

April 14, 2021



GEN Stephen R. Lyons
Commander
United States Transportation Command
508 Scott Drive
Scott AFB, IL 62225

Dear General Lyons,

On January 25, 2021, President Biden issued Executive Order 14005 on “Ensuring the Future is Made in All of America by All of America’s Workers.” That order directs the U.S. government, including military departments, to use “federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States.” Additionally, the order instructs agencies to “consider suspending, revising, or rescinding” actions and policies that are inconsistent with the Executive Order.

To act upon the President’s order, United States Transportation Command (USTRANSCOM) and the Military Sealift Command (MSC) should modify their policy regarding the procurement preference of coastwise and noncontiguous carriage by vessel for offerors that conduct vessel overhaul, repair, and maintenance work in U.S. shipyards.

The John Warner National Defense Authorization Act for Fiscal Year 2007 required the Department of Defense to establish acquisition policy that considers “the extent to which an offeror of such carriage had overhaul, repair, and maintenance work for covered vessels of the offeror performed in shipyards located in the United States.”¹ That requirement was codified in Defense Federal Acquisition Regulation Supplement (DFARS) 252.247-7026, which requires inclusion of the following clause in Department of Defense acquisition of carriage by vessel for cargo in the coastwise and noncontiguous trades:

“This solicitation includes an evaluation criterion that considers the extent to which the offeror has had overhaul, repair, and maintenance work for covered vessels performed in U.S. shipyards.”²

Congress’ intent was clear in adopting this mandate to “maintain the national defense industrial base,” and you have spoken of the critical role of “the commercial transportation industry” in augmenting USTRANSCOM’s capacity to operate in peace and in war.³ America’s domestic maritime vessel operators are that capacity, but they rely on a strong domestic, commercial shipyard industry to maintain their vitality and readiness. You have warned of the National

¹ Public Law 109-364, Sec. 1017. *Obtaining Carriage by Vessel: Criterion Regarding Overhaul, Repair, and Maintenance of Vessels in the United States.*

² 46 CFR § 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.*

³ General Stephen R. Lyons, *Statement Before the Senate Armed Services Committee on the State of the Command, February 2020.*

Defense Strategy’s imperative to be able to “project and sustain the Joint Force under persistent, all-domain attack” and the work of adversaries to “infiltrate contract value chains.”

Yet despite that recognized role of the domestic maritime industry in supporting USTRANSCOM’s capability, and the need for a secure industrial value chain to support it, in late 2018 MSC finalized a contracting interpretation of DFARS 252.247-7026 that granted equal preference to an offeror that had performed as little as 15% of its overhaul, repair, and maintenance work in a U.S. shipyard to an offeror that had performed 100% of its work in a U.S. shipyard. MSC has indicated that it developed that policy in consultation with USTRANSCOM, which has a similar policy. Since that time, MSC has modified its criterion to now provide equal consideration to an offeror performing 50% of overhaul, repair, and maintenance work in a foreign shipyard as to an offeror performing 100% of its work domestically.

Not only are USTRANSCOM’s and MSC’s interpretations counter to Congress’ intent, but they create an increasing vulnerability for USTRANSCOM’s ability to project and sustain forces. The current policy interpretations create a race-to-the-bottom that drives vessel operators to utilize foreign shipyards in the pursuit of obtaining government contracts – foreign shipyards that could be geographically, politically, or commercially controlled by adversaries in a “persistent, all-domain attack.”

That risk can be mitigated by directing USTRANSCOM and MSC to only grant the acquisition preference to offerors that perform 100% of overhaul, repair, and maintenance work in U.S. shipyards.⁴ Congress’ intent was clear, and the President’s Executive Order makes it imperative to promptly review and correct these contradictory policy interpretations in support of America’s workers, America’s defense industrial base, and America’s security.

Sincerely,

Jennifer Carpenter
President & CEO
The American Waterways Operators

Matthew Paxton
President
Shipbuilders Council of America

CC:

Rear Adm. Michael A. Wettlaufer, Commander, Military Sealift Command
Sen. Jack Reed, Chairman, Senate Committee on Armed Services
Sen. James Inhofe, Ranking Member, Senate Committee on Armed Services
Sen. Tim Kaine, Chairman, Subcommittee on Readiness and Management Support
Sen. Dan Sullivan, Ranking Member, Subcommittee on Readiness and Management Support
Rep. Adam Smith, Chairman, House Armed Services Committee
Rep. Mike Rogers, Ranking Member, House Armed Services Committee

⁴ DFARS 252.247-7026(c)(3) provides a limited exception for overhaul, repair, and maintenance work performed in a foreign shipyard “due to accident, emergency, Act of God, or an infirmity to the vessel” if warranted for the safety of the vessel and crew and when work performed in a foreign shipyard “was paid or reimbursed by the U.S. Government.”

Rep. John Garamendi, Chairman, Subcommittee on Readiness

Rep. Doug Lamborn, Ranking Member, Subcommittee on Readiness

Brian Deese, Director, National Economic Council

Cedric Richmond, Senior Advisor to the President and Director, Office of Public Engagement