

RECEIVED

NOV 14 2011

THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. 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 I**

Keith D. Munson (SC Bar #13400)
Catherine R. Atwood (SC Bar #77367)
Womble Carlyle Sandridge & Rice, LLP
550 S. Main Street, Suite 400
Post Office Box 10208 (29603-0208)
Greenville, SC 29601
Telephone: (864) 255-5400
Facsimile: (864) 255-5440
Attorneys for Petitioner

William S. Brown, Esq.
Lane W. Davis, Esq.
104 South Main Street/Ninth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
Telephone: (864) 250-2300
Attorney for Respondent

C. Mitchell Brown, Esq.
Michael J. Anzelmo, Esq.
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 11070
Columbia, SC 29211
Attorneys for Respondent

INDEX

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

VOLUME I

RECORD

Record on Appeal Volume One	1-270
--------------------------------------	-------

VOLUME II

RECORD

Record on Appeal Volume Two	271-513
--------------------------------------	---------

VOLUME III

APPELLATE BRIEFS

Final Brief of the Appellant	Tab 1
Final Brief of Respondents	Tab 2
Final Reply Brief of the Appellant.....	Tab 3

OTHER APPELLATE PLEADINGS AND ORDERS

South Carolina Court of Appeals Opinion No. 4857, July 27, 2011	Tab 4
Respondent's Suggestion of Rehearing <i>En Banc</i> and Petition for Rehearing and Memorandum In Support, August 10, 2011	Tab 5
Appellant's Return to Respondent's Suggestion of Rehearing <i>En Banc</i> and Petition for Rehearing and Memorandum In Support, August 29, 2011	Tab 6
Respondent's Rely Memorandum in Support of Suggestion of Rehearing <i>En Banc</i> and Petition for Rehearing, September 14, 2011	Tab 7
Order Denying Petition for Rehearing, October 13, 2011	Tab 8

18427

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 ONE

C. Mitchell Brown
A. Mattison Bogan
Michael J. Anzelmo
Nelson Mullins Riley & Scarborough LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

William S. Brown
Lane W. Davis
Steven E. Buckingham
104 South Main Street / Ninth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
(864) 250-2300

Attorneys for Appellant

Keith Munson
Catherine R. Atwood
Womble Carlyle Sandridge & Rice
A Professional Limited Liability Co.
Post Office Box 10208
Greenville, SC 29603-0208
(864) 255-5412

Linda L. Shapiro
Kathy A. Wisniewski
John W. Rogers
Thompson Coburn LLP
One US Bank Plaza
St. Louis, MO 63101
(314) 552-6000

Attorneys for Respondent

**RECORD ON APPEAL
INDEX**

VOLUME I

ORDERS and JUDGMENTS

Order denying DynCorp's Motion to Reconsider, December 28, 2009	1
Order granting Partial Summary Judgment to Stevens, November 17, 2009	2

PLEADINGS

Amended Answer of DynCorp, September 24, 2009	12
Answer of DynCorp, September 14, 2009	23
Complaint with Exhibits, August 24, 2009	29
Exhibit A- Subcontract & Modification	42

TRANSCRIPTS

Hearing Transcript, October 21, 2009	95
--	----

EXHIBITS/DOCUMENTS

Teaming Agreement	146
Subcontract and Modification (attached to Complaint).....	42
Kathy A. Wisniewski, Esq. and Keith Munson, Esq. letter to Judge McIntosh, October 27, 2009	155
William Brown, Esq. letter to Judge McIntosh, October 23, 2009	158
Kathy A. Wisniewski, Esq. and Keith Munson, Esq. letter to Judge McIntosh, October 23, 2009	162

OTHER MOTIONS

DynCorp's Notice of Appeal, January 26, 2010	171
Steven's Aviation Inc's Opposition to DynCorp International LLC's Motion to Reconsider, December 9, 2009	184

DynCorp International LLC's Motion to Reconsider, December 3, 2009.....	197
DynCorp International LLC's Memorandum Supporting Motion to Reconsider with exhibits, December 3, 2009.....	199
DynCorp International LLC's Reply in Support of Motion for Judgment on the Pleadings with exhibits, October 19, 2009.....	220
Steven's Aviation, Inc.'s Reply in Support of its Cross Motion for Judgment on the Pleadings and Alternative Motion for Summary Judgment, October 19, 2009.....	239
DynCorp International LLC's Memorandum Opposing Plaintiff's Motion Judgment on the Pleadings or Summary Judgment with exhibits, October 16, 2009	244

VOLUME II

Stevens Aviation, Inc.'s Opposition to DynCorp's Motion for Judgment on the Pleadings with exhibits, October 16, 2009.....	271
DynCorp International LLC's Memorandum Supporting Motion for Judgment on the Pleadings with exhibits, October 12, 2009	299
Stevens Aviation, Inc's Brief in Support of its Cross-Motion for Judgment on the Pleadings and Alternative Motion for Summary Judgment, October 12, 2009	365
Stevens Aviation, Inc's Cross-Motion for Judgment on the Pleadings And Alternative Motion for Summary Judgment with exhibits, October 1, 2009.....	390
DynCorp International LLC's Motion for Judgment on the Pleadings, September 17, 2009	458
Certificate of Counsel	

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO. : 2009-CP-23-7229

Stevens Aviation, Inc., v. Dynacorp International LLC, and Science Applications International Corporation

CHECK ONE:

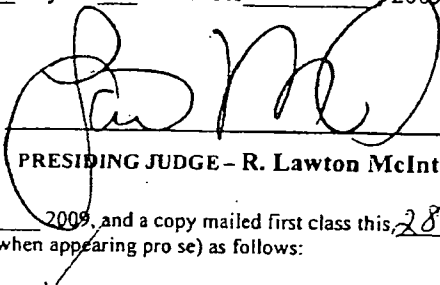
- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by the Court:

Defendant's Motion to Reconsider is DENIED.

Dated at Greenville, South Carolina, this 16th day of December, 2009.

Court Reporter: _____


PRESIDING JUDGE - R. Lawton McIntosh

This judgment was entered on the 28 day of Dec., 2009, and a copy mailed first class this 28 day of Dec., 2009 to attorneys of record or to parties (when appearing pro se) as follows:

Keith Munson
PO Box 10208
Greenville, SC 29603

William S. Brown
P O Box 10084
Greenville, SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRCP APP-24/FORM 4 (Rev. 6/02)

Paul B. Wickensimer - Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2009CP23072290

Stevens Aviation Inc vs. Dyncorp International Llc

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED:

☒ See attached order;

☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 19th day of November, 2009, and a copy mailed first class this 19th day of November, 2009, to attorneys of record or to parties (when appearing pro se) as follows:

Samuel W. Outten Womble Carlyle Sandridge
& Rice P.O. Box 10208 Greenville, SC
296030208
Catherine R Atwood Womble Carlyle
Sandridge & Rice P O Box 10208 Greenville, SC
29603
Keith D. Munson Womble Carlyle Sandridge &
Rice, PLLC P.O. Box 10208 Greenville, SC
296030208
Linda Shapiro Thompson Coburn, Llc One Us
Bank Plaza St. Louis, MO 63101

William Stevens Brown Nelson Mullins Riley &
Scarborough, LLP P.O. Box 10084 Greenville,
SC 29603
Lane Whittaker Davis Nelson Mullins Riley &
Scarborough Llp P.O. Box 10084 Greenville, SC
29603
Steven E Buckingham Nelson Mullins Riley &
Scarborough Llp P.O. Box 10084 Greenville, SC
296030084

CPFORM4M

ROA_002

John Rogers Thompson Coburn Llp One Us
Bank Plaza St. Louis, MO 63101
Stephen D'Aunoy Thompson Coburn Llp One
Us Bank Plaza St. Louis, MO 63101
Kathy Wisniewski Thompson Coburn Llp One
Us Bank Plaza St. Louis, MO 63101

ATTORNEY(S) FOR THE PLAINTIFF(S)

SCRCP APP-24/FORM 4

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer, Clerk Of Court - Clerk of Court

CPFORM4M

ROA_003

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	C.A. NO. 2009-CP-23-7229
Stevens Aviation, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER GRANTING
	)	PARTIAL SUMMARY JUDGMENT
	)	IN FAVOR OF PLAINTIFF,
DynCorp International LLC, and Science	)	STEVENS AVIATION, INC.
Applications International Corporation,	)	
	)	
Defendants.	)	
	)	

Plaintiff, Stevens Aviation, Inc. ("Stevens") has filed an Alternative Motion for Summary Judgment seeking a partial judgment on one of the issues underlying its claims against Defendant DynCorp International LLC ("DynCorp"). The Motion has been fully briefed, and the Court heard argument on the Motion on October 21, 2009. Subsequent to the hearing, the Court received additional documents from the parties relevant to the issues raised in the Motion.

Having considered the motions, briefs, additional documents, and arguments of the parties, the Court hereby GRANTS partial summary judgement in favor of Stevens, and finds that the Subcontract Agreement entered into by the parties is a "requirements contract" which obligates 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. The Court's judgment is based on the findings of fact and conclusions of law set forth below. See B & B Liquors, Inc. v. O'Neil, 361 S.C. 267, 603 S.E.2d 629 (2004).

FINDINGS OF FACT

In March of 2000, DynCorp and Stevens executed a Teaming Agreement.¹ 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." The Teaming Agreement outlined the respective roles and responsibilities of DynCorp and Stevens with respect to "the Project."

The Teaming Agreement provides as follows:

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, DynCorp may direct/authorize STEVENS 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 relating 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 '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.
- 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

¹ Stevens' submitted a copy of the Teaming Agreement to the Court, verified by affidavit. DynCorp has not, at any time, challenged the authenticity of the Teaming Agreement submitted by Stevens.

customer at the composite hourly 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 contain[ed] 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 contain[ed] in OPNAVINST 4790.2.

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

The U.S. Army awarded DynCorp "the Project" that was the subject of the Teaming Agreement, and issued to DynCorp U.S. Army Contract DAAH23-00-C-0226 (the "Prime Contract"). Subsequently, DynCorp and Stevens executed the Subcontract Agreement which is before this Court. The preamble of the Subcontract incorporates and makes the parties' "Teaming Agreement" part of the Subcontract, as it specifically provides that "the Teaming Agreement executed on 16 March, 2000, [] identifies the roles and responsibilities of the parties as Prime and Subcontractor in a cooperative effort to perform the requirements of the U.S. Army Contract DAAH23-00-C-0226" (emphasis added).

Section "C" of the Subcontract, entitled "DESCRIPTION/SPECIFICATIONS/WORK STATEMENT," provides, *inter alia*:

B. C-12/RC-12 STRIP AND PAINT. [Stevens] 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) ...

C. AIRCRAFT CONDITION INSPECTION (ACI). [Stevens] 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 I,
Statement of Work ...

CONCLUSIONS OF LAW

"Contract interpretation begins with the language of the written agreement." Coast Federal Bank, FSB v. United States, 323 F.3d 1035, 1038 (Fed. Cir. 2003). "A contract is ambiguous only when it is susceptible to two reasonable interpretations." Hunt Construction Group, Inc. v. United States, 281 F.3d 1369, 1372 (Fed. Cir. 2002). Under a "four-corners" approach to contract interpretation, a judge sits in chambers and determines from his point of view whether the written words before him are ambiguous. *See, e.g., Mellon Bank, N.A. v. Aetna Business Credit, Inc.*, 619 F.2d 1001, 1011 (3rd Cir. 1980). Alternatively, the judge can hear the proffer of the parties and determine if there is objective indica that, from the linguistic reference point of the parties, the terms of the contract are susceptible of different meanings. *Id.* In the absence of an ambiguity, extrinsic evidence may not be considered. *See, e.g., City of Tacoma, Dept. of Public Utilities v. United States*, 31 F.3d 1130, 1134 (Fed. Cir. 1994).

At the hearing, in response to the Court's inquiry, both DynCorp and Stevens stated that it was their position that the Subcontract Agreement was unambiguous. The Court agrees that it is unambiguous. Because the Subcontract is unambiguous, its construction is a matter of law for the court and not a question of fact for the jury. *See, e.g., Black v. Freeman*, 274 S.C. 272, 262 S.E.2d 897 (1980). Thus, summary judgment is appropriate. *See, e.g., Midwest Financial Acceptance Corp. v. F.D.I.C.*, 93 F. Supp. 2d 327, 330 (W.D.N.Y. 2000).

This Court finds, as a matter of law, that the Subcontract Agreement² at issue is a "requirements contract" which obligated DynCorp to send/refer to Stevens all C-12, RC-12, and

² Paragraph H.5 of the subcontract provides:

"Irrespective of the place of performance, this subcontract will be construed and interpreted according to the federal common law of government contracts as

UC-35 aircraft sent to DynCorp under the Prime Contract for the performance of the specified maintenance work. A "requirements contract" is a type of enforceable indefinite quantity agreement, which is "based on the promise of the buyer to turn to the seller for all requirements or needs which may develop during the contract period." Ceredo Mortuary Chapel, Inc. v. United States, 29 Fed. Cl. 346, 349 (Cl. Cl. 1993); *see also* Coyle's Pest Control, Inc. v. Cuomo, 154 F.3d 1302, 1305 (Fed. Cir. 1998) ("A requirements contract is formed when the seller has the exclusive right and legal obligation to fill all of the buyer's needs for the goods or services described in the contract"). "The test of a valid requirements contract is whether the buyer's promise is illusory; when the promisor retains an option exercisable in his sole discretion the promise will be held illusory." Ceredo, 29 Fed. Cl. at 349.

The Court finds that, adhering to the traditional four-corners approach, the Subcontract (together with the incorporated Teaming Agreement) is unambiguously a requirements contract. Additionally, using the alternative approach of hearing the proffer of the parties, the Court is further convinced that the Subcontract is unambiguously a requirements contract. Although the Subcontract Agreement before this Court involves two private parties, its underlying purpose relates to a government contract, *i.e.*, it was executed as "a cooperative effort to perform the requirements of U.S. Army Contract DAAH23-00-C-0226." This court thus finds the analysis in Ceredo to be persuasive.

In Ceredo, the question was whether the agreement before the court was an enforceable requirements contract or an unenforceable indefinite quantity agreement. 29 Fed. Cl. at 348.

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."

The Ceredo court indicated that generally there are three types of enforceable contracts for procurement of services and supplies: (1) definite quantity contracts; (2) indefinite quantity contracts with an ascertainable minimum; and (3) requirements contracts. Id. at 349. The court noted that all enforceable service contracts will fall into one of these three categories, while, on the other hand, an indefinite quantity agreement with no ascertainable minimum is unenforceable and has a legal status equivalent to a price list or proposal³. Id.

The Ceredo court reasoned that, as a matter of general contract law, binding contract interpretations have long been favored over non-binding ones because the fundamental purpose of contract law is to enforce mutual agreements whenever possible. Id. at 348. The court thus held that understandings equally susceptible to interpretation as enforceable requirements contracts or as unenforceable indefinite quantity agreements will be classified as requirements contracts. Id.

In Ceredo, the defendant argued, *inter alia*, that its proffered non-exclusive interpretation of its duty was supported by the contract's text "*which nowhere specifie[d] that it [was] an exclusive requirements contract.*" Id. at 350 (emphasis added). DynCorp makes this same type of argument here, urging the Court to interpret the Subcontract Agreement as an unenforceable indefinite quantity agreement under which it is only responsible for "services actually ordered (i.e. by purchase order) and provided by [Stevens]". But, in Ceredo the court rejected this argument, holding:

[T]he presence or absence of magic terms is not the end of contract analysis; the intent of the contracting parties is the key to contract interpretation. Just as contracts which proclaim themselves to be requirements contracts might not be, so too contracts which do not mention the term can be requirements contracts.

³ This matter does not involve either a definite quantity contract nor an indefinite quantity contract with an ascertainable minimum. Accordingly, the contract subjudice is either a requirements contract or an indefinite quantity agreement.

Id. (internal citations omitted); *see also* Coyle's, 154 F.3d at 1305-06 (noting that the absence of reference to regulations relating to requirements contracts makes it "more difficult to find the required exclusivity," but going on to analyze whether contract before court was, nonetheless, a "requirements contract").

Although the Ceredo court found that "estimated quantities"⁴ strengthens the implication of exclusivity, it held that such "estimates" are not dispositive in classifying agreements as requirements contracts. Id. at 351. The court did hold, however, that "per-unit pricing ... is an essential element in a requirements contract showing that the supplier is bound to perform regardless of the quantity of work." Id. (citations omitted). The Subcontract Agreement in this case contains per unit pricing, further evidencing the parties' intent that it be treated like a requirements contract.

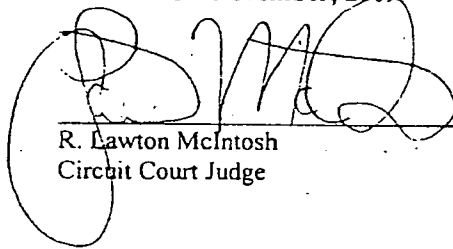
In Ceredo, the court went on to find that several other provisions in the contract before it supported its classification as a requirements contract. Id. at 352-53. Here, too, other provisions support classifying the Subcontract Agreement as a requirements contract. In Ceredo, as here, there was no clause indicating that the parties "did not intend to form a binding, exclusive contract," a "point [which] would probably have been given [some] extensive and visible treatment." Id. at 352. In Ceredo, the court found that clauses allowing for diversion of business under specified circumstances would be "useless" if there was no exclusivity because there would be no obligation to send any business at all. Id. Similarly, here, the lengthy clauses setting forth specified circumstances under which the Subcontract Agreement could be terminated would be useless if there was no exclusivity because DynCorp could, effectively, unilaterally choose to terminate the Subcontract by diverting all business elsewhere. When

⁴ There are no estimated quantities in the parties' subcontract.

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 ..." Gould, Inc. v. United States, 935 F.2d 1271, 1274 (Fed. Cir. 1991).

FOR THE REASONS STATED HEREIN the Court grants Stevens' Alternative Motion for Summary Judgment and enters a partial judgment in Stevens' favor. The Court finds that the Subcontract Agreement is a requirements contract for the specified work on C-12, RC-12, and UC-35 aircraft, and obligates DynCorp to send to Stevens all such aircraft submitted to DynCorp under the Prime Contract for the purpose of allowing Stevens to perform the aviation maintenance services specified in that Agreement.

SO ORDERED THIS 17th DAY OF November, 2009



R. Lawton McIntosh
Circuit Court Judge

Anderson, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
1509 SEP 24) FIFTEENTH JUDICIAL CIRCUIT
Stevens Aviation, Inc.,) Civil Action No. 2009-CP-23-7229
Plaintiff,)
vs.) AMENDED ANSWER OF DYNCORP
DynCorp International, LLC and) INTERNATIONAL, LLC
Science Applications International) Jury Trial Requested
Corporation,)
Defendants.)

Defendant DynCorp International, LLC ("DynCorp"), responding to Stevens Aviation, Inc.'s ("SAI" or "Plaintiff") Complaint, would respectfully show the Court as follows:

Unless specifically admitted, qualified, or otherwise explained, DynCorp denies all allegations set forth in Plaintiff's Complaint.

FOR A FIRST DEFENSE TO THE COMPLAINT

1. Responding to Paragraph 1 of the Complaint, DynCorp is informed and believes that Plaintiff is a corporation incorporated and existing under the laws of the State of Delaware. DynCorp lacks sufficient information and knowledge to form a belief about the location of Plaintiff's principal place of business and, therefore, denies the same.

2. DynCorp admits that it is a limited liability company, organized and existing under Delaware law. DynCorp likewise admits that it is a wholly owned subsidiary of DynCorp International Inc., a Delaware corporation. DynCorp also admits that it is authorized to do business in South Carolina. Finally, in relation to the contracts cited in Paragraph 2 of the Complaint, DynCorp craves reference to the unspecified contracts. To the extent the allegations contained in Paragraph 2 differ from the same, they are denied.

3. DynCorp is informed and believes that co-defendant, Science Applications International Corporation ("SAIC"), is a Delaware corporation authorized to do business in South Carolina. DynCorp lacks sufficient information to admit or deny allegations concerning unspecified contracts executed by SAIC. DynCorp craves reference to such unspecified contracts and to the extent the allegations contained in Paragraph 3 differ from the same, they are denied.

4. Responding to Paragraph 4, DynCorp admits that in March of 2000, DynCorp and SAI executed a Teaming Agreement. DynCorp craves reference to the Teaming Agreement and any allegations contained in Paragraph 4 of the Complaint differing from the same are denied. The Teaming Agreement terminated and was thereafter superseded by a subcontract executed by DynCorp and SAI ("Subcontract") as attached in part to the Complaint as Exhibit A. The Subcontract also includes modifications which have not been attached to the Complaint. All remaining allegations contained in Paragraph 4 are denied.

5. Responding to Paragraph 5, DynCorp craves reference to the Teaming Agreement cited in Paragraph 5 and any allegations contained in Paragraph 5 of the Complaint differing from the same are denied. The Teaming Agreement terminated and was thereafter superseded by the Subcontract attached in part to the Complaint as Exhibit A. The Subcontract also includes modifications which have not been attached to the Complaint. All remaining allegations contained in Paragraph 5 are denied.

6. Responding to Paragraph 6, DynCorp craves reference to the Teaming Agreement cited in Paragraph 6 and any allegations contained in Paragraph 6 of the Complaint differing from the same are denied. The Teaming Agreement terminated and was thereafter superseded by the Subcontract attached in part to the Complaint as Exhibit A. The Subcontract also includes

modifications which have not been attached to the Complaint. All remaining allegations contained in Paragraph 6 are denied.

7. Responding to Paragraph 7, DynCorp craves reference to the Teaming Agreement cited in Paragraph 7 and any allegations contained in Paragraph 7 of the Complaint differing from the same are denied. The Teaming Agreement terminated and was thereafter superseded by the Subcontract attached in part to the Complaint as Exhibit A. The Subcontract also includes modifications which have not been attached to the Complaint. All remaining allegations contained in Paragraph 7 are denied.

8. Paragraph 8 is denied.

9. Responding to Paragraph 9, DynCorp admits that it submitted a Proposal to the United States Army. All remaining allegations are denied.

10. Responding to Paragraph 10, DynCorp admits that it was awarded U.S. Army Contract DAAH23-00-C-0226 ("Army Contract"). To the extent Paragraph 10's allegations differ from the same, they are denied. All remaining allegations are denied.

11. Responding to Paragraph 11, DynCorp admits that on or about March 20, 2001, DynCorp and the Plaintiff executed the Subcontract attached in part to the Complaint as Exhibit A. The Subcontract also includes modifications which have not been attached to the Complaint. The Effective Date of the Subcontract was October 6, 2000. DynCorp denies all remaining allegations set forth in Paragraph 11.

12. Responding to Paragraph 12, DynCorp craves reference to the entire Subcontract, including modifications. To the extent the allegations contained in Paragraph 12 differ from the Subcontract, they are denied. DynCorp denies all remaining allegations set forth in Paragraph 12.

13. Paragraph 13 is denied.

14. Responding to Paragraph 14, DynCorp craves reference to the entire Subcontract, including modifications. To the extent the allegations contained in Paragraph 14 differ from the Subcontract, they are denied. DynCorp specifically denies the Subcontract uses the term "aircraft" in a manner conferring exclusive rights upon SAI. All remaining allegations contained in Paragraph 14 are denied.

15. Responding to Paragraph 15, DynCorp craves reference to the entire Subcontract. To the extent the allegations contained in Paragraph 15 differ from the Subcontract, they are denied. DynCorp denies the Subcontract confers any exclusive rights upon SAI. All remaining allegations are denied.

16. Responding to Paragraph 16, DynCorp craves reference to the entire Subcontract. To the extent the allegations contained in Paragraph 16 differ from the Subcontract, they are denied. All remaining allegations are denied.

17. Responding to Paragraph 17, DynCorp craves reference to the entire Subcontract. To the extent the Paragraph's allegations differ from the same, they are denied.

18. Responding to Paragraph 18, the United States Army extended the Army Contract with DynCorp annually for each of the nine Option Years identified in the Subcontract. The ninth and final Option Year commenced on February 1, 2009, and will expire on January 31, 2010. To the extent that Paragraph 18 contains other or further allegations, such allegations are denied.

19. Regarding Paragraph 19, subject to the terms and conditions of the Subcontract, DynCorp admits the Subcontract continues in effect through January 31, 2010. All remaining allegations are denied.

20. Responding to Paragraph 20, DynCorp admits that it has fully performed the Army Contract and Subcontract pursuant to their respective terms and conditions. DynCorp craves reference to the terms and conditions of both agreements. To the extent Paragraph 20's allegations differ from the same, they are denied.

21. Paragraph 21 is denied.

22. Paragraph 22 is denied.

23. Responding to Paragraph 23, DynCorp denies "diverting" aircraft from SAI without SAI's knowledge or otherwise and further denies any exclusive right on the part of SAI to furnish services to Army RC-12/C-12 planes under the entire Subcontract. All remaining allegations are denied.

24. Paragraph 24 is denied.

25. DynCorp admits that it is subject to the personal jurisdiction of the United States District Court for the District of South Carolina, Greenville Division.

26. DynCorp admits that venue is proper before the United States District Court for the District of South Carolina, Greenville Division.

27. DynCorp is informed and believes that each of the parties to this civil action are incorporated, or otherwise organized, under the laws of the State of Delaware. DynCorp denies that Plaintiff's claims are based on state law, and would show that the Plaintiff's claims depend in substantial part on the interpretation and the application of federal common law, as expressly agreed to and acknowledged in the Subcontract. Therefore, the United States District Court has subject matter jurisdiction pursuant to Title 28, United States Code §1331.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
(Breach of Contract against DynCorp)

28. DynCorp incorporates its prior responses to Plaintiff's allegations, to the extent such answers are not inconsistent with those that follow.

29. Paragraph 29 is denied.

30. Paragraph 30, including every subpart, is denied.

31. Paragraph 31 is denied.

32. Paragraph 32 is denied.

33. Paragraph 33 is denied.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION
(Breach of the Duty of Good Faith and Fair Dealing against DynCorp)

34. DynCorp incorporates its prior responses to Plaintiff's allegations, to the extent such answers are not inconsistent with those that follow.

35. Paragraph 35 is denied.

36. Responding to Paragraph 36, DynCorp is without knowledge or information sufficient to form a belief about the truth of the allegations, and, therefore, denies the same.

37. Paragraph 37 is denied.

38. Responding to Paragraph 38, DynCorp admits that within every contract, an obligation is imposed upon the parties to treat each other in good faith and to deal fairly. To the extent that the Plaintiff has attempted to define with specificity the obligations arising from the duty of good faith and fair dealing, such an attempt is a legal conclusion to which no response is required, and none has been given. DynCorp denies that it has breached the duty of good faith and fair dealing with respect to the Plaintiff. All remaining allegations in Paragraph 38 are denied.

- 39. Paragraph 39 is denied.
- 40. Paragraph 40, including all subparts, is denied.
- 41. Paragraph 41 is denied.
- 42. Paragraph 42 is denied.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION
(Tortious Interference with Contract against SAIC)

43. DynCorp incorporates its prior responses to Plaintiff's allegations, to the extent such answers are not inconsistent with those that follow.

44. Paragraphs 44, 45, 46, 47, 48, 49, 50, and the second paragraph numbered 49¹ pertain only to SAIC. Therefore, no response is required from DynCorp, and none has been given. To the extent that the allegations of Paragraphs 44, 45, 46, 47, 48, 49, 50, and the second paragraph numbered 49 may require a response, such allegations are denied.

45. The Prayer for Relief, which begins with the word "Wherefore," including each and every subpart is denied.

FOR A SECOND DEFENSE TO THE COMPLAINT
(Failure to State a Claim)

46. DynCorp incorporates its prior responses to Plaintiff's allegations, to the extent such answers are not inconsistent with those that follow.

47. Pursuant to Rule 12(b)(6) of the South Carolina Rules of Procedure, Plaintiff has failed to state a claim for which relief may be granted, and the Complaint warrants dismissal.

¹ The Complaint's paragraphs are mis-numbered such that there are two paragraphs numbered "49".

FOR A THIRD DEFENSE TO THE COMPLAINT
(Government Contractor Immunity)

48. DynCorp incorporates its prior responses to Plaintiff's allegations, to the extent such answers are not inconsistent with those that follow.

49. At all relevant times, DynCorp has carried out its obligations under the Prime Contract with the U.S. Army. Therefore, as a government contractor acting within the scope of contractual obligations, DynCorp cannot be liable to the Plaintiff as a matter of law.

FOR A FOURTH DEFENSE TO THE COMPLAINT
(Prior Breach)

50. DynCorp incorporates its prior responses to Plaintiff's allegations, to the extent such answers are not inconsistent with those that follow.

51. To the extent SAI alleges DynCorp breached the Subcontract, DynCorp's breach would be excused by Plaintiff's prior material breach.

FOR A FIFTH DEFENSE TO THE COMPLAINT
(Plaintiff's Default)

52. DynCorp incorporates its prior responses to Plaintiff's allegations, to the extent such answers are not inconsistent with those that follow.

53. DynCorp cannot be liable for any breach of the Subcontract, as at all relevant times, the Plaintiff was in default of the Agreement.

FOR A SIXTH DEFENSE TO THE COMPLAINT
(Failure to Exhaust Remedies)

54. DynCorp incorporates its prior responses to Plaintiff's allegations, to the extent such answers are not inconsistent with those that follow.

55. The Subcontract contains administrative procedures for disputes. SAI failed to abide by the administrative process concerning such disputes, which bar or limit its claims.

FOR A SEVENTH DEFENSE TO THE COMPLAINT
(Patent Ambiguity)

56. DynCorp incorporates its prior responses to Plaintiff's allegations, to the extent such answers are not inconsistent with those that follow.

57. To the extent Plaintiff alleges the Subcontract in its original form or as modified contains language conferring upon SAI exclusive rights, such provisions, to the extent they exist, would constitute patent ambiguities triggering a duty upon SAI to investigate further. SAI's failure to investigate further bars its interpretation of the Subcontract from being adopted by this Court.

FOR AN EIGHTH DEFENSE TO THE COMPLAINT
(Damages Limitation)

58. DynCorp incorporates its prior responses to Plaintiff's allegations, to the extent such answers are not inconsistent with those that follow.

59. Some of the damages claims alleged by Plaintiff are barred by the Subcontract's limitations on damages.

FOR A NINTH DEFENSE TO THE COMPLAINT
(Application of Foreign Law)

60. DynCorp incorporates its prior responses to Plaintiff's allegations, to the extent such answers are not inconsistent with those that follow.

61. The interpretation of the Subcontract is controlled by the federal common law of government contracts. If federal common law is not dispositive as to an issue, the law of Texas applies to the Subcontract.

FOR A TENTH DEFENSE TO THE COMPLAINT
(Commitment to Further Investigation)

62. DynCorp incorporates its prior responses to Plaintiff's allegations, to the extent such answers are not inconsistent with those that follow.

63. As of this time, DynCorp has not had an adequate opportunity to conduct an investigation or to engage in discovery sufficient to address all circumstances touched upon by the Complaint. DynCorp gives notice of its intent to assert any additional affirmative defenses that may become available as information is received and considered. DynCorp therefore reserves the right to amend this Answer to assert any such defenses as they become known.

WHEREFORE, having fully answered the Plaintiff's Complaint, DynCorp would respectfully request that an Order be entered which provides for the following relief:

- A. For the Complaint to be dismissed as to DynCorp, with prejudice;
- B. For the costs, fees, and expenses associated with DynCorp's defense against this civil action, including a reasonable amount of attorneys' fees; and,
- C. For such other legal or equitable relief as the Court deems just and proper.

SIGNATURE PAGE FOLLOWS

Respectfully submitted.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: William S. Brown

William S. Brown

S.C. Bar No. 64164

E-Mail: william.brown@nelsonmullins.com

Lane W. Davis

SC Bar No. 68796

E-Mail: lane.davis@nelsonmullins.com

Steven E. Buckingham

SC Bar No. 75089

E-Mail: steven.buckingham@nelsonmullins.com

104 South Main Street / Ninth Floor

Post Office Box 10084 (29603-0084)

Greenville, SC 29601

(864) 250-2300

Attorneys for DynCorp International LLC

Greenville, South Carolina

September 24, 2009

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Stevens Aviation, Inc.	)	Civil Action No. 6:09-cv-02314-HMH
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
DynCorp International LLC and	)	ANSWER
Science Applications International Corporation,	)	(Jury Trial Demanded)
	)	
Defendants.	)	

NOW COMES the Defendant Science Applications International Corporation ("SAIC") in answer to the Complaint of the Plaintiff Stevens Aviation, Inc. ("Stevens") and alleges as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Each and every allegation, including Stevens' prayer for relief, not hereinafter specifically admitted or explained is denied.
2. With regard to paragraphs 1 and 2 of the Complaint, SAIC lacks sufficient knowledge and information to form a belief as to the truth or falsity of such allegations, and therefore, denies the same.
3. SAIC admits only so much of paragraph 3 that states SAIC is a Delaware corporation registered to do business in South Carolina. All remaining allegations are denied.
4. With regard to paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 of the Complaint, SAIC lacks sufficient knowledge and

information to form a belief as to the truth or falsity of such allegations, and therefore, denies the same.

5. With regard to paragraph 25 of the Complaint, SAIC admits that it is subject to the personal jurisdiction of the United States District Court for the District of South Carolina.

6. With regard to paragraph 26 of the Complaint, SAIC admits that venue is proper before the United States District Court for the District of South Carolina in the Greenville Division.

7. Paragraph 27 requires a legal conclusion. In as much as paragraph 27 requires a response, SAIC admits only that it was incorporated in and is therefore a citizen of Delaware.

8. With regard to paragraph 28 of the Complaint, SAIC repeats and re-alleges the foregoing paragraphs as if stated herein verbatim.

9. The allegations in paragraphs 29, 30, 31, 32, and 33 of the Complaint are not directed at SAIC and therefore no response is required. To the extent the allegations in said paragraphs are directed at SAIC and a response is required, SAIC lacks sufficient knowledge and information to form a belief as to the truth or falsity of such allegations, and therefore, denies the same including any subparts thereto.

10. With regard to paragraph 34 of the Complaint, SAIC repeats and re-alleges the foregoing paragraphs as if stated herein verbatim.

11. The allegations in paragraphs 35, 36, 37, 38, 39, 40, 41, and 42 of the Complaint are not directed at SAIC and therefore no response is required. To the extent the allegations in said paragraphs are directed at SAIC and a response is required, SAIC

lacks sufficient knowledge and information to form a belief as to the truth or falsity of such allegations, and therefore, denies the same including any subparts thereto.

12. With regard to paragraph 43 of the Complaint, SAIC repeats and re-alleges the foregoing paragraphs as if stated herein verbatim.

13. In response to paragraph 44, SAIC admits only that it currently has a contract with the government to provide technical support services to the Fixed Wing Product Management Office, U.S. Army Aviation and Missile Command, Redstone Arsenal, Alabama. Under that contract, SAIC on behalf of the government, interacts with multiple other governmental contractors, including DynCorp. Under SAIC's contract with the government, Michael Epp, for SAIC, primarily acts as coordinator for the scheduling of aircraft maintenance and depot work for various government aircraft, including such aircraft maintenance and depot work as performed by DynCorp pursuant to its contract with the government. SAIC denies all the underlying allegations described throughout the Complaint regarding Epp's alleged actions.

14. Upon information and belief, Paragraph 45 is admitted in as much as SAIC would presume that DynCorp had a contractual relationship with Stevens but SAIC had no actual knowledge of such a contract and upon information and belief no one at SAIC ever possessed, reviewed, or knew of the contents of, any contract between DynCorp and Stevens. In addition, SAIC and Epp know that during the past eight years described in the Complaint certain aircraft went to Stevens for work to be performed.

15. Paragraphs 46, 47, 48, and 49 are denied.

16. Paragraph 50 and 51¹ are denied.

¹ This paragraph was erroneously numbered paragraph 49, but was clearly intended to be paragraph 51.

FOR A SECOND DEFENSE
(Failure to State a Claim)

17. Stevens' Complaint should be dismissed because it fails to state a claim upon which relief may be granted.

FOR A THIRD DEFENSE
(Statute of Limitations)

18. Stevens' claims are barred by the applicable statute of limitations.

FOR A FOURTH DEFENSE
(Punitive Damages)

19. SAIC alleges that it acted in good faith at all times and did not act willfully, recklessly or wantonly. As such, Plaintiff's claim for punitive damages is barred.

Additionally, any award of punitive damages against SAIC will violate the rights guaranteed to them by the Constitution of the United States for the following reasons:

(a) Any award of punitive damages violates the prohibition against excessive fines found in the Eighth Amendment to the Constitution of the United States as applied to the States by way of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

(b) Any award of punitive damages violates the guarantees of Due Process found in the Fourteenth Amendment to the Constitution of the United States because of a lack of objective guidelines on which a jury might base its award and further that such guidelines that do exist are arbitrary and void for vagueness.

FOR A FIFTH DEFENSE
(Proximate Cause)

20. SAIC alleges that it neither proximately caused nor contributed to any loss or damage suffered by the Plaintiff.

FOR A SIXTH DEFENSE
(Government Contractor Defense)

21. SAIC is a government contractor acting under the direction and authority of the United States and is therefore shielded from liability pursuant to the government contractor defense.

FOR A SEVENTH DEFENSE
(Commitment to Further Investigation)

22. As of this time, SAIC has not had an adequate opportunity to conduct an investigation or to engage in discovery sufficient to address all circumstances touched upon by the Complaint. SAIC gives notice of its intent to assert any additional affirmative defenses that may become available as information is received and considered. SAIC therefore reserves the right to amend this Answer to assert any such defenses as they become known.

WHEREFORE, having fully answered the Plaintiff's Complaint, SAIC would respectfully request that an Order be entered which provides for the following relief:

- A. For the Complaint to be dismissed as to SAIC, with prejudice;
- B. For the costs, fees, and expenses associated with SAIC's defense against this civil action, including a reasonable amount of attorney's fees; and
- C. For such other legal or equitable relief as the Court deems just and proper.

Respectfully submitted,

THE TOLLISON LAW FIRM, P.A.

/s/L. Walter Tollison, III

L. Walter Tollison, III

Federal Bar No. 4117

Walt.tollison@thetollisonlawfirm.com

/s/Elizabeth M. McMillan

Elizabeth M. McMillan

Federal Bar No. 5527

Beth.mcmillan@thetollisonlawfirm.com

/s/Lauren S. Price

Lauren S. Price

Federal Bar No. 10406

Lauren.price@thetollisonlawfirm.com

24 Vardry Street, Suite 203

Greenville, South Carolina 29601

Phone: (864) 451-7038

Fax: (864) 451-7591

Attorneys for Defendant SAIC

September 14, 2009
Greenville, South Carolina

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

C.A. NO. 2009-CP-23- 7229

SUMMONS

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
AUG 24 2009

2009 AUG 24 A 9 00

TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to serve upon Samuel W. Outten, of Womble Carlyle Sandridge & Rice, PLLC, Plaintiff's attorney, whose address is 550 South Main Street, Suite 400, Greenville, South Carolina 29601, an answer to the Complaint which is herewith served upon you, within thirty (30) days after service of the Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Samuel W. Outten

Samuel W. Outten (SC Bar #4295)
Catherine R. Atwood (SC Bar #77367)
WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company
Post Office Box 10208
Greenville, SC 29603-0208
Telephone: (864) 255-5421
Fax: (864) 239-5852
Attorneys for Plaintiff

August 24, 2009

WCSR 4187378v1

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

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

7229

COMPLAIN

Jury Trial Demanded

FILED-CLERK OF COURT
JULY 27 2009
GREENVILLE CO. S.C.
JULY 27 2009

2009 AUG 24 A 9 08

Stevens Aviation, Inc. complaining of the defendants DynCorp International LLC and
Science Applications International Corporation would respectfully show unto this Court that:

PARTIES

1. Plaintiff Stevens Aviation Inc. ("Stevens") is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business in Greenville, South Carolina.

2. Defendant DynCorp International LLC ("DynCorp") is a limited liability company, and is a subsidiary of, and owned by DynCorp International Inc., which is a citizen of the state of Delaware where it is incorporated. DynCorp is registered to do business in the State of South Carolina, and has entered into contracts which are to be performed, in whole or in part, in Greenville, South Carolina.

3. Science Applications International Corporation ("SAIC") is a corporation, organized and existing under the laws of the state of Delaware. SAIC is registered to do business in the State of South Carolina, and has entered into contracts which are to be performed, in whole or in part, in Greenville, South Carolina.

FACTUAL ALLEGATIONS

4. Prior to March 2000, DynCorp approached Stevens about entering into an agreement to work together to compile a bid proposal in response to U.S. Army Request for Proposal for Life-Cycle Contractor Support for C-12/RC-12 and UC-35 Fixed Wing Aircraft. Although Stevens was willing to engage in such an effort, it made known to DynCorp that it wanted to retain the right to work with other entities in a similar arrangement who were compiling bids in response to the Army's Request for Proposal.

5. Subsequently, DynCorp requested that Stevens work exclusively with it in compiling a bid proposal in response to the U.S. Army Request for Proposal for Life-Cycle Contractor Support for C-12/RC-12 and UC-35 Fixed Wing Aircraft, and eventually Stevens agreed to this condition. As a result, on or about March 16, 2000, DynCorp, through its related company DynCorp Technical Services, Inc., entered into a Teaming Agreement with Stevens under which DynCorp and Stevens agreed to work together, exclusively, in a cooperative effort to submit a competitive bid proposal in response to the U.S. Army's Request for Proposal ("Fixed Wing Aircraft Bid").

6. Under the Teaming Agreement, the parties agreed that the Fixed Wing Aircraft Bid submitted to the U.S. Army would identify Stevens as the subcontractor who would provide the following work on the Army aircraft subject to that Bid: all aircraft condition inspections; all aircraft strip and paint; depot level maintenance for the C-12/RC-12 aircraft that was above the capability or qualifications of DynCorp personnel; and other depot level tasks for the C-12/RC-12 aircraft fleet that were above the capability or qualifications of DynCorp personnel to include airframe and avionics modifications requested by the Army. The Teaming Agreement also provided that, if the Fixed Wing Aircraft Bid was accepted, DynCorp could, if it chose, request

Stevens to perform other work including correction of "squawks", hot section inspections, landing gear inspections, aircraft storage, and procurement services for OEM parts.

7. Under the Teaming Agreement, depending on the specific work performed, DynCorp was to pay Stevens for the work described on a per occurrence basis at a fixed unit price, at a composite hourly unit price, or at a price to be agreed upon by the parties. Specifically, DynCorp agreed to pay Stevens on a per occurrence basis for aircraft condition inspections and strip and repaint work, at a composite hourly unit price for depot level maintenance which exceeded the capabilities of DynCorp personnel, and at a price to be agreed upon by the parties for other work.

8. Under the Teaming Agreement, DynCorp agreed that in the event the Fixed Wing Aircraft Bid was accepted by the U.S. Army, DynCorp would award Stevens a subcontract to perform all of the work outlined in the Teaming Agreement.

9. DynCorp fulfilled its promise to submit a Fixed Wing Aircraft Bid to the Army in which it identified Stevens as the subcontractor who would, if the Bid was accepted, perform the work outlined in the Teaming Agreement.

10. In early 2001, the Fixed Wing Aircraft Bid submitted to the Army by DynCorp was accepted, and DynCorp was awarded U.S. Army Contract DAAH23-00-C-0226 ("Army Contract").

11. Effective October 6, 2000, DynCorp and Stevens entered into a Subcontract Agreement as contemplated by them under the Teaming Agreement. A copy of the Subcontract Agreement is attached as Exhibit A.

12. In the Subcontract Agreement DynCorp acknowledged that it required the services of a subcontractor experienced in the management, provision, repair and support of C-

12/RC-12 Aircraft to fulfill certain requirements imposed by the Army Contract, and that Stevens had agreed to provide such services.

13. Both DynCorp and Stevens acknowledged that the Subcontract Agreement was entered into in an effort to further the objectives outlined in the March 16, 2000 Teaming Agreement to have Stevens, as a subcontractor to DynCorp, provide the management, repair, skilled labor, material, facilities and engineering data for the maintenance and repair of the U.S. Army's fleet of C-12/RC-12 and UC-35 aircraft as outlined in the Army Contract.

14. The Subcontract Agreement specifically defined the "Aircraft" subject to its provisions as "All Army RC-C-12 and UC-35 aircraft covered under [the Army Contract]."

15. 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.

16. Under the Subcontract Agreement, Stevens was to be paid on a firm fixed price basis for strip and paint work and aircraft condition inspections, and at an established labor rate for maintenance and organizational maintenance.

17. 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 the Army Contract was extended.

18. The Army Contract was extended annually for all nine Option Years identified in the Subcontract Agreement, and it continues to be in effect through January 31, 2010.

19. Simultaneously with the extension of the Army Contract, the Subcontract Agreement was extended, and it continues in full force and effect through January 31, 2010.

20. On information and belief, from the commencement of the Subcontract Agreement in October 2000 until mid-to-late 2008, DynCorp sent all Army RC/C-12 aircraft covered under the Army Contract 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 during the years in which, upon information and belief, DynCorp was fully performing under the Subcontract (2001-2007).

21. On information and belief, the UC-35 aircraft covered under the Army Contract are few in number and were new at the time the Subcontract Agreement was entered into and were covered by warranty for many years, and, as a result, the UC-35 aircraft were not sent to DynCorp for servicing under the Army Contract until sometime in 2008.

22. With respect to all Aircraft sent to it, Stevens has performed, and continues to perform, all of its obligations as required by the Subcontract Agreement.

23. Upon information and belief, starting in or about mid-to-late 2008, without Stevens' knowledge or consent, DynCorp began diverting Army RC/C-12 aircraft covered under the Army contract to other aviation maintenance service entities for performance of strip and repaint work, aircraft condition inspections, maintenance work to replace conditions found to be defective during strip and repaint work or aircraft condition inspections, and site organizational maintenance. Upon information and belief, even before this time DynCorp was diverting Army UC-35 aircraft covered under the Army Contract to other aviation maintenance service entities for such work.

24. 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 significantly reduced. In fact, in the year 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.

JURISDICTION AND VENUE

25. This Court has jurisdiction over DynCorp and SAIC because they are registered to conduct business in this State, and they have entered into contracts which are to be performed in this State.

26. Venue is proper in this Court because it is where Stevens' principal place of business is located, and where the Subcontract Agreement was to be performed.

27. The parties herein are all citizens of the state of Delaware. All the claims asserted by Stevens are based on state law. Thus, this case is not removable to federal court because there is no diversity of citizenship and no federal question is at issue.

COUNT I **Breach of Contract Against DynCorp**

28. Stevens incorporates by reference Paragraphs 1 through 27, as though fully set forth herein.

29. Stevens has performed all of its obligations under the Subcontract Agreement.

30. DynCorp breached the Subcontract Agreement in one or more of the following ways:

- (a) failed to send to Stevens all Army RC/C-12 and UC-35 aircraft covered under the Army Contract which required strip and repaint work, aircraft

condition inspections, maintenance work, and/or site organizational maintenance; and

- (b) purposely diverted Army RC/C-12 and UC-35 aircraft covered under the Army Contract away from Stevens, and to other entities, for the performance of strip and repaint work, aircraft condition inspections, maintenance work, and/or site organizational maintenance.

31. As a result of DynCorp's past diversion of Army RC/C-12 and UC-35 aircraft covered under the Army Contract away from Stevens, it has been damaged in that it has lost profits and other business opportunities.

32. Stevens will be irreparably harmed if DynCorp continues to divert Army RC/C-12 and UC-35 aircraft covered under the Army Contract away from Stevens in that the lack of work and resulting revenue has created a threat to Stevens' ability to continue its current business operations as structured, to retain its highly skilled employees, and to secure future government-related contracts.

33. Stevens has no adequate remedy at law for DynCorp's continued diversion of Army RC/C-12 and UC-35 aircraft covered under the Army Contract to other entities.

COUNT II

Breach of the Duty of Good Faith and Fair Dealing Against DynCorp

34. Stevens incorporates by reference Paragraphs 1 through 33, as though fully set forth herein.

35. In or about 2008, both DynCorp and Stevens were contemplating the fact that the U.S. Army would, within a foreseeable period of time, rebid the work covered under the Army Contract, as that contract was set to expire in January 2010. Eventually, DynCorp approached Stevens about working together in a non-exclusive relationship to submit a bid for the work once

the rebidding process began. DynCorp wanted to use Stevens as an identified subcontractor in the rebidding process as Stevens is recognized by the U.S. Army as a qualified aviation services provider and its identification in a DynCorp bid would increase DynCorp's chances of success in the rebidding process.

36. Stevens rejected DynCorp's proposal to work together on a rebid for the work covered under the Army Contract, and made the decision to work with another entity exclusively in the rebidding process.

37. Upon information and belief, at or about the time that DynCorp began exploring potential teaming relationships for the rebidding process, it began diverting even more Army RC/C-12 and UC-35 aircraft covered under the Army Contract away from Stevens and to other entities for the performance of strip and repaint work, aircraft condition inspections, maintenance work, and/or site organizational maintenance. DynCorp did so in an effort to create relationships with other aviation services entities so that they could use those relationships in the anticipated rebidding process.

38. At the time that DynCorp was diverting Army RC/C-12 and UC-35 aircraft work covered by the Army Contract away from Stevens, it owed Stevens a duty of good faith and fair dealing to carry out its obligations under the Subcontract Agreement. This duty required DynCorp to: cooperate with Stevens in ensuring that the terms of the Subcontract Agreement were carried out; refrain from hindering performance under the Subcontract Agreement; and refrain from acting in such a way as to destroy Stevens' reasonable expectations regarding the fruits of that Subcontract.

39. In addition, or alternatively, the Teaming Agreement entered into by DynCorp and Stevens created a special relationship of trust and confidence between them even prior to the

commencement of the Subcontract Agreement, and because of this special relationship DynCorp owed Stevens a duty of good faith and fair dealing in carrying out the Subcontract Agreement.

40. DynCorp breached the duty of good faith and fair dealing which it owed to Stevens in one or more of the following ways:

- (a) in an effort to enhance the standing and reputation of other aviation services companies with the U.S. Army with which it might partner in the rebidding of work subject to the Army Contract, and consequently to increase its own chances of prevailing in the rebidding process, DynCorp diverted business away from Stevens;
- (b) in an effort to minimize the standing and reputation of Stevens with the U.S. Army in the rebidding of work subject to the Army Contract, and consequently to increase its own chances of prevailing in the rebidding process, DynCorp diverted business away from Stevens;
- (c) upon information and belief, DynCorp is diverting aircraft work rightfully belonging to Stevens under the Subcontract Agreement to other aviation services entities that are substandard or unqualified, and the intentional or negligent result of this diversion of work threatens the reputation of Stevens with the U.S. Army who, based on the language of the bid submitted by DynCorp in response to the proposal issued for the Army Contract, would believe that any substandard work done on the aircraft was performed by Stevens;
- (d) for its own benefit and profit, and at the expense of Stevens, DynCorp purposely diverted Army RC/C-12 and UC-35 aircraft covered under the

Army Contract away from Stevens and to other entities for the performance of strip and repaint work, aircraft condition inspections, maintenance work, and/or site organizational maintenance.

41. As a result of DynCorp's past diversion of Army RC/C-12 and UC-35 aircraft covered under the Army Contract away from Stevens and to other entities Stevens has been damaged in that it has lost profits and other business opportunities.

42. DynCorp's acts as described were willful, wanton, and carried out in reckless disregard of Stevens' rights.

COUNT III
Tortious Interference with Contract Against SAIC

43. Stevens incorporates by reference Paragraphs 1 through 42, as though fully set forth herein.

44. SAIC has a contract with the government under which it, *inter alia*, acts as a liaison for the government, and coordinates the work to be done under, the Army Contract. SAIC has designated its employee Michael Epp to act as the liaison and coordinator for the work awarded to DynCorp under the Army Contract. All of Epp's actions described herein were done as an employee of SAIC, with its authority, and in the scope of Epp's employment.

45. SAIC and Epp know that DynCorp and Stevens have a Subcontract Agreement under which Stevens is to be assigned all strip and repaint work, all aircraft condition inspections, maintenance work, and site organizational maintenance on Army RC/C-12 and UC-35 aircraft. Upon information and belief, SAIC and Epp further know that that during the initial 8 years of the Army Contract DynCorp sent all Army RC/C-12 aircraft to Stevens for such work.

46. Upon information and belief, in or about mid-to-late 2008, Epp, acting with no justification whatsoever, demanded that DynCorp start diverting work which should have been

sent to Stevens under the DynCorp-Stevens Subcontract Agreement away from Stevens and to other aviation services entities.

47. Upon information and belief, Epp demanded that work be diverted away from Stevens and to other aviation services entities so that he could personally work on the aircraft that are subject to the DynCorp-Stevens Subcontract Agreement and/or for other reasons which bestowed a benefit on himself and SAIC.

48. In June 2009, after Stevens made complaints about the diversion of work to other aviation services entities, which work rightfully belonged to it under the Subcontract Agreement, Epp contacted Stevens via telephone and attempted to elicit from Stevens what could be done to make its complaints disappear. In that contact, Epp told Stevens that it needed to "knock off" its complaints. Epp threatened that if Stevens did not stop complaining he would issue a report about a bag of tools found on an aircraft and blame Stevens for the tools. After Stevens invited Epp to report the bag of tools as required, Epp stated that he did not want any more complaints or finger-pointing from Stevens and he abruptly ended the call by hanging up.

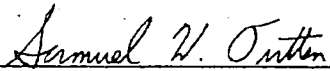
49. Subsequently, Stevens learned that Epp created a list of alleged problems he claimed to have found on aircraft which Stevens had worked on, and Epp sent that list to government employee Troy Brown claiming that Stevens had performed inadequately under the Subcontract Agreement. Epp did so even though he knew, or should have known, that the problems identified on the list he created resulted from DynCorp's specific instructions to Stevens to ignore the problems and not fix them.

50. Stevens has been damaged by Epp's tortious interference with the DynCorp-Stevens Subcontract, and by his demand on DynCorp that it send strip and repaint work, aircraft condition inspections, maintenance work, and site organizational maintenance work for Army

RC/C-12 and UC-35 aircraft to other aviation services entities, in that it has lost significant profits and other business opportunities.

49. The acts of SAIC as described herein, carried out through Epp, were willful, wanton, and carried out in reckless disregard of Stevens' rights.

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 damages, for injunctive relief against DynCorp prohibiting it from continuing to divert Army RC/C-12 and UC-35 aircraft covered under U.S. Army Contract DAAH23-00-C-0226 to other entities, for its costs, and for all other relief which this Court deems just and proper.


Samuel W. Outten (SC Bar #4295)
Catherine R. Atwood (SC Bar #77367)
WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company
Post Office Box 10208
Greenville, SC 29603-0208
Telephone: (864) 255-5421
Fax: (864) 239-5852

Linda L. Shapiro
Kathy A. Wisniewski
John W. Rogers
THOMPSON COBURN LLP
One US Bank Plaza
St. Louis, MO 63101
Telephone: (314) 552-6000
Fax: (314) 552-7000

Attorneys for Plaintiff

August 24, 2009

DYNCORP INTERNATIONAL LLC
6500 West Freeway, Suite 600
Fort Worth, Texas 78118
(817) 570-2858

SUBCONTRACT NO.: LCCS/SAJ001

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 78118

(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")



CONTENTS OF SUBCONTRACT

CONTRACT FORM/COVER PAGE

PREAMBLE	3
TERM	5
DEFINITIONS AND PROCEDURES RELATED TO SUBCONTRACT	8
DEFINITIONS AND PROCEDURES RELATED TO READINESS	9
ABBREVIATIONS	12
SECTION A - SUBCONTRACT INTERPRETATION AND ORDER OF PRECEDENCE	14
A.1 INTERPRETATION OF SUBCONTRACT	14
A.2 CONTACTS WITH CUSTOMER AND OTHER SUBCONTRACTORS	14
A.3 ORDER OF PRECEDENCE	14
SECTION B - SUPPLIES/SERVICES AND PRICES/COSTS	15
B.1 STATEMENT OF REQUIREMENTS	15
B.2 TYPE OF CONTRACT	15
B.3 COST/PRICE INFORMATION/NOTES	15
B.4 SUPPLIES/SERVICES AND PRICES/COSTS	17
SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT	22
C.1 STATEMENT OF WORK/TECHNICAL SPECIFICATION	22
SECTION D - PRESERVATION, PACKAGING AND PACKING	23
D.1 PRESERVATION, PACKAGING, PACKING AND STORAGE	23
D.2 SHIPPING INFORMATION	23
SECTION E - INSPECTION AND ACCEPTANCE	24
E.1 INSPECTION AND ACCEPTANCE	24
E.2 SUBCONTRACTOR/VENDOR QUALITY REQUIREMENT	24
SECTION F - DELIVERY/PERFORMANCE	25
F.1 DELIVERY OF SUPPLIES/SERVICES	25
SECTION G - SUBCONTRACT ADMINISTRATION DATA	26
G.1 SUBMISSION OF INVOICES	26
G.2 PAYMENT TERMS	26
G.3 MODIFICATIONS AND NOTICES	27
G.4 TECHNICAL AND ADMINISTRATIVE REPRESENTATIVES	27
G.5 FUNDING AND LIMITATION OF OBLIGATION	28
SECTION H - SPECIAL PROVISIONS	29
H.1 COMPLIANCE WITH LAWS	29
H.2 LITIGATION AND CLAIMS	29
H.3 ASSIGNMENT OF AGREEMENT	29
H.4 TAXES	29

SAI
DYNCORP


CONTENTS OF SUBCONTRACT (CONTINUED)

H.5	DISPUTES.....	29
H.6	YEAR 2000 WARRANTY—COMMERCIAL & NON-COMMERCIAL SUPPLY ITEMS....	30
H.7	52.243-4000 ENGINEERING CHANGE PROPOSAL (ECP), VALUE ENGINEERING CHANGE PROPOSAL OCT/1997 (VECP), REQUEST FOR DEVIATION (RFD).....	30
H.8	REDUCED PAYMENTS.....	32
H.9	OVER-AND-ABOVE WORK (APPLICABLE TO CLIN X004 "OVER & ABOVE").....	32
H.10	FOLLOW-ON CONTRACT TRANSITION AND INVENTORY.....	35
H.11	REQUIRED INSURANCE.....	38
H.12	PERSONNEL TRAINING REQUIREMENTS.....	37
H.13	INDEMNIFICATION OF GOVERNMENT ASSETS.....	37
H.14	DEPLOYMENTS AND HOSTILE OPERATIONS.....	38
H.15	ENEMY ACTION AND DEATH.....	38
H.16	SECURITY.....	38
H.17	CONFORMITY TO LAWS AND REGULATIONS.....	39
H.18	PASSPORT & VISA REQUIREMENTS.....	39
H.19	CONTRACTOR PERSONNEL FLYING IN GOVERNMENT AIRCRAFT.....	40
H.20	SUBCONTRACTOR MANAGEMENT.....	40
H.21	GOVERNMENT FURNISHED PROPERTY (GFP) MANAGEMENT COSTS.....	40
H.22	ECONOMIC PRICE ADJUSTMENT (EPA).....	40
SECTION I - CLAUSES/GENERAL PROVISIONS.....		44
SECTION J - LIST OF DOCUMENTS, EXHIBITS AND ATTACHMENTS.....		50
ENTIRE AGREEMENT - SIGNATURE PAGE.....		51

SAI
DYNACORP



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-0228 ("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
DYNACORP



4

SAI11DEC00.doc

ROA_046

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.

SAI
DYNCORP



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 icing weather and conditions to altitudes requiring cabin pressurization.

Prime Contract shall mean United States Army Contract DAAH23-00-C-0229.

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.

SAI
DYNCORP



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.

SAI
DYNCORP



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)/MELX(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.

SAI
DYNACORP



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 repairs; 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)

SAI
DYNCORP

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 = (NMCIM + NMCS) = 36 hours.
- (4) MC time = (FMC + PMC) = RT - NMC time = 624 hours - 36 hours = 588 hours.
- (5) Availability rate = $(MC \text{ time} / RT) \times 100 = (588 \text{ hours} / 624 \text{ hours}) \times 100 = 94.2\%$.

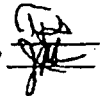
SAI
DYNCORP

[Handwritten signature]

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
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

SAI
DYNCORP



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

SAI
DYNACORP



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-0226; 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

SAI
DYNCORP



SECTION BSUPPLIES/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.

SAI
DYNACORP

Handwritten signature

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.

SAI
DYNCORP



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	\$66,711.00
0004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$58.76
0004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate		HR	\$76.04
0004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs Over 100 Hrs		HR	\$49.26
			HR	\$62.38
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	\$48.80
			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)			

SAI
DYNCORP

LCCS/SAJ0001

CLIN	SUPPLIES/SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT
1005	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		HR	\$48.44	
			HR	\$68.74	
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		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	\$36,968	

SAI
DYNACORP

18

SAI11DEC00.doc

LCCS/SAI0001

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	\$83.89	
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	\$65.88	
5004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate		HR	\$88.22	
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	\$88.22	

SAI
DYNCORP

19

SAI11DEC00.doc

LCCS/SAJ0001

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	\$77.47	
6004B	C-12/RC-12 Over and Above Parts/Materials (TBD)				
6004C	C-12/RC-12 Over And Above A/C Storage (TBD)				
6005	Travel & Per Diem (TBD)				
6010	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	\$87.51	
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	\$40,903	
8003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$81,384	
8004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$89.25	
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	\$81.05	
	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)				

SAJ
DYNACORP

20

SAH11DEC00.doc

LCCS/SAI0001

CLIN	SUPPLIES/SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT
8010	Transition Phase-Out (TBD)				
OPTION NINE (1 FEB 88 - 31 JAN 89)					
9003B	Scheduled Maintenance C-12/RC-12 - Strip and Repaint		EA	\$41,850	
9003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$98,487	
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	
			HR	\$87.62	
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)				

SAI
DYNCORP


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.

SAI
DYNCORP



22

SAI11DEC00.doc

SECTION D**PRESERVATION, PACKAGING AND PACKING/****MARKING 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 DYNCORP determines that the storage is solely for the convenience of DYNCORP. 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: DYNCORP INTERNATIONAL
M/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

SAI
DYNCORP

23

SAI11DEC00.doc

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 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 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 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.

SAI
DYNCORP



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 MainL	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

SAI
DYNCORP



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 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 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.

SAI
DYNCORP



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.

SAI
 DYNCORP



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.

SAI
DYNCORP



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.

SAI
DYNACORP

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 DYNCORP, DYNCORP 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 DYNCORP has reimbursed SAI, SAI shall on demand, promptly repay such amount to DYNCORP, 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 DYNCORP to the Contracting Officer under DYNCORP'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. DYNCORP 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 DYNCORP. DYNCORP 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.

Respective 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

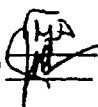
SAI warrants that each commercial and non-commercial item of hardware, software, and firmware product delivered or developed under this Subcontract shall be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth 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 DYNCORP 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 DYNCORP under this warranty shall include repair or replacement of any delivered product whose non-compliance is discovered and made known to DYNCORP in writing within ninety (90) days after acceptance. Nothing in this warranty shall be construed to limit any rights or remedies DYNCORP 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

SAI
 DYNCORP



30

SAI11DEC00.doc

(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 requirement 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 1962-6) 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 Materiel 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

SAI
DYNCORP



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 VECs 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

SAI
DYNCORP



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

SAI
DYNCORP

[Signature]

- 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) **Definitization Of Work Requests:** The DYNCORP Contract Representative will definitize 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, definitized 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-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 DYNCORP determines that such action is to their benefit, or in those instances where, during the performance of ACI,

SAI
DYNCORP



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.

SAI
DYNCORP



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 DYNCORP 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 DYNCORP shall secure the payment of statutory Workers' Compensation benefits to DYNCORP 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 DYNCORP, 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 DYNCORP 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 DYNCORP.

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 employers 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.

SAI
DYNCORP



38

SAI11DEC00.doc

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

SAI
DYNCORP



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. DYNCORP General Indemnification. This General Indemnification is in addition to any other specific indemnification requirements set forth in this Subcontract. DYNCORP 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, DYNCORP'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 DYNCORP, 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 DYNCORP, 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 DYNCORP with respect to any Aircraft delivered to SAI under this Subcontract, or any of DYNCORP'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 DYNCORP, during the term of this Subcontract, whether or not the Aircraft is in the possession of DYNCORP 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 DYNCORP). DYNCORP shall have the right to control the defense of any claim made against one or more of the Indemnified Parties for which DYNCORP 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 DYNCORP'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 DYNCORP, 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.

SAI
DYNCORP



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.

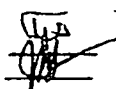
In the event that a(n) SAI employee is barred from continuing to perform under the contract due to failure to comply with all applicable laws or regulations, the cost for removal of the employee or the substitution of a replacement employee shall be SAI's responsibility.

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.

SAI
DYNCORP



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:

SAI
DYNCORP

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 20.293, 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	1.640	(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

SAI
DYNACORP

[Signature]

failure ("Cure Notice"); unless SAI provides DYNACORP 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 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 judgement, 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.

SAI
DYNACORP



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").

SAI
DYNCORP



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/1995	
I-2 52.203-3	GRATUITIES	APR/1984	
I-3 52.203-5	COVENANT AGAINST CONTINGENT FEES	APR/1984	
I-4 52.203-8	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/1987	
I-9 52.204-2	SECURITY REQUIREMENTS	AUG/1988	
I-10 52.209-8	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 52.211-15	DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS	SEPT/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 ACT—OVERTIME COMPENSATION	JUL/1995	
I-18 52.222-20	WALSH-HEALEY PUBLIC CONTRACTS ACT	DEC/1998	
I-19 52.222-28	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 52.222-38	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/1989	
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 52.223-8	DUTY-FREE ENTRY	APR/1984	

SAI
DYNCORP

I-29	52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES AUG/1988
I-30	52.227-1	AUTHORIZATION AND CONSENT JUL/1985
I-31	52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT AUG/1988
I-32	52.229-3	FEDERAL, STATE, AND LOCAL TAXES JAN/1991
I-33	52.229-5	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/1988
I-37	52.237-3	CONTINUITY OF SERVICES JAN/1991
I-38	52.242-13	BANKRUPTCY JUL/1985
I-39	52.242-16	STOP WORK ORDER (8/88)
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 (b) and (d) are completed with thirty (30)) APR/1984
I-43	52.248-25	LIMITATION OF LIABILITY—SERVICES FEB/1997
I-44	52.247-83	PREFERENCE FOR U.S.-FLAG AIR CARRIERS JAN/1997
I-45	52.248-1	VALUE ENGINEERING NOV/1989
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/1999
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/1988
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.

SAI
DYNACORP

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 52.244-6 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

SAI
DYNACORP

[Signature]

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

- (1) 52.222-26, 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) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (48 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).
- (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

SAI
DYNCORP

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 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

SAI
DYNCORP



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-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.

SAI
DYNACORP

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

SAI
DYNCORP

CHA
[Signature]

ENTIRE AGREEMENT - SIGNATURE PAGE

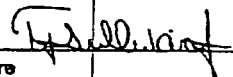
This Subcontract constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and supersedes all prior representations and agreements, except for those specifically and expressly incorporated herein. It shall not be varied, except by an instrument in writing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

DYNCORP INTERNATIONAL LLC

STEVENS AVIATION, INC.


Signature


Signature

John W. Supina
Name

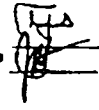
Thomas J. Sullivan
Name

Vice President, Contract Administration
Title

Vice President, Finance
Title

3-20-01
Date

3-2-01
Date

SAI
DYNCORP 

51

SAI11DEC00.doc

DynCorp International

In reply please refer to:
LCCSA-01/0616

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

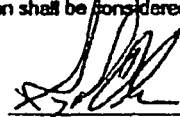
Subject: Modification 1 to Subcontract SAI0001, Eff. Date 6 Oct '00

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

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) COURT OF COMMON PLEAS
3) 2009-CP-23-07229
4 Stevens Aviation, Inc.) TRANSCRIPT OF RECORD
5 -vs-)
6 DynCorp International)
7 -----)
8 October 21, 2009
9 Greenville, South Carolina
10 B E F O R E :
11 THE HONORABLE LAWTON McINTOSH, Judge
12 A P P E A R A N C E S :
13 Kathy Wisniewski, Esquire
14 Attorney for Plaintiff
15 William Stevens Brown, Esquire
16 Attorney for Defendant
17 CAROLINE HISKELL
18 Circuit Court Reporter
19
20
21
22
23
24
25

ORIGINAL

I N D E X

(There were no witnesses or exhibits presented.)

P R O C E E D I N G S

THE COURT: This is a Stevens Aviation, Inc versus DynCorp International. Once thing I was looking at and I wanted to verify with the attorneys, it appears that there is materials outside of the pleadings that have been submitted in support of these motions.

Do y'all agree with that?

MR. BROWN: We would agree that Stevens has done that, yes, and in our papers we said we did not think that was proper.

THE COURT: Well, that would just be converted over to a Summary Judgement Motion as opposed to a --

MR. BROWN: Except that this stage no discovery has occurred so we believe Summary Judgement is inappropriate at this stage, also.

MS. WISNIEWSKI: Judge, they've also submitted stuff outside of the pleadings. They submitted a modification to the contract that wasn't part of the contract and tried to argue for that. Both parties have -- we submitted stuff outside of the pleadings because we do have a Rule 56 Motion.

THE COURT: You did a motion on the pleadings in the alternative Summary Judgement?

MS. WISNIEWSKI: Exactly. That's why we

1 submitted stuff outside the pleadings.

2 THE COURT: I'm glad to hear it all as a
3 judgement on the pleadings and not look at the materials
4 outside of the pleadings except for the exhibits or if
5 y'all want to stick with the 56 Motion and hear it on
6 that. Whatever way y'all want to proceed, I'll be glad to
7 do it either way or both.

8 MS. WISNIEWSKI: Either way is fine with us,
9 Your Honor. Technically, I think the Court has to decide
10 whether the contract says what either of it says first
11 before turning to the stuff outside the pleadings. I have
12 no problem with the Court turning the entire process into
13 a Rule 56 Motion.

14 MR. BROWN: We believe it's premature to hear
15 a Rule 56 Motion and it's only appropriate to hear it on
16 pleadings at this stage.

17 THE COURT: Well, do you agree with her
18 allegation that you submitted in support of your motion
19 materials outside the pleadings?

20 MR. BROWN: We did not submit anything in
21 support of our motion. We submitted something in
22 opposition to their Summary Judgment something outside of
23 the pleadings. But as far as our motion, we did not
24 attach anything that was beyond the pleadings. We did
25 attach some law and we attached the contract itself, which

1 is part of the Complaint.

2 THE COURT: And the Answer.

3 MR. BROWN: We did not attach the Answer, but
4 we agree that the Answer is part of the pleadings. What
5 we attached was the contract itself at issue, which was
6 incorporated as an exhibit and incorporated pursuant to
7 Rule 10 in the pleadings.

8 MS. WISNIEWSKI: Your Honor, I don't know if
9 the Court wants to hear the actual argument on the Summary
10 Judgement, but our Summary Judgement is based on a very
11 simple concept that all of the evidence shows that the
12 intent of the parties nine years ago when they entered
13 into this contract was that it would be an exclusive
14 arrangement.

15 We have submitted an affidavit from our
16 client saying that that certainly was their intent.
17 Dyncorp could have created an issue effect by submit an
18 affidavit from somebody up there saying that really wasn't
19 our intent and then, I guess, it would become a jury
20 issue, but they decided not to do that. They've decided
21 not to file a Rule 56 Affidavit saying what they think
22 discovery would show.

23 I mean, the sole issue in terms of the Rule
24 56 portion of the motion is what was the intent of the
25 parties nine years ago when the contract was entered into,

1 and no discovery of us is going to show what Dyncorp's
2 intent was:

3 THE COURT: We'll get to that. Let's go
4 ahead and hear your motion on the pleadings and we'll go
5 to yours. One or the other doesn't matter to me, but
6 since you are already standing, I'm going to let you do
7 yours and then we'll do yours.

8 MR. BROWN: Thank you, Your Honor.

9 As Your Honor knows from reading materials,
10 this is a contractual dispute between two sophisticated
11 corporate entities who are involved in government
12 contracting repeatedly. This is not someone who is a
13 novice to this area.

14 What Dyncorp is asking is for the Court to
15 interpret the contract as written, and we believe that as
16 written, the contract does not support their claims.
17 Their claims hinge upon a finding that the contract
18 includes exclusivity language. That language does not
19 exist in the contract.

20 If you read the contract, there is no
21 provision that says it's an exclusivity provision. In
22 fact, Stevens admits that; however, they don't identify
23 anything that substantiates exclusivity. There is nothing
24 in there to support that. And in fact, Your Honor, the
25 contract specifically has section, Section B4, that

1 provides the scheduling of work of what is supposed to be
2 done and has in place for the parties to agree upon how
3 many particular planes should have been submitted. That
4 was left blank.

5 They now argue that there is an implied "all"
6 that has to be put into that provision. It's not there.
7 They can't rely upon terms that don't exist.

8 In fact, what they're doing by raising that
9 "all" provision is saying this is really a requirements
10 contract.

11 THE COURT: Well, let me ask you something.
12 I read through all these materials yesterday and we were
13 going through it again before y'all came in here. In
14 looking at the actual contract, it clearly refers back
15 over to the Teaming Agreement. I know the Teaming
16 Agreement has some sundown provisions with 24 months once
17 the contract is issued to Stevens, but would you not have
18 to read the intent of the parties from the Teaming
19 Agreement into the contract itself?

20 MR. BROWN: No, Your Honor.

21 THE COURT: Why not?

22 MR. BROWN: The preamble specifically states
23 that it supersedes any prior agreements, which includes
24 the Teaming Agreement. The Teaming Agreement is listed
25 solely as providing historical background of the

1 negotiations.

2 THE COURT: I disagree with that. That
3 Teaming Agreement is not for historical background. That
4 Teaming Agreement is an agreement between these parties as
5 to what they intend to do in order to get this contract
6 and what their roles and obligations are. It is not a
7 historical document.

8 MR. BROWN: I agree, Your Honor. It is what
9 the parties will do to get the contract.

10 THE COURT: It says their roles and
11 obligations under the contract, too, doesn't it?

12 MR. BROWN: I disagree with that.

13 THE COURT: Yes.

14 MR. BROWN: It says what the roles and
15 obligations are to get the contract and once the contract
16 comes in play, the contract governs, and therefore, it is,
17 in fact, a historical documentation of how you got to the
18 point of the subcontract. And once the subcontract is in
19 place, the subcontract's terms govern.

20 THE COURT: I don't disagree that the
21 subcontract term governs. Since you referred to the
22 Teaming Agreement in the contract itself, it seems that,
23 in order to see, it's necessarily incorporated into it,
24 but it shows the parties intent.

25 MR. BROWN: That's addressed, Your Honor, by

1 the Norford Drummond case that we cite. As the materials
2 say, this case is governed by the federal common law as it
3 relates them contracting ---

4 THE COURT: Or Texas law.

5 MR. BROWN: Or Texas law if the federal law
6 doesn't address the point.

7 THE COURT: You're saying that the federal
8 case says that it has to specifically and unequivocally
9 say that incorporated merged and made a part of.

10 MR. BROWN: Yes, Your Honor. The provisions
11 that we cite to the Norford Drummond case, it barred a
12 similar letter of essential need, which was a lead up
13 agreement. And, in fact, it went on to say that it has to
14 be expressed and direct that the corporation exists and
15 not merely just identification of what has happened
16 before. That express and direct statement is not in this
17 contract.

18 THE COURT: It's clearly not in there.

19 MR. BROWN: It's not in there and that's what
20 the Norford Drummond requires for you the incorporate it
21 in for the purposes of analysis of subcontract intent,
22 otherwise you stick to the four corners of that document.
23 And we believe that the Court has here is four corners of
24 an integrated contract. The parties agreed that this is
25 it, and therefore, that is where the analysis has to

1 stand.

2 Your Honor, we also believe that the law that
3 governs this -- we cited the Coyles(ph) case, Your Honor.
4 That's a case from the federal circuit which dealt with an
5 almost identical language, and the Court analyzed this and
6 said this does not express exclusivity and therefore it
7 can not serve as a requirements contract. It made clear
8 to require all to go to a single supplier, there must be
9 an expressed promise by the buyer, by Dyncorp, to
10 purchase exclusive from the seller. That doesn't exist in
11 this contract.

12 Under the Coyles case, that means that all
13 this contract is is an agreement for whatever we ship to
14 them, they do the work, and we pay them for the work done.
15 There is no dispute whatsoever that that, in fact, has
16 happened.

17 THE COURT: Let me ask you this. Looking at
18 Page 3 of the contract, preamble -- and I keep taking you
19 back to that because that's where I'm looking at. I
20 looked at everything you had and I understand. I have not
21 found any expressed language that says this is exclusive
22 relationship between the parties, but if you look at the
23 document as a whole from four corners, it appears to me
24 from reading Teaming Agreement, subcontract documentation,
25 that these parties got together in order to get this

1 contract. And if your client would get the work to the
2 extent it got the work and it had the funding for it, it's
3 going to be performed as outlined under the contract by
4 Stevens. That's the way I looked at it.

5 If I'm incorrect, I want you to correct me,
6 but looking at Page 3 it says that "The parties entered
7 into a Teaming Agreement which identifies the roles and
8 responsibilities of the parties. That's what the contract
9 says. I don't know who drafted the contract. That issue
10 isn't before me, but I assume it was not one or the other
11 but as a result of both parties in negotiation.

12 MR. BROWN: It was negotiation.

13 THE COURT: So it's not going to be one side
14 or the other. But to go back and look at the Teaming
15 Agreement, Statement of Work, it says, "Aircraft,
16 conditions and spacious, Stevens shall perform all the
17 ACIs." So what I'm asking you is if you have a contract
18 that says this document defines the roles and
19 responsibilities, and then your document you referred to
20 or that the parties referred to says they're going to
21 perform all these, why would that not mean exactly what it
22 says?

23 MR. BROWN: Because that is superseded by
24 this contract.

25 THE COURT: But your contract, itself, says

1 that this document says what the roles and
2 responsibilities are. Look at Page 3 with me. I'm not
3 going to stop you from arguing, but I'd need to get that
4 in my mind a little bit. If you would look at Page 3 with
5 me, if you would, counsel.

6 MR. BROWN: Yes, I'm at Page 3, Your Honor.

7 THE COURT: Does it not clearly say that the
8 Teaming Agreement, which identify the roles and
9 responsibilities of the parties that, "Prime and
10 subcontractor in a cooperative effort under this
11 requirements US Army Contract No," so and so. Does it say
12 that?

13 MR. BROWN: Those are the words of the
14 agreement, yes, Your Honor. It defines the roles of the
15 parties as prime and sub.

16 THE COURT: Right. And you have the
17 Statement of Work that's attached to -- let me ask you
18 another way. If you look at the Teaming Agreement, it's
19 your position that the Teaming Agreement has no relevance
20 at all?

21 MR. BROWN: The Teaming Agreement has no
22 relevance at all. It is not part of the pleadings. It
23 has been superseded, and therefore it has no relevance at
24 all. In fact, the subcontract deals with the requirements
25 of the parties in Section B.

1 THE COURT: What page is that on?

2 MR. BROWN: It starts on Page 15, Your Honor,
3 and lays out what the requirements and obligations are of
4 the parties. If in fact the Statement of Work was part of
5 this agreement, it would conflict with this, and therefore
6 that's the reason it's superseded. The purpose of the
7 Teaming Agreement being referenced is just saying look
8 we've agreed. We'll be prime and you'll be a sub, but it
9 doesn't say every term from the Teaming Agreement is now
10 part of this agreement, which is what is required under
11 the Norford Drummond case to go beyond this document and
12 incorporate those terms from the Teaming Agreement into
13 this.

14 THE COURT: Well, that wouldn't be the only
15 method that you could get that document into
16 consideration. If there was some latent ambiguity of the
17 contract, you could refer to extrinsic evidence, couldn't
18 you?

19 MR. BROWN: If there was ambiguity in the
20 contract, there can be a reference to extrinsic evidence
21 if there is a latent ambiguity. If there is a patent
22 ambiguity, I don't think so under governmental contracting
23 laws.

24 THE COURT: I saw your argument in your Brief
25 that the burden was on them, but I think your contract

1 itself puts the burden on both parties if there is a
2 patent ambiguity to have it cleared up. I think that's a
3 mutual obligation under the contract.

4 MR. BROWN: I think there is a mutual
5 obligation, however, the law takes that the next step and
6 says that if the subcontractor is trying to enforce that
7 patent ambiguity back up stream, that they can't do it if
8 they haven't in due diligence identified it.

9 THE COURT: Okay.

10 MR. BROWN: So you have the contractual
11 provision and the legal interpretation of the general
12 principle of patent ambiguity as well.

13 THE COURT: Okay.

14 MR. BROWN: I don't disagree if there is
15 latent ambiguity, then extrinsic material can come in. We
16 don't believe there is. We believe the document is clear
17 on its four corners and as read on its four corners, does
18 not include the necessary exclusivity.

19 In fact, Your Honor, in analyzing this,
20 Stevens attached a case in their Briefing as well called
21 the Transcon Systems Case, which is, I think, is a federal
22 contracting case. In it, it actually supports our
23 position. Because in it, it had a provision of
24 requirements that is very similar to that in Section B of
25 our subcontract in which the court said that alone is not

1 enough.

2 However, in that case, there was a
3 modification of it. In the modification it specifically
4 said you will give all the work to the sub, and, of
5 course, once that modification kicks in, then that is the
6 type of expression that we need that didn't exist in the
7 subcontract before and doesn't exist in this contract
8 before the Court.

9 So we would contend, Your Honor, that because
10 there is not exclusivity expressed in the contract that
11 we're entitled to a judgement as a matter of law on the
12 pleadings.

13 THE COURT: What would be the standard for
14 judgement on the pleadings?

15 MR. BROWN: Well, interpretation of the
16 contract is an issue of law if it's unambiguous,
17 therefore, if the Court determines that it does not have
18 exclusivity, then the Court would grant the motion if it
19 determines it's an unambiguous contract.

20 THE COURT: Solely as a judgement on the
21 pleadings, I'm required in reviewing to accept all the
22 allegations as true if they're well pled. That doesn't
23 have any inferences or conclusions of law because I set
24 the standard. But if I accept their allegations as true
25 and well pled, that would be the standard, right?

1 MP. BROWN: Except to the extent their
2 allegations within the complaint document itself
3 contradict the reasonable reading of the contract which is
4 attached. If there is a contradiction between the two ---

5 THE COURT: The contract stands.

6 MR. BROWN: The contract has to take
7 precedent and therefore I would agree with that exception.

8 THE COURT: Address his motion first so we
9 can keep it in order.

10 MS. WISNIEWSKI: Before we go forward, I'd
11 like to introduce the Court to Larry Baker who is the
12 Executive Vice President for Stevens. He's located here
13 at the headquarters in Greenville, and he wanted to come
14 today, and I wanted to make sure the Court knew he was in
15 court.

16 I'm going to try not to repeat what's been
17 written because we certainly have some lengthy Briefs
18 here. I think I'll start with addressing a couple of the
19 points that opposing counsel made.

20 First of all the Norford Case. I don't know
21 if the Court has had an opportunity to read that, but
22 there is ---

23 THE COURT: I have not read the Norford case.

24 MS. WISNIEWSKI: There is expressed language
25 in the Norford case that says no magic words of a

1 corporation or reference are required.

2 THE COURT: Do you have that marked so I can
3 just see it? I'm sure you have a copy, counsel, of the
4 Norford case.

5 MR. BROWN: Your Honor, I can get you a copy.
6 I don't have one right here with me, but we quoted it in
7 our Brief.

8 MS. WISNIEWSKI: We quote that too in our
9 Brief, and I apologize, Your Honor.

10 THE COURT: I can look it up.

11 MR. BROWN: I'll be happy to get you one.

12 MS. WISNIEWSKI: There is express and
13 unequivocal language in that case that says you do not
14 need magic words. It has "magic words" in quotes, and
15 then it says, "of reference or incorporation." What you
16 need is to specifically identify the document, what parts
17 of it you are bringing into your new document. You can do
18 it by title or date. Here we do it by both title and
19 date.

20 THE COURT: Well, let me stop you and just
21 like I was questioning counsel. This reference on Page 3
22 of the contract does not identify which parts of the
23 Teaming Agreement are or not to be incorporated if that's
24 your allegation, does it?

25 MS. WISNIEWSKI: Well, Your Honor, I believe

1 it does. It says to the extent the Teaming Agreement
2 outlines the roles and responsibility of party as prime
3 and subcontractor. Some of this language is very telling.
4 It doesn't use the past tense. It doesn't say the Teaming
5 Agreement executed on March 16th, which identified the
6 roles and responsibilities of the parties, it's in the
7 present tense. It identifies the roles and then it uses
8 language that isn't in the Teaming Agreement. It
9 identifies the roles and responsibilities of the parties
10 as prime and subcontractor. That's what we refer to each
11 other in this contract.

12 And why do we have that language there? We
13 have that language because we're incorporating into this
14 document the parts of the Teaming Agreement that
15 identified the roles and responsibilities of the party.

16 THE COURT: Well, look at the Teaming
17 Agreement and show me where the roles and responsibilities
18 is outlined.

19 MS. WISNIEWSKI: I apologize, Your Honor. It
20 will take me just a minute to get there.

21 THE COURT: Sure.

22 MS. WISNIEWSKI: Okay, the roles and
23 responsibilities of the parties as incorporated in the
24 Teaming Agreement is where it says in Paragraph 3.03.
25 "Stevens shall provide direct proposal support to Dyncorp

1 in the development of the proposal with respect to each
2 sections relevant to Stevens proposed work under the
3 project as set forth in Paragraph 2.01 hereof."

4 THE COURT: Now, that sets forth Stevens
5 statement, but I'm looking at, under the contract, it says
6 roles and responsibilities of the parties is prime and
7 subcontract so look at -- I've got that Statement of Work
8 and that's what I was referring to earlier, but looking at
9 it from the other side from Dyncorp's standpoint, it looks
10 like the roles identified in the Teaming Agreement with
11 regards to Dyncorp only apply to the application for or
12 response request for proposal. It doesn't outline any
13 responsibilities as a prime contractor in the event that
14 is level and then Stevens is brought in as a sub.

15 MS. WISNIEWSKI: Well, Attachment B says,
16 "Stevens Aviation shall be proposed to perform the
17 following work." And then it goes on to say that Stevens
18 shall perform ACIs, and it talks about Dyncorp maybe
19 requested to correct ---

20 THE COURT: I don't mean to interrupt you.
21 I'm going to give you plenty of time, but here's -- if you
22 look at the preamble and go back to the Teaming Agreement
23 and say if we're going to treat that as saying that it's
24 incorporated and it sets forth the roles and
25 responsibilities of the subs and the prime, we've got the

1 subs responsibilities outlined in Attachment B, Statement
2 of Work, but I don't see any where if we were going to
3 treat it for that purpose where it sets forth the prime,
4 so how can it be treated for that purpose if it doesn't
5 sets for the prime's responsibilities and roles?

6 MS. WISNIEWSKI: It does because it then goes
7 on to refer to what Dyncorp may be required to do or may
8 be asked to do by Stevens.

9 THE COURT: Show me.

10 MS. WISNIEWSKI: Subparagraph 1a under the
11 attachment of Statement of Work. Dyncorp ---

12 THE COURT: Subparagraph?

13 MS. WISNIEWSKI: 1a under the Statement of
14 Work.

15 THE COURT: Okay. Go ahead.

16 MS. WISNIEWSKI: After it talks about Stevens
17 doing to ACI work, it says, "Stevens at Dyncorp's
18 direction authorization may be requested to correct site
19 squats on aircraft sent to the depo for ACT." So
20 basically what it's saying is Stevens can ask Dyncorp to
21 do that. So there is one of Dyncorp's roles.

22 We have to start with the premises that this
23 contraction was a nine hundred million dollar contract
24 that Dyncorp got according to the Internet. This is just
25 a very minuet part of it. So Dyncorp, the rules and

1 responsibilities are only as to this -- basically what
2 this is saying, the Teaming Agreement is, this is only a
3 very small portion of this huge prime contract, and this
4 is what Stevens shall do. Stevens shall do the ACIs.
5 Stevens shall do the strip and repaint. At the same time,
6 Stevens shall have the right to ask Dyncorp to do certain
7 things.

8 So basically what it's saying is the roles
9 and responsibilities of Stevens is the accept the
10 responsibility and do the work for that part of the prime
11 contract that deals with these very specific itemized
12 things, and that at the same time Dyncorp's responsibility
13 is the answer if Steven needs site squats fixed.

14 Dyncorp's responsibility is to reimburse
15 Stevens. If you look at Attachment Statement of Work,
16 Paragraph 2e, and I think it talks about this actually in
17 one other place, Dyncorp's responsibility is the pay
18 Stevens for taking on that part of this nine hundred
19 million dollar prime contract. Maybe it doesn't have any
20 more responsibilities. I don't think it does. As I
21 understand it there is this site squat issue which is
22 something different than ACI work, depo maintenance, and
23 so it addresses that.

24 There is also the payment obligation. Those
25 are the roles. They're the prime contractor. They're

1 turning over this portion of the prime contract to
2 Stevens. They're role and responsibility is to pay us,
3 they're role and responsibility is to do it right. And
4 then at the same time, these other issues might arise and
5 we have the right to ask Dyncorp to correct these.

6 I don't know what other roles and
7 responsibilities exist under the subcontract agreement
8 itself other than you do this work and we pay for it.

9 THE COURT: Well, there is a section there
10 that says -- in a section of the contract, counsel, it
11 sets forth in the Statement of Work, Work that's supposed
12 to be done by Dyncorp under the subcontract.

13 MR. BROWN: Section B of the subcontract
14 which starts at Page 15 and goes on to Page 21, in
15 general, defines what the parties obligations are and is
16 supplemented by citations to other sections within the
17 agreement. Section B is in essence what's the services
18 and what's going to happen -- it's the meat of the
19 contract, in essence.

20 THE COURT: Go ahead, thank you.

21 MS. WISNIEWSKI: Well, Your Honor, I'm going
22 to refer the Court to a different provision in the
23 contract, Page 15, Your Honor of the subcontract,
24 Statement of Requirements. "Stevens as subcontract to
25 Dyncorp shall provide items consisting of," and it goes on

1 to talk about basically the stuff necessary to depo
2 maintenance for the governments fleet of aircrafts under
3 the prime contract. This "shall provide" language has
4 repeatedly been interpreted by federal court as denoting
5 exclusivity.

6 THE COURT: You have a case that says say
7 denote exclusivity?

8 MS. WISNIEWSKI: Yes, I have a case. I have
9 a case which is the Transcon case which is attached to our
10 Brief; In addition, Your Honor, Coyles. If the Court
11 reads the ---

12 THE COURT: I'll be candid with both
13 attorneys. I have not read the cases. I've read all of
14 the documents, affidavits and pleadings.

15 MS. WISNIEWSKI: The Coyles' case, Your
16 Honor, starts off where it's analyzing the contract. It
17 says, "The contract does include terms that suggest
18 exclusivity. For instance, the contract obligates Coyle
19 to 'furnish all labor, service equipment, transportation
20 materials and supplies to provide subterranean termite
21 control and related services on assigned property.'"

22 THE COURT: Isn't that different from the
23 language on Page 15 it does say Dyncorp shall provide all
24 of their work to SAI, but it says SAI shall provide the
25 following. There's nothing in that paragraph that

1 suggests exclusivity that I can read.

2 MS. WISNIEWSKI: Well, Coyles is in the
3 position of Stevens in this case, Your Honor.

4 THE COURT: The language you stated in that
5 case said that they would provide all of it, and this says
6 they shall provide "management, parts, material, skilled
7 labor" but I see nothing in that paragraph that suggests
8 that SAI receives all of Dyncorp's work in regard to the
9 items outlined in the contract.

10 MS. WISNIEWSKI: Well, it uses the word
11 "fleet." It talks about the government's fleet of
12 aircrafts and it uses the word "Aircraft" in a capital A
13 which is defined in the subcontract as all airplanes. It
14 does use the word "all" if you give the words their
15 meaning that they are assigned in other parts of the
16 contract.

17 So Coyles uses the words "shall provide."
18 There is a third case, Your Honor, which ---

19 THE COURT: Let's look at that for a second.
20 It says "C-12, RC Aircrafts," that's how you read that
21 provision. Aircraft is not a separately provided item as
22 far as to have an additional the revise, it's just the C12
23 and RC-12.

24 MS. WISNIEWSKI: I understand that, Your
25 Honor, but it uses the word aircraft in a capitalized form

1 in the middle of the sentence. It has meaning and the
2 meaning is defined on Page 6. Aircraft is defined to
3 include all army RC, RC-12, U35 Aircraft covered under the
4 prime contract.

5 Throughout this contract Dyncorp has taken
6 the position that the definition of aircraft means
7 nothing. They have not explained one iota what does the
8 definition mean when it says all and then the use of the
9 capitalized form throughout the contract, they said it
10 just doesn't matter. Well, it does matter. We have ample
11 case law that talks about all has legal meaning. It's
12 un rebutted with case law. They haven't submitted anything
13 that says all doesn't mean all, it does mean all. That's
14 exactly what the cases say, Your Honor, that all means
15 all.

16 So if you read the Statement of Requirements,
17 the shall provide which was used in Transcon, which was
18 used in Coyles, which was used in this case which I have
19 not cited in my Brief in which I did bring apparently one
20 extra copy of, this Data Com case was a government
21 contract, and the government issued a contract that said
22 "The contractor shall provide technical inspection support
23 at the user location for all types of computers equipment
24 listed in the computer listing." And then in the very
25 same paragraph it goes on, "This shall not be construed to

1 mean the contractor has exclusive rights to perform the
2 technical inspections."

3 In other words, the government itself was
4 concerned that the first sentence might be misconstrued to
5 give exclusivity so it had a disclaimer right afterwards.
6 I'm going to hand you up a copy. It's after Page 7 if
7 you're looking in the upper right hand corner.

8 The government realizes when it uses the
9 words "shall provide" and it doesn't want to give
10 exclusivity, it needs to follow it with an expressed
11 statement that it's not bestowing exclusivity. And here
12 we've got language shall provide. We've got aircraft
13 defined as all aircraft. We've got references to the
14 government's fleet of aircraft. At some places in this
15 subcontract they refer to the government's worldwide
16 fleet. Yet under Dyncorp's interpretation, that's
17 supposed to be given no meaning at all. It's supposed to
18 mean some if I decide that I want to give you some. It
19 simply makes no sense, Your Honor.

20 I wanted to address, just very briefly, the
21 fact of a motion for judgement on the pleadings and
22 consideration of the Teaming Agreement. If you take the
23 Complaint and the Answer, it can be considered on a motion
24 for judgement on the pleadings because we alleged its
25 existence and they admitted its existence. And just like

1 if this was a contract and I forgot to attach it to the
2 Complaint, the Court can still consider it because it's
3 part of the pleading, and that's exactly what we have
4 here. We have a Teaming Agreement that the parties agree
5 was executed. It's referenced in the Complaint. It's
6 part of the pleadings even though it was not attached.

7 I wanted to just address briefly if I could,
8 Your Honor -- I can go through the outline of why we
9 believe our interpretation works, but the Court's read the
10 Brief's twice, but I would like to address a couple of
11 issues about why Dyncorp's interpretation doesn't work.

12 THE COURT: Okay.

13 MS. WISNIEWSKI: First of all, it requires
14 this Court to ignore express words in the subcontract. We
15 have to ignore the termination clause. What reason did
16 these parties put a termination -- what reason could there
17 have been for them putting a termination clause into the
18 subcontract that said Dyncorp you can fire Stevens if you
19 give me three cure notices in a year if they never had to
20 send me any aircrafts anyway. It simply makes no sense.
21 You have to read things out of the contract. You also
22 have to read things into the contract.

23 On the one hand Dyncorp unequivocally in
24 their paper says there are no inconsistencies in the
25 contract agreement. Then they beg the Court to consider

1 the Order of Precedence Clause. Well the Order of
2 Precedence Clause starts off by saying, if there are
3 inconsistencies in the provision of this contract, you
4 should give this provision better consideration or more
5 weight than this provision or this provision. It give you
6 weight order that you should give it, but if there is no
7 inconsistencies in the first place, which both parties
8 believe there are no inconsistencies in actual contract
9 provisions, that Order of Precedence Clause has no meaning
10 or not place in the Court's analysis.

11 Dyncorp's interpretation also depends on the
12 application of law which has no place in the Court's
13 analysis. They've gone to great lengths to talk about the
14 patent ambiguity doctrine, but again, every single federal
15 case that I read, and there's not a lot of them out there
16 because it's not used very much even in government
17 contracts, but every single case talks about you have to
18 have an inconsistency in the provisions. We cited a
19 federal case that expressly says if I argue an
20 interpretation and that makes it -- and it's inconsistent
21 with the terms, that does not invoke the patent ambiguity
22 doctrine.

23 Dyncorp's interpretation of this contract
24 also depends on this Court treating the private party
25 subcontract agreement like it is a government contract.

1 This is not a government contract. They removed this case
2 to federal court and that was essentially their argument,
3 keep jurisdiction of this case because it's essentially a
4 government contract. We're back here because it is not a
5 government contract.

6 Two other things I wanted to address, Your
7 Honor, is Dyncorp's own conduct and its own situation is
8 truly reflective of the unreasonableness that they try to
9 offer -- the unreasonableness of the interpretation that
10 they offer to this Court. Dyncorp's opening Brief told
11 this Court, you can't interpret this contract as granting
12 exclusivity because Section 8.2 will have no meaning,
13 because Section 8.2 puts limitations on whether Stevens
14 can communicate with the government and other
15 subcontractors. We responded to that by saying, of course
16 it makes sense. There are a multitude of subcontractors
17 working under the prime contract, and this mere limits the
18 communication between them.

19 Dyncorp didn't let it die and they bring it
20 up again and say our interpretation makes no sense. Your
21 Honor, during the course of this litigation, Dyncorp wrote
22 to my client about communications it had with another
23 subcontractor who has nothing to do with the work that my
24 client is doing and the invoked Section 8.2.

25 They come to this Court and say our

1 interpretation makes no sense, but Dynccorp in the course
2 of this litigation interpreted it the exact way that we
3 have asked this Court to look at it. If I may approach
4 the bench.

5 THE COURT: You have a copy of that?

6 MS. WISNIEWSKI: Yes.

7 MR. BROWN: I wrote that letter about their
8 communication with the United States government.

9 MS. WISNIEWSKI: Well, it refers to
10 subcontractors, Your Honor.

11 MR. BROWN: It refers to activity we had with
12 a different subcontractor where they had communications
13 with the United States government. We contend it was
14 improper for them to communicate with the United States
15 government pursuant to that provision, and we still
16 contend they improperly communicated with the government.
17 It does not contradict our position in any way.

18 MS. WISNIEWSKI: Well, Your Honor ---

19 THE COURT: Let me read it.

20 MS. WISNIEWSKI: It refers to companies
21 expressly, Your Honor, and took it to mean they were
22 talking about -- of course, we sometimes communicate with
23 other subcontractors. There's parts suppliers where we
24 get parts from. We had an issue over the weekend where we
25 couldn't get a part where we couldn't make communications.

1 Of course, we do. So the disingenuous position on that
2 issue, I think, is clear.

3 The other issue I think that's very
4 disingenuous is for Dyncorp to come to this Court and
5 argue that the blanks on the pricing schedule -- which by
6 the way doesn't say zero, doesn't say 10, doesn't say
7 anything -- but the blanks on the pricing schedule defeat
8 exclusivity. I don't think Dyncorp would stand before
9 this Court and say that the government can divert work
10 away from them that it's owed to them under the prime
11 contract. Yeah, the schedule is attached to the prime
12 contract for many of these planes if not all of them --
13 for many of these work codes if not all of them are blank
14 in the prime contract just like their blank in the
15 subcontract. Andy why? Because the government doesn't
16 know when these planes are going to be ready or how many
17 of them in any given option year or will be ready for
18 maintenance and when they can get them in here.

19 Why was our blanks? Ours was blank because
20 Dyncorp didn't know when they were going to get them
21 therefore they couldn't promise us when we were going to
22 get them. If they would have said 20 and in any given
23 option year we got 17, they would have risked a lawsuit
24 that you only gave us 17 and now you owe us for 20.

25 THE COURT: Isn't that also subject to

1 funding and how much finding the government gets for this
2 particular line item?

3 MS. WISNIEWSKI: Yes, Your Honor.

4 THE COURT: I may be misunderstanding.

5 MS. WISNIEWSKI: As I understand it, there
6 were amounts designated for each line item that could run
7 out. Dyncorp as the prime contractor could ask for more
8 money for a line item if it ran out, but at some point if
9 that money ran out, what the contract says, if the money
10 runs out that's designated and I don't go and get any
11 more, than I don't have to pay you for what you're doing.

12 THE COURT: Okay. Go ahead.

13 MS. WISNIEWSKI: At the end of the day,
14 Judge, we are left with if we adopt Dyncorp's
15 interpretation that they don't have an obligation to send
16 us anything, we are left with asking what meaning does the
17 definition of aircraft have? What is the meaning in using
18 repeatedly of the capital word Aircraft throughout the
19 subcontract agreement? What meaning does the very lengthy
20 default and termination clause have, which includes the
21 one I referred to previously that they can cancel this
22 contract if three cure notices are issued. And also it
23 says that if Stevens fails to perform after being asked to
24 correct a condition, if it fails for the next 10 days,
25 they can terminate the subcontract. What meaning does

1 that have if they never have to send us anything?

2 What meaning does the statement of
3 requirements have and in its designation that Stevens
4 shall do certain work under the prime contract. The word
5 is used "under the prime contract." And the word aircraft
6 is capitalized in fleet issue. What is the meaning of the
7 preamble's references to a contract or subcontractor
8 relationship for purposes of carrying out the depo work
9 that's described in the prime contract. And we focused on
10 one clause of the preamble, but there are many clauses in
11 here that you have to ask what is the meaning of that if
12 it does bestow exclusivity?

13 What is the meaning of the second to last one
14 where Dyncorp requests and "Stevens agrees to provide the
15 depo support for the aircraft throughout the world and to
16 perform other services encompassed in the prime contract."
17 What is the meaning of that if we adopt Dyncorp's
18 interpretation of the contract?

19 For all of these reasons as well as the ones
20 we've outlined, Judge, we would ask the Court to enter a
21 judgement. We do believe that the contract overwhelming
22 supports, on its fact, an interpretation that required
23 Dyncorp or obligated Dyncorp to send to Stevens all C-12,
24 RC-12, and U35 aircrafts. And we would ask the Court to
25 enter a judgement in our favor.

1 I could move on to the Summary Judgement, but
2 I'm not sure if the Court wants me to at this point.

3 THE COURT: Let me ask you something. Under
4 your Motion for Summary Judgement, what exact relief are
5 you asking the Court to grant to you?

6 MS. WISNIEWSKI: To give us a partial Summary
7 Judgment on the issue of whether the contract obligated
8 Dyncorp to send to Stevens all C-12, RC-12 and U35
9 aircrafts for the work specified in the contract. I know
10 we're going to have other issues. I don't know if Dyncorp
11 is going to argue about what work is "encompassed" in the
12 subcontract. The parties may agree on that, but we would
13 also have to a damage trial or agreement of some sort.
14 It's a partial Summary Judgement.

15 THE COURT: So you're asking me to grant
16 Summary Judgement that Stevens has exclusive right to
17 service as provided in the contract all C-12, RC-12, and
18 U35s?

19 MS. WISNIEWSKI: Yes.

20 THE COURT: Show me in the contract where you
21 would have the exclusivity to the U35 work. I know the
22 definition includes U35.

23 MS. WISNIEWSKI: That would be what we would
24 rely on. Part of the problem here was nine years ago, and
25 even today, there is very few U35 planes, relatively

1 speaking. The U35s were new at the time this contract was
2 -- or under warranty, and my client's position is nobody
3 was really thinking about them specifically at that time
4 years down the road when the warranties ran out. They
5 would deal with that issue then. Other than to give it in
6 a summary fashion, they didn't have to set up pricing for
7 those because of the fact that they were going to be under
8 warranty for several years.

9 So we would rely on the definitions clause
10 with respect to the U35s and the capitalization of
11 aircraft throughout the contract, which, again goes back
12 in our opinion to the definitions clause.

13 THE COURT: Under your interpretation of this
14 contract, is it Stevens' contention that this is an
15 ambiguous contract in any form or fashion, or is it your
16 contention that the Teaming Agreement is a part of the
17 contract by the reference to it in the preamble?

18 MS. WISNIEWSKI: It is our position that the
19 roles and responsibilities outlined in the Teaming
20 Agreement are part and parcel of the subcontract agreement
21 at a minimal; that part is.

22 THE COURT: Is it your contention that this
23 contract is ambiguous at all?

24 MS. WISNIEWSKI: That's a question of law
25 that greater minds than mine must decide, but we believe

1 it's clear on its fact. From our perspective it was
2 intended to be exclusive, so, yes, we believe it's clear
3 on it's fact, but I don't know that me saying that has any
4 bearing on that question.

5 THE COURT: You have no problem giving your
6 contentions about the other aspects, I'm just simply
7 asking you is it your contention that this contract is or
8 is not ambiguous, and that's a simple yes or no question.

9 MS. WISNIEWSKI: My answer to that question
10 is, no, it is not ambiguous.

11 MR. BROWN: Your Honor, it's interesting that
12 repeatedly in quoting the contract, counsel for Stevens is
13 leaving out words, and part of that is the preamble
14 section she just read just before you asked her that
15 question about ambiguity, the next to the bottom one, she
16 read that "SAI has agreed to provide depo support in the
17 form of management, provisions, repair and support of
18 aircrafts throughout the world."

19 THE COURT: Where are you, please, sir?

20 MR. BROWN: I'm not Page 3, the whereas
21 second from the bottom. She reads it "management,
22 provisions, repair and support of aircrafts," and she
23 leaves out C-12 and RC-12, the modifier there. Repeatedly
24 does that, and throughout their citation of where aircraft
25 is used in the capital form each modified each and every

1 time. They ignore that each and every time, seek to have
2 that verbiage from the contract stricken. It's there and
3 that's improper.

4 They do the exact same thing in Section B on
5 Page 15 which says that it deals with CR-12 and RC-12
6 aircrafts. It doesn't use aircraft alone. It modifies
7 it. If you were to take the defined term as they argue,
8 that would say, C-12, RC-12, all RC-12 and UC-35 aircraft
9 and that means that the C-12 and the RC-12 is absolutely
10 meaningless. Rules of Construction of Contract says you
11 should not interpret contracts to make things meaningless.
12 That's what they're asking the Court to do.

13 THE COURT: I think her construction is that
14 you have identified C-12, RC-12 and there's an additional
15 now and aircraft included the definition of U35, but I
16 don't know if I agree with that interpretation, though.

17 MR. BROWN: Your Honor, that interpretation
18 is not a reasonable interpretation and I'm referring to
19 the intent in contrary to the manner in which the contract
20 should be applied.

21 Throughout the argument, multiple, multiple
22 things were referenced which are beyond the pleadings
23 here, Your Honor, and some of which aren't even before the
24 Court. We don't think any of that is appropriate.

25 THE COURT: Such as, please.

1 MR. BROWN: She referenced the prime
2 contract. The prime contract is not before the Court.
3 She referenced comparisons to the prime contract, none of
4 that is before the Court.

5 THE COURT: I'm not taking that in faith.

6 MR. BROWN: She also referenced the Data Com
7 case, but what she read was a situation where the court
8 said it's not exclusive. I don't think that supports
9 their position. The Teaming Agreement she says is part of
10 the pleadings because the word Teaming Agreement is in the
11 pleadings. I don't believe that's consistent with Rule
12 10. Rule 10 says it has to be incorporated by attachment
13 to be part of the pleadings, and so I don't think the
14 Teaming Agreement is appropriate and don't think it's
15 proper to be considered. But even if it's considered,
16 what's required for them to prove exclusivity is a promise
17 by Dyncorp to exclusively give everything to them.

18 What they cited in the Teaming Agreement were
19 promises by Stevens to do certain things. They didn't
20 show you, and there isn't a provision in there, it says
21 Dyncorp shall provide all planes. It's not there. It's
22 not in the Teaming Agreement; it's not in the subcontract.
23 The two things that were there something about squawk
24 sites, which are completely irrelevant to this hearing and
25 we'll pay Stevens for the work that they do. That's

1 perfectly consistent with our position that this contract
2 says what we send them, they'll do the work on and we'll
3 pay them for it, which is exactly what Coyles said this
4 should be.

5 THE COURT: This contract has been going on
6 for eight years?

7 MR. BROWN: This contract has been going on
8 for almost nine years, I believe, Your Honor.

9 THE COURT: Prior to whatever caused this
10 dispute to occur, was Dyncorp sending all of this work to
11 Stevens to be done?

12 MR. BROWN: We did not ever send them a U35,
13 Your Honor.

14 THE COURT: What about the C-12 and the
15 RC-12s?

16 MR. BROWN: We have not sent them all of them
17 throughout the entire time. There were times when we did
18 send them all of them.

19 THE COURT: In other words, you might send
20 them all your RC-12 work to Stevens and at other times you
21 may not send them and send them to another sub?

22 MR. BROWN: What they're arguing about is
23 that we have sent planes to another sub.

24 THE COURT: I understand that. I'm looking
25 at your prior history and your prior dealings with one

1 another throughout the period of time that y'all been
2 contractually combined to one another. Prior to the
3 events that gave rise to this lawsuit, had Dyncorp sent
4 all of its RC-12 work, just taking that plane, to Stevens
5 to be performed?

6 MR. BROWN: I don't know ---

7 THE COURT: If you don't know, that's ---

8 MR. BROWN: I don't know where the planes
9 went and whether the were C-12s or RC-12s. I don't know
10 that I have sufficient detail to know completely how to
11 answer that, Your Honor.

12 THE COURT: Fair enough.

13 Do you know?

14 MS. WISNIEWSKI: Your Honor, it's our belief
15 that up until six months ago that we got every single --
16 we have no evidence and no reason to believe that up until
17 about six months ago we did not get every C-12, RC-12
18 aircraft. We found out that one was diverted about two
19 months before filed this lawsuit. We learned that one had
20 been diverted because it came to us for some work in on a
21 plane log and we saw some work had been done on an ACI at
22 another facility.

23 THE COURT: So if I'm understanding what
24 you're saying, and I know what you're saying is under your
25 information and belief, but from the inception of this

1 contract and whatever, six or eight months ago say 2000 or
2 2001 whatever it was, that in 2001 you had all of the
3 RC-12 and all the C-12s went to Stevens in 2002, '03, '04
4 and '05 up until recently.

5 MS. WISNIEWSKI: 2007 up until 2008 and maybe
6 the entire '08, we're not exactly sure. It would have
7 been the end of '08 that they ever diverted one elsewhere.

8 MR. BROWN: I don't believe that's correct,
9 but for the pending motions I don't think its relevant.
10 That's not before the Court and its not in the pleading as
11 such.

12 THE COURT: Okay, sir.

13 MR. BROWN: Your Honor, another point that we
14 reference in our reply Brief when attached to the Federal
15 Regulations, they're wanting to assert an all when there
16 is no such word in the schedule.

17 THE COURT: Show me that.

18 MR. BROWN: Their arguments in Section B4
19 where it says, "Quantity," and it has nothing in it. They
20 want to say that that should be all even there is nothing
21 there. Well, we cite in our reply Brief that the
22 attachments, the Federal Regulations attachment to our
23 reply Brief, which say if you're saying it's then that's a
24 requirements contract. Under Federal Regulations, there
25 are certain things that have to be there. And Federal

1 Regulation 16503A1 says that to be a requirements contract
2 you have to state a realistic estimate of how much that's
3 going to be. That estimate doesn't exist in this
4 contract.

5 It also goes on to say that if a requirements
6 contract is contemplated, you're supposed to insert some
7 specified language. That specified language is not
8 incorporated in either in its total or by reference. And
9 if Your Honor will look at Pages 44 through 49 of a
10 subcontract, there is a huge list of federal regulations
11 language which is incorporated by reference or
12 incorporated in total. So the parties knew ---

13 THE COURT: Is that regulation that you just
14 showed me ---

15 MR. BROWN: It is not there. It's not
16 referenced there. So the parties knew how to do that if
17 that was their intent, but they did not incorporate the
18 language which would make it a requirements contract,
19 which is in essence is what they're arguing.

20 THE COURT: Would that regulation be
21 applicable to your client's contract with the government,
22 but not necessarily your contract with the sub since that
23 is actually a private contract not a government contract?

24 MR. BROWN: No, Your Honor. The reason all
25 those Federal Acquisition Regulations are incorporated is

1 because the contracts have to be parallel. And that is
2 why, in fact, the parties did agree to six odd pages of
3 federal regulations being incorporated into this
4 subcontract.

5 THE COURT: I want to hear from you on that.
6 That sounds pretty important that the fact that his
7 regulation, 53.21621 -- I think that's the regulation --
8 it's certainly not referred to on Page 44 of Section 1 the
9 Clauses and General Provisions of the contract.

10 MS. WISNIEWSKI: It's required in a
11 government contract, Your Honor. He says it has to be
12 parallel to prime contract, at the same time he says but
13 it's not parallel to the prime contract. I lost sight of
14 the ---

15 THE COURT: Go back and answer that one
16 question, would it not be indicative to this requirements
17 contract since that regulation is not listed there and
18 simply other regulations were so it very well could have
19 been.

20 MS. WISNIEWSKI: Your Honor, they already
21 defined all. They already defined the aircraft as all.
22 They already said Stevens shall perform the work. They
23 don't need to classify this under some government contract
24 classification. It's not to be adjudged by what federal
25 regulations are in there and what aren't. It's to be

1 adjudged by what is in there and obviously the parties
2 never intended for this to be a government contract. If
3 they had regardless of what choice of law provision you
4 look at, and there are two, regardless of which provision
5 you look at, they provided for Texas law.

6 If they thought every single aspect of this
7 contract was going to be governed by federal law, they
8 never would have need some state law to step in.

9 This is a private party contract. It is to
10 be interpreted as no difference than any other contract
11 between two parties. And I think if you looked in any
12 other situation a private party contract where the issue
13 was, was he to be the exclusive dealing in that area or
14 wasn't he, then they're going to say well he didn't
15 incorporate FAR 2.03. They're not going to say that
16 because it's a private party contract. I don't have to
17 have that in there to make it an exclusive contract.

18 THE COURT: Thank you. Go ahead.

19 MR. BROWN: Your Honor, she's saying that
20 there is no need to define the type of contract, but in
21 fact the parties did in Section B2, they did pull from the
22 regulations the type of contract this is.

23 THE COURT: What page is that one?

24 MR. BROWN: It's on Page 5, Your Honor. B2
25 they talk about it being a firm fixed price, time and

1 materials contract, and a cost reimbursement. Those are
2 terms coming out of the Federal Acquisition Regulation. It
3 defines the type of contract. It doesn't define it as a
4 requirements contract.

5 THE COURT: Those items, firm fixed price,
6 time and material and cost reimbursement would just be
7 method of payment.

8 MR. BROWN: That is part of the description
9 that the Federal Acquisition uses to define the contract,
10 but if it was intended to be a requirements contract,
11 requirements can be put in there. And the case they cite
12 did that in the same and equivalent provision. It did say
13 that it's a firm fixed price requirement contracts.
14 That's the case they cite. This is the Transcon case.

15 THE COURT: In order to be fair to both
16 parties, I need to read these cases.

17 MS. WISNIEWSKI: Your Honor, would it be
18 easier if we got together and prepared a notebook of the
19 cases?

20 THE COURT: Let do this. I've heard enough
21 and I want to read those cases. Here's my initial
22 impression and I'll tell you is that looking at the four
23 corners of the parties agreement, I think it's clear that
24 the parties intended that Stevens was going to have
25 exclusive rights to the RC-12 and C-12 work. I don't

1 think the contract goes to the U33s or its at least
2 ambiguous on that side of it. That's not my ruling, but
3 that's my impression. If that is my impression, I want to
4 address before we leave her your issue about discovery and
5 how, if I find that, how could discovery change in any
6 form or fashion if that's my impression of the contract?

7 MR. BROWN: If you determine that the
8 contract is unambiguous and that referring solely to the
9 four corners of the contract that that's what the contract
10 says, I don't disagree that discovery is not appropriate.

11 THE COURT: Here's what I'm thinking as I sit
12 here now, and I obviously have a right to change my mind
13 since I haven't ruled yet, but my impression in reading
14 through your materials and your materials and listening to
15 your arguments and both of you are well prepared, thank
16 you so much, it appears to me that it was clearly the
17 intention of these parties when they went into this deal
18 in order to get this request for bid that Stevens do the
19 work on the RC-12s and the C-12s. Now, that appears to be
20 my thinking.

21 Along those lines I'm looking at the
22 preamble, I think the parties incorporated the Teaming
23 Agreement into the subcontract. That's my thinking. I
24 want to read these cases and go forward with it. If, in
25 fact, the way I rule at this point or heading down that

1 road, how would discovery change that?

2 MR. BROWN: We present no material by intent.
3 We believe there will be documents in discovery which will
4 put into doubt the statement that they believe their
5 intent was. I think there are written materials
6 contemporaneously with the institution which demonstrates
7 their statement is incorrect. That material has not been
8 exchanged. That material has not been disclosed. That
9 material is not before the Court, so if it is an intent
10 based analysis, we believe its premature to make that
11 ruling and must be made upon a full record if it is solely
12 reviewing the four corners of this document without any
13 reference to anything else.

14 But if the Court is going beyond the four
15 corners of the subcontract, we believe that's premature at
16 this point because the record has not been developed and
17 we believe the documents will come forward which will put
18 in doubt the position Stevens is taken today.

19 THE COURT: I have a tendency to agree with
20 that.

21 MR. BROWN: Well, Your Honor, the Court
22 has indicated that its likely to rule on that based on the
23 four corners of the document and we're in agreement that
24 if the Court is that no discovery is going to matter. On
25 the other hand, if the Court thinks it's ambiguous, which

1 is the only way we're going to get to evidence, then we
2 need discovery as to what they're intent was when they
3 entered into this contract.

4 THE COURT: What type of information do you
5 think you're going to discover that are not in your files.

6 MR. BROWN: We believe that there are
7 additional correspondence that they generated that we
8 don't have that relate to the scope of it and we'll be
9 able to question them on it once we have those materials.
10 We don't have them at this point.

11 We would also note that if it is your
12 position that contract is ambiguous in any respect, then
13 an interpretation of it as a matter of law with partial
14 analysis of the record, it's not appropriate. So if you
15 believe it's ambiguous as to the U35s, that makes the
16 contract ambiguous period.

17 MS. WISNIEWSKI: We disagree.

18 THE COURT: I don't agree with you on that.
19 I may be wrong but I don't think that's a correct
20 statement.

21 MS. WISNIEWSKI: We can move for a partial
22 Summary Judgement to interpret a division of a contract
23 even if other parts are ambiguous and there's plenty of
24 case law.

25 THE COURT: Do me a favor, if you would, and

1 I'll allow me to give me the other submission, go ahead
2 and give me the notebook of the cases, outline as
3 specifically as you can the information you think you're
4 going to find out about what the other party's intent was,
5 then I'll go ahead and -- first I'm going to deny both
6 your motions as it relates to the judgement of the
7 pleadings. I think if I look at the pleadings and accept
8 as true in the pleadings, well pled pleadings, then I can
9 grant that motion on either side. So I'm going to deny
10 those.

11 I'm going to take that motion for partial
12 Summary Judgement under advisement. Before I make that
13 ruling I want to see how discovery may alter my thinking.
14 If you would do that for me. Please communicate with each
15 other before y'all submit that to me.

16 MS. WISNIEWSKI: Your Honor, can we have a
17 couple days to respond.

18 THE COURT: Sure, I want to make a fair
19 decision.

20 MS. WISNIEWSKI: We'd just like to respond to
21 it and give a point of view that we think the Court should
22 consider.

23 THE COURT: How long do you think y'all going
24 to need to get this together?

25 MR. BROWN: I wouldn't think the case law

1 would take more than a couple days tops. I think we could
2 submit everything by the end of the week.

3 MS. WISNIEWSKI: I would just like a day or
4 two to respond.

5 THE COURT: If y'all get it together by the
6 end of the week, can you have your response by next
7 Friday?

8 MS. WISNIEWSKI: Absolutely.

9 THE COURT: I'll be in Anderson next week
10 continuing on my nonjury adventures, so you can submit it
11 to me at the Anderson Courthouse or if it's not too
12 voluminous, you can email it to my law clerk.

13 MR. BROWN: Your Honor, will be you be a Form
14 4 on the denials of the judgements of the pleadings?

15 THE COURT: Yes, sir, I'll do that.

16 ---END OF TRANSCRIPT RECORD---

17

18

19

20

21

22

23

24

25

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Circuit Court of Greenville County, South Carolina on
8 the 21st day of October, 2009.

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto.

11
12 January 7, 2010
13

14 _____
15 Caroline Hiskell
16
17
18
19
20
21
22
23
24
25

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.

3.06 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 15

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. Signat

By:

Sheldon K. Early

Name:

JOHN W. SIGNAT

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 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" 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 relating 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 "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.

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 unit price specified in STEVENS cost proposal submitted to DynCorp in connection with the Proposal for the Project.

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.

2. Additional Contract Efforts. STEVENS, at DynCorp's direction, may be requested to perform the following work, as set forth 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 travel and/or the most current Department of State Standardized Regulation(s) for foreign travel.

MAINTENANCE LEVELS - Maintenance tasks divided into the number of levels required so common standards can be applied to the many and varied aircraft maintenance activities of the military establishment. They are increments of which all maintenance activities are composed. JCS PUB-1 defines the three levels as depot (D), intermediate, (I), and organizational (O).

- a. D-LEVEL MAINTENANCE - Maintenance 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. D-level maintenance serves to support lower levels of maintenance by providing technical assistance and performing maintenance beyond the responsibility of O- and I-level maintenance. D-level maintenance provides stocks of serviceable equipment by using more extensive facilities for repair than are available in lower level maintenance activities.
- b. I-LEVEL MAINTENANCE - Maintenance which is the responsibility of and is performed by, designated maintenance activities for direct support of using organizations. Its phases normally consist of calibration, repair or replacement of damaged or unserviceable parts, components, or assemblies; the emergency modification of nonavailable parts; and the provision of technical assistance to using organizations.
- c. O - LEVEL MAINTENANCE - Maintenance which is the responsibility of, and is performed by, a using organization on its assigned equipment. Its phases normally consist of inspection, servicing, lubricating, adjusting, and replacing parts, minor assemblies and sub assemblies.

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.

THOMPSON COBURN LLP

14296/1502
C
One US Bank Plaza
St. Louis, Missouri 63101
314-552-6000
FAX 314-552-7000
www.thompsoncoburn.com

October 27, 2009

Kathy A. Wisniewski
314-552-6337
FAX 314-552-7337
kwisniewski@
thompsoncoburn.com

VIA ELECTRONIC & FIRST-CLASS MAIL

Honorable R. Lawton McIntosh
Circuit Court Judge
Anderson County Courthouse
P.O. Box 8002
Anderson, SC 29622

Re: *Stevens Aviation, Inc. v. DynCorp International LLC, et al.*
Case No. 2009-CP-23-7229
Court of Common Pleas
Greenville County, South Carolina

Dear Judge McIntosh:

We write on behalf of our client Stevens Aviation, Inc. in response to the letter submitted to the Court on October 23, 2009, by Defendant DynCorp International LLC in the above-captioned case. Pending before this Court is the Alternative Motion for Summary Judgment filed by Stevens in which it asks this Court to enter a partial summary judgment in its favor, and to find that the Subcontract Agreement at issue obligated 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.¹

A hearing was held on Stevens' Motion on October 21, 2009. At the hearing, the Court requested that DynCorp submit a letter to the Court proffering specific facts that it believed would result from discovery taken of Stevens that would defeat summary judgment. DynCorp

¹ Without waiving any of its arguments on its right to exclusivity with respect to the UC-35 aircraft, Stevens agrees with this Court's statements at the hearing that the Court could find the Subcontract Agreement unambiguous on the issue of exclusivity as to the C-12/RC-12 aircraft and yet find the Subcontract ambiguous on the issue of the exclusivity as to the UC-35 aircraft. See, e.g., *Sayco Ltd. v. Dalton*, 86 F.3d 1173 (Table Only), 1996 WL 157737 (Fed. Cir. 1996) (holding that no error was committed when board interpreted with some unambiguous provisions of contract on their face, but allowed parol evidence as to intent of parties in resolving other ambiguous terms).

Chicago

St. Louis

Southern Illinois

Washington, D.C.

October 27, 2009

Page 2

submitted a letter on October 23, 2009. The Court has authorized Stevens to submit this letter in response to DynCorp's submission.

As a starting point, it is indisputable that discovery could impact the pending summary judgment motion only if this Court first finds that the Subcontract Agreement is ambiguous on its face, *i.e.*, that both Stevens' and DynCorp's proffered interpretations are *reasonable* based on its language and provisions.² Only then could this Court consider any of the extrinsic evidence which DynCorp hopes to dredge up in the protracted and expensive discovery that it proposes.³

In light of this indisputable law, the discovery proposed by DynCorp is simply not relevant to this Court's interpretative analysis because the Subcontract Agreement is susceptible to only one *reasonable* interpretation: it obligates 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. DynCorp's interpretation of the Subcontract Agreement is *not* reasonable as it ignores, and would render meaningless, significant substantive provisions of the Subcontract (*e.g.*, the extensive "Default and Termination" clause set forth on pages 41-43).

Even if this Court were to consider the Teaming Agreement as part of its interpretive analysis, none of the discovery which DynCorp lists would be relevant. As the Court correctly noted at the hearing, and as the parties then acknowledged, the Court could find that the Teaming Agreement is incorporated into the Subcontract, and, under such circumstances, the Court could consider the Teaming Agreement without being deemed to have looked to "extrinsic evidence" in its interpretive analysis. If the Court finds that the Teaming Agreement and Subcontract together are susceptible to only one reasonable interpretation, DynCorp's proposed discovery would have no place in this Court's analysis because discovery could result in nothing other than "extrinsic evidence" that could not be considered by the Court. Many of the clauses in the Preamble to the Subcontract make clear that at least the roles and responsibilities of Stevens and DynCorp as set forth in the Teaming Agreement are incorporated into the Subcontract (if not the Teaming Agreement in its entirety). For example, in the Subcontract the Teaming Agreement is specifically identified by title and date. The Subcontract uses the present tense when it states that the Teaming Agreement "identifies" the "roles and responsibilities of the parties." The Subcontract then indicates that the Teaming Agreement identifies the "roles and responsibilities"

² See, *e.g.*, LAI Services, Inc. v. Gates, 573 F.3d 1306, 1314 (Fed. Cir. 2009) ("The threshold question here is whether the plain language of the contract supports only one reading or supports more than one reading and is ambiguous ... Ambiguity exists when contract language can reasonably be interpreted in more than one way" (citations omitted)).

³ See, *e.g.*, City of Tacoma, Dept. of Public Utilities v. United States, 31 F.3d 1130, 1134 (Fed. Cir. 1994) (noting that "extrinsic evidence ... may not be considered unless an ambiguity is identified in the contract language").

October 27, 2009

Page 3

of the parties *in their capacities as "Prime and Subcontractor"* – capacities that exist only under the Subcontract Agreement (not the Teaming Agreement).

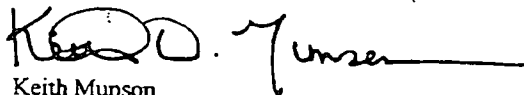
Finally, Stevens respectfully submits that the letter DynCorp has provided to this Court is more akin to a "wish list" than an actual outline of any specific discovery which it, in good faith, believes will reveal specific facts that are likely to defeat summary judgment. DynCorp wants this Court to delay entry of judgment so that it can go on a fishing expedition consisting of production of voluminous notes, memoranda, correspondence, and testimony about *Stevens'* alleged lack of intent as to "exclusivity" when DynCorp, itself a party to the Subcontract, has submitted nothing to this Court as to its own alleged intent of non-exclusivity. With all due respect, it defies logic for DynCorp to suggest that it will find something in Stevens' records or testimony that it can use to show that Stevens' intent was something other than exclusivity when DynCorp itself apparently has no records showing that its own intent was anything but exclusivity. DynCorp was a party to the Subcontract Agreement from the time the exclusive arrangement was first conceived, *i.e.*, before and at the time of the execution of the Teaming Agreement. Yet, it apparently does not have a single document which suggests, or a single witness willing to attest, that anything other than exclusivity was intended. Stevens' submits to this Court that it has no such documents or testimony because, as is clear from the Subcontract Agreement itself, the parties intent was that the Subcontract Agreement would obligate 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.

For the Court's consideration, Stevens attaches to this letter a proposed Order granting the Alternative Motion for Summary Judgment. On behalf of our client and ourselves, we thank the Court for the time and thorough consideration it has given to this case.

Sincerely,



Kathy A. Wisniewski



Keith Munson

of Womble Carlyle Sandridge & Rice

cc: (via electronic and first-class mail)
Counsel of Record

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
104 South Main Street / Ninth Floor / Greenville, SC 29601
Tel: 864.250.2300 Fax: 864.232.2925
www.nelsonmullins.com

William S. Brown
Tel: 864.250.2297
william.brown@nelsonmullins.com

October 23, 2009

VIA HAND DELIVERY & REGULAR MAIL

The Honorable Rivers Lawton McIntosh
Judge, Tenth Judicial Circuit
P.O. Box 8002
Anderson, SC 29622

RE: Stevens Aviation, Inc. v. DynCorp International LLC and Science Applications
International Corporation
2009-CP-23-07229
NMRS File No. 14296/01502

Dear Judge McIntosh:

During Wednesday's hearing, the Court asked DynCorp International, LLC ("DynCorp") to identify what outstanding discovery rendered Stevens Aviation, Inc.'s ("SAI") Motion for Summary Judgment premature.

Initially, I would note that SAI has submitted "additional material" regarding the motion by facsimile today. SAI attempts to characterize for the Court DynCorp's position. The submission is a complete mischaracterization. It is also interesting that SAI, talking out of both sides of its mouth, cites and relies on some Federal Acquisition Regulations ("FARs"), but argue that the FARs that hurt its position are irrelevant because this is "not a government contract." The FARs are relevant because this is a contract for the maintenance of government furnished property.

On exclusivity, DynCorp's position is and has always been that the analysis in the Coyle's case is proper. The starting point of the analysis is to look for language requiring exclusivity. Such an exclusivity provision undisputedly does not exist in the Subcontract. The failure to include provisions from the FARs regarding requirements contracts is just further evidence of the intent of the parties that the Subcontract is not a requirements contract.

With respect to the materials requested by the Court, the list of evidence which discovery would reveal is rather lengthy, as the case is only two months old and no discovery has been completed. Notwithstanding the same, DynCorp submits the following as an illustrative but non-exhaustive list of the evidence it anticipates will be discovered when the Parties complete discovery:

- (1) Memoranda, meeting notes, correspondence, written materials and oral testimony demonstrating the Parties never intended for the Subcontract to constitute an exclusive agreement, as such exclusivity would imperil the U.S. Army's ability to maintain, service, and repair its fleet of planes;
- (2) Memoranda, meeting notes, correspondence, written materials and oral testimony showing the parties did not intend to send all RC-12/C-12 aircraft to SAI under the Subcontract and SAI understood this fact;
- (3) Memoranda, meeting notes, correspondence, written materials and oral testimony directly contradicting the evidentiary materials submitted by SAI in support of the Motion *sub judice*--materials which DynCorp notes were never received by Defendant before SAI's filing of the same and, to date, has had no opportunity to gather and develop the evidence which DynCorp believes directly refutes such materials;
- (5) Memoranda, meeting notes, correspondence, written materials and oral testimony reflecting the Parties never agreed to send UC-35 planes to SAI;
- (6) Memoranda, meeting notes, correspondence, written materials and oral testimony reflecting the Parties did not intend to use the defined term "Aircraft" when such words were coupled with a modifier such as "RC-12/C-12 Aircraft";
- (7) Memoranda, meeting notes, correspondence, written materials and oral testimony reflecting why the Parties included a lengthy schedule containing Federal Acquisition Regulations but specifically omitted the Regulation pertaining to Requirements Contracts;
- (8) Memoranda, meeting notes, correspondence, written materials, and oral testimony reflecting why the Parties did not identify the Subcontract as a Requirements contract, if as SAI contends, the Subcontract was intended to embrace all RC-12/C-12 and UC-35 airplanes;
- (9) Memoranda, meeting notes, correspondence, written materials, and oral testimony reflecting that the parties other subcontractors would handle all UC-35 work and that is why Stevens never sought any UC-35 work until this lawsuit;
- (10) Memoranda, meeting notes, correspondence, written materials, and oral testimony reflecting why the Parties did not specify the term "all" in the quantity column of the Pricing Schedule;

- (11) Memoranda, meeting notes, correspondence, and oral testimony reflecting that the intent of the Teaming Agreement was not to execute an agreement creating exclusive rights and was not to establish terms under the Subcontract;
- (12) Memoranda, meeting notes, correspondence, written materials, and oral testimony reflecting that the Parties intended for the Teaming Agreement to terminate, end, and otherwise be superseded by the terms negotiated and contained in the Subcontract;
- (13) Oral and documentary evidence demonstrating SAI's chronic inability to complete maintenance and repairs of military aircraft, over a period of more than three years, on schedule costing DynCorp to incur several hundred thousand dollars in penalties;
- (14) Oral and documentary evidence demonstrating SAI failed to maintain proper staffing to service the Subcontract in a timely manner;
- (15) Oral and documentary evidence demonstrating that DynCorp in accordance with the written terms of the Subcontract expressly alerted SAI of its failure to complete timely maintenance and repair under the Subcontract and DynCorp's intent to send aircraft elsewhere to alleviate timing problems created by SAI's inability to complete the work in a timely manner;
- (16) Oral and documentary evidence supporting DynCorp's affirmative defenses;
- (17) Oral and documentary evidence reflecting SAI has sustained no damages.

DynCorp has had no opportunity to develop such evidence and present it to the Court. Right now, the Court only has a limited amount of evidentiary materials before it, all from SAI. To the extent the Court considers extrinsic evidence (i.e., anything other than the Complaint and Answer), DynCorp possesses both procedural and substantive rights to develop a responsive record, under Baughman v. AT&T, 306 S.C. 101, 410 S.E.2d 537 (1991) (as cited in DynCorp's Brief In Opposition on p. 12) and its progeny. Accordingly, partial summary judgment is improper at this time.

Additionally, it is noteworthy that, before the hearing, the Parties had already exchanged written discovery requests and began scheduling depositions in this matter. DynCorp simply asks the Court to deny SAI's Motion for Partial Summary Judgment without prejudice, until after discovery occurs, so DynCorp can have a chance to defend itself. Once discovery is complete, SAI can re-file the instant motion and the Court can consider the same issues on a full record.

The Honorable Rivers Lawton McIntosh
October 23, 2009
Page 4

If your honor needs any additional information or material, please do not hesitate to ask and we are glad to provide it.

Very truly yours,

A handwritten signature in black ink, appearing to read "William S. Brown", followed by a horizontal line.

William S. Brown

WSB:ap
cc: Keith Munson, Esq.

14290/1502
c

THOMPSON COBURN LLP

One US Bank Plaza
St. Louis, Missouri 63101
314-552-6000
FAX 314-552-7000
www.thompsoncoburn.com

October 23, 2009

Kathy A. Wisniewski
314-552-6337
FAX 314-552-7337
kwisniewski@
thompsoncoburn.com

VIA ELECTRONIC & OVERNIGHT MAIL

Honorable R. Lawton McIntosh
Circuit Court Judge
Tenth Judicial Circuit
Greenville County Courthouse
305 E. North Street
Greenville, SC 29601

Re: *Stevens Aviation, Inc. v. DynCorp International LLC, et al.*
Case No. 2009-CP-23-7229

Dear Judge McIntosh:

We write on behalf of our client Stevens Aviation, Inc. regarding the above-captioned case. Recently, the Court held a hearing on the cross-motions for judgment on the pleadings filed by Stevens and Defendant DynCorp International LLC. At the hearing, the Court indicated its willingness to consider additional materials from the parties which might be helpful to the Court. The Court then set deadlines for the submission of identified materials it wanted from the parties. While the following information was not specifically requested, in light of the Court's questions at the hearing we believe that it will be of benefit to the Court. We write now so that DynCorp will have adequate time to respond within the deadlines set for the submission of the identified materials requested by the Court.

DynCorp argued at the hearing that the Subcontract Agreement at issue could not be interpreted to create "exclusivity" because it did not incorporate into its terms certain Federal Acquisition Regulations, *i.e.*, FAR 16.503, FAR 16.506, and FAR 52.216-21. These Regulations relate to "requirements contracts" entered into by the federal government. The Court expressed concern about the parties' failure to incorporate these provisions and asked for Stevens' position on that matter. Stevens responded by pointing out to the Court that the Subcontract Agreement is not a government contract, and that it should be interpreted as the private party contract that it is. Stevens now submits this letter to expand on its response to the Court's inquiry.

First, as stated at the hearing, the Subcontract Agreement is a private party contract. Based on this, it is Stevens' position that the determination of whether the Subcontract provides for

Chicago

St. Louis

Southern Illinois

Washington, D.C.

October 23, 2009

Page 2

"exclusivity" should not be based on the inclusion or omission of any clauses which may be required when the government is a party to a contract.

Second, FAR 16.503, FAR 16.506, and FAR 52.216-21 are not required "flow down" provisions to be included in subcontracts let under prime contracts to which the government is a party. There is nothing in the context of those FARs which indicates that a government contractor, like DynCorp, must or should include them in any subcontract if the intent of the parties is one of exclusivity or to ensure that the subcontract is treated like a "requirements contract." This stands in stark contrast to many other FARs. For example, under the express wording of FAR 52.215-2, (which is expressly incorporated into the Subcontract Agreement), DynCorp was obligated to include its provisions in the Subcontract Agreement. See 48 C.F.R. § 52.215-2(g) ("The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (a), in all subcontracts under this contract ..."); see also 48 C.F.R. § 52.222-26(c)(10) ("The Contractor shall include the terms and conditions of this clause in every subcontract ...").

Third, there is nothing in either the express wording of the FARs cited by DynCorp, or in federal case law, which supports the notion that the failure to include a reference to the identified FARs means, *ipso facto*, that a contract cannot be classified as a "requirements contract." In fact, in Appeal of - Trans Com Systems, 2003 WL 2012889, *4 (A.S.B.C.A. May 1, 2003), the court said the exact opposite: "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 ..." (emphasis added). Even the case extensively relied on by DynCorp - Coyle's Pest Control, Inc. v. Cuomo, 154 F.3d 1302 (Fed. Cir. 1998) - supports the notion that the absence of the specified FARs is not, in and of itself, determinative of whether a government contract is a "requirements contract." What the court said in Coyle's is that the absence of "the FAR requirements clause" makes it "more difficult to find the required exclusivity." 154 F.3d at 1305-06. Even though the contract there did not have "the FAR requirements clause" the court went on to analyze whether it was, nonetheless, a "requirements contract." Id.

Fourth, assuming that classification of the Subcontract under the government scheme has some bearing on the exclusivity issue (which it does not), Stevens respectfully submits that DynCorp simply has the "classification analysis" backwards. DynCorp asks to the Court to: first determine whether the Subcontract Agreement incorporates or includes the "magic language" set forth in the specified FARs; and then, if it finds the language is absent, to conclude the Subcontract is not a "requirements contract"; and, then, to declare that because it is not a "requirements contract" exclusivity cannot exist. In reality, however, before concluding whether

¹ For the Court's convenience, copies of 48 C.F.R. § 52.215-2 and 48 C.F.R. § 52.222-26 are attached hereto.

October 23, 2009

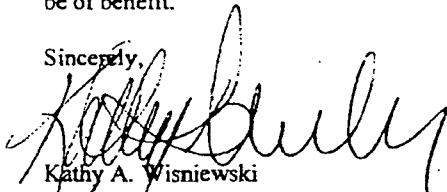
Page 3

a government contract is a "requirements contract" the court must *first* determine whether it provides for exclusivity. This fact is borne out by Coyle's wherein the court stated that "[a] requirements contract is formed when the seller has the exclusive right and legal obligation to fill all of the buyer's needs for the good or services described in the contract." 154 F.3d at 1305.

Fifth, even when the government is one of the contracting parties, a contract does not – as DynCorp seems to suggest – have to "fit neatly into a recognized category." J. Cooper & Assoc. v. United States, 53 Fed.Cl. 8, 18 (Ct.Cl. 2002). The terms of a government contract, like those of a private party contract, are "valid and enforceable" so long as the contract has sufficient "consideration to ensure mutuality of obligation, and sufficient definiteness so as to provide a basis for determining the existence of a breach and for giving an appropriate remedy." Id.

We very much appreciate the Court's time and consideration. We are available at the Court's convenience in the event the Court determines that further argument, briefing, or caselaw would be of benefit.

Sincerely,



Kathy A. Wisniewski



Keith Munson

by permission

cc: (via electronic mail only)
Counsel of Record

Westlaw

48 C.F.R. 52. 215-2

Page 1

C

Effective: March 31, 2009

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 & Amos)

Subpart 52.2. Texts of Provisions and Clauses

→ 52. 215-2 Audit and Records--Negotiation.

As prescribed in 15.209(b), insert the following clause:

Audit and Records--Negotiation (MAR 2009)

(a) As used in this clause, records includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connec-

tion with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

(1) The proposal for the contract, subcontract, or modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the contract, subcontract, or modification; or

(4) Performance of the contract, subcontract or modification.

(d) Comptroller General. (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(f) Availability. The Contractor shall make avail-

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.

<http://elibraries.westlaw.com/print/printstream.aspx?sv=Full&prid=ia744d852000001247...> 10/22/2009

ROA_165

able at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (a), in all subcontracts under this contract that exceed the simplified acquisition threshold and—

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)

Alternate I (MAR 2009). As prescribed in 15.209(b)(2), substitute the following paragraphs (d)(1) and (g) for paragraphs (d)(1) and (g) of the basic clause:

(d) Comptroller General or Inspector General.

(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, shall have access to and the right to—

(i) Examine any of the Contractor's or any subcontractor's records that pertain to and involve transactions relating to this contract or a subcontract hereunder; and

(ii) Interview any officer or employee regarding such transactions.

(g)(1) Except as provided in paragraph (g)(2) of this clause, the Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract. The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(2) The authority of the Inspector General under paragraph (d)(1)(ii) of this clause does not flow down to subcontracts.

Alternate II (APR 1998). As prescribed in 15.209(b)(3), add the following paragraph (h) to the basic clause:

(h) The provisions of OMB Circular No. A-133, "Audits of States, Local Governments, and Non-profit Organizations," apply to this contract.

Alternate III (JUN 1999). As prescribed in 15.209(b)(4), delete paragraph (d) of the basic clause and redesignate the remaining paragraphs accordingly, and substitute the following paragraph (e) for the redesignated paragraph (e) of the basic clause:

(e) Availability. The Contractor shall make available at its office at all reasonable times the records,

materials, and other evidence described in paragraphs (a), (b), (c), and (d) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

[53 FR 10831, April 1, 1988; 54 FR 48993, Nov. 28, 1989; 57 FR 60578, Dec. 21, 1992; 60 FR 34761, July 3, 1995; 60 FR 42651, Aug. 16, 1995; 61 FR 39190, 39198, July 26, 1996; 62 FR 259, Jan. 2, 1997; 62 FR 51271, Sept. 30, 1997; 63 FR 9055, Feb. 23, 1998; 64 FR 32749, June 17, 1999; 72 FR 27389, May 15, 2007; 74 FR 14649, March 31, 2009; 74 FR 14651, March 31, 2009; 74 FR 52852, Oct. 14, 2009]

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).

48 C.F.R. 52.215-2, 48 CFR 52.215-2
Current through October 15, 2009; 74 FR 53143

© 2009 Thomson Reuters
END OF DOCUMENT

Westlaw

48 C.F.R. 52. 222-26

Page 1

C**Effective: March 22, 2007**

Code of Federal Regulations Currentness

Title 48. Federal Acquisition Regulations System

Chapter I. 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. 222-26 Equal Opportunity.

As prescribed in 22.810(e), insert the following clause:

Equal Opportunity (MAR 2007)

(a) Definition. United States, as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b)(1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

(c)(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Or-

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.

der 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of this clause in every subcontract or

purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; *provided*, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

(End of clause)

Alternate I (FEB 1999). As prescribed in 22.810(e), add the following as a preamble to the clause:

Notice. The following terms of this clause are waived for this contract: _____ [Contracting Officer shall list terms].

[63 FR 70286, Dec. 18, 1998; 67 FR 13067, March 20, 2002; 72 FR 13588, March 22, 2007; 72 FR 73218, Dec. 26, 2007]

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;

48 C.F.R. 52. 222-26

Page 3

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).

48 C. F. R. 52. 222-26, 48 CFR 52. 222-26
Current through October 15, 2009; 74 FR 53143

© 2009 Thomson Reuters
END OF DOCUMENT

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.

<http://elibraries.westlaw.com/print/printstream.aspx?sv=Full&prid=ia7448749000001247...> 10/22/2009

ROA_170

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

RECEIVED

JAN 26 2010

SC Court of Appeals

Stevens Aviation, Inc., ... Respondent,

v.

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

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

AMENDED NOTICE OF APPEAL

Pursuant to Rule 203 of the South Carolina Appellate Court Rules, DynCorp International LLC ("Appellant") hereby appeals the order of the Honorable R. Lawton McIntosh granting Plaintiff partial summary judgment and the order denying Appellant's related Rule 59(e) motion. Judge McIntosh's order denying Appellant's Rule 59(e) motion was entered on December 28, 2009. Notice of the signed order was received by Appellant on December 29, 2009. Copies of the appealed orders are attached for reference.

Signatures Attached

By: A. Mattison Bogan
C. Mitchell Brown
A. Mattison Bogan
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

William S. Brown
Lane W. Davis
Steven E. Buckingham
104 South Main Street / Ninth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
(864) 250-2300

Attorneys for DynCorp International LLC

January 26, 2010

Other Counsel of Record:

Keith Munson, Esquire
Womble Carlyle Sandridge & Rice
550 S. Main Street Suite 400
Greenville, SC 29603-0208
(864) 255-5412
Attorneys for Stevens Aviation, Inc.

Kathy A. Wisniewski, Esquire
Thompson Coburn LLP
One US Bank Plaza
St. Louis, MO 63101
(314) 552-6000
Attorneys for Stevens Aviation, Inc.

L. Walter Tollison III, Esquire
The Tollison Law Firm
24 Vardry Street
Greenville, SC 29601
(864) 451-7038
Attorneys for Science Applications International Corporation

14296/1502 P

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO.: 2009-CP-23-7229

Stevens Aviation, Inc., v. Dynacorp International LLC, and Science Applications International Corporation

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):**
- SCRCP (Vol. Nonsuit): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a),
☐ Rule 43(k), SCRCP (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED:

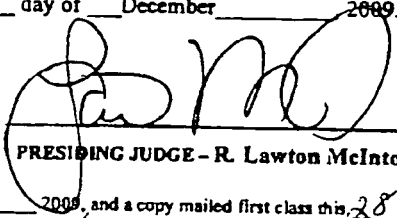
☐ See attached order;

☒ Statement of Judgment by the Court:

Defendant's Motion to Reconsider is DENIED.

Dated at Greenville, South Carolina, this 16th day of December, 2009.

Court Reporter: _____


PRESIDING JUDGE - R. Lawton McIntosh

This judgment was entered on the 28 day of Dec., 2009, and a copy mailed first class this 28 day of Dec., 2009 to attorneys of record or to parties (when appearing pro se) as follows:

Keith Munson
PO Box 10208
Greenville, SC 29603

William S. Brown
P O Box 10084
Greenville, SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRCP APP-24/FORM 4 (Rev. 6/02)

Paul B. Wickensimer - Clerk of Court

CPF(JRM42).dnt

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2009CP2307229

Stevens Aviation Inc vs. Dyncorp International Llc

CHECK ONE:

- ☐ JURY VERDICT: This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:
- ☐ ACTION STRICKEN (CHECK REASON: ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED:

☒ See attached order.

☐ Statement of Judgment by the Court.

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 19th day of November, 2009, and a copy mailed first class this 19th day of November, 2009, to attorneys of record or to parties (when appearing pro se) as follows:

Samuel W. Outten Womble Carlyle Sandridge
& Rice P.O. Box 10208 Greenville, SC
296030208
Catherine R Atwood Womble Carlyle
Sandridge & Rice P O Box 10208 Greenville, SC
29603
Keith D. Munson Womble Carlyle Sandridge &
Rice, PLLC P.O. Box 10208 Greenville, SC
296030208
Linda Shapiro Thompson Coburn, Llc One Us
Bank Plaza St. Louis, MO 63101

William Stevens Brown Nelson Mullins Riley &
Scarborough, LLP P.O. Box 10084 Greenville,
SC 29603
Lane Whittaker Davis Nelson Mullins Riley &
Scarborough Llp P.O. Box 10084 Greenville, SC
29603
Steven E Buckingham Nelson Mullins Riley &
Scarborough Llp P.O. Box 10084 Greenville, SC
296030084

FORM4M

John Rogers Thompson Coburn Lip One Us
Bank Plaza St. Louis, MO 63101
Stephen D'Aunoy Thompson Coburn Lip One
Us Bank Plaza St. Louis, MO 63101
Kathy Wisniewski Thompson Coburn Lip One
Us Bank Plaza St. Louis, MO 63101

ATTORNEY(S) FOR THE PLAINTIFF(S)

SCRCP APP-24/FORM 4

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer, Clerk Of Court - Clerk of Court

07FORM4M

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	C.A. NO. 2009-CP-23-7229
Stevens Aviation, Inc.,	)	
	)	
Plaintiff,	)	
	)	ORDER GRANTING
vs.	)	PARTIAL SUMMARY JUDGMENT
	)	IN FAVOR OF PLAINTIFF,
DynCorp International LLC, and Science	)	STEVENS AVIATION, INC.
Applications International Corporation,	)	
	)	
Defendants.	)	
	)	

Plaintiff, Stevens Aviation, Inc. ("Stevens") has filed an Alternative Motion for Summary Judgment seeking a partial judgment on one of the issues underlying its claims against Defendant DynCorp International LLC ("DynCorp"). The Motion has been fully briefed, and the Court heard argument on the Motion on October 21, 2009. Subsequent to the hearing, the Court received additional documents from the parties relevant to the issues raised in the Motion.

Having considered the motions, briefs, additional documents, and arguments of the parties, the Court hereby GRANTS partial summary judgement in favor of Stevens, and finds that the Subcontract Agreement entered into by the parties is a "requirements contract" which obligates 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. The Court's judgment is based on the findings of fact and conclusions of law set forth below. See B & B Liquors, Inc. v. O'Neil, 361 S.C. 267, 603 S.E.2d 629 (2004).

FINDINGS OF FACT

In March of 2000, DynCorp and Stevens executed a Teaming Agreement.¹ 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." The Teaming Agreement outlined the respective roles and responsibilities of DynCorp and Stevens with respect to "the Project."

The Teaming Agreement provides as follows:

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, DynCorp may direct/authorize STEVENS 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 relating 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 '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.
- 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

¹ Stevens' submitted a copy of the Teaming Agreement to the Court, verified by affidavit. DynCorp has not, at any time, challenged the authenticity of the Teaming Agreement submitted by Stevens.

customer at the composite hourly 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 contain[ed] in OPNAVINST 4790.2.

d) Over and above (FBD). 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 contain[ed] in OPNAVINST 4790.2.

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

The U.S. Army awarded DynCorp "the Project" that was the subject of the Teaming Agreement, and issued to DynCorp U.S. Army Contract DAAH23-00-C-0226 (the "Prime Contract"). Subsequently, DynCorp and Stevens executed the Subcontract Agreement which is before this Court. The preamble of the Subcontract incorporates and makes the parties' "Teaming Agreement" part of the Subcontract, as it specifically provides that "the Teaming Agreement executed on 16 March, 2000, [] identifies the roles and responsibilities of the parties as Prime and Subcontractor in a cooperative effort to perform the requirements of the U.S. Army Contract DAAH23-00-C-0226" (emphasis added).

Section "C" of the Subcontract, entitled "DESCRIPTION/SPECIFICATIONS/WORK STATEMENT," provides, *inter alia*:

B. C-12/RC-12 STRIP AND PAINT. [Stevens] 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) ...

C. AIRCRAFT CONDITION INSPECTION (ACI). [Stevens] 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 ...

CONCLUSIONS OF LAW

"Contract interpretation begins with the language of the written agreement." Coast Federal Bank, FSB v. United States, 323 F.3d 1035, 1038 (Fed. Cir. 2003). "A contract is ambiguous only when it is susceptible to two reasonable interpretations." Hunt Construction Group, Inc. v. United States, 281 F.3d 1369, 1372 (Fed. Cir. 2002). Under a "four-corners" approach to contract interpretation, a judge sits in chambers and determines from his point of view whether the written words before him are ambiguous. *See, e.g., Mellon Bank, N.A. v. Aetna Business Credit, Inc.*, 619 F.2d 1001, 1011 (3rd Cir. 1980). Alternatively, the judge can hear the proffer of the parties and determine if there is objective indication that, from the linguistic reference point of the parties, the terms of the contract are susceptible of different meanings. *Id.* In the absence of an ambiguity, extrinsic evidence may not be considered. *See, e.g., City of Tacoma, Dept. of Public Utilities v. United States*, 31 F.3d 1130, 1134 (Fed. Cir. 1994).

At the hearing, in response to the Court's inquiry, both DynCorp and Stevens stated that it was their position that the Subcontract Agreement was unambiguous. The Court agrees that it is unambiguous. Because the Subcontract is unambiguous, its construction is a matter of law for the court and not a question of fact for the jury. *See, e.g., Black v. Freeman*, 274 S.C. 272, 262 S.E.2d 897 (1980). Thus, summary judgment is appropriate. *See, e.g., Midwest Financial Acceptance Corp. v. F.D.I.C.*, 93 F. Supp. 2d 327, 330 (W.D.N.Y. 2000).

This Court finds, as a matter of law, that the Subcontract Agreement² at issue is a "requirements contract" which obligated DynCorp to send/refer to Stevens all C-12, RC-12, and

² Paragraph H.5 of the subcontract provides:

"Irrespective of the place of performance, this subcontract will be construed and interpreted according to the federal common law of government contracts as

HC-35 aircraft sent to DynCorp under the Prime Contract for the performance of the specified maintenance work. A "requirements contract" is a type of enforceable indefinite quantity agreement, which is "based on the promise of the buyer to turn to the seller for all requirements or needs which may develop during the contract period." Ceredo Mortuary Chapel, Inc. v. United States, 29 Fed. Cl. 346, 349 (Ct. Cl. 1993); *see also* Coyle's Pest Control, Inc. v. Cuomo, 154 F.3d 1302, 1305 (Fed. Cir. 1998) ("A requirements contract is formed when the seller has the exclusive right and legal obligation to fill all of the buyer's needs for the goods or services described in the contract"). "The test of a valid requirements contract is whether the buyer's promise is illusory; when the promisor retains an option exercisable in his sole discretion the promise will be held illusory." Ceredo, 29 Fed. Cl. at 349.

The Court finds that, adhering to the traditional four-corners approach, the Subcontract (together with the incorporated Teaming Agreement) is unambiguously a requirements contract. Additionally, using the alternative approach of hearing the proffer of the parties, the Court is further convinced that the Subcontract is unambiguously a requirements contract. Although the Subcontract Agreement before this Court involves two private parties, its underlying purpose relates to a government contract, *i.e.*, it was executed as "a cooperative effort to perform the requirements of U.S. Army Contract DAAH23-00-C-0226." This court thus finds the analysis in Ceredo to be persuasive.

In Ceredo, the question was whether the agreement before the court was an enforceable requirements contract or an unenforceable indefinite quantity agreement. 29 Fed. Cl. at 348.

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."

The Ceredo court indicated that generally there are three types of enforceable contracts for procurement of services and supplies: (1) definite quantity contracts; (2) indefinite quantity contracts with an ascertainable minimum; and (3) requirements contracts. Id. at 349. The court noted that all enforceable service contracts will fall into one of these three categories, while, on the other hand, an indefinite quantity agreement with no ascertainable minimum is unenforceable and has a legal status equivalent to a price list or proposal¹. Id.

The Ceredo court reasoned that, as a matter of general contract law, binding contract interpretations have long been favored over non-binding ones because the fundamental purpose of contract law is to enforce mutual agreements whenever possible. Id. at 348. The court thus held that understandings equally susceptible to interpretation as enforceable requirements contracts or as unenforceable indefinite quantity agreements will be classified as requirements contracts. Id.

In Ceredo, the defendant argued, *inter alia*, that its proffered non-exclusive interpretation of its duty was supported by the contract's text "*which nowhere specifie[d] that it (was) an exclusive requirements contract.*" Id. at 350 (emphasis added). DynCorp makes this same type of argument here, urging the Court to interpret the Subcontract Agreement as an unenforceable indefinite quantity agreement under which it is only responsible for "services actually ordered (i.e. by purchase order) and provided by [Stevens]". But, in Ceredo the court rejected this argument, holding:

[T]he presence or absence of magic terms is not the end of contract analysis; the intent of the contracting parties is the key to contract interpretation. Just as contracts which proclaim themselves to be requirements contracts might not be, so too contracts which do not mention the term can be requirements contracts.

¹ This matter does not involve either a definite quantity contract nor an indefinite quantity contract with an ascertainable minimum. Accordingly, the contract subjudice is either a requirements contract or an indefinite quantity agreement.

Id. (internal citations omitted); *see also* Coyle's, 154 F.3d at 1305-06 (noting that the absence of reference to regulations relating to requirements contracts makes it "more difficult to find the required exclusivity," but going on to analyze whether contract before court was, nonetheless, a "requirements contract").

Although the Ceredo court found that "estimated quantities"⁴ strengthens the implication of exclusivity, it held that such "estimates" are not dispositive in classifying agreements as requirements contracts. Id. at 351. The court did hold, however, that "per-unit pricing ... is an essential element in a requirements contract showing that the supplier is bound to perform regardless of the quantity of work." Id. (citations omitted). The Subcontract Agreement in this case contains per unit pricing, further evidencing the parties' intent that it be treated like a requirements contract.

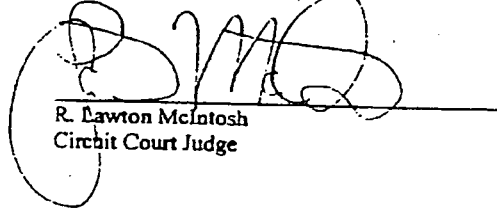
In Ceredo, the court went on to find that several other provisions in the contract before it supported its classification as a requirements contract. Id. at 352-53. Here, too, other provisions support classifying the Subcontract Agreement as a requirements contract. In Ceredo, as here, there was no clause indicating that the parties "did not intend to form a binding, exclusive contract," a "point [which] would probably have been given [some] extensive and visible treatment." Id. at 352. In Ceredo, the court found that clauses allowing for diversion of business under specified circumstances would be "useless" if there was no exclusivity because there would be no obligation to send any business at all. Id. Similarly, here, the lengthy clauses setting forth specified circumstances under which the Subcontract Agreement could be terminated would be useless if there was no exclusivity because DynCorp could, effectively, unilaterally choose to terminate the Subcontract by diverting all business elsewhere. When

⁴ There are no estimated quantities in the parties' subcontract.

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 ..." Gould, Inc. v. United States, 935 F.2d 1271, 1274 (Fed. Cir. 1991).

FOR THE REASONS STATED HEREIN the Court grants Stevens' Alternative Motion for Summary Judgment and enters a partial judgment in Stevens' favor. The Court finds that the Subcontract Agreement is a requirements contract for the specified work on C-12, RC-12, and UC-35 aircraft, and obligates DynCorp to send to Stevens all such aircraft submitted to DynCorp under the Prime Contract for the purpose of allowing Stevens to perform the aviation maintenance services specified in that Agreement.

SO ORDERED THIS 17th DAY OF November, 2009



R. Lawton McIntosh
Circuit Court Judge

Anderson, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Stevens Aviation, Inc.,

Plaintiff,

vs.

DynCorp International LLC, and Science
Applications International Corporation,

Defendants.

2009 DEC -9 PM 4:37
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICK
IN THE COURT OF COMMON PLEAS
C.A. NO. 2009-CP-23-7229

PLAINTIFF STEVENS AVIATION, INC.'S
OPPOSITION TO DEFENDANT
DYNCORP INTERNATIONAL LLC'S
MOTION TO RECONSIDER

This Court has entered partial summary judgment in favor of Plaintiff Stevens Aviation, Inc. ("Plaintiff"). Based on its well-reasoned and legally-supported analysis, this Court found that the Subcontract Agreement which governs the relationship of the parties obligates Defendant DynCorp International LLC ("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 ("the Prime Contract") for the purpose of allowing Stevens to perform the aviation maintenance services specified in the Subcontract Agreement. Without citation to any law not previously considered by the Court, and without offering any new argument, DynCorp now asks this Court to reconsider its Order. Indeed, DynCorp implicitly, if not expressly, admits that it has filed its Motion to Reconsider only to "rehash[] all or part of an argument previously presented."¹

This Court's Order of partial summary judgment is supported by the facts and the law. Accordingly, DynCorp's Motion to Reconsider should be denied.

¹ See Defendant DynCorp International LLC's Memorandum Supporting Motion to Reconsider ("DynCorp Memo"), pp. 2-3.

ARGUMENT

A. THIS COURT CORRECTLY ANALOGIZED THIS CASE TO CEREDO AND COYLE'S.

DynCorp first takes issue with what it characterizes as this Court's "reliance upon the decision of Ceredo Mortuary Chapel, Inc. v. United States, 29 Fed. Cl. 346 (Cl. Cl. 1993)." According to DynCorp, this Court was wrong in finding that the analysis in Ceredo was "persuasive"² because the holding in that case does not "square with" the holding of the Federal Circuit Court of Appeals in Coyle's Pest Control, Inc. v. Cuomo, 154 F.3d 1302 (Fed. Cir. 1998). Notably, in making its argument, DynCorp completely ignores the fact that this Court also cited and discussed Coyle's as authority supporting its analysis and Order. See Order, pp. 5, 7.

In any event, DynCorp really never explains what it is in Ceredo that does not "square with" Coyle's. As best as Stevens can discern, what DynCorp actually seems to be arguing is that Coyle's supports the notion that there is no such thing as "implied exclusivity," and by "implied exclusivity" DynCorp apparently means that unless a contract expressly uses the word "exclusive" in describing the relationship of the parties to that contract, no exclusivity can be found. But, Coyle's does not support this position which DynCorp seems to espouse. Indeed, as noted by this Court in its Order, even though the contract in Coyle's did not use the word "exclusive" in describing the relationship of the parties, that court still went on to analyze whether exclusivity was mandated by its provisions, expressly noting:

The contract does include terms that suggest exclusivity. For instance, the contract obligates Coyle 'to furnish *all* labor, service, equipment, transportation, materials and supplies to provide subterranean termite control and relates services on the *assigned* properties by HUD.

154 F.3d at 1305-06 (emphasis in original).

² What the Court said with respect to its discussion of Ceredo is that it found the "analysis in [it] to be persuasive." See Order, p. 5.

DynCorp also seems to be arguing that this Court erroneously "relied on" the Ceredo court's dicta indicating that when agreements are equally susceptible to interpretation as enforceable requirements contracts or unenforceable indefinite quantity agreements, they should be classified as requirements contracts. See DynCorp Memo, pp. 3-4. But, the premise of DynCorp's argument is simply wrong. While this Court did note this part of the Ceredo court's analysis, it did not "rely on" it. Indeed, nowhere did this Court indicate that it believes the Subcontract Agreement is "equally susceptible to interpretation as enforceable requirements contracts or unenforceable indefinite quantity agreements." *To the contrary*, this Court expressly and unequivocally stated that whether it looked at the Subcontract Agreement from "the traditional four-corners approach" or in light of the "proffer of the parties," it was susceptible of being construed in only one way, *i.e.*, as providing "exclusivity" as in the case of a requirements contract.

In any event, Coyle's simply does not stand for the proposition for which DynCorp offers it. Essentially, DynCorp asks this Court to find that Coyle's supports the notion that when agreements are equally susceptible to interpretation as enforceable requirements contracts or unenforceable indefinite quantity agreements, they *cannot* be classified as requirements contracts. But, Coyle's does not in any way support such a position. Nor does any other case.

In making its arguments, DynCorp offers confusing rhetoric about the Coyle's court having overruled the holding of Torncello v. United States, 681 F.2d 756 (Ct.Cl. 1982). (DynCorp Memo, p. 4). But, Coyle's did no such thing. The Coyle's court merely rejected one party's proffered interpretation of Torncello v. United States, 681 F.2d 756 (Ct.Cl. 1982). That party asserted that Torncello requires a court to make a government contract to "fit into one of three possible types of supply contract" and *requires* a court to choose a classification of

"requirements contract" over "indefinite quantity" contract. 154 F.3d at 1304-05. The Coyle's court merely said that Torncello does not stand for these propositions. Id. In any event, no matter how you interpret it, none of this dicta from Coyle's has anything to do with this Court's analysis or reasoning which led to its unequivocal conclusion that "the Subcontract is unambiguously a requirements contract."

Summary:

This Court should deny DynCorp's Motion to Reconsider because:

- Both Coyle's and Ceredo fully supports this Court's analysis;
- Both Coyle's and Ceredo are good law and have never been overruled; and
- The Coyle's court did not overrule or tarnish the Torncello opinion in any way, but merely rejected one party's proffered interpretation of it.

B. THIS COURT CORRECTLY FOUND THAT THE TEAMING AGREEMENT IS PART OF THE SUBCONTRACT.

DynCorp next rehashes its argument that this Court improperly considered the Teaming Agreement. DynCorp starts its argument from the erroneous position that "[n]othing in the Subcontract expressly incorporates the [Teaming Agreement] into the agreement." (DynCorp Memo, p. 5). In other words, DynCorp essentially ignores this Court's finding that the Teaming Agreement was adopted into the Subcontract Agreement *by express language* indicating: "...the Teaming Agreement executed on 16 March, 2000, [] identifies the roles and responsibilities of the parties as Prime and Subcontractor in a cooperative effort to perform the requirements of the U.S. Army Contract DAAH23-00-C-0226." See Order, p. 3.

DynCorp goes on to argue that this Court "offer[ed] no explanation why the integration clauses do not supersede the [Teaming Agreement's] terms." (DynCorp Memo, p. 5). But, the

Court's finding that the Teaming Agreement was incorporated into the Subcontract *is the explanation* for why the integration clauses do not supersede the Teaming Agreement. If, as this Court correctly found, the Teaming Agreement is incorporated into the Subcontract Agreement then it is not a "prior" agreement or representation subject to the "integration clauses." It is actually part and parcel of the Subcontract Agreement itself.

In any event, DynCorp ignores one critical fact in its arguments: The language the Court relied on in finding that the Teaming Agreement was incorporated into the Subcontract Agreement is the first provision of the Subcontract, and is set forth before any integration clause. *See Subcontract Agreement*, p. 3. In other words, by the time the Subcontract Agreement disclaims that any "prior" representation is superseded, the Teaming Agreement can no longer be classified in the "prior" category because it is already part of the Subcontract. For this reason, all of DynCorp's arguments are simply baseless.

DynCorp next regurgitates its argument that Northrop Grumman Information Technology, Inc. v. United States, 535 F.3d 1339 (Fed. Cir. 2008), does not support incorporation of the Teaming Agreement. *See DynCorp Memo*, p. 6. In this regard, DynCorp again argues "nothing in the Subcontract explicitly incorporates the [Teaming Agreement] as required by Northrop." *Id.* In finding the Teaming Agreement was incorporated into the Subcontract, this Court clearly considered and rejected this old argument of DynCorp's. And, this Court's ruling was clearly correct because the Northrop court expressly stated that there is no need for the "'magic words' of reference or of incorporation" urged by DynCorp. *See Northrop*, 535 F.3d at 1344.³

³ DynCorp goes on to argue that if this Court's analysis was correct several "other documents" would also be incorporated into the Subcontract Agreement. *See DynCorp Memo*, p. 6. DynCorp then self-servingly concludes that this Court must be wrong because these "other documents" were not incorporated into the Subcontract Agreement. *Id.* But, this Court has never considered whether any of

Finally, DynCorp offers the convoluted argument that the Court's Order "makes no sense" because the Teaming Agreement "expired" upon the execution of the Subcontract Agreement. See DynCorp Memo, p. 7. Assuming, *arguendo*, that DynCorp is right that the Teaming Agreement was "expired" at the time of incorporation (which it is not), what DynCorp is apparently saying is that a lapsed agreement cannot be incorporated into a new agreement. DynCorp cites no authority for this baseless proposition, and the law is actually to the contrary. Cf. Davies Precision Machining, Inc. v. United States, 35 Fed.Cl. 651, 660 (Cl.Cl. 1996) ("Once purchase orders lapse, they can be revived by words or conduct of the Government seeking or encouraging continued performance"); see also Hembree v. Johnson, 482 S.E.2d 407 (Ga.App. 1997) (finding exculpatory clause in expired membership agreement barred plaintiff's claim because he signed a "membership addendum" for new membership which expressly referenced terms of expired agreement). In any event, the Teaming Agreement did not lapse until the Subcontract Agreement was executed, and by the time the Subcontract Agreement was executed the current/valid Teaming Agreement was already incorporated into it.

Summary:

This Court should deny DynCorp's Motion to Reconsider because:

- The Teaming Agreement was not a "prior" agreement or representation as referenced in the integration clauses;
- The Court's Order unequivocally set forth the exact language which it found supported incorporation of the Teaming Agreement into the Subcontract;

these "other documents" identified by DynCorp are in fact incorporated into the Subcontract. Nor does it need to consider whether they are in order to determine any issue before the Court. Furthermore, with respect to these "other documents" which DynCorp references, DynCorp has not, and cannot, point to any language remotely similar to that which this Court relied on in finding that the Teaming Agreement was incorporated into the Subcontract Agreement.

- Whether other documents not before the Court are incorporated into the Subcontract Agreement is completely irrelevant to the Court's analysis;
- The Teaming Agreement was still current and valid when the Subcontract was executed; and
- This Court's findings are fully supported by Northrop.

C. THIS COURT CORRECTLY FOUND THAT THE SUBCONTRACT AGREEMENT CAN BE CLASSIFIED AS A REQUIREMENTS CONTRACT.

DynCorp essentially ignores this Court's written opinion when it next argues that the Order granting partial summary judgment "fails to specify what terms from the Subcontract meet [the] threshold of exclusivity." *See* DynCorp Memo, pp. 8. To the contrary, this Court detailed the terms on which it was basing its Order on pages 2 through 4 therein. DynCorp's argument thus defies explanation.

DynCorp's contention that this Court's reasoning is based on "reverse-legal logic" and is "illogical" fares no better. *See* DynCorp Memo, pp. 8-9. In this regard, DynCorp says that this Court's Order stands for the proposition that "the absence of a provision reflecting non-exclusivity evidences exclusivity." *Id.* This statement is baseless, and exposes the extent of DynCorp's desperation in bringing its current Motion. This Court neither said, nor implied, any such thing. Instead, what this Court did is set out in painstaking detail the multiple provisions of the Subcontract on which it was relying to find exclusivity existed.

DynCorp next argues that this Court's Order "fails to address the incorporated Federal Acquisition Regulations" which gave it the alleged "right" to modify the scope of the Subcontract Agreement. *Id.* at 9. Following DynCorp's logic, this Court was required to specifically address and reject every argument made by DynCorp in its efforts to oppose

summary judgment, regardless of how convoluted or ridiculous the argument may have been. There is simply nothing which requires such findings. DynCorp raised its Regulations arguments before the Court, and Stevens offered a contrary view of the purpose of the Regulations. The rejection of DynCorp's arguments is implicit in the Court's granting of judgment.⁴

Summary:

This Court should deny DynCorp's Motion to Reconsider because:

- The Court's well-reasoned and thorough opinion identifies the several provisions of the Subcontract Agreement which restrict DynCorp's ability to "shop around" for the aviation services outlined in the Subcontract Agreement;
- By asserting throughout this litigation that the Subcontract Agreement created a relationship of exclusivity, Stevens, in effect, argued that the Subcontract is a requirements contract;
- The Court correctly considered the provisions of the Teaming Agreement which was incorporated into the Subcontract Agreement; and
- The Court interpreted the Subcontract Agreement without considering any "extrinsic" evidence as that term is legally defined.

⁴ DynCorp, as it has at various times throughout this litigation, asserts that Stevens committed some act or omission which justified some type of "modification" of the Subcontract Agreement under which it could rightfully diverted aircraft away from Stevens to other maintenance facilities. See DynCorp Memo, p. 9, fn.3. DynCorp is wrong about this, but it simply does not matter. Whether such a "modification" could have occurred, or did occur, has nothing to do with whether the Subcontract was a "requirements contract" as found by this Court. Likewise, whether Stevens was late on deadlines, as DynCorp opportunistically asserts, has nothing to do with this issue. Such things as these are relevant, if at all (and Stevens contends they are not), only when determining whether Stevens' alleged acts and omissions justified a termination of the Subcontract under the express termination provisions set forth therein.

D. THIS COURT'S FINDINGS ARE CONSISTENT, WELL-REASONED, AND FREE OF CONTRADICTION.

DynCorp next argues that the Order granting partial summary judgment "contradicts itself with respect to the UC-35 aircraft." (DynCorp Memo, p. 10). DynCorp's argument is based on flawed reasoning and facts. For one thing, DynCorp erroneously argues that Stevens "predicates its entire exclusivity argument on the definition of the term aircraft contained in the Subcontract's definition section." *Id.* at pp. 10-11. This statement is simply false. Stevens based its position on many facts, including but not limited to the multiple uses of the defined term "Aircraft" throughout the Subcontract Agreement, the express references to the UC-35 aircraft in the Teaming Agreement, and the distinctions in the statements of work wherein aircraft were sometimes referred to generally and sometimes referred to specifically as C-12/RC-12 aircraft.

DynCorp also argues that the absence of "per-unit pricing" for the UC-35 in the Subcontract Agreement makes this Court's analysis contradictory. *See* DynCorp Memo, pp. 10-11. But, the existence of "per unit pricing" is only one of several factors which this Court relied on for its findings. DynCorp argues as though it was the entirety of the Court's reasoning. Although there is no per-unit pricing in the Subcontract Agreement with respect to the U-35 aircraft,⁵ the other provisions of that document referenced by the Court fully support its findings and judgment, including the plain language in the Subcontract Agreement's definitions, the multiple references to the defined terms throughout it, the express references in the Teaming Agreement to the U-35, and the references to the Prime Contract.

⁵ DynCorp well knows that there is no "per-unit" pricing for the U-35 in the Pricing Schedule because when the Subcontract Agreement was executed the U-35 airplanes were relatively new and subject to extensive warranties. Thus, at that time neither DynCorp nor Stevens was contemplating any depot work on any of them until several option years later.

Summary:

This Court should deny DynCorp's Motion to Reconsider because:

- The Court never said that the existence of per-unit pricing was the sole determinative factor underlying its judgement;
- The plain language of the Subcontract Agreement makes UC-35 aircraft subject to its provisions; and
- The Court's Order is free of contradiction and is well-reasoned.

E. THIS COURT'S INTERPRETATION OF THE SUBCONTRACT AGREEMENT IS THE ONLY INTERPRETATION UNDER WHICH ALL OF ITS TERMS CAN BE GIVEN MEANING.

DynCorp's next argument clearly demonstrates the flawed nature of its reasoning. DynCorp asserts that this Court's Order ignores "material provisions" of the Subcontract Agreement. *See* DynCorp Memo, pp. 11-12. DynCorp then goes on to create a list which is made up mostly of items that are *not* in the Subcontract. In reality then, what DynCorp seems to be really complaining about is that this Court did not base its interpretive analysis on provisions which *might* have been included in the Subcontract Agreement, but were not. DynCorp thereby suggests that this Court should have interpreted the Subcontract contrary to the well-established law advising that "[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)

This Court's Order was clearly correct because it considered the actual provisions in the Subcontract Agreement, and arrived at an interpretation that gives a reasonable meaning to all of its parts and left no terms useless, inexplicable, or meaningless. This is exactly what this Court was required to do. *See, e.g., Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991).

Summary:

This Court should deny DynCorp's Motion to Reconsider because:

- This Court's interpretation is the only one which will give effect to all of the actual provisions contained in the Subcontract Agreement; and
- The Court considered all the relevant provisions of the Subcontract Agreement, without regard to which proffered interpretation they might favor.

F. THE COURT INTERPRETED THE UNAMBIGUOUS SUBCONTRACT AGREEMENT ON ITS FACE WITHOUT REGARD TO EXTRINSIC EVIDENCE, AND THUS NO DISCOVERY COULD BE RELEVANT.

Without explanation, DynCorp asserts that "[t]he Court considered extrinsic evidence when granting Plaintiffs' Alternative Motion for Summary Judgment." (DynCorp Memo, p. 12). DynCorp argues it was error for the Court to do so because it had not yet conducted discovery. But, DynCorp never identifies any actual "extrinsic evidence" the Court is purported to have considered. And, the fact is that it considered none.

DynCorp simply misunderstands the Court's Order if it intends to convey an argument that the Court admitted to using "extrinsic evidence" in stating that its conclusions would be the same even if it was, in the *alternative*, inclined to consider the "proffer of the parties." *Id.* at p. 13. There is nothing which suggests that "the proffer of the parties" referred to by the Court means "extrinsic evidence." Indeed, this dicta of the Court clearly means nothing more than that the Court listened to the parties' competing "proffered" interpretations of the Subcontract Agreement, read the briefing of each party on this "proffer," and, having done so, decided that the Subcontract Agreement was unambiguous so that no "extrinsic evidence" was necessary. Notably, DynCorp does not explain how any discovery could possibly impact this Court's

analysis in light of the fact that the Court found the Subcontract Agreement to be unambiguous.

And, in fact, it could not.

Summary:

This Court should deny DynCorp's Motion to Reconsider because:

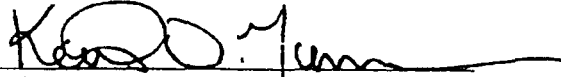
- Discovery is irrelevant when a court finds a contract is unambiguous and can be interpreted as a matter of law;
- Arguments and briefing of the parties as to their proffered interpretations of a contract do not constitute "extrinsic evidence" as that term is legally recognized; and
- The Court did not consider, and could not consider, any extrinsic evidence in interpreting the unambiguous Subcontract Agreement, and thus no discovery could possibly impact the Court's decision.

CONCLUSION

For the reasons outlined herein, Plaintiff Stevens Aviation, Inc. respectfully requests that this Court deny the Motion to Reconsider filed by Defendant DynCorp International LLC, and grant it all other appropriate relief.

This 9th day of December, 2009.

Respectfully submitted,



Keith D. Munson (SC Bar #13400)
Catherine R. Atwood (SC Bar #77367)
WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company
Post Office Box 10208
Greenville, SC 29603-0208
Telephone: (864) 255-5421
Fax: (864) 239-5852

and

Linda L. Shapiro
Kathy A. Wisniewski
John W. Rogers
THOMPSON COBURN LLP
One US Bank Plaza
St. Louis, MO 63101
Telephone: (314) 552-6000
Fax: (314) 552-7000

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE) 782 DEC -3 PM IN THE COURT OF COMMON PLEAS
 Stevens Aviation, Inc.,) THIRTEENTH JUDICIAL CIRCUIT
) Civil Action No. 2009-CP-23-7229
 Plaintiff,)
)
 vs.) DEFENDANT DYNCORP INTERNATIONAL
) LLC'S MOTION TO RECONSIDER
 DynCorp International LLC, and)
 Science Applications International)
 Corporation,)
 Defendants.)

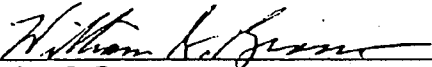
Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure and the inherent authority of the Court, DynCorp International LLC ("DynCorp"), asks the Court to reconsider its Order dated November 19, 2009. This Motion is supported by the following grounds:

- The Order misplaced reliance on Ceredo Mortuary Chapel v. United States.
- The Order erred by incorporating the Teaming Agreement into the Subcontract.
- The Order erred by finding the Subcontract a requirements contract.
- The Order contradicts itself concerning UC-35 aircraft.
- The Order ignores material provisions of the Subcontract.
- The Order erred by disallowing DynCorp to conduct discovery.

This Motion is further supported by the South Carolina Rules of Civil Procedure, applicable precedent, and a contemporaneously filed legal memorandum.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
William S. Brown
SC Bar No. 064164
E-Mail: william.brown@nelsonmullins.com
Lane W. Davis
SC Bar No. 68796
E-Mail: lane.davis@nelsonmullins.com
Steven E. Buckingham
SC Bar No. 75089
E-Mail: steven.buckingham@nelsonmullins.com
104 South Main Street / Ninth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
(864) 250-2300

Attorneys for Defendant DynCorp International LLC

Greenville, South Carolina

December 3, 2009

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Stevens Aviation, Inc.,)

2009 DEC -3) PHIN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

FILED - CIVIL ACTION No. 2009-CP-23-7229

Plaintiff,)

vs.)

DynCorp International, LLC and Science
Applications International Corporation,)

Defendants.)

DEFENDANT DYNCORP INTERNATIONAL
LLC'S MEMORANDUM SUPPORTING
MOTION TO RECONSIDER

DynCorp International, LLC ("DynCorp") respectfully submits this Memorandum Supporting its Motion to Reconsider the Court's Order dated November 17, 2009 ("Order").

I. INTRODUCTION

DynCorp asks the Court to reconsider its Order for six (6) reasons:

- The Order misplaced its reliance on Ceredo Mortuary Chapel, Inc. v. United States.
- The Order erred by incorporating the Teaming Agreement into the Subcontract.
- The Order erred by finding the Subcontract is a requirements contract.
- The Order contradicts itself concerning UC-35 aircraft.
- The Order ignores material provisions of the Subcontract contrary to its holding.
- The Order erred by disallowing DynCorp to conduct discovery.

Due to these reasons, DynCorp respectfully asks the Court to revisit its Order. The Court should instead deny Plaintiff's Motion.

II. FACTUAL BACKGROUND

Stevens Aviation, Inc. ("SAI") filed suit against DynCorp on August 24, 2009 alleging claims for breach of contract and breach of the implied covenant of good faith and fair dealing. DynCorp filed an Answer on September 14, 2009. DynCorp then filed a Motion for Judgment on the Pleadings on September 17, 2009 due to the lack of exclusivity language in the Subcontract disputed by the Parties. SAI countered by filing its own Motion for Judgment on the Pleadings, or in the alternative, a Motion for Partial Summary Judgment on October 1, 2009.

The Court conducted a hearing on the cross-motions on October 21, 2009. At the time of the hearing, no discovery had been completed by either Party. Thereafter, the Court granted SAI's Motion for Partial Summary Judgment by Order dated November 17, 2009 and received by DynCorp on November 23, 2009. DynCorp filed the instant Motion to Reconsider and Supporting Memorandum in response to the Court's ruling.

III. PROCEDURAL STANDARD

Although similar, a Rule 59 Motion under the South Carolina Rules of Civil Procedure differs significantly from its federal counterpart. "First, it is proper to view a Rule 59(e) motion [under South Carolina law] not only as a vehicle to request the trial court 'alter or amend the judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments." Elam v. South Carolina Dep't of Transp., 361 S.C. 9, 21-22, 602 S.E.2d 772, 778-79 (2004). "A motion under Rule 59(e) long has been viewed as a 'motion for reconsideration' despite the absence of those words from the rule." Id.

A party can ask the Court to reconsider its ruling, "even if it means rehashing all or part of an argument previously presented." Id. (citing Arnold v. State, 309 S.C. 157, 172-

73, 420 S.E.2d 834, 842 (1992) ("The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the judge to reconsider matters properly encompassed in a decision on the merits."); Curcio v. Caterpillar, Inc., 355 S.C. 316, 585 S.E.2d 272 (2003) (an example of the many cases in which trial and appellate courts describe a Rule 59(e) motion as a "motion to reconsider" or "motion for reconsideration"); James Flanagan, South Carolina Civil Procedure 474-75 (2d ed. 1996). After all, "there is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity." Elam, 361 S.C. at 22, 602 S.E.2d at 779. This analysis applies to the Motion *sub judice*.

IV. LAW/ANALYSIS

The Court should reconsider and reverse its prior Order.

A. The Court Misplaced Its Reliance on the Ceredo decision.

The Order misplaced its reliance upon the decision of Ceredo Mortuary Chapel, Inc. v. United States, 29 Fed. Cl. 346 (1993). Three of the Order's four pages of legal conclusions centrally rely on the Ceredo decision. (See, e.g., Order p. 5 ("This court thus finds the analysis in Ceredo to be persuasive.")) But the Ceredo decision's holding does not square with the holding of Coyle's Pest Control, Inc. v. Cuomo, 154 F.3d 1302 (Fed. Cir. 1998). And, the Coyle's decision was handed down five years after Ceredo by a higher, controlling court. Despite the same, the Order follows Ceredo but ignores Coyle's contrary analysis. This constitutes legal error.

As an initial matter, the Order adopts Ceredo's rationale finding "implied" exclusivity in order to render the Subcontract as an enforceable requirements contract. (See Order p. 6

("The Court thus held that understandings equally susceptible to interpretation as enforceable requirements contracts or as unenforceable indefinite quantity agreements will be classified as requirements contracts.".) In reaching this result, Ceredo relied upon the holding of Torncello v. United States, 681 F.2d 756, 761 (Ct. Cl. 1982). Overlooked by this Court's Order, however, the Coyle's Court later overruled this analysis from Torncello and held: *"In approving the Board's judgment, this court rejects the notion that Torncello v. United States requires it to save an otherwise unenforceable indefinite quantity contract by interpreting it as "implied" requirement contract."* Coyle's, 154 F.3d at 1304 (emphasis added). As a consequence, the Court's Order relied upon Ceredo's holding, which in turn, relied upon a holding from Torncello which has been actually rejected by the Federal Circuit. This constitutes legal error.

Summary:

The Court should reconsider and reverse its ruling because:

- The Coyle's decision conflicts with the Ceredo holding, as relied upon by the Court.
- The Court of Claims authored the Ceredo opinion in 1993.
- The Federal Circuit authored the Coyle's opinion in 1998.
- The Federal Circuit creates binding precedent for the Court of Claims, not *vice versa*.
- The Ceredo holding relied upon the Torncello opinion, which the Federal Circuit rejected in Coyle's.
- The Court should have applied Coyle's, not Ceredo.

Accordingly, the Court applied the wrong law when issuing its Order.

B. The Order mistakenly incorporated the Teaming Agreement into the Subcontract.

The Court erred by incorporating the Teaming Agreement ("TA") into the Subcontract for three reasons:

1. The Order Ignored the Subcontract's Integration Clauses.

The Order improperly ignored the Subcontract's integration clauses. The Subcontract states:

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.

(Subcontract p. 3.) And:

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.

(Id. at 51.) Nothing in the Subcontract expressly incorporates the TA into the agreement.

Accordingly, the Court should revisit its Order and take into account the impact of the integration clauses.

The Order offers no explanation why the integration clauses do not supersede the TA's terms. This omission is important for three reasons. Initially, the first integration clause (as cited above) directly follows the language relied upon by the Court when incorporating the TA into the Subcontract. (See Subcontract p. 3 ("[T]he parties entered into a Teaming Agreement" identifying their roles as "Prime and Subcontractor in a cooperative effort to perform the requirements" of the Prime Contract.)) Second, the clause citing the TA never

actually incorporates the TA. Third, the TA constituted the only "prior agreement" between the Parties about which the integration clauses could refer. As such, the integration clauses make no sense if the Subcontract incorporates the TA. Ignoring such clauses constitutes error and the Court should revisit its ruling.

2. The Order Ignores Controlling Federal Common Law.

The Order ignores federal common law—the law both Parties admit controls the Subcontract's interpretation. Under federal common law:

[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) (quoted and followed by Carahsoft Tech. Corp. v. United States, 86 Fed. Cl. 325, 350 (2009)). Yet, nothing in the Subcontract explicitly incorporates the TA as required by Northrop and the Order fails to explain how the language citing the TA satisfies Northrop, which it does not. As a result, the Order's incorporation of the TA constitutes legal error.

Under the Order's analysis, all documents merely cited in the Subcontract should be incorporated. If true, the Parties' bid proposal and the Prime Contract would have been considered incorporated and also must have been considered by the Court, but were not. Some documents cannot be incorporated, while others rejected under the same standard. Accordingly, the Court should either not have incorporated the TA or it should have incorporated the TA, the bid proposal, and Prime Contract, which it did not. Such inconsistencies constitute error.

3. The Order Ignores the TA's Terms and Conditions.

The Order's incorporation of the TA's terms makes no sense, because by its own terms, the TA expired. Paragraph 2.02 on page 1 of the TA states:

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:

.....

(e) Lapse of 24 months from the effective date of this Agreement.

.....

(h) Award of a subcontract by DynCorp to Stevens for its designated portion of the project as set forth in Paragraph 2.01 hereof.

(TA ¶ 2.02.) Thus, under Paragraph 2.02(e), the TA would have expired no later than March 16, 2002, two years after the effective date of March 16, 2000. (See *id.* at 4.) However, the execution of the Subcontract terminated the TA even before that date, under Paragraph 2.02(h).

By incorporating the TA into the Subcontract, the Order incorporated terminated terms and conditions. This makes no sense. Moreover, just like the Subcontract's integration clauses, the TA's terms and conditions manifest the Parties' intent to have the Subcontract supersede the same. This is why the TA terminated upon execution of the Subcontract. Not surprisingly, this dovetails with the Subcontract's integration clauses. The Order's failure to address these issues constitutes error.

Summary:

The Court should reconsider and reverse its ruling because:

- The Order ignores the integration clauses in the Subcontract.

- The Order fails to explain what language explicitly incorporates the terms and conditions of the TA into the Subcontract.
- The Order incorporates the TA but omits incorporation of other referenced documents of greater importance.
- The Order does not follow Northrop's holding.
- The Court ignored the TA's terms providing the prior termination of that agreement.

Accordingly, the Court erred when it incorporated the TA into the Subcontract.¹

C. The Court Erred in Ruling the Subcontract a Requirements Contract.

The Subcontract lacks the requisite exclusivity language to constitute a requirements contract. In order to form a requirements contract, the Subcontract required language reflecting a "promise by [DynCorp] to purchase the subject matter of the contract exclusively from [SAI]." Coyle's, 154 F.3d at 1305 (quoting Modern Sys. Tech. Corp. v. United States, 979 F.2d 200, 205 (Fed. Cir. 1992)). Even the Ceredo opinion held such a showing was required. Ceredo, 29 Fed. Cl. at 350 ("Unless the buyer's freedom to shop elsewhere is limited, the contract will fail for lack of consideration.") Notwithstanding this requirement, the Order fails to specify what terms from the Subcontract meet this threshold of exclusivity.

No terms of the Subcontract reflect such exclusivity. Instead, following Ceredo, the Order holds that the absence of a provision reflecting non-exclusivity evidences exclusivity. (Order p. 7.) This reverse-legal logic errs.

¹ DynCorp would further note the Court treated the TA as part of the Subcontract, but it was not so incorporated. As a result, the Order necessarily relied upon extrinsic evidence—the TA—when construing the Subcontract. Simultaneously, the Order adjudged the Subcontract unambiguous. Such analysis cannot be reconciled. See Bank of Guam v. United States, 578 F.3d 1318, 1328 (Fed. Cir. 2009) (extrinsic evidence should only be considered when the contract is ambiguous); McAbee Constr., Inc. v. United States, 97 F.3d 1431, 1435 (Fed. Cir. 1996) (same).

The absence of a provision stating the lack of an obligation does not prove intent to assume an obligation. Such analysis is illogical. If this were proper contract construction, then every time a contract failed to note a party did not have to do something—anything—then that party would have to do it. Indeed, no such provision existed in Coyle's and the Federal Circuit reached the *exact* opposite result reached in this case by rejecting Torncello, upon which Ceredo relied. If the Court revisits its Order and applies Coyle's, as it should, the opposite result obtains.²

The Order simultaneously fails to address the incorporated Federal Acquisition Regulations, which allow DynCorp to modify the Subcontract's scope. (See Subcontract p. 45.) Such FARs contradict the Order's finding that the Subcontract constituted a requirements contract. Moreover, DynCorp expressly exercised its rights under these FARs to modify the Subcontract's scope due to SAI's inability to complete work in the time periods prescribed by the Subcontract. (See DynCorp Letter to SAI, attached hereto as Exhibit 1.) The Order erred by not taking into account these contrary FARs.³

² Taken to its logical extreme, under the Order, any agreement containing only a unit price would constitute a requirements contract, since the requisite exclusivity could be implied by the lack of a non-exclusivity clause. This does not accord with the federal law of government contracts.

³ DynCorp has not previously proffered such evidence and other comparable evidence because DynCorp believed, and continues to believe, SAI's Motion for Summary Judgment was not timely. Moreover, DynCorp notes the Court's ruling may have serious implications on the availability of military aircraft to the U.S. Army at critical periods. As reflected in Exhibit 1, SAI has routinely missed repair and maintenance deadlines presumably due to staffing problems.

Summary:

The Court should revisit its Order because:

- Requirements contracts require language restricting the buyer's ability to shop elsewhere, but none exists in the Subcontract.
- Not even SAI contended the Subcontract constituted a requirements contract before the Court ruled.
- The Court relied upon the TA but its terms are superseded and terminated.
- If the Court considers extrinsic evidence like the TA, DynCorp should be afforded the opportunity to develop and present counter evidence.

Accordingly, the Court should reconsider and reverse its Order.

D. The Order's Analysis Contradicts Itself Concerning UC-35 Aircraft.

The Order contradicts itself with respect to UC-35 aircraft. Citing Ceredo, on page 7 of the Order, the Court held:

The court did hold, however, that "per-unit pricing . . . is an essential element in a requirements contract showing that the supplier is bound to perform regardless of the quantity of work." Id. The Subcontract Agreement in this case contains per unit pricing, further evidencing the parties' intent that it be treated like a requirements contract.

(Order p. 7.) Contrary to the Order, however, the Subcontract contains no per unit pricing for UC-35 aircraft. According to the Court's analysis, then, no requirements contract could exist for UC-35 aircraft, as "per-unit pricing . . . is an essential element in a requirements contract." Id. Yet, the Order makes no effort to reconcile such patent inconsistencies. This constitutes error.

In fact, the Order fails to address the absence of UC-35 airplanes from the Pricing Schedule altogether. Such omitted analysis is critical, since SAI predicates its entire exclusivity argument on the definition of the term aircraft contained in the Subcontract's

definitions section. If the Parties intended for *all* aircraft to go to SAI, as contended and found by the Court, then such an obligation would be reflected in the Pricing Schedule, which it is not. DynCorp respectfully asks the Court to make specific rulings on these issues to avoid further confusion at the appellate level.

Summary:

The Court should revisit its Order because:

- The Order holds per-unit pricing is an essential element of a requirements contract.
- The Order rules that UC-35 airplanes are part of the Subcontract, which was found to be a requirements contract.
- No per-unit pricing exists in relation to UC-35 airplanes.
- The absence of UC-35 airplanes conflicts with the definition of aircraft relied upon by SAI in arguing the Subcontract constitutes an exclusive agreement.

Accordingly, the Court should reconsider and reverse its Order.

E. The Order Ignores Material Provisions of the Subcontract.

According to page 8 of the Order, the Court sought to give "a reasonable meaning to all . . . parts" of the Subcontract. (Order p. 8.) However, the Order neglects to reconcile a slew of terms and conditions favoring DynCorp's construction of the Subcontract. The Order fails to reconcile the existence of the following contract provisions:

- The Subcontract never identifies itself as a requirements contract;
- The Subcontract never uses the term exclusive;
- The Subcontract never states that DynCorp cannot use other contractors;
- The Pricing Schedule fails to reference UC-35 airplanes whatsoever;
- The relied upon definition of the term "aircraft" cites both UC-35 planes and C-12/RC-12 aircraft, but the Pricing Schedule contains no reference to UC-35 planes;

- The Pricing Schedule contains no quantity terms;
- The Subcontract cites Federal Acquisition Regulations, which permit DynCorp to change the Subcontract's scope, inconsistent with a requirements contract;
- None of the required Federal Acquisition Regulations required for the existence of a requirements contract are cited in the Subcontract, although several pages of FARs were included by the Parties;
- Other services provided under the Subcontract contain quantity terms;
- The Pricing Schedule takes precedence over other terms of the Subcontract which conflict with the same.⁴

Thus, the Order simply ignores various material contract provisions which rebut the Subcontract as a requirements contract, while only taking into account those provisions supporting SAI's urged construction. This is contrary to the Order's language where it stated that it sought to provide "reasonable meaning" to all terms.

Summary:

The Court should revisit its Order because:

- The Order stated that it sought to give effect to all terms of the Subcontract.
- The Order omitted the Subcontract provisions favoring DynCorp's position.

Accordingly, the Court should reconsider and reverse its ruling in light of the omitted provisions.

F. The Court Erred by Disallowing DynCorp to Conduct Discovery Before Entering Judgment.

The Court considered extrinsic evidence when granting Plaintiffs' Alternate Motion for Summary Judgment but failed to afford DynCorp any opportunity to conduct discovery.

⁴ There were various other contract terms cited in DynCorp's prior briefs, which DynCorp incorporates by reference. None of the terms or issues raised by DynCorp, however, are addressed by the Order.

Under South Carolina law, it is axiomatic that a non-movant should have a full and fair opportunity to conduct discovery before the Court grants a Motion for Summary Judgment. Baughman v. AT&T, 306 S.C. 101, 112, 116, 410 S.E.2d 537, 543, 545-46 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986)); Jones ex. rel. Jones v. Enter. Leasing Co.-S.E., 383 S.C. 259, 263-64, 678 S.E.2d 819, 821 (Ct. App. 2009); Gauld v. O'Shaugnessy Realty Co., 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008); Boone v. Sunbelt Newspapers, Inc., 347 S.C. 571, 579, 556 S.E.2d 732, 736 (Ct. App. 2001); Carolina Alliance for Fair Employment v. South Carolina Dep't of Labor, Licensing, and Regulation, 337 S.C. 476, 485, 523 S.E.2d 795, 800 (Ct. App. 1999). Indeed, the Order purports to have also used "the alternative approach of hearing the proffer of the parties," which is incorrect, as DynCorp has proffered no counter evidence. Moreover, DynCorp has consistently objected to the consideration of evidence in the absence of an opportunity to conduct discovery. No opportunity to "proffer" evidence has occurred because DynCorp has not received any opportunity to develop the evidentiary record. Failure to afford DynCorp this opportunity constitutes error.

DynCorp submitted to the Court a list of discovery necessary before Summary Judgment issues could be fairly heard. (See DynCorp Letter to the Court, attached hereto as Exhibit 2.) Moreover, several provisions of the Subcontract most favorable to DynCorp were overlooked by the Order. When such provisions are considered relative to SAI's contentions, an ambiguity necessarily arises.⁵ Accordingly, the Court erred by refusing DynCorp an opportunity to conduct discovery before granting Plaintiffs' Motion for Summary Judgment.

⁵ DynCorp's construction is the only uniform, unambiguous construction of the Subcontract.

Summary:

The Court should revisit its Order because:

- At the time of the hearing, no discovery had occurred.
- The Court considered extrinsic evidence.
- South Carolina law is clear that DynCorp is entitled to conduct discovery before Summary Judgment is entered.

Accordingly, the Court should reconsider and reverse its ruling because DynCorp was not afforded discovery.

V. CONCLUSION

For the reasons set forth above, the Court should reconsider and reverse its Order and deny SAI's Motion for Partial Summary Judgment.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: William S. Brown
William S. Brown
SC Bar No. 064164
E-Mail: william.brown@nelsonmullins.com
Lane W. Davis
SC Bar No. 68796
E-Mail: lane.davis@nelsonmullins.com
Steven E. Buckingham
SC Bar No. 75089
E-Mail: steven.buckingham@nelsonmullins.com
104 South Main Street / Ninth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
(864) 250-2300

Attorneys for Defendant DynCorp International LLC

Greenville, South Carolina
December 3, 2009

EXHIBIT 1

February 22, 2008

Mr. Larry Baker
Stevens Aviation
Donaldson Center
Industrial Air Park
600 Delaware Street
Greenville, SC 29605

Subject: Stevens Aviation Letter Dated February 13, 2008

Dear Larry,

The purpose of this correspondence is to reply to the subject letter. I appreciate your comments but I do not think they adequately address the issues we face.

I believe the focus at Stevens concerning manning, skill sets, pilots, and customer service has been lacking for some time. More importantly, Stevens has missed 24 out of 28 scheduled Aircraft Condition Inspection (ACI) deliveries either within the allotted 48 day timeframe or when you have requested extensions through DynCorp International (DI) and the Government for the past option year (see attached documentation). These delivery problems are not limited to just that timeframe.

Based on the above, DI is taking steps in reducing the amount of ACI and Reset work at your facility so that Stevens Aviation has a better opportunity in completing ACIs on-time and taking care of our ultimate customer, the US Army.

We need to talk about next steps and how this problem can be corrected at your convenience.

Sincerely,

Original Signed

Larry Ginder

EXHIBIT 2

FILE 2009

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
104 South Main Street / Ninth Floor / Greenville, SC 29601
Tel: 864.250.2300 Fax: 864.232.2925
www.nelsonmullins.com

William S. Brown
Tel: 864.250.2297
william.brown@nelsonmullins.com

October 23, 2009

VIA HAND DELIVERY & REGULAR MAIL

The Honorable Rivers Lawton McIntosh
Judge, Tenth Judicial Circuit
P.O. Box 8002
Anderson, SC 29622

RE: Stevens Aviation, Inc. v. DynCorp International LLC and Science Applications
International Corporation
2009-CP-23-07229
NMRS File No. 14296/01502

Dear Judge McIntosh:

During Wednesday's hearing, the Court asked DynCorp International, LLC ("DynCorp") to identify what outstanding discovery rendered Stevens Aviation, Inc.'s ("SAI") Motion for Summary Judgment premature.

Initially, I would note that SAI has submitted "additional material" regarding the motion by facsimile today. SAI attempts to characterize for the Court DynCorp's position. The submission is a complete mischaracterization. It is also interesting that SAI, talking out of both sides of its mouth, cites and relies on some Federal Acquisition Regulations ("FARs"), but argue that the FARs that hurt its position are irrelevant because this is "not a government contract." The FARs are relevant because this is a contract for the maintenance of government furnished property.

On exclusivity, DynCorp's position is and has always been that the analysis in the Coyle's case is proper. The starting point of the analysis is to look for language requiring exclusivity. Such an exclusivity provision undisputedly does not exist in the Subcontract. The failure to include provisions from the FARs regarding requirements contracts is just further evidence of the intent of the parties that the Subcontract is not a requirements contract.

With respect to the materials requested by the Court, the list of evidence which discovery would reveal is rather lengthy, as the case is only two months old and no discovery has been completed. Notwithstanding the same, DynCorp submits the following as an illustrative but non-exhaustive list of the evidence it anticipates will be discovered when the Parties complete discovery:

Atlanta • Boston • Charleston • Charlotte • Columbia • Greenville • Myrtle Beach • Raleigh • Tallahassee • Washington, DC • Winston-Salem

- (1) Memoranda, meeting notes, correspondence, written materials and oral testimony demonstrating the Parties never intended for the Subcontract to constitute an exclusive agreement, as such exclusivity would imperil the U.S. Army's ability to maintain, service, and repair its fleet of planes;
- (2) Memoranda, meeting notes, correspondence, written materials and oral testimony showing the parties did not intend to send all RC-12/C-12 aircraft to SAI under the Subcontract and SAI understood this fact;
- (3) Memoranda, meeting notes, correspondence, written materials and oral testimony directly contradicting the evidentiary materials submitted by SAI in support of the Motion *sub judice*—materials which DynCorp notes were never received by Defendant before SAI's filing of the same and, to date, has had no opportunity to gather and develop the evidence which DynCorp believes directly refutes such materials;
- (5) Memoranda, meeting notes, correspondence, written materials and oral testimony reflecting the Parties never agreed to send UC-35 planes to SAI;
- (6) Memoranda, meeting notes, correspondence, written materials and oral testimony reflecting the Parties did not intend to use the defined term "Aircraft" when such words were coupled with a modifier such as "RC-12/C-12 Aircraft";
- (7) Memoranda, meeting notes, correspondence, written materials and oral testimony reflecting why the Parties included a lengthy schedule containing Federal Acquisition Regulations but specifically omitted the Regulation pertaining to Requirements Contracts;
- (8) Memoranda, meeting notes, correspondence, written materials, and oral testimony reflecting why the Parties did not identify the Subcontract as a Requirements contract, if as SAI contends, the Subcontract was intended to embrace all RC-12/C-12 and UC-35 airplanes;
- (9) Memoranda, meeting notes, correspondence, written materials, and oral testimony reflecting that the parties other subcontractors would handle all UC-35 work and that is why Stevens never sought any UC-35 work until this lawsuit;
- (10) Memoranda, meeting notes, correspondence, written materials, and oral testimony reflecting why the Parties did not specify the term "all" in the quantity column of the Pricing Schedule;

- (11) Memoranda, meeting notes, correspondence, and oral testimony reflecting that the intent of the Teaming Agreement was not to execute an agreement creating exclusive rights and was not to establish terms under the Subcontract;
- (12) Memoranda, meeting notes, correspondence, written materials, and oral testimony reflecting that the Parties intended for the Teaming Agreement to terminate, end, and otherwise be superseded by the terms negotiated and contained in the Subcontract;
- (13) Oral and documentary evidence demonstrating SAI's chronic inability to complete maintenance and repairs of military aircraft, over a period of more than three years, on schedule costing DynCorp to incur several hundred thousand dollars in penalties;
- (14) Oral and documentary evidence demonstrating SAI failed to maintain proper staffing to service the Subcontract in a timely manner;
- (15) Oral and documentary evidence demonstrating that DynCorp in accordance with the written terms of the Subcontract expressly alerted SAI of its failure to complete timely maintenance and repair under the Subcontract and DynCorp's intent to send aircraft elsewhere to alleviate timing problems created by SAI's inability to complete the work in a timely manner;
- (16) Oral and documentary evidence supporting DynCorp's affirmative defenses;
- (17) Oral and documentary evidence reflecting SAI has sustained no damages.

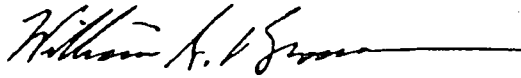
DynCorp has had no opportunity to develop such evidence and present it to the Court. Right now, the Court only has a limited amount of evidentiary materials before it, all from SAI. To the extent the Court considers extrinsic evidence (i.e., anything other than the Complaint and Answer), DynCorp possesses both procedural and substantive rights to develop a responsive record, under Baughman v. AT&T, 306 S.C. 101, 410 S.E.2d 537 (1991) (as cited in DynCorp's Brief In Opposition on p. 12) and its progeny. Accordingly, partial summary judgment is improper at this time.

Additionally, it is noteworthy that, before the hearing, the Parties had already exchanged written discovery requests and began scheduling depositions in this matter. DynCorp simply asks the Court to deny SAI's Motion for Partial Summary Judgment without prejudice, until after discovery occurs, so DynCorp can have a chance to defend itself. Once discovery is complete, SAI can re-file the instant motion and the Court can consider the same issues on a full record.

The Honorable Rivers Lawton McIntosh
October 23, 2009
Page 4

If your honor needs any additional information or material, please do not hesitate to ask and we are glad to provide it.

Very truly yours,

A handwritten signature in cursive script, appearing to read "William S. Brown", followed by a horizontal line.

William S. Brown

WSB:ap

cc: Keith Munson, Esq.

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'S REPLY IN SUPPORT OF</u>
	)	<u>DYNCORP'S MOTION FOR JUDGMENT</u>
	)	<u>ON THE PLEADINGS</u>
DynCorp International LLC, and	)	
Science Applications International	)	
Corporation,	)	
	)	
Defendants.	)	

Like a dog chasing its tail, Stevens Aviation, Inc. ("SAI") presents the Court with twenty pages of circular logic and no basis to accept its forced construction.¹ The lack of any exclusivity language is fatal to SAI's claims. The Subcontract's terms manifest the Parties' intent: no exclusivity clause means the Parties intended no exclusivity. By contrast, SAI asks the Court to construe a negative—the lack of a non-exclusivity clause (whatever that is)—to prove a positive—exclusivity exists. (SAI's Opp. Br. 3.) The Court should reject SAI's backwards legal analysis.²

Although the Subcontract's Pricing Schedule takes precedence over all other terms, (see Compl., Ex. A, p. 14, § A.3), SAI now amazingly argues: the "Pricing Schedule is Irrelevant." (SAI's Opp. Br. 5.) The Pricing Schedule constitutes the Subcontract's single-most important provision, as it lists SAI's job tasks and the supply terms (i.e., quantity, unit price, total amount).

¹ For consistency, DynCorp incorporates by reference its prior designations and fact section from its initial Supporting Memorandum. In addition, the Parties have stipulated that the Reply Briefs would be limited to three pages.

² SAI misplaces reliance on rules of contract construction: "[I]f contractual rights were established only by what is expressly stated, there would never be a need for any of the rules of" contract construction. (SAI's Opp. Br. 4.) "A court would simply be charged with looking at what the contract said and enforcing it" (*Id.*) Exactly. No need exists for the Court to resort to rules of contract construction, when, as here, the Subcontract contains unambiguous terms—the Court should simply look at the Subcontract and enforce it. SAI inexplicably cites the decision of Universal Towing Co. v. United Barge Co., 579 F.2d 1098, 1103 (8th Cir. 1978). The Universal opinion simply does not apply. First, Universal does not apply the federal law of government contracts. Second, Universal was based upon findings of fact, not on issues presented by the written contract. Third, Universal does not square with the holding of Coyle's Pest Control, Inc. v. Cuomo, 154 F.3d 1302, 1304-06 (Fed. Cir. 1998), which does apply federal law and limits enforceability of contracts lacking quantity terms to services actually ordered and delivered. (Coyle's is attached as Exhibit 1).

The Pricing Schedule intentionally contains no quantity regarding any of the disputed CLINs. Had the Parties intended an "all" quantity, as argued by SAI, the Pricing Schedule would so state, but it does not.³ In such instances, the law of federal government contracts enforces such contracts only for services actually ordered (i.e., by purchase order) and provided by SAI. (See DynCorp Opp. Br. 4-5 (discussing Coyle's Pest Control, Inc. v. Cuomo, 154 F.3d 1302, 1304-06 (Fed. Cir. 1998)).)

SAI next mis-cites § B.1.B of the Subcontract, which states that DynCorp does not have to pay any amount exceeding the total funding "identified under Section G." (SAI's Opp. Br. 6.) SAI then proceeds to ignore § G(B), which provides that DynCorp has no obligation to pay SAI any amount exceeding the funds allotted to a CLIN if such amount exceeds "the obligated funds set forth in the [Pricing] Schedule" (Compl., Ex. A, p. 28, § G(B).) As SAI well knows, DynCorp only obligates funds for a CLIN once it issues a purchase order containing a quantity term when directing a plane to SAI. It is for this very reason the Parties intentionally left the quantity term and total amount terms in the Pricing Schedule blank. SAI's arguments totally lack merit.

SAI attempts to side-step DynCorp's arguments concerning the Subcontract's citation to various FARs. (See DynCorp's Supp. Memo. 4-6 (discussing the incorporation of FAR §§ 52.243.1, 52.243-7, & 52.245-2).) SAI ignores DynCorp's actual point—DynCorp's contractual ability to modify SAI's job tasks does not jibe with SAI's exclusive interpretation as DynCorp could only modify SAI's work if it could send work elsewhere.⁴ Moreover, SAI summarily concludes the FARs cannot fundamentally change the Subcontract's scope because all work must go to SAI.⁵

³ Contrary to SAI's suggestion, (see SAI's Opp. Br. 6), the Pricing Schedule serves two important purposes. First, the Pricing Schedule supplies the terms of supply once DynCorp decides what airplanes to send to SAI and issues a purchase order. This analysis is consistent with Coyle's analysis. Second, on certain occasions, the Parties specified minimum purchase amounts for certain CLINs, for which the Pricing Schedule also supplies the terms and conditions.

⁴ Tellingly, SAI misstates DynCorp's arguments on the FAR's content and imputes limitations that do not exist in the same. They argue that Government Property submitted for repair cannot be Government Furnished Property under the Subcontract. This is contrary to the FARs. See, e.g., FAR § 16.503(c). Moreover, the presence of flow-down provisions ensures uniform performance under the Prime and Subcontract but in no way creates exclusivity.

⁵ Contrary to SAI's contentions, (SAI's Opp. Br. 8), the Subcontract's reference to other subcontractors would make no sense if the reference only applied to subcontractors working on wholly unrelated work. In such instances, no need

(See SAI's Opp. Br. 9-10.) Yet, SAI's argument assumes the conclusion. Nothing in the Subcontract entitles SAI to receive every RC-12/C-12 plane. SAI merely attempts to muddy the issues without basis.⁶ The Court should grant DynCorp's Motion.

Further, the Patent Ambiguity Doctrine bars SAI's urged contract interpretation. (See DynCorp's Supp. Memo. 9-11.) Importantly, SAI's interpretation, not DynCorp's, creates facial inconsistencies. Regardless of the policy behind the Patent Ambiguity Doctrine, "the law of government contracts" controls the Subcontract's construction. (Compl., Ex. A, p. 30, § H.5.) Because SAI fails to rebut the doctrine's application, the Court should grant DynCorp's Motion.

Throughout SAI's briefing, it asserts it is entitled to fill all purchase requirements of DynCorp. This is by definition a "requirements contract."⁷ However, the Subcontract fails to include essential provisions to be a requirements contract. A requirements contract must include a realistic estimate of total quantity (FAR § 16.503(a)(1)) and specified language to govern requirements contracts (FAR § 52.216-21). The Parties did not include an estimated quantity or language to govern a requirements contract in the Subcontract. The Parties understood the importance of incorporating proper FAR provisions, as they included several pages of FAR provisions. (Compl., Ex. A, pp. 44-49.)

For the reasons set forth in DynCorp's Supporting Memorandum and above, the Court should grant DynCorp's Motion.

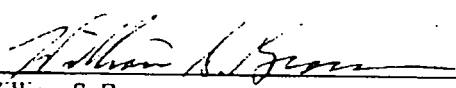
would exist to reference such subcontractors since the work would not overlap.

⁶ SAI again seeks to incorporate terms from the Parties' Teaming Agreement, although: (1) the Subcontract expressly supersedes the same; and (2) the TA terminated under its own terms. (See DynCorp's Opp. Br. 14-15.) Moreover, SAI misstates the holding in Northrop Grumman Info. Tech., Inc. v. United States, 535 F.3d 1339, 1345 (Fed. Cir. 2008). Northrop held: "the language 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 the referenced material into the contract (rather than to acknowledge that the referenced material is relevant to the contract, e.g., as background law or negotiating history)*." (*Id.* (emphasis added).) Not only was the TA not incorporated as such, but the Subcontract expressly superseded the same.

⁷ FAR § 16.503 (attached as Exhibit 2). Additionally, FAR § 16.506(d) (attached as Exhibit 3) directs parties contemplating a requirement contract to include specific language, which is contained in FAR § 52.216-21 (attached as Exhibit 4).

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

William S. Brown

SC Bar No. 064164

E-Mail: william.brown@nelsonmullins.com

Lane W. Davis

SC Bar No. 68796

E-Mail: lane.davis@nelsonmullins.com

Steven E. Buckingham

SC Bar No. 75089

E-Mail: steven.buckingham@nelsonmullins.com

104 South Main Street / Ninth Floor

Post Office Box 10084 (29603-0084)

Greenville, SC 29601

(864) 250-2300

Attorneys for Defendant DynCorp International LLC

Greenville, South Carolina

October 19, 2009

EXHIBIT 1

Westlaw

Page 1

154 F.3d 1302, 42 Cont.Cas.Fed. (CCH) P 77,373
(Cite as: 154 F.3d 1302)

H

United States Court of Appeals,
Federal Circuit
COYLE'S PEST CONTROL, INC., Appellant,
v.

Andrew CUOMO, Secretary of Housing and Urban
Development, Appellee.
No. 97-1234.

Aug. 24, 1998.

Pest control company under contract with Department of Housing and Urban Development brought breach of contract claim against Department. The Department's Board of Contract Appeals denied claim, and company appealed. The Court of Appeals, Rader, Circuit Judge, held that: (1) contract was not requirements contract, and (2) contract was not enforceable indefinite quantity contract.

Affirmed.

West Headnotes

[1] United States 393 ◀70(2.1)

393 United States

393III Contracts

393k70 Construction and Operation of Contracts

393k70(2) Application of General Rules of Construction

393k70(2.1) k. In General. Most Cited

Cases

Because contract interpretation questions are questions of law, Court of Appeals reviews those issues without deference to the trial forum, under Contract Disputes Act, although interpretation of contract by Board of Contract Appeals will be given careful consideration and accorded great respect. Contract Disputes Act of 1978, § 10(b), 41 U.S.C.A. § 609(b).

[2] United States 393 ◀69(2)

393 United States

393III Contracts

393k69 Implied Contracts

393k69(2) k. Subject Matter in General.

Most Cited Cases

Otherwise unenforceable indefinite quantity contract with government entity need not be saved by interpreting it as an "implied" requirements contract.

[3] United States 393 ◀70(6.1)

393 United States

393III Contracts

393k70 Construction and Operation of Contracts

393k70(6) Subject-Matter

393k70(6.1) k. In General. Most Cited

Cases

Company's contract to provide pest control services for Department of Housing and Urban Development (HUD) was not "requirements contract," despite contractual language suggesting exclusivity, as contract did not contain requirements clause mandated by Federal Acquisition Regulations and did not require HUD to assign company all properties within particular region. 48 C.F.R. § 52.216-21; § 16.505(d) (1994).

[4] Sales 343 ◀71(4)

343 Sales

343II Construction of Contract

343k67 Subject-Matter

343k71 Quantity, and Ascertainment

Thereof

343k71(4) k. Sale of Entire Output or Production or as Much as Buyer May Need or Require. Most Cited Cases

A "requirements contract" is formed when the seller has the exclusive right and legal obligation to fill all of the buyer's needs for the goods or services described in the contract; an essential element of a requirements contract is the promise by the buyer to

© 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.

<http://web2.westlaw.com/print/printstream.aspx?rs=WLW9.09&destination=atp&prft=H...> 10/12/2009

ROA_225

154 F.3d 1302, 42 Cont.Cas.Fed. (CCH) P 77,373
(Cite as: 154 F.3d 1302)

purchase the subject matter of the contract exclusively from the seller.

[5] United States 393 ⇨ 70(6.1)

393 United States
393III Contracts
393k70 Construction and Operation of Contracts
393k70(6) Subject-Matter
393k70(6.1) k. In General. Most Cited

Cases

Company's contract to provide pest control services for Department of Housing and Urban Development (HUD), which lacked minimum quantity term, was not enforceable "indefinite quantity contract."

[6] United States 393 ⇨ 70(19)

393 United States
393III Contracts
393k70 Construction and Operation of Contracts
393k70(15) Compensation
393k70(19) k. Goods Sold or Furnished. Most Cited Cases

Where company's contract to provide pest control services for Department of Housing and Urban Development (HUD) was neither requirements contract nor enforceable indefinite quantity contract, company was entitled to payment only for services actually ordered by HUD and provided by company.

*1303 Phillip K. Chung, Chung & Press, P.C., McLean, Virginia, argued for appellant. With him on the brief were Daniel M. Press and Russell B. Adams, III. Also on the brief were Kenneth A. Martin and Kurt M. Rylander, Martin & Rylander, P.C., Washington, DC.

Lara Levinson, Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, Washington, DC, argued for appellee. With her on the brief were Frank W. Hunger, Assistant Attorney General, David M. Cohen, Director, and Sharon Y. Eubanks, Deputy Director. Of counsel on the brief

was Bruce M. Kasson, Attorney, Office of General Counsel, Division of Training and Administrative Law, Department of Housing and Urban Development, Washington, DC.

Before NEWMAN, PLAGER, and RADER, Circuit Judges.

RADER, Circuit Judge.

On summary judgment, the Department of Housing and Urban Development's Board of Contract Appeals (the Board) denied Coyle's Pest Control, Inc.'s (Coyle's) breach of contract claim for \$1,525,170.74. *See Coyle's Pest Control, Inc.*, HUD BCA No. 96-A-121-C10, 97-1 BCA ¶ 28,717 (Jan. 6, 1997). Because the Board correctly determined that the contract was invalid and unenforceable when interpreted as either a requirements or an indefinite quantity contract, this court affirms.

I.

The Department of Housing and Urban Development (HUD), through the Small Business Administration, awarded Contract No. H06C94050400000 to Coyle for termite inspection and subterranean treatment of HUD-owned properties in thirty-four Texas counties. Section B.1 of the contract required Coyle "to furnish all labor, service, equipment, transportation, materials and supplies to provide subterranean termite control and related services on assigned properties owned by [HUD]." Clause C.2.D stated that properties would be "assigned on an *as-needed basis*." (emphasis added).

The contract, effective December 20, 1993, provided for a one-year term (the base year) as well as two one-year options. Section B.2 established a fixed price for inspection services and a two-tier, fixed price scheme for treatment services. This section set treatment prices at one of two levels depending on whether the range of properties assigned monthly was 0-170 or 171-240; the option

154 F.3d 1302, 42 Cont.Cas.Fed. (CCH) P 77,373
(Cite as: 154 F.3d 1302)

years included modest increases for each of the two levels. The estimated value of the contract, including the base year and the two option years, was \$1,930,000.

Section L.14 labeled the contract a "fixed unit rate-indefinite quantity contract." Nonetheless, the contract did not include two provisions typically present in indefinite quantity contracts: (1) a specified minimum number of properties to be assigned to Coyle; and (2) the indefinite quantity clause found in Federal Acquisition Regulation (FAR) 52.216-22 and then required by FAR 16.505(e). See 48 C.F.R. §§ 52.216-22, 16.505(e) (1993). Also absent were two provisions generally associated with requirements contracts: (1) a clause requiring HUD to order all of its subterranean termite inspections and treatments from Coyle; and (2) the requirements clause found in FAR 52.216-21 (a mandatory feature of requirements contracts then under FAR 16.505(d)). See *id.* §§ 52.216-21, 16.505(d).

In June 1995, during the first option year, HUD proposed Modification No. 4 to the contract. The proposed modification prevented Coyle from treating properties that HUD had already inspected and found free of termite infestation. Coyle rejected the modification. Thereafter, HUD informed Coyle that it would receive a "substantially lesser amount of properties" for termite services. At about the same time, in July 1995, HUD also altered its national policy for termite services and began to permit buyers of HUD properties to order their own termite inspections. Due to changes in the parties' relationship, ultimately, on September 25, *1304 1995, they agreed to a revised version of Modification No. 4. As adopted, Modification No. 4 increased prices for both inspection and treatment services beyond that originally contemplated for the option years. More specifically, the parties changed the two-tiered pricing system for treatment services to a higher, single-rate system.

In sum, HUD assigned properties to Coyle from the beginning of the base year to slightly beyond the

contract's first option year and paid to Coyle \$694,228.04 for services during this period. On December 7, 1995, however, Coyle submitted a certified claim for \$1,525,170.74—an amount equal to the difference between the estimated value of the contract (\$1,930,000) and the amount HUD actually paid during the base year (\$404,829.26). Coyle asserted that the contract was a firm fixed price agreement that entitled it to the estimated value of the contract. The contracting officer rejected Coyle's characterization of the contract and denied its claim. On appeal to the Board, Coyle asserted an alternative theory for recovery, that the contract was susceptible to interpretation as a valid and enforceable requirements contract. The Board rejected this characterization and denied Coyle's claim on January 6, 1997. Coyle appeals.

II.

[1] This court reviews the Board's decision under the standard set forth in the Contract Disputes Act, 41 U.S.C. § 609(b) (1994). Under that standard,

the decision of the agency board on any question of law shall not be final or conclusive, but the decision on any question of fact shall be final and conclusive and shall not be set aside unless the decision is fraudulent, or arbitrary, or capricious, or so grossly erroneous as to necessarily imply bad faith, or if such decision is not supported by substantial evidence.

Id. Because contract interpretation questions are questions of law, see *Fortec Constructors v. United States*, 760 F.2d 1288, 1291 (Fed.Cir.1985), this court reviews those issues without deference to the trial forum; see 41 U.S.C. § 609(b); *Aydin Corp. v. Widnall*, 61 F.3d 1571, 1577 (Fed.Cir.1995). Notwithstanding this lack of deference, the "Board's interpretation of a contract will be given careful consideration and accorded great respect." *Fortec Constructors*, 760 F.2d at 1291.

III.

154 F.3d 1302, 42 Cont.Cas.Fed. (CCH) P 77,373
(Cite as: 154 F.3d 1302)

The Board, in a concise, well-reasoned opinion, held:

The contract at issue in this appeal ... does not contain the necessary elements of an enforceable indefinite quantity contract, nor an enforceable requirements contract. The enforcement of such a contract would fail for lack of consideration in the absence of a clause stating a minimum quantity or a clause requiring [HUD] to purchase all of its requirements from [Coyle]. Because the contract is not enforceable for lack of consideration, [Coyle] is entitled to payment only for services ordered by [HUD] and performed by [Coyle]. It is undisputed that [Coyle] has been paid for all services performed. Consequently, we must conclude that [Coyle's] claim for an additional payment of \$1,525,170.74 fails as a matter of law.

Coyle's Pest Control, 97-1 BCA ¶ 28,717 at 143,345. This court discerns no error in the Board's reasoning or conclusion.

[2] In approving the Board's judgment, this court rejects the notion that *Torncello v. United States*, 231 Ct.Cl. 20, 681 F.2d 756 (1982) (en banc), requires it to save an otherwise unenforceable indefinite quantity contract by interpreting it as an "implied" requirements contract. *See id.* 681 F.2d at 761-62. Coyle extracts out of context from *Torncello* two inflexible rules for contract interpretation. First, "contract terms ... must fit into one of the three possible types of supply contracts: those for a definite quantity, those for an indefinite quantity and those for requirements." *Id.* at 761 (citing *Mason v. United States*, 222 Ct.Cl. 436, 615 F.2d 1343, 1347 (1980)). Second, a court must "assume that the parties intended that a binding contract be formed. Thus, any choice of alternative interpretations, with one interpretation saving the contract and the other voiding it, should be resolved in favor of the interpretation that saves the contract." *Id.* Applying its reading of *Torncello* to this case, Coyle argues that its contract with *1305 HUD qualifies as either an indefinite quantity contract or a requirements contract. Because it lacks a minim-

um quantity term, Coyle continues, the contract should be interpreted as a requirements contract.

This court, however, does not read *Torncello* to require the reasoning urged by Coyle. *Torncello* addressed primarily the effect of the government's standard "termination for convenience" clause on a requirements contract. *See id.* at 757. The Armed Services Board of Contract Appeals, without ruling on the type of contract at issue, relied upon the termination clause to deny the contractor's claim against the government for diversion of business to competing bidders. *See id.* at 760. Before reaching this issue, the Court of Claims proceeded to examine the nature of the contract, subject to the strictures of its role as a court of review. *See id.* ("[This court is] constrained to make no determination as an original matter that we could not make as a court of review in a case that properly presented the issue."). The government had urged the Court of Claims to construe the agreement as an indefinite quantity contract—an argument designed to "forestall any further argument" on the diversion issue. *Id.* Apparently following the rules set forth above, a plurality of the Court of Claims read the agreement as a requirements contract. *See id.* at 762.

Importantly, the *Torncello* plurality as well as the concurring opinions agreed (though by different reasoning) that the agreement was a requirements contract. *See, e.g., id.* at 773 (Friedman, C.J., concurring) ("As I understand the court's opinion, the court holds only that when the government enters into a requirements contract...."). Therefore, the Court of Claims proceeded to address the implications of the Government's diversion of required work to other parties. This case, however, does not fit into any of the three neat categories Coyle extracts from *Torncello*. The record does not support the conclusion that the agreement was a requirements contract. Indeed the contract called itself an indefinite quantities contract (albeit without a minimum quantity clause) and lacked the terms of a requirement contract. Finally, Coyle does not maintain that the contract fits into the third category of

154 F.3d 1302, 42 Cont.Cas.Fed. (CCH) P 77,373
(Cite as: 154 F.3d 1302)

definite quantities contracts.

To the contrary, a thorough examination of *Torncello* reveals that the plurality recognized that a contract may not be susceptible to interpretation as either a requirements contract or an indefinite quantities contract. In its discussion of requirements contracts, the court noted that "[t]he entitlement of the seller to all of the buyer's requirements is the key, for if the buyer were able to turn elsewhere for some of its needs, then the contract would not be distinguishable from an indefinite quantities contract with no stated minimum, unenforceable as we have stated." *Id.* at 761-62. Thus, the *Torncello* court implicitly rejected a rule of "saving the contract" by interpreting it as a requirements contract when it is not so susceptible.

IV.

[3][4] Setting aside Coyle's overreaching interpretation of *Torncello* renders analysis of this contract relatively straightforward. At the outset, neither party disputes the existence of a valid, binding agreement; the dispute here centers on the scope and nature of the agreement. Next, this court assesses the merits of interpreting this agreement as a requirements contract, as Coyle has asserted. A requirements contract

is formed when the seller has the exclusive right and legal obligation to fill all of the buyer's needs for the goods or services described in the contract.... [A]n essential element of a requirements contract is the promise by the buyer to purchase the subject matter of the contract exclusively from the seller.

Modern Sys. Tech. Corp. v. United States, 979 F.2d 200, 205 (Fed.Cir.1992) (citations omitted). As this passage suggests, a requirements contract necessarily obligates the Government to purchase exclusively from a single source. Because this agreement does not include the FAR requirements clause, it is more difficult to find the required exclusivity.

The contract does include terms that suggest exclusivity. For instance, the contract obligates Coyle "to furnish all labor, service, equipment, transportation, materials and supplies to provide subterranean termite control and related services on assigned properties*1306 by [HUD]." (emphasis added). While the contract states that Coyle will provide all labor and services for a given property, the clause does not require HUD to assign Coyle all properties in the region. Thus, this contract language falls short of the exclusivity language necessary for a requirements contract.

This court finds no reason to interpret this agreement as a requirements contract based on Coyle's affidavit evidence. Even assuming that these affidavits accurately reflect Coyle's beliefs, they cannot override or contradict the plain language of the contract, which does not require sufficient exclusivity for a requirements contract. See *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed.Cir.1991). Moreover Coyle's affidavits do not reconcile Coyle's intent with the contrary intent of HUD. Cf. *Crown Laundry & Dry Cleaners, Inc. v. United States*, 29 Fed. Cl. 506, 518 (1993) (finding an implied requirements contract when testimony from both parties evinces a clear intent to form a requirements contract). This court therefore affirms the Board's determination that this agreement is not a requirements contract.

[5] This court next analyzes the merits of interpreting this agreement as an indefinite quantity contract. While many factors are relevant, including the absence of the FAR-mandated "indefinite quantity" clause, this court cannot read this agreement as an indefinite quantity contract because it lacks a minimum quantity term. Regardless of whether the contract is susceptible to interpretation as an indefinite quantity contract, a contract lacking this term cannot be construed as a valid indefinite quantity contract. See *Willard, Sutherland & Co. v. United States*, 262 U.S. 489, 493, 43 S.Ct. 592, 67 L.Ed. 1086 (1923) ("[I]f there is nothing in the writing which required the Government to take ...

154 F.3d 1302, 42 Cont.Cas.Fed. (CCH) P 77.373
(Cite as: 154 F.3d 1302)

any ascertainable quantity[, it must be held that, for lack of consideration and mutuality, the contract was not enforceable [as an indefinite quantity contract]."). Thus, this court affirms the Board's determination that the contract cannot be an enforceable indefinite quantity contract.

[6] This contract neither required HUD to order from Coyle termite services for *all* its properties nor contained a minimum quantity term. Thus, the contract is not enforceable as either a requirements contract or as an indefinite quantity contract. As such, Coyle is entitled to payment only for services actually ordered by HUD and provided by Coyle. See *Willard*, 262 U.S. at 494, 43 S.Ct. 592 ("By the conduct and performance of the parties, the contract was made definite and binding as to the [quantity] ordered and delivered according to its terms."). In other words, this court has reached the same conclusion as and affirms the Board's decision.

COSTS

Each party shall bear its own costs.

AFFIRMED.

C.A.Fed., 1998.
Coyle's Pest Control, Inc. v. Cuomo
154 F.3d 1302, 42 Cont.Cas.Fed. (CCH) P 77.373

END OF DOCUMENT

EXHIBIT 2

Subpart 16.5—Indefinite-Delivery Contracts**16.500 Scope of subpart.**

(a) This subpart prescribes policies and procedures for making awards of indefinite-delivery contracts and establishes a preference for making multiple awards of indefinite-quantity contracts.

(b) This subpart does not limit the use of other than competitive procedures authorized by Part 6.

(c) Nothing in this subpart restricts the authority of the General Services Administration (GSA) to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law. Therefore, GSA regulations and the coverage for the Federal Supply Schedule program in Subpart 8.4 and Part 38 take precedence over this subpart.

(d) The statutory multiple award preference implemented by this subpart does not apply to architect-engineer contracts subject to the procedures in Subpart 36.6. However, agencies are not precluded from making multiple awards for architect-engineer services using the procedures in this subpart, provided the selection of contractors and placement of orders are consistent with Subpart 36.6.

16.501-1 Definitions.

As used in this subpart—

“Delivery order contract” means a contract for supplies that does not procure or specify a firm quantity of supplies (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of supplies during the period of the contract.

“Task order contract” means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

16.501-2 General.

(a) There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used to acquire supplies and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award. Pursuant to 10 U.S.C. 2304d and section 303K of the Federal Property and Administrative Services Act of 1949, requirements contracts and indefinite-quantity contracts are also known as delivery order contracts or task order contracts.

(b) The various types of indefinite-delivery contracts offer the following advantages:

(1) All three types permit—

(i) Government stocks to be maintained at minimum levels; and

(ii) Direct shipment to users.

(2) Indefinite-quantity contracts and requirements contracts also permit—

(i) Flexibility in both quantities and delivery scheduling; and

(ii) Ordering of supplies or services after requirements materialize.

(3) Indefinite-quantity contracts limit the Government's obligation to the minimum quantity specified in the contract.

(4) Requirements contracts may permit faster deliveries when production lead time is involved, because contractors are usually willing to maintain limited stocks when the Government will obtain all of its actual purchase requirements from the contractor.

(c) Indefinite-delivery contracts may provide for any appropriate cost or pricing arrangement under Part 16. Cost or pricing arrangements that provide for an estimated quantity of supplies or services (e.g., estimated number of labor hours) must comply with the appropriate procedures of this subpart.

16.502 Definite-quantity contracts.

(a) *Description.* A definite-quantity contract provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries or performance to be scheduled at designated locations upon order.

(b) *Application.* A definite-quantity contract may be used when it can be determined in advance that—

(1) A definite quantity of supplies or services will be required during the contract period; and

(2) The supplies or services are regularly available or will be available after a short lead time.

16.503 Requirements contracts.

(a) *Description.* A requirements contract provides for filling all actual purchase requirements of designated Government activities for supplies or services during a specified contract period, with deliveries or performance to be scheduled by placing orders with the contractor.

(1) For the information of offerors and contractors, the contracting officer shall state a realistic estimated total quantity in the solicitation and resulting contract. This estimate is not a representation to an offeror or contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal. The contracting officer may obtain the estimate from records of previous requirements and consumption, or by other means, and should base the estimate on the most current information available.

(2) The contract shall state, if feasible, the maximum limit of the contractor's obligation to deliver and the Government's obligation to order. The contract may also specify maximum or minimum quantities that the Government may order under each individual order and the maximum that it may order during a specified period of time.

(b) *Application.* (1) A requirements contract may be appropriate for acquiring any supplies or services when the Government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated Government activities will need during a definite period.

(2) No requirements contract in an amount estimated to exceed \$100 million (including all options) may be awarded to a single source unless a determination is executed in accordance with 16.504(c)(1)(ii)(D).

(c) *Government property furnished for repair.* When a requirements contract is used to acquire work (e.g., repair, modification, or overhaul) on existing items of Government property, the contracting officer shall specify in the Schedule that failure of the Government to furnish such items in the amounts or quantities described in the Schedule as "estimated" or "maximum" will not entitle the contractor to any equitable adjustment in price under the Government Property clause of the contract.

(d) *Limitations on use of requirements contracts for advisory and assistance services.* (1) Except as provided in paragraph (d)(2) of this section, no solicitation for a requirements contract for advisory and assistance services in excess of three years and \$11.5 million (including all options) may be issued unless the contracting officer or other official designated by the head of the agency determines in writing that the services required are so unique or highly specialized that it is not practicable to make multiple awards using the procedures in 16.504.

(2) The limitation in paragraph (d)(1) of this section is not applicable to an acquisition of supplies or services that includes the acquisition of advisory and assistance services, if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

16.504 Indefinite-quantity contracts.

(a) *Description.* An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. The Government places orders for individual requirements. Quantity limits may be stated as number of units or as dollar values.

(1) The contract must require the Government to order and the contractor to furnish at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum. The contracting officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for similar supplies or services, survey of potential users, or any other rational basis.

(2) To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should

not exceed the amount that the Government is fairly certain to order.

(3) The contract may also specify maximum or minimum quantities that the Government may order under each task or delivery order and the maximum that it may order during a specific period of time.

(4) A solicitation and contract for an indefinite quantity must—

(i) Specify the period of the contract, including the number of options and the period for which the Government may extend the contract under each option;

(ii) Specify the total minimum and maximum quantity of supplies or services the Government will acquire under the contract;

(iii) Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services the Government will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(iv) State the procedures that the Government will use in issuing orders, including the ordering media, and, if multiple awards may be made, state the procedures and selection criteria that the Government will use to provide awardees a fair opportunity to be considered for each order (see 16.505(b)(1));

(v) Include the name, address, telephone number, facsimile number, and e-mail address of the agency task and delivery order ombudsman (see 16.505(b)(6)) if multiple awards may be made;

(vi) Include a description of the activities authorized to issue orders; and

(vii) Include authorization for placing oral orders, if appropriate, provided that the Government has established procedures for obligating funds and that oral orders are confirmed in writing.

(b) *Application.* Contracting officers may use an indefinite-quantity contract when the Government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that the Government will require during the contract period, and it is inadvisable for the Government to commit itself for more than a minimum quantity. The contracting officer should use an indefinite-quantity contract only when a recurring need is anticipated.

(c) *Multiple award preference—(1) Planning the acquisition.*

(i) Except for indefinite-quantity contracts for advisory and assistance services as provided in paragraph (c)(2) of this section, the contracting officer must, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources.

(ii)(A) The contracting officer must determine whether multiple awards are appropriate as part of acquisition planning. The contracting officer must avoid situations in which awardees specialize exclusively in one or a few areas within the statement of work, thus creating the likelihood that

EXHIBIT 3

(ii) The extension is necessary to ensure continuity of services, pending the award of the follow-on contract.

16.506 Solicitation provisions and contract clauses.

(a) Insert the clause at 52.216-18, Ordering, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(b) Insert a clause substantially the same as the clause at 52.216-19, Order Limitations, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(c) Insert the clause at 52.216-20, Definite Quantity, in solicitations and contracts when a definite-quantity contract is contemplated.

(d)(1) Insert the clause at 52.216-21, Requirements, in solicitations and contracts when a requirements contract is contemplated.

(2) If the contract is for nonpersonal services and related supplies and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform, use the clause with its Alternate I.

(3) If the contract includes subsistence for both Government use and resale in the same Schedule, and similar products may be acquired on a brand-name basis, use the clause with its Alternate II (but see paragraph (d)(5) of this section).

(4) If the contract involves a partial small business set-aside, use the clause with its Alternate III (but see paragraph (d)(5) of this section).

(5) If the contract—

(i) Includes subsistence for Government use and resale in the same schedule and similar products may be acquired on a brand-name basis; and

(ii) Involves a partial small business set-aside, use the clause with its Alternate IV.

(e) Insert the clause at 52.216-22, Indefinite Quantity, in solicitations and contracts when an indefinite-quantity contract is contemplated.

(f) Insert the provision at 52.216-27, Single or Multiple Awards, in solicitations for indefinite-quantity contracts that may result in multiple contract awards. Modify the provision to specify the estimated number of awards. Do not use this provision for advisory and assistance services contracts that exceed 3 years and \$11.5 million (including all options).

(g) Insert the provision at 52.216-28, Multiple Awards for Advisory and Assistance Services, in solicitations for task-order contracts for advisory and assistance services that exceed 3 years and \$11.5 million (including all options), unless a determination has been made under 16.504(c)(2)(i)(A). Modify the provision to specify the estimated number of awards.

EXHIBIT 4

provisioning document or Government option shall be treated as initial target prices, or target prices as agreed upon and stipulated in the pricing document supporting the provisioning or added items. Initial or firm target costs and profits and final prices covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

52.216-18 Ordering.

As prescribed in 16.506(a), insert the following clause:

ORDERING (OCT 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from _____ through _____ [insert dates].

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

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of clause)

52.216-19 Order Limitations.

As prescribed in 16.506(b), insert a clause substantially the same as follows:

ORDER LIMITATIONS (OCT 1995)

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than _____ [insert dollar figure or quantity], the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

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

(1) Any order for a single item in excess of _____ [insert dollar figure or quantity];

(2) Any order for a combination of items in excess of _____ [insert dollar figure or quantity]; or

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

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Con-

tractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

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

(End of clause)

52.216-20 Definite Quantity.

As prescribed in 16.506(c), insert the following clause:

DEFINITE QUANTITY (OCT 1995)

(a) This is a definite-quantity, indefinite-delivery contract for the supplies or services specified, and effective for the period stated, in the Schedule.

(b) The Government shall order the quantity of supplies or services specified in the Schedule, and the Contractor shall furnish them when ordered. Delivery or performance shall be at locations designated in orders issued in accordance with the Ordering clause and the Schedule.

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

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

(End of clause)

52.216-21 Requirements.

As prescribed in 16.506(d), insert the following clause:

REQUIREMENTS (OCT 1995)

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the

Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

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

(End of clause)

Alternate I (Apr 1984). If the requirements contract is for nonpersonal services and related supplies and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The estimated quantities are not the total requirements of the Government activity specified in the Schedule, but are estimates of requirements in excess of the quantities that the activity may itself furnish within its own capabilities. Except as this contract otherwise provides, the Government shall order from the Contractor all of that activity's requirements for supplies and services specified in the Schedule that exceed the quantities that the activity may furnish within its own capabilities.

Alternate II (Apr 1984). If the requirements contract includes subsistence for both Government use and resale in the same Schedule, and similar products may be acquired on

a brand-name basis, add the following paragraph (g) to the basic clause:

(g) The requirements referred to in this contract are for items to be manufactured according to Government specifications. Notwithstanding anything to the contrary stated in the contract, the Government may acquire similar products by brand name from other sources for resale.

Alternate III (Oct 1995). If the requirements contract involves a partial small business set-aside, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The Government's requirements for each item or sub-item of supplies or services described in the Schedule are being purchased through one non-set-aside contract and one set-aside contract. Therefore, the Government shall order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government shall allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.

Alternate IV (Oct 1995). If the contract includes subsistence for both Government use and resale in the same Schedule and similar products may be acquired on a brand-name basis and the contract also involves a partial small business set-aside, substitute the following paragraph (c) for paragraph (c) of the basic clause and add the following paragraph (g) to the basic clause:

(c) The Government's requirements for each item or sub-item of supplies or services described in the Schedule are being purchased through one non-set-aside contract and one set-aside contract. Therefore, the Government shall order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government shall allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.

(g) The requirements referred to in this contract are for items to be manufactured according to the Government specifications. Notwithstanding anything to the contrary stated in the contract, the Government may acquire similar products by brand name from other sources for resale.

52.216-22 Indefinite Quantity.

As prescribed in 16.506(e), insert the following clause:

INDEFINITE QUANTITY (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the

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.	)	REPLY 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 ¹
Defendants.	)	
	)	

Keith D. Munson (SC Bar #13400)
Catherine R. Atwood (SC Bar #77367)
WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company
Post Office Box 10208
Greenville, SC 29603-0208
Telephone: (864) 255-5421
Fax: (864) 239-5852

Linda L. Shapiro
Kathy A. Wisniewski
John W. Rogers
THOMPSON COBURN LLP
One US Bank Plaza
St. Louis, MO 63101
Telephone: (314) 552-6000
Fax: (314) 552-7000

Attorneys for Stevens Aviation, Inc.

¹ The parties agreed to limit their respective reply briefs to three pages, and thus, unfortunately, Stevens cannot address all of the misstatements of law and fact in DynCorp's opposition. It attempts, in the space allotted, to at least mention the most egregious.

This Court is asked to interpret the Subcontract Agreement entered into by DynCorp and Stevens as to whether it obligates DynCorp to send to Stevens *all* C-12/RC-12 and UC-35 aircraft submitted to DynCorp under the "Prime Contract."² DynCorp urges this Court to defer to the "Order of Precedence" clause in the Subcontract Agreement in its interpretation. However, that clause applies only if there is "an inconsistency between any of the provisions of this Subcontract," and dictates only which provisions should be given precedence over others in such a circumstance. See SA, p. 14. DynCorp admits that "there are no inconsistencies" in the Subcontract. (DynCorp Opp., p. 6, fn.5). The "Order of Precedence" clause is inapplicable.

There is, however, a clause in the Subcontract which this Court should consider, *i.e.*, the one found in the "Interpretation of Subcontract" provision which provides:

Any *ambiguity*, discrepancy, inconsistency or conflict in or between any of the technical or contractual provisions hereof, that cannot be resolved by the [Order of Precedence clause], 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.*

DynCorp advances two primary arguments as to why this Court should interpret the Subcontract Agreement as imposing no obligation on it with respect to sending aircraft to Stevens: there is no exclusivity clause in the Subcontract; and the "Pricing Schedule" does not specify a quantity of aircraft to be sent to Stevens. DynCorp is right on the exclusivity *clause*, but that fact simply is not dispositive. See Stevens' Opposition to DynCorp's Motion.

DynCorp, however, is just plain wrong in its "quantity" argument. There *is* a "quantity" specified in the Subcontract, and that quantity is "*all*". DynCorp errs by arguing that Coyle's Pest Control, Inc. v. Cuomo, 154 F.3d 1302 (Fed. Cir. 1998), supports a contrary conclusion. In

² In the course of briefing the pending dispositive cross-motions, DynCorp appears to have lost sight of two critical facts: *First*, this case rests on a contract entered into by two *private* parties, and not on a government contract. *Second*, despite DynCorp's repeated requests for "dismissal" of this entire case, it has pointed to no facts or law which entitle it to a judgment on the pleadings on Stevens' claim for breach of the duty of good faith and fair dealing.

³ See SA, p. 14 (emphasis added).

fact, Coyle's actually supports Stevens' argument that the Subcontract, read as a whole, provides for "exclusivity". Although the contract in Coyle's had no exclusivity clause, the court went on to analyze whether exclusivity was mandated by its provisions:

The contract does include terms that suggest exclusivity. For instance, the contract obligates Coyle 'to furnish *all* labor, service, equipment, transportation, materials and supplies to provide subterranean termite control and related services on the *assigned* properties by HUD.

154 F.3d at 1305-06 (emphasis in original). The Coyle's court expressly found that the contract did not require HUD "to assign Coyle *all* properties" and thus, for this reason only, concluded that exclusivity did not exist. Id. at 1306.

Section B.1.A of the Subcontract Agreement here essentially mimics those terms of the contractual provision in Coyle's which that court found to "suggest exclusivity." But here, that similar provision does not limit the "Aircraft" to only those "assigned"; instead it refers to the "fleet" of "Aircraft" — the latter term being defined in the Subcontract as "*all*" aircraft. As DynCorp puts it, "Coyle controls." (DynCorp Opp., p. 5 fn.2). Coyle's supports exclusivity.

DynCorp's reliance on a modification to the Subcontract Agreement that specified a numerical quantity for some CLINs simply makes no sense. (DynCorp Opp., p. 6). Those numerical quantifications (none of which can be found in the original Subcontract) are, by their express terms, for "*Elective Improvements*" not part of the original contract. See DynCorp Opp., at Exhibit I. In other words, they are for work to be done on specified aircraft that the government had already assigned to DynCorp under the Prime Contract. Id.

DynCorp essentially rewrites the Subcontract when it argues that the defined term "Aircraft" is not used in it and only "C-12/RC-12' *airplanes*" are referenced. (DynCorp Opp., p. 7). The word "airplane(s)" appears nowhere in the Subcontract Agreement. In contrast, the

word "Aircraft" in its capitalized form appears repeatedly.⁴ And, DynCorp's argument about Stevens' references to "fleet" simply make no sense. *Id.* at p. 8. Yes, the "Statement of Requirements" indicates that the specified work is to be done as "set forth in Section B" as DynCorp seems to yell; however, "Section B" repeatedly refers to the "Statement of Work" which is part of the Subcontract, and the Statement of Work makes clear that the aircraft subject to its provisions is the entire "*worldwide fleet*" of C-12/RC-12 and U-35 aircraft.

DynCorp's arguments about the termination section of the Subcontract focus on only one of its sub-provisions, and fail to address what meaning the multiple "Events of Default" could be given if the Subcontract is not "exclusive."⁵ (DynCorp Opp., pp. 9-11). And, while DynCorp baldly claims that the automatic renewal provisions "clearly have an effective meaning" even if the Subcontract does not compel "exclusivity," it never explains what that meaning is.

DynCorp's "complaint" about Stevens' reference to Section B.1.B. of the Subcontract makes no sense. *Id.* at p. 11, fn.9. DynCorp suggests that Section G.5.B modifies Section B.1.B to require DynCorp to issue a purchase order to "obligate" funds to pay Stevens. In fact, however, Section G.5.B is devoid of any reference to a "purchase order". What that Section addresses is DynCorp's obligations in the event the funds allocated to a "*Prime Contract CLIN*" are exhausted. The "funds obligated in a CLIN" are set by the Prime Contract, and the Subcontract in turn sets the price DynCorp is to pay Stevens for each item of work under each CLIN. Section G.5.B simply relieves DynCorp of paying Stevens if the Prime Contract funds run out for any given CLIN.

⁴ It is disingenuous for DynCorp to argue that the omission of a specific reference to "U-35" in the "Pricing Schedule" is indicative of non-exclusivity. When the Subcontract Agreement was executed the U-35 airplanes were relatively new and subject to extensive warranties, and thus neither DynCorp nor Stevens was contemplating any depot work on any of them until several option years later.

⁵ DynCorp's arguments about the provision of the Subcontract which, purportedly, allows the government stepping into the shoes of DynCorp is a mystery. (DynCorp Opp., p. 10). For one thing, DynCorp misrepresents the provisions. And, in any event, DynCorp never explains what the provision has to do with the "exclusivity" issue (and it has nothing to do with it).

Respectfully submitted,

Catherine Whenn for (S.C. Bar #
76042)

Keith D. Munson (SC Bar #13400)

Catherine R. Atwood (SC Bar #77367)

WOMBLE CARLYLE SANDRIDGE & RICE

A Professional Limited Liability Company

Post Office Box 10208

Greenville, SC 29603-0208

Telephone: (864) 255-5421

Fax: (864) 239-5852

Linda L. Shapiro
Kathy A. Wisniewski
John W. Rogers
THOMPSON COBURN LLP
One US Bank Plaza
St. Louis, MO 63101
Telephone: (314) 552-6000
Fax: (314) 552-7000

Attorneys for Plaintiff

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.	)	MEMORANDUM OPPOSING
	)	<u>PLAINTIFF'S MOTION FOR JUDGMENT</u>
DynCorp International LLC, and	)	<u>ON THE PLEADINGS OR SUMMARY</u>
Science Applications International	)	<u>JUDGMENT</u>
Corporation,	)	
	)	
Defendants.	)	

DynCorp International, LLC ("DynCorp") respectfully submits this Memorandum Opposing Stevens Aviation, Inc.'s ("SAI") Motion for a Judgment on the Pleadings or, alternatively, for Summary Judgment.

I. INTRODUCTION

SAI's own words: "*Stevens does not dispute what DynCorp has said throughout this litigation: there is no 'exclusivity clause' in the Subcontract Agreement.*" (SAI's Br. Supp. Mot. J. Pleadings 12.) Two sophisticated businesses executed a commercial agreement. Both previously executed similar agreements. Both possess substantial contracting experience in the field of aircraft maintenance.

Not once does the Subcontract limit DynCorp's ability to use another subcontractor or name SAI as the exclusive subcontractor. Yet, on a Motion for Judgment on the Pleadings, SAI asks the Court to re-write a fifty page contract and judicially insert an exclusivity provision never agreed upon by the Parties. The Court should deny SAI's Motion and instead grant DynCorp's Motion for Judgment on the Pleadings.

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 executed subcontract No. LCCS/SAI001 ("Subcontract") in March of 2001. (Exhibit A to the 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.

Section B.4 in the Subcontract contains a Pricing Schedule itemizing the work to be provided by SAI. (Compl., Ex. A, p. 17, § B.4.) By Contract Line Item Numbers ("CLINs"), the Pricing Schedule lists the supplies and services to be provided by SAI in quantity, unit, unit price and amount for each year (base and option years). (Compl., Ex. A, p. 17, § B.4.) With respect to the vast majority of CLINs, including all CLINs now in dispute, the Parties intentionally did not specify either minimum quantities or amounts. (Compl., Ex. A, p. 17, § B.4.) Indeed, DynCorp only assigns a quantity to such CLINs once it directs a C-12 or RC-12 plane to SAI and issues a purchase order for the same. Notably, the Pricing Schedule directs no UC-35 planes to SAI. (Compl., Ex. A, p. 17, § B.4.)¹ By agreement, the terms of the Pricing Schedule take precedence over all other provisions of the Subcontract. (Compl., Ex. A, p. 14, § A.3.) Now, by ignoring the Pricing Schedule, ignoring material language in the Subcontract, taking terms out of context, and generally mashing various Subcontract provisions together, SAI asks the Court to deem the Subcontract as an exclusive agreement.

¹ With respect to a limited number of CLINs, not in dispute in this action, the Parties did negotiate specific minimum quantities. (See Subcontract, attached to the Complaint as Exhibit A.)

III. LAW/ANALYSIS

The Court should deny SAI's Motion for Judgment on the Pleadings/Summary Judgment for the following reasons:

A. SAI Improperly Cites Material Beyond the Pleadings.

In support of what is purported to be a Motion for Judgment on the Pleadings, SAI improperly cites materials beyond the pleadings. (See, e.g., Affidavits attached as exhibits to SAI's Brief). Materials outside of the pleadings cannot support a Motion for Judgment on the Pleadings. See Falk v. Sadler, 341 S.C. 281, 286, 533 S.E.2d 350, 353 (Ct. App. 2000) (citing Firemen's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 394 S.E.2d 855 (Ct. App. 1990) ("On review of the motion [for judgment on the pleadings], the court may not consider matters outside the pleadings.")). All material outside of the pleadings must be disregarded. Because SAI's argument relies extensively on material outside of the pleadings, this alone is a basis to deny SAI's motion.

B. SAI's Motion for a Judgment on the Pleadings Lacks Merit.

SAI's argument that the Subcontract gives SAI an exclusive right is without merit. Not once does the Subcontract use the term exclusive. The Subcontract never identifies SAI as a sole source provider. Not once does the Subcontract limit DynCorp's ability to use another subcontractor. Importantly, SAI admits the same. (See SAI's Br. Supp. Mot. J. Pleadings 12 ("Stevens does not dispute . . . there is no *"exclusivity clause"* in the Subcontract Agreement.")) SAI nonetheless attempts to manufacture contractual exclusivity by stringing together out-of-context terms, while altogether ignoring various terms in the Subcontract.

1. **SAI Disregards the Subcontract's Pricing Schedule, which Requires No Minimum Quantities.**

SAI's analysis completely ignores the Subcontract's Pricing Schedule, which lists the supplies and services to be provided by SAI under the Subcontract. For each base/option year, the Schedule contains 6 columns, from left to right, reflecting applicable terms of sale. For example, the first three rows of the Schedule (on page 17 of the Subcontract) are as follows:

Contract Line Item Number ("CLIN")	Supplies/Services	Quantity	Unit	Unit Price	Amount
0003B	Scheduled Maintenance C-12/RC-12—Strip and Repaint		EA	\$33,529.00	
0003C	Scheduled Maintenance C-12/RC-12—ACI		EA	\$66,711.00	
0004AA	C-12/RC-12 Over and Above Maintenance Depot Hourly Rate		Hr	\$56.76	

Importantly, with respect to the quantity and amount columns, the Parties intentionally left blank the specific quantity or amount for any of the CLINs presently in dispute. Indeed, a quantity only exists, and thus a total amount, upon issuance of a purchase order to SAI when it sends later designated C-12/RC-12 planes for maintenance and repair.

When, as here, a contract contains no quantity or total amount terms, the federal law of government contracts enforces such contracts only to the extent services are actually ordered and provided. In the decision of Coyle's Pest Control, Inc. v. Cuomo, 154 F.3d 1302 (Fed. Cir. 1998), the Federal Circuit Court of Appeals examined a contract for the supply of "all

labor, service, equipment, transportation, materials, and supplies to provide subterranean termite control and related services on assigned properties owned by [the Department of Housing and Urban Development ("HUD")]."² Id. at 1303. Noting that the Coyle contract entitled Coyle to provide all labor and services for only assigned properties, the Federal Circuit ruled the contract did not require HUD to assign properties to Coyle exclusively. Id. at 1305. The same analysis applies here.

Just like in Coyle, no exclusivity clause exists in the Subcontract. Id. at 1306.³ Just like in Coyle, the Subcontract does not contain the federal acquisition clauses usually found in either indefinite quantity contracts or requirements contracts. Id. at 1304. Just like in Coyle, the Subcontract contains no "minimum quantity term." Id. at 1306. Just like in Coyle, then, SAI can only enforce the Subcontract "for services actually ordered [by DynCorp] and provided by [SAI]." Id. That is to say, as to the disputed CLINs, SAI can only enforce the Subcontract for work ordered under a purchase order and actually completed by SAI. Accordingly, the lack of a minimum quantity term, for those CLINs disputed by SAI, refutes Plaintiff's exclusive construction of the Subcontract under the Coyle decision.⁴

² For four pages of its brief, SAI provides the Court with a lengthy discussion of the word "all." (See SAI's Br. Supp. Mot. J. Pleadings 12-15.) However, SAI's detailed analysis of the word "all" has simply no bearing on the issue of exclusivity in this case. Just as the plaintiff in Coyle, SAI had the obligation to provide all services on the property provided to it, nothing more. The holding in Coyle controls and the Subcontract is only enforceable for actual services ordered and provided.

³ Although SAI does not expressly argue that the Subcontract is a requirements contract, Coyle addresses this also. "[A]n essential element of a requirements contract is the promise by the buyer to purchase the subject matter to the contract exclusively from the seller." Id. at 1305 (quoting Modern Sys. Tech. Corp. v. United States, 979 F.2d 200, 205 (Fed. Cir. 1992)). SAI admits no such exclusivity provision exists in the Subcontract.

⁴ This analysis accords with other cases applying the federal law of government contracts. See, e.g., Flink/Vulcan v. United States, 63 Fed. Cl. 292, 301 (2004) ("Therefore, because the contract between the parties lacks a guaranteed minimum quantity term, the contract is only enforceable to the extent of the work performed by the Plaintiff . . ."); Ralph Constr., Inc. v. United States, 4 Cl. Ct. 727, 733 (1984) ("[A contract] is valid only to the extent it was performed . . .").

The Subcontract also addresses any inconsistencies now perceived by SAI. Section A.3 states:

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.

(Compl., Ex. A, p. 14.) Thus, if any inconsistencies in the Subcontract exist, the Parties specifically agreed that the Pricing Schedule, containing no minimum quantities, controls.⁵

Finally, when the Parties did negotiate a specific minimum quantity for certain CLINs, the Subcontract actually designated a quantity. For example, in several modifications to the Subcontract, the Parties negotiated actual quantities included in the Pricing Schedule. (See, e.g., Ex. 1, Contract Modification, attached hereto.) Conversely, when the Parties did not intend to include a minimum quantity, such as in relation to the CLINs now disputed by SAI, the quantity and amount columns on the Pricing Schedule contain no minimum amounts. See Veit & Co. v. United States, 56 Fed. Cl. 30, 40 (2003) (applying the doctrine of *expressio unius* to federal government contracts). Here, the expression of a minimum amount in certain quantity terms implies no intended minimums when the Parties omitted the same.⁶

SAI could have, but did not, attempt to negotiate a minimum allotted amount for every CLIN. SAI now asks for an impermissible, judicial re-write of the Subcontract to establish

⁵ DynCorp believes there are no inconsistencies and the Subcontract is clear and unambiguous that it is not exclusive.

⁶ See also Smelser v. United States, 53 Fed. Cl. 530, 539 (2002); Kanehl v. United States, 40 Fed. Cl. 762, 768-69 (1998); Nicholson v. United States, 29 Fed. Cl. 180, 196 (1993); Design & Prod., Inc. v. United States, 18 Cl. Ct. 168, 198 (1989); see also Monroe M. Tapper & Assocs. v. United States, 602 F.2d 311, 314 (Ct. Cl. 1979); United Pac. Ins. Co. v. United States, 497 F.2d 1402, 1405 (Ct. Cl. 1974); J.W. Bateson Co. v. United States, 450 F.2d 896, 902 (Ct. Cl. 1971); Shimota v. United States, 21 Cl. Ct. 510, 526 (1990); Pub. Util. Dist. No. 1 v. United States, 20 Cl. Ct. 696, 700 (1990); A. Corbin, *Corbin on Contracts* § 552 (1960); E. Farnsworth, *Farnsworth on Contracts* § 7.11 (3d ed. 2004).

allotted amounts never agreed upon by the Parties.⁷ The Court should, therefore, deny SAI's Motion for a Judgment on the Pleadings.

2. SAI Tortures the Subcontract's Use of the term *Aircraft*.

SAI tortures the definition of "aircraft" contained in the "Definitions and Procedures" section of the Subcontract to argue contractual exclusivity. When the Subcontract generically uses the term "aircraft," the term does embrace: "All Army RC/C-12 and UC-35 aircraft covered under the Prime Contract." (Compl., Ex. A, p. 6.) But, SAI glosses the fact that the Pricing Schedule, the actual worksheet listing the entirety of SAI's intended work, never uses the generic term "Aircraft" but instead specifically references "C-12/RC-12" airplanes. As noted *supra*, in relation to these specific designations, the Parties intentionally did not include minimum quantities or sale amounts.

The Subcontract's use of the narrower term (C-12/RC-12) manifests the Parties' intent not to incorporate the generic definition of *aircraft* with respect to the Pricing Schedule. The Parties otherwise would not use "C-12/RC-12" as a limiting term, since the generic definition would already embrace such planes. Info. Sci. Corp. v. United States, 80 Fed. Cl. 759, 792 (2008) (holding that where there are specific and general terms in a contract that relate to the same subject matter, the specific terms control over the more general language) (citing Restatement (Second) of Contracts § 203(c) (1981) ("[S]pecific terms and exact terms are given greater weight than general language.")).⁸ According to SAI, the generic definition of

⁷ In fact, DynCorp would never agree to a minimum number of planes to be serviced, as that is determined solely by the U.S. Government, and not DynCorp.

⁸ See also Abraham v. Rockwell Int'l Corp., 326 F.3d 1242 (Fed. Cir. 2003); Air-Sea Forwarders, Inc. v. United States, 166 F.3d 1170, 1171-72 (Fed. Cir. 1999); Dalton v. Cessna Aircraft Co., 98 F.3d 1298, 1305 (Fed. Cir. 1996); Daff v. United States, 78 F.3d 1566, 1574 (Fed. Cir. 1996); Hughes Comm'n's Galaxy, Inc. v. United States, 998 F.2d 953, 958 (Fed. Cir. 1993); Hills Materials Co. v. Rice, 982 F.2d 514, 517 (Fed. Cir. 1992); Hol-Gar Mfg. Corp. v. United States, 351 F.2d 972, 980 (Ct. Cl. 1965); Goldwasser v. United States, 325 F.2d 722, 723 (Ct. Cl. 1963); Precision Pine &

aircraft, "standing alone," proves exclusivity. (SAI's Br. Supp. Mot. J. Pleadings 12.) To the contrary, SAI's heavy reliance upon a generic contract definition, not even appearing in Plaintiff's slated job tasks, only evidences how far SAI forces its absurd construction.

Yet another contractual gloss reveals how far SAI strains its position. If the Parties intended for the generic definition *aircraft* to confer exclusive rights upon SAI, the Pricing Schedule would list work on UC-35 planes since the generic definition of *aircraft* encompasses UC-35 planes. So, according to SAI's interpretation, work on UC-35 planes should appear on the Pricing Schedule, but it does not. Since the Subcontract's execution over eight years ago, SAI has, in fact, never conducted any work on UC-35 aircraft. Quite simply, if the Parties intended for SAI to complete work on every C-12/RC-12 *and* UC-35 plane, as the generic definition embraces, the Pricing Schedule would use the generic term *aircraft*, but it does not. SAI just pretends it does and asks the Court to pretend as well.

3. SAI Misstates the Subcontract's Use of the Word *Fleet*.

SAI's arguments concerning the Subcontract's use of the word *fleet* make no sense. (See, e.g., SAI's Br. Supp. Mot. J. Pleadings 15-16.) According to SAI, the Subcontract's reference to "the Government's fleet of C-12/RC-12" planes means that Plaintiff will exclusively provide repair and maintenance on each and every plane in the Government's fleet. (See, e.g., SAI's Br. Supp. Mot. J. Pleadings 15-16.) SAI conspicuously ignores the provision's express reference to the Pricing Schedule. The cited provision states:

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 set forth in Section B.

Timber, Inc. v. United States, 75 Fed. Cl. 80, 90 n.7 (2006); L.W. Matteson, Inc. v. United States, 61 Fed. Cl. 296, 307 (2004); TLT Constr. Corp. v. United States, 60 Fed. Cl. 187 (2004); E. Farnsworth, Farnsworth on Contracts § 7.11 (3d ed. 2004).

(Compl., Ex. A, p. 15, § B.1(A) (emphasis added).) Thus, under the Subcontract, SAI "shall provide . . . management, parts and materials, repairs" on the airplanes from the Government's fleet actually sent to SAI "as set forth in Section B." In turn, Section B.4 contains the Pricing Schedule, which actually lists SAI's slated job tasks and contains no minimum amounts. (Compl., Ex. A, p. 17; see also Compl., Ex. A, p. 14, § A.3 (stating that the Pricing Schedule's terms control if any inconsistencies exist in the Subcontract).) Accepting SAI's interpretation would impermissibly require the Court to delete the express limitation "as set forth in Section B" and ignore the required precedence the Pricing Schedule has over the balance of the Subcontract. See Gould, Inc. v. United States, 935 F.2d 1271, 1274 (Fed. Cir. 1991) (noting that an interpretation providing meaning to all parts will be preferred over one leaving a portion meaningless.)

4. The Existence of Termination, Default, and Automatic Renewal Clauses Fails to Prove Exclusivity.

SAI's arguments concerning the Subcontract's termination, default, and automatic renewal clauses lack merit.

a. The Termination Clause Fails to Prove Exclusivity.

According to SAI, the mere existence of a termination provision evidences exclusivity, since such provision would be unnecessary if DynCorp could simply use another subcontractor. (See SAI's Br. Supp. Mot. J. Pleadings 17.) This argument lacks merit for two reasons.

First, regardless of exclusivity or non-exclusivity, the Subcontract must address what happens to ongoing work, if the Subcontract terminates due to the federal government's cancellation of the Army Contract. When completing work under the Subcontract's Pricing Schedule, SAI takes physical possession of U.S. military aircraft. If, at the time of

termination, SAI is conducting work on RC-12/C-12 planes, the Subcontract addresses how to unwind the Parties' existing relationship.

Section H.23(D) (Page 42) states:

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.

(Compl., Ex. A, p. 42, § H.23(D) (emphasis added).) Tellingly, SAI ignores the provision's citation to FAR 52.249-2, which allows the federal government to step into the shoes of DynCorp in relation to subcontracts terminated pursuant to the termination of the Army Contract. That provision requires DynCorp to:

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

FAR 52.249-2(4). Thus, the Subcontract's termination provision does not create exclusive rights, as SAI contends, but rather provides a contractual mechanism for the U.S. Army to "settle or to pay" SAI for ongoing work if the Prime Contract terminates. Once again, SAI cites terms of the Subcontract only in sound bite fashion, when such provisions, in reality, lack the effect argued by Plaintiff.

Second, SAI's analysis ignores those CLINs where the Parties established minimum quantities. Thus, even setting aside ongoing SAI projects, the termination provision would never constitute mere surplusage with respect to the CLINs where the Parties did establish minimum quantities. For yet another reason, SAI's argument regarding the termination clause lacks merit. Because SAI can cite to no provisions of the Subcontract creating exclusivity, the Court should deny SAI's Motion and dismiss Plaintiff's Complaint.

b. The Default and Automatic Renewal Provisions Fail to Establish Exclusivity.

SAI similarly cites the Subcontract's default and automatic renewal provisions to prove exclusivity. Such arguments fail for the same reasons applicable to the termination clause. Specifically, SAI argues (incorrectly) the Subcontract must be an exclusive agreement for the default and automatic renewal provisions to have meaning. But, the Subcontract's terms had to address both ongoing SAI projects and those CLINs where the Parties specified a minimum quantity of work. Such provisions clearly have an effective meaning. Moreover, the automatic renewal provisions supply the terms under which DynCorp issues purchase orders from year to year. Once again, SAI isolates contract provisions—out of context—hoping to convince the Court to find exclusivity—all while Plaintiff admits no exclusivity term actually exists. (SAI's Br. Supp. Mot. J. Pleadings 12.)⁹

C. SAI's Motion for Summary Judgment Lacks Merit.

If the Court finds the Subcontract contains ambiguities, SAI's Motion for Summary Judgment must be denied for three reasons:

1. The Court Cannot Grant Summary Judgment Before the Parties Complete Any Discovery.

SAI prematurely seeks an order granting summary judgment if the Subcontract contains ambiguities. The Court should not consider such a motion at this stage of the proceedings. The Parties only recently served written discovery requests, which will not even be due as of

⁹ SAI also intermittently relies upon § B.1.B of the Subcontract, which states: "DynCorp is not required to purchase from the Subcontractor any requirement in excess of the total funding identified under Section G under this subcontract." (Compl., Ex. A, § B.1.B.) Notably, SAI omits that § G.5.B does not require DynCorp to pay any amount of "obligated funds" exceeding those set forth in the Pricing Schedule. (Compl., Ex. A, p. 28.) With respect to the Pricing Schedule, no quantities or funds are obligated until DynCorp issues a purchase order as no minimum amounts are affixed to any of the CLINs in dispute. This is yet another example of how SAI provides the Court with half-terms, while omitting material language.

the hearing date. Neither party has completed a single deposition. DynCorp has issued one subpoena and the responsive materials have not yet arrived. Should the Subcontract's interpretation turn on the Parties' intent as proved by parole evidence, DynCorp possesses a procedural right to conduct discovery and defend upon a fully developed record.

South Carolina's Courts routinely reject motions for summary judgment as improper when the non-movant has had no opportunity to participate in discovery.¹⁰ In Baughman v. AT&T, 306 S.C. 101, 410 S.E.2d 537 (1991), the South Carolina Supreme Court ruled:

Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." Watson v. Southern Ry. Co., 420 F. Supp. 483, 486 (D.S.C. 1975); see also Holloman v. McAllister, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986) ("an extreme remedy to be cautiously invoked"). This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. 10A Wright & Miller, Federal Practice and Procedure § 2741, p. 543 (1983); 6 Moore's Federal Practice ¶ 56.02[6], p. 56-39 (2d ed. 1990); see, e.g., First Chicago Int'l v. United Exchange Co., 267 U.S. App. D.C. 27, 836 F.2d 1375 (1988); Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 756 F.2d 230 (2d Cir. 1985); Tyler v. City of Enterprise, 521 So. 2d 951 (Ala. 1988); Gangadean v. Leumi Fin. Corp., 13 Ariz. App. 534, 478 P.2d 532 (1970); Commercial Bank of Kendall v. Heiman, 322 So. 2d 564 (Fla. Dist. Ct. App. 1975); Board of Education v. Van Buren & Firestone, Architects, Inc., 165 W. Va. 140, 267 S.E.2d 440 (1980); cf. Rule 56(f), S.C.R.C.P.

Baughman, 306 S.C. at 112, 410 S.E.2d at 543-44; see also Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 363, 563 S.E.2d 331, 334 (2002) (holding that summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law). Since DynCorp has had no opportunity to complete discovery in the case *sub judice*, the Court should deny SAI's Motion for Summary Judgment.

¹⁰ Throughout its brief, SAI's cites federal common law in relation to the procedural aspects of this dispute. (See e.g., SAI's Br. Supp. Mot. J. Pleadings 20.) This analysis errs as the Subcontract's choice of law provision only applies to contract construction, not procedure: "[T]his Subcontract will be construed and interpreted according to the federal common law of government contracts" (Compl., Ex. A, p. 30, § H.5.) Accordingly, the Court should follow binding decisional law interpreting South Carolina's Rules of Civil Procedure.

The evidentiary materials submitted by SAI reflect why Plaintiff's Motion for Summary Judgment is premature and would prejudice DynCorp. SAI has submitted the affidavits of Sheldon Early and Neal McGrail in support of its Motion. However, as noted *supra*, DynCorp has not had the opportunity to depose either affiant. Before the Court can accredit or discredit either affidavit, DynCorp has the procedural right to test both affiant's sworn statements through deposition.

Granting summary judgment before discovery even commences would substantially prejudice DynCorp. This is particularly true since the attachments to Sheldon Early's affidavit contradict the affidavit's sworn content. For example, on Page 1 of Exhibit 3 to Early's Affidavit, the notation next to the entry entitled, "Pages 4 & 5, Preamble, 6th and 7th Whereas" states: "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." (Early Aff., Ex. 3, p. 1 (emphasis added).) Later, the entry entitled, "Page 29, Section G.5" states: "SAI may rely on DynCorp's issuance of PO's or other direction to proceed as agreement to pay for services rendered." (Early Aff., Ex. 3, p. 2 (emphasis added).) Both entries support DynCorp's interpretation of the Subcontract and refute SAI's currently stated position. Before the Court can entertain a Motion for Summary Judgment, DynCorp is procedurally entitled to conduct discovery as to the evidentiary materials submitted by SAI and as to the case generally. See *Baughman v. AT&T*, 306 S.C. 101, 112, 410 S.E.2d 537, 543-44 (1991).¹¹

¹¹ Additionally, the affidavits submitted by SAI contain various improper conclusions as to DynCorp's intent. The affidavits contain no specific factual basis for such assertions.

2. SAI's Motion for Summary Judgment Relies Upon a Superseded Teaming Agreement.

SAI errantly supports its Motion for Summary Judgment on a Teaming Agreement ("TA") executed by the Parties before the later-executed Subcontract superseded the TA. (See SAI's Br. Supp. Mot. J. Pleadings 21-23.) The Subcontract alone now supplies the terms of the Parties' agreement. Arguing to the contrary, SAI conspicuously ignores the terms of the Subcontract *expressly* superseding 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 deny SAI's Motion for Summary Judgment as it relies upon the superseded TA. See Northrop Grumman Info. Tech., Inc. v. United States, 535 F.3d 1339, 1347 (Fed. Cir. 2008) (holding integration clause stating "these lease terms and conditions constitute the *entire agreement* between [the parties]" barred litigant from relying upon a Letter of Essential Need).¹²

¹² Under federal common law:

[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).

Not only do the Subcontract's terms bar SAI's reliance upon the TA but the TA's terms also foreclose such reliance, as the TA no longer remains in effect. Paragraph 2.2 on page 1 of the TA states:

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:

....

(e) Lapse of 24 months from the effective date of this Agreement.

....

(h) Award of a subcontract by DynCorp to Stevens for its designated portion of the project as set forth in Paragraph 2.01 hereof.

(Compl., Ex. A, p. 1, ¶ 2.2.) Thus, under Paragraph 2.2(e), the Subcontract would have expired no later than March 16, 2002, two years after the effective date of March 16, 2000. (See Subcontract, Ex. A, p. 4.) However, the execution of the Subcontract terminated the TA even before that date, under Paragraph 2.2(h).

SAI's reliance upon the TA fails as a matter of law. The Subcontract expressly superseded the TA. The TA doubly terminated under its own terms. As such, the Court should deny SAI's Motion for Summary Judgment.

3. The Patent Ambiguity Doctrine Bars SAI's Construction.

To the extent the Court finds an ambiguity existed in the Subcontract, the federal common law doctrine of patent ambiguities forecloses SAI's interpretation of exclusivity. "A patent ambiguity is present when the contract contains facially inconsistent provisions" placing

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 (2009) (quoting and following Northrop Grumman.)

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) (citing 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 the ambiguity itself." HPI/GSA-3C, LLC v. Perry, 364 F.3d 1327, 1337 (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 contradicting SAI's claims of exclusivity. First, the Parties left blank the "Quantity" and "Amount" columns on the Pricing Schedule. (*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, and as noted in DynCorp's Brief Supporting its Motion for a Judgment on the Pleadings, the Subcontract contains flow-down provisions from the Army Contract, namely, FAR 52.243-1, 52.243-7, and 52.245.2(b). (*See* Discussion, DynCorp's Br. Supp. Mot. J. Pleadings.) 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 the Court finds ambiguities exist in the Subcontract, such ambiguities constitute patent ambiguities, as the above-cited, 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."); 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."). Because the Parties incorporated the "federal common law of government contracts" into the Subcontract, because an ambiguity now cited by SAI arises on the Subcontract's face, and because the Subcontract constitutes a fully integrated agreement, SAI's urged interpretation of exclusivity must fail. The Court should, therefore, deny SAI's Motion and grant DynCorp's Motion for a Judgment on the Pleadings.

IV. CONCLUSION

For the reasons set forth above, the Court must deny SAI's Motion for a Judgment on the Pleadings or, alternatively, for Summary Judgment and grant DynCorp's Motion for Judgment on the Pleadings.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: William S. Brown

William S. Brown

SC Bar No. 064164

E-Mail: william.brown@nelsonmullins.com

Lane W. Davis

SC Bar No. 68796

E-Mail: lane.davis@nelsonmullins.com

Steven E. Buckingham

SC Bar No. 75089

E-Mail: steven.buckingham@nelsonmullins.com

104 South Main Street / Ninth Floor

Post Office Box 10084 (29603-0084)

Greenville, SC 29601

(864) 250-2300

Attorneys for DynCorp International LLC

Greenville, South Carolina

October 16, 2009

EXHIBIT 1

LCCS/SAI001, Mod 008

DYNCORP INTERNATIONAL LLC
1245 Royal Lane North
DFW Airport, TX 75261
(817) 302-1741

SUBCONTRACT NO.: LCCS/SAI001
Modification 008
14 May 04

CONTRACT TYPE: FIRM FIXED PRICE (FFP) SUPPLIES AND SERVICES AND COST REIMBURSABLE
(CR) ELEMENTS

PLACED UNDER U.S. GOVERNMENT PRIME CONTRACT NO: DAAH23-00-C-0226

SECURITY CLASSIFICATION - UNCLASSIFIED

PRIORITY RATING: DO-A1

=====

SUBCONTRACT AGREEMENT

BETWEEN

DYNCORP INTERNATIONAL

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

1245 Royal Lane North
DFW Airport, TX 75261

(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")

CLIN	SUPPLIES/SERVICES	QTY	UNIT	UNIT PRICE	FUNDED AMT
1005	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		HR	\$48.44	
	Over 100 Hrs		HR	\$68.74	
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	\$38,079	
3003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$71,784	
3003D	Maintenance/Strip & Paint of UE-258		EA	\$91,608	
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		HR	\$50.18	
	Over 100 Hrs		HR	\$89.14	
3004AD	Site Organizational Maintenance Parts (TBD)				TBD
3004B	C-12/RC-12 Over and Above Parts/Materials (TBD)				
3004C	C-12/RC-12 Over And Above A/C Storage (TBD)				

CLIN	SUPPLIES/SERVICES	QTY	UNIT	UNIT PRICE	FUNDED AMT
3005	Travel & Per Diem (TBD)				
3006	Elective Improvements (Modifications and Upgrades)				
3006AA	Modification of GATM III Aircraft - CY 03 FFP	4	EA.	\$448,412	\$1,793,648
3006AB	Modification of GATM III Aircraft - CY 03 O&A				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	\$38,988	
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	\$83.89	
4004AC	C-12/RC-12 Site Organizational Maintenance 1" 100 Hrs		HR	\$52.04	
	Over 100 Hrs		HR	\$71.70	
4004AD	Site Organizational Maintenance Parts (TBD)				TBD
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)				
4006	Elective Improvements (Modifications and Upgrades)				
4006AA	Modification of 4 ea. GATM III Aircraft - CY 04 FFP	4	EA.	\$461,123	\$1,844,492
4006AB	Modification of 4 ea. GATM III Aircraft - CY 04 O&A				TBD
4006AC	Modification of 8 ea. GATM III Aircraft - CY 04 FFP	8	EA.	\$461,123	\$3,688,984
4006AD	Modification of 8 ea. GATM III Aircraft - CY 04 O&A				TBD
4007	Option - Elective Improvements (Modifications and Upgrades - GATM II)				
4007AA	Modification of GATM II T3 Aircraft - CY 04 FFP	4	EA.	\$350,711.65	\$1,402,848.60
4007AB	Modification of GATM II T3 Aircraft - CY 04 FFP	TBD	EA.	\$350,711.65	TBD
4007AC	Modification of GATM II T3 Aircraft - CY 04 O&A				TBD
4007AD	Modification of GATM II T1 Aircraft - CY 04 FFP	TBD	EA.	\$340,942.93	TBD
4007AE	Modification of GATM II T1 Aircraft - CY 04 O&A				TBD
4007AF	Modification of GATM II T2 Aircraft - CY 04 FFP	TBD	EA.	\$340,942.93	TBD
4007AG	Modification of GATM II T2 Aircraft - CY 04 O&A				TBD
4007AH	Procurement of "A" Kits for CLIN 4007AA Modifications	4	EA.	\$ 76,470.00	\$ 305,880.00
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	\$88.22	
5004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs	HR	\$54.07	
	Over 100 Hrs	HR	\$74.49	
5004AD	Site Organizational Maintenance Parts (TBD)			TBD

CLIN	SUPPLIES/SERVICES	QTY	UNIT	UNIT PRICE	FUNDED AMT
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)				
5008	Elective Improvements (Modifications and Upgrades)				
5006AA	Modification of GATM III Aircraft - CY 05 FFP	3	EA.	\$474,257	\$1,422,771
5006AB	Modification of GATM III Aircraft - CY 05 O&A				TBD
5007	Option - Elective Improvements (Modifications and Upgrades - GATM II)				
5007AA	TBD				
5007AB	Modification of GATM II T3 Aircraft - CY 05 FFP	TBD	EA.	\$365,823.01	TBD
5007AC	Modification of GATM II T3 Aircraft - CY 05 O&A				TBD
5007AD	Modification of GATM II T1 Aircraft - CY 05 FFP	TBD	EA.	\$355,548.85	TBD
5007AE	Modification of GATM II T1 Aircraft - CY 05 O&A				TBD
5007AF	Modification of GATM II T2 Aircraft - CY 05 FFP	TBD	EA.	\$355,548.85	TBD
5007AG	Modification of GATM II T2 Aircraft - CY 05 O&A				TBD
5010	Transition Phase-Out (TBD)				

OPTION SDX (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	\$65.86	
6004AB	C-12/RC-12 Over And Above Maintenance Non-Depot Hourly Rate	HR	\$88.22	
6004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs	HR	\$58.23	
	Over 100 Hrs	HR	\$77.47	
6004AD	Site Organizational Maintenance Parts (TBD)			TBD
6004B	C-12/RC-12 Over and Above Parts/Materials (TBD)			
6004C	C-12/RC-12 Over And Above A/C Storage (TBD)			
6005	Travel & Per Diem (TBD)			

6006	Elective Improvements (Modifications and Upgrades)					
6006AA	Modification of GATM III Aircraft - CY 08 FFP			(Deleted)		
6006AB	Modification of GATM III Aircraft - CY 08 O&A			(Deleted)		
6007	Option - Elective Improvements (Modifications and Upgrades - GATM II)					
6007AA	TBD					
6007AB	Modification of GATM II T3 Aircraft - CY 08 FFP	TBD	EA.	\$365,823.01		TBD
6007AC	Modification of GATM II T3 Aircraft - CY 08 O&A					TBD
6007AD	Modification of GATM II T1 Aircraft - CY 08 FFP	TBD	EA.	\$355,548.85		TBD
6007AE	Modification of GATM II T1 Aircraft - CY 08 O&A					TBD
6007AF	Modification of GATM II T2 Aircraft - CY 08 FFP	TBD	EA.	\$355,548.85		TBD
6007AG	Modification of GATM II T2 Aircraft - CY 08 O&A					TBD

6010 Transition Phase-Out (TBD)

OPTION SEVEN (1 FEB 07 - 31 JAN 08)

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	

CLIN	SUPPLIES/SERVICES	QTY	UNIT	UNIT PRICE	FUNDED AMT
7004AC	C-12/RC-12 Site Organizational Maintenance 1 st 100 Hrs		HR	\$58.53	
	Over 100 Hrs		HR	\$80.65	
7004AD	Site Organizational Maintenance Parts (TBD)				TBD
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)				
7006	Elective Improvements (Modifications and Upgrades)				
7006AA	N/A				
7006AB	N/A				
7010	Transition Phase-Out (TBD)				

OPTION EIGHT (1 FEB 08 - 31 JAN 09)

8003B	Scheduled Maintenance C-12/RC-12 - Strip and Repaint		EA	\$40,903	
8003C	Scheduled Maintenance C-12/RC-12 - ACI		EA	\$81,384	
8004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate		HR	\$69.25	
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	\$81.05	
	Over 100 Hrs	HR	\$84.12	
8004AD	Site Organizational Maintenance Parts (TBD)			TBD
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)			
8006	Elective Improvements (Modifications and Upgrades)			
8006AA	N/A			
8006AB	N/A			
8010	Transition Phase-Out (TBD)			

OPTION NINE (1 FEB 09 - 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	\$86,467	
9004AA	C-12/RC-12 Over And Above Maintenance Depot Hourly Rate	HR	\$71.02	

CLIN	SUPPLIES/SERVICES	QTY	UNIT	UNIT PRICE	FUNDED AMT
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	\$87.82	
9004AD	Site Organizational Maintenance Parts (TBD)				TBD
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)				
9006	Elective Improvements (Modifications and Upgrades)				
9006AA	N/A				
9006AB	N/A				
9010	Transition Phase-Out (TBD)				

H.24 AIRCRAFT MODIFICATIONS AND UPGRADES

The following aircraft elective improvements, consisting of modifications and upgrades, shall be accomplished under the Over-and-Above provisions of section H.9 of this subcontract:

- (a) Upgrade of nineteen (19) Global Air Traffic Modification Program (GATM III) RC-12N/P/Q aircraft in accordance with Stevens proposal letter 03SAQ.136.SAI Rev. B - Addendum B dated 25 Aug 03. (To be funded under CLINs 3006AA, 3006AB, 4006AA, 4006AB, 4006AC, 4006AD, 5006AA and 5006AB).
- (1) Material will be invoiced as received by Stevens Aviation, Inc. on the last Friday of each month.
 - (2) Material will be separately stored under the care cognizance and control of Stevens Aviation, Inc. Stevens will be responsible for all insurance and storage costs.
 - (3) Schedule for the last eleven (11) aircraft is estimated and the final schedule will be negotiated no later than 15 Apr 04. Stevens shall not be liable for late aircraft deliveries that are the result of unavailability of equipment.
 - (4) Estimated schedule is based on borrow/payback of the following mix of GFE and CFE items, with the GFE items subject to Government approval:

<u>Nomenclature</u>	<u>Part Number</u>	<u>Vendor</u>	<u>Requirements Dates</u>				<u>Payback Date(s)</u>	<u>Withhold Value</u>
Digital Transponder	4079100-0501	Honeywell	18-May	6-Jul	26-Aug	28-Aug	3/15/2005	57,000.00
Crypto Applique	4079080-0501	Honeywell	18-May	8-Jul	26-Aug	28-Aug	3/15/2005	8,500.00
EGPWS	985-1076-030-213-213	Honeywell	4-May	15-Jun			7/1/2004	68,000.00
TVI-920D	622-9728-313	Rockwell	4-May	15-Jun	15-Aug	15-Aug	7/5/04 (1 ea); 8/14/04 (1ea) 9/15/04 (2 ea)	Included in kit price for TCAS unit

NOTES:

(1) Per agreed upon payment program, SAI will bill for parts on the last Friday of each month for parts actually received during the applicable period. When an aircraft is delivered via DD Form 250, SAI will bill DynCorp for the balance of the mod. A reduction in the installed price will be granted in the form of a withhold for any parts not yet received at the time the aircraft is delivered. In the event parts are received after the borrowed unit is installed, the replacement unit will be returned via DynCorp's written instructions. No reductions in the installed price will be given in those instances. For parts received after aircraft redelivery and billing, a settlement invoice, reflecting the applicable purchase period, will be submitted.

(2) Equipment paid back to DynCorp will be invoiced based on the applicable year that Stevens was invoiced. (i.e., items shipped in 2005 will be invoiced at 2005 rates. Withhold values shown above are at 2004 pricing.

- (b) Maintenance/strip & paint of aircraft UE-258 in accordance with Stevens proposal letter 03SAQ.399.SAI Rev. A dated 5 Dec 03. (To be funded under CLIN 3003D).
- (c) Option - Upgrade of TBD ea. Global Air Traffic Modification Program (GATM II) C-12T3 aircraft in accordance with Stevens proposal letters 04SAQ.187.SAI dated 28 Mar 04 and Addendum A dated 29 Mar 04, Addendum B dated 29 Apr 04, Addendum C dated 11 May 04 and Addendum D dated 12 May 04. (To be funded under CLINs 4007AA - AH, 5007AB - AG and 6007AB - AG).
 - (1) For the first four (4) Option Year 4 GATM II aircraft mods, DynCorp will provide all materials as described in the Stevens proposals listed above, with the exception of the "A" kits, which will be provided by Stevens. Pricing on the remaining GATM aircraft assumes that DynCorp will provide all materials as described in the Stevens proposals listed above.
 - (2) Material will be separately stored under the care cognizance and control of Stevens Aviation, Inc. Stevens will be responsible for all insurance and storage costs.
 - (3) Actual aircraft inductions and delivery schedule will be negotiated on a per-aircraft basis. Delivery for the first four (4) GATM II aircraft will be in accordance with the aircraft induction schedule as identified in Stevens' Addendum A dated 28 Mar 04 (first aircraft to be inducted on 24 Jun 04).

This Modification 008 shall be considered effective upon the date of acceptance by DynCorp. Such acceptance will take place upon receipt of Stevens Aviation Inc.'s acceptance, as acknowledged by your signature below.

Accepted by:

Tom Sullivan Dir. of FAM
 Stevens Aviation, Inc. Representative Date
Tom Sullivan 5/14/04
 Name, Title

Ray Reed 14 May 04
 DynCorp Representative Date
Ray Reed
 Manager LCCS Contracts
 Name, Title