

DFARS Procedures, Guidance, and Information

PGI 205—Publicizing Contract Actions

(Revised October 14, 2014)

PGI 205—PUBLICIZING CONTRACT ACTIONS

PGI 205.2--SYNOPSIS OF PROPOSED CONTRACT ACTIONS

PGI 205.207 Preparation and transmittal of synopses.

(a)(i) *Notice numbering.*

(1) For a particular procurement, when submitting notices at different stages of the acquisition (i.e., sources sought notice, pre-solicitation notice, award notice), ensure the solicitation number is entered exactly the same way in order to allow all to be retrieved when a search is performed.

(2) Use only alpha-numeric characters in the solicitation and award number data elements in the GPE. Do not include hyphens, slashes, or other special characters.

(d) *Special notices for small business events.* When advertising an event for small businesses, post a 'special notice' notice type and ensure the "title" data field begins with "Small Business Event". This will enable the public to easily search the GPE using the small business event calendar on the website.

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PGI 219—Small Business Programs

(Revised October 14, 2014)

PGI 219.2—POLICIES

PGI 219.201 General policy.

(d)(10)(1) Agencies are not precluded from requiring that actions over \$10,000, but under \$150,000, that are totally set aside for small business be reviewed by the small business specialist. One example of when an agency may choose to require this review is when the agency determines that such a review is necessary to assist contracting officers in identifying opportunities for other small business set-aside programs (e.g., HUBZone, service-disabled veteran-owned, small disadvantaged business, women-owned small business) in order to meet small business goals.

(2) Modifications that increase the scope of the contract, or the order under a Federal Supply Schedule contract, should be reviewed by the small business specialist. At a minimum, these actions might impact the small business subcontracting plan. However, funding modifications or modifications that do not increase the scope of the contract generally should not be reviewed, because the value that a small business specialist review would add in these instances would be minimal compared to the resources that would be expended.

(e) Contracting and contract administration activities appoint small business specialists as directed by DoDD 4205.1, DoD Office of Small Business Programs. Specialists—

- (i) Report directly and are responsible only to their appointing authority;
- (ii) Make sure that the contracting activity takes the necessary actions to implement small business and labor surplus area programs;
- (iii) Advise and assist contracting, program manager, and requirements personnel on all matters that affect small businesses and labor surplus area concerns;
- (iv) Aid, counsel, and assist small businesses by providing—
 - (A) Advice concerning acquisition procedures;
 - (B) Information regarding proposed acquisitions; and
 - (C) Instructions on preparation of proposals in the interpretation of standard clauses, representations, and certifications;
- (v) Maintain an outreach program (including participation in Government-industry conferences and regional interagency small business councils) designed to locate and

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develop information on the technical competence of small businesses, service-disabled veteran-owned small businesses, HUBZone small business, small disadvantaged businesses, and women-owned small businesses;

(vi) Ensure that financial assistance, available under existing regulations, is offered and also assist small businesses in obtaining payments under their contracts, late payments, interest penalties, or information on contract payment provisions;

(vii) Provide assistance to contracting officers in determining the need for and the acceptability of subcontracting plans and assist administrative contracting officers (see DFARS [219.706\(a\)\(ii\)](#)) in evaluating, monitoring, reviewing, and documenting contract performance to determine compliance with subcontracting plans; and

(viii) Recommend to the appointing authority the activity's small and disadvantaged business program goals, including goal assignments to subordinate contracting offices; monitor the activity's performance against these goals; and recommend action to correct reporting errors/deficiencies.

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PGI 225—Foreign Acquisition

(Revised October 8, 2014)

PGI 225.77—ACQUISITIONS IN SUPPORT OF OPERATIONS IN AFGHANISTAN

PGI 225.7703 Enhanced authority to acquire products or services from Afghanistan.

PGI 225.7703-1 Acquisition procedures.

(c) When issuing solicitations and contracts for performance in Afghanistan, follow the guidance for CENTCOM Operational Contract Support Policies and Procedures, Theater Business Clearance, at <https://www2.centcom.mil/sites/contracts/Pages/GCO.aspx>, and use the applicable solicitation provisions and contract clauses:

(1) The provision at DFARS [252.232-7014](#), Notification of Payment in Local Currency (Afghanistan), as prescribed at DFARS [232.7202](#).

PGI 225.7703-2 Determination requirements.

(b) Subject matter experts for defense industrial base matters are as follows:

For Army: SAAL-PA, Army Industrial Base Policy, telephone 703-695-2488.

For DLA: DLA J-74, Acquisition Programs and Industrial Capabilities Division, telephone 703-767-1427.

For Navy: Ship Programs, DASN Ships, telephone 703-697-1710.

For Air Force: Air Force Research Laboratory, Materials Manufacturing Directorate, telephone 703-588-7777.

For Other Defense Agencies: Personnel at defense agencies without industrial base expertise on staff should contact the Office of the Deputy Under Secretary of Defense for Industrial Policy (Acquisition, Technology, and Logistics), telephone 703-697-0051.

(c) Determination formats.

(i) Prepare an individual determination and findings substantially as follows:

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DEPARTMENT OR AGENCY

Authority to Acquire Products or Services from Afghanistan

Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of DFARS [225.7703-2](#), the acquisition of a product or service, other than small arms, in support of operations in Afghanistan may be made as follows:

Findings

1. The [contracting office] proposes to purchase under contract number _____, [describe item]. The total estimated cost of this acquisition is _____.
2. The product or service is to be used by [describe the entity(ies) that are the intended user(s) of the product or service].
3. The contracting officer recommends conducting the acquisition using the following procedure, which, given this determination, is authorized by Section 886 of Public Law 110-181:

[Select one of the following:]

Provide a preference for products or services from Afghanistan.

Limit competition to products or services from Afghanistan.

Use procedures other than competitive procedures to award a contract to a particular source or sources from Afghanistan.

4. To implement the recommended procedure, the solicitation will contain [title and number of the applicable provision and/or clause prescribed at DFARS [225.7703-4](#)].
5. The proposed acquisition will provide a stable source of jobs in Afghanistan because _____.
6. The proposed use of other than full and open competition is necessary to provide this stable source of jobs in Afghanistan.

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7. The proposed use of other than full and open competition will not adversely affect military operations or stability operations in Afghanistan, because _____. This is the opinion of the *[title of the official responsible for operations in the area involved]*.
8. The proposed use of other than full and open competition will not adversely affect the United States industrial base.
9. *[If a preference will be provided for products or services from Afghanistan, or if competition will be limited to products or services from Afghanistan, include—*
 - (1) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable; and*
 - (2) Whether a notice was or will be publicized as required by FAR Subpart 5.2 and, if not, which exception in FAR 5.202 applies.]*

- or -

[If procedures other than competitive procedures will be used to award a contract to a particular source or sources from Afghanistan, include—

- (1) A description of the market research conducted in accordance with FAR Part 10 and the results; or a statement of the reason market research was not conducted;*
- (2) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition;*
- (3) A demonstration that the proposed contractor's unique qualifications require the use of a noncompetitive acquisition, or an explanation of the other reasons for use of a noncompetitive acquisition; and*
- (4) A certification by the contracting officer that the information in paragraphs (1) through (3) above is accurate and complete to the best of the contracting officer's knowledge and belief.]*

Determination

I hereby determine that it is in the national security interest of the United States to use the acquisition procedure described above, because the procedure is necessary to provide a stable source of jobs in Afghanistan and it will not adversely affect (1) Operations in Afghanistan or (2) the United States

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industrial base.

(Date)

(ii) Prepare a determination and findings for a class of acquisitions substantially as follows:

DEPARTMENT OR AGENCY

Authority to Acquire Products or Services from Afghanistan

Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of DFARS [225.7703-2](#), the acquisition of products or services, other than small arms, in support of operations in Afghanistan may be made as follows:

Findings

1. It is anticipated that [applicable departments/agencies/components] will need to award contracts during the period from _____ to _____ in order to acquire [describe the type(s) of products or services] for [describe the purpose, if the purpose for which the items will be acquired is a defining characteristic of the class of acquisitions to be covered by the class determination].
2. The products or services to be acquired under the contemplated contracts are to be used by [describe the entity(ies) intended to use the products or services].
3. This class of acquisitions should be conducted using the following procedure, which, given this determination, is authorized by Section 886 of Public Law 110-181, as amended by section 842 of Pub. L. 112-239:

[Select one of the following:]

Provide a preference for products or services from Afghanistan.

Limit competition to products or services from Afghanistan.

Use procedures other than competitive procedures to award a contract to

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a particular source or sources from Afghanistan.

4. To implement the recommended procedure, solicitations will contain *[title and number of the applicable provision and/or clause prescribed at [DFARS 225.7703-4](#)]*.
5. Each of the contemplated contracts will provide a stable source of jobs in Afghanistan, because _____.
6. The proposed use of other than full and open competition for this class of acquisitions is necessary to provide this stable source of jobs in Afghanistan.
7. The proposed use of other than full and open competition for this class of acquisitions will not adversely affect operations in Afghanistan, because _____. This is the opinion of the *[title of the official responsible for operations in the area involved]*.
8. The proposed use of other than full and open competition for this class of acquisitions will not adversely affect the United States industrial base.
9. *[If a preference will be provided for products or services from Afghanistan, or if competition will be limited to products or services from Afghanistan, include—*
 - (1) *A description of the efforts that will be made to ensure that offers are solicited from as many potential sources as is practicable; and*
 - (2) *Whether a notice will be publicized as required by FAR Subpart 5.2 and, if not, which exception in FAR 5.202 applies.]*

- or -

[If procedures other than competitive procedures will be used to award contracts to a particular source or sources from Afghanistan, include—

- (1) *A description of the market research conducted in accordance with FAR Part 10 and the results; or a statement of the reason market research was not conducted;*
- (2) *A listing of the sources, if any, that expressed, in writing, an interest in this class of acquisitions;*
- (3) *A demonstration that the proposed contractor's unique qualifications*

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require the use of a noncompetitive acquisition, or an explanation of the other reasons for use of a noncompetitive acquisition; and

(4) A certification by the contracting officer that the information in paragraphs (1) through (3) above is accurate and complete to the best of the contracting officer's knowledge and belief.]

Determination

I hereby determine that it is in the national security interest of the United States to use the acquisition procedure described above for [description of the class of acquisitions to which this determination is intended to apply], because the procedure is necessary to provide a stable source of jobs Afghanistan and it will not adversely affect (1) Operations in Afghanistan or (2) the United States industrial base.

(Date)

(iii) Prepare a determination and findings for acquisitions issued pursuant to [Class Deviation 2014-O0014](#), to Acquire Products and Services Produced in Countries along a Major Route of Supply to Afghanistan or in Afghanistan, substantially as follows:

DEPARTMENT OR AGENCY

AUTHORITY TO ACQUIRE PRODUCTS OR SERVICES FROM

1

Determination and Findings

Upon the basis of the following findings and determination, which I hereby make in accordance with the provisions of DFARS 225.7799-2 (DEVIATION [2014-O0014](#)), the acquisition of a product or service, other than small arms, in support of operations in Afghanistan may be made as follows:

FINDINGS

1. The 1A proposes to purchase under solicitation number 1B, 1C.

The total estimated cost of this acquisition is 1D.

2. The product or service is to be used by 2

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3. The contracting officer recommends conducting the acquisition using the following procedure, which, given this determination, is authorized by section 801 of Public Law 111-084 and section 886 of Pub. L. 110-181:

3

4. To implement the recommended procedure, the solicitation will contain:

a. DFARS 252.225-7990, Preference for Products or Services from a Central Asian State or Afghanistan (APR 2014)(DEVIATION [2014-O0014](#)) and 252.225-7991, Requirement for Products or Services from a Central Asian State or Afghanistan (APR 2014)(DEVIATION [2014-O0014](#));

b. DFARS 252.225-7992, Acquisition Restricted to Products or Services from a Central Asian State or Afghanistan (APR 2014) (DEVIATION [2014-O0014](#));

c. DFARS 252.225-7998, Preference for Products or Services from Central Asia, Pakistan, the South Caucasus, or Afghanistan (APR 2014) (DEVIATION [2014-O0014](#)), and DFARS 252.225-7999, Requirement for Products or Services from Central Asia, Pakistan, the South Caucasus, or Afghanistan (APR 2014) (DEVIATION [2014-O0014](#));
or

d. DFARS 252.225-7996, Acquisition Restricted to Products or Services from Central Asia, Pakistan, the South Caucasus, or Afghanistan (APR 2014)(DEVIATION [2014-O0014](#)).

5. The proposed acquisition will provide a product or service that is to be used

5

6.a. For products or services from Central Asia, Pakistan, or the South Caucasus, it is in the national security interest of the United States to use a procedure specified in 225.7799-1(a)(DEVIATION [2014-O0014](#)) because the procedure is necessary to

6A

Use of the procedure for acquisition of products or services from Central Asia, Pakistan, or the South Caucasus will not adversely affect military or stability operations in Afghanistan or the United States industrial base (see [6B](#)).

b. For products or services from Afghanistan, it is in the national security interest of the United States to use a procedure specified in 225.7799-1(a)(DEVIATION [2014-O0014](#)) because the procedure is necessary to provide a stable source of jobs in Afghanistan.

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Use of the procedure for acquisition of products or services from Afghanistan will not adversely affect military or stability operations in Afghanistan or the United States industrial base (see 6B). (see 6C)

7. Acquisitions conducted using the procedures specified in DFARS 225.7799-1(a) (DEVIATION [2014-O0014](#)), (see para. 3. above), are authorized to use other than full and open competition procedures and do not require the justification and approval addressed in FAR Subpart 6.3.

8. Requirement will be/was synopsised: YES NO If not synopsised, exception at FAR 5.202(a) applies.

_____ Date: _____

CONTRACTING OFFICER

Name: _____

Office Symbol: _____

DETERMINATION

In accordance with the authorization outlined in DFARS 225.7799-2(b)(1)(i)(DEVIATION [2014-O0014](#)) and under the authority of section 801 if the National Defense Authorization Act for Fiscal Year 2013, I hereby determine that it is in the national security interest of the United States to use the acquisition procedure described above because the procedure is necessary to encourage countries along a major route of supply in support of military and stability operations in Afghanistan. This procedure will not adversely affect military or stability operations in Afghanistan; or the United States industrial base.

_____ Date: _____

INSTRUCTIONS FOR COMPLETING DETERMINATION

- 1 "A Central Asian State or Afghanistan"; or "A Central Asian State, Pakistan, the South Caucasus, or Afghanistan"
- 1A Office symbol of your contracting office
- 1B RFP/RFQ/IFB number
- 1C Description of the items to be purchased
- 1D Estimated amount of the requirement (in USD)
- 2 Describe the entity(ies) that are the intended user(s) of the product or service
- 3 *Select and include one of the following:*
 - a. Provide a preference for products or services from the five Central Asian

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states or Afghanistan IAW the evaluation procedures at 225.7799-3 (DEVIATION [2014-O0014](#)).

b. Limit competition to products or services from the five Central Asian states listed in DEVIATION [2014-O0014](#)).

c. Provide a preference for products or services from Central Asia, Pakistan, the South Caucasus, or Afghanistan IAW the evaluation procedures at 225.7799-3 (DEVIATION [2014-O0014](#)).

d. Limit competition to products or services from Central Asia, Pakistan, the South Caucasus, or Afghanistan (DEVIATION [2014-O0014](#)).

5 *Select and include one of the following:*

In the country that is the source of the product or service.

In the course of efforts by the United States and the Forces to ship goods to or from Afghanistan in support of operations in Afghanistan.

By the military forces, police, or other security personnel of Afghanistan.

By the United States or coalition forces in Afghanistan.

6Ai Paragraph (6.a. may be deleted if the product or service is for use by the military forces, police, or other security personnel of Afghanistan.

6Aii *Select and include one of the following:*

Reduce the overall United States transportation costs and risks in shipping goods in support of operations in Afghanistan.

Encourage states of Central Asia, Pakistan, and the South

Caucasus-to cooperate in expanding supply routes through their territory in support of operations in Afghanistan.

Help develop more robust and enduring routes of supply to Afghanistan.

6B The contracting officer generally may presume that there will not be an adverse effect on the U.S. industrial base. However, when in doubt the contracting officer should coordinate with the applicable subject matter experts.

6C Delete paragraph 6.b. if the product or service concerned is to be used only by the military forces, police, or other security personnel of Afghanistan.

7 Include a description of efforts made to ensure offers are solicited from as many potential sources as is practicable.

PGI 225.7703-3 Evaluating offers.

Prior to awarding a contract on or before December 31, 2018, with an estimated value in excess of \$50,000, that is being, or will be, performed in support of the United States Central Command (USCENTCOM), United States European Command (USEUCOM), United States Africa Command (USAFRICOM), United States Southern Command (USSOUTHCOM), or United States Pacific Command (USPACOM) theater of operations, contracting officers must check the System for Award Management (SAM) to ensure that DoD does not award a contract to persons or entities prohibited/restricted under section 841 National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 and section 831 of the NDAA for FY 2014 (see [Class Deviation 2014-O0020](#), Prohibition

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on Contracting with the Enemy). To access a current list of prohibited/restricted persons or entities in SAM:

- (1) Go to www.sam.gov.
- (2) Go to the “Search Records” page.
- (3) Select “Advanced Search – Exclusion”.
- (4) Select “Single Search”.
- (5) From the drop-down menus, set the search criteria as follows:

Classification = Special Entity Designation

Agency = Department of Defense

Exclusion Status = Active

Exclusion Type = Prohibition/Restriction

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PGI 247—Transportation

(Revised October 14, 2014)

PGI 247.5—OCEAN TRANSPORTATION BY U.S.-FLAG VESSELS

PGI 247.573 General.

(a) *Delegated Authority.* The authority to make determinations of excessive ocean liner rates and excessive charter rates is delegated in [Secretary of Defense Memorandum dated February 7, 2012](#).

(b) *Procedures.*

(1) Contracting officers shall follow these procedures when ocean transportation is not the principal purpose of the contract, and the cargo to be transported is owned by DoD or is clearly identifiable for eventual use by DoD.

(i) DD Form 1653, Transportation Data for Solicitations, shall be used—

(A) By the requesting activity in developing the Government estimate for transportation costs; and

(B) By the contracting officer in ensuring that valid shipping instructions and delivery terms are included in solicitations and contracts that may involve transportation of supplies by sea.

(ii)(A) If the contractor notifies the contracting officer that the contractor or a subcontractor considers that no U.S.-flag vessels are available, the contracting officer shall request confirmation of the nonavailability from—

(1) The Commander, Military Sealift Command (MSC), through the Contracts and Business Management Directorate, MSC (msc.n101.ffw@navy.mil), for voyage and time charters; or

(2) The Commander, Military Surface Deployment and Distribution (SDDC), through the SDDC global e-mailbox (usarmy.scott.sddc.mbx.ffw-team@mail.mil) for ocean liner and intermodal transportation.

(B) If the contractor notifies the contracting officer that the contractor or a subcontractor considers that the proposed 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 a request for an exception to the requirement to ship on U.S.-flag vessels for a particular shipment.

(1) Prior to granting an exception, the contracting officer shall request advice, oral or written, from the Commander, MSC, through the Contracts and Business Management Directorate, MSC (msc.n101.ffw@navy.mil), for voyage and time charters; or the USTRANSCOM Director of Acquisition, through the Sealift Services Division (transcom.scott.afb.tcaq.mbx.i-foreign-flag-waiver@mail.mil), for ocean liner and intermodal transportation.

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(2) In advising the contracting officer whether to grant the exception, evidence from the following sources shall be considered, as appropriate—

- (i) Published tariffs;
- (ii) Industry publications;
- (iii) The U.S. Maritime Administration; and
- (iv) Other available sources.

(C) If the contractor notifies the contracting officer that the contractor or a subcontractor considers that the freight charges proposed by U.S.-flag carriers are excessive or otherwise unreasonable—

(1) The contracting officer shall prepare a report in determination and findings format, and shall—

(i) 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-flag carriers. Therefore, a lower price for use of 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 price differential may indicate a need for further review;

(ii) Consider, accordingly, not only excessive profits to the carrier (to include vessel owner or operator), if ascertainable, but also excessive costs to the Government (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; and

(iii) Include an analysis of whether the cost is excessive, taking into account factors such as—

(a) The differential between the freight charges proposed 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 U.S.-flag rates charged on comparable routes;

(c) Efficiency of operation regardless of rate differential (e.g., suitability of the vessel for the required transportation in terms of cargo requirements or vessel capacity, and the commercial reasonableness of vessel positioning required); and

(d) Any other relevant economic and financial considerations; and

(2) The contracting officer shall forward the report to—

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(i) The Commander, MSC, through the Contracts and Business Management Directorate, MSC (msc.n101.ffw@navy.mil), for voyage and time charters; or

(ii) The USTRANSCOM Director of Acquisition, through the Sealift Services Division (transcom.scott.afb.tcaq.mbx.i-foreign-flag-waiver@mail.mil), for ocean liner and intermodal transportation.

(3) The Commander, MSC, or the USTRANSCOM Director of Acquisition, will forward the report to the Secretary of the Navy or the Commander, USTRANSCOM, respectively, for a determination as to whether the proposed freight charges are excessive or otherwise unreasonable. Upon receipt of a determination by the Secretary of the Navy or the Commander, USTRANSCOM, respectively, that U.S. flag rates are excessive or unreasonable, the contracting officer shall provide the contractor with written approval to use a non-U.S. flag carrier, in accordance with that determination.

(2) Contracting officers shall follow these procedures when the direct purchase of ocean transportation services is the principal purpose of the contract.

(i) Direct purchase of ocean transportation may include—

(A) Time charters;

(B) Voyage charters;

(C) Contracts for charter vessel services;

(D) Dedicated contractor contracts for charter vessel services;

(E) Ocean bills of lading;

(F) Subcontracts under Government contracts or agreements for ocean transportation services; and

(G) Ocean liner contracts (including contracts where ocean liner transportation is part of an intermodal movement).

(ii) Coordinate these acquisitions, as appropriate, with USTRANSCOM, the DoD single manager for commercial transportation and related services, other than Service-unique or theater-assigned transportation assets, in accordance with DoDD 5158.4, United States Transportation Command.

(iii) All solicitations within the scope of this subsection shall provide—

(A) A preference for U.S.-flag vessels in accordance with the 1904 Act;

(B) An evaluation criterion for offeror participation in the Voluntary Intermodal Sealift Agreement; and

(C) An evaluation criterion considering the extent to which offerors have had overhaul, repair, and maintenance work for all covered vessels in an offeror's fleet

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performed in shipyards located in the United States or Guam. Work performed in foreign shipyards shall not be considered if—

(1) 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

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

(iv) Do not award a contract of the type described in paragraph (b)(2) of this subsection for a foreign-flag vessel unless—

(A) The Commander, MSC, or the Commander, SDDC, determines that no U.S.-flag vessels are available;

(1) The Commander, MSC, and the Commander, SDDC, are authorized to make any determinations as to the availability of U.S.-flag vessels to ensure the proper use of Government and private U.S. vessels.

(2) The contracting officer shall request such determinations—

(i) For voyage and time charters, through the Contracts and Business Management Directorate, MSC (msc.n101.ffw@navy.mil); and

(ii) For ocean liner and intermodal transportation, including contracts for shipment of military household goods and privately-owned vehicles, through the SDDC global e-mailbox (usarmy.scott.sddc.mbx.ffw-team@mail.mil).

(3) In the absence of regularly scheduled U.S.-flag service to fulfill stated DoD requirements, the Commander, SDDC, may grant, on a case-by-case basis, an on-going nonavailability determination for foreign-flag service approval with predetermined review date(s);

(B) The contracting officer determines that the U.S.-flag carrier has proposed to the Government freight charges that are higher than charges to private persons for transportation of like goods, and obtains the approval of the Commander, MSC, through the Contracts and Business Management Directorate, MSC (msc.n101.ffw@navy.mil), or the USTRANSCOM Director of Acquisition, through the Sealift Services Division, (transcom.scott.afb.tcaq.mbx.i-foreign-flag-waiver@mail.mil); or

(C) The Secretary of the Navy, for voyage and time charters, or the Commander, USTRANSCOM, for ocean liner and intermodal transportation, determines that the proposed freight charges for U.S.-flag vessels are excessive or otherwise unreasonable.

(1) After considering the factors in [PGI 247.573\(b\)\(1\)\(ii\)\(C\)\(1\)\(i\)](#) and (ii), if the contracting officer concludes that the freight charges proposed by U.S.-flag carriers may be excessive or otherwise unreasonable, the contracting officer shall prepare a report in determination and findings format that includes, as appropriate—

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(i) An analysis of the carrier's costs in accordance with FAR subpart 15.4, or profit in accordance with [215.404-4](#). 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 15.405 to negotiate a reasonable price. For the purpose of FAR 15.405(d), this report is the referral to a level above the contracting officer; and

(iii) An analysis of whether the costs are excessive (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition), taking into consideration factors such as those listed at [PGI 247.573\(b\)\(1\)\(ii\)\(C\)\(1\)\(iii\)](#).

(2) The contracting officer shall forward the report to—

(i) The Commander, MSC, through the Contracts and Business Management Directorate, MSC (msc.n101.ffw@navy.mil), for voyage and time charters; or

(ii) The USTRANSCOM Director of Acquisition, through the Sealift Services Division (transcom.scott.afb.tcaq.mbx.i-foreign-flag-waiver@mail.mil).

(3) The Commander, MSC, or the USTRANSCOM Director of Acquisition, will forward the report to the Secretary of the Navy or the Commander, USTRANSCOM, respectively, for a determination as to whether the proposed freight charges are excessive or otherwise unreasonable. Upon receipt of a determination by the Secretary of the Navy or the Commander, USTRANSCOM, respectively, that U.S. flag rates are excessive or unreasonable, the contracting officer shall provide the contractor with written approval to use a non-U.S. flag carrier, in accordance with that determination.

(3) The following annual reporting requirement procedures relate to solicitation provision [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.

(i) No later than February 15th of each year, departments and agencies shall—

(A) Prepare a report containing all information received from all offerors in response to the provision at [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 during the previous calendar year; and

(B) Submit the report to: Directorate of Acquisition, U.S. Transportation Command, ATTN: TCAQ, 508 Scott Drive, Scott AFB, IL 62225-5357.

(ii) The Director of Acquisition, U.S. Transportation Command, will submit a consolidated annual report to the congressional defense committees, by June 1st of each year, in accordance with section 1017 of Pub. L. 109-364.

(4)(i) Contracting officers shall ensure the following procedures have been followed when security background checks are required pursuant to the clause at [252.247-7027](#), Riding Gang Member Requirements, when exercising the exemption provided by 10 U.S.C. 2401 note. The contracting officer shall coordinate as necessary

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with the Government official specified in the contract pursuant to paragraph [252.247-7027](#)(c)(2)(i)(A).

(ii) Contracting officers shall ensure that security background checks are processed by the Military Sealift Command (MSC) using the procedures contained in COMSC Instruction 5521.1 series, Security Screening of Persons with Access to MSC Ships (FOUO). Force Protection for Military Sealift Command (COMSC N3) will act as the executive agent for DoD utilizing the U.S. Government's El Paso Intelligence Center (EPIC) to perform required background checks as required by 10 U.S.C. 2401 note, and COMSC N34 Director of Force Protection or COMSC Antiterrorism Officer at mschg_n34_epic@navy.mil will facilitate the processes necessary to conduct background checks.