

CONTRACT

FOR THE

Construction of a Steel Twin-screw Sea-going Torpedo-boat of about One Hundred Tons Displacement.

"TORPEDO-BOAT No. 1."

Contract, of two parts, made and concluded this first day of March, A. D. 1888, between THE HERRSHOFF MANUFACTURING COMPANY, a corporation created under the laws of the State of Rhode Island, and doing business at Bristol, in said State, represented by the Treasurer of said Company, PARTY OF THE FIRST PART, and THE UNITED STATES, represented by the Secretary of the Navy, PARTY OF THE SECOND PART:

WHEREAS, the act entitled "An Act to increase the Naval Establishment," approved August 3, 1886, authorized the construction of one first-class torpedo-boat;

AND WHEREAS, after due advertisement, the proposal of the said party of the first part to construct a steel twin-screw sea-going torpedo-boat, of about 100 tons displacement, which, for the purposes of this contract, is designated and known as "Torpedo-boat No. 1," has been duly accepted by the Secretary of the Navy;

AND WHEREAS the drawings and specifications of such vessel, as required by the aforesaid act of August 3, 1886, have been duly provided, adopted, and approved;

NOW, THEREFORE, THIS CONTRACT WITNESSETH: That, in consideration of the premises, and for and in consideration of the payments to be made as hereinafter provided for, the party of the first part, for itself, its successors, assigns, and legal representatives, doth hereby covenant and agree to and with the United States as follows, that is to say:

First. The party of the first part will, at its own risk and expense, construct, in accordance with the provisions of the Act of Congress relating thereto, and in conformity with the aforesaid drawings and specifications, one steel twin-screw sea-going torpedo-boat, complete exclusive of torpedoes and their appendages, of about 100 tons displacement, with fittings as specified, of the following principal dimensions:

	Feet.	Inches.
Extreme length	138	0
Extreme breadth.....	15	0
Depth from floor to deck at highest point	10	0

such vessel to be constructed of steel, of domestic manufacture, and to be provided and fitted with machinery, engines, and boilers, also of domestic manufacture, complete in all their parts, appurtenances, and spare parts, and will deliver the same at the Torpedo Station, Newport, Rhode Island, to such person or persons as the Secretary of the Navy may designate.

Second. The construction of the vessel herein contracted for, shall conform in all respects to and with the drawings above referred to, and the plans and specifications hereto annexed, which plans and specifications shall be deemed and taken as forming part of this contract with the like operation and effect as if the same were incorporated herein. No omission, in the drawings, plans, or specifications, of any detail, object, or provision necessary to carry this contract into full and complete effect, in accordance with the object and intent of the act of Congress above mentioned, shall operate to the disadvantage of the United States, but the same shall be satisfactorily supplied, performed, and observed by the party of the first part, and all claims for extra compensation by reason of, or for or on account of, such extra performance, are hereby, and in consideration of the premises, expressly waived; and it is hereby further provided, and this contract is upon the express condition, that the drawings, plans, and specifications, provided, adopted, and approved, as hereinbefore mentioned, shall not be changed in any respect, when the cost of such change shall, in the construction, exceed five hundred dollars, except upon the written order of the Secretary or Acting Secretary of the Navy; and if changes are thus made, the actual cost thereof, and the damage caused thereby, shall be ascertained, estimated, and determined by a board of naval officers, appointed by the Secretary of the Navy, and the party of the first part shall be bound by the determination of said board, or of a majority thereof, as to the amount of increased or diminished compensation which the said party of the first part shall be entitled to receive, if any, in consequence of such change or changes; it being further expressly understood, covenanted, and agreed, by and between the parties to these presents, that if all the changes authorized increase the cost of construction of said vessel, and premiums are earned by the contractors hereunder, such increased cost shall be deducted from such premiums in the final settlement hereunder.

Third. The materials and workmanship used and applied in the construction of said vessel, in details and finish, shall be first-class and of the very best quality, and shall, from the beginning to the end of the work, be subject to the inspection of the Secretary of the Navy; it being hereby expressly understood, covenanted, and agreed that the said Secretary may appoint suitable Inspectors, to whom the contractors agree to furnish such samples, and such information as to the quality thereof and the manner of using the same, as may be required, and also any assistance they may require in determining the weight and quality of steel and other metals, and of wood and other materials,

either used or intended for use in the construction of said vessel or any part thereof; and the Inspectors may, with the approval of the said Secretary, peremptorily reject any unfit material or forbid the use thereof. The Inspectors shall, at all times during the progress of the work, have full access thereto, and the contractors shall furnish them with full facilities for the inspection and supervision of the same.

Fourth. The steel to be used in the construction of the vessel to be built under this contract shall conform to the "tests to be applied to steel," approved by the Secretary of the Navy, under date of July 15, 1887, which are annexed to and form a part of this contract.

Fifth. It is hereby agreed that such plans or drawings as it may be necessary to prepare during the progress of the work shall be at the expense of the party of the first part, and that such of them as may be required shall be submitted to the Navy Department for approval before the work is commenced.

Sixth. The party of the first part, in consideration of the premises, hereby covenants and agrees to hold and save the United States harmless from and against all and every demand or demands of any nature or kind for or on account of the adoption of any plan, model, design or suggestion, or for or on account of the use of any patented invention, article or appliance, which has been or may be adopted or used in or about the construction of said vessel, or any part thereof, under this contract, and to protect and discharge the Government from all liability on account thereof, or on account of the use thereof, by proper releases from patentees or otherwise, and to the satisfaction of the Secretary of the Navy.

Seventh. The vessel to be constructed under this contract shall be completed and ready for delivery to the United States on or before the expiration of fifteen months from the date of this contract; but the lien of the United States upon said vessel for all moneys advanced on account thereof, shall commence with the first payment, and shall thereupon attach to so much of the work and materials as shall then have been performed and furnished, and shall in like manner attach from time to time as the work progresses and as further payments are made, and shall continue until the same shall have been properly discharged. In case the completion of the vessel shall be delayed beyond the said period of fifteen months, penalties shall be imposed upon the party of the first part for each and every day (excepting Sundays) in excess of said period, and until the vessel is complete and ready for delivery as follows, viz: during the three months next succeeding the expiration of said period, twenty-five dollars per day; during the nineteenth, twentieth, and twenty-first months from the date of this contract, fifty dollars per day; and for each and every day (except Sundays) during which such completion shall be delayed beyond a period of twenty-one months from the date of this contract, one hundred dollars per day,—all penalties thus incurred to be off-set, from time to time, against any payment or payments falling due under this contract: *provided, however,* that such delay shall not have been caused by the act of the party of the second part, or by fire or water, or by any strike or stand-out of workmen employed in the construction of said vessel, or by other circumstances beyond the control of the party of the first part, but such circumstances shall not be deemed to include delays in obtaining materials when such delays arise from causes other than those herein specified: *provided, further,* that, in case of such alleged delay, immediate notice thereof shall be given by the party of the first part to the Secretary of the Navy.

In case any question shall arise, under this contract, concerning the payment of premiums or penalties, such question, with all the facts relating thereto, shall be submitted to the Secretary of the Navy for consideration, and his decision thereon shall be conclusive and binding upon all the parties to this contract.

All delays which the Secretary of the Navy shall find to be properly attributable to the Navy Department, or to its authorized officers or agents, or any or either of them, and to have been a delay operating upon the final completion of the vessel within the time herein specified therefor, shall entitle the contractors to a corresponding extension of the period herein prescribed for the completion of said vessel: *provided, however,* that no delay, attributed by the contractors to the Department, its officers or agents, or the alleged cause or causes thereof, shall be considered by the Secretary of the Navy, unless the party of the first part shall, at the time of the occurrence of such delay, notify him in writing of the facts and circumstances in each case, and of the extent to which it is claimed that the final completion of the vessel is thereby delayed.

Eighth. The vessel to be constructed under this contract, and all materials and appliances provided for and used, or to be used, in the construction thereof, shall be kept duly insured, which insurance shall be renewed and increased from time to time, by and at the expense of the party of the first part, the loss, if any, to be stated in the policies as payable to the United States; the insurance to be effected in such manner and in such companies as shall be approved by the Secretary of the Navy, and in an amount to be fixed, from time to time, by him, not exceeding the amount of advance payments made under this contract.

Ninth. The party of the first part hereby further covenants and agrees that the vessel constructed under this contract shall be sufficiently strong to safely carry the *personnel*, armament, boilers, appurtenances, machinery and fittings mentioned or indicated in the aforesaid drawings and specifications, together with such torpedoes and their appendages, coal, stores, and equipments of all necessary kinds, as would constitute a liberal allowance for use during the longest period of "fuel-endurance," that can be obtained by expending, at the most economical speed, the maximum weight of coal mentioned in said specifications; and that when the vessel is loaded with all the fittings, equipments, stores, and other articles above enumerated, or when she has on board any less amount of coal or other consumable stores than those aforesaid, she shall be able to carry the same properly and safely at sea.

Tenth. The party of the first part hereby further covenants and agrees that said vessel shall, when completed and ready for delivery, as required by the plans and specifications aforesaid, be subjected to trials, under conditions prescribed or approved by the Secretary of the Navy, to test her hull, fittings, machinery, including engines, boilers, and appurtenances, and her stability, speed, and maneuvering and sea-going qualities, and that said vessel shall be accepted only on fulfillment of, and subject to, the conditions and agreements hereinafter referred to or set forth:

(1.) That the working of the machinery in all its parts shall be to the satisfaction of the Secretary of the Navy.

(2.) That the hull, fittings, the machinery, including engines, boilers and appurtenances of the vessel, shall be found to be strong and well-built, and in conformity with the contract, plans, and specifications, and shall be approved by the Secretary of the Navy.

(3.) That the carrying capacity, the stability, and the maneuvering and sea-going qualities of the vessel shall be to the satisfaction of the Secretary of the Navy.

(4.) That the mean speed of the vessel, to be ascertained and determined in the manner and under the conditions prescribed in the annexed Circular relating to said vessel, approved by the Secretary of the Navy, July 22, 1887, which Circular, so far as it relates to the "trials" of the vessel, and to premiums or penalties to be paid or exacted on account of speed, forms a part of this contract, shall not be less than twenty (20) knots per hour; it being mutually understood, covenanted and agreed, that if the mean speed of the vessel so ascertained and determined, shall exceed twenty-three (23) knots per hour, the party of the first part shall, subject to the conditions stated in the aforesaid Circular under the head of "Premium and Penalty," receive the premium or premiums as therein provided for; and that if the mean speed of the vessel shall fall below twenty-two (22) knots per hour, the amount of the penalty provided for in said Circular shall be deducted from the contract price of the vessel.

(5.) If, upon such trials and tests, there shall be any failure in the vessel, including her fittings and machinery, to meet fully the requirements of this contract, the party of the first part shall be entitled to make further trials, sufficient in number to reasonably demonstrate the capabilities of the vessel, *provided*, that the number of trials shall be determined and limited by the Secretary of the Navy, and that the expense thereof shall be borne by the party of the first part.

Eleventh. If, at and upon the trials and tests before mentioned, the foregoing requirements and conditions shall be fulfilled, the vessel shall be accepted and the final payments made, including all reservations, subject, however, to a special reserve of five thousand dollars (\$5,000) from and out of the reservations hereinafter provided for, which reserve shall be held by the party of the second part for a period of six months from and after the date of the acceptance of the vessel, upon the following conditions, viz: that if, at any time during said last-named period, there shall be developed any weakness or defect in either the hull, fittings, machinery, engines, boilers, or appurtenances, of said vessel, or in case there shall be any failure, breaking down, or deterioration thereof or therein, other than that due to fair wear and tear, the same shall be corrected and repaired to the satisfaction of the Secretary of the Navy, by, and at the expense of, the party of the first part—it being, however, mutually understood and agreed that it shall be optional with the party of the first part to have an engineer of its own selection to be present in the engine-room of said vessel, at any time or times during the period last mentioned, who shall have full opportunity to observe and inspect the working of the machinery in all its parts, but without any directing or controlling power over the same; and, in case such engineer shall be a civilian, his compensation shall be paid by the party of the first part.

Twelfth. The Department has adopted, as foundation for this contract, plans and specifications of a vessel which it has reason to think would, if properly carried out, result in the production of a speed of not less than twenty-two knots per hour, but it assumes no responsibility with reference thereto and will consider any changes suggested by the contractors, either as to hull or machinery, and, as the responsibility is with the contractors, the Department will feel it to be its duty to deal liberally with any proposed changes so long as the size, strength, and character of the vessel shall remain substantially the same; changes in plans or specifications involving increased or decreased expense to be dealt with as provided for in the second clause of this contract.

Thirteenth. It is further mutually understood, covenanted, and agreed, that in case of the failure or omission of the party of the first part, at any stage of the work prior to final completion, from any cause or causes other than those specified in the seventh clause of this contract, to go forward with the work and make satisfactory progress towards its completion within the prescribed period, it shall be optional with the Secretary of the Navy to declare this contract forfeited. The party of the first part thereupon, and on notice thereof, in writing, be, and does hereby, in consideration of the premises, for itself and its successors, assigns, and legal representatives, acknowledge itself to be justly indebted to the United States, as for liquidated and ascertained damages, in a sum equal to the aggregate amount of all advance payments theretofore made for or on account of the work to be done under this contract, and does further covenant and agree to refund the same on demand, or within sixty days thereafter, and that the United States shall and may hold, as collateral security for such refund, the vessel and materials, or so much thereof as shall then have been constructed or furnished or as shall be on hand for the purposes of construction. The Secretary of the Navy shall thereupon cause to be taken and filed a full and complete statement and inventory of all work done or commenced in, upon, or about the said vessel, and of all materials on hand applicable thereto, and shall cause the same to be duly valued by a Board, consisting of not less than five persons qualified by knowledge and experience for the discharge of their duties, to be appointed by the Secretary of the Navy, which Board shall proceed without unnecessary delay to examine such work and materials and ascertain and declare the fair market value thereof, including a reasonable and customary margin of profit upon so much of the work as shall have been, at the time such forfeiture is declared, satisfactorily performed; and upon such examination the party of the first part may attend, and submit such evidence as the Board may deem proper.

Fourteenth. Upon receipt of the report and finding of said Board, and upon his approval thereof, the Secretary of the Navy may, in his discretion, proceed to complete the vessel in accordance with this contract, using for that purpose all suitable materials on hand and included in the inventory aforesaid; and the title to said vessel, or so much thereof as shall have been completed, and to all such materials, shall forthwith vest in the United States; and the party of the first part, on receiving notice of the intention of the Secretary of the Navy to proceed to the completion of the work, shall surrender the same and all materials on hand, together with the use of the yard or "plant," and all machinery, tools, and appliances appertaining thereto and theretofore used or necessarily to be used in and about the completion of the work.

Fifteenth. In case the Secretary of the Navy shall proceed, under the foregoing clause, to complete the work and test the vessel, such procedure and tests shall be without unnecessary delay, and shall be at the risk and expense of the party of the first part, who shall be chargeable with any increase in the cost of materials or labor incurred by reason of its failure to perform this contract. Upon the final settlement of the liability of the party of the first part an account shall be stated substantially as follows:

The party of the first part shall be charged—

1. With all advance payments.
2. With the extra cost, if any, of materials and labor, and all other extra expenses, if any, over and above the contract price, incurred in the completion of the work.

The party of the first part shall then be credited with the value of the work done up to the time of suspension, and of the materials on hand, as ascertained by the Board and approved by the Secretary of the Navy under the provisions of the thirteenth clause of this contract, and with such advance payments, if any, as may have been refunded. If a balance shall thereupon appear in favor of the party of the first part, the same shall be paid and accepted in full discharge of all claims under this contract; but if a balance shall appear in favor of the United States, the party of the first part hereby covenants and agrees as aforesaid to pay and discharge the same on demand.

Sixteenth. It is mutually understood, covenanted, and agreed, by and between the respective parties, that it shall not, under any circumstances, be obligatory upon the party of the second part to accept the vessel to be constructed under this contract, unless the same shall have been completed in strict conformity therewith, and in accordance with the provisions of the aforesaid act of Congress, and that this qualification shall be deemed and taken as applicable and applying to each and every clause, covenant, and condition, express or implied, in this contract contained.

Seventeenth. It is mutually understood, covenanted, and agreed, by and between the respective parties, that this contract shall not, nor shall any interest therein, be transferred by the party of the first part to any other person or persons.

Eighteenth. It is hereby mutually and expressly covenanted and agreed, and this contract is upon the express condition, that no member of or delegate to Congress, officer of the Navy, or any person holding any office or appointment under the Navy Department, shall be admitted to any share or part of this contract, or to any benefit to arise therefrom; but this stipulation, so far as it relates to members of or delegates to Congress, is not to be construed to extend to this contract, it being made with an incorporated company.

Nineteenth. The United States, in consideration of the premises, do hereby contract, promise and engage, to and with the party of the first part, as follows:

1. The contract price to be paid for the vessel, machinery, and fittings to be constructed and furnished in accordance with this contract, shall be eighty-two thousand seven hundred and fifty dollars (\$82,750.00).

2. Payments shall be made by the United States in five equal instalments, as the work progresses, with a reservation of 10 per cent. from each instalment.

3. No payment shall be made except upon bills, in triplicate, certified by the Inspectors in such manner as shall be directed by the Secretary of the Navy, whose final approval of all bills thus certified shall be necessary before payment thereof.

4. All warrants for payments under this contract shall be made payable to the party of the first part or its order.

5. The last payment shall not be made until this contract shall have been fully performed by or on the part of the party of the first part, and the vessel shall have been accepted by the party of the second part, as provided for in the tenth clause of this contract.

6. When all the conditions, covenants, and provisions of this contract shall have been performed and fulfilled, the party of the first part shall be entitled, within ten days after the filing and acceptance of a claim therefor, to receive the said reserve, or so much thereof as the said party of the first part may be entitled to, on the execution of a final release to the United States, in such form as shall be approved by the Secretary of the Navy, of all claims of any kind or description under or by virtue of this contract.

Twentieth. If any doubts or disputes arise as to the meaning of anything in the aforesaid circular, drawings, plans, or specifications, or if any discrepancy appear between the same and this contract, the matter shall be at once referred to the Secretary of the Navy for determination, and the party of the first part hereby binds itself and its successors, assigns, and legal representatives, to abide by his decision in the premises.

IN WITNESS WHEREOF the respective parties have hereunto set their hands and seals the day and year first above written.

SIGNED AND SEALED IN THE PRESENCE OF—

[L. S.]

[L. S.]