

REQUEST FOR CLASS WAIVER - SAMPLE

XXXX XX, 20XX

MEMORANDUM FOR: XXXXXXXXXXXXXXXXXXXXXXXX

Director and Senior Bureau Procurement Official
NOAA Acquisition and Grants Office

FROM: XXXXXXXXXXXXXXXXXXXXXXXX

Director and Head of the Contracting Office
[Insert Acquisition Division]

THRU: XXXXXXXXXXXXXXXXXXXXXXXX

Director, Marine Operations

SUBJECT: Request for Class Waiver Approval – Payment and Performance
Bonds on NOAA Ship Repair Contracts

1. PURPOSE: The Acquisition and Grants Office (AGO) [Insert Acquisition Division] is seeking waiver approval from the requirement for prime contractors to furnish performance and payment bonds for contracts in excess of \$150,000 for repair of NOAA Ships.
2. AUTHORITY PERMITTING BOND WAIVER: Commerce Acquisition Regulation 1328.102, Waiver of Performance and Payment Bonds for Contracts Involving the Construction and Repair of NOAA's Fleet of Vessels. The Secretary of Commerce delegated the waiver authority from the Secretary to the Administrator of NOAA who delegated it to the Deputy Under Secretary for Operations (DUSO) who delegated it to the NOAA Senior Bureau Procurement Officer (SBPO). The delegation memoranda are attached (Attachment 1).
3. BASIS FOR REQUEST: NOAA ships enter either a dry-dock or dockside repair period every fiscal year, typically in the first and second quarter. Each vessel is equipped with highly advanced survey instruments, state of the art electronics, computers, and navigational and communication systems, which must be kept operational to ensure the safety of the crew and the ship's schedule.

It is well documented that the requirement for bonds on NOAA ship repair contracts have long since hindered competition and limited NOAA's ability to meet mission objectives, obtain the most advantageous price competition and meet its socio-economic goals. To improve and strengthen NOAA's competitive market base and increase opportunities for small business participation while safeguarding mission schedules at the best price, waiver of the bonding requirement for the NOAA ship repairs is deemed in the best interest of the Government.

Additionally, to ensure that these ships can carry on with only minimal disruption to their missions of sensitive data collection and rapid response deployment related to extreme

weather- related events such as hurricanes, it is paramount that this waiver include emergency repairs to NOAA vessels. To do otherwise could adversely impact the safety of the ship's crew as well as severely jeopardize the very time-critical, cyclical data collection needs of those ships. For example, lost data has long term consequences on NOAA and its ability to meet requirements of the Magnuson-Stevens Fishery Conservation and Management Act, Public Law 94-265.

4. **WAIVER APPROVAL RISK MITIGATION:** Adverse effects to waiving bonds is not anticipated; however, with respect to payment due subcontractors performing on NOAA ship repair contracts, in accordance with clause, CAR 1352.228-77, "Contractor Assurance of Subcontractor Payments," prime contractors must assure the Government that all monies due to any and all subcontractors used in the performance of the contract are paid in full prior to the submission of its final invoice and subsequently certify compliance. This clause will be included in any solicitation where the waiver authority is exercised including emergency acquisitions that require shorter lead-times. Further, NOAA will use the "best value" approach to evaluate and award ship repair contracts and include past performance as one of the factors for evaluation. The Contractor Performance Assessment Reporting System (CPARS) will be used, among other means, to assess a prime contractor's subcontractor payment record.

NOAA does not anticipate any adverse effects to performance or on subcontractors if bonds are not required. Requiring prime contractors to certify that they have made payment to their subcontractors prior to closing out their contracts coupled with the appropriate level of contract oversight will mitigate any risks when bonds are waived.

In the unlikely event that a contractor is found not in compliance with CAR Clause 1352.228-77, appropriate contract remedies will be pursued, and such non-compliance will be appropriately documented in CPARS.

5. **RECOMMENDATION:** Based on the above, it is requested that approval to waive the performance and payment bond requirement under 40 U.S.C. § 3131 be granted in accordance with the authority established under 40 U.S.C § 3134 by the Senior Bureau Procurement Official for NOAA ship repair.

6. **APPROVAL:**

☐ Approved

This waiver is in effect until rescinded.

☐ Disapproved

☐ Further Discussion Required

XXXXXXXX XXXXXXXXXXXX
Senior Bureau Procurement Official

Date