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SOLICITATION AMENDMENT

MODIFICATION DE L'INVITATION

The referenced document is hereby revised; unless otherwise indicated, all other terms and conditions of the Solicitation remain the same.

Ce document est par la présente révisé; sauf indication contraire, les modalités de l'invitation demeurent les mêmes.

Comments - Commentaires

Vendor/Firm Name and Address

**Raison sociale et adresse du
fournisseur/de l'entrepreneur**

Issuing Office - Bureau de distribution

Marine Chartering Services Directorate/Direction des
services d'affrètements maritime

11 Laurier St./ 11, rue Laurier

Place du Portage, Phase III, 6C2

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K1A 0S5

Title - Sujet Navires remorquage d'urgence	
Solicitation No. - N° de l'invitation F7017-160056/C	Amendment No. - N° modif. 007
Client Reference No. - N° de référence du client F7017-160056	Date 2018-03-08
GETS Reference No. - N° de référence de SEAG PW-\$\$MB-003-26699	
File No. - N° de dossier 003mb.F7017-160056	CCC No./N° CCC - FMS No./N° VME
Solicitation Closes - L'invitation prend fin at - à 02:00 PM on - le 2018-04-05	
Time Zone Fuseau horaire Eastern Standard Time EST	
F.O.B. - F.A.B. Plant-Usine: <input type="checkbox"/> Destination: <input type="checkbox"/> Other-Autre: <input type="checkbox"/>	
Address Enquiries to: - Adresser toutes questions à: Aubin, Marc A.	Buyer Id - Id de l'acheteur 003mb
Telephone No. - N° de téléphone (819) 420-5452 ()	FAX No. - N° de FAX () -
Destination - of Goods, Services, and Construction: Destination - des biens, services et construction:	

Instructions: See Herein

Instructions: Voir aux présentes

Delivery Required - Livraison exigée	Delivery Offered - Livraison proposée
Vendor/Firm Name and Address Raison sociale et adresse du fournisseur/de l'entrepreneur	
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Name and title of person authorized to sign on behalf of Vendor/Firm (type or print) Nom et titre de la personne autorisée à signer au nom du fournisseur/ de l'entrepreneur (taper ou écrire en caractères d'imprimerie)	
Signature	Date

This Amendment number 007 is raised to (1) make modifications to the Request for Proposal (RFP) and (2) answer questions from the industry as follows:

Modifications to the RFP

Modification #22 – At Article 7.1 (d) (Defined Terms) the following definition is added as follows:

- (v) Unless context requires otherwise, the term “vessels” refer to the ETVs.

Modification #23 – Article 7.15 (a) (i) only is deleted in its entirety and replaced with the following:

- (i) all water, dispersants, firefighting foam, and transport thereof, port charges, pilotage and boatmen and canal steersmen (whether compulsory or not), launch hire (unless incurred in connection with the Contractor's business), light dues, tug assistance, canal, dock, shore power, harbour, tonnage and other dues and charges, agencies and commissions incurred on the Client's business, price for security or other watchmen, price for quarantine (if occasioned by the nature of the cargo carried or the ports visited whilst employed under this Contract but not otherwise);

Modification #24 – Article 7.15 (a) (iv) only is deleted in its entirety and replaced with the following:

- (iv) Notwithstanding 7.14 (a) (v), the Client must pay for any replacement of any anchor handling, towing and lifting wires and accessories which have been place on board by the Contractor or the Client, should such equipment be lost or damaged, other than as a result of the Contractor's negligence.

Modification #25 – Article 7.20 (g) (vi) only is deleted in its entirety and replaced with the following:

- (vi) **Termination for Failure to provide Corrective Measures as described in (v) above:** In addition to any other rights it has under the Contract, Canada may terminate the Contract for default in accordance with the General Conditions by giving the Contractor a termination notice, if any of the following apply:

- (A) the corrective measures required of the Contractor described above are not met.

This termination will be effective at the end of the Wind-down Period, as specified in the termination notice, unless Canada determines that the Contractor has implemented the corrective measures to Canada's satisfaction.

Modification #26 – Article 7.20 (g) (ii) only is deleted in its entirety and replaced with the following:

(ii) Critical Key Performance Indicators (KPIs):

- (A) The following critical Key Performance Indicators (KPIs) are deemed critical and carry credits as defined in the following clauses for failure to achieve the critical KPI (Critical KPI Failure). The critical KPIs are defined in more detail in Annex A.

No.	Critical KPIs
1	<u>Availability:</u> a) Each vessel must be operational and available for tasking 98% of the time outside of scheduled maintenance periods and outside the maximum 15 days per incident included under Article 7.35 (a). b) Notwithstanding, once both vessels are accepted, the Contractor must have one vessel operational and available at all time. a) and b) above will be measured on a yearly basis.
2	<u>Readiness</u> a) When at sea, the vessels must respond to all taskings immediately, 99% of the time. Response includes acknowledgement and vessel begins transit to tasking area of operation. b) When alongside, the vessels must respond to all taskings within 30 minutes, 99% of the time. Response includes acknowledgement

	and vessel begins transit to tasking area of operation.
	a) and b) will be measured on a yearly basis.

- (B) **Payment Credit Calculations:** This section identifies the payment credits applicable for the Contractor's failure to meet the KPI performance for the above-mentioned critical KPIs.
- When any Critical KPI is not met a Payment Credit of 10% against the ETV monthly price paid by Canada for the ETV Services will apply. The Payment Credit will be applied by reducing the ETV monthly price on the next 6 payments following the yearly assessment on Contractors performance of the Critical KPIs.

- (C) **Breach of Contract for Critical KPI Failures:** Should the Contractor miss the same Critical KPI more than three times in any yearly rolling period then the Contractor will be considered to be in breach and Canada may choose to terminate the contract. The termination will be effective at the end of the Wind-down Period, as specified in the termination notice.

Modification #27 – Article 7.35 (a) only is deleted in its entirety and replaced with the following:

- (a) **Off-Hire Exceptions –** If as a result of any deficiency of Crew or of the Contractor's stores, strike of Crew, breakdown of machinery and equipment (excluding any equipment installed on the vessels by the Client pursuant to Article 7.11 (Structural Alterations and Additional Equipment), damage to hull or other accidents to the vessels, the vessels is prevented from working, no hire must be payable in respect of any time lost and any hire paid in advance must be adjusted accordingly provided always however that hire must not cease in the event of the vessels being prevented from working as aforesaid as a result of the following (up to a maximum of 15 days per incident):
- (i) the carriage of cargo as noted in Article 7.12 (Employment and Area of Operation – The vessel's Space);
 - (ii) quarantine or risk of quarantine unless caused by the Crew having communication with the shore or other vessel at any infected area not in connection with the employment of the vessel, without the consent of the instructions of the Client;
 - (iii) deviation from the vessels' Contract duties or exposure to abnormal risks at the request of the Client;
 - (iv) detention in consequences of being driven into port of to anchorage through stress of weather or trading to shallow harbours or to river or ports with bars or suffering an accident to its cargo, when the expenses resulting from such detention must be for the Client account howsoever incurred;
 - (v) Detention or damage by ice;
 - (vi) any act or omission of the Client's group; or

- (vii) any force majeure event as stated in this Contract.

Modification #28 – Article 7.36 (Pollution) is deleted in its entirety and replaced with the following:

7.36 Pollution

The Contractor must be liable for, and agree to indemnify, defend and hold harmless the Client against all claims, cost, expense, actions, proceedings, suits, demands and liabilities whatsoever arising out of actual or threatened pollution damage due to discharge, spills or leaks from the vessels, except as may emanate from cargo thereon or therein and the cost of cleanup or control thereof even if such claims, costs expenses, actions proceedings, suits, demands and liabilities are caused wholly or partially by the act, neglect, breach or duty (whether statutory or otherwise) or default of the Client.

Modification #29 – Article 7.38 is deleted in its entirety and replaced with the following:

7.38 Saving of Live and Salvage

- (a) The vessels must be permitted to deviate for the purpose of saving life at sea without prior approval or notice coordinated with Canada and without loss of Fixed Service Fee provided however that notice of such deviation is given as soon as possible.
- (b) The Contractor as well as any Employees, including the Master and the Crew of the vessels must waive their right to claim any award for salvage related in any way to any services rendered pursuant to the terms of the Contract. The Contractor further represents that it has the authority to bind the Master and Crew and/or undertake to obtain from the latter a renunciations to such salvage claims.

Modification #30 – Addendum 2 to Appendix B to Annex A - (Towing Conditions and Understanding) document only is deleted in its entirety and replaced with the following:

TOWING CONDITIONS AND UNDERSTANDING

I, the undersigned _____ declare being the owner/operator/master/person in charge of the _____, registered under the official number or registration or license number _____ do hereby request that the Canadian Coast Guard Ship _____ (hereinafter: the "SAR Unit or SAR Unit") provide my disabled vessel with towing assistance.

In doing so, I declare being of sound body and mind and perfectly aware of the dangers and risks of a towing operation, for myself, for all persons on board the vessel, and for the vessel and its equipment.

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003mb

I confirm that the SAR Unit has informed me of the details of the intended towing operation and the SAR Unit expectations from my vessel during the operation, including the requirement not to undertake any manoeuvre or apply the engine or rudder unless it is ordered by the SAR Unit or the SAR Unit has been informed and agreed to the manoeuvre.

I confirm that I am responsible for the safety of the crew and passengers onboard my disabled vessel and that I will take all reasonable steps to ensure their safety during towing operation.

In addition, I have been informed of, and agree to the following:

- The towing operation will be to the nearest place of refuge, or to a rendez-vous position where the tow can be safely transferred;
- If there is a more serious situation elsewhere, the towline will be released or transferred and the towing operation will be ended immediately;
- The SAR Unit may release the towline and end the towing operation if such operation poses risks to its safety or the safety of its crew;
- If adequate commercial assistance reaches the scene, the SAR Unit may hand over the tow. I will be liable to any charges from that commercial resource;
- Upon arrival at the nearest place of refuge, the SAR Unit will release the towline and depart and it will be my responsibility to secure my own vessel; and, the Canadian Coast Guard, the Department of Fisheries and Oceans Canada, the Government of Canada, Her Majesty the Queen in right of Canada, any contractors of any of them and any of their employees or servants are not liable for damages suffered by my vessel, any of its equipment, its owner, master, operator, person in charge, crew or passengers, if the towing operation has to be abandoned, or if damages occurred despite the exercise of due diligence and good seamanship practices of the master and crew of the SAR Unit.

Print Name: _____

Signature: _____

Date: _____

Witness (if any): _____

Note to the Commanding Officer of the SAR Unit:

If the circumstances do not allow the signature of this document, it should be read to the master or person in charge of the disabled vessel by radio, and their verbal acceptance of this agreement and waiver should be noted in the SAR Unit's logbook. Any electronic recordings of the conversation and agreement shall be retained and safeguarded according to established policy and procedures. In some circumstances it may be preferable to have MCTS communicate with the disabled vessel. Commanding Officers should discuss the circumstances with the MCTS Officer as appropriate.

Modification #31 - MR 24 only of Attachment 4.1 (Mandatory Requirements) is deleted in its entirety and replaced with the following:

MANDATORY REQUIREMENTS				
			BIDDER'S RESPONSE	
CRITERIA #	DOCUMENT REF.	MANDATORY REQUIREMENTS	ASSESSMENT METHODOLOGY	SUBMITTED REFERENCE WITH PAGE AND PARAGRAPH NUMBER
MR 24	Baseline Requirement Documents	The Bidder must submit a preliminary Mobilization Plan per vessel which demonstrates how the Bidder intends to mobilize the vessel from their pre-contract award state and condition to meet the requirements of the vessels detailed in the Baseline Requirements Document, the SOW and the ConOps and	The Bidder must provide a preliminary Mobilization Plan which includes the scope of work, the identified shipyard and the schedule which identifies how vessel #1 will be completed prior to 6 MACA and how vessel #2 will be	

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003mb

			must address the deficiencies identified in the OVID and IMCA reports.	completed by September 2019 or earlier.	
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Questions and Answers

Question #51

Please explain the crane requirement and scoring system.

Answer to question #51

For better clarity please see modification #16 of Solicitation amendment 006 and the drawing attached to this solicitation amendment 007.

Question #52

If having a drop down azimuth drive forward on the Vessel, does that count as ASD propulsion?

Answer to question #52

No.

Question #53

Is the 6-metre summer draft requirement a rigid requirement? If a vessel meets all other specs but not this, will it be disqualified?

Answer to question #53

MR 14 remains unchanged. Bids that do not comply with each and every mandatory requirement will be declared non-responsive and be disqualified.

Question #54

Under MR 9 (Technical), is the intent that any of the VSAT/Sailor 100GX, Cellular, and/or Fortinet hardware be installed in this rack?

Answer to question #54

Yes.

Question #55

Regarding the mobilization plan, it is stated that an inspection report (CMID/OVID) must be completed by an accredited surveyor no more than 30 days prior to vessel delivery. Based on voyage transit planned, it will take longer than 30 days to arrive. Would it be possible to extend the amount of days to 45 – 50 days?

Answer to question #55

Please see modification #14 and #21 of solicitation amendment 006.

Question #56

Under MR 9, what is the intent of the Fortinet device?

Answer to question #56

This is the network firewall device used on all CCG vessels. The device will be GFE.

Question #57

With reference to MR 9, can you verify if CCG requires two independent cellular communication systems on board or just one?

Answer to question #57

Two cellular systems, one for voice only and one for data only.

Question #58

With reference to MR 9, is CCG asking for at minimum 3 ethernet data drops that are routed/patched into the Sailor 100GX + cellular systems described in Requirement 3 + 4? If yes, do all aforementioned data drops need to be in the same space or spread out throughout the vessel (i.e. throughout cabins assigned crew members)?

Answer to question #58

CCG is looking for the data drops to be in one location where CCG personnel can sit down to access the CCG network. This location will be dependent on the physical arrangement of the vessel.

Question #59

Under MR 9, what type of system is being referenced when the requirement states near shore wireless?

Answer to question #59

This is for CCG wireless data access in port. Equipment and antenna will be GFE.

Question #60

Do the data drop described in requirement MR 9 need to be routed to the network rack (and is this to be supplied by the Contractor or GFE) and are the power circuit intended to be used for the network rack, referenced in requirement and its associated network hardware?

Answer to question #60

The network rack is Contractor supply. The data drops must be routed to the network rack. The power circuit reference are for the network rack.

Question #61

Can CCG please explain what is meant by patrol?

Answer to question #61

The overall patrol areas for the ETV's are provided graphically under section 3.6 of Appendix B to Annex A "Concept of Operations". Individual patrols will be defined within those areas at the time of tasking by the Regional Operations Centre and the scope (coverage area and duration) will depend on operational requirements at the time. Patrols will not be planned to exceed the vessel's crew change requirements. Patrols are normally conducted at economical speeds unless a specific tasking or, response to an emergency dictates otherwise.

Question #62

What about ETVs for the East Coast, why are they not envisioned through this requirement?

Answer to question #62

This procurement is for ETVs for the Pacific region. East coast requirements remain to be defined and will be addressed when and if required.

Question #63

Fuel supply, how will fuel be supplied through the contract?

Answer to question #63

Fuelling requirements will be coordinated with CCG's Regional Operations Centres using existing CCG standing offer agreements in place for pipeline or tank truck delivery, as described in Article 7.15 (b).

Question #64

Where will fueling points be and what the availability and volume will be required.

Answer to question #64

Canada has not defined base ports for the ETVs. Home basing will be determined by the Contractor. Fuelling requirements will be coordinated with CCG's Regional Operations Centres to ensure sufficient fuel is available at the chosen refuelling point.

Question #65

Can the period of mobilization be extended for more than 6 MACA?

Answer to question #65

No, mobilization period will not be extended beyond 6 MACA.

Question #66

Will the Contractor's brand be allowed on the Vessel?

Answer to question #66

The contractor's brand or house flag will be permitted but, must not interfere with the CCG identification markings on the vessel's hull or, regulatory signalling requirements (masts).

Question #67

Will a clarification or modification to the RFP regarding painting be done (i.e. only marking on the side of the vessel)?

Answer to question #67

The extent to which the vessel is painted is described in the Data Item Deliverables. The Federal Identity Program (FIP) document is provided as a reference only, specifically chapters; 3 – Standardized Paint Colours; 4 – Diagonal Stripe; and 5 – Service Title.

The only difference from the FIP document is the placement of the additional RED border stripe alongside the BLACK border stripe on the WHITE diagonal hull stripe which is dependent on vessel's original hull colour (light or dark, examples were provided). The RED border stripe will have the same stated dimensions from Chapter 4 of the FIP as the BLACK border stripe.

Question #68

Will the first nation brand be allowed on the Vessel?

Answer to question #68

The first nation's brand or house flag will be permitted but, must not interfere with the CCG identification markings on the vessel's hull or, regulatory signalling requirements (masts).

Question #69

What is the benefit of ASD for Canada?

Answer to question #69

As a rated requirement, CCG wishes to introduce azimuthing propulsion into the CCG fleet to expose seagoing personnel to new technology in advance of delivery of the first Offshore Oceanographic Science Vessel (OOSV). CCG is not seeking to meet any specific Azimuthing Stern Drive propulsion performance criteria at this time.

Question #70

Will Client reimburse Contractor for shore power during Charter Period while vessel is tied up in port?

Answer to question #70

Please see modification #23 of this solicitation amendment 007.

Question #71

Support to CCG College has been removed from DID I-001 Skills and Knowledge Transfer Plan but still mentioned in the Rated Requirements under RR-26. Could you confirm whether or not this is a requirement?

Answer to question #71

Support to the CCG College is no longer a requirement. Please also see modification #18 of solicitation amendment 006.

Question #72

Under both vessels for RR-16, it states that 6 points will be allocated if the Bidder has not demonstrated that the vessel meets the requirement. We suspect not is a typo and 6 points will be allocated if the vessel demonstrates this requirement. Please confirm.

Answer to question #72

Please see modification #17 of solicitation amendment 006.

Question #73

OVID and IMCA reports are mentioned under MR24. Would CMID reports be applicable as well?

Answer to question #73

The Common Marine Inspection Document (CMID) is administered by IMCA in their eCMID database.

Question #74

Does the Contractor have to maintain the same crew change schedule that the CCG uses (i.e. 4 week rotations) or is the Contractor allowed to use their own crew change schedule?

Answer to question #74

The contractor may use their own crew change schedule.

Question #75

Do resumes need to be provided for all seafarers on each vessel including both shifts?

Answer to question #75

As described in MR 20, résumés are required for the masters of the vessels only.

Question #76

MR 17 – Please provide a definition of “maximum fuel efficiency”. Is there a baseline or parameter against which this should be calculated?

Answer to question #76

Documented maximum fuel efficiency while loitering on-station or, at anchor means the best combination of main propulsion or ship's service power generation equipment that safely operates the vessel while providing maximum fuel efficiency.

Question #77

Clause 7.38 (b) (iii): Can you please confirm that this indemnification for salvage operations includes all claims, costs, expenses, actions, proceedings, suits, demands, fines and liabilities whatsoever arising out of the Contractor's assistance to property in distress on the basis of "no claim for salvage", including but not limited to claims from / related to

- a. Damage to the distressed vessel and personal injury of such vessel personnel
- b. Damage to Canada's property and Canada's personnel
- c. Damage to 3rd parties property and personnel
- d. pollution from Contractor's vessel,
- e. pollution from distressed Vessel
- f. pollution from 3rd party vessel
- g. Wreck removal of Contractor's vessel
- h. Wreck removal of distressed Vessel
- i. Wreck removal of 3rd party vessel
- j. Costs to remove any lien on Contractor's vessel

Answer to question #77

Provision 7.38 was meant to address situations concerning the saving of life and salvage that could occur outside the scope of the Contract. After a thorough review, Canada could not conceive a situation where the saving of life or salvage would occur outside the scope of the Contract as the primary objective of the Contract is the provision of services for Emergency Towing Operations, and Search and Rescue response for the entire period of the charter (Refer to Appendix B to Annex A – Concept of Operations). To prevent confusion, the provisions pertaining to salvage has been revised to reflect the contract obligations of the Contractor and the fault-based liability model of the contract; please see changes done to Article 7.36 under modification #28 and 7.38 under modification #29 of this solicitation amendment 007.

Question #78

We are not sure about the meaning of the wording "...and the vessel must remain in service when rendering salvage services to such property" as a prerequisite of the applicability of Clause 7.38 (b). Can we please ask you to clarify that the occurrence of

an off-hire event, while the vessel conducts a salvage operation, does not preclude the applicability of Canada's indemnity to the Contractor as described in Clause 7.38 (b)?

Contractor suggest the deletion of "...and the vessel must remain in service when rendering salvage services to such property" in Clause 7.38 (b) for clarity purposes.

Answer to question #78

Please see changes done to Article 7.36 under modification #28 and 7.38 under modification #29 of this solicitation amendment 007.

Question #79

For Non salvage Vessel operation: Can you please confirm that the liability clause in the General Conditions 2035 24 is fault based (i.e. a liability under Clause 24 requires at least simple negligence) and that Clause 24 precludes the applicability of the Supplemental General Conditions - Vessel Charter Clause 3 a for all instances where damage was caused by Canada in accordance with the priority of documents provision in Clause 7.20?

Contractor suggests the inclusion of a Knock for Knock regime for non salvage Vessel operations in accordance Bimco Suppytime Clause 14 in the Contract Clauses (for both Canada and the Contractor) instead of the applicability of the liability clause in the General Conditions 2035 24 for non-salvage Vessel operations.

Answer to question #79

Canada has considered the request, however the RFP will remain the same.

Question #80

For Non salvage Vessel operations: Can you please confirm that the Supplemental General Conditions Vessel Charter 3 a only addresses "... property, engines, gear or equipment ON BOARD the Vessel, as the other items in this clause (vessel and personnel onboard the Vessel) are also only Vessel related.

Contractor suggests the inclusion of a clear Knock for Knock regime for non salvage Vessel operations in accordance Bimco Suppytime Clause 14 in the Contract Clauses for both Canada and the Contractor

Answer to question #80

Canada has considered the request, however the RFP will remain unchanged.

Question #81

Could we please ask you to confirm that the “notwithstanding anything to the contrary” wording in clause 7.38 (b) precludes the applicability of the limitation of liability in 7.19 (b) for the liabilities arising out of Clause 7.38 (b)?

Answer to question #81

Please see changes done to Article 7.38 under modification #29 of this solicitation amendment 007.

Question #82

We have noticed that the Towing Conditions and Understanding document, to be signed by the Owner/Operator/Master of the distressed vessel, does not include a reference that this liability disclaimer also applies to damage to the distressed asset caused by negligent behavior. We understand that there is debate in the Canadian jurisprudence whether an exclusion clause must specifically mention negligence in order for negligent conduct to be covered.

Would Canada update the Towing Conditions and Understanding to include a detailed indemnity and hold harmless wording including applicability of the indemnity despite negligent behavior as well as reference to liability for 3rd party claims, pollution liability in case of pollution origination from the distressed vessel, wreck removal of the distressed vessel and expressly including contractors to the Crown as being covered by the indemnity.

Answer to question #82

Please see changes to Addendum 2 to Appendix B to Annex A under modifications # of this solicitation amendment 007.

Question #83

Clause 7.37 requires the Contractor to be responsible for wreck removal but “vessels becoming a wreck” is not defined as vessels owned by Contractor. Could you please clarify that Clause 7.37 only refers to the wreck removal of Contractor’s vessels.

Answer to question #83

Clause 7.37 refers only for the contractor's vessel, please also see inclusion provided under modification #22.

Question #84

Are the International Limitation Conventions, which Canada has adopted into Canadian law, applicable to the Contract (including but not limited to the 1992 Civil Liability Convention)?

Answer to question #84

An applicable convention applies to the contract to the extent it has been incorporated into Canadian law. In the case of the 1992 Civil Liability Convention, please refer to Marine Liability Act.

Question #85

Contractor suggests the addition of a liability cap for Contractor's liability for gross negligence and consequential damages.

The Contractor's total aggregate liability under this Contract for claims caused by gross negligence, shall never exceed [...].

The Contractor's total aggregate liability under this Contract for claims related to consequential damages, shall never exceed [...].

Answer to question #85

Canada has considered the request, however the RFP will remain unchanged.

Question #86

According to Clause 7.35 (b), Contractors liability for any loss as a result of a Vessel being prevented from working by any cause whatsoever (including Contractor's negligence) is limited to suspension of hire. Clause 7.35 (a) (i) – (viii) address various occurrence of vessel not working but not leading to off-hire (e.g. ice, force majeure etc.).

Clause 7.20 (g) (ii) - 'KPIs' - however place liquidated damages on the Contractor for Vessel not being available/not being responsive at sea without addressing such "permissible" non-readiness/non-availability.

Could we kindly ask you to confirm that Clause 7.20 (g) (ii) shall only apply in cases the Vessel is considered off hire in accordance with the contract?

CONTRACTOR suggests the following clarification to Clause 7.20 (g) (ii)

“Notwithstanding anything to the contrary herein, the Payment Credits in Clause 7.20 (g) (ii) shall only be applicable in case no hire is payable in accordance with Clause 7.35”.

i.e. with regards to the requirement that Contractor must always have one Vessel available, the Credit Payments should not be triggered in a situation where one Vessel is under scheduled maintenance and the other Vessel is not available due to any force majeure event.

Answer to question #86

Please see the modification #26 of this amendment 007.

Question #87

Both Clause 7.35 and the Supplemental General Conditions - 'Vessel Charter Contract' address off-hire. Could we kindly ask you to confirm that - in accordance with Clause 7.25 - Clause 7.35 precludes the applicability of the off-hire clauses in Clause 4, 5 and 6 of the Supplemental General Conditions – Vessel Charter.

Answer to question #87

Both, the articles included in Part 7 - Resulting Contract Clauses and SACC Manual A8501C, apply to the contract. However if there is a discrepancy between the wording of any documents that appear in Article 7.25, the wording of the document that first appears on the list has priority over the wording of any document that appears later on the list.

Question #88

Clause 2035 29 – 3 in the General Conditions enables Canada to claim damages (including consequential damages) in case of Contractor's default. Clause 7.20 (g) (viii) qualifies the payment credits as liquidated damages. Clause 7.20 (g) (x) specifies that Clause 7.20 does not limit Canada's other rights or remedies under the Contract or at law.

Could you please clarify that Clause 7.20 (g) (viii) precludes the applicability of Clause 2035 29 - 3 of the General Conditions. It is our understanding that Liquidated Damages are the sole recourse for a certain damage, barring Canada from claiming any additional damages under the same breach.

Contractor suggests the deletion of Clause 7.20 (g) (x) for clarity purposes

Answer to question #88

The payment credits are intended to address compensation based on very specific performance measures, but are not intended to limit the rights or remedies to which Canada is entitled. As such, Clause 7.20 (g) (x) remains unchanged.

Question #89

Both Clause 7.20 (g) (ii) (C) and Clause 7.20 (g) (vi) address termination rights in response to contractors default giving rise to payment credits. Could we kindly ask you to confirm that termination rights due to Vessel non-availability / non-readiness are exclusively addressed in Clause 7.20 (g) (ii) (c) and that Clause 7.20 (g) (vi) applies to any other instances where credits are payable?

Answer to question #89

No, clause 7.20 (g) (ii) (C) applies on a yearly rolling period while 7.20 (g) (vi) applies during the contract period.

Question #90

Clause 4 in the Supplemental General Conditions – Vessel Charter entitles Canada to terminate the contract in case of 1 week of off-hire and Clause 2035 29 – 1 in the General Conditions enables Canada to terminate the contract in case of any Contractor's default. Clause 7.20 (g) (x) specifies that Clause 7.20 does not limit Canada's other rights or remedies under the Contract or at law.

Can you please clarify that the termination rights in Clause 7.20 (g) (vi) and Clause 7.20 (g) (ii) (C) preclude the availability of Clause 4 in the Supplemental General Conditions – Vessel Charter and Clause 2035 29 - 1 of the General Conditions

Contractor suggests the deletion of Clause 7.20 (g) (x) for clarity purposes

If Canada were able to terminate the contract on the basis of e.g. one single off-hire event / one week of off-hire, Clause 7.20 (g) [Canada's termination right contingent on the occurrence of 3 events giving rise to credit payment claims] would seem inapplicable. This would be in violation of the document priority principles described in Clause 7.25.

Answer to question #90

A prolonged off-hire period will put Canada's operations at risk. As such, Canada requires the ability to terminate the contract and obtain services from other sources in the event of a prolonged off-hire.

Question #91

2035 19 of the General Conditions specifies that Work belongs to Canada after delivery. Work is defined as all the activities, goods and equipment delivered or performed by the Contractor. Could we kindly ask you to clarify that the vessels are not considered Work under the General Conditions as subject to the Purchase Order in Clause 7.2 (b)

Answer to question #91

If the work being performed is the delivery of services, then the Vessels are not considered Work.

Question #92

2035 28 of the General Conditions address the suspension of work and the cost recovery clause seems to be very similar to the concept of laying up a Vessel. Clause 2035 28 includes a reference that during such Suspension of Work, Canada can terminate under Clause 2035 29 (Canada's right to terminate due to Contractor's default) or Clause 2035 30 (Canada's right to terminate for convenience). Could we kindly ask you to clarify that the issuance of a Suspension of Work order does not trigger a Contractor's default under 2035 29.

Answer to question #92

The suspension of work does not automatically trigger a Contractor's default. The contractor's default under clause 29 is determined based on the specific facts of a given situation.

Question #93

Clause 7.12 does not specify any Operational Area. Appendix B to Annex A [Concept of Operations] indicates a reference to possible operations in US waters. How are the legal implications of Contractor's Vessel operating in US Waters, including but not limited to the requirement of the Jones Acts [US flag requirements] as well as tax regulations, taken into consideration?

Contractor suggests to include a detailed Area of Operation in Canada as outlined on page 121 in Appendix B to Annex A in Clause 7.12.

In case Operation outside this area should become necessary, Contractor suggests this to be addressed in an Additional Work Request.

Answer to question #93

Yes, this would be addressed through AWR.

Question #94

Clause 7.15 (a) (iv) provides that ropes / wires... lost ...shall be for Clients account. Clause 7.14 (a) (v) provides that: Contractor general obligation to pay for "all lost equipment, spares, stores during Services". Could we kindly ask you to confirm that Clause 7.15 (a) (iv) is valid in its entirety.

Answer to question #94

Please see modification #24 of this solicitation amendment 007.

Question #95

Clause 7.44 does not mention a specific venue for dispute resolution. Could you please clarify that Clause 7.44 is to be understood as granting jurisdiction over disputes to the Canadian courts, unless the parties agree to refer such dispute to Arbitration?

Answer to question #95

Yes.

ALL OTHER TERMS AND CONDITIONS OF THE RFP REMAIN UNCHANGED

3 PTS = The Bidder has demonstrated that the vessel has a marine, deck crane with a working radius that reaches beyond the vessels centre-line.

6 PTS = The Bidder has demonstrated that the vessel has a marine, deck crane with a working radius that reaches more than 5m over the side of the vessel.

9 PTS = The Bidder has demonstrated that the vessel has a marine, deck crane with a working radius that covers the majority of working deck area and provides more than 5m outreach over the side of the vessel.

Examples

