

Insurance Requirements for MARAD Ship Disposal Contracts

The insurance clause below gives an example of the typical insurance requirements for a Ship Disposal contract that requires towing and whose towing destination is in the Continental United States.

MINIMUM INSURANCE REQUIREMENTS

From the commencement of custody of the Obsolete Vessel at the time the Contractor commences towing from the Government facility until completion of all required performance under this contract, 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 to 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 as provided below, such insurance to specifically include liability assumed by the Contractor under this contract.

A certificate of each policy of insurance shall be furnished to the Contracting Officer and COTR 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 and COTR.

A. ADDITIONAL INDEMNITY AND INSURANCE 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, the Maritime Administration 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.
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 the MARAD in all matters the MARAD may deem necessary in defense of any claim, or suit or appeal from 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. 52.228-5 INSURANCE -- WORK ON A GOVERNMENT INSTALLATION (JAN 1997)

1. The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

2. Before commencing work under this contract, the Contractor shall notify the Contracting Officer and COTR in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective--

a. For such period as the laws of the State in which this contract is to be performed prescribe; or
b. Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer and COTR whichever period is longer.

c. The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make

copies available to the Contracting Officer or COTR upon request.

C. TYPES OF INSURANCE AND MINIMUM COVERAGE

1. Required Insurance during the dismantlement of the Obsolete Vessel(s) at the Contractor's facility.

(A) Workmen's Compensation, including Longshoremen & Harbor Worker's Act coverage - Covering all agents, servants, borrowed servants, statutory employees of the 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. 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 - \$5 million in the aggregate

4. Maritime Employers Liability (Jones Act) to cover both injury and death resulting from accident, sickness or disease

- \$5 million for each person per occurrence
- \$5 million in the aggregate

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

6. Asbestos Abatement Liability Policy with a minimum limit of \$2 Million per occurrence.

Verification of coverage is for the company that will conduct the abatement.

7. Lead Abatement Liability Policy with a minimum limit of \$2 Million per occurrence when/if required by the presence of lead. Verification of coverage is for the company that will conduct the abatement.

D. The coverage below shall be in effect while the Obsolete Vessel(s) are being towed:

1. Tower's Liability - When the Obsolete Vessel(s) 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. Hull and Machinery,

Minimum Coverage Requirements:

The Contractor shall ensure that any tower of the Obsolete Vessel(s) 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, sudden and accidental 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 Obsolete Vessel(s).

Minimum Coverage Requirements: \$10 million per occurrence

E. CONFIRMATION FORMS AND INFORMATION

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 Ship Repairers Legal Liability policy, Comprehensive General Liability Policy and Pollution Policy. Such policies shall contain a clause statement that there is no recourse against the United States of America for payment of premium. All insurance shall be subject to the approval of the Director, Office of Subsidy and Insurance, Maritime Administration, and must contain a thirty (30) calendar days advance notice of cancellation (without disclaimer) or of any nonrenewable which is the option of the insurer, said notice to be provided to the Contracting Officer and COTR.

The Contractor shall have its insurance broker provide a detailed certificate of insurance, cover note or policy confirming the above required coverages. The confirmation shall name the Contractor as an assured 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 London or other approved foreign underwriter placements. The policy amounts, terms and conditions, deductibles and underwriters shall at all times be satisfactory to the Maritime Administration.