

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, AND 30				1. REQUISITION NUMBER W911LJ71152000		PAGE 1 OF 39		
2 CONTRACT NO W81GYE-07-D-0019		3. AWARD/EFFECTIVE DATE 01-Oct-2007	4. ORDER NUMBER		5 SOLICITATION NUMBER W81GYE-07-R-0017		6 SOLICITATION ISSUE DATE 22-May-2007	
7. FOR SOLICITATION INFORMATION CALL		a NAME CAROLYN CORRIA			b TELEPHONE NUMBER (No Collect Calls) 703-428-2038		8. OFFER DUE DATE/LOCAL TIME 04:30 PM 25 Jun 2007	
9 ISSUED BY SDDC CONTRACTING CENTER 200 STOVALL STREET ALEXANDRIA VA 22332-5000 TEL: FAX:		CODE W81GYE	10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED <input checked="" type="checkbox"/> SET ASIDE: 100 % FOR <input checked="" type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> 8(A) NAICS 484110 SIZE STANDARD 500		11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) 13b. RATING 14 METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP		12. DISCOUNT TERMS	
15 DELIVER TO SEE SCHEDULE			16 ADMINISTERED BY USTRANSCOM COMMAND ACQUISITION 508 SCOTT DRIVE SCOTT AFB IL 62225-5357		CODE HTC711			
17a. CONTRACTOR/OFFEROR GARCIA TRUCKING SERVICE INC FELIX CRUZ URB INDUSTRIAL SABANA ABAJO CAROLINA PR 00982-3717 TEL. (787) 762-5353		CODE 1KFM3	18a. PAYMENT WILL BE MADE BY POWER TRACK HTTP://WWW.USBANK.COM/POWERTRACK OR US BA MN		CODE		FACILITY CODE	
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER			18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a. UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM					
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/ SERVICES		21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT		
SEE SCHEDULE								
25 ACCOUNTING AND APPROPRIATION DATA See Schedule					26. TOTAL AWARD AMOUNT (For Govt. Use Only)			
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1 52.212-4 FAR 52.212-3. 52.212-5 ARE ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED								
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED								
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>2</u> COPIES <input checked="" type="checkbox"/> TO ISSUING OFFICE CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN REF: W81GYE-07-R-0017				29 AWARD OF CONTRACT REFERENCE <input type="checkbox"/> OFFER DATED YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMSSEE SCHEDULE				
30a. SIGNATURE OF OFFEROR/CONTRACTOR			31a. UNITED STATES OF AMERICA SIGNATURE OF CONTRACTING OFFICER		31c. DATE SIGNED			
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)		30c. DATE SIGNED	31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) TEL: EMAIL:					

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

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

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

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

33 SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	34 VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
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38 S/R ACCOUNT NUMBER	39 S/R VOUCHER NUMBER	40 PAID BY
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41a I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT 41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c DATE	42a. RECEIVED BY (<i>Print</i>)	
	42b. RECEIVED AT (<i>Location</i>)		
	42c. DATE REC'D (<i>YY/MM/DD</i>)	42d. TOTAL CONTAINERS	

Section SF 1449 - CONTINUATION SHEET

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	Puerto Rico Motor Carrier Contract FFP Funding is required for PR Motor Carrier Contract for inland services in Puerto Rico for the period of 01 Oct 2007 to 30 Sep 2010. FOB: Destination PURCHASE REQUEST NUMBER: W911LJ71152000		Dollars, U.S.		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0002	PR Motor Services FFP From 1 Oct 2010 to 30 Sep 2011. FOB: Destination		Dollars, U.S.		

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0003	PR Motor Services FFP From 1 Oct 2011 to 30 Sep 2012. FOB: Destination		Dollars, U.S.		

INSPECTION AND ACCEPTANCE TERMS

Supplies/services will be inspected/accepted at:

CLIN	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
0001	N/A	N/A	N/A	Government
0002	N/A	N/A	N/A	Government
0003	N/A	N/A	N/A	Government

ACCOUNTING AND APPROPRIATION DATA

AA: 97X4930 FD.30 7 E3 7740 TTTS0000000 4411 22N9 W911LJ71152000 389900

DELIVERY INFORMATION

CLIN	DELIVERY DATE	QUANTITY	SHIP TO ADDRESS	UIC
0001	POP 01-OCT-2007 TO 30-SEP-2010	N/A	N/A FOB: Destination	N/A
0002	POP 01-OCT-2010 TO 30-SEP-2011	N/A	N/A FOB: Destination	N/A
0003	POP 01-OCT-2011 TO 30-SEP-2012	N/A	N/A FOB: Destination	N/A

Zones 1 –13 include points and places in Puerto Rico as follows:

Zone 1: Mario Julia Industrial Park, Pueblo Viejo, Puerta De Tierra, El Viejo San Juan, Altamira, Barriada Eleanor Roosevelt, Barrio Obrero, Caparra heights, Caparra Terrace, Catano, Eleanor Roosevelt (Hato Rey), Ft. Buchanan, Garden Hills, Georgetown, Hato Rey, Martin Pena, Miramar, Parkside, Puerto Nuevo, Punta Las Marias, Los Caobos, San Particio, Santruce, Summit Hills, Turreyquen Villa Caparra Heights and Villa Palmeras

Zone 2: Bayamon, Caribe Industrial Park, Guaynabo, Isla Verde, International Airport, Rio Piedras, Isla Verde (mainland), Villa Prades Palo Seco, Levitown, Hato Tejas

Zone 3: Carolina, Canovanas, Saint Just Trujillo Alto, Trujillo Bajo

Zone 4: Caguas, Dorado, Loiza, Loiza Alden, Rio Grande, Toa Alta, Toa Baja and Vega Alta

Zone 5: Aguas Buenas, Cayey, Gurabo, Juncos, Luquillo, Las Piedras, Palmer, San Lorenzo and Vega Baja

Zone 6: Barceloneta, Cidra, Corozal, Fajardo, Humaco, Manati, C4eiba, Naguabo, and Naranjito

Zone 7: Arecibo, Arroyo, Ciales, Comeno, Ensenada Honda (Cieba), Guayama, Maunabo, Miraflores, Patillas, NavSta Roosevelt Roads, Salinas, Yabucoa and Florida

Zone 8: Aibonito, Barranquitas, Camuy, Hatillo, Morovis and Santa Isabel

Zone 9: Coamo, Juana Diaz, Orocovis, Quebradillas

Zone 10: Isabela, Ponce (Muelle) and Villalba

Zone 11: Aguadilla, Aguada, Moca, Penuelas, Guayanilla, San Sebastian, Jayuya, Lares, Utaudo and Yauco

Zone 12: Anasco, Rincon, Guanica, Sabana Grande, Mayaguez, and Adjuntas

Zone 13: Hormigueros, Las Marias, Lajas, Maricao, San German and Cabo Rojo

PERFORMANCE WORK STATEMENT

1.0 Special Terms and Conditions

1.1 Effective Dates

This contract shall be in effect for all cargo received on 01 October 2007 through 30 September 2010 for a three year base period and from 01 October 2010 through 30 September 2011 for Option Year 1, providing the option is exercised and from 01 October 2011 through 30 September 2012 for Option Year 2, providing the Option is exercised.

1.2 Justification for Inclusion of Liquidated Damages

Liquidated Damages are provided for in RFP W81GYE-07-D-0017, in accordance with FAR Part 11.502, since both (1) time of delivery or performance are such important factors in the award of the contract that the Government may reasonably expect to suffer damage if the delivery or performance is delinquent. (2) The extent or amount of such damage would be difficult or impossible to ascertain or prove. The Contracting Officer (CO) has considered the probable effect of such matters as pricing, competition, and the costs and difficulties of contract administration. Further, the application of liquidated damages for non-performance of service contract provisions is a recognized regulatory practice for the intermodal transportation industry.

1.3 Failure to Pick-up and Remedies

When the MC fails to pick-up a container by the designated date and time, and as a result there is not reasonable time to allow for the shipment to arrive at the consignee by the RDD, the MC shall be liable either for the payment of liquidated damages or for the reimbursement of expenses incurred by the Government to obtain alternate transportation of the container.

1.4 Calculation of Liquidated Damages and Alternate Transportation Services

If the MC fails to pick-up within the designated time frame, the MC shall be liable for either the payment of liquidated damages or for the reimbursement of excess costs incurred by the Government to obtain alternate motor transportation service, whichever is applicable. Liquidated damages shall be equal to the detention charges for that equipment, computed at the rates set forth in Paragraph 7.4.2 "Detention Charges for each day or part thereof from the date of the originally scheduled pickup to the date that alternate services were able to be secured. However, if the OC or the consignee elects to employ alternate motor transportation service to move the container to the consignee, the MC shall be liable for any expenses or costs incurred by the Government above the expenses that would normally would have been incurred had the container been picked-up by the designated date and time.

1.5 Contracting Officer

The Contracting Officer (CO) who shall perform contract administration for this contract effective 01 October 2007 will be:

Ms. Pamela Hall
US TRANSPORTATION COMMAND
ACQUISTION/TCAQ
508 SCOTT DRIVE – BLD 1961

SCOTT AFB, IL 62225-5357
Phone: (618) 229-2468
Email: pamela.hall@ustranscom.mil

1.6 Contract Type

This contract is a Firm Fixed Price, Indefinite Delivery/Indefinite Quantity contract as defined in FAR Part 16.5.

1.7 Option Year Minimums

The Government commits to a minimum guarantee of cargo for each designated zone which is sufficient cargo to ensure full compliance with FAR 16.504(a) (2), more than nominal quantities and economically viable revenue based to support any accepted service. See paragraph 1.8 and 1.9 below. One (1) FEU is considered to be a nominal amount (52.216-19).

1.8 Minimum Cargo Commitment for the Customer Service and Dedicated Zone 1 Section:

The Government commits to ship under the Customer Service/Dedicated Zone Section contract a minimum of 800 containers and 2700 MT of breakbulk cargo to/from the port of San Juan throughout the inland Island of Puerto Rico for the base year. If the Government meets its cargo commitment prior to the expiration of the contract, the Government may ship up to an additional 800 containers and 2700 MT of breakbulk cargo under the same rates, terms and conditions. In the event the selected MCs for this Customer Service/Dedicated Zone contract is unable to transport the minimum volume guaranteed, the Contracting Officer reserves the right to make other arrangements to meet such requirements. The Customer Service/Dedicated Zone Section contract will be awarded to one MC only.

1.9 Minimum Cargo Commitment for the General Section other than the Customer Service/Dedicated Zone contract:

A minimum volume of cargo is guaranteed under the General Section distributed among all holders of contracts awarded under the RFP. The Government commits to ship a minimum of 200 containers and 1000 MT's of breakbulk cargo, (excluding POVs) throughout the Island of Puerto Rico in the base year. This includes all zones 1 through 13 except for AAFES cargo in Zone 1. In the case where the Government fails to ship the minimum guaranteed cargo, the Government will pay the Contractor seventy five (\$75) dollars per shortfall for containers and five (5) dollars per MT shortfall for breakbulk in place of actual damages.

2.0 General

2.1 Transportation Services

The Contractor, a motor carrier, shall provide all resources necessary to perform the Performance Work Statement (PWS). The MC shall maintain trucking services as required under the laws and regulations of the United States and the Commonwealth of Puerto Rico, throughout the period of the contract. The MC shall provide equipment for the movement of containers and/or breakbulk service.

2.2 Normal Government Business Hours/Hours of Operation/Business Day

(a) Normal Government Business Hours are considered to be Monday through Friday, 0800 hours through 1700 hours, with U.S. Federal Holidays excepted. Such days are defined as Business Days. Where U.S. Government offices also observe local holidays, e.g., Puerto Rico, etc., these holidays are also excluded from Normal Government Business Hours. All references in this contract to compliance or observance of Normal Business Hours will use this definition unless otherwise stated.

(b) In addition, MCs are expected to be aware of local office hours of operation for each U.S. Government facility with which they will transact business, and will schedule transactions accordingly. Hours of Operation for Facilities are provided for at Attachment 6.

2.2.1 Expedited Delivery Service Outside Normal Business Hours

The contractor shall provide expedited delivery service when ordered by the OO/COR. The contractor shall deliver the container to consignees in Puerto Rico at the ultimate destination outside the normal business hours.

If the OO/COR requests Expedited Delivery on Saturday, Sunday or a holiday, the carrier shall be paid double the applicable zone rate as specified in the delivery order. If a carrier elects not to pickup/deliver on those days, the OO/COR may offer the cargo to the next available carrier without regard to the General Section or the Customer Service Contract.

When the OO/COR change or divert an expedited delivery after 1200 cutoff time for ordering services, and the MC accepts the order to pickup/deliver outside the normal business hour, the carrier will be paid the rate of \$75.00 per delivery in addition to the basic zone rate and/or diversion rate.

2.3 Payment

Unless otherwise provided herein, payment shall be made on the basis of the services provided as evidenced by the signed work order. In accordance with the Prompt Payment Act, all payments earned on shipments will be made not later than thirty days after receipt of a proper invoice, in accordance with the procedures outlined below.

2.3.1 Electronic Payment

MCs will be paid through Automated Fund Transfer (AFT) using the PowerTrack system, a product of US Bank, Inc. Payment will be made after cargo has been lifted. A satisfactory comparison of shipping instructions and MC lift reports will be the basis for effecting payment to MCs. All MCs a party to this contract must have an agreement with US Bank and be PowerTrack certified for the electronic payment of transportation services. See Attachment 5 Power Track Rules for details of Sealift Carrier Payment via PowerTrack.

2.3.2 Entitlement

Freight shall be earned under this contract as follows:

(1) Import container cargo in ocean carrier's containers with or without the ocean carrier's chassis, freight shall be earned only upon delivery of the cargo at the ultimate destination set forth in the signed work order, and any applicable amendments thereto, and return of the ocean carrier's container with or without chassis to the applicable ocean carrier's designated port terminal;

(2) Import container cargo in government containers on ocean carrier chassis, freight shall be earned only upon delivery of the cargo at the ultimate destination set forth in the signed work order, and any applicable amendments thereto, and return of the government's container and ocean carrier's chassis to the applicable ocean carrier's port terminal or other location designated by the OO;

(3) for import breakbulk cargo on contractor conveyances freight shall be earned only upon delivery of the cargo at the ultimate destination set forth in the signed work order, and any applicable amendments thereto; and

(4) for export cargo freight shall be earned only upon delivery of the cargo at the ultimate destination set forth in the signed work order, and any applicable amendments thereto. Freight shall consist of the sum of all payments due for services actually furnished in accordance with the signed work order, calculated at the rates set forth in the Schedule of Rates.

In the event that import containers and/or chassis are delayed beyond 10 days after delivery to the Government, the contractor shall be entitled to bill for one half or 50% of the round-trip rate for those services. Once the container and/or chassis is released and delivered as required, the contractor is entitled to invoice for the remainder.

2.3.3 Submission of Invoices

- (a) Invoices for payment shall be submitted to the Surface Deployment and Distribution Command, to the attention of Ms. Yolanda Santiago, SDDC 832D TRANS BN PR DET, 218 Brook St. Bldg 512 FT Buchanan, PR 00934 for certification and PowerTrack approval.
- (b) Carrier shall submit one (1) original and one (1) copy of each invoice which shall include the contract number and an itemized listing of the service provided, including container numbers, if applicable, with applicable CLIN numbers and a copy of the signed receipted work order, and/or TIR/EIR for each container/cargo lot, as supporting documents to verify the services provided.
- (c) Invoices must be submitted to the paying office no later than six (6) months from the date the services are performed. Invoices received after that time will not be certified for payment and the Contractor waives any right to payment thereafter.

2.3.4 Determination of Delivery.

Delivery of a loaded container or cargo at ultimate destination and return of the ocean carrier's or government's container on ocean carrier's chassis and accomplishment of the signed work order, for purposes of payment for services shall be established either by a copy of a receipt or the work order signed by the consignee or its agent and a copy of the TIR/EIR, as applicable."

2.3.5 Withholding of Payment

If, after delivery of the cargo or container and stripping by the Government, there is any damage to or shortage of cargo not definitely known to be the fault of the Government or its agents, and it is considered by the Contracting Officer that withholding of certain monies is necessary to protect the interests of the Government pending final determination of the amount of shortage or damage and the Contractor's liability therefore, the dollar amount of such shortage or damage may be estimated and withheld from sums owed to the Contractor by the Government under any order for service. Likewise, the Government may recover overpayments of freight and may recover charges paid to the Contractor for service and supplies furnished by the Government in connection with the carriage of cargo under one work order/order of service by withholding sums due to the Contractor from any other work order/order of services.

2.3.6 Government Offset

The Government shall have the right to offset monies owed to the Government by the Contractor against freight monies owed by the Government to the Contractor under one work order or any other order of services under this or any other Government contract. This may include, but is not limited to, offsets for monies for liquidated damages or ocean carrier detention attributable to the Contractor as set forth in this contract.

2.3.7 Reimbursement

All charges and expenses which may be incurred for the account of the Government, as provided in this contract, and which are not paid directly by the Government or by the consignee, shall be paid by the Contractor, which shall be reimbursed upon the presentation of properly supported invoices, including, but not limited to Contractor's Interchange Receipt.

2.4 Additional Service

In the event that a MC and/or MCs, are suspended from service or terminated for default under this contract such that the Government is no longer able to meet its requirements for delivery of cargo, the Government reserves the right to solicit for additional services under this contract from motor carriers not contractors hereunder to provide the service.

2.5 Reserved

2.6 Shipments by Authorized Agents of the Government

2.6.1 Ocean Carriers as agent of the Government

The Ocean Carrier (OC) is designated as an authorized agent of the Government under this contract. The OC assumes all responsibilities for ordering motor MC services for all containerized cargo moving inland from the Port of San Juan throughout the Island zones.

2.6.2 Dispatching of Motor Carriers in Puerto Rico

Once the containers are cleared for pick-up, the OC, acting as an authorized agent of the Government, will order motor MC service in accordance with the Motor Carrier Contract (MCC) specified by SDDC. The OC must ensure that motor MCs and COR are notified in a timely manner and that the pick-ups are completed within eight (8) hours of notification as specified in the MCC. The COR has the authority to make exception to the 8 hours during peak season for pickups and deliveries of cargo. Each exception will be determined on a case by case basis with a written notification to both the ocean carrier and motor carrier.

2.6.3 Shipments to Consignees

The OC must use the SDDC motor carrier contractors designated to make shipments to consignees.

2.6.4 Utilization of Motor Carriers

The OC must utilize the SDDC negotiated MC contracts for inland transport within Puerto Rico. The OC must use the negotiated contracts for 100% of shipments. The goal for customer wait time (CWT) is less than two (2) hours from the agreed-upon delivery time and date.

2.6.5 Motor Carrier management activities:

The OC, acting as the agent of and as directed by SDDC, will order and report on inland transport shipments within Puerto Rico.

2.6.6 Reserved

2.6.7 Other Carrier Participation

A Carrier who, after the date for responses to the Request for Proposals (RFP) which resulted in this contract, begins operations on the zones but did not submit an offer under that RFP, will be considered for a contract at a negotiated rate level, but such Carrier's rates will not be utilized except as necessary when capability from Carriers which already hold a contract is not available to meet the requirement.

2.7 Multiple Award Task Order Contract and Delivery Order Contract Ombudsman

In accordance with FAR 16.505(b)(5), the following individual has been appointed as ombudsman for multiple award task order and delivery order contracts issued by this organization:

Mr. Dale Huegen

Deputy, Acquisition and Business Support Directorate
Command Acquisition
Telephone Number: 618-256-4300 FAX: 618-256-4702
Email Address: dale.huegen@ustranscom.mil

2.7.1 Reviewing Contractor Complaints

The ombudsman has the authority to review Contractor complaints that they have not been afforded fair opportunity to be considered for award of a particular task order or delivery order under a multiple award contract.

2.7.2 Submitting Contractor Complaints to the Ombudsman

A Contractor who receives an award under a multiple award contract may contact the ombudsman with a complaint concerning the award of a particular task order or delivery order placed under the multiple award contract.

2.7.3 Time Limit for Complaint Submission

The Contractor is encouraged to try to resolve the issue with the CO prior to contacting the ombudsman. However, Contractor complaints to the ombudsman must be made within five (5) workdays of the award under complaint.

2.7.4 Limit of Ombudsman Authority

The ombudsman's authority is limited to issues pertaining to the awarding of task orders and delivery orders under multiple award contracts. Contractor complaints directed to the ombudsman shall be confined to these issues. All other complaints will be outside the authority of the ombudsman and will be returned to the Contractor without action.

2.7.5 Ombudsman Determination of Findings

Upon review of the facts, the ombudsman will determine whether or not the Contractor was afforded a fair opportunity to be considered consistent with the procedures in the contract and either deny the Contractor's Complaint, or require that the CO take corrective action regarding the complaint.

2.7.6 Final Resolution of Complaints

If the CO does not agree with the ombudsman's decision, the issue shall be referred to the SDDC Principal Assistant Responsible for Contracting for final decision.

2.7.7 Ombudsman Process Not Replacing Disputes Clause

These ombudsman procedures are not subject to FAR 52.233-1, Disputes, with or without its Alternate I found elsewhere in this contract.

2.8 Management, Quality Control, Reporting and Records

2.8.1 Management

The MC shall establish and maintain a Management Plan to indicate how service will be managed, coordinated and maintained for all customers. The Management Plan shall include a Risk Management paragraph or chapter that will detail all significant risks identified by the MC, the likely impact of such risks if not mitigated, and the approach the MC will take to minimize or mitigate all identified risks. The government recognizes that minimized time for pickup and delivery reduces risk to cargo and to meeting objectives, such as Required Delivery Dates. Therefore, the government places high value on minimizing this risk. This is especially true for pickup and delivery of refrigerated cargo throughout the Island of Puerto Rico. MCs may expect that contract awards consideration will evaluate this

factor highly. The MC shall submit a proposed Management Plan as part of its technical proposal. This Plan should include as a minimum how the contractor intends to meet scheduled deliveries, to meet unique customer requirements and identification of risks and how the MC will minimize risks for pickup and deliveries.

2.8.2 Quality Control

The MC shall establish and maintain a Quality Control Plan (QCP) to ensure quality service is provided throughout the terms of the contract. The MC shall submit a proposed QCP as part of its technical proposal. The QCP should include as a minimum how the MC intends to meet the performance objectives, and should also identify those areas the MC sees as critical to the customers for this contract, how it will monitor quality performance in those areas, and how it will maintain or exceed customer expectations, including identification and correction of problems.

2.8.3 Problem/Failure

The MC shall self-identify any problem or failure that may impact contract performance. In accordance with its QCP, the MC shall provide the COR with a succinct written plan of action within ten (10) business days of MC self-identification or awareness of a potential or real problem, failure or deficiency. The MC shall detail the methodology for correcting the problem or deficiency in the plan of action, and provide an assurance of the specific time required to bring performance back to acceptable quality levels, as applicable.

2.8.4 Customer Service Assistance

The MC must establish/designate a Customer Service activity to be responsive to Government activities that require assistance. Government activities must be able to contact a person representing the MC throughout the business day to obtain expert assistance in answering questions, exchanging information and resolving problems. A single focal point for each Government activity is desirable. The MC will provide specific points of contact for each Government shipper no later than seven (7) days after contract award.

2.8.5 Quality Council

- (a) Council Meetings will be held in order to identify and resolve potential operational problems and to achieve continuous process improvement. The Government shall establish a Quality Council consisting of members which may include representatives of the Carrier, Shipper services, as well as the Contract Administrator(s), Technical Representatives, Shipper Representatives, and the CO.
- (b) The Quality Council shall meet on a semi-annual basis, or as needed, to identify, monitor, and recommend solutions to operational problems arising during the term of the contract. Recommendations for process improvement will be elevated to the Contracting Officer or his/her designated representative and the designated MC representatives for consideration, approval and negotiation of contract modifications as applicable.

3.0 Performance Requirements

Performance Requirements in this document are expressed in the following manner and may contain the following three elements. In each case, when taken together, these elements constitute a performance requirement.

3.1 Performance Objective

A statement of the outcome or results expected of the MC (not output).

3.2 Performance Measures

The critical few characteristics or aspects of achieving the objective that will be monitored by the Government, are those things that the Government will analyze. Each objective may have one or more measures.

3.3 Performance Standards

- (a) The targeted level or range of levels of performance for each performance measure also referred to as Acceptable Quality Level (AQL).
- (b) Not every performance objective in this contract has a related performance measure or performance standard. However, every performance objective is a contractual requirement. For those performance objectives that do not specify a measure or standard, the measures and standards are IAW standard commercial practices, i.e., substantial compliance with local customary trade practice. When not stated, Performance Standards are assumed to be one hundred (100) percent, unless standard commercial practices would apply a lower standard.
- (c) Performance measures/standards, where specified, may be used to achieve a variety of goals, including collection of data to test the practicality of a performance standard; identification of a performance standard of less than one hundred (100) percent compliance; emphasis on most critical performance objectives; collection of data to support quality assurance and contractual remedies (including evaluation of past performance, discussion at Quality Council meetings, etc.) and similar goals.

3.4 Performance Requirement Summary (PRS)

The Government will monitor the MC's performance through the Government Performance Requirements Summary (PRS), see below Table, to be used in this program, and is provided for the Convenience of the MC. Other Performance Objectives not addressed in the PRS will be monitored by exception. This PRS is to be used for administrative purposes only and does not reflect a change in the contract requirements. To the extent any conflict may arise between the use of the PRS and the substantive provisions of this contract, the substantive provisions of this contract shall apply.

Performance Objective/Description	Measures	Performance Standard (AQL)	Surveillance Method	Government Actions
01 Container Pickup and Delivery	Pickup and deliver cargo within 8 working hours of AOM notice	98%	Ocean MC and motor MC weekly reports; Daily Consignee reports	Evaluate Contractor's performance quarterly
02 Pickup of containers of multiple consignee shipments and delivery of onward shipments	Pickup and delivery of onward shipments within 2 work-days	98%	Motor MC weekly reports; Daily Consignee reports	Evaluate Contractor's performance quarterly
03 Pickup of Refrigerated Containers with proper Temperature/fuel	Pickup of refrigerated containers with appropriate temperature and fuel	100%	Motor MC weekly reports; Daily Consignee reports	Evaluate Contractor's performance quarterly
04 Documentation and Reports – Information/data on report as listed in	Submit weekly reports as required	100%	Weekly submission of reports	Evaluate Contractor's performance

attachment				quarterly
05 Tax clearance	Process Hacienda clearance within 8 hours of request for clearance	98%	Motor Carrier weekly reports	Evaluate Contractor's performance quarterly

Performance Requirement Summary (PRS) Table: Critical Performance Objectives

3.5 Performance Measurement Approaches

The CO and the COR will monitor MC performance and compliance with the terms and the conditions of the contract using the PRS and such other standard techniques as inspections, Government generated management reports, MC reports and customer feedback. The COR, in conjunction with the CO, will conduct periodic meetings (apart from the Quality Council) with the MC to discuss operations, and problem areas.

3.6 Performance Objective 01

3.6.1 Pickup/Delivery of Loaded/Empty Containers/Chassis/Trailers.

- (a) The MC shall pick up and deliver loaded import containers/chassis/trailers from the OC's facility on Port or loaded export booked cargo from Consignor facility and/or pickup empty import container/chassis/trailers from Consignees within eight (8) working hours of notification or later as ordered and approved by the COR during peak season deliveries after receiving the notice that cargo is AOM from the OC and/or the COR, Consignee or consignor.
- (b) Upon notification of an order for services for a booking from the COR/Ordering Officer, the MC shall obtain the applicable booking information and TCMD, to deliver the loaded or empty containers/chassis/trailers to OC's port terminal. Pickup and delivery of cargo or empties for which notification of an order for services has been received by the MC after 1200 hours local time will be accomplished within the time frames specified herein, commencing at 0800 hours on the next working day after such notification has been received.
- (c) In the event that the container is Government provided, the MC is responsible to return the empty chassis to the Ocean Carrier facility port as directed by the COR or Ordering Officer. The MC shall obtain a signed work order from a government representative for pickup. Subsequent use of the chassis by the MC is not permitted.

3.6.2 Performance Objective 02

Pickup of containers of multiple consignee shipments and delivery of onward shipments

Upon notification of an order for this service, the MC shall obtain an OBL from the OC for picking up a container consisting of multiple consignee cargo at the OC's port terminal. The MC shall pickup and deliver cargo the consignees shipments within the timeframe as stated in Performance Objective 01.

3.6.3 Performance Objective 03 - Refrigerated Containers

3.6.3.1 Pickup of Refrigerated Containers/with Temperature/Fuel.

The MC shall not pick up any refrigerated containers that do not have enough power to maintain the temperature for the free time, unless granted an exception by the COR or the consignee.

3.6.3.2 Validation on the Maintenance of Temperature

When the OC offers a fully loaded refrigerated or controlled atmosphere container of perishable subsistence to the MC for movement, the MC shall be responsible to check the refrigerated/controlled atmosphere container equipment to ensure that there is sufficient power to maintain (full tank of fuel) the required temperature during the free time.

- (a) The MC shall check to determine whether such containers are maintained at an internal temperature within five degrees Fahrenheit of the specified in-transit temperature from the time it is received until delivery at destination plus any portion of the un-expired free time.
- (b) The MC shall notify the OC, COR, and the consignee if the temperature is below requirement. The MC shall not move the containers unless there is sufficient power to meet the maintenance requirements. The COR or the consignee may waive this requirement on a case-by-case basis. The MC shall document any exceptions granted.

3.6.4 Performance Objective 04 - Reports and Documentation

3.6.4.1 Weekly Reports

- (a) Weekly reports are due each Friday(1200 hours local time) or the day before if there is a holiday, the MC shall, by mutually agreeable means, provide the COR with an electronic report containing the following information in connection with cargo picked up, transported and delivered in Puerto Rico for the previous work week:
 - (b) Containers/Break-Bulk Originating at the Ocean Terminal: For each container, date and time of notification by OC of order for services for container pick-up at ocean carriers terminal; name of ocean carrier, date and time the MC received the container at the port terminal, OC's or Government container number with ALPHA prefix, seal and/or keyless lock number, and date and time of delivery of container to consignee. This report shall also include a notation of any problems incurred in connection with any specific shipment or container and the number of futile trips.
 - (c) Containers/Break-Bulk Originating at Points Other than Ocean Terminal: For each container, date and time of notification by OC of order for services for container pick up at shipping activity; name of shipping activity, date and time the MC received the container at the origin point, OC's or Government container number with ALPHA prefix, seal and/or keyless lock number, and date and time of delivery of container to OC. This report shall also include a notation of any problems incurred in connection with any specific shipment or container and the number of futile trips.

3.6.5 Performance Objective 05 - Tax Clearance of Containers/Breakbulk

3.6.5.1 Tax Authority Clearance

When the container/breakbulk has been flagged taxable by the local tax office (Hacienda) and the government requests the Tax Clearance Accessorial, the MC will perform the following services. The MC shall obtain the supporting documentation (OBL, Hacienda clearance letter, commercial invoice (when available) etc.), and process the clearance as acting Representative of SDDC. Estimated time for clearance is from 2-3 days for containers and 7-10 days for breakbulk.

3.6.5.2 Customs Broker Transfer Approval

When notified of incoming Department of Defense sponsored cargo, regardless of the origin, the MC will obtain the required clearance from the Customs Broker in order to move the cargo to the designated inland point. This applies to contracts other than Regional Domestic Contracts. Zone rates apply for each movement.

3.7 Use of Quality Performance Information

Performance data and contract compliance will be provided to OOs as part of information used in evaluating Contractors. Information from the reports will be compiled cumulatively to provide annual reports of past performance for use in past performance evaluations for future awards.

4.0 Performance Work Statement (PWS)

4.1 General Transportation Services

The MC shall provide freight transportation services within Puerto Rico, and possesses or will possess by the effective date of the contract date the requisite operating authority required by all federal, state, Commonwealth and other local government agencies to perform such services. The MC shall transport by motor vehicle over public highways in Puerto Rico all types and classes of cargo, which may be required to be transported under this contract. This includes Breakbulk and containerized General Cargo, and refrigerated containerized cargo. Hazardous materials, ammo, oversize and overweight cargo is considered general cargo categories.

4.2 Delivery of Inland Cargo

The MC agrees to provide inland transportation of DoD cargo tendered for transportation under this contract, whatever its size and weight that can be legally transported, with certainty, celerity between the port of San Juan and zone points of origin and zone points of destination in Puerto Rico as described herein, and as set forth in the Schedule of Rates. The MC agrees to provide all personnel, equipment, tools, materials, supervision and other items as are necessary to provide such services in accordance with the terms and conditions of this contract, and to maintain such services throughout the period of the contract and for any extensions or option periods exercised hereunder.

4.3 Compliance with Rules

The MC agrees to comply with all rules and regulations of any governmental agency as may be applicable for the filing of its rates for such service to the Government in the carriage of military cargo as set forth herein. The MC further agrees that the rates offered will not be equal to or exceed the rates set by the Public Service Commission (PSC) of the Commonwealth of Puerto Rico. Rates equal to or exceeding the PSC will not be accepted and may result in the offer being deemed as non-responsive to this solicitation.

4.4 Equipment Interchange Agreements

The MC agrees that it has entered into or will enter into a valid standard Equipment Interchange Agreement (EIA) with each vessel operating ocean carrier which holds a contract for the carriage of DoD cargo to and from the Commonwealth of Puerto Rico by the effective date specified of this contract, and will maintain such EIAs during the contract period and any extensions or options exercised hereunder. If the terms and conditions of this contract are different than those contained in the MC's standardized equipment interchange agreement, the terms and conditions of this contract will apply.

4.5 Vehicle Requirements

The MC agrees to provide equipment necessary to move cargo as specified in this contract. Vehicles shall meet all applicable safety and regulatory requirements.

4.5.1 Registration of Vehicles

All MC vehicles operated under this contract shall be registered at all Department of Defense installations operating within the Commonwealth of Puerto Rico. It shall be the MC's responsibility to obtain such registration directly from the applicable installations.

4.5.2 Vehicle Specifications

The MC shall provide vehicles and equipment that can safely move cargo as specified in this contract. Such vehicles and equipment may include, but not be limited to, tractors, containers, , dry trailers, chassis, flatbeds, and lowboys as described in the definitions section of this contract.

4.5.3 Personnel Requirements

The MC agrees to comply with the following requirements for personnel used in the performance of transportation services under this contract.

4.6 Contract Manager

- (a) The MC shall provide a contract manager who shall be responsible for the performance of work and services during the period of this contract. The name, address, telephone number, e-mail address during working hours, facsimile transmission number and the emergency telephone number for use of that person and an alternate who may act in the contract manager's absence shall be designated in writing to the Contracting Officer or his/her designee.
- (b) The contract manager or alternate shall have the full authority to act for the MC on all contract matters relating to the daily operation of services under this contract. The contract manager or alternate shall be available during normal working hours to, among other things, receive notice for pickup and delivery of cargo, or discuss operational problems, and they shall be available 24 hours a day to deal with emergencies.
- (c) The contract manager/alternate shall from time to time, be required to attend meetings regarding operation and administration of the contract with the COR. The contract manager and his/her alternate must also be able to read, write, speak and understand English.

4.7 Knowledge of Local Emergency Laws and Regulations

The MC's contract manager and alternate shall be responsible for knowledge of procedures and compliance with the Puerto Rico Hurricane Standard Operating Procedure for Natural Disasters or Emergencies. A copy of the standard operating procedures was provided with the RFP and available on SDDC's website.

4.8 Driver Qualifications

- (a) All drivers of motor vehicles transporting DoD cargo under this contract shall be qualified to drive a motor vehicle and shall possess and maintain current, valid commercial motor vehicle operator permits issued by the Commonwealth of Puerto Rico.
- (b) The Contractor shall have available a minimum of four ammo certified drivers in support of government ammo moves in accordance with QASA and USCG requirements. Drivers shall comply with any changes to access and security regulations issued by the U.S. Government.
- (c) The contractor shall also provide police records if the Government and military base security so request. Drivers shall follow all applicable rules and regulations while DoD cargo is in their possession in a professional manner. The Government reserves the right to refuse to permit any MC's driver from transporting DoD cargo under this contract which fails to maintain a Certificate of Good Conduct or valid operators permit, or is not physically qualified to drive a motor vehicle.

4.9 Transport of Hazardous Cargo / Small Arms Ammunition

- (a) Only drivers that are HAZMAT trained and certified in the requirements for the handling and transportation of hazardous materials under 49 CFR parts 838, parts 177.800 and 390 through 397, may transport such cargo under this contract.
- (b) Pickup and delivery of containers loaded with hazardous materials will be accomplished by the MC within one working day after notification of an order for services to provide movement of a loaded hazmat container, beginning at 0730 hours on the day after such notification has been received.
- (c) Small Arms Ammunition (International Marine Organization (IMO) Class 1.1 for the port of Ponce, PR and 1.4 for San Juan, PR will be transported as general cargo with applicable surcharges to protect the cargo as requested by the Ordering Officer such as dual drivers, tracking systems and protective services.

4.10 Hazardous Cargo and Rejection of Hazardous Cargo

The Contractor has the right to reject hazardous cargo including or any cargo deemed to be dangerous or obnoxious in character other than such cargo for which a specific commodity rate is provided herein. The Contractor may refuse to transport hazardous cargo inland, which does not conform in all aspects to applicable U.S. or Puerto Rico Governmental regulations.

5.0 General Basic Common Service Requirements

5.1 Basic Service

- (a) The MC's basic service shall consist of furnishing to the Government compliant tractors in a timely manner; moving stuffed/loaded Ocean Carrier/Motor Carrier provided containers/chassis/trailers from the Port of San Juan to the designated point(s) within the delivery requirements of this contract which may include multiple stop-off points when ordered, and picking up containers/chassis/trailers from the consignees back to the Port of San Juan within the delivery requirements of this contract.
- (b) Line-haul transportation of containerized DoD cargo in full container loads between the Port of San Juan and points in Puerto Rico shall be performed on a "drop and pick" round-trip basis, unless specifically ordered otherwise.

5.2 Pick-up of containers at Port of San Juan

- 5.2.1 The OC will notify the MC and COR via email to pickup cargo documents for delivery or redelivery of containers/chassis/trailers. The MC shall initiate onward movement of cargo within 8 hours of notification or as ordered by the COR during peak season. The MC may assign an individual to contact the OC daily to determine when the cargo is in Available for Onward Movement (AOM) status. Notification of cargo AOM, after 12:00 noon, shall be delivered the next working day. For Zone 1 and the delivery of reefer cargo, notification after 12:00 noon for AOM may be delivered within the same day upon concurrence of all parties.
- 5.2.2 Upon arrival of full and partial containers at the Port of San Juan, as designated by the OC, the MC shall pick up the cleared container at the Port of San Juan and deliver to the consignee as ordered by the OC. The MC shall expedite the pick-up and delivery of refrigerated containers and other containers as requested by the OC and/or the COR. When picking up the container at the Port, the MC shall ensure that the chassis used is completely compliant with all safety standards. At the time of pick-up, the MC shall not accept any loaded container on which the seal is broken or missing or on which it appears that rivets on the container door handle have been tampered with.

- 5.2.3 The MC shall immediately notify the OC and the COR of the broken or missing seal or tampered door handle and request instructions for disposition. In addition, if a seal on any container has been broken and/or replaced while the container is in the MC's custody, the MC shall notify the OC and the COR with a complete report as to the circumstances and potential reasons for the problem.

5.3 Cargo Delivery

- 5.3.1 Pickup and delivery shall be accomplished as stated in the performance objectives or as authorized by the COR if more time is needed, with final delivery before close of business for receipt of cargo at the receiving OC's port terminal. Additionally appointments for pickup/delivery with a specific time may be made between the MC and the receiving activity outside the 8 working hours time limit if agreed to by the consignee and COR. If the MC fails to deliver the cargo in accordance with these standards or at the specified time of the appointment, liquidated damages may be assessed.
- 5.3.2 Notwithstanding the provisions this Section, MC will not retain loaded containers overnight. In the event that it is anticipated that overnight retention of a loaded container or containers is necessary, the MC shall contact the OC and/or COR for disposition instructions regarding such overnight retention.

5.4 Wait/Standby Time and /or Free Time

- 5.4.1 The MC shall pick-up or deliver cargo in accordance with an order for services within the normal working hours of the facility as specified in Attachment 6. In the event that consignee/shipping activity refuses to or is unable to accept delivery or make the empty/loaded container or cargo available for pickup causing the MC to incur driver waiting time beyond one hour free time, the government shall be liable for the payment of waiting time charges at the rate of \$100.00 for each hour that the driver is so delayed. The MC shall obtain a written record from the government representative of the arrival time and the time when services were completed.
- 5.4.2 If the MC arrives at the OC's terminal/port to pickup a loaded container or break bulk cargo, or arrives at the OC's terminal/port to deliver a loaded or empty container or break bulk cargo within the normal working hours as specified by the Ordering Officer and is unable to pick up or deliver due to the fault of the OC, and the MC waiting time exceeds (1) one hour of free time, the OC shall be liable for the payment of waiting time charges at the rate of \$100.00 for each hour that the driver is so delayed which will be assessed against the OC freight payments.
- 5.4.3 In the event that the MC arrives at the consignee/consignor to deliver or pickup a loaded/empty container or break bulk cargo within the facilities normal operating hours (Attachment 6) as specified by the Ordering Officer and is unable to pick up or deliver due to the fault of the consignee/consignor, and the MC waiting time exceeds (1) one hour of free time, the government shall be liable for the payment of waiting time charges at the rate of \$100.00 for each hour that the driver is so delayed which will be assessed against the consignee/consignor.

5.5 Driver free time

Driver free time shall commence to run upon arrival of the MC at the designated location, if not earlier than the appointed arrival time. Time shall cease to run when delivery or pickup of cargo or equipment is completed. Driver free time shall not run during any official lunch period of the designated facility as published in Attachment 6 Official Facilities Operating Hours.

5.6 Notification of Delay

The MC shall immediately notify the OC, consignee and the COR of any delays for the pickup or delivery of cargo, and shall note such delay and applicable times with written confirmation to the consignee/shipper and COR on the order documentation.

5.7 Breakdown Notification

In the case of a breakdown en-route between points under this contract, the MC shall immediately notify the OC, COR and consignee of such breakdown. The MC shall be solely responsible for securing tires, tire repair, or other ordinary repairs to all equipment. If necessary, the MC, at its own expense shall furnish a substitute compatible motor vehicle within two hours unless directed otherwise by the OC. The MC will not be paid for down time or out of service time due to equipment failure.

6.0 Rate Application

6.1 Accessorial Services

6.1.1 Overweight/Oversize Cargo Service.

The MC shall provide special equipment for inland transportation for cargo that is overweight or oversized (OW/OS) as defined herein. The MC shall be paid for such service as set forth in the Schedule of rates. It shall be the MC's responsibility to obtain all permits required to move oversized or overweight cargo. The MC shall obtain the necessary permits before the transportation is performed. Cargo exceeding OW/OS as defined in the contract will be negotiated on a case by case as required by the shipper/consignee or ordering officer.

6.1.2 Re-spot Service.

Upon request or order of the OC or the consignee, the MC shall provide Re-spot service which shall consist of moving a Government container from the initial point of delivery within a facility to another point within the facility for stuffing or stripping. The MC shall be compensated for Re-spot service in accordance with rates set forth in the accessorial table.

6.1.3 Stop-Off Service.

- (a) The MC shall provide stop-off service as requested by the COR or consignee. Stop-off service does not include Re-spot service within the continuous property of the activity involved. The MC shall be compensated for stop off service as stated below:
- (b) When the total distance traveled between the container's first destination and the container's second destination exceeds 50 miles, an additional stop off charge will be paid in accordance with rates set forth in the accessorial table for each fifty mile increment of distance traveled between the first and second destination.
- (c) When one or more stop offs occur, the MC shall be entitled to the freight based on the rate between either the first destination or the second destination and the Port of San Juan, whichever is greater. In the event that cargo is added to an order or in the event that the contractor is ordered to move from zone to zone rather than port to zone, the contractor shall be entitled to an additional payment of \$100.

6.1.4 Diversion.

Upon request of the OC, COR or consignee, the MC shall divert a container and change the destination of a loaded or empty container after transit has commenced. Stop-off and re-spot shall not be considered a diversion regardless of when they occur. The MC shall be compensated for diversions in accordance with rates set forth in the accessorial table.

6.1.5 Chassis Requirement.

From time to time, the Government may require the MC to provide a chassis with its tractor for the movement of Government furnished containers. When providing this service, the MC shall provide chassis' that will remain with the container while they are in the custody of the Government unless this requirement is waived by the OC, COR, or consignee. Chassis' provided by the MC shall be compatible for transporting the size and type of Government furnished containers. The MC shall be compensated for Government use of the chassis in accordance with rates set forth in the accessorial table.

6.1.6 Reimbursable Item(s) Taxes and Other Expenses.

When the MC incurs out of pocket expenses for the processing of any clearance (i.e., customs, taxes and other related expenses) for clearing cargo as stated in Section 3.6.5.2, the Government will reimburse the MC for actual expenses via the PowerTrack system. The MC shall submit all invoices with the original copy of the receipts for the item paid to the COR in Puerto Rico.

6.1.7 Tax Authority Clearance

When Tax Clearance Service is ordered for cargo, as stated in Section 3.6.5.1, the MC will be paid the lumpsum amount as set forth in the Accessorial Schedule of Rates per clearance.

7.0 Special Contract Requirements

7.1 Security

If the Government notifies the MC that the employment or the continued employment of any driver is prejudicial to the interests or endangers the security of the United States of America, the MC shall make any changes necessary in the appointment(s). The Government shall reimburse any costs to the MC occasioned by such changes.

7.2 Strikes

In the event that delivery of cargo is delayed by reason of strike or stoppage of work, the MC shall immediately notify the OO for disposition instructions. The MC shall not be liable for liquidated damages or detention charges as set forth in the contract for delays caused by strikes or stoppage of work beyond the control of the MC. However, in no case shall the MC be relieved of its obligation to fulfill the order for services as result of the strike or stoppage of work.

7.3 Liens

7.3.1 Seizure of cargo

The MC agrees that it will not assert any type of lien, on any cargo transported by the Government under this contract. The MC further agrees that it will not take any action to seize, arrest, hold, or otherwise detain such cargo through any judicial process in the U.S or the Commonwealth of Puerto Rico. The MC agrees to insert this clause in all subcontracts at any tier and to expend any resources necessary to expeditiously enforce the provisions of this clause against such subcontractors.

7.3.2 Freight

There shall be no liens, asserted or permitted on any freight payable by the Government under this contract. The MC agrees to insert this clause in all subcontracts at any tier and to expend any resources necessary to expeditiously enforce the provisions of this clause against such subcontractors.

7.4 Detention of Contractor Equipment

7.4.1 Free Time The total amount of free time for Government use of the MC's conveyances when requested by the COR or Government's designated agent to transport DoD cargo under this contract will be 3 (three) working days. Time shall commence to run at 0800 hours local time on the next working day after the conveyance has been disconnected from the tractor at a Government facility, and shall cease to run when the MC is notified that the conveyance is available for pick-up. When the Government holds the conveyance longer than the allowed free time, detention shall accrue. Detention charges as set forth below shall be paid for each 24 hour period of time spent, or pro-rata for part thereof, beyond the total allowed free time.

7.4.2 Detention Charges

<u>TYPE OF EQUIPMENT</u>	<u>PER DAY</u>
CONTAINER 20FT	\$22.00
CONTAINER 40 FT	\$35.00
REEFER 20 FT	\$70.00
REEFER 40 FT	\$92.00
DRY TRAILER	\$30.00
LOWBOY	\$75.00
FLATBED	\$35.00
CHASSIS	\$5.00

7.4.3 Detention Invoices

Detention invoices must be submitted with the proper documentation showing evidence that detention occurred. Invoices are to be submitted no later than (6) six months from the date the conveyance is returned to the MC. Detention invoices received after that time will not be certified for payment and the MC waives any right to payment thereafter.

7.4.4 Ocean Carrier Equipment

In the event that the Government incurs detention charges under its contract with an OC for the ocean transportation of cargo to and from Puerto Rico as a result of non-performance or breach of the required delivery time by the MC under this contract, the MC shall be liable to the Government for the actual detention charges assessed by the OC which are directly attributable to the MC. The Government shall have the right to offset these detention monies owed by the MC to the Government against freight monies owed to the MC by the Government under this contract of services or any other Government contract.

7.5 Equipment Loss or Damage

7.5.1 Damage to MC Equipment

Should the tractor, trailer or any other conveyance belonging to the MC be damaged by act of the Government, its agents, employees, or contractors while such MC equipment is in the custody of the Government, its agents, employees or contractors, the Government shall repair or reimburse the MC the lessor of the following: the reasonable costs of repairs; the fair market value immediately prior to the damage. The MC will assign to the Government any rights, causes of action, or other claims, which the MC may have against third parties with respect to such damage. The Government shall not be liable for the repair of any damage under this Section unless written notice specifying such damage shall have been given to and acknowledged by the Government or its authorized representative at the time custody of the container or other equipment is returned to the MC. Claims submitted under this clause for damage to MC equipment shall be filed with Commander, Military Surface Deployment Distribution Command, Office of SDAQ-G, 200 Stovall Street, Alexandria, VA 22332.

7.5.2 Damage to Government Equipment

The MC shall be liable for loss of or damage to Government containers and chassis while in the MC's custody to the same extent that the Government is liable for loss or damage to the MC equipment while in the Government's custody. The MC will not procure insurance coverage on Government containers or chassis.

7.5.3 Damage to Ocean Carrier Equipment

The MC shall be liable for loss of or damage to an OC's containers and chassis while in the MC's custody for the transportation of DoD cargo under this contract to the extent set forth in its Interchange Agreement with the applicable OC. The Government shall not be liable for any loss or damage to OC's containers and chassis while in the MC's custody.

7.6 Insurance Requirements

The MC shall assume responsibility for all damage or injury to persons or property occasioned through the use, maintenance, and operation of the MC's motor vehicles or other equipment by, or the action of, the MC or the MC's employees and agents. Therefore, the MC shall obtain and maintain, at its own expense, adequate public liability insurance as set forth below.

7.6.1 General Public Liability

- (a) Before commencing work, and during the period of the contract and any extensions or option periods exercised hereunder, the MC shall, at its own expense, maintain policies of general public liability insurance with applicable endorsements sufficient to satisfy the liability amounts as follows: for (1) bodily injury not less than \$500,000 for each person and \$500,000 for each occurrence; and (2) for property damage (including environmental restoration) not less than \$500,000 for each accident and \$1,500,000.00 in the aggregate. Public liability insurance is defined above to include coverage for bodily injury, property damage, and environmental restoration. The policy shall also name the United States Government as an additional assured with a waiver of subrogation noted on the policy.
- (b) All insurance shall be written on companies (insurance underwriter) which must have a policyholder's rating in the Best's Insurance Guide listed in the Fiscal Service Treasury Department No. 570, listing of surety companies or a company authorized to issue such insurance by the Commonwealth of Puerto Rico, as applicable. The insurance policy shall remain in effect continuously, without interruption for the full period of the contract, and the policy shall contain an endorsement that any cancellation or material change adversely affecting the Government's interest shall not be effective unless the insurer or the Contractor gives 30 days prior written notice of such cancellation or change to the Contracting Officer.
- (c) In the event a policy expires during the contract period, a complete duplicate certified copy of any renewal policy shall be submitted to the Contracting Officer not later than 15 days prior to the expiration of any current policy on file. Failure to obtain and/or maintain the requisite insurance coverage shall be grounds for finding a Contractor non-responsible prior to award and grounds for termination for default after award of a MC's contract.
- (d) Notwithstanding the provisions set forth above, the MC shall maintain, under the same or separate policies, sufficient insurance coverage required for Equipment Interchange Agreements with OC's providing deep-sea ocean transportation services for DoD cargo to and from Puerto Rico. The Government shall in no event be liable or responsible for damage to or injury to any person or property occasioned through the use, maintenance, and operation of the MC's motor vehicles or other equipment by, or the action of, the MC or the MC's employees and agents, and the government shall be indemnified and held harmless against claims for damage or injury in such cases.

7.6.2 Cargo Liability

The MC shall be liable for the security, loss of or damage to cargo under this contract from the time it is received for by the MC at pickup or loading at origin until it is delivered to destination and received for by the consignee. The MC shall obtain cargo loss and damage insurance in accordance with FAR 52.228-9, as set forth in this contract. In addition to the requirements of the clause at FAR 52.228-9, the policy shall also name the United States Government as an additional assured with a waiver of subrogation noted on the policy.

7.7 Performance Bond

- (a) Before commencing work, and during the period of the contract and any extensions or option periods exercised thereunder, the MC, at its own expense, shall obtain and furnish a performance bond in the amount of \$100,000.00. The bond shall be furnished on MT Form 380, "Performance Bond", and must issued by a surety company listed in the Fiscal Service Treasury Department, Circular No.570 or a company authorized to issue such performance bonds by the Commonwealth of Puerto Rico, as applicable. The performance bond shall remain in effect continuously, without interruption for the full period of the contract, and the bond shall contain an endorsement that any cancellation or material change adversely affecting the Government's interest shall not be effective unless the surety or the Contractor gives 30 days prior written notice of such cancellation or change to the Contracting Officer. The Government shall be the sole beneficiary of this bond.
- (b) (b)The performance bond secures performance and fulfillment of the MC's obligation to deliver DoD freight to destination and other services rendered hereunder. The bond will cover, among other things, DoD re-procurement costs as a result of MC default, abandoned shipments, or bankruptcy when such re-procurements costs can not be obtained through Government offset against monies owed to the MC under this contract or any other Government contract.

(end of special terms and performance work statement)

CLAUSES INCORPORATED BY REFERENCE

52.202-1	Definitions	JUL 2004
52.203-3	Gratuities	APR 1984
52.203-12	Limitation On Payments To Influence Certain Federal Transactions	SEP 2005
52.204-4	Printed or Copied Double-Sided on Recycled Paper	AUG 2000
52.204-7	Central Contractor Registration	OCT 2003
52.216-22	Indefinite Quantity	OCT 1995
52.216-27	Single or Multiple Awards	OCT 1995
52.223-3	Hazardous Material Identification And Material Safety Data	JAN 1997
52.232-36	Payment by Third Party	MAY 1999
52.237-3	Continuity Of Services	JAN 1991
52.242-13	Bankruptcy	JUL 1995
52.246-4	Inspection Of Services--Fixed Price	AUG 1996

CLAUSES INCORPORATED BY FULL TEXT

52.212-4 CONTRACT TERMS AND CONDITIONS-- COMMERCIAL ITEMS (SEP 2005)

(a) Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) Assignment. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) Disputes. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) Definitions. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement or any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice. (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include--

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.
- (A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.
- (B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer--Other Than Central Contractor Registration), or applicable agency procedures.
- (C) EFT banking information is not required if the Government waived the requirement to pay by EFT.
- (2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.
- (h) Patent indemnity. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.
- (i) Payment.--
- (1) Items accepted. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.
- (2) Prompt payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.
- (3) Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.
- (4) Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.
- (5) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.
- (j) Risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:
- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- (2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

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

(l) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

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

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

(o) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

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

(q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

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

(End of clause)

ADDENDUM TO FAR 52.212-4

COMMERCIAL TERMS AND CONDITIONS – COMMERCIAL ITEMS

Contract Clause FAR 52.212-4, Contract Terms and Conditions – Commercial Items, incorporated in full text is hereby tailored to reflect the following changes to Paragraph (c), Changes, in accordance to FAR 12.302(a):

(c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties except for items/provisions delineated in the contract as within the authority of the CO. Where the Government requests a change requiring written agreement of the parties, the parties agree to undertake best efforts to affect the requested change. Changes in the terms and conditions of a delivery/task/shipping order issued under the contract may be made in writing on a unilateral basis by the Government.

- A. If any such change causes an increase or decrease in the cost of, or the time required for performance of any part of the work under this contract, whether or not changed by the order, the CO must make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
- B. The MC must assert its right to an adjustment under this clause within thirty (30) days from the date of the receipt of the written order.
- C. If the MC's proposal includes the cost of property made obsolete or excess by the change, the CO shall have the right to prescribe the manner of disposition of the property.
- D. Failure to agree to any adjustment shall be a dispute.

(g) Invoice. PowerTrack shall be the primary method of payment for this contract, however, for billable items outside the ability of PowerTrack, paragraph g above is in effect for invoicing.

(End of clause)

52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (FEB 2006)

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

(1) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(2) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

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

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

(2) 52.219-3, Notice of HUBZone Small Business Set-Aside (Jan 1999) (15 U.S.C. 657a).

(3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JUL 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

(4) [Removed].

(5)(i) 52.219-6, Notice of Total Small Business Set-Aside (JUNE 2003) (15 U.S.C. 644).

- (ii) Alternate I (OCT 1995) of 52.219-6.
- (iii) Alternate II (MAR 2004) of 52.219-6.
- (6)(i) 52.219-7, Notice of Partial Small Business Set-Aside (JUNE 2003) (15 U.S.C. 644).
- (ii) Alternate I (OCT 1995) of 52.219-7.
- (iii) Alternate II (MAR 2004) of 52.219-7.
- (7) 52.219-8, Utilization of Small Business Concerns (MAY 2004) (15 U.S.C. 637 (d)(2) and (3)).
- (8)(i) 52.219-9, Small Business Subcontracting Plan (JUL 2005) (15 U.S.C. 637(d)(4)).
- (ii) Alternate I (OCT 2001) of 52.219-9
- (iii) Alternate II (OCT 2001) of 52.219-9.
- (9) 52.219-14, Limitations on Subcontracting (DEC 1996) (15 U.S.C. 637(a)(14)).
- (10)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (SEP 2005) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
- (ii) Alternate I (JUNE 2003) of 52.219-23.
- (11) 52.219-25, Small Disadvantaged Business Participation Program--Disadvantaged Status and Reporting (OCT 1999) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- (12) 52.219-26, Small Disadvantaged Business Participation Program--Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- (13) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004).
- (14) 52.222-3, Convict Labor (JUNE 2003) (E.O. 11755).
- (15) 52.222-19, Child Labor--Cooperation with Authorities and Remedies (JAN 2006) (E.O. 13126).
- (16) 52.222-21, Prohibition of Segregated Facilities (FEB 1999).
- (17) 52.222-26, Equal Opportunity (APR 2002) (E.O. 11246).
- (18) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).
- (19) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).
- (20) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).
- (21) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).

___ (22)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (AUG 2000) (42 U.S.C. 6962(c)(3)(A)(ii)).

___ (ii) Alternate I (AUG 2000) of 52.223-9 (42 U.S.C. 6962(i)(2)(c)).

___ (23) 52.225-1, Buy American Act--Supplies (JUNE 2003) (41 U.S.C. 10a-10d).

___ (24)(i) 52.225-3, Buy American Act--Free Trade Agreements--Israeli Trade Act (JAN 2006) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub. L. 108-77, 108-78, 108-286).

___ (ii) Alternate I (JAN 2004) of 52.225-3.

___ (iii) Alternate II (JAN 2004) of 52.225-3.

___ (25) 52.225-5, Trade Agreements (JAN 2006) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

___ (26) 52.225-13, Restrictions on Certain Foreign Purchases (FEB 2006) (E.O.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of Treasury).

___ (27) 52.225-15, Sanctioned European Union Country End Products (FEB 2000) (E.O. 12849).

___ (28) 52.225-16, Sanctioned European Union Country Services (FEB 2000) (E.O. 12849).

___ (29) 52.232-29, Terms for Financing of Purchases of Commercial Items (FEB 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

___ (30) 52.232-30, Installment Payments for Commercial Items (OCT 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

___ (31) 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration (OCT 2003) (31 U.S.C. 3332).

___ (32) 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration (MAY 1999) (31 U.S.C. 3332).

X (33) 52.232-36, Payment by Third Party (MAY 1999) (31 U.S.C. 3332).

___ (34) 52.239-1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a).

___ (35)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631).

___ (ii) Alternate I (APR 2003) of 52.247-64.

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

___ (1) 52.222-41, Service Contract Act of 1965, as Amended (JUL 2005) (41 U.S.C. 351, et seq.).

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

___ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act--Price Adjustment (Multiple Year and Option Contracts) (MAY 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

____ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act--Price Adjustment (February 2002) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

____ (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA) (May 1989) (41 U.S.C. 351, et seq.).

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

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

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

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

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

(i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (April 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (December 2001) (38 U.S.C. 4212).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).

(vi) 52.222-41, Service Contract Act of 1965, as Amended (Jul 2005), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, et seq.).

(vii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor May include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

52.216-18 ORDERING. (OCT 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from 01 October 2007 through 30 September 2012, if the option periods are exercised.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of clause)

52.216-19 ORDER LIMITATIONS. (OCT 1995)

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than 1 forty foot container, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) Maximum order. The Contractor is not obligated to honor:

(1) Any order for a single item in excess of the minimum cargo commitment in Section 1.8 and 1.9 of the PWS.

(2) Any order for a combination of items in excess of the minimum cargo commitment in Section 1.8 and 1.9 of the PWS

(3) A series of orders from the same ordering office within 3 days that together call for quantities exceeding the limitation in subparagraph (1) or (2) above.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) above.

(d) Notwithstanding paragraphs (b) and (c) above, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 1 day after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 45 days.

(End of clause)

52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 30 days; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 45 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 5 years and 6 months.

(End of clause)

CLAUSES INCORPORATED BY REFERENCE

52.252-2

Clauses Incorporated By Reference

FEB 1998

DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning as set forth below:

AAFES

Army Air Force Exchange Services

Administrative Contracting Officer (ACO)

Is a warranted CO who is responsible for, but not limited to the following: appoint and train the Contracting Officer Representative (COR), issue administrative modifications, analyze Contractor claims, evaluate the Contractor's performance, and provide reports on the Contractor's performance to the CO.

Agent

Refers to ocean carrier (OC) acting with the capacity of a agent such as required to initiate onward movement from port to consignee and return of empty containers back to port.

Agreement

See Contract.

Available for Onward Movement

Container/Chassis is ready to be hooked to a tractor, fully operational and ready to meet all road and safety requirements, including operable lights, brakes and support equipment.

Boats

Includes all craft in excess of thirty-five (35) feet in length assigned exclusively for use on or under water and may or may not include a cradle for stowage.

Booking

Offer by the Government and acceptance by the Contractor for the transportation of goods pursuant to the applicable rates, terms and conditions of the subject contract.

Breakbulk/RORO Cargo

All cargo that is not containerizable.

Bulk Cargo

Dry or Liquid Cargo which is not subject to mark or count, shipped in fluid or loose state and not packaged for ocean carriage in any manner, such as grain, ore, coal, chemicals, oil, liquid latex, etc.

Car Carrier

A trailer/container of open framework designed for carriage of automobiles or other unboxed vehicles.

Cargo

The type of cargo to be transported will be U.S. Military and military sponsored cargo, mail and any other type of cargo shipped in the Defense Transportation System (DTS), or in support of DOD, e.g. exercise cargo. Cargo may be containerized (mixed and straight loads) or breakbulk and will move in both directions.

Cargo Trailer

See "Van".

Carrier

Any Carrier awarded a Contract pursuant to this solicitation, including its agents and subcontractors. The term "Carrier" is used interchangeably with the term "Contractor."

Chassis -

A platform equipped with running gear and front end support on which a container is placed for transport.

Commercial Motor Vehicle

The term Commercial Motor Vehicle means any self propelled or towed vehicle used on public highways to transport property when the vehicles has a gross vehicle weight rating or gross combinations weight rating of 10,000 or more pounds or the vehicle is used to transport hazardous material in a manner requiring placarding under regulations issued by the Secretary of Transportation.

Consignee

The term Consignee means the person to whom goods are to be delivered by the carrier at the place of destination

Consignor

The term Consignor means the person who places goods in the care of a carrier for delivery to the person known as the consignee. (see shipper)

Consolidation

Practice of consolidating many less-than-container load cargo in order to make container load movements.

Container

A cargo conveyance which confines and protects the cargo from loss or damage, can be handled in transit as a unit and can be mounted and secured in or on marine, rail or highway equipment. Common types of containers are: weatherproof, (dry enclosed, refrigerated, van, tank, high cube), non weatherproof, (open top, car carrier, flatracks, flatbed, lowbed or platforms.

Container Detention

Government ordered delay in commencement of drayage/linehaul (container staging) or Government delay in unstuffing of containers at destination when total delay exceeds total freetime allowed.

Containerizable Cargo

All cargo which can be physically loaded in or on a container.

Contract

This document which contains the contractual terms pursuant to which a Carrier agrees to accomplish transportation of such lawful cargo as may be tendered by the Government.

Contracting Officer (CO)

ACO within the scope of that definition in Federal Acquisition Regulation 52.202-1, who has been appointed or designated as such by the PARC, HQ MTMC. (See Procurement Contracting Officer)

Contracting Officer Representative (COR)

Appointed in writing by the CO. Responsible for, but not limited to, the following: monitors the Contractor's performance in accordance with the terms and conditions of the contract, ensures Contractor's compliance with reporting requirements, provides data for Government reports, verifies/certifies services and conducts initial review of Contractor's claims.

Contractor

See Carrier.

Cutoffs

Local Cutoffs - The date and time publicly established by the Carrier when the cargo must be tendered to the Carrier at its terminal facility, or to the Carrier's agent to meet the requirement for lift from the inland origin of the cargo.

Vessel Cutoffs - The date and time publicly established by the Carrier when the cargo must be tendered to the Carrier at its terminal facility, or to the Carrier's agent to meet the requirement for lift to the booked vessel.

Days

Shall mean calendar days unless specified otherwise. Defense Table of Official Distances (DTOD)

The distance source for all rates, standards, or charges which require a point to port, port to point or point-to-point distance. DTOD is published by ALK Associates of Princeton, NJ. PC*Miler is their commercial, DTOD compliant product.

Detention

Charges assessed against the Government for delaying the release of Carrier equipment beyond allowed free time (See also Container Detention).

Discharging

The physical movement of cargo/container from the place of stowage on board a vessel to the pier.

Diversion

To change the booked destination of a loaded container/trailer after transit has commenced, but before the container has commenced final drayage/linehaul from the port of discharge.

Drayage

The movement of cargo/container between the Carrier's terminal at the port where the cargo/container is loaded to or discharged from the vessel and another place within the commercial zone or modified zone of that United States port city or within a ten (10) mile radius of that city's limits, by means other than the Carrier's principal vessels, such as by highway or railway.

Driver Standby Time

The period of time that the inland participating cargo carrier (truck driver) waits with the container during a split pick-up/delivery service.

Dry Container

A completely enclosed weatherproof container.

Dry Trailer – Minimum useable interior space, 39 feet in length, 7 feet 6 inches wide, and 7 feet 6 inches high, bed height from level ground shall be 48 inches minimum to 52 inches maximum.

Explosives

Includes all military explosives (IMO Class 1.1, 1.2, 1.3), military lethal chemicals, and other items included in Title 49 Code of Federal Regulations, Part 171 et seq (CFR et seq).

FEU

Forty (40) foot equivalent unit.

Flatrack (Platform) Container

A container without weatherproof sides and/or top. Includes platforms and flatracks with rigid or collapsible ends. They can be end loaded, top loaded or side loaded.

Flatbed – Minimum overall cargo surface area dimensions shall be 39 feet long and 8 feet wide, bed height from level ground shall be 48 inches minimum to 50 inches maximum;

Free-In-Out

Loading and discharging services are to be performed by the Government.

Futile Effort

The good faith effort of a Carrier to accept cargo which is futile due to fault of the Government. Does not include the instance in which the Carrier spots a container for a particular booking which does not materialize, but is able to utilize the spotted container for another booking without returning the container to its place of origin.

General Cargo

All dry cargo other than refrigerated cargo and vehicles. Dry cargo refers to shipments of straight or mixed loads of the commodities listed in the Military Standard Transportation and Movement Procedures including hazardous cargo and Class I lethal chemicals (See "Explosives" in this attachment for the reference citing the classes of lethal chemicals).

Government

The United States Government, its agents and Contractors, party to this Contract, and the Consignees, their agents and Contractors unless used in a context to refer to another Government such as a foreign or local government. Does not include Contractors party to this Contract. Ordering activities authorized under this Contract are included.

Government Tractor

A tractor used by the Government to transport the Contractor's containers placed on chassis or over-the-road trailers.

Heavy Vehicles

A breakbulk/RORO cargo – Wheeled or tracked vehicles (unboxed) exceeding 10,000 lbs per unit.

Hazardous Cargo

A substance or material including a hazardous substance, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety and property when transported in commerce and which has been so designated.

Inoperable

Not capable of being operated. This shall not include vehicles, which are required to be inoperative for containerization.

K-Term

A container booking wherein the ocean Carrier accepts or terminates responsibility at the terminal. The Government is responsible for having the cargo or container either moved to and/or removed from the Carrier's terminal i.e., pier-to-pier service.

Light Vehicles

A breakbulk/RORO cargo – Wheeled or tracked vehicles (unboxed) up to and including 10,000 lbs per unit.

Linehaul

The movement of a container between the Carrier's terminal at the port where the container is loaded to or discharged from the vessel and another place outside the commercial zone or modified zone of that United States port city or beyond a ten (10) mile radius of the city limits by means other than the Carrier's principal vessels, such as by highway, railway, canal or river, or in specific instances by ferry or barge system.

Liner Terms

The Carrier assumes all responsibilities and cost for the cargo from the port or point where the cargo is received for by the Carrier to the destination port or point where the Carrier makes the cargo available to the consignee.

Loading

The physical movement of cargo/container from the pier to place of stowage on board a vessel.

Lowboys - Minimum overall cargo surface area dimensions shall be 36 feet long and 8 feet wide, bed height from level ground shall be 36 inches minimum to 52 inches maximum at the rear of the unit with the cargo well no higher than 36 inches.

M Term

The Carrier assumes all responsibilities and cost for the cargo from the point where the cargo is received for by the Carrier to the destination point where the Carrier makes the cargo available to the consignee i.e., door-to-door service.

Mail

Includes all classes and types of postal matter.

Measurement Ton (MT)

Forty (40) cubic feet or 2,240 lbs., whichever will generate the highest tonnage units and revenue when applied to the dimensions and weight of cargo.

Military Traffic Management Command (MTMC)

Commander, Military Traffic Management Command, Office of the Principal Assistant Responsible for Contracting, Transportation Acquisition Division (MTAQ-JI), appointed and designated as the CO.

MILSTAMP

Military Standard Transportation and Movement Procedures.

No Show

Booked cargo that is not available for lift on board the scheduled vessel sailing through no fault of the Contractor and which was not timely cancelled.

Open Top Containers

A Container without a permanently affixed metal top. Top is a removable tarpaulin, which is supported by roof bows.

Ordering Activity

Includes the Commander, Deployment Support Command or his/her designee, and Military Traffic Management Command, or his/her designee, and other agencies as designated.

Ordering Officer (OO)

Appointed by the Chief of Acquisition, MTMC, with a copy provided to the Carrier. Responsible for, but not limited to, the following: books cargo and issue shipping orders, samples bookings for low cost, monitors cargo allocation, recommends addition/deletion of routes/services, authorizes substitution of equipment and authorizes staging.

Over-Dimensional Cargo

Cargo that when booked to be shipped as container cargo where any one dimension exceeds any external container dimension of eight (8) feet wide or eight (8) feet six (6) inches high but does not exceed the following maximum dimensions:

Maximum Dimensions

Weight	Length	Width	Height
48,000 lbs.	40 feet 8 inches	11 feet	11 feet

Oversized Container Cargo

Cargo which when stowed aboard a cellular container ship would require more space than the space needed to load a forty (40) feet long, eight (8) feet six (6) inches high, eight (8) feet wide dry container; i.e., would require more than one (1) container space of this size. Exceptions to this definition are described as "Over Dimensional Cargo."

Oversized Breakbulk Cargo

Cargo that has any one dimension over fifty (50) feet long, more than eleven (11) feet wide or over eleven (11) feet high, or as determined by the OO, requires special handling equipment for loading aboard or discharging from a vessel because of that cargo's atypical size. All wheeled or tracked vehicles regardless of size are excluded from this definition. Extra length charges are not applicable to cargo defined as oversized cargo.

Personal Property

Personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling.

Place Designated By The CO

Places within the commercial zone of United States ports or inland cities, and places within a ten (10) mile radius of the city limits of any U.S. port or inland city or limits of other places designated in the Schedule of Rates.

Platform

A container/trailer with no sides or top, but only the floor.

Protected Stow

The placement of cargo in a manner, which can be stowed either above or below deck that will protect the cargo from wind, water, and other damages associated with the weather and sea.

Rail Intermodal Equipment

A unit for transporting commodities in trailer or container on freight-car service from point-to-point, constructed in such a manner that it may be mounted and secured on a car, chassis or bogie for the purpose of such locomotives.

Receiving Activity

Place, other than the Carrier's terminal, designated by the OO for receipt of cargo/containers from the Carrier for stuffing or unstuffing.

Refrigerated Container

A weatherproof container used for the carriage of controlled temperature cargo which is properly insulated against the effects of temperature outside the container and is equipped with mechanical, thermostatically temperature controlled air circulation or air exchange cooling equipment with venting capability capable of providing temperature protection to cargo, between seventy five (75) degrees and minus ten (-10) degrees Fahrenheit. Further definition is as follows:

Non-Self-Sustaining. A refrigerated container, which requires a power or fuel source, not mounted on the refrigerator or its chassis, to operate the refrigeration unit.

Self-Sustaining. A refrigerated container which does not need an external power or fuel source, and upon which a self-contained power unit is mounted, either on the container or its accompanying chassis. The container is self-sustained only while the power unit and its fuel source are mounted.

Regularly Scheduled Sailings

Sailing at regular intervals maintained between the same port ranges and consisting of regular arrivals and departures along an established route.

Relay Service

Service by which an ocean Carrier serving the port of origin by direct vessel call with one of its vessels and the port of destination by direct vessel call with another of its vessels provides transportation between such ports via an intermediate port served by both vessels at which cargo is transferred from one vessel to the other.

Required Delivery Date (RDD)

A date established by the application of the standards in the contract when cargo must be delivered by the Contractor. RDDs will not require delivery in less time than the standard, unless mutually acceptable between the OO and the Contractor in the booking.

Re-routing

To change the booked destination of a loaded container after final drayage/linehaul has commenced from the port of discharge. Short stop, stop-off, and re-spot shall not be considered rerouting regardless of when they occur.

Re-spot

To move a container from the initial point of delivery within a facility to another point within that facility.

Schedule

Where used, this term refers to the items listed in the CARES II SM tables as noted in the CLIN description. These tables contain the rates approved for use with this contract.

Short Stop

To stop a stuffed container at the Carrier's terminal where the Government elects to take delivery.

Shut out

Cargo that is available for stevedoring but unable to be loaded on board the vessel to which it is booked, due to operational circumstances or overbooking of the vessel.

Split Pick-Up/Delivery

The subsequent movement of a conveyance from one load/off-load station within a facility to another load/off-load station within that same facility for additional stuffing and/or stripping.

Spot

The placement of a container for stuffing or stripping.

STB

Successor Agency to the Interstate Commerce Commission and Commission Termination Successor Agency to ICC, the agent of Congress designated to implement the Interstate Commerce Act which regulates rates, rules, and practices of rail transportation lines engaged in interstate traffic, motor Carriers, common and contract water Carriers operating in domestic trade, and freight forwarding companies.

Stop-Off

Stopping a container en route at a place designated by the OO for additional stuffing/un-stuffing.

Stripping

The process of unloading a container.

Stuffing

The placement of cargo into a container including any necessary chocking, bracing, or dunnaging.

TEU

Twenty (20) foot equivalent unit. A method of quantifying the number of ocean containers. For example, one (1) twenty (20) foot container equals one (1) TEU and one (1) forty (40) foot container equals two (2) TEUs.

Tractor

A motor vehicle designed primarily for hauling containers/trailers over the road.

Trailer

A vehicle designed without motive power, to be drawn by another vehicle and so constructed that no part of its weight rests upon the towing vehicle.

Underdeck Stow

The placement of cargo in a manner which is stowed below the vessel's deck in its holds and protects the cargo from wind, water, and other damages associated with the weather and sea.

Van

A motor vehicle permanently mounted on undercarriage and wheels.

Wheeled Or Tracked Vehicles (Unboxed And Containerizable)

Includes all types of unboxed, land or amphibious equipment or conveyances, set up on wheels or tracks, whether or not self-propelled, but excluding railroad locomotives and set up railroad rolling stock. Vehicles shall be freighted on the basis of extreme dimensions as offered for shipment.

Working Day

Excludes weekends and locally observed holidays.