



U.S. Department of Transportation

1200 New Jersey Ave, SE
Washington, D.C. 20590

**Maritime
Administration**

1-800-9US-FLAG

Transportation Requirements for Department of Defense Projects in Guam

Special federal transportation laws apply to DOD contractors servicing Guam. In order to be of assistance, the following ocean transportation guidelines are provided. If you have additional questions, please do not hesitate to contact the Maritime Administration on 1-800-9US-FLAG.

- The Cargo Preference Act of 1904 (10 U.S.C. 2631) provides that 100% of all supplies bought for the U.S. military must be carried on U.S.-flag vessels if transported by sea. The following applies to cargoes moving between a foreign country and Guam:
 - Exceptions, after a strenuous review process, may be provided by the contracting officer for excessive or unreasonable freight charges but are rare. Waivers based on non-availability of U.S.-flag vessels also require a strenuous approval process.
 - The contractor must submit a request for a waiver to use a foreign-flag vessel to the Contracting Officer at least 45 days prior to the sailing date necessary to meet the delivery schedules. The contractor must document its efforts to secure U.S.-flag vessels. The Maritime Administration can help determine if U.S.-flag vessels are available and if costs are reasonable. After consultation with proper authorities (the Secretary of Defense delegated to the Commanders of the Military Sealift Command or the Military Surface Deployment and Distribution Command), the Contracting Officer will respond.
- Cargo moving between the United States or its territories and Guam falls into a different category and a waiver may only be granted by the Secretary of the Department of Homeland Security only in the interest of national defense. Please contact the Maritime Administration (1-800-9US-FLAG) if you have questions in this area.
- If any waiver of the U.S.-flag vessel requirement is approved, the contracting officer should require a downward adjustment of the contract award in compensation for the government concession as the original contract required the use of U.S.-flag vessels. The Maritime Administration can assist in determining an appropriate adjustment.

- In addition to federal law, DOD contracting regulations (DFAR) require that the contracting officer and the Maritime Administration be kept informed of the transportation of goods by sea, and the use of U.S.-flag vessels.
 - DOD solicitations require the bidder to indicate whether it anticipates that supplies will be transported by sea in performance of any contract or subcontract resulting from the solicitation.
 - If not, the contract must include a clause requiring notification if such transportation is used.
 - If so, the contract must include this clause:
 - Contractor shall use U.S.-flag vessels when transporting any supplies by sea under the contract.
 - Subcontractors must use U.S.-flag vessels if:
 - Contract is a construction contract,
 - Supplies are noncommercial items or
 - Commercial items that
 - Contractor is reselling to government without adding value,
 - Are shipped in direct support of U.S. military contingency operations, exercises or forces deployed in humanitarian or peacekeeping operations or
 - Are commissary or exchange cargoes transported outside of Defense Transportation System.
 - Supplies include buildings, ships, machine tools, material, equipment, stores, construction materials, etc. and their components incorporated directly into end products at any level of manufacture, fabrication or assembly by Contractor or subcontractors.
 - Within 30 days after each shipment, Contractor must provide the Contracting Officer and the Maritime Administration's Office of Cargo Preference with a rated copy of the ocean bill of lading, including the vessel flag of registry, name of vessel and steamship company.
 - The specific DFARS clauses that apply are: 252.247-7023 for use of U.S.-flag vessels; and 252.247-7024 if the contractor claims that the contract will be performed without ocean transportation.
- DFARS provision 247.301-71 requires an evaluation factor favoring Voluntary Intermodal Sealift (VISA) participants. The order of VISA priority use is:
 - U.S.-flag vessel operated by a VISA participant;
 - U.S.-flag vessel operated by a non-VISA participant.
 - If there are no pure U.S.-flag vessels available then a waiver may be sought to use vessels in the following priority order:
 - Combination U.S.-flag/foreign flag operated by VISA participants
 - Combination U.S.-flag/foreign-flag operated by non-participants

- U.S. owned or operated foreign flag capacity operated by VISA participants
 - U.S. owned or operated foreign flag capacity operated by non-participants
 - Foreign owned or operated foreign-flag capacity operated by non-participants
- Buy American Act (41 U.S.C. 10a)
 - Applies to the source of materials used in construction contracts
 - Construction material must be:
 - domestic (U.S.) origin or
 - from countries designated as a WTO, Free Trade Agreement, least developed or Caribbean Basin country. (China, Taiwan and Thailand are not designated countries.)

For assistance contact the Maritime Administration's Office of Cargo Preference and Domestic Trade:

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