U.S. Department of Homeland Security

United States Coast Guard

Director
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16713/5/2
September 24, 2013

Greggory B. Mendenhall, Esq.
Sheppard, Mullin, Richter & Hampton LLP
30 Rockefeller Plaza
New York, NY 10112-0015

Dear Mr. Mendenhall:

We refer to your letter of May 7, 2013, and its supporting exhibits, wherein you requested a determination pursuant to 46 C.F.R. § 67.97 as to the construction by National Steel and Shipbuilding Company ("NASSCO") of two (2), options for three (3), 3,100 TEU dual fuel (LNG and MGO) containerships (individually the "Vessel" and collectively the "Vessels") for TOTE Shipholdings, Inc. at NASSCO's shipyard in San Diego, California.

We also acknowledge receipt of and have taken into consideration your letter of August 12, 2013, and its supporting exhibits, which was received in response to our request by e-mail dated July 23, 2013, for additional information concerning your proposed use of foreign-fabricated container hold hatch covers.

The Vessels are intended to be steel with a fully welded upper deck with forecastle, aft sunken deck, a raked stem with bulbous bow, a transom stern with open water type stern frame, a full spade rudder and a fixed pitched propeller directly driven by a dual fuel burning engine. Two LNG fuel tanks will be arranged aft of the accommodations.

As the Vessels are intended to be documented in the United States with coastwise endorsements, you have requested confirmation that NASSCO's proposed procurement and build details for the construction of these new Vessels is consistent with applicable United States build requirements and that their construction in the manner described will not adversely affect their United States build determination and eligibility to operate in the coastwise trades of the United States.

Your letter noted that NASSCO intends to employ the same design, material procurement and build processes for the construction of these Vessels as were employed by NASSCO for its PC-1 tankers. Those processes and the construction of the PC-1 series of tankers were the subject of determination letters issued by this office on April 11, 2006, May 24, 2006, and May 22, 2007 by which, taken together, we confirmed that the procurement and build processes described would not adversely affect the status of those vessels as built in the United States. Moreover, those processes were again the subject of a favorable determination letter issued by this office on January 8, 2008 with respect to NASSCO's PC-2 tankers and, subsequent to that, a favorable determination letter issued by this office on February 10, 2009, with respect to the construction of certain containerships.

As with those previous cases, NASSCO is under contract to purchase the vessel design, as well as most of the equipment and material necessary to construct each vessel, with the exceptions of most steel plate, flat bar, weld rod and paint to obtain from a Korean source, or that source's suppliers, all of which are outside of the United States. The balance of your letter contains an analysis and discussion, with citations to past determination letters, of the foreign steel and

fabricated components, equipment and outfitting items that will be used to construct and assemble the Vessels in NASSCO's shipyard in San Diego, California.

In order for the Vessels to be documented in the United States with coastwise endorsements entitling them to be operated in the domestic trades of the United States they must be deemed to have been built in the United States. In order for that to be the case, their construction must satisfy both of the requirements of 46 C.F.R. § 67.97; namely:

> "To be considered built in the United States a vessel must meet both of the following criteria:
>
> (a) All major components of its hull and superstructure are fabricated in the United States; and
>
> (b) The vessel is assembled entirely in the United States."

In addition, the following definitions at 46 C.F.R. § 67.3 are pertinent to the application of those requirements:

> ***"Hull*** means the shell, or outer casing, and internal structure below the main deck which provide both the flotation envelope and structural integrity of the vessel in its normal operations... (portions omitted)"

and

> ***"Superstructure*** means the main deck and any other structural part above the main deck."

Consistent with your understanding of these requirements your letter proceeds to raise and address, and request determinations as to, certain specific aspects of the proposed construction. As an aid to our review of certain of those issues, we requested a review and analysis by the Coast Guard's Naval Architecture Division ("NAD") and the report of their findings, dated September 19, 2013, is attached hereto as Exhibit A and incorporated herein by reference.

Specialty Steel Plate, Slabs and Asian Angles

You have reported that, due to unavailability from United States sources, NASSCO intends to obtain from foreign sources certain specialty steel plate and structural flats or "slabs" as well as certain metric sized structural shapes, or angle types, referred to as "Asian angles" or as "unequal" or "inverted" angles.

All of these materials are to be imported and received at NASSCO's shipyard in San Diego, California, as rolled raw stock from the steel mills. All fabrication and assembly processes, including marking, cutting, drilling, beveling, bending or otherwise preparing the steel for use in the vessels will be performed at NASSCO's shipyard.

This practice is consistent with numerous past Coast Guard determinations that there is no regulatory or statutory limit on the amount of foreign materials, such as steel, which may be used in the construction of a vessel considered to be built in the United States provided that, as has

been represented will be the case here, the steel is not worked in any way and that it is imported in standard shapes and sizes as produced at the mill.

Foreign Fabricated Components of the Hull and Superstructure

You have further reported that NASSCO intends to incorporate into the Vessels' hull and superstructure certain foreign fabricated components, all as itemized in exhibits to your submission.

With regard to these foreign fabricated components, we refer to the NAD report and conclusions (Exhibit A). We note that the total weight of the itemized foreign fabricated components of the Vessels' hull and superstructure has been determined, upon review by the NAD, to be 67.2 metric tons (consisting of 59.3 metric tons attributable to hull castings and 7.9 metric tons attributable to LL-required closures). This figure excludes from consideration the combined steelweight of the foreign-fabricated cargo hatch covers, as further discussed below.

The NAD also calculated the discounted steelweight for each Vessel as 9,823.5 metric tons. Consequently, the steelweight of the foreign-fabricated components represents 0.6841% of the approximate steelweight of each Vessel's discounted steelweight. This percentage is well below the standard of 1.50% of a vessel's discounted steelweight for determination of "major components" under the regulatory and statutory requirement.

Foreign Fabricated and Assembled Equipment and Outfitting

Finally, you have reported that NASSCO intends to utilize certain foreign-fabricated and assembled modules, sub-assemblies, equipment and outfitting in the construction of the Vessels. All of such proposed modules and sub-assemblies are represented to be self-supporting, free-standing units, independent of the Vessels' structure, which would include equipment, piping, and a local steel support or skid. Although a precise list of such units has not been finalized and, as such, was not included in your submission, you have represented that all would meet this general description, would be assembled into the Vessels in NASSCO's shipyard, and can be grouped into the following main categories: engine room modules, equipment modules, tank-top assemblies, and LNG fuel storage system.

In accordance with past determinations, as well as the decision in Philadelphia Metal Trades Council v. Allen, 2008 WL 4003380 (E.D. Pa., August 21, 2008), we do not find that the requirements of 46 C.F.R. § 67.97(b) are adversely implicated by the use of the foreign-fabricated and assembled items as described.

You have also reported that NASSCO is considering the use of the following:

(i) Foreign fabricated container cell guides and lashing bridges to facilitate loading and unloading of cargo containers onto the vessels. Although the cell guide and lashing bridge assemblies will be cut and welded together into multiple assemblies by a foreign supplier, they will be installed into the Vessels' cargo holds at NASSCO's shipyard and any structural supports, internal supports and structures, foundations and reinforcements will be fabricated and installed in the Vessels at NASSCO's shipyard as well.

And,

(ii) Foreign fabricated container hold hatch covers which support the loading of containers above each cargo hold and offer weather-tight protection to each hold but do not provide structural integrity to the Vessels' hull.

With regard to the former, it is consistent with past determinations that cell guides and associated stowage systems be considered as outfitting items and not part of the vessel's hull or superstructure.

With regard to the latter, the NAD has reviewed the cargo hatch covers in this case and, from its perspective and for reasons it has articulated in Exhibit A, has concluded that they ought not to be considered as part of the hull and, as such, should be excluded from the steelweight calculation of foreign-fabricated components of the hull. The outcome of the NAD review as to the cargo hatch covers in this case is consistent with the outcomes reached by a long line of past determinations by the Coast Guard (by the National Vessel Documentation Center as well as by its predecessors) when called upon to address the subject of cargo hatch covers generally in the context of U.S. build determinations. Consequently, we concur with that outcome in this case in that it is consistent with the application of that precedent.

In light of all of the foregoing, and based upon all of the information you have provided, we confirm that NASSCO's proposed procurement and build details for the dual fuel containerships, as described by your letters of May 7, 2013, and August 12, 2013, together with their supporting exhibits, will not adversely affect the determination of their status as having been built in the United States at NASSCO's shipyard in San Diego, California.

Sincerely,

Timothy V. Skuby
Captain, USCG Retired
Director