

1352.271-79 Liability and insurance.

As prescribed in 48 CFR 1371.110, insert the following clause:

Liability and Insurance (APR 2010)

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

(b) The contractor shall be responsible for and make good at its own cost and expense any and all loss of or damage of whatsoever nature to the vessel (or part thereof), its equipment, movable stores and cargo, and Government-owned material and equipment for the repair, completion, alteration of or addition to the vessel in the possession of the contractor, whether at the plant or elsewhere, arising or growing out of the performance of the work, except where the contractor can affirmatively show that such loss or damage was due to causes beyond the contractor's control, was proximately caused by the fault or negligence of agents or employees of the Government, or which loss or damage the contractor by exercise of reasonable care was unable to prevent. However, the contractor shall not be responsible for any such loss or damage discovered after redelivery of the vessel unless the loss or damage is discovered within 90 days after redelivery of the vessel and loss or damage is affirmatively shown to be the result of the fault or negligence of the contractor. To induce the contractor to perform the work for the compensation provided, it is specifically agreed that the contractor's aggregate liability on account of loss of or damage to the vessel (or part thereof), its equipment, movable stores and cargo and Government-owned materials and equipment, shall in no event exceed the sum of \$1,000,000.00. As to the contractor, the Government assumes the risk of loss or damage to the Government-owned vessel (or part thereof), its equipment, movable stores and cargo and said Government-owned materials and equipment in excess of \$1,000,000.00. This assumption of risk includes but is not limited to loss or damage from negligence of whatsoever degree of the contractor's servants, employees, agents or subcontractors, but specifically excludes loss or damage from willful misconduct or lack of good faith on the part of contractor's personnel, who have supervision or direction of all or substantially all of the contractor's business, or all or substantially all of the contractor's operation at any one plant. However, as to such risk assumed and borne by the Government, the Government shall be subrogated to any claim, demand or cause of action against third persons which exists in favor of the contractor, and the contractor shall, if required, execute a formal assignment or transfer of claims, demands or causes of action. Nothing contained in this paragraph shall create or give rise to any right, privilege or power in any person except the contractor, nor shall any person (except the contractor) be or become entitled thereby to proceed directly against the Government, or join the Government as a co-defendant in any action against the contractor brought to determine the contractor's liability, or for any other purpose.

(c) The contractor indemnifies and holds harmless the Government, its agencies and instrumentalities, and the vessel against all suits, actions, claims, costs or demands (including without limitation, suits, actions, claims, costs or demands resulting from death, personal injury and property damage) to which the Government, its agencies and instrumentalities, or the vessel may be subject or put by reason of damage or injury (including death) to the property or person of anyone other than the Government, its agencies, instrumentalities and personnel, or the vessel, arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the contractor, or any subcontractor, its or their servants, agents or employees; provided that the contractor's obligation to indemnify under this paragraph (c) shall not exceed the sum of \$1,000,000.00 on account of any one accident or occurrence in respect of any one vessel. Such

indemnity shall include, without limitation, suits, actions, claims, costs or demands of any kind whatsoever, resulting from death, personal injury or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. Any new equipment warranties that extend beyond the 90 days after redelivery of the vessel shall be assigned to the Government upon redelivery of the vessel. With respect to any such suits, actions, claims, costs or demands resulting from death, personal injury or property damage occurring after the expiration of such period, the rights and liabilities of the Government and the contractor shall be as determined by other provisions of this contract and by law; provided that such indemnity shall apply to death occurring after such period which results from any personal injury received during the period covered by the contractor's indemnity as provided herein.

(d) The contractor shall, at its own expense, procure, and thereafter maintain such casualty, accident and liability insurance, in such forms and amounts as may be approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause. In addition, the contractor shall at its own expense procure and thereafter maintain such ship repairer's legal liability insurance as may be necessary to insure the contractor against its liability as ship repairer in the amount of \$1,000,000.00, or the value of the vessel as determined by the Contracting Officer, whichever is the lesser, with respect to each vessel on which work is performed. The contractor shall cause the Government to be named as an additional insured under any and all liability insurance policies, however, at the discretion of the Contracting Officer, such insurance need not be procured whenever the job order requires work on parts of a vessel only and the work is to be performed at a plant other than the site of the vessel. Further, the contractor shall procure and maintain in force Worker's Compensation Insurance (or its equivalent) covering its employees engaged in the work and shall ensure the procurement and maintenance of such insurance by all subcontractors engaged in the work. The contractor shall provide evidence of insurance as required by the Government.

(e) The contractor shall receive no allowance in the contract price for inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) As soon as practicable after the occurrence of any loss or damage, the risk of which the Government has assumed, written notice of the damage shall be given by the contractor to the Contracting Officer. The notice shall contain full particulars of the loss or damage. If claim is made or suit is brought thereafter against the contractor as the result or because of such event, the contractor shall immediately deliver to the Government every demand, notice, summons or other process received by it or its representatives. The contractor shall cooperate with the Government, and, upon the Government's request, shall assist in effecting settlements, securing and giving evidence; obtaining the attendance of witnesses, and other assistance required in the conduct of suits. The Government shall pay to the contractor the expense, other than the cost of maintaining the contractor's usual organization, incurred in this assistance. Except at its own cost, the contractor shall not voluntarily make any payment, assume any obligation or incur any expense not imperative for the protection of the vessel or vessels at the time of the event.

(End of clause)

Parent topic: [Subpart 1352.2 - Text of Provisions and Clauses](#)