

**TRAINING SHIP STATE OF MAINE**  
**FY23 Pierside Repair Package #2**  
**6933A223Q000014**

**General Information**

<u>Document Type:</u>	Combined Solicitation/Synopsis
<u>Solicitation Number:</u>	6933A223Q000014
<u>Posted Date:</u>	12 July 2023
<u>Response Date:</u>	1 August 2023 at 4:00PM ET
<u>Set Aside:</u>	100% Small Business Set Aside
<u>NAICS Code:</u>	488390, Other Support Activities for Water Transportation

This is a combined synopsis/solicitation for commercial items prepared in accordance with the format in Federal Acquisition Regulation (FAR) subpart 12.6, "Streamlined Procedures for Evaluation and Solicitation for Commercial Items," and FAR part 13, Simplified Acquisition Procedures, as supplemented with additional information included in this notice. This solicitation is advertised as Small Business Set Aside. This announcement constitutes the only solicitation. Quotes are being requested.

The Request For Quotations (RFQ) Number is 6933A223Q000014. The solicitation document and incorporated provisions and clauses are those in effect through Federal Acquisition Circular 2023-04, effective June 2, 2023. It is the responsibility of the contractor to be familiar with the applicable clauses and provisions. The FAR clauses may be accessed in full text at the following address: <https://www.acquisition.gov/browse/index/far>.

The associated North American Industrial Classification System (NAICS) code for this procurement is 488390 with a small business size standard of \$47 million.

The U.S. Department of Transportation, Maritime Administration (MARAD), Norfolk, VA is soliciting vendors to perform dockside repairs onboard the Training Ship State of Maine (TSSOM). Issuance of a firm fixed price purchase order is anticipated for services and materials to perform this work in accordance with the Statement of Work (SOW) - **ATTACHMENT 1**.

**Period of Performance:** From award (anticipated roughly September 4, 2023) through December 1, 2023

**Solicitation Attachments:**

Attachment 1: Statement of Work  
Attachment 2: Department of Labor Wage Determinations  
Attachment 3: Vendor Price Sheet

**Drawings:** To request references (drawings, manuals) from the Statement of Work, please send a request via email to the Contracting Officer, Lana Denning, at [Lana.Denning@dot.gov](mailto:Lana.Denning@dot.gov). Requests shall be submitted to the Contracting Officer, only. The last day to submit reference requests is **July 21, 2023**. Requests received after this date may not be filled.

**Questions:** The last day for questions regarding this solicitation is **July 26, 2023**. Questions received after this date may not be answered. **Email questions only to the Contracting Officer**, Lana Denning at [Lana.Denning@dot.gov](mailto:Lana.Denning@dot.gov). All questions need to identify the solicitation number 6933A223Q000014 and will be answered via solicitation amendment.

**Quote Submission:** Quotes shall be submitted to the Contracting Officer only. The method for submittal of quotation information is via email to [Lana.Denning@dot.gov](mailto:Lana.Denning@dot.gov). Please reference solicitation number 6933A223Q000014 on your quote submittal information. **Quotes shall be submitted by August 1, 2023 at 4:00 PM (ET).**

## **ATTENTION**

Minority, Women-Owned, and Disadvantaged Business Enterprises (DBEs). The Department of Transportation (DOT), Short-Term Lending Program (STLP) offers working capital financing in the form of lines of credit to finance accounts receivable for transportation related contracts. Maximum line of credit is \$750,000 with interest at the prime rate, as published daily in the Wall Street Journal, plus 1.75 percent. For further information, call (800) 532-1169 or e-mail [stlpinfo@dot.gov](mailto:stlpinfo@dot.gov).

**QUOTATION SUBMISSION INSTRUCTIONS:** In addition to the referenced provision 52.212-1, Instructions to Offerors—Commercial Products and Commercial Services, quoters shall ensure the following:

System for Award Management (SAM) Registration. **SAM REGISTRATION IS REQUIRED.** Contractors may obtain information on registration and annual confirmation requirements via SAM accessed through <https://www.sam.gov>. Lack of registration in SAM may make an offeror ineligible for award. Information on how to register and the time required is detailed in FAR 52.204-7. **SAM Registration must be maintained for the duration of the contract.**

The following documents are required to be submitted as part of your proposal:

## **Technical submittal**

- The Contractor shall provide a technical approach narrative detailing the contractor's understanding and approach for accomplishing each Work Item. This narrative shall also state the name of all subcontractors (if any) to be used on each Work Item.
- The Contractor shall provide a copy of the resume(s) of the individual(s) managing and supervising the work along with a statement as to what approximate percentage the individual(s) is expected to be on-site versus off-site.
- For each work item, the Contractor shall provide a Gantt chart (in pdf format) indicating the scheduled start and finish dates, a list of the various trades, and estimated labor hours.
- The Contractor shall provide a copy of each one of their welder's (or subcontractor's) WPQ (Welder Performance Qualification Record), WPS (Welding Procedure Specification) and PQR (Procedure Qualification Record) for welding in accordance with

AWS B2.1 SMAW 6G Pipe. Additional WPQs, WPSs and PQRs are not requested, only those related to welding in accordance with AWS B2.1 SMAW 6G Pipe.

- The Contractor shall provide a copy of their electrician's license, if licensed, (or that of their subcontractor) and a resume documenting the extent of the electrician's marine electrical experience.

### **Past performance submittal**

- Provide a listing of work completed within the past 3 years on ocean going ships or shore side industrial facilities having similar equipment and machinery characteristics to those aboard the Training Ship, State of Maine. Include a description of the major work performed for each listing.
- Include with that listing the contact information of the owner/operator of the vessel/facility and the name of the owner/operator's Contracting Officer or person responsible for the oversight of your work/contract.
- Provide the total value of the contract/job and the contract type (time and materials or firm fixed price).

### **Pricing**

- Quoters shall submit a firm-fixed price quote, inclusive of all costs, to complete the specified work. Additionally, quoters shall provide a fully-burdened hourly labor rate. This rate shall be applicable 24 hours per day, seven days per week. The fully burdened rate includes direct and indirect costs associated with employees to include but not limited to: payroll taxes, workers' compensation, health insurance, paid time off, training, travel expenses, vacation, and sick leave, pension contributions, and other benefits.

Validity of quote – Please specify how many days the quote is valid from date quotation received. MARAD prefers quotes be valid for a period of 90 days.

### **Basis for Award:**

Award will be made to the responsible quoter on a Lowest Price/Technically Acceptable basis. The Government plans to evaluate quotes and make award without conducting discussions. Quoters may be given the opportunity to clarify certain aspects of their quote or resolve minor or clerical errors. However, the government reserves the right to conduct discussions, if later determined by the Contracting Officer to be necessary. Award will be made to the responsible company with the lowest total evaluated price, whose quote is acceptable for all non-price evaluation factors.

### **Evaluation Factors:**

The factors listed below shall be used to evaluate quotes. Non-price factors will be evaluated on an acceptable/unacceptable basis:

- Technical Acceptability - Technical information will be evaluated to determine if the quoter's technical submittal information is sufficient to meet the requirements described in the Statement of Work.
- Past Performance - Past performance information will be evaluated to determine the quoter's ability to perform the contract successfully and degree of performance risk associated with a quoter. MARAD will use its discretion to determine the sources of past performance information, and the information may be obtained from references provided, MARAD's knowledge of contractor performance, other government agencies or commercial entities, or past performance databases.
  - A quoter with no past performance relating to service on an ocean-going ship or shore side industrial facilities having similar equipment and machinery characteristics to those aboard the Training Ship State of Maine within the past 3 years will be evaluated as neutral.
- Price - Total evaluated price will be the total quoted price.

Technical submittal information and Past Performance Information will be evaluated as follows:

**Technical:**

Rating	Definition
Acceptable (A)	All of the minimum acceptable criteria are clearly met by the quote. The quotation meets the performance and technical capability requirements defined in the SOW and solicitation.
Unacceptable (U)	Not all of the minimum acceptable criteria are met by the quote. An unacceptable quote contains one or more deficiencies. Quote fails to meet specified minimum performance and technical capability requirements defined in the SOW and solicitation.

**Past Performance:**

Rating	Definition
Acceptable (A)	Based on the quoter's recent and relevant past performance record, the Government has a reasonable expectation that the quoter will be able to successfully perform the required effort.
Unacceptable (U)	Based on the quoter's recent and relevant past performance record, the Government has a low or no expectation that the quoter will be able to successfully perform the required effort.
Neutral (N)	A quoter without a record of recent and relevant past performance or for whom information on past performance is not available may not be evaluated favorably or unfavorably. Such quoters will receive a "Neutral" rating.

**The following FAR provisions apply to this solicitation:**

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Sep 2007)

52.203-18 Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements-Representation (Jan 2017)

52.204-7 System for Award Management (Oct 2018)

52.204-16 Commercial and Government Entity Code Reporting (Aug 2020)

52.204-22 Alternative Line Item Proposal (Jan 2017)

52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (Nov 2021)

52.204-26 Covered Telecommunications Equipment or Services-Representation (Oct 2020)

(a) *Definitions.* As used in this provision, "covered telecommunications equipment or services" and "reasonable inquiry" have the meaning provided in the clause [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) ( <https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(c) (1) *Representation.* The Offeror represents that it ☐ does, ☐ does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(2) After conducting a reasonable inquiry for purposes of this representation, the offeror represents that it ☐ does, ☐ does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

52.211-6 Brand Name or Equal (Aug 1999)

52.212-1 Instructions to Offerors—Commercial Products and Commercial Services. (Mar 2023)

52.212-3 Offeror Representations and Certifications—Commercial Products and Commercial Services (Dec 2022)

Representations and Certifications. Offerors are encouraged to complete the annual representations and certifications of FAR 52.212-3 electronically in SAM accessed through <https://www.sam.gov>. If an offeror has not completed the annual representations and certifications electronically at the SAM website, the offeror shall submit a completed copy of the representations and certifications at FAR 52.212-3 available at <https://www.acquisition.gov/browse/index/far> with the quotation.

52.229-11 Tax on Certain Foreign Procurements – Notice and Representation (June 2020)

52.233-2 Service of Protest (Sept 2006)

Protests, as defined in section [33.101](#) of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from:

Ms. Lana Denning  
Contracting Officer, US Department of Transportation Maritime Administration  
Building 19, Suite 300  
7737 Hampton Blvd

Norfolk, VA 23505

The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

52.252-1 Solicitation Provisions Incorporated by Reference (Feb 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address:

<https://www.acquisition.gov/?q=browsefar>

**The following FAR clauses apply to this solicitation:**

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (June 2020)

52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017)

52.204-13 System for Award Management Maintenance (Oct 2018)

52.204-18 Commercial and Government Entity Code Maintenance (Aug 2020)

52.212-4 Contract Terms and Conditions—Commercial Products and Commercial Services. (Dec 2022)

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (June 2023)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

(1) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).

(3) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).

(5) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Mar 2023) ( 31 U.S.C. 3903 and 10 U.S.C. 3801).

(6) 52.233-3, Protest After Award (Aug 1996) ( 31 U.S.C. 3553).

(7) 52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004) (Public Laws 108-77 and 108-78 (19 U.S.C. 3805 note)).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to

implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

[Contracting Officer check as appropriate.]

X (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Jun 2020), with Alternate I (Nov 2021) (41 U.S.C. 4704 and 10 U.S.C. 2402).

\_\_\_ (2) 52.203-13, Contractor Code of Business Ethics and Conduct (Nov 2021) ( 41 U.S.C. 3509)).

\_\_\_ (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

X (4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Jun 2020) (Pub. L. 109-282) (31 U.S.C. 6101 note).

\_\_\_ (5) [Reserved].

X (6) 52.204-14, Service Contract Reporting Requirements (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

\_\_\_ (7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

X (8) 52.204-27, Prohibition on a ByteDance Covered Application (Jun 2023) (Section 102 of Division R of Pub. L. 117-328).

X (9) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Nov 2021) (31 U.S.C. 6101 note).

X (10) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018) (41 U.S.C. 2313).

\_\_\_ (11) [Reserved].

\_\_\_ (12) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (Oct 2022) ( 15 U.S.C. 657a)

\_\_\_ (13) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Oct 2022) (if the offeror elects to waive the preference, it shall so indicate in its offer) ( 15 U.S.C. 657a).

\_\_\_ (14) [Reserved]

X (15) (i) 52.219-6, Notice of Total Small Business Set-Aside (Nov 2020) (15 U.S.C. 644).

\_\_\_ (ii) Alternate I (Mar 2020) of 52.219-6.

\_\_\_ (16) (i) 52.219-7, Notice of Partial Small Business Set-Aside (Nov 2020) (15 U.S.C. 644).

\_\_\_ (ii) Alternate I (Mar 2020) of 52.219-7.

X (17) 52.219-8, Utilization of Small Business Concerns (Oct 2022) ( 15 U.S.C. 637(d)(2) and (3)).

\_\_\_ (18) (i) 52.219-9, Small Business Subcontracting Plan (Oct 2022) ( 15 U.S.C. 637(d)(4)).

\_\_\_ (ii) Alternate I (Nov 2016) of 52.219-9.

\_\_\_ (iii) Alternate II (Nov 2016) of 52.219-9.

\_\_\_ (iv) Alternate III (Jun 2020) of 52.219-9.

\_\_\_ (v) Alternate IV (Sep 2021) of 52.219-9.  
 \_\_\_ (19) (i) 52.219-13, Notice of Set-Aside of Orders (Mar 2020) (15 U.S.C. 644(r)).  
 \_\_\_ (ii) Alternate I (Mar 2020) of 52.219-13.  
X (20) 52.219-14, Limitations on Subcontracting (Oct 2022) ( 15 U.S.C. 637s)  
 \_\_\_ (21) 52.219-16, Liquidated Damages—Subcontracting Plan (Sep 2021) (15 U.S.C. 637(d)(4)(F)(i)).  
 \_\_\_ (22) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Oct 2022) ( 15 U.S.C. 657f  
X (23) (i) 52.219-28, Post Award Small Business Program Rerepresentation (Mar 2023)( 15 U.S.C. 632(a)(2)  
 \_\_\_ (ii) Alternate I (Mar 2020) of 52.219-28.  
 \_\_\_ (24) 52.219-29, Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Oct 2022) ( 15 U.S.C. 637(m)  
 \_\_\_ (25) 52.219-30, Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Oct 2022) ( 15 U.S.C. 637(m)  
 \_\_\_ (26) 52.219-32, Orders Issued Directly Under Small Business Reserves (Mar 2020) ( 15 U.S.C. 644(r)).  
 \_\_\_ (27) 52.219-33, Nonmanufacturer Rule (Sep 2021) ( 15U.S.C. 637(a)(17)).  
X (28) 52.222-3, Convict Labor (Jun 2003) (E.O.11755).  
X (29) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (Dec 2022) (E.O.13126)  
X (30) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).  
X (31) (i) 52.222-26, Equal Opportunity (Sep 2016) (E.O.11246).  
 \_\_\_ (ii) Alternate I (Feb 1999) of 52.222-26.  
X (32) (i) 52.222-35, Equal Opportunity for Veterans (Jun 2020) ( 38 U.S.C. 4212).  
 \_\_\_ (ii) Alternate I (Jul 2014) of 52.222-35.  
X (33) (i) 52.222-36, Equal Opportunity for Workers with Disabilities (Jun 2020) ( 29 U.S.C. 793).  
 \_\_\_ (ii) Alternate I (Jul 2014) of 52.222-36.  
X (34) 52.222-37, Employment Reports on Veterans (Jun 2020) ( 38 U.S.C. 4212).  
X (35) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).  
X (36) (i) 52.222-50, Combating Trafficking in Persons (Nov 2021) ( 22 U.S.C. chapter 78 and E.O. 13627).  
 \_\_\_ (ii) Alternate I (Mar 2015) of 52.222-50 ( 22 U.S.C. chapter 78 and E.O. 13627).  
X (37) 52.222-54, Employment Eligibility Verification (May 2022) (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial products or commercial services as prescribed in FAR 22.1803.)  
 \_\_\_ (38) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA–Designated Items (May 2008) ( 42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)  
 \_\_\_ (ii) Alternate I (May 2008) of 52.223-9 ( 42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)



\_\_\_ (39) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).

\_\_\_ (40) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (Jun 2016) (E.O. 13693).

\_\_\_ (41) (i) 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment (Jun 2014) (E.O.s 13423 and 13514).

\_\_\_ (ii) Alternate I (Oct 2015) of 52.223-13.

\_\_\_ (42) (i) 52.223-14, Acquisition of EPEAT®-Registered Televisions (Jun 2014) (E.O.s 13423 and 13514).

\_\_\_ (ii) Alternate I (Jun2014) of 52.223-14.

\_\_\_ (43) 52.223-15, Energy Efficiency in Energy-Consuming Products (May 2020) ( 42 U.S.C. 8259b).

\_\_\_ (44) (i) 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products (Oct 2015) (E.O.s 13423 and 13514).

\_\_\_ (ii) Alternate I (Jun 2014) of 52.223-16.

X (45) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (Jun 2020) (E.O. 13513).

X (46) 52.223-20, Aerosols (Jun 2016) (E.O. 13693).

X (47) 52.223-21, Foams (Jun2016) (E.O. 13693).

\_\_\_ (48) (i) 52.224-3 Privacy Training (Jan 2017) (5 U.S.C. 552 a).

\_\_\_ (ii) Alternate I (Jan 2017) of 52.224-3.

\_\_\_ (49)(i) 52.225-1, Buy American-Supplies (Oct 2022) ( 41 U.S.C. chapter 83).

\_\_\_ (ii) Alternate I (Oct 2022) of 52.225-1.

\_\_\_ (50) (i) 52.225-3, Buy American-Free Trade Agreements-Israeli Trade Act (Dec 2022) ( 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, 19 U.S.C. chapter 29 (sections 4501-4732), Public Law 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43

\_\_\_ (ii) Alternate I (Reserved).

\_\_\_ (iii) Alternate II (Dec 2022) of 52.225-3.

\_\_\_ (iv) Alternate III (Jan 2021) of 52.225-3.

\_\_\_ (v) Alternate IV (Oct 2022) of 52.225-3.

\_\_\_ (51) 52.225-5, Trade Agreements (Dec 2022) ( 19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

X (52) 52.225-13, Restrictions on Certain Foreign Purchases (Feb 2021) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

\_\_\_ (53) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302Note).

\_\_\_ (54) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov2007) ( 42 U.S.C. 5150).

\_\_\_ (55) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov2007) ( 42 U.S.C. 5150).

\_\_\_ (56) 52.229-12, Tax on Certain Foreign Procurements (Feb 2021).

\_\_\_ (57) 52.232-29, Terms for Financing of Purchases of Commercial Products and Commercial Services (Nov 2021) ( 41 U.S.C. 4505, 10 U.S.C. 2307(f)).

\_\_\_ (58) 52.232-30, Installment Payments for Commercial Products and Commercial Services (Nov 2021) ( 41 U.S.C. 4505, 10 U.S.C. 2307(f)).

X (59) 52.232-33, Payment by Electronic Funds Transfer-System for Award Management (Oct2018) ( 31 U.S.C. 3332).

\_\_\_ (60) 52.232-34, Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) ( 31 U.S.C. 3332).

\_\_\_ (61) 52.232-36, Payment by Third Party (May 2014) ( 31 U.S.C. 3332).

\_\_\_ (62) 52.239-1, Privacy or Security Safeguards (Aug 1996) ( 5 U.S.C. 552a).

\_\_\_ (63) 52.242-5, Payments to Small Business Subcontractors (Jan 2017) ( 15 U.S.C. 637(d)(13)).

\_\_\_ (64) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) ( 46 U.S.C. 55305 and 10 U.S.C. 2631).

\_\_\_ (ii) Alternate I (Apr 2003) of 52.247-64.

\_\_\_ (iii) Alternate II (Nov 2021) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

[Contracting Officer check as appropriate.]

X (1) 52.222-41, Service Contract Labor Standards (Aug 2018) ( 41 U.S.C. chapter 67).

X (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 2014) ( 29 U.S.C. 206 and 41 U.S.C. chapter 67).

10

This Statement is for Information Only: It is not a Wage Determination.

Occupation Title	Occupation Code	Equivalent Grade
Rigger	23850	WG-10
Welder, Combination, Maintenance	23960	WG-10

\_\_\_ (3) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (Aug 2018) ( 29 U.S.C. 206 and 41 U.S.C. chapter 67).

X (4) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) ( 29 U.S.C. 206 and 41 U.S.C. chapter 67).

\_\_\_ (5) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) ( 41 U.S.C. chapter 67).

\_\_\_ (6) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) ( 41 U.S.C. chapter 67).

X (7) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (Jan 2022).

X (8) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2022) (E.O. 13706).

— (9) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) ( 42 U.S.C. 1792).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, as defined in FAR 2.101, on the date of award of this contract, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial products or commercial services. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Nov 2021) ( 41 U.S.C. 3509).

(ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).

(iv) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(v) 52.204-27, Prohibition on a ByteDance Covered Application (Jun 2023) (Section 102 of Division R of Pub. L. 117-328).

(vi) 52.219-8, Utilization of Small Business Concerns (Oct 2022) ( 15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(vii) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(viii) 52.222-26, Equal Opportunity (Sep 2015) (E.O.11246).

(ix) 52.222-35, Equal Opportunity for Veterans (Jun 2020) ( 38 U.S.C. 4212).

- (x) 52.222-36, Equal Opportunity for Workers with Disabilities (Jun 2020) ( 29 U.S.C. 793).
- (xi) 52.222-37, Employment Reports on Veterans (Jun 2020) ( 38 U.S.C. 4212).
- (xii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.
- (xiii) 52.222-41, Service Contract Labor Standards (Aug 2018) (41 U.S.C. chapter 67).
- (xiv) (A) 52.222-50, Combating Trafficking in Persons (Nov 2021) ( 22 U.S.C. chapter 78 and E.O 13627).
- (B) Alternate I (Mar 2015) of 52.222-50 ( 22 U.S.C. chapter 78 and E.O. 13627).
- (xv) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May2014) ( 41 U.S.C. chapter 67).
- (xvi) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) ( 41 U.S.C. chapter 67).
- (xvii) 52.222-54, Employment Eligibility Verification (May 2022) (E.O. 12989).
- (xviii) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (Jan 2022).
- (xix) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2022) (E.O. 13706).
- (xx) (A) 52.224-3, Privacy Training (Jan 2017) ( 5 U.S.C. 552a).
- (B) Alternate I (Jan 2017) of 52.224-3.
- (xxi) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).
- (xxii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) ( 42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.
- (xxiii) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Mar 2023) ( 31 U.S.C. 3903 and 10 U.S.C. 3801). Flow down required in accordance with paragraph (c) of 52.232-40.
- (xxiv) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) ( 46 U.S.C. 55305 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may include in its subcontracts for commercial products and commercial services a minimal number of additional clauses necessary to satisfy its contractual obligations.

52.232-39 Unenforceability of Unauthorized Obligation (Jun 2013)

52.252-2 Clauses Incorporated by Reference (Feb 1998)

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

<https://www.acquisition.gov/?q=browsefar>

**The following Transportation Acquisition Regulation Clauses apply:**

1252.201-70 Contracting Officer's Representative. Contracting Officer's Representative (NOV 2022)

(a) The Contracting Officer may designate Government personnel to act as the Contracting Officer's Representative (COR) to perform functions under the contract such as review and/or inspection and acceptance of supplies, services, including construction, and other functions of a technical nature. The Contracting Officer will provide a written notice of such designation to the Contractor within five working days after contract award or for construction, not less than five working days prior to giving the contractor the notice to proceed. The designation letter will set forth the authorities and limitations of the COR under the contract.

(b) The Contracting Officer cannot authorize the COR or any other representative to sign documents (i.e., contracts, contract modifications, etc.) that require the signature of the Contracting Officer.

1252.217-70 Guarantee (Nov 2022)

(a) In the event any work performed or materials furnished by the Contractor prove defective or deficient within 60 days from the date of redelivery of the vessel(s), the Contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency in accordance with the contract terms and conditions.

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 60-day period, the Government shall be entitled to rely upon the longer guarantee until its expiration.

(c) With respect to any individual work item identified as incomplete at the time of redelivery of the vessel(s), the guarantee period shall run from the date the item is completed.

(d) If practicable, the Government shall give the Contractor an opportunity to correct the deficiency.

(1) If the Contracting Officer determines it is not practicable or is otherwise not advisable to return the vessel(s) to the Contractor, or the Contractor fails to proceed with the repairs promptly, the Contracting Officer may direct that the repairs be performed elsewhere, at the Contractor's expense.

(2) If correction and repairs are performed by other than the Contractor, the Contracting Officer may discharge the Contractor's liability by making an equitable deduction in the price of the contract.

(e) The Contractor's liability shall extend for an additional 90-day guarantee period on those defects or deficiencies that the Contractor corrected.

(f) At the option of the Contracting Officer, defects and deficiencies may be left uncorrected. In that event, the Contractor and Contracting Officer shall negotiate an equitable reduction in the contract price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this contract

1252.217-72 Performance (Nov 2022)

(a) Upon the award of the contract, the Contractor shall promptly start the work specified and shall diligently prosecute the work to completion. The Contractor shall not start work until the

contract has been awarded except in the case of emergency work ordered by the Contracting Officer in writing.

(b) The Government shall deliver the vessel described in the contract at the time and location specified in the contract. Upon completion of the work, the Government shall accept delivery of the vessel at the time and location specified in the contract.

(c) The Contractor shall without charge -

(1) Make available to personnel of the vessel while in dry dock or on a marine railway, sanitary lavatory and similar facilities at the plant acceptable to the Contracting Officer;

(2) Supply and maintain suitable brows and gangways from the pier, dry dock, or marine railway to the vessel;

(3) Treat salvage, scrap or other ship's material of the Government resulting from performance of the work as items of Government-furnished property, in accordance with clause 52.245-1, Government Property;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work for the Government's use.

(d) The contract will state whether dock and sea trials are required to determine whether the Contractor has satisfactorily performed the work.

(1) If dock and sea trials are required, the vessel shall be under the control of the vessel's commander and crew.

(2) The Contractor shall not conduct dock and sea trials not specified in the contract without advance approval of the Contracting Officer. Dock and sea trials not specified in the contract shall be at the Contractor's expense and risk.

(3) The Contractor shall provide and install all fittings and appliances necessary for dock and sea trials. The Contractor shall be responsible for care, installation, and removal of instruments and apparatus furnished by the Government for use in the trials.

#### 1252.217-73 Inspection and Manner of Doing Work (Nov 2022)

(a) The Contractor shall perform work in accordance with the contract, any drawings and specifications made a part of the job order, and any change or modification issued under the Changes clause.

(b)

(1) Except as provided in paragraph (b)(2) of this clause, and unless otherwise specifically provided in the contract, all operational practices of the Contractor and all workmanship, material, equipment, and articles used in the performance of work under this contract shall be in accordance with the best commercial marine practices and the rules and requirements of all appropriate regulatory bodies including, but not limited to the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of Contractor's submission of offer, and shall be intended and approved for marine use.

(2) When Navy specifications are specified in the contract, the Contractor shall follow Navy standards of material and workmanship. The solicitation shall prescribe the Navy standard whenever applicable.

(c) The Government may inspect and test all material and workmanship at any time during the Contractor's performance of the work.

(1) If, prior to delivery, the Government finds any material or workmanship is defective or not in accordance with the contract, in addition to its rights under the Guarantee clause, the Government may reject the defective or nonconforming material or workmanship and require the Contractor to correct or replace it at the Contractor's expense.

(2) If the Contractor fails to proceed promptly with the replacement or correction of the material or workmanship, the Government may replace or correct the defective or nonconforming material or workmanship and charge the Contractor the excess costs incurred.

(3) As specified in the contract, the Contractor shall provide and maintain an inspection system acceptable to the Government.

(4) The Contractor shall maintain complete records of all inspection work and shall make them available to the Government during performance of the contract and for 90 days after the completion of all work required.

(d) The Contractor shall not permit any welder to work on a vessel unless the welder is, at the time of the work, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of welding being performed. Qualifications of a welder shall be as specified in the contract.

(e) The Contractor shall -

(1) Exercise reasonable care to protect the vessel from fire;

(2) Maintain a reasonable system of inspection over activities taking place in the vicinity of the vessel's magazines, fuel oil tanks, or storerooms containing flammable materials.

(3) Maintain a reasonable number of hose lines ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in dry dock or on a marine railway;

(4) Unless otherwise provided in the contract, provide sufficient security patrols to reasonably maintain a fire watch for protection of the vessel when it is in the Contractor's custody;

(5) To the extent necessary, clean, wash, and steam out or otherwise make safe, all tanks under alteration or repair.

(6) Furnish the Contracting Officer a "gas-free" or "safe-for-hotwork" certificate before any hot work is done on a tank;

(7) Treat the contents of any tank as Government property in accordance with clause 52.245-1, Government Property; and

(8) Dispose of the contents of any tank only at the direction, or with the concurrence, of the Contracting Officer.

(9) Be responsible for the proper closing of all openings to the vessel's underwater structure upon which work has been performed. The Contractor additionally must advise the COR of the status of all valve closures and openings for which the Contractor's workers were responsible.

(f) Except as otherwise provided in the contract, when the vessel is in the custody of the Contractor or in dry dock or on a marine railway and the temperature is expected to go as low as 35 Fahrenheit, the Contractor shall take all necessary steps to -

(1) Keep all hose pipe lines, fixtures, traps, tanks, and other receptacles on the vessel from freezing; and

(2) Protect the stern tube and propeller hubs from frost damage.

(g) The Contractor shall, whenever practicable -

(1) Perform the required work in a manner that will not interfere with the berthing and messing of Government personnel attached to the vessel; and

(2) Provide Government personnel attached to the vessel access to the vessel at all times.

(h) Government personnel attached to the vessel shall not interfere with the Contractor's work or workers.

(i)(1) The Government does not guarantee the correctness of the dimensions, sizes, and shapes set forth in any contract, sketches, drawings, plans, or specifications prepared or furnished by the Government, unless the contract requires that the Contractor perform the work prior to any opportunity to inspect.

(2) Except as stated in paragraph (i)(1) of this clause, and other than those parts furnished by the Government, and the Contractor shall be responsible for the correctness of the dimensions, sizes, and shapes of parts furnished under this contract.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by its employees or the work. At the completion of the work, unless the contract specifies otherwise, the Contractor shall remove all rubbish from the site of the work and leave the immediate vicinity of the work area "broom clean."

#### 1252.217-74 Subcontracts (Nov 2022)

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of its own employees, and of subcontractors and their employees. The Contractor shall also be responsible for the coordination of the work of the trades, subcontractors, and material men.

(c) The Contractor shall, without additional expense to the Government, employ specialty subcontractors where required by the specifications.

(d) The Government or its representatives will not undertake to settle any differences between the Contractor and its subcontractors, or any differences between subcontractors.

#### 1252.217-76 Liability and Insurance (Nov 2022)

(a) The Contractor shall exercise its best efforts to prevent accidents, injury, or damage to all employees, persons, and property, in and about the work, and to the vessel or part of the vessel upon which work is done.



(b) Loss or damage to the vessel, materials, or equipment.

(1) Unless otherwise directed or approved in writing by the Contracting Officer, the Contractor shall not carry insurance against any form of loss or damage to the vessel(s) or to the materials or equipment to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to that property.

(2) The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to maintain insurance, if available, as required or approved by the Contracting Officer.

(3) The Government does not assume risk of and will not pay for any costs of the following:

(i) Inspection, repair, replacement, or renewal of any defects in the vessel(s) or material and equipment due to -

(A) Defective workmanship performed by the Contractor or its subcontractors;

(B) Defective materials or equipment furnished by the Contractor or its subcontractors; or

(C) Workmanship, materials, or equipment which do not conform to the requirements of the contract, regardless of whether the defect is latent or whether the nonconformance is the result of negligence.

(ii) Loss, damage, liability, or expense caused by, resulting from, or incurred as a consequence of any delay or disruption, willful misconduct or lack of good faith by the Contractor or any of its representatives that have supervision or direction of -

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operation at any one plant.

(4) As to any risk that is assumed by the Government, the Government shall be subrogated to any claim, demand or cause of action against third parties that exists in favor of the Contractor. If required by the Contracting Officer, the Contractor shall execute a formal assignment or transfer of the claim, demand, or cause of action.

(5) No party other than the Contractor shall have any right to proceed directly against the Government or join the Government as a codefendant in any action.

(6) Notwithstanding the foregoing, the Contractor shall bear the first \$5,000 of loss or damage from each occurrence or incident, the risk of which the Government would have assumed under the provision of this paragraph (b).

(c) Indemnification. The Contractor indemnifies the Government and the vessel and its owners against all claims, demands, or causes of action to which the Government, the vessel or its

owner(s) might be subject as a result of damage or injury (including death) to the property or person of anyone other than the Government or its employees, or the vessel or its owner, arising in whole or in part from the negligence or other wrongful act of the Contractor, or its agents or employees, or any subcontractor, or its agents or employees.

(1) The Contractor's obligation to indemnify under this paragraph shall not exceed the sum of \$300,000 as a consequence of any single occurrence with respect to any one vessel.

(2) The indemnity includes, without limitation, suits, actions, claims, costs, or demands of any kind, resulting from death, personal injury, or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. For any claim, etc., made after 90 days, the rights of the parties shall be as determined by other provisions of this contract and by law. The indemnity applies to death occurring after 90 days where the injury was received during the period covered by the indemnity.

(d) Insurance.

(1) The Contractor shall, at its own expense, obtain and maintain the following insurance -

(i) Casualty, accident, and liability insurance, as approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause.

(ii) Workers Compensation Insurance (or its equivalent) covering the employees engaged on the work.

(2) The Contractor shall ensure that all subcontractors engaged on the work obtain and maintain the insurance required in paragraph (d)(1) of this clause.

(3) Upon request of the Contracting Officer, the Contractor shall provide evidence of the insurance required by paragraph (d) of this clause.

(e) The Contractor shall not make any allowance in the contract price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) The Contractor shall give the Contracting Officer written notice as soon as practicable after the occurrence of a loss or damage for which the Government has assumed the risk.

(1) The notice shall contain full details of the loss or damage.

(2) If a claim or suit is later filed against the Contractor as a result of the event, the Contractor shall immediately deliver to the Government every demand, notice, summons, or other process received by the Contractor or its employees or representatives.

(3) The Contractor shall cooperate with the Government and, upon request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and

the conduct of suits. The Government shall reimburse the Contractor for expenses incurred in this effort, other than the cost of maintaining the Contractor's usual organization.

(4) The Contractor shall not, except at its own expense, voluntarily make any payments, assume any obligation, or incur any expense other than what would be imperative for the protection of the vessel(s) at the time of the event.

(g) In the event of loss of or damage to any vessel(s), material, or equipment which may result in a claim against the Government under the insurance provisions of this contract, the Contractor shall promptly notify the Contracting Officer of the loss or damage. The Contracting Officer may, without prejudice to any right of the Government, either -

(1) Order the Contractor to proceed with replacement or repair, in which event the Contractor shall effect the replacement or repair;

(i) The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of the replacement or repair together with whatever supporting documentation the Contracting Officer may reasonably require, and shall identify the request as being submitted under the Insurance clause of this contract.

(ii) If the Government determines that the risk of the loss or damage is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable allowable cost of the replacement or repair, plus a reasonable profit (if the work or replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause.

(iii) Payments by the Government to the Contractor under this clause are outside the scope of and shall not affect the pricing structure of the contract, and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) Decide that the loss or damage shall not be replaced or repaired and in that event, the Contracting Officer shall -

(i) Modify the contract appropriately, consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage; or

(ii) Terminate the repair of any part or all of the vessel(s) under the Termination for Convenience of the Government clause of this contract.

1252-217-77 Title (Nov 2022)

(a) Unless otherwise provided, title to all materials and equipment to be incorporated in a vessel in the performance of this contract shall vest in the Government upon delivery at the location specified for the performance of the work.

(b) Upon completion of the contract, or with the approval of the Contracting Officer during performance of the contract, all Contractor-furnished materials and equipment not incorporated

in, or placed on, any vessel, shall become the property of the Contractor, unless the Government has reimbursed the Contractor for the cost of the materials and equipment.

(c) The vessel, its equipment, movable stores, cargo, or other ship's materials shall not be considered Government-furnished property.

1252.217-78 Discharge of Liens (Nov 2022)

(a) The Contractor shall immediately discharge or cause to be discharged, any lien or right in rem of any kind, other than in favor of the Government, that exists or arises in connection with work done or materials furnished under this contract.

(b) If any such lien or right in rem is not immediately discharged, the Government, at the expense of the Contractor, may discharge, or cause to be discharged, the lien or right.

1252.217-79 Delays.

When during the performance of this contract the Contractor is required to delay work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment shall be made in the price of the contract pursuant to the "Changes" clause.

1252.217-80 Department of Labor Safety and Health Regulations for Ship Repair (Nov 2022)

Nothing contained in this contract shall relieve the Contractor of any obligations it may have to comply with -

- (a) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq.);
- (b) The Occupational Safety and Health Standards for Shipyard Employment (29 CFR part 1915); or
- (c) Any other applicable Federal, State, and local laws, codes, ordinances, and regulations.

1252.222-72 Contractor Cooperation in Equal Employment Opportunity and Anti-Harassment Investigations. (Nov 2022)

(a) Definitions. As used in this clause -

Complaint means a formal or informal complaint that has been filed with DOT management, DOT agency Equal Employment Opportunity (EEO) officials, the Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance Programs (OFCCP) or a court of competent jurisdiction.

Contractor employee means all current Contractor employees who work or worked under this contract. The term also includes current employees of subcontractors who work or worked under this contract. In the case of Contractor and subcontractor employees who worked under this contract, but who are no longer employed by the Contractor or subcontractor, or who have been assigned to another entity within the Contractor's or subcontractor's organization, the Contractor

shall provide DOT with that employee's last known mailing address, email address, and telephone number, if that employee has been identified as a witness in an EEO or Anti-Harassment complaint or investigation.

Good faith cooperation means, but is not limited to, making Contractor employees available, with the presence or assistance of counsel as deemed appropriate by the Contractor, for:

- (1) Formal and informal interviews by EEO counselors, the OFCCP, or other Agency officials processing EEO or Anti-Harassment complaints;
  - (2) Formal or informal interviews by EEO investigators charged with investigating complaints of unlawful discrimination filed by Federal employees;
  - (3) Reviewing and signing appropriate affidavits or declarations summarizing statements provided by such Contractor employees during EEO or Anti-Harassment investigations;
  - (4) Producing documents requested by EEO counselors, EEO investigators, OFCCP investigators, Agency employees, or the EEOC in connection with a pending EEO or Anti-Harassment complaint; and
  - (5) Preparing for and providing testimony in depositions or in hearings before the Merit Systems Protection Board, EEOC, OFCCP, and U.S. District Court.
- (b) Cooperation with investigations. In addition to complying with the clause at FAR 52.222-26, Equal Opportunity, the Contractor shall, in good faith, cooperate with the Department of Transportation in investigations of EEO complaints processed pursuant to 29 CFR part 1614 and internal Anti-Harassment investigations.
- (c) Compliance. Failure on the part of the Contractor or its subcontractors to comply with the terms of this clause may be grounds for the Contracting Officer to terminate this contract for default or for cause in accordance with the termination clauses in the contract.
- (d) Subcontract flowdown. The Contractor shall include the provisions of this clause in all subcontract solicitations and subcontracts awarded, at any tier, under this contract.

1252.223-70 Removal or Disposal of Hazardous Substances - Applicable Licenses and Permits. (Nov 2022)

The Contractor has\_\_or does not have\_\_[Contractor check applicable response] all licenses and permits required by Federal, State, and local laws to perform hazardous substance(s) removal or disposal services. If the Contractor does not currently possess these documents, it must obtain all requisite licenses and permits within\_\_[Contracting Officer insert number] calendar days after date of award. The Contractor shall provide evidence of said documents to the Contracting Officer or designated Government representative prior to commencement of work under the contract

1252.223-71 Accident and Fire Reporting. (Nov 2022)

(a) The Contractor shall report to the Contracting Officer any accident or fire occurring at the site of the work which causes -

- (1) A fatality or as much as one lost workday on the part of any employee of the Contractor or subcontractor at any tier;
- (2) Damage of \$1,000 or more to Government-owned or leased property, either real or personal;
- (3) Damage of \$1,000 or more to Contractor or subcontractor owned or leased motor vehicles or mobile equipment; or
- (4) Damage for which a contract time extension may be requested.

(b) Accident and fire reports required by paragraph (a) of this section shall be accomplished by the following means:

(1) Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Government-owned or leased property (either real or personal), the total value of which is estimated at \$100,000 or more, shall be reported immediately by telephone to the Contracting Officer or his/her authorized representative and shall be confirmed in writing within 24 hours to the Contracting Officer. Such report shall state all known facts as to extent of injury and damage and as to cause of the accident or fire.

(2) Other accident and fire reports required by paragraph (a) of this section may be reported by the Contractor using a state, private insurance carrier, or Contractor accident report form which provides for the statement of -

- (i) The extent of injury; and
- (ii) The damage and cause of the accident or fire.

Such report shall be mailed or otherwise delivered to the Contracting Officer within 48 hours of the occurrence of the accident or fire.

(c) The Contractor shall assure compliance by subcontractors at all tiers with the requirements of this clause.

#### 1252.223-73 Seat Belt Use Policies and Programs (Nov 2022)

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Contractor is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information on how to implement such a program or for statistics on the potential benefits and cost-savings to your company or organization, please visit the Click it or Ticket seat belt safety section of

NHTSA's website at <https://www.nhtsa.gov/campaign/click-it-or-ticket> and <https://www.nhtsa.gov/risky-driving/seat-belts>.

1252.232-70 Electronic Submission of Payment Requests.(Nov 2022)

(a) Definitions. As used in this clause -

(1) Contract financing payment has the meaning given in FAR 32.001.

(2) Payment request means a bill, voucher, invoice, or request for contract financing payment or invoice payment with associated supporting documentation. The payment request must comply with the requirements identified in FAR 32.905(b), "Content of Invoices," this clause, and the applicable Payment clause included in this contract.

(3) Electronic form means an automated system transmitting information electronically according to the accepted electronic data transmission methods and formats identified in paragraph (c) of this clause. Facsimile, email, and scanned documents are not acceptable electronic forms for submission of payment requests.

(4) Invoice payment has the meaning given in FAR 32.001.

(b) Electronic payment requests. Except as provided in paragraph (e) of this clause, the contractor shall submit payment requests in electronic form. Purchases paid with a Governmentwide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

(c) Processing system. The Department of Transportation utilizes the DELPHI system for processing invoices. The DELPHI module for submitting invoices is called iSupplier. Access to DELPHI is granted with electronic authentication of credentials (name & valid email address) utilizing the GSA credentialing platform login.gov. Vendors submitting invoices are required to submit invoices via iSupplier (DELPHI) and authenticated via www.login.gov.

(d) Invoice requirements. To receive payment and in accordance with the Prompt Payment Act, all invoices submitted as attachments in iSupplier (DELPHI) shall contain the following:

(1) Invoice number and invoice date.

(2) Period of performance covered by invoice.

(3) Contract number and title.

(4) Task/Delivery Order number and title (if applicable).

(5) Amount billed (by CLIN), current and cumulative.

(6) Total (\$) of billing.

(7) Cumulative total billed for all contract work to date.

(8) Name, title, phone number, and mailing address of person to be contacted in the event of a defective invoice.

(9) Travel. If the contract includes allowances for travel, all invoices which include charges pertaining to travel expenses will catalog a breakdown of reimbursable expenses with the appropriate receipts to substantiate the travel expenses.

(e) Payment system registration. All persons accessing the iSupplier (DELPHI) will be required to have their own unique user ID and password and be credentialed through login.gov.

(1) Electronic authentication. See [www.login.gov](http://www.login.gov) for instructions.

(2) To create a [www.login.gov](http://www.login.gov) account, the user will need a valid email address and a working phone number. The user will create a password and then [www.login.gov](http://www.login.gov) will reply with an email confirming the email address.

(3) iSupplier (DELPHI) registration instructions: New users should navigate to: <http://einvoice.esc.gov> to establish an account. Users are required to log in to iSupplier (DELPHI) every 45 days to keep it active.

(4) Training on DELPHI. To facilitate use of DELPHI, comprehensive user information is available at <http://einvoice.esc.gov>.

(5) Account Management. Vendors are responsible to contact their assigned COR when their firm's points of contacts will no longer be submitting invoices, so they can be removed from the system.

(f) Waivers. For contractors/vendors who are unable to utilize DOT's DELPHI system, waivers may be considered by DOT on a case-by-case basis. Vendors should contact their Contracting Officer's Representative (COR) for procedures.

(g) Exceptions and alternate payment procedures. If, based on one of the circumstances set forth in 1232.7002(a) or (b), and the contracting officer directs that payment requests be made by mail, the contractor shall submit payment requests by mail through the United States Postal Service to the designated agency office. If alternate payment procedures are authorized, the Contractor shall include a copy of the Contracting Officer's written authorization with each payment request. If DELPHI is succeeded by later technology, the Contracting Officer will supply the Contractor with the latest applicable electronic invoicing instructions.

1252.239-72 Compliance with Safeguarding DOT Sensitive Data Controls. (Nov 2022)

(a) The Contractor shall implement security requirements contained in clause 1252.239-74, Safeguarding DOT Sensitive Data and Cyber Incident Reporting, for all DOT sensitive data on all Contractor information systems that support the performance of this contract.



(b) Contractor information systems not part of an information technology service or system operated on behalf of the Government as part of this contract are not subject to the provisions of this clause.

(c) By submission of this offer, the Offeror represents that it will implement the security requirements specified by National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, Revision 2, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" at <https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final> that are in effect at the time the solicitation is issued or as authorized by the contracting officer.

(d) If the Offeror proposes to vary from any security requirements specified by NIST SP 800-171, Rev. 2 in effect at the time the solicitation is issued or as authorized by the Contracting Officer, the Offeror shall submit to the Contracting Officer, for consideration by the DOT Chief Information Officer (CIO), a written explanation of -

(1) Why a particular security requirement is not applicable; or

(2) How the Contractor will use an alternative, but equally effective, security measure to satisfy the requirements of NIST SP 800-171, Rev. 2.

(e) The Office of the DOT CIO will evaluate offeror requests to vary from NIST SP 800-171, Rev. 2 requirements and inform the Offeror in writing of its decision before contract award. The Contracting Officer will incorporate accepted variance(s) from NIST SP 800-171, Rev. 2 into any resulting contract.

#### 1252.239-73 Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information (Nov 2022)

(a) *Definitions.* As used in this clause -

*Compromise* means disclosure of information to unauthorized persons, or a violation of the security policy of a system, whereby without authorization information is disclosed, modified, destroyed, lost, or copied to unauthorized media - whether intentionally or unintentionally.

*DOT sensitive data* means unclassified information that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, and is -

(1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the Contractor by or on behalf of DOT in support of the performance of the contract; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the Contractor in support of the performance of the contract.

*Cyber incident* means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

*Information system* means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

*Media* means physical devices or writing surfaces including, but not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which

DOT sensitive data is recorded, stored, or printed within a covered contractor information system.

*DOT technical information* means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

*(b) Restrictions.*

(1) The Contractor agrees that the following conditions apply to any information it receives or creates in the performance of this contract derived from a third-party's reporting of a cyber incident, pursuant to TAR clause, 1252.239-74, Safeguarding DOT Sensitive Data and Cyber Incident Reporting (or derived from such information obtained under that clause):

(2) The Contractor shall access and use the information only for the purpose of furnishing advice or technical assistance directly to the Government in support of the Government's activities related to clause 1252.239-74, Safeguarding DOT Sensitive Data and Cyber Incident Reporting, and shall not be used for any other purpose.

(3) The Contractor shall protect the information against unauthorized release or disclosure.

(4) The Contractor shall ensure that its employees are subject to use and non-disclosure obligations consistent with this clause prior to the employees being provided access to or use of the information.

(5) The third-party contractor that reported the cyber incident is a third-party beneficiary of the non-disclosure agreement between the Government and Contractor, as required by paragraph (b)(3) of this clause.

(6) A breach of these obligations or restrictions may subject the Contractor to -

- (i) Criminal, civil, administrative, and contractual penalties and other appropriate remedies; and
- (ii) Civil actions for damages and other appropriate remedies by the third party that reported the cyber incident, as a third-party beneficiary of this clause.

*(c) Subcontract flowdown requirement.* The Contractor shall include this clause, including this paragraph (c), in subcontracts, or similar contractual instruments, for services that include support for the Government's activities related to safeguarding covered DOT sensitive data and cyber incident reporting, including subcontracts for commercial products or commercial services, without alteration, except to identify the parties.

1252.239-74 Safeguarding DOT Sensitive Data and Cyber Incident Reporting (Nov 2022).

*(a) Definitions.* As used in this clause -

*Adequate security* means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information against the probability of occurrence.

*Compromise* means disclosure of information to unauthorized persons, or a violation of the security policy of a system, whereby without authorization information is disclosed, modified, destroyed, lost, or copied to unauthorized media - whether intentionally or unintentionally.

*Contractor attributional/proprietary information* means information that identifies the Contractor(s), whether directly or indirectly, by the grouping of information that can be traced

back to the Contractor(s) (e.g., program description, facility locations), personally identifiable information, trade secrets, commercial or financial information, or other commercially sensitive information not customarily shared outside of a company.

*Covered contractor information system* means an unclassified information system owned or operated by or for a Contractor and that processes, stores, or transmits DOT sensitive data.

*DOT sensitive data* means unclassified information that requires safeguarding or dissemination controls pursuant to and consistent with law, regulation, and Government-wide policies, and is -

- (1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the Contractor by or on behalf of DOT in support of the performance of the contract; or
- (2) Collected, developed, received, transmitted, used, or stored by or on behalf of the Contractor in support of the performance of the contract.

*Cyber incident* means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

*Federal record* as defined in 44 U.S.C. 3301, includes all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them. The term Federal record -

- (1) Includes all DOT records;
- (2) Does not include personal materials;
- (3) Applies to records created, received, or maintained by Contractors pursuant to a DOT contract; and
- (4) May include deliverables and documentation associated with deliverables.

*Forensic analysis* means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

*Information system* means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

*Malicious software* means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

*Media* means physical devices or writing surfaces including, but not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which DOT sensitive data is recorded, stored, or printed within a covered contractor information system.

*Operationally critical support* means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

*Spillage security incident* means an incident that results in the transfer of classified or unclassified information onto an information system not accredited (i.e., authorized) for the appropriate security level.

*Technical information* means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as

financial and/or management information, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) *Adequate security*. The Contractor shall provide adequate security on all covered contractor information systems. To provide adequate security, the Contractor shall implement, at a minimum, the following information security protections:

(1) For covered Contractor information systems that are part of an information technology (IT) service or system operated on behalf of the Government, the following security requirements apply:

(i) Cloud computing services shall be subject to the security requirements specified in the clause 1252.239-76, Cloud Computing Services, of this contract.

(ii) Any other such IT service or system (*i.e.*, other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract.

(2) For covered Contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1) of this clause, the following security requirements apply:

(i) Except as provided in paragraph (b)(2)(iv) of this clause, the contractor information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, Revision 2, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (available via the internet at <https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final>) in effect at the time the solicitation is issued or as authorized by the Contracting Officer.

(ii) The Contractor shall implement NIST SP 800-171, Rev. 2, no later than 30 days after the award of this contract. The Contractor shall notify Contract Officer of any security requirements specified by NIST SP 800-171, Rev. 2 not implemented within 30 days of time of contract award.

(iii) If the Offeror proposes to vary from any security requirements specified by NIST SP 800-171, Rev. 2 in effect at the time the solicitation is issued or as authorized by the Contracting Officer, the Offeror shall submit to the Contracting Officer, for consideration by the DOT Chief Information Officer (CIO), a written explanation of -

(A) Why a particular security requirement is not applicable; or

(B) How the Contractor will use an alternative, but equally effective, security measure to satisfy the requirements of NIST SP 800-171, Rev. 2.

(iv) The Office of the DOT CIO will evaluate offeror requests to vary from NIST SP 800-171, Rev. 2 requirements and inform the Offeror in writing of its decision before contract award. The Government will incorporate accepted variance(s) from NIST SP 800-171, Rev. 2 into any resulting contract.

(v) The Contractor need not implement any security requirement adjudicated by an authorized representative of the DOT CIO to be nonapplicable, or have an alternative, but equally effective, security measure that may be implemented in its place.

(vi) If the DOT CIO has previously adjudicated the contractor's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the Contracting Officer when the Contractor requests its recognition under this contract

(3) If the Contractor intends to use an external cloud service provider to store, process, or transmit any DOT sensitive data in performance of this contract, the Contractor shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (<https://www.fedramp.gov/resources/documents/>) and that the cloud service provider complies with requirements in paragraphs (c) through (h) of this clause for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.

(4) The Contractor will apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraphs (b)(1) and (b)(2) of this clause, may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (*e.g.*, medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan, as required by, clause 1252.239-70, Security Requirements for Unclassified Information Technology Resources.

*(c) Cyber incident reporting requirement.*

(1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the DOT sensitive data residing therein, or that affects the contractor's ability to perform the requirements of the contract that are designated as operationally critical support and identified in the contract, the Contractor shall -

(i) Conduct a review for evidence of compromise of DOT sensitive data, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised DOT sensitive data or whether the incident affects the Contractor's ability to provide operationally critical support; and

(ii) Rapidly report cyber incidents to DOT Security Operations Center (SOC) 24x7x365 at phone number: 571-209-3080 (Toll Free: 1-866-580-1852).

(d) *Cyber incident report.* The cyber incident report shall be treated as information created by or for DOT and shall include, at a minimum, the required elements in paragraph (c)(1)(i).

(e) *Spillage.* Upon notification by the Government of a spillage, or upon the Contractor's discovery of a spillage, the Contractor shall cooperate with the Contracting Officer to address the spillage in compliance with DOT policy.

(f) *Malicious software.* When the Contractor or subcontractors discover and isolate malicious software in connection with a reported cyber incident, the Contractor shall submit the malicious software to DOT in accordance with instructions provided by the Contracting Officer. Do not send the malicious software to the Contracting Officer.

(g) *Media preservation and protection.* When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DOT to request the media or decline interest.

(h) *Access to additional information or equipment necessary for forensic analysis.* Upon request by DOT, the Contractor shall provide DOT with access to additional information or equipment that is necessary to conduct a forensic analysis.

(i) *Cyber incident damage assessment activities.* If DOT elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (c) of this clause.

(j) *DOT safeguarding and use of Contractor attributional/proprietary information.* The Government shall protect against the unauthorized use or release of information obtained from the Contractor (or derived from information obtained from the Contractor) under this clause that includes Contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the Contractor attributional/proprietary information that is included in such authorized release consistent with applicable law.

(k) *Use and release of Contractor attributional/proprietary information not created by or for DOT.* Information that is obtained from the Contractor (or derived from information obtained from the Contractor) under this clause that is not created by or for DOT is authorized to be released outside of DOT -

- (1) To entities with missions that may be affected by such information;
- (2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;
- (3) To Government entities that conduct counterintelligence or law enforcement investigations;
- (4) To a support services contractor ("recipient") that is directly supporting Government activities under a contract that includes the clause at 1252.239-73, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information; or
- (5) With Contractor's consent; or
- (6) As otherwise required by law.

(l) *Use and release of Contractor attributional/proprietary information created by or for DOT.* Information that is obtained from the Contractor (or derived from information obtained from the Contractor) under this clause that is created by or for DOT (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DOT for purposes and activities authorized by paragraph (j) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.

(m) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(n) *Other safeguarding or reporting requirements.* The safeguarding and cyber incident reporting required by this clause in no way abrogates the Contractor's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable Government statutory or regulatory requirements.

(o) *Subcontract flowdown requirements.* The Contractor shall -

- (1) Include this clause, including this paragraph (o), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve

DOT sensitive data, including subcontracts for commercial products and commercial services, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as DOT sensitive data and will require protection under this clause, and, if necessary, consult with the Contracting Officer; and

(2) Require subcontractors to -

- (i) Notify the prime Contractor (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171, Rev. 2 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(iii) of this clause; and
- (ii) Provide the incident report number, automatically assigned by DOT, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DOT as required in paragraph (c) of this clause.

**The following MARAD clauses apply to this requirement:**

**MCL.E.-1 Delegation of Inspection and Acceptance (Aug 2005)**

The Contracting Officer's Technical Representative shall be delegated the responsibility and authority to conduct inspection and acceptance duties for this contract.

**MCL.G-2 Schedules and Schedule Updates for Ship Repair (Aug 2005)**

- (a) The Contractor shall, within a period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer, with a copy to the COTR, for approval, an electronic copy or other format as directed by the Contracting Officer, a practicable, detailed schedule using appropriate project management software and technology, showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials and equipment). Format of the schedule and supporting information shall be in the electronic form and format directed by the Contracting Officer. The schedule shall include a summary in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a complete schedule package within the time prescribed, the Contracting Officer may withhold notice to proceed until the Contractor submits the required schedule.
- (b) Periodically, with each invoice submitted, or at other intervals as directed by the Contracting Officer, the Contractor shall update the schedule showing the actual progress and estimated times and resources at completion compared with initial project elements. Failure to submit updated schedules with the invoice shall be grounds for the Contracting Officer's rejection of the entire invoice. The revised progress schedule information shall be delivered to the Contracting Officer in the format and at the times directed by the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the initial approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of facilities, and to submit for approval any supplementary

schedule or schedules as the Contracting Officer deems necessary to demonstrate how the required rate of progress will be regained.

- (c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.
- (d) The Contractor shall plan and schedule all Open, Inspect, and Report Items as required by the Specifications such that they are accomplished within the first 25% of the availability, unless otherwise agreed by the Contracting Officer.

MCL.H-2 Supplemental Work Requests (Subparagraph (d)(10) is \$10,000.00) (Aug 2005)

- (a) In the complex world of ship repairs, supplemental work often emerges as a result of test, inspection, or discovery of unknown or otherwise differing conditions. The extent and nature of such supplemental work can neither be identified in bid or proposal specifications, and both parties recognize the possibility that such work may arise. Notwithstanding the possibility of the identification of such work, MARAD does not guarantee the award of any supplemental work during contract performance.
- (b) Although MARAD shall be under no obligation to award supplemental work during contract performance, MARAD has provided an estimate for labor (in labor hours) and material (in dollars) for such work in the Schedule (Section B of the solicitation under applicable supplemental work contract line item numbers (CLIN or CLINs)). The offeror shall specify an hourly composite billing rate in its bid or proposal for supplemental work labor. The composite labor-billing rate shall be the rate applicable to labor for all supplemental work that MARAD orders under the applicable supplemental CLIN of the resulting contract. Any supplies or subcontracts required to complete supplemental work will be charged as a direct cost reimbursable under the applicable supplemental work CLIN; additional indirect charges for materials and subcontracts will not be allowed.
- (c) During the performance of the contract, when conditions indicate a need for supplemental work, the Contracting Officer's Technical Representative (COTR) is empowered to provide technical direction, negotiate the amount of labor and material, and authorize the contractor to perform supplemental work through the issuance of a written authorization. The COTR will issue authorizations for supplemental work in accordance with the following:
  - (1) When conditions make supplemental work appropriate, the COTR shall submit to the contractor a supplemental work request that identifies the work to be accomplished.
  - (2) The Contractor shall promptly review each supplemental work request upon receipt and shall, within seventy-two (72) hours of issuance, or sooner, as specified by the COTR, provide the COTR with a proposed price for the supplemental work. Price proposals for all supplemental work must be broken down by labor hours, materials, and subcontracts and allocated to the applicable supplemental work CLIN as appropriate. The contractor shall price the supplemental work to be performed in accordance with the composite labor rate bid or proposed under the supplemental work CLIN in the contract. If necessary, the Contractor shall submit prices for subcontractors, which will be negotiated and treated as direct materials. Once the



COTR and contractor agree on the technical direction and price to accomplish the supplemental work, the contractor and COTR shall sign the authorization for supplemental work, which shall be final and binding on the contractor and MARAD. Subject to paragraphs (c.)(3.) through (c.)(6.), if urgent circumstances do not permit waiting for a written authorization, the parties may orally agree and follow up with written confirmation.

- (3) Notwithstanding the preceding, the COTR shall not authorize and the contractor shall not accept individual supplemental work authorizations from the COTR in excess of the price ceiling established by the Contracting Officer pursuant to paragraph (d.)(10.). In addition, the COTR shall not authorize and the contractor shall not accept a supplemental work authorization from the COTR that, when combined with all previously authorized supplemental work under the contract, exceeds the amount of labor hours and materials specified in the applicable supplemental work CLINs.
- (4) If the contractor requests an adjustment to the contract completion date in its proposal for the supplemental work, the COTR must refer the issue to the Contracting Officer for resolution, which could include modifying the performance period of the contract. All supplemental work must be accomplished within the contract performance period. The COTR shall not authorize and the contractor shall not accept supplemental work authorizations from the COTR that cannot be completed within the contract performance period.
- (5) If the COTR and contractor cannot agree upon the price, the time required, or any other term of a supplemental work request, the matter shall be referred to the Contracting Officer who may resolve the issue in accordance with the procedures contained in the Changes clause incorporated in the contract. Specifically, the Contracting Officer shall have the option of (i) directing that the Contractor perform the work at a price and within a time period determined by the Contracting Officer to be reasonable, or (ii) withdrawing said supplemental work request. The Contractor's refusal to perform the work as directed by the Contracting Officer shall constitute an event of default under the default clauses of the contract. Disputed issues resulting from supplemental work unilaterally directed by the Contracting Officer may be handled under the disputes clause of the contract.
- (6) If the Contracting Officer directs the Contractor to perform the work at a price and within a time period determined by the Contracting Officer to be reasonable, the Contractor shall maintain and submit to MARAD on a daily basis, report sheets itemizing materials used, the costs and man hours of all labor (direct, indirect, and impact), production schedule activities affected by and/or related thereto, and charges for equipment, whether furnished by the Contractor, subcontractors or others. Material charges shall be substantiated by valid copies of materials and/or suppliers invoices. Such invoices shall be submitted with the daily report sheets or, if not available, as soon as reasonably practicable thereafter. Said daily reports shall also include an indication as to which specific schedule activity(ies) are affected by the order which are the subject of the daily report sheets. To the extent the contractor fails or refuses to submit the aforementioned daily report sheets on a daily basis, such failure or refusal shall constitute a basis for the Contracting Officer to suspend

payment for work completed under the supplemental work until appropriate documentation required by the contract is provided.

(d) The following rules apply to supplemental work authorizations:

- (1) The COTR shall authorize supplemental-work only during the period of performance of the contract.
- (2) All authorizations for supplemental work are subject to the terms and conditions of the contract and must be within the scope of the contract.
- (3) If mailed, an authorization is considered "issued" when MARAD deposits the order in the mail. Authorizations may also be issued orally, or by written communications, that is hand-delivered or sent by facsimile or electronic transmission. Oral orders must be followed up by written confirmation as soon as practicable thereafter.
- (4) Unless otherwise explicitly noted in the authorization for supplemental work, all authorizations for supplemental work are firm fixed price. The agreed upon price shall cover all costs including, but not limited to, direct and indirect labor and material, overhead, delay, acceleration, and disruption caused by the supplemental work. Where the parties are unable to agree that an order establishes mutually agreeable terms, the parties shall note the specific differences that are not agreed upon in the text of the proposed work authorization and refer the matter to the Contracting Officer for resolution pursuant to paragraph (c).(5.).
- (5) Unless the contractor otherwise explicitly notes in the supplemental work authorization, in consideration of the price of the order, the Contractor remises, releases, and forever discharges MARAD, its officers, agents, employees, and sureties from any and all civil claims and requests for equitable adjustment whatsoever, relating to, arising out of, or connected with said supplemental work authorization. Such release is full and final settlement of all claims and requests for equitable adjustment relating to, arising out of, or connected with the work authorization, as modified, including, but not limited to, all impact claims such as delay, acceleration, disruption, and cumulative effects of the instant and all previously issued supplemental work authorizations. The executed work authorization constitutes a complete and final adjustment of the price and the delivery schedule.
- (6) When MARAD requires supplies or services covered by the contract in an amount less than the total value of the contract, MARAD is not obligated to award supplemental work for the balance of the price bid or proposed for supplemental work. The Contractor is not obligated to honor additional supplemental work in excess of the estimated labor hours identified in the Schedule. This subparagraph does not affect or change the Contracting Officer's authority under the changes clause of the contract.
- (7) Except for limitations of labor hours estimated in the Schedule, there is no limit to the number of supplemental work authorizations that may be issued. MARAD may issue supplemental work authorizations requiring delivery or performance in multiple locations, if the contract contemplates multiple locations.
- (8) In the event a supplemental work authorization covers a series of related procedures, the Contracting Officer may request the Contractor to furnish separate prices for each item of the work.
- (9) If not otherwise provided, the Contracting Officer may request at any time during performance of supplemental work a list of subcontractors performing work covered

by the supplemental work, the dollar value of the respective subcontracts, and a description of the subcontracted work and the contractor shall promptly provide the requested information.

- (10) The COTR shall not issue and the contractor shall not accept supplemental work authorizations from the COTR that exceeds \$10,000.

#### MCL.H-3 Indemnity and Insurance (Aug 2005)

The Contractor shall indemnify and save and keep harmless the Government against any or all loss, cost, damage, claim, expense or liability whatsoever because of accident or injury to persons or property of others occurring in connection with the operations under this contract. The Contractor shall secure, pay the premiums for and keep in force until the expiration of this contract, and any renewal thereof, adequate insurance. Such insurance to specifically include liability assumed by the Contractor under this contract.

Each policy of insurance shall contain an endorsement that any cancellation or material change in the coverage adversely affecting the Government's interest shall not be effective unless the insurer or the Contractor gives written notice of cancellation or change as required to the Contracting Officer. When the coverage is provided by self-insurance, the Contractor shall not change or decrease the coverage without the Administrative Contracting Officer's prior approval.

A certificate of each policy of insurance shall be furnished to the Contracting Officer within ten (10) days after notice of award certifying, among other things, that the policy contains the aforesaid endorsement. The insurance companies providing the above insurance shall be satisfactory to the Government. Notices of policy changes shall be furnished to the Contracting Officer.

The contractor shall provide at the Contractor's expense, within five days of request from the MARAD contracting officer, a copy of all original insurance policies. These may be sent by mail or facsimile machine.

#### MCL.H.4 Indemnity and Insurance (Additional) (Aug 2005)

##### (a) INDEMNITY

- (1) The Contractor shall exercise reasonable care and use its best efforts to prevent accidents, injury or damage to all employees, persons and property in and about the work, and to the vessel or portion thereof upon which work is done.
- (2) Except as provided elsewhere in this contract, including any guarantee clause, the MARAD assumes the risk of physical loss or damage to any part of the vessel, its machinery, equipment, stores, and other property including cargo if owned by the Government except to the extent that such loss or damage is caused by the negligence, fault, error, act or omission of the Contractor, its subcontractors, agents, or employees. The burden of proving freedom from fault shall be borne by the Contractor. Unless the loss or damage was caused by the willful misconduct of the Contractor, its executive officers, or superintendents the Contractor's liability under this Contract shall not exceed total damage to the ship or ships including total loss up to \$5,000,000 per accident or occurrence per vessel, and shall not exceed in the aggregate per accident or occurrence the sum of total damage to the ship or ships including total loss up to \$5,000,000 multiplied by the number of MARAD's vessels

in the care, custody or control of the Contractor at the location and at the time of the accident or occurrence giving to the loss or damage.

- (3) As to third parties, including, but not limited to, agents, employees or servants of the Contractor, or any subcontractor, the Contractor will defend, indemnify and hold harmless the Government, the vessel, its owners and charterers, from all claims, actions, suits, costs, demands and expense of all descriptions arising out of disease, illness, personal injury, death or property damage to any third party in any way related to or arising out of the performance of work under this contract except to the extent caused by the fault, error, act or omission, or negligence of the Government, its agencies or employees. The burden of proving fault of the Government, its agencies or employees shall be borne by the Contractor.
  - (4) As to loss and damage which are the responsibility of the Government, the Government shall be subrogated to any claim, demand, or course of action against third parties which exists in favor of the Contractor, and the Contractor shall, if required, execute a formal assignment or transfer of such claim, demand, or course of action, and shall aid in securing information, evidence, obtaining of witnesses, and cooperate with MARAD in all matters MARAD may deem necessary in defense of any claim, or suit or appeal from any judgment or in effecting indemnity, provided, further, that nothing contained in this paragraph shall create or give rise to any right, privilege or power in any person except the Contractor, nor shall any person (except the Contractor) be or become entitled thereby to proceed directly against the Government, its agencies or instrumentalities, or to join the Government, its agencies or instrumentalities, as a codefendant in any action against the Contractor brought to determine the Contractor's liability or for any other purpose.
- (b) **TYPES OF INSURANCE AND MINIMUM COVERAGE.** The Contractor shall at its own expense, provide and maintain the following insurances during the entire performance of this contract.
- (1) Workmen's Compensation, including Longshoremen & Harbor Worker's Act coverage - Covering all agents, servants, borrowed servants, statutory employees of Contractor for all compensation and other benefits required by applicable state and federal law or by governmental authority on account of injury, death, sickness or disease - Statutory - no minimum.
  - (2) Comprehensive General Liability to include coverage for (but not limited to) products and completed operations liability, property damage liability and contractual liability - \$5 million combined single per occurrence limit for bodily injury and property damage and \$5 million in the aggregate.
  - (3) Ship Repairers Legal Liability - coverage to be provided under the standard London or American Institute forms or their equivalent \$5 million per vessel, per occurrence or such other amount as may be requested.
  - (4) Pollution - sudden and accidental liability - \$5 Million per occurrence.
- (c) All such insurance shall be subject to the approval of the Division of Marine Insurance and will contain thirty (30) calendar days advance notice of cancellation or of any non-renewal which is the option of the insurer, said notice to be provided to the U.S. Maritime Administration, Division of Marine Insurance MAR-710, 1200 New Jersey Avenue SE, Washington, DC 20590.
- (d) **FORM OF CONFIRMATION**

- (1) The pollution insurance may be a separate policy or part of the Comprehensive General Liability policy, but the coverage must be specifically shown on the required confirmation of insurance. Excess liability and umbrella liability policies may be used in the excess of primary policies to meet the minimum limit requirements. The United States of America shall be an additional assured in the Ship Repairs Legal Liability policy, Comprehensive General Liability Policy and Pollution Policy. Such policies shall contain a clause statement that there is no recourse against the United States of America for payment of premium. All such insurance shall be subject to the approval of the Division of Marine Insurance and must contain thirty (30) calendar days advance notice of cancellation (without disclaimer) or of any non-renewal which is the option of the insurer, said notice to be provided to the U.S. Maritime Administration, Division of Marine Insurance MAR-710, 1200 New Jersey Avenue SE, Washington, DC 20590.
- (2) The Contractor shall have its insurance broker provide a detailed certificate of insurance, cover note or policy confirming the above required coverage. The confirmation shall name the Contractor and United States of America as assureds and confirm the types of coverage, policy forms, policy periods, deductibles (if any) and underwriters with their percentage of participation. The N.Y. Suable Clause or Service of Suit USA Clause must be confirmed for any Foreign underwriter placements. The policy amounts, terms and conditions, deductibles and underwriters shall at all times be satisfactory to the Maritime Administration.
- (e) The contractor shall insert the substance of this clause in subcontracts under this contract that require work on a Government installation.

MCL.H-6 Standards of Employee Conduct (Aug 2005)

The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity, and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary.

MCL.H-7 Environmental Concerns/Asbestos Related/Hazardous Materials/Petroleum and Petroleum Products: Environmental Compliance (Aug 2005)

The Contractor must recognize that MARAD vessels often contain hazardous substances, hazardous materials, petroleum and petroleum products, the handling, removal, storage, transportation and disposal of which is required in the performance of work. Such hazardous substances, hazardous materials, petroleum products include but are not limited to: Asbestos, used in heat and electrical insulation, brake linings, deck covering, boiler refractors, joiner work and other areas; mercury; petroleum products; hydraulic oils; liquid cargo products; lead in marine compounds, products and other areas; chromium; tin in anti-foulants and other areas; zinc; polychlorinated biphenyls (PCBs), found in some electrical cable, rubber gaskets, felt gaskets, thermal insulation material (fiberglass, felt, foam and cork), transformers, capacitors or voltage regulators, switches, reclosers, bushings, electromagnets, adhesives, tapes, oil (leaks, spills as well as electrical equipment, motor, anchor windlasses and hydraulic system containing oil), surface contamination of machinery and other solid surfaces, oil based paint, caulking, rubber isolation mounts, foundation mounts, pipe hangers, light ballasts and plasticizers, and other hazardous substances used aboard ship while in operation and/or in Phase IV maintenance.

In performance of the work by the Contractor, the most recent edition of any applicable statute, regulation, standard, or code shall be in effect. Where a conflict among requirements or specifications exist, the most stringent requirements shall be utilized.

## HAZARDOUS SUBSTANCE/HAZARDOUS MATERIALS

The term hazardous substance has the meaning ascribed to it by 42 U.S.C. §9601(14). The term hazardous materials has the meaning ascribed to it by 49 CFR 171.8. The term hazardous material, is as defined for hazardous chemicals in 29 CFR 1910.1200.

### Specific Requirement Standards: ASBESTOS

- (a) All of the handling, removal, storage, transportation and disposal work shall be done in strict compliance with all applicable Federal, State and local statutes, regulations, standards, and codes governing asbestos, asbestos abatement, asbestos disposal and any other trade work done in conjunction with asbestos abatement including, but not limited to:

- (1) Occupational Safety and Health Administration (OSHA):

- Title 29, CFR, Section 1910, Occupational Safety and Health Standards
    - Title 29, CFR, Part 1915, Occupational Safety and Health Standards for Shipyards
    - Employment Title 29, CFR, Part 1926, Safety and Health Regulations for Construction
    - Title 29, CFR, Section 1910.1200 Hazard Communication
    - Federal Register, dated June 20 and October 17, 1986, Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite; Final Rule. (29 CFR Parts 1910 and 1926)

- (2) Environmental Protection Agency (EPA)

- Title 40 CFR Part 61, Subparts A and M (revised Subpart B) National Emission Standard for Hazardous Air Pollutants (Asbestos) and Part 763 Asbestos.
    - Title 40 CFR Part 63, National Emission Standard for Hazardous Air Pollutants Subpart II National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)

- (3) Maritime Administration (MARAD)

Action Plan for the Control of Asbestos Exposures and Uses in MARAD Programs.

NOTE: This action plan is available upon written request to:

Maritime Administration,  
Office of Management Services, MAR-310  
400 Seventh Street, SW., Room 7225  
Washington, D.C. 20590 ATTN.: Safety Officer.

## OTHER HAZARDOUS MATERIALS AND HAZARDOUS, REGULATED AND SPECIAL WASTES

Safe, proper and lawful handling of hazardous substances, hazardous materials and petroleum products is the Contractor's responsibility whether or not it is identified as such in this contract or any attachment herein. The Contractor must determine for itself whether work specified in this contract requires the handling, removal, storage, transportation or disposal of hazardous substances, hazardous materials, petroleum products, and/or hazardous regulated or special wastes and price the bid or proposal accordingly. If available, MARAD will provide to the Contractor information regarding the existence and amount of any such material. No additional charges required for handling, removal, storage, transportation, or disposal of any hazardous substances, hazardous materials, petroleum products and/or hazardous, regulated or special wastes in the specified work will be allowed after award is made. Except to extent such additional changes result from the existence of hazardous substances, hazardous materials, petroleum products and/or hazardous, regulated or special wastes that could not have been reasonably anticipated. In the event of the discovery of such material, a condition report shall be issued. The cost of such additional work will be fixed at the unit price provided in the bid. The work can proceed only upon written approval by the Contracting Officer. Any modification to the contract that increases the requirement for the handling, removal, storage, transportation and disposal of asbestos or other hazardous substances, hazardous materials, petroleum products, and/or hazardous, regulated or special wastes will be included in the agreed cost of the modification of the contract.

All of the handling, removal, storage, transportation and disposal work is to be done in strict compliance with all applicable Federal, State and local regulations, standards, and codes governing environmental compliance, including, but not limited to the following:

1. ENVIRONMENTAL PROTECTION AGENCY (EPA) TITLE 40, Part 50, National Primary and Secondary Ambient Air Quality Standards Part 63 National Emission Standards for Hazardous Air Pollutants Subpart II National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)

Part 82, Protection of Stratospheric Ozone

Part 110, Discharge of Oil

Part 112, Oil Pollution Prevention

Part 117, Determination of Reportable Quantities for Hazardous Substances

Part 122, EPA Administered Permit Programs: The National Pollutant Discharge Elimination System

Part 125, Criteria and Standards for the National Pollutant Discharge Elimination System

Part 261, Identification and Listing of Hazardous Waste

Part 262, Standards Applicable to Generators of Hazardous Waste Part 279, Standards for the Management of Used Oil

Part 300, National Oil and Hazardous Substance Pollution Contingency Plan Part 302, Designation, Reportable Quantities, and Notification Part 355, Emergency Planning and Notification

Part 370, Hazardous Chemical Reporting: Community Right-to-Know Part 372, Toxic Chemical Release: Community Right-to-Know

Part 761, Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions

Part 763, Asbestos

2. COAST GUARD (USCG) TITLE 33 CFR,

Part 153, Control of Pollution by Oil and Hazardous Substances, Discharge Removal  
Part 154, Facilities Transferring Oil or Hazardous Material in Bulk  
Part 156, Oil and Hazardous Material Transfer Operations

3. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) Title 29 CFR,

Part 1910, Occupational Safety and Health Standards  
Part 1915, Occupational Safety And Health Standards for Shipyard employment  
Part 1926, Occupational Safety and Health Regulations for Construction

4. RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION (RSPA) TITLE 49 CFR,

Subchapter C, Hazardous Materials Regulations

The Contractor shall be required to demonstrate a thorough knowledge of and satisfactory record of compliance with all applicable Federal, State and local environmental statutes, regulations, standards, codes and guidelines governing environmental compliance as part of the pre-award survey.

The Contractor shall be responsible as the generator of all hazardous, solid, regulated and special waste that results from activities of the Contractor under this agreement. The Contractor is required to arrange for transportation and disposal of regulated waste generated during the ship's operational period if required by this contract. The Contractor shall be responsible for all permitting, reporting, transporting, documenting and for disposing of said wastes and for obtaining all appropriate Environmental Protection Agency Identification Numbers and permits and/or state or local equivalent. In addition, the contractor shall be responsible for:

- (a) conducting required laboratory testing;
- (b) maintaining any and all required records;
- (c) filing any and all reports required by Federal, State or local statute, regulation, standard or guidelines to be filed by the Generator of such waste or the holder of such permits, or numbers; and,
- (d) complying with all applicable Federal, State and local statutes, regulations standards, codes, or guidelines.

The Contractor shall provide all documentation to the COTR pertaining to the sampling, analysis, storage, transportation and disposal of all wastes generated during the contract.

ENVIRONMENTAL MANAGEMENT PLAN

For all work performed, the Contractor shall submit to the designated MARAD COTR or representative, an acceptable hazardous material and hazardous waste management plan to the COTR within one week after award. An acceptable plan shall address, as a minimum, the following requirements:



- A. Environmental Protection Agency (EPA), State and local authority hazardous waste generator identification numbers or registration with the state or local equivalent, of the Contractor, his/her transporters, storage and disposal facilities (TSDFs).
- B. An inventory of all hazardous chemicals, compounds, and other agents brought aboard the vessel accompanied by their respective Material Safety Data Sheets. The Contractor shall provide and maintain the Material Safety Data Sheets for all hazardous materials in accordance with CFR 29 1910.1200.
- C. A list of all anticipated hazardous wastes to be generated and applicable reference to federal, state, and local regulations.
- D. Waste collection and containment procedures in accordance with 40 CFR 262.
- E. A hazardous materials spill and cleanup plan including tools and materials that will be on hand and readily available to facilitate containment and cleanup.
- F. Training certification for the environmental compliance manager and respective employees.
- G. The Contractor will identify and quantify the amount of hazardous waste generated in the course of the MARAD ship repair. Upon completion of the contract, cost and quantities will be summarized and forwarded to the Office of Environmental Activities MAR-820 Rm. 7209, 400 Seventh St., S.W., Washington, D.C. 20590 for annual OMB A-106 reporting requirements.\*

\* Note: The current address for the Office of Environmental Activities is 1200 New Jersey Avenue, SE, Washington, DC 20590.

#### MCL.H-10 Supplemental Growth Requirements (Aug 2005)

The labor rate offered in Section B under the Supplemental Repair Work CL1N shall be a yardwide composite labor rate and shall include all management, supervision, overhead, G&A, handling charges, freight and profit. The yardwide composite rate offered by the Contractor shall be binding during the entire period of this Contract for all supplemental work which cannot be accurately described at this time and is not included in other CLIN specifications. The Government may order up to 50 percent more hours than are currently estimated in the CLIN at the same labor rate provided therein.

#### MCL.H-11 Disposition of Removed Equipment and Scrap (Aug 2005)

Any ship's equipment, fuel, lube oil, supplies, stores, furniture, fixtures, salvage, scrap and other movable property, removed from the vessel shall be and become the property of the Government and any ship's equipment, fuel, supplies, lube oil, stores, furniture, fixtures, salvage, scrap and other movable property so removed shall be disposed of in such manner as the Contracting Officer may direct, provided such direction is given to the Contractor within sixty (60) days from the date of the completion of the work. During said sixty (60) calendar days period such ship's equipment, fuel, lube oil, supplies, stores, furniture, fixtures, salvage, scrap and other moveable property shall be stored and protected by the Contractor without charge to the Government. If within sixty (60) calendar days such direction is not given to the Contractor, it shall, after said sixty (60) calendar days, store and protect the same in the Contractor's facility or outside of the Contractor's facility, at the Contractor's election, for the additional period directed by the Government. Such direction shall be covered by a change order, and the increased contract price for such additional storage shall be determined as provided in the changes provisions of this contract.

MCL.H-12 Maritime Liens, No Authority to Incur (Aug 2005)

- (a) The Contractor is an independent contractor and does not act as an agent for the Government, its agents, its vessels, servants, or employees.
- (b) The Contractor, its agents, servants, and employees, and all persons acting by, at the direction of, or on behalf of the Contractor (including, without limitation any subcontractors) have no right, power, or authority whatsoever to create, incur, or permit to be placed or imposed (i) any lien or (ii) any right in remedy of any kind, upon or against any vessel upon which work is being performed under this Agreement or against the United States of America or its agents, vessels, servants, or employees. This contractual provision governs notwithstanding any other provision of this contract.
- (c) The Contractor, on behalf of itself, its agents, servants, and employees, and all persons acting by, at the direction of, or on behalf of the Contractor (including, without limitation any subcontractors) hereby waives its right to any maritime lien as well as any right in remedy of any kind based upon a maritime lien theory, upon or against any vessel upon which work has been, is being, or will be performed under this contract or against the United States of America or its agents, servants, or employees, whether known or unknown. The foregoing clause shall not prevent the Contractor's rights to proceed on this contract under the Contract Disputes Act.
- (d) The Contractor shall pay when due all costs and expenses incident to the work performed by it or for its account. Neither the Contractor, nor its agents, servants, and employees, nor persons acting by, at the direction of, or on behalf of the Contractor (including, without limitation, any subcontractors) shall have the power to incur any lien of any kind maritime or otherwise. Such entities shall not (i) create, incur, suffer, or permit to be placed or imposed upon any vessel (or portion thereof), any maritime lien or other lien or encumbrance or charge in any way arising from any act or omission or (ii) incur or allow their subcontractors to incur any debts, obligations, or charges upon the credit of the vessel or against the United States of America or its agents, servants, or employees.
- (e) Although it is not intended that the Contractor shall have the power to incur such liens, the Contractor shall immediately discharge or cause to be discharged any lien or right in remedy of any kind, whether incurred by the Contractor or its subcontractors, other than in favor of the Maritime Administration, which at any time exists or arises in connection with the work done or materials furnished under this contract.
- (f) If any lien or right in remedy is not immediately discharged, MARAD may discharge or cause to be discharged such lien or right in remedy at the expense of the Contractor. MARAD shall have the right to recoup or setoff such funds from any monies owing to the Contractor from any other MARAD contract or any other Government contract. Should a question exist whether there is a valid lien or right in remedy, among other rights, MARAD shall have the right to retain such funds as security without interest.
- (g) From the start of work under this contract the Contractor shall cause a notice, reading as follows (or containing such other information as may be approved by MARAD), in plain type and of such size that the reading matter shall cover a space of at least 2 feet wide by 2 feet high in weather resistant paint to be placed and maintained by the gangway and shall read as follows:

"NOTICE TO SUBCONTRACTORS, MATERIALMEN, AND LABORERS

This vessel is owned by the United States of America, acting by and through the Maritime Administration. The Contractor, and all persons acting by, (prime contractor), at the direction of, or on behalf of the Contractor (including, without limitation, any subcontractors) have no right, power, or authority whatsoever to create, incur, or permit to be placed or imposed any lien or right in remedy of any kind upon any vessel upon which work is being performed under this Agreement. The Contractor, its agents, servants, and employees, have no authority, either express or implied, to pledge the credit of said vessel."

- (h) At the option of MARAD, the Contracting Officer may require that as a condition either for entry upon a vessel of the MARAD by any subcontractor or in order for any subcontractor to provide necessities to a vessel of the MARAD, that such subcontractor shall on behalf of itself, its agents, subcontractors, servants, and employees, and all persons acting by, at the direction of, or on behalf of such subcontractor waive its right to any maritime lien as well as any right in remedy of any kind based upon a maritime lien theory, upon or against any vessel upon which work has been, is being, or will be performed under this contract or against the United States of America or its agents, servants, and employees, known or unknown. The foregoing clause shall not prevent such subcontractor's right, if any, to proceed under the Contract Disputes Act.
- (i) The foregoing clause shall not deprive MARAD of any of the rights or remedies which it has under the common law.

#### MCL.H-13 Supervision (Aug 2005)

The Contractor shall provide at all times the quantity and quality of supervision necessary for the effective and efficient management of the operation. All supervisors shall have an intimate knowledge of the various tasks, equipment, and materials so as to be able to properly train and direct the workers in their individual tasks and to maintain and control an effective operation.

#### MCL.L-2 Agency Protests (Aug 2005)

- (a) Prior to submission of an agency protest, all parties shall use their best efforts to resolve concerns raised by an interested party at the Contracting Officer level through open and frank discussions. At any time the Contracting Officer and Protestor are encouraged to employ the use of alternative dispute resolution techniques to resolve the protest. When this cannot be accomplished interested parties may submit an agency protest to the Contracting Officer set forth in the Service of Protest provision of this solicitation.
- (b) Protests based on alleged apparent improprieties in a solicitation shall be filed before bid opening or the closing date for receipt of proposals. In all other cases, protests shall be filed no later than 10 days after the basis of protest is known or should have been known, whichever is earlier.
- (c) Protests shall include the following information. Failure to substantially include any of the following may be grounds for dismissal of the protest.
  - (i) Name, address, and fax and telephone numbers of the protester.
  - (ii) Solicitation or contract number.
  - (iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.
  - (iv) Copies of relevant documents.

- (v) Request for a ruling by the agency.
  - (vi) Statement as to the form of relief requested.
  - (vii) All information establishing that the protester is an interested party for the purpose of filing a protest.
  - (viii) All information establishing the timeliness of the protest.
- (d) Upon receipt and review of the protest to determine that adequate information is contained therein, the Contracting Officer will acknowledge receipt of the protest and inform the protester of the expected decision date. The Contracting Officer shall render a decision on the protest within 30 calendar days or notify the protestor of an extended decision date.
- (e) Upon receipt of the Contracting Officer's decision, the protestor may appeal the decision within 15 calendar days of decision receipt. The appeal will result in an independent review of the protest by the Head of the Contracting Activity, the Associate Administrator for Administration. The Head of the Contracting Activity will impartially review the protest as presented, taking into consideration all of the available information, and render a decision. To the extent permitted by law and regulation, the Head of the Contracting Activity shall request relevant information from both parties. The Head of the Contracting Activity will render a decision on the appeal within 15 calendar days of receipt. Agency appellate review of the Contracting Officer's decision on the protest will not extend GAO's timeliness requirements. Therefore, any subsequent protest to the GAO must be filed within 10 days of knowledge of initial adverse agency action (4 CFR 21.2(a)(3)).
- (f) Upon receipt of a protest, the Contracting Officer shall follow the procedures set forth in the FAR Subpart 33.103 (f) with regard to contract award and continued performance.