

CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this 5th day of November, 2014 by and between the Government of the Virgin Islands, Department of Property and Procurement, on behalf of the Department of Planning and Natural Resources ("Government") 8100 Lindberg Bay Suite No. 61, Cyril E. King Airport, Terminal Building 2nd Floor, St. Thomas VI 00802 and Ocean Systems Laboratory, Inc. ("Contractor") 4049 LaGrande Princess, Suite #2, St. Croix VI 00820 (Collectively the "Parties").

WITNESSETH:

WHEREAS, the Department of Planning and Natural Resources ("DPNR"), through its Water Quality Management Program, is responsible for the quarterly monitoring of the coastal waters of the USVI;

WHEREAS, DPNR, through its Water Pollution Control Program, is responsible for the administration and enforcement of the Territorial Pollutant Discharge Elimination System ("TPDES");

WHEREAS, enforcement of the TPDES program requires laboratory analysis of water samples collected from regulated facilities during CSI and CEI inspections;

WHEREAS, DPNR, through its Public Water Systems Supervision Program ("PWSS"), is responsible for overseeing public water systems in order to protect the public health;

WHEREAS, administration of the PWSS Program requires laboratory analysis of water samples collected for (i) surveillance water sampling (including new systems, citizen complaints, and QC samples from annual water hauler inspections) and (ii) sanitary surveys of WAPA.

WHEREAS, DPNR acknowledges that it has and continues to, including the effective date of the Contract, utilize the Contractor to provide the analytical laboratory services associated with the quarterly monitoring of the coastal waters, periodic sampling of regulated TPDES facilities, and the sampling under PWSS program ("Prior Analyses");

WHEREAS, DPNR further acknowledges that the Contractor has invoiced DPNR for the Prior Analyses and that the invoices remain outstanding and unpaid;

WHEREAS, the Government remains in need of the services of a contractor to provide analytical laboratory services to support water quality assessment initiatives for the TPDES and PWSS programs in the St. Croix District, which duties and responsibilities are more particularly

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described in Addendum I (Scope of Work) and Addendum II (Terms of Compensation) attached hereto and made a part of this Contract; and

WHEREAS, the Contractor represents that it is willing and capable of providing such services in an expeditious manner and in accordance with the specifications cited in Addendum I and Addendum II.

NOW, THEREFORE in consideration of the mutual covenant herein contained, and intending to be legally bound by this written instrument, the Parties hereto do covenant and agree as follows:

1. **SERVICES**

The Contractor will provide the services described in Addendum I (Scope of Work) attached hereto and made a part of this Contract.

2. **TERM**

This Contract shall commence upon execution by the Governor of the Virgin Islands and shall terminate one (1) year thereafter, unless mutually extended or terminated by the parties in accordance with the applicable terms of this Contract.

3. **COMPENSATION**

The Government, in consideration of the satisfactory performance of the services described in Addendum I (Scope of Work), including the Prior Sampling, agrees to pay Contractor a sum not to exceed Fifty-Six Thousand Seven Hundred Dollars (\$56,700.00) in accordance with the provisions set forth in Addendum II (Terms of Compensation) attached hereto and made a part of this Contract.

4. **RECORDS**

The Contractor, when applicable, will present documented, precise records of time and/or money expended under this Contract.

5. **PROFESSIONAL STANDARDS**

The Contractor agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands.

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11. **GOVERNING LAW**

The laws of the United States Virgin Islands shall govern this Contract and jurisdiction over this Contract shall remain in the United States Virgin Islands.

12. **WAIVERS AND AMENDMENTS**

No waiver, modification or amendment of any term, condition, or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

13. **ENTIRE AGREEMENT**

This Contract constitutes the entire agreement between the parties hereto, and all prior understandings or communications, written or oral, with respect to the Project, which is the subject matter of this Contract, are merged herein.

14. **RIGHT TO WITHHOLD**

If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to the Contractor, such sums as Government may deem ample to protect it against loss or to assure payment of claims arising there-from, and, at its option, Government may apply such sums in such manner as Government may deem proper to secure itself or to satisfy such claims. Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

No such withholding or application shall be made by Government if and while Contractor gives satisfactory assurance to Government that such claims will be paid by Contractor or its insurance carrier, if applicable in the event that such contest is not successful.

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15. **CONDITION PRECEDENT**

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor.

16. **TERMINATION**

Either party will have the right to terminate this Contract with or without cause on thirty (30) days written notice to the other party specifying the date of termination.

17. **PARTIAL TERMINATION**

The performance of work under this Contract may be terminated by the Government, in part, whenever the government shall deem such termination advisable. This partial termination shall be effected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term(s) and/or duties under this Contract are terminated and the date upon which such termination becomes effective. The Contractor shall be entitled to receive payment for services provided to the date of termination, including payment for the period of the thirty (30) days notice.

18. **NON-DISCRIMINATION**

No person shall be excluded from participating in, be denied the proceeds of, or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, disability or national origin.

19. **CONFLICT OF INTEREST**

(a) Contractor covenants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.

(b) Contractor further covenants that it is:

(1) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature, or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or

(2) a territorial officer or employee and, as such, has:

- (i) familiarized itself with the provisions of Title 3, Chapter 37 of the Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;
- (ii) not made, negotiated or influenced this Contract, in its official capacity;
- (iii) no financial interest in the Contract as that term is defined in section 1101 (1) of said Code chapter.

20. EFFECTIVE DATE

The effective date of this Contract shall be the date of execution of the Contract by the Governor.

21. NOTICE

Any notice required to be given by the Terms of this Contract, shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

GOVERNMENT

Lynn Millin-Maduro
Commissioner
Department of Property and Procurement
Sub Base, Building No. 1, Third Floor
St. Thomas, Virgin Islands 00802

Jean-Pierre Oriol
Acting Commissioner
Department of Planning & Natural Resources
No. 45 Mars Hill
Frederiksted, Virgin Islands 00840

CONTRACTOR

Amy Claire Dempsey
Vice President
Ocean Systems Laboratory, Inc.
4049 LaGrande Princess, Suite No. 2
St. Croix VI 00820



22. **LICENSURE**

The Contractor covenants that it has:

- (a) obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code; and
- (b) familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

23. **FALSE CLAIMS**

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

24. **NOTICE OF FEDERAL FUNDING**

Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds. Contractor warrants that it shall not, with respect to this Contract, make, or present any claim knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offense.

25. **DEBARMENT CERTIFICATION**

By execution of this Contract, the Contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON PROCUREMENT." In the event the Contractor or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this Contract or any subcontract and that the Contractor or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

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26. **TRAVEL EXPENSES**

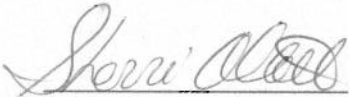
The Government shall pay no travel expenses.

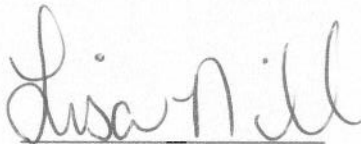
27. **OTHER PROVISIONS**

Addendum I (Scope of Work) and Addendum II (Terms of Compensation) attached hereto are a part of this Contract and are incorporated herein by reference.

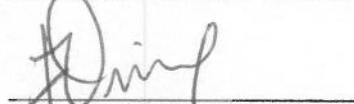
IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first written above.

WITNESSES



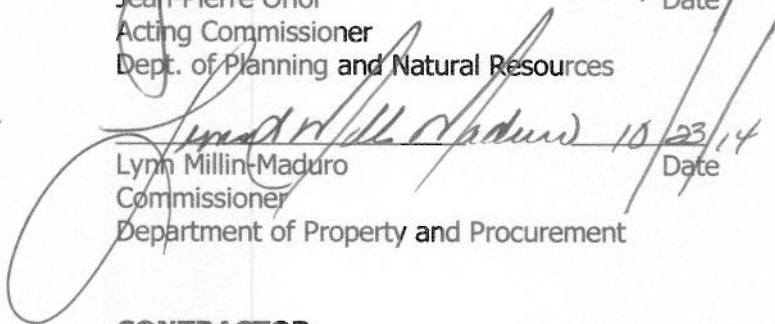


GOVERNMENT OF THE VIRGIN ISLANDS



Jean-Pierre Oriol
Acting Commissioner
Dept. of Planning and Natural Resources

15-Sep-2014
Date



Lynn Millin-Maduro
Commissioner
Department of Property and Procurement

10/23/14
Date

CONTRACTOR



Amy Claire Dempsey, Vice President
Ocean Systems Laboratory, Inc.
(Corporate Seal, if Contractor is a corporation)

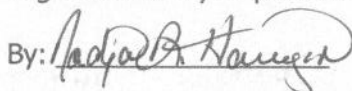
9/1/14
Date

APPROVED



John P. de Jongh, Jr.
Governor of the United States Virgin Islands

Legal Sufficiency Department of Justice

By:  Date: 10-22-14

MED No. _____ Account No. _____

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ADDENDUM I (SCOPE OF WORK)

The Contractor, for the Prior Analyses described in WHEREAS Clauses No.6 and No.7, satisfactorily performed the required analytical services in accordance with the requirements of DPNR's Water Quality Management, TPDES, and PWSS Programs. The overall goal for the services to be performed Post Prior Analyses period, is for the Contractor to provide analytical laboratory services for the periodic sampling at regulated facilities during CSI or CEI inspections under the TPDES Program and surveillance sampling (including citizen complaints, new systems and quality control samples from the annual water tanker/hauler inspections), and sanitary surveys of WAPA under the PWSS Program in the St. Croix district and to satisfactorily perform the following tasks:

PRE-ANALYTICAL REQUIREMENTS

1. Obtain and read the current copy of the Quality Assurance Project Plan ("QAPP") for the TPDES and PWSS programs,
2. Adhere to the requirements, methods and data objectives outlined in each QAPP.
3. Provide DPNR-Division of Environmental Protection ("DPNR-DEP") with an official copy of the Contractor's standard operating procedures ("SOP"). The SOP must specifically and clearly provide, at a minimum, the procedures for both chain of custody, analysis of samples and adherence to the holding time requirements. The Contractor's SOP must be in accordance with DPNR-DEP's QAPP.
4. All samples must be accompanied by the Field Data Sheet and Chain of Custody Record. The Contractor shall not accept any samples without Field Data Sheet and Chain of Custody Record signed by both the sampler and the Contractor indicating the time and reason for the transfer of custody. A copy of the Field Data Sheet and the original Chain of Custody Record shall remain with the samples at all times. DPNR-DEP will retain the original Field Data Sheet and receive a copy of the Chain of Custody Record prior to leaving the lab.
5. All samples will be provided to the Contractor at a temperature below 10 degrees Celsius. The Contractor shall not accept any samples which were not preserved at a temperature below 10 degrees Celsius. The Contractor must verify the preservation

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temperature of the samples before accepting the samples from the Sampler and before commencing analysis.

6. The Contractor must verify that the samples, through the Field Data Sheet and Chain of Custody Record did not exceed the appropriate holding time for the parameters being tested, before accepting the samples from the Sampler and before commencing analysis.

ANALYTICAL REQUIREMENTS

7. All samples from the TPDES Program must be analyzed for Fecal Coliform and Enterococci in accordance with an EPA approved method as indicated in Paragraph 9. Analysis for Fecal Coliform and Enterococci must commence within six hours of sample collection.
8. All samples from the PWSS Program must be analyzed for Total Coliform Bacteria in accordance with an EPA approved membrane filtration method for Total Coliform as indicated in Paragraph 9. In the event a sample tests positive for Total Coliform Bacteria, the Contractor will continue analyzing the sample and test for Fecal Coliform and E.Coli using an EPA approved method.
9. All samples shall be appropriately analyzed using EPA approved methods based on the following:
 - (A) Enterococci Bacteria Samples: United States Environmental Protection Agency's (EPA) Method 1600;
 - (B) Enterococci in Water by Membrane Filtration: membrane-Enterococcus Indoxyl- β -D-Glucoside Agar (mEI);
 - (C) Fecal Coliform Bacteria Samples: American Public Health Association's (APHA) Method 9222-D, Fecal Coliform-Membrane Filter Procedure;
 - (D) Total Suspended Solids Samples: EPA's Method 160.2_M, Total Suspended Solids
 - (E) Total Coliform: EPA approved or membrane filtration method; and
 - (F) Turbidity Samples: APHA's Method 2130-B, Nephelometric Method.

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POST ANALYTICAL REQUIREMENTS

10. The Contractor must submit all analytical laboratory reports to **DPNR no later than one (1) week after the receipt of the sample.** All reports (data sheets) must be signed, scanned and submitted to DPNR-DEP via email.
11. All laboratory reports for the PWSS program must be submitted to both the Program Manager and the DPNR employee who submitted the samples to the laboratory.
12. All laboratory reports for the TPDES program must be provided to the DPNR employee who provided the sample to the Contractor.

INVALID SAMPLES

13. DPNR anticipates that under the following circumstances, the Contractor will be required to either analyze additional samples or to resample:
 - A. A problem arises during the analysis which requires new samples to be analyzed. This includes but is not limited to loss or destruction of samples, failure to analyze samples prior to the expiration of the appropriate holding time after acceptance at the lab, failure to preserve samples at a temperature below 10 degrees Celsius after acceptance from sampler, failure to utilize an approved analytical method and failure to utilize proper equipment. In such occurrences, DPNR-DEP's Quality Assurance Officer and the relevant Program either TPDES or PWSS, will be notified. DPNR-DEP will consider the Contractor's protocols, the QAPP, and analytical methodology employed to determine whether re-sampling and therefore new analysis is required. If re-sampling is required, the Contractor shall be responsible for the cost of the re-sampling/new collection as well as the cost of the new analysis.
 - B. In the event, the Sampler violated the holding time; the Contractor shall reject the sample with the violated holding time. The Contractor must verify that the samples, through the Field Data Sheet and Chain of Custody Record did not exceed the appropriate holding time for the parameter being tested prior acceptance and prior to commencing analysis. The Contractor shall not accept any samples with violated holding times.

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- C. In the event the Contractor violates a sample's holding time, after receipt of the sample, the Contractor must immediately contact DPNR-DEP and the Contractor must collect a new sample and perform new analysis. The Government shall not pay for re-sampling in the event of holding time violation on the part of the Contractor. The Contractor shall be responsible for both the re-sampling and the new analysis of the sample.

OTHER REQUIREMENTS

14. The Contractor shall participate in annually scheduled Performance Audit Inspections to be conducted by DPNR-DEP staff. The Contractor shall receive thirty (30) days written notice of the Performance Audit Inspection.

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ADDENDUM II (TERMS OF COMPENSATION)

The Government, upon the Contractor's satisfactory completion of Addendum I (Scope of Work), including the Prior Analyses, shall pay to the Contractor an amount not to exceed Fifty-Six Thousand Seven Hundred Dollars (\$56,700.00) in accordance with the following:

PRIOR ANALYSES

The Government shall pay the Contractor as set forth below for each sample analyzed during the Prior Analyses period:

Enterococci – Fifty-Five Dollars (\$55.00)

Fecal Coliform - Fifty-Five Dollars (\$55.00)

Total Suspended Solids – Twenty-Eight (\$28.00)

Total Coliform – Fifty-Five Dollars (\$50.00)

Turbidity – Zero Dollars (\$0 – provided other parameters are ordered)

POST PRIOR ANALYSES

The Government shall pay the Contractor as set forth below for each sample analyzed in accordance with Addendum I (Scope of Work):

Enterococci – Fifty-Five Dollars (\$55.00)

Fecal Coliform - Fifty-Five Dollars (\$55.00)

Total Suspended Solids – Twenty-Eight (\$28.00)

Total Coliform – Fifty-Five Dollars (\$50.00)

Turbidity – Zero Dollars (\$0 – provided other parameters are ordered)

The Contractor shall submit to DPNR-DEP for approval monthly invoices consisting of the total number of samples analyzed for each month. The invoices shall further delineate the number of samples analyzed for the TPDES Program and the samples analyzed for the PWSS Program. The Government shall pay the Contractor for the sample analysis in monthly installments based on the total number of samples analyzed for each month. The Government shall not pay for analysis of turbidity, provided other parameters are ordered.

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INVALID SAMPLES:

The Government shall not pay for any additional analysis of samples which were required because of a problem arising during analysis which required re-sampling and repeat analysis through the fault of the Contractor, including but not limited to: loss or destruction of samples, failure to analyze samples prior to the expiration of the appropriate holding time after acceptance at the lab, failure to preserve samples at a temperature below 10 degrees Celsius after acceptance at the lab, failure to utilize an approved analytical method, and failure to utilize proper equipment.

The Government shall not pay for repeat analysis of samples due to a violation of the holding time or temperature requirements.

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