

Notice to the Trade

The Maritime Administration is reminding all contractors, shippers, freight forwarders, and others involved in making arrangements for the transportation of cargoes for the Department of Defense (DOD) that a priority system is in place to maximize the use of U.S.-flag vessels.

While 10 U.S.C. 2631 provides that 100% of DOD cargo must move aboard U.S.-flag vessels, in cases when waivers are considered, regulatory preference is given to service proposals with U.S.-flag vessel participation. For example, if all U.S.-flag vessel service is not available, a combination of U.S.-flag and foreign-flag vessel service is preferred to all foreign vessel service.

A recommended contract clause for DOD contracting officers and those contracting on behalf of DOD is provided in a note following the below announcement:

While any potential use of a foreign-flag vessel must be approved by the DOD contracting officer, Department of Defense Instruction 4500.57 (P.27) specifically states:

E5.4. COMMERCIAL PRIORITIES

When a decision has been made to use commercial sealift capacity to meet a DoD peacetime and contingency ocean transportation requirement, these priorities (in order of precedence) shall be used:

E5.4.1. U.S.-flag vessel capacity operated by a VISA participant and U.S.-flag VSA capacity of a VISA participant.

E5.4.2. U.S.-flag vessel capacity operated by a VISA non-participant.

E5.4.3. Combination U.S.-flag/foreign-flag vessel capacity operated by a VISA participant and combination U.S.-flag/foreign-flag VSA capacity of a VISA participant.

E5.4.4. Combination U.S.-flag/foreign-flag vessel capacity operated by a VISA non-participant.

E5.4.5. U.S.-owned or -operated foreign-flag vessel capacity and VSA capacity of a VISA participant.

E5.4.6. U.S.-owned or -operated foreign-flag vessel capacity and VSA capacity of a VISA non-participant.

E5.4.7. Foreign-owned or -operated foreign-flag vessel capacity of a VISA non-participant.

The above citation is publically available as a website at:

DOD Instruction 4500.57, March 18, 2008 – Posted 3/20/2008

www.dtic.mil/whs/directives/corres/pdf/450057p.pdf

Recommended Contract Clause

The following is a recommended contract clause for DOD Contracting Officers and others contracting on behalf of DOD:

PLEASE NOTE THE FOLLOWING REQUIREMENT:

DFARS CLAUSE 252.247-7023, TRANSPORTATION OF SUPPLIES BY SEA (MAY 2002) ALTERNATE I (MAR 2000), IS APPLICABLE TO THIS SOLICITATION.

THE CONTRACTOR **SHALL USE U.S.-FLAG VESSELS** WHEN TRANSPORTING ANY SUPPLIES BY SEA UNDER THIS CONTRACT.

The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. Other Than U.S.-flag vessels is defined as Combination U.S. Flag/Foreign-Flag vessels (P2) or All Foreign-Flag Vessels (P3).

The Contractor is responsible for any additional transportation costs resulting from a SDDC mandated non-availability determination to use P2 or P3 transportation service.

Contractors are highly encouraged to accurately research availability of U.S.-flag vessels prior to submitting quote. Your quote shall indicate if Proposed Shipping Costs are based upon: (1) U.S.-flag vessels (P1), (2) Combination U.S. Flag/Foreign-Flag vessels (P2) or, (3) all Foreign Flag Vessels (P3). Any quotes using P2 or P3 rates should also include a request for a waiver to the DFARS clause above.