be available from foreign-flag carriers. Therefore, a lower price for use of a foreign-flag vessel is not a sufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a price differential may indicate a need for further review:

(B) Consider, accordingly, not only excessive profits to the carrier (to include vessel owner or operator), if ascertainable, but also excessive costs to the Government (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition) resulting from the use of U.S.-flag vessels in extraordinarily inefficient circumstances; and

(C) Include an analysis of whether the cost is excessive, taking into account factors such as—

(1) The differential between the freight charges proposed by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis;

(2) A comparison of U.S.-flag rates charged on comparable routes;

(3) Efficiency of operation regardless of rate differential (e.g., suitability of the vessel for the required transportation in terms of cargo requirements or vessel capacity, and the commercial reasonableness of vessel positioning required); and

(4) Any other relevant economic and financial considerations.

(ii) The contracting officer must forward the report to—

(A) The Commander, MSC, through the Contracts and Business Management Directorate, MSC; or

(B) The Commander, through the SDDC global e-mailbox: sddc.ops.ffw@us.army.mil and the Principal Assistant Responsible for Contracting, SDDC.

(iii) If in agreement with the contracting officer, the Commander, MSC, or the Commander, SDDC, will forward the report to the Secretary of the Navy or the Secretary of the Army, respectively, for a determination as to whether the proposed freight charges are excessive or otherwise unreasonable.

(1) The Commander, MSC, or the Commander, SDDC, determines that no U.S.-flag vessels are available.
   (i) The Commander, MSC, and the Commander, SDDC, are authorized to make any determinations as to the availability of U.S.-flag vessels to ensure the proper use of Government and private U.S. vessels.
   (ii) The contracting officer must request such determinations—
   (A) For voyage and time charters, through the Contracts and Business Management Directorate, MSC; and
   (B) For ocean and intermodal transportation of DoD and DoD-sponsored cargoes, as applicable under contracts awarded by SDDC, including contracts for shipment of military household goods, through the Chiefs of the SDDC Ocean Cargo Clearance Authority.
   (iii) In the absence of regularly scheduled U.S.-flag service to fulfill stated DoD requirements under SDDC solicitations or rate requests, the Commander, SDDC, may grant, on a case-by-case basis, an on-going nonavailability determination for foreign-flag service approval with pre-determined review date(s);

(2) The contracting officer determines that the U.S.-flag carrier has proposed to the Government freight charges that are higher than charges to private persons for transportation of like goods, and obtains the approval of the Commander, MSC, or the Commander, SDDC; or
(3) The Secretary of the Navy or the Secretary of the Army determines that the proposed freight charges for U.S.-flag vessels are excessive or otherwise unreasonable.
   (i) After considering the factors in 247.573–1(c)(3)(i)(A) and (B), if the contracting officer concludes that the freight charges proposed by U.S.-flag carriers may be excessive or otherwise unreasonable, the contracting officer must prepare a report in determination and finding format that includes, as appropriate—
   (A) An analysis of the carrier’s costs in accordance with FAR Subpart 15.4, or profit in accordance with 215.404–4. The costs or profit should not be so high as to make it unreasonable to apply the preference for U.S.-flag vessels;
   (B) A description of efforts taken pursuant to FAR 15.405, to negotiate a reasonable price. For the purpose of FAR 15.405(d), this report is the referral to a level above the contracting officer; and
   (C) An analysis of whether the costs are excessive (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition), taking into consideration factors such as those listed at 247.573–1(c)(3)(i)(C).
   (ii) The contracting officer must forward the report to—
   (A) The commander, MSC, through the Contracts and Business Management Directorate, MSC; or
   (B) The Commander, SDDC, through the Principal Assistant Responsible for Contracting, SDDC.
   (iii) If an agreement with the contracting officer, the Commander, MSC, or the Commander, SDDC, will forward the report to the Secretary of the Navy or the Secretary of the Army, respectively, for a determination as to whether the proposed freight charges are excessive or otherwise unreasonable.


247.573–3 Annual reporting requirement.
   (a) No later than February 15th of each year, departments and agencies shall—
   (1) Prepare a report containing all information received from all offerors in response to the provision at 252.247–7026 during the previous calendar year; and
   (2) Submit the report to: Directorate of Acquisition, U.S. Transportation Command, ATTN: TCAQ, 508 Scott Drive, Scott AFB, IL 62225–5357.

[72 FR 49206, Aug. 28, 2007, as amended at 73 FR 7911, Nov. 24, 2008]

247.574 Solicitation provisions and contract clauses.
   (a)(1) Use the provision at 252.247–7022, Representation of Extent of