**DFARS Case 2021-D020**

**Preference for United States Vessels in Transporting**

**Supplies By Sea**

**Final Rule**

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**PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

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**SUBPART 242.15—CONTRACTOR PERFORMANCE INFORMATION**

**242.1502 Policy.**

(g) Past performance evaluations in the Contractor Performance Assessment Reporting System—

(i) Shall include an assessment of the contractor's performance against, and efforts to achieve, the goals identified in its comprehensive small business subcontracting plan when the contract contains the clause at 252.219–7004, Small Business Subcontracting Plan (Test Program); ~~and~~

(ii) Shall, unless exempted by the head of the contracting activity, include a notation on contractors that have denied multiple requests for submission of data other than certified cost or pricing data over the preceding 3-year period, but nevertheless received an award (10 U.S.C. 3705(b)(2)(B))~~.~~**[; and]**

**[(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)).]**

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**PART 247—TRANSPORTATION**

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**subpart 247.5—ocean transportation by u.s.-flag vessels**

**247.570 Scope.**

This subpart—

(a) Implements—

(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, ~~or~~ destined for use by, ~~DoD~~**[or otherwise transported by DoD]**;

(2) Section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) **[(10 U.S.C. 2631 note)]**, which requires consideration, in solicitations requiring a covered vessel, of the extent to which offerors have had overhaul, repair, and maintenance work performed in shipyards located in the United States or Guam; ~~and~~

(3) Section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417)**[ (10 U.S.C. chapter 257 note)]**, which addresses requirements that apply to riding gang members and DoD-exempted individuals (see [252.247-7027](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252247.htm#252.247-7027)(c)) who perform work on U.S.-flag vessels under DoD contracts for transportation services documented under ~~chapter 121, title~~ 46 U.S.C.**[ chapter 121; and**

**(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.]**

(b) Does not specifically implement the Cargo Preference Act of 1954 (“the 1954 Act”), 46 U.S.C. **[chapter 553]**~~1241(b)~~. The 1954 Act is applicable to DoD, but DFARS coverage is not required because compliance with the 1904 Act historically has resulted in DoD exceeding the 1954 Act's requirements; and

~~(c) Does not apply to ocean transportation of the following products, in which case FAR subpart 47.5 applies:~~

~~(1) Products obtained for contributions to foreign assistance programs.~~

~~(2) Products owned by agencies other than DoD, unless the products are clearly identifiable for eventual use by DoD.~~

**[(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.]**

**247.571 Definitions.**

As used in this subpart—

~~(a) “Components,” “foreign flag vessel,” “ocean transportation,” “supplies,” and “U.S.-flag vessel” have the meaning given in 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.~~

~~(b) “Reflagging or repair work” has the meaning given in the clause at~~ [~~252.247-7025~~](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252247.htm#252.247-7025)~~, Reflagging or Repair Work.~~

~~(c) “Covered vessel,” “foreign shipyard,” “overhaul, repair, and maintenance work,” “shipyard,” and “U.S. shipyard” have the meaning given in 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.~~

**[****“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.]**

**247.572 Policy.**

(a) In accordance with 10 U.S.C. 2631(a), DoD contractors shall transport supplies~~, as defined in 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,~~ 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]** ~~unless~~—

(1) ~~Those vessels are not available;~~**[Is not available at a fair and reasonable rate for commercial vessels of the United States; or]**

~~(2) The proposed charges to the Government are higher than charges to private persons for the transportation of like goods; or~~

~~(3)~~**[(2)]** ~~The proposed freight charges are excessive or unreasonable~~**[Is not otherwise available]**.

(b) Contracts must provide for the use of **[vessels belonging to the United States]**~~Government-owned vessels~~ when security classifications prohibit the use of other than **[vessels belonging to the United States]**~~Government-owned vessels~~.

(c) In accordance with 10 U.S.C. 2631(~~b~~**[c]**)—

(1) Any vessel used under a time charter contract for the transportation of supplies under this section shall have **[the following work]** ~~any reflagging or repair work, as defined in the clause at~~ [~~252.247-7025~~](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252247.htm#252.247-7025)~~, Reflagging or Repair Work,~~ performed in the United States or its outlying areas~~, if the reflagging or repair work is performed—~~**[:]**

(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

~~(ii)~~**[(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 ~~S~~**[s]**ection 1017 of the National Defense Authorization Act for Fiscal Year 2007 (**[Pub. L.]**~~Public Law~~ 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.]**~~—~~

~~(1) When obtaining carriage requiring a covered vessel, the contracting officer must 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; and~~

~~(2) DoD must submit an annual report to the congressional defense committees, addressing the information provided by offerors with regard to overhaul, repair, and maintenance for covered vessels performed 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 ~~chapter 121 of title~~ 46 U.S.C.**[ chapter 121]**, unless the contract contains the clause at [252.247-7027](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252247.htm#252.247-7027).

**247.573 General.**

(a) *Delegated authority*. Pursuant to 10 U.S.C. 2631(~~a~~**[b]**)**[(2),]** ~~and~~**[the]** Secretary of Defense ~~Memorandum dated February 7, 2012, (see~~ [~~PGI 247.573~~](https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI247_5.htm#247.573)~~)~~ **[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]**~~of excessive ocean liner rates and excessive charter rates is delegated~~ to—

(1) The Commander, United States Transportation Command~~, for excessive ocean liner rate determinations~~; and

(2) The Secretary of the Navy ~~for excessive charter rate determinations~~.

(b) *Procedures*.

(1) Contracting officers shall follow the procedures at [PGI 247.573](https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI247_5.htm#247.573)(b)(1) when purchase of ocean transportation services is incidental to a contract for supplies, services, or construction.

(2) Contracting officers shall follow the procedures at [PGI 247.573](https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI247_5.htm#247.573)(b)(2) when direct purchase of ocean transportation services is the principal purpose of the contract.

**[(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.]**

~~(3) Agency and department procedures relating to annual reporting requirements of information received from offerors in response to solicitation provision~~ [~~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 of Noncontiguous Trade, are found at~~ [~~PGI 247.573~~](https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI247_5.htm#247.573)~~(b)(3).~~

(4) ~~Procedures are provided~~**[Follow the procedures]** at [PGI 247.573](https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI247_5.htm#247.573)(b)(4) to accomplish security background checks pursuant to clause [252.247-7027](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252247.htm#252.247-7027), Riding Gang Member Requirements.

**[(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.]**

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

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

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

**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)(a) and (a)(1), use the following clause:

TRANSPORTATION OF SUPPLIES BY SEA—BASIC (OCT 2024)

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

~~“Components” means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.~~

~~“Department of Defense” (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.~~

“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.]**~~transportation aboard a ship, vessel, boat, barge, or ferry through international waters~~.

“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.]**

~~“Supplies” means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by~~ ~~sea.~~

~~(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.~~

~~(ii) “Supplies” includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.~~

“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.]**~~a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.~~

(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.

(c)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if—

(i) This contract is a construction contract; or

(ii) The supplies being transported are—

(A) Other than commercial products; or

(B) Commercial products that—

*(1)* The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

*(2)* Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

*(3)* Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(d) The Contractor and its subcontractors may request**[, via]**~~that~~ the Contracting Officer**[, a waiver of the requirement to use a U.S.-flag vessel, or identification of any]**~~authorize shipment in foreign-flag vessels, or designate~~ available U.S.-flag vessels, if the Contractor or a subcontractor **[sufficiently explains]**~~believes~~ that—

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

(2) ~~The freight charges are inordinately excessive or unreasonable; or~~**[U.S.-flag vessels are otherwise not available.]**

~~(3) Freight charges are higher than charges to private persons for transportation of like goods.~~

(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, **[however, if a DoD waiver is not approved prior to]** ~~but the Contracting Officer's failure to grant approvals to meet~~ the shipper's sailing date**[, this]** 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 **[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]**~~telegraphic and facsimile message or letters will be sufficient for~~ **[will otherwise be considered]** for this purpose.

(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:

(1) Prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;

(9) Total ocean freight in U.S. dollars; and

(10) Name of the **[carrier]**~~steamship company~~.

(g) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief—

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had **[received a prior-approved waiver for U.S.-flag vessels]**~~the written consent of the Contracting Officer~~ for all foreign-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on foreign-flag vessels without the written consent of **[DoD]**~~the Contracting Officer~~. The Contractor shall describe these shipments in the following format:

|  |  |  |  |
| --- | --- | --- | --- |
|  | Item Description | Contract Line Items | Quantity |
|  |  |  |  |
| Total |  |  |  |

(h) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of foreign-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(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.

(j) *Subcontracts*. In the award of subcontracts for the types of supplies described in paragraph (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 (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 (f) of this clause, and this paragraph (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)(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**)**

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

~~“Components” means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.~~

~~“Department of Defense” (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.~~

“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.]**~~transportation aboard a ship, vessel, boat, barge, or ferry through international waters.~~

“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.]**

~~“Supplies” means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.~~

~~(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.~~

~~(ii) “Supplies” includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.~~

“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.]**~~a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.~~

(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.

(c)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are—

(i) Other than commercial products; or

(ii) Commercial products that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations (Note: This contract requires shipment of commercial products in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations); or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(d) The Contractor and its subcontractors may request**[, via]**~~that~~ the Contracting Officer**[, a waiver of the requirement to use a U.S.-flag vessel, or identification of any]**~~authorize shipment in foreign-flag vessels, or designate~~ available U.S.-flag vessels, if the Contractor or a subcontractor **[sufficiently explains]**~~believes~~ that—

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

(2) ~~The freight charges are inordinately excessive or unreasonable; or~~**[U.S.-flag vessels are otherwise not available.]**

~~(3) Freight charges are higher than charges to private persons for transportation of like goods.~~

(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, **[****however, if a DoD waiver is not approved prior to]** ~~but the Contracting Officer's failure to grant approvals to meet~~ the shipper's sailing date**[, this]** 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 **[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]**~~telegraphic and facsimile message or letters will be sufficient for~~ **[will otherwise be considered]** for this purpose.

(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:

(1) Prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;

(9) Total ocean freight in U.S. dollars; and

(10) Name of **[the carrier]**~~steamship company~~.

(g) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief—

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had **[received a prior-approved waiver for U.S.-flag vessels]**~~the written consent of the Contracting Officer~~ for all foreign-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on foreign-flag vessels without the written consent of **[DoD]**~~the Contracting Officer~~. The Contractor shall describe these shipments in the following format:

|  |  |  |  |
| --- | --- | --- | --- |
|  | Item Description | Contract Line Items | Quantity |
|  |  |  |  |
| Total |  |  |  |

(h) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of foreign-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(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.

(j) *Subcontracts*. In the award of subcontracts for the types of supplies described in paragraph (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 (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 (f) of this clause, and this paragraph (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)(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)

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

~~“Components” means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.~~

~~“Department of Defense” (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.~~

“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.]**~~transportation aboard a ship, vessel, boat, barge, or ferry through international waters.~~

“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.]**

~~“Supplies” means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.~~

~~(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.~~

~~(ii) “Supplies” includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.~~

“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.]**~~a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.~~

(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.

(c)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are—

(i) Other than commercial products; or

(ii) Commercial products that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643 (Note: This contract requires transportation of commissary or exchange cargoes outside of the Defense Transportation System in accordance with 10 U.S.C. 2643).

(d) The Contractor and its subcontractors may request**[, via]**~~that~~ the Contracting Officer**[,** **a waiver of the requirement to use a U.S.-flag vessel, or identification of any]**~~authorize shipment in foreign-flag vessels, or designate~~ available U.S.-flag vessels, if the Contractor or a subcontractor **[sufficiently explains]**~~believes~~ that—

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

(2) ~~The freight charges are inordinately excessive or unreasonable; or~~**[****U.S.-flag vessels are otherwise not available.]**

~~(3) Freight charges are higher than charges to private persons for transportation of like goods.~~

(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, **[however, if a DoD waiver is not approved prior to]** ~~but the Contracting Officer's failure to grant approvals to meet~~ the shipper's sailing date**[, this]** 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 **[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]**~~telegraphic and facsimile message or letters will be sufficient for~~ **[will otherwise be considered]** for this purpose.

(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:

(1) Prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;

(9) Total ocean freight in U.S. dollars; and

(10) Name of **[the carrier]**~~steamship company~~.

(g) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief—

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had **[received a prior-approved waiver for U.S.-flag vessels]**~~the written consent of the Contracting Officer~~ for all foreign-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on foreign-flag vessels without the written consent of ~~the~~**[DoD]**~~Contracting Officer~~. The Contractor shall describe these shipments in the following format:

|  |  |  |  |
| --- | --- | --- | --- |
|  | Item Description | Contract Line Items | Quantity |
|  |  |  |  |
| Total |  |  |  |

(h) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of foreign-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(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, but 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.

(j) *Subcontracts*. In the award of subcontracts for the types of supplies described in paragraph (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 (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 (f) of this clause, and this paragraph (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 Repair Work.**

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

REFLAGGING OR REPAIR WORK (~~JUN 2005~~**[OCT 2024]**)

(a) *Definition***[*s*]***.* **[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~~,~~” ~~as used in this clause,~~ 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 ~~the Secretary of Defense~~**[DoD]** waives this requirement, **[****the Contractor shall ensure performance of the following in the United States]**~~reflagging or repair work shall be performed in the United States~~ or its outlying areas**[:]**~~, if the reflagging or repair work is performed—~~

(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

~~(2)~~**[(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)

**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)(c), use the following provision:

EVALUATION PREFERENCE FOR USE OF DOMESTIC SHIPYARDS — APPLICABLE TO ACQUISITION OF CARRIAGE BY VESSEL FOR DOD CARGO IN THE COASTWISE OR NONCONTIGUOUS TRADE (~~NOV 2008~~**[OCT 2024]**)

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

“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.]**~~Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 12101, 12132, and 55102), commonly referred to as “Jones Act”; 46 U.S.C. 12102, 12112, and 12119; and Section 2 of the Shipping Act, 1916 (46 U.S.C. 50501).~~

“Foreign shipyard” means a shipyard that is not a U.S. shipyard.

“Overhaul, repair, and maintenance work” means work requiring a shipyard period greater than or equal to 5 calendar days.

~~“Shipyard” means a facility capable of performing overhaul, repair, and maintenance work on covered vessels.~~

“U.S. shipyard” means a shipyard that is located in any State of the United States or in Guam.

(b) This solicitation includes an evaluation criterion that considers the extent to which the **[O]**~~o~~fferor has had overhaul, repair, and maintenance work for covered vessels performed in U.S. shipyards.

(c) The **[O]**~~o~~fferor shall provide the following information with its offer, addressing all covered vessels for which overhaul, repair, and maintenance work has been performed during the period covering the current calendar year, up to the date of proposal submission, and the preceding four calendar years:

(1) Name of vessel.

(2) Description and cost of qualifying shipyard work performed in U.S. shipyards.

(3) Description and cost of qualifying shipyard work performed in foreign shipyards and whether—

(i) Such work was performed as emergency repairs in foreign shipyards due to accident, emergency, Act of God, or an infirmity to the vessel, and safety considerations warranted taking the vessel to a foreign shipyard; or

(ii) Such work was paid for or reimbursed by the U.S. Government.

(4) Names of shipyards that performed the work.

(5) Inclusive dates of work performed.

(d) Offerors are responsible for submitting accurate information. The Contracting Officer—

(1) Will use the information to evaluate offers in accordance with the criteria specified in the solicitation; and

(2) Reserves the right to request supporting documentation if determined necessary in the proposal evaluation process.

(e) The Department of Defense will provide the information submitted in response to this provision to the congressional defense committees, as required by ~~S~~**[s]**ection 1017 of Public Law 109-364 **[(10 U.S.C. 2631 note)]**.

(End of provision)