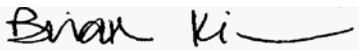


<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS</b> <i>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, AND 30</i>				1. REQUISITION NUMBER		PAGE 1 OF 42		
2. CONTRACT NO. N00033-12-C-2102		3. AWARD/EFFECTIVE DATE 28-Jun-2012	4. ORDER NUMBER		5. SOLICITATION NUMBER N00033-12-R-2102		6. SOLICITATION ISSUE DATE 02-Mar-2012	
7. FOR SOLICITATION INFORMATION CALL:		a. NAME JAMES CARNEY			b. TELEPHONE NUMBER (No Collect Calls) 202-685-0514		8. OFFER DUE DATE/LOCAL TIME 05:00 PM 07 Jun 2012	
9. ISSUED BY MILITARY SEALIFT COMMAND, N1031/PM2 914 CHARLES MORRIS COURT SE WASHINGTON NAVY YARD DC 20398-5540  TEL: 202-685-5203 FAX: 202-685-5966		CODE N00033	10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED <input type="checkbox"/> SET ASIDE: % FOR <input type="checkbox"/> SB <input type="checkbox"/> HUBZONE SB <input type="checkbox"/> 8(A) <input type="checkbox"/> SVC-DISABLED VET-OWNED SB <input type="checkbox"/> EMERGING SB SIZE STD: \$ 7.0 M NAICS: 488330			11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE  <input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) 13b. RATING 14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP		12. DISCOUNT TERMS
15. DELIVER TO  <b>SEE SCHEDULE</b>		CODE	16. ADMINISTERED BY  <b>SEE ITEM 9</b>					CODE
17a. CONTRACTOR/OFFEROR CABRAS MARINE CORPORATION JOSEPH CRUZ 1026 CABRAS HIGHWAY, SUITE 114 PITI GU 96915-5610  TEL. 671-477-7645		CODE OM9K3	18a. PAYMENT WILL BE MADE BY WAWF SUBMIT ELECTRONIC INVOICES IAW WAWF CONTRACT CLAUSE MSC WORLDWIDE DC ANY					CODE
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER		FACILITY CODE	<input type="checkbox"/> 18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a. UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM					
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/ SERVICES			21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT	
<b>SEE SCHEDULE</b>								
25. ACCOUNTING AND APPROPRIATION DATA						26. TOTAL AWARD AMOUNT (For Govt. Use Only)  <b>\$1,268,375.00</b>		
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1. 52.212-4. FAR 52.212-3. 52.212-5 ARE ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED								
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED								
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>1</u> COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.  REF: N00033-12-R-2102				29. AWARD OF CONTRACT: REFERENCE <input type="checkbox"/> OFFER DATED <u>07-Jun-2012</u> . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS: SEE SCHEDULE				
30a. SIGNATURE OF OFFEROR/CONTRACTOR			31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)  			31c. DATE SIGNED 24-Jul-2012		
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)		30c. DATE SIGNED	31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) BRIAN HJ KIMM / CONTRACT SPECIALIST TEL: (b) (6) EMAIL: (b) (6)					

**SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS  
(CONTINUED)**

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/ SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
<p><b>SEE SCHEDULE</b></p>					

32a. QUANTITY IN COLUMN 21 HAS BEEN  
 RECEIVED  INSPECTED  ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: \_\_\_\_\_

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE
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32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE
	32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
<input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL				

38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER	40. PAID BY
------------------------	------------------------	-------------

41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	42a. RECEIVED BY ( <i>Print</i> )		
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE	42b. RECEIVED AT ( <i>Location</i> )	
		42c. DATE REC'D ( <i>YY/MM/DD</i> )	42d. TOTAL CONTAINERS

Section SF 1449 - CONTINUATION SHEET

CLAUSES INCORPORATED BY REFERENCE

52.209-7	Information Regarding Responsibility Matters	FEB 2012
52.209-9	Updates of Publicly Available Information Regarding Responsibility Matters	FEB 2012

NOTES ON CONTRACT

INTRODUCTION

This is a requirement to provide the services of one (1) time-chartered harbor tug to assist vessels docking and undocking in support of Naval Base Guam. The charter begins on October 1, 2012 for a firm period of three hundred and sixty-five (365) days, with options for three additional one-year performance periods and another option for one six month period to support the Government's requirement. The place of performance will be in the geographical region of Apra Harbor and the surrounding navigable waters.

INVOICE INSTRUCTIONS

See clause 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports (MAR 2008) incorporated by reference via clause 252.212-7001 and the Section WAWF Instructions below.

CLINs in Blocks 19-24: CLINs may be added to designate amounts funded for specific purposes, e.g., fuel, overtime, insurance, port charges and expenses, and, if used, restrict the funding amount available for each respective purpose. See the Performance Work Statement (PWS), Reimbursable Expenses.

SCHEDULE OF ESTIMATES

The following estimates are not a guarantee of work. This information is provided for estimation purposes only. Any difference in the actual numbers or workload experienced shall not form the basis for any claim or equitable adjustment.

Period	Estimated Overtime Hours per Year per Tug
Firm Period	288
Option 1	288
Option 2	288
Option 3	288
Option 4	144

The SCHEDULE of Supplies and Services follows as the CLINS and the Performance Work Statement.

**PRICE SHEET**

**CONTRACT PRICING FOR TUG SERVICE**  
(To be filled in by the Government)

	Firm Period	Option One	Option Two	Option Three	Option Four
Charter (Per Diem)	\$3,475	(b) (4)	(b) (4)	(b) (4)	(b) (4)
Overtime (per hour)	\$0	\$0	\$0	\$0	\$0
Mob	\$0				
Demob	\$0	\$0	\$0	\$0	\$0

The rates to be paid under this Charter Party contract, as offered and accepted at the time of award, are provided in the Price Sheet, which shall be filled in by the Government at the time of award.

<b>WAGE DETERMINATION</b>
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Wage Determination (2010-0205 R4), available upon request or at:  
<https://www.procurement.msc.navy.mil/procurement/contract/CommonDocumentManager.jsp?page=1>  
 is incorporated into the contract.

<b>RATE STRUCTURE:</b>
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**DAILY HIRE**

Except as otherwise provided herein, the daily hire rate shall be considered payment in full for all services of the Tug and Associated Equipment and all other requirements under this Charter Party contract, including, but not limited to penalty time, bonuses, payments, and emoluments payable to Master, Officers and crew for services under this Charter, irrespective of the geographic scope of said service and the nominal carriage of ammunition and hazardous cargoes. If a separate overtime rate is not offered, the Daily Hire rate shall also be considered payment in full for all overtime, including but not limited to crew overtime or penalty time required for the making up or breaking of tows. This Rate does not include port charges or the price that the Contractor pays for fuel.

**OVERTIME**

The hourly differential rate shall cover all additional costs for operating the vessel during overtime periods and shall be pro-rated to the nearest quarter hour.

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	FIRM PERIOD FFP \$3,475 x 365 = \$1,268,375	1	Each	\$1,268,375.00	\$1,268,375.00
	FOB: Destination				

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NET AMT \$1,268,375.00

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0100 OPTION	FIRST OPTION PERIOD FFP \$(b) (4)	1	Each	\$(b) (4)	\$(b) (4)
	FOB: Destination				

---

NET AMT \$(b) (4)

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0200 OPTION	SECOND OPTION PERIOD FFP (b) (4)	1	Each	(b) (4)	\$(b) (4)
	FOB: Destination				

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NET AMT \$(b) (4)

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0300 OPTION	THIRD OPTION PERIOD FFP \$(b) (4)	1	Each	\$(b) (4)	\$(b) (4)

FOB: Destination

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NET AMT \$(b) (4)

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0400 OPTION	FOURTH OPTION PERIOD FFP \$(b) (4)	1	Each	\$(b) (4)	\$(b) (4)

FOB: Destination

---

NET AMT \$(b) (4)

END OF CLINS

**PERFORMANCE WORK STATEMENT (PWS)**

**PERFORMANCE**

This is a Charter Party contract for one (1) time-chartered tug in support of Naval Base Guam. The charter is for a firm period of three hundred and sixty-five (365) days, with options for three additional one-year performance periods and one six month period to support the Government's requirement. Contractor shall provide the tug(s) named below in the table "Approved Tugs" by the stated canceling date. Only the tug(s) named, or substituted in accordance with the Substitution of Tugs clause, may be used under this contract.

The place of performance shall be in the geographical region of Apra Harbor and the surrounding navigable waters. Within this geographical region, the Tug may be ordered to any berth, dock, anchorage, wharf, place, open roadstead, submarine line, or alongside any vessel, barge, lighter, submarine, craft, hull, derrick, or object of whatsoever nature that the Government may direct, provided the Tug can lie always afloat except in harbors or waters where it is customary and safe in the port to work aground.

Tug will be home berthed in the Geographical Region noted below. The Government may reassign the Tug to a different berth within the Geographical Region on a temporary or permanent basis to meet emergent requirements. The Tug shall remain on site at the base assigned 24 hours a day, 7 days a week when not on mission, undergoing refueling or required at a shipyard.

GEOGRAPHICAL REGION
APRA HARBOR, GUAM

**PERIODS OF PERFORMANCE**

Period	Length (days)	Option Notice	Date of Commencement	Date of Completion
Firm Period	365		01 October 2012	30 September 2013
Option 1	365	(See MSC 5252.217-9806)	01 October 2013	30 September 2014
Option 2	365	(See MSC 5252.217-9806)	01 October 2014	30 September 2015
Option 3	366	(See MSC 5252.217-9806)	01 October 2015	30 September 2016
Option 4	182	(See MSC 5252.217-9806)	01 October 2016	31 March 2017

**TIME CHARTER**

**CHARTER PERIOD**

This Charter shall be for the periods designated in the table of Periods of Performance above, commencing upon the date shown or the Charterer's acceptance of the Tug(s), which ever occurs later, and continuing until either the date of completion or the completion of the voyage then current, at Charterer's sole option. Each tug shall be considered to have separate performance periods. Any optional periods shall be stated in the contract; in addition, the Government shall have the Time Lost options as specified under this contract and an option to extend services as specified in this contract under clause 52.217-8. All optional periods shall be in direct continuation. Options shall be exercised pursuant to MSC clause 5252.217-9806, Option to Extend the Term of the Contract.

**TIME LOST**

Tacking to the End of Charter Period. Any time lost by the Vessel during the term of this Charter (including during any option period) due to breakdown of machinery, interference by authority, collision, stranding, fire or other accidents or damage to the Vessel; or repairs, inspections, overhaul and alterations, preventing the work of the Vessel, shall be added to the charter period at Charterer's sole option, declarable at least thirty (30) calendar days prior to the termination of the charter period. Hire for such additional declarable period shall be at the same rate as in effect as of the date said declaration was made.

**Excessive Time Lost**

The Government may by written notice cancel this Charter or Contract at no cost to the Government whenever, in any given 365-day period, for any reason whatsoever, more than thirty days are lost except for time lost as a result of the causes set forth in the "War" clause of this contract. See clause 52.212-4 Addendum. Failure to cancel this Charter after thirty days are lost shall be without prejudice to any other rights of the Charterer, or any later right of the Charterer to cancel this Charter Party.

Relationship to Other Remedies. No remedy conferred by this paragraph upon the Charterer is intended to be exclusive of any other remedy, but every such remedy shall be cumulative and shall be in addition to every other remedy already conferred by this Charter Party now or hereafter existing at Law or in Equity or by statute.

**PERFORMANCE PERIOD**

The total performance period under this Charter Party contract shall not exceed 59 months.

**TUG DELIVERY AND REDELIVERY**

The place and time of initial delivery and redelivery shall be as stated in the following box:

Delivery Port	Earliest Delivery Date	Canceling Date See FAR 52.212-2	Notices of Redelivery Date / Port
Apra, Guam	01 October 2012	01 October 2012	7 days/Apra

**DELIVERY**

The Tug(s) and all Associated Equipment shall be delivered in the condition described below to the Charterer at a port or place indicated above not later than 1600 hours local time (place of delivery) on the canceling date stated. The Contractor shall give written notice of readiness during office hours to the Contracting Officer's Representative (COR) at the port or place of delivery on a working day (Saturdays, Sundays, or other recognized weekly days of rest, U.S. Government holidays, and holidays observed at the delivery port, whether national or local, shall not be considered working days). Government inspection of the Vessel, by the COR/Assistant COR (ACOR), shall be completed within a reasonable amount of time thereafter, not exceeding twenty-four (24) hours after proper tender of the notice of readiness, (Saturdays, Sundays, or other recognized weekly days of rest, U.S. Government holidays, and holidays observed at the delivery port, whether national or local, excepted in the computation of said twenty-four



hour period). Hire shall commence upon acceptance of the Tug(s) by the Charterer but not before the commencing date stated in the solicitation, unless approved in writing in advance by the Contracting Officer. Charterer shall have the liberty to cancel this Charter at no cost to the Government should the Tug(s) or Associated Equipment not be ready in accordance with the provisions hereof by the canceling date. Said cancellation is to be declared not later than twenty-four (24) hours after 1600 hours local time (place of delivery) on the stated canceling date. Nothing in this paragraph shall limit any remedy of the Government otherwise available at Law, in Equity or under this Charter Party contract.

Condition. The Vessel and all Associated Equipment shall be seaworthy, properly and efficiently manned and trained, equipped, supplied, and in every way suitable and adequately fitted for and in all respects ready for the service contemplated under this Charter Party. Any Associated Equipment shall upon delivery be as described in this Charter Party and all equipment shall be operable. The Owner shall exercise due diligence to maintain the Vessel and Associated Equipment in such state during the period of the Charter Party.

**REDELIVERY**

Unless lost, the Vessel shall be redelivered at a port or place stated in the contract. Charterer shall notify Contractor of the place and date of redelivery no later than the time shown in the above in the Notices of Redelivery.

**REQUESTS FOR SERVICE**

Requests for service within the scope of this Charter Party contract may be issued only by the specific persons identified below as authorized Government officials:

- (a) Contracting Officer (Brian Kimm, 202-685-5963, Brian.Kimm@navy.mil); or
- (b) Port Operations Officer, or his /her designee (TBN); or
- (c) Contracting Officer’s Representative (COR) – Rowland Smith (671) 339-6143; or
- (d) Assistant Contracting Officer’s Representative (ACOR) – Dan Quicho (671) 339-6688

Overtime shall be approved in writing in advance of the event. Any emergent condition requiring oral approval shall be followed up in writing within 24 hours notifying all personnel listed above. Overtime shall be reconciled through the Contracting Officer’s Representative (COR) via Port Operations Officer at the end of the month comparing Plan of Operational Milestones (POMs), Tug Logs and Overtime Approvals.

**NOTIFICATION**

When tug service is requested, service shall be provided within the time specified in the “Required Response” boxes below.

Time	Required Response
Straight Time – 0600-1700 hours local time, Monday through Friday, exclusive of Federal Holidays.	15 minutes maximum
Overtime – 1701-0559 hours local time, Monday through Thursday; 1701 hours local time Friday through 0559 hours the following Monday; all Federal Holidays.	15 minutes maximum

**AVAILABILITY**

The tug shall be available 24 hrs/day, 7 days/week. After receiving a request for service from an authorized Government official (see “Requests for Service” below), Tugs shall be fully crewed and ready for service in accordance with the response times in the table above.

**TUG CHARACTERISTICS**

CHARACTERISTIC	MINIMUM
FLAG	USA
CLASSIFICATION	Documented compliance with a recognized marine safety program (examples of this include classification by recognized regulatory society, demonstrated adherence to American waterways operators responsible carrier program, ISM certification, etc.)
PROPULSION TYPE	Tractor Tug
BOLLARD PULL	(b) (4)
MAXIMUM LENGTH OVER ALL	N/A
MAXIMUM DRAFT:	N/A
MAXIMUM BEAM:	N/A
MAX AIR DRAFT	N/A
TRANSIT SPEED	N/A
ENDURANCE	N/A
PASSENGER CAPACITY:	N/A
SEWAGE CAPACITY	24 hrs.
BROW	N/A
SURFACE CONFIGURATION	Configured to prevent metal-to-hull contact with surface vessels.
SURFACE FENDERING	Non-marking fendering, clean and sufficient to prevent metal-to-metal contact with surface vessels.
SUBSURFACE CONFIGURATION	Configured to prevent metal-to-hull contact with sub-surface vessels.

SUBSURFACE FENDERING	Non-marking fendering, clean and sufficient to prevent metal-to-metal contact with sub-surface vessels. Fendering should be firmly secured to vessel along entire length. Fendering includes propeller guards, if applicable.
COMMUNICATION EQUIPMENT	Minimum required by the U.S.C.G. and FCC for inland and international waters.
NAVIGATION EQUIPMENT	Minimum required by the U.S.C.G for inland and international waters.
CAPSTANS/WINCHES	Sufficient fore and aft for services performed under this contract. Each shall have a minimum safe working load of 9,000 lbs. Further, each shall have 40 ft. per minute pay-out/in-haul, capable of handling up to 8 in. lines.
LINES	Sufficient for services performed under this contract.
FIREFIGHTING	Tug shall have sufficient fire monitors to provide 360 degree coverage at 1,000gpm, 125 psi. Be equipped with a portable de-watering pump capable of 250 gpm. Fire-fighting system shall be capable of having AFFF injected into it for firefighting.
OTHER REQUIREMENTS	Tug shall be capable of performing work in winds equivalent to Beaufort force 8 (wind speed of 34-40 knots).

AUTHORIZED TUGS AND CREW

The Tugs used for performance of this Contract shall be only those identified in the table of Authorized Tugs (to be filled in upon contract award), or any authorized substitutes provided in accordance with the Substitution of Tugs clause of this Contract.

AUTHORIZED TUGS
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Name	SHP	Bollard Pull
M/T QUIPUHA		(b) (4)

The Tug(s) chartered under this Charter Party contract shall have the minimum characteristics as described in the chart Tug Characteristics. Specifications and characteristics exceeding the minimum, if offered and accepted by the Government, are incorporated by reference upon contract award.

**SUBSTITUTION OF TUGS**

Substitution of tugs is authorized, but only for good cause shown and upon proper notice to the Government and approval of the Contracting Officer. Notice of intent to substitute by the Contractor shall identify the tug being substituted and the tug for which substitution is being made and shall provide the Contracting Officer with sufficient

information on which to base a determination regarding good cause for substitution and the acceptability of the nominated substitute vessel. Notice shall be submitted in writing and shall be submitted sufficiently in advance to permit the Contracting Officer to make a reasoned determination regarding good cause and substitute tug suitability. If circumstances require oral notification, said notice shall provide all of the above required information and shall include a statement of circumstances that preclude a written notice prior to substitution. Confirmation of the information given in an oral notice shall be submitted to the Contracting Officer in writing within forty-eight (48) hours of the giving of oral notification.

The Contractor shall fix and deploy a substitute Tug within a period of six (6) hours of submission of notice of substitution or within six (6) hours of the commencement of any off-hire whichever occurs first. (See section entitled "Off-hire" below.)

Any tug offered as a substitute shall have substantially the same characteristics, i.e., shall be similarly fitted and otherwise equal or superior in performance, as the tug for which substituted and shall be fully ready to perform in accordance with this Charter Party upon arrival at the work site designated by Charterer. Any tug substituted under this Clause shall result in no cost increase for Charterer and substitution shall result in no operation delay for Charterer except as provided above. It shall not otherwise excuse any other performance required under this Charter party.

Contracting Officer's notice of acceptance or rejection of the substitute tug shall be made within reasonable time following Owner's nomination thereof, provided that the Contracting Officer is furnished sufficient information on which to base such a determination. Silence of the Contracting Officer shall not be construed as acceptance of any nominated tug.

Notwithstanding Charterer's prior acceptance of any substitute tug under this paragraph, Charterer may at any time reject any previously accepted substitute vessel if it is determined that the characteristics of that substitute tug were misrepresented by the Contractor or are otherwise unsuited to the requirements of this contract.

#### TUG COMPLEMENT AND CREW

The Master(s), Officers and entire crew shall be U.S. Citizens, speak English fluently and possess valid and current certificates, licenses, and documents and have no felony convictions. The Master, Officers and crew of the Tug(s) shall be appointed or hired by the Contractor and shall be deemed to be the servants and agents of the Contractor at all times except as otherwise expressly specified in this contract. The Master(s) of the Tug(s) shall be under the direction of the Government as regards the employment of the Tug(s) under a given order, but shall not be under Government's orders as regards navigation, care, and custody of the Tug(s).

All contractor employees shall have in their possession photo identification at all times when working under this Charter Party Contract. Contractor shall provide, at least quarterly, a complete listing of all personnel assigned under the contract to include name, qualification and position held. It shall also indicate those personnel essential to operate the tugs under emergent conditions.

All contractor employees shall wear a contractor-furnished uniform with Contractor and individual identification clearly and permanently marked. Individual employee's names shall be visible on front of outer clothing. Contractor name shall be visible on the upper back of uniforms.

If the Charterer shall have reason to be dissatisfied with the conduct or performance of the Master, Officers, or crew, the Contractor shall, on receiving particulars of the complaint, investigate the matter and, if necessary to alleviate the cause of the complaint, make a change in personnel.

#### SECURITY CLEARANCES

The Contractor shall obtain and maintain confidential security clearances for the Masters and Officers throughout their service under this contract. IAW SECNAV M-5510.30, all employees working under this contract shall submit an SF-85 and Fingerprint Card to the Naval Base Guam Security Manager and receive a favorable report ("deemed suitable for a public trust position") back from DONCAF prior to gaining long term installation access. The

Contractor is responsible for the immediate removal from the base of any person deemed unsuitable for a public trust position.

## SERVICES

### TYPICAL SERVICES

The following list is provided for illustrative purposes only and describes some of the services that may be performed as requested on the basis of a 24 hour per day, 365 day per year readiness, including but not limited to:

- (a) Towing, twisting, mooring, berthing, docking, streaming, shifting, assisting, pulling, and escorting those Vessel types identified in the table entitled, List of Vessel Classes, below and miscellaneous other Vessels, barges, submarines, crafts, hulls, sleds, derricks, lighters, and objects of whatsoever nature including anything carried thereon. Government reserves the right to use Government-owned or controlled Tugs or Vessels separately or jointly with Owner's Tugs in the performance of any services listed in this Contract;
- (b) Transfers of pilots and Government Personnel by Vessel;
- (c) Tug emergency support services, including responses to weather conditions threatening Vessels, piers, dry-docks, or shore facilities; shipboard fires; Vessels aground; Vessel equipment failures; downed aircraft; oil spills; missions of mercy; collisions; ammunition mishaps; and search-and-rescue operations and shipboard casualty or National Defense Emergency;
- (d) Line handling; and
- (e) Providing personnel (other than a riding crew) to go aboard a tow, and,
- (f) Contractor shall provide adequate staff and communications to promptly respond to Government's requests for services under this Contract on a 24-hour per day basis. Physical manning of the Tugs by Contractor personnel after hours, weekends and holidays is solely at the discretion of the Contractor and is not reimbursed by the Government.

### OTHER SERVICES, RESPONSIBILITIES

#### DRY-DOCKING

- (a) Contractor, at its expense, shall dry-dock, clean and maintain the Vessel's bottom and propeller, and properly make all overhaul and other necessary repairs to maintain the Vessel in class, maintain the Vessel in compliance with this Contract and its warranties above, and otherwise to keep the Vessel tight, staunch, and strong, and in thoroughly efficient order and condition. All towage, pilotage, fuel, gas-freeing if required, water, and other expenses incurred during dry-dock, and while proceeding to and from dry-dock shall be for Owner's account.
- (b) All dry-dockings under this clause shall be scheduled with the Charterer and shall be subject to the off-hire clause.

#### EMERGENCY SITUATIONS AND TRAINING

- (a) General. In the event that the Owner is unwilling or unable to perform such duties as directed, or to respond timely to emergency situations, and upon determination by the Commander, Pacific Fleet (PACFLT) or his designated representative that the emergency so requires, the Owner agrees to relinquish custody and control of the tug(s) to the Government in order to allow the Government to respond to the emergency situation using the

Owner's tug(s)/equipment augmented in whole or in part by a Government crew. Such determination shall be provided to the Tug Master or designated representative by the Contracting Officer or the Contracting Officer's Representative (COR). The period of Government operation and control shall not exceed that time required to respond to the emergency and properly return the tug(s) to Owner's control.

- (b) Mitigation. Owner's release of the tug(s) for emergency operation by the Government shall serve to mitigate Owner's liability, if any, under the Termination for Cause clause of this contract. See FAR 52.212-4. The value of the release of tug(s) to the Government shall be offset against the Contractor's liability under the Termination for Cause clause. During a period of partial or complete augmentation of crew by the Government, as a result of default, the Owner shall not be entitled to charter hire.
- (c) Owner Responsibility. The Owner shall cooperate and provide assistance in reactivation of the tug(s) from cold iron and provide any other assistance directed by the authorized Government representative(s).
- (d) Government Responsibility. The Government shall be responsible for loss or damage to the tug(s) during periods of complete crew augmentation by the Government. During periods of partial crew augmentation, the Government shall be liable for damages resulting from Government action in accordance with the Federal Tort Claims Act.
- (e) Condition of Default. Any failure, untimely response, or refusal to perform any of the services outlined in this contract may be considered a condition of default under this Charter, unless otherwise excepted.
- (f) Training. The Owner shall provide the use of the Tug(s) and master(s) and crew(s) to train Government personnel in the operation of the Tug(s) as directed in writing by the Contracting Officer or COR; said writing to be provided at least 24 hours in advance of the training. The training shall not be "crew augmentation" for purposes of subsection (f)(1) of this section. The Owner shall not be relieved of responsibilities under the section titled "CHARTER NOT A DEMISE" of this Charter during training. See clause 52.212-4 Addendum, paragraph (1)(d).
  - (1) Such training shall include, but not be limited to, the full operation of the tug(s) (e.g., reactivating from cold iron; underway operation; and towage of vessels/submarines). Training shall include hands-on exercises and shall be conducted to ensure that Government personnel are able to properly, effectively and safely augment or replace the Owner's crew. Training shall be of sufficient quality to allow for partial or complete augmentation of the Contractor's crew.
  - (2) Training shall take place during normal operating hours.

#### PHYSICAL SECURITY

The Owner will comply with and implement the Navy Force Protection and Security requirements for the port in which it is docked or berthed (e.g. RAPIDGate Program). All costs shall be included in the basic hire, except for COR or Contracting Officer directed material purchases over \$100 in total value, which shall be subject to the PASS THROUGH REIMBURSABLES Section of the Contract.

#### OFF-HIRE

##### GENERAL

In the event of the loss of time resulting from deficiency and/or default of men including but not limited to misconduct, illness, injury, strikes, labor disruptions, lockouts; deficiency of stores; fire; breakdown of or damage to hull, machinery, or equipment; collision; stranding; grounding; detention by authorities; average accidents to Vessel or cargo unless resulting from inherent vice, quality, or defect of the cargo; repairs; inspections; all dry-dockings including those for the purpose of examination/inspection or painting bottom but not for those dry-dockings under the Alterations clause contained herein; or deviation for the purpose of landing any ill or injured person on board other than any passenger, supercargo, or military personnel who may be carried at Charterer's request; or by any

other cause whatsoever preventing the full working of the Vessel, the payment of hire shall cease for all time lost until the Vessel is again, at a position not less favorable to the Charterer than that at which such loss of time commenced, ready and in a fully efficient state to resume her service. Should the Vessel deviate or put back during a voyage contrary to the orders or directions of the Charterer for any reason, the hire is to be suspended from the time of her deviating or putting back until she is again, at a position not less favorable to the Charterer than that at which such loss of time commenced, ready and in a fully efficient state to resume her service. When the period of time lost to the Charterer on any one occasion is less than two (2) consecutive hours, the hire shall not be reduced for such period, provided no missions were missed during that period of time.

#### COSTS FOR OWNER

The cost of fuel consumed while the Vessel is off-hire, as well as all port charges, pilotages, and other expenses incurred during such period and consequent upon the putting in to any port or place other than that to which the Vessel is bound, shall be borne by the Owner.

#### LOSS OF VESSEL

Should a Tug be either lost or missing, or become a constructive total loss, the portion of the charter for such Tug shall terminate and hire shall cease to be payable at the time of the loss or, if said time is unknown, at the time of the Tug's last received communication. If the Tug should be off-hire or missing when a payment of hire would otherwise be due, such payment shall be postponed until the off-hire period ceases or the safety of the Tug is ascertained, as the case may be.

#### INSURANCE, WAR & WAR RISK

##### INSURANCE

**General.** During the full period of this Charter Party, Owner shall maintain marine insurance coverage on the Vessel, including:

- i. Broad Form Tower's Liability Insurance (including damage to the Tow) on each tug performing under this Contract in the amount of generally accepted industry standards, with trading limits adequate for the services contemplated herein
- ii. Hull and Machinery,
- iii. Protection and Indemnity (P&I) (including Tower's Protection and Indemnity Liability Insurance on each Vessel performing under this Contract in the amount of generally accepted industry standards, with trading limits adequate for the services contemplated herein)
- iv. Government Personnel Training Insurance (shall cover hands-on operation of the vessel equipment by Government personnel while training to operate the vessel under the Emergency Situations and Training clause)

Except as otherwise expressly provided below or as expressly provided in the section entitled "War" all expense for such insurance coverage (including but not limited to premiums, additional premiums, calls, commissions, overspill claims, advancements, assessments, deductibles, and all other insurance costs regardless of Charterer or Owner fault, neglect, action or inaction, or cause of claim or cost whatsoever) shall be for Owner's account and shall be deemed to be included in the hire payable under this Charter Party. Within 10 calendar days following award of this contract, Owner shall provide the Contracting Officer copies of policies or cover notes evidencing that required coverage has been obtained and demonstrating that the coverage is consistent with the requirements of this section. Owner shall make insurance claims under applicable policies for all damages, injuries, or claims arising from or related to this charter when directed by Charterer regardless of Charterer's fault, neglect, action, inaction, or breach of clauses, obligations or warranties (express, implied or otherwise) of this charter contract.

**Notification of 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. All policies shall contain an endorsement stating that any cancellation or material change in the coverage adversely affecting the Government's interest shall not be effective unless the Contractor provides written notice of the same to the Contracting Officer.

**Charterer Named Assured.** The United States of America shall be named as an additional assured with waiver of subrogation under the Owner's Broad Form Tower's Liability Insurance policy, the Owner's Tower's Protection and Indemnity Liability Insurance (P&I) policy, and the Hull and Machinery Insurance policy (and the Increased Value policy if applicable).

#### **WAR.**

Voyage Instructions. Operating limits of the vessel subject to this contract shall be worldwide. If the Vessel is ordered under this Charter Party to any port, place, or zone 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 be reasonably expected to be subject to capture, seizure, arrest, or hostile act by a belligerent power (whether de facto or de jure), pirate, or terrorist, it shall be unreasonable for the Owner not to prosecute said voyage if insurance against said risks is then available commercially or under a Government program, or if the Government offers the Owner indemnification against said risks pursuant to Public Law 85-804.

The Vessel Owner shall immediately notify the Charterer: (i) whenever any sailing orders will result in a vessel subject to this contract being sent beyond the limits of the War Risk Trading Warranties of insurance policies required under this contract (to include entry into a war risk exclusion zone or when the vessel will enter, sail for, or deviate towards the territorial waters of any of the Countries or places, or any other waters described in the Lloyd's Joint War Committee's current List of Areas of Perceived Enhanced Risk); (ii) if there are any changes to the War Risk Trading Warranties of insurance policies required under this contract (including changes to the exclusion zones or the List of Areas of Perceived Enhanced Risk) or changes to War Risk premiums, charges, or deductibles; or (iii) whenever additional premium charges or costs will be incurred as a direct result of compliance with any sailing orders issued by the Charterer under this contract. The Owner shall ensure that the insurers provide it relevant information in a timely manner. If the Owner has given this required notice to the Charterer, the Charterer will reimburse the Owner for the increase in costs (if any) of insurance premiums, charges, or deductibles which arise from the vessel sailing beyond the applicable War Risk Trading Warranties (including changes to the war risk exclusion zones) when entry into any exclusion zone or Area of Perceived Enhanced Risk under such insurance has been approved in advance by the Charterer. The issuance of sailing orders, by itself, does not constitute approval in advance by the Charterer. The Charterer may give the Owner notice and instructions concerning suspension of commercial War Risk insurance coverage and substitution of Government indemnity or Government War Risk insurance as detailed in the section entitled "Government War Risk Insurance/Indemnity" below.

Additional Wage Costs. The Charterer shall reimburse Owner for the cost of provable additional master and crew wages (including all additional bonuses and payments required) to the extent that such additional costs arise directly from exposure of the Vessel, and/or Vessel's master and crew, to the risks described in the paragraph entitled "Voyage Instructions" above. 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 a similar port, place, zone, or route. Owner shall notify Charterer of all anticipated additional wage costs prior to entering any location which would trigger such additional costs; and no such costs shall be reimbursable unless Charterer, after notification of such costs, provides approval to enter such location.

#### **Government War Risk Insurance/Indemnity.**

General. Upon receipt of notice and instruction from the Contracting Officer, as specified in the last sentence of Section 4.2 of the section entitled "War (H-4)" above, with respect to any area excluded by the War Risk



Trading Warranties or included by the Lloyd's Joint War Committee on the Hull War, Strikes, Terrorism and Related Perils Listed Areas (also known as Listed Areas of Perceived Enhanced Risk) under the Owner's commercial War Risk coverage, the Owner shall, as soon as practicable, contact its insurance brokers or underwriters and arrange for the suspension of its commercial War Risk insurance upon entry of the vessel into, or extension of stay of the vessel in such area(s), or when the vessel will enter, sail for, or deviate towards the territorial waters of any of the Countries or places, or any other waters described in the Lloyd's Joint War Committee's current Listed Areas of Perceived Enhanced Risk, as the case may be, subject to resumption of its commercial War Risk insurance upon exiting such area(s). In such instances, the Owner shall accept the Government's indemnity or War Risk insurance, whichever is applicable, in lieu of such commercial War Risk insurance. The Owner shall ensure that the suspension of its commercial War Risk coverage is coincident with the time that any Government indemnity or War Risk insurance becomes effective, and shall likewise ensure that its commercial War Risk insurance is resumed at the time when any Government indemnity or War Risk insurance becomes ineffective. The Owner shall retain the same risks, such as deductibles (if any), that it has under its commercial insurance.

Government War Risk Insurance. Under the authority of 46 U.S.C. § 53905, the United States Maritime Administration (MARAD), at the request of Commander, Military Sealift Command, may furnish the following war risk insurance coverage, which will be effective during the vessel's transit under this Contract in areas which are in war risk exclusion zones, or waters described in the current Lloyd's Joint War Committee Listed Areas of Perceived Enhanced Risk, or otherwise excluded under the Owner's commercial marine War Risk trading warranties, and which are designated by notice from the Contracting Officer to the Owner:

- (1) War Risk Protection and Indemnity insurance covering all liabilities up to an amount of \$250,000,000;
- (2) War Risk Second Seaman's coverage, the principal sum of which shall be \$200,000 per Crew Member for loss of life.

Government Indemnity. Under the authority of Public Law 85-804 (72 Stat. 972, August 28, 1958) and Executive Order 10789, as amended by Executive Order 11610, the Secretary of Defense or the Secretary of the Navy may authorize the Contracting Officer to indemnify the Owner against loss from risks that would be covered by MARAD war risk coverage as set forth in the paragraph entitled "Government War Risk Insurance" directly above.

Non-availability of Insurance. If no commercial or Governmental insurance is available for service under this Charter Party covering the risks identified above in this section, Tug 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 Tug to other port(s) or places(s).

## REIMBURSABLE EXPENSES

### PASS THROUGH REIMBURSABLES

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.

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 \$3,000 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 (1) through (3) below to the Contracting Officer for approval prior to purchasing fuel. For purchases of services and supplies 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.

- (1) A description of the supplies or services to be subcontracted
- (2) Identification of the proposed subcontractor and price
- (3) 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

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.

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.

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.

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.

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

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.

## FUEL

### DELIVERY BUNKERS

Upon delivery of the Tug, the Owner shall present to the Contracting Officer a statement certified by the Owner or its authorized agent showing the amount and grade of fuel on board at the time of delivery with such additional verification as the Contracting Officer may require. The Charterer shall pay for the on-hire bunker survey if performed by an independent surveyor and required by the Contracting Officer.

#### PROVISION OF FUEL

The Charterer shall ordinarily supply or cause to be supplied any or all of the DFM (F76) grade fuels required by the Vessel during the period of this Charter. For charters six months or more, the Government shall be responsible for any fuel testing. For charters less than six months, the Owner shall be responsible for any fuel testing. Testing laboratory confirmation of compatibility and specifications of newly on-board delivered fuel shall constitute acceptance by Owner. The Vessel shall not be off-hire in the event of delay resulting from the supply of fuel found to be off specification, unless for want of due diligence by Owner. If the Owner loads such fuel on the Vessel at his own expense, the Charterer shall reimburse the Owner the reasonable expenses of such loading.

**Owner's Purchase of Fuel.** The Owner shall, if directed by the Charterer, purchase fuel for the Vessel, in which case the Charterer shall, in accordance with the Pass Through Reimbursables clause of this PWS, reimburse the Owner the price paid for all fuel (excluding lube oils) procured by the Owner and loaded in the Vessel during the period of this Charter. Such direction of the Charterer shall be limited to individual fuel purchases and the total amount reimbursable by the Charterer for purchase of fuel and any reasonable expenses paid for loading the fuel aboard the Tug(s) shall not exceed the funding obligated and available under the fuel CLIN or subCLIN at the time the fuel is purchased. Reimbursement shall be paid only upon presentation of properly certified vouchers, supporting receipts, and other documentation, which justify the charges as fair and reasonable. The Owner shall in no event be reimbursed any amount in excess of the current market price of such fuel and reasonable expenses. The title to all fuel of which the Owner is entitled to be reimbursed hereunder shall automatically pass to and vest in the Charterer upon delivery to the Owner or upon the happening of any other event by which title passes from the vendor or supplier thereof to the Owner. The Charterer shall be afforded all benefits of Owner's contracts for its fuel requirements, including but not limited to any savings addressed in contract section titled Savings.

#### OFF-HIRE – FUEL

If the Tug should go off-hire during the period of this Charter, the Owner shall present to the Contracting Officer a statement certified by it or its authorized agent showing the amount of fuel on board at the time the off-hire period commenced and the amount of fuel on board when the off-hire period ended. The Charterer shall be credited for the cost of the fuel consumed during the off-hire period and also reasonable expenses incurred in loading such fuel, with such costs based upon costs at the previous refueling point.

#### REDELIVERY

The Charterer shall reimburse the Owner for the value of fuel consumed during the performance of the contract as documented by the difference in the certified amounts at delivery and redelivery. The Charterer shall be credited with the value of fuel onboard at the time of redelivery, computed at the current market price at the port of redelivery. The Owner shall present to the Contracting Officer a statement certified by the Owner or its authorized agent showing the amount of fuel on board at the time of redelivery. A bunker survey conducted by an independent bunker surveyor approved by the Charterer may be performed at the port of redelivery or such other place, as the Charterer shall direct, at Owner's time and expense.

#### REASONABLE EXPENSES

The term "reasonable expenses" as used in this paragraph, shall mean all reasonable direct expenses paid, excluding crew overtime, which are necessarily incurred in loading said fuel on board the Tug such as: expenses incurred at tanker terminal; loading fuel from lighters, barges, or other craft used as lighters, including lighterage, lighter demurrage, or detention incurred; shifting lighters for the convenience of the Tug; handling lighter lines; and such similar expenses which the Charterer shall find were necessary to pay for the loading of fuel on the Tug(s) during the period of this Charter.

#### PORT EXPENSES

PORT CHARGES AND EXPENSES (MSC 5252.232-9811 (JUN 1998))

EXPENSES FOR CHARTERER

Except as otherwise provided herein, Charterer shall pay expenses of loading and unloading cargo and all wharfage, dockage, canal tolls, dues, taxes, and similar port charges imposed by public authority including consular charges (except those pertaining to the Master, officers, and crew) incurred by the Vessel in ports visited pursuant to Charter's direction. Agency fees, provided not incurred for the convenience of the Vessel or owner shall also be for Charterer's account. The Charterer shall pay all pilotage charged to the Vessel; however, in no case shall the Charterer reimburse the Owner for pilotage paid to the Master or other members of the crew. Surveyors or consultants 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 inspection or surveys generally; the costs shall be incurred only after prior written approval from the Contracting Officer.

#### REIMBURSEMENT

The Owner if so required by the Charterer as noted in the subparagraph above shall pay all of the charges incurred for Charterer's account. The Charterer shall thereafter reimburse the Owner for such charges in accordance with the Pass Through Reimbursables paragraph of the contract.

#### GOVERNMENT PERSONNEL

##### CHARTERER'S OPTION

The Charterer shall have the option of carrying passengers, assigning officers and/or enlisted personnel aboard the Vessel for duty purposes and appointing supercargo (supercargo as used herein is both plural and singular) as far as accommodations and inspection certification allow and in accordance with COMSC Instruction 3120.19 as amended. If supercargo remains onboard for over 24 hours, Charterer shall, in accordance with the Pass Through Reimbursables clause above, pay an amount of \$30.00 per day, per person, covering all expenses including accommodations and victualling. Owner shall victual all other U.S. Government representatives, pilots, and Customs Officers when authorized by Charterer. Charterer shall pay \$7.00 per meal for all such authorized and approved victualling provided as a result thereof.

##### MILITARY PERSONNEL

In addition to the carriage of personnel noted in subparagraph above, Charterer shall have the option to assign other military personnel aboard the Vessel. Such personnel are not to require victualling or berthing facilities from the Vessel unless requested by the military commander aboard, in which case the Owner will, in accordance with the Pass Through Reimbursables clause of this PWS, be reimbursed out-of-pocket expenses not to exceed the amount per person per day set forth in the subparagraph above. Charterer will supply life floats and jackets for the use of such military personnel carried aboard the Vessel during the Charter period. Such items are to be removed by Charterer at termination of Charter.

##### 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 passengers, supercargoes, evacuees, or military personnel in the embarkation, carriage, or debarkation of passengers, supercargoes, evacuees, or military personnel 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 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. Payment for any such loss or damage shall be by agreement of the parties and failure to agree shall be resolved under the FAR clause 52.212-4 (d) Disputes.

#### PLANS AND REPORTS

##### STRIKE CONTINGENCY PLAN

The Contractor shall provide and maintain a strike contingency plan that describes how services will be provided if there is a labor strike or any other deficiency of Master or crewmembers. The plan must be practicable and must clearly state the means and method for vessel manning during a strike or labor action and for providing services in

the face of disruptive measures typical of a strike situation. Award of the contract shall indicate the Contracting Officer's approval of the plan, whose approval shall not be unreasonably withheld.

The Contractor shall update the plan as necessary but not less than yearly and not later than 30 days before the last day for the exercise of each option to extend contract term. Exercise of an option to extend the term of the contract shall indicate the Contracting Officer's approval of the updated plan, whose approval shall not be unreasonably withheld.

#### VESSEL CASUALTY PLAN

The Contractor shall provide and maintain a vessel casualty plan that describes how services will be continued if there is a casualty to the Vessel or to a system that makes the Vessel inoperable or incapable of safely providing a required service. The plan must be practicable and must clearly state the means and method for timely acquisition and deployment of a substitute Vessel in the event of a vessel casualty. Award of the contract shall indicate the Contracting Officer's approval of the plan, whose approval shall not be unreasonably withheld.

The Contractor shall update the plan as necessary but not less than yearly and not later than 30 days before the last day for the exercise of each option to extend contract term. Exercise of an option to extend the term of the contract shall indicate the Contracting Officer's approval of the updated plan, whose approval shall not be unreasonably withheld.

#### EMERGENCY SITUATION TRAINING PLAN

No more than 30 days after award, the contractor shall submit a proposed training plan to meet the requirements of the Emergency Situation and Training clause, if incorporated. A final plan shall be submitted no later than 30 days after receipt of the Government comments on the proposed plan.

#### INCIDENT REPORTS

In all instances in which any vessel being handled by Owner's Vessel(s) sustains damage or is involved in any incident resulting in damage to vessels or property, or in bodily injury or death, Owner shall secure a report from the Vessel Master or Officer acting as pilot, and from any licensed pilot aboard the vessel being handled. Owner shall submit said report to the Contracting Officer via the COR within twenty-four hours following said incident, reporting the facts, listing deaths, reporting the extent of damages to property and any bodily injuries, and listing recommendations to prevent recurrence.

#### WAWF INSTRUCTIONS

##### MSC WIDE AREA WORKFLOW (WAWF) INSTRUCTIONS (FEB 2010)

To implement DFARS 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports (MAR 2008), Military Sealift Command (MSC) utilizes Wide Area Work Flow (WAWF) to electronically process vendor requests for payment. This application allows DoD vendors to submit and track Invoices and Receipt/Acceptance documents electronically.

The contractor is required to utilize this system when processing invoices and receiving reports under this contract/order, unless an exception at DFARS 252.232-7003(c) applies. The contractor shall:

- (i) ensure an Electronic Business Point of Contact is designated in Central Contractor Registration (CCR) at <http://www.ccr.gov>.
- (ii) register to use WAWF at the <https://wawf.eb.mil> site, within ten (10) calendar days after award of this contract or modification. Step by step procedures to register are available at the <https://wawf.eb.mil> site.
- (iii) ensure review of the vendor guide that is available at the MSC site at <http://www.procurement.msc.navy.mil> under the references section.

In the event the Contractor has WAWF questions, contact the MSC WAWF point of contact (POC) at [MSC\\_WAWF\\_INBOX@navy.mil](mailto:MSC_WAWF_INBOX@navy.mil).

NOTE: The POC identified above is for WAWF issues only. Any other contracting questions/problems should be addressed to the Contracting Officer or other person identified in the contract to whom questions are to be addressed.

The contractor is directed to use the Commercial Invoice format when processing invoices and receiving reports.

The information contained in the table below is for WAWF purposes only. If any information included in these instructions, e.g., Ship to DoDAAC, contradicts information elsewhere in this contract, those other terms shall take precedence for any matter other than invoicing and receiving reports.

When entering the invoice into WAWF, the contractor shall fill in the following DoDAAC fields or DoDAAC extensions exactly as shown in the table below. Fields that should not be filled in when entering the invoice into WAWF will be indicated below with the direction, "Leave Blank." [Contracting Office will fill in the following table at time of award to assist contractor with entering data in WAWF.]

WAWF Routing Table	
Contract Number	N00033-12-C-2102
Delivery Order	Leave Blank
Cage Code/Ext	(b) (4)
Pay DoDAAC	N00033
Issue Date	6/28/2012
Admin By DoDAAC	N00033
Issued By DoDAAC	N00033
Ship To Code/Ext	N62387
Ship From Code/Ext	Leave Blank
LPO DoDAAC	Leave Blank
Acceptor Email Address	Leave Blank
Inspect By DoDAAC/Ext	Leave Blank

In some situations the WAWF system will pre-populate the "Pay DoDAAC," "Admin By DoDAAC" and "Issue By DoDAAC." Contractor shall verify that those DoDAACs automatically entered by the WAWF system match the information in the table above. If these DoDAACs do not match, then the contractor shall correct the field(s).

For Receiving Reports, ensure that the "Inspection" and "Acceptance" defaults of "destination" for both fields are not changed.

The CLINs on the WAWF invoice shall be entered as indicated in Section B of the contract document. The contractor shall bill to the lowest level, e.g., the subCLIN level. The Quantity and Unit of Measure fields must be filled out exactly as indicated in the CLINs and subCLINs to reduce the possibility of the invoice being delayed or rejected during processing.

Before closing out of an invoice session in WAWF, but after submitting the document or documents, the contractor will be given the option to send additional email notifications by clicking on the "Send More Email Notifications" link that appears on the page. The contractor shall click on this link and add the acceptor's/receiver's email address in the first email address block and add any other additional email addresses desired in the following blocks. This additional notification to the Government is important to ensure the acceptor/receiver is aware that the invoice documents have been submitted into the WAWF system.

OTHER INFORMATION

GOVERNMENT PROVIDED SERVICES / FACILITIES

The Government shall provide the following to the contractor during period(s) of service:

- (a) Dockage and hotel services (electricity, water and sewage)
- (b) Parking space for three vehicles

POINTS OF CONTACT:

CONTRACTING QUESTIONS				
Contracting Officer	Brian Kimm	COMSC N1031	(b) (6)	(b) (6)
Contract Specialist	(b) (6)	COMSC N1031	(b) (6)	(b) (6)
Contracting Officer's Representative (COR)	(b) (6)	COMSC Guam N31	(b) (6)	(b) (6)
OPERATIONAL QUESTIONS				
Transportation Specialist	(b) (6)	COMSC PM22	(b) (6)	(b) (6)
COR/ACOR	(b) (6)	COMSC Guam N31	(b) (6)	(b) (6)

LIST OF VESSEL CLASSES

Given below is a list of Vessel classes that are likely to be supported during the term of the Contract. The list is for demonstration purposes only and is not a guarantee of Vessel types to be supported.

. AE	. AFDM	. AGDS
. AKE	. AO	. AOE
. AOR	. AR	. ARD
. ARS	. AS	. ASR
. ATF	. AVM	. CG
. CGN	. CV	. CVN
. DD	. DDG	. FF
. FFG	. IX	. LPH
. LHA	. LHD	. LKA
. LPD	. LSD	. LST
. MSO	. SS	. SSBN
. SSN	. Or foreign military vessels equivalent to any of the above	

## CLAUSES INCORPORATED BY FULL TEXT

## 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

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

<http://www.arnet.gov/far/>  
<http://www.acq.osd.mil/dp/dars/dfars/dfars.html>

(End of clause)

## CLAUSES INCORPORATED BY REFERENCE

252.223-7002 Safety Precautions For Ammunition And Explosives MAY 1994

## CLAUSES INCORPORATED BY FULL TEXT

## 52.212-4 CONTRACT TERMS AND CONDITIONS-- COMMERCIAL ITEMS (FEB 2012)

In accordance with FAR 12.302(a) and (d) the specified paragraphs (identified as "Tailored") are tailored for this Contract. The tailored paragraphs below replace the corresponding paragraphs in FAR 52.212-4.

## (a) INSPECTION/ACCEPTANCE (Tailored).

- (1) The Tug(s) and Associated Equipment shall, at the Charterer's discretion, be subject to the Charterer's inspection as to suitability of the required service prior to delivery (hereinafter, "delivery inspection") and at any subsequent time during the term of this Contract to determine continued suitability for the required service, including but not limited to a determination as to whether the material condition of the Tug(s) and/or Associated Equipment might prevent or impair effective operation during the basic and any exercised optional periods of this Contract.
- (2) Should actual performance or readiness condition of the Tug(s) or Associated Equipment fail to fully comply with one or more warranty, expressed or implied, or fail to fully comply with any other Contract specification or requirement not due to the fault of the Charterer, the hire may be equitably decreased or the Tug(s) may be placed off-hire at Charterer's sole discretion.
- (3) This Contract may be terminated in whole or in part at no cost to the Charterer upon Contractor's failure to correct any discrepancy in the condition of the Tug(s) or Associated Equipment, which discrepancy prevents or materially impairs the performance of any required service, within a reasonable time after receipt of notice of such discrepancy.
- (4) The remedies provided by this paragraph shall not limit any other remedy available at Law or in Equity, or otherwise provided under this Contract.



(b) 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.

(c) CHANGES (Tailored). The Contracting Officer may order changes within the general scope of any of the terms and conditions of this Contract. If any such change causes an increase or decrease in the cost of performance, such change will be the subject of a bilateral modification to the Contract. Failure to agree as to the increase or decrease in the cost of performance shall be resolved under the "Disputes" paragraph of this Contract.

(d) Disputes. 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.

(e) DEFINITIONS (Tailored). The clause at FAR 52.202-1, Definitions, is incorporated herein by reference. Additional definitions are provided at Addendum, paragraph (t), below.

(f) EXCUSABLE DELAYS (Tailored).

(1) Neither the Contractor nor the Charterer shall, unless otherwise in this Charter Party expressly provided, be liable to the other for any delay, loss, damage or failure in performing hereunder arising out of or resulting from an occurrence such as, acts of God; acts of the public enemy, pirates, or assailing thieves; arrest or restraint of princes, rulers, or peoples; seizure under legal process provided bond is promptly furnished to release the Tug; flood; fire; blockade; riot, insurrection, or civil commotion; earthquake; storm; lightning; epidemic; or explosion.

(2) The Tug shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the purpose of saving life or property, or to go into dry dock or into ways with or without cargo, passengers or other personnel, as applicable, onboard.

(3) *Notification.* The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(4) *Reservation.* The exceptions identified in subparagraph (1) above shall not be such as to affect the Contractor's warranties respecting the condition of the Tug nor the Contractor's obligations respecting the services specified.

(g) 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) 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.
  - (h) Patent indemnity. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.
  - (i) Payment.--
    - (1) Items accepted. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.
    - (2) Prompt payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.
    - (3) Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.
    - (4) Discount. 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.
    - (5) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall--
      - (i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the--

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) Interest.

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if--

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on--

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(j) RISK OF LOSS. (Tailored). Any and all costs associated with the following shall be for the sole account of the Contractor without recourse to the Charterer provided that, during preparations for or performance of services under this Charter Party contract, any of the following results from any negligence, wrongful act, or omission of Contractor or its agents, servants, employees, or subcontractors; or from any unseaworthiness, unfitness, or breakdown of the Tug or any gear or other equipment furnished by Contractor:

- (1) Injury or death of Master or crew of the Tug, or of Captain, Officers, or crew of the Tow;
- (2) Injury or death of any other person aboard the Tug or Tow;
- (3) Loss or damage of whatsoever nature sustained by the Tug or Tow, or any property aboard the Tug or Tow;
- (4) Loss or damage of whatsoever nature caused to or suffered by third parties or their property by reason of contact with the Tug or Tow, or by any obstruction created by the presence of the Tug or Tow;
- (5) Any liability in respect to wreck removal for the Tug or Tow, or in respect to the expense of moving or lightening or buoying the Tug or Tow, or in respect to preventing or abating pollution originating from the Tug.

(k) Taxes. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) 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 which reasonably could have been avoided.

(m) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) WARRANTY (Tailored).

(1) Contractor warrants that the Tug(s) shall be in full conformity with the requirements of this Charter Party Contract from the time of delivery and thereafter. Should any specification of the Tug(s) offered and accepted by award of the Contract be in excess of a specification stated in the solicitation or elsewhere in this Contract, the offered and accepted specification shall prevail over the required specification and the Contractor warrants full conformity with the specification as offered and accepted.

(2) The Contractor warrants that the Tug(s) and all Associated Equipment shall be in full compliance with all applicable International Conventions and all applicable laws, regulations, and other requirements of the nation of registry and of the nation(s) and local jurisdictions to whose port(s) and/or place(s) it is

contemplated that the Tug(s) will be ordered hereunder. The Tug(s) shall additionally operate in compliance with the International Maritime Dangerous Goods Code.

(3) The Owner further warrants that the Vessel shall have onboard 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 and promulgated pursuant to the U.S. Federal Water Pollution Control Act, as amended, and/or the Oil Pollution Act of 1990.

(4) *Complement.* The Owner warrants that the Vessel shall have an efficient and legally sufficient complement of Masters, Officers, and crew with adequate training and experience to safely and effectively operate the Tug(s) and all Associated Equipment.

(p) Limitation of liability. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) 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.

(r) 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. 3701, 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.

(s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) the Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause; (3) the clause at 52.212-5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; and (9) the specification.

(t) Central Contractor Registration (CCR). (1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of subpart 42.12; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via CCR accessed through <https://www.acquisition.gov> or by calling 1-888-227-2423 or 269-961-5757.

(End of clause)

#### 52.212-4 ADDENDUM

<p>52.212-4 CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (FEB` 2012) (TAILORED PARAGRAPHS)</p>
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1. In accordance with FAR 12.301(e) and FAR 12.302, the following paragraphs, stating additional terms and conditions consistent with customary commercial practice and necessary for performance of the contract, are added to FAR 52.212-4.

(a) ALTERATIONS (MSC 5252.245-9801 (VARIATION)).

The Charterer shall be at liberty to make any additional alterations it may require beyond what is on board at the commencement of the Charter and to install any equipment or defensive armament (including demagnetization by installed equipment or other process, e.g., degaussing, wiping, or deperming), to install any additional gear or equipment for loading, carrying or discharging cargoes, and to repaint the Vessel. Such work shall be done at the Charterer's expense and on its time and shall not be such as to be in contravention of any applicable law of the United States or regulation made pursuant thereto.

Such equipment, armament, materials, and gear so fitted are to be considered "Government Property" under the terms of FAR clause 52.245-2 incorporated by reference. The Charterer shall, during the period of the Charter, remove the same together with any alterations and additions thereto at its expense and time and shall restore the Vessel to her condition and color prior to such changes, ordinary wear and tear excepted. The Government shall have the right to abandon in place any alteration or Government furnished property, unless the Contracting Officer is notified in writing within 30 days of completion of any alteration that the Contractor requests such restoration or removal.

(b) BROKER. The broker of this Charter, if any, shall be the party identified in the offer. Brokers must obtain a power of attorney executed by the vessel owners prior to submitting offers under their own signatures, signing representations and certifications or executing finalized contracts and must submit same to Government with the finalized contract. Any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this Charter shall be for the Owner's account.

(c) NO COST CANCELLATION OF CONTRACT. The Government shall have the right to cancel the contract at no cost upon 30-days written notice by the Contracting Officer in any option period.

(d) CHARTER NOT A DEMISE (MSC 5252.247-9823 (DEC 1988)).

Nothing herein contained shall be construed as creating a demise of the Vessel to the Charterer, the Owner under this Charter retaining complete and exclusive possession and control of the Vessel and her navigation.

(e) RESERVED.

(f) **LAWS GOVERNING:** The laws of the United States shall govern this contract.

(g) **LIMITATIONS (MSC 5252.247-9832 (JAN 1998)).** The Owner shall have the benefit of all limitations of and exemptions from liability accorded to the Owner or Chartered Owner of the Vessel by any 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 such statute or rule of law limiting the Contractor's liability is subordinate to any statutorily mandated provision of this Charter by operation of law. Nothing in this Charter Party shall operate to limit or deprive the Owner of any statutory exceptions or limitation of liability on the theory of personal contract or otherwise.

(h) **NEGLIGENCE OF PILOTS (MSC 5252.247-9815 (JAN 1998)).** The Government shall not be held responsible, liable, or accountable for losses sustained by the Contractor, the vessel(s) being assisted by the Contractor's tug(s), or other vessels through the negligence of pilots although engaged by the Government.

(i) **PORTS/PLACES.** The Charterer shall not be deemed to warrant the safety of any berth or place and shall not be liable or accountable for any loss, damage, injury, or delay resulting from any unsafe condition at any berth or place unless caused by Charterer's failure to exercise due diligence.

(j) **OWNER'S OBLIGATION.** The Owner shall, unless otherwise provided herein, provide and pay for all provisions; deck, engine room, and galley stores and fresh water; insurance on the Vessel; wages of, transportation of, and services for Master, Officers, and crew and consular fees pertaining to them in accordance with the subparagraph Port Charges and Expenses. Owner will be responsible for all port charges associated with the foregoing.

(k) **READINESS (MSC 5252.246-9810 (JAN 1998)).** Readiness is a required service of the Vessel. Readiness shall be defined as the ability of a Vessel and Associated Equipment to perform the function for which designed, built, or chartered, including the ability to deploy without delays, whether or not so ordered to perform. If there is a degradation of this readiness, such that actual performance or condition of the Vessel or Associated Equipment shows any failure to satisfy one or more of the Owner's warranties or renders the Vessel in less than a fully efficient state, the hire will be proportionately decreased so as to indemnify the Charterer to the extent of such failure, this Charter Party to remain otherwise unaffected. Failure of the parties to agree upon the extent of the proportional decrease in hire shall be a dispute under the clause entitled "Disputes" incorporated herein by reference. Nothing in this clause shall limit the rights of the Charterer to place the Vessel off-hire pursuant to the Off-hire section of the contract.

(l) **SALVAGE:** All salvage moneys earned by the Vessel during the period of this Charter shall be divided equally between the Owner and the Charterer after deducting Master's, Officers' and crew's shares, legal expense, vessel hire lost, if any, as a result of the salvage service, value of fuel consumed (which shall be paid in full to the Charterer from the salvage award), repairs of damage, if any, and other extraordinary loss or expense sustained as a result of the salvage service. Charter hire shall continue to be paid by Charterer during deviations for the purpose of performing salvage service.

(m) **SAVINGS (MSC 5252.232-9813 JAN 1998)).** The Owner agrees that any refunds, rebates, credits, discounts, insurance payments, or other amounts (including any interest thereon) accruing to or received by the Owner under this Charter shall be paid by the Owner to the Government to the extent that they are properly allocable to costs, expenses, or reimbursements for which the Owner has been compensated by the Government under the terms of this Charter. The foregoing shall apply to any savings to the Owner resulting from a fleet reduction, applied on a pro rata basis.

(n) **STANDARDS OF APPEARANCE (MSC 5252.247-9864 (JAN 1998) VARIATION).** The Tug(s) operated under this Contract will operate in direct support of the U.S. Government and the Department of Defense; they must therefore meet the highest possible standards of appearance and Vessel smartness.

(o) SUBCHARTER (MSC 5252.247-9822 (DEC 1988)). 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 time or voyage charter. If Charterer shall enter into any such charter, Charterer shall nevertheless remain liable for the due performance of this Charter. Any such subcharter shall include a provision that it is subject to the provisions of this Charter Party.

(p) Reserved

(q) Reserved

(r) WAIVER OF CLAIMS. All requests for equitable adjustment to the contract price and any other claims whatsoever for monies due under this contract must be submitted to the Contracting Officer pursuant to the clause entitled "Disputes" within six (6) months of the redelivery of the vessel. All requests for equitable adjustment and any other claims whatsoever for monies due under this contract that are not submitted within the six (6) month limit, shall deemed to have been waived by the Owner.

(s) GENERAL DEFINITIONS.

"Assisting" - Movement of a tow, which is making use of, or which has available for use, her own propulsion
"Associated Equipment" - Construed to include all Contractor-furnished or owned equipment necessary for performance under this Contract
"Crew" – Members of the Vessel(s) identified in rate schedule.
"Dry-docking" - For purposes of this Contract dry-docking shall mean any removal of the Vessel from the water for any purpose.
"Line-handling" - Movement or transportation of the tow's lines ashore by Tug's crew
"Master" – Master of the Vessel identified in the rate schedule
"Overtime" – As shown in statement of work.
"Owner" - That entity exercising commercial control of the Vessel(s) identified in the Rate Schedule; 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
"Owner's Representative" - See "Representative", below
"Place" - Any berth, dock, anchorage, submarine line, alongside any Vessel or lighter or any other place whatsoever to which Charterer is entitled to direct the Vessel hereunder
"Representative" - Foreman, superintendent, dispatcher, supervisor, or manager employed and designated by Owner to respond to Government requests for service under this Contract
"Vessel/Vessels" - Those Vessels identified in the Rate Schedule and any other Vessel(s) accepted by the Government for use under this Contract (the word "Vessel" as used in this Contract is both plural and singular).



## CLAUSES INCORPORATED BY FULL TEXT

## 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (JAN 2012)

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

(1) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).

\_\_\_ Alternate I (Aug 2007) of 52.222-50 (22 U.S.C. 7104(g)).

(2) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(3) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: (Contracting Officer check as appropriate.)

X (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

X (2) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

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

\_\_\_ (4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Jul 2010) (Pub. L. 109-282) (31 U.S.C. 6101 note).

\_\_\_ (5) 52.204-11, American Recovery and Reinvestment Act—Reporting Requirements (Jul 2010) (Pub. L. 111-5).

X (6) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Dec 2010) (31 U.S.C. 6101 note).

\_\_\_ (7) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (JAN 2012) (41 U.S.C. 2313).

\_\_\_ (8) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (section 740 of Division C of Pub. L. 111-117, section 743 of Division D of Pub. L. 111-8, and section 745 of Division D of Pub. L. 110-161).

\_\_\_ (9) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (NOV 2011) (15 U.S.C. 657a).

X (10) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 2011) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

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

\_\_\_ (12)(i) 52.219-6, Notice of Total Small Business Set-Aside (NOV 2011) (15 U.S.C. 644).

\_\_\_ (ii) Alternate I (NOV 2011).

\_\_\_ (iii) Alternate II (NOV 2011).

\_\_\_ (13)(i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).

\_\_\_ (ii) Alternate I (Oct 1995) of 52.219-7.

\_\_\_ (iii) Alternate II (Mar 2004) of 52.219-7.

X (14) 52.219-8, Utilization of Small Business Concerns (Jan 2011) (15 U.S.C. 637(d)(2) and (3)).

\_\_\_ (15)(i) 52.219-9, Small Business Subcontracting Plan (Jan 2011) (15 U.S.C. 637(d)(4)).

\_\_\_ (ii) Alternate I (Oct 2001) of 52.219-9.

\_\_\_ (iii) Alternate II (Oct 2001) of 52.219-9.

\_\_\_ (iv) Alternate III (Jul 2010) of 52.219-9.

\_\_\_ (16) 52.219-13, Notice of Set-Aside of Orders (NOV 2011) (15 U.S.C. 644(r)).

\_\_\_ (17) 52.219-14, Limitations on Subcontracting (NOV 2011) (15 U.S.C. 637(a)(14)).

X (18) 52.219-16, Liquidated Damages—Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).

\_\_\_ (19)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Oct 2008) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

\_\_\_ (ii) Alternate I (June 2003) of 52.219-23.

\_\_\_ (20) 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Dec 2010) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

\_\_\_ (21) 52.219-26, Small Disadvantaged Business Participation Program— Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

\_\_\_ (22) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (NOV 2011) (15 U.S.C. 657f).

(23) 52.219-28, Post Award Small Business Program Rerepresentation (Apr 2009) (15 U.S.C. 632(a)(2)).

\_\_\_ (24) 52.219-29, Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns (NOV 2011).

\_\_\_ (25) 52.219-30, Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (NOV 2011)

(26) 52.222-3, Convict Labor (June 2003) (E.O. 11755).

\_\_\_ (27) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Jul 2010) (E.O. 13126).

(28) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).

(29) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(30) 52.222-35, Equal Opportunity for Veterans (Sep 2010)(38 U.S.C. 4212).

(31) 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).

(32) 52.222-37, Employment Reports on Veterans (Sep 2010) (38 U.S.C. 4212).

\_\_\_ (33) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).

(34) 52.222-54, Employment Eligibility Verification (Jan 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

\_\_\_ (35)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

\_\_\_ (ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

\_\_\_ (36) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).

\_\_\_ (37)(i) 52.223-16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (Dec 2007) (E.O. 13423).

\_\_\_\_ (ii) Alternate I (Dec 2007) of 52.223-16.

\_\_\_\_ (38) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011) (E.O. 13513).

\_\_\_\_ (39) 52.225-1, Buy American Act—Supplies (Feb 2009) (41 U.S.C. 10a-10d).

\_\_\_\_ (40)(i) 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act (June 2009) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, Pub. L. 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, and 110-138).

\_\_\_\_ (ii) Alternate I (Jan 2004) of 52.225-3.

\_\_\_\_ (iii) Alternate II (Jan 2004) of 52.225-3.

\_\_\_\_ (41) 52.225-5, Trade Agreements (NOV 2011) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

\_\_\_\_ (42) 52.225-13, Restrictions on Certain Foreign Purchases (June 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

\_\_\_\_ (43) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150)

\_\_\_\_ (44) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

\_\_\_\_ (45) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

\_\_\_\_ (46) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

  X   (47) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (Oct 2003) (31 U.S.C. 3332).

\_\_\_\_ (48) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (May 1999) (31 U.S.C. 3332).

\_\_\_\_ (49) 52.232-36, Payment by Third Party (Feb 2010) (31 U.S.C. 3332).

\_\_\_\_ (50) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

\_\_\_\_ (51)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).

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

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

  X   (1) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, et seq.).

X   (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

  X   (3) 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (Sep 2009) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

       (4) 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Sep 2009) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

       (5) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (Nov 2007) (41 351, et seq.).

       (6) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (Feb 2009) (41 U.S.C. 351, et seq.).

       (7) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Mar 2009) (Pub. L. 110-247).

       (8) 52.237-11, Accepting and Dispensing of \$1 Coin (Sept 2008) (31 U.S.C. 5112(p)(1)).

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

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

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

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

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

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (APR 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note).

(ii) 52.219-8, Utilization of Small Business Concerns (DEC 2010) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iii) Reserved.

- (iv) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).
  - (v) 52.222-35, Equal Opportunity for Veterans (SEP 2010) (38 U.S.C. 4212).
  - (vi) 52.222-36, Affirmative Action for Workers with Disabilities (OCT 1998) (29 U.S.C. 793).
  - (vii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.
  - (viii) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, et seq.).
  - (ix) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).
- Alternate I (AUG 2007) of 52.222-50 (22 U.S.C. 7104(g)).
- (x) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (Nov 2007) (41 U.S.C. 351, et seq.).
  - (xi) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements (FEB 2009) (41 U.S.C. 351, et seq.).
  - (xii) 52.222-54, Employment Eligibility Verification (JAN 2009).
  - (xiii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (MAR 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.
  - (xiv) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.
- (2) While not required, the contractor May include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

**252.212-7001 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (DEC2011)**

(a) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) clause which, if checked, is included in this contract by reference to implement a provision of law applicable to acquisitions of commercial items or components.

  X   52.203-3, Gratuities (APR 1984) (10 U.S.C. 2207).

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

- (1) \_\_\_ 252.203-7000, Requirements Relating to Compensation of Former DoD Officials (SEP 2011) (Section 847 of Pub. L. 110-181).
- (2) \_\_\_ 252.203-7003, Agency Office of the Inspector General (SEP 2010)(section 6101 of Pub. L. 110-252, 41 U.S.C. 3509).
- (3)  252.205-7000, Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).
- (4) \_\_\_ 252.219-7003, Small Business Subcontracting Plan (DoD Contracts) (SEP 2011) (15 U.S.C. 637).
- (5) \_\_\_ 252.219-7004, Small Business Subcontracting Plan (Test Program) (JAN 2011) (15 U.S.C. 637 note).
- (6)(i) \_\_\_ 252.225-7001, Buy American Act and Balance of Payments Program (OCT 2011) (41 U.S.C. chapter 83, E.O. 10582).
- (ii) \_\_\_ Alternate I (OCT 2011) of 252.225-7001.
- (7) \_\_\_ 252.225-7008, Restriction on Acquisition of Specialty Metals (JUL 2009) (10 U.S.C. 2533b).
- (8) \_\_\_ 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals (JAN 2011) (10 U.S.C. 2533b).
- (9) \_\_\_ 252.225-7012, Preference for Certain Domestic Commodities (JUN 2010) (10 U.S.C. 2533a).
- (10) \_\_\_ 252.225-7015, Restriction on Acquisition of Hand or Measuring Tools (JUN 2005) (10 U.S.C. 2533a).
- (11) \_\_\_ 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings (JUN 2011) (Section 8065 of Pub. L. 107-117 and the same restriction in subsequent DoD appropriations acts).
- (12) \_\_\_ 252.225-7017, Photovoltaic Devices (DEC 2011) (Section 846 of Pub. L. 111-383).
- (13)(i) \_\_\_ 252.225-7021, Trade Agreements (OCT 2011) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).
- (ii) \_\_\_ Alternate I (OCT 2011) of 252.225-7021.
- (iii) \_\_\_ Alternate II (OCT 2011) of 252.225-7021.
- (14) \_\_\_ 252.225-7027, Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).
- (15) \_\_\_ 252.225-7028, Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).
- (16)(i) \_\_\_ 252.225-7036, Buy American Act—Free Trade Agreements—Balance of Payments Program (OCT 2011) (41 U.S.C. chapter 83 and 19 U.S.C. 3301 note).
- (ii) \_\_\_ Alternate I (OCT 2011) of 252.225-7036.
- (iii) \_\_\_ Alternate II (OCT 2011) of 252.225-7036.
- (iv) \_\_\_ Alternate III (OCT 2011) of 252.225-7036.
- (17) \_\_\_ 252.225-7038, Restriction on Acquisition of Air Circuit Breakers (JUN 2005) (10 U.S.C. 2534(a)(3)).

- (18) \_\_\_ 252.225-7039, Contractors Performing Private Security Functions (AUG 2011) (Section 862 of Pub. L. 110-181, as amended by section 853 of Pub. L. 110-417 and sections 831 and 832 of Pub. L. 111-383).
- (19) \_\_\_ 252.226-7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004) (Section 8021 of Pub. L. 107-248 and similar sections in subsequent DoD appropriations acts).
- (20) \_\_\_ 252.227-7013, Rights in Technical Data--Noncommercial Items (SEP 2011), if applicable (see 227.7103-6(a)).
- (21) \_\_\_ 252.227-7015, Technical Data—Commercial Items (DEC 2011) (10 U.S.C. 2320).
- (22) \_\_\_ 252.227-7037, Validation of Restrictive Markings on Technical Data ((SEP 2011), if applicable (see 227.7102-4(c)))(10 U.S.C. 2321).
- (23) X 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports (MAR 2008) (10 U.S.C. 2227).
- (24) \_\_\_ 252.237-7010, Prohibition on Interrogation of Detainees by Contractor Personnel (NOV 2010) (Section 1038 of Pub. L. 111-84)
- (25) \_\_\_ 252.237-7019, Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Pub. L. 108-375).
- (26) X 252.243-7002, Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).
- (27) \_\_\_ 252.246-7004, Safety of Facilities, Infrastructure, and Equipment For Military Operations (OCT 2010) (Section 807 of Pub. L. 111-84).
- (28) \_\_\_ 252.247-7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (SEP 2010) (Section 884 of Pub. L. 110-417).
- (29)(i) X 252.247-7023, Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).
- (ii) \_\_\_ Alternate I (MAR 2000) of 252.247-7023.
- (iii) \_\_\_ Alternate II (MAR 2000) of 252.247-7023.
- (iv) \_\_\_ Alternate III (MAY 2002) of 252.247-7023.
- (30) X 252.247-7024, Notification of Transportation of Supplies by Sea (MAR (2000) (10 U.S.C. 2631).
- (31) \_\_\_ 252.247-7027, Riding Gang Member Requirements (OCT 2011) (Section 3504 of Pub. L. 110-417).

c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items clause of this contract (FAR 52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

- (1) 252.225-7039, Contractors Performing Private Security Functions (AUG 2011) (Section 862 of Pub. L. 110-181, as amended by section 853 of Pub. L. 110-417 and sections 831 and 832 of Pub. L. 111-383).
- 2) 252.227-7013, Rights in Technical Data--Noncommercial Items (SEP 2011), if applicable (see 227.7103-6(a)).



- (3) 252.227-7015, Technical Data--Commercial Items (DEC 2011), if applicable (see 227.7102-4(a)).
- (4) 252.227-7037, Validation of Restrictive Markings on Technical Data (SEP 2011), if applicable (see 227.7102-4(c)).
- (5) 252.237-7010, Prohibition on Interrogation of Detainees by Contractor Personnel (NOV 2010) (Section 1038 of Pub. L. 111-84).
- (6) 252.237-7019, Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Pub. L. 108-375).
- (7) 252.247-7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (SEP 2010) (Section 884 of Pub. L. 110-417).
- (8) 252.247-7023, Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).
- (9) 252.247-7024, Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(End of clause)

#### 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. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. 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 anytime before redelivery of the Vessel.

(End of clause)

#### MSC 5252.217-9806 Option to Extend the Term of the Contract - ALT I (DEC 2005)

- (a) The Government may extend the term of this contract by written notice to the contractor anytime prior to redelivery of the Vessel. The Government may, but is not required to, give the contractor a preliminary notice of its intent to extend anytime prior to redelivery of the Vessel. The preliminary notice, if provided, 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 59 months.

(End of Clause)

#### 52.232-18 AVAILABILITY OF FUNDS (APR 1984)

Funds are not presently available for this contract. The Government's obligation under this contract is contingent

upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(End of clause)