
Section

**Support of Naval Air Warfare Center
Weapons Division San Nicolas Island & Santa
Cruz Island**

MSC RFP N00033-09-R-5207

PREAMBLE

- 1. This Request for Proposals (RFP) is a solicitation for offers to perform a Charter Party (the “contract” or “Charter”) in accordance with the terms and conditions herein.**
 - 2. The Charter, when awarded, will consist of the completed Standard Form SF-33, this Preamble, the Box layout, and Sections B-J.**
 - 3. The signature of the Contracting Officer on the SF-33 signifies acceptance of the Contractor’s proposal and award of the Charter. The SF-33 and Sections B through J contain in full all of the amendments, references, responses, deletions, additions and interlineations made by both parties to the RFP and the proposal as of the Charter Party date. In the event that there is any inconsistency between the terms and conditions of this solicitation and those in an Offeror’s proposal, this solicitation shall control, unless the Offeror clearly indicates that it has offered terms and conditions inconsistent with this solicitation and the Government has accepted the changed terms and conditions. All references to boxes in Section B through M shall be to Part B boxes unless otherwise stated.**
 - 4. Each Section and each portion of each Section of this Charter Party shall be deemed severable, and should any Section or any portion thereof be held invalid, illegal, or unenforceable, the remaining Sections and portions thereof shall continue in full force and effect. The headings herein are for the sake of convenience and reference only, and shall not affect the interpretation of this Charter Party.**
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Part I – The Schedule

Section A- Solicitation/Contract form

SOLICITATION, OFFER AND AWARD		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) è		RATING DO-	PAGE 2 OF PAGE 75
2. CONTRACT NUMBER N00033-09-R-5207		4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)		6. REQUISITION/PURCHASE NO. TBD	
7. ISSUED BY Military Sealift Command, N1033/PM5 914 Charles Morris Court SE Washington Navy Yard, DC 20398-5640		CODE PM-52	8. ADDRESS OFFER TO (If other than Item 7) See Item 7		

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder"

SOLICITATION

9. Sealed offers in original and copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depot located in **See Item 7** until **1400 EDT** local time **04 May 2009**.
CAUTION — LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL è	A. NAME Stephen Hughes	B. TELEPHONE (NO COLLECT CALLS)			C. E-MAIL ADDRESS Stephen.t.hughes@navy.m
		AREA CODE 202	NUMBER 685-	EXT. 5380	

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OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within 60 calendar days (60 calendar days unless a different period is inserted in offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered to designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232-8) è	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %
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14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)
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15B. TELEPHONE NUMBER AREA CODE NUMBER EXT.	<input type="checkbox"/> 15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.	17. SIGNATURE	18. OFFER DATE
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AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION
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22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: N/a	23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified) è	ITEM
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24. ADMINISTERED BY (If other than Item 7) CODE	25. PAYMENT WILL BE MADE BY CODE
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26. NAME OF CONTRACTING OFFICER (Type or print)	27. UNITED STATES OF AMERICA	28. AWARD DATE
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IMPORTANT -- Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

Section C – Description/Specifications/Work Statement

The following list, is neither all-inclusive in scope or description, but is only illustrative of the services to be performed under this Contract:

- The vessel must be capable of a beach type landing at Santa Cruz Island(SCI).
- The vessel must have the ability to accomplish an operational landing at the Open Ocean, Roll On / Roll Off (OO RO/RO) Cargo Pier on San Nicolas Island(SNI).
- The vessel shall land in conditions ranging from calm to 5-foot surf.
- The vessel shall be equipped with a ramp fixed at the inboard end and capable of being lowered to discharge and receive cargo.
- The ramp shall have a minimum width of 14 feet and have a minimum length of 40 feet.
- The vessel shall have sufficient permanent tie points installed to provide for securely lashing down cargo over the entire deck.
- The vessel shall have a protective bulkhead a minimum of six feet high on each side and a bulkhead forward at least eight feet high to prevent salt-water contamination of deck cargo.
- The vessel must be a minimum of 200 feet length overall.
- Landing operations at SNI require the use of 3 mooring points capable of maintaining the vessel in position at the OO RO/RO Cargo Pier so that unloading and loading of cargo can be carried out in a safe and professional manner.
- The vessel shall have a current Coast Guard, ABS Load Line Certification of Inspection, IMDG certificate and Hazmat Certifications.
- The towing vessel shall have maneuverability and horsepower/bollard pull sufficient to conduct operations in an open ocean environment.
- Loads of varying size and makeup will be transported including but not limited to: highway tractor-trailers, tractor trailer tankers, various size trucks, vans and passenger vehicles, bulk cargo, construction equipment, petroleum products and hazardous materials. On occasion may require the carrying of ordnance in addition to regular cargo.
- Bulk loads will usually be sand, gravel or a mixture of both.
- When transporting hazardous waste materials, a uniform hazardous waste manifest shall be generated by government personnel to accompany the material. Any vessel carrying hazardous waste must be compliant with federal and state regulations.
- Estimated average load will require 7,100 continuous square feet of open deck space and weigh approximately 505 short tons. Estimated bulk loads may cover 600 to 3,000 square feet of deck space and weigh from 200 to 2,000 long tons. Typically smaller loads of bulk materials will be loaded along with various rolling stock.
- The government shall load and offload all cargo.
- When loading or unloading cargo at Port Hueneme, the government will provide equipment and personnel between the hours of 0700 and 1600 hours.

- The loading or unloading operation at SNI and SCI will be determined by prevailing tides, available light, sea state and the safety of personnel involved.
- The barge operation shall commence and proceed at the discretion of the captain of the vessel.
- Placement of cargo on the vessel will be monitored by the contractor using a load manifest provided by the government.
- Securing of the cargo aboard the vessel shall be the responsibility of the contractor.
- The contractor shall use standard marine cargo lashing gear to secure the equipment or vehicles to prevent damage of cargo caused by the rolling motion of the vessel.
- At SNI, the vessel will approach so the ramp end is capable of resting on the OO RO/RO Cargo Pier.
- The vessel shall be held in position using contractor provided mooring lines, reimbursable, that are installed by government personnel at the OO RO/RO Cargo Pier. The vessel must have winches or devices of sufficient mechanical advantage to make use of the supplied mooring lines.
- During the unloading and loading of the vessel, the contractor will be responsible for maintaining the vessel in a safe and secure position.
- As required, by the government, the contractor will provide the personnel onshore at SNI to accomplish the landing operation. This shall consist of three personnel to act as line handlers. Contractor personnel will be provided with air transportation to and from the offshore island and vehicle transportation to include ride sharing by the government at no cost.
- When contractor personnel onshore are required, overnight stays will also be required for the majority of barge operations at San Nicolas Island. Lodging and meals are accessible at the Island and will be available to contractor personnel at the government rate. Seats to the Island will be coordinated with the COR.

Section D – Packing, Marking and Shipping

See Section C

Section E – Inspection and Acceptance

E.1 - Inspection

(1) In General. The Vessel and her hull; machinery; boilers; all holds, voids, tanks, spaces and equipment whatsoever shall be subject to Charterer's inspection as to suitability for the required service prior to acceptance of the Vessel and at any time during the currency of this Charter Party. The Owner shall instruct the Vessel's Master to give every assistance so as to enable Charterer's inspector(s) properly observes operations throughout the Vessel.

(2) Charterer's Rights. If in the opinion of the Charterer's inspector any deficiency or condition exists which renders the Vessel inadequate for the required service, the Charterer shall have the option to cancel the voyage, if deficiency of a severe nature exists at the determination of the Contracting Officer, at no cost to the Government or to require any necessary corrective actions at the Vessel's expense and to the Charterer's satisfaction.

(3) Acceptance. Acceptance shall be considered when the cargo has been delivered in accordance with the contract at the location(s) identified by the COR. See Section F.

(4) Surveyors and Consultants. Surveyors or consultants may be used, at the determination of the contracting officer, as mutually agreed may be retained under this Charter in order to facilitate fact-finding in respect of actual or potential claim actions or for inspections or surveys generally; the costs therefor shall be as mutually agreed upon and, if for Charterer's account, said costs shall be incurred only after prior written approval from the Contracting Officer.

(5) Clauses: The following clause are incorporated by reference: FAR 52.246-4(Aug 1995) & FAR 52.246-16(Aug 1984)

Section F – Deliveries or Performance

F.1 - Contractor shall report with vessel, crew, and additional personnel as required by the Government on a specific place, date and time. The COR will provide at least 48 hours notice(either written/or oral, to be followed at the COR's earliest opportunity in writing)(written notice shall include E-mail) with at least 48 hours notice from the COR.

F.2 - Period of Performance: Voyages under this Contract of Affreightment will be priced upon the basis of (1) year with (3) one year options and (1) eleven month option. With a single voyage constituting up to; Loading at one place, discharging/loading at another place and discharging at the original place.

F.3 - Excusable delays

(1) Excepted Events. Neither the Vessel, her Master, or Owner, nor the Charterer shall, unless otherwise in this Charter Party expressly provided, be responsible for any loss or damage or delay or failure in performing hereunder arising or resulting from any act of God; act of war; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers, or people; seizure under legal process provided bond is promptly furnished to release the Vessel; flood; fire; blockade; riot, insurrection, or civil commotion; earthquake; or explosion.

(2) Reservation. The exceptions identified in subparagraph (1) above shall not affect Owner's warranties respecting the condition of the Vessel at the

commencement of loading hereunder, or the Owner's obligations respecting the loading, handling, stowage, carriage, custody, care, and discharge of the cargo, or the rights or obligations of either Owner or Charterer respecting laytime as elsewhere provided herein.

(3) Weather. The unique Meteorological and Oceanographic conditions at San Nicholas Island can prevent the safe operational landing of a vessel. Only if conditions outside the control of the owner/master require the owner/master not to deliver cargo then owner/master shall be due only payment pre-approved (see CLIN 0001i or CLIN 0002i) as “failure to deliver”. Those conditions must be documented, by the contractor and COR, and final confirmation of a Failure to deliver shall be determined in writing by the Contracting Officer.

Section G – Contract Administration Data

G.1 Assignment. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

G.2 Invoice. (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices.

An invoice must include-

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, contract line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.
 - (A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.
 - (B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration, or 52.232-34, Payment by Electronic

Funds Transfer-Other Than Central Contractor Registration), or applicable agency procedures.

(C) (C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

G.3 Payment. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and OMB prompt payment regulations at 5 CFR part 1315. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

G.4 REIMBURSABLE SUPPLIES AND SERVICES (CHARTERS)

(1) The Government will reimburse the Contractor only for the actual price paid for those supplies and services that are expressly identified as reimbursable items by this contract. "Actual price" paid by the Contractor for such supplies and services, includes tax paid, if any, and reduced by any and all credits and rebates, whether accrued or realized, associated with the supplies and services provided. "Actual price" does not include material handling charges, overhead, general and administrative costs, profit, or any other indirect cost that is in any way associated with the Contractor's purchase or provision of such supplies and services. The parties expressly agree that the offered and accepted daily rate includes all costs incurred or paid by the Contractor, including but not limited to material handling charges, overhead, general and administrative costs, or profit, that are in any way associated with the Contractor's purchase or provision of such supplies and services.

(2) To be eligible to receive reimbursement for services and supplies identified in this contract as reimbursable items and obtained in support of this contract, the Contractor must obtain at least three quotes for each transaction in excess of \$2,500 to ensure that adequate price competition was sought or the Contractor must provide an acceptable justification as to why it was impracticable to do so. In the case of fuel purchases, unless directed otherwise by the Contracting Officer, the Contractor shall provide the documentation listed in subparagraphs (i) through (iii) below to the Contracting Officer for approval, prior to purchasing fuel. For purchases of services and supplies and other than fuel, the Contractor need provide the aforementioned documentation only when requested by the Contracting Officer. The Contractor shall maintain documentation of all reimbursable purchases until three years after the contract is completed and shall provide access to and copies of such documentation when requested by the Contracting Officer.

- (i) A description of the supplies or services to be subcontracted.
- (ii) Identification of the proposed subcontractor and price.
- (iii) Suppliers contacted and price quotes. Include other pertinent data such as price lists
used if suppliers were not contacted and information regarding the selection if other
than price-related factors were considered.

(3) The Contracting Officer may reduce the reimbursement by any amount above that which the Contracting Officer finds, in his/her sole discretion, is greater than that which is fair and reasonable for the supplies or services provided, giving due consideration to the facts and circumstances prevailing at the time that the Contractor procured the supplies and services. Disputes as to the amount by which any reimbursement is reduced shall be resolved in accordance with the "Disputes" clause of the contract. It shall be the Contractor's burden to demonstrate that the price it paid for reimbursable supplies and services was fair and reasonable.

(4) When the Contractor expects total funding expended for reimbursable items to reach 85 percent of the total funds available on each Reimbursable Supplies and Services CLIN, the Contractor shall notify the Contracting Officer and the COR and any other Government official identified by the Contracting Officer. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule. The Contractor shall not exceed or incur costs that exceed the amount of funding stated on each Reimbursable Supplies and Services CLIN at the time a reimbursable item is ordered.

(5) The Government is not obligated to reimburse the Contractor for otherwise reimbursable supplies and services in excess of the funded amount stated in the Schedule under each Reimbursable CLIN.

(6) The Contractor is not obligated to continue performance of any reimbursable work under this Contract or otherwise incur costs for reimbursable supplies or services in excess of the funded amount stated in the Schedule under each Reimbursable CLIN unless the Contracting Officer notifies the Contractor that the funded amount stated in the Schedule under the applicable Reimbursables CLIN has been increased. Notification shall be in writing. In the event notification is made orally, such notification shall be followed up in writing within two working days.

(7) No notice, communication, or representation from any person other than the Contracting Officer shall affect the Government's obligation to reimburse the Contractor.

(8) Change orders shall not be considered an authorization to exceed the funded amount stated in the Schedule under the Reimbursable CLIN unless they contain a

statement expressly increasing the funded amount of the Reimbursables CLIN by a sufficient amount to cover the change order.

G.5 Method of Payment. If payment(s) under this contract are to be made by check and the contractor elects that the Payment Office send the check via Federal Express, the contractor shall include such instruction and the contractor's Federal Express account number when submitting the invoice for payment.

G.6 Contracting Officer

The Principal Contracting Officer for this contract is:

Kenneth Allen, Contracting Officer (N1033)
Department of the Navy
Military Sealift Command
914 Charles Morris Court SE, Bldg. 210
Washington Navy Yard, DC 20398-5540

**G.7 CONTRACTING OFFICER'S REPRESENTATIVE (COR)
(DFARS 252.201-7000)(DEC 1991)**

(a) *Definition.* "Contracting Officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the Contracting Officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a Contracting Officer's representative (COR), the Owner will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the Contracting Officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

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H.1 Changes. Changes within the general scope of any of the terms and conditions of this contract may be ordered by the Contracting Officer. If any such change causes an increase or decrease in the cost of performance, such change shall be the subject of a bilateral modification to the contract. However, nothing in this paragraph shall excuse the contractor from proceeding with the contract as changed.

H.2 Disputes FAR 52.233-1. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach

agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

H.3 Risk of loss

(1) Carriage of Goods by Sea Act (COGSA). Except as otherwise specified herein, the Owner, Vessel, and Charterer in all matters arising under this Charter Party shall be entitled to the privileges, rights, and immunities (from the time the cargo is loaded until the time it is discharged from the Vessel) contained in 46 U.S.C. App. 1300-1315. However, any references in COGSA to (a) notices of loss or damage or (b) limitation-of-action periods shall not apply to this Charter Party. For purposes of this Charter Party, the term "carrier" as used in that Act shall mean "Owner" and the term "shipper" shall mean "Charterer."

(2) Containers. For purposes of the application of the COGSA, goods shipped in containers which are stowed on deck shall be deemed shipped under deck. With respect to the limitation of liability provisions of COGSA, a container shall be considered a single package only if bulk cargo is stored therein. For non-bulk cargo shipped in containers, the limitation of liability provisions of COGSA shall apply to each package within a container or, for non-packaged cargo, to each measurement ton of cargo within the container. See also H.21 (Deck Cargo).

(3) Package Limit. Except in the case of containerized cargo, for purposes of the application of COGSA, in the case of any loss or damage to or in connection with goods exceeding in actual value \$500 per package, or in the case of goods not shipped in packages, per measurement ton, the value of the goods shall be deemed to be \$500 per package or per measurement ton, and the Owner's liability, if any, shall be determined on the basis of the value of \$500 per package or per measurement ton, unless the nature of the goods and a valuation higher than \$500 shall have been declared in this Charter Party and, in such case, if the actual value of the goods per package or per measurement ton shall exceed such declared value, the value shall nevertheless be deemed to be the declared value. Should Charterer declare valuation higher than \$500.00 per package or per measurement ton, Charterer shall direct Owner to obtain increased cargo legal-liability coverage on said higher-declaration cargo, with the expense of any additional premia and incurred deductibles therefor for Charterer's account.

(4) Other Statutes. The Owner and the Vessel shall have the benefit of all limitations of and exemptions from liability accorded the Owner by any U.S. statute or rule of law for the time being in force (except to the extent that contract terms entitle the Government to compensation from the Contractor for the Contractor's failure to perform the requirements and obligations of this Charter) or to the extent such statute or rule of law is subordinate to any statutorily mandated provision of this Charter Party by operation of law).

(5) Fire. Neither the Owner nor any corporation owned by, subsidiary to, or associated or affiliated with the Owner shall be liable to answer for or make good any loss or damage to the cargo occurring at any time and even though before loading on or after discharge from the Vessel, by reason or by means of any fire whatsoever, unless such fire shall be caused by its design or neglect or unless such wholly owned, subsidiary, or associated corporation serves as underwriter for the Owner and the policy between the Owner and underwriter provides coverage for such liability.

H.4 Taxes. Dues, taxes, wharfage, pilotage, towage, canal tolls, and other charges upon the Vessel, even when assessed on the quantity of cargo loaded or discharged, shall be paid by the Owner. Dues, taxes, and wharfage upon the cargo or freight shall be for the Owner's account.

H.5 Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate, to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

H.6 Default

(1) The Government may, subject to subparagraphs (4) and (5) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to--

- (i) Pickup up the commodities or perform the services, including delivery services, within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see paragraph (2) below); or
- (iii) Perform any of the other provisions of this contract (but see subparagraph (2) below); or
- (iv) Operate the vessels specified in this contract notwithstanding any interruption or delay that may be attributed to labor disruption, labor dispute, or strike.

(2) The Government's right to terminate this Contract under subparagraphs (1)(ii) and (1)(iii) above may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(3) If the Government terminates this contract in whole or in part, it may acquire, under terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for the supplies or services. However, the Contractor shall continue the work not terminated.

(4) Except for defaults of subcontractors at any tier or for failure to perform due to a labor disruption, labor dispute, or strike, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) freight embargoes, and (8) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(5) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(6) If this contract is terminated while the Contractor has possession of Government goods, the Contractor shall, upon direction of the Contracting Officer, protect and preserve the goods until surrendered to the Government or its agent. The Contractor and Contracting Officer shall agree on payment for the preservation and protection of the goods. Failure to agree on an amount will be a dispute under the Disputes Clause.

(7) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(8) The rights and remedies of the Government herein are in addition to any other rights and remedies provided by law or under this Contract.

H.7 Warranty

(1) Owner warrants that, from the time when the obligation to proceed to the loading port(s) or place(s) attaches, and thereafter during the currency of this Charter Party, the Vessel shall be in full compliance with the specifications herein in addition to all other requirements of this Charter Party. The Vessel's cargo capacity, position, and other particulars as set forth in this Charter Party are warranties by the Owner. Should the Vessel fail to satisfy one or more of such warranties or other warranties contained in

this section not due to the fault of the Charterer, the freight may be equitably decreased so as to return the Charterer to a position equivalent to that had the warranty not been breached, this Charter Party otherwise to remain unaffected; alternatively, this Charter Party may in such case be terminated at Charterer's option pursuant to paragraph (H.6) (Default) above.

(2) Condition. The Owner warrants that, before and at the commencement of the voyage(s) hereunder, it shall exercise due diligence to ensure that the Vessel and her hull, machinery, gear, runners, boilers, holds, and other equipment are fully functional and in good working order and condition, with holds dry, free from smell, and swept clean, and that the Vessel is in every way seaworthy, tight, staunch, strong, and fit to carry and preserve the cargo identified by the COR and to perform the voyage(s) required hereunder.

(3) Regulatory Compliance. The Owner warrants that the Vessel shall be in full compliance with all applicable international conventions; and all applicable laws, regulations, and other requirements of the United States and of the state(s) to whose port(s) and/or place(s) the Vessel may be ordered under this Charter Party; and of any terminals or facilities in said port(s) and/or place(s); and of any classification society in which the Vessel is entered. The Owner further warrants that the Vessel shall have on board during the currency of this Charter Party all certificates, records, or other documents required by the aforesaid conventions, laws, regulations, and requirements, including a Certificate of Financial Responsibility meeting the requirements of the U.S. Coast Guard promulgated pursuant to the Federal Water Pollution Control Act as amended and/or the Oil Pollution Act of 1990, and valid gear certificates as required. Upon delivery and throughout the currency of this Charter Party, Vessel shall be entered and maintained in the highest class of a recognized classification society.

(4) Complement. The Owner warrants that the Vessel shall have an efficient and legally sufficient complement of Master, Officers, and crew with adequate training and experience in operation of all of the Vessel's equipment and possessing valid and current certificates/documents issued or approved by the country of the Vessel's registry. The Owner further warrants that the Master and those Officers charged with cargo and/or bunker oil handling shall be proficient with conversational English.

(5) Port Restrictions. If particular ports or places are identified in the delivery instructions, the Owner warrants that a vessel of the type, tonnage, and configuration of the Vessel submitted, laden as contemplated herein, shall be able to approach, lie at, and depart from said ports or places (if safe) always afloat. Any data supplied by the Charterer in any RFP or this Charter Party respecting any port conditions or restrictions are provided for informational purposes and are not warranted to be complete or accurate. Compliance with any additional and/or conflicting conditions or restrictions shall be the Owner's responsibility.

H.8 Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

H.9 Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

H.10 H-42 Order of Precedence

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (A) The Schedule, including the Box format and excluding the specifications
- (B) Representations and other instructions
- (C) Contract clauses
- (D) Solicitation provisions (prior to award)
- (E) Other documents, exhibits, and attachments
- (F) Specifications

H.11 Freight (MSC 5252.232-9807 (Jun 1998))

(1) Rate. Freight shall be as stipulated in Box 19.

(2) When Earned. Freight shall be considered earned after right and true delivery of the cargo at the discharging port(s) or place(s). Should the agreed measure of freight be based upon measure of the cargo, payment shall be based upon the intaken quantity of cargo (using the measure identified in Box 19) identified in the Cargo Manifest. For purposes of payment of freight, delivery of cargo at destination shall be established either by a copy of the Cargo Manifest, signed by the Charterer's Receiving Agent, or upon certification of delivery by the Contracting Officer based on information available to him or her. For purposes of payment of freight, delivery of cargo shall be deemed to occur upon discharge of the cargo at final destination.

(3) Withholding. Upon delivery, if there is any damage to or shortage of cargo not definitely known to be the fault of the Charterer or its agents and if it is considered by the Contracting Officer that withholding of certain monies is necessary to protect the interests of the Charterer pending final determination of the amount of shortage or damage and the Owner's liability therefor, the dollar amount of such shortage or damage may be estimated and withheld from any monies owing to the Owner by the Charterer.

(4) Delivery of Cargo. Cargo is typically transported from a load port to a discharge/load port and back to discharge port. For the purposes of this contract a voyage shall constitute transportation in both directions as one voyage for payment purposes.

H.12 Cargo. As ordered by Charterer, Owner shall load up to a full and complete cargo not exceeding what she can reasonably stow and carry over and above her bunker fuel, water, tackle, apparel, furniture, and stores, and in any case not in excess of the quantity permitted by the minimum permissible freeboard for the voyage always consistent with the discharging port(s)/place(s).

H.13 Non-Government Cargo. Loading and discharging of other than Government cargo(es) during the currency of any voyage, and itineraries therefor, shall be subject to the prior written approval of the Contracting Officer. Any delays or shifting expenses resulting from other than the carriage of Government cargo shall be for the Owner's account. Any non-Government cargo loaded shall in no way be detrimental to the cargo required by the COR to be loaded.

H.14 Loading and Discharging

(1) Costs of loading and discharging shall be allocated to submitted rate.

(2) Stevedores, whether appointed and/or paid by Charterer, Owner, or others, shall be deemed servants of the Owner and shall work under the supervision of the Master. The cargo shall be loaded, stowed, secured, and discharged to the Master's satisfaction in respect of seaworthiness. See also Section (H.19) (Stevedore Damage) below.

H.15 Ports (MSC 5252.247-9805 (Jun 1998))

(1) Voyage. Unless otherwise agreed, the Vessel shall proceed with utmost dispatch to those loading port(s) or place(s) ordered by the Charterer in accordance with Box 3 (or so near thereto as she may safely get and lie always afloat) and there load the cargo identified in Box 2. Upon completion of loading and signing of the Cargo Manifest, the Vessel shall proceed with utmost dispatch to those port(s) or place(s) ordered by Charterer in accordance with Box 5 (or so near thereto as she may safely get and lie always afloat) and there discharge said cargo. Unless loading and/or discharging berths are specifically identified in Boxes 3 and 5, the responsibility for providing safe ports lies with the Charterer.

(2) Routing/Speed Orders. Should the Charterer issue routing instructions or orders to reduce speed, or should a military escort be agreed, any additional steaming time which results from said instructions, orders, or escort shall count as laytime or, if the Vessel is on demurrage, as time on demurrage. In addition, the Charterer shall reimburse the Owner the cost of any extra fuel consumed as a consequence of any of Charterer's routing instructions (at the market price where and when bunkers are next taken after issuance of said instructions or orders) (less the value of the Vessel's in-port bunker consumption for the period of such excess time) upon such verification as as required at Section G.4 (Invoicing and Payment (Reimbursables)).

(3) Shifting

(i) The Charterer shall have the right to shift the Vessel at loading and discharging ports from one berth to another or from a berth to an anchorage once or more often. Except as otherwise provided, the Owner shall be reimbursed the costs of towage, pilotage, running lines on arrival at and upon leaving the berth, and wharfage, dockage, agency fees, customs fees, overtime, and other port charges and expenses properly incurred and payable as a consequence of Charterer's shifting of the Vessel. Furthermore, except as otherwise provided, time lost to the Vessel as a consequence of Charterer's shifting shall count as laytime or, if the Vessel is on demurrage, as time on demurrage less the value of the Vessel's in-port bunker consumption for the period of such lost time. Furthermore, except as otherwise provided, the Charterer shall reimburse the Owner for the cost of any extra fuel consumed as a consequence of Charterer's shifting (at the market price where and when bunkers are next taken after such shifting occurs).

(ii) Notwithstanding the foregoing, no amounts shall be payable by the Charterer under this Article if said shifts are identified in Boxes 3 or 5. Further notwithstanding the foregoing, any amounts payable by Charterer under this Article shall be subject to such certification and verification as are required at Section G.4 (Invoicing and Payment (Reimbursables)). Further notwithstanding the foregoing, Charterer shall in no case reimburse the Owner for pilotage paid to any Master, Officer, or crew of the Vessel.

(4) Rotation. Should Boxes 3 or 5 permit Charterer to order Vessel to load and/or discharge at one or more ports or places out of two or more ports or places named, or within a named range, the rotation of ports shall be at Charterer's option.

(5) Lightening. Provided not on account of any insufficiency of the Vessel, any lightening necessary at port(s) or place(s) of discharge to enable the Vessel to reach her discharging berth(s) shall be at Charterer's risk and expense, with time counting as laytime or, if the Vessel is on demurrage, as time on demurrage.

(6) Seaworthy Trim. Should Boxes 3 or 5 permit Charterer to order the Vessel to load or discharge at more than one loading and/or discharging port or place, the Vessel is to be left in seaworthy trim to the Master's satisfaction for the passage between said ports or places, at Charterer's expense and with time so spent counting as laytime or, if the Vessel is on demurrage, as time on demurrage.

H.16 Notice of Readiness

(1) In Berth. When the Vessel has arrived in the ordered berth at each loading or discharging port or place and is in all respects ready to load or discharge in accordance with this Charter, a notice of readiness shall be tendered during Office Hours SSHEX to the Charterer's representative by the Master or Owner's agent by letter, electronic-mail, radio, or telephone. An oral notice shall be confirmed promptly in writing.

(2) Out of Berth. Should a berth be either unavailable or not designated upon the Vessel's arrival in all respects ready to load/discharge at an ordered port or place, a notice of readiness may be tendered during Office Hours SSHEX upon arrival at a usual waiting

place at or off the port/place ordered. Notwithstanding, should the Vessel be prevented from proceeding to berth by weather, tidal conditions, or mandatory regulations, notice of readiness may be tendered as above only when such hindrance(s) has (have) ceased.

H.17 Cancelling (MSC 5252.247-9816 (Jun 1998))

(1) Late Notice of Readiness. If a valid notice of readiness as required under this Charter Party is not tendered by 1700 hours local time on the cancelling date identified in Box 6 at the port or place ordered, the Charterer shall have the right to cancel this Charter Party at no cost to the Government. Charterer's right to cancel this Charter Party as above shall be exercised by notification to the Owner within twenty-four (24) hours after 1700 hours local time on the cancelling date identified in Box 6, should the notice of readiness not be tendered by the time Charterer makes said notification.

(2) Declaration of Cancellation Option. If it shall become clear to Owner that the Vessel will be delayed in arrival beyond the cancelling date identified in Box 6, Owner may, at the earliest twelve (12) hours before the Vessel is due to sail for the loading port or place, but as soon thereafter as they are in a position to state a new date of readiness with reasonable certainty, the Owner shall advise the new date and ask Charterer whether the option of cancellation will be exercised. Charterer's option to cancel must then be declared within ninety-six (96) hours (but not later than twenty-four (24) hours after the cancelling date identified at Box 6). If Charterer shall not cancel this Charter Party upon such notice within such time limits, then, unless otherwise agreed, Box 6 shall be deemed amended such that noon on the new readiness date shall become the commencing date and noon on the third day after the new readiness date shall become the new cancelling date.

(3) Reservation. The exercise or nonexercise by Charterer of the cancellation option shall not prejudice any claim or right which Charterer may otherwise have against Owner.

H.18 Cargo Receipts

(1) Manifest. The Charterer shall prepare a Cargo Manifest which shall list the cargo loaded on the Vessel. The Master shall sign this Cargo Manifest in acknowledgment of the receipt of the cargo said to have been loaded by the Charterer without responsibility as to quantities, mixture, mark, number of packages, weights, etc., or the apparent condition of the cargo, it being understood that it is the Charterer's responsibility to tally the cargo and to check the condition thereof upon loading and discharging.

(2) Charter Paramount. The terms of this Charter Party shall apply to any shipment made by the Government, whether or not bills of lading are issued.

H.19 Insurance

(1) Requirement. During the period commencing with the first loading and terminating with the final discharge of the Vessel, the Owner shall have in place marine insurance coverage on the Vessel including Hull and Machinery, Protection and Indemnity (P&I), War Risk Hull and Machinery including P&I and, if U.S.-flagged, Second Seamen's War Risk Policy. Owner shall, when requested, furnish a Certificate of Insurance evidencing required coverage. Except as otherwise provided in this Charter Party, the expense for such insurance coverages shall be for the Owner's account and shall be deemed to be included in the freight payable under this Charter Party.

(2) Trading Limits. If Vessel is sent beyond the limits of American Institute Trade Warranties or Institute Warranties (as applicable to Owner's coverage) under this Charter Party, Charterer agrees to reimburse Owner for the actual extra cost of additional premia and/or increased deductible levels, to the extent incurred, properly assessed by the Vessel's marine insurance underwriters and payable by the Owner, which extra cost is occasioned by the Vessel's trading beyond such limits.

(3) Limitation of Charterer's Liability. Except as otherwise specifically provided herein, the Charterer shall not be liable for any loss, damage, expense, cost, or liability whatsoever and howsoever incurred by the Owner or Vessel or which are imposed upon Owner by operation of law. Any amount due Owner under this paragraph (n) shall be subject to setoff by Charterer to the extent of any recovery under any insurance carried by the Owner.

(4) Notification to Charterer. Owner shall, to the maximum extent practicable, keep the Charterer, through the Contracting Officer, currently informed in writing as to the potential vitiation, suspension, lapse, or termination of any of Vessel's insurance policies as a consequence of this Charter Party.

(5) Charterer Named Assured. The United States of America shall be named as an additional assured with waiver of subrogation on all applicable insurance policies.

H.20 Stevedore Damage (MSC 5252.247-9830 (Jun 1998))

(1) Charterer's Liability. Charterer to be responsible for any physical damage done to the Vessel by Government stevedores on loading or discharging only if such damage is occasioned by negligence, breach of warranty or breach of contract and the Master advises Charterer, or Charterer's representative, in writing, within twenty-four hours after occurrence of the specific damage, and the Master further notifies the parties who have caused this damage, in writing, and endeavors to obtain their admission of liability.

(2) Survey. As soon as practical after such damage is sustained, the Owner is to have an independent survey made to define and estimate the damage; a written copy of the survey report is to be promptly forwarded to the Charterer.

(3) Settlement. All claims as above are to be settled directly between the Owner and the stevedores, with the Charterer being ultimately responsible.

(4) Liner Terms. Should liner terms be agreed in Box 2, Charterer to be free of any and all stevedore-damage liability, whosoever and howsoever caused.

H.21 Safety in Loading and Discharging Cargo. Attention of the Owner is directed to U.S. Public Law 91-596 (84 Stat. 1590, approved December 29, 1970) known as the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 et seq.) and to the standards promulgated thereunder.

H.22 Deck Cargo (MSC 5252.247-9841 (Jun 1998)). Should deck cargo be expressly stipulated in Box 2, same shall be at Charterer's risk, excepting cargo shipped in containers.

H.23 Amended Jason Clause (MSC 5252.247-9828). In the event of accident, danger, damage, or disaster before or after commencement of any voyage under this Charter resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequence of which the Owner is not responsible by statute, contract, or otherwise, Charterer, the cargo, shippers, consignees, or owners of the cargo shall contribute with the Owner in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. If a salving Vessel is owned or operated by the Owner, salvage shall be paid for as fully as if the salving Vessel belonged to strangers.

H.24 General Average (MSC 5252.247-9818). General average shall be adjusted, stated, and settled according to York-Antwerp Rules 1974, as amended 1990, or any subsequent modification thereof, in the Port of New York according to the laws and usages at the port of New York. In such adjustment, disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the Vessel. Notwithstanding the foregoing, Charterer's contributions in general average shall in no event exceed three times Owner's contributions for any single general average incident.

H.25 Deviation (MSC 5252.247-9819 (Jun 1998)). The Vessel shall have liberty to sail with or without pilots, to tow or to be towed, to go to the assistance of vessels in distress, and to deviate for the purpose of saving life or property or of landing any ill or injured person on board. Any salvage shall be for the sole benefit of the Owner.

H.26 Agents (MSC 5252.247-9820 (Dec 1988)). The Owner shall appoint, direct, and pay Vessel's agents at all ports visited.

H.27 **Subcharter (MSC 5252.247-9822 - Alternate I (Jun 1998))**. The Charterer shall have the right, without the prior written consent of the Owner, to subcharter or agree to subcharter the Vessel under any form of voyage charter. If Charterer shall enter into any such charter, Charterer shall nevertheless remain responsible for performance of this Charter. Any such subcharter shall include a provision that it is subject to the provisions of this Charter.

H.28 **War**

(1) Requirement. If Vessel is ordered under this Charter Party to any port, place, zone, or route involved in a state of war, warlike operations or hostilities, civil strife or piracy (whether there be a declaration of war or not) where it might reasonably be expected to be subject to capture, seizure, arrest, or hostile act by a belligerent power (whether de facto or de jure), it shall be unreasonable for Owner not to prosecute said voyage instructions if insurance against said risks is then available commercially or under a Government program, or if the Government offers owner an indemnity under Public Law 85-804 against losses that would be covered by such insurance. In the event of the existence of said risks, Charterer shall, to the extent provided in this paragraph (i), assume provable additional costs of wages (including all additional bonuses and payments required) and insurance and all taxes associated therewith properly incurred by Owner as a consequence of service under this Charter Party. No other additional costs shall be reimbursable except as is expressly provided for in this charter.

(2) Additional Wage Costs. Charterer shall reimburse Owner for provable additional costs (including taxes associated therewith) incurred pursuant to this Charter Party as a consequence of the risks identified in subparagraph (1) above for (i) wages of Master, Officers, or crew and (ii) required payments or bonuses to Master, Officers, or crew. However, any of said wages or payments shall not exceed in amount that which would be payable, under applicable laws and regulations, to U.S. Civil Service mariners in the employ of the Military Sealift Command in the same port, place, zone, or route.

(3) Additional Insurance Costs. Charterer shall reimburse Owner for provable additional costs of premia and taxes associated therewith (over and above such costs in effect on the Charter Party Date) reasonably incurred pursuant to this Charter Party as a consequence of the risks identified in subparagraph (i)(1) above in the Vessel's War Risk Hull & Machinery policy, in the Vessel's War Risk Protection & Indemnity policy, and in any war risk policy on the lives of or for injuries to Officers and crew. Provided, however, that no proportion of additional premia allocable to insuring an amount in excess of the coverage in place as of the Charter Party date shall be reimbursable by Charterer in respect of any of the foregoing war risk policies. Provided further that Owner shall apply for and remit to Charterer as savings any rebates by reason of reductions in or rebates of premiums charged for entry into war risk exclusion zones. Provided further that the United States of America shall be named as an additional assured with waiver of subrogation noted under all of the foregoing war risk policies. Alternatively, with respect to any area(s) excluded by war risk trading warranties under Owner's commercial war risk insurance coverage, in Charterer's sole option and at no

cost to the Government, Charterer may delete this subparagraph (i)(3) with twenty-four hours notice in which case (i) Part V(ab) (Voyage Charter War Risk Coverage) shall automatically be effective in such area; or (ii) the Government shall offer an indemnity under Public Law 85-804.

(4) Insurance Nonavailability. If no commercial or Governmental insurance is available for service under this Charter Party covering the risks identified in subparagraph (i)(1) above, Vessel shall not be required to enter or remain at any port, place, zone, or route subject to said risks; Charterer in such case shall have the right to order the Vessel to other port(s) or place(s) consistent with Boxes 3 and 5 herein.

(5) Notify Charter. Owner must immediately notify Charterer of any changes in the Vessel's commercial war risk insurance, including but not limited to, extensions of war risk exclusion zones and increases in commercial war risk insurance premiums. Owners must secure Charterer's permission prior to entry into any commercial war risk exclusion zones before incurring liability for additional premiums

H.29 Substitution (MSC 5252.212-9808 (Jun 1998)). The Owner may at any time propose to substitute a vessel of substantially the same characteristics as the Vessel identified at Box 8, for services under this Charter Party. Said substitution, if proposed, shall be at the sole discretion of the Contracting Officer and at no additional cost to the Government.

H.30 Law Governing (MSC 5252.247-9833 (Jun 1998)). This Charter Party shall be governed by the laws of the United States.

H.31 Notice of ETA (MSC 5252.247-9835 (Jul 1991)). Upon commencing the voyages to either the loading or discharging ports, Master shall advise Charterer by electronic-mail of Vessel's expected date and time of arrival. Further, and provided the length of the voyage permits, the Master shall confirm or amend such advice by electronic-mail seventy-two, forty-eight, and twenty-four hours prior to Vessel's arrival at the loading and discharging ports.

H.32 Loading and Discharging (F.i.o. ex s.s.) (MSC 5252.247-9850 (Jun 1998)). Except as otherwise provided, the cargo shall be brought into the holds and loaded, and taken from the holds and discharged by the Charterer or its representatives, free of any expense whatsoever to the Owner. Stowage and securing/unsecuring shall be for the Owner's account.

(1) Charterer shall be responsible for the cost of the following:

- (i) Stevedoring.
- (ii) Clerking, tallying, checking, and cargo documentation.
- (iii) Heavy-lift equipment other than Vessel's own gear, when ordered for the convenience of Charterer, although Charterer to have free use of any cranes, winches, derricks, tackle, gear, and sufficient motive power therefor, aboard the Vessel.

(iv) Removal of strongbacks with shore equipment where use of shore equipment is not necessitated by a structural or mechanical defect in the Vessel unless said defect is caused by the fault or negligence of the Charterer.

(v) Ligherage not on account of any deficiency of the Vessel, and all costs associated therewith.

(vi) Winchmen, unless same are requested and permitted to be from Vessel's crew.

(vii) All opening and closing of Vessel's hatches, unless requested and permitted to be accomplished by Vessel's crew.

(viii) At discharge, sweeping clean those holds utilized for the carriage of the cargo identified in Box 2.

(2) Owner to be responsible for the cost and time of the following:

(i) Lashing, sheathing, unsheathing, securing/unsecuring, dunnaging, lashing gear, D-rings, separation material, deck-cargo cover material, and any special fittings (including those for special trades, dangerous cargoes, explosive cargoes, deck cargoes, or unusual cargoes) that are required, to include all labor and materials therefor.

(ii) Heavy-lift equipment other than Vessel's own gear, when ordered for the convenience of the Owner.

(iii) Light, as on board the Vessel.

H.33 Position Reports. Upon commencing the voyages to either loading or discharging ports, the Owner shall advise both Charterer and military terminal authorities at loading and discharging ports (as applicable) of the Vessel's position and expected date and time of arrival.

H.34 Tugs and Barges

(1) Construction. All references in this Charter Party to "Vessel" shall be deemed to refer to the Tug and Barge chartered hereunder, unless the context clearly precludes such a reading.

(2) Affreightment. This charter is deemed to be for the purpose of affreightment and is not a towage contract.

(3) COGSA. COGSA shall apply to this Charter as specified at (h) (Risk of Loss). A barge will not be deemed a "package" thereunder. All cargo in barges will be deemed stowed underdeck for purposes of application of COGSA.

H.35 Supercargo and Government Representatives

(1) Charterer's Option. The Charterer shall have the right to assign supercargo (supercargo as used herein is both plural and singular) and other Government representatives aboard the Vessel for duty purposes as far as accommodations and United States Coast Guard certification, when applicable, allow. Charterer shall pay an amount

of \$0.00 per day, per person, covering all expenses including accommodations and victualling. Owner shall victual U.S. Government representatives, pilots, and Customs Officers when authorized by Charterer at \$0.00 per meal. The Government particularly reserves the right to put a representative on-board the Vessel, with the pilot, at the approach to a discharge port (or otherwise as mutually agreeable) to inspect the Vessel and to monitor the unloading; reimbursement for accommodations and/or victualling is to be as described above.

(2) Charterer's Liability. The Charterer shall be liable to the Owner for any loss of the Vessel's fittings or appurtenances or any damage to the Vessel, her fittings, or appurtenances caused by the act of supercargoes or Government representatives in the embarkation, carriage, or debarkation of supercargoes or Government representatives to the extent such loss or damage is not payable under the Vessel's insurance policies. However, the Charterer shall not be liable for such damage unless written notice specifying such damage unless written notice specifying such damage and, if obtainable, the name of the party or parties causing such damage shall have been given to the Charterer or its authorized representative within a reasonable time.

H.36 Nature of Contract (COA). Under this COA, Charterer undertakes to provide for shipment and Owner undertakes to transport the cargo described in Box 2 between those ports identified in Boxes 3 and 5, over the period identified in Box 69. Each voyage conducted under this COA shall be deemed conducted pursuant to a separate, single-voyage charter with terms as stipulated herein.

H.37 Program of Shipments (COA) (MSC 5252.247-9861 (Jun 1998))

(1) Voyages. Unless a specific program is agreed in Box 69, the program of shipments shall be fairly evenly spread over the period of this COA. Should a specific program not be agreed, Box 69 shall nonetheless identify contemplated laydays and cargo quantities of voyages hereunder.

(2) Laydays. Unless a specific program is agreed in Box 69, the party authorized in Box 6 to designate laydays hereunder shall designate laydays of one-day span not less than two running days prior to the commencing date of any voyage hereunder.

(3) Nomination of Ports. Should Box 3 permit Charterer to order the Vessel to load at one or more ports or places out of two or more ports or places named, or within a named range, Charterer shall nominate loading port(s) or place(s) not less than two running days prior to the commencing date of the relevant voyage. Should Box 5 permit Charterer to order the Vessel to discharge at one or more ports or places out of two or more ports or places named, or within a named range, Charterer shall nominate discharging port(s) or places in sufficient time to avoid delay to the Vessel. However, the Charterer may at any time change said nominations and nominate new port(s) or place(s) whether or not within the range or rotation of the port(s) or place(s) previously nominated, always consistent with Boxes 3 and 5. Should any such change of voyage orders be made, any time by which the steaming time to the port(s) or place(s) to which

the Vessel is finally ordered exceeds the steaming time which would have elapsed had the Vessel been ordered to such port(s) or place(s) immediately upon sailing therefor shall count as laytime or, if the Vessel is on demurrage, as time on demurrage (less the value of the Vessel's in-port bunker consumption for the period of such excess time). In addition, the Charterer shall reimburse the Owner the cost of any extra fuel consumed as a consequence of such excess time (at the market price where and when bunkers are next taken), but only upon such verification as required by G.4 (Invoicing and Payment (Reimbursables)).

H.38 Vessel Nomination/Age Restriction (COA)

(1) Requirement. Owner shall nominate vessels from among those identified in Box 68, subject always to (H.29) (Substitution). No Vessel shall be nominated which shall, at the time of its nomination, be in excess of 30 years old, unless approved by the Contracting Officer.

(2) Notice. Owner shall provide Charterer with written nomination of vessels performing hereunder at least seven running days prior to each respective commencing date.

H.39 Cancelling (COA)

(1) Charterer's Rights. Charterer's cancellation option described in (H.17) (Cancelling) shall affect the voyage in question only. Charterer shall have the option to cancel this Contract of Affreightment at no cost to the Government. Any exercise or nonexercise of Charterer's cancellation option as aforesaid shall not be construed in derogation of any future right to cancel this Contract of Affreightment or to take any other action authorized hereunder or by law.

(2) Cargo Quantity. Should any voyage be cancelled in the exercise of Charterer's rights under this Contract of Affreightment, the corresponding quantity of cargo shall be deducted from the outstanding balance. However, should said cancellation result from an incident within the Owner's control, the Charterer shall have the option to postpone the cancelled voyage within the period of this Contract of Affreightment by notice thereof to Owner not later than ten running days after said cancellation.

(3) Renomination. Should Charterer reject any nominated vessel in the exercise of its rights under this Contract of Affreightment, Owner shall, at Charterer's option, nominate another Vessel from among those identified in Box 68 or in accordance with (H.29) (Substitution). Upon rejection, Charterer may at its sole discretion, however, deem a particular voyage cancelled in accordance with the terms of this Charter without permitting any renomination by Owner.

H.40 Securing and Stowing of Ammunition Containers

(1) Vessels offered must be acceptable for carriage of explosives in accordance with International Maritime Dangerous Goods Code (IMDG).

(2) Vessels offered must, in addition to being fully equipped to carry IMDG CLASS 1, be fully container fitted either with cell guides or stools (base fittings for securing containers on tank tops/hatch covers), stacking cones and container securing devices.

(3) Containers loaded with IMDG CLASS 1 explosives stowed underdeck must be stowed a minimum of 3 meters away from the engine room bulkhead when the Vessel is fitted with an engine room bulkhead insulated to A60 standard. For vessels not fitted with an engine room bulkhead insulated to A60 standard, there must be a 9 meter separation. Deck stowed containers must be separated from the bridge, accommodation spaces and life savings appliances by a minimum horizontal distance of 8 meters.

H.41 Safety and Fire Protections and Lighting

(1) Vessel(s) offered must be in compliance with all applicable safety regulations and SOLAS requirements, comply with the IMDG code and be equipped with the following fire protection equipment in working order when tendering notice of readiness:

(i) Main machinery spaces must be fitted with a fixed fire-detection and fire alarm system and a fixed fire-extinguishing installation equivalent to SOLAS standards.

(ii) All cargo spaces must be fitted with a fire detection system.

(iii) Vessel must be equipped with a power operated emergency fire pump, which, together with its source of power and sea connections, should be located outside the machinery space.

(iv) At least two sets of self-contained breathing apparatus of an approved type must be aboard.

(v) At least two fireman's outfits of an approved type must be aboard.

(2) If fixed hold lighting is installed, the fittings and wiring must be intrinsically safe, well protected from mechanical damage, dust tight and protected from water damage. If portable hold lights are used they must be completely protected from dust and protected against projections of water from all directions. Flexible cable should have at least a steel or copper braid armour with an overall sheath of PVC, tough rubber or similar material.

H.42 Emergency Preparedness. At all times when the Vessel is laden with explosives in United Kingdom ports, local regulations require that the following conditions are observed:

- (1) The main engine must be available for immediate emergency use.
- (2) Sufficient crew must be on board to enable the Vessel to get underway immediately.
- (3) A roving watchstander will be on-deck during hours of darkness whenever cargo operations are not being conducted.

H.43 Explosive Warranty. Offerors warrant that Vessel is suitable for carriage of such explosives as described herein. Provision of any fittings, such as fire fighting/detection equipment, and making good any defects to the Vessel, her gear, her fixtures and fittings to make the Vessel suitable for carrying the cargo described, including any necessary certificates/surveys required by competent authority, shall be for the expense of the Vessel. Vessels are required to have aboard current editions of the following publications:

- (1) Medical First Aid Guide for Use in Accidents Involving Dangerous Goods (MFAAG)
- (2) Emergency Procedures for Ships Carrying Dangerous Goods (EMS).
- (3) International Maritime Dangerous Goods Code Volume relating to IMDG CLASS 1.
- (4) Vessels loading out of U.S. ports shall have aboard current editions of Title 49, U.S. Code of Federal Regulations, Chapter 1, Subchapter C.

H.44 Crew List The Contractor shall submit the Full Name, Billet, SSN, Date of Birth, Birth Country, City of Birth, State of Birth, Passport Number and Nationality for all crew members to MSCHQ/PM5 using the Government provided MSC/EPIC Force Protection Personnel/Crew list Submission Template to allow screening by the El Paso Intelligence Center (EPIC). The template must be filled out in its entirety by Owners and resubmitted electronically in Microsoft Excel format to the Charterer, at the following PM5 mailbox MSCHQ.PM5-screening.fct@navy.mil. Submit crewmembers as they are identified to go to the ship(s). When a crew member is replaced, only submit that crewmember instead of submitting the entire crew list again when the new crewmember is submitted. All new personnel must be screened at the beginning of the hiring process prior to being sent to the ship. All personnel shall be resubmitted and re-screened upon a change in contract or Contractor, upon transfer from one ship to another, and once in each 12-month period. A similar procedure shall be followed for all other Contractor personnel for whom unescorted access to the ships is required. MSC PM5 will notify the Contractor of any anomalous screening results requiring further action or investigation. Emails containing the Microsoft Excel attachment shall be written as follows:

- Subject line format is as follows: FOUO - PRIVACY SENSITIVE - EPIC – PM5
- NAME of SHIP - CREW or NON-CREW

- Body of email is to begin and end as follows: FOR OFFICIAL USE ONLY - PRIVACY SENSITIVE. ANY MISUSE OR UNAUTHORIZED DISCLOSURE MAY RESULT IN BOTH CIVIL AND CRIMINAL PENALTIES
- Submitter's name, company, address, and telephone number must be included in the email.
Scanned lists are unacceptable. Additionally, if there is a scheduled crew change or rotation of any percentage of such, the above information is to be provided at least 96 hours prior to the change.
- The Microsoft Excel attachment shall be password protected using the Microsoft password option. The password will be provided by MSCHQ N34. Access to personal information by contractor employees shall be on a need to know basis. To obtain the password, contact either Bruce Belden, 202-685-5378, bruce.belden@navy.mil or Chief Holman, 202-685-5556, derek.p.holman@navy.mil.
- A Microsoft attachment can be password protected as follows: Open the template (spreadsheet) and click on Tools and then Options. In the Options drop down menu, click on Security. Then enter the password and click on OK. Then you will be asked to re-enter the password. Password is case sensitive.

H.45 **Definitions**

“**Associated Equipment**” - Construed to include all Contractor-owned and Contractor-furnished equipment, supplies, fixtures, and tackle necessary for performance under this Charter Party

“**ASTM**” - American Society for Testing and Materials

“**CAGE**” - Commercial and Governmental Entity Code (reference DFARS 252.204-7001).

“**Cancelling Date**” - Identified in Box 6

“**Cargo**” - Identified in Box 2

“**Cargo Manifest**” - Charterer-issued "DD Forms 1385 and 1386," or substitutes.

“**CFE**” - Contractor-furnished equipment

“**CFR**” - Code of Federal Regulations

“**Charterer**” - The United States of America

“**Charter Party**” - This document including both Section B through M; interchangeable with "contract" and "charter" and "master solicitation" as defined at FAR 15.205(b)

“**Charter Party Date**” - Identified in Box 31c of SF 1449.

“**CHOP**” - Charterer's option

“**COA**” - Contract of Affreightment; interchangeable with "contract" and "Charter Party" and "master solicitation" as defined at FAR 15.205(b)

“**Commencing Date**” - Identified in Box 6

“**COMSC**” - U.S. Department of the Navy, Commander, Military Sealift Command

“**COMSCINST**” - COMSC Instruction (publication)

“**Cubic foot**” - see "cu ft"

“**Cubic meter**” - see "m³"

“**Cu ft**” - cubic foot [1 cubic foot equals 0.028317 cubic meter]

“**DD 250-1**” - Tanker/Barge Material Inspection and Receiving Report

“**DFARS**” - Department of Defense Federal Acquisition Regulation Supplement (issued by the Department of Defense)

“**DOD**” - U.S. Department of Defense

“**DWT**” - Deadweight tonnage

“**ETA**” - Estimated time of arrival

“**FAR**” - Federal Acquisition Regulation (issued by the Department of Defense, General Services Administration, and National Aeronautics and Space Administration)

“**FCC**” - Federal Communications Commission

“**FHEX**” - Fridays, U.S. Government holidays, and holidays observed at the port (whether national or local) to be excluded from the time computation. See “**SSHEX**”

“**FHINC**” - Fridays, U.S. Government holidays, and holidays observed at the port (whether national or local) to be included in the time computation. See “**SSHINC**”

“**Freight**” - Identified in Box 18

“**Ft.**” - Foot/feet [1 foot equals 0.3048 meter]

“Full Cargo” - That quantity not exceeding what the Vessel can reasonably stow and carry as further defined at Section H.12; with reference to Box 17 (dry cargo voyage), Charterer's obligation to furnish and Owner's obligation to load a Full Cargo as above, which may be further subject to stipulated minimum and maximum values or an optional margin, in which latter case, Charterer's and Owner's obligation is set at a Full Cargo or the stated minimum, whichever is the lesser

“GFP” - Government-furnished property (see FAR 52.245-2 in Part VIII)

“Government” - The United States of America; interchangeable with "Charterer"

“GSV” - Gross Standard Volume as defined by API Standard, that is, the total volume of all petroleum liquids and “sediment and water” (excluding free water), as corrected by various factors

“hp” - horsepower [1 hp equals 0.745799 kW]

“IMO” - International Maritime Organization

“In.” - Inch(es) [1 inch equals 25.4 mm/2.54 cm]

“In-transit loss” - The difference in the TCV at 60 degrees Fahrenheit, as measured aboard the Vessel after loading at the load port or place and before unloading at the first discharge port or place

“kg” - kilogram [1 kg equals 2.20 pounds]

“kPa” - kiloPascal [1 kPa equals 20.886 psf]

“kW” - kilowatt [1 kW equals 1.34 horsepower (hp)]

“Laydays” - The span of Commencing and Cancelling dates identified in Box 6

“Lb” - Pound [1 pound equals 0.453592 kg]

“LO/LO” - Lift-on, lift-off loading and discharging process

“LT” - Long ton, of 2,240 pounds weight [1 long ton equals 1.016047 metric tons]

“m” - meter [1 meter equals 3.28 feet]

“m²” – square meter [1 square meter equals 10.764 square feet]

“m³” - cubic meter [1 cubic meter equals 0.883 measurement tons/35.314 cubic feet]

“**MarAd**” - U.S. Department of Transportation, Maritime Administration

“**Master**” - Of the Vessel identified in Box 8

“**Maximum Cargo**” - Unless otherwise noted, the greater tonnage identified in Box 2; should a margin ("plus or minus") be identified with the cargo tonnage, "Maximum Cargo" shall be considered to be the greatest quantity of cargo calculable from such margin

“**Meter**” - See "m"

“**Metric ton**” - See "t”

“**Minimum Cargo**” - Unless otherwise noted, the lesser tonnage identified in Box 2; should a margin ("plus or minus") be identified with the cargo tonnage, "Minimum Cargo" shall be considered to be the least quantity of cargo calculable from such margin

“**mm**” - millimeter [1 millimeter equals .039 inch]

“**MOL**” - More or less

“**MOLCHOP**” - More or less at Charterer's option

“**MOLOO**” - More or less at Owner's option

“**MSC**” - Military Sealift Command, interchangeable with "COMSC"

“**MT**” - Measurement ton (40 cubic feet volume)

“**NAPS**” - Navy Acquisition Procedures Supplement (issued by the Department of the Navy)

“**NOR**” - Notice of readiness (see H.16)

“**Office hours**” – Usually from 0800 hours until 1700 hours local time on a Working Day

“**OBQ**” - Onboard quantity of material as defined by API Standard, that is, the water, oil, slops, oil residue, oil/water emulsions, sludge, and sediment remaining in Vessel tanks, void spaces, and/or pipelines prior to loading

“**OO**” - Owner's option

“Owner” - That entity exercising commercial control of the Vessel identified in Box 8; interchangeable with "contractor" and "offeror," and to include disponent owners and all the shipowner's and disponent owner's agents, employees, independent contractors, Master, Officers, and crew

“P&I” - Maritime protection and indemnity insurance

"Paying Office" - Identified in Box 25 of SF 33

"Place" - Any berth, dock, anchorage, or alongside any vessel or lighter or any other place whatsoever to which Charterer is entitled to direct the Vessel hereunder

"Psf" - Pounds per square foot load measure [1 psf equals 0.0478803 kPa]

“QAR” - Quality Assurance Representative; interchangeable with “Charterer’s inspector” and “Charterer’s representative”

"RFP" - Request for Proposals; interchangeable with "solicitation"

"RO/RO" - Roll-on, roll-off loading and discharging process

"SDWT" - Deadweight capacity, to assigned summer mean draft

"SHEX" - Sundays, U.S. Government holidays, and holidays observed at the port (whether national or local) to be excluded from the time computation with the following time so excluded:

(a) from 1700 hours local time on Saturday until 0800 hours local time on the following Monday, except in countries where Friday is the recognized weekly day of rest (where time from 1200 hours local time on Thursday until 0800 hours local time on the following Saturday will be excluded);

(b) from 1700 hours local time on the day preceding a holiday until 0800 hours local time on the following working day.

"SSHEx" - Saturdays, Sundays, U.S. Government holidays, and holidays observed at the port (whether national or local) to be excluded from the time computation, with the following time so excluded:

(a) from 1700 hours local time on Friday until 0800 hours local time on the following Monday, except in countries where Friday is the recognized weekly day of rest (where time from 1200 hours local time on Thursday until 0800 hours local time on the following Saturday will be excluded);

(b) from 1700 hours local time on the day preceding a holiday until 0800 hours local time on the following working day.

“SHINC” - Sundays, U.S. holidays and holidays observed at the port (whether national or local) to be included in the time computation. See “SSHINC”

“SSHINC” - Saturdays, Sundays, U.S. Government holidays, and holidays observed at the port (whether national or local) to be included in the time computation, with time counting:

(a) from 1700 hours local time on Friday until 0800 hours local time on the following Monday, except in countries where Friday is the recognized weekly day of rest (where time from 1200 hours local time on Thursday until 0800 hours local time on the following Saturday will count);

(b) from 1700 hours local time on the day preceding a holiday until 0800 hours local time on the following working day.

"SWL" - Safe working load

“t” - metric ton (1 metric ton equals 0.9842064 long ton)

“Tanker Loading Reports” - Charterer-issued cargo manifests, to include DD Form 250-1

“TCV” - Total Calculated Volume as defined by API Standard, that is, GSV plus free water

“USCG” – United States Coast Guard

“VEF” - Vessel Experience Factor as defined by API

“Voyage” - Identified at Boxes 3 and 5 (dry cargo voyage)

Part II

Section I - Contract Clauses

I-1 FAR 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 these addresses:

farsite.hill.af.mil/
<http://www.arnet.gov>

I-1.1 FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES

52.202-1	Definitions	JUL 2004
52.203-3	Gratuities	APR 1984
52.203-5	Covenant Against Contingent Fees	APR 1984
52.203-6	Restrictions On SubContractor Sales To The Government	SEP 2006

52.203-7	Anti-Kickback Procedures	JUL 1995
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	JAN 1997
52.203-10	Price Or Fee Adjustment For Illegal Or Improper Activity	JAN 1997
52.203-12	Limitation On Payments To Influence Certain Federal Transactions	SEP 2007
52.203-13	Contractor Code of Business Ethics and Conduct	DEC 2008
52.204-2	Security Requirements	AUG 1996
52.204-4	Printed or Copied Double-Sided on Recycled Paper	AUG 2000
52.204-7	Central Contractor Registration	APR 2008
52.204-9	Personal Identity Verification of Contractor Personnel	SEP 2007
52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	SEP 2006
52.215-1	Instructions to Offerors- Competitive	JAN 2004
52.215-2	Audit and Records--Negotiation	JUN 1999
52.215-10	Price Reduction for Defective Cost or Pricing Data	OCT 1997
52.215-17	Waiver of Facilities Capital Cost of Money	OCT 1997
52.215-21	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data-Modifications (Alternate IV)	OCT 1997
52.219-8	Utilization of Small Business Concerns	MAY 2004
52.219-9	Small Business Subcontracting Plan (Alt. II (OCT 2001))	APR 2008
52.219-14	Limitation on Subcontracting	DEC 1996
52.219-16	Liquidated Damages – Subcontracting Plan	JAN 1999
52.222-01	Notice to the Government of Labor Disputes	FEB 1997
52.222-03	Convict Labor	JUN 2003
52.222-08	Payrolls and Basic Records	FEB 1988
52.222-21	Prohibition of Segregated Facilities	FEB 1999
52.222-26	Equal Opportunity	MAR 2007
52.222-29	Notification Of Visa Denial	JUN 2003
52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and other Eligible Veterans	SEP 2006
52.222-36	Affirmative Action For Workers with Disabilities	JUN 1998
52.222-37	Employments Reports on Special Disabled Veterans, Veterans Of The Vietnam Era, And Other Eligible Veterans	SEP 2006
52.222-41	Service Contract Act of 1965, as Amended	NOV 2007
52.222-43	Fair Labor Standards Act and Service Contract Act – Price Adjustment (Multiple Year and Option Contracts	NOV 2006
52.222-50	Combating Trafficking In Persons	FEB 2009
52.223-3	Hazardous Material Identification And Material Safety Data	JAN 1997
52.223-5	Pollution Prevention and Right-to-Know Information	AUG 2003
52.223-6	Drug-Free Workplace	MAY 2001
52.223-10	Waste Reduction Program	AUG 2000
52.223-12	Refrigeration Equipment and Air Conditioners	MAY 1995

52.223-14	Toxic Chemical Release Reporting	AUG 2003
52.224-1	Privacy Act Notification	APR 1984
52.224-2	Privacy Act	APR 1984
52.227-1	Authorization and Consent	DEC 2007
52.227-2	Notice And Assistance Regarding Patent And Copyright Infringement	DEC 2007
52.227-3	Patent Indemnity	APR 1984
52.227-14	Rights in Data--General	DEC 2007
52.228-7	Insurance--Liability To Third Persons	MAR 1996
52.229-3	Federal, State And Local Taxes	APR 2003
52.229-6	Taxes--Foreign Fixed-Price Contracts	JUN 2003
52.232-1	Payments	APR 1984
52.232-4	Payments under Transportation Contracts and Transportation-Related Services Contracts	APR 1984
52.232-8	Discounts For Prompt Payment	FEB 2002
52.232-9	Limitation On Withholding Of Payment	APR 1984
52.232-11	Extras	APR 1984
52.232-17	Interest	OCT 2008
52.232-18	Availability of Funds	APR 1984
52.232-23	Assignment Of Claims	JAN 1986
52.232-25	Prompt Payment	OCT 2008
52.232-33	Payment by Electronic Funds Transfer – Central Contractor Registration	OCT 2003
52.232-35	Designation of Office for Government Receipt of Electronic Funds Transfer Information with Offer	MAY 1999
52.233-1	Disputes (Alternate I (DEC 1991))	JUL 2002
52.233-3	Protest After Award	AUG 1996
52.233-4	Applicable Law for Breach of Contract Claim	OCT 2004
52.237-3	Continuity of Services	JAN 1991
52.242-1	Notice of Intent to Disallow Costs	APR 1984
52.242-3	Penalties for Unallowable Costs	MAY 2001
52.242-13	Bankruptcy	JUL 1995
52.243-1	Changes—Fixed-Price (Alternate II (APR 1984))	AUG 1987
52.243-7	Notification of Changes	APR 1984
52.244-5	Competition In Subcontracting	DEC 1996
52.244-6	Subcontracts for Commercial Items	FEB 2009
52.245-1	Government Property	JUNE 2007
52.246-20	Warranty of Services	MAY 2001
52.246-25	Limitation of Liability--Services	FEB 1997
52.247-64	Preference For Privately Owned U.S. Flagged Commercial Vessels	FEB 2006
52.248-1	Value Engineering	FEB 2000
52.249-2	Termination For Convenience Of The Government (Fixed-Price)	MAY 2004
52.249-8	Default (Fixed-Price Supply and Service)	APR 1984
52.251-1	Government Supply Sources	APR 1984

**I-1.2 DOD FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS)
(48 CFR CHAPTER 2) CLAUSES**

252.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies	DEC 2008
252.203-7002	Requirement to Inform Employees of Whistleblower Rights	JAN 2009
252.204-7000	Disclosure Of Information	DEC 1991
252.204-7002	Payment For Subline Items Not Separately Priced	DEC 1991
252.204-7003	Control Of Government Personnel Work Product	APR 1992
252.204-7004	Alternate A, Central Contractor Registration	SEP 2007
252.209-7002	Disclosure of Ownership or Control by a Foreign Government	JUNE 2005
252.209-7004	Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country	DEC 2006
252.211-7003	Item Identification and Valuation	AUG 2008
252.215-7000	Pricing Adjustments	DEC 1991
252.219-7003	Small Business Subcontracting Plan (DoD Contracts)	APR 2007
252.223-7001	Hazard Warning Labels	DEC 1991
252.223-7002	Safety Precautions For Ammunition And Explosives	MAY 1994
252.223-7004	Drug-Free Work Force	SEP 1988
252.225-7001	Buy American Act And Balance Of Payments Program	JAN 2009
252.225-7002	Qualifying Country Sources As SubContractors	APR 2003
252.225-7004	Reporting of Intended Contract Performance Outside the United States and Canada	MAY 2007
252.225-7005	Identification of Expenditures in the United States	JUN 2005
252.225-7012	Preference for Certain Domestic Commodities	DEC 2008
252.225-7025	Restriction on Acquisition of Forgings	JUL 2006
252.225-7031	Secondary Arab Boycott Of Israel	JUN 2005
252.225-7040	Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States	JAN 2009
252.225-7043	Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States	MAR 2006 NOV 1995
252.227-7013	Rights in Technical Data – Noncommercial Items	
252.227-7016	Rights in Bid or Proposal Information	JUN 1995
252.227-7037	Validation of Restrictive Markings on Technical Data	SEP 1999
252.231.7000	Supplemental Cost Principals	DEC 1991
252.243-7001	Pricing of Contract Modifications	DEC 1991
252.243-7002	Requests for Equitable Adjustment	MAR 1998
252.245-7000	Government-Furnished Mapping, Charting, and Geodesy Property	DEC 1991
252.247-7025	Reflagging or Repair Work	JUN 2005
252.247-7026	Evaluation Preference for Use of Domestic Shipyards — Applicable to Acquisition of Carriage by Vessel for DoD	NOV 2008

I-2 CLAUSES INCORPORATED BY FULL TEXT

**52.215-20-Requirements for Cost or Pricing Data or Information Other Than Cost
or Pricing Data. (OCT 1997)**

(a) *Exceptions from cost or pricing data.*

(1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Commercial item exception.* For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include --

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The offeror shall prepare and submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

(End of Provision)

Alternate I (Oct 1997). As prescribed in 15.408(l), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:

(b)

(1) The offeror shall submit cost or pricing data and supporting attachments in the following format:

52.217-8 Option to Extend Services (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor any time prior to the expiration of this contract.

52.217-9 -- Option to Extend the Term of the Contract (MAR 2000).

(a) The Government may extend the term of this contract by written notice to the Contractor anytime prior to expiration of this contract; provided that the Government

gives the Contractor a preliminary written notice of its intent to extend at any time prior to redelivery, before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 60 months.

52.222-39 – Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004).

(a) Definition. As used in this clause--

“United States” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) Except as provided in paragraph (e) of this clause, during the term of this contract, the Contractor shall post a notice, in the form of a poster, informing employees of their rights concerning union membership and payment of union dues and fees, in conspicuous places in and about all its plants and offices, including all places where notices to employees are customarily posted. The notice shall include the following information (except that the information pertaining to National Labor Relations Board shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151-188)).

Notice to Employees

Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll free number:

National Labor Relations Board
Division of Information
1099 14th Street, N.W.
Washington, DC 20570
1-866-667-6572
1-866-316-6572 (TTY)

To locate the nearest NLRB office, see NLRB's website at <http://www.nlr.gov>

(c) The Contractor shall comply with all provisions of Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR Part 470, and orders of the Secretary of Labor.

(d) In the event that the Contractor does not comply with any of the requirements set forth in paragraphs (b), (c), or (g), the Secretary may direct that this contract be cancelled, terminated, or suspended in whole or in part, and declare the Contractor ineligible for further Government contracts in accordance with procedures at 29 CFR part 470, Subpart B--Compliance Evaluations, Complaint Investigations and Enforcement Procedures. Such other sanctions or remedies may be imposed as are provided by 29 CFR Part 470, which implements Executive Order 13201, or as are otherwise provided by law.

(e) The requirement to post the employee notice in paragraph (b) does not apply to--

(1) Contractors and subcontractors that employ fewer than 15 persons;

(2) Contractor establishments or construction work sites where no union has been formally recognized by the Contractor or certified as the exclusive bargaining representative of the Contractor's employees;

(3) Contractor establishments or construction work sites located in a jurisdiction named in the definition of the United States in which the law of that jurisdiction forbids enforcement of union-security agreements;

(4) Contractor facilities where upon the written request of the Contractor, the Department of Labor Deputy Assistant Secretary for Labor-Management Programs has waived the posting requirements with respect to any of the Contractor's facilities if the Deputy Assistant Secretary finds that the Contractor has demonstrated that--

(i) The facility is in all respects separate and distinct from activities of the Contractor related to the performance of a contract; and

(ii) Such a waiver will not interfere with or impede the effectuation of the Executive order; or

(5) Work outside the United States that does not involve the recruitment or employment of workers within the United States.

(f) The Department of Labor publishes the official employee notice in two variations; one for contractors covered by the Railway Labor Act and a second for all other contractors. The Contractor shall--

(1) Obtain the required employee notice poster from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Download a copy of the poster from the Office of Labor-Management Standards website at <http://www.olms.dol.gov>; or

(3) Reproduce and use exact duplicate copies of the Department of Labor's official poster.

(g) The Contractor shall include the substance of this clause in every subcontract or purchase order that exceeds the simplified acquisition threshold, entered into in connection with this contract, unless exempted by the Department of Labor Deputy Assistant Secretary for Labor-Management Programs on account of special circumstances in the national interest under authority of 29 CFR 470.3(c). For indefinite quantity subcontracts, the Contractor shall include the substance of this clause if the value of orders in any calendar year of the subcontract is expected to exceed the simplified acquisition threshold. Pursuant to 29 CFR Part 470, Subpart B--Compliance Evaluations, Complaint Investigations and Enforcement Procedures, the Secretary of Labor may direct the Contractor to take such action in the enforcement of these regulations, including the imposition of sanctions for noncompliance with respect to any such subcontract or purchase order. If the Contractor becomes involved in litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

52.222-42 -- Statement of Equivalent Rates for Federal Hires (MAY 1989)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe

benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

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

Employee Class	Monetary Wage -- Fringe Benefits

(End of Clause)

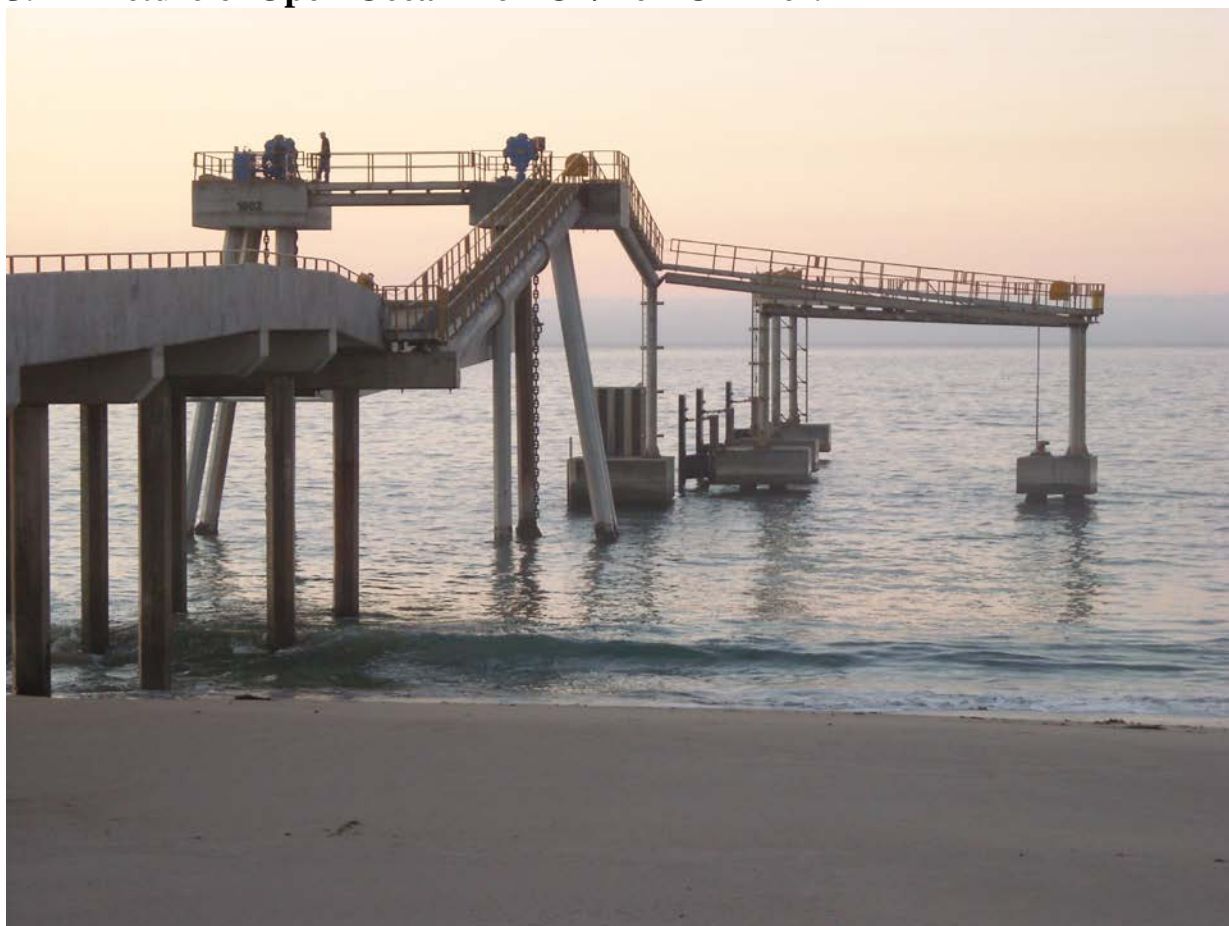
Part III

Section J – List of Documents, Exhibits, and other Attachments

J.1- Picture of Facility at Port Hueneme.



J.2 – Picture of Open-Ocean Roll-On/Roll-Off Pier.



J.3 – Picture of Open-Ocean Roll-On/Roll-Off Pier mooring arrangements.



J.4 – Pricing Worksheet.

Pricing Sheet N00033-09-R-5207			
Base Period			
Clin	Description	Price	Quantity
CLIN 0001	Voyage 1-13		13
CLIN 0001i	Failure to Deliver		INFO
CLIN 0002	Voyage 13+		TBD
CLIN 0002i	Failure to Deliver		INFO
CLIN 0003	Emergency Line Handling		TBD
CLIN 0004	Reimbursables	TBD	TBD
Option Period #1			
Clin	Description	Price	Quantity
CLIN 0001	Voyage 1-13		13
CLIN 0001i	Failure to Deliver		INFO
CLIN 0002	Voyage 13+		TBD
CLIN 0002i	Failure to Deliver		INFO
CLIN 0003	Emergency Line Handling		TBD
CLIN 0004	Reimbursables	TBD	TBD
Option Period #2			
Clin	Description	Price	Quantity
CLIN 0001	Voyage 1-13		13
CLIN 0001i	Failure to Deliver		INFO
CLIN 0002	Voyage 13+		TBD
CLIN 0002i	Failure to Deliver		INFO
CLIN 0003	Emergency Line Handling		TBD
CLIN 0004	Reimbursables	TBD	TBD

Option Period #3				
Clin	Description	Price	Quantity	
CLIN 0001	Voyage 1-13		13	
CLIN 0001i	Failure to Deliver		INFO	
CLIN 0002	Voyage 13+		TBD	
CLIN 0002i	Failure to Deliver		INFO	
CLIN 0003	Emergency Line Handling		TBD	
CLIN 0004	Reimbursables	TBD	TBD	
Option Period #4				
Clin	Description	Price	Quantity	
CLIN 0001	Voyage 1-13		13	
CLIN 0001i	Failure to Deliver		INFO	
CLIN 0002	Voyage 13+		TBD	
CLIN 0002i	Failure to Deliver		INFO	
CLIN 0003	Emergency Line Handling		TBD	
CLIN 0004	Reimbursables	TBD	TBD	

J.5 PAST PERFORMANCE EVALUATION

NAME: _____ FACSIMILE: _____

PHONE: _____ EMAIL: _____

INFORMATION REQUEST

PAST PERFORMANCE

The Military Sealift Command (MSC) is currently in the process of soliciting offers for a contract for the charter of a Tug/barge ._____ provided your name and organization as a reference regarding past performance under_____. Specifically, we are looking for past performance information in the following areas:

- a.) Quality of Service
- b.) Timeliness or Scheduling of Service
- c.) Business Relations/Customer Satisfaction
- d.) Key Personnel and Staffing (Including Subcontractors)

In order for our team to compile its evaluation, we request that you complete the attached survey form and email it, with any other pertinent information, to Stephen Hughes at Stephen.t.hughes@navy.mil.

Information can also be sent via facsimile to the attention of Stephen Hughes at (202) 685-5852. Your assistance in accurately accessing the performance of the aforementioned Contractor is greatly appreciated.

Thank you,

Stephen Hughes
Contract Specialist

Military Sealift Command

Attn: Stephen Hughes
914 Charles Morris CT SE
Washington Navy Yard DC
20398-5540

(Note: Offerors are not to change the spatial structure of this form, i.e. borders, block size, etc.)

1. Complete Name of Reference (Government agency, commercial firm, or other organization)	
2. Complete Address of Reference	
3. Contract Number or other control number	4. Date of contract
5. Date work was begun	6. Date work was completed
7. Contract type, initial contract price, estimated cost and fee, or target cost and profit or fee	8. Final amount invoiced or amount invoiced to date
9a. Reference/Technical point of contact (name, title, address, telephone no. and email address)	9b. Reference/Contracting point of contact (name, title, address, telephone no. and email address)
10. Location of work (country, state or province, county, city)	
11. Current status of contract (choose one): <input type="checkbox"/> Ongoing <input type="checkbox"/> Complete <input type="checkbox"/> Terminated for Convenience <input type="checkbox"/> Terminated for Default <input type="checkbox"/> Other (explain)	
12. Provide brief information describing the contract and the relevancy of the effort to be performed in accordance with the SOW and requirements of the solicitation. Provide an estimated % of relevancy of the referenced contract to the requirements set forth in this solicitation. Relevance can be discussed in further detail on the attached summary description as set forth in block 14 below.	
13a. Did this contract require a Small Business Subcontracting Plan pursuant to FAR 52.219-9? Yes <input type="checkbox"/> , No <input type="checkbox"/> . 13b. If "Yes" to 13a, have you regularly submitted SF 294/295 reports on time? Yes <input type="checkbox"/> , No <input type="checkbox"/> . 13c. Attach a copy of your most recently submitted SF 294.	
14. Provide a summary description of contract work, not to exceed two pages in length. Describe the nature and scope of work, its relevancy to this contract, and a description of any problems encountered and your corrective actions. Attach the explanation to this form.	

