

§§ 296.21–296.23

46 CFR Ch. II (10–1–22 Edition)

(2) No payment can be made for an existing tank vessel granted priority one status after the earlier of:

(i) Four years following the date this MSP Operating Agreement is effective, except if amounts are available for construction of a minimum of three tank vessels under the National Defense Tank Vessel Construction Assistance Program (NDTVCP) by October 1, 2007, then no payments shall be made for the existing “tank vessel” after four years following the date such amounts are available; or

(ii) The date of delivery of the replacement tank vessel constructed in the United States after October 1, 2004.

(3) The Secretary will not enter into more than five MSP Operating Agreements for tank vessels under this priority. If the five tank vessel MSP Operating Agreement slots are not fully subscribed, the Secretary, in consultation with the SecDef, may award the non-subscribed slots to lower priority vessels, if deemed appropriate. If the Secretary determines that no funds are, or are likely to be, allocated for any tank vessel construction in the United States, the five slots may nevertheless be awarded to existing tank vessels or the slots may be awarded permanently to any eligible vessels. The Secretary may temporarily award a slot reserved for a tank vessel under construction to a lower priority vessel during the construction period of that vessel if an existing tank vessel offered by the tank vessel Contractor is not eligible for priority for that slot. If no existing tank vessel is offered by the tank vessel Contractor, the Secretary may temporarily award an MSP Operating Agreement to any eligible vessel of another Contractor until a new tank vessel’s construction is completed in the United States. Such temporary MSP Operating Agreements may be terminated under terms set forth in the temporary MSP Operating Agreement.

§§ 296.21–296.23 [Reserved]

§ 296.24 Subsequent awards of MSP Operating Agreements.

(a) MARAD intends to ensure that all available MSP Operating Agreements are fully utilized at all times in order

to maximize the benefit of the MSP. Accordingly, when an MSP Operating Agreement becomes available through termination by the Secretary or early termination by the MSP contractor, and no transfer under 46 U.S.C. 53105(e) is involved, MARAD will reissue the MSP Operating Agreement pursuant to the following criteria:

(1) The proposed vessel shall meet the requirements for vessel eligibility in 46 U.S.C. 53102(b);

(2) The applicant shall meet the vessel ownership and operating requirements for priority in 46 U.S.C. 53102(c); and

(3) Priority will be assigned on the basis of vessel type established by military requirements specified by the Secretary of Defense. After consideration of military requirements, priority shall be given to an applicant that is a United States citizen under section 50501 of this title.

(b) MARAD shall allow an applicant at least 30 days to submit an application for a new MSP Operating Agreement.

(c) MARAD and USTRANSCOM will determine if the applications received form an adequate pool for award of a reissued MSP Operating Agreement. If so, MARAD will award a reissued MSP Operating Agreement from that pool of qualified applicants in its discretion according to the procedures of paragraph (a) of this section, subject to approval of the Secretary of Defense. MARAD and USTRANSCOM may decide to open a new round of applications. MARAD shall provide written reasons for denying applications. In as much as MSP furthers a public purpose and MARAD does not acquire goods or services through MSP, the selection process for award of MSP Operating Agreements does not constitute an acquisition process subject to any procurement law or the Federal Acquisition Regulations.

[82 FR 56897, Dec. 1, 2017]

Subpart D—Maritime Security Program Operating Agreements

§ 296.30 General conditions.

(a) *Approval.* The Secretary, in conjunction with the Secretary of Defense,

may approve applications to enter into a MSP Operating Agreement and make MSP Payments with respect to vessels that are determined by the Secretary to be commercially viable and deemed by the Secretary of Defense to be militarily useful for meeting the sealift needs of the United States in time of war or national emergencies. The Secretary announced an initial award of 60 MSP Operating Agreements on January 12, 2005. In June 2014, the Secretary extended the term of all 60 MSP Operating Agreements through FY 2025.

(b) *Effective date*—(1) *General rule*. Unless otherwise provided, the effective date of an MSP Operating Agreement is October 1, 2005.

(2) *Exceptions*. In the case of an Eligible Vessel to be included in an MSP Operating Agreement that is on charter to the U.S. Government, other than a charter under the provisions of an Emergency Preparedness Agreement (EPA) provided by 46 U.S.C. 53107, as amended, unless an earlier date is requested by the applicant, the effective date for an MSP Operating Agreement shall be:

(i) The expiration or termination date of the Government charter covering the vessel; or

(ii) Any earlier date on which the vessel is withdrawn from that charter, but not before October 1, 2005.

(c) *Replacement vessels*. A Contractor may replace an MSP vessel under an MSP Operating Agreement with another vessel that is eligible to be included in the MSP under section 296.11(a), if the Secretary, in conjunction with the Secretary of Defense, approves the replacement vessel.

(d) *Termination by the Secretary*. If the Contractor materially fails to comply with the terms of the MSP Operating Agreement:

(1) The Secretary shall notify the Contractor and provide a reasonable opportunity for the Contractor to comply with the MSP Operating Agreement;

(2) The Secretary shall terminate the MSP Operating Agreement if the Contractor fails to achieve such compliance; and

(3) Upon such termination, any funds obligated by the relevant MSP Oper-

ating Agreement shall be available to the Secretary to carry out the MSP.

(e) *Early termination by Contractor, generally*. An MSP Operating Agreement shall terminate on a date specified by the Contractor if the Contractor notifies the Secretary not later than 60 days before the effective date of the proposed termination that the Contractor intends to terminate the MSP Operating Agreement. The Contractor shall be bound by the provisions relating to vessel documentation and national security commitments, and by its EPA for the full term, from October 1, 2005, through September 30, 2025, of the MSP Operating Agreement.

(f) [Reserved]

(g) *Non-renewal for lack of funds*. If, by the first day of a fiscal year, sufficient funds have not been appropriated under the authority of MSA 2003, as amended, for that fiscal year, the Secretary will notify the Senate Committees on Armed Services and Commerce, Science, and Transportation, and the House of Representatives Committee on Armed Services, that MSP Operating Agreements for which sufficient funds are not available will not be renewed for that fiscal year if sufficient funds are not appropriated by the 60th day of that fiscal year. If only partial funding is appropriated by the 60th day of such fiscal year, then the Secretary, in consultation with the Secretary of Defense, shall select the vessels to retain under MSP Operating Agreements, based on the Secretaries' determinations of the most militarily useful and commercially viable vessels. In the event that no funds are appropriated, then all MSP Operating Agreements shall be terminated, and each Contractor shall be released from its obligations under the MSP Operating Agreement. Final payments under the terminated MSP Operating Agreements shall be made in accordance with § 296.41. To the extent that funds are appropriated in a subsequent fiscal year, former MSP Operating Agreements may be reinstated if mutually acceptable to the Administrator and the Contractor, provided the MSP vessel remains eligible.

(h) *Release of vessels from obligations*. If sufficient funds are not appropriated for payments under an MSP Operating

§ 296.31

Agreement for any fiscal year by the 60th day of that fiscal year, then—

(1) Each vessel covered by a terminated MSP Operating Agreement is released from any further obligation under the MSP Operating Agreement;

(2) The owner and operator of a non-tank vessel may transfer and register the applicable vessel under foreign registry deemed acceptable by the Secretary and the SecDef, notwithstanding 46 U.S.C. chapter 561 and 46 CFR part 221;

(3) If section 902 of the Act is applicable to a vessel that has been transferred to a foreign registry due to a terminated MSP Operating Agreement, then that vessel is available to be requisitioned by the Secretary pursuant to section 902 of the Act; and

(4) Paragraph (h) of this section is not applicable to vessels under MSP Operating Agreements that have been terminated for any other reason.

(i) *Foreign transfer of vessel.* A Contractor may transfer a non-tank vessel to a foreign registry, without approval of the Secretary, if the Secretary, in conjunction with the Secretary of Defense, determines that the contractor will provide a replacement vessel:

(1) Of equal or greater military capability and of a capacity that is equivalent or greater as measured in deadweight tons, gross tons, or container equivalent units, as appropriate;

(2) That is a documented vessel under 46 U.S.C. chapter 121 by the owner of the vessel to be placed under a foreign registry; and

(3) That is not more than 10 years of age on the date of that documentation.

(j) *Transfer of MSP Operating Agreements.* A contractor under an MSP Operating Agreement may transfer the agreement (including all rights and obligations under the MSP Operating Agreement) to any person that is eligible to enter into the MSP Operating Agreement under this chapter if the Secretary and the Secretary of Defense determine that the transfer is in the best interests of the United States. A transaction shall not be considered a transfer of an MSP Operating Agreement if the same legal entity with the same vessels remains the contracting

46 CFR Ch. II (10–1–22 Edition)

party under the MSP Operating Agreement.

[82 FR 56897, Dec. 1, 2017]

§ 296.31 MSP assistance conditions.

(a) *Term of MSP Operating Agreement.* MSP Operating Agreements are authorized for 20 years, starting on October 1, 2005, and ending on September 30, 2025, but payments to Contractors are subject to annual appropriations each fiscal year. MARAD may enter into MSP Operating Agreements for a period less than the full term authorized under the MSA 2003, as amended.

(b) *Terms under a Continuing Resolution (CR).* In the event funds are available under a CR, the terms and conditions of the MSP Operating Agreements shall be in force provided sufficient funds are available to fully meet obligations under MSP Operating Agreements, and only for the period stipulated in the applicable CR. If funds are not appropriated under a CR at sufficient levels for any portion of a fiscal year, the Secretary will select the vessels to retain within the funding level of the previous fiscal year, in consultation with the SecDef, based on the Secretaries' determination of the most militarily useful and commercially viable vessels. With regard to an MSP Operating Agreement that does not receive funds, the terms and conditions of any applicable MSP Operating Agreement may be voided and the Contractor may request termination of the MSP Operating Agreement.

(c) *National security requirements.* Each MSP Operating Agreement shall require the owner or operator of an Eligible Vessel included in that MSP Operating Agreement to enter into an EPA pursuant to section 53107 of the MSA 2003. The EPA shall be a document incorporating the terms of the Voluntary Intermodal Sealift Agreement (VISA), as approved by the Secretary and the SecDef, or other agreement approved by the Secretaries.

(d) *Vessel operating agreements.* The MSP Operating Agreement shall require that during the period an Eligible Vessel is included in that MSP Operating Agreement, the Eligible Vessel shall:

Maritime Administration, DOT

§ 296.41

(1) *Documentation*: Be documented as a U.S.-flag vessel under 46 U.S.C. chapter 121;

(2) *Operation*: Be operated exclusively in the foreign commerce or in mixed foreign commerce and domestic trade allowed under a registry endorsement issued under 46 U.S.C. 12111, and shall not otherwise be operated in the coast-wise trade of the United States; and

(3) *Noncontiguous Domestic Trade*: Not receive MSP payments during a period in which the Contractor participates, *i.e.*, directly or indirectly owns, charters, or operates, a vessel engaged in noncontiguous domestic trade unless the Contractor is a Section 2 Citizen.

(e) *Obligation of the U.S. Government*. The amounts payable as MSP payments under an MSP Operating Agreement shall constitute a contractual obligation of the United States Government to the extent of available appropriations.

(f) *U.S. Merchant Marine Academy cadets*. The MSP Operator shall agree to carry on the MSP vessel two U.S. Merchant Marine Academy cadets, if available, on each voyage.

[70 FR 55588, Sept. 22, 2005, as amended at 82 FR 56898, Dec. 1, 2017]

§ 296.32 Reporting requirements.

The Contractor shall submit to the Director, Office of Financial Approvals, Maritime Administration, 2nd Floor, West Building, 1200 New Jersey Ave. SE., Washington, DC 20590, one of the following reports, including management footnotes where necessary to make a fair financial presentation:

(a) *Form MA-172*: Not later than 120 days after the close of the Contractor's semiannual accounting period, a Form MA-172 on a semiannual basis, in accordance with 46 CFR 232.6; or

(b) *Financial Statement*: Not later than 120 days after the close of the Contractor's annual accounting period, an audited financial statement in accordance with 46 CFR 232.6 and the most recent vessel operating cost data submitted as part of its EPA, or if not

current year data, a Schedule 310 of the MA-172.

(Approved by the Office of Management and Budget under Control Number 2133-0005)

[70 FR 55588, Sept. 22, 2005, as amended at 82 FR 56898, Dec. 1, 2017]

Subpart E—Billing and Payment Procedures

§ 296.40 Billing procedures.

Submission of voucher. For contractors operating under more than one MSP Operating Agreement, the contractor may submit a single monthly voucher applicable to all its MSP Operating Agreements. Each voucher submission shall include a certification that the vessel(s) for which payment is requested were operated in accordance with § 296.31(d) and applicable MSP Operating Agreements with MARAD, and consideration shall be given to reductions in amounts payable as set forth in § 296.41(b) and (c). All submissions shall be forwarded to the Director, Office of Accounting, MAR-330, Maritime Administration, 2nd Floor, West Building, 1200 New Jersey Ave. SE., Washington, DC 20590. Payments shall be paid and processed under the terms and conditions of the Prompt Payment Act, 31 U.S.C. 3901.

[82 FR 56898, Dec. 1, 2017]

§ 296.41 Payment procedures.

(a) *Amount payable*. An MSP Operating Agreement shall provide, subject to the availability of appropriations and to the extent the MSP Operating Agreement is in effect, for each Agreement Vessel, an annual payment equal to \$2,600,000 for FY 2006, FY 2007, FY 2008; \$2,900,000 for FY 2009, FY 2010, FY 2011; \$3,100,000 for FY 2012, FY 2013, FY 2014, and FY 2015; \$3,500,000 for FY 2016; \$4,999,950 for FY 2017; \$5,000,000 for FY 2018, FY 2019, and FY 2020; \$5,233,463 for FY 2021; and \$3,700,000 for FY 2022, FY 2023, FY 2024, and FY 2025. This amount shall be paid in equal monthly installments at the end of each month. The annual amount payable shall not be reduced except as provided in paragraphs (b) and (c) of this section.

(b) *Reductions in amount payable*. (1) The annual amount otherwise payable