

assurance provisions that reference higher-level contract quality requirements (see 246.202-4); or

(4) Supplies and services in construction contracts when using the warranties that are contained in Federal, military, or construction guide specifications.

[56 FR 36460, July 31, 1991, as amended at 60 FR 33145, June 27, 1995; 60 FR 61599, Nov. 30, 1995; 63 FR 6109, Feb. 6, 1998]

246.705 Limitations.

(a) Warranties in the clause at 252.246-7001, Warranty of Data, are also an exception to the prohibition on use of warranties in cost-reimbursement contracts.

246.706 Warranty terms and conditions.

(b)(5) *Markings.* Use MIL Standard 129, Marking for Shipments and Storage, and MIL Standard 130, Identification Marking of U.S. Military Property, when marking warranty items.

246.708 Warranties of data.

Obtain warranties on technical data when practicable and cost effective. Consider the factors in FAR 46.703 in deciding whether to obtain warranties of technical data. Consider the following in deciding whether to use extended liability provisions—

(1) The likelihood that correction or replacement of the nonconforming data, or a price adjustment, will not give adequate protection to the Government; and

(2) The effectiveness of the additional remedy as a deterrent against furnishing nonconforming data.

246.710 Contract clauses.

(1) Use a clause substantially the same as the clause at 252.246-7001, Warranty of Data, in solicitations and contracts that include the clause at 252.227-7013, Rights in Technical Data and Computer Software, and there is a need for greater protection or period of liability than provided by other contract clauses, such as the clauses at—

(i) FAR 52.246-3, Inspection of Supplies—Cost-Reimbursement;

(ii) FAR 52.246-6, Inspection—Time-and-Material and Labor-Hour;

(iii) FAR 52.246-8, Inspection of Research and Development—Cost-Reimbursement; and

(iv) FAR 52.246-19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria.

(2) Use the clause at 252.246-7001, Warranty of Data, with its Alternate I when extended liability is desired and a fixed price incentive contract is contemplated.

(3) Use the clause at 252.246-7001, Warranty of Data, with its Alternate II when extended liability is desired and a firm fixed price contract is contemplated.

(4) Use the clause at 252.246-7002, Warranty of Construction (Germany), in solicitations and contracts for construction when a fixed-price contract will be awarded and contract performance will be in Germany.

[56 FR 36460, July 31, 1991, as amended at 62 FR 34128, June 24, 1997]

PART 247—TRANSPORTATION

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Sec.

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 247.573 Solicitation provision and contract clauses.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36466, July 31, 1991, unless otherwise noted.

Subpart 247.1—General

247.103 Transportation Documentation and Audit Regulation (TDA).

(b)(2) Appendix J of the Defense Traffic Management Regulation lists the carriers and carrier associations that have agreed to provide transportation under commercial forms and procedures within CONUS.

247.104 Government rate tenders under section 10721 of the Interstate Commerce Act.

247.104-3 Cost-reimbursement contracts.

(a) Section 10721 rates do not apply to foreign military sale (FMS) shipments.

(i) On shipments of stock fund items from a contractor to a depot, when some of the items in a specific transportation unit are clearly for FMS—

(A) Section 10721 rates do not apply to FMS items shipped on a separate bill of lading; and

(B) Section 10721 rates do apply to the non-FMS items.

247.104-5 Citation of Government rate tenders.

(a) See section XI, chapter 32 of the Defense Traffic Management Regulation for instructions on converting commercial bills of lading to Government bills of lading within CONUS.

247.105 Transportation assistance.

(a)(i) Transportation assistance includes all transportation factors, such as—

- (A) Freight rates (for evaluation of bids or routing purposes);
 (B) Other transportation costs;
 (C) Transit agreements;
 (D) Time in transit;
 (E) Port handling charges; and
 (F) Port capabilities.

(ii) Within CONUS, the Military Traffic Management Command (MTMC), through its eastern and western area commands, is responsible for the performance of traffic management functions. These functions include the direction, control, and supervision of all functions incident to the acquisition and use of commercial freight and passenger transportation services. See chapters 1 and 2 of the Defense Traffic Management Regulation for the locations and geographical areas of jurisdiction of each area headquarters.

(iii) For assistance with international shipments—

(A) Originating in CONUS, request assistance from the appropriate military activity; i.e., the Air Mobility Command (AMC), Military Sealift Command (MSC), MTMC, or the military service sponsoring the cargo;

(B) For all modes of transportation originating overseas, request assistance from the overseas Theater Commander assigned responsibility for common-user, military-operated land transportation;

(C) Of bulk petroleum via ocean tanker, request assistance, rates, or other costs from the MSC;

(D) Of supplies between points outside the CONUS, including Alaska and Hawaii, request assistance, rates, or other costs from the military service sponsoring the cargo. Direct the requests to:

Department of Defense

247.270-6

Army: Deputy Chief of Staff for Logistics,
Department of the Army, Attn: DALO-
TSP, Washington, DC 20310-0570
Navy: Naval Supply Systems Command,
Code 051, Washington, DC 20390-5000
Air Force

Applicable overseas Air Force Com-
mand, HQ PACAF/LGT, 25 East
Street, suite I-326, Hickam AFB, HI
96853-5427.

HQ USAFE/LGT, Unit 3050, Box 105,
APO AE 09049-0105.

HQ AFSPACECOM/LGT, 150 Vanden-
berg Street, suite 1105, Peterson
AFB, CO 80914-4435.

Marine Corps: Director, Transportation Divi-
sion, HQ, U.S. Marine Corps, COS, Wash-
ington, DC 20380

(E) When requesting rates and relat-
ed costs for the evaluation of bids or
proposals, include the bid opening or
proposal due date and the expected
date of initial shipment, if established.

[56 FR 36466, July 31, 1991, as amended at 59
FR 27674, May 27, 1994]

Subpart 247.2—Contracts for Transportation or for Transpor- tation-Related Services

247.270 Stevedoring contracts.

247.270-1 Scope of section.

This section contains procedures pec-
uliar to stevedoring. Other portions of
the FAR and DFARS dealing with serv-
ice contracting also apply to stevedor-
ing contracts.

247.270-2 Definitions.

Commodity rate is—

(1) The price quoted for handling a
ton (weight or measurement) of a spec-
ified commodity.

(2) Computed by dividing the hourly
stevedoring gang cost by the estimated
number of tons of the specified com-
modity which can be handled in 1 hour.

Gang cost is—

(1) The total hourly wages paid to the
workers in the gang, in accordance
with the collective bargaining agree-
ment between the maritime industry
and the unions at a specific port; and

(2) Payments for workmen's com-
pensation, social security taxes, unem-
ployment insurance, taxes, liability
and property damage insurance, gen-

eral and administrative expenses, and
profit.

Stevedoring is the—

(1) Loading of cargo from an agreed
point of rest on a pier or lighter and its
storage aboard a vessel; or

(2) Breaking out and discharging of
cargo from any space in the vessel to
an agreed point of rest dockside or in a
lighter.

247.270-3 Type of contract.

Normally, use an indefinite-quantity
type contract.

247.270-4 Technical provisions.

(a) Because conditions vary at dif-
ferent ports, and sometimes within the
same port, it is not practical to develop
standard technical provisions covering
all phases of stevedoring operations.

(b) When including car loading and
unloading or other dock and terminal
work under a stevedoring contract, in-
clude these requirements as separate
items of work.

247.270-5 Evaluation of bids and pro- posals.

At a minimum, require that offers in-
clude—

(a) Tonnage or commodity rates
which apply to the bulk of the cargo
worked under normal conditions;

(b) Labor-hour rates which apply to
services not covered by commodity
rates, or to work performed under
hardship conditions; and

(c) Cost of equipment rental.

[59 FR 50852, Oct. 6, 1994]

247.270-6 Award of contract.

Make the award to the contractor
submitting the offer most advan-
tageous to the Government, consider-
ing cost or price and other factors spec-
ified elsewhere in the solicitation.
Evaluation will include, but is not lim-
ited to—

(a) Total estimated cost of tonnage
to be moved at commodity rates;

(b) Estimated cost at labor-hour
rates; and

(c) Cost of equipment rental.

[59 FR 50852, Oct. 6, 1994]

247.270-7 Contract clauses.

Use the following clauses in solicitations and contracts for stevedoring services as indicated—

- (a) 252.247-7000, Hardship Conditions, as appropriate;
- (b) 252.247-7001, Price Adjustment, when using sealed bidding;
- (c) 252.247-7002, Revision of Prices, when using negotiation;
- (d) 252.247-7003, Termination, when it is desirable to permit either party to terminate the contract;
- (e) 252.247-7004, Indefinite Quantities-Fixed Charges, when the contract will provide for the payment of fixed charges;
- (f) 252.247-7005, Indefinite Quantities-No Fixed Charges, when the contract will not provide for the payment of fixed charges;
- (g) 252.247-7006, Removal of Contractor's Employees; and
- (h) 252.247-7007, Liability and Insurance.

247.271 Contracts for the preparation of personal property for shipment or storage.**247.271-1 Scope of section.**

This section contains procedures peculiar to the preparation of personal property for shipment or storage, and for the performance of intra-area or intra-city movement. Other portions of the FAR and DFARS dealing with service contracting also apply to these services.

247.271-2 Policy.

- (a) *Annual contracts.* Normally—
 - (1) Use requirements contracts awarded through sealed bidding to acquire services for the—
 - (i) Preparation of personal property for shipment or storage; and
 - (ii) Performance of intra-area movement.
 - (2) Award contracts on a calendar year basis.
 - (3) Provide for option years.
 - (4) Award contracts, or exercise option years, before November 1 of each year, if possible.
- (b) *Areas of performance.* Define clearly in the solicitation each area of performance.

(1) Establish one or more areas; however, hold the number to a minimum consistent with local conditions.

(2) Each schedule may provide for the same or different areas of performance. Determine the areas as follows—

(i) Use political boundaries, streets, or any other features as lines of demarcation. Consider such matters as—

- (A) Total volume;
- (B) Size of overall area; and
- (C) The need to service isolated areas of high population density.

(ii) Specifically identify frequently used terminals, and consider them as being included in each area of performance described in the solicitation.

(c) *Maximum requirements-minimum capability.* The contracting officer shall—

(1) Establish realistic quantities on the Estimated Quantities Report in DoD 4500.34-R, Personal Property Traffic Management Regulation;

(2) Ensure that the Government's minimum acceptable daily capability—

- (i) Will at least equal the maximum authorized individual weight allowance as prescribed by the Joint Federal Travel Regulations; and
- (ii) Will not preclude bidding by small business firms.

247.271-3 Procedures.

(a) *CONUS military activities assigned multi-service personal property areas of responsibility.* (1) When two or more military installations or activities have personal property responsibilities in a given area, one activity shall contract for the estimated requirements of all activities in the area. The installation commanders concerned shall designate the activity by mutual agreement.

(2) The Commander, MTMC, shall designate the contracting activity when local commanders are unable to reach agreement.

(b) *Additional services and excess requirements.* (1) Excess requirements are those services which exceed contractor capabilities available under contracts. Use small purchase procedures to satisfy excess requirements.

(2) Additional services are those not specified in the bid items.

- (i) Additional services may include—
 - (A) Hoisting or lowering of articles;
 - (B) Waiting time;

(C) Special packaging; and
 (D) Stuffing or unstuffing of sea van containers.

(ii) Consider contracting for local moves that do not require drayage by using hourly rate or constructive weight methods. The rate will include those services necessary for completion of the movement, including—

- (A) Packing and unpacking;
- (B) Movement;
- (C) Inventorying; and
- (D) Removal of debris.

(iii) Each personal property shipping activity shall determine if local requirements exist for any additional services.

(iv) The contracting officer may obtain additional services by—

(A) Including them as items within the contract; provided, they are not used in the evaluation of bids (see 252.247-7008, Evaluation of Bids); or

(B) Using small purchase procedures.

(v) Either predetermine prices for additional services with the contractor, or negotiate them on a case-by-case basis.

(vi) The contracting officer must authorize the contractor to perform any additional services, other than attempted pick up or delivery, regardless of the contracting method.

(vii) To the maximum extent possible, identify additional services required that are incidental to an order before placing the order; or, when applicable, during the premove survey.

(c) *Contract distribution.* In addition to the distribution requirements of FAR subpart 4.2, furnish one copy of each contract as follows—

(1) CONUS personal property shipping activities shall send the copy to the Commander, Military Traffic Management Command, Attn: MTPP-CI, Room 408, 5611 Columbia Pike, Falls Church, VA 22041-5050.

(2) In the European and Pacific areas, personal property shipping activities shall send the copy to either the Property Directorate, MTMC Europe, or the MTMC Field Office-Pacific.

(3) Other overseas personal property shipping activities shall send the copy to the Commander, Military Traffic Management Command, Attn: MTPP-Q, 5611 Columbia Pike, Falls Church, VA 22041-5050.

247.271-4 Solicitation provisions, schedule formats, and contract clauses.

When acquiring services for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement, use the following provisions, clauses, and schedules. Revise solicitation provisions and schedules, as appropriate, if using negotiation rather than sealed bidding. Overseas commands, except those in Alaska and Hawaii, may modify these clauses to conform to local practices, laws, and regulations.

(a) The provision at 252.247-7008, Evaluation of Bids. When adding “additional services” items to any schedule, use the basic clause with Alternate I.

(b) The provision at 252.247-7009, Award.

(c) In solicitations and resulting contracts, the schedules contained in DoD 4500.34-R, Personal Property Traffic Management Regulation, as provided by the installation personal property shipping office.

(1) When there is no requirement for an item or subitem in a schedule, indicate that item or subitem number, in its proper numerical sequence, and add the statement “No Requirement.”

(2) Within Schedules I (Outbound) and II (Inbound), item numbers are reserved to permit inclusion of additional items as required by local conditions.

(3) Overseas activities, except those in Alaska and Hawaii, may modify the schedules when necessary to conform with local trade practices, laws, and regulations.

(4) All generic terminology, schedule, and item numbers in proper sequence shall follow those contained in the basic format.

(5) When it is in the Government’s best interest to have both outbound and inbound services within a given area of performance furnished by the same contractor, modify the schedule format to combine both services in a single schedule. However, items shall follow the same sequential order as in the basic format.

(6) Process any modification of schedule format, other than those authorized in paragraphs (c) (1) through (5) of this subsection, as a request for

deviation through MTMC area commands/field offices to HQ, MTMC.

(d) The clause at 252.247-7010, Scope of Contract.

(e) The clause at 252.247-7011, Period of Contract. When the period of performance is less than a calendar year, modify the clause to indicate the beginning and ending dates. However, the contract period shall not end later than December 31 of the year in which the contract is awarded.

(f) In addition to designating each ordering activity, as required by the clause at FAR 52.216-18, Ordering, identify by name or position title the individuals authorized to place orders for each activity. When provisions are made for placing oral orders in accordance with FAR 16.506(b), document the oral orders in accordance with departmental/agency instructions.

(g) The clause at 252.247-7012, Ordering Limitation.

(h) The clause at 252.247-7013, Contract Areas of Performance.

(i) The clause at 252.247-7014, Demurrage.

(j) When using the clause at FAR 52.216-21, Requirements, see 216.505(d) which prescribes use of Alternate I at 252.247-7015.

(k) The clause at 252.247-7016, Contractor Liability for Loss and Damage.

(l) The clause at 252.247-7017, Erroneous Shipments.

(m) The clause at 252.247-7018, Subcontracting.

(n) The clause at 252.247-7019, Drayage.

(o) The clause at 252.247-7020, Additional Services.

(p) The clauses at FAR 52.247-2, Permits, Authorities, or Franchises; FAR 52.247-8, Estimated Weights or Quantities Not Guaranteed; FAR 52.247-13, Accessorial Services—Moving Contracts; and FAR 52.247-17, Charges.

Subpart 247.3—Transportation in Supply Contracts

247.305 Solicitation provisions, contract clauses, and transportation factors.

247.305-10 Packing, marking, and consignment instructions.

(b) Consignment instructions shall include, as a minimum—

(i) The clear text and coded MILSTRIP data as follows—

(A) Consignee code and clear text identification of consignee and destination as published in—

(1) DoD 4000.25-6-M, Department of Defense Activity Address Directory (DoDAAD);

(2) DoD 4000.25-8-M, Military Assistance Program Address Directory (MAPAD);

(3) Commercial and Government Entity (CAGE) Handbook H4/H8; or

(4) Transportation Control and Movement Document.

Reporting procedures and instructions shall comply with DoD Regulation 4500.32-R, MILSTAMP.

(B) Project code, when applicable;

(C) Transportation priority;

(D) Required delivery date; and

(E) Coded MILSTRIP document number, demand/suffix code, a supplementary address and signal code.

(ii) Non-MILSTRIP shipments shall include data similar to paragraph (b)(i) (A) through (D) of this subsection and the applicable portion of paragraph (b)(i)(E) with the notation “Non-MILSTRIP.”

(iii) In amended shipping instructions include, in addition to the data requirements of paragraphs (b)(i) (A) through (E) of this subsection, the following, when appropriate—

(A) Name of the activity originally designated, from which the stated quantities are to be deducted; and

(B) Any other features of the amended instructions not contained in the basic contract.

(iv) If a contract is assigned for any contract administration function listed

in FAR subpart 42.3, to any office listed in DoD 4105.4, DoD Directory of Contract Administration Services Components, then include in instructions the—

(A) Modification serial number; and, if a new line item is created by the issuance of shipping instructions;

(B) New line item number; and

(C) Existing line item number, if affected.

(v) For petroleum, oil and lubricant products, instructions for diversions need not include the modification serial number and new line item number, when the instructions are—

(A) For diversions overseas to new destinations;

(B) Issued by an office other than that issuing the contract or delivery order; and

(C) Issued by telephone, teletype, or telegram.

247.305-70 Returnable containers other than cylinders.

Use the clause at 252.247-7021, Returnable Containers Other Than Cylinders, in solicitations and contracts for supplies involving contractor-furnished returnable reels, spools, drums, carboys, liquid petroleum gas containers, or other returnable containers if the contractor is to retain title to the containers.

[60 FR 29501, June 5, 1995]

247.370 Use of Standard Form 30 for consignment instructions.

When complete consignment instructions are not known initially, use the Standard Form 30, Amendment of Solicitation/Modification of Contract, to issue or amend consignment instructions, and when necessary, to confirm consignment instructions issued by telephone, teletype, or telegram.

(a) When using the SF 30 to confirm delivery instructions—

(1) Stamp or mark "CONFIRMATION" in block letters on the form, and specify in detail those instructions being confirmed.

(2) Do not change the instructions being confirmed.

(b) Process the confirming SF 30 as follows—

(1) For contracts assigned for any contract administration function listed

in subpart 247.3 to any office listed in DoD 4105.4, DoD Directory of Contract Administration Services Components, within five working days;

(2) For diversions of petroleum, oil, and lubricant products overseas to new destinations, within 30 days of instructions being confirmed; and

(3) Other contracts—

(i) Telephone—within five working days; and

(ii) Teletype or telegraph—consolidate on a monthly basis.

247.371 DD Form 1384, Transportation Control and Movement Document.

Reporting procedures and instructions for this form will be in compliance with DoD Regulation 4500.32-R, MILSTAMP.

247.372 DD Form 1653, Transportation Data for Solicitations.

(a) The transportation specialist prepares the DD Form 1653 at the request of the contracting officer. The completed form will contain recommendations concerning f.o.b. terms best suited for a particular acquisition, and other suggested transportation provisions for inclusion in the solicitation.

(b) When appropriate, the DD Form 1653 will also include information on combined port handling and transportation charges for inclusion in the solicitation in connection with export shipments.

247.373 DD Form 1654, Evaluation of Transportation Cost Factors.

Contracting personnel may use the DD Form 1654 to furnish information to the transportation office for development of cost factors for use by the contracting officer in the evaluation of f.o.b. origin offers.

Subpart 247.5—Ocean Transportation by U.S.-Flag Vessels

247.570 Scope.

This subpart—

(a) Implements the Cargo Preference Act of 1904, 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by, or destined for use by, the DoD.

(b) Does not specifically implement the Cargo Preference Act of 1954, 46

U.S.C. 1241(b). The 1954 Act is applicable to the DoD, but DFARS coverage is not required because compliance with the 1904 Act historically has resulted in the DoD exceeding the 1954 Act's requirements.

(c) Is an approved class deviation from FAR subpart 47.5 in its entirety (but see 247.571(c)).

247.571 Policy.

(a) DoD contractors shall transport supplies, as defined in the clause at 252.247-7023, Transportation of Supplies by Sea, exclusively on U.S.-flag vessels unless—

(1) Those vessels are not available, and notices are given and approvals received in accordance with this subpart;

(2) The Secretary of the Navy determines that the freight charged is excessive or unreasonable; or

(3) The contracting officer finds that the charges to the Government are higher than charges to private persons for the transportation of like goods.

(b) Contracts shall provide for the use of Government-owned vessels when security classifications prohibit the use of other than Government-owned vessels.

(c)(1) Any vessel used under a time charter contract for the transportation of supplies shall have any reflagging or repair work, as defined in the clause at 252.247-7205, Reflagging or Repair Work, performed in the United States or its territories, 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 the contract; and

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

(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.

(d) The Cargo Preference Act of 1904 does not apply to ocean transportation of—

(1) Products obtained for contributions to foreign assistance programs; or

(2) Products owned by agencies other than the DoD. In these cases, FAR subpart 47.5 applies.

[56 FR 36466, July 31, 1991, as amended at 59 FR 10580, Mar. 7, 1994; 60 FR 29501, June 5, 1995]

247.572 Procedures.

247.572-1 Ocean transportation incidental to a contract for supplies, services, or construction.

(a) This subsection applies when ocean transportation is not the purpose of the contract. However, effective May 1, 1996, this subsection does not apply to subcontracts for the acquisition of commercial items or commercial components (see 212.504(a)(xxii)).

(b) The contracting officer shall obtain assistance from the cognizant transportation activity (see 247.105), in developing—

(1) The Government estimate for transportation costs, irrespective of whether freight will be paid directly by the Government;

(2) Shipping instructions and delivery terms for inclusion in solicitations and contracts that may involve transportation of supplies by sea.

(c) The contracting officer shall ask each offeror whether it will transport supplies by sea if awarded the contract (see 247.573(a)). Even if the successful offeror responds that it does not anticipate sea transport of supplies, it may discover during contract performance that ocean transportation is required. In that event, the Act will apply to the contract, and it must—

(1) Notify the Government that it now intends to use ocean transportation;

(2) Use U.S.-flag vessels unless certain conditions exist (see 247.571(a)); and

(3) Comply with the other requirements of the clause at 252.247-7023, Transportation of Supplies by Sea.

(d) When the contracting officer is notified that the contractor or subcontractor considers that—

(1) No U.S.-flag vessels are available, the contracting officer shall request confirmation of the nonavailability from the Director, Office of Contracts and Business Management, Military Sealift Command (MSC).

(2) The freight charges to the Government, the contractor or any subcontractor, are higher than charges for transportation of like goods to private persons, the contracting officer may approve any request for a waiver of the requirement to ship on U.S.-flag vessels for a particular shipment.

(i) Prior to granting a waiver, the contracting officer shall request advice, oral or written, from the Commander, MSC.

(ii) In advising the contracting officer whether to grant the waiver, the Commander, MSC, shall consider, as appropriate, evidence from—

- (A) Published tariffs;
- (B) Industry publications;
- (C) The Maritime Administration; and
- (D) Any other available sources.

(3) The freight charged by U.S.-flag carriers is considered excessive or otherwise unreasonable, the contracting officer shall forward a report to the Commander, MSC, through the head of the contracting activity, and the Director, Office of Contracts and Business Management, MSC.

(i) The report shall be in determination and finding format, and—

(A) Take into consideration that the 1904 Act is, in part, a subsidy of the U.S.-flag commercial shipping industry that recognizes that lower prices may be available from foreign shippers;

(B) Consider, accordingly, not only excessive profits to the vessel owner, if ascertainable, but also excessive costs (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition) resulting from the use of U.S.-flag vessels in extraordinarily inefficient circumstances;

(C) Include, as appropriate—

(1) An analysis of whether the cost is excessive, taking into account factors such as the differential between freight charges by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis;

(2) A comparison of U.S.-flag rates charged on comparable routes;

(3) Efficiency of operation regardless of rate differential (i.e., suitability of the vessel for the required transportation in terms of cargo requirements/vessel capacity; the commercial rea-

sonableness of vessel positioning required, etc.); and

(4) Any other relevant economic and financial considerations.

(D) Consider that the fact that it would be less expensive to use a foreign-flag vessel is not a sufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a differential may indicate a need for further review.

(ii) If the Commander, MSC, concurs with the contracting officer, the Commander will forward the report to the Secretary of the Navy, via ASN(RDA)(PP), for a determination as to whether the freight charges are excessive or otherwise unreasonable.

[56 FR 36466, July 31, 1991, as amended at 60 FR 61599, Nov. 30, 1995]

247.572-2 Direct purchase of ocean transportation services.

(a) This subsection applies when ocean transportation is the principal purpose of the contract, including—

- (1) Time charters;
- (2) Voyage charters;
- (3) Contracts of affreightment;
- (4) Dedicated contractor contracts of affreightment;
- (5) Ocean bills of lading; and
- (6) Subcontracts under Government contracts or agreements for ocean transportation services.

(b) Coordinate these acquisitions, as appropriate, with the MSC in accordance with DoDD 5160.10, Single Manager Assignment for Ocean Transportation.

(c) The Commander, MSC, is authorized to make any determination as to the availability of U.S.-flag vessels, in order to ensure the proper utilization of Government and private U.S. vessels.

(d) All solicitations for ocean transportation services for supplies owned by the military departments shall provide a preference for U.S.-flag vessels as an evaluation factor.

(e) The contracting officer shall not award a contract of the type described in paragraph (a) of this subsection for a foreign-flag vessel unless—

- (1) The contracting officer determines that no U.S.-flag vessels are

available, and obtains approval of the Commander, MSC; or

(2) The contracting officer determines that the freight charges proposed by U.S.-flag vessels to the Government are higher than charges to private persons for transportation of like goods, and obtains the approval of the Commander; MSC; or

(3) The Secretary of the Navy determines (see paragraph (f) of this subsection) that the freight charges for U.S.-flag vessels are excessive or otherwise unreasonable.

(f) When the contracting officer concludes, based solely on economic considerations, that the charge offered for a U.S.-flag vessel is excessive or otherwise unreasonable, the contracting officer will send a report through the head of the contracting activity to the Commander, MSC.

(1) The fact that it would be less expensive to use a foreign-flag vessel is an insufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a differential may indicate a need for further review.

(2) The Commander, MSC, will forward the report, if in agreement with the contracting officer, to the Secretary of the Navy for a determination.

(3) The report shall be in determination and finding format; take into consideration the factors in 247.572-1(d)(3); and include, as appropriate—

(i) An analysis of the carrier's cost in accordance with FAR subpart 15.8, or profit in accordance with DFARS subpart 215.9. The costs or profit should not be so high as to make it unreasonable to apply the preference for U.S.-flag vessels;

(ii) A description of efforts taken pursuant to FAR 15.803(d), to negotiate a reasonable price. For the purpose of FAR 15.803(d), this report is the referral to higher authority; and

(iii) An analysis of whether the cost is excessive (i.e., cost beyond the economic penalty normally incurred by excluding foreign competition), taking into consideration such factors as—

(A) The differential between freight charges by the U.S.-flag carrier and an estimate of what foreign-flag carriers

would charge based upon a price analysis;

(B) A comparison of rates charged by other U.S.-flag carriers on comparable routes;

(C) Efficiency of operation regardless of rate differential (i.e., suitability of the vessel capacity/cargo requirements; the commercial reasonableness of the vessel positioning required, etc.); and

(D) Any other relevant economic and financial considerations affecting the Government.

[56 FR 36466, July 31, 1991, as amended at 60 FR 61599, Nov. 30, 1995]

247.573 Solicitation provision and contract clauses.

(a) Use the provision at 252.247-7022, Representation of Extent of Transportation by Sea, in full text, in all solicitations except—

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

(2) Those with an anticipated value below the small purchase limitation at FAR 13.000.

(b) Use the clause at 252.247-7023, Transportation of Supplies by Sea, in all solicitations and resultant contracts, in full text, except—

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

(2) Those with an anticipated value below the small purchase limitation at FAR 13.000.

(c) Use the clause at 252.247-7024, Notification of Transportation of Supplies by Sea, in full text, in all contracts for which the offeror made a negative response to the inquiry in the provision at 252.247-7022, Representation of Extent of Transportation by Sea.

(d) Use the clause at 252.247-7025, Re-flagging or Repair Work, in all time charter solicitations and contracts for the use of a vessel for the transportation of supplies, unless a waiver has been granted in accordance with 247.571(c).

[56 FR 36466, July 31, 1991, as amended at 59 FR 10580, Mar. 7, 1994; 60 FR 29501, June 5, 1995]

PART 248—VALUE ENGINEERING

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.