SUMMARY OF THE PROCEDURES TO FOLLOW UNDER DEPARTMENT OF DEFENSE CONTRACTS WHEN U.S.-FLAG SERVICE IS NOT AVAILABLE.

The Military Cargo Preference Act of 1904 requires that all supplies bought for the Army, Navy, Air Force or Marine Corps must be carried solely (100%) on U.S.-flag vessels except in certain circumstances. If U.S.-flag vessels are not available, there is a procedure in place allowing the conditional use of foreign-flag vessels.

When 100% U.S.-flag service is not available, and a Department of Defense (DOD) contractor (i.e., the private company providing the supplies) believes they need to use foreign vessel, they must request an exemption from the DOD contracting officer before the movement takes place. The DOD contracting officer is the only entity authorized to allow the use of foreign-flag vessels for military cargo.

Contractors must give the government plenty of notice before a foreign-flag vessel can be waived into service. Specifically, DFARS 252.247-7023 states that the contractor must submit any request for use of other than U.S.-flag vessels in writing to the contracting officer at least 45 days prior to the sailing date necessary to meet its delivery schedules.

Also, if no U.S.-flag service is available, this does not automatically mean that the contractor can immediately use a foreign-flag vessel for point-to-point delivery. The regulations require that a combination of U.S.-flag and foreign-flag vessels (in a transshipment) be used next. The last priority would be all foreign-flag service. All foreign-flag service is only an option if all U.S. or U.S.-flag / foreign-flag combination service does not exist.

In addition to combination U.S.-flag / foreign-flag service taking precedence over all foreign-flag service, preference and priority is also given to shipping companies that are members of the Voluntary Intermodal Service Agreement (VISA). U.S.-flag service providers (or combination providers) with VISA membership take precedence over non-VISA members as they have guaranteed the military shipping space on their vessels in time of war.

The DOD contracting regulations[1] provide the procedures to be followed when 100% U.S.-flag service is not available and foreign-flag vessels are needed in some way to provide transportation by sea. For easy reference, the procedure is summarized below:

- If there are no U.S.-flag vessels available to move a specific military shipment, the DOD prime contractor (the private company moving the supplies) must identify ocean transportation that maximizes the use of U.S.-flag vessels, and then ask for an exemption from the 100% U.S.-flag shipping requirement from the DOD contracting officer. The DOD contracting officer is the **only** party authorized to allow the use of non-U.S.-flag vessels for military cargo.

[1] PGI 247.573(b)(1) for Contracting Officers and DFARS 252.247-7023(d) for Contractors

- Before the exemption is issued, the DOD contracting officer must, by regulation, seek the advice of one of the military transport commands regarding U.S.-flag vessel availability. The Navy's Military Sealift Command (MSC) provides formal advice on the availability of U.S.-flag vessels for voyage and time charters.

  The Army's Military Surface Deployment and Distribution Command (SDDC) reviews similar exemption requests for ocean liner and intermodal transportation.

  The point of contacts for MSC and SDDC are as follows:

  MSC exemption concurrence requests should be sent to (email preferred):

  Ms. Monica White
  Phone: 757-433-5879
  Email: Monica.L.White@navy.mil with copy to: msc.n101.ffw@navy.mil

  And

  Mr. Kevin Spillane
  Phone: 202-685-5930
  Email: Kevin.Spillane@navy.mil

  SDDC exemption concurrence requests should be sent to (email preferred):

  usarmy.scott.sddc.mbx.ffw-team@mail.mil
  (to the attention of Mr. Jeff Olenick). Please use this e-mail account for all exemption requests. If you would like to speak to someone, please contact:

  Mr. Jeff Olenick
  Military Surface Deployment and Distribution Command
  Phone: 618-220-6507

- MSC or SDDC will in turn consult with the Maritime Administration (MARAD) to ensure that 100% U.S.-flag service is not available and that U.S.-flag vessels are being used to their fullest extent. . After consulting with MARAD, MSC or SDDC will transmit their exemption advice to the DOD contracting officer.

- If the DOD contracting officer receives advice from SDDC or MSC, that U.S.-flag vessels are not available, the DOD contracting officer can grant an exemption allowing combination U.S.-flag / foreign-flag service, or the use of non-U.S.-flag vessel.

- This procedure is to be followed for each shipment, as no blanket exemptions are granted for the length of a project or the length of a contract. However, exemptions have been approved for as much as 60 days when several small shipments take place in a market where U.S.-flag vessel service is not available. Exemptions are rarely granted for more than 60 days as U.S.-flag vessel operators regularly review and change worldwide ocean service.

In summary, when a prime contractor finds that U.S.-flag vessel service is not available, the prime should (1) develop a solution which maximizes the use of U.S.-flag vessels and then (2) contact the DOD contracting officer with the proposed service. This proposed service may include the use of foreign-flag vessels.

The contracting officer will contact MSC or SDDC to ask for their formal advice.

In making sure U.S.-vessel service is used to its fullest extent, these agencies will ask MARAD to provide an assessment of U.S.-flag vessel availability.

If MARAD's analysis validates that the requested use of foreign vessels has taken into account available U.S.-flag vessels, this will be transmitted by MSC or SDDC to the DOD contracting officer who will approve the exemption.

If MARAD identifies U.S.-flag vessels for service, this will also be transmitted by the DOD contracting officer by MSC or SDDC. The DOD contracting officer will then pass this information to the prime contractor for action and the exemption will be denied.

DOD contractors and entities using the established Universal Service Contract (USC) for DOD cargo do not have to follow this waiver procedure as the automated booking process in the USC maximizes the use of U.S.-flag vessels.

Please also note that the DOD contractor is required by regulation to send proof to MARAD and the DOD contracting officer that the U.S-flag shipping requirements have been met.

This proof comes in the form of a completed ocean bill of lading identifying the ocean carrier as U.S. or foreign-flag, as well as other data. This bill of lading reporting requirement applies to all DOD supplies transported by sea, whether U.S.-flag or foreign-flag, and can be found in the DOD contracting regulations at DFARS 252.247-7023(e). Bills of lading can be submitted electronically to: cargo.marad@dot.gov

If you have questions regarding these procedures, please contact the Maritime Administration Office of Cargo and Commercial Sealift at: 202-366-4610.