



TOTE Services, LLC. Purchase Order Terms and Conditions

ACCEPTANCE: This Purchase Order constitutes an offer by TOTE Services, LLC ("Buyer") to Seller to purchase goods or services described upon the terms and conditions herein and shall become a contract upon acceptance thereof either by acknowledgment or by part performance.

DELIVERY: Timeliness and rate of deliveries is critical to our operations. Upon default by Seller in the time or rate of delivery, Buyer may cancel the undelivered portion thereof or may approve in writing a revised delivery schedule, reserving the right to charge Seller for any loss incurred because of the default goods shipped in advance of delivery schedule may be rejected or returned by Buyer at Seller's risk and expense. Goods received from carrier are subject to verification after unpacking. Title to and risk of loss of any goods supplied by Seller under this Purchase Order shall remain with Seller until delivery has been accepted at the point of delivery stated in this Purchase Order (herein after referred to as "Order").

REJECTIONS: Do not substitute material on this order without authority from this office. All material furnished must be as specified and will be subject to inspection and approval of Buyer after delivery. If goods are found defective in material or workmanship (including goods damaged because of unsatisfactory packaging by Seller) or otherwise not in conformity with the requirements of this Order including drawings, specification, or approved samples if any, Buyer, in addition to any rights it may have under warranties or otherwise, reserves the right to reject and return such goods at Seller's risk and expense including transportation costs (Seller to bear costs of inspecting rejected goods) and to receive full credit for any such goods or upon written request to require replacement of any such rejected goods without additional cost to Buyer.

PERMITS & APPROVALS: All necessary permits, bonds, testing, inspection and approval of materials or workmanship by the proper authorities is to be provided and arranged by Seller at no additional cost to Buyer unless authorized herein.

BUYER'S PROPERTY: Unless agreed to in writing all tools, gauges, designs, sketches, drawings, specifications, blueprints, patterns, dies, engineering data or other technical or proprietary information, special appliances and other equipment or material of any description and any replacement thereof furnished Seller by Buyer, shall remain the property of Buyer. Seller shall see that such property is plainly marked or otherwise properly identified as "property of TOTE, LLC" and shall store safely such property apart from the property of Seller or third parties. Such property, while in Seller's custody or control may be examined by Buyer and shall be maintained in good condition at Seller's expense, shall be held at Seller's risk and shall be kept insured by Seller at Seller's expense, in an amount equal to replacement cost and with loss payable to Buyer.

ADVERTISING: Seller shall not, without first obtaining the written consent of the Buyer, in any manner, advertise or publish in any media that the Seller has either contracted to furnish or has sold to Buyer the goods or services herein mentioned.

CHANGES: Buyer shall have the right to make changes in this Order on written notice to Seller. If such changes should cause an increase or decrease in the amount due or in the time required for performance, an equitable adjustment shall be made, and the Order modified in writing. Any claim for adjustment must be asserted by Seller in writing within 15 days from date the change is ordered. Nothing contained herein shall absolve Seller from proceeding without delay in performance of the Order.



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PAYMENT TERMS: Payment terms are identified on the Purchase Order or if no terms are identified, then payment is due in 30 days. The payment due date is measured from the day after of Buyer's acceptance of the goods or services described herein or on an accurate invoice, and/or provided that the goods and/or services have been received in a good order. Buyer shall have the right to reduce and set-off against amounts payable for any claims Buyer may have against Seller.

ASSIGNMENT AND SUBCONTRACTING: This Order, including payments due or to become due, may not be assigned in whole or in part without Buyer's written consent. Seller shall not procure nor contract for procurement of any fabricated item covered in this Order in completed or substantially completed form without first obtaining Buyer's written approval. Seller may not assign or subcontract any portion of its obligations under this Contract nor assign or otherwise transfer any monies due or to become due hereunder, without first obtaining the written consent of the Buyer. In any event, Seller to remain fully responsible for performance of any and all subcontractors or assigns.

PATENTS: Seller agrees to defend, indemnify, and hold Buyer, its successors, assigns and customers harmless from any loss or damage resulting from any actions or proceedings charging infringement of any patent, trademark, or copyright by reason of sale or use of any item including any process covered by this Order except items for which Buyer has furnished complete specifications, trade secrets and Seller agrees to keep confidential any technical data furnished by Buyer. Seller also agrees to pay Attorney's fees in the event of litigation.

WARRANTIES: Seller warrants that items delivered hereunder shall be free from defects in material and workmanship and in accordance with specifications, drawings, and approved samples, if any. To the extent that any items delivered are not manufactured pursuant to designs furnished by Buyer, Seller warrants, in addition to such warranties that are ordinarily extended by the Seller that are established by the Uniform Commercial Code or other applicable law, such items will be of merchantable quality and free from defects in design and suitable for the purpose for which they are intended. Seller's warranties shall not be deemed exclusive and shall along with any service warranties or guarantees survive acceptance and payment and shall extend to Buyer, its successors, assigns and customer. No substitution or modification of any goods may be made without Purchaser's prior written consent.

PRODUCT LIABILITY AND RECALL: Seller shall bear all costs and expenses of such recall, including without limitation, costs of notifying customers, customer refunds, costs of returning goods, lost profits, and other expenses incurred to meet obligations to third parties. Seller will indemnify Buyer and save Buyer harmless from and against any and all suits, claims, expenses, costs and damages (including attorney's fees) resulting from, growing out of, or incurred by the sale or recall, distribution or use of any of such goods, and will defend at Seller's own expense on behalf of the Buyer any and all such suits and claims. However, Buyer may, at its election, defend any and all such suits and claims at the expense of Seller, and Seller will reimburse Buyer for such expense

INDEMNIFICATION: Seller shall hold harmless, indemnify and defend Buyer and its parent, subsidiary and affiliated companies and their officers and employees from any and all claims, losses, actions, costs, judgments and expenses, including attorneys' fees and costs, resulting from injury or death to any person or damage, loss or destruction to any property (including loss of use thereof) or violation of any employment or labor laws or any other violation of laws (including anti-kickback laws) which arises out of or is related in any way to any of the work or services to be performed under this Order.



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INDEMNITY FROM LIENS: If this Order calls for work to be performed upon property owned or controlled by Buyer, it is agreed that Seller will keep property free and clear of all liens.

DEFAULTS, BANKRUPTCY, CANCELLATION: Buyer may cancel this Order in whole or in part by written notice if:

- a. Seller becomes insolvent or shall make a general assignment for the benefit of creditors, or if a receiver or liquidator for Seller is appointed or applied for or if Seller fails to pay its debts as they become due; or
- b. Any Federal or State bankruptcy proceeding is brought by or against Seller; or
- c. Seller shall default in performance or shall fail to make progress in the work so that performance hereunder is endangered. After notice of cancellation Buyer has the right to require Seller to transfer to Buyer any satisfactorily completed work, any work in progress produced or being produced for the fulfillment of this Order, and any property specifically acquired for the performance of the Order, if after cancellation as provided for above, the cost of Buyer of completion of the Order is in excess of the contract price provided for herein. Seller shall be liable for any such excess over the contract price.

FORCE MAJEURE: Either Seller or Buyer shall be excused from performance of the obligations hereunder when and to the extent that such performance is delayed or prevented by any circumstances reasonably beyond control including, but not limited to, acts of God, epidemics, preparation for war, war, naval or military intervention, interventions of naval or military authorities or other agencies of government, terrorism, acts of terrorism, blockade, sabotage, vandalism, insurrection, storms, floods, earthquakes, fires, strikes, delays of common carriers, and requisitioning of the Vessel by any government or agency thereof (including Turbo or other activations). In the event the Seller is delayed in, or prevented from completing the Work, or any portion thereof, by reason of any of the foregoing occurrences, the Buyer shall have no liability for any expenses or loss incurred by the Seller by reason thereof.

PRICE: The price for the goods and/or services shall be the price as shown on the Order. Seller shall not increase the price without advance written notice and written approval from Buyer. All duties, government surcharges and taxes which Seller is required by law to collect from Buyer are included in the price stated on the Order. Unless otherwise specified, the price stated on the front of this Order includes all charges for packing, hauling, storage, transportation to point of delivery.

NOTIFICATION OF LOWER PRICE: If a lower price on any item covered by this Order is quoted by Seller to anyone, such new lower price becomes effective to Buyer on the date of its quotation, and all goods shipped thereafter pursuant to this Order will be invoiced to Buyer at the new lower price. Seller warrants that the agreed price is not less favorable than currently extended to any other buyer for the same or like goods in equal or lesser quantities.

COMPLIANCE WITH ALL LAWS: Seller shall comply with the Occupational Health and Safety Act and all Federal, State and Municipal laws, rules and regulations which are or may become applicable hereto. At all times during the course of doing business, Seller and its employees shall remain an independent business entity with no relationship to Buyer and there is no employment relationship between Seller's employees and Buyer. Seller shall comply with the provisions of Trafficking Victims Protection Act of 2000 (TVPA), 22 U.S.C. 7102 and of the Occupational Safety and Health Act of 1970, the standards and regulations issued there under and all pertinent State occupational safety and health laws such as "Right-to-Know" Regulations. Hazard communication information such as complete Material Safety Data Sheets (MSDS) shall be supplied to Buyer for all hazardous material. Seller further agrees to indemnify and hold harmless Buyer for any loss, damage, fine, penalty or any expense whatsoever as a result of Seller's failure to comply with such laws and regulations.



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CERTIFICATIONS AND REPRESENTATIONS: Seller makes certain certifications and representations that are material representations of fact upon which Buyer will rely in making awards to Seller. By submitting its written offer or providing oral offers/quotations at the request of Buyer, or accepting any contract, Seller certifies to the representations and certifications as set forth herein. These certifications and representations shall apply whenever these terms and conditions are incorporated by reference in any Order, agreement, other contractual document or any quotation, request for quotation (oral or written), request for proposal or solicitation (oral or written), issued by Buyer, Seller shall immediately notify Buyer of any change of status regarding these certifications and representations. Seller represents and warrants that the work provided under this Contract constitutes a "Commercial Item" as defined in FAR 2.101.

MODIFICATION OF AGREEMENT: This Order contains all agreements and conditions of the transactions described, and no agreement or other understanding in any way or to any extent shall modify the conditions hereof. The conditions of this purchase Order shall be binding upon Seller, and any contrary terms or exceptions hereto imposed by an acknowledgment or otherwise shall not be binding on Buyer unless made in writing, signed by Buyer, and noted as a change of this purchase Order.

NO WAIVER OF CONDITIONS: No waiver by Buyer of any condition shall constitute a waiver of any other condition herein or a waiver of the same of any other conditions regarding subsequent transactions or parts of the transaction covered by this Order.

SECURITY REQUIREMENTS: All Seller's and Sellers Subcontractor personnel must hold Federal TWIC cards for any and all employees that require access to the Ports or vessels. Personnel who do not have TWIC cards will face delays or be denied access beyond Buyer's control and responsibility. Any such security delays or expense will be borne by the Seller. The following link will provide information on how to obtain a TWIC card. <https://www.tsa.gov/for-industry/twic>. 52.204-2

CONFLICT OF INTEREST: Seller covenants and agrees that : (1) no third party has been employed or retained or solicited to secure this Order for Seller or an agreement or understanding for the payment to such person of a commission, percentage, brokerage, contingent fee or other thing of value; (2) no third party has or shall be admitted to any share or part of this Order or to any benefit or profit that may arise therefrom; (3) no officer or agent or employee of Buyer or of an affiliated company of Buyer was employed, retained or solicited to secure this Order; and (4) no officer, agent or employee of Buyer or of an affiliated company of Buyer has a beneficial interest in this Order. For each violation of these covenants, Buyer shall have the right to void this Order without liability or to recover from Seller and its officers and directors jointly, as liquidated damages, and not as a penalty, a sum ten (10) times the amount of such share, commission, percentage, brokerage, contingent fee, or other thing of value, together with its reasonable expenses (including counsel fees) incurred in collecting such sum. Seller will identify any relationships (personal friends or family relationships) that its employees have with any employees of Buyer.

BUSINESS ETHICS: Seller shall endorse and comply with Buyer's Code of Ethical Business Conduct which is incorporated herein by reference and can be located on the Buyer's website at www.toteinc.com and the Buyer's Vendor Code of Conduct available upon request. Seller has not and will not, either directly or indirectly, give to any Buyer employee or representative any gift, entertainment, gratuity, money, or other thing of value with a view toward influencing such person in connection with any Purchase Order by Buyer. Seller shall not act in any fashion or take any action that will



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render Buyer liable for a violation of any applicable anti-bribery legislation (including without limitation, the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010), which prohibits the offering, giving or promising to offer or give, or receiving, directly or indirectly, money or anything of value to any third party to assist it them or Buyer in retaining or obtaining business or in performing this Order.

REFERENCES TO BUYER: Except to the extent required by law, Seller shall make no reference, advertisement, or promotion regarding Buyer or Buyer's purchase or use of the goods or services covered by this Order without the prior written consent of Buyer.

PROVISIONS APPLICABLE ONLY TO MATERIALS:

1. Title: Title and risk of loss to the goods shall pass to Buyer upon Buyer's acceptance of delivery at the Vessel or place specified. Shipping tickets and/or packing slips must show in detail any goods shipped and must accompany all deliveries, which must be signed for by the Master, Chief or Port Engineer.

2. Crating, Cartage, Storage: No charges will be accepted by the Buyer for crating, boxing, cartage, storage or like services, unless specifically agreed to in writing prior to shipment of the goods hereunder.

3. Warranties: Seller warrants clear and merchantable title to the goods free of any security interest, lien or encumbrance and agrees to indemnify Buyer against all liability for patent, copyright, or other infringement on account of sale and use of the goods. Seller further warrants that the goods shall be of merchantable quality and as specified and shall be fit for the purpose intended. All implied warranties of the Uniform Commercial Code and warranties implied by usage of trade are reserved by Buyer and incorporated herein.

4. Transportation Costs: Seller warrants that any transportation costs included in the price will not exceed actual transportation costs paid by Seller. If this Contract calls for payment of any transportation costs by Buyer, Buyer shall in no event be liable or accountable for any amount more than the actual costs of transportation. Seller shall be accountable for and shall pay any excess transportation costs arising from Seller's failure to make delivery to the FOB point or to follow shipping instructions furnished by Buyer.

5. Invoices: NOTE: Due to government funds expiration, all invoices must be received within 90 days of performance to be processed for payment. Buyer expressly reserves the right to refuse to pay any invoices older than 90 days or invalid invoices. Expediting of the invoicing process will not be used as an excuse to accept less than adequate invoices. Partial payments may be made on a case-by-case basis at the Buyer's sole discretion. Goods, Material or Service invoices shall be submitted immediately, with proof of delivery to:

TOTE Services
10401 Deerwood Park Blvd, Suite 1300
Jacksonville, FL 32256
Attn: Invoices, via email: invoices@toteservices.com

PROVISIONS APPLICABLE ONLY TO SERVICES:

1. Manner and Materials: Seller shall perform all services for the Buyer and to the Vessel in a workmanlike manner and in compliance with TOTE Services policies, at the location designated by Buyer in accordance with the specifications of



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Buyer and/or Class. All plans, drawings, materials, machinery, equipment, outfitting, and workmanship involved in performance of the services shall be supplied by Seller and shall be of a quality conforming to the best commercial practice for property of this type. If there should be any conflict between the provisions of any of the aforesaid documents and the Specification, the Specification will prevail.

2. Warranties:

- a) Seller shall keep the Vessel free and clear of all liens, security interests, encumbrances, and claims of every nature, including statutory and maritime liens in favor of workman, materialmen, subcontractors, or others arising by, through or under Seller. Seller shall discharge all such liens and other claims at once. Seller hereby waives all liens, whether possessory or otherwise, in its favor which would otherwise attach to the Vessel. U.S. Public vessels are immune to liens.
- b) Seller shall correct to the satisfaction of Buyer all defects in workmanship or in materials furnished by Seller hereunder, which developed within a period of one year or another longer period as may be specified by manufacturer, after completion of the services.

3. Care of the Vessel: At all times during the term of this Contract, Seller shall protect the Vessel from any and all damage. At all times while the Vessel is on Seller's premises or in the Seller's care, custody or control, Seller shall assume all risk of damage to or loss of the Vessel (or of any machinery, equipment, materials, and outfitting obtained or intended for the Vessel) from any cause whatsoever except acts of God or the sole negligence of Buyer.

4. Clauses: FAR 52.252-2: 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, TOTE Services will make their full text available. Also, the full text of a clause may be accessed electronically at this address: <https://www.acquisition.gov/far>

Flow Down Clauses Incorporated:

52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT.

52.203-7 Anti-Kickback Procedures.

52.203-13 Contractor Code of Business Ethics and Conduct.

52.203-16 Preventing Personal Conflicts of Interest.

52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights.

52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements.

52.204-2 Security Requirements.

52.204-7 System for Award Management.

52.204-14 Service Contract Reporting Requirements

52.204-15 Service Contract Reporting Requirements for Indefinite-Delivery Contracts

52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.

52.222-41 Service Contract Act of 1965 and U.S. Department of Labor Wage Determinations (found at <https://www.wdol.gov/Index.aspx>) Contractors are also required to post the "Notice to Employees Working on Government Contracts" (WH Publication 1313) in a prominent and accessible place at the worksite. WH 1313 is available at: <https://www.dol.gov/whd/regs/compliance/posters/sca.htm>

52.222-43 Fair Labor Standards Act and Service Contract Labor Standards - Price Adjustment

The seller/subcontractor shall include the terms of this clause, in subcontracts awarded under this Contract.



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- 52.222-54 Employment Eligibility Verification.
- 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving.
- 52.224-2 Privacy Act.
- 52.225-13 Restrictions on Certain Foreign Purchases
- 52.227-1 Authorization and Consent.
- 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.
- 52.232-11 Extras.
- 52.237-2 Protection of Government Buildings, Equipment, and Vegetation.
- 1252.237-70 Qualifications of contractor employees. (APR 2005)**
- 252.203-7000 Requirements Relating to Compensation of Former DOD Officials SEP 2011
- 252.203-7004 Display of Hotline Posters OCT 2016
- 252.204-7000 Disclosure of Information OCT 2016
- 252.204-7008 Compliance with Safeguarding Covered Defense Information Controls OCT 2016
- 252.211-7003 Item Unique Identification and Valuation MAR 2016
- 252.225-7000 Buy American Act – Balance of Payments Program Certificate - Basic NOV 2014
- 252.225-7001 Buy American Act – Balance of Payments Program DEC 2016
- 252.225-7003 Report of Intended Performance Outside the United States and Canada—Submission with Offer OCT 2015
- 252.225-7004 Report of Intended Performance Outside the United States and Canada—Submission after Award. OCT 2015
- 252.225-7005 Identification of Expenditures in the United States. JUN 2005
- 252.225-7012 Preference for Certain Domestic Commodities DEC 2016
- 252.225-7013 Duty-Free Entry MAY 2016
- 252.225-7025 Restriction on Acquisition of Forgings DEC 2009
- 252.225-7040 Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the U.S. OCT 2015
- 252.226-7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns SEP 2004
- 252.227-7013 Rights in Technical Data – Noncommercial Items FEB 2014
- 252.227-7016 Rights in Bid or Proposal Information JAN 2011
- 252.227-7030 Technical Data - Withholding of Payment MAR 2000
- 252.227-7037 Validation of Restrictive Markings on Technical Data SEP 2016
- 252.245-7000 Government-furnished Mapping, Charting, and Geodesy Property APR 2012
- 252.245-7001 Tagging, Labeling, and Marking of Government-Furnished Property APR 2012
- 252.245-7004 Reporting, Reutilization, and Disposal SEP 2016
- 252.247-7024 Notification of Transportation of Supplies by Sea MAR 2000
- 252.249-7002 Notification of Anticipated Contract Termination or Reduction OCT 2015
- 252.251-7000 Ordering from Government Supply Sources AUG 2012

FULL TEXT

52.244-6 Subcontracts for Commercial Items.
As prescribed in [44.403](#), insert the following clause:
Subcontracts for Commercial Items (Jan 2017)



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(a) Definitions. As used in this clause—

“Commercial item” and “commercially available off-the-shelf item” have the meanings contained in Federal Acquisition Regulation [2.101](#), Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Oct 2015) ([41 U.S.C. 3509](#)), if the subcontract exceeds \$5.5 million and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) [52.203-15](#), Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017).

(iv) [52.204-21](#), Basic Safeguarding of Covered Contractor Information Systems (Jun 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause [52.204-21](#).

(v) [52.219-8](#), Utilization of Small Business Concerns (Nov 2016) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(vi) [52.222-21](#), Prohibition of Segregated Facilities (Apr 2015).

(vii) [52.222-26](#), Equal Opportunity (Sept 2016) (E.O. 11246).

(viii) [52.222-35](#), Equal Opportunity for Veterans (Oct 2015) ([38 U.S.C. 4212\(a\)](#));

(ix) [52.222-36](#), Equal Opportunity for Workers with Disabilities (Jul 2014) ([29 U.S.C. 793](#)).

(x) [52.222-37](#), Employment Reports on Veterans (Feb 2016) ([38 U.S.C. 4212](#)).

(xi) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause [52.222-40](#).

(xii)(A) [52.222-50](#), Combating Trafficking in Persons (Mar 2015) ([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).

(xiii) [52.222-55](#), Minimum Wages under Executive Order 13658 (Dec 2015), if flowdown is required in accordance with paragraph (k) of FAR clause [52.222-55](#).

(xiv) [52.222-59](#), Compliance with Labor Laws (Executive Order 13673) (Oct 2016), if the estimated subcontract value exceeds \$500,000, and is for other than commercially available off-the-shelf items.

Note to paragraph 52.244-6(c)(1)(xiii): By a court order issued on October 24, 2016, paragraph (c)(1)(xiii) is enjoined indefinitely as of the date of the order. The enjoined paragraph will become effective immediately if the court terminates the injunction. At that time, GSA, DOD and NASA will publish a document in the Federal Register advising the public of the termination of the injunction.

(xv) [52.222-60](#), Paycheck Transparency (Executive Order 13673) (Oct 2016), if the estimated subcontract value exceeds \$500,000, and is for other than commercially available off-the-shelf items.

(xvi) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706), if flowdown is required in accordance with paragraph (m) of FAR clause [52.222-62](#).



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- (xvii)(A) [52.224-3](#), Privacy Training (Jan 2017) (5 U.S.C. 552a) if flow down is required in accordance with 52.224-3(f).
(B) Alternate I (Jan 2017) of [52.224-3](#), if flow down is required in accordance with [52.224-3\(f\)](#) and the agency specifies that only its agency-provided training is acceptable).
- (xviii) [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. 2302 Note](#)).
- (xix) [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause [52.232-40](#).
- (xx) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. App. 1241](#) and [10 U.S.C. 2631](#)), if flow down is required in accordance with paragraph (d) of FAR clause [52.247-64](#).
- (2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.
- (End of clause)

52.223-7 Notice of Radioactive Materials.

As prescribed in [23.602](#), insert the following clause:

Notice of Radioactive Materials (Jan 1997)

(a) The Contractor shall notify the Contracting Officer or designee, in writing, _____* days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions. See FAR [23.601\(d\)](#).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall—

(1) Be submitted in writing.

(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.



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(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.
(End of clause)

INSURANCE REQUIREMENTS: Seller and lower-tier subcontractors, at their sole cost and expense (including the cost of all deductibles), shall procure and maintain in force during the term of this Agreement the following insurance coverages to protect Government property and the Buyer when performing Services onboard any U.S. Government-owned vessel or on Buyer’s premises under this Agreement. TABLE OF COVERAGE TYPES and TABLE OF MINIMUM LIABILITY LIMITS REQUIRED based on risk considerations:

TABLE OF COVERAGE TYPES	
COVERAGE	DESCRIPTION
Workmen’s Compensation, including Longshoremen & Harbor Worker’s Compensation Act coverage, when applicable *See Note	Always Required – no minimum
Employers Liability	E bodily injury by accident, each accident –
	E bodily injury by disease, each accident –
	E bodily injury by disease in the aggregate
Maritime Employers Liability (Jones Act) **See Note	M each person per occurrence M in the aggregate
Comprehensive General Liability	C combined single per occurrence limit for boding injury and property damage –
	C in the aggregate
Ship Repairers Legal Liability *See Note	S per vessel, per occurrence
Pollution Liability	P per occurrence
Tower’s Liability	T applies to dead-ship tow
Automobile Liability	A combined single per occurrence limit for bodily injury and property damage –
	A in the aggregate
See TABLE OF MINIMUM LIABILITY LIMITS REQUIRED for values of variables E, M, C, S, P, T or A	



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TABLE OF MINIMUM LIABILITY LIMITS REQUIRED (in million dollars)							
RISK CONSIDERATIONS/COVERAGE CODE	E	M	C	S	P	T	A
Pier-side (no spaces need to be made safe for hot work or workers)	\$1	\$1	\$1	\$1	\$1		\$1
Pier-side (spaces must be made safe for hot work or workers)	\$2	\$2	\$2	\$2	\$1		\$1
OEM Tech Rep Services	\$1	\$1	\$1				
Shipyards Availabilities w/o Dead-ship Tow	\$5	\$5	\$5	\$5	\$1		
Shipyards Availabilities with Dead-ship Tow	\$5	\$5	\$5	\$5	\$1	\$5	

*Note – Longshoremen harbor Worker’s Compensation Act coverage is required when applicable under the Act. Such insurance is not required when the work is being performed by individuals excluded by definitions. See 33 U.S.C. 902(3), particularly 902(3)(A) excluding “individuals employed exclusively to perform office clerical, secretarial, security, or data processing work”; and 902(3)(D) excluding “Individuals who (i) are employed by suppliers, transporters, or vendors, (ii) are temporarily doing business on the premises of a maritime employers, and (iii) are not engage in work normally performed by employees of that employer covered under the Act”.

** NOTE: MARAD will consider reductions of or waivers to the amounts prescribed for Maritime Employers Liability (Jones Act) and Ship Repairers Legal Liability on a case-by-case basis based on risk considerations, e.g., the work does not involve the use of vessels or is not being performed in a shipyard.

a. Depending on risk considerations, the following additional cover may be required:

1) Consulting services require Professional Liability insurance, with limits of liability not less than \$1,000,000 any one occurrence, covering services to be performed by subcontractor under this Agreement.

2) When work involves the usage of any vessel, Protection and Indemnity, or other Marine Liability Insurance, is required with limits of liability not less than \$1,000,000 per occurrence.

b. All the above insurances except Workman’s Compensation shall name the Government of the United States of America and the Maritime Administration as an assured along with any company or entity, parent of, subsidiary to or affiliate of the ship manager. Such policies shall contain a statement that there is no recourse against both the Government of the United States of America/MARAD and the ship manager for payment of the premium or P&I Club calls. All such insurance will contain the cancellation provision as found in the new ACORD certificates (Edition date 2009/09): “SHOULD ANY OF THE ABOVE-DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.” The



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ship manager shall obtain and review proof of insurance coverage (*i.e.*, certificate of insurance or policy). The ship manager shall ensure that the coverage does not contain exclusions that would effectively negate coverage for all but third-party liabilities. The ACO may request that the ship manager send the subcontractor insurance to the MARAD Office of Marine Insurance for review.

In no event shall the amount or scope of insurance described herein place any limitation on the liability assumed by Seller, and should Seller maintain insurance limits higher than the limits listed above, Buyer shall benefit from those higher limits. Seller shall require their subcontractors performing hereunder to maintain insurance of the types and amounts required of Seller. Policies of Seller shall be primary to any insurance carried by or available to Buyer and any "other insurance" clauses under Seller's policies shall be amended accordingly. Should Seller fail to procure or maintain any of these insurance coverages, or by any act or omission vitiate or invalidate any of the aforesaid insurance coverages, Seller shall pay to Buyer all losses and indemnify Buyer against all claims and demands which would otherwise have been covered by such insurance. Irrespective of the requirements as to insurance to be carried by Seller or their subcontractors as provided herein, insolvency, bankruptcy, or failure of any insurance company to pay all claims accruing shall not be held to relieve Seller of any of its obligations.

Such insurance shall be written with Insurers carrying no less than a "B" rating from A.M. Best's. Commencement of operations without receipt of the required Certificates of Insurance shall not constitute a waiver of the obligation of the Seller to maintain the required insurance coverages.

Should Seller fail to procure or maintain any of the aforesaid insurance coverages, or by any act or omission, vitiate or invalidate any of the aforesaid insurance coverages, Seller shall indemnify Buyer, the United States of America, and the other beneficiaries of said insurance to the extent they or any of them suffers or incurs loss, damage, liability, or expense in consequence of such failure, act, or omission.

It is expressly understood that the Seller shall notify Buyer's office immediately of all accidents and any accident involving the Vessel, advising names of parties involved, location of accident, witnesses, and confirmation of prompt reporting to the responsible insurance agent of the Seller, as identified on the Seller's certificate of insurance.

Certificates of Insurance should be sent to:

TOTE Services
Attn: Vendor Profiles
10401 Deerwood Park Blvd
Bldg. 1, suite 1300
Jacksonville, FL 32256
Email: vendorprofiles@toteservices.com

GENERAL

This contract shall be construed in accordance with the laws of Florida.

Buyer's right and remedies under this Order are not exclusive and are in addition to any other rights or remedies provided by law. Buyer retains the right to audit Seller for compliance with this Order and Seller is responsible to pay any amounts due and owing to Buyer discovered by audit and if so, shall also pay the costs of any audit.



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In the event that Buyer and Seller have a contract or other written agreement in addition to this purchase Order, both documents shall apply unless there is a conflict of terms, in which case the terms of the contract or agreement shall prevail.

As a Federal Contractor, TOTE Services, LLC and its subcontractors have certain obligations that are incorporated herein. The supplier (subcontractor) agrees and certifies that it will comply with all pertinent federal laws, orders, and regulations, including but not limited to, the following:

EEO/AA

This contractor and all covered subcontractors shall abide by the requirements of 29 CFR Part 471, Appendix A to Subpart A, 41 CFR § 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

It is the policy at TOTE Services to provide equal employment and advancement opportunities to all qualified individuals. To achieve this goal, TOTE Services is dedicated to taking affirmative action to employ and advance in employment qualified women, minorities, disabled persons, disabled veterans, and other protected veterans, in compliance with Executive Order 11246, Section 503 of the Rehabilitation Act of 1973 and Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (2001) ("Section 4212" or "VEVRAA") and the implementing regulations TOTE Services is committed to take voluntary, positive action in providing affirmative action and equal employment opportunity to women, minorities, disabled persons, disabled veterans, and other protected veterans. All personnel actions, including compensation, benefits, recruitment, hiring, training, and promoting persons in all job titles, will be administered without regard to race, ethnicity, national origin, gender, disability, veteran, or other protected status, and all employment decisions are based solely on valid job requirements. In addition, employees and applicants are protected from harassment, threats, coercion, intimidation, interference, or discrimination for:

- (1) Filing a complaint.
- (2) Assisting or participating in an investigation, compliance review, hearing, or any other activity under Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 or any other law requiring equal opportunity for disabled persons, and other protected veterans.
- (3) Opposing any practice made unlawful by these laws, or
- (4) Exercising any other right protected by these laws.

As a federal government contractor, TOTE Services expects all its subcontractors, suppliers, and vendors to comply with all their applicable obligations under Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 or any other law requiring equal opportunity for disabled persons, and other protected veterans. Further, the equal employment opportunity clauses set forth in 41 CFR 60-1.4(a), 41 CFR 60-250.5(a) and 41 CFR 60-741.5(a) are hereby incorporated by reference into all the transactions between our companies.



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Obligations: Buyer is an equal opportunity employer and federal contractor or subcontractor. As applicable, the parties agree that they shall abide by the requirements of 41 CFR Section 60-1.4(a); 41 CFR Section 60-300.5(a); 41 CFR Section 60-741.5(a); and 29 CFR Part 471, Appendix A to Subpart A with respect to affirmative action program and posting requirements, and that these requirements are incorporated herein. These regulations require that covered prime contractors and subcontractors ensure nondiscrimination and take affirmative action in employment to employ and advance qualified individuals without regard to sex, gender identity, sexual orientation, race, color, religious creed, national origin, physical or mental disability, and protected Veteran status. These regulations also prohibit covered contractors from taking adverse action against applicants or employees because they have inquired about, discussed, or disclosed their or their co-worker's compensation information in certain situations.

(1) Seller agrees as follows:

Buyer's vessels are certified under the regulations of the major IACS Members (International Class Society). As a minimum, requirement all parts, supplies, materials, and services provided by the seller shall conform to the requirements and regulations of the IACS Member, for shipboard use.

Perform the work in a safe manner and adhere to all applicable Federal and State safety standards and regulations promulgated pursuant to the Occupational Safety and Health Act of 1970, as well as all safety procedures of Buyer Seller hereby acknowledges it has inspected the work area and is fully informed of all existing conditions at the work site which may create a safety hazard, including those conditions to which Federal State and Local safety and/or health laws and regulations may be applicable.

Where practical, the use of environmentally friendly packing materials should be used. Styrofoam and plastics should be minimized as packing for stores and supplies destined for the ship(s) and office. FAR Clause 52.223-10.

The sale of products containing asbestos is strictly prohibited. Asbestos is defined by OSHA, the EU and the USCG/EPA as the six mineral names (with CAS numbers): 1. Actinolite CAS 77536-66-4; 2. Amosite (Grunerite) CAS 12172-73-5; 3. Anthophyllite CAS 77536-67-5; 4. Chrysotile CAS 12001-29-5; 5. Crocidolite CAS 12001-28-4, and 6. Asbestos Tremolite CAS 77536-68-6.

Contractors shall assume responsibility for the disposal and tracking of all hazardous materials (as defined by the cognizant EPA office) generated or accumulated because of the work performed. Contractors shall ensure that all local, state, and federal laws/ regulations are adhered to, and reporting requirements/ fees are included in the price quote. All fees and reports made to government entities shall be made under the contractor's EPA/ State generator number. FAR Clause 52.223-3 and 52.223-5

Your acceptance of this purchase order constitutes full compliance and agreement with the above.

This contract incorporates appropriate flow-down clauses inclusive of the Service Contract Act (SCA). U.S. Department of Labor Wage Determinations can be found at <http://www.wdol.gov/sca.aspx#0>

Applicable to Contracts greater than \$150K:

FAR 52.203-07 Anti-kickback Procedures

FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions



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52.203-16 Preventing Personal Conflicts of Interest

Applicable to Contracts greater than \$550K:

FAR 52.219-09 Small Business Subcontracting Plan (and Alt II)

FAR 52.222-01 Notice to the Government of Labor Disputes

NOTICE OF PROHIBITION ON LIENS

PUBLIC VESSEL

As a provider or potential provider of supplies or services to the:

Altair, Antares, Bellatrix, Denebola, Pacific Collector, Pacific Tracker, Pollux, or Regulus

The above vessels are "public vessels" owned by the United States Department of Transportation, Maritime Administration ("MARAD/Owner"). These vessels are managed by a Ship Manager: TOTE Services

The Maritime Commercial Instruments and Lien Act (MCILA) specifically prohibits maritime liens against public vessels. 46 USC § 31342. In addition, the contract between the above Ship Manager and MARAD contains a "Prohibition on Liens" clause which prohibits liens against the above vessel in the event of the Ship Manager or another's failure to pay.

You are hereby notified that neither the Ship Manager nor the Master nor any other person has the power or authority to order supplies or services on the credit of the above public vessel or to create any liens on said vessel. You must look only to the credit of the entity requesting the supplies or services for payment, not to the credit of the above vessel or its Owner. You are on notice that your provision of supplies or performance of services for the above vessel at the request of the Ship Manager, the Master, or any other person cannot result in a lien against the vessel, *in rem*, or a claim against the Owner, the United States, *in personam*, in the event of the Ship Manager or another's failure to pay for same. If you bring suit against the United States contrary to the provisions of this notice, you shall be required to indemnify the United States for all costs associated with defending such action, including but not limited to attorney's fees.

Further, you are *required* to fax this notice to any lower-tier subcontractors or providers from whom you obtain supplies or services for the vessel. Failure to properly notify such persons of this "Notice of Prohibition on Liens" shall NOT result in a lien against the vessel but instead will result in your being required to indemnify the United States for all costs associated with defending an action brought *in rem* against the vessel or *in personam* against the vessel's Owner by any such lower-tier subcontractor or provider.

THE USE OF SHREDDED PAPER, WHETHER NEWSPAPER, OFFICE SCRAP, COMPUTER SHEETS, OR WAX PAPER, IN PACKING MATERIAL FOR SHIPMENT TO GOVERNMENT ACTIVITIES IS PROHIBITED.