5552.247-9002 Contractor's Failure to Provide Service.

As prescribed in 55 4 7.4-100 (c)(1), insert the following clause in solicitations and contracts for award of international charter airlift transportation:

CONTRACTOR'S FAILURE TO PROVIDE SERVICE (AUG 2015)

(a) In the event that contractor's aircraft is unable to depart from any station, the government may invoke remedies which are set forth in this paragraph which will neither constitute a termination within the meaning of the clause entitled "Termination for Convenience of the Government," nor in any way diminish the government's rights under the clause entitled "Default." The rights and remedies of the government provided for in this paragraph are not exclusive and do not give rise to government liability for costs incurred and are in addition to any other government rights and remedies provided for by law or by this contract.

(b) Substitute Service. This term, as used herein, applies to the substitution of an aircraft to replace contractor's aircraft, which is unable to proceed from the departure station or from any en route station short of destination in accordance with schedules established pursuant to this contract. If the contractor fails to make an aircraft available for departure within 16 hours subsequent to scheduled departure time for a passenger flight or a mixed flight from an originating station or an en route station, or within 4 hours of a scheduled departure time for a passenger flight or a mixed flight from an en route station where no holding facilities for passengers are available, or within 24 hours of a scheduled departure time for a cargo flight from either the originating station or an en route station, or for any flight within such lesser time as may be agreed to by the contractor's designee, the government may: (1) cancel the requirement for further movement of the defaulted flight; (2) require the contractor to transport the defaulted passengers or cargo by substitute service within such additional time as the contracting officer may allow; (3) acquire substitute service from commercial sources; or (4) reschedule the defaulted flight or transport the defaulted passengers or cargo, or any portion thereof, itself, on DOD owned and operated aircraft. The exercise of any of these options will be in accordance with the following:

(1) In the event that the requirement for further movement of the defaulted flight is canceled, the number of passengers equal to the Guaranteed Allowable Cabin Load (GACL) for the flight involved, or the number of pounds of cargo equal to the GACL of the flight involved, or the number of miles for the flight involved, will be subtracted from the government's guarantee. Any canceled requirement will be deleted from the contract by unilateral modification. If the failure to depart was from the originating station, contractor will not be paid any amount for the flight involved. If the failure to depart was from an en route station, the contractor will be paid at the USTRANSCOM negotiated uniform rate for that portion of the trip over which he did transport the passengers or cargo.

(2) If the contractor is required to transport the passengers or cargo of the defaulted flight by substitute service within such additional time as the contracting officer may allow, the contractor shall arrange and pay directly all costs involved in the transportation by the substitute aircraft. In this event, the contractor will be paid the full contract price for the flight involved, irrespective of the amount paid by him for this transportation by substitute aircraft. The substitute aircraft provided by the contractor must be of like type, configured in accordance with the applicable specifications, and must be approved by the contracting officer. In lieu of, or in addition to, providing the above

type substitute service, the contractor may, at his own expense, purchase the amount of space, by common carriage or otherwise, needed for the movement of the passengers or cargo of the defaulted flight. The purchase of such space must be approved by the contracting officer and must be obtained only from American Flag carriers, except that in the event an American Flag carrier is unavailable or not reasonably available for point-to-point substitute service within an overseas area, upon prior authorization of the contracting officer, the contractor may use a Foreign Flag schedule carrier for substitute service on an exception basis only and provided the requirements of the clause entitled "Preference for United States Flag Air Carriers," are complied with. In such event, contractor would be paid the contract price for the involved transportation. If contractor transports by purchase of common carriage only a part of the number of passengers or amount of cargo of the defaulted flight, he will only be paid for those passengers or cargo so transported, and the passengers or cargo not transported shall be deducted from the government's guarantee.

(3) The government may purchase substitute service from commercial sources. This can be by a substitute commercial aircraft or by the purchase from commercial sources of sufficient space to transport by common carriage or otherwise, the number of passengers or amount of cargo involved in the defaulted flight. In either event, the substitute service shall be deducted from the government's guarantee and the contractor would be charged by the government, any amount that the government had to pay to commercial sources which is in excess of the contract price for the transportation of the passengers or cargo involved for the distance involved. (If this substitute service is obtained for only a portion of a trip as provided in the contract, the contract price will be prorated for the distance involved in determining the amount due to the government.) Contractor will not be paid any amount for the defaulted flight except that he will be paid at the USTRANSCOM negotiated uniform rate for that portion of the trip, if any, over which he did transport the passengers or cargo on the flight involved. The contractor shall provide all services normally provided in connection with flights operating under this contract. In the event the defaulted flight was to be performed between military bases and the government procures common carriage substitute service, the defaulting contractor shall be responsible for the transportation between the military bases and the commercial terminal.

(4) The government may, in its discretion, elect to either reschedule the defaulted flight to a later time within the performance period of the contract or may move these passengers and/or this cargo, or any portion thereof, itself, on DOD owned and operated aircraft. In this event, the number of passengers equal to the GACL for the flight involved, or the number of pounds of cargo to the GACL of the flight involved, or the number of miles for the flight involved will be subtracted from the government's guarantee and the contractor will be charged, by the government, the excess, if any, of the charge for this movement over the contract price. If this movement is utilized for only a portion of a trip as provided in the contract, the contract price will be prorated for the distance involved in determining the amount due the government. Contractor will not be paid any amount for transportation of the passengers or cargo of the defaulted flight except that he will be paid at the USTRANSCOM negotiated uniform rate for that portion of the trip, if any, over which he did transport said passengers or cargo in the flight involved.

(c) The contracting officer may permit the contractor to provide services with substitute aircraft having a lower Allowable Cabin Load (ACL). When such substitution of aircraft is permitted, the contractor shall be reimbursed at the rate per ton/pax mile established in the original award times the lesser ACL with a corresponding reduction in the government's guarantee. In addition or as an alternative to providing substitute aircraft having a lower ACL, the contracting officer may permit the contractor to acquire, at his own expense, the amount of space, by common carriage, needed for movement of the pax or cargo equal to the ACL of the aircraft originally scheduled for the flight, in which event the contractor will be paid at the contract rate for the pax and/or cargo within the GACL

which are actually transported. The contracting officer may also permit the contractor to provide services with substitute aircraft having a higher ACL than the aircraft required for performance of services under the contract. In this event, the contractor will be reimbursed only the contract price for the flight as originally awarded.

(d) The contracting officer, in making his decisions and selections for substitute service, will use his discretion in such a manner as to mitigate contractor's liability for excess costs when reasonably possible. However, military needs and urgency will be the prime consideration in the exercise of this discretion.

(e) The provisions of Section C, Performance Work Statement, relative to contractor's responsibility for care of passengers, and for providing meals and billets, apply to all situations discussed in this clause, wherein the contractor failed to depart as scheduled. Contractor shall retain responsibility for passengers until such time as they are moved by the contractor or the government, or the requirement is canceled by the government.

(f) In the event the contractor fails to deliver any part of the GACL (pax or cargo) to manifested destination due to an accident, contractor will be paid at USTRANSCOM negotiated uniform rate only for that amount of pax or cargo delivered to manifested destination.

(End of Clause)

ALTERNATE I (AUG 2015)

As prescribed by 5547.4-100(c)(2), for award of domestic charter airlift transportation, delete paragraphs (a) through (f) of the basic clause and substitute the following paragraphs (a) and (b) to the basic clause.

(a) In the event that Contractor's aircraft is unable to depart from any station, the Government may invoke remedies which are set forth in this paragraph which will neither constitute a termination within the meaning of the clause entitled "Termination for Convenience of the Government," nor in any way diminish the Government's rights under the clause entitled "Default." The rights and remedies of the Government provided for in this paragraph are not exclusive and do not give rise to Government liability for costs incurred and are in addition to any other Government rights and remedies provided for by law or by this contract.

(b) Substitute Service. This term, as used herein, applies to the substitution of an aircraft to replace Contractor's aircraft, which is unable to proceed from the departure station or from any en route station short of destination in accordance with schedules established pursuant to this contract. If the Contractor fails to make an aircraft available for departure as required by the flight schedules, the Government may: (1) cancel the requirement for further movement of the defaulted flights; (2) require the Contractor to transport the defaulted passengers or cargo by substitute service within such additional time as the contracting officer may allow; (3) acquire substitute service from commercial sources; or (4) reschedule the defaulted flight or transport the defaulted passengers or cargo, or any portion thereof, itself, on DOD owned and operated aircraft. The exercise of any of these options will be in accordance with the following:

(1) In the event that the requirement for further movement of the defaulted flights is canceled, the number of miles/trips for the flight involved, and directed landings (if applicable) will be subtracted from the Government's guarantee. Any canceled requirement will be deleted from the contract by unilateral modification.

(2) If the Contractor is required to transport the passengers or cargo of the defaulted flights by

substitute service within such additional time as the contracting officer may allow, the Contractor shall arrange and pay directly all cost involved in the transportation by the substitute aircraft. Contractor will be paid, in this event, the full contract price for the flight involved, irrespective of the amount paid by him for this transportation by substitute aircraft. The substitute aircraft provided by the Contractor must be of like type, configured in accordance with the applicable specifications, and must be approved by the contracting officer. In lieu of, or in addition to, providing the above type substitute service, the Contractor may, at his own expense, purchase the amount of space, by common carriage or otherwise, needed for the movement of passengers or cargo of the defaulted flight. The purchase of such space must be approved by the contracting officer. In such event, Contractor would be paid the contract price for the involved transportation.

(3) The Government may purchase substitute service from commercial sources. This can be by a substitute commercial aircraft or by the purchase from commercial sources of sufficient space to transport by common carriage or otherwise, the number of passengers or amount of cargo involved in the defaulted flight. In either event, the substitute service shall be deducted from the Government's guarantee and the Contractor would be charged by the Government, any amount that the Government had to pay to commercial sources which is in excess of the contract price for the transportation of the passengers or cargo involved for the distance involved. Contractor will not be paid any amount for this defaulted flight. The Contractor shall provide all services normally provided in connection with flights operating under this contract.

(4) The Government may, in its discretion, elect to either reschedule the defaulted flight to a later time within the performance period of the contract or may move these passengers and/or this cargo, or any portion thereof, itself, on DOD owned and operated aircraft. In this event, the number of miles/trips for the flight involved will be subtracted from the Government's guarantee and the Contractor will be charged, by the Government, the excess, if any, of the charge for this movement over the contract price. Contractor will not be paid any amount for transportation of passengers or cargo of the defaulted flight.

(End of Clause)

ALTERNATE II (AUG 2015)

As prescribed by 5547.4-100(c)(3),when using FAR Part 12 procedures for award of international and domestic charter airlift transportation, delete paragraphs (a) through (f) of the basic clause and substitute the following paragraphs (a) and (b) to the basic clause.

(a) In the event the contractor’s aircraft is unable to depart from any station, the government may invoke the remedies set forth in this clause, which will not constitute a termination under FAR clause 52.212-4 , “Contract Terms and Conditions—Commercial Items.” The rights and remedies provided in this clause are not exclusive, do not give rise to government liability for costs incurred, and are in addition to government rights and remedies provided by law or by this contract.(b) Substitute Service. This term means substitution of an aircraft to replace contractor’s aircraft, which is unable to perform the required services. If the contractor fails to make an aircraft available to perform services under the terms of the contract, the government may:

(1) Cancel the requirement for further performance of the defaulted flight or services. In that event, the government’s obligation will be reduced by the costs directly attributable to the canceled flight or services.

(2) Require the contractor to obtain substitute service from another DOD-approved carrier to perform the services within such additional time as the contracting officer may allow. The contractor

shall arrange for and pay directly all costs involved in performing the services by substitute aircraft. The government will pay the contractor the contract price for the services, irrespective of the amount the contractor pays for the substitute service. The substitute aircraft provided by the contractor must be of like type, must be configured in accordance with the applicable specifications, and must be approved by the contracting officer. In lieu of, or in addition to, providing the above substitute service, the contractor may, at his own expense, purchase the amount of space by common carriage or otherwise needed to transport the passengers or cargo from the defaulted flight. The contracting officer must approve purchase of such space. The government will pay the contractor the contract price for the services, irrespective of the amount the contractor pays for the space.

(3) Purchase substitute service from commercial sources. This may include use of substitute commercial aircraft or purchase of sufficient space to transport by common carriage or otherwise the passengers or cargo from the defaulted flight. In either event, the value of the service will be deducted from the contract minimum (if applicable). The contractor will not be paid for the defaulted flight but will be charged any amount in excess of the contract price that the government had to pay for the substitute service.

(4) Elect to either reschedule the defaulted flight to a later time or move the passengers and/or cargo, or any portion thereof, itself, on DOD owned and operated aircraft. In the latter event, the value of the service will be deducted from the contract minimum (if applicable). The contractor will not be paid for the defaulted flight but will be charged any amount in excess of the contract price that the government had to pay to transport the passengers and/or cargo.

(End of Clause)

ALTERNATE III (AUG 2015)

As prescribed by 5547.4-100 (c)(4), for award of the Domestic Charter Airlift Services contract, delete paragraphs (a) through (f) of the basic clause and substitute the following paragraphs (a) through (e) to the basic clause.

(a) In the event that a contractor's aircraft is unable to depart from any station, the government may invoke remedies which are set forth in this paragraph which will not constitute a termination under FAR clause 52.212-4 , “Contract Terms and Conditions—Commercial Items.” The rights and remedies of the government provided for in this paragraph are not exclusive and do not give rise to government liability for costs incurred and are in addition to any other government rights and remedies provided for by law or by this contract.

(b) Substitute Service. This term, as used herein, applies to the substitution of an aircraft to replace contractor's aircraft, which is unable to proceed from the departure station or from any en route station short of destination in accordance with schedules established pursuant to this contract. If the contractor fails to make an aircraft available for departure within 16 hours subsequent to scheduled departure time for a passenger flight or a mixed flight from an originating station or an en route station, or within 4 hours of a scheduled departure time for a passenger flight or a mixed flight from an en route station where no holding facilities for passengers are available, or within 24 hours of a scheduled departure time for a cargo flight from either the originating station or an en route station, or for any flight within such lesser time as may be agreed to by the contractor's designee, the government may: (1) cancel the requirement for further movement of the defaulted flight; (2) require the contractor to transport the defaulted passengers or cargo by substitute service within such additional time as approved by the contracting officer; (3) acquire substitute service from DOD Approved commercial sources; or (4) reschedule the defaulted flight or transport the defaulted

passengers or cargo, or any portion thereof, itself, on DOD owned and operated aircraft. The exercise of any of these options will be in accordance with the following:

(1) Cancel the requirement for further performance of the defaulted flight or services. In that event, the government’s obligation will be reduced by the costs directly attributable to the canceled flight or services.

(2) Require the contractor to obtain substitute service from another DOD-approved carrier to perform the services within such additional time as approved by the contracting officer. The contractor shall arrange for and pay directly all costs involved in performing the services by substitute aircraft. The government will pay the contractor the contract price for the services, irrespective of the amount the contractor pays for the substitute service. The substitute aircraft(s) provided by the contractor must be approved by the contracting officer and transport all passenger of the defaulted flight. In situations where the substitute aircraft(s) cannot carry all the passengers, or in lieu of a full plane charter, the contractor may, at his own expense, purchase the amount of space by common carriage or otherwise needed to transport the passengers or cargo from the defaulted flight. The contracting officer must approve purchase of such space. The government will pay the contractor the contract price for the services, irrespective of the amount the contractor pays for the space.

(3) Purchase substitute service from DOD-approved commercial sources. This may include use of substitute commercial charter aircraft(s) or purchase of sufficient space to transport by common carriage or otherwise the passengers or cargo from the defaulted flight. The contractor shall not be paid for the defaulted flight and shall be charged for any reprocurement costs the government had to pay for the substitute service which are in excess of the contract price.

(4) Elect to either reschedule the defaulted flight to a later time or move the passengers and/or cargo, or any portion thereof, itself, on DOD owned and operated aircraft. The contractor shall not be paid for the defaulted flight but will be charged any amount in excess of the contract price that the government had to pay to transport the passengers and/or cargo.

(c) The contracting officer, in making his decisions and selections for substitute service, will use his discretion in such a manner as to mitigate contractor's liability for excess costs when reasonably possible. However, military needs and urgency will be the prime consideration in the exercise of this discretion.

(d) The provisions of the Performance Work Statement, relative to contractor's responsibility for care of passengers, and for providing meals and billets, apply to all situations discussed in this clause, wherein the contractor failed to depart as scheduled. Contractor shall retain responsibility for passengers until such time as they are moved by the contractor or the government, or the requirement is canceled by the government.

(e) In the event the contractor fails to deliver any part of the GACL (pax or cargo) to manifested destination due to an accident, the contractor shall not be paid at the contract price.

(End of Clause)

Parent topic: Part 5552 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES