

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE	PAGE OF PAGES 1 2
2. AMENDMENT/MODIFICATION NO. 0002	3. EFFECTIVE DATE 08/11/2010	4. REQUISITION/PURCHASE REQ. NO. REQ-4400-10-0052	5. PROJECT NO. (if applicable)
6. ISSUED BY CONSUMER PRODUCT SAFETY COMMISSION DIV OF PROCUREMENT SERVICES 4330 EAST WEST HWY ROOM 517 BETHESDA MD 20814	CODE FMPS	7. ADMINISTERED BY (if other than item 6) CONSUMER PRODUCT SAFETY COMMISSION DIV OF PROCUREMENT SERVICES 4330 EAST WEST HWY ROOM 517 BETHESDA MD 20814	CODE FMPS
8. NAME AND ADDRESS OF CONTRACTOR (No. street, county, state and ZIP Code) NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY ATTN JEFFREY W GILMAN PHD 100 BUREAU DRIVE MS-8602 GAITHERSBURG MD 20899-8602		(X) 9A. AMENDMENT OF SOLICITATION NO. 9B. DATED (SEE ITEM 11)	
CODE		10A. MODIFICATION OF CONTRACT/ORDER NO. CPSC-1-09-0015	
FACILITY CODE		10B. DATED (SEE ITEM 13) 07/23/2009	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended. is not extended. Offers must acknowledge receipt of the amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 9 and 10, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which indicates a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (if required)
 C100A10DPS 2010 2149800000 EXHR004400 253A0 Net Increase: \$105,000.00

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACT/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b)
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)
X	BILATERAL MODIFICATION, FAR 43.103(b)

E. IMPORTANT: Contractor is not. is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)
 DUNS Number: _____
 INTERAGENCY AGREEMENT (IAG)

Modification No. 0002 provides funding for additional tasks 6 and 7 as follows:
 Add the following new item: (see page 2).
 The total amount of this agreement is increased by \$105,000.00, from \$345,000.00 to \$450,000.00.

Discount Terms:
 Continued ...

Except as provided herein, all terms and conditions of the document referenced in Item 5A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) Anthony Hamins, Div Chief	15B. CONTRACTOR OFFICER <i>Ch. Hamins</i>	15C. DATE SIGNED 9/21/10	15A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Donna Hutton	15B. UNITED STATES OF AMERICA <i>Donna Hutton</i>	15C. DATE SIGNED 08/11/2010
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NAME OF OFFEROR OR CONTRACTOR
NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	Net 30				
	Payment: CONSUMER PRODUCT SAFETY COMMISSION DIVISION OF FINANCIAL SERVICES 4330 EAST WEST HWY ROOM 522 BETHESDA MD 20814 FOB: Destination Period of Performance: 07/01/2009 to 09/30/2011 Add Item 0003 as follows:				
0003	Upholstered Furniture - Standard Reference Material (SRM) Foam IAG. Add Item 0003 as follows: MODIFICATION OF IAG CPSC-I-09-0015, UPHOLSTERED FURNITURE PROJECT, PROVIDING ADDITIONAL FUNDING FOR TASKS 6 AND 7. FOR CPSC: ALC: 61-00-0001 TIN: 520978750 DUNS: 069287522 US TREAS. CODE (TAS): 6100100 BETC: DISB FUNDS EXPIRE: 09/30/2010 ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.	1	EA	105,000.00	105,000.00

MOD #0002
ADDENDUM TO AGREEMENT CPSC-I-09-0015
BETWEEN THE
CONSUMER PRODUCT SAFETY COMMISSION
AND THE
NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

The purpose of this addendum is to add additional information. All other terms and conditions of the original agreement apply.

I. Accounting Information:

NIST

Treasury Accounting Symbol (TAS) Appropriation Code: 13X4650
Business Event Type Code: (BETC): COLL
Funding Agency Code: 1341

II. Authorities:

CPSC has programmatic authority to enter into this agreement pursuant to the Fire Prevention and Control Act of 1974 and Section 29(d) of the Consumer Product Safety Act, (15 U.S.C. 2078(d)).

NIST possess programmatic authority to conduct the requested work pursuant to 15 U.S.C. 278f, Fire Research. In addition to this, the following programmatic authority also applies: 15 U.S.C. 272(c)(6).

III. Cost Recovery:

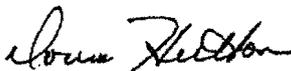
NIST is achieving full cost recovery.

IV. Signatures:



NIST Official

Date:



CPSC Official Donna Hutton

Date: 9/8/10

*previous addendum
dated 8/12/2010 cancelled*



UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, D.C. 20230

SEP 20 2010

MEMORANDUM FOR: Julie A. Weiblinger
Receivables Manager
National Institute of Standards and Technology

FROM: Barbara S. Fredericks 
Assistant General Counsel
for Administration

SUBJECT: Revised Modification 2 to an Agreement between the National
Institute of Standards and Technology (NIST) and the Consumer
Product Safety Commission (CPSC) (Agreement #REQ-4400-10-
0052; NIST Tracking # 336)

This provides clearance on the attached revised Modification 2 to an agreement between NIST and CPSC for research on developing the technical basis for determining whether a flexible foam material can be developed to meet the requirements for a standard foam for use in a proposed CPSC standard to address the flammability of upholstered furniture. The modification consists of a Standard Form 30 and an addendum. During the course of our review, the addendum was revised by the program office to add an additional programmatic authority applicable to NIST as requested by NIST's Office of the Chief Counsel, to remove an inapplicable reference to the funds transfer authority within the NIST Organic Act, and to remove inaccurate language regarding CPSC's *bona fide* need determination.

In July 2009, the parties entered into an agreement concerning the provision of research that would enable the definition of parameters for a standard reference material for use in a proposed CPSC standard for the flammability of upholstered furniture. The agreement is set to terminate on September 30, 2011. The agreement contemplated seven phases of work. CPSC, however, obligated funds to pay NIST for work related to the first three phases. These phases consisted of NIST obtaining a series of foam samples, preparing for and testing those materials, evaluating the foams to identify primary parameters in foams that affect foam flammability, and preparing a report on the data gathered and analyzed to that point. The agreement contemplated that based on the analysis from Phases 1-3, CPSC would determine whether to proceed with subsequent phases. CPSC obligated \$225,000 to pay NIST for its costs, using fiscal year 2009, one-year funds.

In January 2010, the parties executed Modification 1 to the agreement. Through that modification, NIST agreed to perform Phases 4 and 5. Further, the statement of work was revised to reorder these phases to occur before the completion of Phase 3. Specifically, Phases 4 and 5¹ involved the evaluation of secondary parameters on foam flammability. CPSC obligated

¹ The revised statement of work also renumbered these phases as Phases 3 and 4.

an additional \$120,000 to pay for costs associated with these additional phases using fiscal year 2010, one-year funds.

Through Modification 2, NIST agrees to perform Phases 6 and 7. In Phase 6, NIST will prepare a final report with a summary of each project phase, all relevant data, and recommendations for development of a standard foam. Once a standard reference material (SRM) foam is identified based upon the report developed in Phase 6, during Phase 7 NIST will use its own funds to procure the specified SRM foam from a commercial manufacturer, which will be sold as part of NIST's SRM program. CPSC staff will be informed of the progress and any concerns/issues identified during this scale-up process. The NIST program office and the CPSC explained that the purpose of this seventh phase is to enable CPSC to understand issues that may arise as a result of moving from initial testing and identification of an SRM foam to scaling-up to a final SRM foam formulation. For activities to be performed for CPSC during Phases 6 and 7 pursuant to Modification 2, CPSC is obligating an additional \$105,000 using fiscal year 2010, one-year funds.

Although the underlying agreement indicated that the activities in Phases 1-3 extended beyond fiscal year 2009, the activities were non-severable in nature in that CPSC needed work through Phase 3 to be performed, as the completion of that phase marked a decision point for them regarding the feasibility and desirability of proceeding with the subsequent phases. CPSC's funds, therefore, were properly obligated by the underlying agreement, and they remained available for liquidation of expenses incurred by NIST to provide the requested services notwithstanding the continuation of services beyond the end of fiscal year 2009. While Modification 1 reordered the timing of the phases, the NIST program office and CPSC have explained that as a result of preliminary results in the earlier phases, CPSC determined that it had a need to proceed with the originally contemplated Phases 4-5 before completing original Phase 3. The subsequent determination by CPSC to undertake those additional phases constituted a new *bona fide* need determination that arose at the time Modification 1 was executed. The obligation of fiscal year 2010 funds to pay for those phases, therefore, was proper. Although Modification 2 obligates fiscal year 2010 funds for the completion of Phases 6 and 7, the work will not be completed by September 30, 2010. These phases, however, are non-severable in that they will involve the preparation of a final report to identify a standard foam for CPSC's proposed standard. This report will be used as the basis for a scaled-up procurement of standard foam by NIST that will ultimately enable CPSC to understand the feasibility of using the identified foam as an SRM. We, therefore, see no legal problem with CPSC obligating fiscal year 2010 funds to pay NIST for the services to be provided pursuant to Modification 2.

The agreement, as modified, and the transfer of funds by CPSC to NIST are authorized by 15 U.S.C. § 2076(g) which allows CPSC "to enter into contracts with governmental entities . . . for the conduct of activities authorized by [the Consumer Product Safety Act]," and 15 U.S.C. § 2078(d), which allows CPSC to

utilize the resources and facilities of [NIST], on a reimbursable basis, to perform research and analyses related to risks of injury associated with consumer products (including fire and flammability risks), to develop test methods, to conduct studies and investigations,

and to provide technical advice and assistance in connection with the functions of the Commission.

NIST's programmatic authority to conduct the contemplated activities includes 15 U.S.C. § 272(c)(6), related to the preparation of standard reference materials, and 15 U.S.C. § 278f, authorizing a fire research program.

If you have any questions regarding the clearance of this agreement, please contact Nicholas Kornegay at 202-482-3653.

Attachment

NIST Reimbursable Agreements Tracking Cover Sheet

RA/AR Individual Priyanka Sanon		Tracking ID 336	
RA/AR Phone Number (301) 975-5397		Date Rec in Fin 8/12/2010	
RA/AR Email Priyanka.Sanon@nist.gov			
Reimb Agreement Num CPSC-I-09-0015			
Mod Number	Urgent Flag <input type="checkbox"/>	Urgent Date Required:	Date Agreement Ends:
Customer Name CPSC			
Division 866	SMAs Name: karen perry		
AOs Name Sharon Rinehart	SMAs Phone Number: (301) 975-5910		
AOs Phone Number (301) 975-5876	SMAs Email: karen.perry@nist.gov		
AOs Email sharon.rinehart@nist.gov	PIs Name Jeffrey Gilman		
Date Sent to NIST OGC 8/16/2010	PIs Phone Number (301) 975-6573		
OGCs Lawyers Name	PIs Email jeffery.gilman@nist.gov		
OGCs Phone Number	Data Rec From NIST OGC:		
OGCs Email	Date Sent to DoC OGC		