

Docket No. SA-540

Exhibit No. 2 N

NATIONAL TRANSPORTATION SAFETY BOARD

Washington, D.C.

FAA-Medallion Foundation Contract (OTA)

(17 Pages)

Attachment 13

To Operational Factors Specialist Factual Report

ANC17MA001

FAA-Medallion Foundation Contract

(OTA)

1. CONTRACT (Proc. Inst. Ident.) NO. DTFAWA-15-A-80020	2. EFFECTIVE DATE 09/28/2015	3. REQUISITION/PURCHASE REQUEST/PROJECT NO. AL-15-01049
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4. ISSUED BY CODE AAQ330-AFN AAQ-330 OPS PLAN/WEATHER PROG BR Orville Wright Bldg. (FOB10A), Room 335 FAA National Headquarters 800 Independence Ave., SW Washington DC 20591	5. ADMINISTERED BY (If other than Item 4) CODE
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6. NAME AND ADDRESS OF CONTRACTOR (No., Street, City, Country, State and ZIP Code) MEDALLION FOUNDATION 2301 MERRILL FIELD DR STE A3 ANCHORAGE AK 99515	7. DELIVERY <input type="checkbox"/> FOB ORIGIN <input checked="" type="checkbox"/> OTHER (See below)
	8. DISCOUNT FOR PROMPT PAYMENT
	9. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN: ▶ ITEM

CODE	FACILITY CODE	
10. SHIP TO/MARK FOR CODE 5690A07M 5690A07M 690A07 DOT FAA AAL 210 ATTN AAL 210 222 W 7TH AVE STOP 14 ANCHORAGE AK 995137504		11. PAYMENT WILL BE MADE BY CODE AAC FAA AAC ACCTG OFC DOT/FAA AMZ-110 PO BOX 25710 OKLAHOMA CITY OK 73125

12. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:	13. ACCOUNTING AND APPROPRIATION DATA See Schedule
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14A. ITEM	14B. SUPPLIES/SERVICES	14C. QTY	14D. UNIT	14E. UNIT PRICE	14F. AMOUNT
Continued...					

14G. TOTAL AMOUNT OF CONTRACT ▶	\$1,500,000.00
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15. TABLE OF CONTENTS							
(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICE/COST		PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING		PART IV - REPRESENTATIONS AND INSTRUCTIONS			
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE			L	INSTR., CONDS., AND NOTICES TO OFFERORS	
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD	
	H	SPECIAL CONTRACT REQUIREMENTS					

CONTRACTING OFFICER WILL COMPLETE ITEM 16 OR 17 AS APPLICABLE			
16. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return <u>1</u> copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)	17. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____ including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Contract Authority's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.		
18A. NAME AND TITLE OF SIGNER (Type or print)	19A. NAME OF CONTRACTING OFFICER William (Bill) Willenbring		
18B. NAME OF CONTRACTOR BY _____ (Signature of person authorized to sign)	18C. DATE SIGNED	19B. CONTRACT AUTHORITY BY _____ (Signature of the Contracting Officer)	19C. DATE SIGNED

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED
DTFAWA-15-A-80020

PAGE OF
2 16

NAME OF OFFEROR OR CONTRACTOR
MEDALLION FOUNDATION

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
0001	<p>Establishes a three-year agreement to improve safety decision making in Alaska at a cost of approximately \$1,500,000 for the first year. There is no planned funding for years two and three. Total obligations equal \$1,500,000.</p> <p>Small Business: NO FOB: Destination Period of Performance: 09/28/2015 to 09/27/2018</p> <p>MEDALLION FOUNDATION OTA PERIOD OF PERFORMANCE 1 YEAR STARTING 9/10/2015 Obligated Amount: \$1,500,000.00 Electronic & IT: 03</p> <p>Project Data: 12XXFASAFETYSRV.MA0300.ALB0100000.25215.08/21/2015.1250100150.420000</p> <p>Accounting Info: 1250100150.2015.5021420000.ALB0100000.25215.61006600.00000000.0000000000.0000000000 .0000000000 acct1: 1250100150 acct2: 2015 acct3: 5021420000 acct4: ALB0100000 acct 5: 25215 acct6: 61006600 Funded: \$1,500,000.00</p> <p>The total amount of award: \$1,500,000.00. The obligation for this award is shown in box 14G.</p>				1,500,000.00

MEMORANDUM OF AGREEMENT

BETWEEN

**DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

DTFAWA-15-A-80020

AND

MEDALLION FOUNDATION, INC.

INTRODUCTION

This Memorandum of Agreement establishes an agreement between the Federal Aviation Administration (FAA) and Medallion Foundation, Inc. The Medallion Foundation is a non-profit organization whose mission is to change the culture of aviation safety decision making in Alaska, expanding into Hawaii and the Northwest. Their mission directly supports the FAA Administrator's vision, as well as the Alaskan Region Flight Standards Division aviation safety goals for Alaska. Programs run by Medallion include the Star/Shield Program, which raises the air carrier's level of safety, air carrier certification activities on behalf of the FAA, conducting aviation safety audits, continued support of the Circle of Safety program, expanding the Aviation Safety Action Program (ASAP), expanding safety management principles to Federal Aviation Regulation (FAR) Part 135 operators, and providing training devices and online training courses.

ARTICLE 1. PARTIES

The parties to this agreement are the Federal Aviation Administration (FAA) and Medallion Foundation, Inc.

ARTICLE 2. SCOPE

- a. **Purpose:** The purpose of this agreement is to define the overall roles, responsibilities, and activities to be performed by the parties in support of this Agreement.
- b. **Roles and responsibilities for both parties:** The parties are bound by a duty of good faith and best effort in achieving the goals of the Agreement.

ARTICLE 3. MEDALLION FOUNDATION ROLES AND RESPONSIBILITIES:

- a. **Quality Control Requirements:**
 1. As a condition of this funding, the Medallion Foundation must provide the Alaskan Region Flight Standards Division, AAL-200, the follow data on a quarterly basis:

- Names of all active participants in all Medallion programs
 - Names of all Medallion Star recipients
 - Names of all Medallion Shield recipients
 - Names of all organizations audited by Medallion and summary of results
 - Names of all organizations from which a Medallion Shield was suspended or withdrawn
 - Names of all organizations from which one or more Medallion Stars were suspended or withdrawn
 - Summary of all other activities
2. The Medallion Foundation must continue to have an OMB annual financial audit by an authorized auditor and report the results of the audit to the FAA.

b. Medallion Star/Shield Program-Alaska

This program focuses on establishing and sustaining an elevated level of safety performance through the application of system safety and safety management principles. Medallion must develop and promote a safety culture that holds safety as a core value, while providing continuous professional development of individual skills and competence, proactive sharing of operational control responsibilities, hazard identification and risk management techniques, trend analysis, and management practices that support the organization's safety objectives. Medallion must evaluate operators who are eligible for the Shield on the engagement and support of the corporate safety culture. The cornerstones must include: Controlled Flight Into Terrain (CFIT) Avoidance, Operational Control, Maintenance and Ground Service, Safety, and Internal Evaluation.

Out-Reach: In addition to the efforts in Alaska, Medallion must provide Star/Shield outreach in Hawaii and Northwest Mountain region to operators. Recruit 3-5 operators in 2016 to participate in the program. The Foundation will provide its best efforts to assist the Honolulu Hawaii Flight Service District Office (FSDO) in providing public outreach: safety seminars, Safety Management System (SMS) classes for carriers, and work with the tour industry for shipboard safety programs.

c. Organization Delegation Authority (ODA)

The Medallion Foundation must work with the Federal Aviation Administration (FAA) and use its best efforts to receive an Organization Designation Authorization (ODA) to conduct initial certification activities in Alaska and the U.S. The Foundation must conduct single pilot and basic operator certification activities under its ODA. The Foundation will use its best efforts to achieve 40 certification activities per year.

Operators certified by the Medallion ODA must have the Medallion 5 Star/Shield/ Single Pilot/SMS safety attributes built into their certification package.

d. Circle of Safety

Medallion must continue to work with the FAA Safety Team to provide media outreach across Alaska. Likewise, the Foundation must continue to work with industry partners,

carriers, tourism, and the cruise industry to provide safety promotions geared to the traveling public.

The Medallion Foundation must fund Circle of Safety at \$118,000 per year and in collaboration with the FAA Alaskan Region Flight Standards Division, support the execution of that program.

e. **Aviation Safety Action Program (ASAP)**

The Medallion Foundation must provide administrative support for the ASAP program to allow carriers who might not otherwise be able to commit the resources needed to have a standalone program. The Foundation must conduct initial training for the Event Review Committee (ERC) members who are the key decision makers for the program. The Foundation must provide training materials air carriers can use to conduct their internal employee training. In addition, the Medallion Foundation must process reports, schedules ERC meetings, tracks corrective actions, and closes reports. The Medallion Foundation must provide feedback to employees who submit reports and publish a monthly ASAP summary of de-identified reports for the benefit of all ASAP participants.

f. **Maintenance of the Flight Training Devices (FTD's) in Alaska**

The Foundation must provide student and certified pilots the use of the 18 Medallion Flight Training Devices (FTDs) and simulators and the opportunity to practice and hone their skills against some of the toughest Alaskan flying scenarios in a safe, threat free environment. Unique to Medallion are the enhanced graphic depictions of numerous Alaskan mountain passes and fine-tuned weather conditions that have proved a threat to many aviators. Devices offered simulate single engine, multi-engine or helicopter, and include a full-motion tail-wheel Super Cub, BN 2 Islander, CASA 235, DC3, DC9, King Air 350, Lake Amphibian, Q400, Skyvan, T33, Twin Otter, Vampire and 737BBJ. These 18 devices are maintained and offered for use to all qualified airmen, free of charge in 16 locations throughout Alaska. FTD's are located in Ketchikan (2), Juneau (2), Palmer (1), Soldotna (1), Fairbanks (1), Homer (1), Bethel (1), Talkeetna (1), Anchorage (7), and Nenana (1). It is expected that FTD usage must continue to grow moving forward.

g. **Advanced Aviation Training Devices (AATD) Simulator Training**

Medallion will use its best efforts to expand upon the Star/Shield requirements for FAR Part 135 and 121 in crew training to assist operators in addressing poor decision making in the cockpit. Medallion will use its best efforts to obtain and offer Advanced Cockpit Crew Resource Management and Procedures Training programs that are equivalent to FAR Part 121 training for this purpose.

h. **Fatal & Serious Injuries (FSI)**

Medallion must continue to collaborate with the FAA, Alaskan Region Flight Standards on pilot outreach programs, with the exclusive aim of getting pilots to recognize the leading causes of fatal or serious injuries resulting from incidents or accidents by using the following methods:

- Off Airport Guide

- PA18 simulator
- Beaver/Otter Part 135 Shoulder Harness Awareness Campaign
- Weight & Balance Outreach
- CFI/DPE Training Outreach
- Commercials promoting the above concepts, as well as, Airbag Seatbelts, Helmets, 406 ELt's, and Angle of Attack Indicators

ARTICLE 4. FAA ROLES AND RESPONSIBILITIES:

- a. The FAA, Flight Standards Division, AAL-200, will continue to conduct semi-annual audits on the Medallion Foundation's programs.
- b. The FAA will provide Medallion Foundation \$1,500,000 for the first year of the agreement and will monitor Medallion's progress for the following two years.

ARTICLE 5. CONTRIBUTIONS OF THE PARTIES: The intent of this Agreement is to provide a framework for both parties to participate jointly in concept research and development. When able, both parties will agree to provide in-kind contributions of resources, facilities, equipment, and manpower to accomplish objectives of this Agreement.

ARTICLE 6. CONTRIBUTIONS OF THE PARTIES: This Agreement is an "other transaction." It is not intended to be, nor shall it be construed as, a partnership, corporation, or other business organization.

ARTICLE 7. EFFECTIVE DATE AND TERM

This MOA is effective on the date of the last signature of the parties and Medallion must continue for a period of one year effective date of the agreement, unless terminated earlier by the parties herein, in accordance with Article 14.

The FAA will continue to audit Medallion for an additional two years after the effective date of the agreement. This MOA may be extended through a bilateral modification in accordance with Article 12 below.

ARTICLE 8. FUNDING AND PAYMENT

Funds are obligated under this MOA as stated in Articles 4.

ARTICLE 9. REPORTING REQUIREMENTS

Medallion Foundation will provide the Alaskan Region Flight Standards Division, AAL-200, the data listed in Article 3.a.1 quarterly.

ARTICLE 10. LEGAL AUTHORITY

This agreement is entered into under the authority of 49 United States Code (USC), Section 106(1)(6), which authorizes agreements and other transactions on such terms and conditions as the Administrator deems necessary.

ARTICLE 11. AUDITS

The Comptroller General of the United States, the Administrator of the FAA or a duly authorized representative from either; or a representative of the Department of Transportation's Office of the Inspector General will, until three (3) years after completion of any work package under this agreement, have access to and the right to examine any pertinent books, documents, papers, or other records from either party involving transactions specifically related to this agreement.

ARTICLE 12. CHANGES/MODIFICATIONS

Changes or modifications to this Agreement must be in writing and signed by the FAA approving authority and contractual authority, as well as the designated representative of Medallion Foundation. The modification must cite this MOA and state the exact nature of the modification. No oral statement by any person will serve to modify or otherwise affect the terms of this agreement.

ARTICLE 13. ORDER OF PRECEDENCE

In the event of any inconsistency between the terms of the Agreement, the inconsistency shall be resolved by giving preference in the following order:

- (a) The Agreement,
- (b) The Attachments.

ARTICLE 14. TERMINATION

Either party may terminate its participation in this agreement at any time prior to its expiration date without incurring any liability or obligation to the other party (other than performance of obligations accrued on or prior to the termination date) by giving at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving parties shall take immediate steps to stop the accrual of any additional obligations that might require payment. Any payment, material or equipment furnished by either party under this agreement shall be returned upon request.

ARTICLE 15. CONSTRUCTION OF THE AGREEMENT

This agreement is an "Other Transaction" issued under 49 USC Section 106(1)(6) and is not a procurement contract, grant, or cooperative agreement. Nothing in this agreement may be construed as incorporating by reference or implication any provision of federal acquisition law or regulation.

Each party acknowledges that all parties hereto participated equally in the negotiation and drafting of this agreement and any amendments/attachments thereto, and that, accordingly,

this agreement will not be construed more stringently against one party than against the other.

ARTICLE 16. DISPUTES

Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, the dispute will be referred to a mutually agreed-upon mediator, to the extent permitted by law. The decision is final unless it is timely appealed to the FAA Administrator, whose decision is not subject to further administrative review and, to the extent permitted by law, is final and binding.

ARTICLE 17. LIMITATION OF LIABILITY

Claims for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of funding obligated under this Agreement at the time the dispute arises. In no event shall the FAA be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

ARTICLE 18. CIVIL RIGHTS ACT

The parties shall comply with Title VI of the Civil Rights Act of 1964 relating to nondiscrimination in federally assisted programs.

ARTICLE 19. AMS CLAUSES INCLUDED BY REFERENCE

The FAA's Acquisition Management System (AMS) Clause 3.2.5-1, "*Officials Not to Benefit*" and Clause 3.2.5-7, "*Disclosure Regarding Payments to Influence Certain Federal Transactions*" are attached hereto (Attachment 1) and incorporated by reference into this agreement.

ARTICLE 20. PROTECTION OF INFORMATION

The parties acknowledge that the Freedom of Information Act may apply to any or all public records generated or received as a result of this Agreement. The parties agree that they shall take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.

ARTICLE 21. PUBLIC DISCLOSURE

Medallion Foundation agrees not to publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to this MOA, without prior written consent of the Contracting Officer (CO). An electronic or printed copy of any material proposed to be published or distributed must be submitted to the CO reasonably in advance of any proposed release date. The following schedule is established as a guideline when requesting consent (calendar days):

- written or photographic information – 30 days

- oral information – 15 days
- congressional information – 10 days.

ARTICLE 22. INTELLECTUAL PROPERTY

The Government retains Government Purpose Rights in all data developed under this agreement.

"Data" means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, computer software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information.

"Government Purpose Rights" means the rights to –

(1) Use, modify, reproduce, release, perform, display, or disclose data within the government without restriction; and,

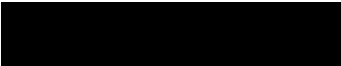
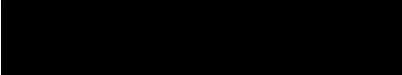
(2) Release or disclose technical data outside the government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for government purposes.

"Government Purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments organizations. Government purposes include competitive acquisition by or on behalf of the government but do not include the rights to use, modify, reproduce, release, perform, display, or disclose data for commercial purposes or authorize others to do so.

b. Rights in Inventions

The respective rights of the Government and the other parties to this agreement are the same as those found at T.5-10 "Patent Rights – Retention by the Contractor (Short Form)

ARTICLE 23. ORGANIZATION POINTS OF CONTACT

FAA	Medallion Foundation, Inc.
William Willenbring Contracting Officer Federal Aviation Administration Room 406 800 Independence Ave, SW Washington, DC 20591 	Gerald H. Rock Executive Director Medallion Foundation, Inc. 1520 Post Road Anchorage, AK 99501 

AGREED

The parties approve of the provisions of this memorandum of agreement as indicated by the signatures of their duly authorized officers.

Non-Governmental Entities

Government Entities

Medallion Foundation

Federal Aviation Administration

BY: Gerald H. Rock

BY: William A. Willenbring

TITLE: Executive Director Medallion Foundation **TITLE: Contracting Officer**

DATE:

DATE:

ATTACHMENT 1

FAA Acquisition Management System Clauses

3.2.5-1 Officials Not to Benefit (April 1996)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

3.2.5-7 Disclosure Regarding Payments to Influence Certain Federal Transactions (October 2010)

(a) Definitions.

- (1) "The Act," as used in this clause, means section 1352, title 31, United States Code.
- (2) "Agency," as used in this clause, means executive agency, within the meaning of 5 U.S.C. 101, 102, and 104(I), and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101..
- (3) "Covered Federal action," as used in this clause, means any of the following Federal actions:
 - (i) The awarding of any Federal contract.
 - (ii) The making of any Federal grant.
 - (iii) The making of any Federal loan.
 - (iv) The entering into of any cooperative agreement.
 - (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (4) "Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.
- (5) "Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.
- (6) "Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental

duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(7) "Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

(i) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(ii) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

(iii) A special Government employee, as defined in section 202, title 18, United States Code.

(iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

(8) 'Person,' as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(9) 'Reasonable compensation,' as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(10) 'Reasonable payment,' as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(11) 'Recipient,' as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(12) 'Regularly employed,' as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such

person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(13) 'State,' as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions. The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal action) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the screening information request (SIR), the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this clause in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$150,000 shall disclose accordingly.

(4) This certification and disclosure is a prerequisite for making or entering into this contract imposed by the Act. Any person who makes a prohibited expenditure or fails to file or amend a disclosure form, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000, for each such failure.

(c) The prohibitions of the Act do not apply under the following conditions:

(1) Agency and legislative liaison by own employees.

(i) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(ii) For purposes of subdivision (c)(1)(i) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(iii) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(A) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(B) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(iv) The following agency and legislative liaison activities are permitted where they are prior to Screening Information Request (SIR) of any covered Federal action:

(A) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(B) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(C) Capability presentations by persons seeking awards from an agency pursuant to the provisions of a law authorizing such actions;

(v) Only those services expressly authorized by subdivision (c)(1)(i) of this clause are permitted under this clause.

(2) Professional and technical services.

(i) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of:

(A) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of submittal/offer or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(B) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any submittal/offer or application for that Federal action or for meeting requirements imposed by or

pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(ii) For purposes of subdivision (c)(2)(i) of this clause, 'professional and technical services' shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a submittal/offer by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's submittal/offer, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a submittal/offer are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(iv) Only those services expressly authorized by subdivisions (c)(2)(i) and (ii) of this clause are permitted under this clause.

(v) The reporting requirements herein shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(d) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB Standard Form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any

disclosure form previously filed by such person under subparagraph (e)(1) of this clause. An event that materially affects the accuracy of the information reported includes:

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the certification, and if required, a disclosure form by any person who requests or receives any subcontractor exceeding \$150,000 under the Federal contract.

(4) All subcontractor disclosure forms shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor.

(e) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

(f) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or fails to file or amend the disclosure form to be filed or amended by paragraph (b) shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representations made by their subcontractors in the certification and in the disclosure form.

(g) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.