

**TITLE: CIB 96-68 - Class Deviation from the FAR Cargo Preference Clause**

December 20, 1996

MEMORANDUM FOR ALL CONTRACTING OFFICERS AND NEGOTIATORS

FROM: M/OP, Marcus L. Stevenson, Procurement Executive

SUBJECT: Class Deviation from the FAR Cargo Preference Clause

**CONTRACT INFORMATION BULLETIN 96 - 28**

The Cargo Preference Act of 1954 requires that Federal Agencies use U.S. Flag vessels for at least 50% of all ocean shipments of U.S. financed goods, and the implementing FAR clause, FAR 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels, requires compliance on an individual contract basis. As USAID meets the requirements of the Cargo Preference Act on a program basis, it is not always appropriate to include FAR 52.247-64 in every contract.

I have approved a class deviation (copy attached) to use an alternate prescription and clause in the following circumstances:

- 1) when carriage on a foreign flag vessel(s) has been fixed at the time of the contract;
- 2) when an entire shipment is fixed on a U.S. vessel(s) at the time of award; and
- 3) when contracts are for transportation services only.

This class deviation also exempts us from the use of FAR 52.247-64 in the Commercial Items clause, 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders - Commercial Items, when the above circumstances apply.

The prescription and clause are set out in the deviation, and will be incorporated into the AIDAR shortly.

You are advised to include the evaluation procedures/criteria for the shipping portion(s) of affected acquisitions in the appropriate Uniform Contract Format (UCF) sections.

Attachment: a/s

December 18, 1996

ACTION MEMORANDUM TO THE PROCUREMENT EXECUTIVE

THRU: M/OP/OD, James D. Murphy

FROM: M/OP/P, Kathleen J. O'Hara

Subject: Class Deviation from the FAR Cargo Preference Clause,  
OP-DEV-96-2c

Problem: We are requesting a class deviation from FAR 52.247-64, Preference for Privately Owned U.S.-flag Commercial Vessels, and its corresponding prescription at FAR 47.507(a), which prescribes its inclusion in all contracts involving ocean transportation of supplies. FAR 52.247-64 implements the Cargo Preference Act of 1954, which mandates the use of U.S. flag vessels for at least 50% of all ocean shipments of U.S.-financed goods, by requiring compliance on an individual contract basis.

Discussion: USAID implements the Cargo Preference Act on a program basis so that the requirement for compliance is spread proportionally among recipient countries. As set forth in the Strategic Objective (SO) agreements, Recipient countries have a responsibility for meeting Cargo Preference Act requirements, but can take advantage of lower foreign flag rates for some shipments when they are offset by equivalent tonnage on U.S. flag carriers. Under USAID programs, there are three situations when the clause at FAR 52.247-64 would be inappropriate:

- 1) when carriage on a foreign flag vessel(s) is fixed at the time of the contract;
- 2) when an entire shipment is fixed on a U.S. vessel(s) at the time of award; and
- 3) when contracts are for transportation services only.

MARAD recognizes and approves USAID's practice of complying with the Cargo Preference Act on a program basis due to the fact that in the aggregate, at least 50% of all ocean transportation of USAID financed goods occurs on U.S. flag vessels. Below is a table taken from MARAD reports to this end for the years 1991-95, as required by FAR 47.606(d), summarizing compliance for programs financed by USAID Grants, which covers transportation financed under direct contracts. Discrepancies are explained in note (1) shown below.

Year	Percent U.S. Flag (tonnage)
1994	72.9%
1993	94.3%
1992	47.2% (1)
1991	46.9% (1)
1990	91.0%

- (1) "The U.S. flag percentage figure reflects an overall non-compliance position. However MARAD determined that the U.S.-flag bulkers were not available for 12,477 metric tons nor tankers for 25,387 metric tons. Based on this determination the bulkers still do not meet the statutory requirement; however the program overall did reach the required 50 percent."

We would like approval to use an alternate prescription rather than the one used at 47.507(a), and to include the following USAID-specific clause in lieu of FAR 52.247-64 in the situations discussed herein.

The prescription would read as follows:

Sec. 747.507 Preference for Privately Owned U.S.-Flag Commercial Vessels

The clause at 752.247-70 shall be inserted in solicitations and contracts solely for ocean transportation services, and in solicitations and contracts for goods and ocean transportation services when the ocean transportation will be fixed at the time the contract is awarded. FAR clause 52.247-64 shall be used as prescribed in FAR 27.507(a) in other situations.

The clause would read as follows:

752.247-70 Preference for Privately Owned U.S.-Flag Commercial Vessels

As prescribed in 747.507, insert the following clause:

Preference for Privately Owned U.S.-Flag Commercial Vessels  
(Oct 1996)

(a) Under the provisions of the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) at least 50 percent of the gross tonnage of equipment, materials, or commodities financed by USAID, or furnished without provision for reimbursement, or at least 75 percent of the gross tonnage of cargo moving under P.L. 480 financed by the U.S. Department of Agriculture, that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers) shall be transported in privately owned U.S.-flag commercial vessels.

(b) In accordance with USAID regulations and consistent with the regulations of the Maritime Administration, USAID applies Cargo Preference requirements on the basis of programs or activities that generally include more than one contract. Thus, the amount of cargo fixed on privately owned U.S.-flag vessels under this contract may be more or less than the required 50 or 75 percent, depending on current compliance with Cargo Preference requirements.

If freight under the contract is fixed on a U.S. flag vessel, Alternate I of this clause shall apply.

(c) (1) The contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Division of National Cargo, Office of Cargo Preference, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, and (ii) the Transportation Division, Office of Procurement, USAID, Washington, DC 20523-1419.

(2) The contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (A) Sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in pounds and cubic feet if available.
- (I) Total ocean freight revenue in U.S. dollars.

Alternate I.

(d) If freight is fixed on a U.S. flag vessel, except as provided in paragraph (e), the contractor shall use privately owned U.S. flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this contract.

(e) If such vessels are not available, or not available at rates that are fair and reasonable for privately owned U.S. flag commercial vessels, the Contractor shall notify the contracting officer and request either (1) authorization to ship in foreign-flag vessels or (2) designation of available U.S.-flag vessels. If the Contractor is authorized in writing by the Contracting Officer to ship the supplies in foreign-flag vessels, the contract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and foreign-flag vessels.

[End of clause]

We will modify the AIDAR accordingly. This class deviation will expire two years from the signature date, or when incorporated into the AIDAR, whichever is first. In accordance with CIB 95-12, coordination with the Civilian Agency Acquisition Council (CAAC) is no longer required for class deviations to non-statutory requirements, but we are required to submit a copy of approved class deviations.

Recommendation: That you approve this class deviation by signing below, sign the attached CIB to inform contracting staff of the deviation, and sign the attached letter to the CAAC.

APPROVED: /s/

DISAPPROVED: \_\_\_\_\_

DATED: 12/20/96

December 20, 1996

Mr. Albert Vicchiolla  
Chairman, Civilian Agency  
Acquisition Council  
General Services Administration  
Office of Acquisition Policy  
Washington, D.C. 20405

Dear Mr. Vicchiolla:

SUBJECT: Agency-Approved Class Deviation to FAR 52.247-64,  
Preference for Privately Owned U.S.-Flag Commercial  
Vessels

For several reasons the FAR Clause 52.247-64 on "Preference for Privately Owned U.S.-Flag Vessels" is not appropriate for USAID's procurements in all the cases for which it is prescribed in FAR 47.507(a). As an example, USAID complies with Cargo Preference on a program basis and may award contracts that will result in cargo moving exclusively on U.S. or foreign flag vessels. Also, USAID enters into some contracts that are solely for ocean transportation services. Thus, it is necessary to deviate from the FAR provisions at 47.507(a) and 52.247-64 to implement a USAID-specific clause.

As this agency has been designated a reinvention laboratory, I have approved a class deviation to the Cargo Preference Act clause under the authority established by the National Performance Review. Enclosed is a copy of the signed deviation laboratories.

If you have any questions regarding this matter, please contact Ms. Kathleen J. O'Hara, Chief, Procurement Policy Division, USAID, at (703) 875-1534.

Sincerely,

/s/

Marcus L. Stevenson  
Director  
Office of Procurement  
Acting USAID Procurement Executive

Enclosure: a/s