

(2) Required shipping date(s) and required delivery date(s);

* * * * *

(f) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and MARAD at *Cargo.Marad@dot.gov*, Attention: Military Team, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

* * * * *

(i) If the Contractor did not anticipate transporting any supplies by sea at the time of contract award and, therefore, did not provide the notification required by paragraph (b) of this clause, but prior to shipment of supplies, the Contractor learns that supplies will be transported by sea, the Contractor shall—

(1) Provide the notification required by paragraph (b) of this clause to the Contracting Officer and MARAD as soon as it is known that supplies will be transported by sea; and

(2) Comply with all the terms and conditions of this clause.

* * * * *

Alternate I. As prescribed in 247.574(a) and (a)(2), use the following clause, which uses a different paragraph (c) than the basic clause:

Transportation of Supplies by Sea—Alternate I (OCT 2024)

* * * * *

(b) If the transportation of supplies by sea is anticipated under this contract, the Contractor shall—

(1) Notify the Contracting Officer and Maritime Administration (MARAD) at *Cargo.Marad@dot.gov*—

(i) Within 3 business days after contract award; or

(ii) Immediately prior to the shipment departure date necessary to meet delivery schedules, whichever is earlier; and

(2) Include in the notification—

(i) A statement of the Contractor's intent to transport supplies by sea;

(ii) The contract number; and

(iii) The task-order or delivery-order number, when applicable.

* * * * *

(e) * * *

(2) Required shipping date(s) and required delivery date(s);

* * * * *

(f) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and MARAD at *Cargo.Marad@dot.gov*, Attention: Military Team, one copy of the rated on board vessel operating carrier's ocean bill of lading,

which shall contain the following information:

* * * * *

(i) If the Contractor did not anticipate transporting any supplies by sea at the time of contract award and, therefore, did not provide the notification required by paragraph (b) of this clause, but prior to shipment of the supplies, the Contractor learns that supplies will be transported by sea, the Contractor shall—

(1) Provide the notification required by paragraph (b) of this clause to the Contracting Officer and MARAD as soon as it is known that supplies will be transported by sea; and

(2) Comply with all the terms and conditions of this clause.

* * * * *

Alternate II. As prescribed in 247.574(a) and (a)(3), use the following clause, which uses a different paragraph (c) than the basic clause:

Transportation of Supplies by Sea—Alternate II (OCT 2024)

* * * * *

(b) If the transportation of supplies by sea is anticipated under this contract, the Contractor shall—

(1) Notify the Contracting Officer and Maritime Administration (MARAD) at *Cargo.Marad@dot.gov*—

(i) Within 3 business days after contract award; or

(ii) Immediately prior to the shipment departure date necessary to meet delivery schedules, whichever is earlier; and

(2) Include in the notification—

(i) A statement of the Contractor's intent to transport supplies by sea;

(ii) The contract number; and

(iii) The task-order or delivery-order number, when applicable.

* * * * *

(e) * * *

(2) Required shipping date(s) and required delivery date(s);

* * * * *

(f) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and MARAD at *Cargo.Marad@dot.gov*, Attention: Military Team, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

* * * * *

(i) If the Contractor did not anticipate transporting any supplies by sea at the time of contract award, and, therefore, did not provide the notification required by paragraph (b) of this clause, but prior to shipment of the supplies, the Contractor learns after the award of the

contract that supplies will be transported by sea, the Contractor shall—

(1) Provide the notification required by paragraph (b) of this clause to the Contracting Officer and MARAD as soon as it is known that supplies will be transported by sea; and

(2) Comply with all the terms and conditions of this clause.

* * * * *

■ 8. Amend section 252.247–7025—

■ a. By revising the section heading; and

■ b. In the introductory text by removing “247.574(c)” and adding “247.574(b)” in its place.

The revision reads as follows:

252.247–7025 Reflagging or Repair Work.

* * * * *

252.247–7026 [Amended]

■ 9. Amend section 252.247–7026 in the introductory text by removing “247.574(d)” and adding “247.574(c)” in its place.

■ 10. Amend section 252.247–7027—

■ a. By revising the section heading; and

■ b. In the introductory text by removing “247.574(e)” and adding “247.574(d)” in its place.

The revision reads as follows:

252.247–7027 Riding Gang Member Requirements.

* * * * *

[FR Doc. 2024–21091 Filed 9–25–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 242, 247, and 252

[Docket DARS–2024–0013]

RIN 0750–AL38

Defense Federal Acquisition Regulation Supplement: Preference for United States Vessels in Transporting Supplies By Sea (DFARS Case 2021–D020)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 intended to increase compliance with military cargo preference requirements.

DATES: Effective October 1, 2024.

FOR FURTHER INFORMATION CONTACT: David Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 89 FR 31681 on April 25, 2024, to implement section 1024 of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283). Section 1024 amends 10 U.S.C. 2631 to, among other things, clarify circumstances in which DoD may seek a waiver from the basic requirement for DoD supplies to be transported by seas in either vessels belonging to the United States or vessels of the United States. One respondent submitted a public comment in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. A discussion of the comment is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule

There are no changes from the proposed rule resulting from the public comment.

B. Analysis of Public Comments

Comment: The respondent suggested the rule should be changed to include a certification requirement in paragraph (f) of the clause at DFARS 252.242–7023, including alternates, in place of a representation. The respondent further suggested the clause at DFARS 252.247–7025 should similarly include a certification requirement. The respondent expressed that these changes would help ensure full compliance with U.S.-flag vessel preference requirements.

Response: As expressed at DFARS 201.107, 41 U.S.C. 1304 prohibits new certification requirements in the DFARS unless either the certification is specifically imposed by statute or an approved justification exists for the certification. Neither condition is met in this case. Therefore, DoD declines the respondent’s suggestion to add certification requirements to the clauses at DFARS 252.242–7023 and 252.247–7025.

C. Other Changes

Two changes are made to the final rule. First, the final rule removes the definition of “foreign shipyard” from DFARS 247.501, because that definition

is not used in subpart 247.5. Secondly, the final rule removes the change included in the proposed rule to the definition of “foreign shipyard” in the solicitation provision at DFARS 252.247–7026, because this change created incongruity with the existing definition of “U.S. shipyard” in the provision.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This final rule amends the clauses at DFARS 252.247–7023, including alternates, 252.247–7025, and the provision at 252.247–7026. However, this final rule does not impose any new requirements on contracts at or below the SAT, for commercial products including COTS items, or for commercial services. The clauses and the provision will continue to apply to acquisitions at or below the SAT, to acquisitions of commercial products including COTS items, and to acquisitions of commercial services.

IV. Expected Impact of the Rule

This rule is intended to increase compliance with military cargo preference requirements, as amended under this rule in accordance with section 1024 of the NDAA for FY 2021. These changes are largely clarifying in nature, including clarification of operational requirements internal to DoD. Therefore, this rule is not expected to have a significant impact on the public.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or

final rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and is summarized as follows:

DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 1024 of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021. Section 1024 modifies 10 U.S.C. 2631 to add a requirement to ensure contractor compliance with 10 U.S.C. 2631 and otherwise updates the listed circumstances in which 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. It also modifies the requirement for reflagging or repair work in the United States for vessels used under time-charter contracts.

The public comment raised no issue in response to the initial regulatory flexibility analysis.

This rule will apply to small entities that have contracts that include DFARS clauses 252.247–7023, Transportation of Supplies by Sea, and 252.247–7025, Reflagging or Repair Work. DoD obtained data from the Procurement Business Intelligence Service for all contracts and modifications that include DFARS clauses 252.247–7023 and 252.247–7025 for fiscal years 2020 through 2022. DoD awarded on average 649,016 contract actions per year that included either DFARS clause 252.247–7023 or 252.247–7025, or both, to 31,665 unique entities, of which approximately 363,260 contract awards (56 percent) were made to 21,737 unique small entities (69 percent).

This rule does not impose any new reporting, recordkeeping, or other compliance requirements.

There are no known alternatives that would accomplish the stated objectives of the applicable statute.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this final rule. However, these changes to the DFARS do not impose additional

information collection requirements to the paperwork burden previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0704–0245, titled: Defense Federal Acquisition Regulation Supplement (DFARS) Part 247, Transportation and Related Clauses.

List of Subjects in 48 CFR Parts 242, 247, and 252

Government procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System amends 48 CFR parts 242, 247, and 252 as follows:

■ 1. The authority citation for parts 242, 247, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

- 2. Amend section 242.1502—
- a. In paragraph (g)(i) by removing the word “and” at the end of the paragraph;
- b. In paragraph (g)(ii) by removing the period at the end of the paragraph and adding “; and” in its place; and
- c. By adding paragraph (g)(iii).
 The addition reads as follows:

242.1502 Policy.

- (g) * * *
- (iii) In accordance with 10 U.S.C. 2631(d), shall include information on contractor compliance with requirements of the clause at 252.247–7023, Transportation of Supplies by Sea (see 10 U.S.C. 2631(a), (b), and (c)).

PART 247—TRANSPORTATION

- 3. Amend section 247.570—
- a. By revising paragraph (a)(1);
- b. In paragraph (a)(2):
- i. By removing “(Pub. L. 109–364)” and adding “(Pub. L. 109–364) (10 U.S.C. 2631 note)” in its place; and
- ii. By removing the word “and” at the end of the paragraph;
- c. In paragraph (a)(3) by removing “(Pub. L. 110–417)” and “chapter 121, title 46 U.S.C.” and adding “(Pub. L. 110–417) (10 U.S.C. chapter 257 note)” and “46 U.S.C. chapter 121; and” in their places, respectively;
- d. By adding paragraph (a)(4);
- e. In paragraph (b) by removing “46 U.S.C. 1241(b)” and adding “46 U.S.C. chapter 553” in its place; and
- f. By revising paragraph (c).
 The revisions and addition read as follows:

247.570 Scope.

* * * * *

(a) * * *

(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;

* * * * *

(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.

* * * * *

(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.

■ 4. Revise section 247.571 to read as follows:

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.

■ 5. Revise section 247.572 to read as follows:

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) 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.

- 6. Amend section 247.573—
- a. By revising paragraphs (a) and (b)(3);
- b. In paragraph (b)(4) by removing “Procedures are provided at” and adding “Follow the procedures at” in its place; and
- c. By adding paragraph (b)(5).

The revisions and addition read as follows:

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) * * *

(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.

* * * * *

(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.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 7. Amend section 252.247-7023—
- a. By revising paragraphs (a) and (d);
- b. In paragraph (e) introductory text by revising the second sentence;
- c. By revising paragraph (e)(7);
- d. In paragraph (f)(10) by removing “the steamship company” and adding “the carrier” in its place;
- e. In paragraph (g)(3) by removing “had the written consent of the Contracting Officer” and adding “had received a prior-approved waiver for U.S.-flag vessels” in its place;
- f. In paragraph (g)(4) by removing “of the Contracting Officer” and adding “of DoD” in its place;
- g. In Alternate I—
- i. By revising paragraphs (a) and (d);
- ii. In paragraph (e) introductory text by revising the second sentence;
- iii. By revising paragraph (e)(7);
- iv. In paragraph (f)(10) by removing “steamship company” and adding “the carrier” in its place;
- v. In paragraph (g)(3) by removing “had the written consent of the Contracting Officer” and adding “had received a prior-approved waiver for U.S.-flag vessels” in its place; and
- vi. In paragraph (g)(4) by removing “of the Contracting Officer” and adding “of DoD” in its place; and
- h. In Alternate II—
- i. By revising paragraphs (a) and (d);
- ii. In paragraph (e) introductory text by revising the second sentence;
- iii. By revising paragraph (e)(7);
- iv. In paragraph (f)(10) by removing “steamship company” and adding “the carrier” in its place;
- v. In paragraph (g)(3) by removing “had the written consent of the Contracting Officer” and adding “had received a prior-approved waiver for U.S.-flag vessels” in its place; and
- vi. In paragraph (g)(4) by removing “of the Contracting Officer” and adding “of DoD” in its place.

The revisions read as follows:

252.247-7023 Transportation of Supplies by Sea.

* * * * *

(a) *Definitions.* As used in this clause—

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.

Subcontractor means a supplier, materialman, distributor, or vendor at any level below the prime contractor

whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

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.

* * * * *

(d) The Contractor and its subcontractors may request, via the Contracting Officer, a waiver of the requirement to use a U.S.-flag vessel, or identification of any available U.S.-flag vessels, if the Contractor or a subcontractor sufficiently explains that—

(1) U.S.-flag vessels are not available at a fair and reasonable rate for commercial vessels of the United States; or

(2) U.S.-flag vessels are otherwise not available.

(e) * * * The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, however, if a DoD waiver is not approved prior to the shipper’s sailing date, this will not of itself constitute a compensable delay under this or any other clause of this contract. * * *

* * * * *

(7) A documented description of current, diligent efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of quotes will suffice for this purpose. Copies of telephone notes, emails, and other relevant communications will otherwise be considered for this purpose.

* * * * *

Alternate I. * * *

(a) *Definitions.* As used in this clause—

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.

Subcontractor means a supplier, materialman, distributor, or vendor at any level below the prime contractor

whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

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.

* * * * *

(d) The Contractor and its subcontractors may request, via the Contracting Officer, a waiver of the requirement to use a U.S.-flag vessel, or identification of any available U.S.-flag vessels, if the Contractor or a subcontractor sufficiently explains that—

(1) U.S.-flag vessels are not available at a fair and reasonable rate for commercial vessels of the United States; or

(2) U.S.-flag vessels are otherwise not available.

(e) * * * The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, however, if a DoD waiver is not approved prior to the shipper's sailing date, this will not of itself constitute a compensable delay under this or any other clause of this contract.* * *

* * * * *

(7) A documented description of current, diligent efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of quotes will suffice for this purpose. Copies of telephone notes, emails, and other relevant communications will otherwise be considered for this purpose.

* * * * *

Alternate II.* * *

(a) Definitions. As used in this clause—

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.

Subcontractor means a supplier, materialman, distributor, or vendor at any level below the prime contractor

whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

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.

* * * * *

(d) The Contractor and its subcontractors may request, via the Contracting Officer, a waiver of the requirement to use a U.S.-flag vessel, or identification of any available U.S.-flag vessels, if the Contractor or a subcontractor sufficiently explains that—

(1) U.S.-flag vessels are not available at a fair and reasonable rate for commercial vessels of the United States; or

(2) U.S.-flag vessels are otherwise not available.

(e) * * * The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, however, if a DoD waiver is not approved prior to the shipper's sailing date, this will not of itself constitute a compensable delay under this or any other clause of this contract.* * *

(7) A documented description of current, diligent efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of quotes will suffice for this purpose. Copies of telephone notes, emails, and other relevant communications will otherwise be considered for this purpose.

* * * * *

■ 8. Revise section 252.247–7025 to read as follows:

252.247–7025 Reflagging or Repair Work.

As prescribed in 247.574(b), use the following clause:

Reflagging or Repair Work (OCT 2024)

(a) Definitions. As used in this clause—

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.

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.

(b) Requirement. Unless DoD waives this requirement, the Contractor shall ensure performance of the following in the United States or its outlying areas:

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

(i) On a vessel for which the Contractor submitted an offer in response to the solicitation for this contract; and

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

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

(End of clause)

■ 9. Amend section 252.247–7026—

■ a. By revising the provision date;

■ b. In paragraph (a) by revising the definition of “Covered vessel” and removing the definition of “Shipyard”;

■ c. In paragraph (b) and paragraph (c) introductory text by removing “offeror” and adding “Offeror” in its place;

■ d. In paragraph (e) by removing “Section 1017 of Public Law 109–364” and adding “section 1017 of Public Law 109–364 (10 U.S.C. 2631 note)” in its place.

The revisions read as follows:

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.

* * * * *

Evaluation Preference for Use of Domestic Shipyards—Applicable To Acquisition of Carriage by Vessel for DOD Cargo in the Coastwise or Noncontiguous Trade (OCT 2024)

(a) * * *

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.

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