Subpart 247.5 - OCEAN TRANSPORTATION BY U.S.-FLAG VESSELS

Parent topic: Part 247 - TRANSPORTATION

247.570 Scope.

This subpart—

(a) Implements—

(1) The Military Cargo Preference Act of 1904 (“the 1904 Act”), 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by, destined for use by, or otherwise transported by DoD;

(2) Section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) (10 U.S.C. 2631 note), which requires consideration, in solicitations requiring a covered vessel, of the extent to which offerors have had overhaul, repair, and maintenance work performed in shipyards located in the United States or Guam;

(3) Section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417) (10 U.S.C. chapter 257 note), which addresses requirements that apply to riding gang members and DoD-exempted individuals (see 252.247-7027 (c)) who perform work on U.S.-flag vessels under DoD contracts for transportation services documented under chapter 46 U.S.C. chapter 121; and

(4) Section 1024 of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283), which updates the listed circumstances where DoD may waive the requirement that DoD supplies be transported by sea in vessels belonging to the United States or vessels of the United States, and it modifies the requirement for reflagging or repair work in the United States for vessels used under time-charter contracts.

(b) Does not specifically implement the Cargo Preference Act of 1954 ("the 1954 Act"), 46 U.S.C. chapter 553. The 1954 Act is applicable to DoD, but DFARS coverage is not required because compliance with the 1904 Act historically has resulted in DoD exceeding the 1954 Act's requirements; and

(c) Does not implement—

(1) Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. chapters 121 and 552), commonly known as the “Jones Act,” for the application of coastwise trade; or

(2) Waivers thereof pursuant to 46 U.S.C. 501.

247.571 Definitions.

As used in this subpart—

"Corrective and preventive maintenance or repair" means—

(1) Maintenance or repair actions performed as a result of a failure in order to return or restore equipment to acceptable performance levels; and

(2) Scheduled maintenance or repair actions to prevent or discover functional failures.

"Covered vessel" means a vessel—

(1) Owned, operated, or controlled by the offeror; and

(2) Qualified to engage in the carriage of cargo in the coastwise or noncontiguous trade under 46 U.S.C. 12112 and 50501 and 46 U.S.C. chapter 551.

"Foreign-flag vessel" means any vessel that is not a U.S.-flag vessel.

"Ocean transportation" means any water-borne transportation aboard a ship, vessel, boat, barge, ferry, or the like outside the internal waters of the United States (as defined in 33 CFR 2.24).

"Overhaul, repair, and maintenance work" means work requiring a shipyard period greater than or equal to 5 calendar days.

"Reflagging or repair work" means work performed on a vessel—

(1) To enable the vessel to meet applicable standards to become a vessel of the United States; or

(2) To convert the vessel to a more useful military configuration.

"Supplies" means supplies that are clearly identifiable for eventual use by or owned by DoD at the time of transportation by sea, or are otherwise transported by DoD, regardless of ownership or use by DoD. An item is clearly identifiable for eventual use by DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

"U.S.-flag vessel means either a vessel belonging to the United States or a vessel of the United States as that term is defined in 46 U.S.C. 116.

247.572 Policy.

(a) In accordance with 10 U.S.C. 2631(a), DoD contractors shall transport supplies exclusively on U.S.-flag vessels. In accordance with 10 U.S.C. 2631(b), DoD (see 247.573(a)) may waive this requirement when a U.S.-flag vessel—

(1) Is not available at a fair and reasonable rate for commercial vessels of the United States; or

(2) Is not otherwise available.

(b) Contracts must provide for the use of vessels belonging to the United States when security classifications prohibit the use of other than vessels belonging to the United States.

(c) In accordance with 10 U.S.C. 2631(c)—

(1) Any vessel used under a time charter contract for the transportation of supplies under this section shall have the following work performed in the United States or its outlying areas:

(i) Reflagging or repair work, if the reflagging or repair work is performed—

(A) On a vessel for which the contractor submitted an offer in response to the solicitation for the contract; and

(B) Prior to acceptance of the vessel by the Government.

(ii) Prior to acceptance of the vessel by the Government.

(ii) Corrective and preventive maintenance or repair work for the duration of the contract, to the greatest extent practicable.

(2) The Secretary of Defense may waive this requirement if the Secretary determines that such waiver is critical to the national security of the United States. In accordance with 10 U.S.C. 2631(c)(2), DoD shall immediately submit, in writing, a notice to the congressional committees listed at 10 U.S.C. 2631(e) of such a waiver and the reason for the waiver.

(d) In accordance with section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364), when obtaining carriage requiring a covered vessel, the contracting officer shall consider the extent to which offerors have had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam.

(e) In accordance with section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), DoD may not award, renew or extend, or exercise an option under a charter of, or contract for carriage of cargo by, a U.S.-flag vessel documented under 46 U.S.C. chapter 121, unless the contract contains the clause at 252.247-7027.

247.573 General.

(a) *Delegated authority*. Pursuant to 10 U.S.C. 2631(b)(2), the Secretary of Defense has delegated (see PGI 247.573) the authority to make determinations either that a U.S.-flag vessel is not available at a fair and reasonable rate for commercial vessels of the United States or is otherwise not available to—

(1) The Commander, United States Transportation Command; and

(2) The Secretary of the Navy.

(b) *Procedures*.

(1) Contracting officers shall follow the procedures at PGI 247.573 (b)(1) when purchase of ocean transportation services is incidental to a contract for supplies, services, or construction.

(2) Contracting officers shall follow the procedures at PGI 247.573 (b)(2) when direct purchase of ocean transportation services is the principal purpose of the contract.

(3) See PGI 247.573 (b)(3) for agency and department procedures relating to annual reporting requirements of waivers granted for nonavailability of U.S.-flag vessels.

(4) Follow the procedures at PGI 247.573 (b)(4) to accomplish security background checks pursuant to clause 252.247-7027 , Riding Gang Member Requirements.

(5)(i) In accordance with 10 U.S.C. 2631(d), contracting officers shall exercise appropriate contractual rights and remedies against contractors who fail to comply. Such remedies may include the determination that a contractor is ineligible for award of future contracts, termination of an existing contract, or suspension or debarment of the contractor. Also see 242.1502 regarding assessments of the contractor's past performance.

(ii) In the event of a contractor's unauthorized use of foreign-flag vessels in the performance of a contract, the contracting officer is authorized to consider an equitable adjustment.

247.574 Solicitation provisions and contract clauses.

(a) Use the basic or one of the alternates of the clause at 252.247-7023, Transportation of Supplies by Sea, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, except those for direct purchase of ocean transportation services.

(1) Use the basic clause unless any of the supplies to be transported are commercial products that are -

(i) Shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations when the contract is not a construction contract; or

(ii) Commissary or exchange cargoes transported outside of the Defense Transportation System when the contract is not a construction contract.

(2) Use the alternate I clause if any of the supplies to be transported are commercial products that are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations when the contract is not a construction contract.

(3) Use the alternate II clause if any of the supplies to be transported are commercial products that are commissary or exchange cargoes transported outside of the Defense Transportation System (10 U.S.C. 2643), when the contract is not a construction contract.

(b) Use the clause at 252.247-7025, Reflagging or Repair Work, in all time charter solicitations and contracts, including time charter solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for the use of a vessel for the transportation of supplies, unless a waiver has been granted in accordance with 247.572 (c)(2).

(c) Use the provision at 252.247-7026 , Evaluation Preference for Use of Domestic Shipyards–Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that require a covered vessel for carriage of cargo for DoD.

(d) Use the clause at 252.247-7027 , Riding Gang Member Requirements, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for the charter of, or contract for carriage of cargo by, a U.S.-flag vessel documented under chapter 46 U.S.C. chapter 121.