

**MILITARY SEALIFT COMMAND  
DRY CARGO TIME CHARTER (DRYTIME – SPOT 13.5)  
SEPTEMBER 2022 (09-22)**

PREAMBLE

1. This Request for Proposals (RFP) is a solicitation for offers to perform a Charter Party (the “Contract” or the “Charter”) in accordance with the terms and conditions herein.
2. The Charter, when awarded, will consist of the completed Standard Form (SF) 1449, this Preamble, and Parts I through IX.
3. The signature of the Contracting Officer on SF 1449 signifies acceptance of the Contractor’s proposal and award of the Charter. The SF 1449 and Parts I through IX contain in full all of the amendments, references, responses, deletions, additions and interlineations made by both parties to the RFP and the proposal as of the Charter Party date. In the event that there is any inconsistency between the terms and conditions of this Contract and those in an offeror’s proposal, this Contract shall control. All references to boxes in Parts II through IX shall be to Part I boxes unless otherwise stated.
4. Each of the Parts or any portion thereof of this Charter Party shall be deemed severable, and should any Part or any portion thereof be held invalid, illegal, or unenforceable, the remaining Parts and portions thereof shall continue in full force and effect. The headings herein are for the sake of convenience and reference only, and shall not affect the interpretation of this Charter Party.

**LIST OF EFFECTIVE CHANGES**

Revision Number	Description	Date
N/A	Part II FAR 52.212-4 Contract Terms and Conditions - Commercial Items (NOV 2021); Updated	Sep 2022
	Part III(m) Press Release; added.	
	Part III(n) Vessel Name Release; added.	
	Part IV(o)(1) Provisions, Insurance, Wages, Fees, and Other Expenses; paragraph revised.	
	Part IV(ad)(5); amended to read, "Reserved."	
	Part IV(ad); deleted last paragraph.	
	Part VI FAR 52.212-5; updated.	
	Part VIII(b)42 DFARS 252.204-7018 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services; added and checked.	
	Part VIII(c)(9) FAR 52.211-14 Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use (Apr 2008); added and checked.	
	Part X(b)(16)(xvi); revised to read: Dependent upon response(s) to FAR 52.204-26, completed FAR 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Service or Equipment (see DRYTIME Part XII).	
	Part X(b)(16)(xxii) Completed DFARS 252.204-7016 Covered Defense Telecommunications Equipment or Services—Representation (See DRYTIME Part XII); added.	
	Part X(b)(16)(xxiii) Dependent upon response to DFARS 252.204-7016, completed DFARS 252.204-7017 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services—Representation (see DRYTIME Part XII); added.	
	Part XI(d) Past Performance; paragraph revised. Added last three sentences.	
	Part XII(c)(3) FAR 52.212-3; updated.	
	Part XIII(b)(4) DFARS 252.204-7016 Covered Defense Telecommunications Equipment or Services—Representation (DEC 2019); added.	
	Part XIII(b)(5) DFARS 252.204-7017 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services—Representation (MAY 2021); added.	

**MILITARY SEALIFT COMMAND  
COMMERCIAL ITEM ACQUISITION  
DRYTIME CHARTER**

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  - (6) DFARS 252.204-7000 Disclosure of Information
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  - (8) Reserved
  - (9) DFARS 252.209-7004 Subcontracting with Firms that are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism
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  - (5) Reserved
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  - (5) FAR 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (NOV 2021)
  - (6) FAR 52.204-26 Covered Telecommunications Equipment or Services-Representation (OCT 2020)
  - (7) FAR 52.229-11 Tax on Certain Foreign Procurements—Notice and Representation (JUN 2020)
  - (8) FAR 52.222-56 Certification Regarding Trafficking in Persons Compliance Plan (OCT 2020)

**XIII. OFFEROR REPRESENTATIONS AND CERTIFICATIONS REQUIRED  
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  - (2) Reserved
  - (3) DFARS 252.204-7019 Notice of NIST SP 800-171 DoD Assessment Requirements (NOV 2020)
- (b) Required (Incorporated by Full Text)
  - (1) DFARS 252.209-7998 Representation Regarding Conviction of a Felony Criminal Violation Under any Federal or State Law (DEVIATION 2012-O0007) (MAR 2012)
  - (2) Reserved
  - (3) Reserved
  - (4) DFARS 252.204-7016 Covered Defense Telecommunications Equipment or Services—Representation (DEC 2019)
  - (5) DFARS 252.204-7017 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services—Representation (MAY 2021)
- (c) Required DFARS Clause by Contracting Officer as Applicable
  - (1) DFARS 252.247-7026 Evaluation Preference for Use of Domestic Shipyards – Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade (NOV 2008)



## MSC DRYTIME 2022

### PART I - DRYTIME BOXES

Solicitation Number (date):		Contract Number (date):	
1. Vessel(s) Required:		2. Place/Range of Delivery:	
		3. Place/Range of Redelivery:	
4. Charter Period:		5. Laydays:  Commencing:  Cancelling:	
6. Terms/Conditions/Attachments added, deleted or modified:			

Vessel(s):
Owner, Unique Entity Identifier (UEI), CAGE Code, TIN (and TIN of parent, if applicable):

	Vessel(s):
Solicitation Number (date):	Contract Number (date):
GENERAL DATA	
7. Vessel/Flag/Year Built:	8. Proposal Firm Until:
9. Amendments Acknowledged (amendment numbers and dates):	
10. Owner (name, address, phone, e-mail, fax):	11. Broker (address, phone, e-mail, fax):
CPARS POC, if different from above (name, email):	12. Remittance address for hire (if other than box 10):

		Vessel(s):
Solicitation Number (date):		Contract Number (date):
		Full Operational Status (FOS) – Per Day
13. Base Period: <b>INSERT NUMBER OF DAYS</b>		\$
14. 1st Option: <b>INSERT NUMBER OF DAYS</b>		\$
15. 2nd Option: <b>INSERT NUMBER OF DAYS</b>		\$

16. Reserved

17. Delivery/Redelivery Bonuses: **Must be Explained by Offeror**

	Vessel(s):
Solicitation Number (date):	Contract Number (date):
18. Laydays Proposed:	19. Estimated Readiness Date:
VESSEL DATA	
20. Voluntary Intermodal Sealift Agreement (VISA) Status of Offeror and Vessel(s): SELECT ONE	
Offeror IS a VISA Participant	Vessel(s) offered IS (ARE)) Enrolled in VISA
Offeror HAS APPLIED to be a VISA Participant	Vessel(s) offered WILL BE Enrolled in VISA
Offeror IS NOT a VISA Participant	Vessel(s) IS (ARE) Not Enrolled in VISA
21. Vessel type and, if applicable, MARAD design type:	
22. Place built	23. Year built:                      Flag:
24. INMARSAT Ident.:	25. Vessel's e-mail/Fax:
26. Call Letters:	27. Official number:
28. Net registered tonnage:	29. Panama Canal tonnage:
30. Gross registered tonnage:	31. Suez Canal tonnage:
32. Beam (extreme) a. (ft)                      b. (m)	33. Length Overall: a. (ft)                      b. (m)
34. Immersion (on draft in Box 36): a. (LT/in)                      b. (t/cm)	35. Length between perpendiculars: a. (ft)                      b. (m)
36. Summer mean draft: a. (ft)                      b. (m)	37. Deadweight capacity (on draft in Box 36): a. (LT)                      b. (t)
38. Displacement, loaded (on draft in Box 36): a. (LT/in)                      b. (t/cm)	39. Summer Load Line Freeboard: a. (ft)                      b. (m)
40. Shaft Horsepower/kilowatts: a. (hp)                      b. (kW)	41. Brake Horsepower/kilowatts: a. (hp)                      b. (kW)
42. Nationality of Master/Officers/Crew:	43. Number of persons other than crew that can be carried:
44. Classification society entered and class assigned:	
45. Insured value of vessel (USD):	46. Vessel's present position/destination:
47. Last dry-dock date (mm/dd/yy):	48. Next dry-dock date (mm/dd/yy):
49. MarAd subsidized vessel:      Yes _____                      No _____	



	Vessel(s):
Solicitation Number (date):	Contract Number (date):
CARGO CAPACITY (as applicable)	
50. Total grain cubic capacity (cu ft / cubic meters underdeck, exclusive of deep tanks, wing tanks, reefer spaces, and spaces fitted with cell guides):	
51. Total Bale cubic capacity (cu ft / cubic meters underdeck, exclusive of deep tanks, wing tanks, reefer spaces, and spaces fitted with cell guides):	
52. Number of tween decks:	
53. Cargo Space	
a. Square footage of cargo space (note particularly total ft <sup>2</sup> , ft <sup>2</sup> with 10 ft clearance, ft <sup>2</sup> underdeck, Ro/Ro Space):	
b. Square meters of cargo space (note particularly total m <sup>2</sup> , m <sup>2</sup> with 3.048 m clearance, m <sup>2</sup> underdeck, Ro/Ro Space):	
54. Total underdeck container capacity (TEU/FEU):	
55. Total on-deck container capacity (TEU/FEU):	
56. Total refrigerated-container capacity (TEU/FEU, including number/style of outlets):	
57. Reefer-space capacity (cu ft / cu meters):	
58. Deep-tank capacity (cu ft/cu meters/bbls):	
59. Capacity of spaces fitted with cell guides (TEU):	
60. Amount and location of permanent ballast carried:	
61. General description of ramps (number, location, size, capacity, and type): (note particularly weight of heaviest permissible vehicle in LT or t)	

Vessel(s):

Solicitation Number (date):

Contract Number (date):

**CARGO CAPACITY (continued)**

62. General description of cargo spaces and special features:

Decks: number, size in ft<sup>2</sup> and cu ft; size in m<sup>2</sup> and cu m; strength in psf/kPa; arrangement

Holds and Hatches: number and size

Hatch Covers: number, size, composition, and type

Underdeck Height Restriction

Description of lashing points; lashing and securing gear; type; description; and amount aboard

Barge-Stowage Particulars

Float-on / Float-off Particulars

Vessel(s):

Solicitation Number (date):

Contract Number (date):

**GEAR**

63. Number/location/SWL capacity of winches, derricks, booms, and cranes:

**CASUALTIES / DEFICIENCIES / WARRANTS**

64. Has vessel been involved in any serious grounding or collision within twelve months from the submission date of this proposal? (include full description if "yes")

65A. Are any deficiencies lodged by any regulatory body outstanding against the Vessel? (include full description if "yes")

65B. Identify any port(s) in which you have any active arrest warrants or similar actions pending that would either delay the vessel from performing, or otherwise prevent the vessel from free entry/departure.

Vessel(s):

Solicitation Number (date):

Contract Number (date):

**FUEL CONSUMPTION AT SERVICE SPEEDS**

66. Average warranted speed (knots, for laden, moderate weather):

67. Average warranted speed (knots, for ballast, moderate weather):

68. Average fuel consumption (net bbls at 60 deg F and grade(s): for laden, moderate weather passage at speed identified in Box 66):

69. Average fuel consumption (net bbls at 60 deg F and grade(s): for ballast, moderate weather passage at speed identified in Box 67):

70. Auxiliaries underway fuel consumption (net bbls at 60 deg F and grade(s), only if not elsewhere identified):

71. Idle fuel period fuel consumption (net bbls at 60 deg F and grade(s)):

**FUEL CONSUMPTION AT VARIABLE SPEEDS**

Average fuel consumption (net bbls at 60 deg F for all grades and all engines/auxiliaries utilized while underway over moderate-weather passages at the speed, ranges, and grade(s) indicated):

72: Grades Consumed:

73 A.	<b>LADEN</b>			73 B.	<b>BALLAST</b>		
Knots	Net bbls per mile	Net bbls per day	Operating Range (NM)	Knots	Net bbls per mile	Net bbls per day	Operating Range (NM)
08				08			
09				09			
10				10			
11				11			
12				12			
13				13			
14				14			
15				15			
16				16			
17				17			
18				18			
19				19			
20				20			
21				21			
22				22			

Vessel(s):

Solicitation Number (date):

Contract Number (date):

FUEL GRADE

74. Minimum vessel fuel specifications

Vessel(s):

Solicitation Number (date):

Contract Number (date):

**CONTINUATION**

75. Space for continuation of responses (refer to prior box numbers):

Vessel(s):

Solicitation Number (date):

Contract Number (date):

**CONTINUATION**

75. Space for continuation of responses (refer to prior box numbers):

**PART II. FAR 52.212-4 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (NOV 2021) (tailored pursuant to FAR 12.302(a))**

\* Indicates that the clause is not tailorable.

^ Indicates that the clause has not been tailored.

**(a) INSPECTION (TAILORED)**

(1) In General

(i) The Vessel and Associated Equipment shall be subject to the Government's inspection as to suitability for the required service prior to delivery and subject to subsequent inspections at any time during the period of this Charter to determine continuing suitability for the required service as well as to determine whether the material condition of the Vessel and Associated Equipment will prevent effective operation during basic and optional periods (if any) of this Charter. Such inspections may include, but not be limited to:

(A) Condition and operability of all cargo handling gear including standing and running rigging, cranes, booms, gantries, and status of regulatory body inspections of same;

(B) Condition and operability of navigation, communication, and environmental protection equipment and existence of appropriate technical manuals and onboard spares;

(C) Condition (tightness and preservation) of hull, deck plating, superstructure, divisional bulkheads and the operability of ground tackle;

(D) General material condition and maintenance of the Vessel;

(E) Condition, operability, and certification of required safety and firefighting equipment;

(F) Operability and safety of engineering spaces and equipment;

(G) Bunker survey;

(H) Condition of all equipment required under this Charter;

(I) Condition (tightness and preservation) of cargo access equipment including hatch covers, between-deck covers, doors, ramps, ports, and elevators;

(J) Condition of holds.

(ii) The Government further reserves the right to have the Vessel surveyed at any time by an independent surveyor.



- (iii) If in the opinion of the Government Inspector or independent surveyor deficiencies exist that preclude the adequacy of the Vessel for the assigned service, a notice for correction will be issued. In the event that the stated deficiencies are not corrected in a reasonable period of time and in the opinion of the Contracting Officer (based upon the recommendation of the Government Inspector and/or the independent surveyor) the Vessel is inadequate for the intended services or unable to operate for the remaining period of this Charter as a result of these deficiencies, the Government reserves the right to cancel this Charter at no cost to the Government at any time during its term or to take any other action available under this Charter Party or authorized by law.
- (iv) The Vessel horsepower identified in Boxes 40 and 41 shall, if required by the Contracting Officer, be verified by an independent surveyor approved by the Government.

(2) Predelivery Inspection. A predelivery inspection of the Vessel may be held at the Charterer's option; such inspection shall be of an advisory nature only. At any such inspection, any representation of a Government representative present, or lack thereof, shall not be binding on the Charterer. This inspection shall be conducted, if possible, in a shipyard and on a date mutually agreeable to the Owner and the Government. The Owner will be advised of the condition of the Vessel and Associated Equipment as found by the Inspector. This predelivery procedure is to enable the Owner to correct any deficiencies discovered before the delivery inspection. The results of any predelivery inspection under this paragraph shall further be without prejudice to any later determinations that the Vessel or its Associated Equipment are unsuitable under this Charter Party, whether made at the delivery inspection or at any time during the period of the charter period including options if exercised.

(3) Service Inspection

- (i) If any of the services do not conform to contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may –
  - (A) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
  - (B) Reduce the contract price to reflect the reduced value of the services performed.
- (ii) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may –

(A) By contract or otherwise, perform the services and charge the Contractor any cost incurred by the Government that is directly related to the performance of such service; or

(B) Terminate the contract for default.

**\*(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 Government-wide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

**(c) CHANGES (TAILORED)**

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

**\*(d) DISPUTES**

This contract is subject to [41 U.S.C. chapter 71](#), Contract Disputes. 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 Federal Acquisition Regulation (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 listed in Part IV.

**(f) EXCUSABLE DELAYS (TAILORED)**

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

(2) 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.

(3) Reservation. The exceptions identified in subparagraph (1) above shall not be such as to affect the Owner's warranties respecting the condition of the Vessel, or the Owner's obligations respecting the services specified under this Charter. Defaults of subcontractors at any tier or the Owner's failure to perform due to a labor disruption, labor dispute, or strike shall not constitute excepted events under subparagraph (1).

**\*(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, 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-System for Award Management, or [52.232-34](#), Payment by Electronic Funds Transfer-Other Than System for Award Management), 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 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 [41 U.S.C. 7109](#), 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 FAR [32.608-2](#) in effect on the date of this contract.

**(j) RISK OF LOSS (TAILORED)**

- (1) Carriage of Goods by Sea Act (COGSA). Except as otherwise specified herein, the Owner, Vessel, and Charterer in all matters arising under this Charter Party shall be entitled to the like privileges, rights, and immunities (from the time the cargo is loaded until the time it is discharged from the Vessel) as are contained in 46 U.S.C. App. 1300-1315. However, any references in COGSA to (a) notices of loss or damage or (b) limitation-of-action periods shall not apply to this Charter Party. For purposes of this Charter Party, the term "carrier" as used in COGSA shall mean "the Owner" and the term "shipper" shall mean "the Charterer."
- (2) Containers. For purposes of the application of COGSA, goods shipped in containers that are stowed on deck shall be deemed shipped under deck. With respect to the limitation of liability provisions of COGSA, a container shall be considered a single package only if bulk cargo is stored therein. For non-bulk cargo shipped in containers, the limitation of liability provisions of COGSA shall apply to each package within a container or, for non-packaged cargo, to each measurement ton of cargo within the container. See also III(j) (Deck Cargo).
- (3) Package limit. Except in the case of containerized cargo, for purposes of the application of COGSA, in the case of any loss or damage to or in connection with goods exceeding an actual value of \$500 per package, or in the case of goods not shipped in packages, per measurement ton, the value of the goods shall be deemed to be \$500 per package or per measurement ton, and the Owner's liability, if any, shall be determined on the basis of the

value of \$500 per package or per measurement ton, unless the nature of the goods and a valuation higher than \$500 shall have been declared in this Charter Party and, in such case, if the actual value of the goods per package or per measurement ton shall exceed such declared value, the value shall nevertheless be deemed to be the declared value. Should the Charterer declare valuation higher than \$500.00 per package or per measurement ton, the Charterer shall direct the Owner to obtain increased cargo legal-liability coverage on said higher-declaration cargo, with the expense of any additional premia and incurred deductibles therefore for the Charterer's account.

- (4) Other statutes. The Owner and the Vessel shall have the benefit of all limitations of and exemptions from liability accorded the Owner by any U.S. statute or rule of law for the time being in force (except to the extent that contract terms entitle the Government to compensation from the Contractor for the Contractor's failure to perform the requirements and obligations of this Charter or to the extent such statute or rule of law is subordinate to any statutorily mandated provision of this Charter Party by operation of law).
- (5) Fire. Neither the Owner nor any corporation owned by, subsidiary to, or associated or affiliated with the Owner shall be liable to answer for or make good any loss or damage to the cargo occurring at any time and even though before loading on or after discharge from the Vessel, by reason or by means of any fire whatsoever, unless such fire shall be caused by its design or neglect or unless such wholly owned, subsidiary, or associated corporation serves as underwriter for the Owner and the policy between the Owner and underwriter provides coverage for such liability.

**(k) TAXES (TAILORED)**

The contract price includes all applicable Federal, State, and local taxes and duties except as otherwise provided in this Charter Party.

**^(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 (TAILORED)**

- (1) 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.
- (2) If this Contract is terminated while the Contractor has possession of Government goods, the Contractor shall, upon direction of the Contracting Officer, protect and preserve the goods until surrendered to the Government or its agent. The Contractor and Contracting Officer shall agree on payment for the preservation and protection of the goods. Failure to agree on an amount will be a dispute under the Disputes clause.
- (3) The rights and remedies of the Government herein are in addition to any other rights and remedies provided by law or under this Contract.”

**^(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) General. The Owner warrants that the Vessel performing under this Charter Party shall be in full conformity with the requirements of this Charter Party, from the time of delivery and thereafter during the currency of this Charter Party. In particular the Owner warrants that the Vessel is as described in Part I of this Charter Party and, if required under this Charter Party (see DFARS 252.247-7025 at VIII(b)(20) concerning requirements for reflagging work in U.S. shipyards), that the Vessel shall be under U.S. flag upon delivery. Should any specification of the Owner in the Contract be in excess of a required specification elsewhere in this Contract, the Owner’s specification shall prevail over the required specification.
- (2) Regulatory compliance. The Owner warrants that the Vessel 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 Vessel will be ordered hereunder. The Vessel shall additionally operate in compliance with the International Maritime Dangerous Goods Code. The Vessel shall be delivered and maintained in the highest class of a recognized classification society and be in compliance with all current safety, health, and pollution regulations promulgated by appropriate authorities, including the latest applicable ISO/IMO regulations. 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 (USCG) and promulgated pursuant to the U.S. Federal Water Pollution Control Act, as amended, and/or the Oil Pollution Act of 1990.

(3) 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 in the operation of all of the Vessel's equipment.

(4) Fuel and speed warranty.

(i) Moderate weather: service speeds.

(A) Laden. The Owner warrants that, unless otherwise ordered by the Charterer, the Vessel is capable of maintaining, throughout the period of this Charter Party, the average speed in knots identified in Box 66 on any given moderate-weather passage from sea buoy to sea buoy while fully laden to summer marks. On any such passage as just described at the average speed identified in Box 66, daily fuel consumption in net barrels at 60 degrees Fahrenheit shall be at the average rate(s) identified in Boxes 68 and 70, for the grade(s)/viscosity(ies) therein identified to be consumed.

(B) Ballast. The Owner warrants that, unless otherwise ordered by the Charterer, the Vessel is capable of maintaining, throughout the period of this Charter Party, the average speed in knots identified in Box 67 on any given moderate-weather passage from sea buoy to sea buoy while in a ballast condition. On any such passage as just described at the average speed identified in Box 67, daily fuel consumption in net barrels at 60 degrees Fahrenheit shall be at the average rate(s) identified in Boxes 69 and 70, for the grade(s)/viscosity (ies) therein identified to be consumed.

(ii) Moderate Weather: Variable Speeds. For periods during which the Charterer orders the Vessel to operate at speeds other than those identified in Boxes 66 or 67, the Owner warrants that the Vessel's total fuel consumption (including all auxiliaries) in net barrels at 60 degrees Fahrenheit at those ordered speeds in moderate weather shall be at the average rates identified in Box 73 for the stated speed, range, and load conditions for the grade(s)/viscosity(ies) therein identified to be consumed.

(iii) Auxiliaries. The Owner warrants that the Vessel's fuel consumption (underway/steaming/laden) in net barrels at 60 degrees Fahrenheit for all auxiliaries, in addition to any fuel consumption identified in Boxes 68 or 69, shall be at the average rate identified in Box 70 for the grades/viscosities therein identified to be consumed, regardless of speed or weather conditions.

- (iv) Idle Periods. The Owner warrants that the Vessel's fuel consumption in net barrels at 60 degrees Fahrenheit during all periods at anchor or alongside berth shall be at the average rate identified in Box 71, for the grade(s)/viscosity(ies) therein identified to be consumed.
- (5) Pollution Prevention and Safety Compliance. Owner warrants that the Vessel is in full compliance with the United States Oil Pollution Act of 1990 (OPA 90) and all applicable U.S. Coast Guard (USCG) regulations for safety and pollution prevention, including those regulations in 33 CFR Parts 155, 156, and 164, and amendments thereto. Owner warrants that it has submitted a Vessel Response Plan (VRP) for the Vessel, which complies with OPA 90 and with USCG regulations. Owner further warrants that the Vessel will be operated in full compliance with the legally applicable VRP requirements and any future VRP requirements. Owner further warrants that the Qualified Individuals listed in the VRP of the Vessel are readily available and their contract telephone numbers can be given to Charterer immediately upon request. Owner will provide evidence of such compliance within three working days from the date of the fixture.
- (6) Communications/Navigation Equipment. Vessel shall be equipped with all navigation equipment required by USCG or flag state (if non-US Flag) as appropriate and in full compliance with all international requirements and regulations. Vessel must also have INMARSAT, facsimile and email capability and, if not included elsewhere, contractor shall provide contact numbers for same on award.
- (7) Financial Responsibility. Owner warrants that it has secured, and carries aboard the Vessel, a Vessel Certificate of Financial Responsibility (Water Pollution) issued by the USCG in accordance with 33 C.F.R. 138.65.
- (8) Remedies. Should actual performance or readiness condition of the Vessel show any failure to satisfy one or more warranties or other Charter requirements not due to the fault of the Charterer, the hire may be equitably decreased, this Charter may be terminated, or the Vessel may be placed off-hire, at the Charterer's option so as to indemnify the Charterer to the extent of such failure. However, in all cases the Owner shall bear the cost of excessive fuel consumption resulting from the Owner's breach of its fuel warranties. The foregoing remedies shall not limit other recoveries available under law or within this Charter.

#### **^(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. chapter 37](#), Contract Work Hours and Safety Standards; [41 U.S.C. chapter 87](#), Kickbacks; [41 U.S.C. 4712](#) and [10 U.S.C. 2409](#) relating to whistleblower protections; [49 U.S.C. 40118](#), Fly American; and [41 U.S.C. chapter 21](#) relating to procurement integrity.

## **(s) ORDER OF PRECEDENCE (TAILORED)**

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

- (1) Information set forth in the Boxes (Part I);
- (2) Paragraphs (b), (d), (g), (i), (q) and (r) of FAR 52.212-4 (as tailored);
- (3) The clause at FAR 52.212-5;
- (4) Any remaining addenda or portions thereof within this solicitation or Contract;
- (5) The Standard Form 1449;
- (6) Solicitation provisions if this is a solicitation;
- (7) Other documents, exhibits, and attachments.

## **^(t) SYSTEM FOR AWARD MANAGEMENT (SAM)**

- (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 SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM 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 SAM database to ensure it is current, accurate and complete. Updating information in the SAM 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 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 SAM database;
  - (B) Comply with the requirements of Subpart 42.12 of the FAR;

(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 SAM 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 SAM record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the SAM database. Information provided to the Contractor’s SAM 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 SAM accessed through <https://www.acquisition.gov>.

#### **^(u) UNAUTHORIZED OBLIGATIONS**

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

**^(v) INCORPORATION BY REFERENCE.**

The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(End of clause)

## **PART III. DRY CARGO (TIME) TERMS AND CONDITIONS (Addendum to FAR 52.212-4)**

### **(a) CHARTER HIRE**

- (1) Hire Rates. Charter hire for services under this Charter Party shall be payable at the applicable rates stipulated in Boxes 13 – 15 and shall be earned at the expiration of each fifteen (15) days of the charter period. Except as otherwise provided herein, said hire rates shall be considered payment in full for all services of the Vessel and Associated Equipment under this Charter including all overtime (including but not limited to crew overtime/penalty time required for the opening and closing of hatches), 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 including the carriage of ammunition and hazardous cargoes. Said hire rates are exclusive of the costs of fuel and port charges, which are addressed at IV(p) (Fuel) and IV(n) (Port Charges and Expenses) below, respectively, and other stevedoring costs such as loading, securing and discharging cargo, which are addressed in III(g) (Loading and Discharging) below.
- (2) Loss of Vessel. Should the Vessel be either lost or missing and presumed lost, Charterer may, at its sole discretion, terminate this Charter, in which case hire shall cease to be payable at the time of the loss or, if said time is unknown, at the time of the Vessel's last received communication. Similarly, should the Vessel become a constructive total loss, Charterer may, at its sole discretion, terminate this Charter, in which case hire shall cease to be payable at the time of the casualty resulting in the constructive loss. The Vessel shall be considered missing and presumed lost when, after a reasonable lapse of time, it fails to reach its next scheduled port and reasonable efforts to contact it fail.

### **(b) MISSION**

The Vessel may be employed in worldwide trade for the following: transportation and/or prepositioning of cargo (including but not limited to hazardous cargoes, explosives, ammunition, vehicular, containerized, and general cargoes) and military readiness, in accordance with the terms of this Charter.

### **(c) REPORTING REQUIREMENTS**

Charterer's Instructions. The Charterer shall furnish the Master with all requisite instructions and sailing directions in writing, including the COMSC "Standard Operating Manual" (SOM) COMSCINST 3121.9 Series. The Master shall exercise due diligence to observe all such orders and instructions of the Charterer with respect to the Charterer's employment of the Vessel's services. Vessel must meet all MSC requirements for reporting. Reports required of the Vessel include, without limitation, the following:

- (i) Movement reports (see SOM, section 2-4-1);
- (ii) Pre-arrival reports (see SOM, section 2-7-3);
- (iii) Casualty reports (see SOM, section 4-3);

- (iv) Dry-cargo reports (see SOM, section 3-7);
- (v) Defense Readiness Reporting System-Navy (see SOM, Section 4-1); and
- (vi) Position Reports. (see SOM, section 2-4-2). Vessel shall provide position/status reports in-port and at-sea every six (6) hours daily at 0000, 0600, 1200, and 1800 hours local Eastern Time (GMT-5 EST/GMT-4 EDT). Position reports shall be issued by electronic mail to the addresses designated in the cargo orders or other direction as issued by the appropriate Program Office or Area Command.

MSC Area Commands and MSCHQ may require additions or deletions to the addressees on the Position Reports and may also require additional reporting requirements. See Box 6 for addressees.

These reports must include the Vessel's Speed of Advance and the ETA to the next port.

#### **(d) CREW**

- (1) Conduct of Master, Officers, and Crew. The Master, Officers, and crew shall be appointed or hired by the Owner and shall be deemed to be the servants and agents of the Owner at all times except as otherwise specified in this Charter. The Master of the Vessel shall be under the Charterer's direction with regard to the employment of the Vessel, but shall not be under the Charterer's orders with regard to the navigation, care, and custody of the Vessel. If the Charterer shall have reason to be dissatisfied with the conduct of the Master, Officers, or crew, the Owner shall, upon receiving the particulars of the complaint, investigate the matter and resolve the issue to the satisfaction of the charterer. Any and all additional costs including but not limited to attorney's fees incurred as a result of removal of such personnel shall be for the Owner's account.
- (2) Qualifications. The Master, Officers, and crew shall be U.S. citizens to the extent required by U.S. law (if Vessel is U.S.-flag) and shall be conversant with English, and in possession of valid and current certificates, licenses, and documents.
- (3) Identification Cards. In the event Government identification cards are issued to Master, Officers and crew, the Contractor shall be responsible for tracking and, upon redelivery of the Vessel, returning all cards.
- (4) OCONUS Contractor Conduct. Upon award of this Contract, the Contractor shall immediately notify all contractor personnel, who are or who will be employed by, or who are or who will be accompanying, United States Naval Forces outside the continental United States (OCONUS), and who are not a host country national ordinarily resident in the host country, that such personnel, and any dependents residing with such personnel, who engage in conduct OCONUS that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States as required by the Military Extraterritorial Jurisdiction Act of 2000, Pub. L. 106-523, 114 Stat. 2488, codified at 18

U.S.C. 3261 – 3267, as implemented by DoD Instruction 5525.11, “Criminal Jurisdiction over Civilians Employed by or accompanying the Armed Forces outside the United States.” Reference is made to Secretary of Defense memo dated 10 March 2008; "UCMJ jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations."

**(e) MARAD CONSTRUCTION DIFFERENTIAL SUBSIDY (CDS)**

The Contractor, if operating a Vessel or Vessels built with Construction Differential Subsidy (CDS) unequivocally agrees that there will be no increase in contract price due to any liability to repay CDS which such Contractor may incur.

**(f) CARGO RECEIPT**

- (1) Manifest/Bill of Lading. The Charterer or consignor of the cargo shall prepare a manifest and/or bill of lading, which shall list the cargo loaded on the Vessel. The Master shall sign said cargo receipt(s) in acknowledgment of the receipt of cargo said to have been loaded by the Charterer or the consignor of the cargo, without responsibility as to quantities, mixture, mark, number of packages, weights, etc., or the apparent condition of the cargo, it being understood that it is the Charterer's or the consignor's responsibility to tally the cargo and to check the condition thereof upon loading and discharging. The Contractor shall provide a copy of the signed manifest(s) upon request by the Government.
- (2) Charter Paramount. Any receipt signed by or on behalf of the Master or Agent shall be without prejudice to the terms, conditions, and exceptions of this Charter and subject to all of them. The terms of this Charter Party shall apply to any shipment made by the Government whether or not bills of lading are issued.

**(g) LOADING AND DISCHARGING**

- (1) General. The whole reach and burthen of the Vessel shall be at the disposal of the Charterer, reserving only proper and sufficient space for Vessel's Master, Officers, and crew, tackle, apparel, furniture, provisions, stores, and fuel. The Charterer shall have the use of all cargo handling equipment onboard and the Owner shall provide sufficient power to operate all the Vessel's cargo handling equipment simultaneously. The Vessel shall work night and day, if required by the Charterer. The Charterer shall have the use of any special gear or fittings actually aboard the Vessel, although said gear or fittings are not required by this Charter. Any material required for securing cargo is to be furnished by the Charterer and for its account, but the Charterer may have the free use of any lashings aboard the Vessel. The Charterer will be responsible for the replacement of lashing gear damaged by the Charterer or its servants. Such replacement shall be as original or equivalent.



- (2) Cargo Quantity Limitation. In no case shall the cargo exceed what the Vessel can reasonably stow and carry, in the judgment of the Master, over and above the space and burthen necessary for Vessel's Officers and crew, her cabin, tackle, apparel, furniture, provisions, fresh water, stores, necessary ballast and fuel. The amount of the deck cargo shall be at the discretion of the Master and the loading, carriage and discharge thereof shall be at the risk of the Charterer.
- (3) Detention or Standby. If by reason of the Owner's failure to use diligence to keep the Vessel in a thoroughly efficient state of hull, machinery, equipment, personnel, and other particulars relating to the seaworthiness of the Vessel, the Charterer incurs cost of stevedoring detention or standby time in connection with the loading or discharging of cargo, such costs shall be for the account of the Owner.
- (4) Lighterage. Lighterage, if any, will be at the risk and expense of the Charterer, except as otherwise provided herein.
- (5) Stevedore Damage. The Charterer is to be responsible for any physical damage done to the Vessel by Government stevedores on loading and/or discharging only if such damage is occasioned by negligence, breach of warranty or breach of contract and the Master advises the Charterer, or the Charterer's representatives, in writing, within twenty-four hours after occurrence of the specific damage and the Master further notifies the parties who have caused this damage, in writing, and endeavors to obtain their admission of liability. As soon as practicable after such damage is sustained, the Owner is to have an independent survey made to define and estimate the damage; a written copy of the survey report is to be promptly forwarded to the Charterer. All claims are to be settled directly between the Owner and the stevedores, with the Charterer being ultimately responsible.
- (6) Charterer's Responsibility. The Charterer shall load, stow, trim, secure, and discharge the cargo, all in compliance with applicable laws and regulations and the permit/waiver requirements there under; notwithstanding, however, that the Master shall supervise and be responsible for such actions as they concern the seaworthiness and stability of the Vessel. Upon request of the Charterer, the Owner shall arrange for stevedoring services at ports visited under this Charter, with reimbursement for all necessary and reasonable agency fees, all reasonable costs of loading and/or discharging, and port charges in accordance with IV(n) (Port Charges and Expenses) below, II(i) (Payment) above, and IV(y) (Reimbursable Supplies and Services (Charters)) below.
- (7) Expenses. The Charterer shall pay all expenses directly connected with the loading and discharging of the cargo including stevedoring, wharfage, clerking and tallying, winchmen, heavy lifts, dumping, stowing, securing, lashing, sheathing, dunnaging, and trimming, and removal of strongbacks with shore equipment where the use of shore equipment is not necessitated by a structural or mechanical defect in the Vessel unless that defect is caused by the fault or negligence of the Charterer. Unless otherwise provided herein, the Charterer shall provide necessary dunnage and shifting boards, also any extra fittings or materials requisite for a special trade or unusual cargoes, but the Owner shall allow the Charterer the use of any dunnage, shifting boards and other fittings or materials

already onboard the Vessel. The Charterer shall have the privilege of using shifting boards for dunnage, but if the Vessel's shifting boards are used as dunnage, the Charterer shall make good any damage to or shortage of such shifting boards on redelivery of the Vessel. If the Charterer elects or is required by the Owner to remove dunnage and fittings placed onboard by the Charterer, the cost of removal and discharge shall be borne by the Charterer. The Charterer shall have free use of any lashing gear, dunnaging, shifting boards, and fittings aboard the Vessel.

#### **(h) OIL POLLUTION SPILL**

- (1) Pollution Damage. Where an escape or discharge of oil occurs from the Vessel and threatens to cause pollution damage to coastlines, Charterer may, at its option, and upon notice to Owner or Master, undertake such measures as are reasonably necessary to prevent or mitigate such damage, unless Owner promptly undertakes same. Charterer shall keep Owner advised of the nature of the measures intended to be taken. Any of the aforementioned measures actually taken by Charterer shall be at Owner's expense except to the extent that any such escape or discharge or threat was caused or contributed to by Charterer. If Owner considers such measures should be discontinued, Owner shall so notify the Charterer and thereafter neither the Charterer nor its nominee shall have any right to continue said measures under the provisions of this paragraph and all further liability to Charterer under this paragraph shall thereupon cease, except that Charterer may continue such measures at Owner's expense if Owner does not undertake reasonable measures to prevent or mitigate damages.
- (2) Reservation. The above provisions are not in derogation of such other rights as Charterer or Owner may have under the provisions of this Charter including but not limited to IV(g) (Insurance) hereof, or may otherwise have or acquire by law or any international convention.

#### **(i) SAFETY IN LOADING AND DISCHARGING CARGO**

Attention of the Owner is directed to the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., as amended, and to the standards promulgated there under by the Secretary of Labor.

#### **(j) DECK CARGO**

Should deck cargo be carried, it shall be carried at the Charterer's risk, excepting cargo shipped in containers.

#### **(k) CLEANING**

- (1) Delivery. Upon delivery in accordance with IV(b) (Delivery) below, all holds, containers, and spaces designated for cargo carriage shall be cleaned and ready to receive lawful cargo.

(2) Redelivery. Upon redelivery of the Vessel in accordance with IV(c) (Redelivery) below, the holds and spaces of the Vessel (and those deep tanks the last use of which was made by the Charterer) shall be swept clean by the Charterer with refuse removed, unless during the period of this Charter the Vessel has carried in these spaces cargo with respect to which custom requires more complete cleaning, in which case the Charterer shall give such spaces the required cleaning.

**(l) SPAIN-GIBRALTAR PROHIBITION**

Owner agrees as a condition of this contract that the vessel will not proceed to Gibraltar for any purpose for its next port call after departing a Spanish port, even if the vessel is off-hire or if the charter has concluded and the ship was redelivered to the owner in Spain. Owner also agrees as a condition of this contract that the vessel will not proceed to Spain for any purpose for its next port call after departing Gibraltar, even if the vessel is off-hire or if the charter has concluded and the ship was redelivered to the owner in Gibraltar.

**(m) PRESS RELEASE**

Owner/Offeror agrees not to issue any press releases related to the charter, post-award, pre-delivery/loading, or post-redelivery/ discharging without the approval of MSC.

**(n) VESSEL NAME RELEASE**

For the purpose of obtaining timely country clearance, vessel names under consideration for award may be released to partner U.S. or foreign government agencies prior to contract award.

## **PART IV. TIME CHARTER COMMON TERMS AND CONDITIONS (Addendum to FAR 52.212-4)**

### **(a) GENERAL DEFINITIONS**

**About** – With respect to the charter period, +/- 10%; Redelivery within -10% shall not constitute a termination for convenience and charter hire is only payable through vessel redelivery.

**Alterations** - Additions of equipment; changes to the configuration, location, type, or number of pieces of equipment or systems; changes in the arrangement and outfitting of Vessel's structure.

**AR** - Interchangeable with ATRS.

**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-owned and Contractor-furnished equipment, supplies, fixtures, and tackle necessary for performance under this Charter Party.

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

**Bbl** - Barrel (42 U.S. gallons volume measure)

**Cancelling Date** - Identified in Box 5 of Part I.

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

**CEC** – Contractor Establishment Code

**CFE** - Contractor-Furnished Equipment

**CFR** - Code of Federal Regulations

**Charter** - Interchangeable with “Charter Party” and "Contract".

**Charter Hire** – Daily rate paid for use of the vessel during the charter; interchangeable with Hire Rate and Per Diem.

**Charterer** - The United States of America.

**Charter Party** - This document when executed; interchangeable with “Contract” and “Charter”.

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

**CHOP** - Charterer's Option

**CLC** - Convention on Civil Liability for Oil Pollution Damage, 1969

**CLIN** – Contract Line Item Number

**COGSA** - Carriage of Goods by Sea Act. 46a U.S.C. Chapter 28

**Commencing Date** - Identified in Box 5 of Part I.

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

**COMSCINST** - COMSC Instruction

**Contract** – Interchangeable with "Charter Party".

**Contracting Officer** - Identified in Boxes 31a and 31b of SF 1449.

**Contractor** - Interchangeable with "Owner".

**CONUS** – Continental United States. Consists of 48 contiguous states and Alaska.

**COR** - Contracting Officer's Representative - (DFARS 202.101) - means an individual designated (in accordance with subsection 201.602-2 of the DFARS) and authorized in writing by the contracting officer to perform specific technical or administrative functions.

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

**Crew** - Of the Vessel identified at Box 7.

**CS** – Contractor Security

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

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

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

**DoD** – U.S. Department of Defense

**DWT** – Deadweight tonnage (Owner's account for any and all costs to meet port restrictions)

**ETA** - Estimated Time of Arrival

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

**FCC** - Federal Communications Commission

**FEU** - Forty-foot Equivalent Unit (container volume measure)

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

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

**FLO/FLO** - Float-On, Float-Off loading/discharging process.

**FPCON** – Force Protection Condition

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

**Full Operational Status (FOS)** - Vessel manned and provisioned, all Associated Equipment operational, and Vessel prepared in all respects to perform her mission in accordance with this Charter, whether or not so ordered (see IV(q) (Reduced Operational Status (Lay-up) in DRYTIME and TANKTIME))

**FY** – Fiscal Year. 1 October to 30 September.

**GFP** - Government-Furnished Property (see FAR 52.245-1 in VIII(b)(3) below)

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

**Government Designated Representative** - Including, but not limited to, force protection personnel, military, government employees, and government contractors

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

**Hire Rate** – Daily rate paid for use of the vessel during the charter; interchangeable with Charter Hire and Per Diem.

**hp** – horsepower [1 hp equals 0.745799 kW]

**IMDG** – International Maritime Dangerous Goods Code

**IMO** - International Maritime Organization

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

**kg** - kilogram [1 kg equals 2.20 pounds]

**km** – kilometers

**kPa** - kilo Pascal [1 kPa equals 20.886 psf]

**kW** - kilowatts [1 kW equals 1.34 horsepower (hp)]

**LASH** – Lighter-Aboard-Ship Vessel type

**Laydays** - The span of Commencing and Cancelling dates identified in Box 5.

**Lb** - Pound [1 pound equals 0.453592 kg]

**LOA** – Length Overall

**LO/LO** - Lift-On, Lift-Off loading/discharging process.

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

**m** – meter [1 meter equals 3.28 feet]

**m<sup>2</sup>** – square meter [1 square meter equals 10.764 square feet]

**m<sup>3</sup>** - cubic meter [1 cubic meter equals 0.883 measurement tons/35.314 cubic feet]

**MarAd** – U.S. Department of Transportation, Maritime Administration

**MARPOL** – Maritime Pollution

**Master** - Of the Vessel identified in Box 7 of Part I.

**mm** - millimeter [1 millimeter equals 0.039 inch]

**Moderate Weather** - Conditions up to sustained winds of Beaufort Force 5 and sea state 4 (any day during which sustained winds of Beaufort Force 5 or above are encountered for more than six hours shall not be considered a “moderate-weather” day for purposes of fuel or speed warranties made under this Charter).

**MOL** - More or Less

**MOLCHOP** - More or Less at Charterer's Option

**MOLOO** - More or Less at Owner's Option

**MSC** -U.S. Department of the Navy, Military Sealift Command

**MT** - Metric Ton

**MTon** – Measurement Ton (40 cubic feet)

**NM**- Nautical Miles

**NMCARS** - Navy Marine Corps Acquisition Regulation Supplement

**NOR** - Notice of Readiness

**OCIMF** - Oil Companies International Marine Forum

**OCONUS** – Outside Continental United States

**Office hours** - From 0800 hours until 1700 hours local time on a Working Day.

**OO** - Owner's Option

**Owner** - That entity or entities exercising commercial control of the Vessel identified in Box 7; interchangeable with “Contractor” and “Offeror” and to include the disponent owners and all the shipowner’s and the disponent owner’s agents, employees, independent contractors, Master, Officers, and crew.

**Per Diem** – Daily rate paid for use of the vessel during the charter; interchangeable with Charter Hire and Hire Rate.

**P&I** - Marine protection and indemnity insurance

**Paying Office** - Identified in Box 18a of SF 1449.

**Per Diem** - Daily rate paid for use of the vessel during the charter; interchangeable with Charter Hire and Hire Rate.

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

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

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



**Readiness** - See DRYTIME or TANKTIME IV(i).

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

**R.O.B.** - Material remaining onboard as defined by API Standard, that is, the water, oil, slops, oil residue, oil/water emulsions, sludge, and sediment in Vessel tanks, void spaces, and/or pipelines after discharge.

**RO/RO** - Roll-On/Roll-Off loading/discharging process.

**SDWT** - Deadweight capacity, to assigned summer mean draft.

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

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

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

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

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

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

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

**SOLAS** – Safety of Life at Sea

**Speed** - Derived by dividing the total hours at sea on any given sea passage (as shown in the Vessel's log)--after excluding any hours of non-moderate weather and any sea passage covered by an off-hire calculation--into the total miles at sea on the given sea passage.

**SWL** - Safe Working Load

**t** - Metric Ton (1 metric ton equals 0.9842064 long ton)

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

**TEU** - Twenty-foot Equivalent Unit (container volume measure)

**TIN** - Taxpayer Identification Number (see FAR 52.212-3 at XII(c)(2) below)

**USCG** - United States Coast Guard

**USD** - U.S. Dollars

**VEF** - Vessel Experience Factor as defined by API

**Vessel** - Identified at Box 7

**VISA** – Voluntary Intermodal Sealift Agreement

**WOG** - Without Guaranty

**(b) DELIVERY**

(1) Laydays. The Vessel and all Associated Equipment shall be delivered to the Charterer at a port or place in accordance with Box 2 not later than 1600 hours local time at place of delivery on the canceling date stated in Box 5, the Owner giving written notice of readiness during office hours to the appropriate Government representative 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), unless otherwise specified. Government inspection of the Vessel 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 Vessel by the Charterer but not before the commencing date stated in Box 5, unless approved in writing in advance by the Contracting Officer. The Charterer shall have the liberty to cancel this Charter at no cost to the Government should the Vessel or Associated Equipment not be ready in accordance with the provisions hereof by the canceling date stated in Box 5, said

cancellation to be declared not later than twenty-four (24) hours after 1600 hours local time at place of delivery on the canceling date stated in Box 5, should the Vessel not be ready by that time. This paragraph shall not limit any right of the Government under this Charter Party or any right to take any other action authorized by law.

- (2) Condition. The Vessel and all Associated Equipment shall be, insofar as due diligence can make them so, 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 cargo-handling equipment shall be rigged, secured, and operable. The Owner shall exercise due diligence to maintain the Vessel and Associated Equipment in such state during the period of this Charter Party.

**(c) REDELIVERY**

Unless lost, the Vessel shall be redelivered at a port or place in accordance with Box 3.

**(d) PORTS/PLACES**

- (1) Safety. The Charterer shall exercise due diligence to order the Vessel to safe berths or places (or alongside vessels or lighters reachable on her arrival and designated/procured by the Charterer) that the Vessel can approach, lie at, and depart from always accessible, always afloat. The Charterer shall not, however, 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 the Charterer's failure to exercise due diligence as aforesaid. Any lightering will be at the expense of the Charterer; however, in the event the Charterer directs the Owner to arrange for lighterage services, the Owner shall make all necessary arrangements therefore.
- (2) Ice. The Vessel shall not be ordered or bound to enter any port or place inaccessible due to ice or at which lights, lightships, markers, or buoys on Vessel's arrival are (or are likely to be) withdrawn by reason of ice. The Vessel shall not be obliged to force ice. If a port or place to which the Vessel is ordered is inaccessible due to ice, the Master shall immediately notify the Charterer requesting revised orders and shall remain outside the ice-bound area. If there is danger of the Vessel being frozen in at any port or place, the Vessel shall, at Master's discretion, proceed to the nearest safe and ice-free position, at the same time requesting the Charterer's revised orders. Any delay or detention resulting from ice to be for the Charterer's account.

**(e) CHARTER PERIOD**

This Charter Party shall be for the period designated in Box 4, commencing upon the Charterer's acceptance of the Vessel and continuing until either the date of her redelivery or the completion of the voyage then current, at the Charterer's sole option. Any option periods shall be in direct continuation; shall be without guaranty at the Charterer's sole option; and

shall be declared as specified in VIII(c)(2) and (3). Optional periods may be declared at any time prior to redelivery of the Vessel.

**(f) DRY DOCK**

- (1) General. The Owner, at its expense, shall dry dock, clean and maintain the Vessel's bottom and propeller, and make all overhaul and other necessary repairs properly to maintain the Vessel in class, maintain the Vessel in compliance with IV(b)(2) (Condition) above and the warranties of II(o) (Warranty) above, and otherwise to keep the Vessel tight, staunch, and strong, and in thoroughly efficient order and condition. For such purpose of dry dock, the Charterer shall allow Vessel to proceed to an appropriate port upon sixty days prior notice to the Contracting Officer. All towage, pilotage, fuel, gas-freeing if required, water, and other expenses incurred while proceeding to and from dry dock shall also be for the Owner's account.
- (2) Suspension of Hire. In case of dry docking, pursuant to IV(f), at a port where Vessel is to load, discharge, or bunker under the Charterer's orders, hire shall be suspended from the time the Vessel receives free pratique on arrival, if in ballast, or upon completion of discharge of cargo, if loaded, until Vessel is again ready for service. In case of dry docking at a port other than where Vessel loads, discharges or bunkers, payment of hire shall cease from the time of deviation until the Vessel is again ready and in a position not less favorable to the Charterer than that at which such deviation occurred.

**(g) INSURANCE**

(1) Vessel Owner's Insurance.

i. During the full period of this Charter Party, Contractor shall maintain marine insurance coverage on the Vessel, including:

- A. Hull and Machinery,
- B. Protection and Indemnity (P&I) (including pollution liability),
- C. War Risk Hull and Machinery,
- D. War Risk Protection and Indemnity (P&I), and
- E. Second Seaman's War Risk. (the principal sum of which shall be \$200,000.00 per Master, Officer, or crew member (this is also the loss-of-life benefit)).

Except as otherwise expressly provided in Paragraph (3) below or as expressly provided in the section entitled "War" (h-1), all expenses 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 Contractor fault, neglect, action or inaction, or cause of claim or cost whatsoever) shall be for Contractor's account and shall be deemed to be included in the hire payable under this Charter Party. Contractor 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.

At least 10 calendar days prior to delivery of Vessel, Contractor 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. Contractor's failure to provide the required policies or cover notes may be considered material breach of this Contract.

- ii. Contractor agrees to indemnify and hold harmless the Charterer for all liability, costs, or expenses arising from or related to this contract and involving covered risks and losses under the terms of the insurance required in Paragraph (1)(i) above. Contractor shall obtain an endorsement on all of Contractor's insurance policies listed in Paragraph (1)(i) above by which Contractor's Insurer "waives all rights of subrogation against the United States of America regardless of amount."
- iii. If Vessel is sent beyond the limits of American Institute Trade Warranties under this Charter Party, the Charterer agrees to reimburse the Contractor for the actual extra cost of additional premiums and/or increased deductible levels to the extent such extra cost is occasioned by the Vessel's trading beyond such limits. Contractor shall immediately notify Charterer whenever any sailing orders will send the Vessel beyond such limits, shall identify to Charterer any anticipated additional cost of insurance relating thereto, and shall obtain Charterer's approval to proceed beyond such limits prior to doing so. If Contractor fails to provide the notifications required or to obtain Charterer's informed prior approval, Charterer shall not be required to reimburse the Contractor for the costs described in this paragraph. The issuance of sailing orders, by itself, does not constitute approval in advance by Charterer.
- iv. All policies shall contain an endorsement stating that "in the event Insurer receives from Vessel Owner any notice of cancellation or any notice of material change to the policy or its coverage, the cancellation or change shall not be effective until 30 days after written notice thereof is provided to Charterer's Contracting Officer by the Insurer (unless such change is directed by the Charterer's Contracting Officer)." Additionally, Contractor shall immediately notify Charterer of any change whatsoever in coverage.

(2) Charterer Named Additional Assured on Owner's Hull Policy, War Risk Hull Policy, and Second Seaman's War Risk Policy.

- i. The United States of America (as Charterer) shall be named as an additional assured with waiver of subrogation under the Contractor's Hull and Machinery policy (and Increased Value policy if applicable), War Risk Hull and Machinery policy, and Second Seaman's War Risk policy.

A. At least 10 calendar days prior to delivery of vessel, Contractor shall provide the Contracting Officer copies of policies or cover notes evidencing that the required coverage has been obtained. Contractor's failure to provide the

required policies or cover notes may be considered material breach of this contract.

- ii. “Other than owner” and “as owner” limitations. If Contractor’s Hull and Machinery policy (and Increased Value policy if applicable), War Risk Hull and Machinery policy, or Second Seaman’s War Risk policy contain(s) any provision limiting coverage under the policy only to liabilities arising as owner of the vessel, Contractor shall arrange for such limiting provision to be stricken from the policy.

If Contractor’s Hull and Machinery policy (and Increased Value policy if applicable), War Risk Hull and Machinery policy, or Second Seaman’s War Risk policy contain(s) any provision designed to limit the effect of striking “other than owner” or “as owner” provisions as required in this Paragraph ii., such provisions shall also be amended to ensure Charterer is provided full benefit of the insurance for its acts as Charterer.

(3) P&I Insurance for Charterer’s Risks or Time Charterer Protection and Indemnity (P&I) with P&I War Risk Coverage.

- i. Contractor shall obtain P&I Insurance for Charterer’s Risks or a Time Charterer Protection and Indemnity policy/entry with P&I War Risk coverage for the United States of America (as Charterer) covering all risks typically covered by P&I Insurance for Charterer’s Risks or Time Charterer Protection and Indemnity entries with P&I War Risk coverages in Protection and Indemnity associations that are members of the International Group. Except as otherwise expressly provided in the section entitled “War,” all expense of such policy/entry described in this section (including but not limited to premiums, additional premiums, calls, commissions, overspill claims, advancements, assessments, deductibles, and all other insurance costs regardless of Charterer or Contractor fault, neglect, action or inaction, or cause of claim or cost whatsoever) shall be for Contractor’s account and shall be deemed to be included in the hire payable under this Charter Party. Contractor shall make insurance claims under the Time Charterer Protection and Indemnity policy/entry described in this section when directed by Charterer.

A. At least 10 calendar days prior to delivery of Vessel, Contractor shall provide the Contracting Officer a copy of the policy. Contractor’s failure to provide the required copy of the policy may be considered material breach of this Contract.

B. The Time Charterer Protection and Indemnity policy/entry with P&I War Risk coverage shall provide coverage of \$500,000,000.00.

- ii. Charterer shall not be obliged to declare to the insurer all ships chartered by it. Contractor will advise the insurer that the Charterer will not declare all ships chartered by it to the insurer, and shall obtain an endorsement on the policy stating, “the United States of America, as Charterer, is not required to declare to [insert insurer name] all ships chartered by it.”

(4) Contractor to Indemnify. If Contractor fails to name the United States as additional assured with waiver of subrogation on Contractor's Hull and Machinery policy (and Increased Value policy if applicable), War Risk Hull and Machinery policy, or Second Seaman's War Risk policy as required by Paragraph (2) above; or fails to obtain for the United States the P&I Insurance for Charterer's Risks or Time Charterer P&I policy/entry with War Risks coverage required by Paragraph (3); the Contractor shall indemnify and hold harmless the Charterer for all liability, costs, or expenses involving covered risks and losses under the required insurance policies/coverage. 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 Owner provides written notice of the same to the Contracting Officer.

- i. Contractor shall not, through action or inaction (including but not limited to failing to meet all conditions of a policy, causing through action or inaction cessation of a policy, or violating any warranty of a policy), vitiate or void the coverage afforded by the Contractor's Hull and Machinery policy (and Increased Value policy if applicable), War Risk Hull and Machinery policy, Second Seaman's War Risk policy, or the coverage afforded by the Time Charterer Protection and Indemnity policy/entry with P&I War Risk coverage. If any such policy is vitiated or voided by Contractor's action or inaction as described in this Paragraph i., Contractor shall indemnify and hold harmless the Charterer for all liability, costs, or expenses which would have been covered by the policy had such policy or coverage remained in full force and effect.
- ii. In the event Contractor fails to strike "other than owner" or "as owner" provisions per Paragraph 2ii above, fails to amend supplemental limiting provisions as described in Paragraph 2ii above, or fails to amend provisions limiting payment or coverage as described in Paragraph 2ii above, Contractor shall indemnify and hold harmless the Charterer for all liability, costs, or expenses which would have been covered by Contractor's Hull and Machinery policy (and Increased Value policy if applicable), War Risk Hull and Machinery policy, and Second Seaman's War Risk policy had such provisions been stricken or amended as required.

#### **(h-1) WAR**

(1) 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, zone, or route involved in a state of war, warlike operations or hostilities, civil strife, or piracy (whether there be a declaration of war or not) where it might 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 Contractor 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 Contractor indemnification against said risks pursuant to Public Law 85-804 (72 Stat. 972, August 28, 1958).

(2) The Contractor shall immediately notify the Charterer: (i) whenever any sailing orders will result in the 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 Hull War, Strikes, Terrorism and Related Perils Listed Areas); (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 Hull War, Strikes, Terrorism and Related Perils Listed Areas) 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 Contractor shall ensure that the insurers provide it relevant information in a timely manner. If the Contractor has given this required notice to the Charterer, the Charterer will reimburse the Contractor 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 Hull War, Strikes, Terrorism and Related Perils Listed Areas 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 Contractor 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.

(3) Additional Wage Costs. The Charterer shall reimburse Contractor 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. Contractor 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.

(4) Insurance Nonavailability. If no commercial or Governmental insurance is available for service under this Charter Party covering the risks identified in subparagraph (1) above, Vessel shall not be required to enter or remain at any port, place, zone, or route subject to said risks; Charterer in such case shall have the right to order the Vessel to other port(s) or areas consistent with Boxes 2 and 3 herein.

## **(h-2) GOVERNMENT WAR RISK INSURANCE/INDEMNITY**

(1) General. Upon receipt of notice and instructions from the Contracting Officer, as specified in the last sentence of Section h-1(2) of the section entitled "War (h-1)" above, concerning suspension of commercial War Risk insurance coverage and substitution of Government indemnity or Government War Risk insurance, the Contractor 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 any area(s) excluded by the War Risk Trading Warranties, 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 Hull War, Strikes, Terrorism and Related Perils Listed Areas, as the case may be, subject to resumption of its commercial War Risk insurance upon exiting such area(s). In such instances, the Contractor shall accept the Government's indemnity or Government War Risk insurance, whichever is applicable, in lieu of such commercial War Risk insurance. The Contractor shall ensure that the suspension of its commercial War Risk coverage is coincident with the time that any Government indemnity or Government 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 Government War Risk insurance becomes ineffective. The Contractor shall retain the same risks, such as deductibles (if any), that it has under its commercial insurance.

(2) 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 Hull War, Strikes, Terrorism and Related Perils Listed Areas, or otherwise excluded under the Contractor's commercial marine War Risk trading warranties, and which are designated by notice from the Contracting Officer to the Contractor:

- i. War Risk Hull Coverage, insured at the vessel's hull value, as determined by MARAD and subject to the limitations of 46 USC §53901 et seq.;
- ii. War Risk Protection and Indemnity coverage, insured at a value of either (A) 150% of the hull value stated in Vessel's current commercial hull policy effective on Charter Party date or (B) \$50,000,000.00, whichever is greater but in no event exceeding that amount of commercial P&I cover which was in effect for the Vessel on Charter Party date;
- iii. War Risk Second Seaman's coverage, the principal sum of which shall be \$200,000 per Master, Officer, or crew member (this is also the loss-of-life benefit);
- iv. War Risk Loss-of-Hire coverage, if a commercial loss-of-hire policy was in effect on the Vessel on Charter Party date. The sum insured by this policy, including the amount of lost time that is covered, will be equivalent to the levels insured by the Vessel's commercial policy. However, the amount insured by this policy will in no event exceed the hire rate(s) (that would have been in effect under this Charter Party during the period of time that the vessel was off-hire because of a covered War Risk), over a maximum duration of 90 days lost. This maximum amount will be further subject to a deductible equivalent to that in place under the Vessel's commercial policy.

(3) 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 Contractor 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.

**(i) READINESS**

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 in Part II(d) above. Nothing in this clause shall limit the rights of the Charterer to place the Vessel off-hire pursuant to IV(j) (Off-Hire) below.

**(j) OFF-HIRE**

(1) 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 damages 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; dry docking for the purpose of examination or painting bottom; or deviation for the purpose of landing any ill or injured person onboard other than any passenger, supercargo, or military personnel who may be carried at the 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 ready and in a fully efficient state to resume her service from a position not less favorable to the Charterer than that at which such loss of time commenced. 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 ready and in a fully efficient state to resume her service from a position not less favorable to the Charterer than that at which such loss of time commenced. When the period of time lost to the Charterer on any one occasion is less than four (4) consecutive hours (or twelve (12) consecutive hours while in prepositioning service), the hire shall not be reduced for such period.

(2) 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. All fuel used by the Vessel being driven into port or to shallow harbors or to rivers or ports with bars, the delay of the Vessel and/or expenses resulting there from shall be for the Charterer's account. See paragraph IV(p)(5) *infra*.

- (3) Delays/Excessive Fuel Consumption. If upon any passage the Vessel (i) fails to make the warranted speed in Boxes 66 and 67 or if her warranted fuel consumption exceeds that in Boxes 68-71 and Box 73, either or both of which are due to defect in or breakdown of any part of her hull, machinery, or equipment; casualty; or inefficiency of Master, Officers, or crew or their failure to proceed with utmost dispatch, and (ii) is delayed more than twelve (12) hours, the hire for the time lost and any cost of extra fuel consumed, if any, shall be borne by the Owner. Any delay by ice shall be for the Charterer's account.

**(k) SUPERCARGO AND GOVERNMENT DESIGNATED REPRESENTATIVES**

- (1) Charterer's Option. The Charterer shall have the right to assign supercargo (supercargo as used herein is both plural and singular) and other Government designated representatives aboard the Vessel for duty purposes to the extent that accommodations and United States Coast Guard certification (when applicable) allow and in accordance with COMSC Instruction 3121.9 Series. The Charterer shall pay an amount of \$30.00 per day, per person, covering all expenses including accommodations and victualling. The Owner shall victual U.S. Government designated representatives, pilots, and Customs Officers when authorized by the Charterer at \$7.00 per meal. The Government particularly reserves the right to put a representative onboard the Vessel, with the pilot, at the approach to a discharge port (or otherwise as mutually agreeable) to inspect the Vessel and to monitor the unloading; reimbursement for accommodations and/or victualling is to be as described above.
- (2) Military Personnel. In addition to the carriage of personnel noted in subparagraph (1) above, the Charterer shall have the right 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 be reimbursed out-of-pocket expenses not to exceed the amount per person per day set forth in subparagraph (1) above. The Owner shall provide sufficient lifesaving equipment for such personnel in accordance with SOLAS and all other applicable regulatory requirements.
- (3) 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 supercargo or Government designated representatives in the embarkation, carriage, or debarkation of supercargo or Government designated representatives to the extent such loss or damage is not payable under the Vessel's insurance policies. However, the Charterer shall not be liable for such damage unless written notice specifying such damage 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.
- (4) Owner Conditions Not Authorized. The owner shall impose no additional conditions or requirements beyond those contained in this contract on supercargo or government personnel who are aboard the vessel in the conduct of their duties. Under no circumstance shall the owner require supercargo or other government personnel to

execute any type of waivers or indemnity agreements as a condition of their presence aboard the vessel.

- (5)  (check as appropriate) Cadet Training. As required by 46 U.S.C. § 51307, the Owner/Operator shall participate in programs for Merchant Marine cadet training under the sponsorship of, and in accordance with the policies and procedures of, the United States Merchant Marine Academy (USMMA) and shall carry on this vessel at least 2 USMMA cadets, if available, on each voyage. The USMMA will determine whether it has cadets available for cadet training. Cadet wages, berthing, training, subsistence, and transportation shall be solely the responsibility of the Owner/Operator. If USMMA cadets are not available, the Owner shall participate in programs for Merchant Marine cadet training under the sponsorship of, and in accordance with the policies and procedures of, accredited state academies. The state academies will determine whether they have cadets available for cadet training. Available positions shall be distributed as equally as possible among the requesting schools. Cadet wages, berthing, training, subsistence, and transportation shall be solely the responsibility of the Owner.

**(l) TIME LOST**

- (1) Tacking to the End of Charter Period. Any time during which the Vessel is off hire under this Charter Party may be added to the charter period, at the Charterer's option. If the Charterer exercises its option to extend the charter period pursuant to this sub-clause, the charter period shall be deemed to include such extension and hire shall be payable at the rate(s) which would otherwise have been payable during each period of off hire.
- (2) Excessive Time Lost. The Charterer may by written notice cancel this Charter at no cost to the Government whenever, in any given 365-day period, for any reason whatsoever, more than 30 days are lost except for time lost as a result of the causes set forth in IV(h)(1) (War) above. 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.
- (3) Relationship to Other Remedies. No remedy conferred by this paragraph upon the Charterer is intended to be exclusive of any other remedy already conferred by this Charter Party now or hereafter existing at law or in equity or by statute.

**(m) NEGLIGENCE OF PILOTS**

The Government, as the Charterer, shall not be held responsible, liable, or accountable for losses sustained by the Owner or the Vessel through the negligence of pilots or tugboats although engaged by the Charterer. Pilots and tugboats shall be considered servants of the Owner.

## **(n) PORT CHARGES AND EXPENSES**

- (1) Expenses for Charterer. Except as otherwise provided herein, the 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 the Charterer's direction. Agency fees, provided not incurred for the convenience of the Vessel or the Owner, shall also be for the 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 inspections or surveys generally; the costs therefore shall be as mutually agreed and, if for the Charterer's account, said costs shall be incurred only after prior written approval from the Contracting Officer. Charterer's responsibility for all port charges ends with redelivery of the vessel.
- (2) Reimbursement. All of the charges incurred for the Charterer's account as noted in subparagraph (1) above shall be paid by the Owner if so required by the Charterer. The Charterer shall thereafter reimburse the Owner for such charges in accordance with II(i) (Payment) above and IV(y) (Reimbursable Supplies and Services (Charters)) below.

## **(o) OWNER'S OBLIGATION**

- (1) Provisions, Insurance, Wages, Fees, and Other Expenses. The Owner shall, unless otherwise provided herein, provide and pay for all provisions; deck, engine room, and galley stores; lube oil; garbage and non-cargo slop removal/disposal; 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 IV(n)(1) (Port Charges and Expenses) above. The Owner will be responsible for all port charges associated with the foregoing.
- (2) Dispatch. The Owner, through its agents, employees, and servants, shall commence and prosecute the voyages made pursuant to this Charter with utmost dispatch and shall render all customary assistance with the Vessel's crew and equipment.
- (3) Logs. The Owner shall have maintained onboard the Vessel deck and engine room logs, true copies of which shall be retained by the Owner and made available to the Charterer at any time upon request and at no cost to the Government for a period of 10 years after the expiration of this Charter Party. Logs shall be legible and in English.

## **(p) FUEL**

- (1) Delivery Bunkers. Upon delivery of the Vessel, 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 and the Charterer shall pay the Owner for such fuel at the current market price at the port of delivery upon certification and verification of such statement by the Contracting Officer, except that for charters where the vessel receives no bunkers during the course of the charter, the Charterer shall reimburse Owner for the amount of fuel used during the Charter at the current market rate at delivery port at time of delivery. The Charterer shall pay for the on-hire bunker survey if performed by an independent surveyor and required by the Contracting Officer. The Owner shall provide additional bunkers as may be required by the Charterer prior to the acceptance of the Vessel by the Charterer; and the Charterer shall reimburse the Owner all costs directly connected with the bunkering of the additional fuel, including but not limited to lightering, dockage and similar charges, and taxes related therewith.

(2) Provision of Fuel. The Charterer shall ordinarily supply or cause to be supplied any or all of the fuel required by the Vessel during the period of this Charter. The grade of such fuel is to be specified by the Owner, and the grade supplied shall be at least that grade unless otherwise mutually agreed.

(3) Fuel Oil Sampling and Testing.

a. For charters exceeding six months, the Owner shall provide and install a "continuous drip-type" fuel oil testing flange to obtain fuel samples. The Charterer shall bear all costs for fuel testing. The Charterer will provide to the Owner all sample bottles, primary sample containers, seals, and prepaid mailers necessary for collecting and testing bunker fuel. During each bunkering, the Owner shall be responsible for collecting the primary sample by IMO MARPOL VI specified continuous drip sample method, and then generating four individual samples from the primary sample. All samples shall be clearly labeled, sealed and serialized. The four individual samples consist of the 1) MARPOL, 2) Offship Lab, 3) Vendor and 4) Offship Retest samples. The Owner shall retain the MARPOL sample in accordance with MARPOL VI regulations, mail the Offship Lab sample to the Charterer's designated fuel lab using the prepaid mailer, offer the Vendor sample to the fuel supplier, retain the Offship Retest sample until the later of the time that the fuel is consumed or 90 days. The Owner shall record the serial numbers and disposition of all sample bottles in the Ship's Log.

b. For charters of six months or less, the Owner shall perform and bear all costs associated with fuel testing. At a minimum the Owner shall collect, seal, and serialize a MARPOL VI retained sample and an Offship Test sample. The Owner shall have the Offship sample tested in accordance with ISO 8217:2005 (or most current version) for the fuel bunkered. All test results shall be forwarded by email to [msc.mschq-fuel.fct@navy.mil](mailto:msc.mschq-fuel.fct@navy.mil).

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.

- (4) Owner's Purchase of Fuel. The Owner shall, if directed by the Charterer, purchase fuel for the Vessel, in which case the Charterer shall reimburse the Owner the cost of all fuel (excluding lube oils and slop removal) procured by the Owner and loaded in the Vessel during the period of this Charter. If the Owner is required to incur costs under this paragraph by the Charterer, the Charterer shall thereafter reimburse the Owner for the reasonable expenses of such fuel upon presentation of properly certified vouchers, supporting receipts, and other documentation which justify the charges as fair and reasonable in accordance with II(i) (Payment) above. The Owner shall not, however, be reimbursed any amount in excess of the current market price of such fuel at the place of loading plus all reasonable expenses incurred by the Owner in loading said fuel on board the Vessel. The title to all fuel for the cost 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, in the case of any such fuel which is purchased for the performance of this Charter. The Charterer shall be afforded all benefits of Owner's contracts for its fuel requirements, including but not limited to any savings addressed in IV(aa) (Savings) below.
- (5) Off-Hire. If the Vessel 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.
- (6) Redelivery. Upon redelivery of the Vessel, 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 shall be performed at the port of redelivery or such other place as the Charterer shall direct, at Owner's time and expense. The Charterer shall be credited with the value of fuel on board at the time of redelivery, computed at the current market price at the port of redelivery, except that for charters where the vessel receives no bunkers during the course of the Charter, the Charterer shall reimburse Owner for the amount of fuel used during the Charter at the current market rate at delivery port at time of delivery.
- (7) Reasonable Expenses. The term "reasonable expenses" as used in this paragraph, shall mean all reasonable costs excluding crew overtime which are necessarily incurred in loading said fuel on board the Vessel 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; cost of shifting lighters for the convenience of the Vessel, handling lighter lines; and such similar expenses which the Charterer shall

find were necessarily incurred in the loading of fuel on the Vessel during the period of this Charter.

**(q) REDUCED OPERATIONAL STATUS (LAY-UP)**

- (1) Charterer's Option. The Charterer shall have the right to direct the Owner to place the Vessel in a period of reduced operational status (ROS). During any such period the rate of hire shall be as stipulated in the applicable boxes in Part I. The less-than-10-day rates stipulated in Part I shall apply over the full term of: (a) any ROS period which actually extends less than 10 days, and (b) any ROS period which is initially estimated by the Charterer to extend less than 10 days, regardless of the actual duration. The 10-day-and-longer rates stipulated in Part I shall apply over the full term of any ROS period which is estimated to and does extend 10 days or longer, without reference to any other ROS or FOS rates.
- (2) Notice to Owner. The Charterer shall give the Owner written or electronic notice or, in the event notice is given by telephone, written or electronic confirmation of exercise of the right specified in subparagraph (1) above, including with said notice an estimate of the duration of the ROS period. Such notice shall also specify the time at which the period of ROS is to commence, which time shall not be less than 48 hours subsequent to the receipt of such notice by the Owner or its representative. The Charterer shall give the Owner written or electronic notice or, in the event notice is given by telephone, written or electronic confirmation of termination of the period of ROS. Such notice shall specify the time at which such period shall terminate, which time shall be at least 72 hours (Saturdays, Sundays and holidays excluded) subsequent to the receipt of said notice by the Owner or its representative; provided, however, that by agreement between the Owner and the Charterer the Vessel may be returned to FOS before the time specified in the notice of termination of the reduced operational period.

**(r) WAIVER OF CLAIMS**

All claims whatsoever under this contract must be submitted to the Contracting Officer pursuant to the clause entitled "Disputes" within six months of the accrual of the claim. All claims not so submitted shall be deemed waived by the Owner.

**(s) CHARTER NOT A DEMISE**

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.

**(t) SUBCHARTER**

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 the Charterer shall enter into any such charter, the Charterer shall nevertheless remain



responsible for the performance of this Charter. Any such subcharter shall include a provision that it is subject to the provisions of this Charter.

**(u) GENERAL AVERAGE**

General average shall be adjusted, stated and settled according to the York-Antwerp Rules 2004, and any subsequent modification thereof, in the port of New York and according to the laws and usages of the port of New York. In such adjustment, disbursements in foreign currencies shall be converted into United States Dollars at the exchange rate prevailing in the United States on the date made and allowances for damage to cargo claimed in foreign currency shall be converted into United States Dollars at the exchange rate prevailing on the last day of discharge of such damaged cargo from the Vessel. Notwithstanding the foregoing, the Charterer's contributions in general average shall in no event exceed three times the Owner's contribution for any single general average incident.

**(v) SALVAGE**

- (1) 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 the Charterer during deviations for the purpose of performing salvage service.
- (2) When engaged in the carriage of Government cargo and if requested by the Charterer, the Owner agrees to accept Navy salvage services. Such services may be provided using Navy personnel and resources or Navy contracted resources.
- (3) In providing such services, the Navy, through the Charterer, agrees to waive all claims for "pure" or "bonus" salvage. Instead, the Charterer shall be entitled to the following:
  - (a) In those cases in which the salvage services are provided by Navy personnel and resources, the salvage claim shall be limited to a schedule of current per diem rates and allowable expenses as established by the Navy's Supervisor of Salvage. In no event shall such amount exceed a maximum claim of \$25,000 per day.
  - (b) In those situations in which the Navy utilizes contracted resources to deliver assistance, the Owner shall be liable for the actual daily rate charged to the Navy by the Contractor(s).
- (4) It is understood that this limited Supervisor of Salvage claim is asserted against the Vessel only, is solely for the Vessel's account, and does not include any amounts for the salvage of the Government's cargo. Notwithstanding any other provisions of this Contract, this limited Supervisor of Salvage claim IS NOT directly or by way of setoff chargeable in whole or in part to the Government by way of general average or otherwise.

**(w) LIMITATIONS**

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 Party 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 (against parties other than the Charterer) on the theory of personal contract or otherwise.

**(x) ALTERATIONS**

The Charterer shall be at liberty to make any additional alterations it may require beyond what is onboard at the commencement of this Charter, such work to be done at the Charterer's expense and on its time. The Charterer shall thereafter, during the period of this Charter, leave the Vessel in her original condition, ordinary wear and tear excepted, provided that the Contracting Officer is notified in writing within 30 days of completion of any alteration that the Contractor requests such restoration or removal. The Charterer shall be at liberty 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 52.245-1 at III(b)(3). The Charterer shall, during the period of this 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.

**(y) REIMBURSABLE SUPPLIES AND SERVICES (CHARTERS)**

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

such supplies and services. The parties expressly agree that the offered and accepted daily rate includes all costs incurred or paid by the Contractor, including but not limited to material handling charges, overhead, general and administrative costs, or profit, that are in any way associated with the Contractor's purchase or provision of such supplies and services.

- (2) To be eligible to receive reimbursement for services and supplies identified in this Contract as reimbursable items and obtained in support of this Contract, the Contractor must obtain at least three quotes for each transaction in excess of \$3,500.00 to ensure that adequate price competition was sought or the Contractor must provide an acceptable justification as to why it was impracticable to do so. In the case of fuel purchases, unless directed otherwise by the Contracting Officer, the Contractor shall provide the documentation listed in subparagraphs (i) through (iii) below to the Contracting Officer for approval prior to purchasing fuel. For purchases of services and supplies and other than fuel, the Contractor need provide the aforementioned documentation only when requested by the Contracting Officer. The Contractor shall maintain documentation of all reimbursable purchases until three years after the Contract is completed and shall provide access to and copies of such documentation when requested by the Contracting Officer.
  - (i) A description of the supplies or services to be subcontracted.
  - (ii) Identification of the proposed subcontractor and price.
  - (iii) Suppliers contacted and price quotes. Include other pertinent data such as price lists used if suppliers were not contacted and information regarding the selection if other than price-related factors were considered.
- (3) The Contracting Officer may reduce the reimbursement by any amount above that which the Contracting Officer finds, in his/her sole discretion, is greater than that which is fair and reasonable for the supplies or services provided, giving due consideration to the facts and circumstances prevailing at the time that the Contractor procured the supplies and services. Disputes as to the amount by which any reimbursement is reduced shall be resolved in accordance with the "Disputes" clause of the Contract. It shall be the Contractor's burden to demonstrate that the price it paid for reimbursable supplies and services was fair and reasonable.
- (4) When the Contractor expects total funding expended for reimbursable items to reach 85 percent of the total funds available on each Reimbursable Supplies and Services CLIN, the Contractor shall notify the Contracting Officer and the COR and any other Government official identified by the Contracting Officer. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule. The Contractor shall not exceed or incur costs that exceed the amount of funding stated on each Reimbursable Supplies and Services CLIN at the time a reimbursable item is ordered.
- (5) The Government is not obligated to reimburse the Contractor for otherwise reimbursable supplies and services in excess of the funded amount stated in the Schedule under each Reimbursable CLIN.

- (6) The Contractor is not obligated to continue performance of any reimbursable work under this Contract or otherwise incur costs for reimbursable supplies or services in excess of the funded amount stated in the Schedule under each Reimbursable CLIN unless the Contracting Officer notifies the Contractor that the funded amount stated in the Schedule under the applicable Reimbursables CLIN has been increased. Notification shall be in writing. In the event notification is made orally, such notification shall be followed up in writing within two working days.
- (7) No notice, communication, or representation from any person other than the Contracting Officer shall affect the Government's obligation to reimburse the Contractor.
- (8) Change orders shall not be considered an authorization to exceed the funded amount stated in the Schedule under each 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.

**(z) STANDARDS OF APPEARANCE**

It is important that the Vessel operation meets the highest possible standards of appearance and Vessel smartness. To this end, the Owner and operator will institute a continuous program of Vessel maintenance. The hull, decks, deckhouse, and all appurtenances will be cleaned and preserved as necessary and painted as required. The interior of the Vessel's deckhouses will be maintained in a clean and orderly state, with all equipage properly and securely stowed. The main and auxiliary machinery spaces will be kept clean and free of excessive accumulations of oil and debris. All spaces will be lighted to allow safe operation and correct maintenance of machinery and equipment.

**(aa) SAVINGS**

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 reimbursed 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.

**(ab) LAW GOVERNING**

This Charter Party shall be governed by the laws of the United States.

**(ac) SUBSTITUTION**

Subject to the Charterer's approval, the Owner may, at any time, propose to substitute a Vessel or Vessels. The nominated Vessel or Vessels shall possess the same or greater

characteristics as the Vessel or Vessels being replaced. Approval of a Vessel substitution is a matter for the Charterer's sole discretion.

**(ad) MSC SHIPBOARD ANTITERRORISM/FORCE PROTECTION MEASURES**

- (1) The Owner agrees that the time or voyage chartered vessel will be under the tactical control of an MSC Area Command. Extended period time charters will follow Navy OPREP reporting requirements. The Area Commander will advise the Master of the vessel of the applicable Force Protection Condition (FPCON) and security measures he is required to implement.
- (2) The Owner agrees that while under charter, U.S. Armed Forces personnel may board the Vessel at any time at any location for U. S. national security purposes, gives consent for such boarding, and agrees to cooperate fully with such U.S. Armed Forces personnel in the boarding party. The Owner also agrees to permit U.S. Armed Forces personnel to search without limitation any and all vessel spaces for U.S. national security purposes.
- (3) The Charterer reserves the right, at the Charterer's sole option, to embark armed U.S. Armed Forces personnel at any time during the period of this Charter to protect U.S. Armed Forces personnel, cargo or equipment onboard the Vessel, or to protect the Vessel itself. These force protection personnel will provide security in accordance with rules of engagement established by competent U. S. military authorities and will operate under the command of such authorities. The Owner shall provide accommodations and victualling for these embarked personnel. The Charterer shall reimburse the Owner for all expenses relating to the embarkation force protection personnel as provided in this Charter for Supercargo.
- (4) The Owner agrees to render all necessary assistance to U.S. Armed Forces personnel with respect to the identification and screening of crewmembers or such others as may be aboard the Vessel. The Owner consents to the immediate removal of crewmembers or such others as may be aboard the Vessel deemed unsuitable for any reason by the Contracting Officer or U.S. Armed Forces personnel. The Owner agrees to replace any such crewmembers promptly and that such replacements will fully comply with all crew screening requirements. The Charterer agrees to reimburse the Owner for the reasonable costs directly incurred by the Owner with respect to such replacements.
- (5) RESERVED
- (6) The Owner agrees to comply with responsibilities addressed in "shipboard military force protection detachment authority to use force" contained in ALMSC 009/03 message. This message includes respective responsibilities of the Vessel Master and Mission Commander of the embarked security team. The Charterer, through the cognizant MSC Area Command, will provide a copy of this message and MSC N3 Force Protection compliance outline memorandum dated 29 October 2008 to the Vessel during the delivery inspection, if applicable, or as requested.

- (7) The Owner agrees that the Master and Embarked Security Team Mission Commander/Tactical Supervisor on watch shall work together to implement force protection measures. The Master will ensure that the Tactical Supervisor is aware of ship maneuvers. The Master shall be available to receive reports by the Tactical Supervisor of the tactical force protection picture to allow the Master to maneuver his vessel so as to best protect his vessel and crew.
- (8) The Owner agrees that the Master will participate in any embarked security team mission brief that may be given upon embarkation of the Mission Commander.
- (9) The Owner agrees to immediately report all FP incidents, warning shots, firing of flares, and disabling fire to the cognizant MSC Area Command. In addition, all force protection threats, actions, and incidents will be entered into the vessel's deck log or Force Protection journal as applicable.
- (10) The Owner agrees that the Vessel will have an operational internal announcing system and hand-held megaphone.

**(ae) PAYMENT**

- (1) All invoices, requests for equitable adjustment, or similar requests for payment under this Charter must be submitted not later than (six) 6 months after the end of the relevant period of service. All invoices, requests for equitable adjustment, or similar requests for payment not so submitted shall be deemed waived by the Owner.
- (2) Vessel owner shall provide an accounting report to the Contracting Officer's Representative (COR) for each month on hire and no later than by the 5th of the following month. This report shall include description and dollar amounts of cost incurred that month, to include invoice with item/description and pending invoiced amount with CLIN numbers.

**(af) SPECIAL REQUIREMENTS**

- (1) Ship Drawings. Unless otherwise stated, within 48 hours of delivery the Owner shall provide detailed ship drawings indicating all stowage areas, bulkheads, rooms, etc., suitable for the preparation of stow plans. These drawings shall include unusual obstructions or characteristics not readily discernable from deck drawings.
- (2) Force Protection: Notwithstanding any restrictions in this Charter Party to the contrary, Owner agrees to the embarkation of up to 12 armed force protection personnel as provided for under the Force Protection clause. In the event complying with this requirement exceeds the Vessel's Certificate of Inspection (COI), Owner agrees to make reasonable efforts to obtain within two business days of award, all appropriate waivers so as to allow the Vessel to carry such additional personnel. If Owner is unable to obtain the necessary waivers, Charterer shall have the option to cancel this Charter at no cost to the Government. The option to cancel shall be declared not later than 24 hours after the

expiration of the aforementioned two-day period. The cost of any additional lifesaving equipment shall be for Owner's account.

**(ag) STATUTORY EMPLOYEE**

Pursuant to Louisiana Revised Statutes (La.R.S.) 23:1061(A)(3) the Department of the Navy, by and through Military Sealift Command, and Contractor expressly provide and agree that the United States of America and/or the Department of the Navy, by and through Military Sealift Command, is the statutory employer of any of Contractor's employees and is entitled to the tort immunity provided in La.R.S. 23:1061 and La.R.S. 23:1032.

**(ah) IN-TRANSIT VIBILITY**

- (1) MSC has implemented a fully automated satellite tracking system (ASTARS) for the purpose of providing In-Transit Visibility (ITV) of its Vessels. To support this system, the Owner's Vessel shall be equipped with an INMARSAT-C Terminal with GPS input.
- (2) Prior to delivery of the Vessel, the Owner shall provide to the Charterer the make and model of the INMARSAT-C terminal, its registered identification number, and the specific satellite (POR, AORE, AORW, or IOR) on to which it is currently logged. Once this information is received, MSC technicians will remotely communicate with the terminal to activate reporting. When no longer required, MSC technicians will stop the terminal from reporting. The Owner shall provide MSC technicians with assistance as required to activate and maintain ASTARS reporting.
- (3) The cost of ASTARS reporting shall be included in the fixed price of this Charter.

**(ai) SECURITY THREAT**

In the event of a security threat or incident involving the Vessel, crew or cargo during the voyage, the Vessel's Master shall report any incident immediately to the MSC Area Command in whose area the Vessel is currently located. The MSC Command Center should be contacted if cognizant Area Command cannot be reached. Contact numbers will be provided upon award.

**(aj) IMMUNIZATIONS (U.S.-FLAG ONLY)**

**PROPHYLACTIC AND MEDICAL COUNTERMEASURES, INCLUDING**

**IMMUNIZATIONS**: U.S.-flag time chartered vessel(s) services are considered essential Contractor services to the Department of Defense in support of military and associated support missions. As a result, Masters, officers, crewmembers, and other individuals who are embarked on such vessels for Owner's purposes, including but not limited to subcontractors, are considered Contractor personnel performing mission essential services under DODI 3020.37, November 6, 1990, (Change 1, January 26, 1996), and are subject to the following:

- (a) Masters, officers, crewmembers and other individuals, as described above, who are embarked on any vessel(s) subject to this Charter shall be medically pre-screened, and

issued or given prophylactic and medical countermeasures, including immunizations, in accordance with COMSC policy. Owner shall ensure that all Masters, Officers, crewmembers, and other individuals embarked on any vessel(s) subject to this charter comply with all such prophylactic and medical countermeasures, including all immunization requirements in effect or made during the period of this Charter, including any options or extensions. Notification of the requirements pursuant to this section shall be provided to Owner by the Contracting Officer.

- (b) When prophylactic and medical countermeasures, including immunizations are required pursuant to this clause, Owner shall provide notification, as directed by the Contracting Officer, of the immunization status of all embarked personnel within 24 hours of fixture or award. Further, at any time during the contract period, the immunization status of any relief personnel scheduled to board the vessel(s) is required no later than 96 hours prior to the personnel change, unless authorized otherwise by the Contracting Officer.
- (c) Any Master, officer, crewmember or other individual who refuses to comply with any prophylactic or medical countermeasure requirement, including any immunization requirement, or any policy concerning the use of said prophylactic or medical countermeasure, or who for medical, personal, religious or any other reason declines or is ineligible to take or use a particular required immunization or other prophylactic or medical countermeasure, shall be removed by Owner from the Vessel as soon as possible, but not later than the next port call, and replaced, with an individual of equal or better qualifications who has, as applicable, the required immunization(s) or is eligible and willing to comply with the requirement. Any removal and replacement of personnel pursuant to this clause shall be solely at Owner's expense, including, but not limited to, travel, per diem, wages and associated administrative expenses.
- (d) Crew shortages resulting from the application of this section may subject the vessel(s) to being placed off-hire.

**(ak) CHANGES APPLICABLE TO FOREIGN FLAG AWARDS ONLY**

- (1) II(o)(1) – next to last sentence of subparagraph (1), delete the words, “and, if required under this Charter Party (see DFARS 252.247-7025 at VIII(b)(20) concerning requirements for reflagging work in U.S. shipyards), that the Vessel shall be under U.S. flag upon delivery.”

**(al) INVESTIGATIONS**

The Owner agrees to cooperate in any investigation conducted by the Charterer. Such cooperation shall include, but not be limited to, the production of documents and logs and making the Owner’s employees available for interview.



**(am) MILITARY EXTRATERRITORIAL JURISDICTION ACT**

Upon award of this Contract, the Contractor shall immediately notify all contractor personnel, who are or who will be employed by, or who are or who will be accompanying, United States Armed Forces outside the continental United States (OCONUS), and who are not a host country national ordinarily resident in the host country, that such personnel, and any dependents residing with such personnel, who engage in conduct OCONUS that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States as required by the Military Extraterritorial Jurisdiction Act of 2000, Pub. L. 106-523, 114 Stat. 2488, codified at 18 U.S.C. 3261 – 3267, as implemented by DoD Instruction 5525.11, “Criminal Jurisdiction over Civilians Employed by or accompanying the Armed Forces outside the United States.”

**(an) RESERVED**

**(ao) BONUSES**

- (1) The delivery ballast bonus identified in Box 17 is in consideration of the Vessel's timely delivery and loading at the port, place, or range stipulated in Box 2 of this Charter, said Vessel having positioned there in ballast from the area identified elsewhere in Part I.
- (2) The Charterer shall have the unilateral right to change the delivery port or place once or more often, always consistent with Box 2.
- (3) Should the Charterer order Vessel to deliver at a port or place other than that intended in Box 2, and should said change necessitate a ballast passage either shorter or longer than originally contemplated, the bonus shall be adjusted. This adjustment shall be proportionate to the change in ballast distance, expressed as a percentage variation describing the difference between the ballast distance run and the ballast distance originally contemplated.
- (4) The redelivery ballast bonus identified in Box 17 is in consideration of the necessity to reposition the Vessel in ballast to its customary trading range after its redelivery at the port, place or range stipulated in Box 3 of this Charter.
- (5) The Charterer shall have the unilateral right to change the redelivery port or place once or more often, always consistent with Box 3.
- (6) Should the Charterer order Vessel to redeliver at a port or place other than that intended in Box 3, and should said change necessitate a ballast passage either shorter or longer than originally contemplated, the bonus shall be adjusted. This adjustment shall be proportionate to the change in ballast distance, expressed as a percentage variation describing the difference between the ballast distance run and the ballast distance originally contemplated.

- (7) Unless otherwise agreed, the delivery ballast bonus shall be considered earned upon acceptance of Vessel by the Charterer and the redelivery ballast bonus shall be considered earned upon redelivery of Vessel to the Owner.
- (8) In the event a follow-on contract is awarded in direct continuation of this Contract, the Owner shall not be entitled to a ballast/redelivery bonus under this Contract and any bonus or other cost delineated herein for redelivery of the Vessel shall be voided.

**(ap) NO-COST CANCELLATION**

If it shall become clear to the Owner that the Vessel will be delayed in arrival beyond the canceling date identified in Box 5, the Owner may, at the earliest 72 hours before the Vessel is due to sail for the delivery port, ask the Charterer in writing whether the right to cancel will be exercised. Upon receipt of such written notice, the Charterer shall, within 96 hours thereafter, exercise one of the following actions:

- (1) This Charter may be cancelled at no cost whatsoever to either party and the parties shall be relieved of any and all further responsibilities thereunder; or
- (2) The canceling date may be extended to a date mutually agreed, and all other terms and conditions of this Charter shall continue in full force and effect.

**(aq) RESERVED**

**(ar) CONTRACTOR'S NOTICE REGARDING LITIGATION**

The Contractor shall provide the Contracting Officer with immediate notice of any legal action, or claim against the Government, the Vessel, the Contractor, or the Contractor's underwriters that arises from or is related to this contract. The Contractor shall also provide the Contracting Officer with immediate notice of any legal action brought by the Contractor that arises from or is related to this contract.

**(as) SOVEREIGN IMMUNITY**

While performing ship operations, the Contractor shall ensure the Master advises foreign authorities and husbanding agents that the vessel under this contract is a sovereign immune vessel of the United States. These privileges include immunity from arrest or search (whether in foreign internal or territorial waters, or in international waters), immunity from foreign taxation, exemption from any foreign state regulation requiring flying the flag of such foreign state either in its ports or while passing through its territorial sea, and entitlement to exercise exclusive control over persons on board such vessels with respect to acts performed on board. The Contractor shall observe all guidelines found in NAVADMIN 158/16, Sovereign Immunity Policy, ALMSC 020/06 Sovereign Immunity Guidance for MSC Masters, and ALMSC 026/09, Supplemental Sovereign Immunity Guidance, all of which shall be provided upon contract award. The Contractor shall contact the Area Command for the area of operations (AO) should any foreign authority or husbanding agent request

information (submission of documents or completion of forms) contrary to the US Navy and MSC sovereign immunity policies.

**PART V. DRY CARGO TIME ADDITIONAL CONTRACT REQUIREMENTS (AS APPLICABLE) (Addendum to FAR 52.212-4)**

Unless specifically referenced in Box 6, the paragraphs that follow do not apply to this Charter Party:

**(a) SECURITY CLEARANCE (REQUIRES CALLING OUT (A) OR (B))**

The Owner warrants that the Vessel shall comply with all administrative requirements, including the necessary investigative actions required by the Government to obtain a Government facilities clearance for the Vessel and any other facilities necessary to carry out the terms of the Contract. The Contractor shall submit, in a timely manner, information requests for clearances to ensure that corporate officers and at least the Master, Chief Mate, and one additional officer (deck or engineering) of the Vessel are cleared to receive information up to and including SECRET.

(A) Contractor Facility Clearance. The Contractor shall possess a SECRET facilities clearance prior to delivery of vessel.

(B) Contractor Facility Clearance. The Contractor shall possess a SECRET facilities clearance at time of proposal submission.

**(b) FUEL MONITORING**

(1) A computer-generated reporting system, which monitors daily fuel oil consumption, shall be installed. At a minimum, the reporting system will show the following (automated to maximum extent practicable):

- (i) Daily fuel oil consumption
- (ii) Speed made good over the ground
- (iii) Speed made good through the water
- (iv) Average propeller RPM per day
- (v) Vessel draft
- (vi) Sea and weather states
- (vii) Length of Day (e.g., 23, 24, 25 hours)

(2) At the end of each voyage/passage, the Contractor shall submit a summary giving the total time at sea, total distance steamed, total average speed, and total fuel consumed for the passage.

(3) The fuel oil monitoring/reporting system shall record on a daily and quarterly basis as described above. Reports and data collected by the system shall be submitted quarterly to the address provided by the Contracting Officer. The Contractor shall provide the data via e-mail and on a CD ROM compatible with MS Word and Excel. The submission shall include the file path/directory of the CD and the definition of the data elements in the file.

- (4) The Contractor shall include a statement certifying the accuracy of the data contained therein as a true and exact copy of Vessel deck and engine logbooks with the quarterly fuel oil report.

**(c) AUTOMATED EXTERNAL DEFIBRILLATOR (AED)**

- (1) Subject to the requirements of paragraph (2) below, the Contractor shall provide at least one Automated External Defibrillator (AED) unit. Unless otherwise specified in Box 6, all AEDs must be FDA approved and be suitable for shipboard use. The Vessel's Medical Department Representative must be trained to operate and maintain the AED.
- (2) The Contractor shall provide sufficient AEDs, stored in a location ready for use, to ensure that response time to shipboard medical emergencies does not exceed five minutes from any location on the Vessel. AEDs shall be stored in a location that is accessible to trained rescuers.

**(d) BOTH TO BLAME**

To the extent not inconsistent with U.S. law, the following shall apply:

- (1) If the Vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect, or default of the Master, mariner, pilot, or servants in the navigation or in the management of the Vessel, the Charterer shall indemnify Owner against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represents loss of or damage to, or any claims whatsoever of the Charterer, paid or payable by the other or non-carrying ship or her owners to the Charterer and/or owners of the cargo and set off, recouped, or recovered by the other or non-carrying ship or her owners as part of their claim against the Vessel or Owner.
- (2) The foregoing provisions shall also apply where the owners/operators or those in charge of any ship or ships or objects other than, or in addition to the colliding ships or object are at fault in respect of a collision or contact, stranding, or other accident.

**(e) TUGS AND BARGES**

- (1) Construction. All references in this Charter Party to "Vessel" shall be deemed to refer to the Tug and Barge chartered hereunder, unless the context clearly precludes such a reading.
- (2) Affreightment. This Charter is deemed to be for the purpose of affreightment and is not a towage contract.
- (3) COGSA. COGSA shall apply to this Charter as specified in II(j) (Risk of Loss). A barge will not be deemed a "package" thereunder. All cargo in barges will be deemed stowed underdeck for purpose of application of COGSA.

**(f) CONTRACTOR SECURITY (CS)**

This contract language is activated when specifically called out in the RFP. Even when activated, CS may only be necessary during a portion of the contract as determined by the USG and the RFP. In instances where CS necessary for the entire PoP, “award” shall refer to the award of the contract by MSC; in instances where CS is necessary only for portions of the mission’s PoP, “award” shall refer to the award of the subcontract by the prime contractor. The cost of the team for the period annotated in Part V(f)(3), shall be included in the fixed price. In the event of emergencies and in response to worldwide events, all contractors, regardless of callout in the original RFP, may be required to provide CS when so directed by the USG.

1. **CONTRACTOR SECURITY.** The Government requires the Contractor to furnish armed Contractor Security (CS) with a minimum of four (4) persons, as follows:
  - a. Each individual shall, at a minimum:
    - i. Be armed with one semi-automatic or automatic rifle of 5.56 or 7.62 caliber and a minimum of 500 rounds of military-style full metal jacket ammunition. Included in the ammunition amount should be tracer ammunition for use in support of firing warning shots. See NTRP 3-07.2.2 Weapons Handling Procedures and Guidelines, Ch. 2, 4, 6, and 7 for weapon specification requirements (can be provided upon request). Be armed with one shotgun with a minimum of 20 rounds of appropriate ammunition for use against small Unmanned Aerial Systems (UAS).
    - ii. Meet the weapons qualifications contained OPNAVINST 3591.1 series or its equivalent.
  - b) The team shall have a minimum of two (2) laser dazzler devices to warn away or deter manned threats, e.g. small boats, small aircraft, helicopters, etc.
  - c) All team members must possess a current TWIC, or have successfully completed a terrorism check (Terrorism Screening Database) by the U.S. Government or commercial equivalent.
2. Contractor shall provide the security support necessary to ensure mission performance. CS shall, at a minimum, perform the following:
  - a. Prevent any Visit, Board, Search or Seizure (VBSS) force, of as many as 15 personnel, from boarding the vessel by any means, to include but not limited to, a helicopter assault.
  - b. Defend the vessel against pirates or terrorists who may use 2 to 20 small vessels simultaneously attacking both sides of the vessel and may be armed with automatic weapons and rocket propelled grenades.
  - c. Defend the vessel against suicide-bomber attacks by manned or remotely piloted small vessels laden with improvised explosive devices.
  - d. Defend the vessel against remotely piloted or GPS-controlled small UAS suicide-bomber attacks.
  - e. Defend the vessel against any other attack designed to steal or sabotage the vessel, its cargo, or cause death or serious bodily harm of its crew or supercargo.
3. The team shall be onboard during the duration of the portion of the voyage(s) specified in Box 6. Contractor WILL PROVIDE approved firearms and ammunition for the CS as described in paragraph 1(a) above (as well as any body armor, tactical communications

systems, or protective equipment for their use), and is responsible for delivery to and retrieval from the Vessel of these items. Contractor will provide berthing and victuals for the CS in accordance with the terms of this Contract. The presence of an Embarked Security Team (EST) aboard the ship at the same time as a CST does not eliminate the contractual obligations herein. If the USG decides to embark an EST, the EST will assume the lead on force protection duties, and the CST will be subordinate to their direction, through the Master, to include disarming and stowing their weapons, if required.

4. DOCUMENTATION REQUIREMENTS AND TIMELINE. The following timeline will be adhered to by all parties for the provision of notifications and documentation:
  - a. Not later than four (4) working days after award, or notification by the MSC KO/COR that CS is required, the contractor shall provide the following for review/approval by the Government:
    - i. A statement of Certification and Warranty that:
      1. Security Contractor possesses a valid certification under International Standard ISO 28007, Ships and Marine Technology — Guidelines for Private Maritime Security Companies (PMSC) Providing Privately Contracted Armed Security Personnel (PCASP) On Board Ships.
      2. CS team members possess a current TWIC card or has undergone a terrorism check (Terrorist Screening Data Base) by the U.S. Government in accordance with the current version of USCG Port Security Advisory 5-09.
      3. Firearms that the CS team will bring onboard the vessel meet the Government 's requirements in para. 1 above.
      4. Only military-style full metal jacket ammunition will be supplied to and used by the CS.
      5. All CS team members have met the qualification requirement in para. 1(a)(iii) above and will sign a CS Acknowledgment (below) prior to embarkation.
    - b. Upon request, Contractor shall provide the Contracting Officer (KO) / Contracting Officers Representative (COR) with substantiating documentation the Contractor has met its contractually obligated standards, e.g., list of weapons, ammunition, and qualifications for the CS, list of CS personnel assigned (including full name and TWIC number or documentation of terrorism screening in accordance with para. 1(c)) for Quality Assurance purposes within seven (7) days.
    - c. Contractor is responsible for the secure transmission of any personally identifiable information (PII). Questions should be directed to the Contracting Officer or the COR.
5. PERMISSION FROM VESSEL'S FLAG STATE (NON-U.S. FLAG). The Contractor will warrant in its proposal that it has confirmed with the Vessel's flag state (for a flag other than the U.S.) that embarkation of an armed CS for the purposes stated in the Contract does not violate flag state law. Once so warrantied, the Contractor shall hold harmless the USG for any violations of local or flag state law or international treaties required by contract performance. The inability of a CS team to perform the contractual duties may result in non-compliance for purposes of proposal evaluation or a breach of contract terms during performance.

6. RULES FOR USE OF FORCE & LEGAL COMPLIANCE. When using force, to include deadly force, CS personnel will at a minimum comply with the use of force rules found in:
  - a. Current version of DoD Directive 5210.56, ARMING AND THE USE OF FORCE (particularly enclosure 2 thereto);
  - b. Current version of SECNAV Instruction 5500.37, ARMING AND THE USE OF FORCE; and
  - c. Current version of ALMSC Message, Subject: RULES FOR THE USE OF FORCE BY MSC MARINERS.

The Contractor shall request copies of the above guidance from the Contracting Officer if they do not have it. Contractor shall immediately report any discharge of weapon(s) or use of force by CS personnel to the ship's Master, Contracting Officer, and the MSC Area Commander, and shall cooperate with and ensure that CS personnel cooperate with any investigation of the incident by MSC, U.S. Navy, DoD, or other U.S. Government agency. The standing rules of engagement applicable to U.S. military members are not applicable to CS personnel.

- 7) WRITTEN CONTRACT SECURITY (CS) ACKNOWLEDGMENT OF CONTRACTOR, SUBCONTRACTOR(S), & CS PERSONNEL.
  - a. Prior to embarkation of the CS, all CS personnel shall sign a CS ACKNOWLEDGMENT. The Contractor is responsible for the submission of the CS Acknowledgment by CS personnel.
  - b. The CS Acknowledgment to the Contracting Officer will state that:

CONTRACT SECURITY (CS) ACKNOWLEDGMENT (CSA)

The undersigned AFFIRMS by signatures (along with their printed names and dates of signature) at the bottom of this Acknowledgment, that they have read and understand the contents of this Acknowledgment, have truthfully provided any required information, and will comply with all requirements contained in this Acknowledgment.

- (1) CS personnel have been briefed by the Contractor or CS subcontractor(s) and understand they will provide security on the Vessel and defend against threats to the Vessel, its crew, and DoD military cargo on board. In particular, CS personnel shall be prepared to:
  - a) Prevent any Visit, Board, Search or Seizure (VBSS) force, of as many as 15 personnel, from boarding the vessel by any means, to include but not limited to, a helicopter assault.
  - b) Defend the vessel against pirates or terrorists who may use 2 to 20 small vessels simultaneously attacking both sides of the vessel and may be armed with automatic weapons and rocket propelled grenades.
  - c) Defend the vessel against suicide-bomber attacks by manned or remotely piloted small vessels laden with improvised explosive devices.
  - d) Defend the vessel against remotely piloted or GPS controlled small UAS suicide-bomber attacks.
  - e) Defend the vessel against any other attack designed to steal or sabotage the vessel, its cargo, or cause death or serious bodily harm of its crew or supercargo.



- (2) Unlawful or otherwise improper use of force may subject the Contractor, subcontractor(s), and their employees (including CS personnel) to criminal prosecution and/or civil liability under U.S., flag state, local, or international law.
- (3) CS personnel have been briefed by the Contractor or CS subcontractor and understand limitations on the use of force. In particular, the standing rules of engagement applicable to U.S. military members are not applicable to CS personnel. When using force, to include deadly force, CS personnel will at a minimum, comply with:
  - i) Current version of DoD Directive 5210.56, ARMING AND THE USE OF FORCE (particularly enclosure 2 thereto);
  - ii) Current version of SECNAV Instruction 5500.37, ARMING AND THE USE OF FORCE; and
  - iii) Current version of ALMSC Message, Subject: RULES FOR THE USE OF FORCE BY MSC MARINERS.
- (4) CS personnel will only use U.S. government-approved firearms and ammunition. These government-approved firearms and ammunition, as well as any body armor, tactical communications systems, or protective equipment, will be furnished to the CS by the Contactor or CS subcontractor(s), who are responsible for delivery to and retrieval from the Vessel of these items.
- (5) Contractor and subcontractor(s) acknowledge that the background and qualifications of CS personnel have been investigated, and certify these personnel are not prohibited under U.S. law to possess firearms, and all documentation provided to the Contracting Officer is accurate.
- (6) CS personnel have properly filled out, signed, and provided DD FORM 2760 (**QUALIFICATION TO POSSESS FIREARMS OR AMMUNITION**) and MSC SUPPLEMENT TO DD FORM 2760. Contractor shall provide copies of these completed forms to the Contracting Officer with this CS Acknowledgment.
- (7) CS personnel shall each carry a copy of the signed CSA with him or her at all times.
- (8) Authorization for CS personnel to use firearms may be revoked for non-compliance with established rules for the use of force by the vessel Master or the Contracting Officer. In the event of such a revocation, the contractor shall:
  - (a) Provide immediate notification (within four (4) hours) to the Contracting Officer.
  - (b) Within 24-hours, provide a plan to return the CS to full capability, including providing all required documentation, certifications and Contract Security (CS) Acknowledgement for replacement personnel, for government acceptance/approval.
- (9) CS personnel shall be current on all qualifications to use the specified Contractor or subcontractor-furnished and government-approved firearms and will not be issued or use any weapon with which they have not qualified (the date and types of qualification standards that individual CS personnel are in compliance with are set forth below under each of their printed names).

**(g) COMMUNICATIONS**

Vessel shall provide an operational FLEET Broadband (FBB) 500 Terminal FBB Sim Chip provisioned to allow dedicated ISDN 64K Universal Dynamic Interface (UDI) 3.1khz for voice and facsimile.

**(h) SECURE SPACE**

Vessel shall provide a secure space dedicated for the use of designated supercargo/government representatives with the capability of connecting communication equipment to the FBB terminal. The space must meet the Controlled Access Area (CAA) physical security requirements for operating and handling classified material in accordance with United States Navy Information Assurance (IA) Publication 5239-22 and the CAA Checklist, provided upon request. The secure space must be of sufficient size for a contractor provided desk to accommodate a government provided standard computer workstation, monitor, Secure Terminal Equipment (STE phone), and government provided GSA safe securely mounted to the deck or bulkhead and must have a 110VAC, 15 Amp outlet for use.

**(i) LASHING GEAR**

Vessel must be fully outfitted with container deck fittings, semi-automatic twist locks, stackers, rods, turnbuckles, lashing gear, dunnage, and shifting boards in sufficient quantity to safely stow and secure cargo.

**(j) SPREADER BAR**

If lifting containers using cranes, vessel must be equipped with a spreader bar, one per crane, capable of lifting 20-foot and 40-foot containers for each crane, weight tested to 50,000 lbs.

**(k) SEGREGATION**

Contractor shall ensure segregation of all loaded munitions containers aboard the vessel in strict conformance with all applicable regulations concerning the safe and proper loading and stowage of Arms, Ammunition, and Explosives (AA&E). Segregation of all commodities within the containers is the responsibility of the shipper.

**(l) SELF-SUSTAINING**

A contractor-provided mobile crane on vessel can equate to being self-sustaining. Offer must provide specification of self-sustaining equipment intended for use for this contract.

**(m) CERTIFICATES**

Provide most recent and complete copies (with endorsements) of the following documents:

1. Company Document of Compliance
2. Vessel Safety Management Certificate
3. Vessel International Ship Security Certificate (as applicable)
4. Vessel Certificate of Inspection (COI) (as applicable)
5. Vessel Certificate of Documentation (Registry/Coastwise) endorsement (Coastwise Endorsement only required for interstate; registry endorsement only required for U.S. Territory)
6. Vessel Document of Compliance for the Carriage of Dangerous Goods (AA&E only)
7. Current outstanding USCG 835 and class society deficiencies with correction date

**(n) STOW PLAN**

Provide detailed stow plan, including vessel trim and stability values resulting from the proposed stow plan, using the provided cargo list showing the vessel's ability to support the requirement. Stow plans may be cross-checked in ICODES for feasibility - to include square footage, weight, trim, and stability issues.

**(o) FULLY BUNKERED**

Vessel shall be delivered fully bunkered.

**(p) RAMP**

Vessel must confirm that they have a ramp capable of off-loading cargo to wharf 15 feet above mean low water.

**(q) LETTER OF VARIANCE**

If cargo stowage variances from 49 CFR 176.170 are required, proof of capability (Letter of Variance) must be provided. If variance is not required, response must state that no variance is required.

**(r) FORKLIFT**

If a barge is offered, a container handling forklift (provided by the contractor) shall be onboard the barge. The container-handling forklift will position containers on the barge during upload and discharge operations. Forklift shall be in good working order and have backfire deflectors and a fire extinguisher as stated in DA PAM 385-64, paragraph 10-3.

**(s) CADET/MIDSHIPMEN**

As required by 46 U.S.C. § 51307, the Owner/Operator shall participate in programs for Merchant Marine cadet training under the sponsorship of, and in accordance with the policies and procedures of, the United States Merchant Marine Academy (USMMA) and shall carry on this vessel at least 2 USMMA cadets, if available, on each voyage. The USMMA will determine whether it has cadets available for cadet training. Cadet wages, berthing, training, subsistence, and transportation shall be solely the responsibility of the Owner/Operator. If USMMA cadets are not available, the Owner shall participate in programs for Merchant Marine cadet training under the sponsorship of, and in accordance with the policies and procedures of, accredited state academies. The state academies will determine whether they have cadets available for cadet training. Available positions shall be distributed as equally as possible among the requesting schools. Cadet wages, berthing, training, subsistence, and transportation shall be solely the responsibility of the Owner.

**PART VI. FAR 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS — COMMERCIAL ITEMS (MAY 2022)**

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

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

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

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

(4) [52.209-10](#), Prohibition on Contracting with Inverted Domestic Corporations (NOV 2015).

(5) [52.233-3](#), Protest After Award (AUG 1996) ( [31 U.S.C. 3553](#)).

(6) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Public Laws 108-77 and 108-78 ( [19 U.S.C. 3805 note](#))).

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

*[Contracting Officer check as appropriate.]*

\_\_\_ (1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (JUN 2020), with *Alternate I* (NOV 2021) ( [41 U.S.C. 4704](#) and [10 U.S.C. 2402](#)).

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

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

\_\_ (4) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) (Pub. L. 109-282) ( [31 U.S.C. 6101 note](#)).

\_\_ (5) [Reserved].

\_\_ (6) [52.204-14](#), Service Contract Reporting Requirements (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

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

\_\_ (8) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (NOV 2021) ( [31 U.S.C. 6101 note](#)).

\_\_ (9) [52.209-9](#), Updates of Publicly Available Information Regarding Responsibility Matters (OCT 2018) ( [41 U.S.C. 2313](#)).

\_\_ (10) [Reserved].

\_\_ (11) [52.219-3](#), Notice of HUBZone Set-Aside or Sole-Source Award (SEP 2021) ( [15 U.S.C. 657a](#)).

\_\_ (12) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (SEP 2021) (if the offeror elects to waive the preference, it shall so indicate in its offer) ( [15 U.S.C. 657a](#)).

\_\_ (13) [Reserved]

\_\_ (14)(i) [52.219-6](#), Notice of Total Small Business Set-Aside (NOV 2020) ( [15 U.S.C. 644](#)).

\_\_ (ii) Alternate I (MAR 2020) of [52.219-6](#).

\_\_ (15)(i) [52.219-7](#), Notice of Partial Small Business Set-Aside (NOV 2020) ( [15 U.S.C. 644](#)).

\_\_ (ii) Alternate I (MAR 2020) of [52.219-7](#).

\_\_ (16) [52.219-8](#), Utilization of Small Business Concerns (OCT 2018) ( [15 U.S.C. 637\(d\)\(2\)](#) and (3)).

\_\_ (17)(i) [52.219-9](#), Small Business Subcontracting Plan (NOV 2021) ( [15 U.S.C. 637\(d\)\(4\)](#)).

\_\_ (ii) Alternate I (NOV 2016) of [52.219-9](#).

- \_\_ (iii) Alternate II (NOV 2016) of [52.219-9](#).
- \_\_ (iv) Alternate III (JUN 2020) of [52.219-9](#).
- \_\_ (v) Alternate IV (SEP 2021) of [52.219-9](#).
- \_\_ (18)(i) [52.219-13](#), Notice of Set-Aside of Orders (MAR 2020) ( [15 U.S.C. 644\(r\)](#)).
- \_\_ (ii) Alternate I (MAR 2020) of [52.219-13](#).
- \_\_ (19) [52.219-14](#), Limitations on Subcontracting (SEP 2021) ( [15 U.S.C. 637s](#)).
- \_\_ (20) [52.219-16](#), Liquidated Damages—Subcontracting Plan (SEP 2021) ( [15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).
- \_\_ (21) [52.219-27](#), Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (SEP 2021) ( [15 U.S.C. 657f](#)).
- \_\_ (22)(i) [52.219-28](#), Post Award Small Business Program Rerepresentation (SEP 2021) ( [15 U.S.C. 632\(a\)\(2\)](#)).
- \_\_ (ii) Alternate I (MAR 2020) of [52.219-28](#).
- \_\_ (23) [52.219-29](#), Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (SEP 2021) ( [15 U.S.C. 637\(m\)](#)).
- \_\_ (24) [52.219-30](#), Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (SEP 2021) ( [15 U.S.C. 637\(m\)](#)).
- \_\_ (25) [52.219-32](#), Orders Issued Directly Under Small Business Reserves (MAR 2020) ( [15 U.S.C. 644\(r\)](#)).
- \_\_ (26) [52.219-33](#), Nonmanufacturer Rule (SEP 2021) ( [15U.S.C. 637\(a\)\(17\)](#)).
- \_\_ (27) [52.222-3](#), Convict Labor (JUN 2003) (E.O.11755).
- \_\_ (28) [52.222-19](#), Child Labor-Cooperation with Authorities and Remedies (JAN 2022) (E.O.13126).
- \_\_ (29) [52.222-21](#), Prohibition of Segregated Facilities (APR 2015).
- \_\_ (30)(i) [52.222-26](#), Equal Opportunity (SEP 2016) (E.O.11246).
- \_\_ (ii) Alternate I (FEB 1999) of [52.222-26](#).

- \_\_ (31)(i) [52.222-35](#), Equal Opportunity for Veterans (JUN 2020) ( [38 U.S.C. 4212](#)).
- \_\_ (ii) Alternate I (JUL 2014) of [52.222-35](#).
- \_\_ (32)(i) [52.222-36](#), Equal Opportunity for Workers with Disabilities (JUN 2020) ( [29 U.S.C. 793](#)).
- \_\_ (ii) Alternate I (JUL 2014) of [52.222-36](#).
- \_\_ (33) [52.222-37](#), Employment Reports on Veterans (JUN 2020) ( [38 U.S.C. 4212](#)).
- \_\_ (34) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).
- \_\_ (35)(i) [52.222-50](#), Combating Trafficking in Persons (NOV 2021) ( [22 U.S.C. chapter 78](#) and E.O. 13627).
- \_\_ (ii) Alternate I (MAR 2015) of [52.222-50](#) ( [22 U.S.C. chapter 78](#) and E.O. 13627).
- \_\_ (36) [52.222-54](#), Employment Eligibility Verification (MAY 2022) (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial products or commercial services as prescribed in FAR [22.1803](#).)
- \_\_ (37)(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.)
- \_\_ (38) [52.223-11](#), Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).
- \_\_ (39) [52.223-12](#), Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693).
- \_\_ (40)(i) [52.223-13](#), Acquisition of EPEAT®-Registered Imaging Equipment (JUN 2014) (E.O.s 13423 and 13514).
- \_\_ (ii) Alternate I (OCT 2015) of [52.223-13](#).
- \_\_ (41)(i) [52.223-14](#), Acquisition of EPEAT®-Registered Televisions (JUN 2014) (E.O.s 13423 and 13514).
- \_\_ (ii) Alternate I (Jun2014) of [52.223-14](#).



\_\_\_ (42) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (MAY 2020) ( [42 U.S.C. 8259b](#)).

\_\_\_ (43)(i) [52.223-16](#), Acquisition of EPEAT®-Registered Personal Computer Products (OCT 2015) (E.O.s 13423 and 13514).

\_\_\_ (ii) Alternate I (JUN 2014) of [52.223-16](#).

\_\_\_ (44) [52.223-18](#), Encouraging Contractor Policies to Ban Text Messaging While Driving (JUN 2020) (E.O. 13513).

\_\_\_ (45) [52.223-20](#), Aerosols (JUN 2016) (E.O. 13693).

\_\_\_ (46) [52.223-21](#), Foams (Jun2016) (E.O. 13693).

\_\_\_ (47)(i) [52.224-3](#) Privacy Training (JAN 2017) (5 U.S.C. 552 a).

\_\_\_ (ii) Alternate I (JAN 2017) of [52.224-3](#).

\_\_\_ (48) [52.225-1](#), Buy American-Supplies (NOV 2021) ( [41 U.S.C. chapter 83](#)).

\_\_\_ (49)(i) [52.225-3](#), Buy American-Free Trade Agreements-Israeli Trade Act (NOV 2021) ( [41 U.S.C.chapter83](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, [19 U.S.C. 3805](#) note, [19 U.S.C. 4001](#) note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43.

\_\_\_ (ii) Alternate I (JAN 2021) of [52.225-3](#).

\_\_\_ (iii) Alternate II (JAN 2021) of [52.225-3](#).

\_\_\_ (iv) Alternate III (JAN 2021) of [52.225-3](#).

\_\_\_ (50) [52.225-5](#), Trade Agreements (OCT 2019) ( [19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

\_\_\_ (51) [52.225-13](#), Restrictions on Certain Foreign Purchases (FEB 2021) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

\_\_\_ (52) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302Note](#)).

\_\_\_ (53) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (Nov 2007) ( [42 U.S.C. 5150](#)).

\_\_\_ (54) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov2007) ( [42 U.S.C. 5150](#)).

\_\_\_ (55) [52.229-12](#), Tax on Certain Foreign Procurements (FEB 2021).

\_\_\_ (56) [52.232-29](#), Terms for Financing of Purchases of Commercial Products and Commercial Services (NOV 2021) ( [41 U.S.C. 4505](#), [10 U.S.C. 2307\(f\)](#)).

\_\_\_ (57) [52.232-30](#), Installment Payments for Commercial Products and Commercial Services (NOV 2021) ( [41 U.S.C. 4505](#), [10 U.S.C. 2307\(f\)](#)).

\_\_\_ (58) [52.232-33](#), Payment by Electronic Funds Transfer-System for Award Management (OCT2018) ( [31 U.S.C. 3332](#)).

\_\_\_ (59) [52.232-34](#), Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) ( [31 U.S.C. 3332](#)).

\_\_\_ (60) [52.232-36](#), Payment by Third Party (MAY 2014) ( [31 U.S.C. 3332](#)).

\_\_\_ (61) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ( [5 U.S.C. 552a](#)).

\_\_\_ (62) [52.242-5](#), Payments to Small Business Subcontractors (JAN 2017) ( [15 U.S.C. 637\(d\)\(13\)](#)).

\_\_\_ (63)(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) ( [46 U.S.C. 55305](#) and [10 U.S.C. 2631](#)).

\_\_\_ (ii) Alternate I (APR 2003) of [52.247-64](#).

\_\_\_ (iii) Alternate II (NOV 2021) of [52.247-64](#).

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

[Contracting Officer check as appropriate.]

\_\_\_ (1) [52.222-41](#), Service Contract Labor Standards (AUG 2018) ( [41 U.S.C. chapter67](#)).

\_\_\_ (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (MAY 2014) ( [29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

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

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

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

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

\_\_ (7) [52.222-55](#), Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

\_\_ (8) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).

\_\_ (9) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) ( [42 U.S.C. 1792](#)).

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

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

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

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

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

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

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

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

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

(v) [52.219-8](#), Utilization of Small Business Concerns (OCT 2018) ( [15 U.S.C. 637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR [19.702\(a\)](#) on the date of subcontract award, the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(vi) [52.222-21](#), Prohibition of Segregated Facilities (APR 2015).

(vii) [52.222-26](#), Equal Opportunity (SEP 2015) (E.O.11246).

(viii) [52.222-35](#), Equal Opportunity for Veterans (JUN 2020) ( [38 U.S.C. 4212](#)).

(ix) [52.222-36](#), Equal Opportunity for Workers with Disabilities (JUN 2020) ( [29 U.S.C. 793](#)).

(x) [52.222-37](#), Employment Reports on Veterans (JUN 2020) ( [38 U.S.C. 4212](#)).

(xi) [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](#).

(xii) [52.222-41](#), Service Contract Labor Standards (AUG 2018) ( [41 U.S.C. chapter 67](#)).

(xiii)(A) [52.222-50](#), Combating Trafficking in Persons (NOV 2021) ( [22 U.S.C. chapter 78](#) and E.O 13627).

(B) Alternate I (MAR 2015) of [52.222-50](#) ( [22 U.S.C. chapter 78 and E.O. 13627](#)).

(xiv) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May2014) ( [41 U.S.C. chapter 67](#)).

(xv) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (MAY 2014) ( [41 U.S.C. chapter 67](#)).

(xvi) [52.222-54](#), Employment Eligibility Verification (MAY 2022) (E.O. 12989).

(xvii) [52.222-55](#), Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

(xviii) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).

(xix)(A) [52.224-3](#), Privacy Training (Jan 2017) ( [5 U.S.C. 552a](#)).

(B) Alternate I (JAN 2017) of [52.224-3](#).

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

(xxi) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (JUN 2020) ( [42 U.S.C. 1792](#)). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xxii) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) ( [46 U.S.C. 55305](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

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

(End of clause)

[http://www.acquisition.gov/far/current/html/52\\_212\\_213.html](http://www.acquisition.gov/far/current/html/52_212_213.html)

**PART VII. CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS**

- (a) The following clause(s) apply to every contract:
- (1) [52.203-3](#), Gratuities
  - (2) [252.203-7000](#), Requirements Relating to Compensation of Former DoD Officials (SEP 2011) (Section 847 of Pub. L. 110-181).
  - (3) [252.227-7015](#), Technical Data—Commercial Items (10 U.S.C. 2320).
  - (4) [252.227-7037](#), Validation of Restrictive Markings on Technical Data (SEP 2016), if applicable (see [227.7102-4\(c\)](#)).
  - (5) [252.237-7010](#), Prohibition on Interrogation of Detainees by Contractor Personnel (JUN 2013) (Section 1038 of Pub. L. 111-84)
- (b) The following clause(s) apply to contract(s) greater than \$1,000,000.00:
- (1) [252.205-7000](#), Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).
- (c) The following clause(s) apply to contract(s) greater than \$500,000.00:
- (1) [252.226-7001](#), Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (Section 8021 of Pub. L. 107-248 and similar sections in subsequent DoD appropriations acts).
- (d) The following clause(s) apply to contract(s) exceeding the simplified acquisition threshold (SAT):
- (1) [252.225-7012](#), Preference for Certain Domestic Commodities (10 U.S.C. 2533a).
  - (2) [252.243-7002](#), Requests for Equitable Adjustment (10 U.S.C. 2410).
- (e) The following clause(s) apply to contract(s) awarded to a U.S. vendor:
- (1) [252.232-7003](#), Electronic Submission of Payment Requests and Receiving (10 U.S.C. 2227).
- (f) The following clause(s) apply to contract(s) awarded to a U.S. flag vessel:
- (1) [252.247-7027](#), Riding Gang Member Requirements (Section 3504 of Pub. L. 110-417).
- (g) The following clause(s) apply to contract(s) for which the offeror made a negative response to the inquiry in the provision at 252.247-7022, Representation of Extent of Transportation by Sea:
- (1) [252.247-7024](#), Notification of Transportation of Supplies by Sea (10 U.S.C. 2631)
- (h) The following clauses apply if checked:
- (1) *Part 203—Improper Business Practices and Personal Conflicts of Interest.*

**XX** (A) Use the FAR clause at 52.203-3, Gratuities, as prescribed in FAR 3.202, to comply with 10 U.S.C. 2207.

**XX** (B) Use the clause at [252.203-7000](#), Requirements Relating to Compensation of Former DoD Officials, as prescribed in [203.171-4\(a\)](#), to comply with section 847 of Pub. L. 110-181.

**XX** (C) Use the clause at [252.203-7003](#), Agency Office of the Inspector General, as prescribed in [203.1004\(a\)](#), to comply with section 6101 of Pub. L. 110-252 and 41 U.S.C. 3509.

**XX** (D) Use the provision at [252.203-7005](#), Representation Relating to Compensation of Former DoD Officials, as prescribed in [203.171-4\(b\)](#).

(ii) *Part 204—Administrative Matters.*

**XX** (A) Use the clause at [252.204-7004](#), Antiterrorism Awareness Training for Contractors, as prescribed in [204.7203](#).

**XX** (B) Use the provision at [252.204-7008](#) Compliance with Safeguarding Covered Defense Information Controls, as prescribed in [204.7304\(a\)](#).

**XX** (C) Use the clause at [252.204-7009](#), Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information, as prescribed in [204.7304\(b\)](#).

**XX** (D) Use the clause at [252.204-7012](#), Safeguarding Covered Defense Information and Cyber Incident Reporting, as prescribed in [204.7304\(c\)](#).

**XX** (E) Use the provision at [252.204-7013](#), Limitations on the Use or Disclosure of Information by Litigation Support Offerors, as prescribed in [204.7403\(a\)](#), to comply with 10 U.S.C. 129d.

**XX** (F) Use the clause at [252.204-7014](#), Limitations on the Use or Disclosure of Information by Litigation Support Contractors, as prescribed in [204.7403\(b\)](#), to comply with 10 U.S.C. 129d.

**XX** (G) Use the clause at [252.204-7015](#), Notice of Authorized Disclosure of Information for Litigation Support, as prescribed in [204.7403\(c\)](#), to comply with 10 U.S.C. 129d.

(iii) *Part 205—Publicizing Contract Actions.*

Use the clause at [252.205-7000](#), Provision of Information to Cooperative Agreement Holders, as prescribed in [205.470](#), to comply with 10 U.S.C. 2416.

(iv) *Part 211—Describing Agency Needs.*

(A) Use the clause at [252.211-7003](#), Item Unique Identification and Valuation, as prescribed in [211.274-6\(a\)\(1\)](#).

(B) Use the provision at [252.211-7006](#), Passive Radio Frequency Identification, as prescribed in [211.275-3](#).

(C) Use the clause at [252.211-7007](#), Reporting of Government-Furnished Property, as prescribed in [211.274-6](#).

(D) Use the clause at [252.211-7008](#), Use of Government-Assigned Serial Numbers, as prescribed in [211.274-6\(c\)](#).

(v) *Part 213—Simplified Acquisition Procedures.*

Use the provision at [252.213-7000](#), Notice to Prospective Suppliers on Use of Past Performance Information Retrieval System—Statistical Reporting in Past Performance Evaluations, as prescribed in [213.106-2-70](#).

(vi) *Part 215—Contracting by Negotiation.*

(A) Use the provision at [252.215-7003](#), Requirements for Submission of Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation, as prescribed at [215.408\(2\)\(i\)](#).

(B) Use the clause at [252.215-7004](#), Requirement for Submission of Data other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation, as prescribed at [215.408\(2\)\(ii\)](#).

**XX** (C) Use the provision at [252.215-7007](#), Notice of Intent to Resolicit, as prescribed in [215.371-6](#).

**XX** (D) Use the provision [252.215-7008](#), Only One Offer, as prescribed at [215.408\(3\)](#).

(E) Use the provision [252.215-7010](#), Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, as prescribed at [215.408\(5\)\(i\)](#) to comply with section 831 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and sections 851 and 853 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92).

(1) Use the basic provision as prescribed at [215.408\(5\)\(i\)\(A\)](#).

(2) Use the alternate I provision as prescribed at [215.408\(5\)\(i\)\(B\)](#).

(vii) *Part 219—Small Business Programs.*

(A) Use the clause at [252.219-7003](#), Small Business Subcontracting Plan (DoD Contracts), to comply with 15 U.S.C. 637.

(1) Use the basic clause as prescribed in [219.708\(b\)\(1\)\(A\)\(1\)](#).

(2) Use the alternate I clause as prescribed in [219.708\(b\)\(1\)\(A\)\(2\)](#).

(B) Use the clause at [252.219-7004](#), Small Business Subcontracting Plan (Test Program), as prescribed in [219.708\(b\)\(1\)\(B\)](#), to comply with 15 U.S.C. 637 note.

(C) Use the provision at [252.219-7000](#), Advancing Small Business Growth, as prescribed in [219.309\(1\)](#), to comply with 10 U.S.C. 2419.

(D) Use the provision at [252.219-7012](#), Competition for Religious-Related Services, as prescribed in [219.270-3](#).

(viii) *Part 223—Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace.*

Use the clause at [252.223-7008](#), Prohibition of Hexavalent Chromium, as prescribed in [223.7306](#).

(ix) *Part 225—Foreign Acquisition.*

(A) Use the provision at [252.225-7000](#), Buy American—Balance of Payments Program Certificate, to comply with 41 U.S.C. chapter 83 and Executive Order 10582 of December 17, 1954, Prescribing Uniform Procedures for Certain Determinations Under the Buy-American Act.



(I) Use the basic provision as prescribed in [225.1101\(1\)\(i\)](#).

(2) Use the alternate I provision as prescribed in [225.1101\(1\)\(ii\)](#).

(B) Use the clause at [252.225-7001](#), Buy American and Balance of Payments Program, to comply with 41 U.S.C. chapter 83 and Executive Order 10582 of December 17, 1954, Prescribing Uniform Procedures for Certain Determinations Under the Buy-American Act.

(I) Use the basic clause as prescribed in [225.1101\(2\)\(ii\)](#).

(2) Use the alternate I clause as prescribed in [225.1101\(2\)\(iii\)](#).

(C) Use the clause at [252.225-7006](#), Acquisition of the American Flag, as prescribed in [225.7002-3\(c\)](#), to comply with section 8123 of the DoD Appropriations Act, 2014 (Pub. L. 113-76, division C, title VIII), and the same provision in subsequent DoD appropriations acts.

(D) Use the clause at [252.225-7007](#), Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies, as prescribed in [225.1103\(4\)](#), to comply with section 1211 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2006 (Pub. L. 109-163) as amended by the NDAA for FY 2012 and FY 2017.

(E) Use the clause at [252.225-7008](#), Restriction on Acquisition of Specialty Metals, as prescribed in [225.7003-5\(a\)\(1\)](#), to comply with 10 U.S.C. 2533b.

(F) Use the clause at [252.225-7009](#), Restriction on Acquisition of Certain Articles Containing Specialty Metals, as prescribed in [225.7003-5\(a\)\(2\)](#), to comply with 10 U.S.C. 2533b.

(G) Use the provision at [252.225-7010](#), Commercial Derivative Military Article—Specialty Metals Compliance Certificate, as prescribed in [225.7003-5\(b\)](#), to comply with 10 U.S.C. 2533b.

**XX** (H) Use the clause at [252.225-7012](#), Preference for Certain Domestic Commodities, as prescribed in [225.7002-3\(a\)](#), to comply with 10 U.S.C. 2533a.

(I) Use the clause at [252.225-7015](#), Restriction on Acquisition of Hand or Measuring Tools, as prescribed in [225.7002-3\(b\)](#), to comply with 10 U.S.C. 2533a.

(J) Use the clause at [252.225-7016](#), Restriction on Acquisition of Ball and Roller Bearings, as prescribed in [225.7009-5](#), to comply with section 8065 of Pub. L. 107-117 and the same restriction in subsequent DoD appropriations acts.

(K) Use the clause at [252.225-7017](#), Photovoltaic Devices, as prescribed in [225.7017-4\(a\)](#), to comply with section 846 of Public Law 111-383.

(L) Use the provision at [252.225-7018](#), Photovoltaic Devices—Certificate, as prescribed in [225.7017-4\(b\)](#), to comply with section 846 of Public Law 111-383.

(M) Use the provision at [252.225-7020](#), Trade Agreements Certificate, to comply with 19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note. Alternate I also implements section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(I) Use the basic provision as prescribed in [225.1101\(5\)\(i\)](#),

(2) Use the alternate I provision as prescribed in [225.1101\(5\)\(ii\)](#).

(N) Use the clause at [252.225-7021](#), Trade Agreements to comply with 19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note.

(1) Use the basic clause as prescribed in [225.1101\(6\)\(i\)](#).

(2) Use the alternate II clause as prescribed in [225.1101\(6\)\(ii\)](#).

(O) Use the provision at [252.225-7023](#), Preference for Products or Services from Afghanistan, as prescribed in [225.7703-4\(a\)](#), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(P) Use the clause at [252.225-7024](#), Requirement for Products or Services from Afghanistan, as prescribed in [225.7703-4\(b\)](#), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(Q) Use the clause at [252.225-7026](#), Acquisition Restricted to Products or Services from Afghanistan, as prescribed in [225.7703-4\(c\)](#), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(R) Use the clause at [252.225-7027](#), Restriction on Contingent Fees for Foreign Military Sales, as prescribed in [225.7307\(a\)](#), to comply with 22 U.S.C. 2779.

(S) Use the clause at [252.225-7028](#), Exclusionary Policies and Practices of Foreign Governments, as prescribed in [225.7307\(b\)](#), to comply with 22 U.S.C. 2755.

(T) Use the clause at [252.225-7029](#), Acquisition of Uniform Components for Afghan Military or Afghan National Police, as prescribed in [225.7703-4\(d\)](#).

(U) Use the provision at [252.225-7031](#), Secondary Arab Boycott of Israel, as prescribed in [225.7605](#), to comply with 10 U.S.C. 2410i.

(V) Use the provision at [252.225-7035](#), Buy American—Free Trade Agreements—Balance of Payments Program Certificate, to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 3301 note. Alternates II, III, and V also implement section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(1) Use the basic provision as prescribed in [225.1101\(9\)\(i\)](#).

(2) Use the alternate I provision as prescribed in [225.1101\(9\)\(ii\)](#).

(3) Use the alternate II provision as prescribed in [225.1101\(9\)\(iii\)](#).

(4) Use the alternate III provision as prescribed in [225.1101\(9\)\(iv\)](#).

(5) Use the alternate IV provision as prescribed in [225.1101\(9\)\(v\)](#).

(6) Use the alternate V provision as prescribed in [225.1101\(9\)\(vi\)](#).

(W) Use the clause at [252.225-7036](#), Buy American--Free Trade Agreements-- Balance of Payments Program to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 3301 note. Alternates II, III, and V also implement section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(1) Use the basic clause as prescribed in [225.1101\(10\)\(i\)\(A\)](#).

(2) Use the alternate I clause I as prescribed in [225.1101\(10\)\(i\)\(B\)](#).

(3) Use the alternate II clause as prescribed in [225.1101\(10\)\(i\)\(C\)](#).

(4) Use the alternate III clause as prescribed in [225.1101\(10\)\(i\)\(D\)](#).

(5) Use the alternate IV clause as prescribed in [225.1101\(10\)\(i\)\(E\)](#).

(6) Use the alternate V clause as prescribed in [225.1101\(10\)\(i\)\(F\)](#).

(X) Use the provision at [252.225-7037](#), Evaluation of Offers for Air Circuit Breakers, as prescribed in [225.7006-4\(a\)](#), to comply with 10 U.S.C. 2534(a)(3).

(Y) Use the clause at [252.225-7038](#), Restriction on Acquisition of Air Circuit Breakers, as prescribed in [225.7006-4\(b\)](#), to comply with 10 U.S.C. 2534(a)(3).

(Z) Use the clause at [252.225-7039](#), Defense Contractors Performing Private Security Functions Outside the United States, as prescribed in [225.302-6](#), to comply with section 2 of Pub. L. 110-181, as amended.

(AA) Use the clause at [252.225-7040](#), Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, as prescribed in [225.371-5\(a\)](#).

**XX** (BB) Use the clause at [252.225-7043](#), Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, as prescribed in [225.372-2](#).

(CC) Use the provision at [252.225-7049](#), Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations, as prescribed in [225.772-5](#), to comply with 10 U.S.C. 2279.

(DD) Use the provision at [252.225-7050](#), Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism, as prescribed in [225.771-5](#), to comply with 10 U.S.C. 2327(b).

(EE) Use the clause at [252.225-7051](#), Prohibition on Acquisition for Certain Foreign Commercial Satellite Services, as prescribed in [225.772-5\(b\)](#), to comply with 10 U.S.C. 2279.

(FF) Use the clause at [252.225-7052](#), Restriction on the Acquisition of Certain Magnets and Tungsten, as prescribed in [225.7018-5](#).

(x) *Part 226--Other Socioeconomic Programs.*  
Use the clause at [252.226-7001](#), Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns, as prescribed in [226.104](#), to comply with section 8021 of Pub. L. 107-248 and similar sections in subsequent DoD appropriations acts.

(xi) *Part 227—Patents, Data, and Copyrights.*

(A) Use the clause at [252.227-7013](#), Rights in Technical Data–Noncommercial Items, as prescribed in [227.7103-6\(a\)](#). Use the clause with its Alternate I as prescribed in [227.7103-6\(b\)\(1\)](#). Use the clause with its Alternate II as prescribed in [227.7103-6\(b\)\(2\)](#), to comply with 10 U.S.C. 7317 and 17 U.S.C. 1301, et. seq.

(B) Use the clause at [252.227-7015](#), Technical Data–Commercial Items, as prescribed in [227.7102-4\(a\)\(1\)](#), to comply with 10 U.S.C. 2320. Use the clause with its Alternate I as prescribed in [227.7102-4\(a\)\(2\)](#), to comply with 10 U.S.C. 7317 and 17 U.S.C. 1301, et. seq.

(C) Use the clause at [252.227-7037](#), Validation of Restrictive Markings on Technical Data, as prescribed in [227.7102-4\(c\)](#).

(xii) *Part 229—Taxes.*

(A) Use the clause at [252.229-7014](#), Taxes—Foreign Contracts in Afghanistan, as prescribed at [229.402-70\(k\)](#).

(B) Use the clause at [252.229-7015](#), Taxes—Foreign Contracts in Afghanistan (North Atlantic Treaty Organization Status of Forces Agreement), as prescribed at [229.402-70\(l\)](#).

(xiii) *Part 232—Contract Financing.*

**XX** (A) Use the clause at [252.232-7003](#), Electronic Submission of Payment Requests and Receiving Reports, as prescribed in [232.7004](#), to comply with 10 U.S.C. 2227.

**XX** (B) Use the clause at [252.232-7006](#), Wide Area WorkFlow Payment Instructions, as prescribed in [232.7004\(b\)](#).

(C) Use the clause at [252.232-7009](#), Mandatory Payment by Governmentwide Commercial Purchase Card, as prescribed in [232.1110](#).

**XX** (D) Use the clause at [252.232-7010](#), Levies on Contract Payments, as prescribed in [232.7102](#).

(E) Use the clause at [252.232-7011](#), Payments in Support of Emergencies and Contingency Operations, as prescribed in [232.908](#).

(F) Use the provision at [252.232-7014](#), Notification of Payment in Local Currency (Afghanistan), as prescribed in [232.7202](#).

(xiv) *Part 237—Service Contracting.*

(A) Use the clause at [252.237-7010](#), Prohibition on Interrogation of Detainees by Contractor Personnel, as prescribed in [237.173-5](#), to comply with section 1038 of Pub. L. 111-84.

(B) Use the clause at [252.237-7019](#), Training for Contractor Personnel Interacting with Detainees, as prescribed in [237.171-4](#), to comply with section 1092 of Pub. L. 108-375.

(xv) *Part 239--Acquisition of Information Technology.*

(A) Use the provision [252.239-7009](#), Representation of Use of Cloud Computing, as prescribed in [239.7604\(a\)](#).

(B) Use the clause [252.239-7010](#), Cloud Computing Services, as prescribed in [239.7604\(b\)](#).

(C) Use the provision at [252.239-7017](#), Notice of Supply Chain Risk, as prescribed in [239.7306\(a\)](#), to comply with 10 U.S.C. 2339a.

(D) Use the clause at [252.239-7018](#), Supply Chain Risk, as prescribed in [239.7306\(b\)](#), to comply with 10 U.S.C. 2339a.

**XX** (xvi) *Part 243—Contract Modifications.*

Use the clause at [252.243-7002](#), Requests for Equitable Adjustment, as prescribed in [243.205-71](#), to comply with 10 U.S.C. 2410.

**XX** (xvii) *Part 244—Subcontracting Policies and Procedures.*

Use the clause at [252.244-7000](#), Subcontracts for Commercial Items, as prescribed in [244.403](#).

(xviii) *Part 246—Quality Assurance.*

(A) Use the clause at [252.246-7003](#), Notification of Potential Safety Issues, as prescribed in [246.370\(a\)](#).

(B) Use the clause at [252.246-7004](#), Safety of Facilities, Infrastructure, and Equipment for Military Operations, as prescribed in [246.270-4](#), to comply with section 807 of Pub. L. 111-84.

(C) Use the clause at [252.246-7008](#), Sources of Electronic Parts, as prescribed in [246.870-3\(b\)](#), to comply with section 818(c)(3) of Pub. L. 112-81, as amended by section 817 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291) and section 885 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92).

(xix) *Part 247—Transportation.*

(A) Use the clause at [252.247-7003](#), Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, as prescribed in [247.207](#), to comply with section 884 of Pub. L. 110-417.

**XX** (B) Use the provision at [252.247-7022](#), Representation of Extent of Transportation by Sea, as prescribed in [247.574\(a\)](#).

**XX** (C) Use the basic or one of the alternates of the clause at [252.247-7023](#), Transportation of Supplies by Sea, as prescribed in [247.574\(b\)](#), to comply with the Cargo Preference Act of 1904 (10 U.S.C. 2631(a)).

(1) Use the basic clause as prescribed in [247.574\(b\)\(1\)](#).

(2) Use the alternate I clause as prescribed in [247.574\(b\)\(2\)](#).

(3) Use the alternate II clause as prescribed in [247.574\(b\)\(3\)](#).

**XX** (D) Use the clause [252.247-7025](#), Reflagging or Repair Work, as prescribed in [247.574\(c\)](#), to comply with 10 U.S.C. 2631(b).

(E) Use the provision at [252.247-7026](#), Evaluation Preference for Use of Domestic Shipyards – Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, as prescribed in [247.574\(d\)](#), to comply with section 1017 of Pub. L. 109-364.

**XX** (F) Use the clause at [252.247-7027](#), Riding Gang Member Requirements, as prescribed in [247.574\(e\)](#), to comply with section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

(G) Use the clause at [252.247-7028](#), Application for U.S. Government Shipping Documentation/Instructions, as prescribed in [247.207](#).

**212.302 Tailoring of provisions and clauses for the acquisition of commercial items.**

(c) *Tailoring inconsistent with customary commercial practice.* The head of the contracting activity is the approval authority within the DoD for waivers under FAR 12.302(c).

## PART VIII. ADDITIONAL FAR AND DFARS CLAUSES

### (a) FAR 52.252-2 Clauses Incorporated by Reference (FEB 1998)

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

<http://www.acquisition.gov/far/index.html>  
<http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>

### (b) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) clauses, which, if checked, are incorporated in this Contract by reference.

- (1) FAR [52.204-4](#) Printed or Copied Double-Side on Postconsumer Fiber Content Paper
- (2) FAR [52.232-18](#) Availability of Funds
- (3) FAR [52.245-1](#) Government Property
- (4) DFARS [252.201-7000](#) Contracting Officer's Representative
- (5) DFARS [252.203-7002](#) Requirement to Inform Employees of Whistleblower Rights
- (6) DFARS [252.204-7000](#) Disclosure of Information
- (7) DFARS [252.204-7003](#) Control of Government Personnel Work Product
- (8) Reserved
- (9) DFARS [252.209-7004](#) Subcontracting with Firms that are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism
- (10) DFARS [252.211-7006](#) Passive Radio Frequency Identification
- (11) DFARS [252.215-7007](#) Notice of Intent to Resolicit
- (12) DFARS [252.215-7008](#) Only One Offer
- (13) DFARS [252.223-7002](#) Safety Precautions for Ammunition and Explosives
- (14) DFARS [252.223-7003](#) Change in Place of Performance – Ammunition and Explosives
- (15) DFARS [252.225-7040](#) Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States
- (16) DFARS [252.225-7043](#) Antiterrorism/Force Protection for Defense Contractors Outside the United States
- (17) DFARS [252.245-7001](#) Tagging, Labeling, and Marking of Government-Furnished Property
- (18) DFARS [252.245-7002](#) Reporting Loss of Government Property
- (19) DFARS [252.245-7003](#) Contractor Property Management System Administration
- (20) DFARS [252.245-7004](#) Reporting, Reutilization, and Disposal
- (21) DFARS [252.247-7025](#) Reflagging or Repair Work
- (22) FAR [52.228-3](#) Worker's Compensation Insurance (Defense Base Act)
- (23) DFARS [252.232-7007](#) Limitation of Government's Obligation
- (24) FAR [52.232-39](#) Unenforceability of Unauthorized Obligations

- (25) FAR [52.232-40](#) Providing Accelerated Payments to Small Business Subcontractors
- (26) DFARS [252.204-7008](#) Compliance with Safeguarding Covered Defense Information Controls
- (27) DFARS [252.204-7012](#) Safeguarding Covered Defense Information and Cyber Incident Reporting
- (28) DFARS [252.247-7027](#) Riding Gang Member Requirements
- (29) DFARS [252.247-7023](#) Transportation of Supplies by Sea-Basic
- (30) DFARS [252.247-7022](#) Representation of Extent of Transportation by Sea
- (31) FAR [52.204-16](#) Commercial and Government Entity Code Reporting
- (32) FAR [52.204-17](#) Ownership or Control of Offeror
- (33) FAR [52.204-18](#) Commercial and Government Entity Code Maintenance
- (34) FAR [52.204-21](#) Basic Safeguarding of Covered Contractor Information Systems Video Surveillance Services or Equipment
- (35) FAR [52.204-25](#) Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment
- (36) DFARS [252.225-7993](#) Prohibition on Providing Funds to the Enemy (DEVIATION 2020-O0001) (NOV 2019)
- (37) DFARS [252.225-7975](#) Additional Access to Contractor and Subcontractor Records (DEVIATION 2020-O0001)
- (38) FAR [52.204-13](#) System for Award Management Maintenance
- (39) DFARS [252.204-7020](#) Notice of NIST SP 800-171 DOD Assessment Requirements
- (40) DFARS [252.232-7017](#) Accelerating Payments to Small Business Subcontractors Prohibition on Fees and Consideration
- (41) DFARS [252.233-7999](#) Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (Deviation 2021-O0009)
- (42) DFARS [252.204-7018](#) Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services

(c) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) clauses which, if checked, are included in this Contract:

(1) **FAR 52.204-7 SYSTEM FOR AWARD MANAGEMENT (OCT 2018)**

(a) Definitions. As used in this provision—

“Electronic Funds Transfer (EFT) indicator means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see [subpart 32.11](#)) for the same entity.

*Registered in the System for Award Management (SAM)* means that—

(1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see [subpart 4.14](#)) into SAM;

(2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in SAM;



(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record “Active”.

*Unique entity identifier* means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See [www.sam.gov](http://www.sam.gov) for the designated entity for establishing unique entity identifiers.

(b)(1) An Offeror is required to be registered in SAM when submitting an offer or quotation, and shall continue to be registered until time of award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “Unique Entity Identifier” followed by the unique entity identifier that identifies the Offeror's name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the Contracting Officer to verify that the Offeror is registered in the SAM.

(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at [www.sam.gov](http://www.sam.gov) for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:

(1) Company legal business name.

(2) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(3) Company physical street address, city, state, and Zip Code.

(4) Company mailing address, city, state and Zip Code (if separate from physical).

(5) Company telephone number.

(6) Date the company was started.

(7) Number of employees at your location.

(8) Chief executive officer/key manager.

(9) Line of business (industry).

(10) Company headquarters name and address (reporting relationship within your entity).

(d) Processing time should be taken into consideration when registering. Offerors who are not registered in SAM should consider applying for registration immediately upon receipt of this solicitation. See <https://www.sam.gov> for information on registration.

(End of provision)

**(2) FAR 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 prior to redelivery of the Vessel.

(End of clause)

**(3) FAR 52.217-9 Option to Extend the Term of the Contract (MAR 2000)**

(a) The Government may extend the term of this contract by written notice to the contractor anytime prior to 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)

**(4) Reserved**

**(5) Reserved**

**(6) DFARS 252.232-7006 Wide Area Work Flow Payment Instructions (DEC 2018)**

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

“Department of Defense Activity Address Code (DoDAAC)” is a six position code that uniquely identifies a unit, activity, or organization.

“Document type” means the type of payment request or receiving report available for creation in Wide Area WorkFlow (WAWF).

“Local processing office (LPO)” is the office responsible for payment certification when payment certification is done external to the entitlement system.

“Payment request” and “receiving report” are defined in the clause at [252.232-7003](#), Electronic Submission of Payment Requests and Receiving Reports.

(b) *Electronic invoicing.* The WAWF system provides the method to electronically process vendor payment requests and receiving reports, as authorized by Defense Federal Acquisition Regulation Supplement (DFARS) [252.232-7003](#), Electronic Submission of Payment Requests and Receiving Reports.

(c) *WAWF access.* To access WAWF, the Contractor shall—

(1) Have a designated electronic business point of contact in the System for Award Management at <https://www.sam.gov>; and

(2) Be registered to use WAWF at <https://wawf.eb.mil/> following the step-by-step procedures for self-registration available at this web site.

(d) *WAWF training.* The Contractor should follow the training instructions of the WAWF Web-Based Training Course and use the Practice Training Site before submitting payment requests through WAWF. Both can be accessed by selecting the “Web Based Training” link on the WAWF home page at <https://wawf.eb.mil/>

(e) *WAWF methods of document submission.* Document submissions may be via web entry, Electronic Data Interchange, or File Transfer Protocol.

(f) *WAWF payment instructions.* The Contractor shall use the following information when submitting payment requests and receiving reports in WAWF for this contract or task or delivery order:

(1) *Document type.* The Contractor shall submit payment requests using the following document type(s):

(i) For cost-type line items, including labor-hour or time-and-materials, submit a cost voucher.

(ii) For fixed price line items—

(A) That require shipment of a deliverable, submit the invoice and receiving report specified by the Contracting Officer.

**Not Applicable**

*(Contracting Officer: Insert applicable invoice and receiving report document type(s) for fixed price line items that require shipment of a deliverable.)*

(B) For services that do not require shipment of a deliverable, submit either the Invoice 2in1, which meets the requirements for the invoice and receiving report, or the applicable invoice and receiving report, as specified by the Contracting Officer.

**Invoice 2-in-1**

*(Contracting Officer: Insert either “Invoice 2in1” or the applicable invoice and receiving report document type(s) for fixed price line items for services.)*

(iii) For customary progress payments based on costs incurred, submit a progress payment request.

(iv) For performance based payments, submit a performance based payment request.

(v) For commercial item financing, submit a commercial item financing request.

(2) Fast Pay requests are only permitted when Federal Acquisition Regulation (FAR) 52.213-1 is included in the contract.

(f) *[Note: The Contractor may use a WAWF “combo” document type to create some combinations of invoice and receiving report in one step.]*

(3) *Document routing.* The Contractor shall use the information in the Routing Data Table below only to fill in applicable fields in WAWF when creating payment requests and receiving reports in the system.

A. Routing Data Table for U.S. Banks / U.S. Currency:

<i>Field Name in WAWF</i>	<i>Data to be entered in WAWF</i>
Pay Official DoDAAC	<b>N50082</b>
Issue By DoDAAC	Leave Blank
Admin DoDAAC	<b>N62387</b>
Inspect By DoDAAC	<b>N62387</b>
Ship To Code	<b>N62387</b>
Ship From Code	Leave Blank
Mark For Code	Leave Blank
Service Approver (DoDAAC)	<b>N62387</b>
Service Acceptor (DoDAAC)	<b>N62387</b>
Accept at Other DoDAAC	Leave Blank
LPO DoDAAC	<b>N62387</b>
DCAA Auditor DoDAAC	Leave Blank
Other DoDAAC(s)	Leave Blank

B. Routing Data Table for Foreign Banks / Foreign Currency:

<i>Field Name in WAWF</i>	<i>Data to be entered in WAWF</i>
Pay Official DoDAAC	<b>N68732</b>
Issue By DoDAAC	Leave Blank
Admin DoDAAC	<b>N62387</b>
Inspect By DoDAAC	<b>N62387</b>
Ship To Code	<b>N62387</b>
Ship From Code	Leave Blank
Mark For Code	Leave Blank
Service Approver (DoDAAC)	<b>N62387</b>
Service Acceptor (DoDAAC)	<b>N62387</b>
Accept at Other DoDAAC	Leave Blank
LPO DoDAAC	<b>N62387</b>
DCAA Auditor DoDAAC	Leave Blank
Other DoDAAC(s)	Leave Blank

(4) *Payment request.* The Contractor shall ensure a payment request includes documentation appropriate to the type of payment request in accordance with the payment clause, contract financing clause, or Federal Acquisition Regulation 52.216-7, Allowable Cost and Payment, as applicable.

(5) *Receiving report.* The Contractor shall ensure a receiving report meets the requirements of DFARS Appendix F.

(g) *WAWF point of contact.*

(1) The Contractor may obtain clarification regarding invoicing in WAWF from the following contracting activity's WAWF point of contact:

[MSCHQ\\_WAWF@navy.mil](mailto:MSCHQ_WAWF@navy.mil)

(2) Contact the WAWF helpdesk at 866-618-5988, if assistance is needed.

(End of clause)

(7) **MSC SPECIFIC WIDE AREA WORKFLOW (WAWF) INSTRUCTIONS**

The information contained in this instruction is supplemental to DFARS 252.232-7006. **The information contained in the table in DFARS 252.232-7006 is for WAWF purposes only. Information included in DFARS 252.232-7006 and this WAWF instruction apply only to WAWF Invoicing and WAWF Receiving Reports. Contradictory information elsewhere in this contract, e.g. Ship to DoDAAC, shall be followed per the terms and conditions of the contract.**

When entering the invoice into WAWF, the Contractor shall fill in the DoDAAC fields or DoDAAC extensions exactly as shown in the table in DFARS 252.232-7006. Fields that should not be filled in when entering the invoice into WAWF will be indicated with the direction, "Leave Blank."

In some situations the WAWF system will pre-populate the "Pay DoDAAC," "Admin By DoDAAC" and "Issue By DoDAAC." The Contractor shall verify that those DoDAACs automatically entered by the WAWF system match the information in the table in DFARS 252.232-7006. If these DoDAACs do not match, then the Contractor shall correct the field(s).

If Receiving Reports are required, ensure that the "Inspection" and "Acceptance" defaults of "destination" for both fields are not changed in the WAWF online interface.

**The CLINs on the WAWF invoice shall be entered exactly as set forth in the contract document including CLIN number (e.g. 0001), Quantity (may be adjusted for actual quantity or dollar value delivered and invoiced), and Unit Price (e.g. \$1.00).** The dollar amounts on each CLIN or SubCLIN on the WAWF invoice shall reflect final performance values, but in no instance can the dollar amount for each CLIN or SubCLIN exceed what is specified in 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 Technical Point of Contact's (TPOC) or Contracting Officer's Representative's (COR) 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.

**(8) DFARS 252.232-7010 Levies on Contract Payments (DEC 2006)**

- (a) 26 U.S.C. 6331(h) authorizes the Internal Revenue Service (IRS) to continuously levy up to 100 percent of contract payments, up to the amount of tax debt.
- (b) When a levy is imposed on a payment under this contract and the Contractor believes that the levy may result in an inability to perform the contract, the Contractor shall promptly notify the Procuring Contracting Officer in writing, with a copy to the Administrative Contracting Officer, and shall provide—
- (1) The total dollar amount of the levy;
  - (2) A statement that the Contractor believes that the levy may result in an inability to perform the contract, including rationale and adequate supporting documentation; and
  - (3) Advice as to whether the inability to perform may adversely affect national security, including rationale and adequate supporting documentation.
- (c) DoD shall promptly review the Contractor's assessment, and the Procuring Contracting Officer shall provide a written notification to the Contractor including—
- (1) A statement as to whether DoD agrees that the levy may result in an inability to perform the contract; and
  - (2)
    - (i) If the levy may result in an inability to perform the contract and the lack of performance will adversely affect national security, the total amount of the monies collected that should be returned to the Contractor; or
    - (ii) If the levy may result in an inability to perform the contract but will not impact national security, a recommendation that the Contractor promptly notify the IRS to attempt to resolve the tax situation.
- (d) Any DoD determination under this clause is not subject to appeal under the Contract Disputes Act.

(End of Clause)

**(9) FAR 52.211-14 Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use (APR 2008)**

Any contract awarded as a result of this solicitation will be  DX rated order;  DO rated order certified for national defense, emergency preparedness, and energy program use under the Defense Priorities and Allocations System (DPAS) (15 CFR700), and the Contractor will be required to follow all of the requirements of this regulation.

(End of provision)

## **PART IX. ATTACHMENTS – DRY CARGO TIME CHARTER**

(a) Attachment IX(A) - Guidelines for Full/Partial Off-Hire Percentages on Readiness Issues

**Unless specifically referenced in Box 6 of Part I, the attachments that follow do not apply to this Charter Party. If specifically referenced in Box 6 of Part I, the terms of any referenced and/or added attachments shall be incorporated into this Charter and shall, unless otherwise provided in the text of the attachment, apply with the same force and effect as any other clause of this Charter.**

(b) Attachment IX(B) – US Department of Labor Wage Determination

(c) Attachment IX(C) – Fuel Consumption Template

(d) Attachment IX(D) – Shipyard Data Information Template; as outlined in relevant Parts VII, X, and XI below, submission of an offer requires the submission of relevant shipyard data information for all Jones Act vessels owned or controlled by the offeror.

## ATTACHMENT IX(A)

### GUIDELINES FOR FULL/PARTIAL OFF-HIRE PERCENTAGES ON READINESS ISSUES

The following are guidelines for the determination of off-hire charges against the Contractor for specific instances of failure to comply with readiness standards under IV(i), "Readiness," and IV(j), "Off-Hire," of this Charter Party. These standards are guidelines only and are not construed as binding and inflexible provisions of this Charter Party. When determining off-hire, the Government will recognize difficulties attributable to the Government, which are encountered by the Contractor in transporting repair and spare parts, personnel, and service representatives. The Contracting Officer at all times reserves the right to make off-hire determinations under the specific facts and circumstances of each incident at issue. If, in any particular instance, these standards operate to impose inequitable results on either the Government or the Contractor, the Contracting Officer may make appropriate adjustments to the off-hire amount suggested by the guidelines so as to comport with applicable Admiralty Law and Custom of the Trade practices.

Definitions:	OOO = Out of Commission	MT = Measurement Tons
Mission Degrading Casualty (as applicable)		Percentage Deduction
1. Unable to Sail - Main Propulsion Casualty or Other Cause		- 100%
2. Main Propulsion Casualty (Speed Restrictive)		
- Point to Point		- Slow Passage Evaluation
- Surveillance Operations		- % Decrease in Warranted Speed
3. USCG/Other Authority Restricts Sailing (e.g. Form 835)		- 100%
4. USCG/Other Authority Restricts Cargo		- % Cargo Unable to Work (MT) Operations
5. Stern Ramp OOC (Only Means to Discharge)		- % Cargo Unable to Work (MT)
6. Stern Ramp OOC (Able to Discharge All Load Via Other Means)		- Additional Time to Up/down Cargo
7. LASH Crane OOC		- % Cargo Unable to Work (MT)
8. Container Crane OOC		- % Cargo Unable to Work (MT)
9. General Cranes/Booms OOC		- % Cargo Unable to Work
10. Cargo Elevators OOC		- Additional Time to Up/down Load
11. AC/DH OOC		- % Cargo Affected (MT) X



12. Failure to maintain stable platform - 100%  
for defined sea state installation/operation

\* Duration Factors: The following duration factors are applicable for use in determining reduced readiness percentages for AC/DH casualties:

- 1-15 days following casualty = 25%
- 16-30 days following casualty = 50%
- Beyond 30 days following casualty = 75%

Note: For actual issues of lost time (VICE readiness issues), actual time lost to be used to determine off-hire.

**ATTACHMENT IX(B)**  
**US DEPARTMENT OF LABOR WAGE DETERMINATION**  
**(TO BE ADDED AS APPLICABLE)**

**ATTACHMENT IX(C)  
FUEL CONSUMPTION TEMPLATE  
(TO BE ADDED AS APPLICABLE)**

**ATTACHMENT IX(D)  
SHIPYARD DATA INFORMATION TEMPLATE  
(TO BE ADDED AS APPLICABLE)**

## PART X. INSTRUCTIONS TO OFFERORS

(a) The Contractor shall comply with the following FAR provisions:

**(1) FAR 52.212-1 Instructions to Offerors—Commercial Items (NOV 2021) (tailored pursuant to FAR 12.302(a)).**

(a) North American Industry Classification System (NAICS) code and small business size standard. The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet ([SF 1449](#)). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) Submission of offers. (Tailored) Submit signed and dated offers to the point of contact specified in Block 7 of the SF 1449 at or before the exact time specified in this solicitation. Offers may be submitted on the [SF 1449](#), letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show --

(1) The solicitation number;

(2) Reserved (Tailored);

(3) The name, address, and telephone number of the offeror;

(4) A technical description of the items being offered in sufficient detail to evaluate compliance with (or acknowledgement of, as appropriate) the requirements in the solicitation. This may include product literature, or other documents, if necessary. (Tailored)

(5) Terms of any express warranty;

(6) Price and any discount terms;

(7) "Remit to" address, if different than mailing address;

(8) A completed copy of the representations and certifications at FAR 52.209-7 Information Regarding Responsibility Matters; FAR 52.209-11 Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction Under any Federal Law; FAR [52.212-3](#) (see FAR 52.212-3(b) for those representations and certifications that the offeror shall complete electronically); (Tailored)

(9) Acknowledgment of Solicitation Amendments;

(10) Past Performance Information: (Tailored)

For the purposes of evaluating offerors' past performance:

a. “Recent” is defined as a contract in-progress or completed within the last three (3) years.

b. “Relevant” is defined as a contract that is of similar scope, magnitude, and complexity to the requirements as set forth in this solicitation.

i. **Scope:** Experience in the areas defined in the PWS.

ii. **Magnitude:** The measure of the volume, dollar value and/or duration of the work actually performed under a contract.

iii. **Complexity:** The measure of technical difficulty, managerial intricacy and/or required coordination of efforts and disciplines performed by the offeror under a contract. For complexity, not only will the tasks performed by the offeror be considered, but also the offeror’s ability to coordinate tasks (e.g., concurrent performance requirements).

(11) If the offer is not submitted on the [SF 1449](#), include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(12) Subcontracting Plan. (Tailored) In accordance with FAR 52.219-9 and DFARS 252.219-7003, large business offerors shall submit a Small Business Subcontracting Plan with their proposal. Offerors shall ensure that they submit a Small Business Subcontracting Plan with all of the information required by FAR 52.219-9.

In preparing the Small Business Subcontracting Plan, offerors should note that historical compliance with FAR 52.219-8 and FAR 52.219-9 may be evaluated as part of past performance in future source selections.

A subcontracting plan is NOT REQUIRED from small business concerns and will not be evaluated.

(13) Form of Submission. (Tailored) Proposals may NOT be submitted via telex. Proposals/extensions may be submitted via e-mail in Adobe Acrobat (.pdf) format, and must be compatible with Adobe Acrobat Reader 8.0 or later version. Offerors are advised that the Government may be unable to receive other types of electronic files (e.g., .zip files) or files in excess of 20 megabytes. Proposals/extensions must contain either a verifiable electronic signature (e.g. PKI enable certificate), or a scanned image of the handwritten signature of the Offeror or Offeror's authorized agent. Note: Unsigned offers will not be considered for award. Offerors are advised that delays in the receipt of e-mail do occur. The Offeror is solely responsible for timely receipt of offers by the Government regardless of any problems or delays related to computer hardware or software systems including, but not limited to, servers and firewalls. The

timestamp of the Offeror's sent e-mail shall not be construed as sufficient documentation of the Government's receipt of an e-mailed offer. An E-mail proposal that resides on a Government server, but has not appeared in the designated E-mail inbox by the due date and time for proposal submission will be considered late. Due to increased e-mail security, it may take longer for e-mails to be received in the appropriate in-box, especially when an e-mail is hosted in a foreign country; some e-mails are delayed in excess of hours. Offerors are encouraged to submit offers as soon as possible. Alternately, proposals/extensions may be faxed or mailed/carried to the address shown in Box 9 on the SF 1449.

- (14) (Tailored) Any other characteristics/details not shown in Part I that are pertinent to the Government's evaluation factors.
- (15) (Tailored) A valid submission consists of at least a ship name, a price, and a signature; without these at a minimum, your submission will not be considered for evaluation and award.
- (16) (Tailored) Set of completed boxes or information required found at DRYTIME PROFORMA Part I, pages I-I through I-11, as applicable, with emphasis on, or in addition to:
  - (i) Vessel's INMARSAT # (DRYTIME Box 24)
  - (ii) Vessel's Call Letters (DRYTIME Box 26)
  - (iii) Vessel's Official Number (DRYTIME Box 27)
  - (iv) Year of Vessel (DRYTIME Boxes 7 and 23)
  - (v) Flag of Vessel (DRYTIME Boxes 7 and 23)
  - (vi) Proposed lay days (DRYTIME Box 18)
  - (vii) Compliance with/acknowledgements pursuant to Part XI(c) below.
  - (viii) Acknowledgement of all terms and conditions of RFP and DRYTIME Proforma
  - (ix) Acknowledgement of whether or not the Owner is a VISA participant (DRYTIME Box 20)
  - (x) Acknowledgement of whether or not the Vessel is VISA enrolled (DRYTIME Box 20)
  - (xi) Name and email address for Contractor Performance Assessment Reporting System (CPARS) (DRYTIME Box 10)
  - (xii) Per diem rate and an explanation of any bonuses proposed (DRYTIME Boxes 13 and 17)
  - (xiii) Completed FAR 52.212-3 Offeror Representations and Certifications – Commercial Items and Alternate 1 (See DRYTIME Part XII; submission in SAM fulfills this requirement.)
  - (xiv) Completed FAR 52.209-7 – Information Regarding Responsibility Matters (See DRYTIME Part XII)
  - (xv) Completed FAR 52.209-11 Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction under any Federal Law (See DRYTIME Part XII; submission in SAM fulfills this requirement.)

- (xvi) Dependent upon response(s) to FAR 52.204-26, completed FAR 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Service or Equipment (see DRYTIME Part XII).
  - (xvii) Any documentation, if required, by Part I, Box 6.
  - (xviii) Completed Fuel Consumption spreadsheet (DRYTIME Boxes 68 thru 71 applies)
  - (xix) Completed FAR 52.204-26 Covered Telecommunications Equipment or Services-Representation (See DRYTIME Part XII; submission in SAM fulfills this requirement.)
  - (xx) Completed FAR 52.229-11 Tax on Certain Foreign Procurements—Notice and Representation (See DRYTIME Part XII.)
  - (xxi) Certification required pursuant to Part XII (c)(8), FAR 52.222-56.
  - (xxii) Completed DFARS 252.204-7016 Covered Defense Telecommunications Equipment or Services—Representation (See DRYTIME Part XII.)
  - (xxiii) Dependent upon response to DFARS 252.204-7016, completed DFARS 252.204-7017 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services—Representation (see DRYTIME Part XII).
- c) Period for Acceptance of Offers. (Tailored) Unless offeror proposes a shorter period, by submission of an offer, offeror agrees that its offer, including any timely revisions thereto, shall remain valid until the Government makes award under this solicitation. The forgoing does not preclude an offeror from withdrawing its offer prior to award.
- (d) Vessel Substitution. (Tailored) No proposed substitution will be permitted by Charterer during the procurement solicitation process after the date and time for offers has passed except when such substitution is made as part of a revised offer during a period in which the solicitation is reopened or when such substitution is made as part of a final proposal revision.
- (e) Multiple offers. Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.
- (f) Late submissions, modifications, revisions, and withdrawals of offers.
- (1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.
  - (2)(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—



- (A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or
  - (B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or
  - (C) If this solicitation is a request for proposals, it was the only proposal received.
- (ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.
- (3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.
  - (4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.
  - (5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.
- (g) Contract award (not applicable to Invitation for Bids). The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.
  - (h) Multiple awards. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the

Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) Availability of requirements documents cited in the solicitation.

(1)(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to--

GSA Federal Supply Service Specifications Section  
Suite 8100  
470 L'Enfant Plaza, SW  
Washington, DC 20407  
Telephone (202) 619-8925  
Facsimile (202) 619-8978

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.

(2) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites--

- (i) ASSIST ( <http://assist.daps.dla.mil> ).
- (ii) Quick Search ( <http://assist.daps.dla.mil/quicksearch/> )
- (iii) ASSISTdocs.com ( <http://assistdocs.com> ).

(3) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by—

- (i) Using the ASSIST Shopping Wizard ( <http://assist.daps.dla.mil/wizard> );
- (ii) Phoning the DoDSSP Customer Service Desk (215) 697-2179, Mon-Fri, 0730 to 1600 EST; or
- (iii) Ordering from DoDSSP, Building 4 Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2197, Facsimile (215) 697-1462.

(4) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(j) Unique Entity Identifier (UEI). (Applies to all offers exceeding \$3,500, and offers of \$3,500 or less if the solicitation requires the Contractor to be registered in the System for Award Management (SAM).) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “Unique Entity Identifier” followed by the unique entity identifier that identifies the Offeror's name and address. The Offeror also shall enter its Electronic Funds Transfer (EFT) indicator, if applicable. The EFT indicator is a four-

character suffix to the unique entity identifier. The suffix is assigned at the discretion of the Offeror to establish additional SAM records for identifying alternative EFT accounts (see [subpart 32.11](#)) for the same entity. If the Offeror does not have a unique entity identifier, it should contact the entity designated at [www.sam.gov](http://www.sam.gov) for unique entity identifier establishment directly to obtain one. The Offeror should indicate that it is an offeror for a Government contract when contacting the entity designated at [www.sam.gov](http://www.sam.gov) for establishing the unique entity identifier.

(k) Reserved.

(l) Debriefing. If a post-award debriefing is given to requesting offerors, a written de-brief including all the debrief-required information will be provided. The offeror will be permitted to submit additional questions within 5 days after receiving the written debrief from the Government. The Government shall disclose the following information, if applicable:

- (1) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.
- (2) The overall evaluated cost or price and technical rating of the successful and debriefed offeror and past performance information on the debriefed offeror.
- (3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.
- (4) A summary of rationale for award;
- (5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.
- (6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(m) Service of Protest. (Added) Protests, as defined in FAR 33.101, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from the Contracting Officer. The mailing address is the same as that stated in Box 9, SF 1449. Interested parties may request an independent review of their protest as an alternative to consideration by the Contracting Officer or as an appeal of the Contracting Officer's decision on their protest. See FAR 33.103. Requests for independent review shall be addressed to:

Director, Contracts & Business Management Directorate, Code N10  
Military Sealift Command  
471 East C Street, Bldg. SP-64  
Naval Station Norfolk  
Norfolk, VA 23511-2419

MSC encourages potential protestors to discuss their concerns with the Contracting Officer prior to filing a protest. The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

- (n) FAR 13.5 Acquisition. (Added) This procurement is a FAR Part 12 acquisition being conducted under FAR 13.5 Simplified Procedures for Certain Commercial Items. Accordingly, simplified acquisition procedures apply. After receipt of proposals the Government may, with or without notice, negotiate with and, if desired, seek proposal revisions from as many or as few offerors as it, in its discretion, deems appropriate.

**(2) FAR 52.215-5 Facsimile Proposals (OCT 1997)**

- (a) Definition.

Facsimile proposal, as used in this provision, means a proposal, revision or modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via facsimile machine.

- (b) Offerors may submit facsimile proposals as responses to this solicitation. Facsimile proposals are subject to the same rules as paper proposals.

- (c) The telephone number of receiving facsimile equipment is 757-341-5745.

- (d) If any portion of a facsimile proposal received by the Contracting Officer is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document --

- (1) The Contracting Officer immediately shall notify the offeror and permit the offeror to resubmit the proposal;
- (2) The method and time for resubmission shall be prescribed by the Contracting Officer after consultation with the offeror; and
- (3) The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the Contracting Officer.

- (e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror promptly shall submit the complete original signed proposal.

**(3) FAR 52.212-1 (Addendum) Additional Instructions to Offerors—Commercial Items**

Questions.

Questions regarding the solicitation will be accepted up until the time that proposals are received. Questions received later than 2 working days prior to closing may not be answered.

**PART XI. FAR 52.212-2 EVALUATION -- COMMERCIAL ITEMS (OCT 2014) (tailored pursuant to FAR 12.302(a)) – SPOT CHARTER**

(a) The Government will award a contract resulting from this solicitation to the responsible offeror (See Note (1) below) whose technically acceptable proposal with acceptable past performance represents the lowest price to the Government. Award will be made, if at all, according to the preference scale set forth in sec. III.A.3. of VISA (available at 79 Federal Register 64462-64470). If this RFP does not include DFARS 252.247-7026, award will be made, if at all, for the technically acceptable offer in the highest VISA priority which has the lowest price among the offers in that VISA priority. If this RFP includes DFARS 252.247-7026, then this evaluation scheme is subject to the next paragraph.

If 50% or more of the cost of overhaul, repair, and maintenance work of an offeror's "covered vessel[s]" (see definition at DFARS 252.247-7026(a)) has been conducted within a U.S. shipyard during the period covering the current calendar year through the date of proposal submission, plus the preceding four calendar years, then the offeror is in "Category 1." All other offerors are in "Category 2." Award will be made, if at all, for the technically acceptable "Category 1" offer with the highest VISA priority which has the lowest price among the offers with that VISA priority. If no such offers exist, then award will be made, if at all, to the lowest price, technically acceptable, "Category 2" offer with the highest VISA priority. This evaluation scheme will continue, with "Category 1" offers within a particular VISA priority level having preference over "Category 2" offers within the same preference level.

NOTE (1): It is emphasized that as an integral part of the award selection a responsibility determination of the offeror will be made in accordance with FAR Part 9.104. Within this determination, the Government will only consider an offeror responsible if it presents a viable, continued capacity to fully provide the contracted services in accordance with the charter, regardless of operating conditions (e.g., conflict or contingency operations). This will be determined using the factors shown in FAR Part 9.104, to include 1) experience, 2) operational controls, 3) technical skills, 4) satisfactory past performance record, and 5) ability to comply with required delivery schedule.

(b) In selecting the lowest price, technically acceptable offer, the following factors will be considered:

- Technical
- Past Performance
- Price

In compliance with Cargo Preference, the Contracting Officer may elect to only evaluate U.S. flag vessels, to include current U.S. flag vessels and vessels to be U.S. flag upon delivery.

(c) Technical. The offeror's proposal will be evaluated based on technical capability of vessels proposed per the submission requirements outlined in Part X(b)(16).

(d) Past Performance. The government will search Contractor Performance Assessment Reporting System (CPARS) for each offeror's three most recent and relevant government contracts for the ocean transportation of cargo. While the government intends to use primarily CPARS to gather information on offerors' past performance, it reserves the right to consider other sources of relevant information. The government will not consider the past performance of parent or sister companies, and will only consider the past performance of the offeror. Recency and relevancy are defined in Part X, above, of past performance information. The government will consider the extent of the offeror's ability to perform a previous contract successfully in the areas of (A) quality of product or services, (B) timeliness or scheduling of supplies/deliveries, (C) business relations/customer satisfaction, and (D) key personnel and staffing (including subcontractors). Additionally, the Government will consider past performance with respect to FAR 52.219-8. Marginal and unsatisfactory ratings or comments will be addressed during discussions, if held. Absent negative information, a rating of satisfactory will be assigned.

a. At a minimum, award will not be made to an offeror who is or within the past three years has been seriously deficient in contract performance, unless the Contracting Officer determines that the circumstances were properly beyond the offeror's control or that the offeror took appropriate corrective action.

b. If discussions are held, offerors will be given the opportunity to address unfavorable reports of past performance.

c. Rating Scale: The government will assign ratings as follows: Acceptable: Based on the offeror's performance record, the government has a reasonable expectation that the offeror will successfully perform the required effort, or the offeror's performance record is unknown (see note below). Unacceptable: Based on the offeror's performance record, the government does not have a reasonable expectation that the offeror will be able to successfully perform the requirement.

Note: In the case of an offeror without a record of relevant performance or for whom information on past performance is not available or so sparse that no meaningful past performance rating can be reasonably assigned, the offeror may not be evaluated favorably or unfavorably on past performance (see FAR 15.305(A) (2) (IV)). Therefore, the offeror shall be determined to have unknown past performance. In the context of acceptability/unacceptability, "Unknown" shall be considered "Acceptable."

(e) Price.

- a. The offeror's price proposal will be evaluated based on the value of the charter hire rate(s) offered for the entire charter period of (a) \_\_\_\_\_ days, price for fuel, and any other pricing elements set forth in the offer. For evaluation purposes, the period of performance will consist of (b) \_\_\_\_\_ days. Fuel calculations will be based upon (c) \_\_\_\_\_ days underway laden at the speed specified in the individual solicitation, using fuel consumptions provided in DRYTIME Boxes 68 and 70; (d) \_\_\_\_\_ days underway ballast at the speed specified in the individual solicitation, using fuel consumptions provided in DRYTIME Boxes 69 and 70; and (e) \_\_\_\_\_ days in port idle, using the fuel consumption

provided in DRYTIME Box 71. This will represent the overall price to the Government. The proposed price(s) must be determined to be fair and reasonable.

b. Fuel consumption calculations will be made using the following Defense Logistics Agency Energy (DLA-E) standard prices and appropriate fuel conversion factors. The rate(s) to be used will be identified in the RFP. All fuel consumption will be based on MGO/MDO prices.

c. Fuel conversion factors are as follows:

MGO/MDO: 7.507 barrels per metric ton

LSFO: TBD

(f) Subcontracting Plan (if required). For large businesses, unless determined that subcontracting possibilities do not exist, the Government will evaluate the Small Business Subcontracting Plan in accordance with FAR [52.219-9](#). Failure to submit and negotiate a subcontracting plan acceptable to the Contacting Officer will make the offeror ineligible for award of a contract.

(g) Options. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(h) A written notice of award or acceptance of an offer mailed, or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

## **PART XII. OFFEROR REPRESENTATIONS AND CERTIFICATIONS REQUIRED BY FAR**

### **(a) FAR 52.252-1 Solicitation Provisions Incorporated by Reference (Feb 1998)**

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

<http://www.acquisition.gov/far/index.html>  
<http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>

(End of provision)

(b) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) provision which is included in this solicitation by reference:

(1) FAR [52.225-25](#) **Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications**

(2) FAR [52.204-19](#) **Incorporation by Reference of Representations and Certifications**

(c) The Contractor agrees to comply with the following FAR provision which is included in this solicitation.

(1) FAR [52.209-7](#) **Information Regarding Responsibility Matters (OCT 2018)**

(a) *Definitions.* As used in this provision—

*Administrative proceeding* means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

*Federal contracts and grants with total value greater than \$10,000,000* means—

(1) The total value of all current, active contracts and grants, including all priced options; and



(2) The total value of all current, active orders including all priced options under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

*Principal* means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

(b) The offeror  has  does not have current active Federal contracts and grants with total value greater than \$10,000,000.

(c) If the offeror checked “has” in paragraph (b) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and Integrity Information System (FAPIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

(1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in—

(A) The payment of a monetary fine or penalty of \$5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.

(2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this provision, whether the offeror has provided the requested information with regard to each occurrence.

(d) The offeror shall post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIS as required through maintaining an active registration in the System for Award Management, which can be accessed via <https://www.sam.gov> (see [52.204-7](#)).

(End of provision)

**(2) FAR 52.209-11 Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction Under any Federal Law (FEB 2016)**

(a) As required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts, the Government will not enter into a contract with any corporation that—

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that—

(1) It is  is not  a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(2) It is  is not  a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(End of provision)

**(3) FAR 52.212-3 Offeror Representations and Certifications—Commercial Products and Commercial Services (MAY 2022) Alternate I (OCT 2014)**

The Offeror shall complete only paragraph (b) of this provision if the Offeror has completed the annual representations and certification electronically in the System for Award Management (SAM) accessed through <https://www.sam.gov>. If the Offeror has not completed the annual representations and certifications electronically, the Offeror shall complete only paragraphs (c) through (v) of this provision.

(a) *Definitions.* As used in this provision—

"Covered telecommunications equipment or services" has the meaning provided in the clause [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

*Economically disadvantaged women-owned small business (EDWOSB) concern* means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business eligible under the WOSB Program.

*Forced or indentured child labor* means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

*Highest-level owner* means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest level owner.

*Immediate owner* means an entity, other than the offeror, that has direct control of the offeror. Indicators of control include, but are not limited to, one or more of the following: ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.

*Inverted domestic corporation*, means a foreign incorporated entity that meets the definition of an inverted domestic corporation under [6 U.S.C. 395\(b\)](#), applied in accordance with the rules and definitions of [6 U.S.C. 395\(c\)](#).

*Manufactured end product* means any end product in product and service codes (PSCs) 1000-9999, except—

- (1) PSC 5510, Lumber and Related Basic Wood Materials;
- (2) Product or Service Group (PSG) 87, Agricultural Supplies;
- (3) PSG 88, Live Animals;
- (4) PSG 89, Subsistence;
- (5) PSC 9410, Crude Grades of Plant Materials;
- (6) PSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) PSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) PSC 9610, Ores;

(9) PSC 9620, Minerals, Natural and Synthetic; and

(10) PSC 9630, Additive Metal Materials.

*Place of manufacture* means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

*Predecessor* means an entity that is replaced by a successor and includes any predecessors of the predecessor.

*Reasonable inquiry* has the meaning provided in the clause [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

*Restricted business operations* means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

(1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;

(2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;

(3) Consist of providing goods or services to marginalized populations of Sudan;

(4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(5) Consist of providing goods or services that are used only to promote health or education; or

(6) Have been voluntarily suspended. "Sensitive technology"—

*Sensitive technology*—

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—

(i) To restrict the free flow of unbiased information in Iran; or

(ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

*Service-disabled veteran-owned small business concern—*

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in [38 U.S.C. 101\(2\)](#), with a disability that is service connected, as defined in [38 U.S.C. 101\(16\)](#).

*Small business concern—*

(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and size standards in this solicitation.

(2) *Affiliates*, as used in this definition, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

*Small disadvantaged business concern*, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that—

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by—

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

*Subsidiary* means an entity in which more than 50 percent of the entity is owned—

- (1) Directly by a parent corporation; or
- (2) Through another subsidiary of a parent corporation

*Successor* means an entity that has replaced a predecessor by acquiring the assets and carrying out the affairs of the predecessor under a new name (often through acquisition or merger). The term "successor" does not include new offices/divisions of the same company or a company that only changes its name. The extent of the responsibility of the successor for the liabilities of the predecessor may vary, depending on State law and specific circumstances.

*Veteran-owned small business concern* means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

*Women-owned business concern* means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women

*Women-owned small business concern* means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

*Women-owned small business (WOSB) concern eligible under the WOSB Program* (in accordance with 13 CFR part 127), means a small business concern that is at least 51 percent

directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.

(b)(1) *Annual Representations and Certifications.* Any changes provided by the Offeror in paragraph (b)(2) of this provision do not automatically change the representations and certifications in SAM.

(2) The offeror has completed the annual representations and certifications electronically in SAM accessed through <http://www.sam.gov>. After reviewing SAM information, the Offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR [52.212-3](#), Offeror Representations and Certifications-Commercial Products and Commercial Services, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard(s) applicable to the NAICS code(s) referenced for this solicitation), at the time this offer is submitted and are incorporated in this offer by reference (see FAR [4.1201](#)), except for paragraphs \_\_\_\_\_.

*[Offeror to identify the applicable paragraphs at (c) through (v) of this provision that the offeror has completed for the purposes of this solicitation only, if any.]*

*These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.*

*Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted electronically on SAM.]*

(c) Offerors must complete the following representations when the resulting contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied [part 19](#) in accordance with [19.000\(b\)\(1\)\(ii\)](#). Check all that apply.

(1) *Small business concern.* The offeror represents as part of its offer that it  is,  is not a small business concern.

(2) *Veteran-owned small business concern.* *[Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents as part of its offer that it  is,  is not a veteran-owned small business concern.

(3) *Service-disabled veteran-owned small business concern.* *[Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.]* The offeror represents as part of its offer that it  is,  is not a service-disabled veteran-owned small business concern.

(4) *Small disadvantaged business concern.* *[Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents, that it  is,  is not a small disadvantaged business concern as defined in 13 CFR124.1002.

(5) *Women-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it  is,  is not a women-owned small business concern.

(6) WOSB concern eligible under the WOSB Program. [Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(5) of this provision.] The offeror represents that-

(i) It  is,  is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(6)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. [The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: \_\_\_\_\_.] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(7) Economically disadvantaged women-owned small business (EDWOSB) concern. [Complete only if the offeror represented itself as a WOSB concern eligible under the WOSB Program in (c)(6) of this provision.] The offeror represents that-

(i) It  is,  is not an EDWOSB concern, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(7)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. [*The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: \_\_\_\_\_.*] Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

**Note:** Complete paragraphs (c)(8) and (c)(9) only if this solicitation is expected to exceed the simplified acquisition threshold.

(8) *Women-owned business concern (other than small business concern).* [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it  is a women-owned business concern.

(9) *Tie bid priority for labor surplus area concerns.* If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of



manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price: \_\_\_\_\_

(10) *HUBZone small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, as part of its offer, that—

(i) It  is,  is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR Part 126; and

(ii) It  is,  is not a HUBZone joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: \_\_\_\_\_.] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

(d) Representations required to implement provisions of Executive Order 11246-

(1) Previous contracts and compliance. The offeror represents that-

(i) It  has,  has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It  has,  has not filed all required compliance reports.

(2) *Affirmative Action Compliance.* The offeror represents that-

(i) It  has developed and has on file,  has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or

(ii) It  has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) *Certification Regarding Payments to Influence Federal Transactions* (31 <http://uscode.house.gov/> U.S.C. 1352). (Applies only if the contract is expected to exceed \$150,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying

Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(f) *Buy American Certificate*. (Applies only if the clause at Federal Acquisition Regulation (FAR) [52.225-1](#), Buy American-Supplies, is included in this solicitation.)

(1)(i) The Offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product.

(ii) The Offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(iii) The terms "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American-Supplies."

(2) Foreign End Products:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*[List as necessary]*

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR [part 25](#).

(g)(1) *Buy American-Free Trade Agreements-Israeli Trade Act Certificate*. (Applies only if the clause at FAR [52.225-3](#), Buy American-Free Trade Agreements-Israeli Trade Act, is included in this solicitation.)

(i)(A) The Offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (iii) of this provision, is a domestic end product.

(B) The terms "Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product," "domestic end product," "end product," "foreign end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "Israeli end product," and "United

States" are defined in the clause of this solicitation entitled "Buy American-Free Trade Agreements-Israeli Trade Act."

(ii) The Offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled "Buy American-Free Trade Agreements-Israeli Trade Act."

Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

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*[List as necessary]*

(iii) The Offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled "Buy American-Free Trade Agreements-Israeli Trade Act." The Offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

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*[List as necessary]*

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR [part 25](#).

(2) *Buy American-Free Trade Agreements-Israeli Trade Act Certificate, Alternate I.* If Alternate I to the clause at FAR [52.225-3](#) is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled "Buy American-Free Trade Agreements-Israeli Trade Act":

Canadian End Products:

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*[List as necessary]*

(3) *Buy American-Free Trade Agreements-Israeli Trade Act Certificate, Alternate II.* If Alternate II to the clause at FAR [52.225-3](#) is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American-Free Trade Agreements-Israeli Trade Act":

Canadian or Israeli End Products:

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*[List as necessary]*

(4) *Buy American-Free Trade Agreements-Israeli Trade Act Certificate, Alternate III.* If Alternate III to the clause at [52.225-3](#) is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled "Buy American-Free Trade Agreements-Israeli Trade Act":

Free Trade Agreement Country End Products (Other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[List as necessary]

(5) *Trade Agreements Certificate.* (Applies only if the clause at FAR [52.225-5](#), Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(5)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products.

Other End Products:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR [part 25](#). For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American statute. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) *Certification Regarding Responsibility Matters (Executive Order 12689)*. (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals—

(1)  Are,  are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2)  Have,  have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(3)  Are,  are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and

(4)  Have,  have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds the threshold at [9.104-5\(a\)\(2\)](#) for which the liability remains unsatisfied.

(i) Taxes are considered delinquent if both of the following criteria apply:

(A) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(B) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(ii) *Examples.*

(A) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(B) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(C) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(D) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. §362 (the Bankruptcy Code).

(i) *Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126).* [The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at [22.1503\(b\)](#).]

(1) *Listed end products.*

\_\_\_\_\_  
\_\_\_\_\_

(2) *Certification.* [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]

(i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

(ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(j) *Place of manufacture.* (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly-

(1)  In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2)  Outside the United States.

(k) *Certificates regarding exemptions from the application of the Service Contract Labor Standards* (Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.) [*The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.*]

(1) Maintenance, calibration, or repair of certain equipment as described in FAR [22.1003-4](#)(c)(1). The offeror  does  does not certify that-

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR [22.1003-4](#)(c)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and

(iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

(2) Certain services as described in FAR [22.1003-4](#)(d)(1). The offeror  does  does not certify that-



(i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR [22.1003-4\(d\)\(2\)\(iii\)](#));

(iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies—

(i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Labor Standards wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

(l) *Taxpayer Identification Number (TIN)* ([26 U.S.C. 6109](#), [31 U.S.C. 7701](#)). (Not applicable if the offeror is required to provide this information to the SAM to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (l)(3) through (l)(5) of this provision to comply with debt collection requirements of [31 U.S.C. 7701\(c\)](#) and [3325\(d\)](#), reporting requirements of [26 U.S.C. 6041](#), [6041A](#), and [6050M](#), and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government ([31 U.S.C. 7701\(c\)\(3\)](#)). If the resulting contract is subject to the payment reporting requirements described in FAR [4.904](#), the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) *Taxpayer Identification Number (TIN)*.

TIN: \_\_\_\_\_.

TIN has been applied for.

TIN is not required because:

Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of the Federal Government.

(4) *Type of organization.*

Sole proprietorship;

Partnership;

Corporate entity (not tax-exempt);

Corporate entity (tax-exempt);

Government entity (Federal, State, or local);

Foreign government;

International organization per 26 CFR1.6049-4;

Other \_\_\_\_\_.

(5) *Common parent.*

Offeror is not owned or controlled by a common parent;

Name and TIN of common parent:

Name \_\_\_\_\_.

TIN \_\_\_\_\_.

(m) *Restricted business operations in Sudan.* By submission of its offer, the offeror certifies that the offeror does not conduct any restricted business operations in Sudan.

(n) *Prohibition on Contracting with Inverted Domestic Corporations.*

(1) Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation, unless the exception at [9.108-2\(b\)](#) applies or the requirement is waived in accordance with the procedures at [9.108-4](#).

(2) *Representation*. The Offeror represents that—

(i) It  is,  is not an inverted domestic corporation; and

(ii) It  is,  is not a subsidiary of an inverted domestic corporation.

(o) Prohibition on contracting with entities engaging in certain activities or transactions relating to Iran.

(1) The offeror shall e-mail questions concerning sensitive technology to the Department of State at [CISADA106@state.gov](mailto:CISADA106@state.gov).

(2) *Representation and Certifications*. Unless a waiver is granted or an exception applies as provided in paragraph (o)(3) of this provision, by submission of its offer, the offeror—

(i) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(ii) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act; and

(iii) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds the threshold at FAR [25.703-2\(a\)\(2\)](#) with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (et seq.) (see OFAC's Specially Designated Nationals and Blocked Persons List at <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>).

(3) The representation and certification requirements of paragraph (o)(2) of this provision do not apply if—

(i) This solicitation includes a trade agreements certification (e.g., [52.212-3\(g\)](#) or a comparable agency provision); and

(ii) The offeror has certified that all the offered products to be supplied are designated country end products.

(p) *Ownership or Control of Offeror.* (Applies in all solicitations when there is a requirement to be registered in SAM or a requirement to have a unique entity identifier in the solicitation).

(1) The Offeror represents that it  has or  does not have an immediate owner. If the Offeror has more than one immediate owner (such as a joint venture), then the Offeror shall respond to paragraph (2) and if applicable, paragraph (3) of this provision for each participant in the joint venture.

(2) If the Offeror indicates "has" in paragraph (p)(1) of this provision, enter the following information:

Immediate owner CAGE code: \_\_\_\_\_.

Immediate owner legal name: \_\_\_\_\_.

(Do not use a "doing business as" name)

Is the immediate owner owned or controlled by another entity:  Yes or  No.

(3) If the Offeror indicates "yes" in paragraph (p)(2) of this provision, indicating that the immediate owner is owned or controlled by another entity, then enter the following information:

Highest-level owner CAGE code: \_\_\_\_\_.

Highest-level owner legal name: \_\_\_\_\_.

(Do not use a "doing business as" name)

(q) *Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law.*

(1) As required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts, The Government will not enter into a contract with any corporation that—

(i) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(ii) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(2) The Offeror represents that—

(i) It is  is not  a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(ii) It is  is not  a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(r) *Predecessor of Offeror.* (Applies in all solicitations that include the provision at [52.204-16](#), Commercial and Government Entity Code Reporting.)

(1) The Offeror represents that it  is or  is not a successor to a predecessor that held a Federal contract or grant within the last three years.

(2) If the Offeror has indicated "is" in paragraph (r)(1) of this provision, enter the following information for all predecessors that held a Federal contract or grant within the last three years (if more than one predecessor, list in reverse chronological order):

Predecessor CAGE code: (or mark "Unknown").

Predecessor legal name:\_\_\_\_\_.

(Do not use a "doing business as" name).

(s) [Reserved].

(t) *Public Disclosure of Greenhouse Gas Emissions and Reduction Goals.* Applies in all solicitations that require offerors to register in SAM ( [12.301](#)(d)(1)).

(1) This representation shall be completed if the Offeror received \$7.5 million or more in contract awards in the prior Federal fiscal year. The representation is optional if the Offeror received less than \$7.5 million in Federal contract awards in the prior Federal fiscal year.

(2) Representation. [Offeror to check applicable block(s) in paragraph (t)(2)(i) and (ii)].

(i) The Offeror (itself or through its immediate owner or highest-level owner)  does,  does not publicly disclose greenhouse gas emissions, i.e., makes available on a publicly accessible website the results of a greenhouse gas inventory, performed in accordance with an accounting standard with publicly available and consistently applied criteria, such as the Greenhouse Gas Protocol Corporate Standard.

(ii) The Offeror (itself or through its immediate owner or highest-level owner)  does,  does not publicly disclose a quantitative greenhouse gas emissions reduction goal, i.e., make available on a publicly accessible website a target to reduce absolute emissions or emissions intensity by a specific quantity or percentage.

(iii) A publicly accessible website includes the Offeror's own website or a recognized, third-party greenhouse gas emissions reporting program.

(3) If the Offeror checked "does" in paragraphs (t)(2)(i) or (t)(2)(ii) of this provision, respectively, the Offeror shall provide the publicly accessible website(s) where greenhouse gas emissions and/or reduction goals are reported: \_\_\_\_\_.

(u)(1) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with an entity that requires employees or subcontractors of such entity seeking to report waste, fraud, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(2) The prohibition in paragraph (u)(1) of this provision does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(3) *Representation.* By submission of its offer, the Offeror represents that it will not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

(v) *Covered Telecommunications Equipment or Services-Representation.* Section 889(a)(1)(A) and section 889 (a)(1)(B) of Public Law 115-232.

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

(2) The Offeror represents that—

(i) It  does,  does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

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

(End of provision)

*Alternate I (Oct 2014).* As prescribed in [12.301\(b\)\(2\)](#), add the following paragraph (c)(11) to the basic provision:

(11) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(4) of this provision.)

Black American.

Hispanic American.

Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, Republic of Palau, Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

Individual/concern, other than one of the preceding.

**(4) FAR 52.223-22 Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation (DEC 2016)**

(a) This representation shall be completed if the Offeror received \$7.5 million or more in Federal contract awards in the prior Federal fiscal year. The representation is optional if the Offeror received less than \$7.5 million in Federal contract awards in the prior Federal fiscal year.

(b) *Representation. [Offeror is to check applicable blocks in paragraphs (1) and (2).]*

(1) The Offeror (itself or through its immediate owner or highest-level owner)  does,  does not publicly disclose greenhouse gas emissions, *i.e.*, make available on a publicly accessible website the results of a greenhouse gas inventory, performed in accordance with an accounting standard with publicly available and consistently applied criteria, such as the Greenhouse Gas Protocol Corporate Standard.

(2) The Offeror (itself or through its immediate owner or highest-level owner)  does,  does not publicly disclose a quantitative greenhouse gas emissions reduction goal, *i.e.*, make available on a publicly available website a target to reduce absolute emissions or emissions intensity by a specific quantity or percentage.

(3) A publicly accessible website includes the Offeror's own website or a recognized, third-party greenhouse gas emissions reporting program.

(c) If the Offeror checked "does" in paragraphs (b)(1) or (b)(2) of this provision, respectively, the Offeror shall provide the publicly accessible website(s) where greenhouse gas emissions and/or reduction goals are reported: \_\_\_\_\_.

(End of Provision)

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

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument" in paragraph (c)(1) in the provision at [52.204-26](#), Covered Telecommunications Equipment or Services—Representation, or in paragraph (v)(2)(i) of the provision at [52.212-3](#), Offeror Representations and Certifications-Commercial Products or Commercial Services. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it "does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services" in paragraph (c)(2) of the provision at [52.204-26](#), or in paragraph (v)(2)(ii) of the provision at [52.212-3](#).

(a) Definitions. As used in this provision—

Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, *and* substantial or essential component have the meanings provided in the clause [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.*

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to—



(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

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

(d) *Representation.* The Offeror represents that—

(1) It  will,  will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds "will" in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

It  does,  does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds "does" in paragraph (d)(2) of this section.

(e) *Disclosures.*

(1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded "will" in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded "does" in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(End of provision)

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

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

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

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

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

(End of provision)

**(7) FAR 52.229-11 Tax on Certain Foreign Procurements—Notice and Representation (JUN 2020)**

(a) *Definitions.* As used in this provision—

*Foreign person* means any person other than a United States person.

*Specified Federal procurement payment* means any payment made pursuant to a contract with a foreign contracting party that is for goods, manufactured or produced, or services provided in a foreign country that is not a party to an international procurement agreement with the United States. For purposes of the prior sentence, a foreign country does not include an outlying area.

*United States person* as defined in [26 U.S.C. 7701\(a\)\(30\)](#) means

(1) A citizen or resident of the United States;

(2) A domestic partnership;

(3) A domestic corporation;

(4) Any estate (other than a foreign estate, within the meaning of [26 U.S.C. 701\(a\)\(31\)](#)); and

(5) Any trust if—

(i) A court within the United States is able to exercise primary supervision over the administration of the trust; and

(ii) One or more United States persons have the authority to control all substantial decisions of the trust.

(b) Unless exempted, there is a 2 percent tax of the amount of a specified Federal procurement payment on any foreign person receiving such payment. See [26 U.S.C. 5000C](#) and its implementing regulations at 26 CFR 1.5000C-1 through 1.5000C-7.

(c) Exemptions from withholding under this provision are described at 26 CFR 1.5000C-1(d)(5) through (7). The Offeror would claim an exemption from the withholding by using the Department of the Treasury Internal Revenue Service Form W-14, Certificate of Foreign Contracting Party Receiving Federal Procurement Payments, available via the internet at [www.irs.gov/w14](http://www.irs.gov/w14). Any exemption claimed and self-certified on the IRS Form W-14 is subject to audit by the IRS. Any disputes regarding the imposition and collection of the 26 U.S.C. 5000C tax are adjudicated by the IRS as the [26 U.S.C. 5000C](#) tax is a tax matter, not a contract issue. The IRS Form W-14 is provided to the acquiring agency rather than to the IRS.

(d) For purposes of withholding under [26 U.S.C. 5000C](#), the Offeror represents that

(1) It  is  is not a foreign person; and

(2) If the Offeror indicates "is" in paragraph (d)(1) of this provision, then the Offeror represents that—I am claiming on the IRS Form W-14  a full exemption, or  partial or no exemption [Offeror shall select one] from the excise tax.

(e) If the Offeror represents it is a foreign person in paragraph (d)(1) of this provision, then—

(1) The clause at FAR [52.229-12](#), Tax on Certain Foreign Procurements, will be included in any resulting contract; and

(2) The Offeror shall submit with its offer the IRS Form W-14. If the IRS Form W-14 is not submitted with the offer, exemptions will not be applied to any resulting contract and the Government will withhold a full 2 percent of each payment.

(f) If the Offeror selects "is" in paragraph (d)(1) and "partial or no exemption" in paragraph (d)(2) of this provision, the Offeror will be subject to withholding in accordance with the clause at FAR [52.229-12](#), Tax on Certain Foreign Procurements, in any resulting contract.

(g) A taxpayer may, for a fee, seek advice from the Internal Revenue Service (IRS) as to the proper tax treatment of a transaction. This is called a private letter ruling. Also, the IRS may publish a revenue ruling, which is an official interpretation by the IRS of the Internal Revenue Code, related statutes, tax treaties, and regulations. A revenue ruling is the conclusion of the IRS on how the law is applied to a specific set of facts. For questions relating to the interpretation of the IRS regulations go to <https://www.irs.gov/help/tax-law-questions>.

(End of provision)

**(8) FAR 52.222-56 Certification Regarding Trafficking in Persons Compliance Plan  
(OCT 2020)**

(a) The term "commercially available off-the-shelf (COTS) item," is defined in the clause of this solicitation entitled "Combating Trafficking in Persons" (FAR clause [52.222-50](#)).

(b) The apparent successful Offeror shall submit, prior to award, a certification, as specified in paragraph (c) of this provision, for the portion (if any) of the contract that-

(1) Is for supplies, other than commercially available off-the-shelf items, to be acquired outside the United States, or services to be performed outside the United States; and

(2) Has an estimated value that exceeds \$550,000.

(c) The certification shall state that-

(1) It has implemented a compliance plan to prevent any prohibited activities identified in paragraph (b) of the clause at [52.222-50](#), Combating Trafficking in Persons, and to monitor, detect, and terminate the contract with a subcontractor engaging in prohibited activities identified at paragraph (b) of the clause at [52.222-50](#), Combating Trafficking in Persons; and

(2) After having conducted due diligence, either-

(i) To the best of the Offeror's knowledge and belief, neither it nor any of its proposed agents, subcontractors, or their agents is engaged in any such activities; or

(ii) If abuses relating to any of the prohibited activities identified in [52.222-50](#)(b) have been found, the Offeror or proposed subcontractor has taken the appropriate remedial and referral actions.

(End of provision)

### **PART XIII. OFFEROR REPRESENTATIONS AND CERTIFICATIONS REQUIRED BY DFARS**

(a) The Contractor agrees to comply with the following Defense Federal Acquisition Regulation Supplement (DFARS) provisions which are included in this solicitation by reference:

**(1) DFARS [252.203-7005](#) Representation Relating to Compensation of Former DoD Officials**

**(2) Reserved.**

**(3) DFARS 252.204-7019 Notice of NIST SP 800-171 DoD Assessment Requirements (NOV 2020)**

(a) *Definitions.*

“Basic Assessment”, “Medium Assessment”, and “High Assessment” have the meaning given in the clause 252.204-7020, NIST SP 800-171 DoD Assessments.

“Covered contractor information system” has the meaning given in the clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, of this solicitation.

(b) *Requirement.* In order to be considered for award, if the Offeror is required to implement NIST SP 800-171, the Offeror shall have a current assessment (i.e., not more than 3 years old unless a lesser time is specified in the solicitation) (see 252.204-7020) for each covered contractor information system that is relevant to the offer, contract, task order, or delivery order. The Basic, Medium, and High NIST SP 800-171 DoD Assessments are described in the NIST SP 800-171 DoD Assessment Methodology located at [https://www.acq.osd.mil/dpap/pdi/cyber/strategically\\_assessing\\_contractor\\_implementation\\_of\\_NIST\\_SP\\_800-171.html](https://www.acq.osd.mil/dpap/pdi/cyber/strategically_assessing_contractor_implementation_of_NIST_SP_800-171.html).

(c) *Procedures.*

(1) The Offeror shall verify that summary level scores of a current NIST SP 800-171 DoD Assessment (i.e., not more than 3 years old unless a lesser time is specified in the solicitation) are posted in the Supplier Performance Risk System (SPRS) (<https://www.sprs.csd.disa.mil/>) for all covered contractor information systems relevant to the offer.

(2) If the Offeror does not have summary level scores of a current NIST SP 800-171 DoD Assessment (i.e., not more than 3 years old unless a lesser time is specified in the solicitation) posted in SPRS, the Offeror may conduct and submit a Basic Assessment to <mailto:webpmsmh@navy.mil> for posting to SPRS in the format identified in paragraph (d) of this provision.

(d) *Summary level scores.* Summary level scores for all assessments will be posted 30 days post-assessment in SPRS to provide DoD Components visibility into the summary level scores of strategic assessments.

(1) *Basic Assessments.* An Offeror may follow the procedures in paragraph (c)(2) of this provision for posting Basic Assessments to SPRS.

(i) The email shall include the following information:

(A) Cybersecurity standard assessed (e.g., NIST SP 800-171 Rev 1).

(B) Organization conducting the assessment (e.g., Contractor self-assessment).

(C) For each system security plan (security requirement 3.12.4) supporting the performance of a DoD contract—

(1) All industry Commercial and Government Entity (CAGE) code(s) associated with the information system(s) addressed by the system security plan; and

(2) A brief description of the system security plan architecture, if more than one plan exists.

(D) Date the assessment was completed.

(E) Summary level score (e.g., 95 out of 110, NOT the individual value for each requirement).

(F) Date that all requirements are expected to be implemented (i.e., a score of 110 is expected to be achieved) based on information gathered from associated plan(s) of action developed in accordance with NIST SP 800-171.

(ii) If multiple system security plans are addressed in the email described at paragraph (d)(1)(i) of this section, the Offeror shall use the following format for the report:

System Security Plan	CAGE Codes supported by this plan	Brief description of the plan architecture	Date of assessment	Total Score	Date score of 110 will be achieved

(2) *Medium and High Assessments.* DoD will post the following Medium and/or High Assessment summary level scores to SPRS for each system assessed:



- (i) The standard assessed (e.g., NIST SP 800-171 Rev 1).
- (ii) Organization conducting the assessment, e.g., DCMA, or a specific organization (identified by Department of Defense Activity Address Code (DoDAAC)).
- (iii) All industry CAGE code(s) associated with the information system(s) addressed by the system security plan.
- (iv) A brief description of the system security plan architecture, if more than one system security plan exists.
- (v) Date and level of the assessment, i.e., medium or high.
- (vi) Summary level score (e.g., 105 out of 110, not the individual value assigned for each requirement).
- (vii) Date that all requirements are expected to be implemented (i.e., a score of 110 is expected to be achieved) based on information gathered from associated plan(s) of action developed in accordance with NIST SP 800-171.

(3) *Accessibility.*

- (i) Assessment summary level scores posted in SPRS are available to DoD personnel, and are protected, in accordance with the standards set forth in DoD Instruction 5000.79, Defense-wide Sharing and Use of Supplier and Product Performance Information (PI).
- (ii) Authorized representatives of the Offeror for which the assessment was conducted may access SPRS to view their own summary level scores, in accordance with the SPRS Software User's Guide for Awardees/Contractors available at [https://www.sprs.csd.disa.mil/pdf/SPRS\\_Awardee.pdf](https://www.sprs.csd.disa.mil/pdf/SPRS_Awardee.pdf).
- (iii) A High NIST SP 800-171 DoD Assessment may result in documentation in addition to that listed in this section. DoD will retain and protect any such documentation as "Controlled Unclassified Information (CUI)" and intended for internal DoD use only. The information will be protected against unauthorized use and release, including through the exercise of applicable exemptions under the Freedom of Information Act (e.g., Exemption 4 covers trade secrets and commercial or financial information obtained from a contractor that is privileged or confidential).

(End of provision)

(b) The Contractor agrees to comply with the following Defense Federal Acquisition Regulation Supplement (DFARS) provisions, which are included in this solicitation.

**(1) DFARS 252.209-7998 Representation Regarding Conviction of a Felony Criminal Violation under any Federal or State Law (DEVIATION 2012-O0007) (MAR 2012)**

(a) In accordance with section 514 of Division H of the Consolidated Appropriations Act, 2012, none of the funds made available by that Act may be used to enter into a contract with any corporation that was convicted of a felony criminal violation under any Federal or State law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

(b) The Offeror represents that it is  is not  a corporation that was convicted of a felony criminal violation under a Federal or State law within the preceding 24 months.

(End of Provision)

**(2) Reserved**

**(3) Reserved**

**(4) DFARS 252.204-7016 Covered Defense Telecommunications Equipment or Services—Representation (DEC 2019)**

(a) *Definitions.* As used in this provision, “covered defense telecommunications equipment or services” has the meaning provided in the clause [252.204-7018](#), Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services.

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

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

(End of provision)

**(5) DFARS 252.204-7017 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services—Representation (MAY 2021)**

The Offeror is not required to complete the representation in this provision if the Offeror has represented in the provision at [252.204-7016](#), Covered Defense Telecommunications Equipment or Services—Representation, that it “does not provide covered defense telecommunications

equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.”

(a) *Definitions.* “Covered defense telecommunications equipment or services,” “covered mission,” “critical technology,” and “substantial or essential component,” as used in this provision, have the meanings given in the [252.204-7018](#) clause, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services, of this solicitation.

(b) *Prohibition.* Section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits agencies from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service to carry out covered missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) at <https://www.sam.gov> for entities that are excluded when providing any equipment, system, or service to carry out covered missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless a waiver is granted.

*Representation.* If in its annual representations and certifications in SAM the Offeror has represented in paragraph (c) of the provision at [252.204-7016](#), Covered Defense Telecommunications Equipment or Services—Representation, that it “does” provide covered defense telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument, then the Offeror shall complete the following additional representation:

The Offeror represents that it [ ] will [ ] will not provide covered defense telecommunications equipment or services as a part of its offered products or services to DoD in the performance of any award resulting from this solicitation.

(e) *Disclosures.* If the Offeror has represented in paragraph (d) of this provision that it “will provide covered defense telecommunications equipment or services,” the Offeror shall provide the following information as part of the offer:

(1) A description of all covered defense telecommunications equipment and services offered (include brand or manufacturer; product, such as model number, original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable).

(2) An explanation of the proposed use of covered defense telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition referenced in paragraph (b) of this provision.

(3) For services, the entity providing the covered defense telecommunications services (include entity name, unique entity identifier, and Commercial and Government Entity (CAGE) code, if known).

(4) For equipment, the entity that produced or provided the covered defense telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known).

(End of provision)

(c) The following DFARS provision applies to this solicitation if checked.

**(1) DFARS 252.247-7026 Evaluation Preference for Use of Domestic Shipyards - Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade (NOV 2008)**

(a) *Definitions.* As used in this provision—

“Covered vessel” means a vessel—

(1) Owned, operated, or controlled by the offeror; and

(2) Qualified to engage in the carriage of cargo in the coastwise or noncontiguous trade under Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 12101, 12132, and 55102), commonly referred to as “Jones Act”; 46 U.S.C. 12102, 12112, and 12119; and Section 2 of the Shipping Act, 1916 (46 U.S.C. 50501).

“Foreign shipyard” means a shipyard that is not a U.S. shipyard.

“Overhaul, repair, and maintenance work” means work requiring a shipyard period greater than or equal to 5 calendar days.

“Shipyard” means a facility capable of performing overhaul, repair, and maintenance work on covered vessels.

“U.S. shipyard” means a shipyard that is located in any State of the United States or in Guam.

(b) This solicitation includes an evaluation criterion that considers the extent to which the offeror has had overhaul, repair, and maintenance work for covered vessels performed in U.S. shipyards.

(c) The offeror shall provide the following information with its offer, addressing all covered vessels for which overhaul, repair, and maintenance work has been performed during the period covering the current calendar year, up to the date of proposal submission, and the preceding four calendar years:

- (1) Name of vessel.
  - (2) Description and cost of qualifying shipyard work performed in U.S. shipyards.
  - (3) Description and cost of qualifying shipyard work performed in foreign shipyards and whether—
    - (i) Such work was performed as emergency repairs in foreign shipyards due to accident, emergency, Act of God, or an infirmity to the vessel, and safety considerations warranted taking the vessel to a foreign shipyard; or
    - (ii) Such work was paid for or reimbursed by the U.S. Government.
  - (4) Names of shipyards that performed the work.
  - (5) Inclusive dates of work performed.
- (d) Offerors are responsible for submitting accurate information. The Contracting Officer—
- (1) Will use the information to evaluate offers in accordance with the criteria specified in the solicitation; and
  - (2) Reserves the right to request supporting documentation if determined necessary in the proposal evaluation process.
- (e) The Department of Defense will provide the information submitted in response to this provision to the congressional defense committees, as required by Section 1017 of Pub. L. 109-364.

(End of Provision)