

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Vessel Documentation Center

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16713/8  
March 20, 2019

Marjorie F. Krumholz, Esq.  
Thompson Coburn LLP  
1909 K Street, N.W.  
Suite 600  
Washington, DC 20006

Dear Ms. Krumholz:

I am writing in response to your letter of March 12, 2019, by which you have sought confirmation that following consummation of the transactions described, the vessels at issue which are currently used in the coastwise trade will continue to be eligible to be so documented and used.

A company that has been identified to us as Infrastructure and Industrial Constructors USA Holdings, Inc., a Delaware corporation, (the "Company") is a diversified heavy civil and industrial contractor which provides design-build services for projects mainly in the transportation, infrastructure and industrial sectors. Because those projects are routinely adjacent to or over bodies of water the Company and its subsidiaries own a fleet of vessels such as deck barges, construction platforms and pushboats (collectively, the "Vessels"). Most of these Vessels are excluded from federal documentation because they measure less than 5 net tons but would otherwise qualify for the coastwise trade. Those Vessels that are federally documented are eligible for coastwise trade endorsements because the Company is a citizen of the United States for the purposes of the coastwise trade.

Because of the nature of the use of those Vessels to push construction platforms into place where they often remain in the same location for the extended periods required to complete projects, you have noted that the Company only has a small number of employees whose work functions include vessel operations.

A Delaware corporation that is not a coastwise citizen (the "Purchaser") intends to purchase 100% of the issued and outstanding stock of the Company. In order to ensure that, after the consummation of the purchase, the Company will continue to have access to the Vessels as necessary to conduct its business, a transaction with the features set forth in summary below has been described by your letter.

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At or prior to its closing with the Purchaser, the Company, through its subsidiaries, will sell the Vessels to a newly-established entity ("NewCo"). The sale will be at estimated fair market value and will be financed through a combination of equity and debt.

NewCo, in its formation (whether as a limited liability company or a corporation), governance and equity ownership will be structured such that it meets in all respects the citizenship requirements for owners of vessels eligible to be documented to engage in the coastwise trade.

With regard to its equity, U.S. citizens will hold at least 75% of the common shares of NewCo and the Company will hold no more than 25% of the common shares. U. S. citizens will hold 100% of preferred shares. The common shareholders will have voting rights for all actions of NewCo, including without limitation, election of officers and approval of the annual budget in accordance with that proportionate ownership. As a minority shareholder, the Company will have typical minority shareholder information and approval rights as to certain extraordinary matters which have been set forth in an exhibit to your letter. However, the Company will not have the right to control the appointment of more than a minority of a quorum of the Board of NewCo.

The shareholders will share in the profits and losses of NewCo based upon their proportionate ownership of the common shares.

The Company will provide an interest-bearing loan to NewCo with a ten (10) year maturity. In the event that NewCo elects to sell a vessel it will be required to prepay a proportionate part of the loan unless the proceeds of that sale are utilized to acquire new Vessel(s).

NewCo will not be co-located with the Company or any of its subsidiaries and will not have corporate or maritime counsel, nor accountants, in common. They may continue to use the same insurance broker but will have separate policies.

NewCo and a subsidiary of the Company will enter into an arms-length administrative services agreement for the provision of certain administrative services to NewCo substantially as were set forth in an exhibit to your letter.

NewCo will directly employ personnel to handle the Vessels' operations and services.

Consistent with our suggestion and perhaps with your original intent in any event, independent auditors have reviewed the transaction structure and have advised the Purchaser that they agree with the determination of management that NewCo would not be under the control of the Company and thus its financial statements would not have to be consolidated pursuant to US GAAP.

The Company and its subsidiaries will obtain the use of the Vessels as necessary for their business projects by entering into Time Charters for an initial term of ten (10) years and will pay charter hire to NewCo in components consisting of basic hire, for the cost of capital, operating hire, for vessel operating expenses, and a management fee, for the vessel management services provided by NewCo.

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The Time Charters will be industry standard arrangements, a form of which accompanied your letter as an exhibit. During their term, NewCo will retain complete dominion and control over the operation of the Vessels. However, the Company and its subsidiaries (the time charterers) will have the right (consistent with the rights of time charterers) to direct the timing and location of Vessel movements.

Finally, the form of the Time Charter was submitted to the Maritime Administration concurrently with your letter to me with your request that they confirm that it is a contract subject to the general approval provided in 46 C.F.R. § 221.13(a). By letter to you dated March 15, 2019, a copy of which you have provided to us, the Maritime Administration has so confirmed.

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As you know, our process for consideration of requests such as the one you have submitted is not an investigative process. We evaluate an applicant's proposal as submitted and, other than inquiries when appropriate to seek clarification or a better understanding of the presentation, we do not investigate the assertions that have been made or facts that may have been omitted. This approach while a matter of practical necessity, is also consistent with the self-certifying nature of vessel documentation generally in which we must and do rely upon the applicant's certification of the completeness and accuracy of the information submitted. We then determine and, when appropriate, offer confirmation based on the information submitted that the requirements of applicable vessel documentation laws and regulations appear to have been met. The fundamental principle that compliance with the vessel documentation laws and regulations is ultimately the responsibility of the vessel owner remains intact.

In light of the above, the conclusion I reach here is based upon the information and descriptions you have provided and is subject to the material accuracy and completeness of that information. That having been said, I find and confirm that as described, NewCo, the proposed purchaser of the Vessels currently used in the coastwise trade, will be a U.S. citizen within the meaning of 46 U.S.C. § 50501 and eligible to document those Vessels with a coastwise endorsement under 46 U.S.C. § 12112 following consummation of the transactions presented for our review.

Sincerely,



Christina G. Washburn  
Director