our customized, proprietary control system. The control system uses sensors and an onboard computer to continuously monitor the PB3 subsystems. We believe that this ability to optimize and manage the electric power output of the PB3 is a significant advantage of our technology. In the event of large storm waves, the control system automatically locks the PB3, and electricity generation is suspended. However, the load center (either the on-board payload or one in the vicinity of the PB3) may continue to receive power from the ESS. When wave heights return to normal operating conditions, the control system automatically unlocks the PB3 and electricity generation and ESS replenishment recommences. This safety feature helps to protect the PB3 from being damaged by storms.

Customized solutions are also available for the PB3 including the addition of subsea sensors to monitor for acoustic signatures, tsunami activity, and water quality.

Recent Technological Advancements

In August 2023 we successfully demonstrated a WAM-V attaching itself remotely to a buoy and establishing a connection that will enable charging. This successful electrical connection that enabled charging represents a significant step forward in the integration of renewable energy sources within the maritime industry and paves the way for a future where electrically propelled autonomous vessels can operate for extended durations, opening doors to potential new applications within the maritime domain.

Next Generation PowerBuoy®

The NextGen PB is an alternative platform to the PB3, and will consist of multiple versions, one utilizing solar and wind power and one utilizing solar and wind power plus wave energy conversion capability, to provide reliable power in remote offshore locations, regardless of ocean wave conditions. The WEC technology in the NextGen PB is based on our ongoing Mass on Spring Wave Energy Converter (MOSWEC) development which has the advantages of smaller size, lower cost, environmentally sealed design, and increased energy generation capability. The prototype of the solar and wind PowerBuoy® has been tested off the coast of New Jersey and was used during the MDAS demonstration for ANTX during fiscal 2023. We believe this product addresses a broader spectrum of customer deployment needs, including low-wave and nearshore environments, with the potential for greater product integration within each customer project. The NextGen PB is intended to provide a stable energy platform for our MDAS solution, and for agile deployment of other intelligence gathering surface and subsea sensors, subsea power applications, such as a surface communications hub for electric remotely operated vehicles (“eROV”) and autonomous underwater vehicles (“AUV”) used for mine counter measures, unexploded ordinance disposal, subsea acoustic monitoring, underwater inspections and short-term maintenance, and subsea equipment monitoring and control. The design has a high payload capacity for surveillance and communications equipment, including subsea acoustics, with the capability of being tethered to subsea payloads such as batteries, or with a conventional anchor mooring system. Energy is stored in onboard lithium ion batteries which can power subsea and topside payloads. The control system uses sensors and an onboard computer to continuously monitor the subsystems. The NextGen PB is designed to be able to operate over a broad range of temperature and ocean wave conditions. It has a 40kW-hour battery system which can be expanded up to 120 kW-hour energy.

Strategic Consulting Services

In November 2023 we divested our non-core strategic consulting team so that we can more fully focus our efforts and resources on the commercialization of our cutting-edge pipeline of products – particularly for the national security and defense markets. Going forward, the focus of our Strategic Consulting Services will be on delivering value to our customers through services which can be integrated in support of our broader PaaS and/or DaaS and RaaS solutions.

Strategy and Marketing

Our strategy includes developing integrated solutions and services, including autonomous and cloud-based delivery systems for ocean intelligence, ocean data and predictive analytics to provide actionable intelligence for our clients. We believe that having demonstrated the capability of our solutions, we can advance our product and services and gain further adoption from our target markets. Our marketing efforts are focused on offshore locations that require a cost-efficient solution for renewable, reliable, and persistent power, data collection, and communications, either by supplying electric power to payloads that are integrated directly with our products or located in its vicinity, such as on the surface, the seabed, or in the water column. Our recent projects have been in the military and government, offshore energy, and science and research industries.

Based on our recent market analysis, several emerging themes are shaping the offshore MDA sector for commercial and defense applications, as highlighted by the National Plan to achieve MDA released by the Department of Homeland Security (“DHS”) and the Government Accountability Office (“GAO”) in their ‘Unmanned Maritime Systems’ 2022 report on Maritime Security. In March 2023, the United States Coast Guard released its Unmanned Systems Strategic Plan with a stated vision to effectively employ, defend against, and regulate unmanned systems in a complex maritime environment advancing maritime safety, security, and prosperity for the American public. Coast Guard mission execution often begins with awareness of what is happening in the maritime domain. Surveillance, detection, classification, identification, and prosecution are enduring, high-level capabilities that the Coast Guard needs in order to execute its statutory missions and we believe that the Company’s products are well positioned to enable the Coast Guard to accomplish this mission. Large defense contractors are also expanding into the “ocean data collection” space by acquiring small and mid-size unmanned and autonomous surface and subsea vehicle companies.

Unmanned systems are increasingly in demand by defense and security and commercial companies to reduce costs and improve safety in offshore operations. Also, geopolitical developments such as the need for countries to protect their exclusive economic zones from illegal fishing activities and protect natural resources on the seabed are accelerating the adoption of solutions or technologies that collect, transmit, and synthesize data to provide actionable intelligence and decision-advantage to clients. Our recent operations in Bahrain and in the Asia Pacific region show the broadening geographic opportunity for our services, especially in the defense and security markets. This includes support for other unmanned assets, such as aerial drones, deployment of underwater vehicles that can then communicate via PowerBuoy deployed communication links, and as a deployment platform for secure communication networks.

We serve a diverse range of leading customers in this sector, including defense and security organizations, offshore wind, science and research, and ports and harbors. Our pipeline continues to grow and comprises primarily of participants in defense and security markets. In addition, we continue to see a growing number of commercial opportunities as we witness growing interest from offshore wind companies for autonomous monitoring, surveillance and survey-related services during various stages of the project development cycle. Further, we are attracting interest targeted toward subsea applications, using proprietary sensor payloads for environmental monitoring and subsea intelligence. We believe that our buoys and WAM-Vs® are uniquely able to deliver these services either as a standalone solution or in combination with other systems. Furthermore, we believe that we are becoming a reliable player in the hydrography survey market, particularly in the shallow water environment.

Commercial Activities

As noted above, we are now primarily focused on commercial activities. We have built a suite of products that we believe will be the basis for our current and future commercial success resulting in meaningful progress in orders, pipeline, and backlog, with backlog increasing from \$3.1 million at July 31, 2023 to \$4.5 million at October 31, 2023. We continue to seek new strategic relationships and further develop our existing partnerships. We collaborate with companies that have developed or are developing in-ocean applications requiring a persistent source of power that is also capable of real time data collection, processing and communication, to address potential customer needs. For the six months ended October 31, 2023 and 2022, the Company had three and four customers whose revenues accounted for at least 10% of the Company’s consolidated revenues, respectively. These revenues accounted for approximately 55% and 69% of the Company’s total revenue for the respective periods.

In order to achieve success in ongoing commercialize efforts, we must expand our customer base and obtain commercial contracts to lease or sell our solutions and services to customers. Our potential customer base for our solutions includes various public and private entities, and agencies that require remote offshore power.

Current and Recent Contracts

The following contract were entered into during fiscal 2024:

- A volume order from Sulmara, a prominent player in offshore services, of WAM-V 16 uncrewed surface vehicles making this the largest single order of WAM-Vs to date. The order, valued at \$1.6 million, underscores our commitment to providing innovative and sustainable solutions for the offshore industry. Due to demand, production is already underway to support and will allow for revenue recognition this fiscal year.
- A contract in support of foreign law enforcement. This collaboration aims to protect vital marine species and combat IUU fishing activities in critical habitats using our state-of-the-art uncrewed technologies and demonstrates unprecedented, networked surveillance capabilities and evidence collection, allowing authorities to gather critical information and support legal actions while keeping personnel safely out of harm's way until the precise time and conditions favor interdiction efforts.
- An award of three separate IDIQ Multiple-Award Contracts from the NOAA. NOAA has selected us as one of several Multiple Award IDIQ contract holders to provide Uncrewed Maritime Systems Services to NOAA's Office of Marine and Aviation Operations uncrewed systems operation center. These contracts have the potential to result in millions of dollars of revenue for us, and the ordering period is set to span three years, commencing on September 1, 2023, and concluding on August 31, 2026.

Business Relationships

We believe that our solutions are best developed, sold, deployed, and maintained together with subject matter experts in their respective fields. This enables the Company to protect, maintain, and evolve our various platforms and integrate them with surface and subsea payloads. The Company has previously entered into business relationships focused on including, but not limited to, deployment and installations, sourcing of surface payloads, and integration with autonomous vehicles. To augment our own internal software development team and further develop the MDAS, we maintain ongoing strategic software and robotics partnerships with software companies. We believe the business relationships with these software companies will further the development, alongside our internal technology resources, of our next-generation MDAS product for the maritime industrial market and governmental defense and security organizations.

Our third-party software companies are contributing to the Company's MDAS by providing integration software, control software, autonomy and systems integration for the buoy sensor payload. In addition, they are assisting the Company with designing and building a customized data platform that supports the Company's MDAS with sensor data feed management, secure communications management, a cloud-based infrastructure, and web-based user interface. The platform was designed with a flexible architecture that allows the Company to integrate new sensor technologies and third-party analytics capabilities and share MDAS data with customers and partners. During fiscal 2024, the Company began decreasing its reliance on third-party software parties through increased support from its internal software team.

We also maintain an active dialogue with several offshore specialists and marine operations partners in the North Sea and North America to support our deployment, maintenance, and recovery operations and projects.

Business Strategy

During the first six months of fiscal 2024, we have continued to advance our marketing programs, products, and solutions. We have substantially completed our research and development efforts, thus positioning the Company to increase its focus on delivering intelligent maritime solutions and services, particularly in the national security and defense markets. We intend to build on these efforts by introducing additional processes and making investments in appropriate human capital, operations, and manufacturing capabilities.

In support of our focus on the national security and defense markets, we have developed a defense specific sales team, including veterans from the U.S. Navy, Swedish Navy, and U.S. Intelligence Community. Key members of management and the Board are either cleared, or in the process of obtaining security clearances.

In addition, we recently retained Rear Admiral Victorino “Vic” G. Mercado (Retired) as a special advisor to the Company’s Board of Directors. We plan to leverage Vic’s experience, expertise, and networks as we build on our momentum in providing intelligent maritime solutions to the U.S. Government and defense and security sectors, and carefully navigate the challenges of securing access to and protecting highly sensitive and confidential information.

The majority of the Company’s potential customers are in areas of defense and security, hydrographic survey, offshore wind, offshore and coastal communication networks, and MDA, including mitigation of IUU fishing, where the end use may be both domestic and abroad.

Historically, demonstration projects have been a requisite step towards broad solution deployment and revenues associated with specific applications such as our New Jersey MDAS test array as part of our DaaS solution and to highlight these capabilities. Customers may want their own dedicated demonstration depending on customer needs. During a typical demonstration project’s specification, negotiation and evaluation period, we are often subject to the prospective customer’s vendor qualification process, which entails substantial due diligence of the Company and its capabilities. Such demonstrations are often a required step prior to leasing and may include negotiation of standard terms and conditions. Many proposals contain provisions which would provide the option to purchase or lease our PowerBuoy® or WAM-V® product upon successful conclusion of the demonstration project. The Company maintains a fleet of WAM-Vs® dedicated to demonstrations and has successfully demonstrated the capabilities of many of its solutions on its own or in customer-sponsored evaluation projects and remains focused on further demonstrations to build customer awareness and confidence and to drive revenue.

The Company is pursuing a long-term growth strategy to expand its market value proposition while growing the Company’s revenue base. This strategy includes partnerships with leading companies and organizations in adjacent and complementary markets. We continue to develop our PowerBuoy® and WAM-V® products for use in offshore power, data acquisition, and real-time data communications applications, and in order to achieve this goal, we are pursuing the following business objectives:

- Provide integrated turn-key solutions, purchases or leases. We believe our DaaS, RaaS and PaaS solutions, together with our platforms, are well suited to enable unmanned, autonomous (non-grid connected) offshore applications, such as topside and subsea surveillance and communications, surveying, subsea equipment monitoring, early warning systems platform, subsea power and buffering, and weather and climate data collection. We have investigated and realized market demand for some of these solutions, and we intend to sell and/or lease our products to these markets as part of these broader integrated solutions. Additionally, we intend to provide services associated with our solution offerings such as paid engineering studies, value-added engineering, maintenance, remote monitoring and diagnostics, application engineering, planning, training, project management, and marine and logistics support required for our solution life cycle. As our MDAS development continues, we expect that this will also include data and cloud services.
- Expand customer system solution offerings through new complementary products that enable more cost-efficient deployments that make shorter missions more feasible. We are continuously innovating new solutions to deliver enhanced value to our customers, such as enhancing our MDAS and improving our deployment platforms solutions, such as our PowerBuoys® and WAM-Vs®. We have substantially completed development of our next generation PowerBuoy® that incorporates wave, wind, and solar power generation capabilities in a robust yet cost effective system that supports shorter term missions as well as the ability to operate in near shore and low wave environments. This effort was partially funded by the DOE SBIR Phase II award. In addition, we have integrated PowerBuoy® and WAM-V® capabilities, including WAM-V® recharging from a PowerBuoy®, with future plans to integrate MDAS capabilities into our WAM-Vs®, thus extending our reach and providing both fixed and mobile MDAS offerings to our customers.

- Focus on selling WAM-Vs® to the defense and security, hydrographic survey, and surveillance industries as we are well positioned to capitalize on the growing demand for unmanned surface vehicles to provide maritime safety, security, and awareness of what is happening in the maritime domain, including surveillance, detection, classification, and identification. The ability of our WAM-Vs® to handle various payloads allows us to target navigation surveys, marine infrastructure surveys, berth clearance surveys, dredging surveys, and mining pit surveys. Near-term future markets for our WAM-Vs® include the use of WAM-Vs® for the launch of aerial drones and underwater survey equipment. WAM-Vs® are easily and economically shipped via land, air, or sea, and their modular design enables us to quickly reduce their size for storage or shipment. The ability to disassemble a WAM-V® reduces the footprint by as much as 75%, and as a result, a 20-foot container can hold four 16-foot WAM-Vs®. In addition, our 8-foot WAM-V® can be checked as baggage on a standard commercial flight. To integrate our solutions and add roaming as an option or enhancement to our MDAS, we are advancing developments to further integrate MDAS into the WAM-V® platform and develop additional autonomy capabilities.
- Focus sales efforts on key global markets in the U.S., Middle East, and Asia Pacific. While we are marketing our products and services globally, we have focused on several key markets and applications, including U.S. and foreign defense and security applications with our MDAS offering; and the hydrographic survey market with regard to our WAM-Vs®. We believe that each of these areas has demand for our solutions, sizable end market opportunities, and high levels of industrialization and economic development. Our headquarters in Monroe Township, New Jersey and our office in Richmond, California enable us to support our customers and strengthen our dialogue with our solution partners.
- Expand our relationships in key market areas through strategic partnerships and collaborations. We believe that strategic partners are an important part of expanding visibility to our products. Partnerships and collaborations can be used to improve the development of overall integrated solutions, create new market channels, expand commercial know-how and geographic footprint, and bolster our product delivery capabilities. We have formed such a relationship with several well-known groups, and we continue to seek other opportunities to collaborate with application experts from within our selected markets. These partnerships have helped us source services, such as installation expertise, and products, such as MDA enabling equipment, to meet our development and customer obligations. We have been actively pursuing additional opportunities to bring in-house skills, capabilities, and solutions that are complementary to our strategy and enable us to scale more quickly.
- Partner with fabrication, deployment and service contractors. In order to minimize our capital requirements as we scale our business, we intend to optimize and utilize state of the art fabrication, anchoring, mooring, cabling supply, and in some cases, deployment of our products and solutions. We believe this domestically distributed manufacturing and assembly approach enables us to focus on our core competencies and ensure a cost-effective product by leveraging a larger more established supply base. We continue to seek strategic partnerships regarding servicing of our products and solutions.
- Expand survey and security market applications. Through our WAM-V® products, we can increase our ability to lease vehicles specifically to support shoreline and offshore survey markets as well as security applications while integrating MDA into these solutions.

Liquidity

During the six months ending October 31, 2023, the Company incurred a net loss of approximately \$14.3 million and used cash in operations of approximately \$15.5 million. The Company has continued to make investments in ongoing product development efforts and in building inventory in anticipation of, and in support of, future growth. The Company's future results of operations involve significant risks and uncertainties. Factors that could affect the Company's future operating results and could cause actual results to vary materially from expectations include, but are not limited to, access to capital, performance of its products, its ability to market and commercialize its products and new products that it may develop, technology development, scalability of technology and production, ability to attract and retain key personnel, concentration of customers and suppliers, pending or threatened litigation (including litigation with Paragon Technologies, Inc.), and deployment risks and integration of acquisitions. Management believes the Company's cash balance of \$3.5 million and short term investments balance of \$15.4 million at October 31, 2023 is sufficient to fund its planned operations through at least December 2024.

Capital Raises

On November 20, 2020, the Company entered into an At-the-Market Offering Agreement ("ATM") with AGP (the "2020 ATM Facility"). The 2020 ATM Facility was terminated by the Company effective June 2, 2023.

On August 7, 2023, the Company entered into a Controlled Equity Offering Sales Agreement (the "2023 ATM") with Cantor Fitzgerald & Co. ("Cantor"), as sales agent, which was terminated on December 2, 2023.

The Company may choose to seek another sales agent for a new ATM in the future. The sale of additional equity under new facilities could result in dilution to our shareholders. If additional funds are raised through the issuance of debt securities or preferred stock, these securities could have rights senior to those associated with our common stock and could contain covenants that would restrict our operations. The Company cannot be certain that additional equity and/or debt financing will be available to the Company as needed on acceptable terms, or at all. If we are unable to obtain required financing when needed, we may be required to reduce the scope of our operations, including our planned product development and marketing efforts, which could materially and adversely affect our financial condition and operating results. If we are unable to secure additional financing, we may be forced to cease our operations.

Backlog

As of October 31, 2023, the Company's backlog was \$4.5 million. Our backlog includes unfilled firm orders for our products and services from commercial or governmental customers. If any of our contracts were to be terminated, our backlog would be reduced by the expected value of the remaining terms of such contract.

The amount of contract backlog is not necessarily indicative of future revenue because modifications to or terminations of present contracts and production delays can provide additional revenue or reduce anticipated revenue. A portion of our revenue is recognized using the input method used to measure progress towards completion of our customer contracts over time, and changes in estimates from time to time may have a significant effect on revenue and backlog. Our backlog is also typically subject to large variations from time to time due to the timing of new awards.

Critical Accounting Policies and Estimates

To understand our financial statements, it is important to understand our critical accounting policies and estimates. We prepare our financial statements in accordance with U.S. Generally Accepted Accounting Principles ("U.S. GAAP"). The preparation of financial statements also requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, costs and expenses and related disclosures. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Actual results could differ significantly from the estimates made by our management. To the extent that there are differences between our estimates and actual results, our future financial statement presentation, financial condition, results of operations and cash flows will be affected. We believe that accounting policies are critical to understanding our historical and future performance, as these policies relate to the more significant areas involving management's judgments and estimates.

For a discussion of our critical accounting estimates, see the section entitled Item 7.- "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on Form 10-K for the year ended April 30, 2023. There were no material changes to our critical accounting estimates or accounting policies during the six months ended October 31, 2023.

Revenue recognition

The Company accounts for revenue in accordance with Accounting Standards Codification 606 (ASC 606) for contracts with customers and Accounting Standards Codification 842 (ASC 842) for leasing arrangements. In relation to ASC 606, which states that a performance obligation is the unit of account for revenue recognition, the Company assesses the goods or services promised in a contract with a customer and identifies as a performance obligation as either: a) a good or service (or a bundle of goods or services) that is distinct; or b) a series of distinct goods or services that are substantially the same and that have the same pattern of transfer to the customer. A contract may contain a single performance obligation or multiple performance obligations. For contracts with multiple performance obligations, the Company allocates the contracted transaction price to each performance obligation based upon the relative standalone selling price, which represents the price the Company would sell a promised good or service separately to a customer. The Company determines the standalone selling price based upon the facts and circumstances of each obligated good or service. When no observable standalone selling price is available, the standalone selling price is generally estimated based upon the Company's forecast of the total cost to satisfy the performance obligation plus an appropriate profit margin.

The nature of the Company's contracts may give rise to several types of variable consideration, including unpriced change orders, liquidated damages and penalties. Variable consideration can also arise from modifications to the scope of services. Variable consideration is included in the transaction price to the extent it is probable that a significant reversal of cumulative revenue recognized will not occur once the uncertainty associated with the variable consideration is resolved. Our estimates of variable consideration and determination of whether to include such amounts in the transaction price are based largely on our assessment of legal enforceability, performance, and any other information (historical, current, and forecasted) that is reasonably available to us. There was no variable consideration as of October 31, 2023 or 2022. The Company presents shipping and handling costs, that occur after control of the promised goods or services transfer to the customer, as fulfillment costs in costs of goods sold and regular shipping and handling activities charged to operating expenses.

The Company recognizes revenue when or as it satisfies a performance obligation by transferring a good or service to a customer, either (1) at a point in time or (2) over time. A good or service is transferred when or as the customer obtains control. The evaluation of whether control of each performance obligation is transferred at a point in time or over time is made at contract inception. Input measures such as costs incurred are utilized to assess progress against specific contractual performance obligations for the Company's services. The selection of the method to measure progress towards completion requires judgment and is based on the nature of the services to be provided. For the Company, the input method using costs or labor hours incurred best represents the measure of progress against the performance obligations incorporated within the contractual agreements. If estimated total costs on any contract project a loss, the Company charges the entire estimated loss to operations in the period the loss becomes known. The cumulative effect of revisions to revenue, estimated costs to complete contracts, including penalties, change orders, claims, anticipated losses, and others are recorded in the accounting period in which the events indicating a loss are known and the loss can be reasonably estimated. These loss projections are re-assessed for each subsequent reporting period until the project is complete. Such revisions could occur at any time and the effects may be material. During the six-month period ended October 31, 2023, the Company recognized approximately \$1.2 million in revenue related to performance obligations satisfied at a point in time and approximately \$0.9 million in revenue related to performance obligations satisfied over-time. During the three-month period ended October 31, 2023 the Company recognized approximately \$0.5 million in revenue related to performance obligation satisfied at a point in time and approximately \$0.4 million in revenue related to performance obligations satisfied over time.

The Company's contracts are either cost-plus contracts, fixed-price contracts, time and material agreements, lease or service agreements. Under cost plus contracts, customers are billed for actual expenses incurred plus an agreed-upon fee.

The Company has two types of fixed-price contracts, firm fixed-price and cost-sharing. Under firm fixed-price contracts, the Company receives an agreed-upon amount for providing products and services specified in the contract, and a profit or loss is recognized depending on whether actual costs are more or less than the agreed upon amount. Under cost-sharing contracts, the fixed amount agreed upon with the customer is only intended to fund a portion of the costs on a specific project. Under cost sharing contracts, an amount corresponding to the revenue is recorded in cost of revenue, resulting in gross profit on these contracts of zero. The Company's share of the costs is recorded as product development expense. The Company reports its disaggregation of revenue by contract type since this method best represents the Company's business. For the the six months ended October 31, 2023 and 2022, the majority of the Company's contracts were classified as firm fixed-price and the balance were cost-sharing.

The Company's revenue also includes revenue from certain contracts which do not fall within the scope of ASC 606, but under the ASC 842. At inception of a contract for those classified under ASC 842, the Company classifies leases as either operating or financing in accordance with the authoritative accounting guidance contained within ASC Topic 842, "Leases". If the direct financing or sales-type classification criteria are met, then the lease is accounted for as a finance lease. All others are treated as operating leases. The Company recognizes revenue from operating lease arrangements generally on a straight-line basis over the lease term, or as agreed upon in-use days are utilized, which is presented in Revenue in the Consolidated Statement of Operations. The Company also enters into lease arrangements for its PowerBuoys® and WAM-V® with certain customers. Revenue related to multiple-element arrangements is allocated to lease and non-lease elements based on their relative standalone selling prices or expected cost plus a margin approach. Lease elements generally include a PowerBuoy®, WAM-V®, and components, while non-lease elements, which the Company expects to become more prevalent, generally include engineering, monitoring and support services. In the lease arrangement, the customer may be provided with an option to extend the lease term or purchase the leased buoy or WAM-V® at some point during and/or at the end of the lease term.

Recently Issued Accounting Standards

There have been no recently issued accounting standards in the current period that would significantly affect the Company's financial statements, that have not been address in prior periods.

Financial Operations Overview

The following describes certain line items in our statement of operations and some of the factors that affect our operating results.

For the six months ended October 31, 2023 and 2022, the Company had three and four customers whose revenues accounted for at least 10% of the Company's consolidated revenues, respectively. These revenues accounted for approximately 55% and 69% of the Company's total revenue for the respective periods.

We currently focus our sales efforts in key global markets in North America, South America, Europe and Asia. The following table shows the percentage of our revenues by geographical location of our customers for the six months ended October 31, 2023 and 2022.

Customer Location*	Three months ended October 31,		Six months ended October 31,	
	2023	2022	2023	2022
North and South America	100%	82%	100%	77%
Asia and Australia	—%	18%	—%	23%
	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>

* For US Government contracts, the revenue is classified as North American however, location of operations may differ.

Cost of revenues

Our cost of revenues consists primarily of subcontracts, incurred material, labor and manufacturing overhead expenses, such as engineering expense, equipment depreciation and maintenance and facility related expenses, and includes the cost of equipment to customize the PowerBuoy® and our other products supplied by third-party suppliers. Cost of revenues also includes PowerBuoy® and other product system delivery and deployment expenses and may include anticipated losses at completion on certain contracts.

Operating Expenses

Engineering and product development costs

Our engineering and product development costs consist of salaries and other personnel-related costs and the costs of products, materials and outside services used in our product development and unfunded research activities. Our product development costs relate primarily to our efforts to increase the power output and reliability of our PowerBuoy® system and other products, to enhance and optimize data monitoring and controls systems, and to the development of new products, product applications and complementary technologies. We expense all of our product development costs including engineering product development costs as incurred.

Selling, general and administrative costs

Our selling, general and administrative costs consist primarily of professional fees, salaries and other personnel-related costs for employees and consultants engaged in sales and marketing of our products, and costs for executive, accounting and administrative personnel, professional fees and other general corporate expenses.

Interest income, net

Interest income, net consists of interest received on cash, cash equivalents, and short term investments as well as amortization expense related to the premiums on the purchase of short term investments.

Foreign exchange gain (loss)

We transact business in various countries and have exposure to fluctuations in foreign currency exchange rates. Since we conduct our business in U.S. dollars and our functional currency is the U.S. dollar, our main foreign exchange exposure, if any, results from changes in the exchange rate between the U.S. dollar and transactions settled in foreign currencies.

In addition, should we desire to, a portion of our operations can be conducted through our subsidiary in the United Kingdom, the functional currency of which is the British pound sterling. This subsidiary has foreign exchange exposure that results from changes in the exchange rate between their functional currency and other foreign currencies in which they conduct business. For the six months ended October 31, 2023 and 2022 there has been little to no activity other than regulatory and tax filings.

The Company is in the process of winding down its Australian subsidiary, which is expected to be completed during fiscal 2024. The Company began the process of winding down its UK subsidiary during the six months ended October 31, 2023. The unrealized gains or losses resulting from foreign currency balances translation are included in Accumulated Other Comprehensive Loss within Shareholders' Equity. Foreign currency transaction gains and losses are recognized within our Consolidated Statements of Operations.

We currently do not hedge our exchange rate exposure. However, we assess the anticipated foreign currency working capital requirements and capital asset acquisitions of our foreign operations and assess the need and cost to utilize financial instruments to hedge currency exposures on an ongoing basis and may hedge against exchange rate exposure in the future.

Results of Operations

This section should be read in conjunction with the discussion below under “Liquidity and Capital Resources.”

Three months ended October 31, 2023 compared to the three months ended October 31, 2022

The following table contains selected statement of operations information, which serves as the basis of the discussion of our results of operations for the three months ended October 31, 2023 and 2022.

	Three months ended October 31,	
	2023	2022
Revenues	\$ 889	\$ 303
Cost of revenues	401	264
Gross margin	488	39
Gain from change in fair value of consideration	(23)	(90)
Operating expenses	7,995	6,409
Operating loss	(7,484)	(6,280)
Interest income, net	270	234
Other income, employee retention credit	—	1,202
Foreign exchange gain	1	—
Loss before income taxes	(7,213)	(4,844)
Provision for income taxes	—	—
Net loss	\$ (7,213)	\$ (4,844)

Revenues

Revenues for the three months ended October 31, 2023 and 2022 were \$0.9 million and \$0.3 million, respectively. The year-over-year increase of \$0.6 million primarily reflects higher levels of revenue stemming from leased WAM-Vs, equal to approximately \$0.2 million and increased buoy revenue of \$0.4 million for the three months ended October 31, 2023.

Cost of revenues

Cost of revenues for the three months ended October 31, 2023 and 2022 increased slightly to \$0.4 million from \$0.3 million, respectively, reflecting a better mix on our margins from strategic consulting services, leased WAM-Vs and government related grants with NOAA and DOE in the current year.

Change in fair value of contingent consideration

The change in fair value of contingent consideration for the three months ended October 31, 2023 and 2022 was \$23 thousand and \$90 thousand, respectively, relating to an adjustment of the contingent consideration liability based on actual and forecasted bookings relating to the MAR acquisition.

Operating expenses

Operating expenses for the three months ended October 31, 2023 and 2022 were \$8.0 million and \$6.4 million, respectively. The increase of approximately \$1.6 million was the result of an increase in employee related costs of \$0.4 million primarily driven by increased headcount, an increase in professional and legal fees of \$1.1 million, and an increase in office related expenses of \$0.3 million, partially offset by a decrease in product development costs of \$0.2 million.

Interest income

Interest income for the three months ended October 31, 2023 and 2022 was \$0.3 million and \$0.2 million, respectively, with the increase primarily related to the investments being purchased at a discount in the current year as a result of increasing interest rates, offset slightly by the decreased balance of short-term investments.

Other income

Other income for the three months ended October 31, 2023 and 2022 was zero and \$1.2 million, respectively. The 2022 balance related to amortization of discounts on investments acquired and the employee retention credits applied for previously filed payroll tax returns with the IRS.

Six months ended October 31, 2023 compared to the six months ended October 31, 2022

The following table contains selected statement of operations information, which serves as the basis of the discussion of our results of operations for the three months ended October 31, 2023 and 2022.

	Six months ended October 31,	
	2023	2022
Revenues	\$ 2,161	\$ 1,017
Cost of revenues	1,010	784
Gross margin	1,151	233
Gain from change in fair value of consideration	(86)	(221)
Operating expenses	16,100	12,727
Operating loss	(14,863)	(12,273)
Interest income, net	610	375
Other income, employee retention credit	—	1,202
Foreign exchange gain	1	—
Loss before income taxes	(14,252)	(10,696)
Provision for income taxes	—	—
Net loss	\$ (14,252)	\$ (10,696)

Revenues

Revenues for the six months ended October 31, 2023 and 2022 were \$2.2 million and \$1.0 million, respectively. The year-over-year increase of \$1.2 million is due to an increase in revenue stemming from leased WAM-Vs, equal to approximately \$0.6 million and increased buoy revenue of \$0.6 million for the six months ended October 31, 2023.

Cost of revenues

Cost of revenues for the six months ended October 31, 2023 and 2022 were \$1.0 million and \$0.8 million, respectively, and increase of \$0.2 million reflecting a better margin mix from on our strategic consulting services, leased boats and government related grants with NOAA and DOE in the current year.

Change in fair value of contingent consideration

The change in fair value of contingent consideration for the six months ended October 31, 2023 and 2022 were \$0.1 million and \$0.2 million, respectively, relating to an adjustment of the contingent consideration liability based on actual and forecasted bookings relating to the MAR acquisition.

Operating expenses

Operating expenses for the six months ended October 31, 2023 and 2022 were \$16.1 million and \$12.7 million, respectively. The increase of approximately \$3.4 million was the result of an increase in employee related costs of \$1.6 million primarily driven by increased headcount, an increase in professional and legal fees of \$2.0 million, and an increase in office related expenses of \$0.5 million, partially offset by a decrease in product development costs of \$0.7 million.

Interest income

Interest income for the six months ended October 31, 2023 and 2022 was \$0.6 million and \$0.4 million, respectively, with the increase primarily related to the investment being purchased at a discount in the current year as a result of increasing interest rates, offset slightly by the decreased balance of short-term investments.

Other income

Other income for the six months ended October 31, 2023 and 2022 was zero and \$1.2 million, respectively. The 2022 balance related to amortization of discounts on investments acquired and the employee retention credits applied for previously filed payroll tax returns with the IRS.

Liquidity and Capital Resources

Our cash requirements relate primarily to working capital needed to operate and grow our business including funding operating expenses. We have experienced and continue to experience negative cash flows from operations and net losses.

The Company's total cash, cash equivalents, short term investments, and restricted cash balances was \$18.9 million as of October 31, 2023 and \$34.9 million as of April 30, 2023.

The Company incurred net losses of \$14.3 million and \$10.7 million for the six months ended October 31, 2023 and 2022, respectively. Refer to "Liquidity Outlook" below for additional information.

Net cash used in operating activities

During the six months ended October 31, 2023, net cash flows used in operating activities was \$15.5 million, an increase of \$4.5 million compared to net cash used in operating activities during the six months ended October 31, 2022 of \$11.0 million. This reflects an increase in net loss of \$14.3 million, an earnout payment related to MAR of \$0.5 million, decrease in accrued expense of \$0.7 million primarily related to accrued bonus payout, and an increase in inventory of \$0.9 million.

Net cash provided by investing activities

Net cash provided by investing activities during the six months ended October 31, 2023 was \$11.9 million, compared to \$13.1 million cash provided by investing activities during the six months ended October 31, 2022. The net cash of \$11.9 million provided by investing activities during the six months ended October 31, 2023 was primarily due to the redemption of short-term investments of \$20.6 million, partially offset by the purchase of short term investments of \$8.0 million and purchases of property and equipment of \$0.7 million

Net cash used in financing activities

Net cash used in financing activities during the six months ended October 31, 2023 was \$27,000.

Effect of exchange rates on cash and cash equivalents

There was no material effect of exchange rates on cash and cash equivalents during the six months ended October 31, 2023 and October 31, 2022.

Liquidity Outlook

Since our inception, the cash flows from customer revenues have not been sufficient to fund our operations and provide the capital resources for our business. As of October 31, 2023, our year to date revenues were \$2.2 million, our year to date net losses were \$14.3 million, our year to date net cash used in operating activities was \$15.5 million and our accumulated deficit was \$294.3 million.

We expect to devote substantial resources to continue our development efforts for our products and to expand our sales, marketing and manufacturing programs associated with the continued commercialization of our products. Our future capital requirements will depend on several factors, including but not limited to:

- our ability to develop, market and commercialize our products, and achieve and sustain profitability;
- our continued development of our proprietary technologies, and expected continued use of cash from operating activities unless or until we achieve positive cash flow from the commercialization of our products and services;
- our ability to obtain additional funding, as and if needed, which will be subject to several factors, including market conditions, and our operating performance;
- our history of operating losses, which we expect to continue for at least the short term and possibly longer;
- our ability to manage challenges and expenses associated with communications and disputes with activist shareholders, including litigation;
- our ability to manage and mitigate risks associated with our internal cyber security protocols and protection of the data we collect and distribute;
- our ability to protect our intellectual property portfolio;
- the impact of inflation related to the U.S. dollar on our business, operations, customers, suppliers and manufacturers and personnel;
- our ability to meet product development, manufacturing and customer delivery deadlines and the potential impact due to disruptions to our supply chain, as a result of, among other things, staff shortages, order delays, and increased pricing from vendors and manufacturers;
- our acquisitions and our ability to integrate them into our operations which may be unsuccessful or expose us to unforeseen liabilities, and may use significant resources;
- our estimates regarding future expenses, revenues, and capital requirements;
- our ability to identify and penetrate markets for our products, services, and solutions;
- our ability to effectively respond to competition in our targeted markets;
- our ability to establish relationships with our existing and future strategic partners which may not be successful;
- our ability to maintain the listing of our common stock on the NYSE American;
- the reliability of our technology, products and solutions;

- our ability to increase or more efficiently utilize the power available from our product lines;
- changes in current legislation, regulations and economic conditions that affect the demand for, or restrict the use of our products;
- the risks related to the actions of Paragon Technologies, Inc. in connection with its threatened proxy contest against us and the related litigation brought against us, including the amount of related costs incurred by us and the disruption caused to our business activities by these actions;
- our ability to hire and retain key personnel, including senior management, to achieve our business objectives; and
- our ability to establish and maintain commercial profit margins.

Our business is capital intensive, and through October 31, 2023, we have been funding our business principally through sales of our securities. As of October 31, 2023, our cash and cash equivalents, short-term restricted cash, and short term investments balance was \$18.9 million and we expect to fund our business with this amount and, to a lesser extent, with our cash flow generated from operations. Management believes the Company's current cash and cash equivalents, and short term investments, are sufficient to fund its planned expenditures through at least December 2024.

Off-Balance Sheet Arrangements

Since inception, we have not engaged in any off-balance sheet financing activities.

Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not applicable.

Item 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to provide reasonable assurance that material information required to be disclosed in our reports that we file or submit under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), as appropriate, to allow timely decisions regarding required financial disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that a control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within a company have been detected.

As of the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including our CEO and CFO, of the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Rule 13a-15 of the Exchange Act. Based upon that evaluation, our CEO and CFO concluded that our disclosure controls and procedures were not effective, due to the material weaknesses in internal control over financial reporting that are described in our Annual Report on form 10-K for the year ended April 30, 2023 (the "2023 10-K").

Notwithstanding such material weaknesses in internal control over financial reporting, our management, including our CEO and CFO, has concluded that our consolidated financial statements present fairly, in all material respects, our financial position, results of our operations and our cash flows for the periods presented in this Quarterly Report, in conformity with U.S. generally accepted accounting principles

Remediation Plans

As previously described in *Part II – Item 9A – Controls and Procedures* of the 2023 10-K, we continue to implement a remediation plan to address the material weaknesses mentioned above. The weaknesses will not be considered remediated until the applicable controls operate for a sufficient period of time and management has concluded, through testing, that these controls are operating effectively.

Progress has been made against management's plan to remediate these material weaknesses, but for Management to consider a material weakness remediated, the related controls are required to function as anticipated for a minimum period which varies based upon the specified control. As part of its remediation plan, management will put mitigating controls in place to minimize risk associated with any open material weaknesses.

Changes in Internal Control Over Financial Reporting

In response to the material weaknesses described in the 2023 10-K, the Company reviewed the design of its controls and began remediation activities to alleviate the noted control deficiencies. Other than these items, there was no change in the Company's internal control over financial reporting that occurred during the quarter ended October 31, 2023, that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II — OTHER INFORMATION

Item 1. *LEGAL PROCEEDINGS*

As part of our normal business activities, we are party to a number of legal proceedings and other matters in various stages of development. Management periodically assesses our liabilities and contingencies in connection with these matters based upon the latest information available. We disclose material pending legal proceedings pursuant to SEC rules and other pending matters as we may determine to be appropriate.

On June 16, 2023, a stockholder of the Company, Paragon Technologies, Inc., a Delaware corporation (“Paragon”), informed the Company that Paragon was planning a proxy contest against the Company and intended to nominate candidates for election to the Company’s Board of Directors (the “Board”) at the Company’s 2023 Annual Meeting of Stockholders (the “2023 Annual Meeting”). Paragon would later disclose that it is seeking to replace a majority of the six-member Board and, thereby, seek control of the Company. In connection with Paragon’s threatened proxy contest, the Company is currently defending against two litigation matters brought by Paragon in the Delaware Court of Chancery.

On July 27, 2023, Paragon filed a complaint against the Company in the Delaware Court of Chancery to enforce the demand that Paragon had made on July 17, 2023, to inspect the Company’s confidential books and records pursuant to Section 220 of the Delaware General Corporation Law. On October 20, 2023, a Magistrate of the Delaware Court of Chancery issued a telephonic report regarding this matter and indicated that Paragon had asserted a proper purpose for its inspection demand.

On October 25, 2023, the Company filed a Notice of Exceptions with the Delaware Court of Chancery to take exceptions to the Magistrate’s report. In its Notice of Exceptions, the Company detailed the areas of the Magistrate’s report that the Company took exception to, including, but not limited to: (i) the report’s conclusion that Paragon had stated a proper purpose for its books and records demand; (ii) the report’s conclusion that the primary purpose motivating Paragon’s demand was Paragon’s stated purpose; (iii) the report’s conclusion that Paragon’s stated purpose for its demand was not pretextual and that Paragon did not have improper ulterior motives; and (iv) the report’s conclusion as to the scope of inspection to be permitted pursuant to Paragon’s demand. On November 14, 2023, the Company filed its opening brief with respect to this matter. As of the date hereof, Paragon has not filed its answering brief, and the Delaware Court of Chancery has not scheduled any further action with respect to this matter.

On October 9, 2023, Paragon initiated litigation in the Delaware Court of Chancery against the Company and the Board alleging claims for breach of fiduciary duty and seeking declaratory and injunctive relief, including an injunction to (i) prevent the Company from rejecting the purported nominating notice that Paragon submitted to the Company on August 25, 2023 to notify the Company of its intention to nominate a majority slate of nominees at the 2023 Annual Meeting (the “Purported Nominating Notice”), and (ii) require the Company to approve Paragon’s request for an exemption from the Company’s Section 382 Tax Benefits Preservation Plan so that Paragon could purchase up to 19.9% of the Company’s common stock without triggering the dilution that would otherwise apply to the holder of 4.99% or more of the Company’s common stock. On November 30, 2023, the Delaware Court of Chancery denied Paragon’s request for injunctive relief to (i) block the Board from continuing to reject Paragon’s Purported Nominating Notice, and (ii) require the Board to grant Paragon the exemption it had requested from the Company’s Section 382 Tax Benefits Preservation Plan. Further, the Delaware Court of Chancery indicated that factual issues remain that would need to be resolved at a trial. On November 30, 2023, the Delaware Court of Chancery also granted, in part, a motion for sanctions against Paragon relating to the purported spoliation of text messages. As of the date hereof, the Delaware Court of Chancery has not scheduled any further action with respect to this matter, other than directing counsel for the Company and the Board to submit an affidavit detailing the reasonable fees and expenses incurred in filing their motion for sanctions and providing Paragon with an opportunity to respond.

For information on other matters in dispute, see Note 14 to the Consolidated Financial Statements under Part I, Item 1 of this report.

Item 1A. *RISK FACTORS*

The discussion of our business and operations should be read together with the risk factors contained in Item 1A of our Annual Report on Form 10-K for the year ended April 30, 2023 and set forth below in this Quarterly Report on Form 10-Q. These risk factors describe various risks and uncertainties to which we are or may become subject. These risks and uncertainties have the potential to affect our business, financial condition, results of operations, cash flows, strategies or prospects in a material and adverse manner. Except as noted below, there have been no material changes in our risk factors from those disclosed in our Annual Report on Form 10-K filed with the SEC on July 28, 2023.

We have a history of operating losses and may not achieve or maintain profitability and positive cash flow.

We have incurred net losses since we began operations in 1994, including net losses of \$14.3 million during the first six months of fiscal year 2024 and \$10.7 million during the same six month period in fiscal year 2023. As of October 31, 2023, we had an accumulated deficit of \$294.3 million. To date, our activities have consisted primarily of activities related to the development and testing of our technologies and our PowerBuoy®. Thus, our losses to date have resulted primarily from costs incurred in our research and development programs and from our selling, general and administrative costs. As we continue to develop our proprietary technologies, we expect to continue to have a net use of cash from operating activities unless or until we achieve positive cash flow from the commercialization of our products and services.

We do not know whether we will be able to successfully commercialize our products and solutions, or whether we can achieve profitability. There is significant uncertainty about our ability to successfully commercialize our products and solutions in our targeted markets. Even if we do achieve commercialization of our products and solutions and become profitable, we may not be able to achieve or, if achieved, sustain profitability on a quarterly or annual basis.

Actions of activist stockholders could be disruptive and costly and the possibility that activist stockholders may gain representation on or control of our board of directors could adversely affect our results of operations, financial condition, or share price.

While we strive to maintain constructive communications with our stockholders, we have been, and may in the future be, subject to actions initiated by activist stockholders. On August 25, 2023, Paragon Technologies, Inc. (“Paragon”), an OPT stockholder, purported to provide notice to OPT of its intent to replace a majority of the OPT board of directors at OPT’s 2023 Annual Meeting of Stockholders. While that purported notice was rejected by the OPT board of directors for not complying with OPT’s Amended and Restated Bylaws, Paragon has publicly disclosed that it remains interested in replacing a majority of the OPT board of directors. Further, in connection with Paragon’s threatened proxy contest, we are currently defending against two litigation matters brought by Paragon in the Delaware Court of Chancery.

Any activist campaign against OPT that contests, conflicts with, or seeks to change, our board composition, leadership, strategic direction, or business mix could have an adverse effect on us because: (i) responding to actions by activist stockholders could disrupt our operations, be costly or time-consuming, or divert the attention of our board of directors and senior management from their regular duties, which could adversely affect our results of operations or financial condition; (ii) perceived uncertainties, including as a result of possible changes to the composition of our board, as to our future direction may lead to the perception of a change in the direction of the business or lack of continuity, any of which may be exploited by our competitors, cause concern to our customers and/or employees and result in the loss of potential business opportunities, or make it more difficult to attract and retain qualified personnel and business partners, and may affect our relationships with vendors, customers and other third parties; (iii) these types of actions could cause significant fluctuations in our share price based on temporary or speculative market perceptions or other factors that do not necessarily reflect the underlying fundamentals and prospects of our business; and (iv) if individuals are elected to our board of directors with a specific agenda, it may adversely affect our ability to effectively implement our business strategy and create additional value for our stockholders.

Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None.

Item 3. DEFAULTS UPON SENIOR SECURITIES

None.

Item 4. MINE SAFETY DISCLOSURES

Not applicable.

Item 5. OTHER INFORMATION

None.

Item 6. EXHIBIT INDEX

10.1	##	Contract for Commercial Items between Ocean Power Technologies, Inc. and the National Oceanic and Atmospheric Administration dated September 1, 2023.
10.2	##	Contract for Commercial Items between Ocean Power Technologies, Inc. and the National Oceanic and Atmospheric Administration dated September 1, 2023.
10.3	##	Contract for Commercial Items between Ocean Power Technologies, Inc. and the National Oceanic and Atmospheric Administration dated September 1, 2023.
31.1		Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2		Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	*	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	*	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101		The following financial information from Ocean Power Technologies, Inc.'s Quarterly Report on Form 10-Q for the quarter ended October 31, 2023, formatted in eXtensible Business Reporting Language (XBRL): (i) Consolidated Balance Sheets – October 31, 2023 (unaudited) and April 30, 2021, (ii) Consolidated Statements of Operations (unaudited) – three and six months ended October 31, 2023 and 2022, (iii) Consolidated Statements of Comprehensive Loss (unaudited) – three and six months ended October 31, 2023 and 2021, (iv) Consolidated Statement of Shareholders' Equity (unaudited) – three and six months ended October 31, 2023 and 2022 (v) Consolidated Statements of Cash Flows (unaudited) –six months ended October 31, 2023 and 2022, (vi) Notes to Consolidated Financial Statements.**
101.INS		Inline XBRL Instance Document
101.SCH		Inline XBRL Taxonomy Extension Schema Document
101.CAL		Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF		Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB		Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE		Inline XBRL Taxonomy Extension Presentation Linkbase Document
104		Cover Page Interactive Data File (embedded within the Inline XBRL document)
	*	As provided in Item 601(b)(32)(ii) of Regulation S-K, this exhibit shall not be deemed to be “filed” or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, and shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liability under those sections.
	**	As provided in Rule 406T of Regulation S-T, this exhibit shall not be deemed “filed” or a part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, and shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liability under those sections.
	##	As permitted by Regulation S-K, Item 601(b)(10)(iv) of the Securities Exchange Act of 1934, as amended, certain confidential portions of this exhibit have been redacted from the publicly filed document. The Company agrees to furnish supplementally an unredacted copy of the exhibit to the Securities and Exchange Commission upon its request.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Ocean Power Technologies, Inc.
(Registrant)

Date: December 13, 2023

/s/ Philipp Stratmann

By: Philipp Stratmann
President and Chief Executive Officer

Date: December 13, 2023

/s/ Robert Powers

By: Robert Powers
Senior Vice President and Chief Financial Officer

***Certain identified information has been excluded from this exhibit because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.

**SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30**

2. CONTRACT NO. 1305M223DNMAN0067		3. AWARD/EFFECTIVE DATE SEPT 01, 2023		4. ORDER NUMBER		1. REQUISITION NUMBER NM-AN0000-23-01845		PAGE 1 OF 32	
7. FOR SOLICITATION INFORMATION CALL:		a. NAME AMY L. MCLIVERTY		amy.l.mcliverty@noaa.gov		5. SOLICITATION NUMBER 1305M223QNMAN0073		6. SOLICITATION ISSUE DATE MAY 26, 2023	
9. ISSUED BY ACQUISITION AND GRANTS OFFICE EASTERN ACQ DIV NORFOLK FED BLDG 200 GRANBY ST STE 815 NORFOLK VA 23510		CODE AJF10001		10. THIS ACQUISITION IS SMALL BUSINESS HUBZONE SMALL BUSINESS SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS		UNRESTRICTED OR WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM EDWOSB		SET ASIDE: 100 % FOR: NAICS: 541990 SIZE STANDARD: 19.5	
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED SEE SCHEDULE		12. DISCOUNT TERMS		13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		13b. RATING		14. METHOD OF SOLICITATION X RFQ IFB RFP	
15. DELIVER TO Uncrewed Operations Center HQ 1315 East West Hwy SSMC3 10th Floor Silver Spring MD 20910		CODE NMAN0001		16. ADMINISTERED BY ACQUISITION AND GRANTS OFFICE EASTERN ACQ DIV NORFOLK FED BLDG 200 GRANBY ST STE 815 NORFOLK VA 23510		CODE AJF10001			
17a. CONTRACTOR/OFFEROR. OCEAN POWER TECHNOLOGIES, INC. 28 ENGELHARD DRIVE MONROE TOWNSHIP NJ 08831		CODE 00034875		FACILITY CODE		18a. PAYMENT WILL BE MADE BY NOAA FINANCE OFFICE BLDG. SSMC3 1315 EAST WEST HWY SILVER SPRING MD 20910		CODE AJ200012	
CAGE: 04EP7 TIN: 222535818 TELEPHONE NO.		UEI: QMEHBTKWMQG3		17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED		SEE ADDENDUM	
19. ITEM NO.		20. SCHEDULE OF SUPPLIES/SERVICES		21. QUANTITY		22. UNIT		23. UNIT PRICE	
								24. AMOUNT	
<p>The Contractor shall provide OMAO/UxSOC, UMS for Living Marine Resource Surveys and Research, in accordance with Attachment A-Statement of Work and Attachment B-Schedule of Items and Prices.</p>									
(Use Reverse and/or Attach Additional Sheets as Necessary)									
25. ACCOUNTING AND APPROPRIATION DATA See Schedule					26. TOTAL AWARD AMOUNT \$***				
27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA					ARE NOT ATTACHED				
27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDA					ARE NOT ATTACHED				
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED					29. AWARD OF CONTRACT: REF. OFFER				
30a. SIGNATURE OF OFFEROR/CONTRACTOR					31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)				
30b. NAME AND TITLE OF SIGNER (Type or print)			30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (Type or print) JANA KOLB 757-441-3344 JANA.KOLB@NOAA.GOV			31c. DATE SIGNED 08/31/2023	

***Certain identified information has been excluded from this exhibit because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.

AUTHORIZED FOR LOCAL REPRODUCTION
PREVIOUS EDITION IS NOT USABLE

STANDARD FORM 1449 (REV. 2/2012)
Prescribed by GSA FAR (48 CFR) 53.212

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	<i>Jana Kolb</i>		

***Certain identified information has been excluded from this exhibit because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

32a. QUANTITY IN COLUMN 21 HAS BEEN

RECEIVED INSPECTED ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE
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32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE
	32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
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38. S/R ACCOUNT NO.	39. S/R VOUCHER NUMBER	40. PAID BY
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41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	42a. RECEIVED BY (Print)		
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE	42b. RECEIVED AT (Location)	
		42c. DATE RECD (YY/MM/DD)	42d. TOTAL CONTAINERS

***Certain identified information has been excluded from this exhibit because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.

	42c. DATE REC'D (YY/MM/DD)	42d. TOTAL CONTAINERS
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1305M223DNMAN0067

STANDARD FORM 1449 (REV. 2/2012) **BACK**

SECTION II
CONTRACT TERMS AND CONDITIONS

1. FEDERAL ACQUISITION REGULATION (FAR) 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:

Federal Acquisition Regulation (FAR) - <http://www.acquisition.gov>

Commerce Acquisition Regulation (CAR) – <https://www.acquisition.gov/car>

The following clauses are incorporated by reference:

Clause No.	Clause Title	Date
FAR 52.203-3	Gratuities	APR 1984
FAR 52.203-12	Limitation On Payments To Influence Certain Federal Transactions	JUN 2020
FAR 52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights.	JUN 2020
FAR 52.204-4	Printed Or Copied Double-Sided On Postconsumer Fiber Content Paper	MAY 2011
FAR 52.204-13	System For Award Management Maintenance	OCT 2018
FAR 52.204-18	Commercial And Government Entity Code Management	AUG 2020
CAR 1352.201-70	Contracting Officer's Authority	APR 2010
CAR 1352.209-73	Compliance With The Laws	APR 2010
CAR 1352.209-74	Organizational Conflict of Interest	APR 2010
CAR 1352.216-74	Task Orders	APR 2010

2. FAR 52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (DEC 2022) WITH ADDENDA

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights-

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at Federal Acquisition Regulation (FAR) 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

SECTION II
CONTRACT TERMS AND CONDITIONS

(e) *Definitions*. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *Excusable delays*. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice.

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include-

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of

lading;

- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this

contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (*e.g.*, 52.232-33, Payment by Electronic Funds Transfer-System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer-Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C.3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) *Patent indemnity*. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment.-

(1) *Items accepted*. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

SECTION II
CONTRACT TERMS AND CONDITIONS

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C.3903) and prompt payment regulations at 5 CFR Part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see 52.212- 5(b) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall-

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the-

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by 33.211 if-

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on-

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

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(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in FAR 32.608-2 in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;

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(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) [Reserved]

(u) Unauthorized Obligations.

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) Incorporation by reference. The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(End of clause)

ADDENDUM TO FAR 52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (DEC 2022)

A. FAR 52.216-18 ORDERING (AUG 2020)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individual designated in the Schedule. Such orders may be issued ***three years from date of award***.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) A delivery order or task order is considered "issued" when—

(1) If sent by mail (includes transmittal by U.S. mail or private delivery service), the Government deposits the order in the mail;

(2) If sent by fax, the Government transmits the order to the Contractor's fax number; or

(3) If sent electronically, the Government either—

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(i) Posts a copy of the delivery order or task order to a Government document access system, and notice is sent to the Contractor; or

(ii) Distributes the delivery order or task order via email to the Contractor's email address.

(d) Orders may be issued by methods other than those enumerated in this clause only if authorized in the contract.

(End of clause)

B. FAR 52.216-19 ORDER LIMITATIONS (OCT 1995)

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than \$2,000.00 the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) Maximum order. The Contractor is not obligated to honor-

(1) Any order for a single item in excess of \$1,000,000.00;

(2) Any order for a combination of items in excess of \$1,000,000.00; or

(3) A series of orders from the same ordering office within seven (7) days that together call for quantities exceeding the limitation in paragraph (b) (1) or (2) of this section.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within seven (7) days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

C. FAR 52.216-22 INDEFINITE QUANTITY (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

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(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after **one (1) year after the contract expiration**.

(End of clause)

D. FAR 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 30 days prior to the expiration of the current task order period of performance.

Inclusion of FAR clause 52.217-8, Option to Extend Services, in the solicitation and resultant contract is for use by the Government as outlined at FAR 37.111, Extension of Services. The option will be exercised as needed at any time during the life of the contract using the rates applicable at the time of exercise.

(End of clause)

E. FAR 52.227-14 RIGHTS IN DATA-GENERAL (MAY 2014)

(a) *Definitions*. As used in this clause-

Computer database or "database means" a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software-

(1) Means

(i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

Data means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

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Limited rights means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

Limited rights data means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

Restricted computer software means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

Restricted rights, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

Technical data means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 116).

Unlimited rights means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in-

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to-

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) Copyright-

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(1) Data first produced in the performance of this contract.

(i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the Contracting Officer is required to assert copyright in all other data first produced in the performance of this contract.

(ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor-

(i) Identifies the data; and

(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) *Removal of copyright notices.* The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) *Release, publication, and use of data.* The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except-

(1) As prohibited by Federal law or regulation (*e.g.*, export control or national security laws or regulations);

(2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 4703, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

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(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor-

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may-

(i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

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(1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall-

(i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.

(3) [Reserved]

(h) *Subcontracting.* The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.

(i) *Relationship to patents or other rights.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

F. CAR 1352.201-72 CONTRACTING OFFICER'S REPRESENTATIVE (COR) (APR 2010)

(a) PaTrina Gregory is hereby designated as the Contracting Officer's Representative (COR). The COR may be changed at any time by the Government without prior notice to the contractor by a unilateral modification to the contract. The COR is located at:

NOAA/OMAO/Uncrewed Operations Center (UxSOC)
1315 East West Hwy
SSMC3, 10th Floor
Silver Spring, MD 20910
Email: PatTrina.Gregory@noaa.gov
Phone: (202) 936-5998

(b) The responsibilities and limitations of the COR are as follows:

(1) The COR is responsible for the technical aspects of the contract and serves as technical liaison with the contractor. The COR is also responsible for the final inspection and acceptance of all deliverables and such other responsibilities as may be specified in the contract.

(2) The COR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the contract price, terms or conditions. Any contractor request for changes shall be referred to the Contracting Officer directly or through the COR. No such changes shall be made without the express written prior authorization of the Contracting Officer. The Contracting Officer may designate assistant or alternate COR(s) to act for the COR by naming such assistant/alternate(s) in writing and transmitting a copy of such designation to the contractor.

(End of clause)

G. CAR 1352.216-75 MINIMUM AND MAXIMUM CONTRACT AMOUNTS (APR 2010)

During the term of the contract, the Government shall place orders totaling a minimum of \$***. The amount of all orders shall not exceed \$*** (**To be shared among five (5) IDIQ Contract Holders**). This maximum value will be shared by all contracts. Be advised that the Government anticipates making multiple awards. The guaranteed minimum amount of \$*** applies to the 3-year ordering period, not each ordering period.

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(End of clause)

H. CAR 1352.216-76 PLACEMENT OF ORDERS (APR 2010)

(a) The contractor shall provide goods and/or services under this contract only as directed in orders issued by authorized individuals. In accordance with FAR 16.505, each order will include:

- (1) Date of order;
- (2) Contract number and order number;
- (3) Item number and description, quantity, and unit price or estimated cost or fee;
- (4) Delivery or performance date;
- (5) Place of delivery or performance (including consignee);
- (6) Packaging, packing, and shipping instructions, if any;
- (7) Accounting and appropriation data;
- (8) Method of payment and payment office, if not specified in the contract;
- (9) Any other pertinent information.

(b) In accordance with FAR 52.216-18, Ordering, the following individuals (or activities) are authorized to place orders against this contract:

<u>Office</u>	<u>Point of Contact</u>
NOAA/AGO/Eastern Acquisition Division 200 Granby Street, Suite 815 Norfolk, VA 23510	Amy McLiverty 757-441-3426 Amy.L.McLiverty@noaa.gov

(c) If multiple awards have been made, the contact information for the DOC task and delivery order ombudsman is AGOombudsman@noaa.gov.

(End of clause)

I. CAR 1352.246-70 PLACE OF ACCEPTANCE (APR 2010)

- a. The Contracting Officer or the duly authorized representative will perform inspection and acceptance of supplies and services to be provided under this contract.
- b. The inspection and acceptance will be designated in individual task orders.

(End of clause)

J. CAR 1352.270-70 PERIOD OF PERFORMANCE (APR 2010)

(a) The Ordering period for this contract vehicle is three (3) years from date of award. This ordering period may be extended by an additional six (6) months under FAR 52.217-8, Option to Extend Services.

(End of clause)

K. NOAA ACQUISITION MANUAL (NAM) 1330-52.203-70 SCIENTIFIC INTEGRITY AND RESEARCH MISCONDUCT (OCT 2012)

(a) **Definitions. As used in this this solicitation and contract language –**

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Scientific activities mean activities that involve inventorying, monitoring, observations, experimentation, study, research, integration, modeling, and scientific assessment.

Scientific integrity means the condition resulting from adherence to professional values and practices when conducting and applying the results of science that ensures objectivity, clarity, and reproducibility, and that provides insulation from bias, fabrication, falsification, plagiarism, interference, censorship, and inadequate procedural and information security.

Presentation of scientific activities results includes the analysis, synthesis, compilation, or translation of scientific information and data into formats for the use of the Department of Commerce or the United States of America.

Scientific and Research Misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing scientific and research activities, or in the products or reporting of the results of these activities. It specifically includes intentional circumvention of the integrity of the scientific and research process and actions that compromise that process, but does not include honest error or differences of opinion.

Investigation is formal collection and evaluation of information and facts to determine if scientific or research misconduct can be established, to assess its extent and consequences, and to recommend appropriate action.

(b) General Guidelines

1. **Maintaining Integrity.** The contractor shall maintain the scientific integrity of research performed pursuant to this contract award including the prevention, detection, and remediation of research misconduct, and the conduct of inquiries, investigations and adjudication of allegations of research misconduct.
2. In performing or presenting the results of scientific activities under the contract, and in responding to allegations of scientific and research misconduct, the contractor shall comply with the solicitation and contract language herein and NOAA Administrative Order (NAO) 202-735D, Scientific Integrity, and its Procedural Handbook, including any amendments thereto.
3. **Primary Responsibility.** The contractor shall have the primary responsibility to prevent, detect, and investigate allegations of scientific and research misconduct. Unless otherwise instructed by the contracting officer, the contractor shall promptly conduct an initial inquiry into any allegation of such misconduct and may rely on its internal policies and procedures, as appropriate, to do so.
4. By executing this contract, the contractor provides its assurance that it has established an administrative process for performing an inquiry, investigating, and reporting allegations of scientific and research misconduct; and that it will comply with its own administrative process for performing an inquiry, investigation and reporting of such misconduct.
5. The contractor shall insert the substance of this requirement in subcontracts at all tiers that involve research being performed under this contract.

(c) Investigating Misconduct Research

1. **Initiating Investigation.** If the contractor determines that there is sufficient evidence to proceed to an investigation, it shall notify the contracting officer and, unless otherwise instructed, the contractor shall:

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A. Promptly conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of scientific and research misconduct and an identification of appropriate remedies or a determination that no further action is warranted.

B. If the investigation leads to a finding of scientific and research misconduct, obtain adjudication by a neutral third party adjudicator. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.

2. Finalizing Investigation. When the investigation is complete, the contractor shall forward to the contracting officer a copy of the evidentiary record, the investigative report, any recommendations made to the Contractor's adjudicating official, the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response (if any).

(d) Findings and Corrective Actions

1. If the contractor finds that scientific and research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process and shall:

- i. Take all necessary corrective actions, which includes, but are not limited to, correcting the research record, and, as appropriate, imposing restrictions, controls, or other parameters on research in process or to be conducted in the future, and
- ii. Coordinate remedial action with the contracting officer.

(e) Department of Commerce Actions

1. The Department of Commerce may accept the Contractor's findings or proceed with its own investigation, in which case the contractor shall fully cooperate with the investigation. The contracting officer will inform the contractor of the Department's final determination.

2. The Department of Commerce reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms and conditions of the contract and applicable laws and regulations. Such remedies and actions may include, but are not limited to, disallowance of costs, recoupment of contract payments, and suspension or debarment.

(End of Clause)

L. NAM 1330-52.203-71 NOTICE OF POST-GOVERNMENT EMPLOYMENT RESTRICTIONS (OCT 2015)

By submission of an offer in response to a NOAA solicitation or acceptance of a contract, the contractor acknowledges the restriction on current NOAA employees regarding contact with offerors regarding prospective employment and the corresponding obligations for contractors who engage them. The contractor further acknowledges that it has provided notice to former NOAA employees who will provide service to NOAA under the contract of post-Government employment restrictions that apply to them. Such restrictions include, but are not limited to, those set forth in:

(a) 41 U.S.C. § 2103 regarding contacts between a federal employee working on a procurement and an offeror about prospective employment;

(b) 18 U.S.C. § 207 regarding the restrictions on former federal employees having contact with a federal agency on behalf of another person or entity concerning a specific party matter with which the former employee was involved as a federal employee or for which the former federal employee had official responsibility;

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(c) 18 U.S.C. § 207 regarding the restrictions on former senior employees and senior political employees from having contact with his former federal agency on behalf of another person or entity concerning any official matter; and

(d) 41 U.S.C. § 2104 regarding the restrictions on a former federal employee involved in an acquisition over \$10,000,000 from accepting compensation from a contractor.

(End of Clause)

M. NAM 1330-52.215-70 SCHEDULE OF DELIVERABLES (SEPT 2005)

The following is a schedule of all deliverables, including administrative deliverables, required during the period of performance of this contract:

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>QTY</u>	<u>DUE DATE</u>	<u>DELIVERY TO</u>	<u>REFERENCE</u>
1.	Annual Sexual Assault and Sexual Harassment (SASH) Training	For each contractor hired to the task order	30 days after task order award, then March 1 each calendar year thereafter	Contracting Officer (CO) and Contracting Officer's Representative (COR)	RFQ Clause N
2.	Services as provided in in Individual Task Order.	As provided in individual TO	TO Specific	TO specific	Individual TO

(End of clause)

N. NAM 1330-52.222-70 NOAA SEXUAL ASSAULT AND SEXUAL HARASSMENT PREVENTION AND RESPONSE POLICY (MAY 2018)

In accordance with NOAA Administrative Order (NAO) 202-1106, NOAA Sexual Assault and Sexual Harassment Prevention and Response Policy, it is the policy of NOAA to maintain a work environment free from sexual assault and sexual harassment. NOAA prohibits sexual assault and sexual harassment by or of any employee, supervisor, manager, contractor, vendor, affiliate, or other individual with whom NOAA employees come into contact by the virtue of their work for NOAA.

(a) Definitions.

Contractor Employees - The term "contractor employees," as used in this solicitation and contract language, refers to employees of the prime contractor or its subcontractors, affiliates, consultants, or team members.

Sexual Assault - The term sexual assault, as used in this solicitation and contract language, means any conduct proscribed by state or federal sexual abuse laws, including, but not limited to, those defined in chapter 109A of title 18 of the U.S. Code (sexual abuse), and assaults committed both by offenders who are strangers to the victim and by offenders who are known or related by blood or marriage to the victim.

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Sexual Harassment - As defined by the Equal Employment Opportunity Commission, sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual nature when any of the following are true:

- Submission to such conduct is made either explicitly or implicitly as a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual;
- The conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

The main characteristics of sexual harassment are that the harasser's conduct is targeted against the recipient's sex, gender identity, or sexual orientation, and is unwelcome to the recipient. It may include, but is not limited to: offensive jokes, slurs, epithets or name calling, undue attention, physical assaults or threats, unwelcome touching or contact, intimidation, ridicule or mockery, insults or put-downs, constant or unwelcome questions about an individual's identity, and offensive objects or pictures.

(b) Requirements.

1. It is the responsibility of the contractor to ensure that contractor employees maintain the highest degree of conduct and standards in performance of the contract. In support of this, NOAA urges its contractors to develop and enforce comprehensive company policy addressing sexual assault and sexual harassment.
2. The contractor shall include wording substantially the same as this solicitation and contract language in every subcontract so that it is binding upon each subcontractor.
3. If a contractor employee observes or is the object of sexual assault or sexual harassment, he or she is highly encouraged to report the matter, as soon as possible, to their immediate supervisor, the Contracting Officer's Representative (COR), subset of the COR (e.g. Task Manager or Assistant COR), or contracting officer (CO) if a COR is not assigned to the contract. The contract employee may also contact the NOAA Civil Rights Office to obtain guidance on reporting instances of sexual assault or sexual harassment. If deemed necessary, the contractor employee may also report such instances to local law enforcement. In the case where the incident occurs while performing at a remote location, such as at sea or in the field (at a field camp or other isolated location) where the above referenced individuals are unavailable, the contractor employee should follow the reporting procedure set forth in NAO 202-1106, Section 6, .07, Reporting from Remote Locations.
4. Swift reporting allows NOAA and the contractor to take the appropriate measures to ensure that offensive behavior stops and the complainants' needs are addressed.
5. The COR (if assigned), CO, and contractor, where applicable, will work together to ensure appropriate action is taken in accordance with applicable laws and regulations, contract terms and conditions, and the contractor's written policy (where applicable).
6. The contractor shall provide all contractor employees assigned to perform under this contract with mandatory sexual assault and sexual harassment prevention and response training in compliance with the requirements of NAO 202-1106, Section 5, Prevention Training and Awareness, as part of their initial in-processing and on an annual basis thereafter. The initial training shall be completed within 30 business days contract award or the date a contractor employee is assigned to perform under the contract, as applicable.

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Evidence of initial training by name and date completed for each contractor employee, shall be submitted to the COR or contracting officer (if no COR assigned) within 10 business days of completion.

Evidence of annual training by name and date completed for each contractor employee shall be submitted to the COR or contracting officer (if no COR assigned) no later than March 1st of each calendar year of contract performance.

7. The mandatory sexual assault and sexual harassment training provided by the contractor shall include the required elements set forth by NOAA's Workplace Violence Program Manager. A link to the website including the required elements of the training is provided at: <https://www.noaa.gov/organization/acquisition-grants/noaa-workplace-harassment-training-for-contractors-and-financial>. The website will also provide training materials and resources to assist the contractor in conducting the training. The contractor may provide training that solely addresses the NOAA required elements or may supplement existing company sexual assault and sexual harassment training in a manner that ensures all of the elements are adequately addressed. The website will also provide training materials and resources to assist the contractor in conducting the training. The contractor may provide training that solely addresses the NOAA required elements or may supplement existing company sexual assault and sexual harassment training in a manner that ensures all of the elements are adequately addressed.
8. The required elements of the training and resources available to the contractor for the training may be updated by NOAA periodically. The contractor is responsible for monitoring the website and incorporating any changes to the NOAA required elements into the contractor provided training.
9. NOAA's Workplace Violence Program Manager, COR, or CO may periodically review the contractor's training outline to ensure all required elements are included and, if necessary, any appropriate adjustments are made to the training by the contractor.
10. Contractor employees performing on assignments in a remote location, such as at a field camp or other isolated locations, are subject to receiving the same briefing on the parameters of the order provided to NOAA employees as set forth in Section 6 of NAO 202-1106.
11. The contractor shall provide a copy of this solicitation and contract language and NAO 202-1106 to contractor employees.

(c) Sexual Assault/Sexual Harassment (SASH) Helpline.

For NOAA employees, affiliates, and contractors who have experienced sexual assault or sexual harassment, NOAA has established the NOAA Sexual Assault/Sexual Harassment (SASH) helpline. This helpline is designed to provide crisis intervention, referrals, and emotional support to those who are victims and/or survivors of sexual harassment or sexual assault within the workplace. Contractor employees may use the helpline to receive live, confidential, one-on-one support in an occurrence of sexual harassment or assault by a Federal Government employee. All services are anonymous, secure, and available worldwide, 24 hours a day, seven days a week. The NOAA SASH helpline is accessible through a variety of channels, including:

- Phone: 1-866-288-6558
- Website & Online Chat: <http://NOAASASHHelpline.org>
- Mobile App: NOAA SASH Helpline (available via iOS and Android App Stores)
- Text: (202) 335-0265

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(d) Confidentiality.

Any party receiving information from the filing of a complaint alleging sexual assault or sexual harassment, or while performing an investigation into such a complaint, shall keep the information confidential. "Confidentiality" means that the information shall only be shared with others who have a need to know the information to conduct their official duties.

(e) Remedies.

In addition to other remedies available to the Government, contractor employee violations of

Federal requirements (e.g., law, statutes, executive orders, code, rules, regulations) applicable to sexual assault and sexual harassment and/or failure to complete the mandatory training set forth in this solicitation and contract language, may result in:

1. Requiring the Contractor to remove a contractor employee or employees from the performance of the contract;
2. Requiring the Contractor to terminate a subcontract;
3. Suspension of contract payments until the Contractor has taken appropriate remedial action;
4. Termination of the contract for default or cause, in accordance with the termination clause of this contract;
5. Suspension or debarment; or
6. Other appropriate action.

(End of clause)

O. NAM 1330-52.232-72 NOAA TRANSITION TO THE INVOICE PROCESSING PLATFORM ELECTRONIC INVOICING SYSTEM (FEB 2023)

Beginning October 1, 2023, when NOAA implements the Department of Commerce Business Applications Solution, the Contractor must submit payment requests electronically through the U.S. Department of the Treasury's Invoice Processing Platform (the IPP) System. The Contractor must use the IPP website to register, access, and submit payment requests. The IPP website address is <https://www.ipp.gov>.

"Payment request" means any request for contract financing payment or invoice payment to the Contractor. To be considered proper, invoices must be prepared in accordance with, and contain all elements specified in, the contract payment clause (e.g., FAR 52.212-4(g), FAR 52.232-25(a)(3), FAR 52.232-26(a)(2), FAR 52.232-27(a)(2)). All supporting documents required by the Contracting Officer must be included as attachments to payment requests submitted through the IPP.

If the Contractor is unable to comply with the requirement to submit payment requests through the IPP due to a threat to national security; a matter of unusual or compelling urgency; or because the political, financial, or communications infrastructure of a foreign country does not support access to the IPP, the Contractor must request an exception in writing. Contact the Contracting Officer for more information about requesting an exception.

P. NAM 1330-52.235-70 COMPLIANCE WITH U.S. DEPARTMENT OF COMMERCE AND OTHER EXPORT CONTROL REGULATIONS (MAY 2006)

(a) In performing this contract, the contractor may engage in activities -- such as transfers or releases of items, technology, software, or source code -- that are subject to U.S. export controls, including, but not limited to, those contained in the DOC EAR, 15 C.F.R. Parts 730-774, and administered by the Bureau of Industry and Security. The contractor is responsible for compliance with U.S. export controls and associated licensing requirements that may attach to an export or "deemed export," as defined in Paragraph (b)(1) of this Section. The contractor shall establish and maintain, throughout the period of contract performance, effective export control compliance procedures covering all contractor employees and all of the contractor's non-NOAA facilities where the contract shall be performed. Failure to establish, maintain, or adhere to such compliance procedures shall constitute grounds for default termination under this contract as well as a breach of contract by the contractor.

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(b) Definitions.

1. "Deemed export." The EAR defines a deemed export as any release of technology or source code subject to the EAR to a foreign national, in the United States. Such release is "deemed" to be an export to the home country of the foreign national. 15 C.F.R § 734.2(b)(2)(ii).
2. "Export-controlled information and technology." Export-controlled information and technology is information and technology subject to the EAR (15 C.F.R. § 730 et seq.) or the ITARs, 22 C.F.R. §§ 120-130 (ITAR), administered by the Department of State. This category includes, but is not limited to, dual-use items, defense articles, and any related assistance, services, software, source code, or technical data, as defined in the EAR and ITAR.

(c) The contractor shall prevent unauthorized access by foreign nationals to all export-controlled information and technology that it possesses or that comes into its possession in performance of this contract, to ensure that access by a foreign national is restricted, or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations. If access to EAR or ITAR-controlled technology is required by a foreign national, the contractor must obtain appropriate authorization.

(d) Nothing in the terms of this contract is intended to change, supersede, or waive any of the requirements of applicable Federal laws, Executive Orders, or regulations.

(e) The contractor shall include this solicitation and contract language, including this paragraph (e), in all subcontracts under this contract.

(End of solicitation and contract language)

Q. NAM 1330-52.237-70 CONTRACTOR COMMUNICATIONS

(a) A contractor employee shall be identified both by the individual's name and the contractor's name when:

1. Included in NOAA's locator, and
2. When submitting any type of electronic correspondence to any NOAA employee or stakeholder.

(b) Any written correspondence from a contractor or any contractor employee shall be printed on company/organization letterhead or otherwise clearly identify the sender as an employee of the company or organization and shall identify the contract number.

(c) Contractors and/or contractor employees shall clearly identify themselves as such in any verbal communications, whether in informal discussion or a formal meeting.

(End of clause)

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R. NAM 1330-52.237-71 NOAA GOVERNMENT-CONTRACTOR RELATIONS – NON- PERSONAL SERVICES CONTRACT (SEPT 2017)

- (a) The Government and the Contractor understand and agree that the services to be delivered under this contract by the Contractor to the Government are non-personal services as defined in FAR Part 37, Service Contracting, and the parties recognize and agree that no employer-employee relationship exists or will exist under the contract between the Government and the Contractor's personnel. It is, therefore, in the best interest of the Government to afford both parties an understanding of their respective obligations.
- (b) Contractor personnel under this contract shall not:
 - 1. Be placed in a position where they are under relatively continuous supervision and control of a Government employee.
 - 2. Be placed in a position of command, supervision, administration, or control over Government personnel or over personnel of other Contractors performing under other NOAA contracts.
- (c) The services to be performed under this contract do not require the Contractor or the Contractor's personnel to exercise personal judgement and discretion on behalf of the Government. Rather, the Contractor's personnel will act and exercise personal judgement and discretion on behalf of the Contractor.
- (d) Rules, regulations, directives, and requirements that are issued by the Department of Commerce and NOAA under its responsibility for good order, administration, and security are applicable to all personnel who enter the Government installation and facilities, who are provided access to Government systems, or who travel on Government transportation. This is not to be construed or interpreted to establish any degree of Government control that is inconsistent with a non-personal services contract.
- (e) Both parties are responsible for monitoring contract activities for indications of improper employee- employer relationships during performance. In the event a situation or occurrence takes place inconsistent with this contract language, the following applies:
 - 1. The Contractor shall notify the Contracting Officer in writing within 5 business days from the date of any situation or occurrence where the Contractor considers specific contract activity to be inconsistent with the intent of this contract language. The notice must include the date, nature and circumstance of the situation or occurrence, the name, function and activity of each Government employee or Contractor employee involved or knowledgeable about the situation or occurrence, provide any documents or the substance of any oral communications related to the activity, and an estimated date by which the Government is recommended to respond to the notice in order to minimize cost, delay, or disruption of performance.
 - 2. The Contracting Officer will review the information provided by the Contractor, obtain additional information (if needed), and respond in writing as soon as practicable after receipt of the notification from the Contractor. The Contracting Officer's response will provide a decision on whether the Contracting Officer determines the situation or occurrence to be inconsistent with the intent of this contract language and, if deemed necessary, will specify any corrective action(s) to be taken in order to resolve the issue.

(End of clause)

S. NAM 1330-52.237-72 CONTRACTOR ACCESS TO NOAA FACILITIES (SEPT 2017)

- (a)
 - 1. The performance of this contract requires employees of the prime contractor or its subcontractors, affiliates, consultants, or team members ("contractor employees") to have access to and to the extent authorized, mobility within, a NOAA facility.

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2. NOAA may close and or otherwise deny contractor employees access to a NOAA facility for a portion of a business day or longer for various reasons including, but not limited, to the following events:
 - i. Federal public holidays for federal employees in accordance with 5 U.S.C. 6103;
 - ii. Fires, floods, earthquakes, and unusually severe weather, including but not limited to snow storms, tornadoes, and hurricanes;
 - iii. Occupational safety or health hazards;
 - iv. Lapse in Appropriations; or
 - v. Federal Statute, Executive Order, Presidential Proclamation, or any other unforeseen reason.
3. In such events, the contractor employees may be denied access to a NOAA facility that is ordinarily available for the contractor to perform work or make delivery, as required by the contract.

(b) In all instances where contractors are denied access or required to vacate a NOAA facility, in part or in whole, the contractor shall be responsible to ensure contractor personnel working under the contract comply. If the circumstances permit, the contracting officer will provide direction to the contractor, either directly or through the Contracting Officer's Representative (COR), which could include continuing on-site performance during the NOAA facility closure period; however, if Government oversight is required and is not available, on-site performance shall not be allowed. In the absence of such direction, the contractor shall exercise sound judgment to minimize unnecessary contract costs and performance impacts, for example, performing required work off-site if possible or reassigning personnel to other activities if appropriate.

(c) The contractor shall be responsible for monitoring the Office of Personnel Management at www.opm.gov, the local radio, television stations, NOAA web sites, and other communication channels. Once the facility is accessible, the contractor shall resume contract performance as required by the contract.

(d) For the period that NOAA facilities were not accessible to contractors who required access in order to perform the services, the contracting officer may—

1. Adjust the contract performance or delivery schedule for a period equivalent to the period the NOAA facility was not accessible;
2. Forego the work; or
3. Reschedule the work by mutual agreement of the parties.

(e) Notification procedures of a NOAA facility closure, including contractor denial of access, are as follows:

1. The contractor shall be responsible for notification of its employees of the NOAA facility closure to include denial of access to the NOAA facility. The dismissal of NOAA employees in accordance with statute and regulations providing for such dismissals shall not, in itself, equate to a NOAA facility closure in which contractors are denied access. Moreover, the leave status of NOAA employees shall not be conveyed or imputed to contractor personnel. Accordingly, unless a NOAA facility is closed and the contractor is denied access to the facility, the contractor shall continue performance in accordance with the contract.
2. Access to Government facilities and resources, including equipment and systems, will be limited and personnel necessary to administer contract performance may not be available. Generally, supply and service contracts that are funded beyond the date of the lapse in appropriation and do not require access to Government facilities, active administration by Government personnel or the use of government resources in a manner that would cause the government to incur additional obligations during the lapse in appropriation may continue. If a delivery date for a contract falls during the period of a lapse in appropriations, Government personnel may not be available to receive delivery. Contractors are directed to consult with a contracting officer before attempting to make a delivery. Contracting officers will be available throughout the lapse in appropriation period to provide guidance.

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Once OMB guidance is given, CORs, in consultation with the contracting officer, will notify those contractors that are deemed by the Program Office to be performing excepted work and identify the contractor personnel requiring access to NOAA facilities. CORs will also coordinate with directly with facility management or physical security personnel at respective locations to ensure that the names of contractor personnel requiring access to government facilities during the lapse in appropriations are provided to physical security personnel.

Contractors who are not designated as performing excepted work are not allowed access to Government facilities or to utilize government resources in a manner that would incur any additional obligation of funding on behalf of the government during the lapse in appropriation.

3. Unless otherwise specified within the contract award, contractors requiring access to NOAA facilities outside normal business hours or outside the normal workweek shall submit a written request in writing through the COR to the contracting officer. The written request shall provide justification supporting the required access and be submitted 48 hours before access to the NOAA facility is needed.

(End of clause)

T. NAM 1330-52.243-70 REQUESTS FOR EQUITABLE ADJUSTMENT (OCT 2017)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the contractor believes the Government is liable. The request shall include only costs for performing the change. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) Any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

(Official's Name)

(Title)

(c) The certification in paragraph (b) of this solicitation and contract language requires full disclosure of all relevant facts, including:

Certified cost or pricing data, if required, in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and

Data other than certified cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if certified cost or pricing data are not required.

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(d) The certification requirement in paragraph (b) of this solicitation and contract language does not apply to:

Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

Final adjustments under an incentive provision of the contract.

(End of clause)

U. NAM 1330-52.270-304 NOAA ACQUISITION AND GRANTS OFFICE OMBUDSMAN (OCT 2016)

(a) The NOAA Acquisition and Grants Office (AGO) Ombudsman is available to organizations to promote responsible and meaningful exchanges of information. Generally, the purpose of these exchanges will be to:

1. Allow contractors to better prepare for and propose on business opportunities.
2. Advise as to technologies and solutions within the marketplace that the Government may not be aware of, or is not fully benefiting.
3. Identify constraints in transparency.

(b) The AGO Ombudsman will objectively, reasonably, and responsibly collaborate with parties and recommend fair, impartial, and constructive solutions to the matters presented to him/her. Further, the AGO Ombudsman will maintain the reasonable and responsible confidentiality of the source of a concern, when such a request has been formally made by an authorized officer of an organization seeking to do business with, or already doing business with NOAA.

(c) Before consulting with the AGO Ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations with the respective contracting officer for resolution. However, direct access to the AGO Ombudsman may be sought when an interested party questions the objectivity or equity of a contracting officer's decision, or when there is a bona fide reason to believe that reasonable, responsible, and objective consideration will not be received from an assigned contracting officer.

(d) There are several constraints to the scope of the AGO Ombudsman's authority, for instance:

1. Consulting with the AGO Ombudsman does not alter or postpone the timelines of any formal process (e.g., protests, claims, debriefings, employee employer actions, activities involving A76 competition performance decisions, judicial or congressional hearings, or proposal, amendment, modification or deliverable due dates).
2. The AGO Ombudsman cannot participate in the evaluation of proposals, source selection processes, or the adjudication of protests or formal contract disputes.
3. The AGO Ombudsman is not authorized to generate or alter laws, judicial decisions, rules, policies, or formal guidance.
4. The AGO Ombudsman is not authorized to develop or alter opportunity announcements, solicitations, contracts, or their terms or conditions.
5. The AGO Ombudsman cannot overrule the authorized decisions or determinations of the contracting officer.
6. The AGO Ombudsman has no authority to render a decision that binds AGO, NOAA, the Department of Commerce, or the U.S. Government.
7. The AGO Ombudsman is not NOAA's agent relative to the service of magistrate or judicial process and cannot be used to extend service of process to another party (whether federal, public, or a private entity).

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(e) After review and analysis of a filed concern or recommendation, the AGO Ombudsman may refer the interested party to another more suitable Federal official for consideration. Moreover, concerns, disagreements, and/or recommendations that cannot be resolved by the AGO Ombudsman will need to be pursued through more formal venues.

(f) The AGO Ombudsman is not to be contacted to request copies of forms and/or documents under the purview of a contracting officer. Such documents include Requests for Information, solicitations, amendments, contracts, modifications, or conference materials.

(g) Questions regarding items (a) through (f) within this language shall be directed to NOAA AGO Ombudsman, at ago.ombudsman@noaa.gov.

(End of clause)

END OF ADDENDUM TO FAR 52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (DEC 2022)

V. FAR 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS -- COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (JUN 2023)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

(1) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (NOV 2021) (Section 1634 of Pub. L. 115-91).

(3) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (NOV 2015).

(5) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (MAR 2023) (31 U.S.C. 3903 and 10 U.S.C. 3801).

(6) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(7) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Public Laws 108-77 and 108-78 (19 U.S.C. 3805 note)).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

X (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (JUN 2020), with *Alternate I* (NOV 2021) (41 U.S.C. 4704 and 10 U.S.C. 4655).

X (2) 52.203-13, Contractor Code of Business Ethics and Conduct (NOV 2021) (41 U.S.C. 3509)).

 (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

 (4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) (Pub. L. 109-282) (31 U.S.C. 6101 note).

 (5) [Reserved].

 (6) 52.204-14, Service Contract Reporting Requirements (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

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- _(7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).
- _(8) 52.204-27, Prohibition on a ByteDance Covered Application (JUN 2023) (Section 102 of Division R of Pub. L. 117-328).
- X** (9) 52.209-6, Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (NOV 2021) (31 U.S.C. 6101 note).
- X** (10) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (OCT 2018) (41 U.S.C. 2313).
- _(11) [Reserved].
- _(12) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (OCT 2022) (15 U.S.C. 657a).
- _(13) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (OCT 2022) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).
- _(14) [Reserved]
- X** (15)
- (i) 52.219-6, Notice of Total Small Business Set-Aside (NOV 2020) (15 U.S.C. 644).
- _(ii) Alternate I (MAR 2020) of 52.219-6.
- _(16)
- (i) 52.219-7, Notice of Partial Small Business Set-Aside (NOV 2020) (15 U.S.C. 644).
- _(ii) Alternate I (MAR 2020) of 52.219-7.
- X** (17) 52.219-8, Utilization of Small Business Concerns (OCT 2022) (15 U.S.C. 637(d)(2) and (3)).
- _(18)
- (i) 52.219-9, Small Business Subcontracting Plan (OCT 2022) (15 U.S.C. 637(d)(4)).
- _(ii) Alternate I (NOV 2016) of 52.219-9.
- _(iii) Alternate II (NOV 2016) of 52.219-9.
- _(iv) Alternate III (JUN 2020) of 52.219-9.
- _(v) Alternate IV (SEP 2021) of 52.219-9.
- X** (19)
- (i) 52.219-13, Notice of Set-Aside of Orders (MAR 2020) (15 U.S.C. 644(r)).
- _(ii) Alternate I (MAR 2020) of 52.219-13.
- _(20) 52.219-14, Limitations on Subcontracting (OCT 2022) (15 U.S.C. 637s).
- _(21) 52.219-16, Liquidated Damages—Subcontracting Plan (SEP 2021) (15 U.S.C. 637(d)(4)(E)(i)).
- _(22) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (OCT 2022) (15 U.S.C. 657f).
- X** (23)
- (i) 52.219-28, Post Award Small Business Program Rerepresentation (MAR 2023)(15 U.S.C. 632(a)(2)).
- _(ii) Alternate I (MAR 2020) of 52.219-28.
- _(24) 52.219-29, Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women- Owned Small Business Concerns (OCT 2022) (15 U.S.C. 637(m)).
- _(25) 52.219-30, Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (OCT 2022) (15 U.S.C. 637(m)).
- _(26) 52.219-32, Orders Issued Directly Under Small Business Reserves (MAR 2020) (15 U.S.C. 644(r)).
- _(27) 52.219-33, Nonmanufacturer Rule (SEP 2021) (15 U.S.C. 637(a)(17)).

X(28) 52.222-3, Convict Labor (JUN 2003) (E.O.11755).

_(29) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (DEC 2022) (E.O.13126).

_(30) 52.222-21, Prohibition of Segregated Facilities (APR 2015).

_(31)

(i) 52.222-26, Equal Opportunity (SEP 2016) (E.O.11246).

_(ii) Alternate I (FEB 1999) of 52.222-26.

X(32)

(i) 52.222-35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212).

_(ii) Alternate I (JUL 2014) of 52.222-35.

SECTION II
CONTRACT TERMS AND CONDITIONS

X(33)

(i) 52.222-36, Equal Opportunity for Workers with Disabilities (JUN 2020) (29 U.S.C. 793).

_(ii) Alternate I (JUL 2014) of 52.222-36.

_(34) 52.222-37, Employment Reports on Veterans (JUN 2020) (38 U.S.C. 4212).

X(35) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).

X(36)

(i) 52.222-50, Combating Trafficking in Persons (NOV 2021) (22 U.S.C. chapter 78 and E.O. 13627).

_(ii) Alternate I (MAR 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

___ **X(37) 52.222-54**, Employment Eligibility Verification (MAY 2022) (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial products or commercial services as prescribed in FAR 22.1803.)

_(38)

(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA–Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

_(ii) Alternate I (MAY 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

_(39) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).

_(40) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693).

_(41)

(i) 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment (JUN 2014) (E.O.s 13423 and 13514).

_(ii) Alternate I (OCT 2015) of 52.223-13.

_(42)

(i) 52.223-14, Acquisition of EPEAT®-Registered Televisions (JUN 2014) (E.O.s 13423 and 13514).

_(ii) Alternate I (Jun2014) of 52.223-14.

_(43) 52.223-15, Energy Efficiency in Energy-Consuming Products (MAY 2020) (42 U.S.C. 8259b).

_(44)

(i) 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products (OCT 2015) (E.O.s 13423 and 13514).

_(ii) Alternate I (JUN 2014) of 52.223-16.

X(45) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (JUN 2020) (E.O. 13513).

_(46) 52.223-20, Aerosols (JUN 2016) (E.O. 13693).

_(47) 52.223-21, Foams (Jun2016) (E.O. 13693).

_(48)

(i) 52.224-3 Privacy Training (JAN 2017) (5 U.S.C. 552 a).

_(ii) Alternate I (JAN 2017) of 52.224-3.

_(49)

(i) 52.225-1, Buy American-Supplies (OCT 2022) (41 U.S.C. chapter 83).

_(ii) Alternate I (OCT 2022) of 52.225-1.

_(50)

(i) 52.225-3, Buy American-Free Trade Agreements-Israeli Trade Act (DEC 2022) (19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, 19 U.S.C. chapter 29 (sections 4501-4732), Public Law 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43.

_(ii) Alternate I [Reserved].

_(iii) Alternate II (DEC 2022) of 52.225-3.

_(iv) Alternate III (JAN 2021) of 52.225-3.

_(v) Alternate IV (Oct 2022) of 52.225-3.

SECTION II
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_(51) 52.225-5, Trade Agreements (DEC 2022) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

X (52) 52.225-13, Restrictions on Certain Foreign Purchases (FEB 2021) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

_(53) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Subtitle A, Part V, Subpart G Note).

_(54) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

_(55) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov2007) (42 U.S.C. 5150).

_(56) 52.229-12, Tax on Certain Foreign Procurements (FEB 2021).

_(57) 52.232-29, Terms for Financing of Purchases of Commercial Products and Commercial Services (NOV 2021) (41 U.S.C. 4505, 10 U.S.C. 3805).

_(58) 52.232-30, Installment Payments for Commercial Products and Commercial Services (NOV 2021) (41 U.S.C. 4505, 10 U.S.C. 3805).

X (59) 52.232-33, Payment by Electronic Funds Transfer-System for Award Management (OCT2018) (31 U.S.C. 3332).

_(60) 52.232-34, Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) (31 U.S.C. 3332).

_(61) 52.232-36, Payment by Third Party (MAY 2014) (31 U.S.C. 3332).

_(62) 52.239-1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a).

X (63) 52.242-5, Payments to Small Business Subcontractors (JAN 2017) (15 U.S.C. 637(d)(13)).

_(64)

(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) (46 U.S.C. 55305 and 10 U.S.C. 2631).

_(ii) Alternate I (APR 2003) of 52.247-64.

_(iii) Alternate II (NOV 2021) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

_(1) 52.222-41, Service Contract Labor Standards (AUG 2018) (41 U.S.C. chapter 67).

_(2) 52.222-42, Statement of Equivalent Rates for Federal Hires (MAY 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

_(3) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (AUG 2018) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

_(4) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

_(5) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. chapter 67).

X (6) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (MAY 2014) (41 U.S.C. chapter 67).

_(7) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

_(8) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).

_(9) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) (42 U.S.C. 1792).

(d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, as defined in FAR 2.101, on the date of award of this contract, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

SECTION II
CONTRACT TERMS AND CONDITIONS

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1), in a subcontract for commercial products or commercial services. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (NOV 2021) (41 U.S.C. 3509).

(ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (NOV 2021) (Section 1634 of Pub. L. 115-91).

(iv) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(v) 52.204-27, Prohibition on a ByteDance Covered Application (JUN 2023) (Section 102 of Division R of Pub. L. 117-328).

(vi) 52.219-8, Utilization of Small Business Concerns (OCT 2022) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(vii) 52.222-21, Prohibition of Segregated Facilities (APR 2015).

(viii) 52.222-26, Equal Opportunity (SEP 2015) (E.O.11246).

(ix) 52.222-35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212).

(x) 52.222-36, Equal Opportunity for Workers with Disabilities (JUN 2020) (29 U.S.C. 793).

(xi) 52.222-37, Employment Reports on Veterans (JUN 2020) (38 U.S.C. 4212).

(xii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

(xiii) 52.222-41, Service Contract Labor Standards (AUG 2018) (41 U.S.C. chapter 67). (xiv)

(A) 52.222-50, Combating Trafficking in Persons (NOV 2021) (22 U.S.C. chapter 78 and E.O 13627).

(B) Alternate I (MAR 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

(xv) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. chapter 67).

(xvi) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (MAY 2014) (41 U.S.C. chapter 67).

(xvii) 52.222-54, Employment Eligibility Verification (MAY 2022) (E.O. 12989).

(xviii) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

(xix) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706). (xx)

(A) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a).

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CONTRACT TERMS AND CONDITIONS

(B) Alternate I (JAN 2017) of 52.224-3.

(xxi) 52.225-26, Contractors Performing Private Security Functions Outside the United States (OCT

2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Subtitle A, Part V, Subpart G Note).

(xxii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (JUN 2020) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xxiii) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Mar 2023) (31 U.S.C. 3903 and 10 U.S.C. 3801). Flow down required in accordance with paragraph (c) of 52.232-40.

(xxiv) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) (46 U.S.C. 55305 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may include in its subcontracts for commercial products and commercial services a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

Attachments:

- 1) Attachment A- Statement of Work (SOW)
- 2) Attachment B- Schedule of Items and Prices

SCHEDULE Continued

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	<p>The Contractor shall furnish all personnel, material, supplies, equipment, transportation, and facilities (except as otherwise specified), to provide Office of Marine and Aviation Operations OMAO, Uncrewed Systems Operations Center (UxSOC), Uncrewed Maritime Systems (UMS) for Living Marine Resource Surveys and Research as provided in Attachment A-Statement of Work and Attachment B-Schedule of Items and Prices.</p> <p>Ordering Period: 36 months (September 1, 2023-August 31, 2026)</p>				
0001	<p>The Minimum Guarantee of \$*** is provided at time of award.</p> <p>Maximum value of \$*** to be shared between the five (5) Multiple Award IDIQ contract holders.</p> <p>Accounting and Appropriation Data: 14.23.X8A4XDS.PSA.1123.100401000. 0802000300000000.25272517.000000 \$***</p>	1.00	LO	***	***

***Certain identified information has been excluded from this exhibit because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30				1. REQUISITION NUMBER NM-AN0000-23-01839	PAGE 1 OF 32
2. CONTRACT NO. 1305M223DNMAN0071	3. AWARD/EFFECTIVE DATE SEP 01, 2023	4. ORDER NUMBER	5. SOLICITATION NUMBER 1305M223QNMAN0071	6. SOLICITATION ISSUE DATE MAY 26, 2023	
7. FOR SOLICITATION INFORMATION CALL:	a. NAME AMY L. MCLIVERTY amy.l.mcliverty@noaa.gov		b. TELEPHONE NUMBER (No collect calls) 757-441-3426	8. OFFER DUE DATE/ LOCAL TIME JUL 7, 2023 12:00PM EST	
9. ISSUED BY ACQUISITION AND GRANTS OFFICE EASTERN ACQ DIV NORFOLK FED BLDG 200 GRANBY ST STE 815 NORFOLK VA 23510		CODE AJF10001	10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED OR <input checked="" type="checkbox"/> SET ASIDE: 100 % FOR: <input checked="" type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM NAICS: 541990 <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> EDWOSB <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8 (A) SIZE STANDARD: 19.5		
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE	12. DISCOUNT TERMS		<input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	13b. RATING	
15. DELIVER TO Uncrewed Operations Center HQ 1315 East West Hwy SSMC3 10th Floor Silver Spring MD 20910	CODE NMAN0001	16. ADMINISTERED BY ACQUISITION AND GRANTS OFFICE EASTERN ACQ DIV NORFOLK FED BLDG 200 GRANBY ST STE 815 NORFOLK VA 23510			
17a. CONTRACTOR/ OFFEROR OCEAN POWER TECHNOLOGIES, INC. 28 ENGELHARD DRIVE MONROE TOWNSHIP NJ 08831		CODE 00034875	FACILITY CODE	18a. PAYMENT WILL BE MADE BY NOAA FINANCE OFFICE BLDG. SSMC3 1315 EAST WEST HWY SILVER SPRING MD 20910	
CAGE: 04EP7 TIN: 222535818 TELEPHONE NO.		UEI: QMEHBTKWMQG3	CODE AJ200012		
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER			18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input checked="" type="checkbox"/> SEE ADDENDUM		
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	The Contractor shall provide OMAO/UxSOC, UMS for Ocean Exploration and Characterization, as provided in Attachment A Statement of Work; Attachment B Schedule of Items and Prices. <i>(Use Reverse and/or Attach Additional Sheets as Necessary)</i>				
25. ACCOUNTING AND APPROPRIATION DATA See Schedule			26. TOTAL AWARD AMOUNT (For Govt. Use Only) \$2,500.00		
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA			<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED		
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDA			<input type="checkbox"/> ARE <input checked="" type="checkbox"/> ARE NOT ATTACHED		
<input type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED			29. AWARD OF CONTRACT: REF. _____ OFFER DATED _____ . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:		
30a. SIGNATURE OF OFFEROR/CONTRACTOR			31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) <i>Jana Kolb</i>		
30b. NAME AND TITLE OF SIGNER (Type or print)		30c. DATE SIGNED	31b. NAME OF CONTRACTING OFFICER (Type or print) JANA KOLB 757-441-3344 JANA.KOLB@NOAA.GOV		31c. DATE SIGNED 08/31/2023

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

32a. QUANTITY IN COLUMN 21 HAS BEEN

RECEIVED
 INSPECTED
 ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED:

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE
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32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE
32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE	

33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
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38. S/R ACCOUNT NO.	39. S/R VOUCHER NUMBER	40. PAID BY
---------------------	------------------------	-------------

41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT		42a. RECEIVED BY <i>(Print)</i>	
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		41c. DATE	
		42b. RECEIVED AT <i>(Location)</i>	
		42c. DATE REC'D <i>(YY/MM/DD)</i>	42d. TOTAL CONTAINERS

SECTION II
CONTRACT TERMS AND CONDITIONS

1. FEDERAL ACQUISITION REGULATION (FAR) 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:

Federal Acquisition Regulation (FAR) - <http://www.acquisition.gov>

Commerce Acquisition Regulation (CAR) – <https://www.acquisition.gov/car>

The following clauses are incorporated by reference:

Clause No.	Clause Title	Date
FAR 52.203-3	Gratuities	APR 1984
FAR 52.203-12	Limitation On Payments To Influence Certain Federal Transactions	JUN 2020
FAR 52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights.	JUN 2020
FAR 52.204-4	Printed Or Copied Double-Sided On Postconsumer Fiber Content Paper	MAY 2011
FAR 52.204-13	System For Award Management Maintenance	OCT 2018
FAR 52.204-18	Commercial And Government Entity Code Management	AUG 2020
CAR 1352.201-70	Contracting Officer's Authority	APR 2010
CAR 1352.209-73	Compliance With The Laws	APR 2010
CAR 1352.209-74	Organizational Conflict of Interest	APR 2010
CAR 1352.216-74	Task Orders	APR 2010

2. FAR 52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (DEC 2022) WITH ADDENDA

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights-

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (*e.g.*, use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at Federal Acquisition Regulation (FAR) 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

SECTION II
CONTRACT TERMS AND CONDITIONS

(e) *Definitions.* The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence. (g) Invoice.

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include-

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (*e.g.*, 52.232-33, Payment by Electronic Funds Transfer-System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer-Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C.3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

SECTION II
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(i) Payment.-

(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C.3903) and prompt payment regulations at 5 CFR Part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see 52.2125(b) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall-

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the-

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and (D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by 33.211 if-

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on-

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

SECTION II
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(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in FAR 32.608-2 in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) [Reserved]

(u) Unauthorized Obligations.

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an AntiDeficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) Incorporation by reference. The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(End of clause)

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ADDENDUM TO FAR 52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (DEC 2022)

A. FAR 52.216-18 ORDERING (AUG 2020)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individual designated in the Schedule. Such orders may be issued *three years from date of award*.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) A delivery order or task order is considered “issued” when—

(1) If sent by mail (includes transmittal by U.S. mail or private delivery service), the Government deposits the order in the mail;

(2) If sent by fax, the Government transmits the order to the Contractor’s fax number; or

(3) If sent electronically, the Government either—

(i) Posts a copy of the delivery order or task order to a Government document access system, and notice is sent to the Contractor; or

(ii) Distributes the delivery order or task order via email to the Contractor’s email address.

(d) Orders may be issued by methods other than those enumerated in this clause only if authorized in the contract.

(End of clause)

B. FAR 52.216-19 ORDER LIMITATIONS (OCT 1995)

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than \$2,000.00 the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) Maximum order. The Contractor is not obligated to honor-

(1) Any order for a single item in excess of \$1,000,000.00;

(2) Any order for a combination of items in excess of \$1,000,000.00; or

(3) A series of orders from the same ordering office within seven (7) days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within seven (7) days after issuance, with written notice stating the Contractor’s intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

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C. FAR 52.216-22 INDEFINITE QUANTITY (OCT 1995)

- (a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."
- (c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- (d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after **one (1) year after the contract expiration**.

(End of clause)

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D. FAR 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 30 days prior to the expiration of the current task order period of performance.

Inclusion of FAR clause 52.217-8, Option to Extend Services, in the solicitation and resultant contract is for use by the Government as outlined at FAR 37.111, Extension of Services. The option will be exercised as needed at any time during the life of the contract using the rates applicable at the time of exercise. (End of clause)

E. FAR 52.227-14 RIGHTS IN DATA-GENERAL (MAY 2014)

(a) *Definitions.* As used in this clause-

Computer database or “database means” a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software-

(1) Means

(i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

Computer software documentation means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

Data means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

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Limited rights means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

Limited rights data means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

Restricted computer software means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

Restricted rights, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

Technical data means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 116).

Unlimited rights means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in-

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to-

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

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(c) Copyright-

(1) Data first produced in the performance of this contract.

(i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the Contracting Officer is required to assert copyright in all other data first produced in the performance of this contract.

(ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor-

(i) Identifies the data; and

(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) *Removal of copyright notices.* The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) *Release, publication, and use of data.* The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except-

(1) As prohibited by Federal law or regulation (*e.g.*, export control or national security laws or regulations);

(2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.

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(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 4703, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor-

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

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(3) If data has been marked with an incorrect notice, the Contracting Officer may-

(i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or (ii) Correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

(1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall-

(i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.

(3) [Reserved]

(h) *Subcontracting*. The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.

(i) *Relationship to patents or other rights*. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

F. CAR 1352.201-72 CONTRACTING OFFICER'S REPRESENTATIVE (COR) (APR 2010)

(a) PaTrina Gregory is hereby designated as the Contracting Officer's Representative (COR). The COR may be changed at any time by the Government without prior notice to the contractor by a unilateral modification to the contract. The COR is located at:

NOAA/OMAO/Uncrewed Operations Center (UxSOC)
1315 East West Hwy
SSMC3, 10th Floor Silver
Spring, MD 20910
Email: PatTrina.Gregory@noaa.gov
Phone: (202) 936-5998

(b) The responsibilities and limitations of the COR are as follows:

(1) The COR is responsible for the technical aspects of the contract and serves as technical liaison with the contractor. The COR is also responsible for the final inspection and acceptance of all deliverables and such other responsibilities as may be specified in the contract.

(2) The COR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the contract price, terms or conditions. Any contractor request for changes shall be referred to the Contracting Officer directly or through the COR. No such changes shall be made without the express written prior authorization of the Contracting Officer. The Contracting Officer may designate assistant or alternate COR(s) to act for the COR by naming such assistant/alternate(s) in writing and transmitting a copy of such designation to the contractor.

(End of clause)

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G. CAR 1352.216-75 MINIMUM AND MAXIMUM CONTRACT AMOUNTS (APR 2010)

During the term of the contract, the Government shall place orders totaling a minimum of \$***. The amount of all orders shall not exceed \$*** **(To be shared among five (5) IDIQ Contract Holders)**. This maximum value will be shared by all contracts. Be advised that the Government anticipates making multiple awards. The guaranteed minimum amount of \$*** applies to the 3-year ordering period, not each ordering period.

(End of clause)

H. CAR 1352.216-76 PLACEMENT OF ORDERS (APR 2010)

(a) The contractor shall provide goods and/or services under this contract only as directed in orders issued by authorized individuals. In accordance with FAR 16.505, each order will include:

- (1) Date of order;
- (2) Contract number and order number;
- (3) Item number and description, quantity, and unit price or estimated cost or fee;
- (4) Delivery or performance date;
- (5) Place of delivery or performance (including consignee);
- (6) Packaging, packing, and shipping instructions, if any;
- (7) Accounting and appropriation data;
- (8) Method of payment and payment office, if not specified in the contract; (9) Any other pertinent information.

(b) In accordance with FAR 52.216-18, Ordering, the following individuals (or activities) are authorized to place orders against this contract:

<u>Office</u>	<u>Point of Contact</u>
NOAA/AGO/Eastern Acquisition Division 200 Granby Street, Suite 815 Norfolk, VA 23510	Amy McLiverty 757-441-3426 Amy.L.McLiverty@noaa.gov

(c) If multiple awards have been made, the contact information for the DOC task and delivery order ombudsman is AGOombudsman@noaa.gov.

(End of clause)

I. CAR 1352.246-70 PLACE OF ACCEPTANCE (APR 2010)

- a. The Contracting Officer or the duly authorized representative will perform inspection and acceptance of supplies and services to be provided under this contract.
- b. The inspection and acceptance will be designated in individual task orders.

(End of clause)

**SECTION II
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J. CAR 1352.270-70 PERIOD OF PERFORMANCE (APR 2010)

(a) The Ordering period for this contract vehicle is three (3) years from date of award. This ordering period may be extended by an additional six (6) months under FAR 52.217-8, Option to Extend Services.

(End of clause)

K. NOAA ACQUISITION MANUAL (NAM) 1330-52.203-70 SCIENTIFIC INTEGRITY AND RESEARCH MISCONDUCT (OCT 2012)

(a) Definitions. As used in this this solicitation and contract language –

Scientific activities mean activities that involve inventorying, monitoring, observations, experimentation, study, research, integration, modeling, and scientific assessment.

Scientific integrity means the condition resulting from adherence to professional values and practices when conducting and applying the results of science that ensures objectivity, clarity, and reproducibility, and that provides insulation from bias, fabrication, falsification, plagiarism, interference, censorship, and inadequate procedural and information security.

Presentation of scientific activities results includes the analysis, synthesis, compilation, or translation of scientific information and data into formats for the use of the Department of Commerce or the United States of America.

Scientific and Research Misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing scientific and research activities, or in the products or reporting of the results of these activities. It specifically includes intentional circumvention of the integrity of the scientific and research process and actions that compromise that process, but does not include honest error or differences of opinion.

Investigation is formal collection and evaluation of information and facts to determine if scientific or research misconduct can be established, to assess its extent and consequences, and to recommend appropriate action.

(b) General Guidelines

1. **Maintaining Integrity.** The contractor shall maintain the scientific integrity of research performed pursuant to this contract award including the prevention, detection, and remediation of research misconduct, and the conduct of inquiries, investigations and adjudication of allegations of research misconduct.
2. In performing or presenting the results of scientific activities under the contract, and in responding to allegations of scientific and research misconduct, the contractor shall comply with the solicitation and contract language herein and NOAA Administrative Order (NAO) 202-735D, Scientific Integrity, and its Procedural Handbook, including any amendments thereto.
3. **Primary Responsibility.** The contractor shall have the primary responsibility to prevent, detect, and investigate allegations of scientific and research misconduct. Unless otherwise instructed by the contracting officer, the contractor shall promptly conduct an initial inquiry into any allegation of such misconduct and may rely on its internal policies and procedures, as appropriate, to do so.

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4. By executing this contract, the contractor provides its assurance that it has established an administrative process for performing an inquiry, investigating, and reporting allegations of scientific and research misconduct; and that it will comply with its own administrative process for performing an inquiry, investigation and reporting of such misconduct.

5. The contractor shall insert the substance of this requirement in subcontracts at all tiers that involve research being performed under this contract.

(c) Investigating Misconduct Research

1. Initiating Investigation. If the contractor determines that there is sufficient evidence to proceed to an investigation, it shall notify the contracting officer and, unless otherwise instructed, the contractor shall:

A. Promptly conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of scientific and research misconduct and an identification of appropriate remedies or a determination that no further action is warranted.

B. If the investigation leads to a finding of scientific and research misconduct, obtain adjudication by a neutral third party adjudicator. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.

2. Finalizing Investigation. When the investigation is complete, the contractor shall forward to the contracting officer a copy of the evidentiary record, the investigative report, any recommendations made to the Contractor's adjudicating official, the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response (if any).

(d) Findings and Corrective Actions

1. If the contractor finds that scientific and research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process and shall:

i. Take all necessary corrective actions, which includes, but are not limited to, correcting the research record, and, as appropriate, imposing restrictions, controls, or other parameters on research in process or to be conducted in the future, and

ii. Coordinate remedial action with the contracting officer.

(e) Department of Commerce Actions

1. The Department of Commerce may accept the Contractor's findings or proceed with its own investigation, in which case the contractor shall fully cooperate with the investigation. The contracting officer will inform the contractor of the Department's final determination.

2. The Department of Commerce reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms and conditions of the contract and applicable laws and regulations. Such remedies and actions may include, but are not limited to, disallowance of costs, recoupment of contract payments, and suspension or debarment.

(End of Clause)

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L. NAM 1330-52.203-71 NOTICE OF POST-GOVERNMENT EMPLOYMENT RESTRICTIONS (OCT 2015)

By submission of an offer in response to a NOAA solicitation or acceptance of a contract, the contractor acknowledges the restriction on current NOAA employees regarding contact with offerors regarding prospective employment and the corresponding obligations for contractors who engage them. The contractor further acknowledges that it has provided notice to former NOAA employees who will provide service to NOAA under the contract of post-Government employment restrictions that apply to them. Such restrictions include, but are not limited to, those set forth in:

- (a) 41 U.S.C. § 2103 regarding contacts between a federal employee working on a procurement and an offeror about prospective employment;
- (b) 18 U.S.C. § 207 regarding the restrictions on former federal employees having contact with a federal agency on behalf of another person or entity concerning a specific party matter with which the former employee was involved as a federal employee or for which the former federal employee had official responsibility;
- (c) 18 U.S.C. § 207 regarding the restrictions on former senior employees and senior political employees from having contact with his former federal agency on behalf of another person or entity concerning any official matter; and
- (d) 41 U.S.C. § 2104 regarding the restrictions on a former federal employee involved in an acquisition over \$10,000,000 from accepting compensation from a contractor. (End of Clause)

M. NAM 1330-52.215-70 SCHEDULE OF DELIVERABLES (SEPT 2005)

The following is a schedule of all deliverables, including administrative deliverables, required during the period of performance of this contract:

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>QTY</u>	<u>DUE DATE</u>	<u>DELIVERY TO</u>	<u>REFERENCE</u>
1.	Annual Sexual Assault and Sexual Harassment (SASH) Training	For each contractor hired to the task order	30 days after task order award, then March 1 each calendar year thereafter	Contracting Officer (CO) and Contracting Officer's Representative (COR)	RFQ Clause N
2.	Services as provided in in Individual Task Order.	As provided in individual TO	TO Specific	TO specific	Individual TO

(End of clause)

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N. NAM 1330-52.222-70 NOAA SEXUAL ASSAULT AND SEXUAL HARASSMENT PREVENTION AND RESPONSE POLICY (MAY 2018)

In accordance with NOAA Administrative Order (NAO) 202-1106, NOAA Sexual Assault and Sexual Harassment Prevention and Response Policy, it is the policy of NOAA to maintain a work environment free from sexual assault and sexual harassment. NOAA prohibits sexual assault and sexual harassment by or of any employee, supervisor, manager, contractor, vendor, affiliate, or other individual with whom NOAA employees come into contact by the virtue of their work for NOAA.

(a) Definitions.

Contractor Employees - The term “contractor employees,” as used in this solicitation and contract language, refers to employees of the prime contractor or its subcontractors, affiliates, consultants, or team members.

Sexual Assault - The term sexual assault, as used in this solicitation and contract language, means any conduct proscribed by state or federal sexual abuse laws, including, but not limited to, those defined in chapter 109A of title 18 of the U.S. Code (sexual abuse), and assaults committed both by offenders who are strangers to the victim and by offenders who are known or related by blood or marriage to the victim.

Sexual Harassment - As defined by the Equal Employment Opportunity Commission, sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual nature when any of the following are true:

- Submission to such conduct is made either explicitly or implicitly as a term or condition of an individual’s employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual;
- The conduct unreasonably interferes with an individual’s work performance or creates an intimidating, hostile, or offensive working environment.

The main characteristics of sexual harassment are that the harasser’s conduct is targeted against the recipient’s sex, gender identity, or sexual orientation, and is unwelcome to the recipient. It may include, but is not limited to: offensive jokes, slurs, epithets or name calling, undue attention, physical assaults or threats, unwelcome touching or contact, intimidation, ridicule or mockery, insults or put-downs, constant or unwelcome questions about an individual’s identity, and offensive objects or pictures.

(b) Requirements.

1. It is the responsibility of the contractor to ensure that contractor employees maintain the highest degree of conduct and standards in performance of the contract. In support of this, NOAA urges its contractors to develop and enforce comprehensive company policy addressing sexual assault and sexual harassment.
2. The contractor shall include wording substantially the same as this solicitation and contract language in every subcontract so that it is binding upon each subcontractor.
3. If a contractor employee observes or is the object of sexual assault or sexual harassment, he or she is highly encouraged to report the matter, as soon as possible, to their immediate supervisor, the Contracting Officer’s Representative (COR), subset of the COR (e.g. Task Manager or Assistant COR), or contracting officer (CO) if a COR is not assigned to the contract. The contract employee may also contact the NOAA Civil Rights Office to obtain guidance on reporting instances of sexual assault or sexual harassment. If deemed necessary, the contractor employee may also report such instances to local law enforcement. In the case where the incident occurs while performing at a remote location, such as at sea or in the field (at a field camp or other isolated location) where the above referenced individuals are unavailable, the contractor employee should follow the reporting procedure set forth in NAO 202-1106, Section 6, .07, Reporting from Remote Locations.

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4. Swift reporting allows NOAA and the contractor to take the appropriate measures to ensure that offensive behavior stops and the complainants' needs are addressed.
5. The COR (if assigned), CO, and contractor, where applicable, will work together to ensure appropriate action is taken in accordance with applicable laws and regulations, contract terms and conditions, and the contractor's written policy (where applicable).
6. The contractor shall provide all contractor employees assigned to perform under this contract with mandatory sexual assault and sexual harassment prevention and response training in compliance with the requirements of NAO 202-1106, Section 5, Prevention Training and Awareness, as part of their initial in-processing and on an annual basis thereafter. The initial training shall be completed within 30 business days contract award or the date a contractor employee is assigned to perform under the contract, as applicable.

Evidence of initial training by name and date completed for each contractor employee, shall be submitted to the COR or contracting officer (if no COR assigned) within 10 business days of completion.

Evidence of annual training by name and date completed for each contractor employee shall be submitted to the COR or contracting officer (if no COR assigned) no later than March 1st of each calendar year of contract performance.

7. The mandatory sexual assault and sexual harassment training provided by the contractor shall include the required elements set forth by NOAA's Workplace Violence Program Manager. A link to the website including the required elements of the training is provided at: <https://www.noaa.gov/organization/acquisition-grants/noaa-workplace-harassment-training-forcontractors-and-financial>. The website will also provide training materials and resources to assist the contractor in conducting the training. The contractor may provide training that solely addresses the NOAA required elements or may supplement existing company sexual assault and sexual harassment training in a manner that ensures all of the elements are adequately addressed. The website will also provide training materials and resources to assist the contractor in conducting the training. The contractor may provide training that solely addresses the NOAA required elements or may supplement existing company sexual assault and sexual harassment training in a manner that ensures all of the elements are adequately addressed.
8. The required elements of the training and resources available to the contractor for the training may be updated by NOAA periodically. The contractor is responsible for monitoring the website and incorporating any changes to the NOAA required elements into the contractor provided training.
9. NOAA's Workplace Violence Program Manager, COR, or CO may periodically review the contractor's training outline to ensure all required elements are included and, if necessary, any appropriate adjustments are made to the training by the contractor.
10. Contractor employees performing on assignments in a remote location, such as at a field camp or other isolated locations, are subject to receiving the same briefing on the parameters of the order provided to NOAA employees as set forth in Section 6 of NAO 202-1106.
11. The contractor shall provide a copy of this solicitation and contract language and NAO 202-1106 to contractor employees.

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(c) Sexual Assault/Sexual Harassment (SASH) Helpline.

For NOAA employees, affiliates, and contractors who have experienced sexual assault or sexual harassment, NOAA has established the NOAA Sexual Assault/Sexual Harassment (SASH) helpline. This helpline is designed to provide crisis intervention, referrals, and emotional support to those who are victims and/or survivors of sexual harassment or sexual assault within the workplace. Contractor employees may use the helpline to receive live, confidential, one-on-one support in an occurrence of sexual harassment or assault by a Federal Government employee. All services are anonymous, secure, and available worldwide, 24 hours a day, seven days a week. The NOAA SASH helpline is accessible through a variety of channels, including:

- Phone: 1-866-288-6558
- Website & Online Chat: <http://NOAASASHHelpline.org>
- Mobile App: NOAA SASH Helpline (available via iOS and Android App Stores)
- Text: (202) 335-0265

(d) Confidentiality.

Any party receiving information from the filing of a complaint alleging sexual assault or sexual harassment, or while performing an investigation into such a complaint, shall keep the information confidential. "Confidentiality" means that the information shall only be shared with others who have a need to know the information to conduct their official duties.

(e) Remedies.

In addition to other remedies available to the Government, contractor employee violations of Federal requirements (e.g., law, statutes, executive orders, code, rules, regulations) applicable to sexual assault and sexual harassment and/or failure to complete the mandatory training set forth in this solicitation and contract language, may result in:

1. Requiring the Contractor to remove a contractor employee or employees from the performance of the contract;
2. Requiring the Contractor to terminate a subcontract;
3. Suspension of contract payments until the Contractor has taken appropriate remedial action;
4. Termination of the contract for default or cause, in accordance with the termination clause of this contract;
5. Suspension or debarment; or 6. Other appropriate action.

(End of clause)

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O. NAM 1330-52.232-72 NOAA TRANSITION TO THE INVOICE PROCESSING PLATFORM ELECTRONIC INVOICING SYSTEM (FEB 2023)

Beginning October 1, 2023, when NOAA implements the Department of Commerce Business Applications Solution, the Contractor must submit payment requests electronically through the U.S. Department of the Treasury's Invoice Processing Platform (the IPP) System. The Contractor must use the IPP website to register, access, and submit payment requests. The IPP website address is <https://www.ipp.gov>.

"Payment request" means any request for contract financing payment or invoice payment to the Contractor. To be considered proper, invoices must be prepared in accordance with, and contain all elements specified in, the contract payment clause (e.g., FAR 52.212-4(g), FAR 52.232-25(a)(3), FAR 52.232-26(a)(2), FAR 52.232-27(a)(2)). All supporting documents required by the Contracting Officer must be included as attachments to payment requests submitted through the IPP.

If the Contractor is unable to comply with the requirement to submit payment requests through the IPP due to a threat to national security; a matter of unusual or compelling urgency; or because the political, financial, or communications infrastructure of a foreign country does not support access to the IPP, the Contractor must request an exception in writing. Contact the Contracting Officer for more information about requesting an exception.

P. NAM 1330-52.235-70 COMPLIANCE WITH U.S. DEPARTMENT OF COMMERCE AND OTHER EXPORT CONTROL REGULATIONS (MAY 2006)

(a) In performing this contract, the contractor may engage in activities — such as transfers or releases of items, technology, software, or source code — that are subject to U.S. export controls, including, but not limited to, those contained in the DOC EAR, 15 C.F.R. Parts 730-774, and administered by the Bureau of Industry and Security. The contractor is responsible for compliance with U.S. export controls and associated licensing requirements that may attach to an export or "deemed export," as defined in Paragraph (b)(1) of this Section. The contractor shall establish and maintain, throughout the period of contract performance, effective export control compliance procedures covering all contractor employees and all of the contractor's non-NOAA facilities where the contract shall be performed. Failure to establish, maintain, or adhere to such compliance procedures shall constitute grounds for default termination under this contract as well as a breach of contract by the contractor.

(b) Definitions.

1. "Deemed export." The EAR defines a deemed export as any release of technology or source code subject to the EAR to a foreign national, in the United States. Such release is "deemed" to be an export to the home country of the foreign national. 15 C.F.R § 734.2(b)(2)(ii).
2. "Export-controlled information and technology." Export-controlled information and technology is information and technology subject to the EAR (15 C.F.R. § 730 et seq.) or the ITARs, 22 C.F.R. §§ 120-130 (ITAR), administered by the Department of State. This category includes, but is not limited to, dual-use items, defense articles, and any related assistance, services, software, source code, or technical data, as defined in the EAR and ITAR.

(c) The contractor shall prevent unauthorized access by foreign nationals to all export-controlled information and technology that it possesses or that comes into its possession in performance of this contract, to ensure that access by a foreign national is restricted, or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations. If access to EAR or ITAR-controlled technology is required by a foreign national, the contractor must obtain appropriate authorization.

(d) Nothing in the terms of this contract is intended to change, supersede, or waive any of the requirements of applicable Federal laws, Executive Orders, or regulations.

(e) The contractor shall include this solicitation and contract language, including this paragraph (e), in all subcontracts under this contract.

(End of solicitation and contract language)

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Q. NAM 1330-52.237-70 CONTRACTOR COMMUNICATIONS

- (a) A contractor employee shall be identified both by the individual's name and the contractor's name when:
 - 1. Included in NOAA's locator, and
 - 2. When submitting any type of electronic correspondence to any NOAA employee or stakeholder.
- (b) Any written correspondence from a contractor or any contractor employee shall be printed on company/organization letterhead or otherwise clearly identify the sender as an employee of the company or organization and shall identify the contract number.
- (c) Contractors and/or contractor employees shall clearly identify themselves as such in any verbal communications, whether in informal discussion or a formal meeting. (End of clause)

R. NAM 1330-52.237-71 NOAA GOVERNMENT-CONTRACTOR RELATIONS – NON- PERSONAL SERVICES CONTRACT (SEPT 2017)

- (a) The Government and the Contractor understand and agree that the services to be delivered under this contract by the Contractor to the Government are non-personal services as defined in FAR Part 37, Service Contracting, and the parties recognize and agree that no employer-employee relationship exists or will exist under the contract between the Government and the Contractor's personnel. It is, therefore, in the best interest of the Government to afford both parties an understanding of their respective obligations.
- (b) Contractor personnel under this contract shall not:
 - 1. Be placed in a position where they are under relatively continuous supervision and control of a Government employee.
 - 2. Be placed in a position of command, supervision, administration, or control over Government personnel or over personnel of other Contractors performing under other NOAA contracts.
- (c) The services to be performed under this contract do not require the Contractor or the Contractor's personnel to exercise personal judgement and discretion on behalf of the Government. Rather, the Contractor's personnel will act and exercise personal judgement and discretion on behalf of the Contractor.
- (d) Rules, regulations, directives, and requirements that are issued by the Department of Commerce and NOAA under its responsibility for good order, administration, and security are applicable to all personnel who enter the Government installation and facilities, who are provided access to Government systems, or who travel on Government transportation. This is not to be construed or interpreted to establish any degree of Government control that is inconsistent with a non-personal services contract.
- (e) Both parties are responsible for monitoring contract activities for indications of improper employee- employer relationships during performance. In the event a situation or occurrence takes place inconsistent with this contract language, the following applies:
 - 1. The Contractor shall notify the Contracting Officer in writing within 5 business days from the date of any situation or occurrence where the Contractor considers specific contract activity to be inconsistent with the intent of this contract language. The notice must include the date, nature and circumstance of the situation or occurrence, the name, function and activity of each Government employee or Contractor employee involved or knowledgeable about the situation or occurrence, provide any documents or the substance of any oral communications related to the activity, and an estimated date by which the Government is recommended to respond to the notice in order to minimize cost, delay, or disruption of performance.
 - 2. The Contracting Officer will review the information provided by the Contractor, obtain additional information (if needed), and respond in writing as soon as practicable after receipt of the notification from the Contractor. The Contracting Officer's response will provide a decision on whether the Contracting Officer determines the situation or occurrence to be inconsistent with the intent of this contract language and, if deemed necessary, will specify any corrective action(s) to be taken in order to resolve the issue.

(End of clause)

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S. NAM 1330-52.237-72 CONTRACTOR ACCESS TO NOAA FACILITIES (SEPT 2017)

(a)

1. The performance of this contract requires employees of the prime contractor or its subcontractors, affiliates, consultants, or team members (“contractor employees”) to have access to and to the extent authorized, mobility within, a NOAA facility.
2. NOAA may close and or otherwise deny contractor employees access to a NOAA facility for a portion of a business day or longer for various reasons including, but not limited, to the following events:
 - i. Federal public holidays for federal employees in accordance with 5 U.S.C. 6103;
 - ii. Fires, floods, earthquakes, and unusually severe weather, including but not limited to snow storms, tornadoes, and hurricanes;
 - iii. Occupational safety or health hazards;
 - iv. Lapse in Appropriations; or
 - v. Federal Statute, Executive Order, Presidential Proclamation, or any other unforeseen reason.
3. In such events, the contractor employees may be denied access to a NOAA facility that is ordinarily available for the contractor to perform work or make delivery, as required by the contract.

(b) In all instances where contractors are denied access or required to vacate a NOAA facility, in part or in whole, the contractor shall be responsible to ensure contractor personnel working under the contract comply. If the circumstances permit, the contracting officer will provide direction to the contractor, either directly or through the Contracting Officer’s Representative (COR), which could include continuing on- site performance during the NOAA facility closure period; however, if Government oversight is required and is not available, on-site performance shall not be allowed. In the absence of such direction, the contractor shall exercise sound judgment to minimize unnecessary contract costs and performance impacts, for example, performing required work off- site if possible or reassigning personnel to other activities if appropriate.

(c) The contractor shall be responsible for monitoring the Office of Personnel Management at www.opm.gov, the local radio, television stations, NOAA web sites, and other communication channels. Once the facility is accessible, the contractor shall resume contract performance as required by the contract.

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(d) For the period that NOAA facilities were not accessible to contractors who required access in order to perform the services, the contracting officer may—

1. Adjust the contract performance or delivery schedule for a period equivalent to the period the NOAA facility was not accessible;
2. Forego the work; or
3. Reschedule the work by mutual agreement of the parties.

(e) Notification procedures of a NOAA facility closure, including contractor denial of access, are as follows:

1. The contractor shall be responsible for notification of its employees of the NOAA facility closure to include denial of access to the NOAA facility. The dismissal of NOAA employees in accordance with statute and regulations providing for such dismissals shall not, in itself, equate to a NOAA facility closure in which contractors are denied access. Moreover, the leave status of NOAA employees shall not be conveyed or imputed to contractor personnel. Accordingly, unless a NOAA facility is closed and the contractor is denied access to the facility, the contractor shall continue performance in accordance with the contract.
2. Access to Government facilities and resources, including equipment and systems, will be limited and personnel necessary to administer contract performance may not be available. Generally, supply and service contracts that are funded beyond the date of the lapse in appropriation and do not require access to Government facilities, active administration by Government personnel or the use of government resources in a manner that would cause the government to incur additional obligations during the lapse in appropriation may continue. If a delivery date for a contract falls during the period of a lapse in appropriations, Government personnel may not be available to receive delivery. Contractors are directed to consult with a contracting officer before attempting to make a delivery. Contracting officers will be available throughout the lapse in appropriation period to provide guidance.

Once OMB guidance is given, CORs, in consultation with the contracting officer, will notify those contractors that are deemed by the Program Office to be performing excepted work and identify the contractor personnel requiring access to NOAA facilities. CORs will also coordinate with directly with facility management or physical security personnel at respective locations to ensure that the names of contractor personnel requiring access to government facilities during the lapse in appropriations are provided to physical security personnel.

Contractors who are not designated as performing excepted work are not allowed access to Government facilities or to utilize government resources in a manner that would incur any additional obligation of funding on behalf of the government during the lapse in appropriation.

3. Unless otherwise specified within the contract award, contractors requiring access to NOAA facilities outside normal business hours or outside the normal workweek shall submit a written request in writing through the COR to the contracting officer. The written request shall provide justification supporting the required access and be submitted 48 hours before access to the NOAA facility is needed.

(End of clause)

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T. NAM 1330-52.243-70 REQUESTS FOR EQUITABLE ADJUSTMENT (OCT 2017)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the contractor believes the Government is liable. The request shall include only costs for performing the change. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) Any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

(Official's Name)

(Title)

(c) The certification in paragraph (b) of this solicitation and contract language requires full disclosure of all relevant facts, including:

Certified cost or pricing data, if required, in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and

Data other than certified cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if certified cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this solicitation and contract language does not apply to:

Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

Final adjustments under an incentive provision of the contract.

(End of clause)

U. NAM 1330-52.270-304 NOAA ACQUISITION AND GRANTS OFFICE OMBUDSMAN (OCT 2016)

(a) The NOAA Acquisition and Grants Office (AGO) Ombudsman is available to organizations to promote responsible and meaningful exchanges of information. Generally, the purpose of these exchanges will be to:

1. Allow contractors to better prepare for and propose on business opportunities.
2. Advise as to technologies and solutions within the marketplace that the Government may not be aware of, or is not fully benefiting.
3. Identify constraints in transparency.

(b) The AGO Ombudsman will objectively, reasonably, and responsibly collaborate with parties and recommend fair, impartial, and constructive solutions to the matters presented to him/her. Further, the AGO Ombudsman will maintain the reasonable and responsible confidentiality of the source of a concern, when such a request has been formally made by an authorized officer of an organization seeking to do business with, or already doing business with NOAA.

(c) Before consulting with the AGO Ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations with the respective contracting officer for resolution. However, direct access to the AGO Ombudsman may be sought when an interested party questions the objectivity or equity of a contracting officer's decision, or when there is a bona fide reason to believe that reasonable, responsible, and objective consideration will not be received from an assigned contracting officer.

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(d) There are several constraints to the scope of the AGO Ombudsman's authority, for instance:

1. Consulting with the AGO Ombudsman does not alter or postpone the timelines of any formal process (e.g., protests, claims, debriefings, employee employer actions, activities involving A76 competition performance decisions, judicial or congressional hearings, or proposal, amendment, modification or deliverable due dates).
2. The AGO Ombudsman cannot participate in the evaluation of proposals, source selection processes, or the adjudication of protests or formal contract disputes.
3. The AGO Ombudsman is not authorized to generate or alter laws, judicial decisions, rules, policies, or formal guidance.
4. The AGO Ombudsman is not authorized to develop or alter opportunity announcements, solicitations, contracts, or their terms or conditions.
5. The AGO Ombudsman cannot overrule the authorized decisions or determinations of the contracting officer.
6. The AGO Ombudsman has no authority to render a decision that binds AGO, NOAA, the Department of Commerce, or the U.S. Government.
7. The AGO Ombudsman is not NOAA's agent relative to the service of magistrate or judicial process and cannot be used to extend service of process to another party (whether federal, public, or a private entity).

(e) After review and analysis of a filed concern or recommendation, the AGO Ombudsman may refer the interested party to another more suitable Federal official for consideration. Moreover, concerns, disagreements, and/or recommendations that cannot be resolved by the AGO Ombudsman will need to be pursued through more formal venues.

(f) The AGO Ombudsman is not to be contacted to request copies of forms and/or documents under the purview of a contracting officer. Such documents include Requests for Information, solicitations, amendments, contracts, modifications, or conference materials.

(g) Questions regarding items (a) through (f) within this language shall be directed to NOAA AGO Ombudsman, at ago.ombudsman@noaa.gov.

(End of clause)

END OF ADDENDUM TO FAR 52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (DEC 2022)

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V. FAR 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS — COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (JUN 2023)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

- (1) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).
- (2) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (NOV 2021) (Section 1634 of Pub. L. 115-91).
- (3) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).
- (4) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (NOV 2015).
- (5) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (MAR 2023) (31 U.S.C. 3903 and 10 U.S.C. 3801).
- (6) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).
- (7) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Public Laws 108-77 and 108-78 (19 U.S.C. 3805 note)).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

- (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (JUN 2020), with *Alternate I* (NOV 2021) (41 U.S.C. 4704 and 10 U.S.C. 4655).
- (2) 52.203-13, Contractor Code of Business Ethics and Conduct (NOV 2021) (41 U.S.C. 3509)).
- (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)
- (4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) (Pub. L. 109-282) (31 U.S.C. 6101 note).
- (5) [Reserved].
- (6) 52.204-14, Service Contract Reporting Requirements (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).
- (7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).
- (8) 52.204-27, Prohibition on a ByteDance Covered Application (JUN 2023) (Section 102 of Division R of Pub. L. 117-328).
- (9) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (NOV 2021) (31 U.S.C. 6101 note).
- (10) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (OCT 2018) (41 U.S.C. 2313).
- (11) [Reserved].
- (12) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (OCT 2022) (15 U.S.C. 657a).
- (13) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (OCT 2022) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).
- (14) [Reserved]
- (15)
 - (i) 52.219-6, Notice of Total Small Business Set-Aside (NOV 2020) (15 U.S.C. 644).
 - (ii) Alternate I (MAR 2020) of 52.219-6.
- (16)
 - (i) 52.219-7, Notice of Partial Small Business Set-Aside (NOV 2020) (15 U.S.C. 644).
 - (ii) Alternate I (MAR 2020) of 52.219-7.

X(17) 52.219-8, Utilization of Small Business Concerns (OCT 2022) (15 U.S.C. 637(d)(2) and (3)).

__ (18)

(i) 52.219-9, Small Business Subcontracting Plan (OCT 2022) (15 U.S.C. 637(d)(4)).

__ (ii) Alternate I (NOV 2016) of 52.219-9.

__ (iii) Alternate II (NOV 2016) of 52.219-9.

__ (iv) Alternate III (JUN 2020) of 52.219-9.

__ (v) Alternate IV (SEP 2021) of 52.219-9.

SECTION II
CONTRACT TERMS AND CONDITIONS

X(19)

(i) 52.219-13, Notice of Set-Aside of Orders (MAR 2020) (15 U.S.C. 644(r)).

__ (ii) Alternate I (MAR 2020) of 52.219-13.

__ (20) 52.219-14, Limitations on Subcontracting (OCT 2022) (15 U.S.C. 637s).

__ (21) 52.219-16, Liquidated Damages—Subcontracting Plan (SEP 2021) (15 U.S.C. 637(d)(4)(F)(i)).

__ (22) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (OCT 2022) (15 U.S.C. 657f).

X(23)

(i) 52.219-28, Post Award Small Business Program Rerepresentation (MAR 2023)(15 U.S.C. 632(a)(2)).

__ (ii) Alternate I (MAR 2020) of 52.219-28.

__ (24) 52.219-29, Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (OCT 2022) (15 U.S.C. 637(m)).

__ (25) 52.219-30, Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (OCT 2022) (15 U.S.C. 637(m)).

__ (26) 52.219-32, Orders Issued Directly Under Small Business Reserves (MAR 2020) (15 U.S.C. 644(r)).

__ (27) 52.219-33, Nonmanufacturer Rule (SEP 2021) (15 U.S.C. 637(a)(17)).

X(28) 52.222-3, Convict Labor (JUN 2003) (E.O.11755).

__ (29) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (DEC 2022) (E.O.13126).

__ (30) 52.222-21, Prohibition of Segregated Facilities (APR 2015).

__ (31)

(i) 52.222-26, Equal Opportunity (SEP 2016) (E.O.11246).

__ (ii) Alternate I (FEB 1999) of 52.222-26.

X(32)

(i) 52.222-35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212).

__ (ii) Alternate I (JUL 2014) of 52.222-35.

X(33)

(i) 52.222-36, Equal Opportunity for Workers with Disabilities (JUN 2020) (29 U.S.C. 793).

__ (ii) Alternate I (JUL 2014) of 52.222-36.

__ (34) 52.222-37, Employment Reports on Veterans (JUN 2020) (38 U.S.C. 4212).

X(35) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).

X(36)

(i) 52.222-50, Combating Trafficking in Persons (NOV 2021) (22 U.S.C. chapter 78 and E.O. 13627).

__ (ii) Alternate I (MAR 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

__ **X(37)** 52.222-54, Employment Eligibility Verification (MAY 2022) (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial products or commercial services as prescribed in FAR 22.1803.)

__ (38)

(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA–Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.) __

(ii) Alternate I (MAY 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

__ (39) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).

__ (40) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693).

__ (41)

(i) 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment (JUN 2014) (E.O.s 13423 and 13514).

__ (ii) Alternate I (OCT 2015) of 52.223-13.

SECTION II
CONTRACT TERMS AND CONDITIONS

__ (42)

(i) 52.223-14, Acquisition of EPEAT®-Registered Televisions (JUN 2014) (E.O.s 13423 and 13514).

__ (ii) Alternate I (Jun2014) of 52.223-14.

__ (43) 52.223-15, Energy Efficiency in Energy-Consuming Products (MAY 2020) (42 U.S.C. 8259b).

__ (44)

(i) 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products (OCT 2015) (E.O.s 13423 and 13514).

__ (ii) Alternate I (JUN 2014) of 52.223-16.

X(45) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (JUN 2020) (E.O. 13513).

__ (46) 52.223-20, Aerosols (JUN 2016) (E.O. 13693).

__ (47) 52.223-21, Foams (Jun2016) (E.O. 13693).

__ (48)

(i) 52.224-3 Privacy Training (JAN 2017) (5 U.S.C. 552 a).

__ (ii) Alternate I (JAN 2017) of 52.224-3.

__ (49)

(i) 52.225-1, Buy American-Supplies (OCT 2022) (41 U.S.C. chapter 83).

__ (ii) Alternate I (OCT 2022) of 52.225-1.

__ (50)

(i) 52.225-3, Buy American-Free Trade Agreements-Israeli Trade Act (DEC 2022) (19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, 19 U.S.C. chapter 29 (sections 4501-4732), Public Law 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).

__ (ii) Alternate I [Reserved].

__ (iii) Alternate II (DEC 2022) of 52.225-3.

__ (iv) Alternate III (JAN 2021) of 52.225-3.

__ (v) Alternate IV (Oct 2022) of 52.225-3.

__ (51) 52.225-5, Trade Agreements (DEC 2022) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

X(52) 52.225-13, Restrictions on Certain Foreign Purchases (FEB 2021) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

__ (53) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Subtitle A, Part V, Subpart G Note).

__ (54) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

__ (55) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov2007) (42 U.S.C. 5150).

__ (56) 52.229-12, Tax on Certain Foreign Procurements (FEB 2021).

__ (57) 52.232-29, Terms for Financing of Purchases of Commercial Products and Commercial Services (NOV 2021) (41 U.S.C. 4505, 10 U.S.C. 3805).

__ (58) 52.232-30, Installment Payments for Commercial Products and Commercial Services (NOV 2021) (41 U.S.C. 4505, 10 U.S.C. 3805).

X(59) 52.232-33, Payment by Electronic Funds Transfer-System for Award Management (OCT2018) (31 U.S.C. 3332).

__ (60) 52.232-34, Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) (31 U.S.C. 3332).

__ (61) 52.232-36, Payment by Third Party (MAY 2014) (31 U.S.C. 3332).

___ (62) 52.239-1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a).

X(63) 52.242-5, Payments to Small Business Subcontractors (JAN 2017) (15 U.S.C. 637(d)(13)).

SECTION II
CONTRACT TERMS AND CONDITIONS

__ (64)

(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) (46 U.S.C. 55305 and 10 U.S.C. 2631).

__ (ii) Alternate I (APR 2003) of 52.247-64.

__ (iii) Alternate II (NOV 2021) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

__ (1) 52.222-41, Service Contract Labor Standards (AUG 2018) (41 U.S.C. chapter 67).

__ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (MAY 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

__ (3) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (AUG 2018) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

__ (4) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

__ (5) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. chapter 67).

(6) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (MAY 2014) (41 U.S.C. chapter 67).

__ (7) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

__ (8) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).

__ (9) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) (42 U.S.C. 1792).

(d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, as defined in FAR 2.101, on the date of award of this contract, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1), in a subcontract for commercial products or commercial services. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (NOV 2021) (41 U.S.C. 3509).

(ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (NOV 2021) (Section 1634 of Pub. L. 115-91).

(iv) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

SECTION II
CONTRACT TERMS AND CONDITIONS

- (v) 52.204-27, Prohibition on a ByteDance Covered Application (JUN 2023) (Section 102 of Division R of Pub. L. 117-328).
- (vi) 52.219-8, Utilization of Small Business Concerns (OCT 2022) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- (vii) 52.222-21, Prohibition of Segregated Facilities (APR 2015).
- (viii) 52.222-26, Equal Opportunity (SEP 2015) (E.O.11246).
- (ix) 52.222-35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212).
- (x) 52.222-36, Equal Opportunity for Workers with Disabilities (JUN 2020) (29 U.S.C. 793).
- (xi) 52.222-37, Employment Reports on Veterans (JUN 2020) (38 U.S.C. 4212).
- (xii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.
- (xiii) 52.222-41, Service Contract Labor Standards (AUG 2018) (41 U.S.C. chapter 67).
- (xiv)
- (A) 52.222-50, Combating Trafficking in Persons (NOV 2021) (22 U.S.C. chapter 78 and E.O 13627).
- (B) Alternate I (MAR 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).
- (xv) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. chapter 67).
- (xvi) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (MAY 2014) (41 U.S.C. chapter 67).
- (xvii) 52.222-54, Employment Eligibility Verification (MAY 2022) (E.O. 12989).
- (xviii) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).
- (xix) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).
- (xx)
- (A) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a).
- (B) Alternate I (JAN 2017) of 52.224-3.
- (xxi) 52.225-26, Contractors Performing Private Security Functions Outside the United States (OCT 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Subtitle A, Part V, Subpart G Note).
- (xxii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (JUN 2020) (42 U.S.C. 1792).
- Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.
- (xxiii) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Mar 2023) (31 U.S.C. 3903 and 10 U.S.C. 3801). Flow down required in accordance with paragraph (c) of 52.232-40.
- (xxiv) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) (46 U.S.C. 55305 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.
- (2) While not required, the Contractor may include in its subcontracts for commercial products and commercial services a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

Attachments:

- 1) Attachment A- Statement of Work (SOW)
- 2) Attachment B- Schedule of Items and Prices

SCHEDULE Continued

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	<p>The Contractor shall furnish all personnel, material, supplies, equipment, transportation, and facilities (except as otherwise specified), to provide Office of Marine and Aviation Operations OMAO, Uncrewed Systems Operations Center (UxSOC), Uncrewed Maritime Systems (UMS) for Ocean Exploration and Characterization as provided in Attachment A-Statement of Work and Attachment B-Schedule of Items and Prices.</p> <p>Ordering Period: 36 months (September 1, 2023-August 31, 2026)</p> <p>The Minimum Guarantee of \$*** is provided at time of award.</p> <p>Maximum value of \$*** to be shared between the five (5) Multiple Award IDIQ contract holders.</p> <p>Accounting and Appropriation Data:</p> <p>14.23.X8A4XDS.PSA.1123.100401000. 0802000300000000.25272517.000000</p> <p>Cost Applied: \$***</p>	1.00	LO	***	***

***Certain identified information has been excluded from this exhibit because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30		1. REQUISITION NUMBER NM-AN0000-23-01824		PAGE 1 OF 32	
2. CONTRACT NO. 1305M223DNMAN0077	3. AWARD/EFFECTIVE DATE SEP 01, 2023	4. ORDER NUMBER	5. SOLICITATION NUMBER 1305M223QNMAN0070	6. SOLICITATION ISSUE DATE MAY 26, 2023	
7. FOR SOLICITATION INFORMATION CALL:	a. NAME AMY L. MCLIVERTY amy.l.mcliverty@noaa.gov		b. TELEPHONE NUMBER (No collect calls) 757-441-3426	8. OFFER DUE DATE/ LOCAL TIME JUL 7, 2023 12:00PM EST	
9. ISSUED BY ACQUISITION AND GRANTS OFFICE EASTERN ACQ DIV NORFOLK FED BLDG 200 GRANBY ST STE 815 NORFOLK VA 23510		CODE AJF10001	10. THIS ACQUISITION IS <input checked="" type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> UNRESTRICTED OR <input checked="" type="checkbox"/> SET ASIDE: 100 % FOR: <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM NAICS: 541990 <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8 (A) <input type="checkbox"/> EDWOSB SIZE STANDARD: 19.5		
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE	12. DISCOUNT TERMS	13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) <input type="checkbox"/>	13b. RATING		
15. DELIVER TO Uncrewed Operations Center HQ 1315 East West Hwy SSMC3 10th Floor Silver Spring MD 20910	CODE NMAN0001	16. ADMINISTERED BY ACQUISITION AND GRANTS OFFICE EASTERN ACQ DIV NORFOLK FED BLDG 200 GRANBY ST STE 815 NORFOLK VA 23510		CODE AJF10001	
17a. CONTRACTOR/ OFFEROR OCEAN POWER TECHNOLOGIES, INC. 28 ENGELHARD DRIVE MONROE TOWNSHIP NJ 08831	CODE 00034875	FACILITY CODE	18a. PAYMENT WILL BE MADE BY NOAA FINANCE OFFICE BLDG. SSMC3 1315 EAST WEST HWY SILVER SPRING MD 20910		
CAGE: 04EP7 TIN: 222535818 TELEPHONE NO.	UEI: QMEHBTKWMQGS	18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input checked="" type="checkbox"/> SEE ADDENDUM			
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER					
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	The Contractor shall provide OMAO/UxSOC, UMS for Meteorological and Oceanographic Observations in accordance with Attachment A-Statement of Work; and Attachment B-Schedule of Items and Prices. <i>(Use Reverse and/or Attach Additional Sheets as Necessary)</i>				
25. ACCOUNTING AND APPROPRIATION DATA See Schedule			26. TOTAL AWARD AMOUNT (For Govt. Use Only) \$2,500.00		
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA		<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED			
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDA		<input type="checkbox"/> ARE <input checked="" type="checkbox"/> ARE NOT ATTACHED			
<input type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED		<input type="checkbox"/> 29. AWARD OF CONTRACT: REF. _____ OFFER DATED _____ . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:			
30a. SIGNATURE OF OFFEROR/CONTRACTOR		31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) <i>Jana Kolb</i>			
30b. NAME AND TITLE OF SIGNER (Type or print)	30c. DATE SIGNED	31b. NAME OF CONTRACTING OFFICER (Type or print) JANA KOLB 757-441-3344 JANA.KOLB@NOAA.GOV		31c. DATE SIGNED 08/31/2023	

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Prescribed by GSA - FAR (48 CFR) 53.212

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

32a. QUANTITY IN COLUMN 21 HAS BEEN

RECEIVED
 INSPECTED
 ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED:

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE		32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE		
32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE			32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE		
			32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE		
33. SHIP NUMBER		34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT	37. CHECK NUMBER
PARTIAL	FINAL			<input type="checkbox"/> COMPLETE	<input type="checkbox"/> PARTIAL
38. S/R ACCOUNT NO.		39. S/R VOUCHER NUMBER	40. PAID BY		
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT			42a. RECEIVED BY (Print)		
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		41c. DATE	42b. RECEIVED AT (Location)		
		42c. DATE REC'D (YY/MM/DD)	42d. TOTAL CONTAINERS		

**SECTION II
CONTRACT TERMS AND CONDITIONS**

1. FEDERAL ACQUISITION REGULATION (FAR) 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:

Federal Acquisition Regulation (FAR) - <http://www.acquisition.gov> Commerce
Acquisition Regulation (CAR) – <https://www.acquisition.gov/car>

The following clauses are incorporated by reference:

<u>Clause No.</u>	<u>Clause Title</u>	<u>Date</u>
FAR 52.203-3	Gratuities	APR 1984
FAR 52.203-12	Limitation On Payments To Influence Certain Federal Transactions	JUN 2020
FAR 52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights.	JUN 2020
FAR 52.204-4	Printed Or Copied Double-Sided On Postconsumer Fiber Content Paper	MAY 2011
FAR 52.204-13	System For Award Management Maintenance	OCT 2018
FAR 52.204-18	Commercial And Government Entity Code Management	AUG 2020
CAR 1352.201-70	Contracting Officer's Authority	APR 2010
CAR 1352.209-73	Compliance With The Laws	APR 2010
CAR 1352.209-74	Organizational Conflict of Interest	APR 2010
CAR 1352.216-74	Task Orders	APR 2010

2. FAR 52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (DEC 2022) WITH ADDENDA

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights-

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (*e.g.*, use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at Federal Acquisition Regulation (FAR) 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

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(e) *Definitions*. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *Excusable delays*. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice.

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include-

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (*e.g.*, 52.232-33, Payment by Electronic Funds Transfer-System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer-Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C.3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) *Patent indemnity*. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

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(i) Payment.-

(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C.3903) and prompt payment regulations at 5 CFR Part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see 52.2125(b) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall-

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the-

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable; (C) Affected line item or subline item, if applicable; and (D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by 33.211 if-

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on-

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

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(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in FAR 32.608-2 in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;

(3) The clause at 52.212-5.

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(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) [Reserved]

(u) Unauthorized Obligations.

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an AntiDeficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) Incorporation by reference. The Contractor’s representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(End of clause)

ADDENDUM TO FAR 52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (DEC 2022)

A. FAR 52.216-18 ORDERING (AUG 2020)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individual designated in the Schedule. Such orders may be issued *three years from date of award*.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) A delivery order or task order is considered “issued” when—

(1) If sent by mail (includes transmittal by U.S. mail or private delivery service), the Government deposits the order in the mail;

(2) If sent by fax, the Government transmits the order to the Contractor’s fax number; or

(3) If sent electronically, the Government either—

(i) Posts a copy of the delivery order or task order to a Government document access system, and notice is sent to the Contractor; or

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(ii) Distributes the delivery order or task order via email to the Contractor's email address.

(d) Orders may be issued by methods other than those enumerated in this clause only if authorized in the contract.

(End of clause)

B. FAR 52.216-19 ORDER LIMITATIONS (OCT 1995)

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than \$2,000.00 the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) Maximum order. The Contractor is not obligated to honor-

(1) Any order for a single item in excess of \$1,000,000.00;

(2) Any order for a combination of items in excess of \$1,000,000.00; or

(3) A series of orders from the same ordering office within seven (7) days that together call for quantities exceeding the limitation in paragraph (b) (1) or (2) of this section.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within seven (7) days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

C. FAR 52.216-22 INDEFINITE QUANTITY (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

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(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after **one (1) year after the contract expiration**.

(End of clause)

D. FAR 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 30 days prior to the expiration of the current task order period of performance.

Inclusion of FAR clause 52.217-8, Option to Extend Services, in the solicitation and resultant contract is for use by the Government as outlined at FAR 37.111, Extension of Services. The option will be exercised as needed at any time during the life of the contract using the rates applicable at the time of exercise. (End of clause)

E. FAR 52.227-14 RIGHTS IN DATA-GENERAL (MAY 2014)

(a) *Definitions*. As used in this clause-

Computer database or "database means" a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software-

(1) Means

(i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

Data means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

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Limited rights means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

Limited rights data means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

Restricted computer software means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

Restricted rights, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

Technical data means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 116).

Unlimited rights means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in-

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to-

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

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(c) Copyright-

(1) Data first produced in the performance of this contract.

(i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the Contracting Officer is required to assert copyright in all other data first produced in the performance of this contract.

(ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor-

(i) Identifies the data; and

(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) *Removal of copyright notices.* The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) *Release, publication, and use of data.* The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except-

(1) As prohibited by Federal law or regulation (*e.g.*, export control or national security laws or regulations); (2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.

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(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 4703, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor-

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the proposed notice is authorized; and

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(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may-

(i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or (ii) Correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

(1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall- (i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.

(3) [Reserved]

(h) *Subcontracting*. The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.

(i) *Relationship to patents or other rights*. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

F. CAR 1352.201-72 CONTRACTING OFFICER'S REPRESENTATIVE (COR) (APR 2010)

(a) PaTrina Gregory is hereby designated as the Contracting Officer's Representative (COR). The COR may be changed at any time by the Government without prior notice to the contractor by a unilateral modification to the contract. The COR is located at:

NOAA/OMAO/Uncrewed Operations Center (UxSOC)
1315 East West Hwy
SSMC3, 10th Floor Silver Spring, MD 20910
Email: PatTrina.Gregory@noaa.gov
Phone: (202) 936-5998

(b) The responsibilities and limitations of the COR are as follows:

(1) The COR is responsible for the technical aspects of the contract and serves as technical liaison with the contractor. The COR is also responsible for the final inspection and acceptance of all deliverables and such other responsibilities as may be specified in the contract.

(2) The COR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the contract price, terms or conditions. Any contractor request for changes shall be referred to the Contracting Officer directly or through the COR. No such changes shall be made without the express written prior authorization of the Contracting Officer. The Contracting Officer may designate assistant or alternate COR(s) to act for the COR by naming such assistant/alternate(s) in writing and transmitting a copy of such designation to the contractor.

(End of clause)

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G. CAR 1352.216-75 MINIMUM AND MAXIMUM CONTRACT AMOUNTS (APR 2010)

During the term of the contract, the Government shall place orders totaling a minimum of \$***. The amount of all orders shall not exceed \$*** **(To be shared among five (5) IDIQ Contract Holders)**. This maximum value will be shared by all contracts. Be advised that the Government anticipates making multiple awards. The guaranteed minimum amount of \$*** applies to the 3-year ordering period, not each ordering period.

(End of clause)

H. CAR 1352.216-76 PLACEMENT OF ORDERS (APR 2010)

(a) The contractor shall provide goods and/or services under this contract only as directed in orders issued by authorized individuals. In accordance with FAR 16.505, each order will include:

- (1) Date of order;
- (2) Contract number and order number;
- (3) Item number and description, quantity, and unit price or estimated cost or fee;
- (4) Delivery or performance date;
- (5) Place of delivery or performance (including consignee);
- (6) Packaging, packing, and shipping instructions, if any;
- (7) Accounting and appropriation data;
- (8) Method of payment and payment office, if not specified in the contract; (9) Any other pertinent information.

(b) In accordance with FAR 52.216-18, Ordering, the following individuals (or activities) are authorized to place orders against this contract:

<u>Office</u> NOAA/AGO/Eastern Acquisition Division 200 Granby Street, Suite 815 Norfolk, VA 23510	<u>Point of Contact</u> Amy McLiverty 757-441-3426 Amy.L.McLiverty@noaa.gov
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(c) If multiple awards have been made, the contact information for the DOC task and delivery order ombudsman is AGOombudsman@noaa.gov.

(End of clause)

I. CAR 1352.246-70 PLACE OF ACCEPTANCE (APR 2010)

- a. The Contracting Officer or the duly authorized representative will perform inspection and acceptance of supplies and services to be provided under this contract.
- b. The inspection and acceptance will be designated in individual task orders.

(End of clause)

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J. CAR 1352.270-70 PERIOD OF PERFORMANCE (APR 2010)

(a) The Ordering period for this contract vehicle is three (3) years from date of award. This ordering period may be extended by an additional six (6) months under FAR 52.217-8, Option to Extend Services.

(End of clause)

K. NOAA ACQUISITION MANUAL (NAM) 1330-52.203-70 SCIENTIFIC INTEGRITY AND RESEARCH MISCONDUCT (OCT 2012)

(a) Definitions. As used in this this solicitation and contract language –

Scientific activities mean activities that involve inventorying, monitoring, observations, experimentation, study, research, integration, modeling, and scientific assessment.

Scientific integrity means the condition resulting from adherence to professional values and practices when conducting and applying the results of science that ensures objectivity, clarity, and reproducibility, and that provides insulation from bias, fabrication, falsification, plagiarism, interference, censorship, and inadequate procedural and information security.

Presentation of scientific activities results includes the analysis, synthesis, compilation, or translation of scientific information and data into formats for the use of the Department of Commerce or the United States of America.

Scientific and Research Misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing scientific and research activities, or in the products or reporting of the results of these activities. It specifically includes intentional circumvention of the integrity of the scientific and research process and actions that compromise that process, but does not include honest error or differences of opinion.

Investigation is formal collection and evaluation of information and facts to determine if scientific or research misconduct can be established, to assess its extent and consequences, and to recommend appropriate action.

(b) General Guidelines

1. **Maintaining Integrity.** The contractor shall maintain the scientific integrity of research performed pursuant to this contract award including the prevention, detection, and remediation of research misconduct, and the conduct of inquiries, investigations and adjudication of allegations of research misconduct.
2. **In performing or presenting the results of scientific activities under the contract, and in responding to allegations of scientific and research misconduct, the contractor shall comply with the solicitation and contract language herein and NOAA Administrative Order (NAO) 202-735D, Scientific Integrity, and its Procedural Handbook, including any amendments thereto.**
3. **Primary Responsibility.** The contractor shall have the primary responsibility to prevent, detect, and investigate allegations of scientific and research misconduct. Unless otherwise instructed by the contracting officer, the contractor shall promptly conduct an initial inquiry into any allegation of such misconduct and may rely on its internal policies and procedures, as appropriate, to do so.

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4. By executing this contract, the contractor provides its assurance that it has established an administrative process for performing an inquiry, investigating, and reporting allegations of scientific and research misconduct; and that it will comply with its own administrative process for performing an inquiry, investigation and reporting of such misconduct.

5. The contractor shall insert the substance of this requirement in subcontracts at all tiers that involve research being performed under this contract.

(c) Investigating Misconduct Research

1. Initiating Investigation. If the contractor determines that there is sufficient evidence to proceed to an investigation, it shall notify the contracting officer and, unless otherwise instructed, the contractor shall:

A. Promptly conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of scientific and research misconduct and an identification of appropriate remedies or a determination that no further action is warranted.

B. If the investigation leads to a finding of scientific and research misconduct, obtain adjudication by a neutral third party adjudicator. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.

2. Finalizing Investigation. When the investigation is complete, the contractor shall forward to the contracting officer a copy of the evidentiary record, the investigative report, any recommendations made to the Contractor's adjudicating official, the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response (if any).

(d) Findings and Corrective Actions

1. If the contractor finds that scientific and research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process and shall:

i. Take all necessary corrective actions, which includes, but are not limited to, correcting the research record, and, as appropriate, imposing restrictions, controls, or other parameters on research in process or to be conducted in the future, and

ii. Coordinate remedial action with the contracting officer.

(e) Department of Commerce Actions

1. The Department of Commerce may accept the Contractor's findings or proceed with its own investigation, in which case the contractor shall fully cooperate with the investigation. The contracting officer will inform the contractor of the Department's final determination.

2. The Department of Commerce reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms and conditions of the contract and applicable laws and regulations. Such remedies and actions may include, but are not limited to, disallowance of costs, recoupment of contract payments, and suspension or debarment.

(End of Clause)

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L. NAM 1330-52.203-71 NOTICE OF POST-GOVERNMENT EMPLOYMENT RESTRICTIONS (OCT 2015)

By submission of an offer in response to a NOAA solicitation or acceptance of a contract, the contractor acknowledges the restriction on current NOAA employees regarding contact with offerors regarding prospective employment and the corresponding obligations for contractors who engage them. The contractor further acknowledges that it has provided notice to former NOAA employees who will provide service to NOAA under the contract of post-Government employment restrictions that apply to them. Such restrictions include, but are not limited to, those set forth in:

- (a) 41 U.S.C. § 2103 regarding contacts between a federal employee working on a procurement and an offeror about prospective employment;
- (b) 18 U.S.C. § 207 regarding the restrictions on former federal employees having contact with a federal agency on behalf of another person or entity concerning a specific party matter with which the former employee was involved as a federal employee or for which the former federal employee had official responsibility;
- (c) 18 U.S.C. § 207 regarding the restrictions on former senior employees and senior political employees from having contact with his former federal agency on behalf of another person or entity concerning any official matter; and
- (d) 41 U.S.C. § 2104 regarding the restrictions on a former federal employee involved in an acquisition over \$10,000,000 from accepting compensation from a contractor. (End of Clause)

M. NAM 1330-52.215-70 SCHEDULE OF DELIVERABLES (SEPT 2005)

The following is a schedule of all deliverables, including administrative deliverables, required during the period of performance of this contract:

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>QTY</u>	<u>DUE DATE</u>	<u>DELIVERY TO</u>	<u>REFERENCE</u>
1.	Annual Sexual Assault and Sexual Harassment (SASH) Training	For each contractor hired to the task order	30 days after task order award, then March 1 each calendar year thereafter	Contracting Officer (CO) and Contracting Officer's Representative (COR)	RFQ Clause N
2.	Services as provided in in Individual Task Order.	As provided in individual TO	TO Specific	TO specific	Individual TO
(End of clause)					

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N. NAM 1330-52.222-70 NOAA SEXUAL ASSAULT AND SEXUAL HARASSMENT PREVENTION AND RESPONSE POLICY (MAY 2018)

In accordance with NOAA Administrative Order (NAO) 202-1106, NOAA Sexual Assault and Sexual Harassment Prevention and Response Policy, it is the policy of NOAA to maintain a work environment free from sexual assault and sexual harassment. NOAA prohibits sexual assault and sexual harassment by or of any employee, supervisor, manager, contractor, vendor, affiliate, or other individual with whom NOAA employees come into contact by the virtue of their work for NOAA.

(a) Definitions.

Contractor Employees - The term "contractor employees," as used in this solicitation and contract language, refers to employees of the prime contractor or its subcontractors, affiliates, consultants, or team members.

Sexual Assault - The term sexual assault, as used in this solicitation and contract language, means any conduct proscribed by state or federal sexual abuse laws, including, but not limited to, those defined in chapter 109A of title 18 of the U.S. Code (sexual abuse), and assaults committed both by offenders who are strangers to the victim and by offenders who are known or related by blood or marriage to the victim.

Sexual Harassment - As defined by the Equal Employment Opportunity Commission, sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual nature when any of the following are true:

- Submission to such conduct is made either explicitly or implicitly as a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual;
- The conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

The main characteristics of sexual harassment are that the harasser's conduct is targeted against the recipient's sex, gender identity, or sexual orientation, and is unwelcome to the recipient. It may include, but is not limited to: offensive jokes, slurs, epithets or name calling, undue attention, physical assaults or threats, unwelcome touching or contact, intimidation, ridicule or mockery, insults or put-downs, constant or unwelcome questions about an individual's identity, and offensive objects or pictures.

(b) Requirements.

1. It is the responsibility of the contractor to ensure that contractor employees maintain the highest degree of conduct and standards in performance of the contract. In support of this, NOAA urges its contractors to develop and enforce comprehensive company policy addressing sexual assault and sexual harassment.
2. The contractor shall include wording substantially the same as this solicitation and contract language in every subcontract so that it is binding upon each subcontractor.
3. If a contractor employee observes or is the object of sexual assault or sexual harassment, he or she is highly encouraged to report the matter, as soon as possible, to their immediate supervisor, the Contracting Officer's Representative (COR), subset of the COR (e.g. Task Manager or Assistant COR), or contracting officer (CO) if a COR is not assigned to the contract. The contract employee may also contact the NOAA Civil Rights Office to obtain guidance on reporting instances of sexual assault or sexual harassment. If deemed necessary, the contractor employee may also report such instances to local law enforcement. In the case where the incident occurs while performing at a remote location, such as at sea or in the field (at a field camp or other isolated location) where the above referenced individuals are unavailable, the contractor employee should follow the reporting procedure set forth in NAO 202-1106, Section 6, .07, Reporting from Remote Locations.

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4. Swift reporting allows NOAA and the contractor to take the appropriate measures to ensure that offensive behavior stops and the complainants' needs are addressed.
5. The COR (if assigned), CO, and contractor, where applicable, will work together to ensure appropriate action is taken in accordance with applicable laws and regulations, contract terms and conditions, and the contractor's written policy (where applicable).
6. The contractor shall provide all contractor employees assigned to perform under this contract with mandatory sexual assault and sexual harassment prevention and response training in compliance with the requirements of NAO 202-1106, Section 5, Prevention Training and Awareness, as part of their initial in-processing and on an annual basis thereafter. The initial training shall be completed within 30 business days contract award or the date a contractor employee is assigned to perform under the contract, as applicable.

Evidence of initial training by name and date completed for each contractor employee, shall be submitted to the COR or contracting officer (if no COR assigned) within 10 business days of completion.

Evidence of annual training by name and date completed for each contractor employee shall be submitted to the COR or contracting officer (if no COR assigned) no later than March 1st of each calendar year of contract performance.

7. The mandatory sexual assault and sexual harassment training provided by the contractor shall include the required elements set forth by NOAA's Workplace Violence Program Manager. A link to the website including the required elements of the training is provided at:

<https://www.noaa.gov/organization/acquisition-grants/noaa-workplace-harassment-training-forcontractors-and-financial>.

The website will also provide training materials and resources to assist the contractor in conducting the training. The contractor may provide training that solely addresses the NOAA required elements or may supplement existing company sexual assault and sexual harassment training in a manner that ensures all of the elements are adequately addressed. The website will also provide training materials and resources to assist the contractor in conducting the training. The contractor may provide training that solely addresses the NOAA required elements or may supplement existing company sexual assault and sexual harassment training in a manner that ensures all of the elements are adequately addressed.

8. The required elements of the training and resources available to the contractor for the training may be updated by NOAA periodically. The contractor is responsible for monitoring the website and incorporating any changes to the NOAA required elements into the contractor provided training.
9. NOAA's Workplace Violence Program Manager, COR, or CO may periodically review the contractor's training outline to ensure all required elements are included and, if necessary, any appropriate adjustments are made to the training by the contractor.
10. Contractor employees performing on assignments in a remote location, such as at a field camp or other isolated locations, are subject to receiving the same briefing on the parameters of the order provided to NOAA employees as set forth in Section 6 of NAO 202-1106.
11. The contractor shall provide a copy of this solicitation and contract language and NAO 202-1106 to contractor employees.

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(c) Sexual Assault/Sexual Harassment (SASH) Helpline.

For NOAA employees, affiliates, and contractors who have experienced sexual assault or sexual harassment, NOAA has established the NOAA Sexual Assault/Sexual Harassment (SASH) helpline. This helpline is designed to provide crisis intervention, referrals, and emotional support to those who are victims and/or survivors of sexual harassment or sexual assault within the workplace. Contractor employees may use the helpline to receive live, confidential, one-on-one support in an occurrence of sexual harassment or assault by a Federal Government employee. All services are anonymous, secure, and available worldwide, 24 hours a day, seven days a week. The NOAA SASH helpline is accessible through a variety of channels, including:

- Phone: 1-866-288-6558
- Website & Online Chat: <http://NOAASASHHelpline.org>
- Mobile App: NOAA SASH Helpline (available via iOS and Android App Stores)
- Text: (202) 335-0265

(d) Confidentiality.

Any party receiving information from the filing of a complaint alleging sexual assault or sexual harassment, or while performing an investigation into such a complaint, shall keep the information confidential. "Confidentiality" means that the information shall only be shared with others who have a need to know the information to conduct their official duties.

(e) Remedies.

In addition to other remedies available to the Government, contractor employee violations of

Federal requirements (e.g., law, statutes, executive orders, code, rules, regulations) applicable to sexual assault and sexual harassment and/or failure to complete the mandatory training set forth in this solicitation and contract language, may result in:

1. Requiring the Contractor to remove a contractor employee or employees from the performance of the contract;
2. Requiring the Contractor to terminate a subcontract;
3. Suspension of contract payments until the Contractor has taken appropriate remedial action;
4. Termination of the contract for default or cause, in accordance with the termination clause of this contract;
5. Suspension or debarment; or 6. Other appropriate action.

(End of clause)

O. NAM 1330-52.232-72 NOAA TRANSITION TO THE INVOICE PROCESSING PLATFORM ELECTRONIC INVOICING SYSTEM (FEB 2023)

Beginning October 1, 2023, when NOAA implements the Department of Commerce Business Applications

Solution, the Contractor must submit payment requests electronically through the U.S. Department of the Treasury's Invoice Processing Platform (the IPP) System. The Contractor must use the IPP website to register, access, and submit payment requests. The IPP website address is <https://www.ipp.gov>.

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“Payment request” means any request for contract financing payment or invoice payment to the Contractor. To be considered proper, invoices must be prepared in accordance with, and contain all elements specified in, the contract payment clause (e.g., FAR 52.212-4(g), FAR 52.232-25(a)(3), FAR 52.232-26(a)(2), FAR 52.232-27(a)(2)). All supporting documents required by the Contracting Officer must be included as attachments to payment requests submitted through the IPP.

If the Contractor is unable to comply with the requirement to submit payment requests through the IPP due to a threat to national security; a matter of unusual or compelling urgency; or because the political, financial, or communications infrastructure of a foreign country does not support access to the IPP, the Contractor must request an exception in writing. Contact the Contracting Officer for more information about requesting an exception.

P. NAM 1330-52.235-70 COMPLIANCE WITH U.S. DEPARTMENT OF COMMERCE AND OTHER EXPORT CONTROL REGULATIONS (MAY 2006)

(a) In performing this contract, the contractor may engage in activities — such as transfers or releases of items, technology, software, or source code — that are subject to U.S. export controls, including, but not limited to, those contained in the DOC EAR, 15 C.F.R. Parts 730-774, and administered by the Bureau of Industry and Security. The contractor is responsible for compliance with U.S. export controls and associated licensing requirements that may attach to an export or “deemed export,” as defined in Paragraph (b)(1) of this Section. The contractor shall establish and maintain, throughout the period of contract performance, effective export control compliance procedures covering all contractor employees and all of the contractor’s non-NOAA facilities where the contract shall be performed. Failure to establish, maintain, or adhere to such compliance procedures shall constitute grounds for default termination under this contract as well as a breach of contract by the contractor.

(b) Definitions.

1. “Deemed export.” The EAR defines a deemed export as any release of technology or source code subject to the EAR to a foreign national, in the United States. Such release is “deemed” to be an export to the home country of the foreign national. 15 C.F.R § 734.2(b)(2)(ii).
2. “Export-controlled information and technology.” Export-controlled information and technology is information and technology subject to the EAR (15 C.F.R. § 730 et seq.) or the ITARs, 22 C.F.R. §§ 120-130 (ITAR), administered by the Department of State. This category includes, but is not limited to, dual-use items, defense articles, and any related assistance, services, software, source code, or technical data, as defined in the EAR and ITAR.

(c) The contractor shall prevent unauthorized access by foreign nationals to all export-controlled information and technology that it possesses or that comes into its possession in performance of this contract, to ensure that access by a foreign national is restricted, or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations. If access to EAR or ITAR-controlled technology is required by a foreign national, the contractor must obtain appropriate authorization.

(d) Nothing in the terms of this contract is intended to change, supersede, or waive any of the requirements of applicable Federal laws, Executive Orders, or regulations.

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(e) The contractor shall include this solicitation and contract language, including this paragraph (e), in all subcontracts under this contract.

(End of solicitation and contract language)

Q. NAM 1330-52.237-70 CONTRACTOR COMMUNICATIONS

- (a) A contractor employee shall be identified both by the individual's name and the contractor's name when:
 - 1. Included in NOAA's locator, and
 - 2. When submitting any type of electronic correspondence to any NOAA employee or stakeholder.
- (b) Any written correspondence from a contractor or any contractor employee shall be printed on company/organization letterhead or otherwise clearly identify the sender as an employee of the company or organization and shall identify the contract number.
- (c) Contractors and/or contractor employees shall clearly identify themselves as such in any verbal communications, whether in informal discussion or a formal meeting. (End of clause)

R. NAM 1330-52.237-71 NOAA GOVERNMENT-CONTRACTOR RELATIONS – NON- PERSONAL SERVICES CONTRACT (SEPT 2017)

- (a) The Government and the Contractor understand and agree that the services to be delivered under this contract by the Contractor to the Government are non-personal services as defined in FAR Part 37, Service Contracting, and the parties recognize and agree that no employer-employee relationship exists or will exist under the contract between the Government and the Contractor's personnel. It is, therefore, in the best interest of the Government to afford both parties an understanding of their respective obligations.
- (b) Contractor personnel under this contract shall not:
 - 1. Be placed in a position where they are under relatively continuous supervision and control of a Government employee.
 - 2. Be placed in a position of command, supervision, administration, or control over Government personnel or over personnel of other Contractors performing under other NOAA contracts.
- (c) The services to be performed under this contract do not require the Contractor or the Contractor's personnel to exercise personal judgement and discretion on behalf of the Government. Rather, the Contractor's personnel will act and exercise personal judgement and discretion on behalf of the Contractor.
- (d) Rules, regulations, directives, and requirements that are issued by the Department of Commerce and NOAA under its responsibility for good order, administration, and security are applicable to all personnel who enter the Government installation and facilities, who are provided access to Government systems, or who travel on Government transportation. This is not to be construed or interpreted to establish any degree of Government control that is inconsistent with a non-personal services contract.

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(e) Both parties are responsible for monitoring contract activities for indications of improper employee- employer relationships during performance. In the event a situation or occurrence takes place inconsistent with this contract language, the following applies:

1. The Contractor shall notify the Contracting Officer in writing within 5 business days from the date of any situation or occurrence where the Contractor considers specific contract activity to be inconsistent with the intent of this contract language. The notice must include the date, nature and circumstance of the situation or occurrence, the name, function and activity of each Government employee or Contractor employee involved or knowledgeable about the situation or occurrence, provide any documents or the substance of any oral communications related to the activity, and an estimated date by which the Government is recommended to respond to the notice in order to minimize cost, delay, or disruption of performance.
2. The Contracting Officer will review the information provided by the Contractor, obtain additional information (if needed), and respond in writing as soon as practicable after receipt of the notification from the Contractor. The Contracting Officer's response will provide a decision on whether the Contracting Officer determines the situation or occurrence to be inconsistent with the intent of this contract language and, if deemed necessary, will specify any corrective action(s) to be taken in order to resolve the issue.

(End of clause)

S. NAM 1330-52.237-72 CONTRACTOR ACCESS TO NOAA FACILITIES (SEPT 2017)

(a)

1. The performance of this contract requires employees of the prime contractor or its subcontractors, affiliates, consultants, or team members ("contractor employees") to have access to and to the extent authorized, mobility within, a NOAA facility.
2. NOAA may close and or otherwise deny contractor employees access to a NOAA facility for a portion of a business day or longer for various reasons including, but not limited, to the following events:
 - i. Federal public holidays for federal employees in accordance with 5 U.S.C. 6103;
 - ii. Fires, floods, earthquakes, and unusually severe weather, including but not limited to snow storms, tornadoes, and hurricanes;
 - iii. Occupational safety or health hazards;
 - iv. Lapse in Appropriations; or
 - v. Federal Statute, Executive Order, Presidential Proclamation, or any other unforeseen reason.
3. In such events, the contractor employees may be denied access to a NOAA facility that is ordinarily available for the contractor to perform work or make delivery, as required by the contract.

(b) In all instances where contractors are denied access or required to vacate a NOAA facility, in part or in whole, the contractor shall be responsible to ensure contractor personnel working under the contract comply. If the circumstances permit, the contracting officer will provide direction to the contractor, either directly or through the Contracting Officer's Representative (COR), which could include continuing on- site performance during the NOAA facility closure period; however, if Government oversight is required and is not available, on-site performance shall not be allowed. In the absence of such direction, the contractor shall exercise sound judgment to minimize unnecessary contract costs and performance impacts, for example, performing required work off- site if possible or reassigning personnel to other activities if appropriate.

(c) The contractor shall be responsible for monitoring the Office of Personnel Management at www.opm.gov, the local radio, television stations, NOAA web sites, and other communication channels. Once the facility is accessible, the contractor shall resume contract performance as required by the contract.

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(d) For the period that NOAA facilities were not accessible to contractors who required access in order to perform the services, the contracting officer may—

1. Adjust the contract performance or delivery schedule for a period equivalent to the period the NOAA facility was not accessible;
2. Forego the work; or
3. Reschedule the work by mutual agreement of the parties.

(e) Notification procedures of a NOAA facility closure, including contractor denial of access, are as follows:

1. The contractor shall be responsible for notification of its employees of the NOAA facility closure to include denial of access to the NOAA facility. The dismissal of NOAA employees in accordance with statute and regulations providing for such dismissals shall not, in itself, equate to a NOAA facility closure in which contractors are denied access. Moreover, the leave status of NOAA employees shall not be conveyed or imputed to contractor personnel. Accordingly, unless a NOAA facility is closed and the contractor is denied access to the facility, the contractor shall continue performance in accordance with the contract.
2. Access to Government facilities and resources, including equipment and systems, will be limited and personnel necessary to administer contract performance may not be available. Generally, supply and service contracts that are funded beyond the date of the lapse in appropriation and do not require access to Government facilities, active administration by Government personnel or the use of government resources in a manner that would cause the government to incur additional obligations during the lapse in appropriation may continue. If a delivery date for a contract falls during the period of a lapse in appropriations, Government personnel may not be available to receive delivery. Contractors are directed to consult with a contracting officer before attempting to make a delivery. Contracting officers will be available throughout the lapse in appropriation period to provide guidance.

Once OMB guidance is given, CORs, in consultation with the contracting officer, will notify those contractors that are deemed by the Program Office to be performing excepted work and identify the contractor personnel requiring access to NOAA facilities. CORs will also coordinate with directly with facility management or physical security personnel at respective locations to ensure that the names of contractor personnel requiring access to government facilities during the lapse in appropriations are provided to physical security personnel.

Contractors who are not designated as performing excepted work are not allowed access to Government facilities or to utilize government resources in a manner that would incur any additional obligation of funding on behalf of the government during the lapse in appropriation.

3. Unless otherwise specified within the contract award, contractors requiring access to NOAA facilities outside normal business hours or outside the normal workweek shall submit a written request in writing through the COR to the contracting officer. The written request shall provide justification supporting the required access and be submitted 48 hours before access to the NOAA facility is needed.

(End of clause)

T. NAM 1330-52.243-70 REQUESTS FOR EQUITABLE ADJUSTMENT (OCT 2017)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the contractor believes the Government is liable. The request shall include only costs for performing the change. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

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(b) Any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

(Official's Name)

(Title)

(c) The certification in paragraph (b) of this solicitation and contract language requires full disclosure of all relevant facts, including:

Certified cost or pricing data, if required, in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and

Data other than certified cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if certified cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this solicitation and contract language does not apply to:

Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

Final adjustments under an incentive provision of the contract.

(End of clause)

U. NAM 1330-52.270-304 NOAA ACQUISITION AND GRANTS OFFICE OMBUDSMAN (OCT 2016)

(a) The NOAA Acquisition and Grants Office (AGO) Ombudsman is available to organizations to promote responsible and meaningful exchanges of information. Generally, the purpose of these exchanges will be to:

1. Allow contractors to better prepare for and propose on business opportunities.
2. Advise as to technologies and solutions within the marketplace that the Government may not be aware of, or is not fully benefiting.
3. Identify constraints in transparency.

(b) The AGO Ombudsman will objectively, reasonably, and responsibly collaborate with parties and recommend fair, impartial, and constructive solutions to the matters presented to him/her. Further, the AGO Ombudsman will maintain the reasonable and responsible confidentiality of the source of a concern, when such a request has been formally made by an authorized officer of an organization seeking to do business with, or already doing business with NOAA.

(c) Before consulting with the AGO Ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations with the respective contracting officer for resolution.

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However, direct access to the AGO Ombudsman may be sought when an interested party questions the objectivity or equity of a contracting officer's decision, or when there is a bona fide reason to believe that reasonable, responsible, and objective consideration will not be received from an assigned contracting officer.

(d) There are several constraints to the scope of the AGO Ombudsman's authority, for instance:

1. Consulting with the AGO Ombudsman does not alter or postpone the timelines of any formal process (e.g., protests, claims, debriefings, employee employer actions, activities involving A76 competition performance decisions, judicial or congressional hearings, or proposal, amendment, modification or deliverable due dates).
2. The AGO Ombudsman cannot participate in the evaluation of proposals, source selection processes, or the adjudication of protests or formal contract disputes.
3. The AGO Ombudsman is not authorized to generate or alter laws, judicial decisions, rules, policies, or formal guidance.
4. The AGO Ombudsman is not authorized to develop or alter opportunity announcements, solicitations, contracts, or their terms or conditions.
5. The AGO Ombudsman cannot overrule the authorized decisions or determinations of the contracting officer.
6. The AGO Ombudsman has no authority to render a decision that binds AGO, NOAA, the Department of Commerce, or the U.S. Government.
7. The AGO Ombudsman is not NOAA's agent relative to the service of magistrate or judicial process and cannot be used to extend service of process to another party (whether federal, public, or a private entity).

(e) After review and analysis of a filed concern or recommendation, the AGO Ombudsman may refer the interested party to another more suitable Federal official for consideration. Moreover, concerns, disagreements, and/or recommendations that cannot be resolved by the AGO Ombudsman will need to be pursued through more formal venues.

(f) The AGO Ombudsman is not to be contacted to request copies of forms and/or documents under the purview of a contracting officer. Such documents include Requests for Information, solicitations, amendments, contracts, modifications, or conference materials.

(g) Questions regarding items (a) through (f) within this language shall be directed to NOAA AGO Ombudsman, at ago.ombudsman@noaa.gov.

(End of clause)

END OF ADDENDUM TO FAR 52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (DEC 2022)

V. FAR 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS — COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (JUN 2023)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

- (1) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

SECTION II
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(2) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (NOV 2021) (Section 1634 of Pub. L. 115-91).

(3) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (NOV 2015).

(5) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (MAR 2023) (31 U.S.C. 3903 and 10 U.S.C. 3801).

(6) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(7) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Public Laws 108-77 and 108-78 (19 U.S.C. 3805 note)).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

(1) 52.203-6, Restrictions on Subcontractor Sales to the Government (JUN 2020), with *Alternate I* (NOV 2021) (41 U.S.C. 4704 and 10 U.S.C. 4655).

(2) 52.203-13, Contractor Code of Business Ethics and Conduct (NOV 2021) (41 U.S.C. 3509)).

(3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

(4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) (Pub. L. 109-282) (31 U.S.C. 6101 note).

(5) [Reserved].

(6) 52.204-14, Service Contract Reporting Requirements (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

(7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

(8) 52.204-27, Prohibition on a ByteDance Covered Application (JUN 2023) (Section 102 of Division R of Pub. L. 117-328).

(9) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (NOV 2021) (31 U.S.C. 6101 note).

(10) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (OCT 2018) (41 U.S.C. 2313).

(11) [Reserved].

(12) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (OCT 2022) (15 U.S.C. 657a).

(13) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (OCT 2022) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a). (14) [Reserved]

(15)

(i) 52.219-6, Notice of Total Small Business Set-Aside (NOV 2020) (15 U.S.C. 644).

(ii) Alternate I (MAR 2020) of 52.219-6.

(16)

(i) 52.219-7, Notice of Partial Small Business Set-Aside (NOV 2020) (15 U.S.C. 644).

(ii) Alternate I (MAR 2020) of 52.219-7.

(17) 52.219-8, Utilization of Small Business Concerns (OCT 2022) (15 U.S.C. 637(d)(2) and (3)).

(18)

(i) 52.219-9, Small Business Subcontracting Plan (OCT 2022) (15 U.S.C. 637(d)(4)).

(ii) Alternate I (NOV 2016) of 52.219-9.

(iii) Alternate II (NOV 2016) of 52.219-9.

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(iv) Alternate III (JUN 2020) of 52.219-9.

(v) Alternate IV (SEP 2021) of 52.219-9.

X(19)

(i) 52.219-13, Notice of Set-Aside of Orders (MAR 2020) (15 U.S.C. 644(r)).

(ii) Alternate I (MAR 2020) of 52.219-13.

(20) 52.219-14, Limitations on Subcontracting (OCT 2022) (15 U.S.C. 637s).

(21) 52.219-16, Liquidated Damages—Subcontracting Plan (SEP 2021) (15 U.S.C. 637(d)(4)(F)(i)).

(22) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (OCT 2022) (15 U.S.C. 657f).

X(23)

(i) 52.219-28, Post Award Small Business Program Rerepresentation (MAR 2023)(15 U.S.C. 632(a)(2)).

(ii) Alternate I (MAR 2020) of 52.219-28.

(24) 52.219-29, Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (OCT 2022) (15 U.S.C. 637(m)).

(25) 52.219-30, Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (OCT 2022) (15 U.S.C. 637(m)).

(26) 52.219-32, Orders Issued Directly Under Small Business Reserves (MAR 2020) (15 U.S.C. 644(r)). (27) 52.219-33, Nonmanufacturer Rule (SEP 2021) (15 U.S.C. 637(a)(17)). **X** (28) 52.222-3, Convict Labor (JUN 2003) (E.O.11755).

(29) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (DEC 2022) (E.O.13126).

(30) 52.222-21, Prohibition of Segregated Facilities (APR 2015).

(31)

(i) 52.222-26, Equal Opportunity (SEP 2016) (E.O.11246).

(ii) Alternate I (FEB 1999) of 52.222-26.

X(32)

(i) 52.222-35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212). (ii) Alternate I (JUL 2014) of 52.222-35.

X(33)

(i) 52.222-36, Equal Opportunity for Workers with Disabilities (JUN 2020) (29 U.S.C. 793).

(ii) Alternate I (JUL 2014) of 52.222-36.

(34) 52.222-37, Employment Reports on Veterans (JUN 2020) (38 U.S.C. 4212).

X(35) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). **X**(36)

(i) 52.222-50, Combating Trafficking in Persons (NOV 2021) (22 U.S.C. chapter 78 and E.O. 13627).

(ii) Alternate I (MAR 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

X (37) 52.222-54, Employment Eligibility Verification (MAY 2022) (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial products or commercial services as prescribed in FAR 22.1803.)

(38)

(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008)

(42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.) (ii) Alternate I (MAY 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

(39) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).

___ (40) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693). ___ (41)

(i) 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment (JUN 2014) (E.O.s 13423 and 13514).

___ (ii) Alternate I (OCT 2015) of 52.223-13.

___ (42)

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CONTRACT TERMS AND CONDITIONS

(i) 52.223-14, Acquisition of EPEAT®-Registered Televisions (JUN 2014) (E.O.s 13423 and 13514).

__ (ii) Alternate I (Jun2014) of 52.223-14.

__ (43) 52.223-15, Energy Efficiency in Energy-Consuming Products (MAY 2020) (42 U.S.C. 8259b).

__ (44)

(i) 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products (OCT 2015) (E.O.s 13423 and 13514).

__ (ii) Alternate I (JUN 2014) of 52.223-16.

X(45) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (JUN 2020) (E.O. 13513).

__ (46) 52.223-20, Aerosols (JUN 2016) (E.O. 13693).

__ (47) 52.223-21, Foams (Jun2016) (E.O. 13693).

__ (48)

(i) 52.224-3 Privacy Training (JAN 2017) (5 U.S.C. 552 a).

__ (ii) Alternate I (JAN 2017) of 52.224-3.

__ (49)

(i) 52.225-1, Buy American-Supplies (OCT 2022) (41 U.S.C. chapter 83).

__ (ii) Alternate I (OCT 2022) of 52.225-1.

__ (50)

(i) 52.225-3, Buy American-Free Trade Agreements-Israeli Trade Act (DEC 2022) (19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, 19 U.S.C. chapter 29 (sections 4501-4732), Public Law 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).

__ (ii) Alternate I [Reserved].

__ (iii) Alternate II (DEC 2022) of 52.225-3.

__ (iv) Alternate III (JAN 2021) of 52.225-3. __ (v) Alternate IV (Oct 2022) of 52.225-3. __ (51) 52.225-5, Trade Agreements (DEC 2022) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

X(52) 52.225-13, Restrictions on Certain Foreign Purchases (FEB 2021) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

__ (53) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Subtitle A, Part V, Subpart G Note).

__ (54) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150). __ (55) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov2007) (42 U.S.C. 5150).

__ (56) 52.229-12, Tax on Certain Foreign Procurements (FEB 2021).

__ (57) 52.232-29, Terms for Financing of Purchases of Commercial Products and Commercial Services (NOV 2021) (41 U.S.C. 4505, 10 U.S.C. 3805).

__ (58) 52.232-30, Installment Payments for Commercial Products and Commercial Services (NOV 2021) (41 U.S.C. 4505, 10 U.S.C. 3805).

X(59) 52.232-33, Payment by Electronic Funds Transfer-System for Award Management (OCT2018) (31 U.S.C. 3332).

__ (60) 52.232-34, Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) (31 U.S.C. 3332).

__ (61) 52.232-36, Payment by Third Party (MAY 2014) (31 U.S.C. 3332).

__ (62) 52.239-1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a).

X(63) 52.242-5, Payments to Small Business Subcontractors (JAN 2017) (15 U.S.C. 637(d)(13)).

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__ (64)

(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) (46 U.S.C. 55305 and 10 U.S.C. 2631).

__ (ii) Alternate I (APR 2003) of 52.247-64.

__ (iii) Alternate II (NOV 2021) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

__ (1) 52.222-41, Service Contract Labor Standards (AUG 2018) (41 U.S.C. chapter 67). __ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (MAY 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

__ (3) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (AUG 2018) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

__ (4) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

__ (5) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. chapter 67). ~~X~~ (6) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (MAY 2014) (41 U.S.C. chapter 67).

__ (7) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

__ (8) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).

__ (9) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) (42 U.S.C. 1792).

(d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, as defined in FAR 2.101, on the date of award of this contract, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1), in a subcontract for commercial products or commercial services. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (NOV 2021) (41 U.S.C. 3509).

(ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (NOV 2021) (Section 1634 of Pub. L. 115-91).

(iv) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

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- (v) 52.204-27, Prohibition on a ByteDance Covered Application (JUN 2023) (Section 102 of Division R of Pub. L. 117-328).
- (vi) 52.219-8, Utilization of Small Business Concerns (OCT 2022) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- (vii) 52.222-21, Prohibition of Segregated Facilities (APR 2015).
- (viii) 52.222-26, Equal Opportunity (SEP 2015) (E.O.11246).
- (ix) 52.222-35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212).
- (x) 52.222-36, Equal Opportunity for Workers with Disabilities (JUN 2020) (29 U.S.C. 793).
- (xi) 52.222-37, Employment Reports on Veterans (JUN 2020) (38 U.S.C. 4212).
- (xii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.
- (xiii) 52.222-41, Service Contract Labor Standards (AUG 2018) (41 U.S.C. chapter 67).
- (xiv)
- (A) 52.222-50, Combating Trafficking in Persons (NOV 2021) (22 U.S.C. chapter 78 and E.O 13627). (B) Alternate I (MAR 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).
- (xv) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. chapter 67). (xvi) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (MAY 2014) (41 U.S.C. chapter 67).
- (xvii) 52.222-54, Employment Eligibility Verification (MAY 2022) (E.O. 12989).
- (xviii) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).
- (xix) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).
- (xx)
- (A) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a).
- (B) Alternate I (JAN 2017) of 52.224-3.
- (xxi) 52.225-26, Contractors Performing Private Security Functions Outside the United States (OCT 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Subtitle A, Part V, Subpart G Note).
- (xxii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (JUN 2020) (42 U.S.C. 1792).
- Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.
- (xxiii) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Mar 2023) (31 U.S.C. 3903 and 10 U.S.C. 3801). Flow down required in accordance with paragraph (c) of 52.232-40.
- (xxiv) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) (46 U.S.C. 55305 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.
- (2) While not required, the Contractor may include in its subcontracts for commercial products and commercial services a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

Attachments:

- 1) Attachment A- Statement of Work (SOW)
- 2) Attachment B- Schedule of Items and Prices

SCHEDULE Continued

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	The Contractor shall furnish all personnel, material, supplies, equipment, transportation, and facilities (except as otherwise specified), to provide Office of Marine and Aviation Operations OMAO, Uncrewed Systems Operations Center (UxSOC), Uncrewed Maritime Systems (UMS) for Meteorological & Oceanographic Observations as provided in Attachment A-Statement of Work and Attachment B-Schedule of Items and Prices.				
0001	Ordering Period: 36 months (September 1, 2023-August 31, 2026)	1.00		LO ***	***
	The Minimum Guarantee of \$*** is provided at time of award.				
	Maximum value of \$*** to be shared between the five (5) Multiple Award IDIQ contract holders.				
	Accounting and Appropriation Data: 14.23.X8A4XDS.PSA.1123.100401000. 0802000300000000.25272517.000000 Cost Applied: \$***				

CERTIFICATION PURSUANT TO SECTION 302 OF SARBANES-OXLEY ACT

I, Philipp Stratmann, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or other persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 13, 2023

/s/ Philipp Stratmann

Philipp Stratmann

President and Chief Executive Officer

CERTIFICATION PURSUANT TO SECTION 302 OF SARBANES-OXLEY ACT

I, Robert Powers, certify that:

- 1 I have reviewed this Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc.;
- 2 Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3 Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4 The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5 The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or other persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 13, 2023

/s/ Robert Powers

Robert Powers

Senior Vice President and Chief Financial Officer

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc. (the "Company") for the period ended October 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Philipp Stratmann III, President and Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: December 13, 2023

/s/ Philipp Stratmann

Philipp Stratmann

President and Chief Executive Officer

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc. (the "Company") for the period ended October 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Robert Powers, Senior Vice President and Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: December 13, 2023

/s/ Robert Powers

Robert Powers

Senior Vice President and Chief Financial Officer

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.
