



U.S. Department of Transportation

Maritime Administration

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Transportation Requirements for Department of Defense Projects in Guam

Special federal transportation laws apply to U.S. Department of Defense (DoD) contractors servicing Guam. In order to be of assistance, the following summary of ocean transportation laws and regulations are provided. If you have additional questions, please contact the Maritime Administration (MARAD) at Cargo.MARAD@dot.gov or by phone at (202) 366-4610.

- The Cargo Preference Act of 1904 (10 U.S.C. 2631) requires that 100% of all supplies purchased for the U.S. military must be carried on U.S.-flag vessels if transported by sea. The following applies to cargoes moving between a foreign country and Guam:
 - The application process requires that the contractor must provide evidentiary emails from U.S.-flag carriers, of which there must be at least two, proving the contractor attempted to secure ocean transportation service from U.S.-flag carriers.
 - Exceptions to the U.S.-flag vessel use requirement can only be provided by the DoD contracting officer in writing, after the contracting officer has received advice from one of the major DOD transportation commands—either Military Sealift Command for full ship charters or the Military Surface and Distribution Command for liner cargo.
 - Per DFARS 252.247-7023, the contractor must submit to the Contracting Officer requests for a waiver to use any form of foreign-flag vessel at least 45 days prior to the sailing date necessary to meet the delivery schedules.
- Cargo moving between the United States and Guam falls into a special category and a waiver may only be granted by the Secretary of the Department of Homeland Security, but only in the interest of national defense.
- If any waiver of the U. S.-flag vessel requirement is approved, the contracting officer should require a downward adjustment of the contract award in

- compensation for the government concession as the original contract required the use of U. S.-flag vessels. MARAD can assist in determining an appropriate adjustment.
- In addition to federal law, DoD contracting regulations (DFARS) require that the contracting officer and MARAD be kept informed of the transportation of goods by sea, and the use of U.S.-flag vessels.
 - Per DFARS 252-247-7022, as amended, DoD solicitations require the bidder to indicate whether it anticipates that supplies will be transported by sea in performance of any contract or subcontract resulting from the solicitation.
 - All DoD supply contracts must include the clause on Transportation of Supplies by Sea (DFARS 252-247-7023), which provides:
 - Contractors shall use U.S.-flag vessels when transporting any supplies by sea under the contract.
 - Subcontractors must use U.S.-flag vessels if:
 - The contract is a construction contract;
 - Supplies are noncommercial items or commercial items that the contractor is reselling to government without adding value;
 - Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or
 - Are commissary or exchange cargoes transported outside of the Defense Transportation System.
 - Supplies include, but are not limited to items for buildings, ships, aircraft, and machine tools, material, equipment, stores, construction materials, etc., and their components incorporated directly into end-products at any level of manufacturing, fabrication, or assembly by the contractor or its subcontractors.
 - Within 30 days after each shipment, the contractor must provide the U.S. government contracting officer and MARAD's Office of Cargo & Commercial Sealift at Cargo.MARAD@dot.gov with a receipt for ocean shipping in the form a rated master bill of lading. A listing of data needed for this are in part (e) of DFARS clause 252.247-7023.
 - DFARS provision 247.301-71 requires an evaluation factor favoring Voluntary Intermodal Sealift (VISA) participants. The order of VISA priority use is:

- U.S.-flag vessel operated by a VISA participant.
 - U.S.-flag vessel operated by a non-VISA participant.
 - If there are no pure U.S.-flag vessels available, then a waiver may be sought to use vessels in the following priority order:
 - Combination U.S.-flag/foreign flag operated by VISA participants
 - Combination U.S.-flag/foreign-flag operated by non-participants
 - U.S.-owned or -operated foreign flag capacity operated by VISA participants.
 - U.S.-owned or -operated foreign flag capacity operated by non- participants.
 - Foreign-owned or -operated foreign-flag capacity operated by non- participants.
 - Buy American Act (41 U.S.C. 10a)—applies to the source of materials used in construction contracts. Construction material must be of domestic (U.S.) origin, or from countries designated as having a World Trade Organization (WTO) Free Trade Agreement with the United States, or designated as least developed, or a Caribbean Basin country. China, Taiwan and Thailand are not designated countries.
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For further assistance, please contact the Maritime Administration's Office of Cargo and Commercial Sealift:

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