Subpart 47.5 - Ocean Transportation by U.S.-Flag Vessels

Parent topic: Part 47 - Transportation

47.500 Scope of subpart.

This subpart prescribes policy and procedures for giving preference to *U.S.-flag vessels* when transportation of *supplies* by ocean vessel is required. This subpart does not apply to the Department of Defense (DoD). Policy and procedures applicable to DoD appear in DFARS Subpart 247.5.

47.501 Definitions.

As used in this subpart-

Dry bulk carrier means a vessel used primarily for the carriage of shipload lots of homogeneous unmarked nonliquid cargoes such as grain, coal, cement, and lumber.

Dry cargo liner means a vessel used for the carriage of heterogeneous marked cargoes in parcel lots. However, any cargo *may* be carried in these vessels, including part cargoes of dry bulk items or, when carried in deep tanks, bulk liquids such as petroleum and vegetable oils.

Foreign-flag vessel means any vessel of foreign registry including vessels owned by U.S. citizens but registered in a nation other than the *United States*.

Government vessel means a vessel owned by the U.S. Government and operated directly by the Government or for the Government by an agent or contractor, including a privately owned *U.S.-flag vessel* under bareboat charter to the Government.

Privately owned U.S.-flag commercial vessel means a vessel-

(1) Registered and operated under the laws of the *United States*,

(2) Used in commercial trade of the *United States*,

(3) Owned and operated by U.S. citizens, including a vessel under voyage or time charter to the Government, and

(4) A Government-owned vessel under bareboat charter to, and operated by, U.S. citizens.

Tanker means a vessel used primarily for the carriage of bulk liquid cargoes such as liquid petroleum *products*, vegetable oils, and molasses.

U.S.-flag vessel when used independently means either a *Government vessel* or a *privately owned U.S.-flag commercial vessel*.

47.502 Policy.

(a) The policy of the *United States* regarding the use of *U.S.-flag vessels* is stated in the following acts:

(1) The Cargo Preference Act of 1904 (10 U.S.C. 2631), which requires the Department of Defense to use only *U.S.-flag vessels* for ocean transportation of *supplies* for the Army, Navy, Air Force, or Marine Corps unless those vessels are not available at fair and reasonable rates.

(2) The Merchant Marine Act of 1936 (46 U.S.C. 1101), which declares it is the policy of the *United States* to foster the development and encourage the maintenance of its merchant marine.

(3) The Cargo Preference Act of 1954 (46 U.S.C. 1241(b), which is Section 901(b) of the Merchant Marine Act). Under this Act, Government agencies acquiring, either within or outside the *United States*, *supplies* that *may* require ocean transportation *shall* ensure that at least 50 percent of the gross tonnage of these *supplies* (computed separately for *dry bulk carriers*, *dry cargo liners*, and *tankers*) is transported on *privately owned U.S.-flag commercial vessels* to the extent that such vessels are available at rates that are fair and reasonable for U.S.-flag commercial vessels. This applies when the *supplies* are-

(i) Acquired for the account of the *United States*;

(ii) Furnished to, or for the account of, a foreign nation without provision for reimbursement;

(iii) Furnished for the account of a foreign nation in connection with which the *United States* advances funds or credits, or guarantees the convertibility of foreign currencies; or

(iv) Acquired with advance of funds, loans, or guaranties made by or on behalf of the *United States*.

(b) Additional policies providing preference for the use of *U.S.-flag vessels* are contained in-

(1) 46 U.S.C. 1241(a) for official business travel by officers and employees of the *United States* and for the transportation of their personal effects; and

(2) 46 U.S.C. 1241(e) for the transportation of motor vehicles owned by Government personnel when transportation is at Government expense or otherwise authorized by law.

(c) The provisions of the Cargo Preference Act of 1954 *may* be temporarily waived when the Congress, the President, or the Secretary of Defense declares that an *emergency* justifying a temporary waiver exists and so notifies the appropriate agency or agencies.

47.503 Applicability.

(a) Except as stated in paragraph (b) of this section and in 47.504, the Cargo Preference Acts of1904 and1954 described in 47.502(a) apply to the following cargoes:

(1) *Supplies* owned by the Government and in the possession of-

(i) The Government;

(ii) A contractor; or

(iii) A subcontractor at any tier.

(2) *Supplies* for use of the Government that are contracted for and require subsequent delivery to a Government activity but are not owned by the Government at the time of *shipment*.

(3) *Supplies* not owned by the Government at the time of *shipment* that are to be transported for distribution to foreign assistance programs, but only if these *supplies* are not acquired or contracted for with local currency funds (see 47.504(b)).

(b) Government-owned *supplies* to be shipped commercially that are-

(1) In the possession of a department, a contractor, or a subcontractor at any tier and

(2) For use of military departments *shall* be transported exclusively in *privately owned U.S.-flag commercial vessels* if such vessels are available at rates that are fair and reasonable for U.S.-flag commercial vessels.

(c) The 50-percent requirement *shall* not prevent the use of *privately owned U.S.-flag commercial vessels* for transportation of up to 100 percent of the cargo subject to the Cargo Preference Act of1954.

47.504 Exceptions.

The policy and procedures in this subpart do not apply to the following:

(a) *Shipments* aboard vessels as required or authorized by law or treaty.

(b) Ocean transportation between foreign countries of *supplies* purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of1961 (22 U.S.C. 2353).

(c) *Shipments* of classified *supplies* when the classification prohibits the use of non-*Government vessels*.

(d) Subcontracts for the *acquisition* of *commercial products*, including *commercial components*, or *commercial services* (see 12.504(a)(1) and (a)(11)). This exception does not apply to-

(1) Grants-in-aid *shipments*, such as agricultural and food-aid *shipments*;

(2) *Shipments* covered under 46 U.S.C. App.1241-1, such as those generated by Export-Import Bank loans or guarantees;

(3) Subcontracts under-

(i) Government contracts or agreements for ocean transportation services; or

(ii) *Construction* contracts; or

(4) *Shipments* of *commercial products* that are-

(i) Items the contractor is reselling or distributing to the Government without adding value (see FAR 12.501(b)). Generally, the contractor does not add value to the items when it subcontracts items for *f.o.b. destination shipment*; or

(ii) Shipped in direct support of U.S. military-

(A) *Contingency operations*;

(B) Exercises; or

(C) Forces deployed in connection with United Nations or North Atlantic Treaty Organization *humanitarian or peacekeeping operations*.

47.505 Construction contracts.

(a) Except as stated in paragraph (b) of this section, *construction* contractors, including subcontractors and suppliers, engaged in overseas work *shall* comply with the policies and regulations in this subpart.

(b) These requirements *shall* not apply to military assistance, foreign aid, or similar projects under the auspices of the U.S. Government when the recipient nation furnishes, or pays for, at least 50 percent of the transportation, in which event *foreign-flag vessels may* be used for a portion not to exceed 50 percent of the gross tonnage for the project.

47.506 Procedures.

(a) The *contracting officer shall* obtain assistance from the transportation activity (see 47.105) in developing appropriate shipping instructions and delivery terms for inclusion in *solicitations* and contracts that *may* involve ocean transportation of *supplies* subject to the requirements of the Cargo Preference Act of1954 (see 47.502(a)(3)).

(b) When the contractor notifies the *contracting officer* that a *privately owned U.S.-flag commercial vessel* is not available, the *contracting officer shall* seek assistance from the transportation activity.

(c) For purposes of determining the availability of *privately owned U.S.-flag commercial vessels* at fair and reasonable rates, rates filed and published in accordance with the requirements of the Federal Maritime Commission *may* be accepted as fair and reasonable. When applicable rates for charter cargoes are not in published tariffs, a determination as to whether the rates are fair and reasonable *shall* be obtained from the Maritime Administration.

(d) The Maritime Administration has issued regulations (46 CFR381) that require agencies to submit reports regarding ocean *shipments*. *Contracting officers shall* follow agency regulations when preparing, or furnishing information for, these reports.

47.507 Contract clauses.

(a)

(1) Insert the clause at 52.247-64, Preference for *Privately Owned U.S.-Flag Commercial Vessels*, in *solicitations* and contracts that *may* involve ocean transportation of *supplies* subject to the Cargo Preference Act of1954. (For application of the Cargo Preference Act of1954, see 47.502(a)(3), 47.503(a), and 47.504.)

(2) If an applicable statute requires, or if it has been determined under agency procedures, that the *supplies* to be furnished under the contracts *must* be transported exclusively in *privately owned U.S.-flag commercial vessels* (see 47.502(a)(1) and 47.503(b)), use the clause with its AlternateI.

(3) Except for contracts or agreements for ocean transportation services or *construction* contracts, use the clause with its *Alternate* II if any of the *supplies* to be transported are *commercial products* that are shipped in direct support of U.S. military-

(i) *Contingency operations*;

(ii) Exercises; or

(iii) Forces deployed in connection with United Nations or North Atlantic Treaty Organization *humanitarian or peacekeeping operations*.

(b) The *contracting officer may* insert in *solicitations* and contracts, under agency procedures, additional appropriate clauses concerning the vessels to be used.