

**MILITARY SEALIFT COMMAND
TUG CONTRACT (TUGCON – SPOT 13.5)
SEPTEMBER 2022 (09-22)**

Preamble

1. This Request for Proposals (RFP) is a solicitation for offers to perform a contract in accordance with the terms and conditions herein.
2. The contract, when awarded, will consist of the completed Standard Form (SF) 1449, this Preamble, and Parts I through VI.
3. The signature of the Contracting Officer on SF1449 signifies acceptance of the contractor's proposal and award of the contract. The SF 1449 and Parts I through VI 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 contract date. In the event that there is any inconsistency between the terms and conditions of this solicitation and those in an offeror's proposal, this solicitation shall control, unless the offeror clearly indicates that it has offered terms and conditions inconsistent with this solicitation and the Government has accepted the changed terms and conditions. All references to boxes in Parts II through VI 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 Num.	Description	Date
N/A	Part II FAR 52.212-4 Contract Terms and Conditions - Commercial Items (NOV 2021); updated.	Sep 2022
	Part III(ac) Press Release; added.	
	Part III(ad) Vessel Name Release; added.	
	Part IV FAR 52.212-5; updated.	
	Part VI(b)42 DFARS 252.204-7018 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services; added and checked.	
	Part VI(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 VIII(b)(16)(xiv); 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 TUGCON Part XII).	
	Part VIII(b)(16)(xix) Completed DFARS 252.204-7016 Covered Defense Telecommunications Equipment or Services—Representation (See TUGCON Part XII.); added.	
	Part VIII(b)(16)(xx) 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 TUGCON Part XII); added.	
	Part IX(d) Past Performance; paragraph revised. Added last three sentences.	
	Part X(c)(3) FAR 52.212-3; updated.	
	Part XI(b)(4) DFARS 252.204-7016 Covered Defense Telecommunications Equipment or Services—Representation (DEC 2019); added.	
	Part XI(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
TUGCON**

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- (b) Required for contract(s) greater than \$1,000,000.00
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 - (5) Reserved
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(tailored pursuant to FAR 12.302(a))

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 - (3) Reserved
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MSC TUGCON 2022

PART I. TUGCON BOXES

MSC TUGCON 2022		Tug(s):	
PART I. TUGCON BOXES		Owner, UEI, CAGE Code, TIN (and TIN of parent, if applicable)	
		Solicitation Number (date):	
Contract Number (date):		1. Tug(s) Required:	
2. Description of the Tow:		2. Description of the Tow:	
Declared Value (USD):		Declared Value (USD):	
Riding Crew? [] Yes [] No		Riding Crew? [] Yes [] No	
3. Port(s)/Place(s) of Departure:		4. Laytime:	
		DAYS SHEX SSHEX SSHINC	
		<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	
5. Port(s)/Place(s) of Destination:		6. Laydays:	
		Commencing:	
		Cancelling:	
7. Terms/Conditions/Attachments added, deleted or modified:			

Tug(s):	Solicitation number (date):
	Contract Number (date):
8. Tug/Flag/Year Built:/INMARSAT# or other Contact #	9. Proposal Firm Until:
10. Amendments Acknowledged (amendment numbers and dates):	
11. Owner (name, address, phone, e-mail, fax):	12. Broker (address, phone, e-mail, fax):
CPARS POC, if different from above (name, email):	13. Remittance address for hire (if other than box 10):
14. Laydays Proposed: Commencing: Cancelling:	15. Expected Ready to Present:
16. Contemplated Route and Itinerary:	
17. Rates (USD)	
CLIN	Description
	Unit
	Quantity
	Extended Price
(TBD at award)	Towage price (lumpsum)
(TBD at award)	Demurrage (per day)
(TBD at award)	Cost of Marine Surveyor (not to exceed)

Tug(s) :		Solicitation Number (date):	
		Contract Number (date):	
18. Registered Owner (if other than as listed in Box 11):			
19. Current position/destination:		20. Nationality of Master and crew:	
21. Call Letters:		22. Official number:	
23. Maximum Length:		24. Length between perpendiculars:	
a. (ft.)	b. (m)	a. (ft.)	b. (m)
25. Maximum Beam:		26. Maximum saltwater draft:	
a. (ft.)	b. (m)	a. (ft.)	b. (m)
27. Net registered tonnage:		28. Gross registered tonnage:	
29. Load line assigned (if any):		30. Vertical distance, waterline-plane to uppermost point of Tug:	
a. (ft.)	b. (m)	a. (ft.)	b. (m)
31. Classification Society entered, if any		32. Classification assigned, if any:	
33. USCG certification and regulatory status, if any:			
34. Insurer(s):			
PROPULSION			
35. Shaft Horsepower:	Verified by:	Verification date:	
36. Brake Horsepower:	Verified by:	Verification date:	
37. Bollard pull (pounds):	Verified by:	Verification date:	
38. Main engines/propellers (qty):	Manufactured by:	Drive Type/Tractor?	
39. Design Shaft RPM:			
SPEED			
40. Transit Speed (full speed, at 80% of the horsepower identified in Box 35, without Tow, in moderate weather):			
EQUIPMENT			
41. Description of towing gear and lifting equipment:			
42. Fire pump capacity (gpm):			
43. Capstan pull capacity (lbs. and fpm):			

Tug(s) :	Solicitation Number (date):
	Contract Number (date):

CONTINUATION

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

Box #

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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. The Tug and associated equipment shall be subject to the Government's inspection as to suitability for the towage required under this contract prior to award of this contract and to subsequent inspections at any time during the currency of this contract to determine continuing suitability for the required services. The Owner shall instruct the Towing Vessel's Master to give every assistance so as to enable Hirer's inspector(s) to properly observe operations throughout the Tug.

(2) Hirer's Rights. If in the opinion of the Hirer's inspector any deficiency or condition exists which renders the Tug inadequate for the required service, the Charterer shall have the option to cancel this contract at no cost to the Government or to require any necessary corrective actions at the Tug's expense and to the Hirer's satisfaction.

(3) Limitation of Charterer's Liability. Except as otherwise specifically provided herein, the Charterer shall not be liable for any loss, damage, expense, cost, or liability whatsoever and howsoever incurred by the Owner or Tug or which are imposed upon Owner by operation of law.

(4) Cooperation of Master. The Hirer or designated representative(s) shall have the right at loading and/or discharging port(s) or place(s) to inspect the Tug and observe operations. The Owner shall instruct the Master to give every assistance so as to enable said representative(s) to observe operations throughout the Tug properly. Hirer's representative(s) shall not interfere with the Tug's operations. Any delay to the Tug resulting from the Hirer's inspections shall count as laytime or, if the Tug is on demurrage, as time on demurrage.

(5) Surveyors and Consultants. Surveyors or consultants, as mutually agreed, may be retained under this Hirer 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 Hirer's account, said costs shall be incurred only after prior written approval from the Contracting Officer.

*(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 shall be the subject of a bilateral

modification to the contract. However, nothing in this paragraph shall excuse the contractor from proceeding with the contract as changed.

*(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 III.

(f) **Excusable delays (Tailored)**.

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

(2) **Reservation**. The exceptions identified in subparagraph (1) above shall not affect Owner's warranties respecting the condition of the Tug at the commencement of loading hereunder, or the Owner's obligations respecting the loading, handling, stowage, carriage, custody, care, and discharge of the cargo, or the rights or obligations of either Owner or Hirer respecting laytime or demurrage as elsewhere provided herein.

(3) **Necessary Deviation or Slow Steaming**. If the Tug during the course of the towage hereunder puts into a port or place or seeks shelter or is detained or deviates from the original route identified in Part I, Box 16, or slow steams because either the Owner or Tug Master reasonably consider that

- (i) the Tow is not fit to be towed; or
- (ii) the Tow is incapable of being towed at the original speed contemplated by the Owner; or
- (iii) the towing connection requires rearrangement; or
- (iv) repairs or alterations or additional equipment for the Tow are required to safeguard the venture and enable the Tow to be towed to destination; or
- (v) it would not be prudent to do otherwise on account of weather conditions actual or forecast; or

because of any other good or valid reason outside the control of the Tug Master or because of any delay caused by or at the request of the Hirer, this contract shall remain in full force and effect, and the Owner shall be entitled to receive from the Hirer additional compensation at the demurrage rate identified in Box 17 for all time spent at the port or place deviated and for all

time spent by the Tug at sea in excess of the time which would have been spent had such slow steaming or deviation not taken place.

***(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 - **Towing Liability (Tailored)**

(1) Any and all associated costs with the following shall be for the sole account of the Owner without recourse to the Government, provided any of the following results during the performance of services under this contract or preparation therefor from any negligence, wrongful act, or omission of Owner or its agents, servants, employees, or subcontractors; or from any unseaworthiness, unfitness, or breakdown of any Tug, gear, or other equipment furnished by Owner under this contract: (a) injury or death of Master or crew of the Tug or captain, officers,

or crew of the Tow; (b) injury or death of any person aboard the Tug or Tow; (c) loss or damage of whatsoever nature sustained by the Tug or Tow or any property aboard the Tug or Tow; (d) loss or damage of whatsoever nature caused to or suffered by third parties or their property by reason of contact with the Tug or Tow or by an obstruction created by the presence of the Tug or Tow; (e) any liability in respect of wreck removal for the Tug or Tow or in respect of the expense of moving or lightening or buoying the Tug or Tow or in respect of preventing or abating pollution originating from the Tug.

(2) Whenever the Master (or any crew) of any Tug furnished or engaged in furnishing Tug power or assistance to any vessel (which vessel utilizes or has readily available her own propulsion capacity) goes aboard said vessel, or when any licensed pilot goes aboard said vessel, said Master, crew member or licensed pilot becomes the servant of the Owner of said assisted vessel in respect of the giving of orders to any of the Tugs provided for or engaged in said services and in respect of the handling of the vessel. Further, neither those providing the Tug or pilot, nor the Tug, its Owners, charters, operators, manager, or agents shall same be liable for any damage resulting therefrom, unless said damage is caused or results from the negligence or wrongful act or omission of the Tug Owners, Hirers, operators, managers, employees, or agents of those furnishing the Tug or pilot.

(3) In all instances in which any vessel being handled by Owner's Tug sustains damage or is involved in any incident resulting in damage to vessels or property or in bodily injury or death, Owner shall secure a report from the Master or officer acting as pilot or from any licensed pilot aboard the vessel being handled. Owner shall submit said report in triplicate to the Contracting Officer within 24 hours following said incident, reporting the facts, listing deaths, reporting the extent of damages or bodily injuries, and listing recommendations to prevent recurrence.

(k) **Taxes (Tailored)**. Dues, taxes, and other charges upon the Tug shall be for the Owner's account. Dues, taxes, and other charges on the Tow or the towage price shall be paid by the Owner at the Charterer's option, but be for the Charterer's account and reimbursed by the Hirer. Assist tugs shall be for the account of the party ordering same. Reimbursement of Owner for dues, taxes, and other charges under this paragraph shall be in accordance with Part II (g) and (i) herein.

^ (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 Owner 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 Owner 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 Owner can demonstrate, to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Owner 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 Owner's records. The Owner shall not be paid for any work performed or costs incurred that 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 cause, 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) Owner warrants that, from the time when the obligation to proceed to the loading port(s) or place(s) attaches, and thereafter during the currency of this contract, the Tug shall be in full compliance with the specifications herein in addition to all other requirements of this contract. The Tug's capacity, position, and other particulars as set forth in this contract are warranties by the Owner. Should the Tug fail to satisfy one or more of such warranties or other warranties contained in this section not due to the fault of the Hirer, the freight may be equitably decreased so as to return the Hirer to a position equivalent to that had the warranty not been breached, this contract otherwise to remain unaffected; alternatively, this contract may in such case be terminated at Hirer's option pursuant to paragraph (m) (Cause) above.

(2) **Condition.** The Owner warrants that, before and at the commencement of the voyage(s) hereunder, it shall exercise due diligence to ensure that the Tug and her hull, machinery, boilers, towing equipment, and other equipment are fully functional and in good working order and condition, and that the Tug is in every way seaworthy, tight, staunch, strong, and fit to perform the Tow identified in Box 2 and the voyage(s) required hereunder.

- (3) **Regulatory Compliance.** The Owner warrants that the Tug 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) to whose port(s) and/or place(s) the Tug may be ordered under this contract; and of any terminals or facilities in said port(s) and/or place(s); and of any classification society in which the Tug is entered. The Owner further warrants that the Tug shall have on board during the currency of this contract all certificates, records, or other documents required by the aforesaid conventions, laws, regulations, and requirements, including a Certificate of Financial Responsibility meeting the requirements of the U.S. Coast Guard promulgated pursuant to the Federal Water Pollution Control Act as amended and/or the Oil Pollution Act of 1990, and valid gear certificates as required. Upon delivery and throughout the currency of this contract, Tug shall be entered and maintained in the highest class of a recognized classification society.
- (4) **Complement.** The Owner warrants that the Tug shall have an efficient and legally sufficient complement of Master and crew with adequate training and experience in towage operation of all of the Tug's equipment and possess valid and current certificates/documents issued or approved by the country of the Tug's registry. The Tug Master and entire crew of the Tug shall be appointed or hired by the Owner and shall be deemed to be servants and agents of the Owner at all times except as otherwise specified in this contract. The Tug Master shall be proficient with conversational English.
- (5) **Towing Gear.** Towing bridle sufficient for the Tow identified in Box 2 shall be furnished by the Owner. Additionally, the Owner shall provide for Hirer's use, at no additional cost, all towing hawsers, bridles, winches, and other towing gear actually aboard the Tug.
- (6) **Port Restrictions.** If particular ports or places are identified in Boxes 3 and 5, the Owner warrants that a vessel of the type, tonnage, and configuration of the Tug identified in Box 8, laden as contemplated herein, shall be able to approach, lie at, and depart from said ports or places (if safe) always afloat. Any data supplied by the Owner in any RFP or this contract respecting any port conditions or restrictions are provided for informational purposes and are not warranted to be complete or accurate. Compliance with any additional and/or conflicting conditions or restrictions shall be the Owner's responsibility.

^(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 Owner 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 1);
- (2) Paragraphs (b), (d), (g), (i), (q) and (s) 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) Solicitation provisions if this is a solicitation.
- (6) The Standard Form 1449.
- (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; and (C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the 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 Use 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.

PART III. TUGCON TERMS AND CONDITIONS (Addendum to FAR 52.212-4)

(a) General Definitions

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

“BHP” – Brake horsepower

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

“Cancelling Date” - Identified in Box 6

“CFE” - Contractor-Furnished Equipment

“CFR” - Code of Federal Regulations

“CHOP” - Charterer's Option

“Commencing Date” - Identified in Box 6

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

“COMSCINST” - COMSC Instruction (publication)

“Contract” – This document including parts I - XI

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

“Contracting Officer's Representative (COR) DFARS 202.101, Oct 2016” - means an individual designated 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.

“Contractor” – Interchangeable with “Owner”

“Crew” – of the Tug identified in Part I

“Dead Tow” – See “Flat tow” below

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

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

“**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

“**Flat Tow**” – Tow which does not have her own propulsion available for use

“**fpm**” – feet per minute

“**GFP**” - Government-Furnished Property (see FAR 52.245-2 in Part VIII)

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

“**gpm**” – gallons per minute

“**Hirer**” – The United States of America

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

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

“**Laytime**” - The period of time agreed in Box 4 during which the Owner will make and keep the Tug available for delivery or redelivery of the Tow and for all other Hirer’s purposes without payment additional to the towage price

“**Live Tow**” – a Tow under her propulsion or which has her own propulsion available for use

“**LOA**” – Length Overall

“**Moderate Weather**” – Conditions up to and including Sea State 3 (Beaufort Scale)

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

“**MSCLANT**” - Military Sealift Command, Atlantic

“**MSCPAC**” - Military Sealift Command, Pacific

“**MSCEUR**” - Military Sealift Command, Europe

“**MSCFE**” - Military Sealift Command, Far East

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

“P&I” - Maritime Protection and Indemnity Insurance

“Place” – any berth, dock, anchorage, wharf, open roadstead, submarine line, or alongside any vessel, barge, lighter, submarine, craft, hull, derrick, or object of whatsoever nature, or any other place whatsoever to which the Government is entitled to direct the Tug hereunder

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

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

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

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

“SHP” – Shaft horsepower

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

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

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

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

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

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

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

"SWL" - Safe Working Load

"Tow" – identified in Box 6

"Tug" – identified in Part I

"Tugmaster" – of the Tug(s) identified in Part I

"USCG" – United States Coast Guard

"Weather permitting" – Time during which weather actually prevents working shall not count as laytime

(b) **Towage Price**

(1) Lumpsum towage price shall be stipulated in Box 17, and deemed to include the cost of fuel, lubricants, towing gear, port charges, Tug Master, and crew required for the service contemplated herein, and for all costs associated with the Contractor complying with requirements of this solicitation including those requirements delineated above in PART I, Box 7

(2) Towage price shall not be considered earned until the release of the Tow at the port or place of destination.

(c) **Demurrage**

(1) Rate. Demurrage shall be at the rate stipulated in Box 17.

(2) When Earned. The Hirer shall pay demurrage per running day (and pro rata for any part thereof) at the rate identified in Box 17 for all time by which allowed laytime allowed in Paragraph III(g) exceeds time on demurrage under the contract for (a) tender of the tow by Hirer at port of departure; (b) acceptance of redelivery of the Tow by Hirer at port of destination; and (c) all other Hirer's purposes.

(d) **Tow-Worthiness of the Tow**.

(1) Hirer shall exercise due diligence that the Tow at the commencement of its towage be in a proper condition for the towage contemplated and be suitable trimmed and prepared and ready to be towed and fitted and equipped with such shapes, signals, navigational and other lights, all of a type required for this towage.

(2) Prior to commencement of the towage hereunder, a recognized, independent marine surveyor, as mutually agreed by Hirer and Owner, shall have issued an unconditional certificate of tow worthiness for the Tow and a determination that same is properly made up, provided always that the Owner shall be under no obligation to perform the towage contemplated until, and in his discretion, he is satisfied that that Tow is in all respects trimmed, prepared, fit, and ready for the towage.

(3) Independent Marine Surveyor (IMS) must have prior experience towing military cargo and completing the Comprehensive Tow Package IAW the U.S Navy Tow Manual. Independent Marine Surveyor and an MSC representative must approve the Comprehensive Tow Package, prepared IAW the Navy Tow Manual, prior to tug on hire (submitted to iben.gantt@navy.mil and timothy.c.vickers@navy.mil).

(e) **Ports**

(1) Unless otherwise agreed, the Tug shall proceed with utmost dispatch to that port(s) or place(s) ordered by the Hirer in accordance with Box 3, and the Hirer shall there tender the Tow identified in Box 2. Upon completion of connecting the Tow and signing the necessary documents, the Tug and Tow shall proceed with utmost dispatch to the port(s) or place(s) of destination ordered by Hirer in accordance with Box 5 and there tender the Tow, which shall be accepted forthwith and taken over by Hirer. The precise ports or places of departure and destination shall always be safe and accessible for the Tug to enter, operate, and for Tug and Tow to leave, and shall be a place where Tug is permitted to, respectively, connect or release the Tow.

(2) Routing/Speed Orders. Should the Hirer issue routing instructions or orders to reduce speed, or should a military escort be agreed, any additional steaming time which results from said instructions, orders, or escort shall count as laytime or, if the Tug is on demurrage, as time on demurrage. In addition, the Hirer shall reimburse the Owner the cost of any extra fuel consumed as a consequence of any such delay at the market price where and when bunkers are next taken.

(f) **Notice of Readiness**

When the Tug has arrived at the ordered ports or places of departure or destination (or at the usual waiting place if the Tug cannot enter, berth, or approach the Tow by reason of any cause beyond Owner's control) and is fully ready to connect or release the Tow as applicable, a notice of readiness shall be tendered to the Hirer's representative at the port by the Tug Master or Owner's agent by letter, electronic mail, radio, or telephone. An oral notice shall be promptly confirmed in writing.

(g) **Laytime/Demurrage**

(1) Commencement/Resumption.

(i) First or sole port(s) or place(s) of departure or destination. Laytime shall commence at 0800 hours local time on the next working day SSHINC after the date of a notice of readiness properly tendered hereunder.

(ii) First discharge port. Laytime, or if the Tug is on demurrage, shall start or resume upon arrival designated destination port turnover site, upon tendering a proper notice of readiness and Tug is within one hour for which the tug turnover shall start.

(iii) Before laydays. Laytime shall not commence before 0800 hours local time on the commencing date identified in Box 4 unless the Hirer shall consent, in which case laytime shall commence upon Tug's arrival in berth and count as half time as used until 0800 hours local time on the commencing date.

(iv) Before laytime. Any time used from Notice of Readiness properly tendered until commencement of laytime shall count as half-time.

(v) After laytime. The notice time stipulated in subparagraph (ii) above shall apply irrespective of whether or not laytime shall have expired.

(2) Duration. The laytime stipulated in Box 4, in working days of twenty-four running hours weather permitting, shall be permitted free of expense to the Hirer for the purposes of tender of the Tow, acceptance of Tow at destination, connection of the Tow, release of the Tow, and for all other Hirer's purposes. At port or place of departure, said laytime shall continue to count until the Tug and Tow leave said port or place. At port or place of destination, said laytime shall continue to count until the Tug is free to leave said port or place.

(3) Time Excluded

(i) Notwithstanding any other provision of this contract to the contrary, time shall not count as laytime or, if the Tug is on demurrage, as time on demurrage, if such time is spent or lost:

(A) As a consequence of the breach of any of Owner's warranties contained in this contract and not due to the fault of the Hirer, or any other breakdown, inefficiency, or any other condition whatsoever preventing the fitness of the Tug for the service contemplated and not due to the fault of the Hirer;

(B) As a consequence of any negligence or default whatsoever affecting the working of the Tug by the Owner, Master, or crew of the Tug, including any labor dispute, labor disruption, strike, go slow, lockout, work to rule, stoppage, or restraint of labor of the Master or crew;

(C) As a consequence of the Owner or port authority prohibiting hookup or drop off of the Tow, or as a consequence of any other mandatory regulations;

(D) As a consequence of moving from a waiting place on an inward passage to the nominated port or place of departure or destination;

(4) Half-Time. Any time excepted from laytime by Box 4 shall, to the extent used, count as half time or, should the Tug be on demurrage, time excepted but so used shall be payable at one-half the demurrage rate.

(h) Insurance

(1) Requirement. During the currency of this contract, the Owner shall have in place marine insurance coverage on the Tug including Hull and Machinery; Protection and Indemnity

(P&I), including pollution (minimum coverage for damage to the Tow equaling USD 5,000,000.00 or the value of the Tow declared in Box 2, at Government's sole option declarable prior to the contract date); War Risk Hull and Machinery; War Risk P&I; Second Seamen's War Risk Policy (the principal sum of which shall be \$200,000.00 per Master, Officer, or crew member); and Broad Form Towage's Liability Insurance (minimum cover for damage to the Tow equaling USD 5,000,000.00 or the value of the Tow declared in Box 2, at the Government's sole option declarable prior to the contract date). Owner shall, when requested, furnish a Certificate of Insurance evidencing required coverage. Except as otherwise provided in this contract, the expense for such insurance coverages shall be for the Owner's account and shall be deemed to be included in the towage price payable under this contract.

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

(3) Vitiating, Suspension, Lapse, or Termination. In the event any or any part of the insurance required by the above Paragraph III(h)(1) or provided under a governmental program shall become vitiated, suspended, lapsed, or terminated from any cause arising out of or as a result of orders, acts, or omissions of the Hirer or any persons properly acting for the Hirer, the Hirer shall indemnify the Owner against any loss, damage, or expense suffered or sustained by it as a result of such violation, suspension, lapse, or termination; however, Owner shall credit the Hirer with any savings in respect of such premiums from the time of such vitiating, suspension, lapse, or termination. The value of the Tug shall be the aggregate valuation of the Tug stated in the marine risk insurance policy, policies, or binders carried by the Owner on the contract date, or if no marine insurance was carried at that date, such valuation as shall be agreed upon by the Owner and the Contracting Officer (and a dispute of fact under the Contract Disputes Act of 1978, failing such agreement).

(4) Limitation of Owner's Liability. Except as otherwise specifically provided herein, the Hirer shall indemnify and hold harmless the Owner, Tug Master, and the Tug from losses, expenses, and liabilities proximately caused by compliance with any orders or directions of the Hirer or its representatives or employees except those properly chargeable to the Owner under other provisions of this contract or which are recoverable under any insurance carried by the Owner. The Owner shall as far as may be practicable keep the Hirer, through the Contracting Officer, currently informed in writing as to any oral orders (involving substantial delays, expense or risk to the Tug or her cargo), which have not been promptly confirmed in writing by the person giving such orders. The Hirer's liability shall not exceed 150% of the fair market value of the Tug at the time of the loss less whatever amounts are recovered from the underwriters or other parties. The fair market value shall be determined by the Contracting Officer and shall be deemed a dispute of fact under the Contract Disputes Act of 1978 if the Owner questions such determination.

(5) Limitation of Hirer's Liability. Except as otherwise specifically provided herein, the Hirer shall not be liable for any loss, damage, expense, cost, or liability whatsoever and howsoever incurred by the Owner or Tug which is recoverable under any insurance carried by

the Owner or which would have been recoverable under insurance required by Paragraph III(h)(1) herein had the Owner not elected to be a self-insurer in whole or in part.

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

(7) Availability of Funds. Any liability of the Government under this paragraph shall be limited to funds available in the Military Sealift Command's portion of the Navy Industrial Fund.

(8) Additional Assured/P&I Insurance for Charterer's Risks. The United States of America shall be named as an additional assured with waiver of subrogation under Owner's Tower's Liability Policy, Hull and Machinery Policy, War Risk Hull and Machinery policy, and Second Seaman's War Risk policy. Further, the contractor shall obtain P&I Insurance for Charterer's Risks with P&I War Risk coverage for the United States of America (as Hirer) covering all risks typically covered by P&I Insurance for Charterer's Risks.

(i) **War**

(1) Requirement. If Tug is ordered under this contract to any port, place, zone, or route involved in a state of war, warlike operations or hostilities, civil strife or piracy (whether there be a declaration of war or not), where it might reasonably be expected to be subject to capture, seizure, arrest, or hostile act by a belligerent power (whether de facto or de jure), it shall be unreasonable for Owner not to prosecute said voyage instructions if insurance against said risks is then available commercially or under a Government program, including but not limited to War Risk insurance available through MARAD, or if the Government offers owner an indemnity under Public Law 85-804 against losses that would be covered by such insurance. In the event of the existence of said risks, Hirer shall, to the extent provided in this paragraph (i), assume provable additional costs of wages (including all additional bonuses and payments required) and insurance and all taxes associated therewith properly incurred by Owner as a consequence of service under this contract.

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

(3) Additional Insurance Costs. Hirer shall reimburse Owner for provable additional costs of premiums and taxes associated therewith (over and above such costs in effect on the contract date) reasonably incurred pursuant to this contract as a consequence of the risks identified in subparagraph (i)(1) above in the Tug's War Risk Hull & Machinery policy, in the Tug's War Risk Protection & Indemnity policy, and in any war risk policy on the lives of or for injuries to the crew. Provided, however, that no proportion of additional premiums allocable to insuring an

amount in excess of the insured value of the Tug (as of the contract date) may be reimbursable by Hirer in respect of any of the foregoing war risk policies. Provided further that Owner may apply for and remit to Hirer as savings any rebates by reason of Tug trading in lower-premium war risk areas. Provided further that the United States of America may be named as an additional assured with waiver of subrogation noted under all of the foregoing war risk policies. Alternatively, with respect to any area(s) excluded by war risk exclusion zones (war, strikes, terrorism and related perils) listed areas under Owner's commercial war risk insurance coverage, in Hirer's sole option and at no cost to the Government, Hirer may delete this subparagraph (i)(3) with twenty-four hours' notice in which case the Government shall offer an indemnity under Public Law 85-804.

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

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

(j) Salvage.

(1) In the event of the Tow breaking away from the Tug, the Tug shall stand by and render all reasonable services to reconnect the tow line and fulfill this contract of towage without making any claim for salvage.

(2) When engaged in the carriage of government cargo and if requested by Charterer, 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 Charterer, agrees to waive all claims for "pure" or "bonus" salvage. Instead, 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, 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.”

(k) **Position Reports.**

Position reports shall be issued by electronic mail: Vessel shall provide position/status report in port twice daily at 0000Z and 1200Z and at-sea four times daily at 0000Z, 0600Z, 1200Z, and 1800Z. Additionally, Position/Status Reports shall also be sent upon arrival port, upon departure port and at other times requested by the applicable MSC Area Command for Force Protection reasons. Reports shall be sent to the following email addresses: mschq.bwc.fct@navy.mil , msc.cop.fct@navy.mil, iben.gantt@navy.mil, timothy.c.vickers@navy.mil, richard.appling@navy.mil, bernie.donathan@navy.mil, and bob.gregory@navy.mil

(l) **Nature of Contract.** This contract is for towage services and shall not be construed as a charter of the Tug.

(m) **Statutory Exemptions.** Any provisions of this contract to the contrary notwithstanding the Owner and the Tug shall have the benefit of all limitation of and exemptions from liability accorded to the Owner or demise Hirer of vessels by any statute or rule of law for the time being in force.

(n) **Permits and Certification.** Apart from the certificate or tow-worthiness, Hirer shall arrange for its (Hirer's) account and provide the Owner all necessary licenses, authorizations, and permits required by the Tug and Tow to undertake and complete the towage contemplated, together with all necessary certification for the Tow to enter or leave any or all ports of call or refuge on the contemplated voyage. Any loss or expense incurred by the Owner by reason of the Hirer's failure to comply with this paragraph shall be reimbursed by Hirer to the Owner, and any delays caused thereby shall be compensated at the demurrage rate stipulated in Box 17.

(o) **Riding Crew.** In the event Owner provides a riding crew for the Tow, such crew and their suitability for the work shall be at the Owner's discretion with all expenses therefor for Owner's account, and the same shall not be deemed to be servants, agents, or employees of the Owner.

(p) **Cancelling**

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

(2) **Declaration of Cancellation Option.** If it shall become clear to Owner that the Tug will be delayed in arrival beyond the cancelling date identified in Box 6, Owner may, at the earliest

seventy-two (72) hours before the Tug is due to sail for the loading port or place, but as soon thereafter as they are in a position to state a new date of readiness with reasonable certainty, the Owner shall advise the new date and ask Hirer whether the option of cancellation will be exercised. Hirer's option to cancel must then be declared within ninety-six (96) hours (but not later than twenty-four (24) hours after the cancelling date identified at Box 6). If Hirer shall not cancel this contract upon such notice within such time limits, then, unless otherwise agreed, Box 6 shall be deemed amended such that noon on the new readiness date shall become the commencing date and noon on the third day after the new readiness date shall become the new cancelling date.

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

(q) Ice

(1) General. The Tug 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 Tug's arrival are (or are likely to be) withdrawn by reason of ice. The Tug shall not be obliged to force ice.

(2) Responsibilities. If a nominated port or place is inaccessible due to ice, the Master shall immediately notify Hirer requesting revised orders and shall remain outside the ice-bound area. If there is danger of the Tug being frozen in at any nominated port or place, the Tug shall, at Tug Master's discretion, proceed with the Tow to the nearest safe and ice-free position, at the same time requesting Hirer's revised orders. If such nominated port or place in question is:

(i) The port or place of departure and the Tow has not been connected, Hirer shall have the option of nominating an alternative port or place of departure, or of cancelling this contract;

(ii) The port or place of destination, Hirer shall have the option of nominating an alternative port or place of destination, or of ordering the Tug to wait at a safe port or place off the nominated port until it can safely be entered.

(3) Consequences. If in the exercise of Hirer's rights under this paragraph:

(i) The contract is cancelled, time lost during the period from when the request for revised orders was received by Hirer, or from the time when the Tug arrived and gave notice of readiness (whichever is earlier), until the time when Owner received notice of such cancellation shall count as laytime or, if the Tug is on demurrage, as time on demurrage; further, the cost of any fuel consumed during said period to be reimbursed at the market price where and when bunkers are next taken, less the value of the Tug's in-port bunker consumption during said period;

(ii) The voyage is changed, towage price shall nevertheless be payable for the voyage that would have been performed but for such change, but increased or reduced to compensate for the increase or reduction in voyage costs. Such increase or reduction in voyage costs shall be calculated by reference to: (a) the change in voyage time (valued as time on demurrage; and to

include any time awaiting revised orders); (b) the change in bunkers consumed (valued as provided at subparagraph (i) above); and (c) the change in port charges incurred;

(iii) The Tug tenders the Tow at the nominated port or place of destination, this shall be at Hirer's risk, and the whole period from the time the Master's request for revised orders was received by Hirer until the Tug can safely depart after releasing the Tow shall count as laytime.

(iv) Any loss or damage is caused to the Tug by ice which would be recoverable under the terms of a full-force marine hull insurance policy, but which is excluded from such policy by American Institute Trade Warranties or Institute Warranties (as applicable to Owner's coverage), shall be made good by the Hirer to the extent not covered by insurance.

(r) **Quarantine**. If at the time of Hirer's nomination of a port, quarantine is in force at the nominated port, any time thereby lost by the Tug on account of quarantine shall count as laytime or, if the Tug is on demurrage, as time on demurrage. If, however, quarantine comes into force at such port or place after its nomination, only one-half of the time thereby lost by the Tug shall count as laytime, but full time shall count for demurrage if the Tug is on demurrage upon its arrival in such port or place.

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

(t) **General Average**. General average shall be adjusted, stated, and settled according to York-Antwerp Rules 1974, as amended 1990, or any subsequent modification thereof, in the Port of New York according to the laws and usages at the port of New York. In such adjustment, disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to the Tow claimed in foreign currency shall be converted at the rate prevailing on the last day of the release of the Tow at the port or place of destination of such damaged Tow from the Tug. Notwithstanding the foregoing, Hirer's contributions in general average shall in no event exceed three times Owner's contributions for any single general average incident.

(u) **Time Sheets**. Attachment VII(a) shall be completed and signed by Owner at ports of departure and destination for countersignature at said ports by Hirer's representative. An executed, original Attachment VII(a) shall accompany any claim for demurrage under this contract.

(v) **Deviation**. The Tug shall have liberty to sail with or without pilots, to tow or to be towed, to go to the assistance of vessels in distress, to deviate for the purpose of saving life or property or

of landing any ill or injured person on board, and to call any port or place for emergency repairs, supplies, or necessities. Any salvage shall be for the sole benefit of the Owner.

(w) **Agents**. The Owner shall appoint, direct, and pay Tug's agents at all ports visited.

(x) **Subcontract**. The Hirer shall have the right, without the prior written consent of the Owner, to subcontract or agree to subcontract the Tug. If Hirer shall enter into any such contract, Hirer shall nevertheless remain responsible for performance of this contract. Any such subcontract shall include a provision that it is subject to the provisions of this contract.

(y) **Substitution**. The Owner may at any time propose to substitute a vessel of substantially the same characteristics as the Tug identified at Box 8, for services under this contract. Approval of any said substitution shall be at the sole discretion of the Contracting Officer and at no additional cost to the Government.

(z) **Reimbursable Supplies and Services, (Charters)**

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

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

- (i) A description of the supplies or services to be subcontracted.
- (ii) Identification of the proposed subcontractor and price.

(iii) Suppliers contacted and price quotes. Include other pertinent data such as price lists used if suppliers were not contacted and information regarding the selection if other than price-related factors were considered.

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

(aa) REIMBURSABLE SUPPLIES AND SERVICES (CHARTERS)

(1) The Government will reimburse the Contractor only for the actual price paid for those supplies and services that are expressly identified as reimbursable items by this contract. "Actual price" paid by the Contractor for such supplies and services, includes tax paid, if any,

and reduced by any and all credits and rebates, whether accrued or realized, associated with the supplies and services provided. "Actual price" does not include material handling charges, overhead, general and administrative costs, profit, or any other indirect cost that is in any way associated with the Contractor's purchase or provision of such supplies and services. The parties expressly agree that the offered and accepted daily rate includes all costs incurred or paid by the Contractor, including but not limited to material handling charges, overhead, general and administrative costs, or profit, that are in any way associated with the Contractor's purchase or provision of such supplies and services.

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

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

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

(ab) 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.

(ac) 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.

(ad) 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. 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. 2302](#)Note).

___ (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. chapter 67](#)).

__ (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

PART V. 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's 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.

(I) 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).

(I) 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).

(I) 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 VI. ADDITIONAL FAR AND DFARS CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

(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
- (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 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 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	N50082
Issue By DoDAAC	Leave Blank
Admin DoDAAC	N62387
Inspect By DoDAAC	N62387
Ship To Code	N62387
Ship From Code	Leave Blank
Mark For Code	Leave Blank
Service Approver (DoDAAC)	N62387
Service Acceptor (DoDAAC)	N62387
Accept at Other DoDAAC	Leave Blank
LPO DoDAAC	N62387
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	N68732
Issue By DoDAAC	Leave Blank
Admin DoDAAC	N62387
Inspect By DoDAAC	N62387
Ship To Code	N62387
Ship From Code	Leave Blank
Mark For Code	Leave Blank
Service Approver (DoDAAC)	N62387
Service Acceptor (DoDAAC)	N62387
Accept at Other DoDAAC	Leave Blank
LPO DoDAAC	N62387
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

(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 VII. ATTACHMENTS – TUG CONTRACT

(a) Attachment VII(A) Standard Statement of Facts (Time Sheet)

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 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 VII(B) US Department of Labor Wage Determination

(c) Attachment VII(C) Shipyard Data Information Spreadsheet; 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 VII(A) STANDARD STATEMENT OF FACTS

1. Agents		STANDARD STATEMENT OF FACTS (SHORT FORM) RECOMMENDED BY THE BALTIC AND INTERNATIONAL MARITIME CONFERENCE (BIMCO) AND THE FEDERATION OF NATIONAL ASSOCIATIONS OF SHIP BROKERS AND AGENTS (FONASBA)	
2. Vessel's name		3. Port	
4. Owners/Disponent Owners		5. Vessel berthed	
		6. Loading commenced	7. Loading completed
8. Cargo		9. Discharging commenced	10. Discharging completed
		11. Cargo documents on board	12. Vessel sailed
13. Charter Party*		14. Working hours/meal hours of the port*	
15. Bill of Lading weight/quantity	16. Outturn weight/quantity		
17. Vessel arrived on roads		18.	
19. Notice of readiness tendered		20.	
21. Next tide available		22.	

DETAILS OF DAILY WORKING*

Date	Day	Hours worked		Hours stopped		No. of gangs	Quantity load/disch.	Remarks*
		From	to	From	to			
General remarks*								
Place and date						Name and signature (Master)*		
Name and signature (Agents)*						Name and signature (for the Charterers/Shippers/Receivers)*		

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

**ATTACHMENT VII(C)
SHIPYARD DATA INFORMATION TEMPLATE
(TO BE ADDED AS APPLICABLE)**

PART VIII. 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 found at TUGCON PROFORMA Part I, pages I-1 through I-4, as applicable and at a minimum:

- (i) Vessel's INMARSAT # (TUGCON Box 8)
- (ii) Vessel's call letters (TUGCON Box 21)
- (iii) Vessel's Official Number (TUGCON Box 33)
- (iv) Year of Vessel (TUGCON Box 8)
- (v) Flag of Vessel (TUGCON Box 8)
- (vi) Proposed lay days (TUGCON Box 15)
- (vii) Compliance with/acknowledgements pursuant to Part XI(c) below.
- (viii) Acknowledgement of all terms and conditions of RFP and TUGCON Proforma
- (ix) Lump sum price and demurrage rate (TUGCON Box 17)
- (x) Name and email address for Contractor Performance Assessment Reporting System (CPARS) (TUGCON Box 11)
- (xi) Completed FAR 52.212-3 Offeror Representations and Certifications – Commercial Items and Alternate 1 (See TUGCON Part X; submission in SAM fulfills this requirement.)
- (xii) Completed FAR 52.209-7 – Information Regarding Responsibility Matters (See TUGCON Part X)
- (xiii) Completed FAR 52.209-11 Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction Under any Federal Law (See TUGCON Part X; submission in SAM fulfills this requirement.)

- (xiv) 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 TUGCON Part X)
- (xv) Any documentation, if required, by Part I, Box 7.
- (xvi) Completed FAR 52.204-26 Covered Telecommunications Equipment or Services-Representation (See TUGCON Part X; submission in SAM fulfills this requirement.)
- (xvii) Completed FAR 52.229-11 Tax on Certain Foreign Procurements—Notice and Representation (See TUGCON Part X.)
- (xviii) Certification required pursuant to Part XII (c)(8), FAR 52.222-56.
- (xix) Completed DFARS 252.204-7016 Covered Defense Telecommunications Equipment or Services—Representation (See TUGCON Part XII.); added.
- (xx) 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 TUGCON Part XII); added.

(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 East 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) 697-2667/2179, 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 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 for establishing the unique entity identifier.

(k) Reserved.

(l) Debriefing. If a post-award debriefing is given to requesting offerors, 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 the 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 the 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 Kenneth D. Allen. 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

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

(a) Award will be made, if at all, 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. 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 low price, technically acceptable “Category 1” offer with acceptable past performance. If no such offers exist, then award will be made, if at all, to the lowest price, technically acceptable, “Category 2” offer with acceptable past performance. the highest VISA priority.

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-priced, 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 VIII(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. The evaluated price will be computed based on the lumpsum freight rate plus one day demurrage plus any other costs set forth in the offer. The proposed price must be determined to be fair and reasonable.

(f) Subcontracting Plan (if required): For large businesses, 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 Contracting 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 X. 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 provisions which are 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 (FAPIIS) 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 FAPIIS 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:

[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:

[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:

[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:

[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.

(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. 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)

XI. 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.

(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.
- (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 2012-00007) (DATE 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)