The American Waterways Operators

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Thomas A. Allegretti
President & CEO

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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, Amendment 0001

Dear Mr. Allen:

The American Waterways Operators is the national trade association for the tugboat, towboat and barge industry. AWO's more than 300 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 extending the comment period, which has given us the opportunity submit these supplemental comments on MSC's market survey regarding the implementation of Defense Federal Acquisition Regulation Supplement (DFARS) 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 continues to respectfully oppose MSC's proposal to establish a 15 percent minimum cost 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. We oppose this change because 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 statute 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 the maritime industrial base necessary for national security and wartime mobilization. The proposed 15 percent threshold stands in direct opposition to this strategy as it would, 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 conducting a higher percentage of repair and maintenance work in lower-cost foreign shipyards. Giving a company that conducts only 15 percent of its fleet's repair and maintenance work in the U.S. equal consideration with a company that utilizes U.S. shipyards for 100 percent of its repair and maintenance activities does not promote – and in fact, discourages – the use of domestic shipyards.

Further, MSC has still not provided industry with any explanation of the rationale for the change or the methodology used to arrive at the proposed 15 percent threshold. In addition, while AWO appreciates MSC's decision to provide an additional 28 days for public comment, MSC has not followed what we believe to be the proper regulatory process for making changes to DFARS. DFARS 201.3 requires that changes to contract clauses and solicitation provisions that constitute a significant revision "shall be…[p]ublished for comment in the Federal Register" and approved by the Under Secretary of Defense for Acquisition, Technology, and Logistics. That stipulation relies on the definition of "significant revision" at Subpart 1.501-1 of the Federal Acquisition Regulations (FAR). AWO believes MSC's proposed change constitutes a "significant revision" to a local clause because it is a revision that alters the substantive meaning of the existing contracting preference and has "significant effect beyond the internal operating procedures of the issuing agency." Additionally, FAR 1.501-2 requires that a "minimum of 30 and, normally, at least 60 days will be given for the receipt of comments."

For these reasons, AWO encourages MSC to withdraw the 15 percent threshold proposal and revert to the previous evaluation language in its solicitation. Should MSC determine that changes to its application of Public Law 364's mandate are necessary, the Command should provide public notice of its justification for the proposed revision and adequate time for affected parties to provide input in accordance with the DFARS' publication requirements.

We reiterate that our industry sees itself as a partner with, and an ally of, MSC 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 DFARS 252.247-7026.

Sincerely,

Thomas A. Allegretti
President & CEO