**DFARS Case 2020-D026**

**Modification of Notification of Intent to Transport Supplies By Sea**

**Final Rule**

**PART 204—ADMINISTRATIVE AND INFORMATION MATTERS**

**\* \* \* \* \***

**SUBPART 204.12—ANNUAL REPRESENTATIONS AND CERTIFCATIONS**

**204.1202 Solicitation provision and contract clause.**

When using the provision at FAR 52.204-8, Annual Representations and Certifications—

\* \* \* \* \*

(2) When the provision at FAR 52.204-7, System for Award Management, is included in the solicitation, do not include separately in the solicitation the following provisions, which are included in ~~DFARS~~**[the provision at]** 252.204-7007:

\* \* \* \* \*

~~(xv) 252.247-7022, Representation of Extent of Transportation by Sea.~~

\* \* \* \* \*

**PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES**

\* \* \* \* \*

**SUBPART 212.3—SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES**

\* \* \* \* \*

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.**

\* \* \* \* \*

(f) The following additional provisions and clauses apply to DoD solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services. If the offeror has completed any of the following provisions listed in this paragraph electronically as part of its annual representations and certifications at [*https://www.sam.gov*](https://www.sam.gov), the contracting officer shall consider this information instead of requiring the offeror to complete these provisions for a particular solicitation. The contracting officer shall not use other FAR or DFARS provisions and clauses unless required by the FAR or DFARS or consistent with customary commercial practices (section 874(b)(1)(A), Pub. L. 114–328).

\* \* \* \* \*

(xxi) *Part 247—Transportation.*

(A) Use the clause at 252.247–7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, as prescribed in 247.207, to comply with section 884 of ~~Pub. L.~~**[Public Law]** 110–417.

~~(B) Use the provision at~~ [~~252.247-7022~~](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252247.htm#252.247-7022)~~, Representation of Extent of Transportation by Sea, as prescribed in~~ [~~247.574~~](https://www.acq.osd.mil/dpap/dars/dfars/html/current/247_5.htm#247.574)~~(a).~~

(~~C~~**[B]**) Use the basic or one of the alternates of the clause at [252.247-7023](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252247.htm#252.247-7023), Transportation of Supplies by Sea, as prescribed in [247.574](https://www.acq.osd.mil/dpap/dars/dfars/html/current/247_5.htm#247.574)(~~b~~**[a]**), to comply with the Cargo Preference Act of 1904 (10 U.S.C. 2631(a)).

(*1*) Use the basic clause as prescribed in [247.574](https://www.acq.osd.mil/dpap/dars/dfars/html/current/247_5.htm#247.574)(~~b~~**[a]**)(1).

(*2*) Use the alternate I clause as prescribed in [247.574](https://www.acq.osd.mil/dpap/dars/dfars/html/current/247_5.htm#247.574)(~~b~~**[a]**)(2).

(*3*) Use the alternate II clause as prescribed in [247.574](https://www.acq.osd.mil/dpap/dars/dfars/html/current/247_5.htm#247.574)(~~b~~**[a]**)(3).

(~~D~~**[C]**) Use the clause [252.247-7025](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252247.htm#252.247-7025), Reflagging or Repair Work, as prescribed in [247.574](https://www.acq.osd.mil/dpap/dars/dfars/html/current/247_5.htm#247.574)(~~c~~**[b]**), to comply with 10 U.S.C. 2631(b).

(~~E~~**[D]**) Use the provision at [252.247-7026](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252247.htm#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, as prescribed in [247.574](https://www.acq.osd.mil/dpap/dars/dfars/html/current/247_5.htm#247.574)(~~d~~**[c]**), to comply with section 1017 of ~~Pub. L.~~**[Public Law]** 109-364.

(~~F~~**[E]**) Use the clause at [252.247-7027](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252247.htm#252.247-7027), Riding Gang Member Requirements, as prescribed in [247.574](https://www.acq.osd.mil/dpap/dars/dfars/html/current/247_5.htm#247.574)(~~e~~**[d]**), to comply with section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

(~~G~~**[F]**) Use the clause at [252.247-7028](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252247.htm#252.247-7028), Application for U.S. Government Shipping Documentation/Instructions, as prescribed in [247.207](https://www.acq.osd.mil/dpap/dars/dfars/html/current/247_2.htm#247.207).

\* \* \* \* \*

**PART 247—TRANSPORTATION**

**\* \* \* \* \***

**SUBPART 247.5—OCEAN TRANSPORTATION BY U.S.-FLAG VESSELS**

**\* \* \* \* \***

**247.574 Solicitation provisions and contract clauses.**

~~(a)(1) Use the provision at~~ [~~252.247-7022~~](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252247.htm#252.247-7022)~~, Representation of Extent of Transportation by Sea, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, except—~~

~~(i) Those for direct purchase of ocean transportation services; or~~

~~(ii) Those with an anticipated value at or below the simplified acquisition threshold.~~

~~(2) If the solicitation includes the provision at FAR 52.204-7, do not separately list~~ [~~252.247-7022~~](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252247.htm#252.247-7022) ~~in the solicitation.~~

(~~b~~**[a]**) Use the basic or one of the alternates of the clause at [252.247-7023](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252247.htm#252.247-7023), Transportation of Supplies by Sea, in ~~all~~ 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 and commercial services 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 and commercial services 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 and commercial services 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.

(~~c~~**[b]**) Use the clause at [252.247-7025](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252247.htm#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](http://www.acq.osd.mil/dpap/dars/dfars/html/current/247_5.htm#247.572)(c)(2).

(~~d~~**[c]**) Use the provision at [252.247-7026](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252247.htm#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.

(~~e~~**[d]**) Use the clause at [252.247-7027](http://www.acq.osd.mil/dpap/dars/dfars/html/current/252247.htm#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 121 of title~~ 46 U.S.C. **[chapter 121.]**

\* \* \* \* \*

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**SUBPART 252.2—TEXT OF PROVISIONS AND CLAUSES**

**\* \* \* \* \***

**252.204-7007 Alternate A, Annual Representations and Certifications.**

As prescribed in [204.1202](https://www.acq.osd.mil/dpap/dars/dfars/html/current/204_12.htm#204.1202), use the following provision:

ALTERNATE A, ANNUAL REPRESENTATIONS AND CERTIFICATIONS

(~~NOV 2023~~**[OCT 2024]**)

Substitute the following paragraphs (b), (d), and (e) for paragraphs (b) and (d) of the provision at FAR 52.204-8:

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

~~(viii)~~ [~~252.247-7022~~](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252247.htm#252.247-7022)~~, Representation of Extent of Transportation by Sea. Applies to all solicitations except those for direct purchase of ocean transportation services or those with an anticipated value at or below the simplified acquisition threshold.~~

\* \* \* \* \*

(End of provision)

\* \* \* \* \*

**252.247-7022 [Reserved] ~~Representation of extent of transportation by sea.~~**

~~As prescribed in~~ [~~247.574~~](https://www.acq.osd.mil/dpap/dars/dfars/html/current/247_5.htm#247.574)~~(a), use the following provision:~~

~~REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (JUN 2019)~~

~~(a) The Offeror shall indicate by checking the appropriate blank in paragraph (b) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term “supplies” is defined in the Transportation of Supplies by Sea clause of this solicitation.~~

~~(b)~~ *~~Representation.~~* ~~The Offeror represents that it—~~

~~\_\_\_\_\_ Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.~~

~~\_\_\_\_\_ Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.~~

~~(c) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause.~~

~~(End of provision)~~

**252.247-7023 Transportation of Supplies by Sea.**

*~~Basic.~~*As prescribed in [247.574](https://www.acq.osd.mil/dpap/dars/dfars/html/current/247_5.htm#247.574)(~~b~~**[a]**) and (~~b~~**[a]**)(1), use the following **[basic]** clause:

TRANSPORTATION OF SUPPLIES BY SEA—BASIC (~~JAN 2023~~**[OCT 2024]**)

(a) *Definitions.* \* \* \*

**[(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***](mailto: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.]**

(~~b~~**[c]**)\* \* \*

(~~c~~**[d]**) \* \* \*

(~~d~~**[e]**) The Contractor must submit any request for use of foreign-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

(1) Type, weight, and cube of cargo;

(2) Required shipping date**[(s) and required delivery date(s)]**;

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of 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 telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(~~e~~**[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***](mailto:Cargo.Marad@dot.gov)**, Attention: Military Team,]**~~the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590,~~ one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

\* \* \* \* \*

(~~f~~**[g]**) \* \* \*

(~~g~~**[h]**) \* \* \*

(~~h~~**[i]**) If the Contractor ~~has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it~~ did not anticipate transporting ~~by sea~~ 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]**~~; however, after the award of this contract~~**[prior to shipment of supplies]**, the Contractor learns that supplies will be transported by sea, the Contractor **[shall]**—

(1) ~~Shall notify the Contracting Officer of that fact~~**[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) ~~Hereby agrees to comply~~ **[Comply]** with all the terms and conditions of this clause.

(~~i~~**[j]**) *Subcontracts.* In the award of subcontracts for the types of supplies described in paragraph (~~b~~**[c]**)(2) of this clause, including subcontracts for commercial products, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (~~i~~**[j]**), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (~~e~~**[f]**) of this clause, and this paragraph (~~i~~**[j]**), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(End of clause)

*Alternate I.* As prescribed in [247.574](https://www.acq.osd.mil/dpap/dars/dfars/html/current/247_5.htm#247.574)(~~b~~**[a]**) and (~~b~~**[a]**)(2), use the following clause, which uses a different paragraph (~~b~~**[c]**) than the basic clause:

TRANSPORTATION OF SUPPLIES BY SEA—ALTERNATE I (~~JAN 2023~~**[OCT 2024]**)

(a) *Definitions.* \* \* \*

**[****(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.]**

(~~b~~**[c]**) \* \* \*

(~~c~~**[d]**) \* \* \*

(~~d~~**[e]**) The Contractor must submit any request for use of foreign-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

(1) Type, weight, and cube of cargo;

(2) Required shipping date**[****(s) and required delivery date(s)]**;

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of 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 telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(~~e~~**[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***](mailto:Cargo.Marad@dot.gov)**, Attention: Military Team,]**~~the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590,~~ one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

\* \* \* \* \*

(~~f~~**[g]**) \* \* \*

(~~g~~**[h]**) \* \* \*

(~~h~~**[i]**) If the Contractor ~~has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it~~ did not anticipate transporting ~~by sea~~ any supplies **[****by sea at the time of contract award and, therefore, did not provide the notification required by paragraph (b) of this clause,]**~~;~~~~however, after the award of this contract~~**[** **but prior to shipment of the supplies]**, the Contractor learns that supplies will be transported by sea, the Contractor **[shall]**—

(1) ~~Shall notify the Contracting Officer of that fact~~**[****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) ~~Hereby agrees to~~ **[C]**~~c~~omply with all the terms and conditions of this clause.

(~~i~~**[j]**) *Subcontracts.* In the award of subcontracts for the types of supplies described in paragraph (~~b~~**[c]**)(2) of this clause, including subcontracts for commercial products, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (~~i~~**[j]**), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (~~e~~**[f]**) of this clause, and this paragraph (~~i~~**[j]**), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

**[(End of clause)]**

*Alternate II.* As prescribed in [247.574](https://www.acq.osd.mil/dpap/dars/dfars/html/current/247_5.htm#247.574)(~~b~~**[a]**) and (~~b~~**[a]**)(3), use the following clause, which uses a different paragraph (~~b~~**[c]**) than the basic clause:

TRANSPORTATION OF SUPPLIES BY SEA—ALTERNATE II (~~JAN 2023~~**[OCT 2024])**

(a) *Definitions.* \* \* \*

**[****(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.]**

(~~b~~**[c]**) \* \* \*

(~~c~~**[d]**) \* \* \*

(~~d~~**[e]**) The Contractor must submit any request for use of foreign-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

(1) Type, weight, and cube of cargo;

(2) Required shipping date**[****(s) and required delivery date(s)]**;

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of 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 telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(~~e~~**[f]**) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and ~~the~~ **[****MARAD at** [***Cargo.Marad@dot.gov***](mailto:Cargo.Marad@dot.gov)***,* Attention: Military Team,]** ~~Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590,~~ one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

\* \* \* \* \*

(~~f~~**[g]**) \* \* \*

(~~g~~**[h]**) \* \* \*

(~~h~~**[i]**) If the Contractor ~~has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it~~ did not anticipate transporting ~~by sea~~ 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 **[C]**~~c~~ontractor learns after the award of the contract that supplies will be transported by sea, the Contractor shall ~~notify the Contracting Officer of that fact.~~**[—**

**(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.]**

(~~i~~**[j]**) *Subcontracts.* In the award of subcontracts for the types of supplies described in paragraph (~~b~~**[c]**)(2) of this clause, including subcontracts for commercial products, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (~~i~~**[j]**), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (~~e~~**[f]**) of this clause, and this paragraph (~~i~~**[j]**), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

**[(End of clause)]**

\* \* \* \* \*

**252.247-7025 Reflagging or [R]~~r~~epair [W]~~w~~ork.**

As prescribed in [247.574](https://www.acq.osd.mil/dpap/dars/dfars/html/current/247_5.htm#247.574)(~~c~~**[b]**), use the following clause:

\* \* \* \* \*

**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.**

As prescribed in [247.574](https://www.acq.osd.mil/dpap/dars/dfars/html/current/247_5.htm#247.574)(~~d~~**[c]**), use the following provision:

\* \* \* \* \*

**252.247-7027 Riding [G]~~g~~ang [M]~~m~~ember [R]~~r~~equirements.**

As prescribed in [247.574](https://www.acq.osd.mil/dpap/dars/dfars/html/current/247_5.htm#247.574)(~~e~~**[d]**), use the following clause:

\* \* \* \* \*