

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Opinion No. 4857 (S.C. Ct. App. filed July 27, 2011)

Stevens Aviation, Inc.....Petitioner,

v.

DynCorp International LLC Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI
VOLUME II

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2009-CP-23-7229

Stevens Aviation, Inc., ... Respondent,

v.

DynCorp International LLC and Science Applications Defendants.
International Corporation, ...

Of whom DynCorp International LLC is, ... Appellant.

RECORD ON APPEAL
VOLUME TWO

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Stevens Aviation, Inc.

Plaintiff,

v.

DynCorp International LLC, and Science
Applications International Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. NO. 2009-CP-23-7729

**PLAINTIFF STEVENS AVIATION, INC.'S
OPPOSITION TO
DYNCORP INTERNATIONAL LLC'S
MOTION FOR JUDGMENT
ON THE PLEADINGS**

Pending before this Court are cross-motions in which Plaintiff Stevens Aviation, Inc. ("Stevens") and Defendant DynCorp International LLC ("DynCorp") ask this Court to interpret the Subcontract Agreement executed by them with respect to the issue of whether DynCorp was obligated to send to Stevens *all* C-12/RC-12 and UC-35 aircraft submitted to DynCorp under U.S. Army Contract DAAH23-00-C-0226 (the "Prime Contract") for the purpose of allowing Stevens to perform the aviation maintenance services specified in that Agreement. In a new twist, DynCorp now raises in its supporting Memorandum an issue not raised in the actual Motion it filed weeks ago – DynCorp now says that if this Court agrees that Stevens is entitled to all the specified aircraft, that this Court should limit Stevens' damages. For the Court's convenience, Stevens will address the arguments made by DynCorp in the order they appear in its Memorandum.

I. INTRODUCTION

DynCorp's suggested interpretation of the Subcontract Agreement is simply not *reasonable*. It arrives at its proffered construction by ignoring express and unequivocal provisions in the Subcontract, and by urging this Court to consider only what is *not* in it (and

even then DynCorp wants the Court to consider only those "omissions" that supports its proffered interpretation and to ignore other omissions that do not comport with what it offers up).

DynCorp's proffered interpretation of the Subcontract Agreement will leave several of its actual provisions useless and inexplicable. At the same time, DynCorp has not, and cannot, point to a single clause in the Subcontract Agreement which will be left meaningless or surplusage if this Court adopts the *reasonable* interpretation of the Subcontract Agreement pressed by Stevens, *i.e.*, that it requires DynCorp to send to Stevens *all* C-12/RC-12 and UC-35 aircraft submitted to DynCorp under the Prime Contract.¹

II. FACTUAL BACKGROUND

DynCorp and Stevens are in agreement that their relationship with respect to their respective rights to the work under the Prime Contract is governed by the provisions of the Subcontract Agreement attached to the Complaint. *See* DynCorp Memo, pp. 1-2. DynCorp, however, ignores (and fails to address in any manner) the fact that there are two *different* choice of law provisions in the Subcontract Agreement – one referencing federal common law and the other only Texas law. *Id.* at p. 2, fn.2. To the extent this Court were to find that the provision mandating application of Texas law is controlling, many of DynCorp's arguments are simply not applicable.²

¹ *See* Memorandum Supporting Motion for Judgment on the Pleadings (filed by DynCorp) ("DynCorp Memo").

² Because Stevens believes that the contract principles necessary to resolve the current Motions are basically the same under both federal and Texas law, it sees no need to waste the Court's time with a debate of that issue at this point in the litigation. Without waiving its right to seek application of Texas law if and when appropriate, Stevens responds to DynCorp's Memorandum with citation to only federal law since DynCorp chose to present its arguments in that fashion.

III. LAW/ANALYSIS

A. The Subcontract Agreement, Read As A Whole, Is Clear On Exclusivity.

1. The Absence Of An Exclusivity Clause Is Not Determinative.

DynCorp first asks this Court to consider "what was not included" in the Subcontract Agreement, and then goes on to argue that since "[t]he Subcontract never uses the term 'exclusive' regarding the services to be provided by" Stevens, DynCorp is entitled to judgment. (DynCorp Memo, p. 3 (emphasis in original)). DynCorp makes this argument without reference to any of the provisions which are actually *in* the Subcontract Agreement. In other words, DynCorp asks this Court to consider *only* what is "not included" in the Subcontract, and to ignore what is actually in it. DynCorp's argument in this regard is both factually and legally flawed.

As an initial matter, in making its argument DynCorp completely ignores the fact that the Subcontract never uses the term "non-exclusive," and the fact that the Subcontract nowhere says that DynCorp is free to use some entity other than Stevens for the specified aircraft maintenance services. If this Court were inclined to do as DynCorp urges – consider what is "not included" in the Subcontract Agreement – it should give equal weight to the fact that there is no "exclusivity clause" or "*non-exclusivity clause*."

Furthermore, DynCorp's argument that this Court should consider *only* what is "not included" in the Subcontract does not comport with the well-established rules of contract construction. The law is abundantly clear that this Court is to interpret the Subcontract Agreement by considering the actual *provisions* in it "as a whole." See, e.g., United International Investigative Services v. United States, 109 F.3d 734, 737 (Fed. Cir. 1997).

DynCorp's suggestion that the absence of the word "exclusive" translates into an interpretation that "exclusivity" was not intended ignores this very basic rule of interpretation.

The fact that the word "exclusive" does not appear in the Subcontract Agreement does not negate the actual contractual provisions which make clear that "exclusivity" was intended and is mandated.³ This is exactly what the court held in Universal Towing Co v. United Barge Co., 579 F.2d 1098, 1103 (8th Cir. 1978). In Universal Towing, the court noted that the contract at issue was silent as to the amount of business that the defendant United was required to give to the plaintiff Universal, but then expressly held that this silence was not dispositive:

We first reject the contention that silence in the written agreement relieved United from its obligation to have Universal provide fleeting services ... The evidence fully supports the finding that United agreed to give *all* of its harbor and fleeting business to Universal.

579 F.2d at 1103 (emphasis added); *see also Fireman's Fund Insurance Co. v. United States*, 909 F.2d 495, 498 (Fed. Cir. 1990) (holding that contract's silence on specific issue should not be interpreted to dictate specific result).

Finally, if contractual rights were established only by what is expressly stated, there would never be a need for any of the many well-established rules of contract construction which courts routinely apply, or for consideration of extrinsic evidence. A court would simply be charged with looking at what the contract said and enforcing it – actual interpretation would not be needed. In reality, however, rules governing contract construction exist because while "[c]ontracting parties can, of course, make their expectations explicit" by providing certain provisions in a contract, "[i]n the absence of such express provisions, the contract nonetheless

³ See Stevens Aviation Inc.'s Brief in Support of its Cross-Motion for Judgment on the Pleadings and Alternative Motion for Summary Judgment, filed on October 13, 2009.

may implicitly reveal the expectations of the parties." Allstate Ins. Co. v. Hague, 449 U.S. 302, 328-29 (1981) (Stevens, J., concurring).

Here, the Subcontract Agreement, read as a whole, clearly reveals that the expectations of the parties were that Stevens would do the defined work on *all* C-12/RC-12 and UC-35 aircraft submitted to DynCorp under the Prime Contract.

2. The Contract's Pricing Schedule Is Irrelevant.

DynCorp does little more than reframe its "there is no exclusivity clause" argument when it next asserts that the "Pricing Schedule" found at pages 17 through 21 of the Subcontract Agreement "does not grant exclusivity." (DynCorp Memo, pp. 3-4). While acknowledging that the "Pricing Schedule" lists a price for each item of work (*i.e.*, CLIN) to be done by Stevens under the Subcontract, DynCorp argues that the fact that the "Pricing Schedule" does not "allot" a specific quantity or units for each CLIN supports its contention that it was free to send aircraft to maintenance facilities other than Stevens. Id.

DynCorp's argument is just nonsensical. No one -- not even Stevens -- has suggested that the Subcontract Agreement can be interpreted so as to obligate DynCorp to send a specific number of aircraft to Stevens each year or during the entire term of the Subcontract. What Stevens posits is that the Subcontract obligates DynCorp to send to Stevens *all* C-12/RC-12 and UC-35 aircraft sent to DynCorp under the Prime Contract. Such an interpretation does not require an actual quantity designation in the "Pricing Schedule." Indeed, in the circumstances contemplated by the Subcontract Agreement the "*all*" aircraft designation is not subject to quantification because until and unless the government sends an aircraft to DynCorp under the Prime Contract, DynCorp has no obligation to do anything with respect to Stevens. This is precisely why the "intentionally left blank" "quantity" columns exist.

Notably, DynCorp completely ignores the fact that the Subcontract Agreement has a provision under which DynCorp is obligated to pay Stevens only that amount of money equal to the funding DynCorp gets from the government. See SA, p. 15. The existence of this provision reinforces the fact that the parties had no basis to identify a specified number of aircraft in the "Pricing Schedule." Indeed, the absence of a specified quantity in the "Pricing Schedule," combined with DynCorp's payment obligation being linked to what it receives from the government for each CLIN, actually supports Stevens' contention that the contract obligates DynCorp to send to Stevens *all* C-12/RC-12 and UC-35 aircraft submitted to DynCorp under the Prime Contract. Otherwise, the latter provision would have no implication, whatsoever.

DynCorp's resort to the "Order of Precedence" clause in this context highlights the absurd nature of its argument. The Order of Precedence clause is applicable only if an "inconsistency" is identified between actual provisions in the Subcontract Agreement. See Subcontract Agreement ("SA"), p. 14. Yet, DynCorp has identified no inconsistency between the "Pricing Schedule" and any other of the Subcontract's provisions. And, in fact, none exist. And, while the "intentionally left blank" quantity portions of the "Pricing Schedule" are entirely consistent with Stevens' proffered interpretation that DynCorp was required to send to it *all* aircraft subject to the Prime Contract (whatever that number might be), the existence of the "Pricing Schedule" simply makes no sense if, as DynCorp contends, it had no obligation to ever send any aircraft to Stevens. No reasonable person would believe that Stevens would agree to a set price for work to be done over a ten-year period that it had no guarantee of ever getting.

As DynCorp well knows, the reason there are no quantities listed in the "Pricing Schedule" is because there was no commitment from the government as to how many aircraft would be sent to DynCorp in a specific year. Obviously, DynCorp did not want to commit itself

to send 10, 20, or 100 aircraft to Stevens when it had no guarantee that it would receive from the government that number of aircraft under the Prime Contract. In the final analysis, the "Pricing Schedule" simply has nothing to do with whether DynCorp is free to send aircraft to entities other than Stevens.

3. The "Remaining Terms" Identified By DynCorp.

DynCorp next asserts that its "analysis accords with the balance of the Subcontract, which contains various flow-down provisions from the Army Contract [Prime Contract]." See DynCorp Memo, pp. 4-6. This acknowledgement of DynCorp – that the Subcontract has "flow-down provisions" from the Prime Contract – actually supports Stevens' contention that the Subcontract Agreement, read as a whole, obligates DynCorp to send to Stevens *all* C-12/RC-12 and UC-35 aircraft submitted to DynCorp under the Prime Contract. Indeed, why would the Subcontract Agreement create and rely on "flow-down" provisions from the Prime Contract if the parties did not intend that the work subject to the Subcontract would be the same as under the Prime Contract? The only *reasonable* interpretation of the so-called "flow-down provisions" is that they were included to ensure that DynCorp's obligations to Stevens hinged on what the government did or did not do under the Prime Contract.

In any event, none of the "remaining terms" which DynCorp identifies in its Memorandum support its interpretation of the Subcontract Agreement. Indeed, the unreasonableness of DynCorp's proffered interpretation is highlighted by its reference to Section A.2 of the Subcontract Agreement, which, DynCorp erroneously claims, is a "remaining term" precluding any interpretation which would obligate DynCorp to send to Stevens *all* C-12/RC-12 and UC-35 aircraft submitted to DynCorp under the Prime Contract. (DynCorp Memo, pp. 5-6). According to DynCorp, Section A.2 "expressly states there will be other

subcontractors" and thus Stevens' proffered interpretation will not work unless this Court "impermissibly read[s]" the following language from Section A.2 out of Subcontract:

[Stevens] is reminded that DYNCORP is responsible for all liaison and communications with its customer and other subcontractors for the term of this Subcontract, and no commitment shall be made to DYNCORP's customer or other subcontractors without the prior approval of DYNCORP ... If [Stevens] receives a request for information regarding the Subcontract from DYNCORP's customer or other subcontractors, [Stevens] is to notify DYNCORP immediately.

See SA, p. 14 (referenced in DynCorp Memo at pp. 5-6).

In making this argument DynCorp thereby suggests that the reference to "other subcontractors" in this Section can only be read to mean that Stevens knew DynCorp would hire subcontractors other than Stevens to do the aircraft condition inspections, strip and repaint work, and depot maintenance specified in the Subcontract Agreement. See DynCorp Memo, pp. 5-6. DynCorp's argument is unfathomable, disingenuous, and purposely misleading. As DynCorp well knows, the Prime Contract is much broader in scope than the Subcontract Agreement. And, as DynCorp clearly knows, it has a *multitude* of subcontractors performing work required by the Prime Contract. For example, DynCorp awarded a subcontract under the Prime Contract to Pratt & Whitney Canada for the engine overhaul work required under the Prime Contract – work not covered by the Subcontract Agreement.⁴

The other "remaining terms" which DynCorp identifies fare no better. Specifically, DynCorp argues that if this Court were to interpret the Subcontract Agreement as obligating DynCorp to send *all* the subject aircraft to Stevens, the provisions in the Subcontract Agreement

⁴ See <http://www.marketwire.com/press-release/Pratt-and-Whitney-Canada-355156.html>.

incorporating FAR 52.243-1, FAR 52.243-7, and FAR 52.245-2 would be rendered meaningless.⁵ See DynCorp Memo, pp. 4-6. DynCorp is simply wrong.

(a) FAR 52.243-1

As an initial matter, *DynCorp misquotes FAR 52.243-1*. Contrary to what DynCorp portrays, there is not now, nor has there ever been during the term of the Subcontract Agreement, language within FAR 52.243-1 allowing a "Contracting Officer" (presumably DynCorp puts itself in this position) to change the "[a]ssumption of services to be performed." See DynCorp Memo, pp. 4-5. Nor is there anything in FAR 52.243-1 which allows a "Contracting Officer" (i.e., DynCorp) to "modify the Subcontract's scope" as DynCorp contends. *Id.* DynCorp's entire argument is based on an erroneous belief that FAR 52.243-1 authorizes a change to the "assumption" of work, which DynCorp translates to mean that a change can be made to the *entire* scope of a contract. Neither caselaw, nor the actual language of the regulation supports this.

Case law establishes that the "within the general scope of the work" language found in FAR 52.243-1 has specific meaning. The court expressly recognized this in Air-A-Plane Corp. v. United States, 408 F.2d 1030, 187 Ct.Cl. 269 (Ct.Cl. 1969):

The normal Changes article [] permits the Government to make changes 'within the general scope of this contract.' Because of this phrase in particular, and the structure of the article in general, the court has consistently ruled that such a 'changes' provision does not authorize a 'cardinal' change -- a drastic modification beyond the scope of the contract. Rather, a fundamental alteration of this type is a contract breach, entitling the contractor to breach damages.

⁵ DynCorp's citations to these regulations is, at best, confusing. DynCorp specifically identifies in its brief FAR 52.243-1, FAR 52.243-7, and FAR 52.245-2. At one point it purports to quote from FAR 52.243-1, and cites the Court to § I-74 of the Subcontract Agreement for this quote. See DynCorp Memo, pp. 4-5. However, § I-74 of the Subcontract is actually FAR 52.245-2. In an attempt to unravel the confusion caused by DynCorp's references, Stevens will deal with each regulation in turn.

Air-A-Plane, 408 F.2d at 1032-33. And, notably, the government is not allowed to make a change to a contract that results in the complete elimination of a portion of the work awarded under the contract. *See, e.g., General Contracting & Construction Co. v. United States*, 84 Ct.Cl. 570 (Ct.Cl. 1937) (holding that authority "vested in contracting officer" to make changes in drawings and specifications "did not vest him with authority to eliminate entirely from the contract Building No. 17," which was one of several buildings to be constructed under the contract because "[i]f he could eliminate one building from the contract under the guise of making changes in the drawings and specifications he could likewise eliminate two or any number of buildings and thus entirely change the contract"; elimination of a building from the contract constituted a breach of contract).

DynCorp's suggestion that the incorporation of FAR 52.243-1 into the Subcontract authorizes such wholehearted changes as modifying an exclusive provider contract to eliminate all obligations to send work to that provider does not comport with this well recognized law. Nor does it comport with the language of the regulation itself. DynCorp relies on Alternate II of FAR 52.243-1 for its argument. That provision allows a "Contracting Officer" "*by written order*" to make certain changes "within the general scope of [the] contract," but those changes can be made to only six things: the "*description* of the services to be performed"; the time of performance; the place of performance; drawings, designs and specifications; the method of shipment; and the place of delivery. 48 C.F.R. § 52.243-1 (Alternate II) (emphasis added).⁶ None of these translate into a "Contracting Officer" having the right to divert work from a party contractually entitled to receive it.

⁶ For the Court's convenience, a copy of FAR 52.243-1 and FAR 52.243-7 (cited in DynCorp's Memorandum) are attached hereto as Exhibit A. DynCorp also cites FAR 52.245-2 in its Memorandum. That FAR is set forth in full at pages 47 to 49 of the Subcontract Agreement.

DynCorp's argument that FAR 52.243-1 negates any claim of "exclusivity" makes no sense for the additional reason that this Court is currently tasked with interpreting the Subcontract Agreement *as written* to determine if DynCorp is obligated by its terms to send to Stevens *all* C-12/RC-12 and UC-35 aircraft submitted to DynCorp under the Prime Contract. Assuming, *arguendo*, that DynCorp is correct that it could unilaterally modify the Subcontract to change its terms (which it is not), the fact is that DynCorp has not complied with the provisions of FAR 52.243-1 requiring a "written order" to modify Stevens' right to service *all* C-12/RC-12 and UC-35 aircraft.

Finally, DynCorp's suggestion that FAR 52.243-1 would have no meaning if the Subcontract Agreement is interpreted to give Stevens the right to perform the specified maintenance on *all* aircraft makes no sense, whatsoever. When applicable, the plain wording of the regulation allows a "Contracting Officer" to modify the "description of services to be performed" *e.g.*, use of a different method of stripping paint, additional tests as part of an aircraft condition inspection, etc. This authority to modify the "description of services" remains even if DynCorp sends *all* aircraft to Stevens.

(b) FAR 52.243-7

In its Memorandum, DynCorp also makes what can only be described as a passing reference to FAR 52.243-7. *See* DynCorp Memo, p. 5. DynCorp's reference to FAR 52.243-7 is, at best, confusing. DynCorp first makes a passing statement that if the Subcontract Agreement meant to bestow "exclusivity" on Stevens the parties would not have included in it a reference to FAR 52.243-7 because "exclusivity" renders that regulation meaningless. *Id.* DynCorp offers no explanation for this bald statement, but does drop a footnote explaining that

FAR 52.243-7 "governs a notice process for [Stevens] if it contends changes in the Scope of Services has occurred." Id. at p. 5 fn.7.

As expressly stated in its own context, "the primary purpose" of FAR 52.243-7 "is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract." 48 C.F.R. § 52.243.7(b). The regulation obligates a contractor to notify "the Administrative Contracting Officer" within a set number of days "from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions." Id. Stevens is at a loss as to what this provision has to do with the issue before this Court, *i.e.*, whether the Subcontract Agreement obligates DynCorp to send to Stevens *all* C-12/RC-12 and UC-35 aircraft submitted to DynCorp under the Prime Contract. As a result, all that Stevens can offer in response is that it does not believe the Subcontract terms and conditions have changed at all. What it believes is that DynCorp has breached the terms and conditions that do exist.⁷

(c) FAR 52.245-2

DynCorp stretches yet again when it argues that FAR 52.245-2 refutes any claim of "exclusivity" because, according to DynCorp, that regulation authorizes a reduction in the number of "government-owned aircraft sent to [Stevens]." *See* DynCorp Memo, p. 6. According to DynCorp, "[i]f the Subcontract constitutes an exclusive agreement, then DynCorp would have no ability to reduce the number of government-owned aircraft sent to [Stevens], as expressly permitted by FAR 52.245.2(b)." Id. Notably, DynCorp never explains why this is so.

⁷ To the extent DynCorp is suggesting that Stevens was obligated to give notice to DynCorp under FAR 52.243-7 that DynCorp's diversion of aircraft away from Stevens constituted a breach of the Subcontract Agreement, the point is moot. Stevens actually gave such notice to DynCorp by letter immediately upon learning of the breach.

In any event, according to the Subcontract Agreement FAR 52.245-2 is to be applied only to the specific "Government-furnished property described in the Schedule or specifications." See SA, p. 47. And, there is no "Schedule or specifications" before this Court which establish that the "government-furnished property" subject to FAR 52.245-2 includes the actual subject matter of the Subcontract Agreement (*i.e.*, the aircraft). And, as DynCorp well knows, the aircraft themselves are *not* "government-furnished property" within the meaning of FAR 52.245-2.

In fact, the Subcontract Agreement recognizes that the actual aircraft do not fall within the parameters of FAR 52.245-2. Section H.21 of Subcontract expressly addresses "GOVERNMENT FURNISHED PROPERTY (GFP) MANAGEMENT COSTS." What is listed in Section H.21 are things such as "tugs, stands, jacks," "tools and test equipment," and "aircraft components." These are the very types of things, (as opposed to the aircraft themselves), which comport with the plain wording of FAR 52.245-2. The provisions of that regulation make no sense as applied to the actual subject matter of the Subcontract, *i.e.*, the aircraft. For example, the regulation refers to government-furnished property as something DynCorp is to deliver to Stevens "for use in connection with and under the terms of" the Subcontract, and it indicates that performance dates are based on the "expectation that Government-furnished property" will be "suitable for use (except for property furnished 'as is')." FAR 52.245-2(a)(1)(2) (emphasis added). The regulation allows Stevens to "repair, modify, return, or otherwise dispose of" government-furnished property that it receives that is not "suitable for the intended use." FAR 52.245-2(a)(3). This language simply makes no sense when applied to the aircraft themselves.

Furthermore, as DynCorp knows, the *Prime Contract* has over 900 pages of what is to be considered "government-furnished property" subject to FAR 52.245-2, and *none* of the

referenced items are the actual aircraft. What is listed in those 900+ pages are things such as tools, drawings, and parts which the government has agreed to provide to DynCorp and its subcontractors to complete the work required by the Prime Contract.

Finally, assuming, *arguendo*, that FAR 52.245-2 applies to the actual aircraft (which it does not), the language of that regulation expressly requires the submission of "*written notice*" of the specific "decrease" in government furnished property which is to occur. The pleadings do not establish that any such written notice was ever given by DynCorp, and, in fact, it was not. And, obviously, even if DynCorp is obligated to give Stevens *all* aircraft, FAR 52.245-2 would still have meaning because anything less-than-all would constitute a decrease. Under such circumstances, however, FAR 52.245-2 would require DynCorp to pay Stevens for this "decrease" in the business promised to it. *See* FAR 52.245-2(b)(2) (providing that any change involving a decrease in government-furnished property entitles the subcontractor to an equitable adjustment). DynCorp has made no such payment to Stevens, and thus even under DynCorp's own nonsensical interpretation it is in breach of the terms of the Subcontract Agreement.

B. The Incorporation Of The Teaming Agreement Into The Subcontract.

In seeking judgment on the pleadings, DynCorp argues that this Court should ignore the Teaming Agreement executed by it and Stevens prior to the time that the Subcontract Agreement was entered into.⁸ *See* DynCorp Memo, pp. 7-8. According to DynCorp, the Subcontract

⁸ Even if DynCorp is correct (which it is not) that the Teaming Agreement should be completely ignored by the Court in deciding the cross-motions for judgment on the pleadings, it is indisputable that if the Court finds the Subcontract Agreement is ambiguous, the Teaming Agreement constitutes extrinsic evidence of the parties' intent which this Court can, and should, consider in construing the Subcontract Agreement. *See* Stevens Aviation Inc.'s Brief in Support of its Cross-Motion for Judgment on the Pleadings and Alternative Motion for Summary Judgment, filed on October 13, 2009. Thus, DynCorp's argument that the "claims for relief based upon the superseded [Teaming Agreement]" should be dismissed is baseless.

"constitutes a fully integrated agreement," and thus "[t]he Subcontract alone now supplies the terms of the Parties' agreement." Id. In support of its argument, DynCorp relies on Northrop Grumman Information Technology, Inc. v. United States, 535 F.3d 1339 (Fed. Cir. 2008). That case, however, actually compels this Court to consider the Teaming Agreement.

In Northrop, the court first expressly established the rules for when extraneous documents can be treated as part of a government contract for purposes of interpretation. 535 F.3d at 1343-46. The court acknowledged that no "'magic words' of reference or of incorporation" are needed, and held:

[T]o incorporate material by reference, the host document must identify with detailed particularity what specific material it incorporates and clearly indicate where that material is found in the various documents identified. In other words, the incorporating contract must use language that is *express* and *clear*, so as to leave no ambiguity about the identity of the document being referenced, nor any reasonable doubt about the fact that the referenced document is being incorporated into the contract.

Id. at 1344 (citation omitted) (emphasis in original). The Northrop court found that the extrinsic document at issue in that case (a "Letter of Essential Need") had not been incorporated into the contract agreement only because the contract did "not refer to the Letter of Essential Need explicitly, as by title or date, or otherwise in any similarly clear, precise manner." Id. at 1346.

In contrast to Northrop, the Subcontract Agreement here expressly and unequivocally refers to the Teaming Agreement *by title and date*, and expressly acknowledges that the Teaming Agreement "identifies the roles and responsibilities of the parties as Prime and Subcontractor in an effort to perform the requirements of U.S. Army Contract DAAH23-00-C-0226." See SA, p. 3. In other words, the references to the Teaming Agreement meet all the criteria established by the Northrop court (the case relied on by DynCorp) for its incorporation into the Subcontract

Agreement. Accordingly, this Court must consider the Teaming Agreement in deciding the cross-motions for judgment on the pleadings.

C. The Alleged "Rewriting" Of The Subcontract Agreement.

Completely ignoring the definition set forth in the Subcontract Agreement of the word "Aircraft", DynCorp argues that Stevens "seeks to rewrite the Subcontract" to include "UC-35 planes." See DynCorp Memo, pp. 8-9. DynCorp baldly declares that "[n]o provision of the Subcontract calls for [Stevens] to complete any work on UC-35 planes." *Id.* DynCorp is simply wrong.

In the Subcontract, the term "Aircraft" is expressly defined as: "*All Army RC/C-12 and UC-35 aircraft covered under the Prime Contract.*" See SA at p. 6 (emphasis added). And the word "Aircraft", in its capitalized format, is then used throughout the Subcontract Agreement in describing its purposes, the parties' obligations, and the work that Stevens is required to perform under its terms. See, e.g., SA at pp. 3, 15, 25, 32, 33, 37, 38. In addition, as noted above, the "roles and responsibilities of the parties" set forth in the Teaming Agreement are incorporated into the Subcontract Agreement. And, the Teaming Agreement refers to both C-12/RC-12 and UC-35 aircraft, and makes no distinction in the "roles and responsibilities" of DynCorp and Stevens with respect to the performance of aircraft condition inspections ("ACIs") and strip and repaint work on those aircraft.⁹

⁹ It is noteworthy that, in contrast to ACIs and strip and repaint work, the Teaming Agreement actually does make a distinction for "Over and Above Depot Maintenance" and "Over and Above" work, expressly indicating that Stevens is guaranteed the work under these latter categories only for the C-12/RC-12 aircraft. If the UC-35 aircraft were not to be included under the Subcontract for any purpose there would never have been a need for this distinction.

D. DynCorp's Improper Reliance On The Patent Ambiguity Doctrine,

DynCorp's argument that this Court should apply the "patent ambiguity doctrine" in deciding its Motion for Judgment on the Pleadings is inexplicable for a number of reasons.¹⁰ See DynCorp Memo, pp. 9-11.

First, as DynCorp admits, the patent ambiguity doctrine is applicable only if the Subcontract Agreement "contains *facially inconsistent* provisions." *Id.* at p. 9. DynCorp identifies no "facially inconsistent provisions" in the Subcontract Agreement. All that DynCorp does is attempt to point out terms which allegedly "contradict[] [Steven's] claims of exclusivity." *Id.* at p. 10. In other words, DynCorp argues that Stevens' proffered interpretation of the Subcontract Agreement creates a "patent ambiguity." However, the Federal Circuit Court of Appeals has rejected the notion that the patent ambiguity doctrine applies when a party's proffered interpretation of a contract creates the alleged ambiguity, and that court has indicated that the doctrine is to be invoked only if the contract has "facially inconsistent provisions." See, e.g., LAI Services, Inc. v. Gates, 573 F.3d 1306, 1314 fn.6 (Fed. Cir. 2009).¹¹ Because DynCorp

¹⁰ The "patent ambiguity doctrine" and the rules governing interpretation of ambiguous contracts are *not* one and the same. A contract is considered to be "ambiguous" if, *when read as a whole*, it is subject to more than one *reasonable* interpretation; a finding of such ambiguity requires a court to consider extrinsic evidence in determining the contract's meaning. See, e.g., McAbee Construction, Inc. v. United States, 97 F.3d 1431, 1434-35 (Fed. Cir. 1996). The "patent ambiguity doctrine" is distinct from this in that it comes into play only if there are *specific* provisions in a contract which are *facially inconsistent* with one another. See DynCorp Memo, p. 9 (and cases cited therein).

¹¹ DynCorp actually cited the LAI Services case in its own Memorandum (see DynCorp Memo, p. 10), but apparently overlooks that court's analysis which makes amply clear that the patent ambiguity doctrine does not come into play merely because one party's proffered interpretation of a contract is alleged to *create* an ambiguity. See LAI Services, 573 F.3d at 1314 (after finding that patent ambiguity doctrine did not apply because the government was contending only that the contractor's "interpretation" of the contract created the ambiguity, court went on to determine whether "the plain language of the contract supports only one reading or supports more than one reading and is ambiguous").

does not identify any conflicting provisions in the Subcontract Agreement its arguments based on the patent ambiguity doctrine are improper.

Second, the patent ambiguity doctrine simply has no place in this Court's analysis of a contract entered into by two private parties. The patent ambiguity doctrine is "a court-made rule" which has never been given "broad application" even in the federal government contracts context. Triax Pacific, Inc. v. West, 130 F.3d 1469, 1475 (Fed. Cir.1998). The doctrine exists as a check on the government *bidding* process, and the purposes underlying the doctrine make clear that it has no rightful application in interpreting an agreement between two private parties:

The patent ambiguity doctrine is a court-made rule that is designed to ensure, to the greatest extent possible, that all parties bidding on a contract share a common understanding of the scope of the project. That objective is particularly important in government contracts, in which significant post-award modifications are limited by the government's obligation to use competitive bidding procedures and by the risk of prejudice to other potential contractors. In addition, the duty of inquiry prevents contractors from taking advantage of ambiguities in government contracts by adopting narrow interpretations in preparing their bids and then, after the award, seeking equitable adjustments to perform the additional work the government actually wanted.

While this court has invoked the patent ambiguity doctrine in appropriate cases, it has not given the doctrine broad application. Because the doctrine has the effect of relieving the government from the consequences of its own poorly drafted contracts, the doctrine has been applied only to contract ambiguities that are so 'patent and glaring' that it is unreasonable for a contractor not to discover and inquire about them. More subtle ambiguities are deemed latent and are accorded an interpretation favorable to the contractor under the doctrine of *contra proferentum*.

Triax Pacific, 130 F.3d at 1475. The Subcontract Agreement before this Court was not executed as part of any bidding process; in fact, DynCorp actually asks this Court to completely ignore the one document executed by the parties that was part of the bidding process, *i.e.*, the Teaming Agreement. Under these circumstances, the patent ambiguity doctrine does not apply.

Third, there are no "facially inconsistent provisions" in the Subcontract Agreement that are so "*patent and glaring*" that Stevens should have inquired about them. Indeed, all the provisions of the Subcontract Agreement are consistent with Stevens' interpretation of it: that the Subcontract obligates DynCorp to send to Stevens *all* C-12/RC-12 and UC-35 aircraft submitted to DynCorp under the Prime Contract for the specified maintenance work.

E. **DynCorp's Newly Raised Damage Theory.**

Apparently anticipating the inevitable, DynCorp asks that, in the event judgment is not entered in its favor, this Court dismiss all of Stevens' claims for relief other than those for "actual damages" and/or for an "equitable adjustment." See DynCorp Memo, pp. 11-13. DynCorp – which has answered the Complaint (twice) – did not move this Court for such relief, and requests dismissal of certain damage claims for the first time in the Memorandum supporting its Motion for Judgment on the Pleadings. Even if this Court puts aside the procedural impropriety of DynCorp's request, it should deny DynCorp's baseless prayer for dismissal.

1. **The Subcontract Agreement Does Not Address Damages For Breach.**

DynCorp first argues that this Court should dismiss Stevens' claims for "reputational harm, lost business opportunities, punitive damages" and "all other such damage claims." See DynCorp Memo, pp. 11-12. DynCorp's only basis for seeking such relief is the provision in the Subcontract Agreement found in Section H.23(C). *Id.* That Section of the Subcontract expressly and unequivocally outlines the remedies available in the event one of the *defined* "Events of Default" listed in Section H.23(A)(B) occurs.¹² That provision has nothing to do with this case

¹² In the Subcontract Agreement, the only "Events of Default" for *DynCorp* which would invoke the purported "actual damages" remedies provision relied on by DynCorp in its Memorandum are limited to its failure to make timely payments and the discontinuation of its business. See SA, pp. 41-42.

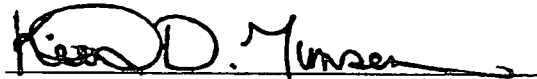
because none of the "Events of Default" relate to DynCorp breaching the Subcontract Agreement by diverting work away from Stevens. DynCorp's argument is bogus.

2. Stevens' Remedies Are Not Limited To An Equitable Adjustment.

Erroneously citing FAR 52.245-2, DynCorp next argues that Stevens' right to relief is limited to an "equitable adjustment." Based on DynCorp's argument, Stevens assumes that DynCorp intended to cite FAR 52.243-1. In any event, DynCorp's argument is without merit because it is based on the completely erroneous assumption that some regulation authorizes it to divert aircraft away from Stevens to other maintenance service entities. This assumption is supported by neither fact, nor law. See § III.A.3(a), *supra*. Furthermore, in arguing that this Court should limit Stevens' damages to an "equitable adjustment," DynCorp completely ignores the fact that Stevens has pleaded a claim for breach of the duty of good faith and fair dealing which, if proven, entitles Stevens' to all the damages it claims.

IV. CONCLUSION

DynCorp's proffered interpretation of the Subcontract Agreement is based on misquoted regulations, misapplications of the law, and a complete disregard of significant contractual provisions. There is only one *reasonable* interpretation of the Subcontract Agreement that is supported by the plain language of its provisions, and which gives meaning to each and every provision contained therein: the Subcontract obligates DynCorp to send to Stevens *all* C-12/RC-12 and UC-35 aircraft submitted to DynCorp under the "Prime Contract". DynCorp's Motion for Judgment on the Pleadings should be denied, and Stevens' Cross-Motion for Judgment on the Pleadings should be granted.



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October 16, 2009

EXHIBIT A

Westlaw.

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C

Effective:[See Text Amendments]

Code of Federal Regulations Currentness
 Title 48. Federal Acquisition Regulations System
 Chapter 1. Federal Acquisition Regulation
 Subchapter H. Clauses and Forms
 * Part 52. Solicitation Provisions and Contract Clauses (Refs & Annos)
 * Subpart 52.2. Texts of Provisions and Clauses

→ 52.243-1 Changes--Fixed-Price.

As described in 43.205(c), insert the following clause:

Changes--Fixed-Price (AUG 1987)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(2) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Con-

tracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

Alternate I (APR 1984). If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

Alternate II (APR 1984). If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this

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contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.

Alternate III (APR 1984). If the requirement is for architect-engineer or other professional services, substitute the following paragraph (a) for paragraph (a) of the basic clause and add the following paragraph (f):

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed.

(f) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Contracting Officer.

Alternate IV (APR 1984). If the requirement is for transportation services, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Specifications.
- (2) Work or services.
- (3) Place of origin.

(4) Place of delivery.

(5) Tonnage to be shipped.

(6) Amount of Government-furnished property.

Alternate V (APR 1984). If the requirement is for research and development and it is desired to include the clause, substitute the following subparagraphs (a) (1) and (a)(3) and paragraph (b) for subparagraphs (a)(1) and (a)(3) and paragraph (b) of the basic clause:

(1) Drawings, designs, or specifications.

(3) Place of inspection, delivery, or acceptance.

(b) If any such change causes an increase or decrease in the cost of, or time required for, performing this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in (1) the contract price, the time of performance, or both; and (2) other affected terms of the contract, and shall modify the contract accordingly.

[52 FR 30079, Aug. 12, 1987; 54 FR 48995, Nov. 28, 1989]

SOURCE: 48 FR 42478, Sept. 19, 1983; 48 FR 43273, Sept. 22, 1983; 50 FR 52429, Dec. 23, 1985; 54 FR 5054, Jan. 31, 1989; 60 FR 48218, Sept. 18, 1995; 68 FR 28079, 28091, 28097, 28098, May 22, 2003; 68 FR 43856, 43865, 43869, 43874, July 24, 2003; 68 FR 56672, 56683, 56684, 56686, Oct. 1, 2003; 68 FR 69254, 69258, Dec. 11, 2003; 69 FR 1053, Jan. 7, 2004; 69 FR 16149, March 26, 2004; 69 FR 17744, 17770, April 5, 2004; 69 FR 25275, May 5, 2004; 69 FR 34227-34229, 34240, June 18, 2004; 69 FR 59700, 59704, Oct. 5, 2004; 69 FR 76345, 76348, 76353, 76358, Dec. 20, 2004; 69 FR 77872, Dec. 28, 2004; 70 FR 11742, 11752, 11762, 11763, March 9, 2005; 70 FR 14954, March 23, 2005; 70 FR 18959, April 11, 2005; 70 FR 33656, 33659, 33661, 33665, 33673, June 8, 2005;

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70 FR 43581, 43582, 43584, July 27, 2005; 70 FR 57459, Sept. 30, 2005; 71 FR 20304, April 19, 2006; 71 FR 38245, July 5, 2006, unless otherwise noted.

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

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Current through October 9, 2009; 74 FR 52373

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C

Effective: September 28, 2006

Code of Federal Regulations Currentness
 Title 48. Federal Acquisition Regulations System
 Chapter 1. Federal Acquisition Regulation
 Subchapter H. Clauses and Forms
 *§ Part 52. Solicitation Provisions and Contract Clauses (Refs & Annos)
 *§ Subpart 52.2. Texts of Provisions and Clauses

→ 52. 243-7 Notification of Changes.

As prescribed in 43.107, insert the following clause:

Notification of Changes (APR 1984)

(a) Definitions.

Contracting Officer, as used in this clause, does not include any representative of the Contracting Officer.

Specifically Authorized Representative (SAR), as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this subparagraph and shall be issued to the designated representative before the SAR exercises such authority.

(b) Notice. The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing promptly, within ____ (to be negotiated) calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral

communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state—

(1) The date, nature, and circumstances of the conduct regarded as a change;

(2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;

(3) The identification of any documents and the substance of any oral communication involved in such conduct;

(4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;

(5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including—

(i) What contract line items have been or may be affected by the alleged change;

(ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;

(iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;

(iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and

(6) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.

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(c) Continued performance. Following submission of the notice required by (b) above, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; provided, however, that if the Contractor regards the direction or communication as a change as described in (b) above, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing promptly and copies furnished to the Contractor and to the Contracting Officer. The Contracting Officer shall promptly countermand any action which exceeds the authority of the SAR.

(d) Government response. The Contracting Officer shall promptly, within ____ (to be negotiated) calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either—

(1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;

(2) Countermand any communication regarded as a change;

(3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or

(4) In the event the Contractor's notice information is inadequate to make a decision under (1), (2), or (3) above, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.

(e) Equitable adjustments.

(1) If the Contracting Officer confirms that Govern-

ment conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made—

(i) In the contract price or delivery schedule or both; and

(ii) In such other provisions of the contract as may be affected.

(2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in (b) and (c) above.

Note: The phrases contract price and cost wherever they appear in the clause, may be appropriately modified to apply to cost-reimbursement or incentive contracts, or to combinations thereof.

(End of clause)

[55 FR 25534, June 21, 1990; 55 FR 38518, Sept. 18, 1990; 56 FR 15148, April 15, 1991; 71 FR 57369, Sept. 28, 2006]

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SOURCE: 48 FR 42478, Sept. 19, 1983; 48 FR 43273, Sept. 22, 1983; 50 FR 52429, Dec. 23, 1985; 54 FR 5054, Jan. 31, 1989; 60 FR 48218, Sept. 18, 1995; 68 FR 28079, 28091, 28097, 28098, May 22, 2003; 68 FR 43856, 43865, 43869, 43874, July 24, 2003; 68 FR 56672, 56683, 56684, 56686, Oct. 1, 2003; 68 FR 69254, 69258, Dec. 11, 2003; 69 FR 1053, Jan. 7, 2004; 69 FR 16149, March 26, 2004; 69 FR 17744, 17770, April 5, 2004; 69 FR 25275, May 5, 2004; 69 FR 34227-34229, 34240, June 18, 2004; 69 FR 59700, 59704, Oct. 5, 2004; 69 FR 76345, 76348, 76353, 76358, Dec. 20, 2004; 69 FR 77872, Dec. 28, 2004; 70 FR 11742, 11752, 11762, 11763, March 9, 2005; 70 FR 14954, March 23, 2005; 70 FR 18959, April 11, 2005; 70 FR 33656, 33659, 33661, 33665, 33673, June 8, 2005; 70 FR 43581, 43582, 43584, July 27, 2005; 70 FR 57459, Sept. 30, 2005; 71 FR 20304, April 19, 2006; 71 FR 38245, July 5, 2006, unless otherwise noted.

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Stevens Aviation, Inc.,)
Plaintiff,)

Civil Action No. 2009-CP-23-7229

vs.)

**MEMORANDUM SUPPORTING MOTION
FOR JUDGMENT ON THE PLEADINGS**

DynCorp International LLC, and)
Science Applications International)
Corporation,)
Defendants.)

DynCorp International, LLC ("DynCorp") respectfully submits this Memorandum Supporting Defendant's Motion for a Judgment on the Pleadings dismissing the Complaint of Stevens Aviation, Inc. ("SAI").

I. INTRODUCTION

Wishful thinking best describes SAI's lawsuit alleging breaches of non-existent terms in a contract. Plaintiff admits its case "hinges" on the Court finding SAI as "the exclusive provider" of aviation services under a subcontract executed by the Parties.¹ But, the Parties' subcontract contains no exclusivity language. DynCorp did not and could never agree to such exclusivity terms due to obligations under its Prime Contract with the U.S. Army. Because SAI's claims totally lack merit, the Court should dismiss this lawsuit and spare DynCorp any further defense costs.

II. FACTUAL BACKGROUND

The Department of Defense awarded United States Prime Contract No. DAAH23-00-C-0226 ("Army Contract") to DynCorp in early 2001. (Compl. ¶ 10.) DynCorp and SAI then

¹ (Pl.'s Br. Supp. Mot. Expedited Disc. p. 5.)

executed subcontract No. LCCS/SAI001 ("Subcontract") in March of 2001. (Exhibit A to Complaint.) Under the Subcontract, SAI agreed to perform certain repair and maintenance work on C-12/RC-12 military aircraft. Nowhere does the Subcontract identify SAI as DynCorp's *exclusive* or *sole* service provider for maintenance and repair work beneath the Army Contract.²

On August 24, 2009, SAI sued DynCorp contending the Subcontract conferred upon SAI exclusive rights to maintain and repair certain aircraft. (See, e.g., Compl., ¶ 30(a)-(b).) SAI attached a copy of the Subcontract to the Complaint as Exhibit A and incorporated the agreement into the pleading.³ Because no term of the Subcontract confers exclusive rights upon SAI, and because SAI's lawsuit "hinges" upon a finding of exclusivity, DynCorp is entitled to a Judgment on the Pleadings.

² Pursuant to Section H.5 of the Subcontract, (Compl., Ex. A, p. 30), the "federal common law of government contracts as enunciated and applied by federal judicial bodies, Boards of Contract Appeals, and quasi-judicial agencies of the federal government" controls the interpretation and construction of the Subcontract. (Compl., Ex. A, p. 30, § H.5.) If federal common law is not dispositive on an issue, "the laws of Texas shall apply." (Compl., Ex. A, p. 30, § H.5.)

³ See Rule 10(c), S.C. R. Civ. P., which states: "A copy of any plat, photograph, diagram, document or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading." Therefore, "[a] copy of a document which is an exhibit to a pleading is a part of the pleading for all purposes" Brazell v. Windsor, ___ S.C. ___, ___ S.E.2d ___, 2009 WL 2851284 (S.C. Sept. 8, 2009.) "Where there is a disparity between a written instrument annexed to a pleading and an allegation in the pleading based thereon, the written instrument will control." ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 n.8 (3d Cir. 1994); Charles A. Wright & Arthur R. Miller, 5A Federal Practice and Procedure: Civil 3d § 1327 n.21 & accompanying text (3d ed. 2004) ("It appears to be well settled that when a disparity exists between the written instrument annexed to the pleadings and the allegations in the pleadings, the terms of the written instrument will control"); see also Ogden Martin Sys. of Indianapolis, Inc. v. Whiting Corp., 179 F.3d 523, 529 (7th Cir. 1999); Nishimatsu Constr. Co. v. Houston Nat'l Bank, 515 F.2d 1200, 1206-07 (5th Cir. 1975); Braswell v. Haywood Reg'l Med. Ctr., 352 F. Supp. 2d 639 (W.D.N.C. 2005). For convenience, DynCorp has attached the Subcontract hereto as Exhibit A.

III. LAW/ANALYSIS

SAI's Complaint warrants dismissal for the following reasons:

A. The Subcontract Confers No Exclusive Rights Upon SAI.

1. No Exclusivity Provision Exists In The Subcontract.

The Subcontract contains no exclusivity provision. SAI bases its allegations upon a fictional and nonexistent contract term. The Subcontract never uses the term "exclusive" regarding the services to be provided by SAI. Nowhere does the Subcontract prevent DynCorp from using another subcontractor. Not once does the subcontract designate SAI as a "sole source" provider. Had the Parties intended the Subcontract as an exclusive agreement, the Subcontract would contain express language to that effect. Yet none exists—SAI simply invents these terms.⁴

2. The Subcontract's Pricing Schedule for Work Does Not Grant Exclusivity.

Section B of the Subcontract contains the Pricing Schedule ("Schedule"). (See Compl., Ex. A, p. 17 - 21.)⁵ The Schedule lists the supplies and services to be provided by SAI under the Subcontract. Nowhere does the Schedule (or the Subcontract generally) designate SAI as the sole provider of the maintenance and repair services addressed. Notably, SAI can identify none.

⁴ DynCorp asks the Court not only to consider what the Subcontract says but what was not included in the Subcontract. Had the Parties intended for the Subcontract to constitute an exclusive agreement, the contract would at least contain some express exclusivity term. The term exclusivity would be defined. The failure to maintain exclusivity would be included as an event of default. The amount of aircraft to be provided would be somehow established. Yet none of these terms appear in the Subcontract, despite the fact that two sophisticated, commercial actors negotiated and executed the agreement.

⁵ Under the Subcontract's terms, the Pricing Schedule must be the primary focus of contractual analysis. The Subcontract specifically states that "[i]n the event of an inconsistency between any of the provisions of this Subcontract, the inconsistency shall be resolved by giving precedence in the following order: (1) Pricing Schedule (excluding the specifications), reflected in Section B.4. . . ." (Compl. Ex. A, p. 14, § A.3).

The Schedule's list of services (in § B.4 of the Subcontract) refutes SAI's claims of exclusivity. The Schedule allots no amount or quantity for any of the work items disputed by SAI.⁶ The Subcontract assigns each work item a Client Line Item Number ("CLIN"), appearing on the first column of the Schedule on pages 17 through 21 of the Subcontract. In relation to the CLINs disputed by SAI, the Parties intentionally left blank both the "Quantity" and "Amount" columns on the Schedule. (See Compl., Ex. A, pp. 17-21, § B.4.) While the Subcontract does assign a "Unit Price" for each CLIN, the Subcontract does not allot any specified "Quantity" or "Amount" per work item.

DynCorp has no obligation to purchase a pre-set amount of supplies or services from SAI. SAI could have, but did not, negotiate a minimum quantity and amount for each CLIN. SAI now asks for a judicial re-write of the Subcontract to establish an allotted amount of every plane. The Parties never agreed to a minimum threshold amount.

3. The Subcontract's Remaining Terms Contradict SAI's Claims of Exclusivity.

By contrast to SAI's urged construction, DynCorp's analysis accords with the balance of the Subcontract, which contains various flow-down provisions from the Army Contract. For example, the Subcontract incorporates Federal Acquisition Regulation ("FAR") 52.243-1, which states:

Alternate II (Apr. 1984). If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

⁶ Certain limited exceptions exist with respect to written modifications to the Subcontract executed by the Parties where minimum quantities are included. SAI does not allege any breach of these modifications. Notably, SAI failed to attach these provisions to its Complaint, as they actually disprove Plaintiff's urged construction. When the Parties intended to establish minimum thresholds, they included quantities. When no quantities were intended, the Parties included none.

(a) The contracting officer at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Assumption of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specifically manufactured for the government, in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.

(Compl., Ex. A, p. 45, § I-74.)⁷ DynCorp's express ability to modify the Subcontract's scope squarely contradicts SAI's contentions of exclusivity.

If, as SAI contends, an "exclusivity provision" prevented DynCorp from changing or modifying the Scope of Services under the Subcontract (including reducing the number of planes sent to SAI), then the Parties would not have expressly incorporated FAR 52.243-1 and 52.243-7 into the Subcontract. Otherwise, incorporation of FAR 52.243-1 and 52-243-7 would have no meaning. Price v. United States, 46 Fed. Cl. 640, 647 (2000) (regarding government contracts, "a court must give reasonable meaning to all parts of the contract and not render portions of the contract meaningless") (citing Fortec Constructors v. United States, 760 F.2d 1288, 1292 (Fed. Cir. 1985); United States v. Johnson Controls, Inc., 713 F.2d 1541, 1555 (Fed. Cir. 1983); McAbee Constr., Inc. v. United States, 97 F.3d 1431, 1434 (Fed. Cir. 1996)). Accordingly, the Court should reject SAI's construction as contrary to the Subcontract's plain language.

SAI's urged construction impermissibly attempts to delete other Subcontract terms as well. While SAI contends it is the exclusive, sole, or only subcontractor under the Prime

⁷ The Subcontract similarly incorporates FAR 52.243-7, which governs a notice process for SAI if it contends changes in the Scope of Services has occurred. (Compl., Ex. A, p. 45, § I-74.)

Contract. Section A.2 expressly states there will be other subcontractors and directs how communications should occur (or not occur) between SAI and other subcontractors. (Compl., Ex. A, pp. 14, § A.2.). If the Subcontract expressly references other subcontractors, the Court cannot adopt SAI's forced construction, rendering it the sole subcontractor, without impermissibly reading the reference to other subcontractors out of the agreement. Price, 46 Fed. Cl. at 647.

Yet another provision of the Subcontract refutes SAI's claims of exclusivity. The Parties also incorporated FAR 52.245-2 into the Subcontract, which governs handling of U.S. Army property. (Compl., Ex. A, p. 47, § I-74.) FAR 52.245(b) states: "The Prime Contractor [DynCorp] may, by written notice, (i) decrease the Government-furnished property provided or to be provided under [the Subcontract]. . . ." FAR 52.245-2(b). The government property dealt with under the Subcontract includes C-12/RC-12 aircraft. If the Subcontract constitutes an exclusive agreement, then DynCorp would have no ability to reduce the number of government-owned aircraft sent to SAI, as expressly permitted by FAR 52.245.2(b). SAI's construction of the Subcontract altogether fails to acknowledge such provisions in the agreement, while simultaneously failing to cite a single provision actually conferring exclusive rights or even using the word "exclusive."

The Subcontract contains no exclusivity provisions. Plaintiff admits its case "hinges" upon the Court finding such exclusivity provisions exist. In this way, SAI asks the Court for a contractual do-over because it no longer likes the Subcontract's terms. The Parties constitute two sophisticated commercial entities; the Court should not rewrite the Subcontract simply to sustain SAI's unsupported legal theories.

B. The Subcontract's Terms Alone Control the Scope of the Parties' Business Relationship.

SAI's claims for relief errantly focus on a Teaming Agreement ("TA") executed by the Parties before the later-executed Subcontract superseded the TA. (See Compl. ¶¶ 5-11, 13, 39.)⁸ The Subcontract alone now supplies the terms of the Parties' agreement. Arguing to the contrary, SAI conspicuously ignores the terms of the Subcontract which *expressly* superseded the TA:

Whereas, this Subcontract supersedes all prior written or oral agreements between the parties, excluding the Proprietary Data Exchange Agreement executed on 16 March, 2000, and constitutes the entire agreement between the parties hereto with respect to this Subcontract.

(Compl., Ex. A, p. 3.) Likewise:

This Subcontract constitutes the entire undertaking and agreement of the parties with respect to the subject matter hereof, and supersedes all prior representations and agreements, except for those specifically and expressly incorporated herein. It shall not be varied, except by an instrument in writing of subsequent date duly executed by authorized representatives of the parties.

(Compl., Ex. A, p. 51.) The Subcontract, therefore, constitutes a fully integrated agreement. Accordingly, the Court should dismiss all claims for relief based upon the superseded TA. See Northrop Grumman Info. Tech., Inc. v. United States, 535 F.3d 1339, 1347 (Fed. Cir. 2008) (holding integration clause which stated that its "lease terms and conditions constitute the *entire agreement* between [the parties]" barred litigant from relying upon a Letter of Essential Need (emphasis in original)).⁹

⁸ During the hearing on SAI's Motion for TRO, Judge Few asked SAI which provisions conferred exclusive rights upon SAI. (TRO Tr. 16:12-18.) SAI then cited a series of provisions from the TA, even though the Subcontract alone constitutes a fully integrated contract. (TRO Tr. 16:25, 18:4-25, 19:1-12, 27:19-25, 28:1-25.) DynCorp addresses the few provisions actually cited in the Subcontract below.

⁹Under federal common law:

SAI's claims for relief under the TA fail as a matter of law. The Subcontract expressly superseded the TA. The TA doubly terminated under its own terms. Accordingly, the Court should dismiss SAI's claims for relief under the TA and strike all references to the TA in the Complaint.

C. SAI Seeks to Rewrite the Subcontract.

Another example of how SAI seeks to rewrite the Subcontract and ignore the Subcontract's actual language relates to its claim regarding UC-35 planes. According to SAI, the Subcontract requires SAI to exclusively receive aircraft condition inspections or strip and paint work for both C-12/RC-12 planes (propeller planes) and UC-35 planes (jet airplanes). Although the Prime Contract between DynCorp and the United States Government covers both C-12/RC-12 planes and UC-35 planes, the Subcontract does not. No provision of the Subcontract calls for SAI to complete any work on UC-35 planes. To the contrary, the preamble of the Subcontract clearly limits SAI's work activities to C-12/RC-12 aircraft. It states: "DynCorp has requested and SAI has agreed to provide Depot support . . . of C-12/RC-12 Aircraft . . ." (Compl., Ex. A, p. 3, Preamble.)

[L]anguage used in a contract to incorporate extrinsic material by reference must explicitly, or at least precisely, identify the written material being incorporated and must clearly communicate that the purpose of the reference is to incorporate and must clearly communicate that the purpose of the reference is to incorporate the referenced material into the contract (rather than merely to acknowledge that the referenced material is relevant to the contract, e.g., as background law or negotiating history).

Northrop Grumman Info. Tech., Inc. v. United States, 535 F.3d 1339, 1345 (Fed. Cir. 2008); see also Carahsoft Tech. Corp. v. United States, 86 Fed. Cl. 325, 350 (Fed. Cl. 2009) (quoting and following Northrop.)

The Subcontract's substantive provisions similarly limit SAI's work to C-12/RC-12 aircraft and *not* UC-35 planes. The Statement of Requirements states: SAI "shall provide . . . maintenance and repair of the Government's fleet of C-12/RC-12 Aircraft." (Compl., Ex. A, p. 15, § B.1.A.) The Statement of Requirements fails to reference UC-35 planes whatsoever. Moreover, Section B.4 contains a schedule for the supplies and services to be provided. (Compl., Ex. A, pp. 17-21, § B.4.) Not one supply or service listed relates to the UC-35 planes. Notwithstanding the same, SAI asks the Court to rule that it is the exclusive supplier of UC-35 planes. Like Plaintiff's arguments generally, SAI's claims regarding UC-35 planes lack merit.

D. If Ambiguities Exist, the Patent Ambiguity Doctrine Bars SAI's Urged Interpretation.

To the extent SAI now claims an ambiguity existed in the Subcontract, the federal common law doctrine of patent ambiguities forecloses SAI's interpretation of exclusivity.¹⁰ "A patent ambiguity is present when [a] contract contains facially inconsistent provisions" placing a reasonable subcontractor "on notice" and prompting the subcontractor to "rectify the inconsistency by inquiring of the appropriate parties." Stratos Mobile Networks USA, LLC v. United States, 213 F.3d 1375, 1381 (Fed. Cir. 2000). That is to say, "[t]he existence of a patent ambiguity in a government contract 'raises the duty of inquiry, regardless of the reasonableness of the [subcontractor's] interpretation.'" Triax Pac., Inc. v. West, 130 F.3d 1469, 1474-75 (Fed. Cir. 1997) (quoting Fortec Constructors v. United States, 760 F.2d 1288, 1291 (Fed. Cir. 1985)). "Absent such inquiry, a patent ambiguity in the contract will be resolved against the [subcontractor]." Triax Pacific, 130 F.3d at 1474-75. "The patent ambiguity doctrine . . . requires no actual knowledge of the other party's interpretation, and only imputed recognition of

¹⁰ As noted *supra*, the Parties agreed the "federal common law of government contracts" controlled the Subcontract's interpretation and construction. (Compl., Ex. A, p. 30, § H.5.)

the ambiguity itself." HPI/GSA 3C, LLC v. Perry, 364 F.3d 1327, 1337 n.9 (Fed. Cir. 2004); see also LAI Servs., Inc. v. Gates, 573 F.3d 1306, 1314 n.6 (Fed. Cir. 2009) (same). This analysis applies to the case *sub judice*.

Even if an ambiguity existed in the Subcontract, such ambiguity would arise on the face of the Subcontract. As discussed *supra*, the Subcontract contains various terms facially contradicting SAI's claims of exclusivity. First, the Parties left blank the "Quantity" and "Amount" columns on the Schedule of Work. (See Compl., Ex. A, pp. 17-21, § B.4.) Had SAI truly believed the Subcontract as exclusive, the blank quantity and amount terms should have prompted a reasonable subcontractor to inquire further clarifying their meaning.

Second, also noted above, the Subcontract contains flow-down provisions from the Army Contract, namely, FAR 52.243-1, 52.243-7, and 52.245.2(b). (See, supra, § III.A.) All such provisions allow DynCorp to change the Subcontract's scope in plain contradiction of the exclusivity, now claimed by SAI. Had SAI truly believed the Subcontract as foreclosing DynCorp's use of other subcontractors, the FAR provisions authorizing changes in the Subcontract's scope should have prompted a reasonable subcontractor to inquire further clarifying their meaning.

Even if SAI now claims ambiguities exist in the Subcontract, such ambiguities must constitute patent ambiguities, as the above-cited, the claimed contradictory terms appear on the agreement's face. Stratos Mobile Networks, 213 F.3d at 1381 (holding that "facially inconsistent provisions" constitute patent ambiguities); see also LAI Services, 573 F.3d at 1314 n.6 ("[A] patent ambiguity is present when the contract contains *facially inconsistent* provisions." (emphasis in original)); M.A. Mortenson Co. v. Brownlee, 363 F.3d 1203, 1207 (Fed. Cir. 2004) (same). When, as here, SAI sought no clarification of the Subcontract, a patent ambiguity in the

Subcontract must be resolved against SAI. See NVT Techs., Inc. v. United States, 370 F.3d 1153, 1162 (Fed. Cir. 2004) ("If an ambiguity is obvious and a bidder fails to inquire with regard to the provision, his interpretation will fail."); P.R. Burke Corp v. United States, 277 F.3d 1346, 1355 (Fed. Cir. 2002) ("Absent such an inquiry, a patent ambiguity in the contract will be resolved against the contractor." (citation omitted)). Because the Parties incorporated the "federal common law of government contracts" into the Subcontract, because any ambiguity now cited by SAI would arise on the Subcontract's face, and because the Subcontract constitutes a fully integrated agreement, SAI's urged interpretation of exclusivity must fail.

E. Even If SAI Could Sustain a Contract Claim, It Is Not Entitled to the Remedies It Seeks.

Even if Plaintiff otherwise could sustain a contract claim, SAI cannot pursue the damages as alleged for two reasons:

1. The Subcontract Limits SAI's Damages.

In the alternative, even if the Court allowed SAI to proceed with its claims, all damages claims against DynCorp, except SAI's claims for actual damages, warrant dismissal. SAI's Complaint seeks damages not recoverable under the Subcontract. For example, SAI alleges:

- "[I]t has been damaged in that it has lost profits and other business opportunities." (Compl. ¶ 31.)
- A "lack of work and resulting revenue has created a threat to Stevens' ability to continue its current business operations as structured." (Compl. ¶ 32.)
- "[T]he intentional or negligent result of this diversion of work threatens the reputation of Stevens with the U.S. Army" (Compl. ¶ 40(c).)
- "Stevens has been damaged in that it has lost profits and other business opportunities." (Compl. ¶ 41.)
- "WHEREFORE, Stevens Aviation, Inc. prays for a judgment in its favor and against DynCorp International, LLC and against Science Applications International Corporation, for compensatory damages in an amount in excess of \$1,000,000, for punitive damage

...." (Compl., Prayer of Relief, p. 12.)

Notwithstanding Plaintiff's damages claims, the Subcontract limits SAI's damages as follows:

Remedies. Upon the occurrence of an Event of Default by either Party, the other Party shall be entitled to all remedies, minus consequential or incidental damages (actual damages only), under applicable laws in accordance with the Applicable Law and Disputes provision of this Subcontract in Section H.

(Compl., Ex. A, § H.23(c).) Accordingly, should SAI be allowed to proceed, the Court should dismiss all claims for: reputational harm, lost business opportunities, punitive damages (as to DynCorp), and all such other damage claims, not constituting "actual damages" as limited by the Subcontract.

2. With respect to Scope of Service Claims, the Subcontract Limits SAI's Relief to an Equitable Adjustment.

As noted above, the Subcontract expressly provides DynCorp with the right to reduce the number of planes sent to SAI. The Subcontract states: "The Prime Contractor [DynCorp] may, by written notice, (i) decrease the Government-furnished property provided or to be provided under [the Subcontract]" (Compl., Ex. A, p. 47, § I-74 (FAR 52.245-2(b)(1))). The only Government-furnished property at issue under the Subcontract is C-12/RC-12 planes. Even though the Subcontract expressly allows DynCorp to decrease the volume of Government-owned planes, such conduct as alleged by Plaintiff forms the sole basis of SAI's Complaint.

Further, under the Subcontract, when a decrease in Government-owned property (such as C-12/RC-12 planes) occurs, SAI's sole relief is through the administrative remedy of an equitable adjustment. (Compl., Ex. A, p. 47, § I-74 (FAR 52.245-2(b)(2))). The Subcontract states: "The right to an equitable adjustment shall be the Subcontractor's exclusive remedy." (Compl., Ex. A, p. 48, § I-74 (FAR 52.245-2(h))). In fact, the only time the Subcontract uses the word "exclusive" is to limit SAI's remedy for the exact type of conduct alleged as the basis of

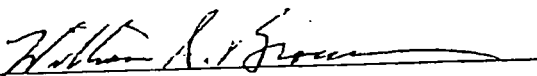
Plaintiff's claims for relief. Accordingly, SAI's ability to recover should be limited to the terms of the Subcontract.

IV. CONCLUSION

For the reasons set forth above, the Court should dismiss SAI's Complaint with prejudice.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

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October 12, 2009

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SUBCONTRACT NO.: LCCSASAI001

CONTRACT TYPE: FIRM FIXED PRICE (FFP) SUPPLIES AND SERVICES, TIME & MATERIAL (T&M);
AND COST REIMBURSABLE (CR) ELEMENTS

PLACED UNDER U.S. GOVERNMENT PRIME CONTRACT NO: DAAH23-00-C-0228

SECURITY CLASSIFICATION - UNCLASSIFIED

PRIORITY RATING: DOS1

SUBCONTRACT AGREEMENT

BETWEEN

DYNCORP INTERNATIONAL

a limited liability company of the State of Delaware
with an office at:

6500 West Freeway, Suite 600
Fort Worth, Texas 76116

(hereinafter also referred to as "Contractor" or "DYNCORP")

AND

STEVENS AVIATION, INC.

a corporation of the State of Delaware
with an office at:

Donaldson Center Industrial Air Park,
600 Delaware Street
Greenville, SC 29605

(hereinafter also referred to as "Subcontractor" or "SAI")



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SAI
DYNCORP


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SAI
DYNCORP


PREAMBLE

WITNESSETH THAT:

THIS SUBCONTRACT AGREEMENT ("Subcontract") is made effective as of the 6th day of October 2000 ("Effective Date") between DYNCORP INTERNATIONAL, a Delaware limited liability company, with a place of business at One Ridgmar Centre, 6500 West Freeway, Fort Worth, Texas 76116 (hereinafter "DYNCORP", the "Prime Contractor", the "LCCS Contractor" or the "Contractor"), STEVENS AVIATION, INC., a Delaware corporation, with a place of business at Donaldson Center Industrial Air Park, 600 Delaware Street, Greenville, SC 29605, (hereinafter also referred to as "Subcontractor" or "SAI"). DYNCORP and SAI shall throughout this Subcontract be referred to individually as a "Party" or in the plural as the "Parties";

WHEREAS, the parties entered into a Teaming Agreement ("TA") executed on 18 March, 2000, which identifies the roles and responsibilities of the parties as Prime and Subcontractor in a cooperative effort to perform the requirements of U.S. Army Contract DAAH23-00-C-0226 ("Prime Contract");

WHEREAS, this Subcontract supersedes all prior written or oral agreements between the parties, excluding the Proprietary Data Exchange Agreement executed on 18 March, 2000, and constitutes the entire agreement between the parties hereto with respect to this Subcontract;

WHEREAS, the Prime Contract provides for the maintenance and repair of the Government's fleet of C-12/RC-12 and UC-35 Aircraft and related support equipment (hereinafter the "Life Cycle Contractor Support Program" or "LCCS Program");

WHEREAS, DYNCORP requires the services of a subcontractor experienced in the management, provision, repair and support of C-12/RC-12 Aircraft to fulfill certain requirements of the Prime Contract;

WHEREAS, SAI is experienced in the management, provision, repair and support of C-12/RC-12 Aircraft in the performance of government contracts;

WHEREAS, DYNCORP has requested and SAI has agreed to provide Depot support in the form of management, provision, repair and support of C-12/RC-12 Aircraft throughout the world and to perform such other services as primarily encompassed in the Prime Contract;

WHEREAS, The parties desire to enter into this Subcontract in furtherance of their objectives as stated in the TA for SAI, as a subcontractor to DYNCORP, to provide Depot support in the form of management, repair, skilled labor, materials, facilities and engineering data for the maintenance and repair of the Government's fleet of C-12/RC-12 Aircraft and related support equipment under the Prime Contract;

SAI
DYNCORP



LCCS/SAI0001

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements contained herein, the parties hereto agree as follows:

SAI
DYNCORP



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SAI11DEC00.doc

TERM

The term of this Subcontract shall be for (i) the Base Year, which shall commence on the Effective Date and continue through the 31st day of January, 2001, plus (ii) any and all of the Option Years indicated below with regard to which the Government extends the Prime Contract with DYNCORP. In each instance that the Government extends the Prime Contract with DYNCORP for any of the nine (9) Option Years indicated below, and provided that SAI is not then in default and subject to termination under Section H.23, DYNCORP shall be deemed to have extended, and shall extend, this Subcontract for the same Option Year. DYNCORP shall provide SAI written notice of each extension of the Prime Contract and the corresponding extension of this Subcontract. Option performance periods are as follows:

Option 1	1 Feb 01-31 Jan 02
Option 2	1 Feb 02-31 Jan 03
Option 3	1 Feb 03-31 Jan 04
Option 4	1 Feb 04-31 Jan 05
Option 5	1 Feb 05-31 Jan 06
Option 6	1 Feb 06-31 Jan 07
Option 7	1 Feb 07-31 Jan 08
Option 8	1 Feb 08-31 Jan 09
Option 9	1 Feb 09-31 Jan 10

SAI
DYNCORP



DEFINITIONS AND PROCEDURES RELATED TO SUBCONTRACT

Administrative Contracting Officer (ACO). The individual responsible for overall administration of the contract on behalf of the Government.

Aircraft On Ground (AOG). This acronym is used to indicate an Aircraft is Not Mission Capable, and is grounded for maintenance or unavailable spare parts.

Aircraft. All Army RC/C-12 and UC-35 aircraft covered under the Prime Contract.

Backshop. The support services to provide the necessary repairs, overhaul, testing and modification of components removed from the airframe.

Catastrophic Failure (Over and Above for Engines Only). Cost to repair exceeds eighty percent (80%) of replacement cost.

Class I and Class II Aircraft Condition Inspection (ACI). Specification establishing ACI requirements for the C-12 to carefully inspect those areas not normally accessible at the Site and to restore the Aircraft to a high level of operational availability and revitalized appearance. The Class levels indicate the specification requirements in the ACI checklists.

Contracting Officer shall mean the Government official(s) authorized to contractually commit the Government under the prime Contract, or authorized representatives of these officials acting within the scope of their authority.

Data. All management, scientific, engineering, logistics information, reports, and documentation which are required.

Day shall mean calendar day unless otherwise specified.

Defect. Any non-conformance of a characteristic with specified requirements.

Depot. Includes any facility that is not a Site and which is used for off-site Depot Level Maintenance or repair of any Aircraft or Engine.

Depot Level Maintenance. Depot level maintenance is that done on material requiring major rework, or a complete rebuild of parts, assemblies, subassemblies, and end items, including the manufacture, modification, testing and reclamation of parts required. Depot level maintenance serves to support lower levels of maintenance by providing technical assistance and performing maintenance beyond the responsibility of Organizational and Intermediate level maintenance. Depot level maintenance provides stocks of serviceable equipment by using more extensive facilities for repair than are available in lower level maintenance activities.

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Disassembly. Tear-down of the item or parts sufficient to permit the type and amount of inspection and work required.

DYNACORP Representative shall mean DYNACORP's authorized representative(s) identified elsewhere in this Subcontract.

Effective Date shall mean the effective date of this Subcontract as specified in the Preamble.

Engine Accessories. All external items containing the fuel, ignition and control systems that are normally removed for rework or replaced without disassembly of the Engine.

Engine Accessory Parts. All assemblies, subassemblies or components and detail parts pertinent to Engine accessories.

Engine Parts. All items of the basic Engine, excluding Engine accessories and parts thereof.

Engine. A built-up Engine with all accessories, in a Quick Engine Change (QEC) configuration. (QEC configurations are identified in Section 1.5.4 of Article II of this Subcontract.

Government shall mean The United States of America, acting in its contractual capacity.

Government Furnished Avionics Equipment (GFAE). Avionics equipment identified in Appendix C.

Inspect or Check. An examination of an item to determine identity, condition, and proper installation.

Mission. A mission is a pre-planned sequence of one or more sorties flown by one Aircraft that has been assigned a specific mission number.

Modification. A change in the physical configuration or in the functional characteristics of a system or equipment.

Primary Mission. A primary mission shall include day or night flight under Instrument Flight Rules (IFR) conditions, into High Density Air Traffic Control Zones and through known icing weather and conditions to altitudes requiring cabin pressurization.

Prime Contract shall mean United States Army Contract DAAH23-00-C-0228.

Procuring Contracting Officer (PCO). The individual authorized to enter into contracts for supplies and services on behalf of the Government and who is responsible for overall management of the contract.

Program Management Office (PMO). This is a general term used throughout the Statement of Work to refer to the Government Program Manager.

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Purchase Order. Any document such as an Over-&Above Work Request or Authorization to Proceed letter, which is signed by authorized DYNCORP personnel as defined in paragraphs G.3 and G.4 of this Subcontract, and which authorizes SAI to proceed with a priced effort, shall constitute a Purchase Order.

Repair. The restoration or replacement of parts or components of material as necessitated by wear and tear, damage, failure of parts, or the like, in order to maintain the specific item of material in efficient operating condition.

Repairable. A Class IX secondary item which can be repaired and returned to service.

Serviceable. Capable of meeting the requirement and performing the function for which designed or modified and meets all test requirements established by the work specification.

Site. Includes facilities provided by DYNCORP and/or the Government under the Statement of Work, which are used and maintained for the base operations support.

Support Equipment (SE). Includes all ground equipment, tools, and associated test, support, and control equipment, computers and software required to support and maintain the Aircraft.

Technical Directives. Special instructions and efforts (service, repairs, modifications and inspection) such as those required by FAA Airworthiness Directives, airframe manufacturer Service Instructions and Engine/Component Manufacturer's Service Bulletins. There are mandatory and optional technical directives.

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DEFINITIONS AND PROCEDURES RELATED TO READINESS**1.0 PURPOSE**

This appendix is intended to provide direction on determining the Mission Capable rate required for each aircraft.

2.0 MISSION CAPABLE (MC)

MC is the sum total of Fully Mission Capable (FMC) and Partially Mission Capable (PMC) hours.

2.1 FULLY MISSION CAPABLE (FMC)

A condition status that indicates the aircraft is capable of safe flight and can perform all the prescribed missions required by the Aircraft Minimum Equipment List (MEL). The aircraft MEL's are provided as an Appendix Q to this SOW. If the system is Not Mission Capable (NMC), the Contractor shall perform the work necessary, or obtain the parts that are required to return the aircraft to a FMC status. FMC rate is based on the number of hours of reporting time in a monthly reporting period that the system is available for all operational missions.

2.2 PARTIALLY MISSION CAPABLE (PMC)

The system is considered PMC when the aircraft can perform one or more, but not all, of the missions prescribed for the aircraft's owning unit because an inoperable/missing item listed in the MEL. Recording of PMC time starts when it is first known that a discrepancy exists, except when caused by an in-flight malfunction, then the time starts at the termination of the flight. PMC time stops when maintenance has been successfully completed.

2.3 NOT MISSION CAPABLE (NMC)

The material condition of an aircraft indicating that it is not capable of performing any one of its missions (as defined in the applicable Minimum Equipment/System Matrix (MESM)/Mission Essential Subsystem List (MESL)/MEL)(Appendix Q), or when a maintenance action required causes the aircraft to be non-airworthy. An aircraft shall be reported "Not Mission Capable" during all periods of time when it is not available for a mission because of scheduled or unscheduled maintenance. Scheduled maintenance time for reporting purposes includes routine, details, calendar, engine and special inspections when the combination of inspection requirements is such that it requires placing the aircraft in an inoperable condition. It does not include time spent performing daily, preflight, turnaround, post-flight inspections, or corrosion inspections when the requirements do not require placing the aircraft in an inoperable condition.

The NMC time starts when the Contractor is notified of an inoperable condition. The NMC time ends when the Contractor notifies the COR or Operations Officer that the aircraft is ready for pre-flight inspection or test flight. If the aircraft is determined to be NMC as a result of the pre-flight inspection or test flight and the cause is attributable to the original fault, NMC time shall continue from the original time of discovery provided the preflight or test flight inspection is performed within 24 hours after notification is provided to the COR or Operations Officer by the Contractor. When inspection requirements do not require a major disassembly of the aircraft and, thus, do not affect the mission capability, the aircraft is considered to be mission capable during the entire portion of the inspection phase of the inspection. However, if panels and equipment are removed to conduct area inspections and cannot be replaced within a two-hour time frame, then the entire inspection is considered to have impacted mission capability and shall be documented as NMC. The two-hour rule applies to scheduled maintenance only. If the preflight inspection or test flight is not performed within 24 hours, MC time shall apply from the time when the Contractor notified the COR that the aircraft was ready for pre-flight inspection or test flight. Should a new discrepancy be found during pre-flight or test flight, the NMC time will start when the COR notifies the Contractor of the inoperable condition. If the aircraft is not located at the BB or if the aircraft is located at the BB and Contractor personnel are not available, NMC time will start when the Government notifies the Contractor of the inoperable condition or in either case, not later than one hour after time of discovery/flight termination.

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2.4 NON-REPORTING TIME (NRT)

NRT is not authorized for any Contractor induced damage. This is a condition status of an aircraft that is not in a reporting status for the purposes of calculating reduced payment. This is the time required to perform the following: modify the aircraft; perform crash damage repair; install/remove ferry tanks; replace time or cycle limited components as depicted in the table below; and perform special inspections when directed by the COR. When directed by the Government, the time which the parts or required maintenance personnel are in the Government transportation system is considered Non-Reporting Time (NRT). The Contractor shall not be penalized for aircraft downtime resulting from, but not limited to locally enforced restrictions, holidays, noise abatement, religious customs, coups, restricted access, hostilities, military restrictions and customs clearance delays which were not in existence prior to contract award. Non-reporting time (NRT) shall be deducted from the total hours in the month when computing Mission Capable rates. Any delay in avionics repair attributable to non-availability of Government Furnished Avionics Equipment (GFAE) shall be counted as NRT for the RC-12. Any delay in systems repair attributable to non-availability of Government Furnished Equipment (GFE) or Line Replaceable Units (LRU) shall be counted as NRT for the RC-12. The following are examples of Non-Reporting Time.

- Time waiting for maintenance test flight/maintenance operational checks shall be reported as FMC up to 24 hours IAW AR 700-138 and TM 55-1500-328-23.
- Time waiting for off-Site station maintenance as described in Section 4 of the SOW.
- Aircraft involved in Service-directed efforts.
- Actions or situations substantiated and agreed to by the PCO as beyond the control of the Contractor.
- Contractor shall not be penalized for system downtime resulting from locally enforced restrictions, i.e., holidays, noise abatement, religious customs, coups, restricted access, hostilities and military restrictions.
- System aircraft awaiting/undergoing crash damage disposition/repair, which was not caused by the Contractor, shall be counted as NRT.

2.4.1 EXAMPLES OF NRT FOR C-12/RC-12 AIRCRAFT

C-12/RC-12 UNIQUE NRT CONDITION	
Engine HSI (awaiting parts)	8 hours
TBO Engine and Propeller change out	Not to exceed 2 calendar days per engine
TBO Propeller change out shall be 24 hours	Not to exceed 1 calendar day per propeller
Aircraft Engine Removal and Replacement (labor)	Not to exceed 1.5 calendar days per engine
Unanticipated engine replacement (engine shipment)	Not to exceed 3 calendar days CONUS and 8 calendar days OCONUS
100 Hour Inspection (labor)	Not to exceed 4 hours
200 Hour Inspection (labor)	Not to exceed 2 calendar days
Flap System (labor)	Not to exceed 3 calendar days
Aircraft Condition Inspection (Includes complete strip and repaint) (labor)	Not to exceed 48 calendar days
Aircraft Strip and Repaint (labor)	Not to exceed 25 calendar days
Elective Improvements	Determined by PCO
Landing Gear	Not to exceed 4 calendar days (complete set)

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2.5 REPORTING TIME

A Condition status of an aircraft that is in a reporting status for the purposes of calculating liquidated damages. The aircraft shall either be Mission Capable or Not Mission Capable. Reporting Time (RT). This is the total time that an aircraft is either mission capable or not mission capable. $(RT=MC + NMC)$

2.6 CALCULATION OF MC

Non-reporting time (NRT) per aircraft shall be deducted from the Total Hours on Hand hours in the month when computing MC rates. MC shall be calculated as depicted in the example below:

Example: The reporting period (RP) was thirty (30) days, or 720 hours; the MC time for the reporting period was 588 hours, the NMC time was thirty six (36) hours and the NRT was four (4) days, or ninety-six (96) hours.

- (1) Reporting period (RP) = # days per month X 24 hours per day = 30 days X 24 hours = 720 hours.
- (2) Reporting time (RT) = RP - NRT = 720 hours - 96 hours = 624 hours.
Also, $RT = MC + NMC$
- (3) NMC time = (NMCM + NMCS) = 36 hours.
- (4) MC time = (FMC + PMC) = RT - NMC time = 624 hours - 36 hours = 588 hours.
- (5) Availability rate = $(MC \text{ time} / RT) \times 100 = (588 \text{ hours} / 624 \text{ hours}) \times 100 = 94.2\%$.

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ABBREVIATIONS

A&P	Airframe and Powerplant
ACI	Aircraft Condition Inspection
AWR	Airworthiness Release
AD	Airworthiness Directive
AGE	Auxiliary Ground Equipment
ALSE	Aviation Life Support Equipment
AOAP	Army Oil Analysis Program
ASE	Aircraft Survivability Equipment
AMC	Air Mobility Command
BB	Beddown Base
C&E	Communication and Electronic
CFE	Contractor Furnished Equipment
CFSR	Contract Funds Status Report
CITIS	Contractor Integrated Technical Information Service
CLIN	Contract Line Item Number
COMSEC	Communication Security
CONUS	Continental United States
COR	Contracting Officer's Representative
DAC	Day After Contract
DLAM	Defense Logistics Agency Manual
DOD	Department of Defense
ETM	Engine Trend Monitoring
FAA	Federal Aviation Administration
FAR	Federal Acquisition Regulation(s) Federal Aviation Regulation(s) (Always written out in this document)
FFP	Firm, Fixed-Price
EMC	Fully Mission Capable
FOO	Foreign Object Damage
FW	Fixed Wing
FY	Fiscal Year
GFE	Government-Furnished Equipment
GFP	Government-Furnished Property
HSI	Hot Section Inspection
IAW	In Accordance With
LCCS	Life Cycle Contractor Support
MACOM	Major Command
MC	Mission Capable
MEL	Minimum Essential List
MESL	Mission Essential Subsystem List
MESM	Minimum Equipment/System Matrix
NMC	Not Mission Capable
MTF	Maintenance Test Flight
MOC	Maintenance Operational Check
NLT	No Later Than
NRT	Non-Reporting Time
OCONUS	Outside of the Continental U.S.
OEM	Original Equipment Manufacturer (Manufactured)
PCO	Procuring Contracting Officer
PM	Program Manager
PMC	Partial Mission Capable
PME	Prime Mission Equipment

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PMO	Program/Product Manager's Office
QDR	Quality Deficiency Report
RFI	Ready for Issue
RT	Reporting Time
SB	Service Bulletin
SOF	Army Safety of Flight Message
SOW	Statement of Work
STC	Supplemental Type Certificates
TB	Technical Bulletin
TBO	Time Between Overhaul
TBD	To Be Determined
TD	Technical Directive
TMDE	Test Measurement and Diagnostic Equipment
TO	Technical Order

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SECTION A

SUBCONTRACT INTERPRETATION AND ORDER OF PRECEDENCE**A.1 INTERPRETATION OF SUBCONTRACT**

- A. Each Party shall exercise due diligence to discover and bring to the attention of the other Party, at the earliest possible time, any ambiguities, discrepancies, inconsistencies, or conflicts in or between any of the technical or contractual provisions hereof.
- B. Any ambiguity, discrepancy, inconsistency or conflict in or between any of the technical or contractual provisions hereof, that cannot be resolved by the application of Subsection A.3 below, shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the parties at the time of subcontracting.

A.2 CONTACTS WITH CUSTOMER AND OTHER SUBCONTRACTORS

DYNCORP understands that from time to time SAI may have liaison and communications with DYNCORP's customer during the normal course of executing this Subcontract. SAI is reminded that DYNCORP is responsible for all liaison and communications with its customer and other subcontractors for the term of this Subcontract, and no commitment shall be made to DYNCORP's customer or other subcontractors without the prior approval of DYNCORP. Therefore, every attempt should be made to avoid any such commitment, and such liaison and communication should be relayed to DYNCORP as soon as possible. If SAI receives a request for information regarding this Subcontract from DYNCORP's customer or other subcontractors, SAI is to notify DYNCORP immediately.

A.3 ORDER OF PRECEDENCE

In the event of an inconsistency between any of the provisions of this Subcontract, the inconsistency shall be resolved by giving precedence in the following order:

- (1) Pricing Schedule (excluding the specifications), reflected in Section B.4;
- (2) Terms and conditions as set forth in the main body of this Subcontract;
- (3) Statement of Work for Aircraft Life Cycle Contractor Support (LCCS) for the C-12/RC-12 and UC-35 (Contract DAAH23-00-C-0228; Attachment 1)
- (4) Representations and certifications provided by SAI to DYNCORP in relation to this Subcontract;
- (5) Other documents, exhibits and attachments, incorporated by reference or attached hereto;
- (6) Purchase Order

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SECTION B**SUPPLIES/SERVICES AND PRICES/COSTS****B.1 STATEMENT OF REQUIREMENTS**

- A. SAI, as a Subcontractor to DYNACORP, shall provide items consisting of management, parts and materials, repairs, skilled labor, facilities and engineering data for the maintenance and repair of the Government's fleet of C-12/RC-12 Aircraft and related support equipment under the Prime Contract as specifically set forth in Section B.
- B. DYNACORP is not required to purchase from the Subcontractor any requirement in excess of the total funding identified under Section G under this subcontract.

B.2 TYPE OF CONTRACT

The subcontract awarded hereunder consists of items on a Firm Fixed Price (FFP), Time and Material (T&M), and Cost Reimbursable (CR) contractual arrangements.

B.3 COST/PRICE INFORMATION/NOTES

The following Contract Line Item Number (CLIN) descriptions apply to this Subcontract.

The first (1st) character in each CLIN set forth in a specific contract or modification will correspond to that specific ordering period. (Example: CLIN X003, as set forth below, will be identified in the Base Period as CLIN 0003, Option Period 1 as 1003 and Option Period 2 as 2003, etc).

CLIN X003 SCHEDULED MAINTENANCE**X003B C-12/RC-12 STRIP AND PAINT**

The firm-fixed unit price per aircraft shall include all labor, services, facilities, equipment, and direct and indirect parts and material to perform the requirements of the applicable specifications for strip and repaint (for other than ACI) requirements, in accordance with Section 4, Attachment 1, SOW.

X003C AIRCRAFT CONDITION INSPECTION (ACI)

The firm-fixed unit price of the ACI includes all labor, services, equipment, tools, facilities, tooling, lubricants, excluding engine oil, direct and indirect parts and material, fuel, and strip and repaint to perform all the requirements of Appendix P of Attachment 1, Statement of Work. The ACI includes performing the inspection, and the correction of minor discrepancies in accordance with Appendix P (2-1.2) of the SOW, except for those discrepancies which would normally be corrected by site organizational maintenance. Items found defective beyond those addressed by Appendix P will be handled on an Over-and-Above basis.

DynCorp will supply one case of engine oil with the plane when it goes to Stevens for ACI. Stevens shall document the engine oil usage, and return the unused oil with the plane returning to its beddown site.

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CLIN X004 OVER AND ABOVE MAINTENANCEX004AA / AB DEPOT MAINTENANCE / NON-DEPOT MAINTENANCE

The firm-fixed hourly composite over and above labor rates to perform both depot and non-depot labor will be in accordance with Section 4 and 5, Attachment 1, SOW. Separate rates will be established for Depot and Non-Depot Maintenance. DYNCORP will reimburse SAI for the labor required for:

- 1) Replacing the on condition items found defective during ACI and Strip & Paint;
- 2) Discrepancies which, if not corrected, would result in the grounding of the aircraft;
- 3) Other over and above tasks, as directed by DYNCORP.

The "Hourly Composite Rate" includes all hourly direct and indirect personnel compensation, allocable overhead, profit, and G&A expenses. The fixed hourly composite rate will include an allocation for all labor disciplines necessary to perform Over & Above work. SAI shall comply with the Section H clause entitled "Over and Above Work".

X004AC SITE ORGANIZATIONAL MAINTENANCE

Both Parties recognize that at times it will be beneficial for work that would have normally been performed at the site by the site personnel to be accomplished at SAI's facility. SAI is not authorized to proceed with such efforts without written authorization from DYNCORP. The procedures for request, provision of estimate, authorization, and performance of such efforts will be in accordance with Section H.12, "Over and Above Work". The labor rate to be applied to these efforts is included in the pricing schedule below (B.4).

X004B OVER & ABOVE PARTS AND MATERIALS

DYNCORP will reimburse SAI for the allowable actual cost to purchase parts and materials necessary for those on-condition item replacements and repairs described above. Government approved purchases of GSE will be reimbursed under this CLIN. The Subcontractor shall be allowed its normal burden factors in accordance with FAR 52.216-7, "Allowable Cost and Payment", and actual shipping costs. Fee/profit is unallowable for parts and materials. Parts/materials are cost reimbursable and shall not be included in the FFP for Over & Above Labor proposed under CLIN X004.

X004C OVER & ABOVE AIRCRAFT STORAGE

Should SAI be required to retain an aircraft at its facility for purposes other than the performance of maintenance/repair efforts as described in Section C of this Subcontract, an equitable adjustment for costs associated with the same shall be agreed upon at that time.

CLIN X005 TRAVEL AND PER DIEM

DYNCORP will reimburse the Subcontractor for travel, overtime and per diem costs for logistical support, and DYNCORP directed Deployments on the basis of allowable actual costs incurred up to the equivalent allowed a Government employee in the DOD Civilian Personnel Joint Travel Regulations for domestic travel and the Department of State Standardized Regulations for foreign travel. Travel to and from military installations shall be accomplished via Government transportation to the maximum extent possible. Travel and per diem costs incurred in the SAI-directed replacement of personnel or the attendance of SAI-directed training courses will not be reimbursed. SAI personnel may be authorized Government quarters. SAI personnel are considered equivalent to a GS-11. Travel and per diem must be authorized in advance by DYNCORP. SAI may include allowable, allocable, and reasonable charges in accordance with FAR 52.216-7 "Allowable Cost and Payment", for cost-reimbursables. Fee/profit is unallowable on cost reimbursables.

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CLIN 1000 TRANSITION PHASE OUT

Period of performance for contract phase out is for a period of 60 days occurring any time after the base period and before the conclusion of the last available option period. Transition phase out option can be exercised by the Government at any time the determination is made not to exercise the next year's contract option. Pricing will be negotiated at the time Phase out option is exercised.

B.4 SUPPLIES/SERVICES AND PRICES/COSTS

The supplies and services to be provided are as follows:

CLIN	SUPPLIES/SERVICES	QTY	UNIT	UNIT PRICE
<u>BASE YEAR (28 SEP 00 - 31 JAN 01)</u>				
0003B	Scheduled Maintenance C-12/RC-12 - Strip and Repaint		EA	\$33,529.00
0003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$68,711.00
0004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$58.78
0004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate		HR	\$78.04
0004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs Over 100 Hrs		HR	\$45.28
			HR	\$82.38
0004B	C-12/RC-12 Over and Above Parts/Materials (TBD)			
0004C	C-12/RC-12 Over And Above A/C Storage (TBD)			
0005	Travel & Per Diem (TBD)			
0010	Transition Phase-Out (TBD)			
<u>OPTION ONE (1 FEB 01 - 31 JAN 02)</u>				
1003B	Scheduled Maintenance C-12/RC-12 - Strip and Repaint		EA	\$34,327
1003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$68,299
1004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$58.12
1004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate		HR	\$77.85
1004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs Over 100 Hrs		HR	\$48.60
			HR	\$84.48
1004B	C-12/RC-12 Over and Above Parts/Materials (TBD)			
1004C	C-12/RC-12 Over And Above A/C Storage (TBD)			

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CLIN	SUPPLIES/SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT
1008	Travel & Per Diem (TBD)				
1010	Transition Phase-Out (TBD)				
OPTION TWO FEB 02 - 31 JAN 03					
2003B	Scheduled Maintenance C-12/RC-12 - Strip and Repaint		EA	\$35,192	
2003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$70,020	
2004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$59.58	
2004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate		HR	\$79.81	
2004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs Over 100 Hrs		HR	\$48.44	
			HR	\$58.74	
2004B	C-12/RC-12 Over and Above Parts/Materials (TBD)				
2004C	C-12/RC-12 Over And Above A/C Storage (TBD)				
2005	Travel & Per Diem (TBD)				
2010	Transition Phase-Out (TBD)				
OPTION THREE (1 FEB 03 - 31 JAN 04)					
3003B	Scheduled Maintenance C-12/RC-12 - Strip and Repaint		EA	\$36,079	
3003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$71,784	
3004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$61.08	
3004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate		HR	\$81.23	
3004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs Over 100 Hrs		HR	\$50.18	
			HR	\$69.14	
3004B	C-12/RC-12 Over and Above Parts/Materials (TBD)				
3004C	C-12/RC-12 Over And Above A/C Storage (TBD)				
3005	Travel & Per Diem (TBD)				
3010	Transition Phase-Out (TBD)				
OPTION FOUR (1 FEB 04 - 31 JAN 05)					
4003B	Scheduled Maintenance C-12/RC-12 - Strip and Repaint		EA	\$38,968	

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CLIN	SUPPLIES/SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT
4003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$73,593	
4004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$82.62	
4004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate		HR	\$83.69	
4004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs		HR	\$52.04	
	Over 100 Hrs		HR	\$71.70	
4004B	C-12/RC-12 Over and Above Parts/Materials (TBD)				
4004C	C-12/RC-12 Over And Above A/C Storage (TBD)				
4005	Travel & Per Diem (TBD)				
4010	Transition Phase-Out (TBD)				

OPTION FIVE (1 FEB 05 - 31 JAN 06)

5003B	Scheduled Maintenance C-12/RC-12 - Strip and Repaint		EA	\$37,942	
5003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$75,492	
5004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$65.88	
5004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate		HR	\$68.22	
5004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs		HR	\$54.07	
	Over 100 Hrs		HR	\$74.49	
5004B	C-12/RC-12 Over and Above Parts/Materials (TBD)				
5004C	C-12/RC-12 Over And Above A/C Storage (TBD)				
5005	Travel & Per Diem (TBD)				
5010	Transition Phase-Out (TBD)				

OPTION SIX (1 FEB 06 - 31 JAN 07)

6003B	Scheduled Maintenance C-12/RC-12 - Strip and Repaint		EA	\$38,898	
6003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$77,395	
6004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$65.88	
6004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate		HR	\$68.22	

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CLIN	SUPPLIES/SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT
6004AC	C-12/RC-12 Site Organizational Maintenance				
	1 st 100 Hrs		HR	\$58.23	
	Over 100 Hrs		HR	\$77.67	
6004B	C-12/RC-12 Over and Above Parts/Materials (TBD)				
6004C	C-12/RC-12 Over And Above A/C Storage (TBD)				
8005	Travel & Per Diem (TBD)				
8010	Transition Phase-Out (TBD)				
OPTION SEVEN (1 FEB 07 - 31 JAN 09)					
7003B	Scheduled Maintenance				
	C-12/RC-12 - Strip and Repaint		EA	\$39,878	
7003C	Scheduled Maintenance				
	C-12/RC-12 - ACI		EA	\$79,345	
7004AA	C-12/RC-12 Over And Above Maintenance				
	Depot Hourly Rate		HR	\$67.51	
7004AB	C-12/RC-12 Over And Above Maintenance				
	Non-Depot Hourly Rate		HR	\$90.44	
7004AC	C-12/RC-12 Site Organizational Maintenance				
	1 st 100 Hrs		HR	\$58.53	
	Over 100 Hrs		HR	\$80.65	
7004B	C-12/RC-12 Over and Above Parts/Materials (TBD)				
7004C	C-12/RC-12 Over And Above A/C Storage (TBD)				
7005	Travel & Per Diem (TBD)				
7010	Transition Phase-Out (TBD)				
OPTION EIGHT (1 FEB 08 - 31 JAN 09)					
8003B	Scheduled Maintenance				
	C-12/RC-12 - Strip and Repaint		EA	\$40,808	
8003C	Scheduled Maintenance				
	C-12/RC-12 - ACI		EA	\$81,384	
8004AA	C-12/RC-12 Over And Above Maintenance				
	Depot Hourly Rate		HR	\$68.25	
8004AB	C-12/RC-12 Over And Above Maintenance				
	Non-Depot Hourly Rate		HR	\$92.77	
8004AC	C-12/RC-12 Site Organizational Maintenance				
	1 st 100 Hrs		HR	\$61.05	
	Over 100 Hrs		HR	\$84.12	
8004B	C-12/RC-12 Over and Above Parts/Materials (TBD)				
8004C	C-12/RC-12 Over And Above A/C Storage (TBD)				
8005	Travel & Per Diem (TBD)				
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CLIN	SUPPLIES/SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT
8019	Transition Phase-Out (TBD)				
OPTION HERE (1 FEB 08 - 31 JAN 10)					
9003B	Scheduled Maintenance C-12/RC-12 - Strip and Repaint		EA	\$41,950	
9003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$58,457	
9004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$71.02	
9004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate		HR	\$95.14	
9004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs		HR	\$83.74	
	Over 100 Hrs		HR	\$57.52	
9004B	C-12/RC-12 Over and Above Parts/Materials (TBD)				
9004C	C-12/RC-12 Over And Above A/C Storage (TBD)				
9005	Travel & Per Diem (TBD)				
9010	Transition Phase-Out (TBD)				

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SECTION CDESCRIPTION/SPECIFICATIONS/WORK STATEMENTC.1 STATEMENT OF WORK/TECHNICAL SPECIFICATION

- A. The work shall be performed in accordance with the Statement of Work for Aircraft Life Cycle Contractor Support (LCCS) for the C-12/RC-12 and UC-35 (Contract DAAH23-00-C-0226; Attachment 1).
- B. C-12/RC-12 STRIP AND PAINT. SAI shall provide all labor, services, facilities, equipment, and direct and indirect parts and materials required to strip and completely repaint aircraft (for other than ACI requirements), at the direction of DYNACORP. Such work will be performed in accordance with the SOW, Section 4 (4.1.3) and OEM/FAA approved standards.
- C. AIRCRAFT CONDITION INSPECTION (ACI). SAI shall provide all labor, services, equipment, tools, facilities, tooling, lubricants, excluding engine oil, direct and indirect parts and material, fuel, and strip and repaint services required to perform all the requirements of Appendix P of Attachment 1, Statement of Work. The ACI includes performing the inspection, and the correction of minor discrepancies in accordance with Appendix P (2-1.2) of the SOW, except for those discrepancies which would normally be corrected by site organizational maintenance. Items found defective beyond those addressed by Appendix P will be handled on an Over-and-Above basis.
- 1) DynCorp will supply one case of engine oil with the plane when it goes to Stevens for ACI. Stevens shall document the engine oil usage, and return the unused oil with the plane returning to its beddown site.
 - 2) DynCorp requests SAI to submit a Statement of Compliance of Work (SOCOW) to DynCorp whenever a major or serialized maintenance/modification effort is completed.
- D. OVER AND ABOVE MAINTENANCE. SAI shall perform both Depot and Non-Depot Maintenance in accordance with Sections 4.0 and 5.0 of the SOW, and shall provide parts and materials required for the same. DYNACORP will reimburse SAI for the labor required for:
- 1) Replacing the on condition items found defective during ACI and Strip & Paint;
 - 2) Discrepancies which, if not corrected, would result in the grounding of the aircraft;
 - 3) Other over and above tasks, as directed by DYNACORP.
 - 4) DynCorp requests SAI to submit a Statement of Compliance of Work (SOCOW) to DynCorp whenever a major or serialized maintenance/modification effort is completed.
- E. SITE ORGANIZATIONAL MAINTENANCE. As directed by DYNACORP, SAI shall accomplish work, at SAI's facility, that would normally be performed at the site by the site personnel.

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SECTION DPRESERVATION, PACKAGING AND PACKINGMARKING AND SHIPPING INFORMATION**D.1 PRESERVATION, PACKAGING, PACKING AND STORAGE**

- A. Unless otherwise specified by written direction, all shipments of material, supplies, and data and technical documentation provided by SAI in the performance of this Subcontract shall be preserved, packaged and packed, and prepared for shipment to prevent deterioration and damage during shipping, handling, and storage, and to ensure safe delivery at destination in accordance with the American Society for Testing and Materials Standard and Practice for Commercial Packaging. SAI is solely responsible for the preservation, marking, packaging, and packing of all material and supplies at SAI's facility.
- B. STORAGE: SAI shall adhere to Government/Contractor Environmental criteria for the proper care, maintenance and storage of Government/Contractor property, in accordance with local, state, federal, and local station regulations. Designated Government/Contractor personnel have access to property in storage for the purpose of inspecting the property. The expense of storage, including any cost incident to the transportation to and from the storage area, shall be borne by the Subcontractor and shall not be charged to the Subcontract unless DYNACORP determines that the storage is solely for the convenience of DYNACORP. Should SAI be required to retain an aircraft at its facility other than for purposes of conducting maintenance/repair efforts as described in Section C of this Subcontract, an equitable adjustment for costs associated with the same shall be agreed upon at that time.

D.2 SHIPPING INFORMATION

Specific shipping information for material, supplies, and OEC engines shall be provided for each shipment. Data and technical documentation shall be shipped to the address below.

A. Ship To: DYNACORP INTERNATIONAL
 MF: Central Receiving/LCCS Program
 6500 West Freeway, Suite 600
 Fort Worth, TX 78118

B. Mark each crate, container or package as follows:

Prime Contract No.:	DAAH23-00-C-0228
Subcontract No.:	LCCS/SAI001

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SECTION E
INSPECTION AND ACCEPTANCE

E.1 INSPECTION AND ACCEPTANCE

- A. All supplies and services shall be subject to in-process inspections/test by DYNCORP/Government at SAI and selected vendor's facilities to the extent practicable, to determine that adequate performance is being accomplished. Such inspections will not impede the ACL schedule and will be conducted in a manner to cause the least possible disruption to the programmed work flow.
- B. SAI's and its vendor's performance shall be subject to DYNCORP/Government source inspection.
- C. DYNCORP's Technical and/or Quality Assurance Representatives will provide ongoing oversight of SAI's performance and may require SAI to initiate corrective actions as necessary. Should SAI perceive any such direction to be in conflict with, or out of, the scope of work for depot operations as set forth in Attachment A to this Subcontract, SAI shall immediately notify the DYNCORP Contract Representative of the same. DYNCORP will take all necessary steps to resolve the issue in a fair and equitable manner, in accordance with the Subcontract. Such oversight may be accomplished prior to/concurrent with inspections being conducted by the Government. DYNCORP's acceptance of the supplies and/or services to be furnished hereunder shall be made by DYNCORP's Technical and/or Quality Assurance Representatives and evidenced by their signature(s) on a Statement of Certification of Work (SOCOW) completed and submitted by SAI. SAI shall complete and submit SOCOW's upon completion of ACL. Separate SOCOW's shall be submitted by SAI for the inclusion of Service Bulletins or Airworthiness Directives, modifications to the configuration of the aircraft, and changeout of landing gear, propellers, or engines.

E.2 SUBCONTRACTOR/VENDOR QUALITY REQUIREMENT

The Subcontractor shall comply with FAA Quality Standards, or best commercial practices.

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SECTION FDELIVERY/PERFORMANCE**F.1 DELIVERY OF SUPPLIES/SERVICES**

The supplies/services to be furnished hereunder shall be delivered FOB Contractor's designated facility in the following timeframes:

<u>CLIN ITEM</u>	<u>DELIVERY DATE</u>
X003B - C12/RC-12 Strip and Repaint	Within 25 Days of Aircraft Induction (or as specified)
X003C - C12/RC-12 ACI	Within 48 Days of Aircraft Induction (or as specified)
X004AA/AB - Depot/Non-Depot Labor	Start Work Within 2 Days of Request (or as specified)
X004AC - Site Organizational Maint.	Start Work within 2 Days of Request (or as specified)
X004B - O&A Parts & Materials	Within 2 Days of Request (for items available at SAI's facility); Place Order Within 2 Days of Request (for items not available at SAI's facility)
X004C - A/C Storage	Place in Storage Within 2 Days of Request (or as specified)
X005 - Travel & Per Diem	Start Travel Within 2 Days of Request (or as specified); except as modified by and in accordance with H.18

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SECTION GSUBCONTRACT ADMINISTRATION DATA**G.1 SUBMISSION OF INVOICES**

- A. The Subcontractor shall be paid for performance hereunder in accordance with the terms of payment of this subcontract, upon submission of proper invoices and DYNCORP approval.
- B. The Subcontractor shall invoice separately against each Purchase Order issued. Each invoice shall reference the Subcontract and Purchase Order number and shall itemize charges against the Purchase Order.
- C. Discrepant invoices may result in a delay of payment pending resolution of discrepancy(s) as set forth in Paragraph G.2 PAYMENT TERMS.
- D. An original and two (2) copies of the invoice should be mailed to the following:

DYNCORP INTERNATIONAL
6500 West Freeway, Suite 600
Fort Worth, TX 76116
Attn: Kristin Satre, LCCS Program

Each invoice shall, at a minimum, contain the following data:

- a. Subcontractor's Name and Business Address.
- b. Date of Invoice.
- c. Invoice Number.
- d. Description of Service (Title).
- e. CLIN(s) Being Invoiced.
- f. Prime Contract/Subcontract Nos.
- g. Purchase Order Number.

G.2 PAYMENT TERMS

Payment of all invoices hereunder shall be contingent upon inclusion of the invoice data required under the above Clause. Payment to SAI by DYNCORP shall be made in immediately available U.S. dollars. DYNCORP shall pay SAI on a net thirty (30) day basis from the date of receipt of an acceptable SAI invoice.

If a dispute arises on an invoice, within 30 Days from the date of receipt thereof by DYNCORP, DYNCORP shall pay the entire undisputed amount, and the Parties shall diligently and cooperatively work to resolve the dispute. Any remaining balance agreed by the Parties to be due to SAI shall be paid by DYNCORP upon receipt of an adjusted invoice.

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In the event that DYNCORP receivables are past ninety (90) days, SAI may suspend services under this Subcontract until such time as DYNCORP receivables are brought current. SAI must give DYNCORP two (2) weeks written notice prior to such suspension of services.

G.3 MODIFICATIONS AND NOTICES

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Subcontract. Sole authority to issue change orders and modifications to this Subcontract is vested in the DYNCORP Contract Representative designated in G.4. below, or the following DYNCORP personnel:

Contract Manager (LCCS Program)
 Program Manager (LCCS Program)
 Director of Contracts, Logistics, & Purchasing (LCCS Program)
 Director of Finance and Administration (DYNCORP)
 Vice President, Contract Administration (DYNCORP)

G.4 TECHNICAL AND ADMINISTRATIVE REPRESENTATIVES

The following technical and administrative representatives of DYNCORP and SAI are hereby designated for this Subcontract:

SAI Representatives are:

Technical Representative – Mr. V. P. Hart, Jr.

Contract Representative – Mr. V. P. Hart, Jr.

DYNCORP Representatives are:

Technical Representative – Mr. Travis White

Depot Representative (at SAI) – Mr. Richard Robinson

Quality Representative (at SAI) – Mr. Tom Mellon

Contract Representative – Ms. Kristin Satre

DYNCORP's Technical and Depot Representatives are responsible for day-to-day clarifications and guidance as may be required within the scope of the technical work requirements. Neither the Technical Representative nor the Depot Representative has the authority to modify the Subcontract or to authorize payments thereunder. All written communications shall be transmitted through DYNCORP's designated Contract Representative and SAI's Designated Contract Representative. Any change in the Technical, Depot, or Contract Representatives of either Party shall be communicated to the other Party in writing.

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G.5 FUNDING AND LIMITATION OF OBLIGATION

A. The funds allotted may be increased through the issuance of a Subcontract or Purchase Order modification. Each modification will cite the Prime or Subcontract, the CLIN, subCLIN, and total dollars allotted for the individual modification.

B. In the event DYNACORP exhausts funds for any Prime Contract CLIN, SAI is under no obligation to provide logistics support or maintenance functions covered by the CLIN and DYNACORP accepts no liability for continued performance until such time as funds become available and are contractually obligated.

DYNACORP shall not be obligated to pay SAI any amount in excess of the funds obligated in a CLIN and SAI shall not be obligated to continue performance under that CLIN if to do so would exceed the obligated funds set forth in the schedule, unless and until DYNACORP shall have notified SAI in writing that the obligated funds have been increased and shall have specified in the notice an increased amount that shall constitute the new obligated total for these items.

DYNACORP reserves the right to increase or decrease the funds allotted herein for the CLINs on a unilateral basis by modification to the Subcontract or Purchase Order, as applicable. In no event shall DYNACORP decrease the funds below the amount incurred by SAI at the time of the notice of decrease.

C. SAI shall not be obligated to continue performance on the Subcontract or Purchase Order beyond the point at which the total amount paid and payable to the SAI will exceed the total funds allotted.

D. Nothing herein shall be deemed to imply that SAI may not rely upon any Purchase Order issued by DYNACORP. SAI may rely upon any Purchase Order issued by DYNACORP as indication that SAI shall be paid by DYNACORP for all work performed thereunder. For purposes of clarification, this paragraph (G.5-D) shall be the operative paragraph regarding Purchase Orders released by DYNACORP to SAI.

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[Signature]

SECTION H
SPECIAL PROVISIONS

H.1 COMPLIANCE WITH LAWS

SAI herein recognizes that their performance of this effort relates to an overall U.S. Government requirement and thus agrees to comply with U.S. Department of Army regulations, rules, and Executive Orders applicable to U.S. Government contracts to the extent that they apply to this Subcontract.

H.2 LITIGATION AND CLAIMS

SAI shall give DYNACORP immediate notice in writing regarding the following:

1. Any action, including any proceedings before a federal, state or local governmental or civilian agency, filed against SAI arising out of the performance of this Subcontract; and,
2. Any claim by a third party against SAI, arising out of the performance of this Subcontract. In the event of the occurrence of either of the above, SAI shall immediately furnish to DYNACORP copies of all pertinent papers and documents received by SAI with respect to such action or claim.

H.3 ASSIGNMENT OF AGREEMENT

This Subcontract shall inure to the benefit of and be binding upon each of the parties hereto and their respective successors and assigns. It may not be assigned in whole or in part without written consent of the non-assigning Party, except that each Party may assign all or part of this Subcontract to any corporate affiliate.

H.4 TAXES

Unless otherwise provided herein, the Subcontract price includes all applicable U.S. Government federal, state and local taxes or any taxes, such as customs duty, which may be associated with foreign made products.

H.5 DISPUTES

Any controversy upon a question of fact and/or law pertaining to this Subcontract or the performance thereof, which cannot be satisfactorily adjusted between the Parties hereto, shall be decided by recourse to any available legal, equitable, or administrative remedies. Pending final resolution of any request for relief, claim, appeal, or action arising hereunder, the parties shall diligently proceed with the performance of their obligations under this Subcontract, except as otherwise addressed herein or agreed to in writing by the parties.

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If, as a result of any decision or judgment (including a Government audit of SAI's books and records) which is binding upon SAI and DYNACORP, DYNACORP is unable to obtain reimbursement from the Government under the Prime Contract for, or is required to refund or credit to the Government, any amount with respect to any item of cost or fee for which DYNACORP has reimbursed SAI, SAI shall on demand, promptly repay such amount to DYNACORP, provided it is determined that SAI is at fault for having created or permitted the mistake upon which the Government has based its decision.

In the event SAI disagrees with any portion of the work required to be performed hereunder, SAI shall have the right to assert a claim through DYNACORP to the Contracting Officer under DYNACORP's name. If the Contracting Officer's final decision shall be deemed by SAI to have an adverse effect on its position or its rights, SAI shall have the right to assert an appeal through and to prosecute such appeal under the "Disputes" clause of the Prime Contract, under DynCorp's name. DYNACORP agrees to give SAI prompt notice of any such decision and to make available to SAI all reasonable assistance in perfecting and prosecuting such appeal; provided, however, that SAI shall bear all costs and expenses thereof and that such appeal shall be at no cost to DYNACORP. DYNACORP and SAI shall be equally bound by the decision of the Board in any appeal pursuant to this paragraph.

The rights and obligations described herein shall survive completion of any final payment under the Subcontract.

Irrespective of the place of performance, this Subcontract will be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, Boards of Contract Appeals, and quasi-judicial agencies of the federal government. To the extent that the federal common law of government contracts is not dispositive, the laws of the State of Texas shall apply.

H.6 YEAR 2000 WARRANTY—COMMERCIAL & NON-COMMERCIAL SUPPLY ITEMS

SAI warrants that each commercial and non-commercial item of hardware, software, and firmware product delivered or developed under this Subcontract shall be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, including leap year calculations, when used in accordance with the product documentation provided by SAI, to the extent that all delivered or developed products (e.g. hardware, software, firmware) used in combination with such delivered or developed products properly exchanges date/time data with it. If the Subcontract requires that specific delivered or developed products must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those delivered or developed products as a system. The duration of this warranty and the remedies available to DYNACORP for breach of this warranty shall be as defined in, and subject to, the terms and limitations of SAI's standard commercial warranty or warranties contained in this Subcontract, provided that notwithstanding any provision to the contrary, in such commercial warranty or warranties, the remedies available to DYNACORP under this warranty shall include repair or replacement of any delivered product whose non-compliance is discovered and made known to DYNACORP in writing within ninety (90) days after acceptance. Nothing in this warranty shall be construed to limit any rights or remedies DYNACORP may otherwise have under this Subcontract with respect to defects other than Year 2000 performance.

H.7 52.243-4000 ENGINEERING CHANGE PROPOSAL (ECP), VALUE ENGINEERING CHANGE PROPOSAL OCT1997 (VECP), REQUEST FOR DEVIATION (RFD), AND REQUEST FOR WAIVER (RFW) (LONG FORM)—ALTERNATE I (USAAMCOM)

Applicability:

☒ Long Form Procedure
☐ Short Form Procedure

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(a) **FORMAT:** Subcontractor initiated ECPs, VECPs pursuant to the Value Engineering clause of the contract (if included elsewhere in the contract), RFDs, and RFWs (collectively referred to as "proposals") shall be prepared in accordance with the formats and requirements specified in the applicable paragraphs of MIL-STD-973.

(b) **PREPARATION:** Each proposal shall be prepared in accordance with the requirements and instructions contained in MIL-STD-973 and as specified herein:

- (1) Long Form Procedure: ECPs and VECPs (DD Forms 1692 through 1692-6) shall be prepared in accordance with the instructions of Appendix D of MIL-STD-973.
- (2) Short Form Procedure: ECPs and VECPs (DD Form 1692) shall be prepared in accordance with the instructions of Appendix D, paragraph D.4.1 of MIL-STD-973. Supplemental pages may be used with the ECP form as necessary. The cognizant Contract Administration Office (CAO) or other designated review activity will enter the appropriate data in Block 5 "Class of ECP", Block 6 "Justification Codes" other than VECPs, and Block 7 "Priority".
- (3) Class II ECPs: Class II ECPs shall be prepared in accordance with the instructions of Appendix D of MIL-STD-973. Only DD Form 1692 (Page 1), with the applicable enclosures is required. Unless otherwise specified in the contract, Government review of Class II changes is required and the Subcontractor shall not implement the change until approval is granted by the Contractor.
- (4) RFDs and RFWs: (DD Form 1694) shall be prepared in accordance with Appendix E of MIL-STD-973. Requests for Minor Waiver shall not be dispositioned in accordance with MIL-STD-973, Paragraph 5.4.4.5.1, by either the local Material Review Board or by the cognizant Contract Administration Office (CAO).
- (5) Proposals shall include sufficient technical data to describe changes from existing subcontract requirements.
- (6) Proposals shall include sufficient justification for making the change, including a statement of subcontract impact if the change is not authorized.
- (7) Any Subcontractor proposal for an ECP shall set forth a "not to exceed" price and delivery adjustment acceptable to the Subcontractor if the Contractor subsequently orders such a proposal. If ordered, the equitable increase shall not exceed this amount. Any Subcontractor proposal for a VECP shall set forth a "not less than" price and delivery adjustment acceptable to the Subcontractor if the Contractor subsequently approves such proposal. If approved, the savings shall not be less than this amount. Proposals which involve aggregate increases or decreases in cost plus applicable profits in excess of \$500,000 will require the submission to the Contracting Officer of a SF 1411 and a signed Certificate of Current Cost or Pricing Data.

(c) **SUBMITTAL:** The Subcontractor shall submit two (2) copies of each proposal to the cognizant CAO or other designated review activity for compliance with MIL-STD-973 and this clause. One (1) copy of each proposal shall be returned to the Subcontractor within (5) working days after receipt by the Contractor, stating whether or not the proposal is in compliance with the aforesaid requirements. Any unresolved differences between the Contractor and the Subcontractor concerning ECPs, RFDs, or RFWs will be forwarded to the Procuring Contracting Officer (PCO) for resolution.

(d) **DISTRIBUTION:**

- (1) For each Class I proposal which is determined to be in compliance with MIL-STD-973 and this clause, the Subcontractor shall forward the original plus twenty-five copies back to the Contractor who shall immediately forward DD Form 1698, Comments on Waiver, Deviation, or Engineering Change Request along with the twenty-six copies of contractor request to the PCO at address shown in block 5 of the Standard Form 28, Award/Contract. The number of copies for RFDs/RFWs and Class II ECPs shall be original plus seven (7) instead of twenty-six copies as stated for Class I ECPs.
- (2) For each VECP which is determined to be in compliance with MIL-STD-973 and this clause, the Subcontractor shall forward the original plus twenty-five copies back to the Contractor who shall

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immediately forward DD Form 1988, Comments on Waiver, Deviation, or Engineering Change Request, along with the twenty-six copies of contractor request to the Value Engineering Program Manager (VEPM) at the address below. Information regarding the preparation and submittal of VECPs may also be obtained from the VEPM.

(e) Contractor acceptance of a proposal shall be effected by the issuance of a written change order or execution of a supplemental agreement incorporating said proposal. The Contractor will notify the Subcontractor in writing regarding proposals determined to be unacceptable with supporting rationale.

H.8 REDUCED PAYMENTS

DYNCORP is subject to liquidated damages in the way of reduced payments based on certain parameters within the Prime Contract. These damages result from inability to meet Aircraft Mission capability and correction of minor discrepancies.

If the reduced payment clause is invoked by the Government, DYNCORP may request an equitable adjustment from SAI on a case-by-case basis. This equitable adjustment shall be limited to damages resulting from lack of performance on the part of SAI.

A reduction in payment applied to DYNCORP may be applied to SAI to the extent that SAI contributed to DYNCORP's reduction in payment, on a percentage basis. When determining SAI's contribution to the reduction, NMC conditions attributable to DYNCORP-supplied maintenance (NMCM) will take precedence over NMCS attributable to SAI (i.e., an Aircraft cannot be NMC for both maintenance and supply at the same time; therefore, maintenance takes precedence over supply for grounding issues).

SAI agrees to accept responsibility for any reduced payments imposed by the Government for Site Over and Above hours, as defined in Section H.9 below, for less than 500 hours on a particular aircraft. This responsibility does not include the availability of parts from vendors. In the event that the total Site Over and Above hours exceeds 500 hours, SAI agrees to negotiate with DYNCORP an equitable allocation of the reduced payments imposed by the Government.

In addition, notwithstanding any reduction of payment under this clause, if delivery or performance is delayed or deficient under the specified requirements, and SAI was in control of or responsible for the causal factor of the delay or deficiency, DYNCORP may opt to terminate this Subcontract in whole or in part, as described under paragraph H.23.

H.9 OVER-AND-ABOVE WORK (Applicable to CLIN X004 "Over & Above")

SAI may be required to perform Over and Above (O&A, hereafter) Work for Maintenance and Elective Improvements. DYNCORP's Technical and Depot Representatives shall have the authority to provide instruction in such matters, but the DYNCORP Depot Representative shall not be authorized to obligate funding. In accordance with DFARS 252.217-7028, "Over and Above Work", Section I, herein, and subject to funding limitations under the referenced CLINs established in Section B, the following procedures are established:

O&A Depot Maintenance Work Requests

(a) Authorization to Proceed: SAI is NOT authorized to proceed with items ordered under O&A without prior approval from DYNCORP's Contract Representative or other authorized personnel specified under G.4 herein. Authorization to Proceed must be in writing. Verbal authorization by the DYNCORP's Contract Representative may be given in an emergency situation but shall be confirmed in writing within ten (10) working days from the date of issuance. SAI shall notify DYNCORP if the written authorization is

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not received within fifteen (15) working days. DYNCORP will make every effort to return such authorization to SAI in a timely manner so that cost and schedule of the work to be performed are not impacted. Should a cost and/or schedule impact be anticipated by SAI as a result of DYNCORP's failure to return authorizations in a timely manner, SAI must notify the DYNCORP Contract Representative of the same, in writing.

If DYNCORP is granted cost and/or schedule relief as the result of a delay in the approval process, such relief will be passed on to SAI.

(b) Work Requests (hereinafter, SAI O & A Form SA-0119) are required for work performed under the referenced CLINs. Each Work Request shall be a stand-alone document serially numbered beginning with the number one. Subsequent changes to Work Requests shall be identified by using the original Work Request number followed by an alphabetic designator beginning with "A". If more than one change is made, the alphabetic designator shall be consecutive. SAI shall certify thereon that the work is not covered by the basic fixed-price effort. SAI shall submit the Work Request to the DYNCORP Depot Representative, who will forward the same to the DYNCORP PM Office.

In the interest of timely approval processing, each O&A Work Request submitted by SAI shall be valid for a period of three (3) working days, after which time the request may be subject to negotiation of schedule relief, if necessary.

(c) Over and Above Work Requests

(1) Procedures: When effort is required under the referenced CLINs, SAI shall promptly notify DYNCORP through the DYNCORP Depot Representative. Upon such notification, the DYNCORP Contract Representative (or other authorized personnel under G.3 herein) will issue an authorization and establish a limitation on funds to be expended. SAI shall not exceed this funding limitation unless and until the amount is expressly modified by an authorized DYNCORP Representative. Upon receipt of the authorization from the DYNCORP Representative, SAI shall proceed with performance as provided by this work request authorization and contract terms. SAI shall not proceed without this authorization.

SAI will submit O & A forms to the DYNCORP Depot Representative. DYNCORP will forward the O & A forms to the Government within 2 working days. DYNCORP shall notify SAI immediately upon receipt of approval from the Government; such notification may be verbal or via electronic message, but in all events shall be confirmed in writing within ten (10) working days of issuance.

(2) Work Request Format: SAI shall submit separate Work Requests for work to be performed under individual CLINs. Work Requests shall contain, as a minimum, the following information:

- a. Aircraft Identification
- b. Date prepared
- c. Work Request number
- d. How Malfunctioned
- e. When discovered
- f. Action taken
- g. Work area
- h. Work zone (when applicable)
- i. Fuselage/wing station (when applicable)
- j. Water line (when applicable)
- k. Butt line (when applicable)
- l. CLIN/SubCLIN
- m. CLIN units
- n. Narrative description of defect
- o. Proposed man-hours

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- p. Part numbers and quantity
- q. Area affected in inches (when applicable)
- r. Proposed corrective action with criteria for performance (i.e., technical publication paragraph)
- s. Operations breakdown with number of man-hours per step when proposed man-hours are 8 or more
- t. Cost breakout by: materials, labor, other direct cost-FFP, other direct cost reimbursable
- u. Repair schedule/ time frame

(d) **Definition of Work Requests:** The DYNCORP Contract Representative will define Work Requests based on direct ("hands on") labor hours multiplied by the composite labor rate cited in Section B for the applicable CLIN. The number of direct ("hands on") labor hours required will be negotiated between SAI and the DYNCORP Contract Representative. Direct ("hands on") labor hours are the labor hours performed by personnel actually engaged in the direct performance of work required. Direct labor does not include any labor performed by support or supervisory personnel, such as, but not limited to, timekeepers, payroll clerks, purchasing, material handling, quality control, storing, and issuing personnel. Quality control personnel are those persons who apply standards to finished work or products to determine that finished production work is serviceable in all respects. Direct parts and materials, and travel and per diem (authorized in advance by DYNCORP) required to perform the Over & Above work shall be reimbursed under O&A CLINs, as applicable. Failure to agree upon total allowable, allocable price shall be subject to the "Disputes" clause of this Subcontract. The DYNCORP Contract Representative (or other authorized personnel under G.3 herein) will prepare and execute a bilateral contract modification for approved, defined Work Requests, and forward two (2) copies of the resulting modification to SAI.

(e) At any time during the Subcontract performance, when sufficient data becomes available on a repetitive task being performed in the fixed hourly rate category, either SAI or DYNCORP may request a negotiation to establish a firm-fixed-price (fixed-price item) for that item for the remaining life of the Subcontract. All such changes will be made to the Subcontract by the appropriately authorized DYNCORP Representative.

(f) **Authority To Negotiate:** SAI shall provide to DYNCORP a list of names of individuals authorized to bind the company and specify the limitations of their authority. It is SAI's responsibility to keep this list current.

Over and Above Non-Depot Maintenance Work Requests

a. **Procedures: Non-Depot (On-Site Support) O&A Maintenance** labor charges will only be incurred when other than on-site personnel are required to perform repairs. When effort is required under the O&A Non-Depot CLIN/subCLIN, SAI shall promptly notify the DYNCORP Depot Representative. Upon such notification, the DYNCORP Contract Representative (or authorized personnel under G.3) will notify SAI of its decision to proceed, issue an authorization and establish a limitation on funds to be expended. Upon receipt of the authorization from DYNCORP, SAI shall proceed with performance as provided by this work request authorization and Subcontract terms. SAI shall not proceed without this authorization.

b. **Work Request Format:** SAI shall submit separate Work Requests for work to be performed under the O&A CLIN. Work Requests shall contain the same data required IAW DI-SAF-81563.

Over and Above Site Organizational Maintenance

a. Both Parties recognize that at times it will be beneficial for work that would have normally been performed at the site by the site personnel to be accomplished at the depot. When DYNCORP determines that such action is to their benefit, or in those instances where, during the performance of ACI,

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SAI discovers a discrepancy that could have been repaired at the site by site personnel, the DYNCORP Contract Representative will request that SAI provide an estimate for the work in the same manner as is done for Over and Above discrepancies discovered during ACL. SAI will prepare an estimate using the SAI Over and Above Form, valid for a period of three (3) working days, to include the labor and materials necessary to effect the repair. The labor rates to be applied to these efforts is included in the pricing schedule of this Subcontract (Section B.4). DYNCORP will signify acceptance of the estimate submitted by SAI and direct the performance of the work on the signature of the appropriately authorized DYNCORP Representative. Immediately upon notification of approval by DYNCORP, SAI will order the parts and commence work on the repair. Should a cost and/or schedule impact be anticipated by SAI as a result of DYNCORP's failure to return authorizations in a timely manner, SAI must notify the DYNCORP Contract Representative of the same, in writing.

b. DYNCORP may elect to provide the parts for these deferred repairs. If that avenue is chosen by DYNCORP, DYNCORP agrees to provide the parts to SAI at the depot on or before the arrival of the aircraft at the depot. Parts so provided will be subject to all FAA requirements with respect to parts for installation under a Part 145 Certified facility. All FAA required documentation will accompany these parts at the time of their arrival at the depot.

c. In the event that the total site Over and Above hours exceeds 500 hours, SAI agrees to negotiate with DYNCORP an equitable allocation of the reduced payments imposed by the Government. SAI agrees to accept responsibility for any reduced payments imposed by the Government for Site Over and Above hours for less than 500 hours on a particular aircraft. This responsibility does not include the availability of parts from vendors.

DYNCORP agrees to accept the existing O & A standards that have been established and previously approved by the resident Depot DCMC representatives. SAI agrees to the establishment of additional standards for repetitive Site Over and Above actions. These additional standards will be established after the fifth similar action on the same type, model and series of C-12 aircraft.

In the event of an impasse as to the hours to repair the discrepancy, SAI is not required to perform the repairs and the aircraft will leave the depot with the discrepancy coded as "noted but not corrected".

H.10 FOLLOW-ON CONTRACT TRANSITION AND INVENTORY

a. In addition to the provisions of FAR 52.237-3, "Continuity of Services", Section I, herein, upon written notice from the DYNCORP Contract Representative, SAI shall furnish phase-out services as required by DYNCORP for a period of up to two months prior to Subcontract expiration.

b. Upon written request by the DYNCORP Contract Representative, SAI shall provide the following to DYNCORP:

- (1) SAI's best estimate of required parts (itemized by quantity for each logistically supported aircraft and/or engine type and including part number and NSN) needed beyond Subcontract expiration for a period of eighteen months.
- (2) If SAI desires to furnish the parts estimated under item (1) above, a firm-fixed price proposal for the parts identified shall be provided. This proposal will serve as the basis for negotiation, should DYNCORP choose to obtain parts from SAI.

c. Nothing in this clause shall be construed as binding either SAI or DYNCORP to any agreement to provide parts.

d. Any subsequent contractual agreement to purchase follow-on inventory from SAI shall be subject to the laws and regulations in effect on the date of the agreement.

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H.11 REQUIRED INSURANCE

The types of insurance listed below, with the minimum amounts of liability indicated, are required in the performance of this subcontract. An approved program of self-insurance, as provided in FAR Part 28.308, may be substituted for any of the types of insurance ordinarily required. Proof of policy coverage shall be provided to the DYNACORP Contract Representative before commencing work under the contract.

WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE - SAI shall secure the payment of statutory Worker's compensation benefits to SAI employees working in the United States and DYNACORP shall secure the payment of statutory Workers' Compensation benefits to DYNACORP employees in a manner satisfactory to the Worker's Compensation Authority or authorities having jurisdiction in locations in which each company operates.

AVIATION GENERAL LIABILITY INSURANCE SAI agrees to maintain Aviation General Liability insurance with limits of at least U.S. One Hundred Million Dollars (\$100,000,000.00) per occurrence. Such insurance shall (1) name DYNACORP, its respective directors, officers, partners, employees, shareholders, affiliates, agents and representatives as Additional Insureds, (2) be primary, without rights of contribution in relation to any other insurance, and not subject to average (3) contain a Waiver of Subrogation Clause in favor of the Additional Insureds, (4) contain a standard Severability of Interests with Cross Liability Clause, (5) specifically state that the indemnification agreement contained in paragraph H.13 is insured as a contractual obligation of STEVENS' Insurers to the extent of the risks covered by the policy including war and allied perils under Extended Coverage Endorsement as per AVN 52 (6) contain an Insurance Company set off waiver in favor of the Additional Insureds, and (7) contain a provision requiring SAI's Insurers to provide DYNACORP with a written notice of cancellation or adverse material change which shall not be effective as to the benefit and/or interest of the Additional Insureds for thirty (30) days after written notice of such cancellation or adverse material change is received by DYNACORP.

AUTOMOBILE LIABILITY INSURANCE - This insurance is required on the comprehensive form of policy and shall provide bodily injury liability and property damage liability covering the operation of all automobiles used in connection with the performance of the Subcontract. At least the minimum limits of \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage is required. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

AIRCRAFT PUBLIC AND PASSENGER LIABILITY - At least \$200,000 per person and \$500,000 per occurrence for bodily injury other than Passenger Liability, and \$200,000 per occurrence for property damage. Passenger Liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

For all insurance requirements listed in Section H.11, the insurance carriers shall be rated AM Best's AVII or higher. The Prime Contractor will be listed as an additional insured on all policies except workers compensation and employer's liability. With respect to the property policies, the Prime Contractor shall be named as loss payee, as their interest may appear.

For all insurance requirements listed in Section H.11, if the insurance is cancelled for any reason whatsoever, or any restrictive material change is made in the coverage which affects the interests of the Additional Insured, the Insurers will endeavor to provide thirty (30) days prior written notice of such cancellation or change to Prime Contractor.

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H.12 PERSONNEL TRAINING REQUIREMENTS

SAI shall be responsible for training its personnel. SAI personnel shall possess training and certifications as required by the SOW and FAA regulations. Personnel performing maintenance on aircraft shall be certified A&P Technicians or possess other appropriate certification (e.g., avionics technician) IAW FAR (Federal Aviation Regulation) Part 145. All personnel performing maintenance on aircraft must have received Subcontractor developed familiarization training on the C-12/RC-12 and/or UC35 aircraft within 90 days of hire. All SAI personnel operating aircraft shall be trained and shall possess adequate training and experience to accomplish the following tasks:

- a. Perform engine run-ups or taxi operations, shall be trained and shall pass a company-sponsored physical examination requirements.
- b. Shall possess an appropriate drivers license covering tug and flight line vehicles as required by local regulations/authorities.

H.13 INDEMNIFICATION OF GOVERNMENT ASSETS

a. SAI hereby agrees to indemnify and hold harmless DYNCORP against any and all losses, claims, liabilities, damages, costs, and expenses for or resulting from aircraft and components logistically supported under this subcontract, which are in the possession, care, custody or control of SAI while on the premises of their vendor or subcontractor while the aircraft is undergoing maintenance. Reimbursement of any damage to or loss of an aircraft will not exceed the replacement cost of that particular aircraft, including all modifications and improvements to the aircraft and any other Government-owned property located in or on the aircraft. Acts of God are expressly excluded unless provisions to cover these occurrences are part of SAI's, or their vendor's or subcontractor's normal business practices.

b. As a result of SAI's assumption of the risk of loss of, or damage to, aircraft placed in their possession, care, custody, or control, as stated in paragraph (a) above, DFARS 252.228-7001, entitled "Ground and Flight Risk", is not applicable to aircraft undergoing maintenance while on the prime, vendor's, or subcontractor's premises. DFARS 252.228-7001 remains applicable for all other aircraft operations not excluded by this clause.

c. SAI General Indemnification. This General Indemnification is in addition to any other specific indemnification requirements set forth in this Subcontract. SAI hereby releases and agrees to defend, indemnify and hold DYNCORP, its officers, directors, partners, employees, shareholders, agents, affiliates, representatives and assignees (the "DYNCORP Indemnified Parties") harmless from and against any and all liabilities, claims, demands, suits, damages and losses (regardless of whether the same shall be made or incurred during or after the termination of this Subcontract), including, without limitation, all attorney's fees, costs and expenses in connection therewith or incident thereto, for deaths of or injuries to any persons whomsoever (including, without limitation, SAI's employees) and for loss of or damage to any property whatsoever, in any manner arising out of or in any way connected with the work of SAI, its directors, officers, shareholders, employees or subcontractors performed under this Subcontract, or any actions taken or any failures to act by SAI, its directors, officers, partners, shareholders, employees, agents, affiliates, representatives, assignees or subcontractors in accordance with this Subcontract. This indemnification extends to any work performed by SAI with respect to Aircraft delivered to SAI for work under, and during the term of, this Subcontract, whether or not the Aircraft is in the possession of SAI at the time the injury or damage is discovered. The foregoing indemnification shall not apply to any claim or liability relating to the conduct of the Quality Assurance representatives, or resulting from the willful misconduct or gross negligence of the DYNCORP Indemnified Parties (other than SAI). SAI shall have the right to control the defense of any claim made against one or more of the DYNCORP Indemnified Parties for which SAI is obligated to indemnify or release them, including those claims in which one or more of the DYNCORP Indemnified Parties is named co-party. The DYNCORP Indemnified Parties shall

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comply with all reasonable requests made in connection with such defense, such as responding to discovery requests, appearing for depositions, hearings or trials, and responding to inquiries from STEVENS' counsel.

d. DYNACORP General Indemnification. This General Indemnification is in addition to any other specific indemnification requirements set forth in this Subcontract. DYNACORP hereby releases and agrees to defend, indemnify and hold SAI, its officers, directors, partners, employees, shareholders, agents, affiliates, representatives and assignees (the "SAI Indemnified Parties") harmless from and against any and all liabilities, claims, demands, suits, damages and losses (regardless of whether the same shall be made or incurred during or after the termination of this Subcontract), including, without limitation, all attorney's fees, costs and expenses in connection therewith or incident thereto, for deaths of or injuries to any persons whatsoever (including, without limitation, DYNACORP's employees) and for loss of or damage to any property whatsoever, in any manner arising out of or in any way connected with the work of DYNACORP, its directors, officers, partners, shareholders, employees, agents, affiliates, representatives, assignees or subcontractors (other than SAI) performed under this Subcontract, or any actions taken or any failures to act by DYNACORP, its directors, officers, partners, shareholders, employees, agents, affiliates, representatives, assignees or subcontractors (other than SAI) in accordance with this Subcontract. This Indemnification extends to any work performed by DYNACORP with respect to any Aircraft delivered to SAI under this Subcontract, or any of DYNACORP's obligations under this Subcontract, including but not limited to its obligation to supply parts, materials or technical data, or any other item of equipment installed on any Aircraft by DYNACORP, during the term of this Subcontract, whether or not the Aircraft is in the possession of DYNACORP at the time the injury or damage is discovered. The foregoing indemnification shall not apply to any such claim or liability resulting from the willful misconduct or gross negligence of the SAI Indemnified Parties (other than DYNACORP). DYNACORP shall have the right to control the defense of any claim made against one or more of the Indemnified Parties for which DYNACORP is obligated to indemnify or release them, including those claims in which one or more of the SAI Indemnified Parties is named as co-party. The SAI Indemnified Parties shall comply with all reasonable requests made in connection with such defense, such as responding to discovery requests, appearing for depositions, hearings or trials, and responding to inquiries from DYNACORP's counsel.

H.14 DEPLOYMENTS AND HOSTILE OPERATIONS

SAI shall be responsible for performing all of the functions accomplished under this Subcontract during hostile operations. Hostile operations are those actions, including contingency planning as defined by AR715-9, DA Pam 715-16. In the event of hostilities in the overseas theater, SAI shall, at the direction of DYNACORP, provide support to using units under the terms of this contract.

H.15 ENEMY ACTION AND DEATH

If, during the term of the contract, any SAI personnel become injured, killed or missing due to action of a common enemy or become prisoners of war, thus being prevented from performance of their assigned duties, the provisions of Public Law 784, 77th Congress, as amended (42 U.S.C. section 1701) shall apply.

H.16 SECURITY

a. Full performance of this contract will require access to Classified U.S. Government Information, U.S. Government Furnished Equipment (GFE), and COMSEC equipment that has not been approved for release to foreign governments nor foreign owned, controlled or influenced companies. Performance of this contract requires a U.S. SECRET facility clearance.

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b. SAI shall be responsible for obtaining necessary security clearances and identification for SAI personnel. SAI personnel shall possess the level of clearance required by the DD Form 254. All A&P mechanics and Avionics Technicians shall have at least a Secret clearance. All personnel authorized to perform maintenance on SEMA aircraft shall have at least a Secret clearance.

c. SAI shall maintain and administer a security program in accordance with Industrial Security Manual DoD 5220.22M and DIA Manual 50-6. Copies of these manuals are available for review in the office of the Contracting Officer.

d. Loss or suspension pending investigation of required security clearances as set forth in the DD 254, "Contract Security Classification Specification", attached hereto and made a part of this Subcontract would result in inability to perform in accordance with the terms and conditions of this contract. As a result of this inability to perform SAI is subject to default in accordance with the General Provisions entitled, "Default."

e. DYNCORP reserves the right to direct any SAI employee to be removed from performance, direct or indirect whenever there is probable cause or belief, on the facts available, that such action is warranted in the interest of national security, whether or not the cause is deemed of sufficient severity to warrant action to terminate SAI for the period of time necessary, to conduct an investigation of alleged misconduct, direct or indirect, which may in the opinion of the DYNCORP Contract Representative jeopardize the security of the project.

f. Military security requirements in the performance of this contract shall be maintained in accordance with the DD 254. The highest classification involved in the performance of this contract is DOD Secret Clearance.

H.17 CONFORMITY TO LAWS AND REGULATIONS

SAI shall be responsible for assuring that employees assigned to this subcontract comply with all laws and regulations of the country and political subdivisions of their location, including military rules and regulations.

In the event that a(n) SAI employee is barred from continuing to perform under the contract due to failure to comply with all applicable laws or regulations, the cost for removal of the employee or the substitution of a replacement employee shall be SAI's responsibility.

H.18 PASSPORT & VISA REQUIREMENTS

SAI shall be responsible for obtaining valid passports and VISA's as necessary for each foreign country in which operations are conducted. DYNCORP will endeavor to provide 30 days notice to SAI of any travel that will require a passport or VISA. SAI will exercise its best efforts to obtain passports and visa within the 30 day period; however SAI will not be held responsible for delays created by parties not in the employ of SAI.

DYNCORP will be responsible for obtaining TESA status for SAI employees prior to the departure of the SAI personnel, where necessary. DYNCORP will be responsible for obtaining In Country Clearances where necessary prior to the departure of SAI personnel. DYNCORP will provide in-country sponsorship where required for SAI employees.

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H.19 CONTRACTOR PERSONNEL FLYING IN GOVERNMENT AIRCRAFT

SAI personnel are authorized to travel in Government aircraft, subject to approval of DYNCORP, when such flights are in the best interest of DYNCORP.

H.20 SUBCONTRACTOR MANAGEMENT

DYNCORP shall have the right to attend scheduled subcontractor reviews. SAI shall coordinate reviews with DYNCORP at least 15 working days prior to each review.

H.21 GOVERNMENT FURNISHED PROPERTY (GFP) MANAGEMENT COSTS

a. Ground Support Equipment (GSE) to include lugs, stands, jacks, aircraft ferry fuel systems, RC-12 flightline support vans, etc. which are provided to SAI shall be maintained by SAI IAW FAR Part 46. SAI is responsible for all routine maintenance of GSE equipment. Responsibility for replacement of items that have been lost or stolen will be assumed by SAI. Replacement of GSE as the result of fair wear and tear will be the responsibility of DYNCORP. DYNCORP approval must be received prior to replacing GSE.

b. Tools and Test equipment provided to SAI are provided to limit SAI's necessary investment in tools and test equipment. As such, SAI shall maintain these tools and test equipment in serviceable condition. In consideration for this activity the cost for repair will be the responsibility of SAI. Responsibility for replacement of items that have been lost or stolen will be assumed by SAI. Replacement of tools that are worn out as the result of fair wear and tear will be the responsibility of DYNCORP.

c. Some serviceable aircraft components may be provided to SAI by DYNCORP for use on Army aircraft to improve readiness and aircraft availability.

d. Unserviceable aircraft components: Upon SAI request for disposition, DynCorp will provide written direction for unserviceable aircraft components to be returned to either DynCorp or a different location; tagged as UNSERVICEABLE, in the same fashion as a core is returned to the vendor when there is an exchanged part arrangement.

H.22 ECONOMIC PRICE ADJUSTMENT (EPA)

(a) Economic price adjustment shall apply only to contract option years five (5) through nine (9), and shall be made prospectively to contract unit prices based upon significant deviations between the following forecasted and first revised actual U.S. Department of Labor, Bureau of Labor Statistics' indices. "Avg. Hourly Earnings - Aircraft & Parts (AHE 372NS)" will be used for the effected labor dollars and "Aircraft & Parts (PPI 372NS)" will be used for the effected material dollars. Effected labor and material dollars are those firm fixed priced for option years five through nine. A two (2) percent threshold is established to define a "significant deviation". It is the responsibility of SAI to provide the cost/pricing information necessary for DYNCORP to be able to properly identify the effected labor and material dollars. This information should be provided for each effected CLIN for option years five through nine.

(b) To determine the economic price adjustment, divide the first revised actual index by the forecasted index (forecasted rates are set forth in subparagraph (c) below), using the same calendar year for both and using the same calendar year in which the upcoming subcontract option is to be exercised. If the resulting quotient is greater than 1.02, or less than .98, multiply the upcoming option year's unit price by the quotient. If the quotient is equal to or between .98 and 1.02 (equal to or greater than .98 and equal to or less than 1.02), no adjustment is necessary. The Subcontract shall be modified to incorporate any adjusted unit prices. All calculations should be taken to four decimal places. An example follows:

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Assume the forecasted August 2004 labor index was 23.501 and the actual August 2004 labor index was 24.601. Since 24.601 divided by 23.501 is equal to 1.0468, and is greater than 1.02, then multiply the subcontract option year five effected labor dollars by 1.0468. The same calculation would then be performed using the material indices. The subcontract would then be modified to include the adjustments in the firm fixed prices for option year five, to be exercised 1 February 2005. No further adjustment to option year five prices would be made based upon this clause.

(c) For the purpose of calculating the adjustments required by this clause, the following forecasted indices apply. The forecast is from Data Resources, Inc. (DRI) and represents third quarter forecasts for the respective indices listed in paragraph (a) above as forecasted by DRI in the 4th Quarter of 1999. The current year 2000 1st Quarter labor projection is 20.283, and the current year 2000 1st Quarter material projection is 1.457.

Option	Year	Labor Index	Material Index	Used to Adjust Option Year
5	August 2004	23.501	1.640	(1 Feb 05 - 31 Jan 06)
6	August 2005	24.155	1.688	(1 Feb 06 - 31 Jan 07)
7	August 2006	24.987	1.737	(1 Feb 07 - 31 Jan 08)
8	August 2007	25.944	1.791	(1 Feb 08 - 31 Jan 09)
9	August 2008	26.728	1.844	(1 Feb 09 - 31 Jan 10)

(d) Adjustments made under this clause are subject to the following:

1. No economic price adjustment shall be made to Subcontract unit prices for option years one through four.
2. Only option years five through nine are subject to adjustment by this clause.
3. Each economic price adjustment will be made prior to the effected year and no further economic price adjustment will be made.
4. In the event the Bureau of Labor Statistics discontinues or suspends publication of the index set forth in paragraph (a) of this clause, the Parties hereby agree to use the same index as DYNACORP applies to the Prime Contract with the Government.
5. In the event the Subcontract unit prices are changed as a result of a Subcontract modification(s), the unit prices subject to adjustment shall be reduced by the cost of any deleted work and the unit prices shall not be increased by the cost of any added work. Any added costs may be adjusted by the economic price adjustment clause specified by Subcontract modification.
6. The aggregate of the increases in any Subcontract CLIN made under this clause shall not exceed 10% of the original total CLIN price. There is no percentage limitation on the amount of decreases that may be made under this clause.
7. Representatives of the U. S. Government Representative(s) may examine SAI's books, records, and other supporting data related to the performance of this Subcontract during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation, whichever is earlier.
8. Any disputes arising under this clause shall be determined in accordance with the "Disputes" clause of this Subcontract.

H.23 DEFAULT AND TERMINATION

A. Default by SAI. The following events shall constitute Events of Default for SAI (whether such events shall be voluntary or involuntary or arise or be affected by operation of law or pursuant to or in compliance with any judgement, decree or order of any court or any order, rule, or regulation of any administrative or governmental body):

1. SAI shall fail in the faithful performance of its obligations in accordance with the terms of this Subcontract and such failure shall continue for ten (10) days after receipt of written notice of such

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failure ("Cure Notice"); unless SAI provides DYNCORP with adequate assurance of its ability to cure such failure within a reasonable time, and thereafter so cures.

2. Recurring problems or issues with the quality of work performed by SAI, which result in the execution of the provisions of paragraph H.23-A, subparagraph 1, above (issuance of a Cure Notice), shall be grounds for the modification of the Term of this Subcontract as it pertains to renewal of Option Years. "Recurring" shall be defined as the issuance of more than three (3) Cure Notices in one (1) Option Year, pursuant to paragraph H.23-A, subparagraph 1.
3. Any certification, representation or warranty made by SAI in or pursuant to this Agreement shall have been incorrect in any material respect on the date made.
4. SAI shall suspend all or substantially all of its operations, temporarily or permanently discontinue business, sell or otherwise dispose of all or substantially all of its assets or cease to hold the permits, licenses, authorizations and certificates including any certificate of convenience and necessity required for the conduct of its business, or the same are revoked or varied in a manner which materially adversely affects the financial situation of SAI.
5. If a petition shall be filed against SAI seeking any reorganization, composition, readjustment, liquidation or similar relief under any present or future statute, law or regulation of the United States and shall remain as non dismissed or unstayed for an aggregate of ninety (90) days (whether or not consecutive), or if any trustee, receiver or liquidator of SAI is appointed, which appointment shall remain unvacated or unstayed for an aggregate of ninety (90) days (whether or not consecutive).
6. SAI shall not be deemed in control of, or responsible for, the late delivery of parts that are supplied by a third party, (OEM, DynCorp, or the Government), if such late delivery is beyond SAI's control. Moreover, in such event, SAI shall not be considered to have failed in the faithful performance of its obligations hereunder.

B. Default by DYNCORP. The following events shall constitute Events of Default for DYNCORP (whether such events shall be voluntary or involuntary or arise or be affected by operation of law or pursuant to or in compliance with any judgement, decree or order of any court or any order, rule, or regulation of any administrative or governmental body):

1. If DYNCORP fails in its obligations hereunder to make timely payment and fails to cure such breach within sixty (60) days after written notification.
2. If DYNCORP shall suspend all or substantially all of its operations, temporarily or permanently discontinue business, sell or otherwise dispose of all or substantially all of its assets or cease to hold the permits, licenses, authorizations and certificates including any certificate of convenience and necessity required for the conduct of its business, or the same are revoked or varied in a manner which materially adversely affects the financial situation of DYNCORP.

C. Remedies. Upon the occurrence of an Event of Default by either Party, the other Party shall be entitled to all remedies, minus consequential or incidental damages (actual damages only), under applicable laws in accordance with the Applicable Law and Disputes provision of this Subcontract in Section H. Upon the occurrence of an Event of Default by either Party, the other Party shall be entitled to terminate this Subcontract. Such termination shall not relieve the Parties of any prior obligations incurred under this Subcontract.

D. Termination. Notwithstanding the provisions above, DYNCORP shall have the right to terminate this Subcontract prior to the exercise of any Option, provided that the Government has terminated DYNCORP's Prime Contract for the services described herein, pursuant to FAR 52.249-2.

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E. Stop Work Order. At any time, DYNACORP may, pursuant to FAR 52.242-13, provide written instruction to SAI to stop all, or any part, of the work called for by this Subcontract for a period of up to ninety (90) days after the stop work order is delivered to SAI, and for any additional period to which the Parties may agree. Any such order shall be specifically identified as a stop work order issued pursuant to this Section. Upon receipt of such an order, SAI shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered the order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to SAI, or within any extension of that period to which the Parties shall have agreed, DYNACORP shall either:

- 1) Cancel the stop work order; or
- 2) Terminate the work covered by such order as provided in the Termination Clause of this Subcontract

If a stop work order issued under this Section is canceled in writing, SAI shall resume work. If the period of the order or any extension thereof merely expires, SAI shall contact DYNACORP and ask for direction before resuming work or treating the silence as a Termination. An equitable adjustment shall be made in the delivery schedule and/or Subcontract price, or estimated cost and fixed fee (if any), and the Subcontract shall be modified in writing accordingly, if:

- 1) The stop work order results in an increase in the time required for, or in SAI's cost properly allocated to, the performance of any part of this Subcontract; and
- 2) SAI asserts a claim for such adjustment within twenty (20) days after the end of the period of work stoppage, provided that, if DYNACORP decides the facts justify such action, it may receive and act upon the claim asserted before final payment.

If a stop work order is not canceled and the work covered by such order is terminated for the convenience of the Government, the reasonable costs resulting from the stop work order shall be allowed in accordance with FAR 52.249-2 ("Termination for Convenience of the Government - Fixed Price").

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SECTION ICLAUSES/GENERAL PROVISIONS

This Subcontract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Whenever the word "U.S. Government" is stated as the Buyer, substitute the word "DYNCORP" or "Contractor". For the word "Contracting Officer", substitute "Authorized Contract Representative". Whenever the word "Contractor" is stated as the Seller, substitute the word "SAI" or "Subcontractor". The date of the clause will be the current version as contained in the Federal Acquisition Regulation and DoD Supplements thereto.

The following Federal Acquisition Regulations (FAR) and the Department of Defense FAR Supplement (DFAR) clauses are hereby incorporated into this Subcontract. Inasmuch as the Subcontractor intends to supply only Commercial Items, as defined by Federal Acquisition Regulation (FAR) 52.201-1, "Definitions", under this subcontract, the following clauses are applicable:

I.1 The following Federal Acquisition Regulations (FAR) and the Department of Defense FAR Supplement (DFAR) clauses are hereby incorporated by reference into this subcontract.

Regulatory Cite	Title Date	Regulatory Cite	Title Date
<u>FAR CLAUSES</u>			
I-1	52.202-1	DEFINITIONS	OCT/1985
I-2	52.203-3	GRATUITIES	APR/1984
I-3	52.203-5	COVENANT AGAINST CONTINGENT FEES	APR/1984
I-4	52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT	JUL/1995
I-5	52.203-7	ANTI-KICKBACK PROCEDURES	JUL/1995
I-6	52.203-8	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY	JAN/1997
I-7	52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY	JAN/1997
I-8	52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	JUN/1997
I-9	52.204-2	SECURITY REQUIREMENTS	AUG/1988
I-10	52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT	JUL/1995
I-11	52.211-5	MATERIAL REQUIREMENTS	OCT/1997
I-12	52.211-13	DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS	SEP/1990
I-13	52.215-2	AUDIT AND RECORDS—NEGOTIATION	JUN/1999
I-14	52.215-8	ORDER OF PRECEDENCE—UNIFORM CONTRACT FORMAT	OCT/1997
I-15	52.215-19	NOTIFICATION OF OWNERSHIP CHANGES	OCT/1997
I-16	52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES	FEB/1997
I-17	52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS—OVERTIME COMPENSATION	JUL/1995
I-18	52.222-20	WALSH-HEALEY PUBLIC CONTRACTS ACT	DEC/1995
I-19	52.222-26	EQUAL OPPORTUNITY	FEB/1999
I-20	52.222-29	NOTIFICATION OF VISA DENIAL	FEB/1999
I-21	52.222-35	AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA	APR/1998
I-22	52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES	JUN/1998
I-23	52.222-37	EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA	JAN/1999
I-24	52.222-43	FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS)	MAY/1999
I-25	52.223-5	POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION	APR/1998
I-26	52.223-6	DRUG-FREE WORKPLACE	JAN/1997
I-27	52.223-14	TOXIC CHEMICAL RELEASE REPORTING	OCT/1998
I-28	52.223-6	DUTY-FREE ENTRY	APR/1984

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I-29	52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES AUG/1998
I-30	52.227-1	AUTHORIZATION AND CONSENT JUL/1995
I-31	52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT AUG/1998
I-32	52.228-3	FEDERAL, STATE, AND LOCAL TAXES JAN/1991
I-33	52.228-5	TAXES—CONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO APR/1984
I-34	52.232-22	LIMITATION OF FUNDS APR/1984
I-35	52.232-23	ASSIGNMENT OF CLAIMS (JAN 1988)—ALTERNATE I APR/1984
I-36	52.233-3	PROTEST AFTER AWARD AUG/1998
I-37	52.237-3	CONTINUITY OF SERVICES JAN/1991
I-38	52.242-13	BANKRUPTCY JUL/1988
I-39	52.242-16	STOP-WORK ORDER (1988)
I-40	52.242-17	GOVERNMENT DELAY OF WORK (4/84)
I-41	52.243-1	CHANGES—FIXED-PRICE (AUG 1987)—ALTERNATE II APR/1984
I-42	52.243-7	NOTIFICATION OF CHANGES (the blanks in paragraphs (9) and (c) are completed with thirty (30)) APR/1984
I-43	52.246-25	LIMITATION OF LIABILITY—SERVICES FEB/1987
I-44	52.247-63	PREFERENCE FOR U.S.-FLAG AIR CARRIERS JAN/1987
I-45	52.248-1	VALUE ENGINEERING NOV/1988
I-46	52.249-2	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) SEP/1998
I-47	52.249-8	DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) APR/1984
I-48	52.253-1	COMPUTER GENERATED FORMS JAN/1991

DFAR CLAUSES

I-49	252.203-7001	PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES MAR/1999
I-50	252.204-7000	DISCLOSURE OF INFORMATION DEC/1991
I-51	252.215-7000	PRICING ADJUSTMENTS DEC/1991
I-52	252.217-7028	OVER AND ABOVE WORK DEC/1991
I-53	252.225-7001	BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM MAR/1998
I-54	252.225-7009	DUTY-FREE ENTRY—QUALIFYING COUNTRY SUPPLIES (END PRODUCTS AND COMPONENTS) MAR/1998
I-55	252.225-7010	DUTY-FREE ENTRY—ADDITIONAL PROVISIONS MAR/1998
I-56	252.225-7012	PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES MAY/1998
I-57	252.225-7014	PREFERENCE FOR DOMESTIC SPECIALTY METALS (MAR 1998)—ALTERNATE I MAR/1998
I-58	252.225-7016	RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS AUG/1998
I-59	252.225-7025	RESTRICTION ON ACQUISITION OF FORGINGS JUN/1997
I-60	252.225-7031	SECONDARY ARAB BOYCOTT OF ISRAEL JUN/1992
I-61	252.225-7041	CORRESPONDENCE IN ENGLISH JUN/1997
I-62	252.228-7005	ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES DEC/1991
I-63	252.243-7001	PRICING OF CONTRACT MODIFICATIONS DEC/1991
I-64	252.243-7002	REQUESTS FOR EQUITABLE ADJUSTMENT MAR/1998
I-65	252.244-7000	SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DoD CONTRACTS) FEB/1997
I-66	252.245-7001	REPORTS OF GOVERNMENT PROPERTY MAY/1994
I-67	252.248-7000	PREPARATION OF VALUE ENGINEERING CHANGE PROPOSALS MAY/1994

I-68 52.222-26 EQUAL OPPORTUNITY (FEB 1999)—ALTERNATE I FEB/1999

Notice: All terms of this clause are waived for work performed outside the United States by employees recruited outside the United States.

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I-69 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA APR/1984 (APR 1998)-ALTERNATE I

NOTICE: All terms of this clause are waived for work to be performed outside the United States by employees recruited outside the United States.

I-70 52.222-38 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998) - JUN/1998 ALTERNATE I

NOTICE: All terms of this clause are waived for work to be performed outside the United States by employees recruited outside the United States.

I-71 52.222-21 PROHIBITION OF SEGREGATED FACILITIES FEB/1999

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex or national origin because of written or oral policies, or employee custom. The term does not include separate or single-user rest rooms and necessary dressing or sleeping areas, which shall be provided to assure privacy between the sexes.

(b) The Subcontractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Subcontractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this subcontract.

(c) The Subcontractor shall include this clause in every subcontract that contains the clause of this contract entitled "Equal Opportunity."

I-72 52.223-11 OZONE-DEPLETING SUBSTANCES JUN/1996

(a) Definitions. "Ozone-depleting substance", as used in this clause, means any substance designated as Class I by the Environmental Protection Agency (EPA) (40 CFR Part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or any substance designated as Class II by EPA (40 CFR Part 82), including but not limited to hydrochlorofluorocarbons.

(b) The Subcontractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

"WARNING: Contains (or manufactured with, if applicable) _____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere."

"The Subcontractor shall insert the name of the substance(s)."

I-73 52.244-8 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS OCT/1998

(a) Definition.

"Commercial item", as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract", as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Subcontractor or subcontractor at any tier.

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

(c) Notwithstanding any other clause of this contract, the Subcontractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required

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to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

- (1) 52.222-28, Equal Opportunity (E.O. 11246);
 - (2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));
 - (3) 52.222-38, Affirmative Action for Workers with Disabilities (29 U.S.C. 793); and
 - (4) 52.247-84, Preference for Privately Owned U.S.-Flagged Commercial Vessels (48 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1998).
- (d) The Subcontractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

I-74 52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (DEV 99-00012)

APR1984

(a) Government-furnished property.

(1) The Prime Contractor shall deliver to the Subcontractor, for use in connection with and under the terms of this subcontract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Subcontractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(2) The delivery or performance dates for this subcontract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as is") will be delivered to the Subcontractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Subcontractor to meet the subcontract's delivery or performance dates.

(3) If Government-furnished property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt of it, notify the Prime Contractor's Representative, detailing the facts, and, as directed by the Prime Contractor and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Subcontractor, the Prime Contractor shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government-furnished property is not delivered to the Subcontractor by the required time, the Prime Contractor shall, upon the Subcontractor's timely written request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government-furnished property.

(1) The Prime Contractor may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Subcontractor shall promptly take such action as the Prime Contractor may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Subcontractor's written request, the Prime Contractor shall make an equitable adjustment to the subcontract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make the property available for performing this subcontract and there is any-

- (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
- (ii) Withdrawal of authority to use this property, if provided under any other subcontract or lease.

(c) Title in Government property.

(1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause). Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities and special test equipment acquired by the Subcontractor for the Government under this subcontract shall pass to and vest in the Government when its use in performing this subcontract commences or when the Government has paid for it, whichever is earlier, whether or not

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title previously vested in the Government.

(4) If this subcontract contains a provision directing the Subcontractor to purchase material for which the Government will reimburse the Subcontract as a direct item of cost under this subcontract-

(i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(ii) Title to all other material shall pass to and vest in the Government upon-

(A) Issuance of the material for use in subcontract performance;

(B) Commencement of processing of the material or its use in subcontract performance; or

(C) Reimbursement of the cost of the material by the Government, whichever occurs first.

(d) Use of Government property. The Government property shall be used only for performing this subcontract, unless otherwise provided in this subcontract or approved by the Prime Contractor.

(e) Property administration.

(1) The Subcontractor shall be responsible and accountable for all Government property provided under this subcontract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this subcontract.

(2) The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this subcontract, the Government shall replace the items or the Prime Contractor shall make such repairs as the Government directs. However, if the Prime Contractor cannot effect such repairs within the time required, the Prime Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Subcontractor represents that the subcontract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Subcontractor is responsible shall be accomplished by the Subcontractor's at its own expense.

(f) Access. The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Risk of loss. Unless otherwise provided in this subcontract, the Subcontractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Subcontractor or upon passage of title to the Government under paragraph (c) of this clause.

However, the Subcontractor is not responsible for reasonable wear and tear to Government property or Government property properly consumed in performing this subcontract.

(h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected subcontract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy.

The Government shall not be liable to suit for breach of contract for-

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Government is responsible.

(i) Final accounting and disposition of Government property. Upon completing this subcontract, or at such earlier dates as may be fixed by the Contracting Officer, the Subcontractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property

(including any resulting scrap) not consumed in performing this contract or delivered to the Government.

The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(j) Abandonment and restoration of Contractor's premises. Unless otherwise provided herein, the Government-

(1) May abandon any Government property in place, at which time all obligations of the Government

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regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon subcontract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

(l) Overseas contracts. If this subcontract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

1-75 52.252-2 CLAUSES INCORPORATED BY REFERENCE FEB/1998

This subcontract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Prime Contractor will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

FAR Clauses:

www.acq.gov/far

DFARS Clauses:

www.dtic.mil/dfars

Clause Deviations:

www.acq.osd.mil/dp/dars/classdev.html

1-78 252.243-7000 ENGINEERING CHANGE PROPOSALS (SEP 1999)-ALTERNATE I MAY/1994

- (a) The Prime Contractor may ask the Subcontractor to prepare engineering change proposals for engineering changes within the scope of this subcontract. Upon receipt of a written request from the Prime Contractor, the Subcontractor shall prepare and submit an engineering change proposal in accordance with the instructions of MIL-STD-973, in effect on the date of subcontract award.
- (b) The Subcontractor may initiate engineering change proposals. Subcontractor initiated engineering change proposals shall include a "not to exceed" price or a "not less than" price and delivery adjustment. If the Prime Contractor orders the engineering change, the increase shall not exceed nor the decrease be less than the "not to exceed" or "not less than" amounts.
- (c) When the price of the engineering change is \$500,000 or more, the Subcontractor shall submit—
 - (1) A subcontract proposal using the format in Table 15-2, Section 15.408, of the Federal Acquisition Regulation; and
 - (2) At the time of agreement on price, or on another date agreed upon between the parties, a signed Certificate of Current Cost or Pricing Data.
- (d) If the price of a Subcontractor initiated engineering change is \$5000 or less, the change, if ordered, shall be made at no adjustment in the subcontract price.

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SECTION J

LIST OF DOCUMENTS, EXHIBITS AND ATTACHMENTS

- J.1 List of documents, Exhibits and Attachments:
- a. Statement of Work for Aircraft Life Cycle Contractor Support (LCCS) for the C-12/RC-12 and UC-35 (Contract DAAH23-00-C-0228; Attachment 1)
 - b. Department of Defense Contract Security Classification Information (DD Form 254) for Contract DAAH23-00-C-0228

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[Signature]

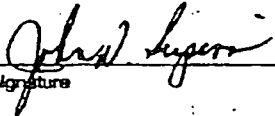
ENTIRE AGREEMENT - SIGNATURE PAGE

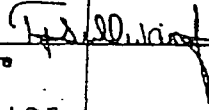
This Subcontract constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and supersedes all prior representations and agreements, except for those specifically and expressly incorporated herein. It shall not be varied, except by an instrument in writing of subsequent date duly executed by authorized representatives of the parties. The validity, construction, scope and performance of this Subcontract agreement shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the parties hereto have, through duly authorized officials, executed this Subcontract agreement effective as of the day and year indicated on the cover page.

DYNACORP INTERNATIONAL LLC

STEVENS AVIATION, INC.


 Signature


 Signature

John W. Supina
 Name

Thomas J. Sullivan
 Name

Vice President, Contract Administration
 Title

Vice President, Finance
 Title

3-20-01
 Date

3-2-01
 Date

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DynCorp International

In reply please refer to:
LCCSA-01/0816

28 March 2001

Stevens Aviation, Inc.
Donaldson Center Industrial Air Park
800 Delaware Street
Greenville, SC 29605

Attention: Mr. V. P. Hart - C-12 Program Manager

Subject: Modification 1 to Subcontract SAI0001, Eff. Date 6 Oct '00

Dear Mr. Hart:

The purpose of this Modification is to extend the term of the Subcontract for an additional one-year period ("Option Year I"), beginning on 1 February 2001 and continuing through 31 January 2002, subject to the termination provisions contained in the Subcontract. All other terms and conditions of the Subcontract remain unchanged and in effect for the duration of Option Year I.

This Modification shall be considered effective upon the date of signature by DynCorp (below).

Accepted by


DynCorp Representative

3/26/01
Date

Roy P. Oler, Program Director
Name, Title

CC: SAI - V. Hart
C. Crum

DynCorp - P. O'Brien
T. Crawley
M. Craft
G. Jacobs

One Ridgeway Centre • 6500 West Freeway, Suite 600 • Fort Worth, TX 76116-2187 • (817) 732-4481 • Fax (817) 737-1818 • www.dyncorp.com

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	C.A. NO. 2009-CP-23-7229
	)	
Stevens Aviation, Inc.,	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF STEVENS AVIATION, INC.'S
vs.	)	BRIEF IN SUPPORT OF ITS
	)	CROSS-MOTION FOR JUDGMENT
DynCorp International LLC, and Science	)	ON THE PLEADINGS AND
Applications International Corporation,	)	ALTERNATIVE MOTION FOR
	)	SUMMARY JUDGMENT
Defendants.	)	
	)	

Plaintiff Stevens Aviation, Inc. ("Stevens") has moved this Court to enter judgment in its favor and against Defendant DynCorp International LLC ("DynCorp") on the issue of whether the Subcontract Agreement required, and continues to require, DynCorp to send to Stevens *all* C-12/RC-12 and UC-35 aircraft submitted to DynCorp under U.S. Army Contract DAAH23-00-C-0226 for the purpose of allowing Stevens to perform the aviation maintenance services specified in that Agreement, *i.e.*, aircraft condition inspections ("ACIs"), strip and repaint work, and depo maintenance work. Stevens seeks entry of judgment under Rule 12(c), or alternatively Rule 56, of the South Carolina Rules of Civil Procedure. For the reasons outlined herein, Stevens Motion should be granted.

I. FACTS

A. UNDISPUTED FACTS ESTABLISHED BY PLEADINGS.

DynCorp was awarded U.S. Army Contract DAAH23-00-C-0226 ("the Prime Contract"). See Amended Answer of DynCorp International LLC ("Am. Ans."), ¶ 10. Subsequently, (as DynCorp admits), the Subcontract Agreement attached to the Complaint as Exhibit A was executed by DynCorp and Stevens. See Am. Ans. at ¶ 11. The Subcontract Agreement was

executed specifically for the purposes of carrying out work subject to the Prime Contract. See Subcontract Agreement ("SA"), pp. 3-4.

The purposes of, and the intent of the parties in executing, that Subcontract Agreement were set forth in detail in its PREAMBLE:

WHEREAS, the parties entered into a Teaming Agreement ("TA") executed on 16, March, 2000, which identifies the roles and responsibilities of the parties as Prime and Subcontractor in a cooperative effort to perform the requirements of U.S. Army Contract DAAH23-00-C-0226 [];

WHEREAS, this Subcontract supersedes all prior written or oral agreements between the parties, excluding the Proprietary Data Exchange Agreement executed on 16 March, 2000, and constitutes the entire agreement between the parties hereto with respect to this Subcontract;

WHEREAS, the Prime Contract provides for the maintenance and repair of the Government's fleet of C-12/RC-12 and UC-35 Aircraft and related support equipment (hereinafter the "Life Cycle Contractor Support Program" or "LCCS Program");

WHEREAS, DYNCORP requires the services of a subcontractor experienced in the management, provision, repair and support of C-12/RC-12 Aircraft to fulfill certain requirements of the Prime Contract;

WHEREAS, Stevens¹ is experienced in the management, provision, repair and support of C-12/RC-12 Aircraft in performance of government contracts;

WHEREAS, DYNCORP has requested and Stevens has agreed to provide Depot support in the form of management, provision, repair and support of C-12/RC-12 Aircraft throughout the world and perform such other services as primarily encompassed in the Prime Contract;

WHEREAS, The parties desire to enter into this Subcontract in furtherance of their objectives as stated in the TA [Teaming Agreement] for Stevens, as a subcontractor to DYNCORP, to provide Depot support in the form of management repair, skilled labor, materials, facilities and engineering data for the maintenance and repair of the Government's *fleet* of C-12/RC-12 Aircraft and related support equipment under the Prime Contract;

¹ Stevens is actually referred to throughout the Subcontract Agreement as "SAI" (i.e., "Stevens Aviation, Inc."). For consistency, "SAI" is replaced with "Stevens" in the context of this Brief.

See SA, p. 3 (emphasis added).

As expressly set forth in the Subcontract Agreement, its "term"/length coincides directly with the Prime Contract DynCorp entered into with the Government. Id. at p. 5. More specifically, "in each instance that the Government extends the Prime Contract with DynCorp" for any of its available option years, DynCorp is automatically "deemed to have extended, and shall extend," the Subcontract Agreement for that same period. Id.

Immediately after setting forth the purposes of the Subcontract Agreement and its term with respect to duration – and prior to describing the agreements of the parties and the actual work to be performed under it – the Subcontract Agreement sets forth the "DEFINITIONS AND PROCEDURES RELATED TO SUBCONTRACT." Id. at pp. 6-8. In this section, the term "Aircraft" is expressly defined as: "All Army RC/C-12 and UC-35 aircraft covered under the Prime Contract." See SA, p. 6 (emphasis added).

After having defined the word "Aircraft" as including "all" RC/C-12 and UC-35 aircraft covered under the Prime Contract, the Subcontract Agreement sets forth a "STATEMENT OF REQUIREMENTS" which provides:

Stevens, as a Subcontractor to DYNCORP, shall provide items consisting of the management, parts and materials, repairs, skilled labor, facilities and engineering data for the maintenance and repair of the Government's fleet of C-12/RC-12 *Aircraft* and related support equipment under the Prime Contract as specifically set forth in Section B.

DYNCORP is not required to purchase from the Subcontractor [Stevens] any requirement in excess of the total funding identified in Section G under this subcontract.

See SA, p 15 (capitalization in original) (emphasis added).

In turn, Section G of the Subcontract Agreement refers to funds allocated for "contract line item numbers" commonly referred to in the government contracts world as a "CLIN".² Id. at p. 28. Under Section G, Stevens is relieved from performing under the Subcontract, and DynCorp is relieved from its obligation to pay Stevens, to the extent that "DynCorp exhausts funds for any Prime Contract CLIN". Id.

The parties indicated in the Subcontract Agreement that the entirety of the Statement of Work ("SOW") from the Prime Contract was to be incorporated into it. Id. at p. 50. And, that Statement of Work is repeatedly referenced within the context of the Subcontract Agreement when it describes the work that Stevens is to perform under the Subcontract. *See, e.g., SA*, pp. 15, 16, 22, 37. That Statement of Work provides:

1.0 SCOPE

This Statement of work (SOW) specifies the Life-Cycle Contractor Support (LCCS) activities for the Army's C-12/RC-12/UC-35 fixed wing aircraft fleet. This includes total aircraft system maintenance services, logistical support, and management processes *to maintain the worldwide fleet of approximately 172 C-12/RC-12 Army Aircraft, and 20 Army UC-35 and 2 Navy UC-35 aircraft ...*

See Attachment 4 (at p. 6) to Affidavit of Sheldon K. Early, attached hereto as Exhibit A.

In two separate places, the Subcontract Agreement expressly contemplates DynCorp's right to terminate the Agreement. In Section H.8, DynCorp is given the right to terminate the Subcontract Agreement "if delivery or performance is delayed or deficient under the specified requirements, and Stevens was in control of or responsible for the causal factor of the delay or deficiency." *See SA*, p. 32.

Additional conditions under which termination can occur are then extensively set forth later in the Subcontract Agreement:

² This is recognized in the Subcontract Agreement in that its "ABBREVIATIONS" section lists "CLIN" as "Contract Line Item Number." *See SA*, p. 12.

H.23 DEFAULT AND TERMINATION

A. **Default by Stevens.** The following events shall constitute Events of Default for Stevens (whether such events shall be voluntary or involuntary or arise or be affected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule, or regulation of any administrative or governmental body):

1. Stevens shall fail in the faithful performance of its obligations in accordance with the terms of this Subcontract and such failure shall continue for ten (10) days after receipt of written notice of such failure ("Cure Notice"); unless Stevens provides DYNCORP with adequate assurance of its ability to cure such failure within a reasonable time, and thereafter so cures.
2. Recurring problems or issues with the quality or work performed by Stevens, which result in the execution of the provisions of paragraph H.23-A, subparagraph 1 above (issuance of a Cure Notice), shall be grounds for the modification of the Term of this Subcontract as it pertains to renewal of Option Years. "Recurring" shall be defined as the issuance of more than three (3) Cure Notices in one (1) Option Year, pursuant to paragraph H.23-A, subparagraph 1.
3. Any certification, representation or warranty made by Stevens in or pursuant to the Agreement shall have been incorrect in any material respect on the date made.
4. [If] Stevens shall suspend all or substantially all of its operations, temporarily or permanently discontinue business, sell or otherwise dispose of all or substantially all of its assets or cease to hold the permits, licenses, authorizations and certificates including any certificate of convenience and necessarily required for the conduct of its business, or the same are revoked or varied in a manner which materially adversely affects the financial situation of Stevens.
5. If a petition shall be filed against Stevens seeking any reorganization, composition, readjustment, liquidation or similar relief under any present or future statute, law or regulation of the United States and shall remain as non dismissed or unstayed for an aggregate of ninety (90) days (whether or not consecutive), or if any trustee, receiver or liquidator of Stevens is appointed, which appointment shall remain unvacated or unstayed for an aggregate of ninety (90) days (whether or not consecutive).
6. Stevens shall not be deemed in control of, or responsible for, the late delivery of parts that are supplied by a third party, (OEM, DynCorp, or the

Government) if such late delivery is beyond Steven's control. Moreover, in such event, Stevens shall not be considered to have failed in the faithful performance of its obligations hereunder.

B. Default of DYNCORP. The following events shall constitute Events of Default for DYNCORP (whether such events shall be voluntary or involuntary or arise or be affected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule, or regulation of any administrative or governmental body):

1. If DYNCORP fails in its obligations hereunder to make timely payment and fails to cure such breach within sixty (60) days after written notification.
2. If DYNCORP shall suspend all or substantially all of its operations, temporarily or permanently discontinue business, sell or otherwise dispose of all or substantially all of its assets or cease to hold the permits, licenses, authorizations and certificates including any certificate of convenience and necessarily required for the conduct of its business, or the same are revoked or varied in a manner which materially adversely affects the financial situation of DYNCORP.

C. Remedies. Upon the occurrence of an Event of Default by either Party, the other Party shall be entitled to all remedies, minus consequential or incidental damages (actual damages only), under applicable laws in accordance with the Applicable Law and Disputes provision of this Subcontract in Section H. Upon the occurrence of an Event of Default by either Party, the other Party shall be entitled to terminate this Subcontract. Such termination shall not relieve the Parties of any prior obligations incurred under this Subcontract.

D. Termination. Notwithstanding the provisions above, DYNCORP shall have the right to terminate this Subcontract prior to the exercise of any Option, provided that the Government has terminated DYNCORP's Prime Contract for the services described herein, pursuant to FAR 52.249-2.

Id. at pp. 41-42.

B. INDISPUTABLE FACTS ESTABLISHED BY EVIDENCE.

The events leading up to, and surrounding, the execution of the Subcontract Agreement are well documented. In March of 2000 DynCorp and Stevens executed a Teaming Agreement; DynCorp outright admits this. See Am. Ans. at ¶ 4. The purpose of the Teaming Agreement, as

stated therein, was "to cooperate in preparing and submitting one or more competitive proposals in response to the [Request for Proposal for Life Cycle Contractor Support for C-12/RC-12 and UC-35 Fixed Wing Aircraft]" issued by the U.S. Army "in an attempt to obtain the award of a contract for the Project." See Teaming Agreement (p. 1), attached to Affidavit of Sheldon K. Early (Exhibit A) as Exhibit 2.

In Paragraph 2.01 of the Teaming Agreement, DynCorp and Stevens agreed that DynCorp would submit the "competitive proposal" to the U.S. Army, but that it would identify Stevens "as *the* subcontractor to provide the services" identified in Attachment B to the Teaming Agreement, i.e., aircraft condition inspections, strip and repaint work, and depot maintenance. See Teaming Agreement at p. 1 (& Attachment B, thereto) (emphasis added). The Teaming Agreement then expressly provided that:

In the event that DynCorp is awarded the prime contract under the [Request for Proposal for Life Cycle Contractor Support for C-12/RC-12 and UC-35 Fixed Wing Aircraft], DynCorp *shall* award to STEVENS a subcontract thereunder to perform the work described in Paragraph 2.01 hereof.

Id. at p. 3 (emphasis added).

The Subcontract Agreement was the culmination of the efforts undertaken by DynCorp and Stevens as outlined in the Teaming Agreement. See Affidavit of Sheldon K. Early (Exhibit A), ¶¶ 2-8. At the time the Subcontract Agreement was entered into, DynCorp and Stevens both agreed and understood that Stevens would be the only entity performing the specified work on the C-12/RC-12 and UC-35 aircraft submitted to DynCorp by the U.S. Army under the Prime Contract. Id. at ¶¶ 10-13. And, Stevens believed it was the only entity performing aircraft condition inspections, strip and repaint work, and depo maintenance work on the C-12/RC-12 and UC-35 aircraft submitted to DynCorp under the Prime Contract until it

learned, in mid-2009, that DynCorp had sent an aircraft to another aviation maintenance facility for such work.³

II. ARGUMENT

A. APPLICABLE LAW.

The Subcontract Agreement has two different choice of law provisions. One dictates that the Subcontract is to be interpreted "according to the federal common law of government contracts," or, if that is not dispositive, according to the laws of the State of Texas (where DynCorp maintains its principal place of business). See SA, p. 30. The other choice of law provision is found on the "Signature Page" of the Subcontract Agreement, directly above where both DynCorp and Stevens affixed their signatures, and provides: "The validity, construction, scope and performance of this Subcontract agreement shall be governed by the laws of the State of Texas." *Id.* at p. 51.

Because the principles of contract interpretation necessary to resolution of the current Motions are virtually identical under both federal common law and Texas law, which of these choice-of-law provisions actually applies is largely an academic question. Under either law there is only one reasonable interpretation of the Subcontract Agreement: DynCorp was, and still is, required to send to Stevens "[a]ll Army RC/C-12 and UC-35 aircraft covered under the Prime Contract" for performance of the maintenance services specified in the Subcontract Agreement.

³ See Affidavit of Neal McGrail, already of record in this case. For the Court's convenience, a copy of the McGrail Affidavit (without exhibits) is attached hereto as Exhibit B.

B. RULES GOVERNING CONTRACT INTERPRETATION.

The rules applicable to this Court's interpretation of the Subcontract Agreement are well established, and not open to any good faith debate:

First, "[c]ontract interpretation begins with the language of the written agreement." Coast Federal Bank, FSB v. United States, 323 F.3d 1035, 1038 (Fed. Cir. 2003);⁴

Second, a court must interpret a contract "as a whole and in a manner which gives *reasonable* meaning to all of its parts." United International Investigative Services v. United States, 109 F.3d 734, 737 (Fed. Cir. 1997) (emphasis added);⁵

Third, in interpreting a contract, "an interpretation which gives a reasonable meaning to all of its parts will be preferred to one which leaves a portion of it useless, inexplicable, inoperative, void, insignificant, meaningless, superfluous, or achieves a weird and whimsical result." Gould, Inc. v. United States, 935 F.2d 1271, 1274 (Fed. Cir. 1991) (citation omitted);⁶

Fourth, "[t]he language of a contract must be given that meaning that would be derived from the contract by a reasonably intelligent person acquainted with the contemporaneous circumstances." Metric Constructors, Inc. v. Nat'l Aeronautics & Space Admin., 169 F.3d 747, 752 (Fed. Cir. 1999);⁷

⁴ See also SAS Institute, Inc. v. Breitenfeld, 167 S.W.3d 840 (Tex. 2005) ("[A] court interprets a contract by ascertaining the true objective intentions of the parties, based on the contract language").

⁵ See also Westwind Exploration, Inc. v. Homestate Savings Ass'n., 696 S.W.2d 378, 382 (Tex. 1985) ("[A] reasonable interpretation of an agreement will be preferred to one which is unreasonable").

⁶ See also Seagull Energy E & P, Inc. v. Eland Energy, Inc., 207 S.W.3d 342, 346 (Tex. 2006) ("[W]e examine and consider the entire writing in an effort to harmonize and give effect to all the provisions of the contract so that none will be rendered meaningless. No single provision taken alone will be given controlling effect; rather, all the provisions must be considered with reference to the whole instrument" (emphasis in original)).

⁷ See also Manzo v. Ford, 731 S.W.2d 673, 676 (Tex.App. 1987) ("This court will construe the language used in the contract by determining how the 'reasonable man' would have used and understood

Fifth, "extrinsic evidence ... may not be considered unless an ambiguity is identified in the contract language," and "[o]utside evidence may not be brought in to create an ambiguity." City of Tacoma, Dept. of Public Utilities v. United States, 31 F.3d 1130, 1134 (Fed. Cir. 1994),⁸

Sixth, in determining if a contract is ambiguous it must be read as whole. *See, e.g., McAbee Construction, Inc. v. United States*, 97 F.3d 1431, 1434-35 (Fed. Cir. 1996) ("We turn, therefore, to the other issue in the case: whether the terms of the contract *read as a whole* are ambiguous, whether they are susceptible to more than one reasonable interpretation" (emphasis added));⁹

Seventh, an ambiguity does not exist merely because two "parties differ in their respective interpretations of a contract term"; "[r]ather, both interpretations must fall within a 'zone of reasonableness'" for the court to find that an ambiguity exists. Metric Constructors, 169 F.3d at 751;¹⁰ and

such language, considering the circumstances surrounding its negotiation and keeping in mind the purposes intended to be accomplished by the parties when entering into the contract").

⁸ *See also Friendswood Development Co. v. McDade + Company*, 926 S.W.2d 280, 283 (Tex. 1996) ("[P]arol evidence of intent cannot be admitted for the purpose of creating an ambiguity. Only after a contract is found to be ambiguous may parol evidence be admitted for the purpose of ascertaining the true intentions of the parties expressed in the contract").

⁹ *See also National Union Fire Insurance Co. of Pittsburgh, PA v. CBI Industries, Inc.*, 907 S.W.2d 517, 520 (Tex. 1995) ("Whether a contract is ambiguous is a question of law for the court to decide by looking at the contract as a whole in light of the circumstances present when the contract was entered").

¹⁰ *See also Columbia Gas Transmission Corp. v. New Ulm Gas, Ltd.*, 940 S.W.2d 587, 589 (Tex. 1996) ("An ambiguity does not arise simply because the parties advance conflicting interpretations of the contract. For an ambiguity to exist, both interpretations must be *reasonable*" (emphasis in original) (citations omitted)).

Eighth, when a court turns to extrinsic evidence to resolve an ambiguity, the court must "construe [the contract's] language to effect the parties' intent at the time they executed" it. Dureiko v. United States, 209 F.3d 1345, 1356 (Fed. Cir. 2000).¹¹

C. MOTION FOR JUDGMENT UNDER RULE 12(C).

In ruling on a motion brought under Rule 12(c) of the South Carolina Rules of Civil Procedure, this Court cannot consider matters outside the pleadings. See S.C.R.Civ.P. 12(c). Thus, while a court can, on a Rule 12(c) motion, interpret a contract which is attached to a complaint, it can only do so if that contract is clear and unambiguous on its face because an ambiguous contract requires consideration of extrinsic evidence. See, e.g., Daewoo Engineering & Construction Co., Ltd. v. United States, 557 F.3d 1332, 1337 (Fed. Cir. 2009) ("Where the meaning of a written instrument is unclear, courts look to extrinsic evidence to resolve the question"); EMC Mortgage Corp. v. Davis, 167 S.W.3d 406, 413 (Tex.App. 2005) ("When a court determines that a contract is ambiguous, a court may admit extraneous evidence to determine the true meaning of the instrument").

Accordingly, in this case, this Court can enter a judgment on the pleadings under Rule 12(c) as to the interpretation of the Subcontract Agreement only if it finds that the Subcontract is not ambiguous, *i.e.*, that it is susceptible to only one *reasonable* interpretation with respect to the issue of whether DynCorp was required to send to Stevens *all* C-12/RC-12 and UC-35 aircraft submitted to DynCorp under the Prime Contract for the purpose of allowing Stevens to perform the aviation maintenance services specified in that Agreement.¹²

¹¹ See also Friendswood, 926 S.W.2d at 283 (indicating that when a contract is ambiguous parol evidence is admissible to ascertain the true intent of the parties).

¹² See e.g., Metric Constructors, 169 F.3d at 751 (indicating that the interpretations of a contract offered by two opposing parties "must fall within a 'zone of reasonableness'" for the court to find that an

This Court can, and should, enter judgment under Rule 12(c), and find that under the Subcontract Agreement DynCorp was required to send to Stevens "*all*" C-12/RC-12 and UC-35 aircraft submitted to DynCorp under the Prime Contract for the purpose of allowing Stevens to perform the aviation maintenance services specified in the Subcontract. Read as a whole, and giving meaning to each and every provision therein, there is no other *reasonable* interpretation of the Subcontract Agreement.

As an initial matter, Stevens does not dispute what DynCorp has said throughout this litigation: there is no "exclusivity *clause*" in the Subcontract Agreement. But, that fact plays both ways: while there is no clause expressly stating that DynCorp must use Stevens as the exclusive provider of the aviation maintenance services at issue, there also is no clause which states that DynCorp does not have to use Stevens exclusively. However, the Subcontract Agreement, read as a whole, is subject to no other meaning than that DynCorp is obligated to send to Stevens "*all*" C-12/RC-12 and UC-35 aircraft for the purpose of allowing Stevens to perform the aviation maintenance services specified therein.

Indeed, the definition of "Aircraft" set forth in the Subcontract Agreement, standing alone, is sufficient to establish that Stevens' proffered interpretation is the only *reasonable* one. In the Subcontract, the term "Aircraft" is expressly defined as: "*All* Army RC/C-12 and UC-35 aircraft covered under the Prime Contract." See SA at p. 6 (emphasis added). And the word "Aircraft", in its capitalized format, is then used throughout the Subcontract Agreement in describing its purposes, the parties' obligations, and the work that Stevens is required to perform under its terms. See, e.g., SA at pp. 3, 15, 25, 32, 33, 37, 38. The use of the word "all" in

ambiguity exists); *Columbia Gas*, 940 S.W.2d at 589 ("An ambiguity does not arise simply because the parties advance conflicting interpretations of the contract. For an ambiguity to exist, both interpretations must be *reasonable*" (emphasis in original) (citations omitted)).

defining the Aircraft governed by the provisions of the Subcontract is conclusive of fact that the Stevens was, and is, entitled to have *all* RC/C-12 and UC-35 aircraft covered under the Prime Contract sent to it for the performance of the specified maintenance services.

The significance to be attached to the use of the qualifying word "all" in a contract was discussed at length in National Steel & Shipbuilding Co. v. United States, 190 Ct.Cl. 247, 419 F.2d 863 (Cl.Ct. 1969). In National Steel the court applied the federal common law of government contracts in interpreting a provision which required the defendant government agency to "employ all reasonable effort and reasonable diligence to supply to the Contractor working plans" by the dates specified. 419 F.2d at 867. Analyzing the duties imposed by the contract, the National Steel court noted:

The effort and diligence were, further, to be 'all' effort and diligence. 'All' is often used in writing intended to have legal effect as a preface to flexible or imprecise words, as in 'all other property,' 'all the rest and residue,' 'all and every,' 'all speed,' 'all respect.' Its purpose is to underscore that intended breadth is not to be narrowed. 'All' means the whole of that which it defines - not less than the entirety. 'All' means all and not substantially all. The prefatory word 'all' in the contract clause meant, then, that no available effort might be omitted.

Id. at 875.

In a similar case in which the court interpreted an agreement under the federal common law of government contracts, the court likewise concluded that the use of the word "all" is a clear and unequivocal description of an entirety. In Hughes Aircraft Co. v. United States, 15 Cl.Ct. 550, 552-53 (Cl.Ct. 1988), the court entered judgment in favor of the government finding that the claims made against it were released by Hughes when it entered into a settlement agreement with a third party. Hughes had entered into a settlement agreement with third party Ford to resolve claims of patent infringement existing between those two entities. 15 Cl.Ct. at 553. The Ford-Hughes settlement agreement provided that Hughes granted a release to Ford which extended "to

all customers for and users of goods made or sold by Ford.” Id. Rejecting Hughes’ argument that the preamble to the settlement agreement somehow meant that the word “all” should be interpreted to mean “less than all,” the Hughes court reasoned:

Phrases such as ‘all customers’ and ‘all users’ could hardly be more clear cut and categorical. ‘All’ means ‘all’ without requiring the insertion of the names of any and all other persons. To read implied limitations into the release would require contortion of the release language.

Id. at 554; *see also* Seville Construction, Inc. v. United States, 35 Fed.Cl. 242, 246 (Cl.Ct. 1996) (in dispute involving government contract for installation of dampers, court reasoned that “all means all” and held that defendant contractor could not use “fusible fire dampers” at any location on contract site since notations on drawings instructed that “smoke/fire dampers” were to be installed “at all locations”).

The courts’ analyses of the word “all” in National Steel and Hughes are consistent with both the generally recognized meaning of the word, and a multitude of opinions handed down by courts construing contracts under various laws. *See, e.g.,* Oxford American Dictionary 17 (1980) (defining “all” as “the whole amount or number or extent of”); *see also* Knott v. McDonald’s Corp., 147 F.3d 1065, 1067-68 (9th Cir. 1998) (noting that “‘all’ is an all-encompassing term” and that “‘all’ means all,” court rejected the plaintiffs’ argument that their assignment to new owners of “all right, title and interest” in franchise did not include an assignment of their breach of contract claims); Morison v. General Motors Corp., 428 F.2d 952, 953 (5th Cir. 1970) (holding that settlement agreement releasing the settling party and “all other persons, firms or corporations” included party which had paid no settlement money because “‘all’ means ‘all’ without requiring the insertion of the names of any and all other persons”).

As is clear, the federal common law of government contracts, as well as common sense and logic, mandate that the Subcontract Agreement be interpreted as requiring that Stevens has the right to perform the specified maintenance on "*all*" C-12/RC-12 and U-35 aircraft because that is exactly what that Subcontract says. But Stevens' proffered interpretation of the Subcontract – that it had the right to perform the prescribed maintenance work on *all* C-12/RC-12 and U-35 aircraft – is supported by much more than just a definition set forth in the Subcontract.

Within the four-corners of the Subcontract Agreement there is a host of provisions which make clear that the only *reasonable* interpretation of it is that DynCorp had a contractual obligation to send *all* C-12/RC-12 and U-35 aircraft to Stevens. For example, the Subcontract dictates:

Stevens, as a Subcontractor to DYNACORP, shall provide items consisting of the management, parts and materials, repairs, skilled labor, facilities and engineering data for the maintenance and repair of the Government's fleet of C-12/RC-12 Aircraft and related support equipment under the Prime Contract as specifically set forth in Section B.

See SA, p. 15. There would be no need to mandate that Stevens provide the designated items for the entire "*fleet*" of "*Aircraft*" if DynCorp could, at its whim, send aircraft to some other entity. This language supports no other conclusion than that DynCorp was required to send *all* aircraft to Stevens. Cf. Appeal of – Trans Com Systems, 2003 WL 2012889, *4 (A.S.B.C.A. May 1, 2003) (holding that language in government firm fixed price requirements contract indicating that a contractor "shall provide all labor, materials, equipment, transportation, and supervision necessary to perform transcription services for *all medical and radiological reports from the 95th Medical Group*" was "clearly indicative of exclusivity" (emphasis in original)).¹³

¹³ A copy of the Trans Com Systems opinion is attached hereto as Exhibit C.

Furthermore, under the express and unequivocal wording of the Subcontract Agreement, the entirety of the Statement of Work from the Prime Contract is incorporated into its provisions, and that Statement of Work is then referenced multiple times in describing the work that Stevens is to perform under the Subcontract. *See, e.g., SA*, pp. 15, 16, 22, 37, 50. In turn, the Statement of Work makes clear that the aircraft subject to its provisions includes the entire “*worldwide fleet*” of C-12/RC-12 and U-35 aircraft; indeed, it goes so far as to identify the approximate number of aircraft in the fleet, *i.e.*, “approximately 172 C-12/RC-12 Army Aircraft, and 20 Army UC-35 and 2 Navy UC-35 aircraft.” *See Exhibit 4 to Affidavit of Sheldon K. Early (Exhibit A)*. The fact that the Statement of Work from the Prime Contract uses such broad and encompassing language, and that it, in turn, is then incorporated into the Subcontract Agreement lends further support to Stevens’ claim that it was to be the exclusive provider of the aviation maintenance services described in the Subcontract Agreement.

In addition to this, it is clear that interpreting the Subcontract Agreement as DynCorp has suggested – as leaving DynCorp free to send aircraft to entities other than Stevens at its own choosing – would simply negate, and render completely meaningless, several of its provisions. Such a result is prohibited by general principles of contract interpretation.¹⁴ For example, DynCorp’s proffered interpretation would render completely meaningless the lengthy and detailed provisions set forth in Section H.23 of the Subcontract which outline specific “Events of

¹⁴ *See Gould*, 935 F.2d at 1274 (“[A]n interpretation which gives a reasonable meaning to all of [a contract’s] parts will be preferred to one which leaves a portion of it useless, inexplicable, inoperative, void, insignificant, meaningless, superfluous, or achieves a weird and whimsical result”); *Seagull Energy*, 207 S.W.3d at 346 (“[W]e examine and consider *the entire writing* in an effort to harmonize and give effect to *all the provisions* of the contract so that none will be rendered meaningless” (emphasis in original)).

Default for Stevens," the occurrence of which creates DynCorp's "entitle[ment] to terminate this Subcontract." See SA, pp. 41-42; see also id., p. 32.

If DynCorp could simply choose to send all aircraft to an entity other than Stevens at any point in time, why would a termination clause ever be needed? The Subcontract Agreement could still "exist" and DynCorp could accomplish the same result as a termination would accomplish simply by its own unilateral act of sending no aircraft to Stevens. Effectively then, employing DynCorp's interpretation of the Subcontract Agreement would leave it free to terminate the Subcontract Agreement for no reason at all. This point is amply demonstrated by considering that part of the termination clause which indicates that issuance by DynCorp to Stevens of "more than (3) Cure Notices in one (1) Option Year" shall be grounds for DynCorp not renewing any of the Option Years. Id. Obviously, if DynCorp was not required to send any aircraft to Stevens, renewal of option years would have no meaning anyway.

A termination clause granting DynCorp the right to terminate or modify the terms of the Subcontract Agreement based on the specified non-performance or wrongful-performance of Stevens only makes sense, and has meaning, if DynCorp is, in the absence of such circumstances, required to send all aircraft to Stevens. Otherwise, the termination clause would be complete surplusage – an interpretation which is prohibited. See, e.g., Gould, 935 F.2d at 1274 (court should not construe contract in such a way "which leaves a portion of it useless, inexplicable, inoperative, void, insignificant, meaningless, superfluous, or achieves a weird and whimsical result"); Seagull Energy, 207 S.W.3d at 346 "[W]e examine and consider *the entire writing* in an effort to harmonize and give effect to *all the provisions* of the contract so that none will be rendered meaningless").

This same analysis applies to the provision in the Subcontract Agreement which indicates that DynCorp is not required to purchase from Stevens any services for contract line items if the payment for those items would exceed the funds DynCorp receives under the Prime Contract. See SA, pp. 15, 28. This provision would be entirely meaningless if, as DynCorp promotes, the Subcontract Agreement is interpreted to mean that DynCorp has no obligation to send all aircraft to Stevens. Under DynCorp's interpretation, when the charges DynCorp incurred for Stevens' work exceeded the amounts it received from the government under the Prime Contract it could just stop buying anything and everything from Stevens – it would not need the Subcontract to authorize such action. That is, if the Subcontract Agreement is to permit DynCorp to purchase aviation maintenance services from any entity, this provision would be nonsensical and absolutely meaningless because the express limitation imposed on DynCorp's "obligation" to purchase services from Stevens would actually be an express limitation on a non-existent obligation.

DynCorp's proposed interpretation of the Subcontract Agreement would also render meaningless its automatic renewal provisions. See SA, p. 5. What purpose would the renewal provision serve if the Subcontract Agreement did not, and does not, impose on DynCorp any obligation to send aircraft to Stevens anyway? The answer is that it would have no meaning whatsoever. Stevens would merely be entitled to renewal of a contract that is meaningless because it effectively promises nothing to Stevens since DynCorp could choose to send aircraft elsewhere. No reasonable person would interpret a contract in such a way.

Finally, in reading the Subcontract as a whole (as required), the provisions of its Preamble cannot be ignored. The Preamble incorporates the "roles and responsibilities" of Stevens and DynCorp as set forth in the Teaming Agreement. See SA, p. 3. And, that Teaming

Agreement expressly and unequivocally indicates that if DynCorp is awarded the Prime Contract (as it was), Stevens' roles and responsibilities will then be to provide "*all* ACI's" (i.e., aircraft condition inspections), strip and repaint work, and depot maintenance. *See* Teaming Agreement (pp. 3, 6), attached to Affidavit of Sheldon K. Early (Exhibit A).

The Preamble also acknowledges that the Subcontract Agreement is intended to outline a "cooperative effort to perform the requirements of" the Prime Contract. *See* SA, p. 3. The requirements of the Prime Contract apply to *all* C-12/RC-12 and UC-35 aircraft. *See* Exhibit 4 (Statement of Work), attached to Affidavit of Sheldon K. Early (Exhibit A). Indeed, it is expressly acknowledged in the Preamble that "the Prime Contract provides for the maintenance and repair of the Government's *fleet* of C-12/RC-12 and UC-35 Aircraft" and that DynCorp needs Stevens' experience to fulfill the Prime Contract. *See* SA, p. 3 (emphasis added). The Preamble then acknowledges that DynCorp has requested, and Stevens has agreed, to "provide Depot support in the form of management repair, skilled labor, materials, facilities and engineering data for the maintenance and repair of the Government's *fleet* of C-12/RC-12 Aircraft and related support equipment under the Prime Contract." *Id.* (emphasis added). The repeated use of the word "fleet" and the defined word "Aircraft" (in its capitalized format) in describing the work that Stevens is to do pursuant to the terms of the Subcontract Agreement lends further support to the fact that the Subcontract, read as a whole, imposes an obligation on DynCorp to send *all* C-12/RC-12 and UC-35 aircraft to Stevens for the performance of the specified maintenance services.

D. MOTION FOR JUDGMENT UNDER RULE 56.

In the event that this Court finds that the Subcontract Agreement, read as a whole, is susceptible to more than one *reasonable* interpretation on the issue of whether DynCorp is

obligated to send all C-12/RC-12 and UC-35 aircraft to Stevens, it should still enter judgment in favor of Stevens. Under the federal common law of government contracts, “[e]ven when the interpretation [of a contract] involves resolving some ambiguity in the contract language, this court may properly resolve this ambiguity as a matter of law on a motion for summary judgment.” General Electric v. United States, 60 Fed.Cl. 782, 790 (Ct.Cl. 2004).¹⁵

Any ambiguity in the Subcontract Agreement which this Court finds to exist must be resolved by considering evidence. *See, e.g., City of Tacoma*, 31 F.3d 1130 at 1134 (holding that extrinsic evidence can be considered when “an ambiguity is identified in the contract language”); Friendswood, 926 S.W.2d at 283 (indicating that after a contract is found to be ambiguous “parol evidence be admitted”). And, the applicable law, as well as the Subcontract Agreement itself, mandate that resolution of any ambiguity involve an examination of the circumstances and the intent of the parties at the time the Subcontract was executed. *See SA*, p. 14 (“Any ambiguity, discrepancy, inconsistency or conflict in or between any of the technical or contractual provisions hereof ... shall be resolved by applying the most *reasonable* interpretation under the circumstances, giving full consideration to the intentions of the parties *at the time of subcontracting*” (emphasis added)); Cities of Burbank, Glendale and Pasadena, Cal. v. Bodman, 464 F.3d 1280, 1284 (Fed. Cir. 2006) (“A principal objective in deciding what contractual language means is to discern the parties’ intent at the time the contract was signed”);

¹⁵ *See also Washington Metropolitan Area Transit Authority v. Potomac Investment Properties, Inc.*, 476 F.3d 231, 235 (4th Cir. 2007) (“Even where a court, however, determines as a matter of law that the contract is ambiguous, it may yet examine evidence extrinsic to the contract that is included in the summary judgment materials, and, if the evidence is, as a matter of law, dispositive of the interpretive issue, grant summary judgment on that basis”); Compagnie Financiere de Cic et de L’Union Europeenne v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 232 F.3d 153, 158 (2d Cir. 2000) (citation omitted) (“[T]he court may resolve ambiguity in contractual language as a matter of law if the evidence presented about the parties’ intended meaning is so one-sided that no reasonable person could decide the contrary”).

Friendswood, 926 S.W.2d at 283 (indicating that when a contract is ambiguous parol evidence is admissible to ascertain the true intent of the parties). And, here the overwhelming evidence proves that the intent of the parties at the time that the Subcontract Agreement was executed was that DynCorp would send *all* C-12/RC-12 and UC-35 aircraft to Stevens for performance of the specified maintenance services.

Indeed, there is clear and unequivocal written contemporaneous evidence of the parties' intent at the time the Subcontract was contemplated and executed. That evidence comes in the form of a legally binding pre-contract contract, i.e., the Teaming Agreement. The significance of the Teaming Agreement is obvious. Indeed, the Subcontract Agreement itself refers to it and expressly acknowledges that the Teaming Agreement: (1) exists and has been executed; (2) is the document which "identifies the roles and responsibilities of the parties as Prime and Subcontractor" with respect to the Prime Contract; and (3) identifies DynCorp's and Stevens' "objectives" in executing the Subcontract. See SA, p. 3.

The Teaming Agreement, having identified the government's "Request for Proposal, for Life-Cycle Contractor Support for C-12/RC-12 and UC-35 Fixed Wing Aircraft" as the "Project", recognizes that DynCorp and Stevens "have complementary skills and capabilities which, taken together, would allow the Parties to perform the Project and improve chances of selection as the winning contractor." See Exhibit 2 to Affidavit of Sheldon K. Early (Exhibit A). Its stated "objective" is to have DynCorp and Stevens "cooperate in preparing and submitting one or more proposals in response" to the government's Request for Proposal "in an attempt to obtain the award of a contract for the Project." Id.

Two provisions in the Teaming Agreement are of vital significance, and conclusive of the parties' intentions at the time the Subcontract Agreement was executed. Section 2.01 of the Teaming Agreement states:

DynCorp shall prepare data required for any Proposal, integrating the proposal data furnished by STEVENS, and shall submit the Proposal as prime contractor with STEVENS identified in the Proposal as *the* subcontractor to provide the services set forth in Attachment B.

Id. (capitalization in original) (emphasis added).

"Attachment B" to the Teaming Agreement is entitled "STATEMENT OF WORK" and indicates that "STEVENS AVIATION *shall* be proposed to perform ... "*all* ACIs" (*i.e.*, aircraft condition inspections) ... "strip and repaint" ... and "depot level maintenance for the C-12/RC-12 aircraft fleet that is above the capability or qualifications of DynCorp personnel." Id. at p. 6 (emphasis added).

And, notably, the Teaming Agreement unequivocally obligates DynCorp to enter into a subcontract with Stevens in the event it is awarded the prime contract by the government, and to include in that subcontract a provision allowing Stevens to perform "*all* ACIs" "strip and repaint" work and "depot level maintenance":

In the event that DynCorp is awarded the prime contract under the RFP, *DynCorp shall award to Stevens a subcontract* thereunder to perform the work described in Paragraph 2.01 hereof."

Id. at p. 3 (emphasis added).

The fact that the Teaming Agreement contemplated an "exclusive" arrangement between DynCorp and Stevens in the event their joint efforts resulted in the awarding of a government contract to DynCorp is further bolstered by the fact that its provisions required Stevens to work exclusively with DynCorp in responding to the government's request for proposal. Id.

Each of these provisions, and the Teaming Agreement as a whole, makes it abundantly clear what the parties intended at the time of entering into the Subcontract Agreement: that DynCorp was subcontracting with Stevens to perform the aircraft condition inspections, strip and repaint work, and other specified maintenance on *all* aircraft covered under the Prime Contract. No reasonable person would believe that Stevens entered into an exclusive teaming arrangement with DynCorp to help it obtain the Prime Contract, so that DynCorp could then divert the aviation maintenance work to another entity.

In addition to the Teaming Agreement, eyewitness accounts of the events surrounding the execution of the Subcontract Agreement unequivocally support the fact that at that time the intent of DynCorp and Stevens was that DynCorp would have an obligation to send *all* aircraft subject to the Prime Contract to Stevens for the specified maintenance services, and that DynCorp would not be free to divert those aircraft to other maintenance facilities. Sheldon Early, as an employee of Stevens, was personally involved in negotiating not only the Teaming Agreement but the Subcontract Agreement as well. He has attested that at the time the Subcontract Agreement was executed, the parties intended it to provide for a "pass through" arrangement where Stevens was responsible for the depot maintenance work called for under the Prime Contract, *i.e.*, if DynCorp was given the work by the government, the work went to Stevens. *See* Affidavit of Sheldon K. Early (Exhibit A).

Finally, the conduct of DynCorp over the initial eight to nine years of the Subcontract Agreement also supports the fact that both DynCorp and Stevens intended that Stevens would perform the maintenance on *all* aircraft subject to the Prime Contract. Indeed, DynCorp has made admissions that the Subcontract obligates it to send the specified aircraft to Stevens for depot maintenance. *See* Affidavit of Sheldon K. Early (Exhibit A). And, DynCorp (to the best

of Stevens' knowledge) sent all aircraft covered under the Prime Contract to Stevens for aircraft condition inspections, strip and repaint work and depot maintenance work for at least the first 8 years after execution of the Subcontract Agreement.¹⁶ "Under both Texas contract law and general contract law, when a contract is ambiguous, 'conduct of the parties which indicates the construction that the parties themselves placed on the contract may be considered in determining the parties' true intent.'" DDB Technologies, L.L.C. v. MLB Advanced Media, L.P., 517 F.3d 1284, 1292 (Fed. Cir. 2008) (*quoting Consolidated Eng'g Co. v. S. Steel Co.*, 699 S.W.2d 188, 192-93 (Tex. 1985)); *see also Julius Goldman's Egg City v. United States*, 697 F.2d 1051, 1058 (Fed. Cir. 1983) ("A principle of contract interpretation is that the contract must be interpreted in accordance with the parties' understanding as shown by their conduct before the controversy").¹⁷

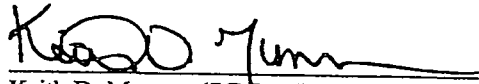
III. CONCLUSION

There is only one *reasonable* interpretation of the Subcontract Agreement on the issue before this Court, and that is: DynCorp had an obligation to send, and continues to have an obligation to send, to Stevens *all* C-12/RC-12 and UC-35 aircraft submitted to DynCorp under U.S. Army Contract DAAH23-00-C-0226 for the purpose of allowing Stevens to perform the aviation maintenance services specified in that Agreement. The language of the Subcontract Agreement supports this interpretation, and the evidence is overwhelming that this is what the parties intended. Stevens thus respectfully requests that this Court grant its Cross-Motion for Judgment on the Pleadings, or its Alternative Motion for Summary Judgment.

¹⁶ See Affidavit of Neal McGrail, already of record in this case.

¹⁷ It is noteworthy that in a document put out by the Fixed Wing Product Management Office of the U.S. Army, "Stevens Aviation, Greenville, SC" is recognized as *the* "depot maintainer" which performs aircraft condition inspections on "C-12, RC-12, UC-35" aircraft. See [https://hs66.order-vault.net/quad-a.org/Convention07/07_presentations/Fixed%20Wing%20-%20Brown.pps#331,7>Contact Information](https://hs66.order-vault.net/quad-a.org/Convention07/07_presentations/Fixed%20Wing%20-%20Brown.pps#331,7>Contact%20Information) (a copy of this document is attached hereto as Exhibit D for the Court's convenience).

Respectfully submitted,



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Catherine R. Atwood (SC Bar #77367)
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Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Stevens Aviation, Inc.,

Plaintiff,

vs.

DynCorp International LLC, and Science
Applications International Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS
C.A. NO. 2009-CP-23-7229

**STEVENS AVIATION, INC.'S
CROSS-MOTION FOR JUDGMENT
ON THE PLEADINGS AND
ALTERNATIVE MOTION FOR
SUMMARY JUDGMENT**

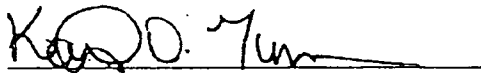
Pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure, Plaintiff Stevens Aviation, Inc. ("Stevens") moves this Court to enter judgment in its favor and against Defendant DynCorp International LLC ("DynCorp") on the issue of whether DynCorp was required to send to Stevens all C-12/RC-12 and UC-35 aircraft submitted to DynCorp under U.S. Army Contract DAAH23-00-C-0026 for the purpose of allowing Stevens to perform the aviation maintenance services specified in that Agreement. In support of its motion under Rule 12(c), Stevens relies on the Complaint and Answer thereto, the Subcontract Agreement attached to the Complaint, applicable precedent, and any memorandum of law which may be filed prior to a hearing on this Motion.

Alternatively, in the event that this Court finds the Subcontract Agreement to be ambiguous, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Stevens moves this Court to enter judgment in its favor and against DynCorp on the issue of whether DynCorp was required to send to Stevens all C-12/RC-12 and UC-35 aircraft submitted to DynCorp under U.S. Army Contract DAAH23-00-C-0026 for the purpose of allowing Stevens to perform the

aviation maintenance services specified in that Agreement. In support of its motion under Rule 56, Stevens relies on the Complaint and Answer thereto, the Subcontract Agreement entered into by the parties, the Teaming Agreement entered into by the parties which predated the Subcontract Agreement, evidence to be offered by way of affidavit and/or testimony, applicable precedent, and any memorandum of law which may be filed prior to a hearing on this Motion.

WHEREFORE, Plaintiff Stevens Aviation, Inc. respectfully requests that this Court enter a judgment in its favor and against Defendant DynCorp International LLC finding that, under the Subcontract Agreement, DynCorp was required to send to Stevens all C-12/RC-12 and UC-35 aircraft submitted to DynCorp under U.S. Army Contract DAAH23-00-C-0026, for the purpose of allowing Stevens to perform the aviation maintenance services specified in that Agreement.

Respectfully submitted,



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Catherine R. Atwood (SC Bar #77367)
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EXHIBIT A

EXHIBIT 2

(To Affidavit of Sheldon K. Early)

STATE OF SOUTH CAROLINA	)	
COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
	)	C.A. NO. 2009-CP-23-7229
Stevens Aviation, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT OF SHELDON K. EARLY
	)	
DynCorp International LLC, and Science	)	
Applications International Corporation,	)	
	)	
Defendants.	)	
	)	

I, Sheldon K. Early, know the following of my own personal knowledge. If called upon to testify, I could and would testify as follows:

1. From 1995 to the early 2000s, I was employed by Stevens Aviation, Inc. ("Stevens") in the position of Vice-President for Sales and Marketing and Business Development. In that role, I had responsibility and oversight of Stevens' military operations. Since leaving the employment of Stevens, I have worked for it on a consulting basis and continue to do so at this time.
2. In 1999 and 2000, I was personally involved in the negotiations with DynCorp International LLC ("DynCorp"), and its related company DynCorp Technical Services, Inc., concerning the possibility of entering into a teaming arrangement for purposes of responding to a Request for Proposal for Life Cycle Contractor Support for C-12/RC-12 and UC-35 Fixed Wing Aircraft (the "LCCS Bid") issued by the U.S. Army.
3. At the time of these negotiations, Stevens was the exclusive provider of depot maintenance and repair work for the AGES Group under a joint prime contract with the Army,

Navy and Air Force for all maintenance, repair, and logistics support for their fleet of C-12 and U-21 aircraft. In that role, Stevens performed exceptionally and had built an excellent reputation and relationship with the military in servicing its aircraft.

4. Because of Stevens' excellent performance in the AGES program and its reputation with the government, Stevens was approached by a number of prime government contractors to team with them in preparing a response to the LCCS Bid. These prime contractors believed that having Stevens as their partner would increase their chances of being awarded the contract for the LCCS program.

5. The major negotiating point between Stevens and DynCorp with respect to a teaming arrangement was whether or not the parties would work together exclusively. Stevens initially did not want to work with DynCorp exclusively as it wanted the aviation maintenance work regardless of which entity was awarded the prime contract. Stevens therefore planned to work with a number of prime contractors in responding to the LCCS Bid in order to maximize the chances of it getting the aviation maintenance work.

6. In order to increase its chances of being awarded the contract for the LCCS program, DynCorp wanted Stevens to agree to work only with DynCorp and no other prime contractor in preparing and submitting the LCCS Bid.

7. After negotiations, Stevens agreed to work exclusively with DynCorp in preparing the LCCS Bid and not submit a proposal with any other entity. In exchange, DynCorp agreed that if the contract was awarded to it, Stevens would be the exclusive provider of the aircraft condition inspections, strip and repaint work, and depot maintenance for the government's aircraft. Attached to this Affidavit as Exhibit 1 is a true and accurate copy of a

written record of a telephone conversation between the representatives of DynCorp and Stevens reflecting the parties' negotiations of the teaming arrangement.

8. In March of 2000, DynCorp and Stevens formalized their agreement by entering into a written Teaming Agreement. In that agreement, the parties agreed to work together, exclusively, in preparing and submitting the LCCS Bid, and they agreed that if the contract was awarded Stevens would be the exclusive provider of aircraft condition inspections, strip and repaint work, and depot maintenance for the government's aircraft.

9. I was the person who signed the written Teaming Agreement on behalf of Stevens. A true and accurate copy of the Teaming Agreement is attached to this affidavit as Exhibit 2.

10. In preparing the LCCS bid, Stevens believed that, if the government contract was awarded to DynCorp, Stevens would be the subcontractor that would perform all of the aircraft condition inspections, strip and repaint work, and depot maintenance work on the government's aircraft over the contract's ten-year period. The ten-year pricing structure Stevens proposed for the work reflected its belief it would be the exclusive provider of the aircraft condition inspections, strip and repaint work, and depot maintenance for the government's aircraft over the life of the contract. If Stevens was not guaranteed all of the aircraft condition inspections, strip and repaint work, and depot maintenance work, its pricing structure would have been different.

11. DynCorp and Stevens worked together in preparing and submitting the LCCS Bid as agreed in the Teaming Agreement, and the U.S. Army ultimately awarded the "Prime Contract" to DynCorp.

12. As contemplated in the Teaming Agreement, DynCorp and Stevens entered into a Subcontract Agreement under which Stevens would be the exclusive provider of the aircraft condition inspections, strip and repaint work, and depot maintenance work for all of the government's aircraft covered under the Prime Contract.

13. I was personally involved in the negotiations between Stevens and DynCorp regarding their Subcontract Agreement. In negotiating and entering into the Subcontract Agreement, it was always understood that Stevens would be the exclusive provider of the aircraft condition inspections, strip and repaint work, and depot maintenance work on the government's aircraft covered under the Prime Contract. The Subcontract Agreement was drafted in a way so that when DynCorp got the aircraft condition inspection, strip and repaint, and depot maintenance work under the Prime Contract, Stevens, in turn, would get that work under the Subcontract. Many of the negotiations concerning the Subcontract Agreement involved this principle. For example, the Subcontract Agreement was written in a manner that if the government extended the Prime Contract, the Subcontract Agreement was likewise extended. Similarly, if the government cancelled the Prime Contract, the Subcontract Agreement was likewise cancelled. That is, the Subcontract Agreement was essentially a "pass through" arrangement where Stevens was responsible for the aircraft depot maintenance work called for under the Prime Contract. If DynCorp was given the work by the government, the work went to Stevens.

14. It is my recollection that the major negotiating point between DynCorp and Stevens relating to the Subcontract Agreement concerned the provision dealing with terminating the contract for cause. This was important to the parties because they were entering into a long-

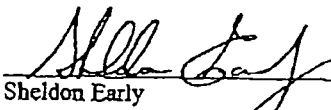
term relationship in which they would need to work cooperatively. Attached to this Affidavit as Exhibit 3 is a true and accurate copy of a document prepared by DynCorp and sent to Stevens in November of 2000 which reflects DynCorp's proposed changes to a draft of the Subcontract Agreement, as well as its rationale for those changes.

15. DynCorp prepared the initial draft of the Subcontract Agreement, its various revisions during the negotiations, and the final draft that was signed by the parties.

16. Attached to this Affidavit as Exhibit 4 is a true and accurate copy of the Statement of Work for the Prime Contract.

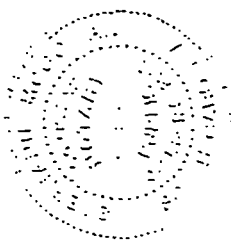
17. In my consulting work for Stevens over the past nine years, representatives of DynCorp have acknowledged to me that Stevens is the exclusive provider of the aircraft depot work under the Subcontract Agreement. In addition, representatives of the government have likewise stated to me that Stevens is the subcontractor responsible for the maintenance and modification of its aircraft under the LCCS program.

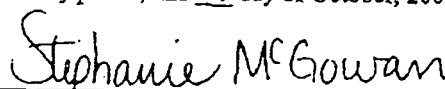
Further the affiant sayeth naught.


Sheldon Early

STATE OF SOUTH CAROLINA)
) ss
COUNTY OF GREENVILLE)

Subscribed and sworn to before me, a notary public, this 9 day of October, 2009.




Notary Public

MY COMMISSION EXIRES
NOVEMBER 9, 2016

EXHIBIT 1

(To Affidavit of Sheldon K. Early)

RECORD OF TELEPHONE CONVERSATION

BY: V. Hart ()
S. Early

WITH: Bill Shelt/Ray Reed (XX)

OF: DynCorp

PHONE: (817) 737-1602 Ext

LOCATION: FTW. TX

DATE: 25 Jun 99

TIME:

CHECK WHO INITIATED THE CALL (XX)

SUBJ: DynCorp/SAI Teaming Agreement

NOTES:

1. As had been arranged, Bill and Ray called to review the differences in our versions of the draft agreement.
2. The following items were discussed:
 - a) paragraph 2.01; DynCorp wanted to remove the words "without modification". We advised that the intent of the wording is to make sure that there are not changes to data submitted by SAI that are then labeled by the reader as being submitted by SAI. The example cited was a change in a price that is greater than that submitted by SAI, and then the delta would be kept by the Prime. We advised that our reputation was such with the Services that we did not want to leave an opening for someone to make changes to our data. DynCorp's reclama was to reword the paragraph stating that any change would have to be negotiated and approved in writing prior to submission. We advised that was acceptable to SAI.
 - b) paragraph 2.02J DynCorp read the intent as SAI wanting to have an escape clause to permit us to jump to another partner at the last minute thus leaving DynCorp holding the bag. We explained that as we were aware of the quality of DynCorp's proposals was such that there was little probability of our feeling that their submission was not going to meet the expected standard. DynCorp's reclama was to reword stating that SAI would have substantive review of the proposal prior to submission. This was discussed as a possible red team type of approach by SAI.
 - c) Paragraph 6.03 was deleted by DynCorp. SAI's position was explained as being that our understanding was DynCorp's willingness to accept a nonexclusive agreement. DynCorp commented that they desired an exclusive teaming agreement and asked what it would take for us to sign up to those terms. SAI responded that it would take a guarantee that DynCorp would win the competition. DynCorp said that they thought there was an offer by SAI to an exclusive agreement due to the wording of other sections of the draft. When

asked for specifics, SAI was referred to Attachment A. SAI's reclama to that comment was that the exclusivity addressed there was for work content and not for a teaming agreement. SAI explained that it was our intent to have our pricing structure formulated to ensure that the contract margin was profitable to the necessary degree but that the various factors might have different individual margins. To work up that type of cost structure would require that SAI be assured of receiving specific portions of the contract on an exclusive basis. The parts issue was used to explain that to be price competitive with RA any submission would have to provide the Beech Distributor discount for the parts. No one could compete effectively without that advantage. It was explained that this was the intent of the agreement with AGES and we intended to keep the same arrangement. We offer the discount in return for our being the sole source of all OEM parts. DynCorp seemed to understand but said that would take some discussion at their end.

- d) Paragraph 6.13 DynCorp said they could offer Texas or Delaware as the State for jurisdiction. They explained that under the Federal statutes any disagreement would be adjudicated in the Federal Court System so the only advantage they could see would be the travel and access to the trial attorney's firm. SAI's reclama was to ask if DynCorp would consider arbitration as the first avenue of recourse in the event of disputes. DynCorp said that would have to be discussed at their end.

3. It was agreed that DynCorp would reword these areas and get back to SAI with a new draft.

4. SAI explained that we have worked very hard to make sure that the Services were satisfied with the product they receive from the Depot. That was done to create our competitive advantage and we were not of the mind to do anything that harmed that reputation. We explained that we felt we brought a distinct advantage to a team that would submit a proposal.

COPY TO:

S. Early
J. Gogins
D. Nisky
L. Shapiro
R. Smith

DYNCORP TECHNICAL SERVICES, INC. / STEVENS AVIATION, INC.
TEAMING AGREEMENT

PREAMBLE

This Teaming Agreement (hereinafter "Agreement") is made and entered into by and between: DYNCORP TECHNICAL SERVICES INC., hereinafter called "DynCorp", a Delaware corporation, with an office located at One Ridgmar Centre, 8500 West Freeway, Fort Worth, Texas, 76116, and STEVENS AVIATION, INC. hereinafter called "STEVENS", a South Carolina corporation, with an office located at Donaldson Center Industrial Air Park, 600 Delaware Street, Greenville, SC 29605. DynCorp and STEVENS are hereinafter referred to as "the Parties."

I. RECITALS

1.01 Whereas, the U.S. Army (the "Customer") ^{has issued} ~~will be issuing~~ a Request for Proposal, for Life-Cycle Contractor Support for C-12/RC-12 and UC-35 Fixed Wing Aircraft (the "Project") (hereinafter, the subject Request for Proposal, and/or any modification thereto, shall be referred to as the "RFP").

1.02 Whereas, the Parties have complementary skills and capabilities which, taken together, would allow the Parties to perform the Project and improve chances of selection as the winning contractor.

1.03 Whereas, the Parties wish to form a teaming arrangement and to define their respective rights, duties and obligations thereunder.

1.04 Whereas, the objective of the teaming hereunder shall be to cooperate in preparing and submitting one or more competitive proposals in response to the RFP (hereinafter, a "Proposal" or "Proposals"), in an attempt to obtain the award of a contract for the Project.

II. OBJECTIVE AND DURATION

2.01 DynCorp shall prepare data required for any Proposal, integrating the proposal data furnished by STEVENS, and shall submit the Proposal as prime contractor with STEVENS identified in the Proposal as the subcontractor to provide the services set forth in Attachment B. DynCorp shall incorporate STEVENS' data into the proposal without modification, except as follows: Prior to making any changes to STEVENS' data, DynCorp shall secure the approval of STEVENS. DynCorp shall not be obligated to include any data in conflict with US Government laws or regulations.

2.02 Except as otherwise set forth in Paragraph A.3 of Attachment A hereof, the term of this Agreement shall be for the period beginning on the effective date hereof, and ending on the occurrence of the earliest of the following events:

- a) Cancellation of the RFP by the Customer;
- b) The RFP is amended such that the services described in paragraph 2.01 above are no longer required by the final RFP;
- c) Award of a contract under the RFP to a contractor or contractor team other than the Parties, provided that award is not overturned by protest;
- d) Mutual written consent of the Parties to terminate this Agreement;
- e) Lapse of 24 months from the effective date of this agreement;
- f) The indictment, suspension or debarment by the Government of either Party;

- g) A Receiver, Trustee in Bankruptcy, or other Custodian of the property or assets of a Party hereto is appointed, or if either Party hereto commits an act of bankruptcy or is adjudicated bankrupt or insolvent;
- h) Award of a subcontract by DynCorp to STEVENS for its designated portion of the Project, as set forth in Paragraph 2.01 hereof;
- i) There is a change to the scope of the Project which, in the opinion of STEVENS, significantly impacts the role of STEVENS as set forth in Paragraph 2.01 hereof, or the Customer notifies DynCorp that this Teaming arrangement is not an appropriate means of meeting the Customer's needs, or the parties fail to reach agreement on Attachment B to this document (Statement of Work) within seven (7) calendar days from the date of execution of this agreement.

III. PROPOSAL PREPARATION

3.01 DynCorp shall have primary responsibility for the preparation of all technical and non-technical aspects of the proposal including but not limited to:

- a) Marketing and promotional effort;
- b) Proposal content, assembly and production;
- c) Liaison with customer personnel;
- d) Oral discussions and negotiations, if held.

3.02 STEVENS shall contribute to the preparation of the Proposal under the RFP by submitting to DynCorp a proposal, including costs, with respect to its proposed work on the Project. STEVENS shall be entitled to submit any cost or other data it considers proprietary directly to the Customer. Notwithstanding the provisions of paragraph 3.01 above, STEVENS shall be entitled to participate in oral discussions concerning its contributions to the Proposal (if permitted by Customer) and shall at all times be entitled to receive, upon reasonable request, documentation and information concerning oral discussions and negotiations between DynCorp and the Customer regarding the proposed effort.

3.03 STEVENS shall provide direct proposal support to DynCorp in the development of the Proposal with respect to those section(s) relevant to STEVENS' proposed work under the Project, as set forth in Paragraph 2.01 hereof. STEVENS will provide existing material as required to support the Proposal in a timely manner. Detailed proposal writing assignments will be determined at a separate meeting or via separate communication between DynCorp and STEVENS. The respective points of contact for each Party with respect to the matters described in this agreement are listed below.

DynCorp Technical Services, Inc.

STEVENS

Technical POC Roy P. Oler, CLS Program Mgr.
 Phone (817) 570-2843
 Fax (817) 570-2838
 E-mail olerp@dynCorp.com

Technical POC V.P. Hart, Jr.
 Phone (864) 879-6017
 Fax (864) 879-6020
 E-mail vhart@stevensaviation.com

3.04 The Parties shall carry out the preparation of the Proposal and the conduct of all negotiations and pricing, in accordance with all applicable laws and regulations governing the RFP and the award of contracts thereunder.

3.05 Except as may otherwise be agreed in writing by the Parties, each Party shall bear its own expenses for its own performance of Proposal and related work.

3.08 Contractor past performance may be a significant evaluation factor of the RFP. STEVENS understands and agrees that it will be required to timely submit all past performance information reasonably requested by DynCorp and required by the RFP. DynCorp reserves the right to independently contact the points of contact provided in STEVENS' past performance citations to determine the adequacy/appropriateness of those citations. DynCorp, at its sole discretion, may utilize in the Proposal any or all citations provided by STEVENS.

IV. AWARD OF SUBCONTRACT

4.01 In the event that DynCorp is awarded the prime contract under the RFP, DynCorp shall award to STEVENS a subcontract thereunder to perform the work described in Paragraph 2.01 hereof. The Parties agree to negotiate in good faith and proceed in a timely manner to execute a mutually acceptable subcontract agreement, subject to necessary government approvals and required flow-down clauses, and sufficient to enable DynCorp to otherwise comply with its obligations under the prime contract.

V. RESERVED

VI. GENERAL PROVISIONS

6.01 No announcement, release or other disclosure of information relating to this Agreement shall be made except by specific written agreement of the Parties.

6.02 This Agreement shall not constitute, create or in any way be interpreted as a joint venture, partnership or formal business organization of any kind. Neither Party may assign or transfer its interests under this Agreement without the written consent of the other Party hereto except that DynCorp shall have the right to assign its responsibilities under this Agreement to any division, subsidiary or affiliate thereof.

6.03 The efforts of STEVENS relating to the RFP and the Project shall be exclusive to DynCorp, and STEVENS shall not pursue the RFP or Project either independently or in concert with any additional party. In the event that the Government directs any change affecting this Agreement in any material respect, this Agreement shall be modified in accordance with such direction, and the exclusivity of effort described above shall continue to exist, except as the Government may specifically prescribe, provided however, that in no event shall this provision be construed as a contract for the benefit of third parties.

6.04 Attachment A hereto, entitled "Proprietary Data Provisions", is incorporated by reference.

6.05 Attachment B hereto, entitled "Statement of Work", is incorporated by reference.

6.06 The Parties agree that they shall not, during the term of this Agreement, or during the term of any resulting contract or subcontract, or extension or modification thereof, or for a period of one (1) year after, recruit the personnel of any other Party to this Agreement without the express written consent of that Party.

6.07 This Agreement is the entire agreement of the Parties with regard to the subject matter hereof, and supersedes any prior oral or written agreement or understanding pertaining to the Project. Changes to this Agreement, to be effective, must be in writing and executed by an authorized representative of each Party.

6.08 Notices shall be deemed given hereunder when received or, if mailed by prepaid certified or registered mail return receipt requested, five days after mailing. Notices shall be addressed to the signatories to this Agreement at the addresses specified in the PREAMBLE above. Either Party may change its cognizant point of contact under this Paragraph 6.08, or its technical point of contact under Paragraph 3.03, by written notice to the other.

8 16

6.09 If any provision of this Agreement or part of such provision is or becomes invalid or unenforceable, then the remaining provisions hereof shall continue to be effective.

6.10 No waiver by a Party of any of its rights or remedies shall be construed as a waiver by such Party of any other rights or remedies that such Party may have under this Agreement.

6.11 The Parties shall attempt to resolve, by amicable discussions between appropriate executives of the respective companies who are a Party to this Agreement, any controversy or claim arising between the Parties out of or in connection with the provisions of the Agreement. If such discussions do not result in a resolution of the controversy or claim, either Party may file suit in any court of competent jurisdiction.

6.12 Inventions conceived solely by employees of STEVENS shall belong exclusively to STEVENS. Inventions conceived solely by employees of DynCorp shall belong exclusively to DynCorp. Inventions conceived jointly by the Parties hereto in the course of work called for by this Agreement shall be subject to further agreement of the Parties. This understanding is subject to modification as may be required by applicable Government regulations, or the terms of the prime contract or resultant subcontract between the Parties. Except as stated in the preceding paragraph, nothing contained in this Agreement shall be deemed, by implications, estoppel or otherwise, to grant any right or license in respect of any patents, inventions or technical information at any time owned by the other Party.

6.13 Irrespective of the place of performance, this Agreement will be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, Boards of Contract Appeals, and quasi-judicial agencies of the federal government. To the extent that the federal common law of government contracts is not dispositive, the laws of the State of Texas shall apply.

VII. EXECUTION AND EFFECTIVITY

7.01 The Parties have executed this Agreement on the dates entered below. The Agreement may be executed in two or more counterparts.

7.02 This Agreement is effective as of the last date entered below.

DYNACORP TECHNICAL SERVICES, INC.

STEVENS AVIATION, INC.

By: John W. S. [Signature]

By: Sheldon K. Early [Signature]

Name: John W. S. [Signature]

Name: Sheldon K. Early

Title: Vice President, Contracts

Title: V.P. Business Development

Date: 3/15/00

Date: 3/16/00

ATTACHMENT A

PROPRIETARY DATA PROVISIONS

A.1. The Parties anticipate that under this Agreement it may be necessary for either Party to transfer Confidential Information to the other. The term "Confidential Information" shall mean any information relating to the business or affairs of either Party, including but not limited to information relating to financial statements, customer identities, potential customers, employees, suppliers, servicing methods, equipment, programs, strategies and information, analysis, profit margins, pricing and cost information, proposals, estimates, marketing plans, invoices, reports, or other proprietary and company-sensitive information generated or used by a Party in connection with its business. Confidential Information shall not include any information bearing no notice regarding its confidential or proprietary nature, and all Confidential Information should be clearly identified in writing by the disclosing Party at the time of disclosure. Oral disclosure, when necessary, shall be clearly identified as confidential and/or "confidential" or "proprietary" within 30 days of the oral disclosure.

Each Party agrees to hold and protect Confidential Information belonging to the disclosing Party as it would protect its own confidential or proprietary information, and agrees that it shall use the Confidential Information only in connection with the preparation of the Proposal, and as may be necessary in connection with the performance under any prime contract that may be awarded under the RFP.

Any Party receiving Confidential Information from the other Party shall store all copies of the written or tangible Confidential Information in a locked cabinet, or an unlocked cabinet in a locked room, with access limited to the Technical Point of Contact (POC) designated in this Agreement. Each Party hereby represents that it provided a copy of the Agreement to its Technical POC, and advised such person of his or her duties hereunder. The foregoing limitations shall not apply to the disclosure or use of any portion of Confidential Information which:

- a) The receiving Party can demonstrate by written evidence that the Confidential Information was already known to it, prior to receiving it from the disclosing Party; or
- b) Prior to the time of its disclosure hereunder to any Party, has been published or otherwise made freely available to the general public; or
- c) Subsequent to its disclosure hereunder to any other Party is independently thereafter rightfully made available on an unrestricted basis to the public or the receiving Party by the disclosing Party; or
- d) Is independently developed by the receiving Party, or has been lawfully received from other sources, including the Government, provided that the receiving Party's development of information, or that received from another source, was not due to, or did not arise out of, a breach of this agreement or any other agreement.

A.2. No license to the other Party, under any trademark, patent or copyright, domestic or foreign, is either granted or implied by the conveying Confidential Information to a Party. None of the information which may be submitted or exchanged by the Parties shall constitute any representation, warranty, assurance, guarantee or inducement by a Party to the other with respect to the infringement of trademarks, patents, copyrights or other rights of third persons.

A.3. Notwithstanding any other portions of this Agreement, the obligations of this Attachment A shall continue for a period of five (5) years from the effective date of this Agreement.

ATTACHMENT B

STATEMENT OF WORK

1. Contract Effort. STEVENS AVIATION shall be proposed to perform the following work, as listed below:

- a) Aircraft Condition Inspection (ACI). STEVENS shall perform all ACI's. Payment for ACI's shall be on a "per occurrence" basis at the firm fixed unit price set forth in STEVENS' cost proposal submitted to DynCorp in connection with the Proposal for the Project. In addition, STEVENS, at DynCorp's direction/authorization, may be requested to correct site "Squawks" (Organizational Level) on aircraft sent to the depot for ACI. STEVENS shall be compensated at a price agreed to in advance by the parties for its additional costs related to performance of such work at the STEVENS' facility.
- b) Strip and Repaint. STEVENS shall perform aircraft strip and paint in accordance with the ACI strip and paint requirements. Payment for strip and repaint shall be on a "pre occurrence" basis at the firm fixed price set forth in STEVENS' cost proposal submitted to DynCorp in connection with the Proposal for the Project.
- c) Over and Above Depot Maintenance. STEVENS shall perform depot level maintenance for the C-12/RC-12 aircraft fleet that is above the capability or qualifications of DynCorp personnel. STEVENS will be reimbursed for all direct labor hours negotiated and accepted by the customer at the composite hourly rate unit price specified in STEVENS' cost proposal submitted to DynCorp in connection with the Proposal for the Project. The definition of the levels of maintenance shall be that contained in OPNAVINST 4790.2.
- d) Over and Above (TBD). STEVENS shall perform other depot level tasks for the C-12/RC-12 aircraft fleet that are above the capability or qualifications of DynCorp personnel, to include airframe and avionics modifications requested by the Customer under the Project. STEVENS shall be compensated at a price agreed to in advance by the parties for its additional costs relating to performance of such work at a location other than STEVENS' facility. The definition of the levels of maintenance shall be that contained in OPNAVINST 4790.2.

2. Additional Contract Efforts. STEVENS, at DynCorp's direction, may be requested to perform the following work, as set for the below:

- a) Hot Section Inspection. STEVENS may be requested to provide hot section inspection. In the event that it performs such work, STEVENS shall do so at Firm Fixed prices agreed to in advance by the Parties.
- b) Other Per Occurrence Items. STEVENS may be requested to provide landing gear inspection. In the event that it performs such work, STEVENS shall do so at Firm fixed prices agreed to in advance by the parties.
- c) Aircraft Storage. STEVENS may be requested to provide aircraft storage at the prices set forth in STEVENS cost proposal submitted to DynCorp in connection with the Proposal for the Project.
- d) Original Equipment Manufacturer (OEM) Parts. STEVENS may be requested to perform procuring agent functions for OEM parts (i. e., those parts to which the OEM has assigned part numbers) that are required for use under the contract. This may include parts that are required at the Depot and those required at the Beddown sites.
- e) Travel & Per Diem. STEVENS will support TRAVEL AND PER DIEM at reasonable request. DynCorp will reimburse STEVENS for any and all travel and per diem costs on the basis of allowable actual costs incurred up to the equivalent allowed in the most current DOD Civilian Personnel Joint Travel Regulations for domestic and/or the most current Department of State Standardized Regulation(s) for foreign travel.

EXHIBIT 3
(To Affidavit of Sheldon K. Early)

EXPLANATION OF MAJOR CHANGES TO STEVENS DRAFT SUBCONTRACT

Page 4, Preamble, 2nd Whereas paragraph. Reference to the TA is removed, because the Teaming Agreement, with the exception of the Proprietary Data provision (Attachment A thereto), becomes null and void upon execution of this Subcontract (stated in the TA document). Also, descriptions of the tasks to be performed are included in the Subcontract section C, and the attached SOW.

Pages 4 & 5, Preamble, 6th & 7th Whereas. References to the Prime Contract CLIN's are removed. Not appropriate or accurate for this subcontract, as SAI will only perform a portion of the work described by the Prime CLIN's; also Prime subCLIN's are assigned differently than Subcontract subCLIN's.

Page 6, Term. New Term paragraph inserted.

Page 10, Definitions Related to Readiness. Paragraphs 2.3, 2.4, and 2.5 ARE applicable to Paragraph H.10, Reduced Payments. Leave in.

Page 13, Abbreviations. AWR and AD should remain Airworthiness Release and Airworthiness Directive, respectively. The term "AWR" or "Airworthiness Release" comes directly from the Army, and that is the title of the document. The term "AD" or "Airworthiness Directive" comes from the FAA and is used industry-wide; again, that is what the FAA document is called.

Page 15, paragraphs A.1-A and -B. SAI is only required to exercise due diligence, it is not tasked with finding each and every discrepancy. First paragraph is reworded to indicate that both Parties should exercise due diligence. Both these paragraphs apply and should remain in, as reworded.

Page 15, paragraph A.3. Please review the revised Order of Precedence, which contains more definitive language. Note: this Order is specified by FAR 52.215-8.

Page 16, paragraph B.1-B. There is no inconsistency between this paragraph and paragraph H.14. Paragraph B.1-B states that Dyn is under no obligation to pay for work done in excess of the funds allotted - ie, if SAI exceeds funding then they are working at risk. Paragraph H.14 states the same thing another way: "DYNOCORP shall not be obligated to pay SAI any amount in excess of the funds obligated in a CLIN and SAI shall not be obligated to continue performance under that CLIN, if to do so would exceed the obligated funds set forth in the schedule...".

Page 16, paragraph B.3. Removed references to the Prime contract in the first sentence. Same explanation as above...Prime CLIN's and subCLIN's do not apply to this Subcontract.

Page 16, paragraph X003C. Changed wording.

Page 17, paragraph X004AA/AB. Definitized requirements for Over & Above. Third paragraph was a direct reference to the Prime; removed all but first sentence, which is now at the end of the 2nd paragraph.

Page 17, paragraph X004AC. New paragraph, addressing repair of site squawks.

Page 17, paragraph X004B. Reworded for clarification.

Page 17, paragraph X004C. New paragraph addressing the O&A storage of A/C at SAI's facility. Deleted entire paragraph titled "Elective Improvements/Technical Directives", as any elective improvements would fall under Over & Above.

Page 17, paragraph X007 Transition/Phase-In. Deleted entire paragraph; did not apply.

Page 18, paragraph X010 Transition Phase-Out. Deleted second paragraph inserted by SAI, as this issue is already addressed in "Term". Also, Dyn is not obligated to continue its Subcontract with SAI in the event that the Prime Contract is terminated.

Page 18 and continuing, B.4 Pricing Schedule. Added line item for CLIN X010 for each options period; also pricing structure for site organizational maintenance.

Page 23, Section C. Took out reference to the RFP. Wrote brief descriptions of the work to be performed by Stevens.

Page 24, Section D. Took out subparagraph B, referring to the handling of QEC engines, as not applicable to SAI.

Page 24, D.1-B. Reworded first sentence so it makes sense. The second-to-last sentence about storage of property should remain as worded. As the Depot facility, SAI should be expected to have parts/materials on hand, as well as items of GFE/GFP. However, I've added a caveat that should they ever be required to store an aircraft, reimbursement will be discussed at that time (refer to new CLIN X004C on page 17).

Page 25, Section E.1-C. Removed last 2 sentences which stated that Gov representatives would accept work at SAI's facility and certify work via DD260. Not appropriate reference for the Subcontract.

Page 26, Section F. Made some changes for the sake of clarification. Added requirement for O&A parts that must be ordered vs what SAI might have on-hand.

Page 27, Section G. Deleted paragraph A ("no payments made prior to execution of Subcontract").

Page 27, Section G.1-B. Changed "delivery order" to "purchase order". This terminology is more consistent with the DynCorp system.

Page 27, Section G.2. Deleted the requirement that Dyn pay SAI "within 2 business days of receipt of payment from Government, OR net 30, whichever was sooner". DynCorp's payment terms for all subs are Net 30, period.

Also deleted SAI's wording concerning notification of discrepancies w/in 5 days, and payment beyond 30 days constituting default. The issue of default is addressed in Section H.23 - also, neither of these statements provided a means of resolving disputes. Reworded paragraph does so.

Page 29, Section G.5. Removed references added by SAI to the Army's funding of DynCorp under the Prime Contract - not appropriate for the subcontract. SAI may rely on DynCorp's issuance of PO's or other direction to proceed as agreement to pay for services rendered.

Page 30, Section H.2. Removed SAI's subparagraphs 3 and 4 that address sponsorship in the event of a lawsuit. This issue is now addressed under the reworded Section H.5 ("Disputes") - new language per DynCorp Legal Counsel.

Page 31, Section H.6. Combine H.6 and H.7 into one, as the paragraphs were identical except that one addressed commercial items, and the other non-commercial items. Also deleted what was formerly paragraph H.8, as not applicable and redundant. Renumbered accordingly.

Page 33, Section H.8. Reworded the Reduced Payments clause to be consistent with DynCorp's policies.

Page 33. Deleted the paragraph that was "Option to Extend the Subcontract" as that is already covered under "Term". Renumbered accordingly.

Page 33 & continuing, Section H.9. Please note that throughout this section, reference to DynCorp authority are usually the DynCorp Contract Rep, or other person authorized under Section G.4. The Depot Rep is only authorized to direct and oversee efforts, and serves as a liaison between SAI and the DynCorp PM Office. This role may be changed in the future, but that is how it stands right now.

Changes to this section are as follows:

Under "O&A Depot Maint. Work Requests", in subparagraph a), changed requirement for 2-day turnaround of O&A Requests. DynCorp will make every effort to turn these around quickly, but 2 days will not be realistic in all cases. Bear in mind that DynCorp only gets advance NTE authorizations from the Government for ACI-related O&A's, NOT for other O&A work.

Subparagraph c)-1 of the same section, some additional wording for clarification of DynCorp's processes.

Under "O&A Site Organizational Maint.", in subparagraph a), 24 hour turnaround will not be realistic for all cases.

Same, removed subparagraph c) which discussed the increase in price for site squawks above 100 hours. This issue is covered by the statement in subparagraph a), "The labor rates to be applied to these efforts is included in the pricing schedule of this Subcontract (Section B.4)."

Same, removed final paragraph, "DYNCORP agrees to pay SAI for the services rendered...". This is covered by the statement in subparagraph a) and Section G.

Page 36, Section H.10. The entire paragraph DOES apply to SAI, in the event that we need them to perform Phase-Out services. Clarification of sentence c) is that SAI is not required to provide parts nor are we required to buy them. Didn't see any reason why this paragraph should be a problem for either Party.

Page 37, Section H.11. The provision for Aircraft Public and Passenger Liability must remain in, because SAI will be operating the A/C as part of the ACI process. Auto Liability should also remain – there will be occasions where SAI representatives are requested to travel to sites to perform maintenance on A/C that cannot be flown to the Depot. Assume SAI personnel will have to drive vehicles in support of these requirements, and they may have to drive on Government property.

Under AVIATION GENERAL LIABILITY INSURANCE, to what does Item 5) refer? I don't see a Section 4.2...

Page 39 & 40, Section H.13. In lieu of the two long paragraphs of mutual indemnification, DynCorp suggests the following wording, provided by its Legal Counsel:

"Each Party to this subcontract agrees to hold harmless and to indemnify the other Party and that Party's employees, officers, affiliates and agents from any and all loss or liability arising from the actions or inactions of the first Party's employees, officers, affiliates and agents under this Subcontract and/or any delivery orders related hereto, and each Party agrees to defend the other from any claims from third parties based in whole or in part on the first Party's actions or inactions."

If the Parties cannot agree to use the above paragraph, SAI's 2 paragraphs will be acceptable as revised. DynCorp will not indemnify SAI for the actions of other subcontractors or defects inherent in the A/C.

Page 39, Sections H.14 & H.15. More than likely they will never apply...but in the event that there are hostilities somewhere where we have an A/C down and require Depot maintenance to repair it, SAI personnel would have to travel into the hostile area to do so. See rewording.

Page 40, Section H.16. This is a mandatory flowdown from the Prime. DynCorp will be providing information to SAI on whom to contact to begin the process of being declared a "secure facility" – COMSEC account will be required once facility is secure.

Page 40, Section H.17. Leave in. Again, may not ever be an issue, but in case of SAI travel to other countries, we must have that protection.

Page 41, Section H.19. Leave in. It is stated in Section B that travel for this Subcontract may be accomplished by Government A/C if such is in our best interests (and if we get approval to do so).
Page 41. Removed the paragraph entitled "Technical Liaison and Surveillance Clause" - it's repetitive of information provided in Sections G and H, regarding authorized DynCorp personnel.

Pages 41-42, Section H.22. The appropriately authorized DynCorp Rep should be allowed access to those documents associated with this Subcontract; rules for disclosure of same would fall under the Proprietary Data provision (Attachment A) of the Teaming Agreement with SAI. Note rewording.

Pages 42-43, Section H.23. Substantial rewording here. DynCorp cannot allow termination by subcontractor, because such would put DynCorp in breach of contract with its customer. Therefore, the only conditions under which Dyn can allow subcontractor termination are: DynCorp's suspension of business activities; or DynCorp's failure to cure non-payment w/in 60 days of written notice.

The rationale for paragraph D is to cover DynCorp in case of a Government Stop-Work Order.

EXHIBIT 4
(To Affidavit of Sheldon K. Early)

STATEMENT OF WORK

AIRCRAFT

LIFE CYCLE CONTRACTOR SUPPORT
(LCCS)

FOR THE C-12/RC-12 AND UC-35

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APPENDIX D MISSION CAPABLE RATE REPORTING..... ERROR! BOOKMARK NOT DEFINED.

APPENDIX E SUPPLEMENTAL C-12/RC-12 REQUIREMENTS TO THE 800 HOUR PHASE
INSPECTION PROGRAM ERROR! BOOKMARK NOT DEFINED.

APPENDIX F AIRCRAFT CLEANING CHECKLIST..... ERROR! BOOKMARK NOT DEFINED.

APPENDIX G UC-35A PRATT & WHITNEY JT15D-5D ENGINE HOT SECTION INSPECTION (HSI)
AND TIME BETWEEN OVERHAUL (TBO) EXTENSION PROGRAM..... ERROR! BOOKMARK NOT
DEFINED.

APPENDIX H AIRCRAFT INTERIOR SPECIFICATIONS ERROR! BOOKMARK NOT DEFINED.

APPENDIX I AVIONICS/EQUIPMENT CONFIGURATION ERROR! BOOKMARK NOT DEFINED.

APPENDIX J GOVERNMENT PROVIDED RC-12 PRIME MISSION EQUIPMENT / AIRFRAME
INTERFACE COMPONENTS..... ERROR! BOOKMARK NOT DEFINED.

APPENDIX K TECHNICAL LIBRARY LIST..... ERROR! BOOKMARK NOT DEFINED.

APPENDIX L RC-12 BB MINIMUM ESSENTIAL PARTS SUPPLY LIST..... ERROR! BOOKMARK NOT
DEFINED.

APPENDIX M RC-12 BB MANAGED AUTHORIZED QUANTITIES SUPPLY LIST..... ERROR!
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APPENDIX N GFF LIST ERROR! BOOKMARK NOT DEFINED.

APPENDIX O BB FACILITIES AND RESOURCES ERROR! BOOKMARK NOT DEFINED.

APPENDIX P AIRCRAFT CONDITION INSPECTION..... ERROR! BOOKMARK NOT DEFINED.

APPENDIX Q COMPONENTS CRITICAL TO FLIGHT; MINIMUM ESSENTIAL LIST..... ERROR!
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1.0 SCOPE

This Statement of work (SOW) specifies the Life-Cycle Contractor Support (LCCS) activities for the Army's C-12/RC-12/UC-35 fixed wing aircraft fleet. This includes total aircraft system maintenance services, logistical support, and management processes to maintain the worldwide fleet of approximately 172 C-12/RC-12 Army Aircraft, and 20 Army UC-35 and 2 Navy UC-35 aircraft. The Contractor shall furnish all required documentation, material, equipment, property, facilities, and vehicles not provided as Government Furnished Property (GFP) to perform this contract.

2.0 PROGRAM MANAGEMENT

The Contractor shall implement program and financial management in accordance with (IAW) the contract attachment entitled "Program and Financial Management Approach" and this SOW. The approach shall be consistent with and fulfill the requirements of the RFP and the SOW. The Contractor shall assign a single Program Manager (PM) with authority and responsibility to fulfill the requirements of this contract.

2.1 MANAGEMENT REVIEWS

The Contractor shall conduct a post award meeting to include contracts and management with Government participation, No Later Than (NLT) 21 Days After Contract (DAC) award at the Contractor's facility. The Contractor, in conjunction with the Government, shall develop a Government approved agenda 5 working days prior to the meeting. The Contractor shall participate in scheduling and conducting Program Management Reviews on a semi annual basis, or at the request of the Fixed Wing Program Management Office (FW-PMO). The Contractor shall demonstrate progress to date to include transition activities, contract and schedule compliance, personnel status, subcontract status, data management, financial status, interface activities with other Contractors, and technical performance at each IPR.

2.2 CONTRACTOR INTEGRATED TECHNICAL INFORMATION SERVICE

The Contractor shall establish a Contractor Integrated Technical Information Service (CITIS) IAW MIL-STD-974. The CITIS shall be operational within 60 days after award of contract and throughout the life of the contract. Prior to the implementation of the CITIS, contract deliverables shall be submitted via hard copy or electronic mail. The Contractor shall prepare a Data Accession List IAW DI-MGMT-81453. Classified data shall be processed and shipped IAW AR 380-5.

2.3 REPORTS

2.3.1 CONTRACT FUNDS STATUS REPORT (CFSR)

The Contractor shall prepare a CFSR IAW DI-MGMT-81468.

2.3.2 PROGRAM STATUS REPORTS

The Contractor shall prepare Program Status Reports IAW DI-MGMT-80368 summarizing performance to date, current issues, major problems or deficiencies with impact, and recommended solutions, comparisons of status achieved to planned goals. These reports shall include metrics created in support of internal management plans.

2.3.3 ACCIDENT/INCIDENT REPORTS

The Contractor shall prepare Accident/Incident Reports IAW DI-SAFT-81563. This report will provide immediate notification and information concerning any accident/incident. Reports shall be incident/aircraft specific.

2.3.4 DEPOT MAINTENANCE COST REPORT

The Contractor shall prepare a Depot Maintenance Cost Report IAW DI-FNCL-80462.

2.3.5 TIME BEFORE OVERHAUL (TBO) REPORT

The Contractor shall prepare a TBO Report, IAW DI-MISC-80508, listing all engines, propellers, and landing gear installed and in storage, that are projected for overhaul by fiscal year for the fleet.

3.0 OPERATIONAL READINESS

The Contractor shall implement Beddown Base (BB) Operations IAW the contract attachment, "Operational Readiness Approach" and the requirements of this SOW. The approach shall be consistent with and fulfill the requirements of the RFP and the SOW. The Contractor shall provide maintenance support at all BB locations listed in Appendix C. The Contractor shall maintain each aircraft at a Mission Capable (MC) rate of at least 80 percent calculated per aircraft as described in Appendix D. The Contractor shall base his support on a projected fleet wide average flight hours/30 day period utilization rate as follows:

FLEET	FLEET AVG HOURS/30 DAYS
C-12/RC-12	50
UC-35	67
USN/USMC UC-35	85

The Contractor shall submit Aircraft Status Reports (daily, monthly) IAW DI-MNTY-81067. Prior to submission of this report, each BB report shall be reviewed and approved/signed by the appropriate COR. The Contractor shall forward disagreements as to the contents of the report to PCO.

3.1 MANNING

The Contractor shall implement BB Manning IAW the contract attachment "Beddown Base Manning Approach". The Contractor shall staff BB sites to meet the requirements of this SOW to at least the minimum levels specified in Appendix C. The Contractor shall maintain airworthiness using certified Airframe and Powerplant (A&P) Technicians or Technicians who possess other appropriate certification (e.g., avionics technician). In addition to manning the USN/USMC BB to meet the aircraft maintenance and operation requirements, the contractor shall staff USN/USMC BB sites to cover air station operation hours of 0700 to 2300. The Contractor shall provide anticipated TESA/Other Foreign Tax compliance impact NLT every November of the year prior to the fiscal year of implementation.

3.2 MAINTENANCE OPERATIONS

3.2.1 AIRWORTHINESS DIRECTIVE/SERVICE BULLETIN COMPLIANCE

The Contractor shall obtain from the Original Equipment Manufacturers (OEM) /FAA, Airworthiness Directives (AD), Service Bulletins (SB), and OEM recommendations. The Contractor shall comply with these after approval from the Procuring Contracting Officer (PCO). The Contractor shall submit requests to perform AD/SB maintenance/application to the PCO and shall notify the Contracting Officer's Representative (COR) prior to AD/SB compliance to ensure aircraft availability. Notifications shall include a copy of the requiring documents. All AD/SB completion documentation shall be submitted IAW DI-MISC-81241. The Contractor shall handle emergency or urgent actions which may require aircraft grounding in an expeditious manner. When grounding is the result of a US Services action (i.e. Army Safety of Flight Message (SOF)), the designated contractor's manager shall be telephonically notified by the PMO, and followed up in writing. When grounding is the result of a FAA Directive or Aircraft OEM, the Contractor shall immediately notify the PMO telephonically, and followed up in writing. The Contractor shall be provided with disposition by the PCO.

3.2.2 INSPECTIONS

3.2.2.1 C-12/RC-12 INSPECTIONS

The Contractor shall conduct maintenance inspections IAW FAA/OEM/Army directives and the following inspection table.

Routine Inspection	Phase Inspection	Complete Maintenance Inspection Cycle
100 Hours	200 Hours	800 Hours

The Contractor shall perform the Army's supplemental requirements for the 800 Hour Phase Inspection program defined in Appendix E.

3.2.2.2 UC-35 INSPECTIONS

The Contractor shall conduct UC-35 inspections, IAW OEM 1600-hour inspection cycle and OEM component maintenance requirements.

3.2.2.3 UNSCHEDULED/SPECIAL INSPECTIONS

The Contractor shall conduct unscheduled/special inspections when required by applicable technical manuals or the direction of the PCO. These inspections include those subsequent to, but not limited to the following.

- (1) Hard landings.
- (2) Encounters with severe turbulence.
- (3) Lightning strikes and other acts of nature.
- (4) Bird strikes.
- (5) Sudden stoppage of the engines.
- (6) Operating limits in excess of the aircraft tolerance/parameters.
- (7) Inspection for any type of damage not a direct result of any Contractor action, caused by crash or collision with another object during flight or on the ground, or as a direct result of enemy hostile action.

3.2.2.4 HOT SECTION INSPECTION

The Contractor shall perform scheduled HSI, as specified in the Engine OEM SB's/maintenance manuals. The Contractor shall provide a technical tear down and analysis IAW DI-MISC-80508 for each engine that has undergone HSI.

CURRENT HSI INTERVALS			
UC-35	JT15D-5D	See Appendix G	
	PW 535A	2500	5000
C-12/RC-12	PT6A-41	1500	3000
	PT6A-42	1500	3000
	PT6A-65B/67D	2000	4000
	PT6A-67	1750	

3.2.2.4.1 REQUIRED REPLACEMENT ITEMS

The Contractor shall develop a list of required replacement items that will be Firm Fixed Price (FFP). All parts and materials shall be OEM approved, refurbished or new, and shall be capable of operating to the next HSI or TBO.

3.2.2.4.2 ON CONDITION ITEMS

The Contractor shall repair/replace items that do not meet OEM serviceability criteria on an over and above basis. All parts and materials shall be OEM approved, refurbished or new, and shall be capable of operating to the next HSI or TBO.

3.2.3 SERVICING AND CLEANING

The Contractor shall service the aircraft IAW OEM requirements, and shall clean/wash the interior and exterior. The contractor shall clean aircraft IAW Appendix F, Aircraft Cleaning Checklist.

3.2.4 MAINTENANCE

The Contractor shall perform all required maintenance work on aircraft, aircraft systems/components, and GFP IAW FAA/OEM/Army approved procedures and regulations.

3.2.4.1 MAINTENANCE TEST FLIGHTS (MTF)/OPERATIONAL CHECKS

The Contractor shall notify the Government of the requirement to conduct MTFs IAW TM 1-1500-328-23, Section I and III. The Contractor shall support the conduct of MTF's. The Contractor shall perform Maintenance Operational Checks (MOCs) when aircraft system components have been repaired, replaced, removed and reinstalled, calibrated or adjusted as specified in the OEM manuals. MOCs shall be performed in such a manner as to approximate the conditions under which the system(s) is operated in flight, and shall be of such scope and duration as to assure continuous satisfactory operation.

3.2.4.2 ENGINE MAINTENANCE

The Contractor shall establish an engine maintenance program IAW the OEM maintenance manuals. The Contractor shall maintain engine historical records IAW FAA/Federal Aviation Regulation (FAR) procedures. The Contractor shall maintain engines to meet configuration, serviceability, and functional test requirements of FAA Federal Aviation Regulations and applicable (OEM) specifications and parts. The Contractor shall continue the current UC-35 HSI/TBO extension program IAW Appendix G.

3.2.4.2.1 ENGINE TREND MONITORING

The Contractor shall perform Engine Trend Monitoring (ETM) IAW OEM manuals. The Contractor shall prepare Monitoring Reports IAW DI-MISC-80508. The Contractor shall immediately notify the on-site COR of any abnormal reading. The Contractor shall maintain and use on-aircraft automated ETM functions and updated software for all aircraft. The Contractor shall implement Manual ETM functions when automated functions are not available.

3.2.4.2.2 ENGINE WASH SCHEDULE

The Contractor shall conduct desalination and performance recovery washes IAW OEM Maintenance Manual requirements. Wash schedules shall be increased as necessary when environmental conditions dictate. Maximum use of preventive measures shall be taken to maintain engine performance at optimum performance levels. In addition to the OEM requirements, the Contractor shall implement the following wash schedule for the C-12 and RC-12: complete engine clear water rinses every 50 hours and power recovery wash every 100 hours.

3.2.4.2.3 C-12/RC-12 ENGINE OIL SAMPLES

The Contractor shall take engine oil samples, for the C-12 and RC-12, every fifty (50) flight hours IAW Technical Bulletin (TB) 43-0106, Army Oil Analysis Program (AOAP). Recording of AOAP samples shall be made on DA Form 2408-20 and the AOAP Laboratory automated results shall be maintained with historical records. Abnormal AOAP results shall be brought to the attention of the on site COR. The Contractor shall perform actions as directed by the COR and/or AOAP lab.

3.2.4.3 PROPELLER MAINTENANCE

The Contractor shall perform required maintenance on propeller assemblies IAW appropriate Aircraft Component Maintenance Manuals, OEM Maintenance Manuals, ADs and SBs. The Contractor shall conduct propeller vibration analysis annually and during installation IAW OEM procedures.

3.2.4.4 SUPPORT EQUIPMENT MAINTENANCE

The Contractor shall schedule and perform maintenance on all support equipment IAW applicable FAA/OEM/Army approved procedures and regulations.

3.2.4.4.1 RC-12 UNIQUE GROUND SUPPORT EQUIPMENT

The Contractor shall maintain the Auxiliary Ground Equipment (AGE) vans, including the on-board ONAN generator system and the MA-3D air-conditioning systems. This maintenance does not include special mission

equipment within the AGE van, but does include the normal aircraft communication radios (AN/ARC-164, AN/ARC-186).

3.2.4.5 WEIGHT AND BALANCE

The Contractor shall perform aircraft weighing and balancing IAW OEM manuals, TM 55-1500-342-23 or its replacement and AR 95-1. The Contractor shall maintain all equipment required to perform aircraft weighing requirements as outlined in AR 95-1 and prepare all forms as specified by Technical Manual 55-1500-342-23 or its replacement, for acceptance by the on-site COR. The contractor shall prepare USN/USMC UC-35 Aircraft Weight and Balance Records using OEM forms for on-site COR approval.

3.2.4.6 CREW SYSTEMS MAINTENANCE/SURVIVAL EQUIPMENT

The Contractor shall perform maintenance on crew systems to include preventative and corrective maintenance and/or replacement/inspection/storage of items issued with/for the aircraft IAW FAA, OEM manuals. This includes life rafts, first aid kits and components, survival kits, and survival kit contents.

3.2.4.7 INTERIOR MAINTENANCE

The Contractor shall maintain all aircraft interior items IAW Appendix H, Interior Specification.

3.2.4.8 COMPASS SWING

The Contractor shall perform compass swings and calibration updates IAW FAA/OEM/Army procedures every 12 months.

3.2.4.9 LONG RANGE NAVIGATION UPDATES

The Contractor shall maintain current database updates on aircraft equipped with Long Range Navigation Systems IAW OEM procedures.

3.2.4.10 SPOT PAINTING

The Contractor shall conduct Aircraft touch-up painting IAW local environmental and HAZMAT requirements. The Contractor shall provide all materials, tools, and personnel necessary to spot paint and touch up flaws in the paint on the aircraft with matching commercial aviation paint or CARC paint (MIL-C-46168) for RC-12 aircraft.

3.2.4.11 C-12/UC-35 AVIONICS EQUIPMENT

The Contractor shall maintain, repair and support avionics equipment as listed Appendix I. The listings are not intended to be all inclusive. All Avionics shall be supported by the LCCS Contractor. Special procedures provided by the PCO shall be followed as necessary for the maintenance of Communication Security (COMSEC) equipment.

3.2.4.11.1 RC-12 AIRFRAME AVIONICS SUPPORT

The Contractor shall maintain RC-12 airframe avionics and CPO (Complete Provisions Only) listed in Appendix I. The Government shall support the RC-12 avionics requirements listed in Appendix I.

3.2.4.12 RC-12 AIRFRAME NON PRIME MISSION EQUIPMENT REQUIREMENTS

The Contractor shall remove, repair and or replace all defective RC-12 airframe components i.e. network assemblies, antenna de-ice boots, radome anti-ice blower, sheet metal mounts/pin assemblies, airframe cabling, matching networks, airframe wave-guide assemblies, domes, and fairings etc., as required and described in OEM maintenance/parts manual. Due to the integral nature of aircraft and Government provided systems, the Contractor shall assist in troubleshooting of these systems where interface with the aircraft is involved, (e.g. rack CPO (complete provisions only), power sources/inputs, ac inverters, and cabling). The Contractor shall assist in reconfiguration, removal and reinstallation of prime mission equipment actions as necessary to preclude damage to aircraft. The Government shall support the RC-12 prime mission equipment systems listed in Appendix I.

3.2.4.12.1 AIRCRAFT SURVIVABILITY EQUIPMENT MAINTENANCE

The Contractor shall troubleshoot and fault isolate, to Line Replacement Unit (LRU) level, all Aircraft Survivability Equipment (ASE) to include removal, replacement, and checkout. ASE must be operational for the aircraft to be mission capable during hostile environment operations, and other times per Appendix D. Replacement LRU's will be the responsibility of the Government.

3.2.4.13 MAINTENANCE ON AWAY AIRCRAFT

The Contractor shall provide maintenance support on aircraft undergoing any or all modifications to include PME. The Contractor shall be responsible for coordinating maintenance activities with third parties performing mission equipment/other modifications.

3.2.4.14 AIRCRAFT RECOVERY

The Contractor shall initiate recovery operations NLT 24 hours from notification of a requirement. Recovery operations shall include the required test equipment, parts, and personnel. The Contractor shall return the aircraft to Mission Capable status, or make the necessary repairs to ferry the aircraft to the BB or a FAA repair facility.

3.2.4.15 HOSTILITIES/CRISES

Hostile environmental conditions and mission requirements may require modification of the maintenance programs, but in no instance will safety of flight be compromised. The Contractor shall provide a Contingency Plan for continued services in the event of wartime or other crisis situation as defined in AR 715-9, DA PAM 715-16, and DODI 3020.37, IAW DI-MGMT-80004.

3.2.5 TECHNICAL LIBRARY

The Contractor shall maintain current technical libraries that contain all necessary publications to maintain the aircraft fleet including OEM and FAA subscription services with aircraft and subsystem manufacturers. The Contractor shall provide the Government access to the libraries. Government furnished publications are listed in Appendix K.

3.2.6 TEST, MEASUREMENT AND DIAGNOSTIC EQUIPMENT (TMDE)

The Contractor shall store, maintain, calibrate, and control Government furnished and Contractor furnished Test, Measurement and Diagnostic Equipment (TMDE) items required to meet the requirements of this SOW.

3.3 LOGISTICS OPERATIONS

The Contractor shall conduct logistics operations defined below to satisfy MC rate requirements as set forth in this SOW. The Contractor shall conduct all logistics operations IAW applicable FAA/OEM/Army approved procedures and FAR 45.5.

3.3.1 MATERIEL MANAGEMENT

The Contractor shall manage all material requirements necessary to support this program to include procurement, stock control, receipt, storage, issuance, packing, packaging, transportation, and quality assurance for all parts and material utilized in support of aircraft and sub-systems. The Contractor shall maintain and manage an automated inventory of parts, repairable components, consumable items, and material for the aircraft, engines, propellers, and support equipment. The Contractor shall make this data available to the Government through the CITIS.

3.3.1.1 SPARE PARTS STANDARD

The Contractor shall use spare parts that are certified and qualified by the FAA or OEM, and adequate to maintain applicable warranties. Spares used in engine and propeller maintenance shall be FAA and OEM approved. The Contractor shall ensure the safety and quality of all material used.

3.3.1.2 SPARE PARTS USAGE REPORT

The Contractor shall prepare spare parts usage reports IAW DI-MISC-80834.

3.3.1.3 RC-12 PRESCRIBED LOAD LIST (PLL)

The Contractor shall sustain the existing minimum essential parts supply at designated RC-12 BB sites IAW Appendix L and M. The title will remain with the Government for the contents of the minimum essential parts supply. The Contractor shall maintain the stockage level at no less than '90% fill' (by line) at all times. The Contractor shall return the minimum essential parts supply (at a 100% stockage level) to the Government on request or at termination of the contract.

3.3.1.4 GFP MANAGEMENT

The Contractor shall be responsible for the shipment, receipt, storage, maintenance, repair, accountability and reporting status of all GFP listed in Appendix N. The Contractor shall provide GFP status reports IAW DI-MGMT-80259.

3.3.2 FORMS AND RECORDS

The Contractor shall use a single automated maintenance management program for all aircraft records, configuration management, and status to include, but not limited to: TBO time change components, (hour, day, month, annual, cycle, event), rotatables, critical shelf life components, life support equipment, PME items, inspection requirements, and incorporation and accomplishment of all airworthiness directives, and manufacturer SB's and modifications to include automation of scheduled services on GFP. The Government shall have access to this data through the CITIS.

3.3.2.1 C-12/RC-12 FORMS AND RECORDS

The Contractor shall initiate, maintain, and complete the required C-12/RC-12 logbook, historical records, and related forms IAW DA PAM 738-751.

3.3.2.2 UC-35 FORMS AND RECORDS

Maintaining Aircraft Logbooks, forms, and records IAW DA PAM 738-751 is not required for the UC-35.

3.3.3 WARRANTY MANAGEMENT

The Contractor shall manage all commercial warranties, including pass-through vendor warranties IAW FAR Part 46.705. The Contractor shall provide for transfer of these warranties to the Government upon completion of this contract. The Contractor shall track all GFE and engine/campaign and other warranties IAW DI-MISC-80359. This warranty report should include all items which could result in a credit to the Government.

3.4 MISSION SUPPORT

3.4.1 PRE/POST FLIGHT OPERATIONS

The Contractor shall perform all required basic inspection, pre/post flight inspection, and maintenance actions. The Contractor shall be at the BB and available to assist the crew in preparing / recovering the aircraft for/from flight operations. The Contractor shall marshal the aircraft and pre-brief/debrief the aircrew for any known aircraft deficiencies. Once all post flight inspections have been accomplished, the Contractor shall clean the system and ensure that the aircraft has been serviced and fully prepared for the next mission.

3.4.1.1 RC-12 GUARDRAIL MISSION PREFLIGHT AND POST FLIGHT SERVICING

The Contractor shall perform the following additional requirements for the RC-12 sites.

3.4.1.1.1 AIRCRAFT SURVIVABILITY EQUIPMENT SERVICING

The Contractor shall load, install, and perform pre-flight checkout of M-130 Chaff and Flare Dispenser payload modules and ejector cartridges on aircraft prior to flight and downloading after each flight.

3.4.1.1.2 PRE/POST FLIGHT SERVICING

The Contractor shall arrive at the aircraft IAW unit requirements to perform the following tasks:

- a. Position one Jet-Ex power unit and one air conditioner unit next to each aircraft and insure adequate power is applied for the mission system run-up.
- b. Assist unit Communications and Electronic (C&E) repairmen in performing communications checks on aircraft mission communications radios.
- c. Assist in trouble shooting unique mission airframe communication equipment.
- d. Perform start-up and alignment of the INS and GPS (when equipped) IAW location data provided by the Government.
- e. Record preflight alignment and post flight pre/shutdown computed location data to the accuracy specified by the unit. Provide this data to the COR on a monthly basis. Daily errors in excess of the amount specified by the unit shall be reported to the COR or Pilot immediately.

The Contractor shall be available while unit personnel are performing Primary Mission Equipment post-flight inspections.

3.4.2 GROUND/FLIGHT OPERATIONS

Contractor ground and flight operations shall be in compliance with AR 95-20 and local facility safety requirements. The Contractor shall provide flight operation and maintenance support on transient (not permanently assigned to BB) C-12/RC-12/UC-35 aircraft. The Contractor shall perform routine flight operations to include aircraft directing, parking, securing, and providing technical assistance to flight crews.

3.5 FACILITIES

The Contractor shall secure, clean and maintain assigned spaces and repair damage caused by the Contractor. Available Government BB facilities and Resources are listed in Appendix O.

4.0 DEPOT/PROPULSION/OVER AND ABOVE

4.1 DEPOT OPERATIONS

The Contractor shall implement Depot operations IAW the contract attachment, "Depot/Propulsion/Over And Above Approach" and this SOW. The approach shall be consistent with and fulfill the requirements of the RFP and the SOW. The Contractor shall prepare the Depot/Aircraft Condition Inspection (ACI) Status Report IAW DI-MGMT-80933.

4.1.1 DEPOT FACILITIES

The Contractor shall use only FAA Part 135 and/or 145 certified repair stations/depot facilities. Repair station certificates shall cover all aircraft types and categories of work to be performed. The Contractor shall make office space available for Government personnel as required.

4.1.2 AIRCRAFT CONDITION INSPECTION

The Contractor shall perform ACI for the C-12 and RC-12 aircraft IAW Appendix P. The Contractor shall provide all services, materials, tools, equipment, facilities, fuel, lubricants, parts, consumables and direct and indirect materials and labor required to accomplish ACI with strip and repaint. The Contractor shall document the repairs completed during the ACI IAW DA PAM 738-751. Items found defective beyond those addressed by Appendix P will be handled on an over and above basis. After completion of the ACI, the Contractor shall certify and document airworthiness (by aircraft tail number) IAW DI-MISC-80508.

4.1.3 STRIP AND PAINT

The Contractor shall strip and completely repaint aircraft at the written direction of the PCO. The Contractor shall repaint RC-12 aircraft with CARC (MIL-C-46168) paint. Any time the aircraft is completely repainted, the

Contractor shall perform an in-depth corrosion inspection, including treatment and repair of all defective areas which shall be accomplished IAW OEM/ FAA approved standards.

4.1.4 INTERIOR REFURBISHMENT

The Contractor shall inspect the aircraft interior IAW Appendix H. The Contractor shall recommend to the PCO if refurbishment is required. Refurbishment shall be performed at the direction of the PCO.

4.1.5 MAINTENANCE TEST FLIGHTS/OPERATIONAL CHECKS

The Contractor shall conduct MTF's/MOCs IAW OEM instructions and applicable Army policies and regulations.

4.2 PROPULSION SYSTEM MAINTENANCE

The Contractor shall implement Propulsion System maintenance IAW the contract attachment, "Depot/Propulsion/Over and Above Maintenance Approach" and this SOW. The approach shall be consistent with and fulfill the requirements of the RFP and the SOW.

4.2.1 ENGINE OVERHAUL/REPAIR

The Contractor shall overhaul engines IAW OEM standards at the intervals listed in the table listed below. The Contractor shall ensure all engines meet configuration, serviceability and airworthiness standards of the FAA FAR and applicable OEM specifications. A FAA Form 8130-3 shall be attached to each serviceable engine returned to the Contractor from a FAA repair station. The Contractor shall update Army/Navy engines to the latest manufacturer's configuration during engine overhaul and repair activities. The Contractor shall provide a technical tear down analysis and specification build up sheet IAW DI-MISC-80508 for each engine that is overhauled. PCO may direct overhaul in lieu of repair for components that have 25% or less service life remaining.

CURRENT TBO INTERVALS	
UC-35	
- JT15D-5D	3500 Hours **
- PW535A	5000 Hours
C-12/RC-12	
- PT6A-41	4000 Hours
- PT6A-42	4000 Hours
- PT6A-65B	6000 Hours
- PT6A-67	3500 Hours
- PT6A-67D	6000 Hours
** TBO extension program in force	Appendix G

The Contractor shall perform engine overhauls/repair IAW Army guidance as follows:

- When parts must be replaced and optional replacement parts or components are available, the part of component with the longest cyclic and/or total life shall be installed. Used replacement parts shall not have less than the times/cycles remaining on the removed part.
- The Contractor shall incorporate all FAA AD's, OEM mandatory SB's, and Government approved non-mandatory SB's.
- Incorporating corrosion protection coating SERMETEL 5380DP or other PCO approved coating to the compressor section and gas generator case, and all other components thereof (include in the FFP for the overhaul) for the C-12/RC-12.
- The contractor shall establish and maintain a program to ensure all commercial warranties associated with the engine and engine component repair and/or overhaul are passed on to the Government, including downstream damage.
- All parts and materials shall be OEM approved, refurbished or new, and shall be capable of operating to the next TBO.

- f. Incorporation of PT6A-42 compressor turbine blades in place of PT6A-41 compressor turbine blades in the PT6A-41 engines shall be accomplished prior to the engine being installed on the aircraft (at the first field replacement or repair/overhaul) following the manufacturers established guidelines.

4.2.1.1 REQUIRED REPLACEMENT ITEMS

The Contractor shall replace items during overhaul as required by OEM and FAA standards. The Contractor shall develop a list of required replacement items that will be FFP.

4.2.1.2 ON CONDITION ITEMS

The Contractor shall repair/replace items that do not meet OEM serviceability criteria on an over and above basis. All parts and materials shall be OEM approved, refurbished or new, and shall be capable of operating to the next TBO.

4.2.1.3 CONTRACTOR PROVIDED ENGINES

The Contractor shall provide an engine during periods when an Army/Navy engine is removed for overhaul/repair. This effort should follow best commercial practices with the cost of any major maintenance (HSI/overhauls, etc.) being the responsibility of the engine owner. The Army/Navy engine removed from the aircraft will be reinstalled when the overhaul/repair is complete. The replacement engine shall remain on the aircraft until return of the government engine. See Section H and Appendix D for engine repair parameters.

4.2.2 PROPELLER OVERHAUL/REPAIR

The Contractor shall overhaul/repair propellers IAW the propeller manufacturers approved methods, practices, and procedures. The Contractor shall ensure that all serviceable parts used to repair/refurbish TBO components have sufficient time remaining to allow the component to operate to the next scheduled overhaul. The Contractor shall provide a technical tear down analysis and specifications sheet IAW DI-MISC-80508 for each propeller that is overhauled/repared. PCO may direct overhaul in lieu of repair for components that have 25% or less service life remaining.

4.2.2.1 REQUIRED REPLACEMENT ITEMS

The Contractor shall replace items during overhaul as required by OEM and FAA standards. The Contractor shall develop a list of required replacement items that will be included in the FFP.

4.2.2.2 ON CONDITION ITEMS

The Contractor shall repair/replace items that do not meet OEM serviceability criteria. All parts and materials shall be OEM approved, refurbished or new, and shall be capable of operating to the next TBO. The entire propeller overhaul will be FFP. Propeller repair may be on an over and above basis if other than site labor and material is required.

4.2.3 LANDING GEAR OVERHAUL

The Contractor shall provide overhaul services from an FAA approved repair station IAW the landing gear manufacturers approved methods, practices, and procedures when landing gear has reached its TBO, or earlier if conditions warrant. The Contractor shall provide a technical tear down analysis and specification sheet IAW DI-MISC-80508 for each landing gear that is overhauled.

4.2.3.1 REQUIRED REPLACEMENT ITEMS

The Contractor shall replace items during overhaul as required by OEM and FAA standards. The Contractor shall develop a list of required replacement items that will be included in the FFP.

4.2.3.2 ON CONDITION ITEMS

The Contractor shall repair/replace items during overhaul that do not meet OEM serviceability criteria. All parts and materials shall be OEM approved, refurbished or new, and shall be capable of operating to the next TBO. The entire overhaul will be FFP. Gear repair may be on an over and above basis if other than site labor and material is required.

4.3 OVER AND ABOVE

The Contractor shall implement other Over and Above Maintenance IAW the contract attachment, "Depot/Propulsion/Over and Above Maintenance Approach" and this SOW. The approach shall be consistent with and fulfill the requirements of the RFP and the SOW.

4.3.1 TECHNICAL DIRECTIVES (TD)

The Contractor shall apply all Army/Navy approved TDs.

4.3.2 DAMAGE REPAIR

The Contractor shall conduct repairs resulting from unscheduled maintenance events to include the following:

- (1) Hard landings.
- (2) Encounters with severe turbulence.
- (3) Lightning strikes and other acts of nature.
- (4) Bird strikes.
- (5) Sudden stoppage of the engines.
- (6) Operating limits in excess of the aircraft tolerance/parameters.
- (7) Repair for any type of damage not a direct result of any Contractor action, caused by crash or collision with another object during flight or on the ground, or as a direct result of enemy hostile action.
- (8) Engine and propeller (on condition) parts replaced during HSI inspection or overhaul/repair.

4.3.3 CRASH DAMAGE

The Contractor shall conduct repairs resulting from crash damage. The Contractor shall obtain access to all required OEM approved technical data, special tools, jigs, and fixtures needed to perform structural repairs. When repair procedures are unavailable from the OEM, the Contractor shall develop and obtain approval from the OEM for repairs not covered in the OEM manuals.

4.3.4 PREMATURE ENGINE FAILURE

The Contractor shall perform a tear-down analysis at the direction of the PCO on any engine that fails prematurely. Premature Engine Failure is defined as engine failure "between overhauls". At the request of the PCO, the Contractor shall perform a tear-down analysis of a component or system to determine the reason for failure and report findings IAW DI-MISC -80508.

4.3.5 DEPLOYMENTS

The Contractor shall be prepared to relocate personnel and equipment to support deployments. The Contractor shall adhere to all requirements of AR 715-9, DA PAM 715-16 and DODI 3020.37. Normally, routine labor cost associated with deployments will not be charged under Over and Above.

4.3.6 ELEMENTARY OPERATIONS

At the direction of the PCO, the Contractor shall perform the following elementary operations, but not limited to, the following:

- a. The run-in of the engine.
- b. The run-in of the engine.
- c. Conduct of other maintenance operations to include inspections, adjustments.

4.3.7 BEDDOWN BASE ACTIVATION, RELOCATION, AND CHANGES

At the direction of the PCO, the Contractor shall develop and conduct a BB Survey, which identifies facilities and materials needed to open/operate the Site. The Contractor shall perform tasks required to close, open/operate BB at the direction of the PCO.

5.0 ENGINEERING

The Contractor shall provide Engineering support IAW the contract attachment, "Engineering Support Approach" and the requirements of this SOW. The approach shall be consistent with and fulfill the requirements of the RFP and the SOW.

5.1 AIRWORTHINESS AND CERTIFICATION

The Contractor shall provide Airworthiness and Certification Engineering Support in support of Paragraph 3.0, Operational Readiness, and Paragraph 4.0, Depot/Propulsion/Over and Above, of this SOW. The Contractor shall provide an Airworthiness Certification for all aircraft maintained under this contract. The report shall list each aircraft by tail number and state as a minimum that each aircraft has been maintained IAW all applicable FAA/OEM/Army requirements and as of the submittal date are considered airworthy by the contractor. The certification shall be signed by, as a minimum, the Contractor's Chief Inspector and Director of Maintenance. The submittal shall be IAW DI-MISC-80508.

5.2 SYSTEMS ENGINEERING

5.2.1 QUALITY ASSURANCE

The Contractor shall develop and implement a quality control/assurance program IAW best commercial practices in support of Paragraph 3.0, Operational Readiness, and Paragraph 4.0, Depot/Propulsion/Over and Above, of this SOW. Quality, safety, and airworthiness shall be ensured by the maintenance Contractor. The Contractor shall have in place a tool control plan meeting acceptable commercial standards. The Contractor shall prepare Quality Deficiency Reports (QDR) IAW DI-QCIC-80736 after failure/discrepancy of a flight safety part or component, whether Contractor Furnished Equipment (CFE) or GFP. At the request of the Government, the Contractor shall perform a tear-down analysis of a component or system to determine the reason for failure IAW DI-ALSS-81534.

5.2.2 CONFIGURATION MANAGEMENT

The Contractor shall provide Configuration Management Support in support of Paragraph 3.0, Operational Readiness, of this SOW. The Contractor shall prepare an Aircraft Configuration Report IAW DI-MISC-80508. The Contractor shall maintain a current database of all configuration changes to the aircraft by tail number.

5.2.3 ENVIRONMENTAL ENGINEERING

The Contractor shall provide Environmental Engineering Support in support of Paragraph 3.0, Operational Readiness, and Paragraph 4.0, Depot/Propulsion/Over and Above, of this SOW. The Contractor shall handle, transport, store and dispose of any hazardous material IAW federal, state, and local regulations.

5.2.4 SAFETY ENGINEERING

The Contractor shall provide Safety Engineering Support in support of Paragraph 3.0, Operational Readiness, and Paragraph 4.0, Depot/Propulsion/Over and Above, of this SOW. The contractor shall execute a safety program IAW the safety portion of the Engineering Support Approach, "applicable Government regulations and local facility safety requirements. These activities shall include safety awareness briefings, safety inspections of the work place, and process to amend maintenance procedures to reduce safety hazards.

5.2.5 ENGINEERING INVESTIGATION, RESEARCH, AND ANALYSIS

The Contractor shall provide services to develop/conduct; engineering investigations, mishap investigations, technical analysis, studies, research, FAA Supplemental Type Certificates (STC) as required by the Government in support of Paragraph 4.0, Depot/Propulsion/Over and Above, of this SOW.

6.0 TRANSITION

The Contractor shall implement LCCS transition IAW the contract attachment, "Transition Approach" IAW the requirements of this SOW". The approach shall be consistent with and fulfill the requirements of the RFP and the SOW. The Contractor shall utilize in his approach those items of assistance required from the incumbent Contractor.

6.1 PHASE IN

The Contractor shall be responsible for system maintenance effective IAW Section B of the contract. Immediately after contract award, the Contractor shall conduct transition activities, IAW the contract attachment "Transition Approach". The Contractor shall conduct a joint inventory (outgoing contractor and incoming contractor) of all GFP and document the results IAW DI-MGMT-80259. The Contractor shall, in conjunction with the COR, perform an initial inspection to review/validate the airworthiness of all aircraft in the fleet. The Contractor shall also physically verify the existing configuration of all aircraft IAW DI-MISC-80508.

6.2 PHASE OUT

At the request of the Government, the Contractor shall provide transition support including providing all pertinent maintenance data and transitional planning, necessary for the Government or follow-on Contractor to assume full logistics support of the aircraft. The Contractor shall make available to the follow-on Contractor all appropriate maintenance related records, technical libraries operating instructions, and procedures. The Contractor shall conduct a joint inventory (outgoing contractor and incoming contractor) of all GFP and document the results IAW DI-MGMT-80259. The Contractor shall return all GFP in serviceable/useable condition at the contract completion. The Contractor shall support the aircraft airworthiness/other inspection at contract completion. The Contractor shall provide a phase-out plan IAW DI-MISC-80508.

APPENDIX A ACRONYM LIST

A&P	Airframe and Powerplant
ACI	Aircraft Condition Inspection
AD	Airworthiness Directive
	Aircraft Directive
AGE	Auxiliary Ground Equipment
ALSE	Aviation Life Support Equipment
AOAP	Army Oil Analysis Program
ASE	Aircraft Survivability Equipment
AMC	Air Mobility Command
BB	Beddown Base
C&E	Communication and Electronic
CFE	Contractor Furnished Equipment
CFSR	Contract Funds Status Report
CITIS	Contractor Integrated Technical Information Service
CLIN	Contract Line Item Number
COMSEC	Communication Security
CONUS	Continental United States
COR	Contracting Officer's Representative
DAC	Day After Contract
DLAM	Defense Logistics Agency Manual
DOD	Department of Defense
ETM	Engine Trend Monitoring
FAA	Federal Aviation Administration
FAR	Federal Aviation Regulation(s)
	Federal Acquisition Regulation(s) (Always written out in this document)
FFP	Firm, Fixed-Price
FMC	Fully Mission Capable
FOD	Foreign Object Damage
FW	Fixed Wing
FY	Fiscal Year
GFE	Government-Furnished Equipment
GFP	Government-Furnished Property
HSI	Hot Section Inspection
IAW	In Accordance With
LCCS	Life Cycle Contractor Support
MACOM	Major Command
MC	Mission Capable
MEL	Minimum Essential List
MESL	Mission Essential Subsystem List
MESM	Minimum Equipment/System Matrix
NMC	Not Mission Capable
MTF	Maintenance Test Flight
MOC	Maintenance Operational Check
NLT	No Later Than
NRT	Non-Reporting Time
OCONUS	Outside of the Continental U.S.
OEM	Original Equipment Manufacturer (Manufactured)
PCO	Procuring Contracting Officer
PM	Program Manager
PMA	Program Management, Aircraft Navy
PMC	Partial Mission Capable
PME	Prime Mission Equipment
PMO	Program/Product Manager's Office

QDR	Quality Deficiency Report
RFI	Ready for Issue
RT	Reporting Time
SB	Service Bulletin
SOF	Army Safety of Flight Message
SOW	Statement of Work
STC	Supplemental Type Certificates
TB	Technical Bulletin
TBO	Time Between Overhaul
TBD	To Be Determined
TD	Technical Directive
TMDE	Test Measurement and Diagnostic Equipment
TO	Technical Order

EXHIBIT B

IN THE CIRCUIT COURT OF GREENVILLE COUNTY, SOUTH CAROLINA

STEVENS AVIATION, INC.)

Plaintiff,)

vs.)

Case No.)

DYNCORP INTERNATIONAL LLC, and)

SCIENCE APPLICATIONS)

INTERNATIONAL CORPORATION,)

Defendants.)

AFFIDAVIT OF NEAL McGRAIL

I, Neal McGrail, know the following of my own personal knowledge and a review of the books and records kept by Stevens Aviation, Inc. ("Stevens") in the normal course of its business. If called upon to testify, I could and would testify as follows:

1. I have been employed by Stevens since September 2002, and am currently employed in the position of Chief Operating Officer.
2. Stevens is a Delaware Corporation with its principal place of business in Greenville, South Carolina. Stevens is an aviation services company providing its customers with specialized expertise in aircraft maintenance, upgrade, refurbishment, modification and completion services, new and used aircraft sales, aircraft management, fixed base operations, and charter and other flight services. Approximately 40-50% of Stevens' operations involve providing services and support to the U.S. Department of Defense on a number of depot maintenance, modification and upgrade programs.
3. Sometime prior to March 16, 2000, Stevens was approached by DynCorp International LLC ("DynCorp"), through its related company DynCorp Technical Services, Inc., regarding the possibility of entering into a teaming arrangement for purposes of responding to a

Request for Proposal for Life Cycle Contractor Support for C-12/RC-12 and UC-35 Fixed Wing Aircraft (the "Project") issued by the U.S. Army. The Project involved the maintenance and repair of the government's fleet of C-12/RC-12 and UC-35 Aircraft and related support equipment, and DynCorp needed a subcontractor like Stevens that has experience and expertise in the management, provision, repair and support of such aircraft to fulfill certain requirements of the Project. The teaming arrangement contemplated that the parties would cooperate in preparing a bid for the Project, and if the contract was awarded, the parties would jointly work on the Project.

4. Prior to being approached by DynCorp, Stevens was the exclusive provider of depot maintenance and repair work for the AGES Group under a joint prime contract with the Army, Navy and Air Force for all maintenance, repair and logistics support for their fleet of C-12 and U-21 Aircraft. DynCorp needed Stevens' extensive knowledge, experience, and excellent past performance record it gained under the AGES contract in order to obtain the contract for the Project.

5. Stevens initially planned to submit a bid proposal as a subcontractor for the depot work with all the potential prime contractors for the Project; however, DynCorp wanted an exclusive arrangement with Stevens. After negotiations, Stevens agreed to the exclusive arrangement proposed by DynCorp, and thus only submitted a bid proposal for the Project with DynCorp. In exchange, DynCorp agreed to identify Stevens in the bid proposal sent to the U.S. Army as the entity which would perform the inspection and depot maintenance and repair work on Army C-12/RC-12 and UC-35 aircraft, and to give Stevens all depot level maintenance and repair work for the Project, in the event the contract was awarded to DynCorp.

6. On March 16, 2000, DynCorp and Stevens formalized their agreement by executing a written Teaming Agreement. A true and accurate copy of the Teaming Agreement is attached to this affidavit as Exhibit 1.

7. In early 2001, the U.S. Army awarded U.S. Army Contract DAAH23-00-C-0226 (the "Prime Contract") for the Project to DynCorp.

8. On October 6, 2000, Stevens and DynCorp entered into a Subcontract Agreement (the "Subcontract") as contemplated by the Teaming Agreement. A true and accurate copy of the Subcontract is attached to this affidavit as Exhibit 2.

10. Under the Subcontract, DynCorp and Stevens confirmed their agreement that Stevens would be the exclusive provider of the maintenance and repair work for all C-12/RC-12 and UC-35 Aircraft covered under the Prime Contract.

11. The Subcontract Agreement commenced on October 6, 2000 and continued through January 31, 2001, plus nine "Option Years". The periods of the Option Years ran annually starting on the 1st day of February, 2001 and terminated on the next January 31. Under the terms of the Subcontract Agreement, the Option Years were automatically extended by DynCorp, and accepted by Stevens, if and when U.S. Army Contract DAAH23-00-C-0226 was extended. Army Contract DAAH23-00-C-0226 was extended annually for all nine Option Years identified in the Subcontract Agreement, and it continues to be in effect through January 31, 2010. Simultaneously with the extension of U.S. Army Contract DAAH23-00-C-0226, the Subcontract Agreement was extended, and it continues in full force and effect through January 31, 2010.

12. The Subcontract Agreement specifically defined the Aircraft subject to its provisions as "All Army RC/C-12 and UC-35 aircraft covered under [U.S. Army

Contract DAAH23-00-C-0226].” The Subcontract Agreement specifically identified the work that Stevens would perform on Aircraft as including: strip and repaint work; aircraft condition inspections; maintenance work to replace conditions found to be defective during strip and repair work or aircraft condition inspections; and site organizational maintenance.

13. From the commencement of the Subcontract Agreement in October 2000 until mid-to-late 2008, DynCorp, to the best of Steven's knowledge, sent all Army C-12/RC-12 aircraft covered under U.S. Army Contract DAAH23-00-C-0226 to Stevens for strip and repaint work, aircraft condition inspections, maintenance work, and site organizational maintenance, resulting in Stevens servicing, on average, 27 aircraft per year under the Subcontract Agreement through 2007. Since in or about mid-to-late 2008, as a result of DynCorp diverting Aircraft to other service facilities, the number of Aircraft sent to Stevens by DynCorp as required by the Subcontract Agreement has been reduced significantly. In 2009, DynCorp has sent only 7 Army aircraft to Stevens, and there have been no aircraft sent to Stevens by DynCorp since early June 2009.

14. In recent months, Stevens obtained evidence that DynCorp has been diverting C-12/RC-12 aircraft work to other facilities. This information was learned when aircraft arrived at Stevens from facilities in Texas and Arkansas. In addition, DynCorp requested that our pilots go to an aviation facility in Arkansas to perform maintenance test flights under the Prime Contract that the Arkansas facility was not qualified to do. During the pilots visit to the Arkansas facility, they saw numerous US Army C-12/RC-12 aircraft at the facility awaiting maintenance depot work.

15. The U.S. Army has a very limited number of and UC-35 Aircraft, and Stevens believed that all of them were new and under warranty at the time the Subcontract was first

executed. Thus, Stevens believed and understood that for most of the years of the Subcontract there was no UC-35 Aircraft work for DynCorp to send to Stevens. However, Stevens came to learn that DynCorp had been sending UC-35 Aircraft work to another aviation services entity.

16. Knowing that the Prime Contract and the Subcontract are set to expire on January 31, 2010, and that the U.S. Army will be rebidding the work covered under the Prime Contract for beyond that time, DynCorp approached Stevens about working together in the rebidding process. This time, however, DynCorp stated that it wanted a non-exclusive agreement so that if it was successful in the rebidding process it could subcontract with a variety of entities for aviation maintenance services on C-12/RC-12 and UC-35 aircraft.

17. Stevens made the decision to forego involving itself in the rebidding process with DynCorp, and chose, instead, to enter into an agreement with another entity to be the exclusive provider of aviation maintenance for services for C-12/RC-12 and UC-35 aircraft should it be successful in the rebidding process. Subsequent to making this decision, Stevens informed DynCorp of it.

18. DynCorp's breach of the Subcontract has caused, and is continuing to cause, irreparable harm to Stevens. For one thing, the bid for the Project identified Stevens as the entity doing the inspection and maintenance depot work on Army C-12/RC-12 and UC-35 aircraft, and to the extent that DynCorp is sending these aircraft to other less-qualified entities for such work, the reputation of Stevens could be impugned if the work is substandard or of a lesser quality than that which would be performed by Stevens. For another thing, Stevens is threatened with losing its highly skilled work force because of a lack of work to keep them occupied and a lack of revenue to pay them. For example, in 2009, the number of Stevens employees in military maintenance has dropped from 54 to 34 due to the reduction of work under the Subcontract, and

of the 34 employees left, due to the diversion of aircraft by DynCorp, there is only enough work for 6 full time employees. Similarly, the number of employees involved in painting aircraft has dropped from 19 to 14 as a result of the diversion of aircraft by DynCorp. A continued loss of skilled workers could result in Stevens losing its ability to provide the highly skilled services required for government contracts, and could thus affect its ability to provide the services which would be required as a subcontractor for future government contracts.

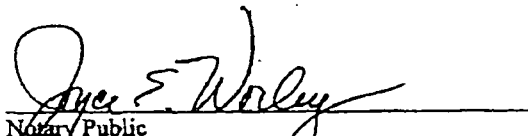
19. During all relevant times, Stevens performed and continues to perform all of its obligations required under the Subcontract Agreement. In fact, if Stevens was not meeting its contractual obligations under the Subcontract, there are specific procedures for terminating the contract for cause. Over the life of the Subcontract, Stevens has never exercised its rights to terminate the contract for cause.

Further the affiant sayeth naught.


Neal McGrail

STATE OF SOUTH CAROLINA)
) ss
COUNTY OF GREENVILLE)

Subscribed and sworn to before me, a notary public, this 20th day of August, 2009.


Notary Public

My Commission Expires: 7/9/17

JOYCE E. WORLEY
Notary Public
State of South Carolina
Commission Expires July 9, 2017

- 6 -

EXHIBIT C

C

03-1 BCA P 32246, ASBCA No. 53865, 2003 WL 2012889 (A.S.B.C.A.)

ASBCA

APPEAL OF - TRANS COM SYSTEMS

Under Contract No. F04700-99-D-0004

May 1, 2003

APPEARANCE FOR THE APPELLANT: Cynthia Malyszek, Esq.

Malyszek & Malyszek

Los Angeles, CA

APPEARANCES FOR THE GOVERNMENT: COL Alexander W. Purdue, USAF

Chief Trial Attorney

CAPT Sky W. Smith, USAF

Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE JAMES ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Respondent moves for summary judgment on this appeal on the grounds that the captioned contract is unenforceable as an "indefinite quantity" or "requirements" type contract, and, therefore, appellant is entitled to payment only for work ordered and performed. Appellant opposes the motion, has submitted no affidavits of fact, but adverts to Rule 4 documents with respect to some disputed material facts, and argues that the parties intended the contract to be a requirements type contract.

STATEMENT OF FACTS (SOF) FOR THE PURPOSES OF THE MOTION

1. Air Force solicitation No. F04700-98-R-0036, dated 27 August 1998, for medical transcription services at Edwards Air Force Base (AFB), stated in § L: "52.216-01 TYPE OF CONTRACT (APR 1984) The Government contemplates award of a Firm Fixed Price Requirements contract resulting from this solicitation" (emphasis in original) (R4, tab 1 at 1-2, tab 4 at 13).

2. The 9 November 1998 letter of Edwards AFB's Director for Small Business to the U.S. Small Business Administration (SBA) offered an SBA § 8(a) contract to Trans Com Systems (TCS) for medical transcription services for the 95th Medical Group at

Edwards AFB, and described the contract as a "fixed price, indefinite delivery, indefinite quantity delivery order contract" (R4, tab 8).

3. The contracting officer's (CO) 13 November 1998 price negotiation memorandum stated that negotiations of fixed unit prices with TCS were concluded on 12 November 1998 for transcription services for the 95th Medical Group, and—

This is a requirements task order contract with no guarantees to the contractor as to the amount of work that will be ordered over the 5 year performance period. The dollar and quantities are estimates. The actual amounts will be determined on the individual task orders.

(R4, tab 31)

4. On 24 November 1998, the Air Force awarded Contract No. F04700-99-D-0004 (contract 4) to TCS, effective 1 January 1999, for medical transcription services for the 95th Medical Group at Edwards AFB, at an estimated value of \$456,000 for fiscal years 1999-2003 (R4, tab 1 at 1-2, tab 2 at 4).

5. Contract 4's § B provided that "funding will be provided on task orders" and set forth estimated quantities of 600,000 lines (of transcription) for each of fiscal years 1999, 2000, 2001, 2002 and 2003, at unit prices of \$.145, \$.15, \$.155, \$.155 and \$.155 per line, respectively (R4, tab 1 at 1-2).

6. Contract 4's § C, DESCRIPTION/SPECIFICATIONS, provided in § 1.1:

Scope of Work: The contractor shall provide all personnel, equipment, tools, materials, supervision, and other items and services necessary to perform medical outpatient and inpatient transcription of clinical services dictated by 95th Medical Group, USAF health care providers as defined in this performance work statement (PWS)

(R4, tab 2 at 1)

7. Contract 4 incorporated by reference, *inter alia*, the FAR 52.216-18 ORDERING (OCT 1995) clause, which required any supplies or services to be ordered by issuance of delivery or task orders, and FAR 52.216-19 ORDER LIMITATIONS (OCT 1995) clause, which set a \$100 minimum order amount and a \$250,000 maximum order amount for a single item and for a combination of items (R4, tab 1 at 1-3).

8. Contract 4 did not incorporate the FAR 52.216-20 DEFINITE QUANTITY (OCT 1995), 52.216-21 REQUIREMENTS (OCT 1995), or 52.216-22 INDEFINITE QUANTITY (OCT 1995) clauses in effect on the contract award date, and did not designate any minimum quantity or dollar amount of services in the contract schedule (R4, tab 1 at 1-4).

9. The CO issued two delivery orders (DO) under contract 4 [FNal] :

DO No.	Date Est.	Value	Amount Ordered
0001	11-24-98	\$80,999.90	\$26,535

0002 10-01-99 \$90,000 \$20,213
(R4, tab 3 at 1-5)

10. Respondent's 12 April 2000 memorandum reported that its contract specialist, upon advice of the JAG office, told TCS that—

... the Government wasn't obligated to provide [TCS] any consideration [for down scope of transcription services] as our requirement only guaranteed that [TCS] would get the work as long as we had a requirement. ...

... this was a contract that was set-up guaranteeing that [TCS] would get all the hospital's transcription requirements. It did not guarantee [TCS] the maximum estimated lines per year.

(R4, tab 12)

11. The Air Force contract specialist's 27 February 2001 facsimile to TCS sent a "new Statement of Work" for the 12 February 2001 to 30 September 2003 period of performance, which stated: "The Contractor shall provide all labor, materials, equipment, transportation, and supervision necessary to perform transcription services for *all medical and radiological reports from the 95th Medical Group*, located at Edwards AFB CA" (emphasis added) (R4, tab 17). Effective 19 March 2001, Modification 2 to DO 0002 changed the unit price from \$.15 to \$.20 per line of transcription and incorporated the new statement of work (R4, tab 3 at 8-10).

12. The CO's undated MEMO FOR RECORD referred to a 27 August 2001 letter about TCS and stated: "We recognize that the contract estimates were significantly greater than actuals but the contract type is a requirements type" (R4, tab 20).

13. On 24-25 February 2002 TCS submitted a certified claim to the CO under contract 4 for \$228,000 because of the reduced actual transcription services performed in 1999-2001 due to closure of the Edwards AFB hospital, and on 27 March 2002 revised the claim amount to \$230,844 (R4, tabs 24, 27).

14. The CO's 22 April 2002 final decision letter to TCS stated:

2. Reference to the pertinent contract terms

a. Although the Requirements Clause, 52.216-21, was inadvertently omitted from the contract, 52.216-01, Type of Contract (APR 1984), was included in the solicitation and it states, "The Government contemplates award of a Firm Fixed Price Requirements contract resulting from this solicitation." The letter to the [SBA] stated the contract type as requirements. The contractor was briefed on the type of contract during the solicitation process. Further, this contract has been administered as a requirements contract and consistent with a requirements contract [TCS] billed only for the work performed.

4. Subject claim is denied in its entirety.

a. This contract is an indefinite quantity requirements contract. The only guarantee for this type of contract is all of the medical transcription services done at Edwards [AFB] would go to this contractor during the period of performance of this contract. ...

(R4, tab 28 at 1-2)

DECISION

Summary judgment is appropriate when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. See FED. R. CIV. P. 56(c); *U.S. Ecology, Inc. v. United States*, 245 F.3d 1352, 1355 (Fed. Cir. 2001).

Movant points to SOF ¶¶ 4-9, showing that contract 4 had no FAR 52.216-21 REQUIREMENTS clause, did not require

the Government to order from TCS all its medical transcription services for the 95th Medical Group, Edwards AFB, had no FAR 52.216-22 INDEFINITE QUANTITY clause, and did not designate any minimum quantity or dollar amount of services in the contract schedule. Movant argues that contract 4 cannot be a requirements or an ID/IQ type contract, and TCS, therefore, is entitled to payment only for services ordered and performed.

TCS points to SOF ¶¶ 1-3, 10-14 showing that the respondent and its CO, in the solicitation and pre-award communications, and thereafter in its communications and the CO's final decision denying TCS' claim, considered contract 4 to be a requirements type contract and recognized TCS' exclusive right to provide medial transcription services at Edwards AFB during contract 4's term, albeit respondent twice commingled indefinite quantity terminology. TCS argues, in the alternative, that discovery is needed to develop a more complete record from which to determine the type of contract intended, so movant is not entitled to judgment at present.

The absence of the FAR 52.216-21 REQUIREMENTS and 52.216-22 INDEFINITE QUANTITY clauses, and of a designated minimum quantity of supplies or services, from an instrument does not end the inquiry into the type of contract the parties intended. One must review the specified terms and conditions, including the Government's estimate of the quantities of supplies or services, and the parties' course of dealing with respect to purchasing the designated supplies or services exclusively from the contractor. *See Centurion Electronics Service*, ASBCA No. 51956, 03-1 BCA ¶ 32,097 at 158,658-59 (contract was a requirements contract despite absence of FAR clause, since contract required contractor to perform all repairs of specified ADP equipment); *cf. Konitz Contracting, Inc.*, ASBCA No. 52113, 00-2 BCA ¶ 31,121 at 153,717 (contract was not a definite quantity, requirements, or indefinite quantity type contract when there was no evidence of terms of exclusive ordering from the contractor, stated minimum quantity of services, or parties' conduct clarifying the intended type of contract).

It appears that the parties genuinely dispute whether contract 4's terms and conditions and their pre- and post-award conduct establish the intended type of contract. Furthermore, much of the documentary evidence in the present record is indicative of a mutual intent to enter into a requirements type contract. Considered in isolation from other facts, the original statement of work, "The Contractor shall provide all personnel . . . and services necessary to perform medical . . . transcription of clinical services dictated by the 95th Medical Group" (SOF ¶ 6), fell short of the exclusivity language necessary for a requirements contract. *See Coyte's Pest Control, Inc. v. Cuomo*, 154 F.3d 1302, 1305-06 (Fed. Cir. 1998). However, considering that the solicitation stated that the Government contemplated "award of a Firm Fixed Price Requirements contract" (emphasis in original) (SOF ¶ 1), the "new Statement of Work" provision added to DO 0002 – "The Contractor shall provide all labor, materials, equipment, transportation, and supervision necessary to perform transcription services for all medical and radiological reports from the 95th Medical Group" (emphasis added) (SOF ¶ 11) was clearly indicative of exclusivity, *see Centurion, supra*, 03-1 BCA at 158,659, at the very least after 19 March 2001, if not also indicative of the parties' original intent. Therefore, movant is not entitled to judgment as a matter of law.

We deny the Government's motion for summary judgment.

DAVID W. JAMES, JR.
Administrative Judge
Armed Services Board of Contract Appeals

I concur
MARK N. STEPLER
Administrative Judge
Acting Chairman

Armed Services Board of Contract Appeals

I concur

RONALD JAY LIPMAN

Administrative Judge

Acting Vice Chairman

Armed Services Board of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 53865, Appeal of Trans Com Systems, rendered in conformance with the Board's Charter.

EDWARD S. ADAMKEWICZ

Recorder

Armed Services Board of Contract Appeals

FN1. Respondent asserts that on 1 October 2001 the CO issued a DO 0003 for \$2,666, citing R4, tab 3; but the Rule 4 file does not include any DO 0003.

03-1 BCA P 32246, ASBCA No. 53865, 2003 WL 2012889 (A.S.B.C.A.)

END OF DOCUMENT

EXHIBIT D

ROA_451



LTC Keith Brown
Product Manager, Fixed Wing Aircraft

Army Aviation Association of America
2007



PM Fixed Wing Missions and Functions



Manage the acquisition, fielding, sustainment, and retirement of fixed wing platforms; performs equipment modernization through centralized life-cycle management



Worldwide management of 256 Army aircraft; Contract MC rates of 80% exceed Army requirements. 100% contractor maintained!



Fleet Wide Readiness

Exceeding Department of the

Army Standards

Contractor Logistics Support for deployed SEMA aircraft exceeding Department of Army standards



RESET

Induction of 23 aircraft in FY 2007



GATM



Global Air Traffic Management (GATM) upgrades and cockpit changes

C-12	RC-12
UC-35	C-26

Aviation Survivability Equipment Modifications to led by PD ASE



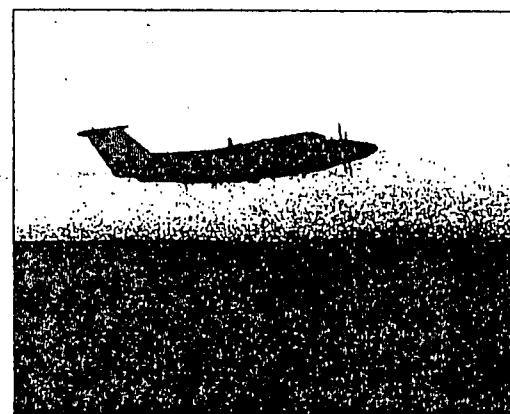
Blue Force Tracker (BFT) Installation on C-23 Aircraft



Recent Accomplishments



- Aviation Survivability Equipment (ASE) install complete for three Aerial Exploitation Battalions (RC-12)
- ASE install complete for in-theater C-23s
- Government acceptance of first RC-12D/H cockpit safety modifications
- C-12V prototype complete
- C-12U GATM modifications
- Blue Force Tracker install complete for in-theater C-23s
- C-23 Ballistic Armor Protection System fielding

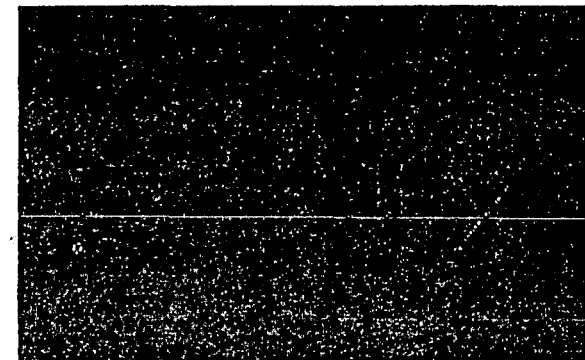




Successes



- **Teaming with Industry**
- **Contract performance Mission Capable (MC) rates exceeding Army requirements with high OPTEMPO**
- **Exceptionally high SEMA and ARL aircraft readiness in support of Global War On Terror**
- **More than 400 Contracting Officer's Representatives trained by Team Redstone**
- **Product Office overhead less than 4%**

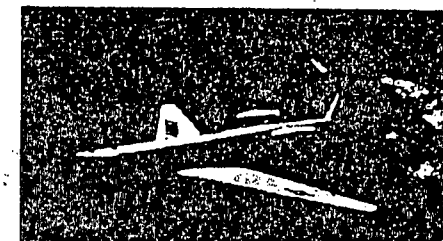
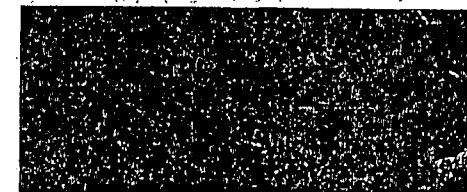
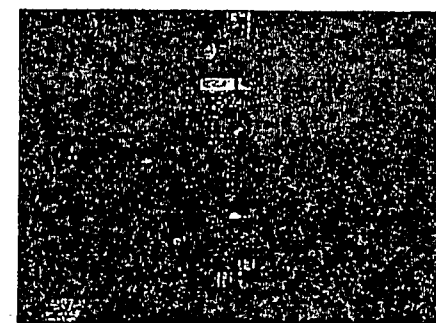




Fixed Wing Way-Ahead



- RC-12 fleet modernization
- Aerial Common Sensor (ACS) program restart
- Global Air Traffic Management
 - C-26 cockpit modernization
 - C-12V cockpit modernization
 - RC-12 total system modernization
- Golden Knights' aircraft acquisition
- C-23B+ cockpit modifications
- C-23B+ Night Vision Goggle capability
- C-23 ASE modernization
- C-37 DIRCM
- Fixed Wing Reset



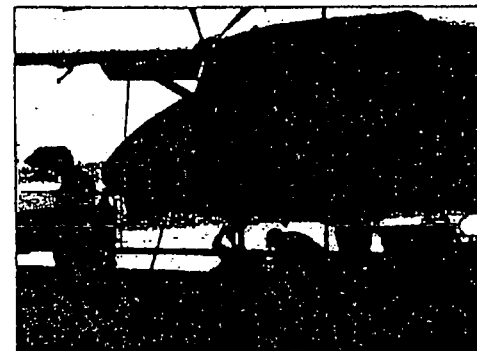


Fixed Wing Reset Program

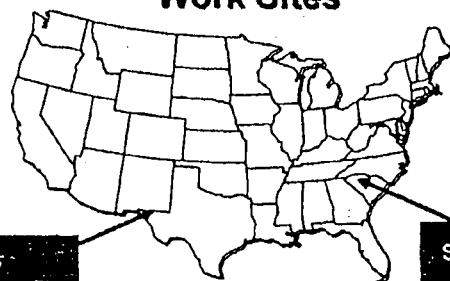


Reset Objective

- Return aircraft to pre-deployment condition using a modified Aircraft Condition Inspection (ACI)
- Return safe and FMC aircraft to fleet as rapidly as possible
- FW rotations 1-3 years, C-23 in greatest need
- 23 aircraft planned for FY2007
- ACI performed by depot maintainer
 - C-12, RC-12, UC-35 – Stevens Aviation, Greenville, SC
 - C-23 – M7, San Antonio, TX
- Expect reduced life cycle cost and increased service life



Work Sites



M7
San Antonio, TX

Stevens Aviation
Greenville, SC

Programmed RESET
cost \$300-\$581K per
aircraft



Contact Information



**Fixed Wing
Product Management Office
256-955-0081**

ROA_457

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Stevens Aviation, Inc.,	)	Civil Action No. 2009-CP-23-7229
	)	
Plaintiff,	)	
	)	
vs.	)	<u>DYNCORP INTERNATIONAL,</u>
	)	<u>LLC'S MOTION FOR JUDGMENT</u>
DynCorp International LLC, and	)	<u>ON THE PLEADINGS</u>
Science Applications International	)	
Corporation,	)	
	)	
Defendants.	)	
	)	

Pursuant to Rule 12(c), S.C. R. Civ. P., Defendant, DynCorp International, LLC ("DynCorp"), moves the Court for dismissal of Stevens Aviation, Inc.'s ("SAI") Complaint. SAI alleges that it constituted the exclusive provider of aviation maintenance services identified in a subcontract ("Subcontract") executed between the Parties and attached to the Complaint as Exhibit A. Compl., p.6, ¶30(a)-(b); see also SAI Brief Supporting Expedited Discovery, p. 5 ("[T]his case hinges on a find that Stevens is the exclusive provider of aviation maintenance services..."). Contrary to SAI's allegations, nothing in the Subcontract creates an exclusive relationship between DynCorp and SAI. Accordingly, DynCorp seeks dismissal of the Complaint because no allegation supports a viable claim against DynCorp, as the Subcontract creates no exclusive rights. This Motion is supported by a contemporaneously filed memorandum of law, the Complaint and the Subcontract attached as Exhibit A, the Answer, applicable precedent and the South Carolina Rules of Civil Procedure.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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(864) 250-2300

Attorneys for DynCorp International LLC

Greenville, South Carolina

September 15, 2009

EXHIBIT A

DYNACORP INTERNATIONAL LLC
6500 West Freeway, Suite 600
Fort Worth, Texas 76116
(817) 570-2858

SUBCONTRACT NO.: LCCS/SAI001

CONTRACT TYPE: FIRM FIXED PRICE (FFP) SUPPLIES AND SERVICES, TIME & MATERIAL (T&M);
AND COST REIMBURSABLE (CR) ELEMENTS

PLACED UNDER U.S. GOVERNMENT PRIME CONTRACT NO: DAAH23-00-C-0228

SECURITY CLASSIFICATION - UNCLASSIFIED

PRIORITY RATING: DOS1

SUBCONTRACT AGREEMENT

BETWEEN

DYNACORP INTERNATIONAL

a limited liability company of the State of Delaware
with an office at

8500 West Freeway, Suite 600
Fort Worth, Texas 76116

(hereinafter also referred to as "Contractor" or "DYNACORP")

AND

STEVENS AVIATION, INC.

a corporation of the State of Delaware
with an office at

Donaldson Center Industrial Air Park,
600 Delaware Street
Greenville, SC 29605

(hereinafter also referred to as "Subcontractor" or "SAI")



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[Signature]

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PREAMBLE

WITNESSETH THAT:

THIS SUBCONTRACT AGREEMENT ("Subcontract") is made effective as of the 6th day of October 2000 ("Effective Date") between DYNACORP INTERNATIONAL, a Delaware limited liability company, with a place of business at One Ridgmar Centre, 6500 West Freeway, Fort Worth, Texas 76116 (hereinafter "DYNACORP", the "Prime Contractor", the "LCCS Contractor" or the "Contractor"), STEVENS AVIATION, INC., a Delaware corporation, with a place of business at Dohaldson Center Industrial Air Park, 600 Delaware Street, Greenville, SC 29605, (hereinafter also referred to as "Subcontractor" or "SAJ"). DYNACORP and SAJ shall throughout this Subcontract be referred to individually as a "Party" or in the plural as the "Parties";

WHEREAS, the parties entered into a Teaming Agreement ("TA") executed on 18 March, 2000, which identifies the roles and responsibilities of the parties as Prime and Subcontractor in a cooperative effort to perform the requirements of U.S. Army Contract DAAH23-00-C-0226 ("Prime Contract");

WHEREAS, this Subcontract supersedes all prior written or oral agreements between the parties, excluding the Proprietary Data Exchange Agreement executed on 18 March, 2000, and constitutes the entire agreement between the parties hereto with respect to this Subcontract;

WHEREAS, the Prime Contract provides for the maintenance and repair of the Government's fleet of C-12/RC-12 and UC-35 Aircraft and related support equipment (hereinafter the "Life Cycle Contractor Support Program" or "LCCS Program");

WHEREAS, DYNACORP requires the services of a subcontractor experienced in the management, provision, repair and support of C-12/RC-12 Aircraft to fulfill certain requirements of the Prime Contract;

WHEREAS, SAJ is experienced in the management, provision, repair and support of C-12/RC-12 Aircraft in the performance of government contracts;

WHEREAS, DYNACORP has requested and SAJ has agreed to provide Depot support in the form of management, provision, repair and support of C-12/RC-12 Aircraft throughout the world and to perform such other services as primarily encompassed in the Prime Contract;

WHEREAS, The parties desire to enter into this Subcontract in furtherance of their objectives as stated in the TA for SAJ, as a subcontractor to DYNACORP, to provide Depot support in the form of management, repair, skilled labor, materials, facilities and engineering data for the maintenance and repair of the Government's fleet of C-12/RC-12 Aircraft and related support equipment under the Prime Contract;

SAJ
DYNACORP



LCCS/SAI0001

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements contained herein, the parties hereto agree as follows:

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TERM

The term of this Subcontract shall be for (i) the Base Year, which shall commence on the Effective Date and continue through the 31st day of January, 2001, plus (ii) any and all of the Option Years indicated below with regard to which the Government extends the Prime Contract with DYNCORP. In each instance that the Government extends the Prime Contract with DYNCORP for any of the nine (9) Option Years indicated below, and provided that SAI is not then in default and subject to termination under Section H.23, DYNCORP shall be deemed to have extended, and shall extend, this Subcontract for the same Option Year. DYNCORP shall provide SAI written notice of each extension of the Prime Contract and the corresponding extension of this Subcontract. Option performance periods are as follows:

Option 1	1 Feb 01-31 Jan 02
Option 2	1 Feb 02-31 Jan 03
Option 3	1 Feb 03-31 Jan 04
Option 4	1 Feb 04-31 Jan 05
Option 5	1 Feb 05-31 Jan 06
Option 6	1 Feb 06-31 Jan 07
Option 7	1 Feb 07-31 Jan 08
Option 8	1 Feb 08-31 Jan 09
Option 9	1 Feb 09-31 Jan 10

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DEFINITIONS AND PROCEDURES RELATED TO SUBCONTRACT

Administrative Contracting Officer (ACO). The individual responsible for overall administration of the contract on behalf of the Government.

Aircraft On Ground (AOG). This acronym is used to indicate an Aircraft is Not Mission Capable, and is grounded for maintenance or unavailable spare parts.

Aircraft. All Army RC/C-12 and UC-35 aircraft covered under the Prime Contract.

Backshop. The support services to provide the necessary repairs, overhaul, testing and modification of components removed from the airframe.

Catastrophic Failure (Over and Above for Engines Only). Cost to repair exceeds eighty percent (80%) of replacement cost.

Class I and Class II Aircraft Condition Inspection (ACI). Specification establishing ACI requirements for the C-12 to carefully inspect those areas not normally accessible at the Site and to restore the Aircraft to a high level of operational availability and revitalized appearance. The Class levels indicate the specification requirements in the ACI checklists.

Contracting Officer shall mean the Government official(s) authorized to contractually commit the Government under the prime Contract, or authorized representatives of these officials acting within the scope of their authority.

Data. All management, scientific, engineering, logistics information, reports, and documentation which are required.

Day shall mean calendar day unless otherwise specified.

Defect. Any non-conformance of a characteristic with specified requirements.

Depot. Includes any facility that is not a Site and which is used for off-site Depot Level Maintenance or repair of any Aircraft or Engine.

Depot Level Maintenance. Depot level maintenance is that done on material requiring major rework, or a complete rebuild of parts, assemblies, subassemblies, and end items, including the manufacture, modification, testing and reclamation of parts required. Depot level maintenance serves to support lower levels of maintenance by providing technical assistance and performing maintenance beyond the responsibility of Organizational and Intermediate level maintenance. Depot level maintenance provides stocks of serviceable equipment by using more extensive facilities for repair than are available in lower level maintenance activities.

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Disassembly. Tear-down of the item or parts sufficient to permit the type and amount of inspection and work required.

DYNCORP Representative shall mean DYNCORP's authorized representative(s) identified elsewhere in this Subcontract.

Effective Date shall mean the effective date of this Subcontract as specified in the Preamble.

Engine Accessories. All external items containing the fuel, ignition and control systems that are normally removed for rework or replaced without disassembly of the Engine.

Engine Accessory Parts. All assemblies, subassemblies or components and detail parts pertinent to Engine accessories.

Engine Parts. All items of the basic Engine, excluding Engine accessories and parts thereof.

Engine. A built-up Engine with all accessories, in a Quick Engine Change (QEC) configuration. (QEC configurations are identified in Section 1.5.4 of Article II of this Subcontract.

Government shall mean The United States of America, acting in its contractual capacity.

Government Furnished Avionics Equipment (GFAE). Avionics equipment identified in Appendix C.

Inspect or Check. An examination of an item to determine identity, condition, and proper installation.

Mission. A mission is a pre-planned sequence of one or more sorties flown by one Aircraft that has been assigned a specific mission number.

Modification. A change in the physical configuration or in the functional characteristics of a system or equipment.

Primary Mission. A primary mission shall include day or night flight under Instrument Flight Rules (IFR) conditions, into High Density Air Traffic Control Zones and through known bad weather and conditions to altitudes requiring cabin pressurization.

Prime Contract shall mean United States Army Contract DAAH23-00-C-0225.

Procuring Contracting Officer (PCO). The individual authorized to enter into contracts for supplies and services on behalf of the Government and who is responsible for overall management of the contract.

Program Management Office (PMO). This is a general term used throughout the Statement of Work to refer to the Government Program Manager.

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Purchase Order. Any document such as an Over-&-Above Work Request or Authorization to Proceed letter, which is signed by authorized DYNCORP personnel as defined in paragraphs G.3 and G.4 of this Subcontract, and which authorizes SAI to proceed with a priced effort, shall constitute a Purchase Order.

Repair. The restoration or replacement of parts or components of material as necessitated by wear and tear, damage, failure of parts, or the like, in order to maintain the specific item of material in efficient operating condition.

Repairable. A Class IX secondary item which can be repaired and returned to service.

Serviceable. Capable of meeting the requirement and performing the function for which designed or modified and meets all test requirements established by the work specification.

Site. Includes facilities provided by DYNCORP and/or the Government under the Statement of Work, which are used and maintained for the base operations support.

Support Equipment (SE). Includes all ground equipment, tools, and associated test, support, and control equipment, computers and software required to support and maintain the Aircraft.

Technical Directives. Special instructions and efforts (service, repairs, modifications and inspection) such as those required by FAA Airworthiness Directives, airframe manufacturer Service Instructions and Engine/Component Manufacturer's Service Bulletins. There are mandatory and optional technical directives.

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DEFINITIONS AND PROCEDURES RELATED TO READINESS**1.0 PURPOSE**

This appendix is intended to provide direction on determining the Mission Capable rate required for each aircraft.

2.0 MISSION CAPABLE (MC)

MC is the sum total of Fully Mission Capable (FMC) and Partially Mission Capable (PMC) hours.

2.1 FULLY MISSION CAPABLE (FMC)

A condition status that indicates the aircraft is capable of safe flight and can perform all the prescribed missions required by the Aircraft Minimum Equipment List (MEL). The aircraft MEL's are provided as an Appendix Q to this SOW. If the system is Not Mission Capable (NMC), the Contractor shall perform the work necessary, or obtain the parts that are required to return the aircraft to a FMC status. FMC rate is based on the number of hours of reporting time in a monthly reporting period that the system is available for all operational missions.

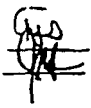
2.2 PARTIALLY MISSION CAPABLE (PMC)

The system is considered PMC when the aircraft can perform one or more, but not all, of the missions prescribed for the aircraft's owning unit because an inoperable/missing item listed in the MEL. Recording of PMC time starts when it is first known that a discrepancy exists, except when caused by an in-flight malfunction, then the time starts at the termination of the flight. PMC time stops when maintenance has been successfully completed.

2.3 NOT MISSION CAPABLE (NMC)

The material condition of an aircraft indicating that it is not capable of performing any one of its missions (as defined in the applicable Minimum Equipment/System Matrix (MESM)/Mission Essential Subsystem List (MESL)/MEL)(Appendix Q), or when a maintenance action required causes the aircraft to be non-airworthy. An aircraft shall be reported "Not Mission Capable" during all periods of time when it is not available for a mission because of scheduled or unscheduled maintenance. Scheduled maintenance time for reporting purposes includes routines, details, calendar, engine and special inspections when the combination of inspection requirements is such that it requires placing the aircraft in an inoperable condition. It does not include time spent performing daily, preflight, turnaround, post-flight inspections, or corrosion inspections when the requirements do not require placing the aircraft in an inoperable condition. The NMC time starts when the Contractor is notified of an inoperable condition. The NMC time ends when the Contractor notifies the COR or Operations Officer that the aircraft is ready for pre-flight inspection or test flight. If the aircraft is determined to be NMC as a result of the pre-flight inspection or test flight and the cause is attributable to the original fault, NMC time shall continue from the original time of discovery provided the preflight or test flight inspection is performed within 24 hours after notification is provided to the COR or Operations Officer by the Contractor. When inspection requirements do not require a major disassembly of the aircraft and, thus, do not affect the mission capability, the aircraft is considered to be mission capable during the entire portion of the inspection phase of the inspection. However, if panels and equipment are removed to conduct area inspections and cannot be replaced within a two-hour time frame, then the entire inspection is considered to have impacted mission capability and shall be documented as NMC. The two-hour rule applies to scheduled maintenance only. If the preflight inspection or test flight is not performed within 24 hours, MC time shall apply from the time when the Contractor notified the COR that the aircraft was ready for pre-flight inspection or test flight. Should a new discrepancy be found during pre-flight or test flight, the NMC time will start when the COR notifies the Contractor of the inoperable condition. If the aircraft is not located at the BB or if the aircraft is located at the BB and Contractor personnel are not available, NMC time will start when the Government notifies the Contractor of the inoperable condition or in either case, not later than one hour after time of discovery/flight termination.

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2.4 NON-REPORTING TIME (NRT)

NRT is not authorized for any Contractor induced damage. This is a condition status of an aircraft that is not in a reporting status for the purposes of calculating reduced payment. This is the time required to perform the following: modify the aircraft; perform crash damage repair; install/remove ferry tanks; replace time or cycle limited components as depicted in the table below; and perform special inspections when directed by the COR. When directed by the Government, the time which the parts or required maintenance personnel are in the Government transportation system is considered Non-Reporting Time (NRT). The Contractor shall not be penalized for aircraft downtime resulting from, but not limited to locally enforced restrictions, holidays, noise abatement, religious customs, coups, restricted access, hostilities, military restrictions and customs clearance delays which were not in existence prior to contract award. Non-reporting time (NRT) shall be deducted from the total hours in the month when computing Mission Capable rates. Any delay in avionics repair attributable to non-availability of Government Furnished Avionics Equipment (GFAE) shall be counted as NRT for the RC-12. Any delay in systems repair attributable to non-availability of Government Furnished Equipment (GFE) or Line Replaceable Units (LRU) shall be counted as NRT for the RC-12. The following are examples of Non-Reporting Time.

- Time waiting for maintenance test flight/maintenance operational checks shall be reported as FMC up to 24 hours IAW AR 700-138 and TM 55-1500-328-23.
- Time waiting for off-Site station maintenance as described in Section 4 of the SOW.
- Aircraft involved in Service-directed efforts.
- Actions or situations substantiated and agreed to by the PCO as beyond the control of the Contractor.
- Contractor shall not be penalized for system downtime resulting from locally enforced restrictions, i.e., holidays, noise abatement, religious customs, coups, restricted access, hostilities and military restrictions.
- System aircraft awaiting/undergoing crash damage disposition/repair, which was not caused by the Contractor, shall be counted as NRT.

2.4.1 EXAMPLES OF NRT FOR C-12/RC-12 AIRCRAFT

C-12/RC-12 UNIQUE NRT CONDITION	
Engine HSI (awaiting parts)	8 hours
TBO Engine and Propeller change out	Not to exceed 2 calendar days per engine
TBO Propeller change out shall be 24 hours	Not to exceed 1 calendar day per propeller
Aircraft Engine Removal and Replacement (labor)	Not to exceed 1.5 calendar days per engine
Unanticipated engine replacement (engine shipment)	Not to exceed 3 calendar days CONUS and 6 calendar days OCONUS
100 Hour Inspection (labor)	Not to exceed 4 hours
200 Hour Inspection (labor)	Not to exceed 2 calendar days
Flap System (labor)	Not to exceed 3 calendar days
Aircraft Condition Inspection (includes complete strip and repaint) (labor)	Not to exceed 48 calendar days
Aircraft Strip and Repaint (labor)	Not to exceed 25 calendar days
Elective Improvements	Determined by PCO
Landing Gear	Not to exceed 4 calendar days (complete set)

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2.5 REPORTING TIME

A Condition status of an aircraft that is in a reporting status for the purposes of calculating liquidated damages. The aircraft shall either be Mission Capable or Not Mission Capable. Reporting Time (RT). This is the total time that an aircraft is either mission capable or not mission capable. $(RT = MC + NMC)$

2.6 CALCULATION OF MC

Non-reporting time (NRT) per aircraft shall be deducted from the Total Hours on Hand hours in the month when computing MC rates. MC shall be calculated as depicted in the example below:

Example: The reporting period (RP) was thirty (30) days, or 720 hours; the MC time for the reporting period was 588 hours, the NMC time was thirty six (36) hours and the NRT was four (4) days, or ninety-six (96) hours.

- (1) Reporting period (RP) = # days per month X 24 hours per day = 30 days X 24 hours = 720 hours.
- (2) Reporting time (RT) = RP - NRT = 720 hours - 96 hours = 624 hours.
Also, $RT = MC + NMC$
- (3) NMC time = (NMCMI + NMCS) = 36 hours.
- (4) MC time = (FMC + PMC) = RT - NMC time = 624 hours - 36 hours = 588 hours.
- (5) Availability rate = $(MC \text{ time} / RT) \times 100 = (588 \text{ hours} / 624 \text{ hours}) \times 100 = 94.2\%$.

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ABBREVIATIONS

A&P	Airframe and Powerplant
ACI	Aircraft Condition Inspection
AWR	Airworthiness Release
AD	Airworthiness Directive
AGE	Auxiliary Ground Equipment
ALSE	Aviation Life Support Equipment
AOAP	Army Oil Analysis Program
ASE	Aircraft Survivability Equipment
AMC	Air Mobility Command
BB	Beddown Base
C&E	Communication and Electronic
CFE	Contractor Furnished Equipment
CFSR	Contract Funds Status Report
CITIS	Contractor Integrated Technical Information Service
CLIN	Contract Line Item Number
COMSEC	Communication Security
CONUS	Continental United States
COR	Contracting Officer's Representative
DAC	Day After Contract
DLAM	Defense Logistics Agency Manual
DOD	Department of Defense
ETM	Engine Trend Monitoring
FAA	Federal Aviation Administration
FAR	Federal Acquisition Regulation(s) (Always written out in this document)
FFP	Firm, Fixed-Price
FMC	Fully Mission Capable
FOD	Foreign Object Damage
FW	Fixed Wing
FY	Fiscal Year
GFE	Government-Furnished Equipment
GFP	Government-Furnished Property
HSI	Hot Section Inspection
IAW	In Accordance With
LCCS	Life Cycle Contractor Support
MACOM	Major Command
MC	Mission Capable
MEL	Minimum Essential List
MESL	Mission Essential Subsystem List
MESM	Minimum Equipment/System Matrix
NMC	Not Mission Capable
MTF	Maintenance Test Flight
MOC	Maintenance Operational Check
NLT	No Later Than
NRT	Non-Reporting Time
OCNUS	Outside of the Continental U.S.
OEM	Original Equipment Manufacturer (Manufactured)
PCO	Procuring Contracting Officer
PM	Program Manager
PMC	Partial Mission Capable
PME	Prime Mission Equipment

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PMO	Program/Product Manager's Office
QDR	Quality Deficiency Report
RFI	Ready for Issue
RT	Reporting Time
SB	Service Bulletin
SOF	Army Safety of Flight Message
SOW	Statement of Work
STC	Supplemental Type Certificates
TB	Technical Bulletin
TBO	Time Between Overhaul
TBD	To Be Determined
TD	Technical Directive
TMDE	Test Measurement and Diagnostic Equipment
TO	Technical Order

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SECTION A

SUBCONTRACT INTERPRETATION AND ORDER OF PRECEDENCEA.1 INTERPRETATION OF SUBCONTRACT

- A. Each Party shall exercise due diligence to discover and bring to the attention of the other Party, at the earliest possible time, any ambiguities, discrepancies, inconsistencies, or conflicts in or between any of the technical or contractual provisions hereof.
- B. Any ambiguity, discrepancy, inconsistency or conflict in or between any of the technical or contractual provisions hereof, that cannot be resolved by the application of Subsection A.3 below, shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the parties at the time of subcontracting.

A.2 CONTACTS WITH CUSTOMER AND OTHER SUBCONTRACTORS

DYNCORP understands that from time to time SAI may have liaison and communications with DYNCORP's customer during the normal course of executing this Subcontract. SAI is reminded that DYNCORP is responsible for all liaison and communications with its customer and other subcontractors for the term of this Subcontract, and no commitment shall be made to DYNCORP's customer or other subcontractors without the prior approval of DYNCORP. Therefore, every attempt should be made to avoid any such commitment, and such liaison and communication should be relayed to DYNCORP as soon as possible. If SAI receives a request for information regarding this Subcontract from DYNCORP's customer or other subcontractors, SAI is to notify DYNCORP immediately.

A.3 ORDER OF PRECEDENCE

In the event of an inconsistency between any of the provisions of this Subcontract, the inconsistency shall be resolved by giving precedence in the following order:

- (1) Pricing Schedule (excluding the specifications), reflected in Section B.4;
- (2) Terms and conditions as set forth in the main body of this Subcontract;
- (3) Statement of Work for Aircraft Life Cycle Contractor Support (LCCS) for the C-12/RC-12 and UC-35 (Contract DAAH23-00-C-0228; Attachment 1)
- (4) Representations and certifications provided by SAI to DYNCORP in relation to this Subcontract;
- (5) Other documents, exhibits and attachments, incorporated by reference or attached hereto;
- (6) Purchase Order

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SECTION BSUPPLIES/SERVICES AND PRICES/COSTSB.1 STATEMENT OF REQUIREMENTS

- A. SAI, as a Subcontractor to DYNACORP, shall provide items consisting of management, parts and materials, repairs, skilled labor, facilities and engineering data for the maintenance and repair of the Government's fleet of C-12/RC-12 Aircraft and related support equipment under the Prime Contract as specifically set forth in Section B.
- B. DYNACORP is not required to purchase from the Subcontractor any requirement in excess of the total funding identified under Section G under this subcontract.

B.2 TYPE OF CONTRACT

The subcontract awarded hereunder consists of items on a Firm Fixed Price (FFP), Time and Material (T&M), and Cost Reimbursable (CR) contractual arrangements.

B.3 COST/PRICE INFORMATION/NOTES

The following Contract Line Item Number (CLIN) descriptions apply to this Subcontract.

The first (1st) character in each CLIN set forth in a specific contract or modification will correspond to that specific ordering period. (Example: CLIN X003, as set forth below, will be identified in the Base Period as CLIN 0003, Option Period 1 as 1003 and Option Period 2 as 2003, etc).

CLIN X003 SCHEDULED MAINTENANCEX003B C-12/RC-12 STRIP AND PAINT

The firm-fixed unit price per aircraft shall include all labor, services, facilities, equipment, and direct and indirect parts and material to perform the requirements of the applicable specifications for strip and repaint (for other than ACI) requirements, in accordance with Section 4, Attachment 1, SOW.

X003C AIRCRAFT CONDITION INSPECTION (ACI)

The firm-fixed unit price of the ACI includes all labor, services, equipment, tools, facilities, loading, lubricants, excluding engine oil, direct and indirect parts and material, fuel, and strip and repaint to perform all the requirements of Appendix P of Attachment 1, Statement of Work. The ACI includes performing the inspection, and the correction of minor discrepancies in accordance with Appendix P (2-1.2) of the SOW, except for those discrepancies which would normally be corrected by site organizational maintenance. Items found defective beyond those addressed by Appendix P will be handled on an Over-and-Above basis.

DynCorp will supply one case of engine oil with the plane when it goes to Stevens for ACI. Stevens shall document the engine oil usage, and return the unused oil with the plane returning to its beddown site.

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CLIN X004 OVER AND ABOVE MAINTENANCEX004AA / AB DEPOT MAINTENANCE / NON-DEPOT MAINTENANCE

The firm-fixed hourly composite over and above labor rates to perform both depot and non-depot labor will be in accordance with Section 4 and 5, Attachment 1, SOW. Separate rates will be established for Depot and Non-Depot Maintenance. DYNCORP will reimburse SAI for the labor required for:

- 1) Replacing the on condition items found defective during ACI and Strip & Paint;
- 2) Discrepancies which, if not corrected, would result in the grounding of the aircraft;
- 3) Other over and above tasks, as directed by DYNCORP.

The "Hourly Composite Rate" includes all hourly direct and indirect personnel compensation, allocable overhead, profit, and GSA expenses. The fixed hourly composite rate will include an allocation for all labor disciplines necessary to perform Over & Above work. SAI shall comply with the Section H clause entitled "Over and Above Work".

X004AC SITE ORGANIZATIONAL MAINTENANCE

Both Parties recognize that at times it will be beneficial for work that would have normally been performed at the site by the site personnel to be accomplished at SAI's facility. SAI is not authorized to proceed with such efforts without written authorization from DYNCORP. The procedures for request, provision of estimate, authorization, and performance of such efforts will be in accordance with Section H.12, "Over and Above Work". The labor rate to be applied to these efforts is included in the pricing schedule below (B.4).

X004B OVER & ABOVE PARTS AND MATERIALS

DYNCORP will reimburse SAI for the allowable actual cost to purchase parts and materials necessary for those on-condition item replacements and repairs described above. Government approved purchases of GSE will be reimbursed under this CLIN. The Subcontractor shall be allowed its normal burden factors in accordance with FAR 52.216-7, "Allowable Cost and Payment", and actual shipping costs. Fee/profit is unallowable for parts and materials. Parts/materials are cost reimbursable and shall not be included in the FFP for Over & Above Labor proposed under CLIN X004.

X004C OVER & ABOVE AIRCRAFT STORAGE

Should SAI be required to retain an aircraft at its facility for purposes other than the performance of maintenance/repair efforts as described in Section C of this Subcontract, an equitable adjustment for costs associated with the same shall be agreed upon at that time.

CLIN X005 TRAVEL AND PER DIEM

DYNCORP will reimburse the Subcontractor for travel, overtime and per diem costs for logistical support, and DYNCORP directed Deployments on the basis of allowable actual costs incurred up to the equivalent allowed a Government employee in the DOD Civilian Personnel Joint Travel Regulations for domestic travel and the Department of State Standardized Regulations for foreign travel. Travel to and from military installations shall be accomplished via Government transportation to the maximum extent possible. Travel and per diem costs incurred in the SAI-directed replacement of personnel or the attendance of SAI-directed training courses will not be reimbursed. SAI personnel may be authorized Government quarters. SAI personnel are considered equivalent to a GS-11. Travel and per diem must be authorized in advance by DYNCORP. SAI may include allowable, allocable, and reasonable charges in accordance with FAR 52.216-7 "Allowable Cost and Payment", for cost-reimbursables. Fee/profit is unallowable on cost reimbursables.

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CLIN 1000 TRANSITION PHASE OUT

Period of performance for contract phase out is for a period of 60 days occurring any time after the base period and before the conclusion of the last available option period. Transition phase out option can be exercised by the Government at any time the determination is made not to exercise the next year's contract option. Pricing will be negotiated at the time Phase out option is exercised.

B.4 SUPPLIES/SERVICES AND PRICES/COSTS

The supplies and services to be provided are as follows:

CLIN	SUPPLIES/SERVICES	QTY	UNIT	UNIT PRICE
<u>BASE YEAR (28 SEP 00 - 31 JAN 01)</u>				
0003B	Scheduled Maintenance C-12/RC-12 - Strip and Repaint		EA	\$33,528.00
0003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$68,711.00
0004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$58.78
0004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate		HR	\$78.04
0004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs Over 100 Hrs		HR	\$45.26
			HR	\$82.36
0004B	C-12/RC-12 Over and Above Parts/Materials (TBD)			
0004C	C-12/RC-12 Over And Above A/C Storage (TBD)			
0005	Travel & Per Diem (TBD)			
0010	Transition Phase-Out (TBD)			
<u>OPTION ONE (1 FEB 01 - 31 JAN 02)</u>				
1003B	Scheduled Maintenance C-12/RC-12 - Strip and Repaint		EA	\$34,327
1003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$68,299
1004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$58.12
1004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate		HR	\$77.85
1004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs Over 100 Hrs		HR	\$48.80
			HR	\$64.48
1004B	C-12/RC-12 Over and Above Parts/Materials (TBD)			
1004C	C-12/RC-12 Over And Above A/C Storage (TBD)			

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CLIN	SUPPLIES/SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT
1008	Travel & Per Diem (TBD)				
1010	Transition Phase-Out (TBD)				
OPTION TWO FEB 02 - 31 JAN 03					
2003B	Scheduled Maintenance C-12/RC-12 - Strip and Repaint		EA	\$35,182	
2003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$70,020	
2004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$59.58	
2004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate		HR	\$79.81	
2004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs Over 100 Hrs		HR HR	\$48.44 \$69.74	
2004B	C-12/RC-12 Over and Above Parts/Materials (TBD)				
2004C	C-12/RC-12 Over And Above AAC Storage (TBD)				
2005	Travel & Per Diem (TBD)				
2010	Transition Phase-Out (TBD)				
OPTION THREE (1 FEB 03 - 31 JAN 04)					
3003B	Scheduled Maintenance C-12/RC-12 - Strip and Repaint		EA	\$36,079	
3003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$71,784	
3004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$61.03	
3004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate		HR	\$81.23	
3004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs Over 100 Hrs		HR HR	\$50.18 \$69.14	
3004B	C-12/RC-12 Over and Above Parts/Materials (TBD)				
3004C	C-12/RC-12 Over And Above AAC Storage (TBD)				
3005	Travel & Per Diem (TBD)				
3010	Transition Phase-Out (TBD)				
OPTION FOUR (1 FEB 04 - 31 JAN 05)					
4003B	Scheduled Maintenance C-12/RC-12 - Strip and Repaint		EA	\$36,988	

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CLIN	SUPPLIES/SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT
4003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$73,593	
4004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$62.62	
4004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate		HR	\$63.89	
4004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs		HR	\$52.04	
	Over 100 Hrs		HR	\$71.70	
4004B	C-12/RC-12 Over and Above Parts/Materials (TBD)				
4004C	C-12/RC-12 Over And Above A/C Storage (TBD)				
4005	Travel & Per Diem (TBD)				
4010	Transition Phase-Out (TBD)				

OPTION FIVE (1 FEB 05 - 31 JAN 06)

5003B	Scheduled Maintenance C-12/RC-12 - Strip and Repaint		EA	\$37,942	
5003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$75,492	
5004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$65.86	
5004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate		HR	\$68.22	
5004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs		HR	\$54.07	
	Over 100 Hrs		HR	\$74.49	
5004B	C-12/RC-12 Over and Above Parts/Materials (TBD)				
5004C	C-12/RC-12 Over And Above A/C Storage (TBD)				
5005	Travel & Per Diem (TBD)				
5010	Transition Phase-Out (TBD)				

OPTION SIX (1 FEB 06 - 31 JAN 07)

6003B	Scheduled Maintenance C-12/RC-12 - Strip and Repaint		EA	\$38,896	
6003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$77,395	
6004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$65.86	
6004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate		HR	\$68.22	

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CLIN	SUPPLIES/SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT
8004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs		HR	\$58.23	
	Over 100 Hrs		HR	\$77.47	
8004B	C-12/RC-12 Over and Above Parts/Materials (TBD)				
8004C	C-12/RC-12 Over And Above A/C Storage (TBD)				
8005	Travel & Per Diem (TBD)				
8010	Transition Phase-Out (TBD)				
OPTION SEVEN (1 FEB 07 - 31 JAN 09)					
7003B	Scheduled Maintenance C-12/RC-12 - Strip and Repaint		EA	\$38,578	
7003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$79,345	
7004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$67.51	
7004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate		HR	\$90.44	
7004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs		HR	\$58.53	
	Over 100 Hrs		HR	\$80.65	
7004B	C-12/RC-12 Over and Above Parts/Materials (TBD)				
7004C	C-12/RC-12 Over And Above A/C Storage (TBD)				
7005	Travel & Per Diem (TBD)				
7010	Transition Phase-Out (TBD)				
OPTION EIGHT (1 FEB 08 - 31 JAN 09)					
8003B	Scheduled Maintenance C-12/RC-12 - Strip and Repaint		EA	\$40,803	
8003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$81,384	
8004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$69.23	
8004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate		HR	\$92.77	
8004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs		HR	\$61.05	
	Over 100 Hrs		HR	\$84.12	
8004B	C-12/RC-12 Over and Above Parts/Materials (TBD)				
8004C	C-12/RC-12 Over And Above A/C Storage (TBD)				
8005	Travel & Per Diem (TBD)				

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CLIN	SUPPLIES/SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT
8010	Transition Phase-Out (TBD)				
OPTION NINE (1 FEB 08 - 31 JAN 10)					
9003B	Scheduled Maintenance C-12/RC-12 - Strip and Repaint		EA	\$41,960	
9003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$38,467	
9004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$71.02	
9004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate		HR	\$93.14	
9004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs		HR	\$83.74	
	Over 100 Hrs		HR	\$87.52	
9004B	C-12/RC-12 Over and Above Parts/Materials (TBD)				
9004C	C-12/RC-12 Over And Above A/C Storage (TBD)				
9005	Travel & Per Diem (TBD)				
9010	Transition Phase-Out (TBD)				

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SECTION CDESCRIPTION/SPECIFICATIONS/WORK STATEMENTC.1 STATEMENT OF WORK/TECHNICAL SPECIFICATION

- A. The work shall be performed in accordance with the Statement of Work for Aircraft Life Cycle Contractor Support (LCCS) for the C-12/RC-12 and UC-35 (Contract DAAH23-00-C-0226; Attachment 1).
- B. C-12/RC-12 STRIP AND PAINT. SAI shall provide all labor, services, facilities, equipment, and direct and indirect parts and materials required to strip and completely repaint aircraft (for other than ACI requirements), at the direction of DYNCORP. Such work will be performed in accordance with the SOW, Section 4 (4.1.3) and OEM/FAA approved standards.
- C. AIRCRAFT CONDITION INSPECTION (ACI). SAI shall provide all labor, services, equipment, tools, facilities, tooling, lubricants, excluding engine oil, direct and indirect parts and material, fuel, and strip and repaint services required to perform all the requirements of Appendix P of Attachment 1, Statement of Work. The ACI includes performing the inspection, and the correction of minor discrepancies in accordance with Appendix P (2-1.2) of the SOW, except for those discrepancies which would normally be corrected by site organizational maintenance. Items found defective beyond those addressed by Appendix P will be handled on an Over-and-Above basis.
- 1) Dyncorp will supply one case of engine oil with the plane when it goes to Stevens for ACI. Stevens shall document the engine oil usage, and return the unused oil with the plane returning to its beddown site.
 - 2) Dyncorp requests SAI to submit a Statement of Compliance of Work (SOCOW) to Dyncorp whenever a major or serialized maintenance/modification effort is completed.
- D. OVER AND ABOVE MAINTENANCE. SAI shall perform both Depot and Non-Depot Maintenance in accordance with Sections 4.0 and 5.0 of the SOW, and shall provide parts and materials required for the same. DYNCORP will reimburse SAI for the labor required for:
- 1) Replacing the on condition items found defective during ACI and Strip & Paint;
 - 2) Discrepancies which, if not corrected, would result in the grounding of the aircraft;
 - 3) Other over and above tasks, as directed by DYNCORP.
 - 4) Dyncorp requests SAI to submit a Statement of Compliance of Work (SOCOW) to Dyncorp whenever a major or serialized maintenance/modification effort is completed.
- E. SITE ORGANIZATIONAL MAINTENANCE. As directed by DYNCORP, SAI shall accomplish work, at SAI's facility, that would normally be performed at the site by the site personnel.

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SECTION DPRESERVATION, PACKAGING AND PACKINGMARKING AND SHIPPING INFORMATION**D.1 PRESERVATION, PACKAGING, PACKING AND STORAGE**

- A. Unless otherwise specified by written direction, all shipments of material, supplies, and data and technical documentation provided by SAI in the performance of this Subcontract shall be preserved, packaged and packed, and prepared for shipment to prevent deterioration and damage during shipping, handling, and storage, and to ensure safe delivery at destination in accordance with the American Society for Testing and Materials Standard and Practice for Commercial Packaging. SAI is solely responsible for the preservation, marking, packaging, and packing of all material and supplies at SAI's facility.
- B. STORAGE: SAI shall adhere to Government/Contractor Environmental criteria for the proper care, maintenance and storage of Government/Contractor property, in accordance with local, state, federal, and local station regulations. Designated Government/Contractor personnel have access to property in storage for the purpose of inspecting the property. The expense of storage, including any cost incident to the transportation to and from the storage area, shall be borne by the Subcontractor and shall not be charged to the Subcontract unless DYNACORP determines that the storage is solely for the convenience of DYNACORP. Should SAI be required to retain an aircraft at its facility other than for purposes of conducting maintenance/repair efforts as described in Section C of this Subcontract, an equitable adjustment for costs associated with the same shall be agreed upon at that time.

D.2 SHIPPING INFORMATION

Specific shipping information for material, supplies, and QEC engines shall be provided for each shipment. Data and technical documentation shall be shipped to the address below.

A. Ship To: DYNACORP INTERNATIONAL
 W/F: Central Receiving/LCCS Program
 6500 West Freeway, Suite 600
 Fort Worth, TX 78118

B. Mark each crate, container or package as follows:

Prime Contract No.:	DAAH23-00-C-0228
Subcontract No.:	LCCS/SAI001

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SECTION E
INSPECTION AND ACCEPTANCE

E.1 INSPECTION AND ACCEPTANCE

- A. All supplies and services shall be subject to in-process inspections/test by DYNACORP/Government at SAI and selected vendor's facilities to the extent practicable, to determine that adequate performance is being accomplished. Such inspections will not impede the ACI schedule and will be conducted in a manner to cause the least possible disruption to the programmed work flow.
- B. SAI's and its vendor's performance shall be subject to DYNACORP/Government source inspection.
- C. DYNACORP's Technical and/or Quality Assurance Representatives will provide ongoing oversight of SAI's performance and may require SAI to initiate corrective actions as necessary. Should SAI perceive any such direction to be in conflict with, or out of, the scope of work for depot operations as set forth in Attachment A to this Subcontract, SAI shall immediately notify the DYNACORP Contract Representative of the same. DYNACORP will take all necessary steps to resolve the issue in a fair and equitable manner, in accordance with the Subcontract. Such oversight may be accomplished prior to/concurrent with inspections being conducted by the Government. DYNACORP's acceptance of the supplies and/or services to be furnished hereunder shall be made by DYNACORP's Technical and/or Quality Assurance Representatives and evidenced by their signature(s) on a Statement of Certification of Work (SOCOW) completed and submitted by SAI. SAI shall complete and submit SOCOW's upon completion of ACI. Separate SOCOW's shall be submitted by SAI for the inclusion of Service Bulletins or Airworthiness Directives, modifications to the configuration of the aircraft, and changeout of landing gear, propellers, or engines.

E.2 SUBCONTRACTOR/VENDOR QUALITY REQUIREMENT

The Subcontractor shall comply with FAA Quality Standards, or best commercial practices.

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SECTION F
DELIVERY/PERFORMANCE

F.1 DELIVERY OF SUPPLIES/SERVICES

The supplies/services to be furnished hereunder shall be delivered FOB Contractor's designated facility in the following timeframes:

<u>CLIN ITEM</u>	<u>DELIVERY DATE</u>
X003B - C12/RC-12 Strip and Repaint	Within 25 Days of Aircraft Induction (or as specified)
X003C - C12/RC-12 ACI	Within 48 Days of Aircraft Induction (or as specified)
X004AA/AB - Depot/Non-Depot Labor	Start Work Within 2 Days of Request (or as specified)
X004AC - Site Organizational Maint.	Start Work within 2 Days of Request (or as specified)
X004B - O&A Parts & Materials	Within 2 Days of Request (for items available at SAI's facility); Place Order Within 2 Days of Request (for items not available at SAI's facility)
X004C - A/C Storage	Place in Storage Within 2 Days of Request (or as specified)
X005 - Travel & Per Diem	Start Travel Within 2 Days of Request (or as specified); except as modified by and in accordance with H.18

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SECTION GSUBCONTRACT ADMINISTRATION DATAG.1 SUBMISSION OF INVOICES

- A. The Subcontractor shall be paid for performance hereunder in accordance with the terms of payment of this subcontract, upon submission of proper invoices and DYNACORP approval.
- B. The Subcontractor shall invoice separately against each Purchase Order issued. Each invoice shall reference the Subcontract and Purchase Order number and shall itemize charges against the Purchase Order.
- C. Discrepant invoices may result in a delay of payment pending resolution of discrepancy(s) as set forth in Paragraph G.2 PAYMENT TERMS.
- D. An original and two (2) copies of the invoice should be mailed to the following:

DYNACORP INTERNATIONAL
6500 West Freeway, Suite 600
Fort Worth, TX 76116
Attn: Kristin Sabre, LCCS Program

Each invoice shall, at a minimum, contain the following data:

- a. Subcontractor's Name and Business Address.
- b. Date of Invoice.
- c. Invoice Number.
- d. Description of Service (Title).
- e. CLIN(s) Being Invoiced.
- f. Prime Contract/Subcontract Nos.
- g. Purchase Order Number.

G.2 PAYMENT TERMS

Payment of all invoices hereunder shall be contingent upon inclusion of the invoice data required under the above Clause. Payment to SAI by DYNACORP shall be made in immediately available U.S. dollars. DYNACORP shall pay SAI on a net thirty (30) day basis from the date of receipt of an acceptable SAI invoice.

If a dispute arises on an invoice, within 30 Days from the date of receipt thereof by DYNACORP, DYNACORP shall pay the entire undisputed amount, and the Parties shall diligently and cooperatively work to resolve the dispute. Any remaining balance agreed by the Parties to be due to SAI shall be paid by DYNACORP upon receipt of an adjusted invoice.

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In the event that DYNCORP receivables are past ninety (90) days, SAI may suspend services under this Subcontract until such time as DYNCORP receivables are brought current. SAI must give DYNCORP two (2) weeks written notice prior to such suspension of services.

G.3 MODIFICATIONS AND NOTICES

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Subcontract. Sole authority to issue change orders and modifications to this Subcontract is vested in the DYNCORP Contract Representative designated in G.4. below, or the following DYNCORP personnel:

Contract Manager (LCCS Program)
 Program Manager (LCCS Program)
 Director of Contracts, Logistics, & Purchasing (LCCS Program)
 Director of Finance and Administration (DYNCORP)
 Vice President, Contract Administration (DYNCORP)

G.4 TECHNICAL AND ADMINISTRATIVE REPRESENTATIVES

The following technical and administrative representatives of DYNCORP and SAI are hereby designated for this Subcontract:

SAI Representatives are:

Technical Representative – Mr. V. P. Hart, Jr.

Contract Representative – Mr. V. P. Hart, Jr.

DYNCORP Representatives are:

Technical Representative – Mr. Travis White

Depot Representative (at SAI) – Mr. Richard Robinson

Quality Representative (at SAI) – Mr. Tom Melton

Contract Representative – Ms. Kristin Setra

DYNCORP's Technical and Depot Representatives are responsible for day-to-day clarifications and guidance as may be required within the scope of the technical work requirements. Neither the Technical Representative nor the Depot Representative has the authority to modify the Subcontract or to authorize payments thereunder. All written communications shall be transmitted through DYNCORP's designated Contract Representative and SAI's Designated Contract Representative. Any change in the Technical, Depot, or Contract Representatives of either Party shall be communicated to the other Party in writing.

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G.5 FUNDING AND LIMITATION OF OBLIGATION

A. The funds allotted may be increased through the issuance of a Subcontract or Purchase Order modification. Each modification will cite the Prime or Subcontract, the CLIN, subCLIN, and total dollars allotted for the individual modification.

B. In the event DYNCORP exhausts funds for any Prime Contract CLIN, SAI is under no obligation to provide logistics support or maintenance functions covered by the CLIN and DYNCORP accepts no liability for continued performance until such time as funds become available and are contractually obligated.

DYNCORP shall not be obligated to pay SAI any amount in excess of the funds obligated in a CLIN and SAI shall not be obligated to continue performance under that CLIN if to do so would exceed the obligated funds set forth in the schedule, unless and until DYNCORP shall have notified SAI in writing that the obligated funds have been increased and shall have specified in the notice an increased amount that shall constitute the new obligated total for these items.

DYNCORP reserves the right to increase or decrease the funds allotted herein for the CLINs on a unilateral basis by modification to the Subcontract or Purchase Order, as applicable. In no event shall DYNCORP decrease the funds below the amount incurred by SAI at the time of the notice of decrease.

C. SAI shall not be obligated to continue performance on the Subcontract or Purchase Order beyond the point at which the total amount paid and payable to the SAI will exceed the total funds allotted.

D. Nothing herein shall be deemed to imply that SAI may not rely upon any Purchase Order issued by DYNCORP. SAI may rely upon any Purchase Order issued by DYNCORP as indication that SAI shall be paid by DYNCORP for all work performed thereunder. For purposes of clarification, this paragraph (G.5-D) shall be the operative paragraph regarding Purchase Orders released by DYNCORP to SAI.

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[Signature]

SECTION H
SPECIAL PROVISIONS

H.1 COMPLIANCE WITH LAWS

SAI herein recognizes that their performance of this effort relates to an overall U.S. Government requirement and thus agrees to comply with U.S. Department of Army regulations, rules, and Executive Orders applicable to U.S. Government contracts to the extent that they apply to this Subcontract.

H.2 LITIGATION AND CLAIMS

SAI shall give DYNACORP immediate notice in writing regarding the following:

1. Any action, including any proceedings before a federal, state or local governmental or civilian agency, filed against SAI arising out of the performance of this Subcontract; and,
2. Any claim by a third party against SAI, arising out of the performance of this Subcontract. In the event of the occurrence of either of the above, SAI shall immediately furnish to DYNACORP copies of all pertinent papers and documents received by SAI with respect to such action or claim.

H.3 ASSIGNMENT OF AGREEMENT

This Subcontract shall inure to the benefit of and be binding upon each of the parties hereto and their respective successors and assigns. It may not be assigned in whole or in part without written consent of the non-assigning Party, except that each Party may assign all or part of this Subcontract to any corporate affiliate.

H.4 TAXES

Unless otherwise provided herein, the Subcontract price includes all applicable U.S. Government federal, state and local taxes or any taxes, such as customs duty, which may be associated with foreign made products.

H.5 DISPUTES

Any controversy upon a question of fact and/or law pertaining to this Subcontract or the performance thereof, which cannot be satisfactorily adjusted between the Parties hereto, shall be decided by recourse to any available legal, equitable or administrative remedies. Pending final resolution of any request for relief, claim, appeal, or action arising hereunder, the parties shall diligently proceed with the performance of their obligations under this Subcontract, except as otherwise addressed herein or agreed to in writing by the parties.

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If, as a result of any decision or judgment (including a Government audit of SAI's books and records) which is binding upon SAI and DYNACORP, DYNACORP is unable to obtain reimbursement from the Government under the Prime Contract for, or is required to refund or credit to the Government, any amount with respect to any item of cost or fee for which DYNACORP has reimbursed SAI, SAI shall on demand, promptly repay such amount to DYNACORP, provided it is determined that SAI is at fault for having created or permitted the mistake upon which the Government has based its decision.

In the event SAI disagrees with any portion of the work required to be performed hereunder, SAI shall have the right to assert a claim through DYNACORP to the Contracting Officer under DYNACORP's name. If the Contracting Officer's final decision shall be deemed by SAI to have an adverse effect on its position or its rights, SAI shall have the right to assert an appeal through and to prosecute such appeal under the "Disputes" clause of the Prime Contract, under DynCorp's name. DYNACORP agrees to give SAI prompt notice of any such decision and to make available to SAI all reasonable assistance in perfecting and prosecuting such appeal; provided, however, that SAI shall bear all costs and expenses thereof and that such appeal shall be at no cost to DYNACORP. DYNACORP and SAI shall be equally bound by the decision of the Board in any appeal pursuant to this paragraph.

The rights and obligations described herein shall survive completion of any final payment under the Subcontract.

Irrespective of the place of performance, this Subcontract will be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, Boards of Contract Appeals, and quasi-judicial agencies of the federal government. To the extent that the federal common law of government contracts is not dispositive, the laws of the State of Texas shall apply.

H.6 YEAR 2000 WARRANTY—COMMERCIAL & NON-COMMERCIAL SUPPLY ITEMS

SAI warrants that each commercial and non-commercial item of hardware, software, and firmware product delivered or developed under this Subcontract shall be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, including leap year calculations, when used in accordance with the product documentation provided by SAI, to the extent that all delivered or developed products (e.g. hardware, software, firmware) used in combination with such delivered or developed products properly exchanges date/time data with it. If the Subcontract requires that specific delivered or developed products must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those delivered or developed products as a system. The duration of this warranty and the remedies available to DYNACORP for breach of this warranty shall be as defined in, and subject to, the terms and limitations of SAI's standard commercial warranty or warranties contained in this Subcontract, provided that notwithstanding any provision to the contrary, in such commercial warranty or warranties, the remedies available to DYNACORP under this warranty shall include repair or replacement of any delivered product whose non-compliance is discovered and made known to DYNACORP in writing within ninety (90) days after acceptance. Nothing in this warranty shall be construed to limit any rights or remedies DYNACORP may otherwise have under this Subcontract with respect to defects other than Year 2000 performance.

H.7 52.243-4000 ENGINEERING CHANGE PROPOSAL (ECP), VALUE ENGINEERING CHANGE PROPOSAL OCT/1997 (VECP), REQUEST FOR DEVIATION (RFD), AND REQUEST FOR WAIVER (RFW) (LONG FORM)—ALTERNATE I (USAAMCOM)

Applicability:

☒ Long Form Procedure
☐ Short Form Procedure

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(a) **FORMAT:** Subcontractor initiated ECPs, VECPs pursuant to the Value Engineering clause of the contract (if included elsewhere in the contract), RFDs, and RFWs (collectively referred to as "proposals") shall be prepared in accordance with the formats and requirements specified in the applicable paragraphs of MIL-STD-973.

(b) **PREPARATION:** Each proposal shall be prepared in accordance with the requirements and instructions contained in MIL-STD-973 and as specified herein:

- (1) Long Form Procedure: ECPs and VECPs (DD Forms 1692 through 1692-6) shall be prepared in accordance with the instructions of Appendix D of MIL-STD-973.
- (2) Short Form Procedure: ECPs and VECPs (DD Form 1692) shall be prepared in accordance with the instructions of Appendix D, paragraph D.4.1 of MIL-STD-973. Supplemental pages may be used with the ECP form as necessary. The cognizant Contract Administration Office (CAO) or other designated review activity will enter the appropriate data in Block 5 "Class of ECP", Block 6 "Justification Codes" other than VECPs, and Block 7 "Priority".
- (3) Class II ECPs: Class II ECPs shall be prepared in accordance with the instructions of Appendix D of MIL-STD-973. Only DD Form 1692 (Page 1), with the applicable enclosures is required. Unless otherwise specified in the contract, Government review of Class II changes is required and the Subcontractor shall not implement the change until approval is granted by the Contractor.
- (4) RFDs and RFWs: (DD Form 1694) shall be prepared in accordance with Appendix E of MIL-STD-973. Requests for Minor Waiver shall not be dispositioned in accordance with MIL-STD-973, Paragraph 5.4.4.5.1, by either the local Material Review Board or by the cognizant Contract Administration Office (CAO).
- (5) Proposals shall include sufficient technical data to describe changes from existing subcontract requirements.
- (6) Proposals shall include sufficient justification for making the change, including a statement of subcontract impact if the change is not authorized.
- (7) Any Subcontractor proposal for an ECP shall set forth a "not to exceed" price and delivery adjustment acceptable to the Subcontractor if the Contractor subsequently orders such a proposal. If ordered, the equitable increase shall not exceed this amount. Any Subcontractor proposal for a VECP shall set forth a "not less than" price and delivery adjustment acceptable to the Subcontractor if the Contractor subsequently approves such proposal. If approved, the savings shall not be less than this amount. Proposals which involve aggregate increases or decreases in cost plus applicable profits in excess of \$500,000 will require the submission to the Contracting Officer of a SF 1411 and a signed Certificate of Current Cost or Pricing Data.

(c) **SUBMITTAL:** The Subcontractor shall submit two (2) copies of each proposal to the cognizant CAO or other designated review activity for compliance with MIL-STD-973 and this clause. One (1) copy of each proposal shall be returned to the Subcontractor within (5) working days after receipt by the Contractor, stating whether or not the proposal is in compliance with the aforesaid requirements. Any unresolved differences between the Contractor and the Subcontractor concerning ECPs, RFDs, or RFWs will be forwarded to the Procuring Contracting Officer (PCO) for resolution.

(d) **DISTRIBUTION:**

- (1) For each Class I proposal which is determined to be in compliance with MIL-STD-973 and this clause, the Subcontractor shall forward the original plus twenty-five copies back to the Contractor who shall immediately forward DD Form 1998, Comments on Waiver, Deviation, or Engineering Change Request along with the twenty-six copies of contractor request to the PCO at address shown in block 5 of the Standard Form 28, Award/Contract. The number of copies for RFDs/RFWs and Class II ECPs shall be original plus seven (7) instead of twenty-six copies as stated for Class I ECPs.
- (2) For each VECP which is determined to be in compliance with MIL-STD-973 and this clause, the Subcontractor shall forward the original plus twenty-five copies back to the Contractor who shall

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immediately forward DD Form 1998, Comments on Waiver, Deviation, or Engineering Change Request, along with the twenty-six copies of contractor request to the Value Engineering Program Manager (VEPM) at the address below. Information regarding the preparation and submittal of VECPs may also be obtained from the VEPM.

(e) Contractor acceptance of a proposal shall be effected by the issuance of a written change order or execution of a supplemental agreement incorporating said proposal. The Contractor will notify the Subcontractor in writing regarding proposals determined to be unacceptable with supporting rationale.

H.8 REDUCED PAYMENTS

DYNCORP is subject to liquidated damages in the way of reduced payments based on certain parameters within the Prime Contract. These damages result from inability to meet Aircraft Mission capability and correction of minor discrepancies.

If the reduced payment clause is invoked by the Government, DYNCORP may request an equitable adjustment from SAI on a case-by-case basis. This equitable adjustment shall be limited to damages resulting from lack of performance on the part of SAI.

A reduction in payment applied to DYNCORP may be applied to SAI to the extent that SAI contributed to DYNCORP's reduction in payment, on a percentage basis. When determining SAI's contribution to the reduction, NMC conditions attributable to DYNCORP-supplied maintenance (NMCN) will take precedence over NMCS attributable to SAI (i.e., an Aircraft cannot be NMC for both maintenance and supply at the same time; therefore, maintenance takes precedence over supply for grounding issues).

SAI agrees to accept responsibility for any reduced payments imposed by the Government for Site Over and Above hours, as defined in Section H.9 below, for less than 500 hours on a particular aircraft. This responsibility does not include the availability of parts from vendors. In the event that the total Site Over and Above hours exceeds 500 hours, SAI agrees to negotiate with DYNCORP an equitable allocation of the reduced payments imposed by the Government.

In addition, notwithstanding any reduction of payment under this clause, if delivery or performance is delayed or deficient under the specified requirements, and SAI was in control of or responsible for the causal factor of the delay or deficiency, DYNCORP may opt to terminate this Subcontract in whole or in part, as described under paragraph H.23.

H.9 OVER-AND-ABOVE WORK (Applicable to CLIN X004 "Over & Above")

SAI may be required to perform Over and Above (O&A, hereafter) Work for Maintenance and Elective Improvements. DYNCORP's Technical and Depot Representatives shall have the authority to provide instruction in such matters, but the DYNCORP Depot Representative shall not be authorized to obligate funding. In accordance with DFARS 252.217-7028, "Over and Above Work", Section I, herein, and subject to funding limitations under the referenced CLINs established in Section B, the following procedures are established:

O&A Depot Maintenance Work Requests

(a) Authorization to Proceed: SAI is NOT authorized to proceed with items ordered under O&A without prior approval from DYNCORP's Contract Representative or other authorized personnel specified under G.4 herein. Authorization to Proceed must be in writing. Verbal authorization by the DYNCORP's Contract Representative may be given in an emergency situation but shall be confirmed in writing within ten (10) working days from the date of issuance. SAI shall notify DYNCORP if the written authorization is

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not received within fifteen (15) working days. DYNCORP will make every effort to return such authorization to SAI in a timely manner so that cost and schedule of the work to be performed are not impacted. Should a cost and/or schedule impact be anticipated by SAI as a result of DYNCORP's failure to return authorizations in a timely manner, SAI must notify the DYNCORP Contract Representative of the same, in writing.

If DYNCORP is granted cost and/or schedule relief as the result of a delay in the approval process, such relief will be passed on to SAI.

(b) Work Requests (hereinafter, SAI O & A Form SA-0119) are required for work performed under the referenced CLINs. Each Work Request shall be a stand-alone document serially numbered beginning with the number one. Subsequent changes to Work Requests shall be identified by using the original Work Request number followed by an alphabetic designator beginning with "A". If more than one change is made, the alphabetic designator shall be consecutive. SAI shall certify thereon that the work is not covered by the basic fixed-price effort. SAI shall submit the Work Request to the DYNCORP Depot Representative, who will forward the same to the DYNCORP PM Office.

In the interest of timely approval processing, each O&A Work Request submitted by SAI shall be valid for a period of three (3) working days, after which time the request may be subject to negotiation of schedule relief, if necessary.

(c) Over and Above Work Requests

(1) Procedures: When effort is required under the referenced CLINs, SAI shall promptly notify DYNCORP through the DYNCORP Depot Representative. Upon such notification, the DYNCORP Contract Representative (or other authorized personnel under G.3 herein) will issue an authorization and establish a limitation on funds to be expended. SAI shall not exceed this funding limitation unless and until the amount is expressly modified by an authorized DYNCORP Representative. Upon receipt of the authorization from the DYNCORP Representative, SAI shall proceed with performance as provided by this work request authorization and contract terms. SAI shall not proceed without this authorization.

SAI will submit O & A forms to the DYNCORP Depot Representative. DYNCORP will forward the O & A forms to the Government within 2 working days. DYNCORP shall notify SAI immediately upon receipt of approval from the Government; such notification may be verbal or via electronic message, but in all events shall be confirmed in writing within ten (10) working days of issuance.

(2) Work Request Format: SAI shall submit separate Work Requests for work to be performed under individual CLINs. Work Requests shall contain, as a minimum, the following information:

- a. Aircraft identification
- b. Date prepared
- c. Work Request number
- d. How Malfunctioned
- e. When discovered
- f. Action taken
- g. Work area
- h. Work zone (when applicable)
- i. Fuselage/wing station (when applicable)
- j. Water line (when applicable)
- k. Butt line (when applicable)
- l. CLIN/SubCLIN
- m. CLIN units
- n. Narrative description of defect
- o. Proposed man-hours

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- p. Part numbers and quantity
- q. Area affected in inches (when applicable)
- r. Proposed corrective action with criteria for performance (i.e., technical publication paragraph)
- s. Operations breakdown with number of man-hours per step when proposed man-hours are 8 or more
- t. Cost breakout by: materials, labor, other direct cost-FFP, other direct cost reimbursable
- u. Repair schedule/ time frame

(d) Definition of Work Requests: The DYNACORP Contract Representative will define Work Requests based on direct ("hands on") labor hours multiplied by the composite labor rate cited in Section B for the applicable CLIN. The number of direct ("hands on") labor hours required will be negotiated between SAI and the DYNACORP Contract Representative. Direct ("hands on") labor hours are the labor hours performed by personnel actually engaged in the direct performance of work required. Direct labor does not include any labor performed by support or supervisory personnel, such as, but not limited to, timekeepers, payroll clerks, purchasing, material handling, quality control, storing, and issuing personnel. Quality control personnel are those persons who apply standards to finished work or products to determine that finished production work is serviceable in all respects. Direct parts and materials, and travel and per diem (authorized in advance by DYNACORP) required to perform the Over & Above work shall be reimbursed under O&A CLINs, as applicable. Failure to agree upon total allowable, allocable price shall be subject to the "Disputes" clause of this Subcontract. The DYNACORP Contract Representative (or other authorized personnel under G.3 herein) will prepare and execute a bilateral contract modification for approved, defined Work Requests, and forward two (2) copies of the resulting modification to SAI.

(e) At any time during the Subcontract performance, when sufficient data becomes available on a repetitive task being performed in the fixed hourly rate category, either SAI or DYNACORP may request a negotiation to establish a firm-fixed-price (fixed-price item) for that item for the remaining life of the Subcontract. All such changes will be made to the Subcontract by the appropriately authorized DYNACORP Representative.

(f) Authority To Negotiate: SAI shall provide to DYNACORP a list of names of individuals authorized to bind the company and specify the limitations of their authority. It is SAI's responsibility to keep this list current.

Over and Above Non-Depot Maintenance Work Requests

a. Procedures: Non-Depot (On-Site Support) O&A Maintenance labor charges will only be incurred when other than on-site personnel are required to perform repairs. When effort is required under the O&A Non-Depot CLIN/subCLIN, SAI shall promptly notify the DYNACORP Depot Representative. Upon such notification, the DYNACORP Contract Representative (or authorized personnel under G.3) will notify SAI of its decision to proceed, issue an authorization and establish a limitation on funds to be expended. Upon receipt of the authorization from DYNACORP, SAI shall proceed with performance as provided by this work request authorization and Subcontract terms. SAI shall not proceed without this authorization.

b. Work Request Format: SAI shall submit separate Work Requests for work to be performed under the O&A CLIN. Work Requests shall contain the same data required IAW DI-SAFT-81563.

Over and Above Site Organizational Maintenance

a. Both Parties recognize that at times it will be beneficial for work that would have normally been performed at the site by the site personnel to be accomplished at the depot. When DYNACORP determines that such action is to their benefit, or in those instances where, during the performance of ACI,

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SAI discovers a discrepancy that could have been repaired at the site by site personnel, the DYNCORP Contract Representative will request that SAI provide an estimate for the work in the same manner as is done for Over and Above discrepancies discovered during ACL. SAI will prepare an estimate using the SAI Over and Above Form, valid for a period of three (3) working days, to include the labor and materials necessary to effect the repair. The labor rates to be applied to these efforts is included in the pricing schedule of this Subcontract (Section B.4). DYNCORP will signify acceptance of the estimate submitted by SAI and direct the performance of the work on the signature of the appropriately authorized DYNCORP Representative. Immediately upon notification of approval by DYNCORP, SAI will order the parts and commence work on the repair. Should a cost and/or schedule impact be anticipated by SAI as a result of DYNCORP's failure to return authorizations in a timely manner, SAI must notify the DYNCORP Contract Representative of the same, in writing.

b. DYNCORP may elect to provide the parts for these deferred repairs. If that avenue is chosen by DYNCORP, DYNCORP agrees to provide the parts to SAI at the depot on or before the arrival of the aircraft at the depot. Parts so provided will be subject to all FAA requirements with respect to parts for installation under a Part 145 Certified facility. All FAA required documentation will accompany these parts at the time of their arrival at the depot.

c. In the event that the total site Over and Above hours exceeds 600 hours, SAI agrees to negotiate with DYNCORP an equitable allocation of the reduced payments imposed by the Government. SAI agrees to accept responsibility for any reduced payments imposed by the Government for Site Over and Above hours for less than 600 hours on a particular aircraft. This responsibility does not include the availability of parts from vendors.

DYNCORP agrees to accept the existing O & A standards that have been established and previously approved by the resident Depot DCMC representatives. SAI agrees to the establishment of additional standards for repetitive Site Over and Above actions. These additional standards will be established after the fifth similar action on the same type, model and series of C-12 aircraft.

In the event of an impasse as to the hours to repair the discrepancy, SAI is not required to perform the repairs and the aircraft will leave the depot with the discrepancy coded as "noted but not corrected".

H.10 FOLLOW-ON CONTRACT TRANSITION AND INVENTORY

a. In addition to the provisions of FAR 52.237-3, "Continuity of Services", Section I, herein, upon written notice from the DYNCORP Contract Representative, SAI shall furnish phase-out services as required by DYNCORP for a period of up to two months prior to Subcontract expiration.

b. Upon written request by the DYNCORP Contract Representative, SAI shall provide the following to DYNCORP:

(1) SAI's best estimate of required parts (itemized by quantity for each logistically supported aircraft and/or engine type and including part number and NSN) needed beyond Subcontract expiration for a period of eighteen months.

(2) If SAI desires to furnish the parts estimated under Item (1) above, a firm-fixed price proposal for the parts identified shall be provided. This proposal will serve as the basis for negotiation, should DYNCORP choose to obtain parts from SAI.

c. Nothing in this clause shall be construed as binding either SAI or DYNCORP to any agreement to provide parts.

d. Any subsequent contractual agreement to purchase follow-on inventory from SAI shall be subject to the laws and regulations in effect on the date of the agreement.

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H.11 REQUIRED INSURANCE

The types of insurance listed below, with the minimum amounts of liability indicated, are required in the performance of this subcontract. An approved program of self-insurance, as provided in FAR Part 28.308, may be substituted for any of the types of insurance ordinarily required. Proof of policy coverage shall be provided to the DYNACORP Contract Representative before commencing work under the contract.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE - SAI shall secure the payment of statutory Worker's compensation benefits to SAI employees working in the United States and DYNACORP shall secure the payment of statutory Workers' Compensation benefits to DYNACORP employees in a manner satisfactory to the Worker's Compensation Authority or authorities having jurisdiction in locations in which each company operates.

AVIATION GENERAL LIABILITY INSURANCE SAI agrees to maintain Aviation General Liability Insurance with limits of at least U.S. One Hundred Million Dollars (\$100,000,000.00) per occurrence. Such insurance shall (1) name DYNACORP, its respective directors, officers, partners, employees, shareholders, affiliates, agents and representatives as Additional Insureds, (2) be primary, without rights of contribution in relation to any other insurance, and not subject to average (3) contain a Waiver of Subrogation Clause in favor of the Additional Insureds, (4) contain a standard Severability of Interests with Cross Liability Clause, (5) specifically state that the indemnification agreement contained in paragraph H.13 is insured as a contractual obligation of STEVENS' Insurers to the extent of the risks covered by the policy including war and allied perils under Extended Coverage Endorsement as per AVN 52 (6) contain an Insurance Company set off waiver in favor of the Additional Insureds, and (7) contain a provision requiring SAI's Insurers to provide DYNACORP with a written notice of cancellation or adverse material change which shall not be effective as to the benefit and/or interest of the Additional Insureds for thirty (30) days after written notice of such cancellation or adverse material change is received by DYNACORP.

AUTOMOBILE LIABILITY INSURANCE - This insurance is required on the comprehensive form of policy and shall provide bodily injury liability and property damage liability covering the operation of all automobiles used in connection with the performance of the Subcontract. At least the minimum limits of \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage is required. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

AIRCRAFT PUBLIC AND PASSENGER LIABILITY - At least \$200,000 per person and \$500,000 per occurrence for bodily injury other than Passenger Liability, and \$200,000 per occurrence for property damage. Passenger Liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

For all insurance requirements listed in Section H.11, the insurance carriers shall be rated AM Best's AVII or higher. The Prime Contractor will be listed as an additional insured on all policies except workers' compensation and employer's liability. With respect to the property policies, the Prime Contractor shall be named as loss payee, as their interest may appear.

For all insurance requirements listed in Section H.11, if the insurance is cancelled for any reason whatsoever, or any restrictive material change is made in the coverage which affects the interests of the Additional Insured, the Insurers will endeavor to provide thirty (30) days prior written notice of such cancellation or change to Prime Contractor.

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H.12 PERSONNEL TRAINING REQUIREMENTS

SAJ shall be responsible for training its personnel. SAJ personnel shall possess training and certifications as required by the SOW and FAA regulations. Personnel performing maintenance on aircraft shall be certified A&P Technicians or possess other appropriate certification (e.g., avionics technician) IAW FAR (Federal Aviation Regulation) Part 145. All personnel performing maintenance on aircraft must have received Subcontractor developed familiarization training on the C-12/RC-12 and/or UC35 aircraft within 90 days of hire. All SAJ personnel operating aircraft shall be trained and shall possess adequate training and experience to accomplish the following tasks:

- a. Perform engine run-ups or taxi operations, shall be trained and shall pass a company-sponsored physical examination requirements.
- b. Shall possess an appropriate drivers license covering tug and flight line vehicles as required by local regulations/authorities.

H.13 INDEMNIFICATION OF GOVERNMENT ASSETS

a. SAJ hereby agrees to indemnify and hold harmless DYNACORP against any and all losses, claims, liabilities, damages, costs, and expenses for or resulting from aircraft and components logistically supported under this subcontract, which are in the possession, care, custody or control of SAJ while on the premises of their vendor or subcontractor while the aircraft is undergoing maintenance. Reimbursement of any damage to or loss of an aircraft will not exceed the replacement cost of that particular aircraft, including all modifications and improvements to the aircraft and any other Government-owned property located in or on the aircraft. Acts of God are expressly excluded unless provisions to cover these occurrences are part of SAJ's, or their vendor's or subcontractor's normal business practices.

b. As a result of SAJ's assumption of the risk of loss of, or damage to, aircraft placed in their possession, care, custody, or control, as stated in paragraph (a) above, DFARS 252.228-7001, entitled "Ground and Flight Risk", is not applicable to aircraft undergoing maintenance while on the prime, vendor's, or subcontractor's premises. DFARS 252.228-7001 remains applicable for all other aircraft operations not excluded by this clause.

c. SAJ General Indemnification. This General Indemnification is in addition to any other specific indemnification requirements set forth in this Subcontract. SAJ hereby releases and agrees to defend, indemnify and hold DYNACORP, its officers, directors, partners, employees, shareholders, agents, affiliates, representatives and assignees (the "DYNACORP Indemnified Parties") harmless from and against any and all liabilities, claims, demands, suits, damages and losses (regardless of whether the same shall be made or incurred during or after the termination of this Subcontract), including, without limitation, all attorney's fees, costs and expenses in connection therewith or incident thereto, for deaths of or injuries to any persons whomsoever (including, without limitation, SAJ's employees) and for loss of or damage to any property whatsoever, in any manner arising out of or in any way connected with the work of SAJ, its directors, officers, shareholders, employees or subcontractors performed under this Subcontract, or any actions taken or any failures to act by SAJ, its directors, officers, partners, shareholders, employees, agents, affiliates, representatives, assignees or subcontractors in accordance with this Subcontract. This indemnification extends to any work performed by SAJ with respect to Aircraft delivered to SAJ for work under, and during the term of, this Subcontract, whether or not the Aircraft is in the possession of SAJ at the time the injury or damage is discovered. The foregoing indemnification shall not apply to any claim or liability relating to the conduct of the Quality Assurance representatives, or resulting from the willful misconduct or gross negligence of the DYNACORP Indemnified Parties (other than SAJ). SAJ shall have the right to control the defense of any claim made against one or more of the DYNACORP Indemnified Parties for which SAJ is obligated to indemnify or release them, including those claims in which one or more of the DYNACORP Indemnified Parties is named co-party. The DYNACORP Indemnified Parties shall

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comply with all reasonable requests made in connection with such defense, such as responding to discovery requests, appearing for depositions, hearings or trials, and responding to inquiries from STEVENS' counsel.

d. DYNACORP General Indemnification. This General Indemnification is in addition to any other specific indemnification requirements set forth in this Subcontract. DYNACORP hereby releases and agrees to defend, indemnify and hold SAI, its officers, directors, partners, employees, shareholders, agents, affiliates, representatives and assignees (the "SAI Indemnified Parties") harmless from and against any and all liabilities, claims, demands, suits, damages and losses (regardless of whether the same shall be made or incurred during or after the termination of this Subcontract), including, without limitation, all attorney's fees, costs and expenses in connection therewith or incident thereto, for deaths of or injuries to any persons whatsoever (including, without limitation, DYNACORP's employees) and for loss of or damage to any property whatsoever, in any manner arising out of or in any way connected with the work of DYNACORP, its directors, officers, partners, shareholders, employees, agents, affiliates, representatives, assignees or subcontractors (other than SAI) performed under this Subcontract, or any actions taken or any failures to act by DYNACORP, its directors, officers, partners, shareholders, employees, agents, affiliates, representatives, assignees or subcontractors (other than SAI) in accordance with this Subcontract. This indemnification extends to any work performed by DYNACORP with respect to any Aircraft delivered to SAI under this Subcontract, or any of DYNACORP's obligations under this Subcontract, including but not limited to its obligation to supply parts, materials or technical data, or any other item of equipment installed on any Aircraft by DYNACORP, during the term of this Subcontract, whether or not the Aircraft is in the possession of DYNACORP at the time the injury or damage is discovered. The foregoing indemnification shall not apply to any such claim or liability resulting from the willful misconduct or gross negligence of the SAI Indemnified Parties (other than DYNACORP). DYNACORP shall have the right to control the defense of any claim made against one or more of the Indemnified Parties for which DYNACORP is obligated to indemnify or release them, including those claims in which one or more of the SAI Indemnified Parties is named as co-party. The SAI Indemnified Parties shall comply with all reasonable requests made in connection with such defense, such as responding to discovery requests, appearing for depositions, hearings or trials, and responding to inquiries from DYNACORP's counsel.

H.14 DEPLOYMENTS AND HOSTILE OPERATIONS

SAI shall be responsible for performing all of the functions accomplished under this Subcontract during hostile operations. Hostile operations are those actions, including contingency planning as defined by AR715-9, DA Pam 715-18. In the event of hostilities in the overseas theater, SAI shall, at the direction of DYNACORP, provide support to using units under the terms of this contract.

H.15 ENEMY ACTION AND DEATH

If, during the term of the contract, any SAI personnel become injured, ill or missing due to action of a common enemy or become prisoners of war, thus being prevented from performance of their assigned duties, the provisions of Public Law 784, 77th Congress, as amended (42 U.S.C. section 1701) shall apply.

H.16 SECURITY

a. Full performance of this contract will require access to Classified U.S. Government Information, U.S. Government Furnished Equipment (GFE), and COMSEC equipment that has not been approved for release to foreign governments nor foreign owned, controlled or influenced companies. Performance of this contract requires a U.S. SECRET facility clearance.

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b. SAI shall be responsible for obtaining necessary security clearances and identification for SAI personnel. SAI personnel shall possess the level of clearance required by the DD Form 254. All A&P mechanics and Avionics Technicians shall have at least a Secret clearance. All personnel authorized to perform maintenance on SEMA aircraft shall have at least a Secret clearance.

c. SAI shall maintain and administer a security program in accordance with Industrial Security Manual DoD 5220.22M and DIA Manual 50-5. Copies of these manuals are available for review in the office of the Contracting Officer.

d. Loss or suspension pending investigation of required security clearances as set forth in the DD 254, "Contract Security Classification Specification", attached hereto and made a part of this Subcontract would result in inability to perform in accordance with the terms and conditions of this contract. As a result of this inability to perform SAI is subject to default in accordance with the General Provisions entitled, "Default."

e. DYNCORP reserves the right to direct any SAI employee to be removed from performance, direct or indirect whenever there is probable cause or belief, on the facts available, that such action is warranted in the interest of national security, whether or not the cause is deemed of sufficient severity to warrant action to terminate SAI for the period of time necessary, to conduct an investigation of alleged misconduct, direct or indirect, which may in the opinion of the DYNCORP Contract Representative jeopardize the security of the project.

f. Military security requirements in the performance of this contract shall be maintained in accordance with the DD 254. The highest classification involved in the performance of this contract is DOD Secret Clearance.

H.17 CONFORMITY TO LAWS AND REGULATIONS

SAI shall be responsible for assuring that employees assigned to this subcontract comply with all laws and regulations of the country and political subdivisions of their location, including military rules and regulations.

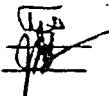
In the event that a(n) SAI employee is barred from continuing to perform under the contract due to failure to comply with all applicable laws or regulations, the cost for removal of the employee or the substitution of a replacement employee shall be SAI's responsibility.

H.18 PASSPORT & VISA REQUIREMENTS

SAI shall be responsible for obtaining valid passports and VISA's as necessary for each foreign country in which operations are conducted. DYNCORP will endeavor to provide 30 days notice to SAI of any travel that will require a passport or VISA. SAI will exercise its best efforts to obtain passports and visa within the 30 day period; however SAI will not be held responsible for delays created by parties not in the employ of SAI.

DYNCORP will be responsible for obtaining TESA status for SAI employees prior to the departure of the SAI personnel, where necessary. DYNCORP will be responsible for obtaining In Country Clearances where necessary prior to the departure of SAI personnel. DYNCORP will provide in-country sponsorship where required for SAI employees.

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H.19 CONTRACTOR PERSONNEL FLYING IN GOVERNMENT AIRCRAFT

SAI personnel are authorized to travel in Government aircraft, subject to approval of DYNCORP, when such flights are in the best interest of DYNCORP.

H.20 SUBCONTRACTOR MANAGEMENT

DYNCORP shall have the right to attend scheduled subcontractor reviews. SAI shall coordinate reviews with DYNCORP at least 15 working days prior to each review.

H.21 GOVERNMENT FURNISHED PROPERTY (GFP) MANAGEMENT COSTS

a. Ground Support Equipment (GSE) to include tugs, stands, jacks, aircraft ferry fuel systems, RC-12 flightline support vans, etc. which are provided to SAI shall be maintained by SAI IAW FAR Part 45. SAI is responsible for all routine maintenance of GSE equipment. Responsibility for replacement of items that have been lost or stolen will be assumed by SAI. Replacement of GSE as the result of fair wear and tear will be the responsibility of DYNCORP. DYNCORP approval must be received prior to replacing GSE.

b. Tools and Test equipment provided to SAI are provided to limit SAI's necessary investment in tools and test equipment. As such, SAI shall maintain these tools and test equipment in serviceable condition. In consideration for this activity the cost for repair will be the responsibility of SAI. Responsibility for replacement of items that have been lost or stolen will be assumed by SAI. Replacement of tools that are worn out as the result of fair wear and tear will be the responsibility of DYNCORP.

c. Some serviceable aircraft components may be provided to SAI by DYNCORP for use on Army aircraft to improve readiness and aircraft availability.

d. Unserviceable aircraft components: Upon SAI request for disposition, DynCorp will provide written direction for unserviceable aircraft components to be returned to either DynCorp or a different location; tagged as UNSERVICEABLE, in the same fashion as a core is returned to the vendor when there is an exchanged part arrangement.

H.22 ECONOMIC PRICE ADJUSTMENT (EPA)

(a) Economic price adjustment shall apply only to contract option years five (5) through nine (9), and shall be made prospectively to contract unit prices based upon significant deviations between the following forecasted and first revised actual U.S. Department of Labor, Bureau of Labor Statistics indices. "Avg. Hourly Earnings - Aircraft & Parts (AHE 372NS)" will be used for the effected labor dollars and "Aircraft & Parts (PPI 372NS)" will be used for the effected material dollars. Effected labor and material dollars are those firm fixed priced for option years five through nine. A two (2) percent threshold is established to define a "significant deviation". It is the responsibility of SAI to provide the cost/pricing information necessary for DYNCORP to be able to properly identify the effected labor and material dollars. This information should be provided for each effected CLIN for option years five through nine.

(b) To determine the economic price adjustment, divide the first revised actual index by the forecasted index (forecasted rates are set forth in subparagraph (c) below), using the same calendar year for both and using the same calendar year in which the upcoming subcontract option is to be exercised. If the resulting quotient is greater than 1.02, or less than .98, multiply the upcoming option year's unit price by the quotient. If the quotient is equal to or between .98 and 1.02 (equal to or greater than .98 and equal to or less than 1.02), no adjustment is necessary. The Subcontract shall be modified to incorporate any adjusted unit prices. All calculations should be taken to four decimal places. An example follows:

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Assume the forecasted August 2004 labor index was 23.501 and the actual August 2004 labor index was 24.801. Since 24.801 divided by 23.501 is equal to 1.0468, and is greater than 1.02, then multiply the subcontract option year five effected labor dollars by 1.0468. The same calculation would then be performed using the material indices. The subcontract would then be modified to include the adjustments in the firm fixed prices for option year five, to be exercised 1 February 2005. No further adjustment to option year five prices would be made based upon this clause.

(c) For the purpose of calculating the adjustments required by this clause, the following forecasted indices apply. The forecast is from Data Resources, Inc. (DRI) and represents third quarter forecasts for the respective indices listed in paragraph (a) above as forecasted by DRI in the 4th Quarter of 1999. The current year 2000 1st Quarter labor projection is 20.293, and the current year 2000 1st Quarter material projection is 1.457.

Option	Year	Labor Index	Material Index	Used to Adjust Option Year
5	August 2004	23.501	1.840	(1 Feb 05 - 31 Jan 06)
6	August 2005	24.155	1.888	(1 Feb 06 - 31 Jan 07)
7	August 2006	24.967	1.737	(1 Feb 07 - 31 Jan 08)
8	August 2007	25.944	1.791	(1 Feb 08 - 31 Jan 09)
9	August 2008	26.726	1.844	(1 Feb 09 - 31 Jan 10)

(d) Adjustments made under this clause are subject to the following:

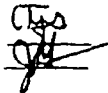
1. No economic price adjustment shall be made to Subcontract unit prices for option years one through four.
2. Only option years five through nine are subject to adjustment by this clause.
3. Each economic price adjustment will be made prior to the effected year and no further economic price adjustment will be made.
4. In the event the Bureau of Labor Statistics discontinues or suspends publication of the index set forth in paragraph (a) of this clause, the Parties hereby agree to use the same index as DYNCORP applies to the Prime Contract with the Government.
5. In the event the Subcontract unit prices are changed as a result of a Subcontract modification(s), the unit prices subject to adjustment shall be reduced by the cost of any deleted work and the unit prices shall not be increased by the cost of any added work. Any added costs may be adjusted by the economic price adjustment clause specified by Subcontract modification.
6. The aggregate of the increases in any Subcontract CLIN made under this clause shall not exceed 10% of the original total CLIN price. There is no percentage limitation on the amount of decreases that may be made under this clause.
7. Representatives of the U. S. Government Representative(s) may examine SAI's books, records, and other supporting data related to the performance of this Subcontract during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation, whichever is earlier.
8. Any disputes arising under this clause shall be determined in accordance with the "Disputes" clause of this Subcontract.

H.23 DEFAULT AND TERMINATION

A. Default by SAI. The following events shall constitute Events of Default for SAI (whether such events shall be voluntary or involuntary or arise or be affected by operation of law or pursuant to or in compliance with any judgement, decree or order of any court or any order, rule, or regulation of any administrative or governmental body):

1. SAI shall fail in the faithful performance of its obligations in accordance with the terms of this Subcontract and such failure shall continue for ten (10) days after receipt of written notice of such

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failure ("Cure Notice"); unless SAI provides DYNACORP with adequate assurance of its ability to cure such failure within a reasonable time, and thereafter so cure.

2. Recurring problems or issues with the quality of work performed by SAI, which result in the execution of the provisions of paragraph H.23-A, subparagraph 1, above (issuance of a Cure Notice), shall be grounds for the modification of the Term of this Subcontract as it pertains to renewal of Option Years. "Recurring" shall be defined as the issuance of more than three (3) Cure Notices in one (1) Option Year, pursuant to paragraph H.23-A, subparagraph 1.
3. Any certification, representation or warranty made by SAI in or pursuant to this Agreement shall have been incorrect in any material respect on the date made.
4. SAI shall suspend all or substantially all of its operations, temporarily or permanently discontinue business, sell or otherwise dispose of all or substantially all of its assets or cease to hold the permits, licenses, authorizations and certificates including any certificate of convenience and necessity required for the conduct of its business, or the same are revoked or varied in a manner which materially adversely affects the financial situation of SAI.
5. If a petition shall be filed against SAI seeking any reorganization, composition, readjustment, liquidation or similar relief under any present or future statute, law or regulation of the United States and shall remain as non dismissed or unstayed for an aggregate of ninety (90) days (whether or not consecutive), or if any trustee, receiver or liquidator of SAI is appointed, which appointment shall remain unvacated or unstayed for an aggregate of ninety (90) days (whether or not consecutive).
6. SAI shall not be deemed in control of, or responsible for, the late delivery of parts that are supplied by a third party, (OEM, DynCorp, or the Government), if such late delivery is beyond SAI's control. Moreover, in such event, SAI shall not be considered to have failed in the faithful performance of its obligations hereunder.

B. Default by DYNACORP. The following events shall constitute Events of Default for DYNACORP (whether such events shall be voluntary or involuntary or arise or be affected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule, or regulation of any administrative or governmental body):

1. If DYNACORP fails in its obligations hereunder to make timely payment and fails to cure such breach within sixty (60) days after written notification.
2. If DYNACORP shall suspend all or substantially all of its operations, temporarily or permanently discontinue business, sell or otherwise dispose of all or substantially all of its assets or cease to hold the permits, licenses, authorizations and certificates including any certificate of convenience and necessity required for the conduct of its business, or the same are revoked or varied in a manner which materially adversely affects the financial situation of DYNACORP.

C. Remedies. Upon the occurrence of an Event of Default by either Party, the other Party shall be entitled to all remedies, minus consequential or incidental damages (actual damages only), under applicable laws in accordance with the Applicable Law and Disputes provision of this Subcontract in Section H. Upon the occurrence of an Event of Default by either Party, the other Party shall be entitled to terminate this Subcontract. Such termination shall not relieve the Parties of any prior obligations incurred under this Subcontract.

D. Termination. Notwithstanding the provisions above, DYNACORP shall have the right to terminate this Subcontract prior to the exercise of any Option, provided that the Government has terminated DYNACORP's Prime Contract for the services described herein, pursuant to FAR 52.249-2.

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E. Stop Work Order. At any time, DYNCORP may, pursuant to FAR 52.242-15, provide written instruction to SAI to stop all, or any part, of the work called for by this Subcontract for a period of up to ninety (90) days after the stop work order is delivered to SAI, and for any additional period to which the Parties may agree. Any such order shall be specifically identified as a stop work order issued pursuant to this Section. Upon receipt of such an order, SAI shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered the order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to SAI, or within any extension of that period to which the Parties shall have agreed, DYNCORP shall either:

- 1) Cancel the stop work order; or
- 2) Terminate the work covered by such order as provided in the Termination Clause of this Subcontract.

If a stop work order issued under this Section is canceled in writing, SAI shall resume work. If the period of the order or any extension thereof merely expires, SAI shall contact DYNCORP and ask for direction before resuming work or treating the silence as a Termination. An equitable adjustment shall be made in the delivery schedule and/or Subcontract price, or estimated cost and fixed fee (if any), and the Subcontract shall be modified in writing accordingly, if:

- 1) The stop work order results in an increase in the time required for, or in SAI's cost properly allocated to, the performance of any part of this Subcontract; and
- 2) SAI asserts a claim for such adjustment within twenty (20) days after the end of the period of work stoppage, provided that, if DYNCORP decides the facts justify such action, it may receive and act upon the claim asserted before final payment.

If a stop work order is not canceled and the work covered by such order is terminated for the convenience of the Government, the reasonable costs resulting from the stop work order shall be allowed in accordance with FAR 52.249-2 ("Termination for Convenience of the Government - Fixed Price").

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SECTION ICLAUSES/GENERAL PROVISIONS

This Subcontract incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Whenever the word "U.S. Government" is stated as the Buyer, substitute the word "DYNCORP" or "Contractor". For the word "Contracting Officer", substitute "Authorized Contract Representative". Whenever the word "Contractor" is stated as the Seller, substitute the word "SAI" or "Subcontractor". The date of the clause will be the current version as contained in the Federal Acquisition Regulation and DoD Supplements thereto.

The following Federal Acquisition Regulations (FAR) and the Department of Defense FAR Supplement (DFAR) clauses are hereby incorporated into this Subcontract, inasmuch as the Subcontractor intends to supply only Commercial Items, as defined by Federal Acquisition Regulation (FAR) 52.201-1, "Definitions", under this subcontract, the following clauses are applicable:

I.1 The following Federal Acquisition Regulations (FAR) and the Department of Defense FAR Supplement (DFAR) clauses are hereby incorporated by reference into this subcontract.

Regulatory Cite	Title Date Regulatory Cite Title Date
FAR CLAUSES	
I-1 52.202-1	DEFINITIONS OCT/1996
I-2 52.203-3	GRATUITIES APR/1984
I-3 52.203-5	COVENANT AGAINST CONTINGENT FEES APR/1984
I-4 52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT JUL/1996
I-5 52.203-7	ANTI-KICKBACK PROCEDURES JUL/1995
I-6 52.203-8	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY JAN/1997
I-7 52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY JAN/1997
I-8 52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS JUN/1997
I-9 52.204-2	SECURITY REQUIREMENTS AUG/1998
I-10 52.208-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT JUL/1993
I-11 52.211-5	MATERIAL REQUIREMENTS OCT/1997
I-12 52.211-13	DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS SEPT/1990
I-13 52.213-2	AUDIT AND RECORDS - NEGOTIATION JUN/1999
I-14 52.215-8	ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT OCT/1997
I-15 52.215-19	NOTIFICATION OF OWNERSHIP CHANGES OCT/1997
I-16 52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES FEB/1997
I-17 52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION JUL/1998
I-18 52.222-20	WALSH-HEALEY PUBLIC CONTRACTS ACT DEC/1998
I-19 52.222-26	EQUAL OPPORTUNITY FEB/1999
I-20 52.222-29	NOTIFICATION OF VISA DENIAL FEB/1999
I-21 52.222-35	AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA APR/1998
I-22 52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES JUN/1998
I-23 52.222-37	EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA JAN/1999
I-24 52.222-43	FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) MAY/1998
I-25 52.223-5	POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION APR/1998
I-26 52.223-8	DRUG-FREE WORKPLACE JAN/1997
I-27 52.223-14	TOXIC CHEMICAL RELEASE REPORTING OCT/1998
I-28 52.225-8	DUTY-FREE ENTRY APR/1984

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I-29	52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES AUG/1988
I-30	52.227-1	AUTHORIZATION AND CONSENT JUL/1988
I-31	52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT AUG/1988
I-32	52.228-3	FEDERAL, STATE, AND LOCAL TAXES JAN/1991
I-33	52.228-6	TAXES—CONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO APR/1984
I-34	52.232-22	LIMITATION OF FUNDS APR/1984
I-35	52.232-23	ASSIGNMENT OF CLAIMS (JAN 1988)—ALTERNATE I APR/1984
I-36	52.233-3	PROTEST AFTER AWARD AUG/1988
I-37	52.237-3	CONTINUITY OF SERVICES JAN/1991
I-38	52.242-13	BANKRUPTCY JUL/1988
I-39	52.243-15	STOP-WORK ORDER (3/89)
I-40	52.243-17	GOVERNMENT DELAY OF WORK (4/84)
I-41	52.243-1	CHANGES - FIXED-PRICE (AUG 1987)—ALTERNATE II APR/1984
I-42	52.243-7	NOTIFICATION OF CHANGES (the blanks in paragraphs (b) and (d) are completed with thirty (30) APR/1984
I-43	52.248-25	LIMITATION OF LIABILITY—SERVICES FEB/1997
I-44	52.247-63	PREFERENCE FOR U.S.-FLAG AIR CARRIERS JAN/1991
I-45	52.248-1	VALUE ENGINEERING NOV/1988
I-46	52.249-2	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) SEP/1998
I-47	52.249-8	DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) APR/1984
I-48	52.253-1	COMPUTER GENERATED FORMS JAN/1991

DFAR CLAUSES

I-49	252.203-7001	PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES MAR/1988
I-50	252.204-7000	DISCLOSURE OF INFORMATION DEC/1991
I-51	252.215-7000	PRICING ADJUSTMENTS DEC/1991
I-52	252.217-7028	OVER AND ABOVE WORK DEC/1991
I-53	252.225-7001	BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM MAR/1998
I-54	252.225-7008	DUTY-FREE ENTRY—QUALIFYING COUNTRY SUPPLIES (END PRODUCTS AND COMPONENTS) MAR/1998
I-55	252.225-7010	DUTY-FREE ENTRY—ADDITIONAL PROVISIONS MAR/1998
I-56	252.223-7012	PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES MAY/1998
I-57	252.223-7014	PREFERENCE FOR DOMESTIC SPECIALTY METALS (MAR 1998)—ALTERNATE I MAR/1998
I-58	252.225-7016	RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS AUG/1988
I-59	252.225-7025	RESTRICTION ON ACQUISITION OF FORGINGS JUN/1987
I-60	252.225-7031	SECONDARY ARAB BOYCOTT OF ISRAEL JUN/1992
I-61	252.225-7041	CORRESPONDENCE IN ENGLISH JUN/1987
I-62	252.228-7005	ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES DEC/1991
I-63	252.243-7001	PRICING OF CONTRACT MODIFICATIONS DEC/1991
I-64	252.243-7002	REQUESTS FOR EQUITABLE ADJUSTMENT MAR/1998
I-65	252.244-7000	SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DoD CONTRACTS) FEB/1997
I-66	252.245-7001	REPORTS OF GOVERNMENT PROPERTY MAY/1994
I-67	252.248-7000	PREPARATION OF VALUE ENGINEERING CHANGE PROPOSALS MAY/1994

I-68 52.222-28 EQUAL OPPORTUNITY (FEB 1999)—ALTERNATE I FEB/1999

Notice: All terms of this clause are waived for work performed outside the United States by employees recruited outside the United States.

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I-69 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA APR/1984 (APR 1998)-ALTERNATE I
NOTICE: All terms of this clause are waived for work to be performed outside the United States by employees recruited outside the United States.

I-70 52.222-38 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998) - JUN/1998 ALTERNATE I
NOTICE: All terms of this clause are waived for work to be performed outside the United States by employees recruited outside the United States.

I-71 52.222-21 PROHIBITION OF SEGREGATED FACILITIES FEB/1999
(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex or national origin because of written or oral policies, or employee custom. The term does not include separate or single-user rest rooms and necessary dressing or sleeping areas, which shall be provided to assure privacy between the sexes.
(b) The Subcontractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Subcontractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this subcontract.
(c) The Subcontractor shall include this clause in every subcontract that contains the clause of this contract entitled "Equal Opportunity."

I-72 52.223-11 OZONE-DEPLETING SUBSTANCES JUN/1998
(a) Definitions. "Ozone-depleting substance", as used in this clause, means any substance designated as Class I by the Environmental Protection Agency (EPA) (40 CFR Part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or any substance designated as Class II by EPA (40 CFR Part 82), including but not limited to hydrochlorofluorocarbons.
(b) The Subcontractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:
"WARNING: Contains (or manufactured with, if applicable) _____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere."
The Subcontractor shall insert the name of the substance(s).

I-73 52.244-8 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS OCT/1998
(a) Definition.
"Commercial item", as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.
"Subcontract", as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Subcontractor or subcontractor at any tier.
(b) To the maximum extent practicable, the Subcontractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
(c) Notwithstanding any other clause of this contract, the Subcontractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required

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to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

- (1) 52.222-28, Equal Opportunity (E.O. 11246);
 - (2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));
 - (3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793); and
 - (4) 52.247-84, Preference for Privately Owned U.S.-Flagged Commercial Vessels (48 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1998).
- (d) The Subcontractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

I-74 52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (DEV 99-00012)
APR/1984

(a) Government-furnished property.

- (1) The Prime Contractor shall deliver to the Subcontractor, for use in connection with and under the terms of this subcontract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Subcontractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").
- (2) The delivery or performance dates for this subcontract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as is") will be delivered to the Subcontractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Subcontractor to meet the subcontract's delivery or performance dates.
- (3) If Government-furnished property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt of it, notify the Prime Contractor's Representative, detailing the facts, and, as directed by the Prime Contractor and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Subcontractor, the Prime Contractor shall make an equitable adjustment as provided in paragraph (h) of this clause.
- (4) If Government-furnished property is not delivered to the Subcontractor by the required time, the Prime Contractor shall, upon the Subcontractor's timely written request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government-furnished property.

- (1) The Prime Contractor may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Subcontractor shall promptly take such action as the Prime Contractor may direct regarding the removal, shipment, or disposal of the property covered by such notice.
- (2) Upon the Subcontractor's written request, the Prime Contractor shall make an equitable adjustment to the subcontract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make the property available for performing this subcontract and there is any:
 - (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
 - (ii) Withdrawal of authority to use this property, if provided under any other subcontract or lease.

(c) Title in Government property.

- (1) The Government shall retain title to all Government-furnished property.
- (2) All Government-furnished property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.
- (3) Title to each item of facilities and special test equipment acquired by the Subcontractor for the Government under this subcontract shall pass to and vest in the Government when its use in performing this subcontract commences or when the Government has paid for it, whichever is earlier, whether or not

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title previously vested in the Government.

(4) If this subcontract contains a provision directing the Subcontractor to purchase material for which the Government will reimburse the Subcontract as a direct item of cost under this subcontract-

(i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(ii) Title to all other material shall pass to and vest in the Government upon-

(A) Issuance of the material for use in subcontract performance; or

(B) Commencement of processing of the material or its use in subcontract performance; or

(C) Reimbursement of the cost of the material by the Government, whichever occurs first.

(d) Use of Government property. The Government property shall be used only for performing this subcontract, unless otherwise provided in this subcontract or approved by the Prime Contractor.

(e) Property administration.

(1) The Subcontractor shall be responsible and accountable for all Government property provided under this subcontract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this subcontract.

(2) The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this subcontract, the Government shall replace the items or the Prime Contractor shall make such repairs as the Government directs. However, if the Prime Contractor cannot effect such repairs within the time required, the Prime Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Subcontractor represents that the subcontract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Subcontractor is responsible shall be accomplished by the Subcontractor's at its own expense.

(f) Access. The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Risk of loss. Unless otherwise provided in this subcontract, the Subcontractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Subcontractor or upon passage of title to the Government under paragraph (c) of this clause.

However, the Subcontractor is not responsible for reasonable wear and tear to Government property or Government property properly consumed in performing this subcontract.

(h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected subcontract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy.

The Government shall not be liable to suit for breach of contract for-

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Government is responsible.

(i) Final accounting and disposition of Government property. Upon completing this subcontract, or at such earlier dates as may be fixed by the Contracting Officer, the Subcontractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(j) Abandonment and restoration of Contractor's premises. Unless otherwise provided herein, the Government-

(1) May abandon any Government property in place, at which time all obligations of the Government

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regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon subcontract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

(l) Overseas contracts. If this subcontract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

I-75 52.252-2 CLAUSES INCORPORATED BY REFERENCE FEB/1998

This subcontract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Prime Contractor will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

FAR Clauses:

www.acqnet.gov/far

DFARS Clauses:

www.dtic.mil/dfars

Clause Deviations:

www.acq.osd.mil/dp/dars/classdev.html

I-78 252.243-7000 ENGINEERING CHANGE PROPOSALS (SEP 1999) - ALTERNATE I MAY/1994

- (a) The Prime Contractor may ask the Subcontractor to prepare engineering change proposals for engineering changes within the scope of this subcontract. Upon receipt of a written request from the Prime Contractor, the Subcontractor shall prepare and submit an engineering change proposal in accordance with the instructions of MIL-STD-873, in effect on the date of subcontract award.
- (b) The Subcontractor may initiate engineering change proposals. Subcontractor initiated engineering change proposals shall include a "not to exceed" price or a "not less than" price and delivery adjustment. If the Prime Contractor orders the engineering change, the increase shall not exceed nor the decrease be less than the "not to exceed" or "not less than" amounts.
- (c) When the price of the engineering change is \$500,000 or more, the Subcontractor shall submit--
 - (1) A subcontract proposal using the format in Table 15-2, Section 15.408, of the Federal Acquisition Regulation; and
 - (2) At the time of agreement on price, or on another date agreed upon between the parties, a signed Certificate of Current Cost or Pricing Data.
- (d) If the price of a Subcontractor initiated engineering change is \$5000 or less, the change, if ordered, shall be made at no adjustment in the subcontract price.

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SECTION J

LIST OF DOCUMENTS, EXHIBITS AND ATTACHMENTS

- J.1 List of documents, Exhibits and Attachments:
- a. Statement of Work for Aircraft Life Cycle Contractor Support (LCCS) for the C-12/RC-12 and UC-35 (Contract DAAH23-00-C-0228; Attachment 1)
 - b. Department of Defense Contract Security Classification Information (DD Form 254) for Contract DAAH23-00-C-0228

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[Handwritten signature]

ENTIRE AGREEMENT - SIGNATURE PAGE

This Subcontract constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and supersedes all prior representations and agreements, except for those specifically and expressly incorporated herein. It shall not be varied, except by an instrument in writing of subsequent date duly executed by authorized representatives of the parties. The validity, construction, scope and performance of this Subcontract agreement shall be governed by the laws of the State of Texas.

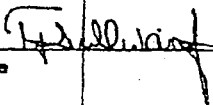
IN WITNESS WHEREOF, the parties hereto have, through duly authorized officials, executed this Subcontract agreement effective as of the day and year indicated on the cover page.

DYNACORP INTERNATIONAL LLC

STEVENS AVIATION, INC.



 Signature



 Signature

John W. Supina

 Name

Thomas J. Sullivan

 Name

Vice President, Contract Administration

 Title

Vice President, Finance

 Title

3-20-01

 Date

3-2-01

 Date

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DynCorp International

In reply please refer to:
LCCSA-01/0810

28 March 2001

Stevens Aviation, Inc.
Donaldson Center Industrial Air Park
600 Delaware Street
Greenville, SC 29605

Attention: Mr. V. P. Hart - C-12 Program Manager

Subject: Modification 1 to Subcontract SAI0001, Eff. Date 8 Oct '00

Dear Mr. Hart:

The purpose of this Modification is to extend the term of the Subcontract for an additional one-year period ("Option Year I"), beginning on 1 February 2001 and continuing through 31 January 2002, subject to the termination provisions contained in the Subcontract. All other terms and conditions of the Subcontract remain unchanged and in effect for the duration of Option Year I.

This Modification shall be considered effective upon the date of signature by DynCorp (below).

Accepted by


DynCorp Representative

3/26/01
Date

Roy P. Oler, Program Director
Name, Title

CC: SAI - V. Hart
C. Crum

DynCorp - P. O'Brien
T. Crawley
M. Craft
G. Jacobs

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2009-CP-23-7229

Stevens Aviation, Inc., ... Respondent,

v.

DynCorp International LLC and Science Applications Defendants,
International Corporation, ...

Of whom DynCorp International LLC is, ... Appellant

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all
material proposed to be included by any of the parties and not any other material.

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LLP

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June 16, 2010