

service that would not involve an analysis of freight. However, in all such cases, commodities would be transported in compliance with cargo preference requirements. Examples of extenuating circumstances are events such as internal strife at the foreign destination or urgent humanitarian conditions threatening the lives of persons at the foreign destination. Other types of services may include, but are not limited to, multi-trip voyage charters, indefinite delivery/indefinite quantity (IDIQ), delivery cost and freight (C & F), delivery cost insurance and freight (CIF), and indexed ocean freight costs.

(4) If a contracting officer determines that action may be appropriate under paragraph (a)(3) of this section, prior to the acceptance of any applicable offer, the contracting officer will provide to the Head of Contracting Activity Designee a written request to obtain commodities and freight in a manner other than on a lowest landed cost basis consistent with Title 48 Code of Federal Regulations. This request shall include a statement of the reasons for not using lowest landed cost basis. The Head of the Contracting Activity Designee, or the designee one level above the contracting officer, may either accept or reject this request and shall document this determination.

(b) *Multiple offers or delivery points.* If more than one offer for the sale of commodities is received or more than one delivery point has been designated in such offers, in order to achieve a combination of a freight rate and commodity award that produces the lowest landed cost for the delivery of the commodity to the foreign destination, the contracting officer shall evaluate offers submitted on a delivery point by delivery point basis; however, consideration shall be given to prioritized ocean transport service in determining lowest landed cost.

(c) *Freight shipping and rates.* (1) In determining the lowest-landed cost, the Department shall use the freight rates offered in response to solicitations issued by the Department or, if applicable, the grantee organization.

(2) Freight rates offered must be submitted as specified in the solicitation issued by the Department or, if appli-

cable, the grantee organization. Any such solicitation issued by a grantee organization must contain the following elements:

(i) If directed by the Department, include a closing time for the receipt of written freight offers and state that late written freight offers will not be considered;

(ii) Provide that freight offers are required to have a canceling date no later than the last contract lay day specified in the solicitation;

(iii) Provide the same deadline for receipt of written freight offers from both U.S. flag vessel and non-U.S. flag vessels; and

(iv) Be received and opened prior to any related offer for acquisition of commodities to be shipped.

(3) The Department may require organizations that will receive commodities from the Department to submit information relating to the capacity of a U.S. port, or, if applicable, a terminal, prior to the acquisition of such commodities or freight.

(d) *Freight rate notification.* If the Department is not the party procuring freight with respect to a shipment of an agricultural commodity for delivery to a foreign destination, the organization that will receive commodities from the Department, or its shipping agent, shall be notified by the Department of the vessel freight rate used in determining the commodity contract award and the organization will be responsible for finalizing the charter or booking contract with the vessel representing the freight rate.

470.202 Acquisition of commodities for United States Agency for International Development (USAID) programs.

(a) *Lowest landed cost and delivery considerations.* (1) Except as provided in paragraphs (a)(3) and (e)(2) of this section, with respect to the acquisition of agricultural commodities for delivery to foreign destinations and related freight to transport such commodities under Title II of Public Law 480, contracts will be entered into in a manner that will result in the lowest landed cost of such commodity delivery to the

intended destination. This lowest landed cost determination shall be calculated on the basis of rates and service for that portion of the commodities being purchased that is determined is necessary and practicable to meet 46 U.S.C. 55314(c)(3) and cargo preference requirements and on an overall (foreign and U.S. flag) basis for the remaining portion of the commodities being procured and the additional factors set forth in this section. Accordingly, the solicitations issued with respect to a commodity procurement or a freight procurement will specify that in the event an offer submitted by a party is the lowest offered price, the contracting officer reserves the right to reject such offer if the acceptance of another offer for the commodity or freight, when combined with other offers for commodities or freight, results in a lower landed cost to USAID.

(2) The Department may contact any port prior to award to determine the port's cargo handling capabilities, including the adequacy of the port to receive, accumulate, handle, store, and protect the cargo. Factors which will be considered in this determination will include, but not be limited to, the adequacy of building structures, proper ventilation, freedom from insects and rodents, cleanliness, and overall good housekeeping and warehousing practices. The Department may consider the use of another coastal range or port if a situation exists at a port that may adversely affect the ability of the Department to have the commodity delivered in a safe and/or timely manner. Such situations include:

- (i) A port is congested;
- (ii) Port facilities are overloaded;
- (iii) A vessel would not be able to dock and load cargo without delay;
- (iv) Labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; or
- (v) Other similar situation that may adversely affect the ability of the Department to have the commodity delivered in a timely manner.

(3) *Use of other than lowest landed cost.* In order to ensure that commodities are delivered in a timely fashion to foreign destinations and without damage, the Department may complete an acquisition without regard to the lowest

land cost process set forth in paragraph (a)(1) of this section, if:

(i) The solicitation specifies that the lowest land cost process will not be followed in the completion of the contract; or

(ii) After issuance of the solicitation, it is determined that:

(A) Internal strife at the foreign destination or urgent humanitarian conditions threatens the lives of persons at the foreign destination;

(B) A specific port's cargo handling capabilities (including the adequacy of the port to receive, accumulate, handle, store, and protect commodities) and other similar factors will adversely affect the delivery of such commodities without damage or in a timely manner. Such similar factors include, but are not limited to: port congestion; overloaded facilities at the port; vessels would not be able to dock and load cargo without delay; labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; and the existence of inadequate or unsanitary warehouse and other supporting facilities;

(C) The total transit time of a carrier, as it relates to a final delivery date at the foreign destination may impair the ability of the Department to achieve timely delivery of the commodity; or

(D) Other similar situations arise that materially affect the administration of the program for which the commodity or freight is being procured.

(4) If the contracting officer determines that action may be appropriate under paragraph (a)(3) of this section, prior to the acceptance of any applicable offer, the contracting officer shall provide to the head of contracting activity designee and to USAID, a written request to obtain commodities and freight in a manner other than on a lowest landed cost basis. This request shall include a statement of the reasons for not using lowest landed cost basis. The head of contracting authority designee, or one level above the contracting officer, with the concurrence of USAID, shall, on an expedited basis, either accept or reject this request and shall document this determination in writing and provide a copy to USAID.

(b) *Freight shipping and rates.* (1) In determining lowest-landed cost as specified in paragraph (a) of this section, the Department shall use vessel rates offered in response to solicitations issued by USAID or grantee organizations receiving commodities under 7 U.S.C. 1731 *et seq.*

(2) USAID may require, or direct a grantee organization to require, an ocean carrier to submit offers electronically through a Web-based system maintained by the Department. If electronic submissions are required, the Department may, at its discretion, accept corrections to such submissions that are submitted in a written form other than by use of such Web-based system.

(c) *Delivery date.* The contracting officer shall consider total transit time, as it relates to a final delivery date, in order to satisfy Public Law 480 Title II program requirements.

(d) *Delivery points.* (1) Commodities offered for delivery free alongside ship Great Lakes port range or intermodal bridge-point Great Lakes port range that represent the overall (foreign and U.S. flag) lowest landed cost will be awarded on a lowest landed cost basis. Tonnage allocated on this basis will not be reevaluated on a lowest landed cost U.S.-flag basis unless the contracting officer determines that 25 percent of the total annual tonnage of bagged, processed, or fortified commodities furnished under 7 U.S.C. 1731 *et seq.* has been, or will be, transported from the Great Lakes port range during that fiscal year.

(2) The contracting officer shall consider commodity offers as offers for delivery “intermodal bridge-point Great Lakes port range” only if:

(i) The offer specifies delivery at a marine cargo-handling facility that is capable of loading ocean going vessels

at a Great Lakes port, as well as loading ocean going conveyances such as barges and container vans, and

(ii) The commodities will be moved from one transportation conveyance to another at such a facility.

(e) *Multiple awards or delivery points.* (1) If more than one offer for the sale of commodities is received or more than one delivery point has been designated in such offers, in order to achieve a combination of a freight rate and commodity award that produces the lowest landed cost for the delivery of the commodity to the foreign destination, the contracting officer shall evaluate offers submitted on a delivery point by delivery point basis; however, consideration shall be given to prioritized ocean transport service in determining lowest landed cost.

(2) The contracting officer may determine that extenuating circumstances preclude awards on the basis of lowest landed cost. However, in all such cases, commodities may be transported in compliance with cargo preference requirements as determined by USAID.

(3) The contracting officer shall notify USAID or, if applicable, the grantee organization, that its shipping agent will be notified of the vessel freight rate used in determining the commodity contract award. The grantee organization or USAID will be responsible for finalizing the charter or booking contract with the vessel representing the freight rate so used.

470.203 Cargo preference.

An agency having responsibility under this subpart shall administer its programs, with respect to this subpart, in accordance with regulations prescribed by the Secretary of Transportation.