

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>				1. CONTRACT ID CODE	Page 1 of 62
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2. AMENDMENT/MODIFICATION NO. 0017	3. EFFECTIVE DATE 04/11/2007	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
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6. ISSUED BY DOT/Maritime Administration, MAR-380 1200 New Jersey Ave., SE MAR380, W28-201 Washington, DC 20590	CODE 00091	7. ADMINISTERED BY (If other than Item 6) DOT/Maritime Administration, MAR-380 1200 New Jersey Ave., SE MAR380, W28-201 Washington, DC 20590	CODE 00091
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8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and Zip Code)  ABLE UK LTD Able House,,Billingham Reach Industrial Estate Billingham, TS23 - 1PX	9A. AMENDMENT OF SOLICITATION NO.  9B. DATED (SEE ITEM 11)  (X) 10A. MODIFICATION OF CONTRACT/ORDER NO. DTMA1C03010  (X) 10B. DATED (SEE ITEM 13)
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CODE \* \_\_\_\_\_ FACILITY CODE \_\_\_\_\_

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)  
- 69 - 4303 - 9 - 03 - 99 - - 22SCPO - 161000 - - 254T - 03 - 9900 - 0V32 - - - \$-2,372,783.40

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS.  
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A. <input type="checkbox"/>
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b). <input type="checkbox"/>
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: FAR 52.249-08, Default (Fixed-Price Supply and Service) <input checked="" type="checkbox"/>
	D. OTHER (Specify type of modification and authority) <input type="checkbox"/>

E. IMPORTANT: Contractor  is not,  is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

A. In lieu of terminating the entire Contract for default, Post-Service Remediation Partners' (PRP's) subContractor, Able UK Limited (Able UK) has agreed to be substituted for PRP and become the Contractor responsible for performance of Phase I and be in privity of Contract with the U.S. Maritime Administration (MARAD).

B. Accordingly, this modification 0017 to the Contract

- (1) Provides a conformed copy of the Contract, inclusive of all changes to date;
- (2) Extends the Contract;
- (3) Terminates Phase II of the Contract for default;
- (4) Substitutes Able UK for PRP as the Contractor that performs the un-terminated portion of the Contract, Phase I;
- (5) Extends the period of performance for cash consideration from 24 Feb 07 to 31 Aug 08, with parties having continuing obligations through December 1, 2010.
- (6) Provides for disposal of the Phase I vessels at an alternate facility;
- (7) Revises the requirement for a Performance Bond and the date of Notice to Proceed;
- (8) Revises the payment schedule;
- (9) Revises the timing for dismantlement of the Phase I vessels;

[continued in Section A]

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) PETER STEPHANSON	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Frank Bajowski		
15B. CONTRACTOR/OFFEROR 	15C. DATE SIGNED 29/05/07	16B. United States of America BY	16C. DATE SIGNED

<b>Line Item Summary</b>	<b>Document Number</b> DTMA1C03010/0017	<b>Title</b> Able UK Contract	<b>Page</b> 2 of 62
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**Total Funding:** \$12,482,805.00

FYs	Fund	Budget Org	Sub	Object Class	Sub	Program	Cost Org	Sub	Proj/Job No.	Sub	Reporting Category
<b>Division</b>		<b>Closed FYs</b>		<b>Cancelled Fund</b>							

Line Item Number	Description	Delivery Date (Start date to End date)	Quantity	Unit of Issue	Unit Price	Total Cost
0001	REMOVAL AND DISPOSAL OF FOUR (4) PHASE I NDRF VESSELS FROM JRRF  (07/25/2003 to 08/31/2008)  Change in Delivery Date, Description, Extended Description, Performance Period, Unit Price The Contractor will tow, dismantle, recycle and dispose of four (4) Phase I NDRF Vessels in accordance with this Contract and the requirements set forth in Attachment A: CANISTEO, CALOOSAHATICHEE, COMPASS ISLAND and CANOPUS, the end date pertaining to cash consideration. Total value of this contract line item number (CLIN) 0001 is reduced from \$17,846,338.40 by \$17,846,338.40 to a revised total of \$0.00 as a result of restructuring payment terms. See new subCLIN 0004, Towing Costs Paid, for the amount previously paid to tow the four (4) Phase I vessels from JRRF to the Able UK TERRC facility. See subCLINs 0001AA & 0001AB for the price to remediate and dispose of the four (4) Phase I vessels. And, see new subCLIN 0003AA for the contract financing payment.		0.00	Tons	(\$144.65)	(\$17,846,338.40)
0001AA	Remediation of four (4) Phase I Vessels  (07/25/2003 to 08/31/2008)  Change in Delivery Date, Description, Extended Description, Performance Period, Unit of Issue, Quantity, Unit Price Remediation of CANISTEO, CALOOSAHATICHEE, COMPASS ISLAND and CANOPUS, end date pertaining to cash consideration. Total value is increased from \$0.00 by \$6,123,284.00 (\$1,530,821.00 per Phase I vessel) to a total of \$6,123,284.00. In conjunction with subCLINs 0001AB, 0003AA, 0004 and 0005 this subCLIN 0001AA replaces CLIN 0001.		4.00	EA	\$1,530,821.00	\$6,123,284.00
0001AB	Disposal of Four (4) Phase I Vessels  (07/25/2003 to 08/31/2008)  Change in Delivery Date, Description, Extended Description, Performance Period, Unit of Issue, Quantity, Unit Price Disposal of CANISTEO, CALOOSAHATICHEE, COMPASS ISLAND and CANOPUS, the end date pertaining to cash consideration. Total value is increased from \$0.00 by \$2,624,264.00 (\$656,066.00 per Phase I vessel) to a total of \$2,624,264.00. In conjunction with subCLINs 0001AA, 0003AA, 0004 and 0005 this subCLIN 0001AB replaces CLIN 0001.		4.00	EA	\$656,066.00	\$2,624,264.00
0002	Sale of Unfinished Ships  (07/18/2003 to 09/30/2004)  Change in Extended Description, Unit Price As part of this Contract, the BENJAMIN ISHERWOOD and the HENRY ECKFORD, upon EPA approval of the Pilot Program, will be sold to the Contractor. Total value that is credited to the Government is reduced from \$3,000,000.00 by \$3,000,000.00 to \$0.00.	09/30/2004	0.00	LOT	\$3,000,000.00	\$3,000,000.00
0003	Payment of Attorney's Fees  Change in Description, Extended Description Payment of Attorney's Fees previously invoiced and paid in accordance with modificaliton 0010 to this Contract remains unchanged at \$9,250.00.		0.00		\$0.00	\$0.00

<b>Line Item Summary</b>	<b>Document Number</b> DTMA1C03010/0017	<b>Title</b> Able UK Contract	<b>Page</b> 3 of 62
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**Total Funding:** \$12,482,805.00

FYs	Fund	Budget Org	Sub	Object Class	Sub	Program	Cost Org	Sub	Proj/Job No.	Sub	Reporting Category
<b>Division</b>		<b>Closed FYs</b>		<b>Cancelled Fund</b>							

Line Item Number	Description	Delivery Date (Start date to End date)	Quantity	Unit of Issue	Unit Price	Total Cost
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0003AA	Contract Financing Payment  This is a New Line This new CLIN is established as contract financing payment against the remaining balance of Phase I. Total value of this CLIN is established at \$1,400,000.00.	30 dys. ( ADC )	1.00	EA	\$1,400,000.00	\$1,400,000.00
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0004	Towing Costs Paid  This is a New Line This line represents the total amount paid to the Contractor for towing the four Phase I ships from JRRF to the the Able UK facility in the United Kingdom, per G.1 Payments. In conjunction with subCLINs 0001AA, 0001AB, 0003AA and CLIN 0005 this CLIN 0004 replaces CLIN 0001.		1.00	JOB	\$2,326,005.00	\$2,326,005.00
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0005	Price Adjustment  This is a New Line This CLIN is established to reconcile the \$2.00 difference between remediation (subCLIN 0001AA) and disposal (subCLIN 0001AB) unit prices and respective extended prices. This difference was introduced by mathematical rounding errors throughout the course of negotiations resulting in the 22 Mar 07 Confirmation of Agreement in Principle.		1.00	EA	\$2.00	\$2.00
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**Previous Total:** \$14,855,588.40  
**Modification Total:** (\$2,372,783.40)  
**Grand Total:** \$12,482,805.00  
(Includes Discounts)

*Distribution:*  
MAR-380 - Official File  
MAR-600  
MAR-600.5 (Truffer)  
MAR-610.3

**Contract Level  
Funding Summary**

**Document Number**  
DTMA1C03010/0017

**Title**  
Able UK Contract

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**Funding Strip Code**

- 69 - 4303 - 9 - 03 - 99 - - 22SCPO - 161000 - - 254T - 03 - 9900 - 0V32 - - -

**Change in Funded Amount**

(\$2,372,783.40)

**Shipping Addresses**

<b>Code</b>	<b>Detail</b>
0001	<b>Org:</b> DOT/Maritime Administration, MAR-610 <b>Addr:</b> 400 Seventh Street, SW., Room 2122  Washington DC 20590 <b>Attn:</b> Curt Michanczyk, Program Manager <b>Phone:</b> (202) 366-6467 ext. <b>Fax:</b> ( ) - ext.

**Invoice Addresses**

<b>Code</b>	<b>Detail</b>
0001	<b>Org:</b> DOT/ Enterprise Services Center (ESC) OFO/FAA, <b>Addr:</b> MARAD A/P Branch, AMZ-150 PO Box 25710  Oklahoma City OK 73125 <b>Attn:</b> Kelly Nelson, Accounting Technician <b>Phone:</b> (405) 954-2178 ext. <b>Fax:</b> (405) 954-9573 ext.

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## SECTION A -- SOLICITATION/CONTRACT FORM

### A.1 SUMMARY OF CHANGES

The free form item 'Continuation of Block 14 Description to the SF-30 has been added.

The free form item 'STATEMENT OF WORK has been edited.

Clause '52.246-04 - Inspection Of Services- Fixed Price' has been edited.

Clause 'MCL.E-1 - DELEGATION OF INSPECTION AND ACCEPTANCE' has been edited.

Clause '52.242-15 - Stop-Work Order' has been edited.

Clause '52.211-08 Alt III - Time of Delivery (Jun 1997) - Alternate III ' has been edited.

Clause '52.211-11 - Liquidated Damages--Supplies, Services, or Research and Development' has been edited.

Clause '52.242-17 - Government Delay Of Work' has been edited.

Clause 'MCL.F-2 - DELIVERY AND SHIFTING OF VESSELS ' has been edited.

The free form item 'Notice to Proceed has been edited.

The free form item 'Contract Administration has been edited.

The free form item 'Payments has been edited.

Clause 'MCL.H-12 - MARITIME LIENS, NO AUTHORITY TO INCUR' has been edited.

Clause 'MCL.H-13 - SUPERVISION ' has been edited.

Clause 'MCL.H-6 - STANDARDS OF EMPLOYEE CONDUCT' has been edited.

Clause 'MCL.H-3 - INDEMNITY AND INSURANCE' has been edited.

Clause 'MCL.H-4 - INDEMNITY AND INSURANCE (ADDITIONAL)' has been edited.

The free form item 'Cancellation Limitation of Liability has been edited.

The free form item 'DISPOSITION OF ECKFORD AND ISHERWOOD has been edited.

The free form item 'EPA ENFORCEMENT DISCRETION REQUIREMENTS has been edited.

The free form item 'Indemnity for Violation of UK Environmental, Occupational Safety Law has been edited.

The free form item 'Performance and Payment Bonds - Other Than Construction has been edited.

The free form item 'PRICING AND PAYMENT TERMS has been edited.

The free form item 'Purchase of the Unfinished Vessels has been edited.

The free form item 'READILY REMOVABLE PCBs has been edited.

The free form item 'REQUIREMENT FOR UNITED KINGDOM CONSENT has been edited.

The free form item 'Vessel Towing Provisions has been edited.

Clause '52.202-01 - Definitions' has been edited.

Clause '52.203-03 - Gratuities' has been edited.

Clause '52.203-05 - Covenant Against Contingent Fees' has been edited.

Clause '52.203-06 - Restrictions On Subcontractor Sales To The Government' has been edited.

Clause '52.203-07 - Anti-Kickback Procedures' has been edited.

Clause '52.203-08 - Cancellation, Rescission, and Recovery of Funds for Illegal or

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Improper Activity' has been edited.

Clause '52.203-10 - Price Or Fee Adjustment For Illegal Or Improper Activity' has been edited.

Clause '52.203-12 - Limitation On Payments To Influence Certain Federal Transactions' has been edited.

Clause '52.215-02 - Audit and Records--Negotiation' has been edited.

Clause '52.215-08 - Order of Precedence--Uniform Contract Format' has been edited.

Clause '52.215-19 - Notification of Ownership Changes' has been edited.

Clause '52.216-24 - Limitation Of Government Liability' has been edited.

Clause '52.216-25 - Contract Definitization (See Note 1.)' has been edited.

Clause '52.219-08 - Utilization of Small Business Concerns' has been edited.

Clause '52.219-09 - Small Business Subcontracting Plan' has been edited.

Clause '52.222-21 - Prohibition of Segregated Facilities' has been edited.

Clause '52.222-26 - Equal Opportunity' has been edited.

Clause '52.222-29 - Notification Of Visa Denial' has been edited.

Clause '52.222-35 - Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans' has been edited.

Clause '52.222-36 - Affirmative Action For Workers with Disabilities' has been edited.

Clause '52.222-37 - Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans' has been edited.

Clause '52.222-41 - Service Contract Act Of 1965, As Amended' has been edited.

Clause '52.223-14 - Toxic Chemical Release Reporting' has been edited.

Clause '52.225-13 - Restrictions on Certain Foreign Purchases' has been edited.

Clause '52.228-14 - Irrevocable Letter of Credit' has been edited.

Clause '52.229-03 - Federal, State And Local Taxes' has been edited.

Clause '52.232-01 - Payments' has been edited.

Clause '52.232-09 - Limitation On Withdrawing Of Payment' has been edited.

Clause '52.232-17 - Interest' has been edited.

Clause '52.232-23 - Assignment Of Claims' has been edited.

Clause '52.232-25 - Prompt Payment' has been edited.

Clause '52.232-33 - Payment by Electronic Funds Transfer--Central Contractor Registration' has been edited.

Clause '52.233-01 Alt I - Disputes (Jul 2002) - Alternate I' has been edited.

Clause '52.242-13 - Bankruptcy' has been edited.

Clause '52.243-01 Alt I - Changes--Fixed Price (Aug 1987) - Alternate I' has been edited.

Clause '52.244-06 - Subcontracts for Commercial Items' has been edited.

Clause '52.245-01 - Property Records' has been edited.

Clause '52.246-25 - Limitation Of Liability--Services' has been edited.

Clause '52.247-64 - Preference for Privately Owned U.S. - Flag Commercial Vessels' has been edited.

Clause '52.249-08 - Default (Fixed-Price Supply and Service)' has been edited.

Clause '1252.215-70 - Key Personnel and/or Facilities' has been edited.

Clause '1252.217-76 - Liability and Insurance' has been edited.

Clause '1252.223-70 - Removal or Disposal of Hazardous Substances-Applicable Licenses and Permits' has been edited.

Clause '52.222-01 - Notice To The Government Of Labor Disputes' has been edited.

Clause '52.228-02 - Additional Bond Security' has been edited.

Clause '52.229-06 - Taxes--Foreign Fixed-Price Contracts' has been edited.

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Clause '52.232-11 - Extras' has been edited.

Clause '52.232-32 - Performance-Based Payments' has been edited.

Clause '52.233-03 - Protest After Award' has been edited.

Clause '52.242-02 - Production Progress Reports' has been edited.

Clause '52.243-07 - Notification Of Changes' has been edited.

Clause '52.245-04 - Government-Furnished Property (Short Form)' has been edited.

Clause '52.249-03 - Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements)' has been edited.

Clause '52.249-14 - Excusable Delays' has been edited.

Clause '52.252-02 - Clauses Incorporated By Reference' has been edited.

Clause '52.253-01 - Computer Generated Forms' has been edited.

The free form item 'ATTACHMENT A' has been edited.

The free form item 'PURCHASER'S CERTIFICATION' has been edited.

## A.2 CONTINUATION OF BLOCK 14 DESCRIPTION TO THE SF-30

(10) Addresses what happens when work has begun but is not completed by 15 Jul 08;

(11) Addresses what happens when work has begun but is not completed by 31 Aug 08;

(12) Provides various releases between MARAD, PRP and Able UK;

(13) Incorporates the 22 Mar 07 Confirmation of Agreement in Principle as Attachment J-4 to the Contract;

(14) Incorporates the "Novation of Contract" dated April 2, 2007 as Attachment J-5 to the Contract;

(15) For clarity and ease of understanding, the following summary of prices changes are provided -

(a) Contract line item number (CLIN) 0001, Removal and Disposal of Four (4) Phase I Vessels from the James River Reserve Fleet (JRRF) is reduced from \$17,846,338.40 by \$17,846,338.40 to a revised total of \$0.00 as a result of restructuring payment terms. See new subCLIN 0004, Towing Costs Paid, for the amount previously paid to tow the four (4) Phase I vessels from JRRF to the Able UK TERRC facility. See subCLINs 0001AA & 0001AB for the price to remediate and dispose of the four (4) Phase I vessels. And, see new subCLIN 0003AA for the contract financing payment.

(b) New subCLIN 0001AA, Remediation of Four (4) Phase I Vessels, is established at \$1,530,821.00 per vessel or a total value of \$6,123,284.00. In conjunction with subCLINs 0001AB, 0003AA, 0004 and 0005 this subCLIN 0001AA replaces CLIN 0001.

(c) New subCLIN 0001AB, Disposal of Four (4) Phase I Vessels, is established at \$656,066.00 per vessel or a total value of \$2,624,264.00. In conjunction with subCLINs 0001AA, 0003AA, 0004 and 0005 this subCLIN 0001AB replaces CLIN 0001.

(d) CLIN 0002, Sale of Unfinished Ships, is decreased from a credit to the Government of \$3,000,000.00 by \$3,000,000.00 to a revised total of \$0.00.

(e) CLIN 0003, Payment of Attorney's Fees, previously invoiced and paid in accordance with modification 0010 to this Contract remains unchanged at \$9,250.00.

(f) New CLIN 0003AA, Contract Financing Payment, is established at \$1,400,000.00 as a contract financing payment against the remaining balance of Phase I.

(g) New CLIN 0004, Towing Costs Paid, is established at \$2,326,005.00. This value represents the amount previously paid from CLIN 0001 for towage of the four (4) Phase I vessels to the Able UK TERRC facility in the United Kingdom.

(h) New CLIN 0005, Price Adjustment, is established at \$2.00 to reconcile a mathematical rounding error that was introduced while negotiating Attachment B to the Contract (Confirmation of Agreement in Principle).

(i) Accordingly, total contract value is reduced from \$14,855,588.40 by \$2,372,783.40 to \$12,482,805.00.

(16) This Block 14 Summary shall not be used to construe the Agreement in Principle or other terms and conditions of the Contract; but,

(17) In the event of a conflict between the Contract and the Confirmation of Agreement in Principle, the Agreement shall take precedence.

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## SECTION C -- DESCRIPTIONS AND SPECIFICATIONS

### C.1 STATEMENT OF WORK

Foreign Contract  
Scope of Work

#### WORK STATEMENT

##### **C1. GENERAL INFORMATION - SCOPE OF WORK**

The Contractor shall provide all personnel, insurance, equipment, tools, vehicles, materials, facilities, supervision and any other items and services necessary to dismantle, recycle, and dispose of the ships in a practicable manner which is safe for workers and the environment. All contractual requirements shall be performed in compliance with all laws and regulations applicable to the Governments of the United States (U.S.) and the United Kingdom (U.K.), and with State and local jurisdictions.

All personnel provided by the Contractor to support the performance of the work defined in this contract shall have appropriate training and/or, as required, certification. The Contractor shall use best industry practices and all requirements as authorized by the U.S. and U.K. Coast Guards to tow the ships from the U.S. to the Contractor's dismantling facility, located in Teesside, England, in a timely, cost effective, and safe manner. Upon arrival at the contractor's facility, the contractor shall, in accordance with the contractor's Technical Compliance Plan (TCP), completely dismantle the vessels, either by recycling or appropriately disposing of the materials generated as part of the dismantling process. The Contractor shall comply, at all times, with the TCP, which demonstrates the knowledge and understanding of all applicable International, United Kingdom, and Local laws. The contractor shall maximize, within reason, recyclable equipment/material proceeds.

The contractor shall, as part of the scope of work for dismantling and disposal of the ships:

1. Implement an approved Technical Compliance Plan (TCP), which will consist of the following four components: An Environmental Compliance Plan; An Operational Plan; A Business Plan; and A Health & Safety Plan. The TCP shall demonstrate the Contractor's knowledge of and ability to apply all applicable Safety, Health, and Environmental Regulations.
2. Obtain all necessary insurance and bonding prior to the commencement of the work.
3. Establish a task oriented performance schedule for the abatement and remediation of all regulated and waste materials and the structural dismantlement of the vessel(s).
4. Prepare the vessel(s) for oceangoing towing as required by the United States Coast Guard, (U.S.C.G.) international regulations and contractor's towing company insurance underwriter's marine surveyor.
5. Take delivery and tow the vessel(s) from the JRRF, located in Virginia, except the vessel Protector which is located at Portsmouth Naval Base, Virginia, to the Contractor's facility.
6. Identify, sample and test, as necessary, to remove, handle, store, transport and dispose of all hazardous materials onboard the vessel(s), including to but not limited to: Asbestos, PCBs, Mercury, Lead, oils/fuels and any other regulated materials in accordance with applicable U.S. and U.K. government, State, and local environmental laws and regulations.
7. Remove, recycle, and/or dispose of all structural components above the main deck, and from and including the main deck to the keel, and all equipment, machinery, and other components installed on or contained in the structure.
8. Remove, sell, and dispose of all salvageable or recyclable equipment, components, and scrap materials.

The Government shall, upon the safe arrival of all of the Obsolete Vessels at Teesside, provide the Contractor with a written "Authorization To Sell" letter for the recyclable material/equipment, a proforma copy of which is attached hereto as Attachment J-3 of the Contract.

The contractor and all subcontractors must have valid permits, licenses, and insurance necessary prior to performing the associated scope of work. The contractor and all subcontractors must maintain valid permits, licenses and insurance throughout the period of performance of this contract. Subcontractor compliance with these requirements shall be the responsibility of the contractor. MARAD reserves the right to request appropriate copies of all permits, licenses, and insurance documentation, and to inspect such documents at the Contractor and subcontractor facilities upon five (5) days advance written notice by the Administrative Contracting Officer.

##### **C1.1 SHIPS TO BE DISPOSED OF:**

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Reference is made to attachment A,(EPA "**Letter of Enforcement Discretion**"), page 5, under conditions, paragraph h: Four (4) of the below listed ships or substitutions designated by MARAD, will be dismantled and recycled in the pilot phase of this program. In the event that the hazardous materials remediation and dismantling processes conducted on those vessels is not satisfactory according to MARAD and EPA, corrective actions within a reasonable time period (30 days) will be required to the satisfaction of MARAD and EPA. If the Contractor fails to make corrections with in this time frame, Marad reserves the right to terminate the contract. The Contractor will stop work in process, and be responsible for all costs associated with the completion of the dismantling, the preparation and towing of the vessels and other reasonable related costs.

**The following obsolete ships** are designated as part of this contract for the purpose of securing ship dismantling/recycling and hazardous material remediation services:

PHASE I SHIPS

- CALOOSAHATCHEE
- CANISTEO
- CANOPUS
- COMPASS ISLAND \_\_\_\_\_

The sequence in which these ships will be towed and dismantled will be determined by mutual agreement of the parties prior to first tow. Phase II is to be agreed upon by the parties. All tow related initial inspections for Phase II vessels shall be completed not later than sixty (60) days prior to the first scheduled tow date with dates to be agreed upon by the parties. If there are delays beyond the control and without fault or negligence of the Contractor in conjunction with the tow preparations, the Clause at I.17 of this Contract will prevail.

The following two (2) obsolete ships (herein referred to as the Unfinished Ships) are included in this contract for the purpose of vessel surveys, inspections and tow preparations that are the responsibility of the Contractor. The ownership of these ships will be conveyed to the Contractor by way of Bills of Sale, a proforma copy of which is attached:

- BENJAMIN ISHERWOOD
- HENRY ECKFORD

**C1.2 TOWING**

The Contractor is responsible for ensuring all United States Coast Guard (U.S.C.G.) and statutory towing and transfer requirements including, but not limited to, towing preparations, notifications, inspections, insurance, emergency response and procedures are met for all vessels upon departure from the James River Reserve Fleet (JRRF) or Portsmouth Naval Base. Towing plans and submittals must be in compliance with all United States federal requirements. The Contractor shall be responsible for any and all additional requirements pertaining to the towing of these vessels, as required by the U.S.C.G for the portion of the tow , through U.S. waters, and further destinations required by the U.S.C.G. . The contractor is responsible to provide a performance schedule for the preparation and towing for all vessels. During towing operations, the Contractor shall provide the COTR a daily situation report for each tow that will identify the date, report time, location of the tow (latitude and longitude), current and forecasted weather and sea conditions, ETA, a brief description of the tow situation and proposed action in the face of inclement weather.

**C1.3 Transfer of Vessel Custodial Responsibility**

The Contractor shall assume all custodial responsibility for each vessel during towing operations from the specific point in time when the vessel is broken out of the berthing nest in the fleet and physical control and custody of the vessel passes from the MARAD fleet personnel to the harbor pilot and the Contractor's tugmaster.

**C1.4 U.S. Coast Guard Towing Requirements.**

Currently the known U.S. Coast Guard requirements for towing obsolete dead ships from the Hampton Roads area include those listed below. These requirements are subject to change by the Coast Guard without notice and may be project specific. MARAD does not

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guarantee that these are all the requirements the Coast Guard may require. The responsibility for determining the exact Coast Guard towing requirements rests with the Contractor.

1. Completion of the standard Dead-Ship Tow Proposal Form including tank layout with hazardous material type, amount and location onboard. A Liquid Loading Report will be provided by MARAD.
2. Comprehensive discussion of pilotage and docking issues: specifically, who will have operational control of the evolution during all phases of the transit and where those persons will be stationed.
3. Complete descriptions of the proposed towing configurations through all phases of the transit from removal from the JRRF to the sea-towing configuration.
4. A spill contingency plan including 24 hour contact information for a qualified individual and a description of pre-positioned spill response equipment.
5. Discussions of weather conditions and operational limitations.
6. The number of persons who will remain on the towed vessel during the evolution.
7. The names and official numbers of any foreign flagged vessels involved in the operation.
8. A communication plan and/or schedule.
9. A timeline of events for the overall operation.
10. Vessel evaluation for the issuance of an International Loadline Exemption Certificate. This certificate is based on a current material condition survey of each vessel. The survey shall be delivered to the assigned Marine Inspector for review prior to the issuance of the Certificate. A possibility exists that the Marine Inspector may require a Marine Chemist's certificate declaring a space "safe for entry" if the inspector determines that access to a confined space is necessary during the examination.

## **C1.5 Towing Schedule**

### **A. REQUIRED DELIVERY SCHEDULE**

1. The Contractor shall remove all PHASE I ships of the Obsolete Vessels from the James River Reserve Fleet, in tow to the Teesside, United Kingdom facility, not later than 31 October 2003. Liquidated damages of \$1,350.00 per calendar day/per vessel shall accrue and apply after 31 October 2003 pursuant to FAR Clause 52.211-11, until all of the vessels have been removed from the James River Reserve Fleet.
2. The Contractor shall remove all PHASE II vessels from the James River Reserve Fleet and the Portsmouth Naval Base, in tow to the Teesside, United Kingdom facility, on dates to be agreed upon by the parties. Liquidated damages of \$1,350.00 per calendar day/per vessel shall accrue and apply after 30 calendar days from the determined final towing date pursuant to FAR Clause 52.211-11, until all of the PHASE II vessels have been removed from the James River Reserve Fleet and the Portsmouth Naval Base.
3. The Contractor shall completely dispose of, dismantle and remediate all thirteen (13) vessels by 31 December 2005. Liquidated damages of \$1,350.00 per calendar day/per vessel shall accrue and apply after 31 December 2005, pursuant to FAR Clause 52.211-11, until all work associated with the disposal of, dismantling, and remediation of the thirteen (13) vessels has been completed.
4. The application of liquidated damages may be waived at the sole discretion of the Maritime Administration.
5. The towing schedule for the 13 ships, which will be towed from the JRRF and Portsmouth Naval Base, will be determined by mutual agreement of the parties, and incorporated via a Contract Modification within 7 days prior to departure of the first tow. Departure of the BENJAMIN ISHERWOOD and HENRY ECKFORD are to be determined at a later date.

**TOWING SCHEDULED TO BE INCORPORATED, UPON MUTUAL AGREEMENT OF THE PARTIES, VIA CONTRACT MODIFICATION.**

The sequence and schedule are subject to change based on the material condition of the vessel and the amount of industrial activity necessary to prepare the vessel for tow. All tow related inspections for the PHASE II vessels shall be completed not later than sixty (60) days prior to the first scheduled tow date which is to be agreed upon by the parties. The towing schedule is subject to the completion of the USCG requirements and receipt of consent to hazardous material movement to the U.K. by the Environment Agency of the United Kingdom. Specific dates for vessel departures will be provided in the performance schedule after contract award.

## **C1.6 Oil Spill Management Company**

The Contractor shall be responsible for hiring an Oil Spill Management Company (SMC) prior to the departure of any of the vessels from the fleet. The SMC will have available during all vessel towing operations a qualified individual (QI) who shall be available 24 hours a day seven days a week to act on the Contractor's behalf to provide contingency planning and organized response in case of an oil spill during towing operations. The Contractor shall provide the COTR the name of the SMC and the qualified individual not later than 10 days after contract award. The Contractor's responsibility will start the moment the Contractor's tugs accept the vessel for tow.

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### C1.7 Vessel(s) Arrival at Teesside Facility

Upon arrival at the recycling facility in Teesside, UK, all vessels will be safely moored and continuously monitored by the Contractor while afloat and prior to being dry-docked in the dismantling basin. The safe mooring of the vessels shall include provisions for heavy weather protection and containment equipment in the event of oil discharging from the vessels. Monitoring shall include local and remote audible/visual alarms in the event of flooding and on-site security watches to monitor for oil discharges, mooring security and vessel trim and stability. The existing alarms installed on the vessels shall remain; however, the Contractor shall be responsible for ensuring the alarms are in proper working order. In any event, the Contractor shall monitor the vessels in accordance with the terms and conditions of this Contract with or without the vessel alarms. The Contractor shall provide to the COTR a Vessel Afloat Monitoring Plan that addresses details of the above requirements including discharge, flooding and mooring response plans. The Plan must be comprehensive enough to provide summary information encompassing systematic mooring/monitoring operation for all 13 ships in the project and incorporate the individual plan for each vessel. The Vessel Afloat Monitoring Plan shall be submitted to the COTR within 20 days after contract award.

### C1.8 INSPECTION FACILITIES

The Contractor shall provide reasonable office facilities and services for use by visiting and/or assigned United States Government Representatives or designees. Facilities and services shall be equal to those provided by the Contractor for his use for generally similar purposes and shall include the availability of desks, chairs, and parking. The Contractor shall provide and maintain a telephone and direct line with local and long distance capability; telephones for this type of service shall be provided with a dial lock or equivalent. Long distance calls shall be billed to the United States Government on the basis of actual cost.

### C1.9 ACCESS TO THE VESSEL(S) AND FACILITIES

Officers, employees and associates of other prime contractors with the U.S. Government and their subcontractors, as authorized by the Contractor, shall have, at all reasonable times, admission to the facility, access to the vessel(s) where and as required, and be permitted, within the facility and on the vessel(s) and as required to perform and fulfill their respective obligations to the U.S. Government.

The Contractor shall, when given notice, be available for any and all inspections.

Safety During Access to Vessels: Attention of the Contractor is directed to the United Kingdom occupational health and safety standards. Nothing contained in this contract shall relieve the Contractor from any obligations, which it may have for compliance with aforesaid regulations.

### C1.10 OPERATIONAL PLAN

The Contractor is responsible for completely dismantling and disposing of the entire vessel. This includes the removal, abatement and proper disposal of all hazardous materials found on board the vessel and the deconstruction of the vessel such that no considerable part of the ship is left intact or undisturbed to the extent that it can be reconstructed or readily identified as an existing portion of the original vessel. Recyclable materials and equipment shall be disposed of at the Contractor's discretion.

A master performance schedule shall be compiled which incorporates all summary project information, requirements and reporting related to the dismantlement of the 13 obsolete vessels. Each vessel will have its own performance schedule, which shall be incorporated into the master performance schedule. Each vessel performance schedule will address all tasks required for ship dismantling including Performance Schedule Milestones, Deliverables, all subcontracted work and activities, preparation for towing, towing, initial surveys, inspections, activities, identification and safe removal & disposal of hazardous materials, ship dismantling, sale of scrap steel, non-ferrous metal, sale of salvageable equipment and reporting requirements. The schedule shall include planned start & completion dates and timeline for each phase of the dismantlement process. Identification of all project and individual vessel work items considered to be on the critical path to completion will also be identified. All vessel performance schedules shall be linked at the activity level where necessary to the degree that any schedule impact to one vessel performance schedule can be readily evaluated as to the downstream effect on any and all other vessel performance schedules and the entire critical path of the project.

The Contractor's schedules in the Contractor's proposal are incorporated into the contract. The schedules shall be used as the baseline schedules in developing the status reports required in this contract.

### C1.11 DEMILITARIZED ITEMS

Contractor is responsible to properly destroy any and all military items beyond recognition or as such where there are no identifiable marks or items that can be remanufactured unless notified otherwise. Demilitarized items will be surveyed jointly between MARAD and the contractor prior to the dismantling of the ship(s). In the event a militarized item is to be saved, the item will be removed in its

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current condition and shipped to the United States. MARAD will pay for all shipping costs associated with the return of demilitarized items.

#### ENVIRONMENTAL COMPLIANCE PLAN

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

- A. Environmental Protection Agency (EPA), State and local authority hazardous waste generator identification numbers or registration with the state or local equivalent, of the Contractor, his/her transporters, storage and disposal facilities (TSDFs). For all work done within the United Kingdom (UK) the analogous UK information must be supplied to the COTR.
- B. An inventory of all hazardous chemicals, compounds, and other agents brought aboard the vessel accompanied by their respective Material Safety Data Sheets. The Contractor shall maintain the Material Safety Data Sheets for all hazardous materials in accordance with U.K. legislation. This information shall be made available for MARAD and/or its representatives to review on-site.
- C. A list of all anticipated hazardous material to be generated and applicable reference to federal, state, and local regulations or equivalent U.K. law.
- D. Hazardous Material collection and containment procedures in accordance with 40 CFR 262, or equivalent U.K. law.
- E. A hazardous materials spill and cleanup plan including tools and materials that will be on hand and readily available to facilitate containment and cleanup.
- F. Training certification (or U.K. equivalent) for the environmental compliance manager and respective employees shall be made available for MARAD and/or its representatives to review on-site.

Environmental Administration: Prior to commencing work, the Contractor shall meet in conference with the Contracting Officer's Technical Representative (COTR) to discuss and reach an understanding of the implementation of the Contractor's Environmental Compliance Plan (ECP).

Hazardous Materials that may be encountered include, but are not limited to, asbestos used in heat and electrical insulation, brake linings, pipe lagging, deck coverings, joiner work, boiler refractors and other areas; mercury-containing instruments, such as thermometers; solid PCB's in electrical cable, switchboards and other areas; and lead-based coatings, many of which are damaged and loose, and above regulatory thresholds. The Maritime Administration is providing estimated quantities of Hazardous Materials; however, it is the responsibility of the Contractor to specifically identify, classify, and quantify the Hazardous Materials. The safe and proper handling of such Hazardous Material shall be the Contractor's responsibility. The Contractor is responsible for all steps necessary to remove, manage and dispose of all Hazardous Materials in compliance with applicable Environmental Laws.

Environmental Law -- The term Environmental Law shall mean any applicable United Kingdom or United States, and/or local law, statute, treaty, convention, agreement, ordinance, order, regulation, administrative rule, general policy statement or guidance of any regulatory agency, pertaining to health, industrial hygiene or safety, the regulation or protection of the environment, the processing, handling, transportation, storage, disposal or use of Hazardous Materials.

Hazardous Material(s) -- The term Hazardous Material shall mean hazardous wastes, hazardous substances, hazardous constituents, hazardous materials, toxic substances, pollutants, contaminants, petroleum or petroleum products, as those or similar terms are used in and which are regulated, controlled or prohibited under any applicable UK Environmental Law.

In the event Environmental Laws change during the term of this contract, the Contractor is required to comply with such applicable laws as they become effective.

The Contractor shall provide the U.S. Government with copies of all correspondence with international, national, and local regulatory agencies relating to this contract. This shall include but not be limited to: Notification of any regulatory agency inspection conducted, of any notice of violations, citations, or cautionary notices received from regulators during the reporting period, relating to the performance of this contract. The Contractor shall provide the U.S. Government with copies of all documentation pertaining the testing, analysis, transportation and disposal of all Hazardous Materials, including, but not limited to, bill of lading, quantity reports and disposal manifest or UK equivalence. Upon completion of the contract, the Contractor shall certify, in writing, that the Contractor has accomplished all Hazardous Material removal and disposal in compliance with all applicable Environmental Laws.

Among the Hazardous Material that the Contractor shall properly identify, manage and dispose of are the following:

1. Polychlorinated Biphenyls (PCBs) including but not limited to, electrical components and cables, vent duct and misc. gaskets, thermal and acoustical insulation materials, adhesives, paint, various rubber and plastic components.

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2. Asbestos - Including, but not limited to, bulkhead and pipe insulation; bulkhead fire shields; electrical cable materials; brake linings; floor tiles and deck underlay; steam, water and vent flange gaskets; flexitalic gaskets; garlock seals; shaft packing; valve packing; pipe hanger inserts; and weld shop protectors and turn covers.
3. Petroleum and petroleum products - including, but not limited to, fuel oil, lube oil, hydraulic oil, lubricants/greases/sludges, bilge water, standing waste water on board at the time of delivery, oily water, and sump oil.
4. Chromium-treated ballast water and other ballast water
5. Mercury
6. Ozone depleting substances
7. Waste water generated during dismantling
8. Degreasing agents.
9. Paints, including enamels, polyurethane and water-based latex paints.
10. Caustics and boiler chemicals.
11. Permanent ballast or ballast installed for ship stability purposes

Identify applicable general environmental regulatory ID numbers and all International, United Kingdom, or local government permits, certificates, licenses or approvals required to perform the work and whether such have been issued by the cognizant regulatory authority or will be obtained by the Contractor or its subcontractors.

Identify names, addresses, telephone numbers, and regulatory compliance identification numbers or permits of generators, transporters, and storage and disposal facilities that may be used by the Contractor or its subcontractors in performing the work.

Describe or provide a copy of the scrap site spill prevention and/or the emergency response plan.

Provide documentation on the Contractors and subcontractors training program sufficient to demonstrate compliance with training requirements of the United Kingdom and local regulatory agencies.

### **SAFETY AND HEALTH PROGRAM**

Safety Administration. Prior to commencing work, the Contractor shall meet with the Contracting Officer's Technical Representative (COTR) to discuss and develop an understanding of the implementation of its Safety and Health Management Plan.

Safety Inspections. The Contractor's workspace may be inspected periodically for compliance with the Government- approved Technical Compliance Plan. Correction of violations will be the responsibility of the Contractor. The Contractor will provide assistance to any and all U.S. Federal Representatives and International and local regulatory inspectors.

The Contractor is responsible to comply with all applicable national, and local laws and regulations, best management practices, and the submitted technical compliance plan with regard to all work performed under this contract including their application to:

1. Diving Operations.
2. Confined and Enclosed Spaces.
3. Welding, cutting and heating.
4. Fire Prevention/Protection.
5. Compressed Gas Cylinders.
6. Scaffolds, Ladders, Other Working Surfaces.
7. Housekeeping and Temporary Lighting.
8. Health and Sanitation.
9. Hazard Communication (chemicals).
10. Asbestos Abatement Program.
11. Gear and Equipment for Rigging and material handling.
12. Personal Protective Equipment including respiratory protection
13. Employee Emergency Plans.
14. Lead Abatement Program.
15. Fall Protection
16. Spill Containment Program and Emergency Response Plan.
17. Contractor approach to management and control of safety and health of both contractor's and all subcontractor's activities under this contract.
18. Contractor's and subcontractor's safety and health organizational structure. Include names and resumes of key individuals.

### **CONTRACTOR PERSONNEL**

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Key Personnel: The Contractor shall provide the following key personnel in their management organization: Program Manager and Environmental, Safety & Health Manager. The Contractor shall provide the ACO and COTR in writing with the name, address and a 24 hour telephone number of the "Responsible Party" and the organization that will take initial action to mitigate and contain a petroleum or other Hazardous Material discharge, should one occur. In the event there is a change in personnel, the contractor shall provide the CO and COTR with the suitable information with as much notice as possible.

Program Manager: The Contractor shall provide a full-time on-site program manager (PM) responsible for the performance of work required under this statement of work. Additionally, the PM is responsible for submitting status reports in accordance with the contract.

Environmental, Safety & Health Manager: The Contractor shall provide an Environmental, Safety & Health (ES&H) manager who will be responsible for all environmental and safety matters pertaining to this contract. The ES&H manager will report directly to the Program Manager.

Contractor/Subcontractor Employees: The Contractor shall ensure that employees and subcontractor employees have current and valid professional certifications before starting work under this contract. Certifications shall be maintained by the Contractor.

Employee Training and Certification: The Contractor shall provide all necessary classroom and on-the-job training required to prepare and document employees as trained and ready for duty prior to assignment to abatement or dismantling work on the ship. Training records shall be maintained on site by the Contractor.

## **C.2 RECORDS, PROGRESS SCHEDULE, AND PROGRESS REPORTS**

The Contractor shall make available all records and documents related to this project for inspection by MARAD and/or its representatives upon request.

### **C.2-1. Technical Status Reports**

The Contractor shall prepare technical status reports covering the previous two weeks performance period that shall be provided simultaneously with the bi-weekly report. The reports shall be submitted to and in the hands of the ACO and COTR at least 24 hours prior to the scheduled bi-weekly meeting. The purpose of these reports is to apprise MARAD of the status of the project and to call attention to any departures from the applicable management and work plans. The reports shall consist of a concise, executive level summary of all technical activities performed under the contract during the reporting period. The summary shall highlight activities of the program and progress achieved under the project. Specific areas of interest shall include: difficulties encountered during the reporting period and corrective actions taken; a performance schedule summary matrix showing accomplishments versus planned activities; revised activity schedule dates; any changes of key personnel concerned with the project; and the following:

- (a) Progress achieved since the previous progress report, including status of Hazardous Material abatement and disposal, approximate tonnage of scrap metals and equipment removed and disposed and identification of the deck to which the ship has been dismantled. Also, the approximate percentage of completion of the overall project, of each vessel, and of the abatement and dismantling work on each ship. Specific details on approximate quantities of Hazardous Materials are to be provided.
- (b) Quantity and type of Hazardous Material disposed of during the reporting period (to include copies of all manifests and other shipping or Hazardous Material property disposal documents) shall be made available for MARAD and/or its representatives to review on-site.

All required reports are to be electronically prepared and forwarded via e-mail to the COTR and one copy to the MARAD on-site Project and ES&H representatives during the appropriate submittal period. The Contractor shall supply a CD-ROM as requested by MARAD. The first summary status report shall be submitted to the Maritime Administration within 15 calendar days after start of the task order. This report listing is representative of the type of reports necessary to actively manage production progress. It is not a definitive listing of all contract required reports. It is the Contractors responsibility to submit any and all reports required by the contract. Failure by the Contractor to comply with the schedule reporting and schedule update reporting requirements shall be a material breach of the Contract.

### **C.2-2 Baseline/Pre-Arrival/Arrival:**

The contractor shall deliver the following reports to the COTR within the time frame indicated:

A. Not later than 4 days after the vessel's arrival at the Contractor's dismantling facility:

- 1. Copies of all notifications made, as required, to U.S., U.K., and State and local regulatory agencies.

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2. An inspection report of the condition of the facility at the beginning of the project including copies of the most recent Contractor furnished ground and water sampling results.
4. A vessel arrival condition report that (a) describes any material change in the vessel condition since departure from the fleet; and (b) describes any significant change in the liquid loading of the vessel since departure from the fleet.

B. Not later than 21 days after the vessel's arrival at the Contractor's facility at the beginning of the project:

1. A verification report of the contents of all tanks on the ship, conducted on the vessel's arrival at the Contractor's facility, compared to the Government furnished tank soundings provided prior to the vessel's departure. Verification of the on arrival survey of all tank contents and approximate quantities contained and compared to the Government furnished baseline estimates with an accompanying tank sounding report shall constitute verification.

### C2.3 Bi-Weekly Status Reports

A. The Contractor shall prepare technical status reports to be submitted bi-weekly on the 1st and 15th calendar day of each month summarizing the previous two weeks performance. The report shall be submitted to the COTR at least 24 hours prior to the scheduled bi-weekly meeting. The purpose of this report is to apprise MARAD of the project status and to identify any departures from the approved management and work plans. The report shall consist of three parts.

Part 1 shall consist of a concise, executive level progress summary of all technical activities performed under the contract during the reporting period. Actual physical progress reporting shall be an approximate percentage of actual work completed derived from the monitoring of the work schedule. Part I shall discuss the following topics;

1. A table, listing the project milestones, shall be presented with columns noting the scheduled, actual and revised dates indicated for each milestone and key event. A table shall be presented for the project in its entirety and for each individual ship.
2. Any changes of key personnel concerned with the project.
3. Project Progress since the previous progress report defined as work accomplished vs. planned work. Approximate overall percentage of project completion with accompanying breakdowns for each vessel with the overall percentage of vessel dismantlement and the percentage of completion for hazardous material removal and disposal and for the structural dismantling of the vessel.
4. Difficulties encountered during the reporting period and corrective actions taken.
5. Notification of any regulatory agency inspection conducted, or any Notices of Violation, citations, or cautionary notices received from regulators during the reporting period relating to the performance of this Contract. Also, notification of any other documentation relating to International, National, or local administrative or legal actions arising under or relating to the Contract. The contractor shall supply MARAD with copies of all correspondence associated with regulatory agencies relating to the performance of this contract.
6. Progress on any deficiencies identified by regulatory inspection.
7. Status of outstanding permits/licenses required for performance of this Contract, and status of any existing permits/licenses due to expire within ninety (90) days of the Progress Report.
8. Advance notice of commencement of project activities that will require notification to any regulatory agency by Contractor or any of its subcontractors.
9. Contractor plan to respond to any discrepancies noted or questions asked in writing by the U.S. Government.
10. Assessment of risks relating to timely completion of this Contract.

Part 2 shall consist of specific areas of interest relating to the progress and documentation of the overall project. Quantities for materials remediated from each ship shall be reported for the previous two-week reporting period, cumulatively to date.

### C2.4 Hazardous Materials

A. Status of Hazardous Material abatement and disposal.

1. Quantity of each type of Hazardous Material removed from each ship.
2. Quantity of each type of Hazardous Material forecasted to be removed from each ship in the next two-week reporting period.
3. Copies of chain of custody forms or equivalent for all samples and copies of the results of sampling obtained during the previous two-week reporting period for each ship shall be made available for MARAD and/or its representatives to review on-site.
4. Recyclable Materials
  - a. Tonnage of recyclable ferrous and non-ferrous metals and equipment disposed.
  - b. Cumulative totals of recyclable ferrous and non-ferrous metals and equipment disposed for each ship.
  - c. Forecasted tonnage of recyclable ferrous and non-ferrous metals and equipment to be disposed in the next two-week reporting period for each ship.

### 5. Health and Safety/Regulatory Inspections

A. Copies of notification of any regulatory agency inspection conducted, or any Notices of Violation, citations, or cautionary notices received from regulators during the previous two-week reporting period. Status of the Contractors worker health and safety program including:

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1. Status of any safety deficiencies found during on-site inspections by the Contractor or any U.S Government or International, National or local regulatory agency. (Corrective actions, explanations, etc.)
2. Information of any worker exposure monitoring that exceeds trigger levels.
- B. Copies of notification of any other documentation relating to National or local administrative or legal actions arising under or relating to the Contract. The contractor shall supply MARAD with copies of all correspondence associated with regulatory agencies relating to the performance of this contract.
- C. Notification of any accident, incident and injury reports generated by the Contractor or subcontractors and required for submittal to any regulatory agency during the previous two-week reporting period.
- D. Summary totals of worker injuries, incidents and lost labor days for the previous two-week reporting period including cumulative totals and a summary of causes.
- E. Copies of outstanding permits/licenses required for performance of this contract and any existing permits/license due to expire within 90 days for the reporting date.
- F. Status of advance notice of commencement, submitted by the Contractor or its subcontractors, of project activities requiring notification to any regulatory agency.

The Contractor shall maintain all books and records detailing contract expenses and revenue, and other documents used to perform the contract/subcontracts, and make such documents available for U.S. Government review and audit purposes. The Contractor must further maintain such records for a period of 3 years after contract completion, or for such a time as the Contractor or subcontractor, for its own purposes, retains such books, records and other documents, whichever is longer.

#### C2.5 Final Close Out Report

Upon completion of the contract performance, the Contractor shall provide a final closeout report for each vessel which shall include the requirements listed above, as well as the following additional requirements: The final close out report is a milestone activity and shall be scheduled in the performance plan. The report shall be submitted to MARAD within thirty (30) calendar days after completion of each vessel dismantling.

- a. A final performance schedule updated to show actual events of the project including the actual duration of the scheduled activities compared to the established baseline schedule.
- b. Quantity of Hazardous Materials disposed by element.
- c. Quantity of scrap recovered for resale to include, but not limited to, ferrous, non-ferrous, and equipment.
- d. A written certificate attesting that all materials associated with the vessel have been disposed of in accordance with the applicable regulatory and contractual requirements.
- e. A written certificate attesting that the dismantling facility has been returned to the same condition as identified in the baseline pre-arrival/arrival determination shall be provided at the completion of the dismantlement of the last vessel.
- f. A written certificate for each vessel entitled "Certificate of Destruction" attesting that the vessel has been completely dismantled and that all Hazardous Materials have been remediated and disposed in accordance with all U.S. or U.K., National, and local laws and regulations.

#### C2.6 Bi-Weekly Progressing Meeting

1. The Contractor and his major subcontractor(s) shall participate in the bi-weekly conference and be prepared to address in detail any and all questions posed by the Government Representatives. The Contractor shall make available at the bi-weekly meeting those key personnel having direct responsibility for ship dismantlement and hazardous materials remediation functions including, The Project Manager, Environmental Manager, and Safety Manager.

2. The Contractor shall participate in a Bi-Weekly Progress Meeting at a place and time mutually agreeable to all parties either on site or by teleconference. The Contractor representative in attendance shall be authorized to make management decisions relative to the requirements of the contract. The Contractor must have a knowledgeable Environment, Health and Safety person participating.

a. The Contractor shall be prepared to discuss the following:

1. Total percentage of overall project work complete, total percentage of overall work complete for each vessel, percentage completion of each Work Item, Performance Schedule milestones, key events, Controlling Work Items, Critical Path, float, and schedule recovery.
2. Planned production manning versus actual manning.
3. Major problem areas encountered in the overall project and major problem areas encountered for each vessel, and for each item the proposed corrective action.

a. The Contractor shall provide to the COTR at least one working day prior to the scheduled bi-weekly progress meeting an updated master performance schedule, which incorporates all individual vessel sub-schedules; a performance schedule summary matrix showing accomplishments versus planned activities and revised activity schedule dates; and current physical progress percent complete for each. Percentage complete shall agree with the percentage complete as reported in all the Performance Schedules.

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### C3 Performance Schedule

#### C3.1 Performance Schedule

The Contractor shall prepare a master performance schedule, which incorporates all summary project information, requirements and reporting related to the dismantlement of the 13 obsolete vessels. The master performance schedule shall address all tasks necessary for the successful completion of the overall project including but not limited to:

- a. All work identified under the Statement of Work
- b. Subcontracted work and activities.
- c. Performance Schedule Milestones.
- d. Deliverables.
- e. Insurance and Bonding
- f. Permits Licenses and Certifications.
- g. Surveys and Inspections
- h. Reporting Requirements

The Contractor shall prepare for each vessel its own performance schedule, which shall be integrated into the master performance schedule. Each vessel performance schedule will address all tasks required for ship dismantling including but not limited to:

- a. All work identified under the Statement of Work.
- b. Performance Schedule Milestones
- c. Deliverables
- d. All subcontracted work and activities.
- e. Preparation and towing of the ship(s)
- f. Acquiring of necessary specific permits, licenses, certificates
- g. Acquiring of appropriate bonding and insurances
- h. Arrival survey and tank sounding verification.
- i. Identification, sampling and safe removal and disposal of hazardous materials/wastes
- j. Ship dismantling.
- k. Stripping of Government property in accordance with information provided in writing by MARAD.
- l. Submission of required reports.

The Contractor shall prepare and submit an updated performance schedule within 30 days from the time the vessel awarded. The updated performance schedule shall incorporate the latest revisions to all tasks and shall take into account all other work in the Contractor's facility or schedule to arrive at facility that directly impacts the vessel's performance schedule. The Contractor shall include a narrative report addressing all constraints to the vessel's performance schedule incurred as a direct result of all other work in the Contractor's facility. Once accepted by the COTR the performance schedule shall be incorporated as the baseline project schedule and the Contractor shall manage the project to the submitted schedule. The baseline schedule shall be used for the development of the required reports, progressing methodology and determining progress payments.

The schedule shall include planned start & completion dates and timeline for each phase of the dismantlement and hazardous material remediation process. Identification of all project and individual vessel work items considered to be on the critical path to completion will also be identified. All vessel performance schedules once integrated into the master performance schedule shall be linked at the activity level where necessary to the degree that any schedule impact to one vessel performance schedule can be readily evaluated for the downstream effect on any and all other vessel performance schedules and the entire critical path of the project.

The performance schedule shall be updated to coincide with the bi-weekly reporting requirements and shall at all times be maintained in as accurate and updated condition to support the physical progress of the vessel dismantlement and hazardous material remediation.

The Performance Schedule shall be comprised of:

- A. A time-sequenced Critical Path Method (CPM) generated Gantt Chart that contains the following:
  1. Scheduled key project events, milestones and items as listed above.
  2. Critical Path and Controlling Work Items for the overall project and each vessel shall be clearly indicated with interdependent relationships to other critical path tasks clearly identified.
  3. Scheduled start and completion date of the production work for each activity.
  4. The original schedule baseline shall be retained and progress shall be shown on the Schedule as completed activities and shall be comparable to the baseline schedule.

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5. Activity duration shall be in working weeks unless reviewed and accepted by the COTR. Identify all activities not on a 5-day workweek calendar, and all planned holidays and other periods of shutdown. Identify overtime and multiple shift work.
6. Linked items and activities shall be used to show the sequence and interdependence of the items and activities and the effects thereof, including Work Items that interrelate with Controlling Work Items that are on the Critical Path
7. The following data shall also be included in tabular format with the Gantt chart for each activity of Critical Path activities:

- Original duration in calendar days
  - Remaining duration in calendar days
  - Percent (%) complete
  - Total float based on a five day work week
  - Original start date
  - Original finish date
  - Revised start date
  - Revised finish date
  - Actual start date
  - Actual finish date

9. All Schedules prepared by the Contractor can not contain logic that has been overridden (and thus not identified) by time, sequence, or resource constraints. If constraints exist, the Contractor shall identify them by type of constraint.

B. Performance Schedule Impact Analysis shall be provided, in a narrative format, for all changes that affect the schedule.

1. The Contractor shall provide ongoing Schedule analysis by comparing actual progress to planned progress as identified by the original baseline production schedule and shall report in the Summary Status Report the percentage ahead or slippage of his to date progress.
2. The Schedule Impact Analysis shall demonstrate how the Contractor proposes to incorporate the changes into the Schedule and shall explain the affect if any, on milestone accomplishment, Schedule Critical Path, Schedule logic, resources, and costs and completion date.
3. Any changes and events which the Contractor does not indicate in the Schedule and Schedule Impact Analysis is assumed to have no affect on the Production Schedule.
4. Failure by the Contractor to include any element of work required for performance of the Contract shall not excuse the Contractor from completing all work within the Contract performance period and/or in accordance with any Contract-required Milestone Date(s).

C. Recovery Plan. If slippage has occurred from the Contractor's original performance Schedule, or any previously revised Performance Schedule, the Contractor shall provide an analysis, in narrative format, of the slippage that identifies the cause of the slippage and proposes a plan of action that will be taken to complete the remaining work within the Contract performance period.

D. Late Completion Notification. If at any time, the updated Critical Path of the Performance Schedule indicates a late delivery or late completion date, notify the COTR in writing the next working day, and/or prior to the beginning of any period when no work will occur, such as a holiday period. This notification shall include identification of the problem and shall propose corrective actions for schedule recovery.

E. The Performance Schedule and required reports shall be delivered to the COTR for review and acceptance within **(30) thirty** calendar days after Contract award. Status reports shall be prepared bi-weekly and submitted one day prior to the next scheduled progress meeting, to reflect the addition, deletion, or modification of Work Items, and changes made by the Contractor.

1. Upon acceptance of the Schedule by the COTR, the Contractor shall proceed in accordance with the reviewed and accepted plan and shall not modify the Schedule without the acceptance by the COTR within 5 days. Modifications to the Schedule do not constitute a modification to the Contract.
2. Any changes in the Schedule desired by the Contractor in the job approach as reflected by the network logic, activity duration, and resource loading shall be reviewed and accepted by the COTR within 5 days.

F. The initial Performance Schedule produced for each vessel awarded to the Contractor shall be saved by the Contractor to serve as a baseline for the purpose of progress tracking and variance analysis.

G. The contractor shall manage and schedule all subcontractors' production work/progress, material procurement, and interface control to support the overall Performance Schedule.

1. Provide and Maintain a Subcontractor Listing on file beginning within (3) three days after award of Contract. A revised list is to be updated whenever changes occur to the list. The subcontractor list shall include:
  - a. The Subcontractor's business address, telephone number and point of contact.

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b. All Work Item(s) and scheduled activity(s) number and a brief description of the specific work to be accomplished.

### C3.2 Performance Schedule Milestones

The Contractor shall incorporate into the performance schedule for each vessel the following major contract milestones and their required due dates as listed.

MILESTONE	DUE DATE
Deliver Certificates of Company Insurance	10 days after Contract Award
Deliver Performance Bond	10 days after Contract Award
Tripartite Escrow Agreement	10 days after Contract Award
Deliver Licenses & Permit Documentation	15 days after Contract Award
Deliver Initial Performance Schedule	30 days after Contract Award
Deliver Towers Insurance	3 days before vessel departure
Validation of Government Estimates	21 days after vessel arrival
Delivery of Unfinished Ships	To Be Agreed Upon By the Parties
Complete PCB/Asbestos Sampling Testing	To be Determined by Schedule
Complete PCB Abatement	To be Determined by Schedule
Complete Asbestos Abatement	To be Determined by Schedule
Complete all Hazmat Removal/Disposal	To be Determined by Schedule
Begin Vessel Dismantling	To be Determined by Schedule
Remove Last Structural Piece from Slip	To be Determined by Schedule
Complete Vessel Dismantling	To be Determined by Schedule
Deliver Certificate of Destruction	30 days after Complete Vessel Dismantling
Deliver Closeout-Report and Final Schedule	30 days after Complete Vessel Dismantling

### C3.3 DELIVERABLES

The following are the deliverables required under this contract. This list is not intended to be inclusive of all reporting requirements and does not include those reports required from the Contractors Technical Compliance Plan or other Federal, State or local regulatory agencies. Changes to this listing will be accomplished via a modification.

DELIVERABLE	DUE DATE	RECIPIENT
Certificates of Insurance Policies	10 days after Contract Award	ACO / COTR
Performance Bond	10 days after Contract Award	CO / COTR
Tripartite Escrow Agreement	10 days after Contract Award	CO
Confirmation Licenses & Permits	15 days after Contract Award	COTR
Initial Performance Schedule	30 days after Contract Award	COTR
Towers Insurance	3 days before vessel departure	ACO
Validation of Gov't Estimates	21 days after vessel arrival	COTR
Vessel Afloat Monitoring Plan	20 days after Contract Award	COTR
Notification of Selected Use of Unfinished Ships	90 days after delivery of Unfinished Ships	ACO
Bi-Weekly Status Reports	Bi-Weekly	COTR
Invoices	Monthly	MAR 330
Incident/Accident Reports	Within 3 days of occurrence	COTR
Environmental Licenses/Permits	As Requested by MARAD	COTR
Vessels Certificates of Destruction	30 days after Completion of all Vessel Dismantling	COTR
Facility Restoration	30 days after Complete Vessel Dismantling	COTR
Hazardous Materials Remediation	30 days after Complete Vessel Dismantling	COTR
Closeout-Reports and Final Schedule	30 days after Complete Vessel Dismantling	COTR
Performance Schedule Updates/other than Bi-Weekly	As Requested by MARAD	COTR

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#### C3.4 FAILURE TO MAINTAIN PROPER SCHEDULES:

1. Schedules required by this item will be used to determine performance-based milestone payments. Failure to submit updated and timely schedules will result in a lack of basis for determining performance-based milestone payments and could delay payment to the contractor.
2. Acceptance by the COTR of submitted schedules and associated reports does not relieve the Contractor of performance to the requirements of the Contract. Nor does acceptance serve to approve, warrant, or indicate agreement by the COTR as to the accuracy of the Contractor's schedules.
3. Extension of the delivery date will be granted only to the extent the equitable time adjustments to the activity affected by the Change Order, Delivery Order, or delay, exceeds the total (positive or zero) float of a critical activity and extends the delivery date.

#### C3.5 Sale of Recyclable/Reusable Equipment/Scrap Material

The Contractor shall sell and/or dispose of, the recyclable and reusable equipment/material generated as a result of dismantling the ship in accordance with all applicable UK laws and regulations. The Contractor shall report for each vessel individual material/scrap/equipment type, and the quantity equipment/material recovered for disposal. The Contractor shall provide a list of recyclable materials and reusable equipment retained for sale at the time of delivery to the COTR of the vessel(s) Certificate of Destruction. The Contractor shall clearly identify those pieces of equipment retained on site for use by the dismantling facility. Upon the safe arrival of all of the Obsolete Vessels at Teesside, the Government shall provide the Contractor written "Authorization to Sell" letter for the recyclable material/equipment.

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## SECTION E -- INSPECTION AND ACCEPTANCE

### E.1 MCL.E-1 DELEGATION OF INSPECTION AND ACCEPTANCE AUGUST 2005

1. The Contracting Officer's Technical Representative (COTR) shall be delegated the responsibility and authority to conduct inspection and acceptance duties for this contract. Unless and until changed or revoked, the COTR for this contract shall be Mr. James Fox. His address and phone number are as follows:

The Maritime Administration  
Office of Ship Disposal Programs (MAR-640)  
1200 New Jersey Ave  
W23-103  
Washington, DC 20590  
United States of America

Attn: **Jim Fox**

Phone: **1 + 202-366-0728**

FAX: **1 + 202-366-3954**

E-mail: **james.fox@dot.gov**

2. The U.S. Maritime Administration (MARAD) and the U.S. Environmental Protection Agency reserve the right to conduct announced and unannounced inspections at any time during all activities of the Contractor and Subcontractor to monitor compliance of contract performance with applicable United States, United Kingdom, or international laws, regulations, and treaties, as appropriate. MARAD or its designee may inspect all operations in connection with the ship disposal and recycling of the obsolete vessels awarded under this contract.

3. The Contractor shall provide, either directly or through its sub-contractor, Able UK Ltd., office facilities for use by the Government or its designee during their inspections of or visits to the Subcontractor's ship recycling facilities. The office facilities shall be equal to those provided by the Contractor or Subcontractor for their own use for similar purposes. The Contractor or Subcontractor shall provide Government representatives, or their designees, attending the job, with the required personal protective equipment (ppe) as required by the hazardous circumstances present at the job site. The Contractor, and any Subcontractors, shall cooperate with the Government inspectors, administrators, and designees in the performance of their duties, including Project Management and Environmental, Safety and Health Monitoring.

### E.2 52.246-04 INSPECTION OF SERVICES- FIXED PRICE AUGUST 1996

(a) Definitions: "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

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(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may--

- (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
- (2) reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may--

- (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service; or
- (2) terminate the contract for default.

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SECTION F -- DELIVERIES OR PERFORMANCE

F.1 52.252-02 CLAUSES INCORPORATED BY REFERENCE

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

<http://www.acqnet.gov/far/current/html/FARMTOC.html>

<http://www.acqnet.gov/far/current/html/FARMTOC.html>

[Insert one or more Internet addresses]

Clause	Title	Date
52.242-15	Stop-Work Order	August 1989

F.2 52.211-08 TIME OF DELIVERY (JUN 1997) - ALTERNATE III APRIL 1984  
ALT III

(a) The Government requires delivery to be made according to the following schedule:

REQUIRED DELIVERY SCHEDULE

1. The Contractor shall remove all PHASE I ships of the Vessels from the James River Reserve Fleet, in tow to the Teesside, United Kingdom, facility not later than 31 October 2003. Liquidated damages of \$1,350.00 per calendar day/per vessel shall accrue and apply after 31 October 2003, pursuant to FAR clause 52.211-11, until all four (4) PHASE I Obsolete Vessels have been removed.

2. The Contractor shall remove all nine (9) PHASE II ships of the Obsolete Vessels from the James River Reserve Fleet and Portsmouth Naval Base, in tow to the Teesside, United Kingdom facility, not later than 1 July 2004 for the first vessel(s) and not later than 31 July 2004 for the last vessel(s). Liquidated damages of \$1,350.00 per calendar day/per vessel shall accrue and apply after 31 August 2004, pursuant to FAR clause 52.211-11, until all nine (9) PHASE II Obsolete Vessels have been removed from the James River Reserve Fleet and Portsmouth Naval Base.

3. The Contractor shall completely dispose of, dismantle and remediate all thirteen (13) Obsolete Vessels not later than 31 December 2005. Liquidated damages of \$1,350.00 per calendar day/ per vessel shall accrue and apply beyond 31 December 2005, pursuant to FAR clause 52.211-11, until all work associated with the disposal of, dismantling, and remediation of the thirteen (13) vessels has been completed.

4. The application of liquidated damages may be waived at the sole discretion of the Maritime Administration.

F.3 52.242-17 GOVERNMENT DELAY OF WORK APRIL 1984

(a) If the performance of all or any part of the work of this contract is delayed or interrupted (1) by an act of the Contracting Officer in the administration of this contract that is not expressly or impliedly authorized by this contract, or (2) by a failure of the Contracting Officer to act within the time specified in this contract, or within a reasonable time if not specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this contract caused by the delay or interruption and the contract shall be modified in writing accordingly. Adjustment shall also be made in the delivery or performance dates and any other contractual term or

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condition affected by the delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(b) A claim under this clause shall not be allowed--

(1) For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and

(2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

F.4 52.211-11 LIQUIDATED DAMAGES--SUPPLIES, SERVICES, OR SEPTEMBER 2000  
RESEARCH AND DEVELOPMENT

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, the Contractor shall, in place of actual damages, pay to the Government liquidated damages of \$ 1,350.00 per calendar day of delay.

(b) If the Government terminates this contract in whole or in part under the Default-Fixed-Price Supply and Service clause, the Contractor is liable for liquidated damages accruing until the Government reasonably obtains delivery or performance of similar supplies or services. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(c) The Contractor will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Contractor as defined in the Default-Fixed-Price Supply and Service clause in this contract (See Clause 52.249-08, incorporated by reference in Section I.1 of this contract).

(End of clause)

F.5 MCL.F-2 DELIVERY AND SHIFTING OF VESSELS AUGUST 2005

I. Delivery

(a) The Government shall deliver the vessel to the Contractor at a pre-determined location or point of transfer. The Contractor shall have sole responsibility for preparing the vessel for tow. MARAD has agreed to accomplish vessel tow preparations at the James River Reserve Fleet (JRRF) within their capabilities for 12 of the 13 vessels, not including the vessel PROTECTOR. Any tow preparations identified by MARAD as being beyond their capability to accomplish will be accomplished by the Contractor after notification by MARAD.

(b) Both parties shall mutually agree to any change in the time of transfer due to inclement weather or other unforeseen circumstances.

(c) Prior (no less than 48 hours) to the delivery of the vessel to the Contractor by the Government, it shall be the Contractor's responsibility to:

- (1) Obtain United States Coast Guard load-line exemption and "permit to proceed."
- (2) Have a recognized salvage association or qualified marine surveyor with expertise in towing requirements to certify the adequacy of the vessel to be towed and the tug(s) to be utilized for the tow.
- (3) Provide the tugs, pilots, towing gear, equipment and any necessary riding crews involved in the vessel transfer.
- (4) Obtain standard towing liability insurance.
- (5) Provide sufficient sanitary facilities on the stern if a riding crew is necessary.
- (6) Provide documents to the COTR that shall verify that items (1) through (5) above have been completed.

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## II. Transfer

Upon transfer of the vessel, it shall be the Contractor's responsibility to:

- (a) Complete a vessel delivery certificate that conveys custody of the vessel and which shall be countersigned by either the Government's Fleet Captain, Fleet Superintendent or Acting Fleet Superintendent, or MARAD Marine Surveyor.
- (b) Provide proof to one of the officials referenced in (a) above that the requirements outlined in Section I (c) of this clause are met.

## III. Shifting

While the vessel is in the custody of the Contractor, any necessary towage, shifting of the vessel's berth at Contractor's facility, carriage, or other transportation between the vessel and shop or elsewhere, which may be incidental to the work herein specified, shall be furnished by the Contractor without additional charge to the Government.

## F.6 NOTICE TO PROCEED

- (1) Signature of both parties to this Contract constitutes Notice To Proceed (NTP) to the Contractor for the procurement of the tugs services, accomplishment of the tow preparation and other services as required by the USCG in order to prepare for the tow of the obsolete vessels after consent by the U.K. Environment Agency.
- (2) A NTP, establishing the effective date for commencement of all other performance components of this contract will be issued by the PCO. Performance, other than as indicated in paragraph (1) above, under this contract before that date shall be at the contractor's risk and shall not be reimbursed.

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## SECTION G -- CONTRACT ADMINISTRATION DATA

### G.1 PAYMENTS

In accordance with FAR Clause 52.232-32 - Performance-Based Payments (February 2002), Section I.17 of this contract, the Contractor shall be paid according to the following milestones at the following rates:

Towing - \$45 per ton

Successful completion is defined as verification of safe arrival of each vessel to the ABLE Facility in Teesside, UK.

Towing Adjustment - \$3.65 per ton

Successful completion is defined as verification of actual additional towing costs, above and beyond the Contractor's estimated towing costs included in preceding milestone, resulting directly from the late summer tows. The total cost for towing adjustment shall not exceed \$436,890.40.

Remediation - \$67.00 per ton

(Successful completion is defined as verifiable evidence of removal and disposal of all hazardous materials for each vessel pursuant to the Statement of Work. Verifiable evidence is obtained by visual inspection, indicating that hazardous materials have been removed, final clearance samples to ensure the atmosphere is safe, and **verification that** any materials remaining during the dismantling of the vessels can be recycled and/or disposed of within the structure or equipment in its current position according to applicable laws.)

Disposal - \$29.00 per ton

Successful completion is defined as submission of "Certificate of Destruction" for each vessel to the COTR.

### G.2 CONTRACT ADMINISTRATION

#### G.2 GENERAL

Contract administration shall be as set forth below and in accordance with the special contract requirement(s) of this Contract.

##### G.2-1 INVOICE REQUIREMENTS

a. Invoices shall be submitted in an original and 1 (one) copy to:

U.S. MAIL

MARAD A/P Headquarters Invoices

Branch, AMZ-150

PO Box 25710

Oklahoma City, OK 73125

FEDEX

MARAD A/P Headquarters Invoices

Branch, AMZ-150

6500 S MacArthur Blvd.

Oklahoma City, OK 73169

In addition, all commercial vendors will have the option to send payment requests electronically. The payment requests must be in PDF format. Vendors can submit electronic payment requests to the following email address:

MARADInvoices@FAA.GOV

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b. In accordance with the Clause at FAR 52.232-32, Performance-Based Payments, to constitute a proper invoice, the invoice must include the following information and/or attached documentation:

- (1) The name and address of the Contractor;
- (2) The date of the request for performance-based payment;
- (3) The Contract number and/or other identifier of the contract or order under which the request is made;
- (4) Such information and documentation as is required by the contract's description of the basis for payment;
- (5) A certification by a Contractor official authorized to bind the Contractor, as set forth in the Clause at FAR 52.232-32(7)(m);
- (6) Name (where practicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent; and
- (7) Other substantiating documentation or information as required by the contract.

**G.2-2 ELECTRONIC FUNDS TRANSFER (EFT) PAYMENT REQUIREMENTS**

FAR 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER (CCR), is included in this solicitation/contract. All Contractor payments will be made by EFT unless excepted or otherwise determined by the paying office designated in the contract.

The Contractor must initiate enrollment in EFT by contacting the paying office designated in the contract and requesting form SF 3881, Automated Clearing House (ACH) Vendor/Miscellaneous Payment Enrollment Plan. This form must be completed by the Contractor and their financial institution and returned to the paying office. The paying office will complete the process and notify the Contractor that EFT enrollment is complete. All payments under this contract will be held until the Contractor provides the required EFT enrollment information.

**G.2-3 POINTS OF CONTACT**

a. PROCURING CONTRACTING OFFICER: **Frank Bajowski**  
(PCO) U.S. DEPARTMENT OF TRANSPORTATION  
MARITIME ADMINISTRATION  
OFFICE OF ACQUISITION, MAR-380  
1200 New Jersey Ave, W26-416  
WASHINGTON, DC 20590  
E-Mail Address: **Frank.Bajowski@dot.gov**

b. **RESERVED**

All correspondence shall be directed to the Administrative Contracting Officer except as otherwise specified.

c. CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE: **MR. JIM FOX**  
(COTR) U.S. DEPARTMENT OF TRANSPORTATION  
MARITIME ADMINISTRATION  
OFFICE OF SHIP DISPOSAL PROGRAMS  
1200 NEW JERSEY AVE  
E-Mail Address: **James.Fox@dot.gov**

The COTR is responsible for the technical aspects of the project and technical liaison with the Contractor. The COTR is also responsible for the final inspection and acceptance of all reports, and such other responsibilities as may be specified in the contract/task orders.

The COTR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes that affect the contract price, terms or conditions. Any Contractor request for changes shall be referred to the Contracting Officer directly or through the COTR. No such changes shall be made without the expressed prior authorization of the Contracting Officer. The COTR may designate assistant COTR(s) to act for him by naming such assistant in writing and transmitting a copy of such designation through the Contracting Officer to the Contractor.

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The COTR may be changed by the Government at any time, but notification of the change, including the name and address of the successor COTR, will be promptly provided to the Contractor by the Contracting Officer in writing.

The Contractor shall forward a copy of all invoices to the Contracting Officer's Technical Representative.

d. The Contractor's Primary Point of Contact shall be:

(To be provided by Contractor and inserted after contract award)

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## SECTION H -- SPECIAL CONTRACT REQUIREMENTS

### H.1 52.252-02 CLAUSES INCORPORATED BY REFERENCE

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

<http://www.acqnet.gov/far/current/html/FARMTOC.html>

<http://www.acqnet.gov/far/current/html/FARMTOC.html>

[Insert one or more Internet addresses]

Clause	Title	Date
MCL.H-12	MARITIME LIENS, NO AUTHORITY TO INCUR	August 2005
MCL.H-13	SUPERVISION	August 2005
MCL.H-6	STANDARDS OF EMPLOYEE CONDUCT	August 2005

### H.2 VESSEL TOWING PROVISIONS

#### **Loss of Obsolete Vessels in Transit to Dismantling Facility**

##### Substitution or Loss of Obsolete Vessels

1. This Contract involves the dismantling and recycling of 13 Obsolete Vessels (identified elsewhere in this Contract) in the United Kingdom. Post-Service Remediation Partners LLC (PRP) is responsible for safely moving the Obsolete Vessels from the United States to the dismantling facility in the United Kingdom. PRP shall ensure that each Obsolete Vessel can be moved safely from the United States to the United Kingdom dismantling facility before commencing movement. In the event that the United States Coast Guard determines that an Obsolete Vessel cannot be moved safely, PRP shall notify the Contracting Officer in writing, and the Contracting Officer shall substitute another Obsolete Vessel of approximately equivalent tonnage.

2. In the event that an Obsolete Vessel is lost while transiting the waters of the United States and/or while in transit from the United States to the United Kingdom dismantling facility, and such loss is without fault or negligence of PRP, its officers, employees, agents or subcontractors, upon notification by PRP of such loss, the Contracting Officer, in accordance with the terms of the May 22,, 2003, EPA Enforcement Discretion Letter, shall provide PRP another Obsolete Vessel of approximately equivalent tonnage to replace the lost Obsolete Vessel. All terms and conditions of this Contract shall apply with full force and effect to the replacement Obsolete Vessel as if it had originally been part of this Contract except that PRP shall be entitled to a reasonable extension of the Contract's performance period to dismantle and recycle the replacement Obsolete Vessel and to the costs incurred to tow the replacement Obsolete Vessel from the United States to the dismantling facility in the United Kingdom.

3. In the event of the loss as described in Paragraph 2 above, the Maritime Administration (MARAD) shall pay PRP \$35,000 in addition to reimbursing PRP the allocable costs PRP incurred to move the lost Obsolete Vessel from the United States to the point of loss. PRP shall be entitled to invoice for payment under this clause separately from other payment provisions of this Contract.

4. Notwithstanding Paragraph 3 above, MARAD shall not be obligated to replace more than two lost Obsolete Vessels or to pay PRP more than a total of \$70,000 in addition to allocable costs PRP may incur in moving Obsolete Vessels from the United States to the point of loss.

Notwithstanding anything contained in this Contract to the contrary, in the event that MARAD is unable to provide obsolete vessels to PRP for dismantling and recycling of approximate equivalent tonnage to the 13 Obsolete Vessels (identified elsewhere in this Contract), and provided that PRP is not otherwise in default of this Contract, the Termination for Convenience clause of this Contract shall prevail.

### H.3 REQUIREMENT FOR UNITED KINGDOM CONSENT

Pursuant to the terms, conditions, and requirements set forth in the EPA letter attached to this Contract as Attachment A, the consent of the U.K. Environment Agency must be provided to the U.S. Environmental Protection Agency prior to the import of any ships covered in this contract to the United Kingdom. Should this consent be refused, or otherwise not granted, it is anticipated that the Government will Terminate the Contract for the Government's Convenience in accordance with FAR 52.212-4 (l).

### H.4 PRICING AND PAYMENT TERMS

1. The Maritime Administration will acquire services from the Contractor to scrap approximately 13 obsolete vessels with a total estimated lightweight tonnage of 123,376 tons at a price of \$144.65 per ton (tonnage, not number of ships, determines compliance with contract requirements). The total contract price to be paid to the Contractor for ship scrapping services is the price per lightweight ton multiplied by the actual number of lightweight tons scrapped. The Contractor is not required to scrap more than 13 obsolete vessels and MARAD may provide the Contractor less than 13 obsolete vessels for scrapping. However, if the actual lightweight tonnage scrapped varies from the estimated total of 123,376 lightweight tons by more than 5 percent below, or 10 percent above the estimated total, either the Contractor or MARAD shall be entitled to an equitable adjustment in the price per ton scrapping price (either an increase or a decrease as appropriate). If the actual total lightweight tonnage scrapped varies less than the 5 percent below or 10 percent above the 123,376 tons, neither the Contractor nor MARAD shall be entitled to an equitable adjustment in the per ton scrapping price.

2. The total resulting contract price is \$17,846,338.40, representing 123,376 tons at \$144.6500 per ton.

3. The payment terms are as follows:

a. MARAD will transfer title to the vessels HENRY A. ECKFORD and BENJAMIN ISHERWOOD to the Contractor pursuant to Clause H. 9 , "EPA Enforcement Discretion Requirements".

b In addition to the title transfer of the ECKFORD and ISHERWOOD, MARAD will pay the Contractor \$14,866,338.40 for the complete disposal of the thirteen (13) vessels.

c. The total price payable to the Contractor includes costs incurred by the Contractor associated with the towing of the thirteen vessels, including tow surveys and tow preparation ("tow costs"), upon the completion of the tow of the thirteen vessels to the Contractor's facility in Teesside, England.

d. Upon successful completion of the Pilot Phase, MARAD will offset a credit in the amount of \$3,000,000 against any unpaid invoices submitted, as consideration for and prior to the transfer of the title to and possession of the vessels ECKFORD and ISHERWOOD. Neither title nor possession of these vessels shall transfer to the Contractor prior to the offset of the \$3,000,000 sum in full. Credit towards unpaid invoices is at the discretion of the Contractor. In addition, should the sum not be offset in full by September 30, 2004, then the Contractor may still be liable for liquidated damages.

e. Except as provided by Clause H.2., "Vessel Towing Provisions", all remaining costs associated with the vessel dismantlement, hazardous material/waste disposal and remediation, and the documentation will be paid to the Contractor as regular performance-based payments in accordance with FAR Part 52.232.32, Performance-Based Payments.

#### 4. Computation of the Total Contract Price

Vessel	Light Ship	Price/Ton	Price
CANOPUS	12,618	\$144.65	\$1,825,193.70
COMPASS ISLAND	14,170	\$144.65	\$2,049,690.50
CANISTEO	10,723	\$144.65	\$1,551,081.95
CALOOSAHATCHEE	10,300	\$144.65	\$1,489,895.00
SUBTOTAL OF NAMED VESSELS	47,811	\$144.65	\$6,915,861.15

SUBTOTAL OF VESSELS

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TO BE DETERMINED	75,565	\$144.65	\$10,930,477.25
TOTAL FINISHED VESSELS	123,376	\$144.65	\$17,846,338.40
UNFINISHED VESSELS			
Benjamin Isherwood	9,938		(\$1,950,000.00) credit
Henry Eckford	9,938		(\$1,050,000.00) credit
SUBTOTALS	19,876		(\$3,000,000.00) credit
<b>TOTALS</b>	<b>143,252</b>		<b>\$14,846,338.40</b>

## H.5 PERFORMANCE AND PAYMENT BONDS - OTHER THAN CONSTRUCTION

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

"Original contract price" means the award price of the contract or, for requirements contracts, the price payable for the estimated quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b)(1) The Contractor shall furnish a performance bond (Standard Form 1418 or equivalent) for the protection of the Government in an amount equal to \$3,710,000.00 for the four (4) PHASE I ships. Upon the successful completion of the tow of all **four (4)** obsolete vessels to the U.K., the bond shall be reduced by \$667,000.00 to a new total of \$3,043,000.00.

(2) The Contractor shall furnish a payment bond (Standard Form 1418 or equivalent) for the protection of the Government, or increase the performance bond in lieu of posting a separate payment bond, in the amount of \$556,000, representing a negotiated rate of 15% of the performance bonding requirement for PHASE I. The bond shall be reduced by this amount at the completion of all work in PHASE I.

(c) (1) Not later than three (3) days prior to the commencement of the tow of the first Phase II ship(s), the Contractor shall furnish a Phase II performance bond (Standard Form 1418 or equivalent) for the protection of the Government in an amount equal to \$6,790,000.00. Upon the successful completion of the Pilot Phase of this Contract, the bond shall be reduced by \$750,000 for a new total of \$6,040,000.00. Upon the successful completion of the tow of all nine (9) PHASE II ships to the United Kingdom, the bond shall be reduced by an additional \$750,000.00 for a new total of \$5,290,000.00. At the completion of the remediation and dismantling of each of the nine (9) PHASE II ships, the Contracting Officer will further reduce the Phase II performance bond amount by an additional \$587,777.77 per ship.

(2) The Contractor shall furnish a payment bond (Standard Form 1418 or equivalent) for the protection of the Government, or increase the performance bond in lieu of posting a separate payment bond, in the amount of \$1,018,500.00, representing a negotiated rate of 15% of the performance bonding requirement for PHASE II. The bond shall be reduced by this amount upon completion of all work in PHASE II.

In the event of any dispute, the Disputes Clause at FAR 52.233-01 Alt. I, incorporated into this Contract by reference shall apply. Following the use of alternative dispute resolution, either party may litigate any dispute arising under or relating to this contract before any U.S. court of competent jurisdiction. In the alternative, the parties may agree to arbitration of such a dispute or to some other form of alternative dispute resolution. Pending resolution of any such dispute by settlement or by final judgment, the parties shall proceed diligently with performance. Subcontractor's performance shall be in accordance with the Contractor's written instructions.

(d) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within ten (10) days, or by mutual assent. If the Contractor can not provide proper a performance bond in the required amount within the prescribed time frame, the Contractor shall immediately notify the Contracting Officer in writing of the delay, the reason for the delay, and the anticipated date the Contractor shall obtain the required bonds. It shall be the sole discretion of the Contracting Officer whether this delay shall be grounds for the Government to exercise the Termination for Default clause of this contract.

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(e) The Government may require additional performance bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bonds or to obtain additional bonds.

(f) The bond shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register, or may be obtained from the:

U.S. Department of Treasury  
 Financial Management Service  
 Surety Bond Branch  
 401 14th Street, NW, 2nd Floor, West Wing  
 Washington, DC 20227

## H.6 INDEMNITY FOR VIOLATION OF UK ENVIRONMENTAL, OCCUPATIONAL SAFETY LAW

This contract involves the dismantling and recycling of thirteen (13) Obsolete Vessels in the United Kingdom. Post-Service Remediation Partners, Ltd. (PRP) shall indemnify and hold the United States harmless for the violation of any and all environmental and/or occupational health and safety laws of the United Kingdom associated with the dismantling and recycling of those thirteen (13) Obsolete Vessels. If a court of competent jurisdiction holds the United States liable and assesses damages against the United States for violation of the environmental or occupational safety laws of the United Kingdom, the United States shall seek recovery from PRP for those damages, and PRP shall not contest such reasonable recovery.

## H.7 MCL.H-4 INDEMNITY AND INSURANCE (ADDITIONAL) AUGUST 2005

### (a) INDEMNITY

(1) The Contractor shall exercise reasonable care and use its best efforts to prevent accidents, injury or damage to all employees, persons and property in and about the work, and to the vessel or portion thereof upon which work is done.

(2) Except as provided elsewhere in this contract, including any guarantee clause, the MARAD assumes the risk of physical loss or damage to any part of the vessel, its machinery, equipment, stores, and other property including cargo if owned by the Government except to the extent that such loss or damage is caused by the negligence, fault, error, act or omission of the Contractor, its subcontractors, agents, or employees. The burden of proving freedom from fault shall be borne by the Contractor. Unless the loss or damage was caused by the willful misconduct of the Contractor, its executive officers, or superintendents the Contractor's liability under this Contract shall not exceed total damage to the ship or ships including total loss up to \$5,000,000 per accident or occurrence per vessel, and shall not exceed in the aggregate per accident or occurrence the sum of total damage to the ship or ships including total loss up to \$5,000,000 multiplied by the number of MARAD's vessels in the care, custody or control of the Contractor at the location and at the time of the accident or occurrence giving to the loss or damage.

(3) As to third parties, including, but not limited to, agents, employees or servants of the Contractor, or any subcontractor, the Contractor will defend, indemnify and hold harmless the Government, the vessel, its owners and charterers, from all claims, actions, suits, costs, demands and expense of all descriptions arising out of disease, illness, personal injury, death or property damage to any third party in any way related to or arising out of the performance of work under this contract except to the extent caused by the fault, error, act or omission, or negligence of the Government, its agencies or employees. The burden of proving fault of the Government, its agencies or employees shall be borne by the Contractor.

(4) As to loss and damage which are the responsibility of the Government, the Government shall be subrogated to any claim, demand, or course of action against third parties which exists in favor of the Contractor, and the Contractor shall, if required, execute a formal assignment or transfer of such claim, demand, or course of action, and shall aid in securing information, evidence, obtaining of witnesses, and cooperate with MARAD in all matters MARAD may deem necessary in defense of any claim, or suit or appeal from

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any judgment or in effecting indemnity, provided, further, that nothing contained in this paragraph shall create or give rise to any right, privilege or power in any person except the Contractor, nor shall any person (except the Contractor) be or become entitled thereby to proceed directly against the Government, its agencies or instrumentalities, or to join the Government, its agencies or instrumentalities, as a codefendant in any action against the Contractor brought to determine the Contractor's liability or for any other purpose.

**(b) TYPES OF INSURANCE AND MINIMUM COVERAGE:**

(b-1) The Contractor shall at its own expense, provide and maintain the following insurances during the entire performance of this contract.

(1) Workmen's Compensation, including Longshoremen & Harbor Worker's Act coverage - Covering all agents, servants, borrowed servants, statutory employees of Contractor for all compensation and other benefits required by applicable state and federal law or by governmental authority on account of injury, death, sickness or disease - Statutory - no minimum.

(2) Employers Liability - to cover both injury and death resulting from accident, sickness or disease - \$5 million bodily injury by accident, each accident - \$5 million bodily injury by disease each accident - \$5 million bodily injury by disease in the aggregate.

(3) Maritime Employers Liability (Jones Act) to cover both injury and death resulting from accident, sickness or disease - \$5 million for each person per occurrence and \$5 million in the aggregate. Equivalent coverage must be obtained for work done in England.

(4) Comprehensive General Liability to include coverage for (but not limited to) products and completed operations liability, property damage liability and contractual liability - \$5 million combined single per occurrence limit for bodily injury and property damage and \$5 million in the aggregate.

(5) Pollution - sudden and accidental liability - \$5 Million per occurrence.

(6) Lead and Asbestos Abatement Liability Policy with a minimum limit of \$5 Million per occurrence.

(b-2) The coverages below shall be in effect while the obsolete vessels are being towed:

(1) Tower's Liability - When the vessel is being moved it must have full form tower's liability with the United States of America being named and waived.

Minimum Coverage Requirements: \$5 million limit.

(2) Tower's Insurance

Minimum Coverage Requirements:

Contractor shall ensure that any tower of the 13 obsolete vessels shall maintain broad form collision tower's liability with a limit of \$5 million. The tower shall also insure each tug performing under this contract with Protection and Indemnity Insurance with a minimum limit of \$5 million and Hull & Machinery Insurance covering the value of each tug.

(3) Marine Protection and Indemnity (P&I), including, but not limited to, pollution liability, full collision liability, and removal of wreck. This coverage shall include insurance for damage to third parties however caused arising out of movement of the vessels.

Minimum Coverage Requirements: \$10 million per occurrence

**(c) MARAD APPROVAL**

All such insurance listed in paragraphs (b-1) and (b-2) above shall be subject to the approval of the Division of Marine Insurance, Maritime Administration, and will contain thirty (30) calendar days advance notice of cancellation or of any non-renewal which is the option of the insurer, said notice to be provided to the U.S. Department of Transportation, Division of Marine Insurance, MAR-575, Room 8117, 400 Seventh Street, S.W., Washington, DC 20590.

**(d) FORM OF CONFIRMATION**

(1) The pollution insurance may be a separate policy or part of the Comprehensive General Liability policy, but the coverage must be specifically shown on the required confirmation of insurance. Excess liability and umbrella liability policies may be used in the excess of primary policies to meet the minimum limit requirements. The United States of America shall be an additional assured in the Comprehensive General Liability Policy and Pollution Policy. All policies shall contain a clause statement that there is no

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recourse against the United States of America for payment of premium. All such insurance shall be subject to the approval of the Division of Marine Insurance and must contain thirty (30) calendar days advance notice of cancellation (without disclaimer) or of any non-renewal which is the option of the insurer, said notice to be provided to the U.S. Department of Transportation, Division of Marine Insurance, MAR-575, Room 8117, 400 Seventh Street, S.W., Washington, DC 20590.

(2) The Contractor shall have its insurance broker provide a detailed certificate of insurance, cover note or policy confirming the above required coverage. The confirmation shall name the Contractor and United States of America as assureds and confirm the types of coverage, policy forms, policy periods, deductibles (if any) and underwriters with their percentage of participation. The N.Y. Suable Clause or Service of Suit USA Clause must be confirmed for any Foreign underwriter placements. The policy amounts, terms and conditions, deductibles and underwriters shall at all times be satisfactory to the Maritime Administration.

(e) The contractor shall insert the substance of this clause in subcontracts under this contract that require work on a Government installation.

## H.8 PURCHASE OF THE UNFINISHED VESSELS

In the event this Contract should be Terminated for the Convenience of the Government before completion of the Pilot Phase identified in provision H.4 of this Contract, the Contractor shall have the right to purchase the Unfinished Ships at a price of \$3,500,000.00, by conveyance of a bank certified check made payable to the Maritime Administration.

## H.9 DISPOSITION OF ECKFORD AND ISHERWOOD

### Conveyance of Title to, and Risk of Loss of, Unfinished Ships

This Contract involves the dismantling and recycling of 13 Obsolete Vessels. As part of the consideration for the dismantling and recycling of those 13 Obsolete Vessels, the U.S. Maritime Administration (MARAD) agrees to the transfer of title and possession of the ships HENRY ECKFORD and BENJAMIN ISHERWOOD (the "Unfinished Ships") as further described below. The parties agree that the total monetary value of the Unfinished Ships is \$3,000,000.00.

Title and all risk of loss to the Unfinished Ships (the "vessels"), by Bill of Sale, shall transfer to the Contractor upon EPA approval of successful completion of the Pilot Phase, the posting of the PHASE II performance bond in accordance with Section H.5(c); AND the offset of the \$3,000,000. The Contractor agrees to take physical custody of both vessels (i.e., removal of the vessels from the JRRF) on a date agreed upon by the parties, during which time the Contractor shall obtain and maintain necessary insurance on the vessels (MARAD will provide the Contractor with a listing of the insurance coverage required). Should the Contractor fail to take possession of both vessels by the agreed upon date, the Contractor shall pay MARAD, as liquidated damages and not as a penalty, the sum of \$500 per vessel/per day of delay.

MARAD, by Bills of Sale, the form of which is provided in Section J of this Contract, shall convey title to, sell and transfer the whole of the Unfinished Ships to PRP, "AS IS, WHERE IS" with warranty of title only and free from liens and encumbrances, other than statutory and contractual restrictions running in favor of the United States Government as stated herein. Upon the execution of the Bills of Sale by MARAD, title to the Unfinished Ships shall immediately vest in PRP, and PRP shall immediately assume any and all risk of loss for the Unfinished Ships.

Guarantee on Use of Unfinished Ships - For a period of ten (10) years after the date of transfer of title to, and risk of loss of, the HENRY ECKFORD and the BENJAMIN ISHERWOOD (the Unfinished Ships) to Post-Services Remediation Partners, LLC (PRP), any subsequent use of the Unfinished Ships shall comply with Section 508 of the Merchant Marine Act of 1936, 46 USC App. § 1158. To ensure compliance with that statute, not later than the date of transfer of title and risk of loss, PRP shall provide a written guarantee or bond by a United States corporation found by the Maritime Administrator to be financially qualified to pay the stipulated amount of the guarantee or bond. The stipulated amount of the guarantee or bond shall be \$150,000 per Unfinished Ship.

### Delivery of Unfinished Ships

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1. The term "delivery" means physical delivery. The U.S. Maritime Administration (MARAD) agrees to deliver the HENRY ECKFORD and BENJAMIN ISHERWOOD (the Unfinished Ships) to Post-Services Remediation Partners, Ltd. (PRP), "AS IS, WHERE IS," afloat and free of moorings at the James River Reserve Fleet for towing. PRP agrees to accept delivery of the Unfinished Ships by the agreed upon date. Within 90 days of taking delivery of the Unfinished Ships, PRP shall, in writing, notify the Administrative Contracting Officer of the selected use of the Unfinished Ships from the five (5) options proposed by PRP. Delivery of the Unfinished Ships shall be at no cost to MARAD. MARAD reserves the right to make any changes to the Unfinished Ships after signing of this Contract and before the Unfinished Ships are delivered to PRP that are deemed necessary to protect the environment or to maintain the Unfinished Ships in a safe and seaworthy condition. PRP shall not be entitled to assert any claim against the United States Government or MARAD with respect to such changes. PRP shall promptly reimburse MARAD for any such emergency expenses. After delivery, PRP shall not be entitled to make or assert any claim against the United States Government or MARAD, on account of any agreements, representations, or warranties, expressed or implied, with respect to the condition of the Unfinished Ships. The delivery of the Unfinished Ships by MARAD and the acceptance thereof by PRP shall constitute full performance by MARAD of all obligations under this Contract with respect to the Unfinished Ships.

2. Except for spare parts and equipment that have been specifically identified to the Unfinished Ships, including file cabinets and pallets of technical manuals and drawings located in MARAD's Chesapeake, Virginia warehouse, MARAD shall not be responsible for furnishing any stores, supplies, equipment or spare parts over and above those on board the Unfinished Ships at the time of delivery. Notwithstanding the above, within fourteen (14) days after contract award MARAD will provide an inventory listing of all materials currently stored in the Chesapeake, Virginia, warehouse that belong to the two vessels, and then store them on the vessels under appropriate shelter all materials belonging to the Unfinished Ships prior to their departure from the fleet. This transfer of materials shall occur at a mutually agreeable time and at no additional cost to the Contractor. Provided, however that all rectifiers, rheostats, junction boxes, switches, fenders, mooring gear, and electric cable used in the National Defense Reserve Fleet's cathodic protection system, and demountable crosswalks, if any, on board the Unfinished Ships, shall remain the property of MARAD.

3. The Unfinished Ships provide part of the consideration for this Contract. The value of the Unfinished Ships is based upon their condition "AS IS, WHERE IS" on the date that MARAD and PRP sign this Contract. Any material changes in the Unfinished Ships resulting from normal deterioration after the parties sign this Contract and before conveyance to PRP shall be at the risk of PRP. Risk of loss of the Unfinished Ships shall be with PRP from the moment MARAD executes Bills of Sale for the Unfinished Ships. PRP agrees to hold MARAD harmless for any claims arising from defects in the Unfinished Ships or from exposure to hazardous material, including asbestos and polychlorinated biphenyls, after the conveyance of the Unfinished Ships, except for claims arising before the date of the conveyance or from use of the Unfinished Ships by MARAD after that date.

4. MARAD will, without cost or expense to PRP, but at the risk of PRP, render the Unfinished Ships free of moorings at the James River Reserve Fleet, on the agreed upon date, and make them available at such location for delivery to PRP pursuant to this Contract. The Unfinished Ships will be available for delivery to PRP on the date requested by PRP in writing, which written request shall be received by the Contracting Officer not less than five days in advance of the requested date; Provided, however, that MARAD shall not be liable for delay in making any Unfinished Ships available for delivery due to conditions beyond its control or conditions which by the exercise of reasonable diligence it was unable to prevent. MARAD shall not be obligated to deliver the Unfinished Ships on Saturdays, Sundays, or legal United States Holidays. MARAD reserves the right to determine the removal sequence of the Unfinished Ships.

5. The Unfinished Ships will be delivered to PRP "AS IS, WHERE IS" and PRP is obligated to accept such delivery on a date to be determined. Provided, that in the event PRP is delayed in accepting delivery beyond the specified time and the Contracting Officer is satisfied that such delay has been caused by conditions which, by the exercise of reasonable diligence, PRP was unable to prevent, then the Contracting Officer may grant PRP a written extension of time for accepting delivery for such period as in the judgment of the Contracting Officer shall be just, reasonable, and proper. Application for extension of time shall be filed in writing with the Contracting Officer not less than five days from the time delivery is otherwise required to be accepted, unless the Contracting Officer shall extend the time in writing for the filing of such application.

6. PRP hereby agrees that if PRP fails or refuses to accept delivery within the time specified in paragraph 5 above, or any extension thereof, PRP will pay as liquidated damages, and not as a penalty, the sum of \$500 per Unfinished Ship per day (or fraction thereof) of delay, and PRP shall be liable for the amount thereof. In the event of such default or failure of PRP in accepting delivery, the Contracting Officer shall also have the right, upon giving ten days written notice to PRP: (i) to store the Unfinished Ship(s) for the account and at the risk and expense of PRP, or (ii) to resell the Unfinished Ship(s) for the account of PRP upon such terms and conditions as the Contracting Officer may deem proper, charging against PRP in either of such cases any excess cost occasioned MARAD thereby, together with any liquidated damages accrued on account of such default or failure. The exercise by the Contracting Officer of one or more of the rights herein specified will not preclude the Contracting Officer from exercising any other rights the Contracting Officer may have against PRP.

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7. PRP shall be liable for any physical damage to property of the U.S. Government, and expenses incidental thereto, caused by and occurring during any part of the removal operations by PRP. PRP shall repair the damage, or have the damage repaired to the satisfaction of the Contracting Officer.

Disposition of Unfinished Ships

1. PRP expressly promises not to operate the HENRY ECKFORD or BENJAMIN ISHERWOOD (the Unfinished Ships) in the foreign commerce of the United States at any time within the period of ten years after the date of conveyance, in competition with any other vessel owned by a citizen or citizens of the United States and registered under the laws thereof. The terms "foreign commerce," "citizen of the United States," and "United States" are defined in Section 905 of the Merchant Marine Act of 1936 (as amended) (46 USC App. § 1244)

2. In the event PRP shall at any time within the period of ten years after the date of conveyance operate or use an Unfinished Ship in the foreign commerce of the United States, PRP shall pay to the Contracting Officer, as liquidated damages and not as a penalty, in addition to any other sum or sums payable hereunder, the sum of TEN THOUSAND UNITED STATES DOLLARS (US \$10,000) for each day an Unfinished Ship is in such operation or use. The payment of liquidated damages as herein provided, however, shall not prevent the Contracting Officer from terminating this Contract as hereinafter provided. Furthermore, payment of liquidated damages shall neither entitle PRP to operate or use an Unfinished Ship in the foreign commerce of the United States, nor shall such payment be a waiver of any of the obligations or agreements to be performed by PRP hereunder.

3. The Contracting Officer shall notify PRP in writing of the operation or use of an Unfinished Ship in the foreign commerce of the United States in violation of this provision. In the event PRP fails to cease the operation or use of an Unfinished Ship in the foreign commerce of the United States or fails to pay liquidated damages within seven days after receipt of the Contracting Officer's written notification, the Contracting Officer may terminate this Contract for default in whole or in part. The Contracting Officer shall provide notice of termination to PRP in writing, either personally or by leaving said notice at its principal office with the officer in charge thereof, or by service upon the Master, if any, aboard an Unfinished Ship, and thereupon PRP shall cease to have any interest in the Unfinished Ship or Ships. PRP agrees that such termination shall not release PRP from the payment of liquidated damages that are due and payable, as herein provided, from PRP to the Contracting Officer at the time of service of the written notice of termination.

4. In the event this Contract is terminated in whole or in part as provided for in this provision, PRP agrees that it will forthwith upon receipt of directions from the Contracting Officer surrender to the Contracting Officer the possession of the Unfinished Ship or Ships and deliver to the Contracting Officer a properly executed bill of sale conveying the Unfinished Ship or Ships to MARAD with full warranty of title and freedom from all liens and encumbrances. PRP shall secure and preserve at its expense the Unfinished Ship or Ships pending delivery to MARAD, such delivery to occur within 30 days of the PRP's receipt of the notice of termination. The United States Government shall bear no liability whatsoever to PRP for any changes, modifications, or improvements that PRP makes or may make to the Unfinished Ship or Ships before termination.

5. Sale or Assignment of Unfinished Ships - PRP shall neither sell the HENRY ECKFORD or the BENJAMIN ISHERWOOD (the Unfinished Ships) nor assign any of its rights or obligations hereunder without 30 days written notification to the Contracting Officer prior to the executed Bills of Sale for the Unfinished Ships. The Contracting Officer may request information from PRP, or following the completion of the sale of the Unfinished Ships, from any subsequent buyer/owner to ensure the Unfinished Ships will be used in compliance with U.S. export laws.

6. The Unfinished Ships shall be used in compliance with all U.S. export laws and regulations including those set forth in the Arms Export Control Act and its implementing regulations -- International Traffic in Arms Regulations and the Export Administration Act and its implementing regulations - Export Administration Regulations. In the event the Unfinished Ships are to be disposed of within ten (10) years from the date of the Contract, any such remediation and disposal shall be conducted with the approval of MARAD.

7. The provisions of the preceding paragraphs 1 through 6 shall run with the title to each of the Unfinished Ships and shall be binding on all owners thereof except the United States Government.

Successors and Assigns of Unfinished Ships

All covenants, stipulations, and agreements in this Contract pertaining to the HENRY ECKFORD and the BENJAMIN ISHERWOOD (the Unfinished Ships) are and shall be binding upon the respective heirs, administrators, executors, successors and assigns, if any, of Post-Service Remediation Partners, Inc. and the U.S. Maritime Administration.

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## H.10 CANCELLATION LIMITATION OF LIABILITY

In the event MARAD cancels the Contract following the successful completion of the tow of all thirteen (13) Obsolete Vessels to the ABLE Teesside, UK facility, MARAD will pay the Contractor the sum of \$40.00 per remaining ton for any vessel, identified in this Contract, which has not been totally dismantled and is in a condition that can be safely towed in a transoceanic movement from the Teesside, UK facility. Towing requirements and insurance are defined elsewhere in the Contract.

In the event of cancellation of this Contract, the payment stipulated above will be subtracted from any other allowable payment due the Contractor under the terms of the Contract.

## H.11 READILY REMOVABLE PCBS

The removal of the thirteen (13) obsolete vessels from the James River Reserve Fleet by the Contractor is subject to the completion by MARAD of due diligence related to liquid and readily removable PCBs on the vessels. Should MARAD discover liquid or readily removable PCBs on a vessel(s), MARAD will remove and dispose of those PCBs prior to the vessels being towed at MARAD's expense, unless, in its sole discretion, MARAD determines that removal is not cost effective. In the later case, the parties, in good faith, negotiate and agree to a replacement vessel of approximately equivalent tonnage at no additional cost to the Government. Any obsolete vessel proposed as a substitute is subject to the review of the U.S. Environmental Protection Agency pursuant to the terms of the EPA Enforcement Discretion Letter dated May 22, 2003, a copy of which is attached to this Contract as Attachment A. PRP agrees that the failure of the Government to substitute or replace an Obsolete Vessel shall not be grounds for dispute under the Disputes clause of this Contract.

## H.12 MCL.H-3 INDEMNITY AND INSURANCE

AUGUST 2005

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

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

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

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

## H.13 EPA ENFORCEMENT DISCRETION REQUIREMENTS

Both parties acknowledge that the transfer of obsolete vessels to the Contractor, and their subsequent disposal in Teesside, United Kingdom, are governed by the assumptions, definitions, restrictions and conditions set forth in the letter dated May 22, 2003, from the

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U.S. Environmental Protection Agency to Mr. James E. Caponiti, Associate Administrator for National Security, Maritime Administration. A copy of this letter is included in this contract as Attachment A and its wording is incorporated into the terms and conditions of the contract in its entirety as if it were set forth in the main body of the contract.

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## SECTION I -- CONTRACT CLAUSES

### I.1 52.252-02 CLAUSES INCORPORATED BY REFERENCE

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

<http://www.acqnet.gov/far/current/html/FARMTOC.html>

<http://www.acqnet.gov/far/current/html/FARMTOC.html>

[Insert one or more Internet addresses]

Clause	Title	Date
52.203-05	Covenant Against Contingent Fees	April 1984
52.232-33	Payment by Electronic Funds Transfer--Central Contractor Registration	October 2003
52.203-03	Gratuities	April 1984
52.202-01	Definitions	July 2004
52.232-17	Interest	June 1996
52.232-09	Limitation On Withdrawing Of Payment	April 1984
52.229-03	Federal, State And Local Taxes	April 2003
52.228-14	Irrevocable Letter of Credit	December 1999
52.225-13	Restrictions on Certain Foreign Purchases	February 2006
52.223-14	Toxic Chemical Release Reporting	August 2003
52.222-41	Service Contract Act Of 1965, As Amended	July 2005
52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	September 2006
52.222-36	Affirmative Action For Workers with Disabilities	June 1998
52.222-29	Notification Of Visa Denial	June 2003
52.222-26	Equal Opportunity	March 2007
52.222-21	Prohibition of Segregated Facilities	February 1999
52.219-09	Small Business Subcontracting Plan	September 2006
52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	September 2006
52.219-08	Utilization of Small Business Concerns	May 2004
52.216-24	Limitation Of Government Liability	April 1984
52.215-19	Notification of Ownership Changes	October 1997
52.215-08	Order of Precedence--Uniform Contract Format	October 1997
52.215-02	Audit and Records--Negotiation	June 1999
52.203-12	Limitation On Payments To Influence Certain Federal Transactions	September 2005
52.216-25	Contract Definitization (See Note 1.)	October 1997
52.232-01	Payments	April 1984
52.203-10	Price Or Fee Adjustment For Illegal Or Improper Activity	January 1997
52.203-08	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	January 1997
52.232-23	Assignment Of Claims	January 1986
52.232-25	Prompt Payment	October 2003
52.249-08	Default (Fixed-Price Supply and Service)	April 1984
52.233-01 Alt I	Disputes (Jul 2002) - Alternate I	December 1991

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52.242-13	Bankruptcy	July 1995
52.243-01 Alt I	Changes--Fixed Price (Aug 1987) - Alternate I	April 1984
52.247-64	Preference for Privately Owned U.S. - Flag Commercial Vessels	February 2006
52.246-25	Limitation Of Liability--Services	February 1997
52.203-07	Anti-Kickback Procedures	July 1995
52.245-01	Property Records	April 1984
52.244-06	Subcontracts for Commercial Items	March 2007
52.203-06	Restrictions On Subcontractor Sales To The Government	September 2006

I.2    52.253-01    COMPUTER GENERATED FORMS    JANUARY 1991

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

(d) All electronic documents submitted to MARAD shall be compatible with and readable by Microsoft Office 97 Professional and it's embedded word processing, spreadsheet, and database applications. All scheduling data files shall be compatible with and readable by MS Project 2000.

I.3    52.252-02    CLAUSES INCORPORATED BY REFERENCE    FEBRUARY 1998

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

<http://www.arnet.gov>

I.4    52.249-14    EXCUSABLE DELAYS    APRIL 1984

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless--

(1) The subcontracted supplies or services were obtainable from other sources;

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(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

I.5      52.249-03      **TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS)**      **MAY 2004**

(a) The Government may terminate performance of work under this contract, in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date. Upon receipt of the notice, if title to property is vested in the Contractor under this contract, it shall revert in the Government regardless of any other clause of this contract, except for property that the Contractor disposed of by bona fide sale or removed from the site.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government--

(i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and

(ii) the completed or partially completed plans, drawings, information, and other property that, if the contract has been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any

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transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of settlement costs, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of--

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract, if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under section 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the amount of the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Preservation and protection of property under subparagraph (b)(8) of this clause.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

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(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (e) or (l) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (e), (g), or (l) of this clause, the Government shall pay the Contractor--

(1) The amount determined by the Contracting Officer, if there is no right of appeal or if no timely appeal has been taken; or

(2) The amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against cost incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

## I.6 52.245-04 GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) JUNE 2003

(a) The Government shall deliver to the Contractor, at the time and locations stated in this contract, the Government-furnished property described in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Contractor, the Contracting Officer shall equitably adjust affected provisions of this contract in accordance with the Changes clause when--

(1) The Contractor submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(b) Title to Government-furnished property shall remain in the Government. The Contractor shall use the Government-furnished property only in connection with this contract. The Contractor shall maintain adequate property control records in accordance with

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sound industrial practice and will make such records available for Government inspection at all reasonable times, unless the clause at Federal Acquisition Regulation 52.245-1, Property Records, is included in this contract.

(c) Upon delivery of Government-furnished property to the Contractor, the Contractor assumes the risk and responsibility for its loss or damage, except--

- (1) For reasonable wear and tear;
- (2) To the extent property is consumed in performing this contract; or
- (3) As otherwise provided for by the provisions of this contract.

(d) Upon completing this contract, the Contractor shall follow the instructions of the Contracting Officer regarding the disposition of all Government-furnished property not consumed in performing this contract or previously delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as directed by the Contracting Officer.

(e) If this contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

I.7 52.243-07 NOTIFICATION OF CHANGES

APRIL 1984

(a) Definitions. "Contracting Officer," as used in this clause, does not include any representative of the Contracting Officer, (such as, but not limited to, the COTR).

"Specifically authorized representative (SAR)," as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this subparagraph and shall be issued to the designated representative before the SAR exercises such authority.

(b) Notice. The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Contracting Officer in writing, within THREE (3) calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state--

- (1) The date, nature, and circumstances of the conduct regarded as a change;
- (2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;
- (3) The identification of any documents and the substance of any oral communication involved in such conduct;
- (4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
- (5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including--
  - (i) What contract line items have been or may be affected by the alleged change;
  - (ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;

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(iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;

(iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and

(6) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.

(c) Continued performance. Following submission of the notice required by (b) above, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; provided, however, that if the Contractor regards the direction or communication as a change as described in (b) above, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing and copies furnished to the Contractor and to the Contracting Officer. The Contracting Officer shall countermand any action which exceeds the authority of the SAR.

(d) Government response. The Contracting Officer shall promptly, within FIVE (5) calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either--

(1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;

(2) Countermand any communication regarded as a change;

(3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or

(4) In the event the Contractor's notice information is inadequate to make a decision under subparagraphs (d)(1), (2), or (3) above, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.

(e) Equitable adjustments. (1) If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made--

(i) In the contract price or delivery schedule or both; and

(ii) In such other provisions of the contract as may be affected.

(2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in (b) and (c) above.

NOTE: The phrases "contract price" and "cost" wherever they appear in the clause, may be appropriately modified to apply to cost-reimbursement or incentive contracts, or to combinations thereof.

(a) The Contractor shall prepare and submit to the Contracting Officer the production progress reports specified in the contract Schedule.

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(b) During any delay in furnishing a production progress report required under this contract, the Contracting Officer may withhold from payment an amount not exceeding \$25,000 or 5 percent of the amount of this contract, whichever is less.

I.9 52.233-03 PROTEST AFTER AWARD

AUGUST 1996

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

I.10 52.232-32 PERFORMANCE-BASED PAYMENTS

FEBRUARY 2002

(a) Amount of payments and limitations on payments. Subject to such other limitations and conditions as are specified in this contract and this clause, the amount of payments and limitations on payments shall be specified in the contract's description of the basis for payment.

(b) Contractor request for performance-based payment. The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all performance-based payments in any period for which payment is being requested shall be included in a

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single request, appropriately itemized and totaled. The Contractor's request shall contain the information and certification detailed in paragraphs (l) and (m) of this clause.

(c) Approval and payment of requests. (1) The Contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contracting Officer shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contracting Officer may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.

(2) A payment under this performance-based payment clause is a contract financing payment under the Prompt Payment clause of this contract and not subject to the interest penalty provisions of the Prompt Payment Act. The designated payment office will pay approved requests on the 30th day after receipt of the request for performance-based payment. However, the designated payment office is not required to provide payment if the Contracting Officer requires substantiation as provided in paragraph (c)(1) of this clause, or inquires into the status of an event or performance criterion, or into any of the conditions listed in paragraph (e) of this clause, or into the Contractor certification. The payment period will not begin until the Contracting Officer approves the request.

(3) The approval by the Contracting Officer of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this contract.

(d) Liquidation of performance-based payments.

(1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole contract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.

(2) A payment under this performance-based payment clause is a contract financing payment under the Prompt Payment clause of this contract and not subject to the interest penalty provisions of the Prompt Payment Act. The designated payment office will pay approved requests on the 30th day after receipt of the request for performance-based payment. However, the designated payment office is not required to provide payment if the Contracting Officer requires substantiation as provided in paragraph (c)(1) of this clause, or inquires into the status of an event or performance criterion, or into any of the conditions listed in paragraph (e) of this clause, or into the Contractor certification. The payment period will not begin until the Contracting Officer approves the request.

(e) Reduction or suspension of performance-based payments. The Contracting Officer may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the contract, or take a combination of these actions after finding upon substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (h) and (i) of this clause).

(2) Performance of this contract is endangered by the Contractor's--

(i) failure to make progress; or

(ii) unsatisfactory financial condition.

(3) The Contractor is delinquent in payment of any subcontractor or supplier under this contract in the ordinary course of business.

(f) Title.

(1) Title to the property described in this paragraph (f) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract

(2) "Property," as used in this clause, includes all of the following described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices:

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(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;

(iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (f)(2)(ii) of this clause; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract (e.g., the termination or special tooling clauses) shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract, without requesting the Contracting Officer's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to the Contracting Officer.

(5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all performance-based payments, title shall vest in the Contractor for all property (or the proceeds thereof) not--

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(g) Risk of loss. Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. If any property is damaged, lost, stolen, or destroyed, the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(h) Records and controls. The Contractor shall maintain records and controls adequate for administration of this clause. The Contractor shall have no entitlement to performance-based payments during any time the Contractor's records or controls are determined by the Contracting Officer to be inadequate for administration of this clause.

(i) Reports and Government access. The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the Contracting Officer for the administration of this clause and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's records and to examine and verify the Contractor's performance of this contract for administration of this clause.

(j) Special terms regarding default. If this contract is terminated under the Default clause--

(1) the Contractor shall, on demand, repay to the Government the amount of unliquidated performance-based payments; and

(2) title shall vest in the Contractor, on full liquidation of all performance-based payments, for all property for which the Government elects not to require delivery under the Default clause of this contract. The Government shall be liable for no payment except as provided by the Default clause.

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(k) Reservation of rights.

(1) No payment or vesting of title under this clause shall--

(i) excuse the Contractor from performance of obligations under this contract; or

(ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause--

(i) shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and

(ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(1) Content of Contractor's request for performance-based payment. The Contractor's request for performance-based payment shall contain the following:

(1) The name and address of the Contractor;

(2) The date of the request for performance-based payment;

(3) The contract number and/or other identifier of the contract or order under which the request is made;

(4) Such information and documentation as is required by the contract's description of the basis for payment; and

(5) A certification by a Contractor official authorized to bind the Contractor, as specified in paragraph (m) of this clause.

(m) Content of Contractor's certification. As required in paragraph (1)(5) of this clause, the Contractor shall make the following certification in each request for performance-based payment:

I certify to the best of my knowledge and belief that--

(1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Contractor, in accordance with the contract and the instructions of the Contracting Officer;

(2) (Except as reported in writing on \_\_\_\_\_), all payments to subcontractors and suppliers under this contract have been paid, or will be paid, currently, when due in the ordinary course of business;

(3) There are no encumbrances (except as reported in writing on \_\_\_\_\_) against the property acquired or produced for, and allocated or properly chargeable to, the contract which would affect or impair the Government's title;

(4) There has been no materially adverse change in the financial condition of the Contractor since the submission by the Contractor to the Government of the most recent written information dated \_\_\_\_\_; and

(5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.

I.11 52.232-11 EXTRAS

APRIL 1984

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefore have been authorized in writing by the Contracting Officer.

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I.12 52.229-06 TAXES--FOREIGN FIXED-PRICE CONTRACTS

JUNE 2003

(a) To the extent that this contract provides for furnishing supplies or performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

(b) "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"Country concerned," as used in this clause, means any country, other than the United States, its possessions, and Puerto Rico, in which expenditures under this contract are made.

"Tax" and "taxes," as used in this clause, include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

"All applicable taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

"After-imposed tax," as used in this clause, means any new or increased tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, other than excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

"After-relieved tax," as used in this clause, means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"Excepted tax," as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor's possession of, interest in, or use of property, title to which is in the U.S. Government.

(c) Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(d) The contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(e) The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such interest was earned after the Contractor was paid by the Government of the United States for such taxes. The Government of the United States shall be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(f) The contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the contract and that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(g) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

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(h) If the Contractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the contract price or was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs.

(i) The Contractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Contractor, any subcontractor, or the transactions or property covered by this contract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Contractor shall promptly notify the Contracting Officer of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

I.13 52.228-02 ADDITIONAL BOND SECURITY OCTOBER 1997

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if--

- (a) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the Government.
- (b) Any surety fails to furnish reports on its financial condition as required by the Government;
- (c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer; or
- (d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting officer has the right to immediately draw on the ILC.

I.14 52.222-01 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES FEBRUARY 1997

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

I.15 1252.223-70 REMOVAL OR DISPOSAL OF HAZARDOUS SUBSTANCES-APPLICABLE LICENSES AND PERMITS DECEMBER 1997

The Contractor certifies that it has \_\_\_ does not have \_\_\_ all licenses and permits required by Federal, state, and local laws, and the laws of the **United Kingdom** to perform hazardous material and hazardous waste removal or disposal services. If the Contractor does not currently possess these documents, it must obtain all requisite licenses and permits within 15 days after date of award. The Contractor shall provide evidence of said documents to the Contracting Officer or designated Government representative prior to commencement of work under the contract.

I.16 1252.217-76 LIABILITY AND INSURANCE OCTOBER 1994

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Indemnification. The Contractor indemnifies the Government and the vessel and its owners against all claims, demands, or causes of action to which the Government, the vessel or its owner(s) might be subject as a result of damage or injury (including death) to the property or person of anyone other than the Government or its employees, or the vessel or its owner, arising in whole or in part from the negligence or other wrongful act of the Contractor, or its agents or employees, or any subcontractor, or its agents or employees.

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

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

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

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

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

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

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

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

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

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

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

(3) The Contractor shall cooperate with the Government and, upon request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits. The Government shall reimburse the Contractor for expenses incurred in this effort, other than the cost of maintaining the Contractor's usual organization.

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

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

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

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

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

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

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

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

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

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(a) The personnel and/or facilities as specified below are considered essential to the work being performed hereunder and may, with the consent of the contracting parties, be changed from time to time during the course of the contract by adding or deleting personnel and/or facilities, as appropriate.

(b) Prior to removing, replacing, or diverting any of the specified individuals or facilities, the Contractor shall notify, in writing, and receive consent from, the Contracting Officer reasonably in advance of the action and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract.

(c) No diversion shall be made by the Contractor without the written consent of the Contracting Officer. The Contracting Officer may ratify, in writing, the change and such ratification shall constitute the consent of the Contracting Officer required by this clause.

The Key Personnel and/or Facilities under this Contract:

1. Able UK Ltd Teesside Environmental Reclamation and Recycling Center (TERRC)  
facility in Hartlepool, Teesside, United Kingdom
2. Able UK Ltd Seaton Meadows Landfill, Hartlepool, Teesside, United Kingdom
3. Shanks Liquid Treatment Facility, or a facility of equal competence, Hartlepool, Teesside, United Kingdom.

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## SECTION J -- LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

### J.1 ATTACHMENT A

DTMA1C03010  
ATTACHMENT 1  
LETTER DATED MAY 22, 2003 FROM THE U.S. EPA TO JAMES E. CAPONITI

Mr. James E. Caponiti  
Associate Administrator for National Security  
Maritime Administration  
400 Seventh Street, S.W.  
Washington, DC 20590

Re: Request for Enforcement Discretion for Export of Ships to Teesside, England

Dear Mr. Caponiti:

I am replying to your letter of May 7, 2003, requesting that the Environmental Protection Agency (EPA) exercise enforcement discretion to allow the Maritime Administration (MARAD) to export thirteen vessels in the James River Reserve Fleet to the AbleUK facility in Teesside, England for dismantling and recycling. As Assistant Administrator for the Office of Enforcement and Compliance Assurance, I have been delegated the authority to make this determination on behalf of EPA. Based on the findings and subject to the conditions below, I hereby grant MARAD's request.

#### PURPOSE

1. This letter supersedes the letter of enforcement discretion issued from the EPA to MARAD on November 30, 1995, and the Agreement Between the Maritime Administration and the United States Environmental Protection Agency titled EXPORT OF NATIONAL DEFENSE RESERVE FLEET (NDRF) VESSELS THAT MAY CONTAIN POLYCHLORINATED BIPHENYLS FOR SCRAPPING OUTSIDE THE UNITED STATES, November 7, 1997.
2. This letter is intended to specify the manner and conditions under which MARAD, its agents; and the contractors for disposal of non-retention NDRF vessels (hereinafter NDRF vessels) may export NDRF vessels for scrapping under the Pilot Program directed by the Defense Authorization Act for Fiscal Year 2003. This Agreement does not eliminate legal requirements which may be applicable to the actions covered by the letter.

#### COVERED MATTERS

3. This letter establishes the conditions under which MARAD, its agents, and contractors for disposal of NDRF vessels may export vessels that possibly contain polychlorinated biphenyls (PCBs) for scrapping. Export of these vessels is intended to be a Pilot Program pursuant to Section 7 (c)(1)(A) of the National Defense Authorization Act for Fiscal Year 2003, which directs the Secretary of Transportation, the Secretary of State, and the Administrator of the Environmental Protection Agency to jointly carry out one or more pilot programs through the Maritime Administration to explore the feasibility and advisability of various alternatives for exporting non-retention vessels in the National Defense Reserve Fleet for purposes of the dismantlement and recycling of such vessels.
4. This letter applies to the transfer and export of NDRF vessels that may contain PCBs, including in the following uses: (1) shipboard PCB-impregnated felt material, applications of which include, but are not limited to, gaskets in the joints of ventilation ducts, faying or insulating material between dissimilar metals, and machinery mount insulation; and (2) other PCB uses, including uses as plasticizers or flame retardants in insulation, dried paints, adhesives, rubber mounts, non-metallic components of electrical wire cable systems, PCBs used as dielectric fluid in transformers, capacitors, and other electrical equipment, PCBs used as hydraulic fluid and heat transfer fluids, and other PCB uses discovered during the term of this letter. If MARAD discovers any additional significant use of PCBs, defined as more than 3 pounds of PCB on any NDRF vessel, it shall inform the Director, Federal Facilities

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Enforcement Office (2261 A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, D.C. 20460, who will determine, in consultation with MARAD, the extent to which the terms of the letter cover the newly discovered use.

**DEFINITIONS**

5. The following definitions shall apply to this letter:

- a. "NDRF vessels" means any non-retention vessel exported for scrapping that is (1) owned by MARAD or (2) purchased from MARAD, its agents, or subsequent transferees after the date this Agreement becomes effective.
- b. "Export for scrapping" means export to a facility approved by EPA for the purpose of the complete demolition of a vessel outside the United States to recover metal and other valuable materials after the date this Agreement becomes effective.
- c. "Purchasers, purchase, and purchased" cover participants in any transaction in which a NDRF vessel is transferred.
- d. "Readily removable" means the PCBs or PCB item can be removed in a cost effective and efficient fashion without significant risks to human health and the environment, and without compromising ship integrity or seaworthiness. Objects are not readily removable if the objects must be removed by heat, chemical stripping, scraping, abrasive blasting, or similar process.
- e. "Operated in a seaworthy manner" means the operation of the vessel with water tight integrity, stability, buoyancy, and such propulsion, navigation, water, electrical, air conditioning, firefighting, habitation, and hydraulic systems as are required to deliver the vessel to the destination of overseas scrapping.

**STATEMENT OF FACTS**

6. MARAD has provided the following information.

- a. MARAD is responsible for the operation and maintenance of the NDRF, including non-retention vessels. The National Defense Authorization Act of 2001, P.L. 106-398, Oct. 30, 2000, requires MARAD to dispose of all vessels in the NDRF that are not assigned to the Ready Reserve Force or otherwise designated for a specific purpose by September 30, 2006. In addition, MARAD is the disposal agent for the United States for all vessels over 1500 gross tons that are capable of conversion to merchant use. Section 510(1) of the Merchant Marine Act, 1936, 46 APP. U.S.C. §1160(1), specifically authorizes MARAD to export vessels for scrap.
- b. NDRF vessels, like the vessels of other vessel-exporting nations, may contain polychlorinated biphenyls (PCBs) in some solid materials, added as plasticizers or fire retardants during the manufacturing process. The types of materials in which such PCBs may be found include, but are not limited to, paints, rubber products, felt gaskets and machinery mounts, adhesives, and electrical cable insulation. The United States no longer allows the manufacture of products to which PCBs have been intentionally added.
- c. NDRF vessels may also contain PCBs in transformers, high and low voltage capacitors, and hydraulic fluids and heat transfer fluids.
- d. Many items that contain PCBs are in locations accessible only by dismantling the vessel's structure. Often, such items are integral to the continuing function of the vessel as a vessel or to maintaining the watertight and structural integrity of the vessel.

7. Under section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. Section 2605(e), and its implementing regulations at 40 CFR 761.97, no person may process or distribute in commerce any PCB, or any PCB item at levels greater than or equal to 50 ppm, for export from the United States for disposal. Most of the obsolete NDRF vessels contain PCBs in concentrations above 50 ppm, therefore their export for scrapping may constitute a violation of TSCA.

**AbleUK TEESIDE, ENGLAND**

8. EPA and MARAD met with representatives from AbleUK in Teesside, England February 23-26, 2003. The meetings consisted of presentations by AbleUK and tours of AbleUK, Teesside Environmental Reclamation and Recycling Facility (TERRC), Seaton Meadows Landfill and Shanks Liquid Treatment Facility. The following findings support EPA's determination that AbleUK will be capable of meeting the requisite standard of Environmentally Sound Management:

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a. AbleUK has experience in deconstruction and demolition of large off-shore structures such as oil rigs and floating storage platforms, power plants and the recycling, resale and reuse of materials. The facility has a 24 acre basin that can be sealed and drained similar to a dry dock.

b. TERRC is located at the mouth of the River Tees. The area is comprised of heavy industry, including powerplants, petrochemical and chemical and local trash recycling and transfer stations. The nearest residential area is approximately 1-2 km away. TERRC is permitted to manage and store hazardous materials by the UK's Environment Agency.

c. Seaton Meadows Landfill is owned by AbleUK and is permitted by the Environment Agency to receive and dispose of domestic and regulated wastes, including PCBs of the types and concentrations similar to those found on MARAD vessels.

d. AbleUK will contract with Shanks Liquid Treatment Facility to dispose of any liquid wastes they cannot handle themselves with the exception of liquid PCBs.

e. Management of PCBs in the UK is very similar to that in the United States. The UK has two incinerators permitted to take both liquid and solid PCB wastes. There should be no liquid PCBs onboard the MARAD vessels, but should any be discovered, liquid PCBs will be incinerated. Solid materials suspected of containing PCBs will be landfilled at Seaton Meadows. Cabling will be sent to a reclamation facility which will strip out the copper and return the debris to AbleUK for landfilling.

f. The majority of metal cutting will be done using cold cutting techniques, but if hot cutting of metal is necessary, AbleUK will remove a four inch strip of any paints/coatings containing PCBs using blasting prior to cutting.

g. All employees are trained either by AbleUK or by a contractor and issued appropriate protective equipment, including respiratory protection and tools for their assigned jobs.

**CONDITIONS**

9. MARAD, its agents and subsequent purchasers of any vessels identified for this Pilot Program shall not export any vessels that may contain PCBs for scrapping unless such actions are carried out in accordance with the requirements of this Agreement.

10. Exports of Vessels for Scrapping. Vessels that may contain PCBs may be exported for scrapping if all of the following conditions are met:

a. MARAD may export only those vessels listed in the Appendix, unless MARAD provides notice in advance of a need to substitute a vessel or vessels after completion of a towing survey.

b. Prior to the proposed export, the following items shall be removed and stored and/or disposed of in accordance with the requirements of the PCB Regulations, 40 CFR Part 761 and EPA shall be notified in writing of such removal:

(1) All transformers and large high and low voltage capacitors that contain dielectric fluids with PCBs <sup>3</sup>50 ppm and all hydraulic and heat transfer fluids containing PCBs <sup>3</sup>50 ppm.

(2) Solid items containing PCBs <sup>3</sup>50 ppm, when such solid items are readily removable and their removal does not jeopardize the structural integrity of the ship or the ability of the ship to be operated in a seaworthy manner for delivery to the location where it will be scrapped.

c. Prior to export, MARAD shall provide to EPA the name and location of the towing company and certification of towability and seaworthiness from the Coast Guard.

d. EPA inspectors shall be allowed access to all parts of vessels intended for scrapping under this Agreement.

e. Notice of export of these ships shall be provided to the UK Environment Agency in accordance with the Organization of Economic Cooperation and Development (OECD) agreement on the transboundary movement of wastes for recovery. Consent of the UK Environment Agency to the import of the ships must be provided to EPA.

f. Prior to export, MARAD, its agent or the purchaser must provide written notice to the United Kingdom that a specific vessel or vessels are proposed to be exported to the United Kingdom for scrapping, including specific information about the hazardous materials that may be found on the vessel(s) being exported.

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g. PCBs shall be disposed of in the appropriate facilities as described in paragraph 8.e above.

h. Four vessels will be dismantled and recycled in the pilot phase of this program. Provided the hazardous materials remediation and dismantling processes conducted on those vessels are satisfactory to MARAD and EPA, the remaining vessels may be dismantled and recycled.

11. All contracts between MARAD or its agents and any purchaser of a NDRF vessel under this Pilot Program shall include a copy of this Agreement and a certification by the purchaser that (1) the purchaser has read the Agreement and agrees not to export any vessel for scrapping except in accordance with the Agreement's requirements; (2) the purchaser understands that failure to comply with the Agreement's requirements could result in EPA taking an enforcement action against the purchaser for violating the regulatory ban on the export of PCBs (at concentrations of 50 ppm or greater) for disposal; and (3) that the purchaser understands that he may not resell the vessel except to carry out the purposes of this Agreement (that is, for scrapping at AbleUK, Teesside, England). All contracts between MARAD or its agent and the purchaser of a vessel for export for scrapping shall require the purchaser to include this information in any subsequent sales contract for that vessel.

**OVERSIGHT AND TECHNICAL ASSISTANCE**

12. It is the expectation of the parties, pursuant to the National Defense Authorization Act of Fiscal Year 2003, that the overseas dismantling of obsolete vessels in the NDRF will be accomplished in a manner that appropriately addresses concerns regarding worker health and safety and the environment.

a. Periodically during this Pilot Program for scrapping/recycling AbleUK will be monitored by MARAD or a contractor hired by MARAD or its agent to be agreed on by EPA.

b. Prior to export, MARAD agrees to notify EPA regarding the entity which will be conducting oversight and the frequency of oversight.

c. EPA shall have the right, during the course of any pilot project, to visit the site for purposes of oversight of the pilot scrapping project.

**BREACH**

13. If the requirements of this letter are breached by MARAD or any subsequent transferee, EPA may determine that the letter is void as to that party, and EPA reserves the right to bring an enforcement action for violation of the TSCA export ban.

**TERMINATION**

14. EPA may terminate this letter at any time, for cause, in writing from the EPA signatory or his successor, to the MARAD signatory or his successor.

If you have any questions regarding this letter, please contact me at 564-2440, or your staff may contact Elliott Gilberg, Associate Director, Federal Facilities Enforcement Office, at 564-2510.

Sincerely,

John Peter Suarez:

Assistant Administrator  
APPENDIX

NDRF Vessels to be Exported to AbleUK Facility  
in Teesside, England for Dismantling and Recycling

- MORMACWAVE
- SANTA CRUZ
- MARINE FIDDLER

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- DONNER
- AMERICAN BANKER
- MORMACMOON
- PROTECTOR
- RIGEL
- COMPASS ISLAND
- CANISTEO
- CALOOSAHATCHEE
- SANTA ISABEL
- AMERICAN RANGER

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## SECTION K -- REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS

### K.1 PURCHASER'S CERTIFICATION

1. Attachment A to this contract (the "Agreement") is the May 22, 2003 Enforcement Discretion letter from the U.S. Environmental Protection Agency (EPA) to Mr. James E. Caponiti, the Associate Administrator for National Security of the Maritime Administration.
2. By signing this contract, the Contractor (the "purchaser") certifies the following:
  - a. The purchaser has read the Agreement and agrees not to export any vessel for scrapping except in accordance with the Agreement's requirements;
  - b. The purchaser understands that failure to comply with the Agreement's requirements could result in EPA taking an enforcement action against the purchaser for violating the regulatory ban on the export of PCBs (at concentrations of 50 ppm or greater) for disposal; and,
  - c. The purchaser understands that they may not resell the vessel except to carry out the purposes of this Agreement (that is, for scrapping at AbleUK, Teesside, England).
3. Any subsequent sales contract by the purchaser for a vessel included in this contract for scrapping shall include this information.

SAMPLE

BILL OF SALE

TO ALL TO WHOM THESE PRESENTS COME, GREETINGS:

KNOW YE, THAT THE UNITED STATES OF AMERICA REPRESENTED BY THE SECRETARY OF TRANSPORTATION ACTING BY AND THROUGH THE MARITIME ADMINISTRATOR (THE "SELLER"), THE SOLE OWNER OF THE VESSEL (THE "VESSEL") HERE IN BELOW MORE PARTICULARLY IDENTIFIED, AS FOLLOWS:

NAME:

TYPE:

LOCATION:

FOR AND IN CONSIDERATION OF THE SUM OF, LAWFUL MONEY OF THE UNITED STATES OF AMERICA, TO IT IN HAND PAID BEFORE DELIVERY BY TERAOKA COMPANY ("THE BUYER"), AND OTHER GOOD AND VALUABLE ONSIDERATIONS, THE RECEIPT OF BOTH OF WHICH IT DOES HEREBY ACKNOWLEDGE AND IS THEREWITH FULLY SATISFIED, CONTENTED AND PAID, HAS BARGAINED AND SOLD, ANY BY THESE PRESENTS, DOES BARGAIN AND SELL UNTO THE BUYER, ITS SUCCESSORS AND ASSIGNS, ALL OF THE RIGHTS, TITLE AND INTEREST OF THE SELLER IN AND TO THE VESSEL, ALL ENGINES, BOILERS, MASTS, SAILS, BOATS, CABLES, TACKLE, FURINITURE AND ALL OTHER NECESSARIES THERE TO APPERTAINING AND ON BOARD THE VESSEL.

TO HAVE AND TO HOLD THE VESSEL AND APPURTENANCES THEREUNTO BELONGING UNTO IT, THE SAID BUYER, ITS SUCCESSORS AND ASSIGNS

FOREVER TO THE SOLE AND ONLY PROPER USE, BENEFIT, AND BEHALF OF THE SAID BUYER AND ITS SUCCESSORS AND ASSIGNS, AND THE SELLER HEREBY EXPRESSLY SELLS THE VESSEL “AS IS, WHERE IS” AFLOAT AND MAKES NO WARRANTY, GUARANTY, OR REPRESENTATION AS TO SEAWORTHINESS, DESCRIPTION, CAPACITY, CONDITIONS, TONNAGE, OR OTHERWISE CONCERNING SAID VESSEL AND APPURTENANCES, EXCEPT THAT SELLER HAS PROMISED, COVENANTED AND AGREED, AND BY THESE PRESENTS DOES HEREBY PROMISE, COVENANT AND AGREE FOR ITSELF AND ASSIGNS, TO AND WITH THE SAID BUYER, ITS SUCCESSORS AND ASSIGNS, TO WARRANT AND DEFEND THE TITLE IN AND TO THE SAID VESSEL AND APPURTENANCES AGAINST ALL AND EVERY PERSON OR PERSONS WHOMSOEVER, AND ALSO WARRANTS THAT THE SAID VESSEL AND APPURTENANCES ARE FREE AND CLEAR OF LIENS AND ENCUMBRANCES.

TITLE TO THE AFORESAID VESSEL IS BEING TRANSFERRED TO THE BUYER BY THIS BILL OF SALE PURSUANT TO AND SUBJECT TO THE TERMS AND PROVISIONS OF THE PURCHASE CONTRACT BETWEEN THE UNITED STATES OF AMERICA, AND THE BUYER DATED AS OF THIS DATE, CONTRACT NO. \_\_\_\_\_, (THE “PURCHASE CONTRACT”), WHICH PROVIDES, AMONG OTHER THINGS, THAT THE VESSEL SHALL ONLY BE USED IN COMMERCIAL PURSUITS AS PER THE BUSINESS PLAN, BUT SHALL NOT BE USED FOR THE CARRIAGE OF CARGOES RESERVED TO THE UNITED STATES UNDER SECTION 46 APP. U.S.C. 55317 AND 46 APP. U.S.C. 55314 OF THE MERCHANT MARINE ACT, 1936, AS AMENDED.

IN TESTIMONY WHEREOF, THE UNITED STATES OF AMERICA,

REPRESENTED AS AFORESAID, HAS CAUSED THIS BILL OF SALE TO BE DULY SIGNED AND SEALED ON ITS BEHALF BY ITS PROPER OFFICER, THEREUNTO DULY AUTHORIZES) THIS \_\_\_\_\_DAY OF \_\_\_\_\_, 200.

UNITED STATES OF AMERICA  
SECRETARY OF TRANSPORTATION  
MARITIME ADMINISTRATION

By \_\_\_\_\_  
Director, Office of Ship Operations

ATTEST:

By: \_\_\_\_\_  
Secretary

(Seal)



U.S. Department  
of Transportation  
**MARITIME  
ADMINISTRATION**

1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

## AUTHORIZATION TO SELL

This is to certify that Able UK, LLC, who is responsible for the dismantling of the U.S. Government vessels, ex-USS CANISTEO, ex-USS CALOOSAHATICHEE, ex-USS COMPASS ISLAND, and ex-USS CANOPUS, under contract DTMA1C03010, has full and complete authority to sell scrap materials such as parts, steel and equipment resulting from the dismantling of said vessels and retain, for its own account, any proceeds resulting therefrom.

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Contracting Officer  
U.S. Maritime Administration

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Chief Executive  
Able UK, Ltd.

Confirmation of an Agreement in Principle Negotiated between  
the Maritime Administration, Post-Service Remediation Partners and Able UK

1. Under Contract DTMA1C03010 with DOT/Maritime Administration ("MARAD"), the Contractor, Post-Service Remediation Partners ("PRP"), is required in Phase I to dismantle and dispose of four (4) obsolete vessels (currently in the United Kingdom) for the sum of \$6,915,861. In Phase II of the Contract, PRP is required to dispose of 9 additional obsolete vessels for \$10,930,477.40. After completion of Phase I, PRP was to receive the ECKFORD and ISHERWOOD ("Unfinished Vessels") and credit MARAD \$3 million on the work to be performed in Phase II of the Contract. Modification 5 modified Phase II of the Contract to require disposal of a tonnage of 75.565 in lieu of the 9 vessels identified in the original Contract.
2. In lieu of terminating the entire Contract for default, PRP's subContractor, Able UK, Ltd ("Able UK"), under the conditions set forth below, has agreed to be substituted for PRP and become the Contractor responsible for performance of Phase I and be in privity of Contract with MARAD. The total contract price, without reference to the \$3,000,000 credit for the two Unfinished Vessels, is reduced from \$17,846,338.40 for disposal of thirteen (13) vessels to \$10,147,550 and title to the two Unfinished Vessels for disposal of four (4) vessels ("Phase I"), subject to the conditions set forth herein, in full and complete settlement of any and all claims or damages that either PRP and/or Able UK may have under the Contract as of the date of this Agreement.
3. Concurrently with the novation of the Contract to replace PRP with Able UK, Phase II of PRP's Contract will be terminated for default under the following terms:
  - a. PRP and Able UK agree to accept the partial termination for default of Phase II and not to appeal the default or seek a termination for convenience or seek any monies or make claims for said termination of Phase II subject to the terms and conditions set forth below;
  - b. Able UK agrees to be substituted for PRP as the Contractor for the un-terminated portion of the Contract, Phase I;
  - c. MARAD agrees to forbear termination of Phase I and not to seek any monies or make claims against PRP or Able UK, subject to the terms and conditions set forth below;
  - d. MARAD agrees not to seek from either Able UK or PRP costs of re-procurement for the terminated Phase II or require Able UK to return any payments made under the Contract prior to the execution of the modification implementing this Agreement;
  - e. MARAD and PRP/Able UK agree that they shall have no liability to each other for the termination except as specifically provided herein; and,
  - f. MARAD agrees that in future responsibility determinations, MARAD will not consider PRP's default termination different from a termination due to causes beyond the control and without the fault or negligence of the Contractor. Further, if PRP seeks a Government Contract and is required under FAR 52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT AND OTHER RESPONSIBILITY MATTERS (Dec 2001) to disclose that it was terminated for default under Contract DTMA1C03010, MARAD agrees that PRP may inform the agency that MARAD considers the matter as above and MARAD agrees that Able UK may supply a copy of this Agreement to such agency.
4. Phase I Completion. The period of performance is extended from February 24, 2007, to August 31, 2008, as further conditioned by the following terms.
5. Alternate Facility. If Able UK intends to utilize a facility other than TERRC, Able UK shall notify MARAD of a prospective facility and provide to MARAD all information relative to the prospective facility and its control and operation, defined as all operating licenses and Technical Compliance Plan documentation described on the MARAD online Virtual Office of

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Acquisition (VOA). All information specified shall be provided a minimum of 8 weeks prior to the proposed commencement of work in such proposed facility. MARAD shall make all reasonable efforts to secure approval of said facility as an acceptable substitute facility. After issuance of the required licenses and permissions for TERRC or approval of alternative facility, MARAD will issue a Notice to Proceed within 7 days.

6. Performance Bond and Notice to Proceed. Within 15 business days of the execution of the Contract modification pursuant to this Agreement, Able UK shall submit to MARAD a performance bond acceptable to MARAD along with proof of all required insurances. The performance bond shall be in the amount of \$3,000,000; the bonding requirement shall be reduced by \$525,000 each time Able UK issues a Certificate of Remediation as defined by Attachment 1 and \$225,000 each time Able UK issues a Certificate of Destruction for each of the four Phase I vessels. This bond or its remainder will remain in force until the later date of the presentation of the fourth and final Certificate of Destruction of the Phase I vessels or the completion or redelivery of the Phase I vessels to the United States at which time therefore Able UK's duty to keep the bond in force for the security and benefit of MARAD will expire. MARAD may make demand upon the bond for Defaults hereunder including but not limited to Able UK's refusal or failure to return the vessels to the United States.
7. Payment Schedule. MARAD's total liability and the payment schedule is specified below:
  - a. MARAD's payment liability for Phase I totals \$10,147,550.
  - b. Upon execution of the modification implementing this Agreement and upon receipt of a proper invoice, MARAD will pay Able UK \$1,400,000 as a Contract financing payment against the remaining balance of Phase I reducing MARAD's payment liability to \$8,747,550. In no event shall MARAD be entitled to any reimbursement or credit for the \$1,400,000 sum.
  - c. Payments for the Phase I Vessels.
    - i. Upon completion of remediation of each Phase I vessel and receipt of a certificate of remediation by MARAD. Able UK shall invoice MARAD and MARAD shall pay the sum of \$1,530,821 per vessel.
    - ii. Upon completion of dismantlement of each Phase I vessel and receipt of a Certificate of Destruction by MARAD. Able UK shall invoice MARAD and MARAD shall pay the sum of \$656,066 per vessel.
  - d. Additional Contract Financing. Able UK may further request (at its option) up to an additional \$4,000,000 Contract financing payment following Able UK's receipt of licenses necessary to begin and complete work or upon MARAD approval of a substitute facility but prior to the commencement of substantive work; however, MARAD will only make payment upon submission of an additional bond approved by MARAD equal to \$4,000,000. The payment bond will be reduced by 17.5% each time Able UK issues a Certificate of Remediation and 7.5% each time Able UK presents a Certificate of Destruction. If Able elects to take the Contract financing payment, the specified payments in c(i) and c(ii) will be replaced as follows:
    - i. The sum paid for the presentation of the certificate of remediation shall be reduced to \$830,821; and
    - ii. The sum paid for the presentation of the Certificate of Destruction will be reduced to \$356,066.
  - e. Unfinished Vessels. Able UK will become entitled to title of one of the Unfinished Vessels (of MARAD's choosing at that time) upon presentation of the second Certificate of Destruction of the Phase I vessels, and to the remaining Unfinished Vessel upon presentation of the fourth and final Certificate of Destruction of the Phase I vessels, noting that such presentation of Certification must occur on or before September 30, 2010, and that if not so presented, MARAD's obligation to transfer title to any Unfinished Vessel will be extinguished on October 1, 2010. Noting that entitlement to

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transfer may arise earlier than transfer of title, MARAD will transfer title to one or both Unfinished Vessels at such time as Able UK takes possession of them for permanent removal from MARAD possession. The applicable restrictions in 46 U.S.C. 57102, 57103. (previously 46 U.S.C. 1158) will remain in effect as contemplated under the original agreement.

8. Performance timing. The following establishes the timing for dismantlement of the Phase I Vessels as well as details the ramifications for failure to meet the established dates.
  - a. Able UK must commence work by July 15, 2008.
    - i. Able UK must 1. secure all necessary licenses and permits or acquire an alternative facility; and 2. begin active removal of hazardous materials on at least one of the Phase I Vessels by July 15, 2008:
    - ii. If Able fails to meet the July 15, 2008, deadline, the parties agree that the Contract will be terminated for default. subject to the following terms:
      1. Able UK agrees to: (i) accept the termination for default of the Contract: (ii) not appeal the default or seek a termination for convenience or seek any further monies, claims or damages from the U.S. Government: and (iv) at MARAD's option, to deliver the four Phase I vessels to a location of MARAD's choice on the East Coast of the United States from Jacksonville, Florida to Philadelphia, Pennsylvania by September 15, 2008, at Able UK's expense, including costs associated with Drydocking, Repairs, Insurance and Towage.
      2. MARAD agrees to, without prejudice to any obligation secured by bonds herein: (i) not seek costs of procurement for the terminated Contract (Phase I). (ii) not require Able UK to return any payments made under the Contract prior to July 15, 2008: and (iii) not seek any other damages:
9. The following provisions pertain to work begun but not completed by July 15, 2008:
  - a. As to any Phase I vessel on which remediation has not begun or has begun, but such vessel is capable of certification for transoceanic towing, Able UK agrees, at MARAD's option, to deliver the vessel or vessels to a location of MARAD's choice on the East Coast of the United States from Jacksonville, Florida to Philadelphia, Pennsylvania by September 15, 2008, at Able UK's expense, including costs associated with Drydocking, Repairs, Insurance and Towage.
  - b. Notwithstanding paragraph 9(a), if Able UK has received all necessary licenses and permits by July 15, 2008, but has not begun remediation and/or destruction of one vessel, Able UK may elect to retain the vessels to perform the dismantlement. Under such circumstance, Able UK will not be entitled to monetary payment for any work completed and invoiced after August 31, 2008, per paragraph 10: the Unfinished Vessels will remain available as compensation as otherwise specified herein and Able UK will maintain all required bonds as otherwise specified herein.
10. The following provisions pertain to work begun but not completed by August 31, 2008:
  - a. As to any vessels on which remediation or dismantlement has begun but are not capable of certification for transoceanic towing but also have not attained fifty (50) per cent of dismantlement, Able UK shall be responsible for the completion of remediation and dismantlement in the United Kingdom and presentation of the Certificates of Destruction therefor without further cash payment by MARAD.
  - b. As to any vessels on which remediation or dismantlement has begun, and fifty (50) per cent of dismantlement has been completed by August 31, 2008, MARAD will pay the full price for performance to Able UK as to such vessels in exchange for a performance bond of value proportionately equivalent to prepaid but unfinished work.
  - c. All invoicing for cash payment must be completed by August 31, 2008.

d. After August 31, 2008, the parties shall only be liable to each other as specified herein, all other rights, remedies, or recourse being explicitly waived.

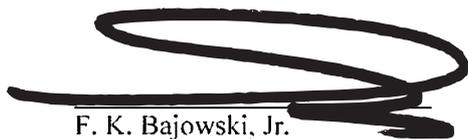
e. Established as an outer limit on the time for certification of destruction of all four Phase I vessels, MARAD's obligation to transfer title to the Unfinished Vessels shall be extinguished pertaining to any and all Certificates of Destruction of Phase I vessels presented after September 30, 2010.

f. On October 1, 2010, as to any Phase I vessel on which remediation has not begun or has begun, but such vessel is capable of certification for transoceanic towing, Able UK agrees, at MARAD's option, to deliver the vessel or vessels to a location of MARAD's choice on the East Coast of the United States from Jacksonville, Florida to Philadelphia, Pennsylvania by December 1, 2010, at Able UK's expense, including costs associated with Drydocking, Repairs, Insurance and Towage.

11. Except as provided in this Agreement, by this Agreement Able UK and PRP do remise, release, and discharge the U.S. Government, its officers, agents, and employees, of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said Contract.

12. Except as provided in this Agreement, by this Agreement MARAD does remise, release, and discharge Able UK and PRP, its officers, agents, and employees, of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said Contract.

13. The changes to the Contract effectuated by this document are limited to those specifically contained herein. Absent specific modification herein, all other provisions in the underlying Contract and all Modifications agreed to as of this date remain in effect.



F. K. Bajowski, Jr.  
Contracting Officer  
Maritime Administration

22 Mar 07

(date)



Peter M. Stephenson  
Chief Executive  
Able UK Ltd

20-03-07

(date)



Peter M. Stephenson  
Executive Officer  
Post-Service Remediation Partners

20-03-07

(date)

## Novation Agreement

Post-Service Remediation Partners LLC ("PRP" or "Transferor"), a corporation duly organized and existing under the laws of Wyoming with its principal office in Boston, Able UK Ltd ("ABLE" or "Transferee"), a corporation duly organized and existing under the laws of United Kingdom with its principal office in Teesside; and the Maritime Administration, on behalf of the United States of America ("Government") enter into this Agreement contemporaneously with the execution of Modification 0017 to Contract DTMA1C03010, and effective upon the date of execution of Modification 17. May \_\_\_, 2007.

(a) The parties agree to the following facts:

(1) The Government, represented by various Contracting Officers of the Maritime Administration, has entered into a contract with the Transferor, namely: DTMA1C03010. The term "the contract or contracts," as used in this Agreement, means the above contract and all other contracts and purchase orders, including all modifications, made between the Government and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders). Included in the term "the contract or contracts" are also all modifications made under the terms and conditions of these contracts and purchase orders between the Government and the Transferee, on or after the effective date of this Agreement.

(2) As of the effective date of this Novation, the Transferor has transferred to the Transferee all assets of the Transferor necessary to perform Contract DTMA1C03010, by virtue of the Transferee's purchase of all issued and outstanding limited liability interests from Transferor on or about September 11, 2003, as described in Exhibit A attached hereto.

(3) The Transferee has acquired 100% ownership of the Transferor by virtue of the above transfer.

(4) The Transferee has assumed all obligations and liabilities of the Transferor under the contracts by virtue of the above transfer.

(5) The Transferee is in a position to fully perform all obligations that may exist under the contracts.

(6) It is consistent with the Government's interest to recognize the Transferee as the successor party to the contract.

(7) Evidence of the above transfer has been filed with the Government.

(b) In consideration of these facts, the parties agree that by this Agreement

(1) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the Government that it now has or may have in the future in connection with the contract.

(2) The Transferee agrees to be bound by and to perform the contract in accordance with the conditions contained in the contracts. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the contracts as if the Transferee were the original party to the contracts.

(3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contracts, with the same force and effect as if the action had been taken by the Transferee.

(4) The Government recognizes the Transferee as the Transferor's successor in interest in and to the contracts. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the contracts as if the Transferee were the original party to the contracts. Following the effective date of this Agreement, the term "Contractor," as used in the contracts, shall refer to the Transferee.

(5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Government against the Transferor.

(6) All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the contracts, shall be considered to have discharged those parts of the Government's obligations under the contracts. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Government's obligations under the contracts, to the extent of the amounts paid or reimbursed.

(7) The Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contracts.

(8) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee

(i) Assumes under this Agreement; or

(ii) May undertake in the future should these contracts be modified under their terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

(9) The contracts shall remain in full force and effect, except as modified by this Agreement and by Modification 0017. Each party has executed this Agreement as of the day and year first above written.

United States of America,

By \_\_\_\_\_

F.K. Bajowski, Jr

Title: MARAD Contracting Officer

POST-SERVICE REMEDIATION PARTNERS,

By \_\_\_\_\_

Peter M. Stephenson

Title: Executive Officer

Certificate

I, Mr. Peter Stephenson, certify that I am an Executive Officer of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand this 21<sup>st</sup> day of May, 2007.

By \_\_\_\_\_

ABLE UK Ltd,

By \_\_\_\_\_

Peter M. Stephenson

Title: Chief Executive

Certificate

I, Rachel Stephenson, certify that I am the Secretary of ABLE UK Ltd, that Mr. Peter Stephenson, who signed this Agreement for this company, is the Chief Executive of the company; and that this Agreement was duly signed for and on behalf of this company by authority of its governing body and within the scope of its corporate powers. Witness my hand this 21<sup>st</sup> day of May, 2007.

By \_\_\_\_\_

C. Joel Van Over  
Direct Phone: (202) 373-6581  
Direct Fax: (202) 373-6001  
joel.vanover@bingham.com

April 2, 2007

**VIA ELECTRONIC MAIL**

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**Re: Novation of MARAD Contract DTMAIC03010**

Dear Mr. Crane:

As we discussed, in support of the referenced contract novation from Post-Service Remediation Partners, LLC ("PRP") to Able UK Ltd ("Able") whereby Able will be the successor in interest of the referenced contract, we provide the following information:

1. On September 11, 2003, Able purchased all of the issued and outstanding limited liability company interests of PRP. As a result of this transaction, Able owns 100% of PRP.
2. PRP remains a separate corporate entity, a Wyoming limited liability company. PRP is a wholly-owned subsidiary of Able.
3. Prior to and after the sale of PRP to Able, Able UK has been the principle subcontractor performing the referenced contract.

Please let me know if you have any questions.

Very truly yours,



C. Joel Van Over

cc: (via electronic mail)  
Gerald Kehoe  
Peter Stephenson  
Glyn Wheeler