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Thomas A. Allegretti
President & CEO

October 2, 2018

Mr. Kenneth D. Allen
Contracting Officer, Strategic Sealift Program Support Office
Military Sealift Command Norfolk
471 East C Street
Norfolk, VA, 23511

Re: Market Survey No. N32205-MS-N321-
18-087

Dear Mr. Allen:

The American Waterways Operators is the national trade association for the tugboat, towboat and barge industry. AWO's more than 200 member companies own and operate barges and towing vessels on the U.S. inland and intracoastal waterways; the Atlantic, Pacific and Gulf coasts; and the Great Lakes. Our industry's 5,500 towing vessels and 31,000 barges comprise the largest segment of the U.S.-flag domestic fleet. Each year, our vessels safely, securely and efficiently move more than 760 million tons of cargo critical to the U.S. economy, including petroleum products, chemicals, coal, grain, steel, aggregates and containers. Tugboats also provide essential services in our nation's ports and harbors, including shipdocking, tanker escort and bunkering. Additionally, several of our members have enrolled in the Voluntary Intermodal Sealift Agreement (VISA) program and participate in the Military Sealift Command's (MSC) contracting and procurement processes to carry cargo for the Department of Defense.

On behalf of AWO's member companies, thank you for the opportunity to comment on MSC's market survey regarding the implementation of Defense Federal Acquisition Regulation (DFAR) 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."

AWO respectfully opposes MSC's proposal to establish a 15 percent cost minimum threshold for the amount of vessel overhaul, repair and maintenance work that must be conducted within a U.S. shipyard in the previous four years in order for the vessel operator to be considered "Category 1," and therefore, a preferred offeror. MSC has not offered any information to help industry to understand why the Command believes proposed change is needed or how it was arrived at, raising the possibility that it is inconsistent with the legislation that created the evaluation preference for domestic shipyard use. Section 1017 of Public Law 364 states that "[i]n order to maintain the national defense industrial base, the Secretary of Defense shall issue an acquisition policy that establishes, as a criterion required to be considered...the

extent to which an offeror...had overhaul, repair, and maintenance work for covered vessels of the offeror performed in shipyards located in the United States.” This preference is an integral part of a larger strategy, which includes the Jones Act and related laws and regulatory policies, to ensure the U.S. maintains a maritime industrial base necessary for national security and wartime mobilization. Key to that industrial base are domestic shipyards and the skilled workers they employ. Without further analysis from MSC, it is impossible to know whether the proposed 15 percent threshold would help or hurt this strategy. It may, in fact, disincentivize use of domestic shipyards by allowing contracts to be awarded to low-price offerors that are able to outbid their competition by utilizing a higher percentage of lower-cost foreign shipyards.

Further, MSC has not provided industry with an adequate notice and comment period. Allowing the public less than four days to comment on a solicitation that was posted in the late afternoon on a Friday does not engender public trust in the transparency and fairness of this determination, nor does it comply with the Administrative Procedure Act.

For these reasons, AWO encourages MSC to withdraw the 15 percent threshold proposal and revert to the previous evaluation language in its requests for proposal until it can provide appropriate justification for a change and adequate analysis of its impacts. Should MSC determine changes to its application of Public Law 364’s mandate are necessary, the Command should provide adequate time for affected parties to provide input.

Our industry sees itself as a partner to MSC. Not just as a contracting partner, but as a steadfast ally—demonstrated through programs like VISA—in maintaining U.S. military readiness and maritime security. We would be pleased to answer any questions or provide further information to assist MSC in implementing DFAR 252.247-7026.

Sincerely,



Thomas A. Allegretti
President & CEO