

SUBCHAPTER A—GENERAL

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36284, July 31, 1991, unless otherwise noted.

Subpart 201.1—Purpose, Authority, Issuance

201.103 Applicability.

The FAR and the Defense Federal Acquisition Regulation Supplement (DFARS) also apply to purchases and contracts by DoD contracting activities made in support of foreign military sales or North Atlantic Treaty Organization cooperative projects without regard to the nature or sources of funds obligated, unless otherwise specified in this regulation.

201.104 Issuance.

201.104-3 Copies.

Copies of the DFARS in loose-leaf and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325. Purchase of a copy of DFARS includes a subscription for Defense Acquisition Circulars.

Subpart 201.2—Administration

201.201 Maintenance of the FAR.

201.201-1 The two councils.

(c) The composition and operation of the DAR Council is prescribed in DoD Directive 5000.35, Defense Acquisition Regulatory System.

(d)(i) Departments and agencies process proposed revisions of FAR or DFARS through channels to the Director of the DAR Council. Process the proposed revision as a memorandum in the following format, addressed to the Director, DAR Council, OUSD(A&T), 3062 Defense Pentagon, Washington, DC 20301-3062; datafax (703) 602-0350:

I. Problem: Succinctly state the problem created by current FAR and/or DFARS coverage and describe the factual and/or legal reasons necessitating regulatory change.

II. Recommendation: Identify the FAR and/or DFARS citations to be revised. Attach as TAB A a copy of the text of the existing coverage, conformed to include the proposed additions and deletions. Indicate deleted coverage with dashed lines through the current words being deleted and insert proposed language in brackets at the appropriate locations within the existing coverage. If the proposed deleted portion is extensive, it may be outlined by lines forming a box with diagonal lines drawn connecting the corners.

III. Discussion: Include a complete, convincing explanation of why the change is necessary and how the recommended revision will solve the problem. Address advantages and disadvantages of the proposed revision, as well as any cost or administrative impact on Government activities and contractors. Identify any potential impact of the change on automated systems, e.g., automated financial and procurement systems. Provide any other background information that would be helpful in explaining the issue.

IV. Collaterals: Address the need for public comment (FAR 1.301(b) and subpart 1.5), the Paperwork Reduction Act, and the Regulatory Flexibility Act (FAR 1.301(c)).

V. Deviations: If a recommended revision of DFARS is a FAR deviation, identify the deviation and include under separate TAB a justification for the deviation, which addresses the requirements of 201.402(3). The justification should be in the form of a memorandum for the USD(A&T)DP.

(ii) The public may offer proposed revisions of FAR or DFARS by submission of a memorandum, in the format (including all of the information) prescribed in paragraph (d)(i) of this subsection, to the Director of the DAR Council.

[56 FR 36284, July 31, 1991, as amended at 60 FR 61591, Nov. 30, 1995; 61 FR 50451, Sept. 26, 1996]

Subpart 201.3—Agency Acquisition Regulations

201.301 Policy.

(a) DoD implementation and supplementation of the FAR is issued in the Defense Federal Acquisition Regulation Supplement (DFARS) under authorization and subject to the authority, direction, and control of the Secretary of Defense.

(b) When FEDERAL REGISTER publication is required for any policy, procedure, clause, or form, the department or agency requesting USD(A&T) approval for use of the policy, procedure, clause, or form (see 201.304(1)) must include an analysis of the public comments in the request for approval.

[56 FR 36284, July 31, 1991, as amended at 60 FR 61591, Nov. 30, 1995]

201.303 Publication and codification.

(a)(i) The DFARS is codified under chapter 2 in title 48, Code of Federal Regulations.

(ii) To the extent possible, all DFARS text (whether implemental or supplemental) is numbered as if it were implemental. Supplemental numbering is used only when the text cannot be integrated intelligibly with its FAR counterpart.

(A) Implemental numbering is the same as its FAR counterpart, except when the text exceeds one paragraph,

the subdivisions are numbered by skipping a unit in the FAR 1.104–2(b)(2) prescribed numbering sequence. For example, three paragraphs implementing FAR 19.501 would be numbered 219.501 (1), (2), and (3) rather than (a), (b), and (c). Three paragraphs implementing FAR 19.501(a) would be numbered 219.501(a) (i), (ii), and (iii) rather than (a) (1), (2), and (3). Further subdivision of the paragraphs follows the prescribed numbering sequence, e.g., 219.501(1)(i)(A)(1)(j).

(B) Supplemental numbering is the same as its FAR counterpart, with the addition of a number of 70 and up or (S–70) and up. Parts, subparts, sections, or subsections are supplemented by the addition of a number of 70 and up. Lower divisions are supplemented by the addition of a number of (S–70) and up. When text exceeds one paragraph, the subdivisions are numbered using the FAR 1.104–2(b)(2) prescribed sequence, without skipping a unit. For example, DFARS text supplementing FAR 19.501 would be numbered 219.501–70. Its subdivisions would be numbered 219.501–70 (a), (b), and (c).

(C) Subdivision numbering below the 4th level does not repeat the numbering sequence. It uses italicized Arabic numbers and then italicized lower case Roman numerals.

(D) An example of DFARS numbering is in Table 1–1, DFARS Numbering.

(iii) Department/agency and component supplements must parallel the FAR and DFARS numbering, except department/agency supplemental numbering uses subsection numbering of 90 and up, instead of 70 and up.

TABLE 1–1—DFARS NUMBERING

FAR	Is implemented as	Is supplemented as
19	219	219.70
19.5	219.5	219.570
19.501	219.501	219.501–70
19.501–1	219.501–1	219.501–1–70
19.501–1(a)	219.501–1(a)	219.501–1(a)(S–70)
19.501–1(a)(1)	219.501–1(a)(1)	219.501–1(a)(1)(S–70)

201.304 Agency control and compliance procedures.

Departments/agencies and their component organizations may issue acquisition regulations as necessary to implement or supplement the FAR or DFARS.

(1) Approval of the USD(A&T) is required, before inclusion in a department/agency or component supplement or any other contracting regulatory document such as a policy letter, or clause book, of any policy, procedure, clause, or form which—

(i) Has a significant effect beyond the internal operating procedures of the agency; or

(ii) Has a significant cost or administrative impact on contractors or offerors.

(2) The USD(A&T) has delegated authority to the USD(A&T)DP to approve or disapprove the policies, procedures, clauses, and forms subject to paragraph (1) of this section.

(3) Approval of USD(A&T)DP is required for any class deviation (as defined in FAR subpart 1.4) from the FAR or DFARS, before its inclusion in a department/agency or component supplement or any other contracting regulatory document such as a policy letter or clause book.

(4) Each department and agency shall develop and, upon approval by USD(A&T)DP, implement, maintain, and comply with a plan for controlling the use of clauses other than those prescribed by FAR or DFARS.

(5) Departments/agencies submit requests for the USD(A&T) and USD(A&T)DP approvals required by this section through the Director of the DAR Council.

(6) Revisions to the DFARS are issued through Defense Acquisition Circulars or Departmental Letters.

(i) Defense Acquisition Circulars—

(A) Are issued on a quarterly basis to all recipients of the DFARS.

(B) Are published in the FEDERAL REGISTER.

(C) Include, in addition to DFARS revisions, policies, directives, and informational items.

(D) Include the effective dates for use of the revisions, policies, or directives. The effective date means the date on which the revisions, policies, or direc-

tives must be applied. Unless stated otherwise in the circular, any new or revised clauses, provisions, or forms must be included in solicitations issued on or after that date.

(ii) Departmental Letters—

(A) Are issued as necessary to the departments and agencies when time is of essence in disseminating a revision, policy, or directive.

(B) Are effective until the revision, policy, or directive is superseded by publication of the material in a Federal Acquisition Circular, Defense Acquisition Circular, or other directive or is specifically withdrawn.

[56 FR 36284, July 31, 1991, as amended at 60 FR 61591, Nov. 30, 1995]

Subpart 201.4—Deviations From the FAR**201.402 Policy.**

(1) The Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), USD(A&T)DP, is the approval authority within the DoD for—

(i) Any individual deviation from—

(A) FAR/DFARS Section 3.104, Procurement integrity;

(B) FAR/DFARS Subpart 27.4, Rights in Data and Copyrights;

(C) FAR/DFARS Subpart 31.1, Applicability (contract cost principles);

(D) FAR/DFARS Subpart 31.2, Contracts with Commercial Organizations; or

(E) FAR/DFARS Part 32, Contract Financing (except 32.7, 32.8, and the payment clauses prescribed by 32.1).

(ii) Any class deviation.

(2) Individual deviations.

(i) Except as provided in paragraph (2)(ii) of this section, individual deviations, other than those in paragraph (1)(i) of this section, must be approved in accordance with the department/agency plan prescribed by 201.304(4).

(ii) Contracting officers outside the United States are authorized to deviate from prescribed non-statutory FAR and DFARS clauses when contracting for support services, supplies, or construction, with the governments of North Atlantic Treaty Organization (NATO) countries or other allies (as described in 10 U.S.C. 2341(2)), or with United Nations or NATO organizations.

This authority shall be exercised only if such governments or organizations will not agree to the standard clauses.

(3) Submit requests for deviation approval through department/agency channels to the approval authority in paragraph (1) or (2), as appropriate. Submit deviations which require USD(A&T)DP approval through the Director of the DAR Council. At a minimum, each request must—

(i) Identify the department/agency, and component if applicable, requesting the deviation;

(ii) Identify the FAR or DFARS citation from which a deviation is needed, state what is required by that citation, and indicate whether an individual or class deviation is requested;

(iii) Describe the deviation and indicate which of paragraphs (a) through (f) of FAR 1.401 best categorizes the deviation.

(iv) State whether the deviation will have a significant effect beyond the internal operating procedures of the agency and/or a significant cost or administrative impact on contractors or offerors, and give reasons to support the statement;

(v) State the period of time for which the deviation is required;

(vi) State whether approval for the same deviation has been received previously, and if so, when;

(vii) State whether the proposed deviation was published (see FAR subpart 1.5 for publication requirements) in the FEDERAL REGISTER and provide analysis of comments;

(viii) State whether the request for deviation has been reviewed by legal counsel, and if so, state results; and

(ix) Give detailed rationale for the request. State what problem or situation will be avoided, corrected, or improved if request is approved.

[56 FR 36284, July 31, 1991, as amended at 60 FR 61591, Nov. 30, 1995; 61 FR 50451, Sept. 26, 1996]

201.403 Individual deviations.

See approval requirements in 201.402.

201.404 Class deviations.

See approval requirements in 201.402.

Subpart 201.6—Contracting Authority and Responsibilities

201.602 Contracting officers.

201.602–2 Responsibilities.

Contracting officers may designate qualified personnel as their authorized representatives to assist in the technical monitoring or administration of a contract. A contracting officer's representative (COR)—

(1) Must be a Government employee, unless otherwise authorized in agency regulations.

(2) Must be qualified by training and experience commensurate with the responsibilities to be delegated in accordance with department/agency guidelines.

(3) May not be delegated responsibility to perform functions at a contractor's location that have been delegated under FAR 42.202(a) to a contract administration office.

(4) May not be delegated authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract.

(5) Must be designated in writing, and a copy furnished the contractor and the contract administration office,—

(i) Specifying the extent of the COR's authority to act on behalf of the contracting officer;

(ii) Identifying the limitations on the COR's authority;

(iii) Specifying the period covered by the designation;

(iv) Stating the authority is not re-delegable; and

(v) Stating that the COR may be personally liable for unauthorized acts.

(6) Must maintain a file for each contract assigned. This file must include, as a minimum—

(i) A copy of the contracting officer's letter of designation and other documentation describing the COR's duties and responsibilities; and

(ii) Documentation of actions taken in accordance with the delegation of authority.

201.602-70 Contract clause.

Use the clause at 252.201-7000, Contracting Officer's Representative, in solicitations and contracts when appointment of a contracting officer's representative is anticipated.

201.603 Selection, appointment, and termination of appointment.**201.603-2 Selection.**

(1) Pursuant to 10 U.S.C. 1724, beginning October 1, 1993, in order to qualify to serve as a contracting officer with authority to award or administer contracts for amounts above the small purchase threshold in FAR 13.000, a person must—

(i) Have completed all mandatory contracting courses required for a contracting officer at the grade level, or in the position within the grade of the General Schedule in which the person is serving;

(ii) Have at least two years experience in a contracting position;

(iii) Have—

(A) Received a baccalaureate degree from an accredited educational institution;

(B) Completed at least 24 semester credit hours, or equivalent, of study from an accredited institution of higher education in any of the following disciplines: Accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management; or

(C) Passed an examination considered to demonstrate skills, knowledge, or abilities comparable to that of an individual who has completed at least 24 semester credit hours, or equivalent, of study from an accredited institution of higher education in any of the disciplines in paragraph (1)(iii)(B) of this subsection; and

(iv) Meet such additional requirements, based on the dollar value and complexity of the contracts awarded or administered in the position as may be established by the Secretary of Defense.

(2) The requirements in 201.603-2(1)(iii) do not apply to any employee who, as of October 1, 1991, had at least 10 years experience in acquisition positions, in comparable positions in other

government agencies or the private sector, or in similar positions in which the individual obtained experience directly relevant to the field of contracting.

(3) The requirements in 201.603-2(1) do not apply to any employee for purposes of qualifying to serve in the position in which the employee is serving on October 1, 1993, or any other position in the same grade and involving the same level of responsibilities as the position in which the employee is serving on that date.

(4) Waivers may be authorized. Information on waivers is contained in DoD Manual 5000.52-M, Career Development Program for Acquisition Personnel.

[58 FR 28463, May 13, 1993]

201.603-3 Appointment.

Certificates of Appointment executed under the Armed Services Procurement Regulation or the Defense Acquisition Regulation have the same effect as if they had been issued under FAR.

PART 202—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

Subpart 202.1—Definitions**202.101 Definitions.**

Contracting activity for DoD also means elements designated by the director of a defense agency which has been delegated contracting authority through its agency charter. DoD contracting activities are—

DEPARTMENT OF DEFENSE

Real Estate and Facilities Directorate,
Washington Headquarters Services
Defense Evaluation Support Activity
Department of Defense Office of Dependents
Schools
Office of Civilian Health and Medical Program of the Uniformed Services

ARMY

Contract Support Agency
Office of the Deputy Chief of Staff for Procurement, Headquarters, U.S. Army Materiel Command
Armament Munitions and Chemical Command
Missile Command

Research Laboratory
 Communications-Electronics Command
 Troop Support Agency
 Troop Support Command
 Tank-Automotive Command
 Aviation Systems Command
 Training and Doctrine Command
 Test and Evaluation Command
 Forces Command
 Health Services Command
 Military District of Washington
 U.S. Army, Europe
 National Guard Bureau
 Corps of Engineers
 Information Systems Command
 Medical Research and Development Com-
 mand
 U.S. Army, Pacific
 Military Traffic Management Command
 Space and Strategic Defense Command
 Eighth U.S. Army
 Depot System Command
 Intelligence and Security Command
 U.S. Army South
 Defense Supply Service—Washington
 Directorate of Information Systems for Com-
 mand, Control, Communications and Com-
 puters, Office of the Secretary of the Army
 U.S. Army Special Operations Command

NAVY

Deputy, Acquisition and Business Manage-
 ment, Office of the Assistant Secretary of
 the Navy (Research, Development, and Ac-
 quisition)
 Directorate of Procurement Policy, Office of
 the Assistant Secretary of the Navy (Re-
 search, Development, and Acquisition)
 Naval Air Systems Command
 Space and Naval Warfare Systems Command
 Naval Facilities Engineering Command
 Naval Inventory Control Point
 Naval Sea Systems Command
 Naval Supply Systems Command
 Office of Naval Research
 Military Sealift Command
 Strategic Systems Programs
 Headquarters, U.S. Marine Corps
 Marine Corps Systems Command
 Installations and Logistics, Headquarters,
 U.S. Marine Corps

AIR FORCE

Office of the Deputy Assistant Secretary
 (Contracting)
 Air Force Materiel Command
 Air Combat Command
 Air Mobility Command
 Air Education and Training Command
 Pacific Air Forces
 United States Air Forces in Europe
 Air Force Space Command

DEFENSE ADVANCED RESEARCH PROJECTS
 AGENCY

Office of the Deputy Director, Management

DEFENSE INFORMATION SYSTEMS AGENCY

Headquarters, Defense Information Systems
 Agency
 Defense Commercial Communications Office

DEFENSE INTELLIGENCE AGENCY

Office of Procurement

DEFENSE LOGISTICS AGENCY

Office of the Executive Director, Contract
 Management
 Office of the Executive Director, Contracting
 Defense Supply Centers
 Defense Personnel Support Center

DEFENSE MAPPING AGENCY

Headquarters, Office of Acquisition, Installa-
 tions and Logistics

DEFENSE SPECIAL WEAPONS AGENCY

Headquarters, Defense Special Weapons
 Agency

NATIONAL SECURITY AGENCY

Headquarters, National Security Agency

ON-SITE INSPECTION AGENCY

Acquisition Management Office

BALLISTIC MISSILE DEFENSE ORGANIZATION

Headquarters, Ballistic Missile Defense Or-
 ganization

UNITED STATES SPECIAL OPERATIONS
 COMMAND

Headquarters, United States Special Oper-
 ations Command

Contracting officer's representative
 means an individual designated and au-
 thorized in writing by the contracting
 officer to perform specific technical or
 administrative functions.

Departments and agencies, as used in
 DFARS, means the military depart-
 ments and the defense agencies. The
 military departments are the Depart-
 ments of the Army, Navy, and Air
 Force (the Marine Corps is a part of the
 Department of the Navy). The defense
 agencies are the Defense Advanced Re-
 search Projects Agency, the Defense
 Commissary Agency, the Defense Infor-
 mation Systems Agency, the Defense
 Intelligence Agency, the Defense Invest-
 igative Service, the Defense Logistics
 Agency, the Defense Mapping Agency,
 the Defense Special Weapons Agency,
 the National Security Agency, the On-
 Site Inspection Agency, the Ballistic
 Missile Defense Organization, and the

Department of Defense

202.101

United States Special Operations Command.

Department of Defense (DoD), as used in DFARS, means the Department of Defense, the military departments, and the defense agencies.

Executive agency means for DoD, the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force.

Head of the agency, means for DoD, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force. Subject to the direction of the Secretary of Defense, the Under Secretary of Defense (Acquisition), and the Director of Defense Procurement, the directors of the defense agencies have been delegated authority to act as head of the agency for their respective agencies (i.e., to perform functions under the FAR or DFARS reserved to a head of agency or agency head), except for such actions that by terms of statute, or any delegation, must be exercised within the Office of the Secretary of Defense.

Senior procurement executive, means for DoD—

Department of Defense (including the defense agencies)—Under Secretary of Defense (Acquisition & Technology);

Department of the Army—Assistant Secretary of the Army (Research, Development and Acquisition);

Department of the Navy—Assistant Secretary of the Navy (Research, Development and Acquisition);

Department of the Air Force—Assistant Secretary of the Air Force (Acquisition).

The directors of the defense agencies have been delegated authority to act as senior procurement executive for their respective agencies, except for such actions that by terms of statute, or any delegation, must be exercised by the Under Secretary of Defense (Acquisition & Technology).

[56 FR 36287, July 31, 1991, as amended at 56 FR 67212, Dec. 30, 1991; 57 FR 42629, Sept. 15, 1992; 59 FR 27668, May 27, 1994; 60 FR 29497, June 5, 1995; 60 FR 61591, Nov. 30, 1995; 61 FR 7741, Feb. 29, 1996; 61 FR 50451, Sept. 26, 1996]

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.

Subpart 203.1—Safeguards

- 203.103 Independent pricing.
- 203.103-2 Evaluating the certification.
- 203.104 Procurement integrity.
- 203.104-4 Definitions.
- 203.104-5 Disclosure of proprietary and source selection information.
- 203.170 Statutory prohibitions on compensation to former DoD employees.
- 203.170-1 Policy.
- 203.170-2 Reporting requirements.
- 203.170-3 Penalties.
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Subpart 203.2—Contractor Gratuities to Government Personnel

- 203.203 Reporting suspected violations of the Gratuities clause.

Subpart 203.3—Reports of Suspected Antitrust Violations

- 203.301 General.

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- 203.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 203.5—Other Improper Business Practices

- 203.502 Subcontractor kickbacks.
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- 203.570 Employment prohibitions on persons convicted of fraud or other DoD contract-related felonies.
- 203.570-1 Scope.
- 203.570-2 Policy.
- 203.570-3 Waiver.
- 203.570-4 Reporting.
- 203.570-5 Contract clause.

Subpart 203.7—Voiding and Rescinding Contracts

- 203.703 Authority.

Subpart 203.70—Contractor Standards of Conduct

- 203.7000 Policy.
- 203.7001 Procedures.
- 203.7002 Contract clause.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36288, July 31, 1991, unless otherwise noted.

Subpart 203.1—Safeguards

203.103 Independent pricing.

203.103-2 Evaluating the certification.

(b)(3) The contracting officer also shall report the matter in accordance with 209.406-3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

203.104 Procurement integrity.

203.104-4 Definitions.

(c)(2) Each order under a basic ordering agreement is a separate procurement action.

203.104-5 Disclosure of proprietary and source selection information.

(e)(4) For purposes of FAR 3.104-5(e)(4) only, DoD follows the notification procedures in FAR 27.404(h). However, the first sentence in FAR 27.404(h) does not apply to DoD.

203.170 Statutory prohibitions on compensation to former DoD employees.

203.170-1 Policy.

(a) 10 U.S.C. 2397b prohibits DoD officials who left DoD service on or after April 16, 1987, and who, while serving with the DoD, performed acquisition related functions in connection with a major defense contractor, from accepting compensation from that contractor for a period of two years after the officials have left service with the DoD. Additional DoD implementation of the statute is in DoD Directive 5500.7, Standards of Conduct. (See the clause at 252.203-7000, Statutory Prohibition on Compensation to Former Department of Defense Employees, for definition of terms.) The prohibitions in 10 U.S.C. 2397b do not apply to contractors that supply only commercial items to DoD.

(b) Section 507 of the Ethics Reform Act of 1989 suspended the prohibitions of 10 U.S.C. 2397b from December 1, 1989, to November 30, 1990. Section 815 of the 1991 DoD Authorization Act (Pub. L. 101-510) continued the suspension from December 1, 1990, through May 31, 1991. During the period of the

suspension, the clause which appeared at 252.203-7002, Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former Department of Defense (DoD) Employees, was inserted in solicitations and contracts, but the provision of the clause that prohibited the offering of compensation to a person if the compensation would violate 10 U.S.C. 2397b, and the remedies for violating that provision, were not applied.

[56 FR 36288, July 31, 1991, as amended at 60 FR 61591, Nov. 30, 1995]

203.170-2 Reporting requirements.

Paragraph (c) of the clause at 252.203-7000, Statutory Prohibitions on Compensation to Former Department of Defense Employees, requires major defense contractors to report on the employment of certain former DoD employees.

203.170-3 Penalties.

(a) Major defense contractors are subject to the following penalties for knowing failure to comply with the statute, the contractual prohibition, or the reporting requirements—

(1) Civil fines up to \$500,000 for knowingly offering or providing compensation to another person with knowledge that acceptance of that compensation is or would be in violation of the statute.

(2) Liquidated damages in the amount of either \$100,000 or three times the amount of compensation paid by the contractor to the former DoD official, whichever is greater, for failure to comply with the contract prohibition.

(3) An administrative penalty not to exceed \$10,000 for failure to report as required by the statute and as implemented in the clause at 252.203-7000, Statutory Prohibitions on Compensation to Former Department of Defense Employees.

(b) Liquidated damages will be assessed in accordance with agency procedures in coordination with the Designated Agency Ethics Official.

203.170-4 Contract clause.

Use the clause at 252.203-7000, Statutory Prohibitions on Compensation to

Department of Defense

203.570-3

Former Department of Defense Employees, in all solicitations and contracts expected to exceed \$100,000, except solicitations and contracts for commercial items.

[60 FR 61591, Nov. 30, 1995]

Subpart 203.2—Contractor Gratuities to Government Personnel

203.203 Reporting suspected violations of the Gratuities clause.

Report suspected violations of the Gratuities clause in accordance with 209.406-3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

Subpart 203.3—Reports of Suspected Antitrust Violations

203.301 General.

(b) Report suspected antitrust violations in accordance with 209.406-3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

Subpart 203.4—Contingent Fees

203.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(b) Report suspected fraud or other criminal conduct in accordance with 209.406-3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

Subpart 203.5—Other Improper Business Practices

203.502 Subcontractor kickbacks.

Report suspected violations of the Anti-Kickback Act in accordance with 209.406-3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

203.502-2 General.

(h) The DoD Inspector General has designated Special Agents of the following investigative organizations as representatives for conducting inspections and audits under the Anti-Kickback Act of 1986:

(i) U.S. Army Criminal Investigation Command.

(ii) Naval Criminal Investigative Service.

(iii) Air Force Office of Special Investigations.

(iv) Defense Criminal Investigative Service.

[56 FR 36288, July 31, 1991, as amended at 60 FR 29497, June 5, 1995]

203.570 Employment prohibitions on persons convicted of fraud or other DoD contract-related felonies.

203.570-1 Scope.

This subpart prescribes policies and procedures to implement 10 U.S.C. 2408.

203.570-2 Policy.

(a) Contractors or subcontractors shall not knowingly allow a person, convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD, to serve—

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract; or,

(2) On its board of directors; or

(3) As a consultant, agent, or representative.

(b) The period covered by the prohibition in paragraph (a) of this subsection is for five years from the date of conviction unless waived in the interest of national security by the agency head or designee.

203.570-3 Waiver.

(a) The contracting officer shall—

(1) Review any request for waiver; and

(2) Deny the request if the contracting officer decides the waiver is not required in the interests of national security; or

(3) Forward the request to the head of the agency or designee for approval if the contracting officer decides the waiver may be in the interest of national security.

(b) The head of the agency or designee shall report all waivers granted, and the reasons for granting the waiver, to the Under Secretary of Defense (Acquisition), who will forward the report to Congress as required by 10 U.S.C. 2408(a)(3).

203.570-4 Reporting.

When a Defense contractor or first-tier subcontractor is found in violation of the prohibition in 203.570-2, the contracting officer shall report the matter in accordance with 209.406-3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

203.570-5 Contract clause.

Use the clause at 252.203-7001, Special Prohibition on Employment, in all solicitations and contracts exceeding the simplified acquisition threshold in FAR part 13, except solicitations and contracts for commercial items.

[60 FR 61592, Nov. 30, 1995]

Subpart 203.7—Voiding and Rescinding Contracts

203.703 Authority.

The authority to act for the agency head under this subpart is limited to a level no lower than an official who is appointed by and with the advice of the Senate, without power of redelegation. For the defense agencies, for purposes of this subpart, the agency head designee is the Under Secretary of Defense (Acquisition & Technology).

[56 FR 36288, July 31, 1991, as amended at 60 FR 61592, Nov. 30, 1995]

Subpart 203.70—Contractor Standards of Conduct

203.7000 Policy.

Government contractors must conduct themselves with the highest degree of integrity and honesty. Contractors should have standards of conduct and internal control systems that—

- (1) Are suitable to the size of the company and the extent of their involvement in Government contracting,
- (2) Promote such standards,
- (3) Facilitate timely discovery and disclosure of improper conduct in connection with Government contracts, and
- (4) Ensure corrective measures are promptly instituted and carried out.

203.7001 Procedures.

(a) A contractor's system of management controls should provide for—

- (1) A written code of business ethics and conduct and an ethics training program for all employees;
- (2) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with standards of conduct and the special requirements of Government contracting;
- (3) A mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports;
- (4) Internal and/or external audits, as appropriate;
- (5) Disciplinary action for improper conduct;
- (6) Timely reporting to appropriate Government officials of any suspected or possible violation of law in connection with Government contracts or any other irregularities in connection with such contracts; and
- (7) Full cooperation with any Government agencies responsible for either investigation or corrective actions.

(b) Contractors who are awarded a DoD contract of \$5 million or more must display DoD Hotline Posters prepared by the DoD Office of the Inspector General unless—

- (1) The contract will be performed in a foreign country; or
- (2) The contractor has established an internal reporting mechanism and program, as described in paragraph (a) of this section.

203.7002 Contract clause.

Use the clause at 252.203-7002, Display of DoD Hotline Poster, in solicitations and contracts expected to exceed \$5 million, except when performance will take place in a foreign country.

PART 204—ADMINISTRATIVE MATTERS

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36289, July 31, 1991, unless otherwise noted.

Subpart 204.1—Contract Execution

204.101 Contracting officer's signature.

(a)(i) Include the contracting officer's telephone number on contracts and modifications.

(ii) The contracting officer may sign bilateral modifications of a letter contract before signature by the contractor.

Subpart 204.2—Contract Distribution

204.201 Procedures.

(1) The procuring contracting officer (PCO) retains the original signed contract for the official contract file. Administrative contracting officers and terminations contracting officers provide the original of each modification to the PCO for retention in the official contract file. Unless otherwise directed by department/agency procedures, the office issuing the orders maintains the original of orders under basic ordering agreements and the original of provisioning orders.

(2) Ensure that distribution of contracts and modifications is consistent with security directives.

(e)(i) Distribute one copy of each of the following types of contracts or modifications to the appropriate Defense Contract Audit Agency (DCAA) field audit office (listed in the DCAA Directory—Headquarters and Field Offices)—

(A) Cost reimbursement;

(B) Time-and-materials;

(C) Labor-hour;

(D) Fixed price contracts with provisions for redetermination, incentives, economic price adjustment, or cost allowability; and

(E) Any other contract that requires audit service.

(ii) If there is a question as to the appropriate DCAA field audit office, request the assistance of the DCAA procurement liaison auditor or the nearest DCAA field audit office.

(f) Provide two copies to offices performing contract administration support functions.

[56 FR 36289, July 31, 1991, as amended at 59 FR 27668, May 27, 1994]

204.202 Agency distribution requirements.

(1) Distribute copies of contracts as follows—

(i) Four copies to the contract administration office (send simultaneously with the copy furnished under FAR 4.201(b));

(ii) One copy to each consignee indicated in the contract. A transshipping terminal is not a consignee.

(A) Inventory control points that have an automated uniform inventory control point data base that interfaces with consignees may use their automated procedure rather than sending a written copy of the contract. However, when inspection is required at destination, send a written copy to the consignee.

(B) The Defense Logistics Agency is authorized to prescribe alternate procedures for distribution of contract documents in Defense Subsistence Region, Europe;

(iii) Two copies to the military interdepartmental purchase request requiring activity in the case of coordinated acquisition;

(iv) One copy to the contract administration office (CAO) automatic data processing point, except when the DoDAAD code is the same as that of either the CAO or payment office (see DLAH 4105.4, DoD Directory of Contract Administration Services Components); and

(v) One copy, or an extract of the pertinent information, to the cognizant Defense Investigative Service office listed in DoD 5100.76-M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives, when the clause at 252.223-7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives, is included in the contract.

(2) The activity executing a contract modification shall furnish a copy of the basic contract and all modifications to—

(i) The new and old payment office when adding or changing a payment office;

(ii) The new contract administration office, a new consignee or other activity, based on the extent to which each activity is concerned with the basic contract and modifications.

(3) Distribution of modifications issued to provide initial or amended shipping instructions under 204.7004(c)(3)(iii) and 204.7004(f) may be limited to the following—

(i) Contractor, one copy;

(ii) Receiving activity, one copy each;

(iii) Contract administration office, one copy;

(iv) Payment office, one copy; and

(v) Contract administration office automatic data processing point, one copy.

(4) Distribution of modifications generated by automated means (computer programs) may be limited to the following—

(i) Contractor, one copy;

(ii) Contract administration office, one copy;

(iii) New payment office, one copy;

(iv) Procuring contracting office, one copy;

(v) Funding activities, one copy to each; and

(vi) Consignee, one copy to each.

[56 FR 36289, July 31, 1991, as amended at 61 FR 7742, Feb. 29, 1996]

Subpart 204.4—Safeguarding Classified Information Within Industry

204.402 General.

(1) Subpart 239.74 contains policy and procedures for securing telecommunications between Government agencies and contractors and subcontractors.

(2) Pursuant to section 808 of Pub. L. 102-190, DoD employees or members of the Armed Forces who are assigned to or visiting a contractor facility and are engaged in oversight of an acquisition program will retain control of their work product. Classified work products of DoD employees or members of the Armed Forces shall be handled in accordance with DoD 5220.22-M, Industrial Security Manual, and DoD 5220.22-R, Industrial Security Regulation. Contractor procedures for protecting against unauthorized disclosure of information shall not require DoD employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to a contractor.

[57 FR 14992, Apr. 23, 1992]

204.404 Contract clause.

204.404-70 Additional contract clauses.

(a) Use the clause at 252.204-7000, Disclosure of Information, in solicitations and contracts when the contractor will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public.

(b) Use the clause at 252.204-7003, Control of Government Personnel Work Product, in all solicitations and contracts.

[57 FR 14992, Apr. 23, 1992]

Subpart 204.6—Contract Reporting

204.600 Scope of subpart.

The Defense Contract Action Data System (DCADS) (see 204.670) is the DoD reporting system which supports the uniform reporting requirements for—

(1) DD Form 350, Individual Contracting Action Report; and

(2) DD Form 1057, Monthly Summary of Actions \$25,000 or Less.

204.601 Record requirements.

(a) The DCADS meets these record retention requirements.

(d) The Directorate for Information, Operation, and Reports (DIOR), of the Washington Headquarters Services (WHS) transmits required DoD information to the Federal Procurement Data System.

204.602 Federal Procurement Data System.

(c) DoD uses the DD Form 350, Individual Contracting Action Report, in lieu of the SF 279, Federal Procurement Data System (FPDS) Individual Contract Action Report. DoD uses the DD Form 1057, Monthly Contracting Summary of Actions \$25,000 or Less, in lieu of the SF 281, FPDS Summary Contract Action Report (\$25,000 or Less).

204.602-70 Solicitation provision.

When the Commercial and Government Entity codes for the prospective offerors are not available to the contracting office, use the provision at 252.204-7001, Commercial and Government Entity (CAGE) Code Reporting.

[61 FR 61592, Nov. 30, 1995]

204.670 Defense Contract Action Data System (DCADS)

204.670-1 Definitions.

As used in this section and 253.204-70 and 253.204-71—

(a) *Contract administration office* means an office, other than the contracting office, which awards or executes contracting actions on behalf of the contracting office, including actions relating to the settlement of terminated contracts.

(b) *Contracting action* means any written action obligating or deobligating funds in connection with the purchasing, renting, or leasing of supplies, services, or construction. The term does not include grants or cooperative agreements. The term includes, but is not limited to—

(1) Definitive contracts, including notices of award;

(2) Letter contracts;

(3) Purchase orders;

(4) Orders under existing contracts or agreements, e.g.—

(i) Orders against basic ordering agreements, including service orders issued on DD Form 1164 by installation transportation offices;

(ii) Calls against blanket purchase agreements;

(iii) Job orders;

(iv) Task orders;

(v) Delivery orders;

(vi) Communication services authorizations; and

(vii) Notices of termination or cancellation.

(5) Contract modifications, e.g.—

(i) Change orders;

(ii) Supplemental agreements;

(iii) Funding actions; and

(iv) Option exercises.

(c) *Departmental data collection points* are—

(1) For the Army (including Corps of Engineers civil Works): U.S. Army Contracting Support Agency, Attn: SFAE-CSA-PPS, 5109 Leesburg Pike, Suite 916, Falls Church, VA 22041-3201

(2) For the Navy: Fleet Industrial Supply Center, Norfolk Detachment Washington, Attn: PMRS, Washington Navy Yard, Bldg. 200, 4th Floor, 800 M Street, SW, Washington, DC 20374-2004

(3) For the Air Force: SAF/AQCI, 1060 Air Force Pentagon, Washington, DC 20330-1060

(4) For the Defense Logistics Agency: Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 3147, Attn: Directorate of Procurement (Acquisition Operations Team, Ft. Belvoir, VA 22060-6221

(5) For other DoD contracting activities: U.S. Army Contracting Support Agency, Attn: SFAE-CSA-PPS, 5109 Leesburg Pike, Suite 916, Falls Church, VA 22041-3201.

(d) *United States and outlying areas* is defined in Federal Information Processing Standard Publication (FIPS PUB) 55-2, Guideline: Codes for Named Populated Places, Primary County Divisions, and Other Locational Entities of the United States and Outlying Areas. Outlying areas are—

(1) American Samoa;

(2) The Federated States of Micronesia;

(3) Guam;

(4) The Marshall Islands;

(5) Northern Mariana Islands;

(6) The Trust Territory of Palau;

(7) Puerto Rico;

(8) The U.S. Minor Outlying Islands; and

(9) The U.S. Virgin Islands.

[56 FR 36289, July 31, 1991, as amended at 60 FR 61592, Nov. 30, 1995; 61 FR 51030, Sept. 30, 1996]

204.670-2 Reportable contracting actions.

(a) Except as provided in paragraph (c) of this subsection, complete a DD Form 350 for—

(1) All contracting actions that obligate or deobligate more than \$25,000; and

(2) All contracting actions that obligate or deobligate \$25,000 or less if the action is in a designated industry group under the small business competitiveness demonstration program (See 204.670-9 and FAR subpart 19.10).

(b) Except as provided in paragraph (c) of this subsection, complete a DD Form 1057 for all contracting actions which obligate or deobligate \$25,000 or less, including contracting actions reported on a DD Form 350 under paragraph (a)(2) of this subsection.

(c) Do not report on a DD Form 350, contingency actions defined in 213.101. Summarize these actions on a DD Form 1057 in accordance with the instructions in 253.204-71(a)(3).

(d) The following contracting actions shall not be reported on either the DD Form 350 or DD Form 1057:

(1) Imprest fund transactions, SF 44 purchases, and micro-purchases obtained through use of the purchase card;

(2) Transactions that cite only non-appropriated funds (Funds held in trust accounts for foreign governments shall be treated as appropriated funds.);

(3) Transactions for purchase of land, or rental or lease of real property, when the General Services Administration (GSA) executes the contracting action;

(4) Orders from GSA stock and the GSA Consolidated Purchase Program;

(5) Transactions that involve Government bills of lading or transportation requests, except orders placed under Regional Storage Management Office's (RSMO) BOAs;

(6) Requisitions transferring supplies within or among the departments or agencies; and

(7) Pursuant to 204.670-6(b), orders placed by other contracting activities against indefinite delivery contracts awarded by the—

- (i) Military Sealift Command;
- (ii) Defense Fuel Supply Center for petroleum and petroleum products; or
- (iii) Defense Supply Center, Richmond, for petroleum products.

[56 FR 36289, July 31, 1991, as amended at 57 FR 53598, Nov. 12, 1992; 60 FR 61592, Nov. 30, 1995; 61 FR 51030, Sept. 30, 1996]

204.670-3 Contracting office responsibilities.

(a) For DD Form 350, contracting offices—

(1) Prepare the appropriate type of DD Form 350 (see 204.670-6), in accordance with the instructions in 253.204-70, on all reportable contracting actions (see 204.670-2(a)), including actions accomplished by contract administration offices on behalf of the contracting office.

(2) Complete the DD Form 350 in the required format within three working days after the date on which the dollars were actually obligated or deobligated (see 204.670-7). Submit all contracting actions for the calendar month to the departmental data collection point (see 204.670-1(c)) in accordance with departmental/agency procedures, except—

(i) For Defense Fuel Supply Center major petroleum acquisitions which result in multiple awards, the due date is ten working days when permitted by the departmental data collection point;

(ii) For actions executed in the month of September, due dates may be extended ten calendar days when permitted by the departmental data collection point; and

(iii) For actions accomplished by a contract administration office, the due date is three working days after the receipt of the contractual instrument annotated "DD FORM 350 REPORTING COPY."

(3) Prepare and submit a corrected or cancelling DD Form 350 as required in accordance with departmental data collection point instructions.

(4) Establish a control system for assigning report numbers to DD Forms 350 (Block A2 of the DD Form 350). The number shall have four positions and may be any combination of alpha or numeric characters. If more than one activity within a contracting office utilizes the same reporting office code, the contracting office shall assign separate blocks of numbers to each activity in order to prevent duplication of report numbers.

(5) Maintain a copy of the DD Form 350 in the contract file, in accordance with departmental/agency procedures.

(b) For DD Form 1057, contracting offices—

(1) Prepare a DD Form 1057, in accordance with the instructions in 253.204-71, covering reportable contracting actions (see 204.670-2(b)), including actions accomplished by contract administration offices on behalf of the contracting office. An installation, base, or other activity may have more than one contracting office code to separate the various types of acquisitions, such as base and central contracting, or RDT&E and non-RDT&E acquisition. Each contracting office with a separate code must submit its own DD Form 1057.

(2) Complete the DD Form 1057 in the required format within three working days after the cutoff of the reporting month (see 204.670-7 for alternate formats). Contracting offices are authorized to cut off the reporting month no earlier than the 25th calendar day. For September only, the cutoff date shall not be later than September 30. Submit the DD Form 1057 to the departmental data collection point in accordance with departmental/agency procedures.

(3) Unless otherwise instructed by the departmental data collection point, do not submit revised DD Form 1057 reports. Include any required corrections or adjustments in following month's report.

[56 FR 36289, July 31, 1991, as amended at 61 FR 51030, Sept. 30, 1996]

204.670-4 Contract administration office responsibilities.

Contract administration offices executing actions subject to DD Form 350 or DD Form 1057 reporting must submit an annotated copy of the contractual

instrument to the contracting office so that the contracting office can submit the required report.

(a) For DD Form 350, annotate in the heading of the contractual instrument in large block letters "DD FORM 350 REPORTING COPY." Send the annotated copy to the contracting office within one working day after the action date.

(b) For DD Form 1057, annotate in the heading of the contractual instrument in large block letters "DD FORM 1057 REPORTING COPY." Send the annotated copy with the normal distribution.

204.670-5 Departmental data collection point responsibilities.

Departmental data collection points—

(a) Collect DD Forms 350 and 1057 data provided by their contracting activities;

(b) Electronically record the data in accordance with the instructions for recording and editing developed by WHS-DIOR with the majority agreement of the departments/agencies and prescribed by the Director of Defense Procurement; and

(c) Submit monthly reports (non-cumulative) to Washington Headquarters Services, ATTN: DIOR, within 18 days after the close of the reporting period, except the due date for September may be extended for no more than ten days. Reports control symbols, DD-P&L(M) 1014 and DD-P&L(M) 1015, respectively, apply to reports submitted to WHS-DIOR for DD Form 350 actions and DD Form 1057.

[61 FR 51030, Sept. 30, 1996]

204.670-6 Types of DD Form 350 reports.

There are three types of reports—single, consolidated, and multiple.

(a) A single report is one DD Form 350 report per contracting action.

(b) A consolidated report is one DD Form 350 report which combines several contracting actions.

(1) Prepare consolidated reports for—
(i) Air Mobility Command awards for international airlift services. The Command reports these at the end of each operating month with one DD Form 350 for each airlift contract.

(ii) Military Sealift Command awards of indefinite delivery contracts for ocean transportation. The Command reports at the beginning of each fiscal year the estimated value of the orders for that fiscal year on one DD Form 350.

(iii) Defense Fuel Supply Center of Defense Supply Center, Richmond, indefinite delivery contracts for petroleum or petroleum supplies. The Centers, at the time of award, report the estimated value of the orders to be placed against the contract on one DD Form 350.

(iv) Order place by the Defense commissary Agency (DeCA) for resale items in excess of \$25,000. DeCA consolidates the orders monthly and reports the cumulative dollar amounts and actions on one DD Form 350 in accordance with departmental/agency procedures. Defense Logistics Agency activities submit single rather than consolidated reports.

(v) Vouchers processed by the U.S. Army Contracting Command, Europe (USACCE), for the purchase of utilities from municipalities (e.g., gas, electricity, water, sewage, steam, snow removal, and garbage collection). USACCE consolidates these transactions monthly and reports the cumulative dollar amount on one DD Form 350 in accordance with departmental/agency procedures.

(2) Consolidated reports may be prepared in accordance with departmental/agency procedures for orders under communications service agreements for local dial tone services.

(c) A multiple report is more than one DD Form 350 per contracting action. Prepare multiple reports if—

(1) The contracting action includes foreign military sales (FMS) requirements in addition to non-FMS requirements (Block B9 on the DD Form 350). Submit one DD Form 350 report for the FMS requirements and another DD Form 350 report for the non-FMS requirements, except if either of the portions in \$25,000 or less, report the \$25,000 or less portion on a DD Form 1057 in lieu of a DD Form 350.

(2) The contracting action includes more than one type of contract (Block C5 on the DD Form 350) and the type with the least dollar value exceeds

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\$500,000. Prepare a separate DD Form 350 for each contract type.

[56 FR 36289, July 31, 1991, as amended at 59 FR 27668, May 27, 1994; 60 FR 61592, Nov. 30, 1995; 61 FR 51031, Sept. 30, 1996]

204.670-7 Report formats.

Contracting offices submit the signed original DD Forms 350 and 1057, unless the data collection point approves use of an automated facsimile or electronic equivalent containing the information.

204.670-8 Security classification.

Submit DD Forms 350 as unclassified documents. Classified contracts are not exempt from reporting solely because the contract is classified. Contact the appropriate departmental data collection points for special instructions if it is necessary for security reasons to modify coding of all or any individual blocks on the DD Form 350. If contact cannot be made for security reasons, obtain instructions from the Office of the Deputy to the Under Secretary of Defense for Policy Support, ATTN: Director for Special Programs. Telephone number is (703) 614-0578/9 or DSN 224-0578/9.

[61 FR 51031, Sept. 30, 1996]

204.670-9 Reporting of individual contracting actions of \$25,000 or less.

Under the Small Business Competitiveness Demonstration Program (see FAR subpart 19.10), contract actions of \$25,000 or less in four designated industry groups (for Army, includes dredging) must be reported in the same manner as if the action were in excess of \$25,000.

(a) Report contract actions of \$25,000 or less in the designated industry groups on both the DD Form 350 and the DD Form 1057.

(b) The following contracting actions are not subject to the additional DD Form 350 reporting, although they must still be reported on the DD Form 1057:

- (1) Contracting actions of \$500 or less.
- (2) Foreign military sales.
- (3) Orders or modifications under a Federal schedule.
- (4) Actions with a government agency.

(5) Actions with non-U.S. business firms.

(6) Actions where the place of performance is other than the United States and its outlying areas.

[56 FR 36289, July 31, 1991, as amended at 61 FR 51031, Sept. 30, 1996]

Subpart 204.8—Contract Files

204.802 Contract files.

Official contract files shall consist of—

(1) Only original, authenticated or conformed copies of contractual instruments—

(i) *Authenticated copies* means copies that are shown to be genuine in one of two ways—

(A) Certification as true copy by signature of an authorized person; or

(B) Official seal.

(ii) *Conformed copies* means copies that are complete and accurate, including the date signed and the names and titles of the parties who signed them.

(2) Signed or official record copies of correspondence, memoranda, and other documents.

204.804 Closeout of contract files.

Normally, the closeout date for contract files is the date in Block 9d on the DD Form 1594, Contract Completion Statement, or in columns 59-65 on the PK9. If the contracting office must do a major closeout action that will take longer than three months after the date shown in Block 9d of the DD Form 1594, or in columns 59-65 of the PK9—

(1) The closeout date for file purposes will be the date in Block 10e of the DD Form 1594 or the date of the closeout statement executed when the MILSCAP PK9 is received.

(2) The contracting office shall notify the contract administration office of the revised closeout date by either sending a copy of the completed DD Form 1594 or by preparing a MILSCAP Format Identifier PKZ, Contract Closeout Extension.

204.804-1 Closeout by the office administering the contract.

(1) For contracting offices administering their own contracts, locally

developed forms or statement of completion may be used instead of the DD Form 1594, Contract Completion Statement. Whichever method is used, the form shall be retained in the official contract file.

(2) For contracts valued above the small purchase threshold, prepare a DD Form 1597, Contract Closeout Check List, (or agency equivalent) to ensure that all required contract actions have been satisfactorily accomplished.

204.804-2 Closeout of the contracting office files if another office administers the contract.

(1) When an office, other than the contracting office, administers the contract, it shall—

(i) Provide the contracting office an interim contract completion statement when the contract is physically completed and accepted. This notice may be in the form of either a DD Form 1594, Contract Completion Statement, or a MILSCAP Format Identifier Interim PK9, Contract Physical Completion. When the DD Form 1594 is used, the contracting officer—

(A) Annotates Block 8, Remarks, with—

(1) “Notice of Physical Completion;”

(2) Final acceptance date;

(3) Signature of a responsible official; and

(4) Date signed.

(B) Does not complete Blocks 9 (b), (c), and (d) at this time;

(ii) Prepare a DD Form 1597, Contract Closeout Check List, if necessary, to determine that all the required actions have been done;

(iii) Initiate DD Form 1593, Contract Administration Completion Record, if necessary to obtain statements from other organizational elements that they have completed the actions they are responsible for; and

(iv) Upon final payment—

(A) Process the DD Form 1594 with Blocks 1 through 9 completed or the MILSCAP Format Identifier PK9 verifying that all contract administration office actions have been done; and

(B) Send the original of the DD Form 1594 or the MILSCAP Format Identifier PK9 to the contracting office, and file a copy in the official contract file.

(2) If the administrative contracting officer (ACO) cannot closeout a contract within the specified time period (see FAR 4.804-1), the ACO must notify the procuring contracting officer (PCO) within 45 days after the expiration of the time period of—

(i) The reasons for the delay; and

(ii) New target date for closeout. If MILSCAP procedures apply, the ACO shall use the MILSCAP Format Identifier PKX, Unclosed Contract Status, to provide this notice to the PCO.

(3) If the contract still is not closed out by the new target date, the ACO shall again notify the PCO with the reasons for delay and new target date. If MILSCAP procedures apply, continue to use the MILSCAP Format Identifier PKX, Unclosed Contract Status, to provide this notice.

204.805 Disposal of contract files.

(1) The sources of the period for which official contract files must be retained are General Records Schedule 3 (Procurement, Supply, and Grant Records) and General Records Schedule 6 (Accountable Officers’ Accounts Records). Copies of the General Records Schedule may be obtained from the National Archives and Records Administration, Washington, DC 20408.

(2) Deviations from the periods cannot be granted by the Defense Acquisition Regulatory Council. Forward requests for deviations to both the General Accounting Office and the National Archives and Records Administration.

(3) Hold completed contract files in the office responsible for maintaining them for a period of 12 months after completion. After the initial 12 month period, send the records to the local records holding or staging area until they are eligible for destruction. If no space is available locally, transfer the files to the General Services Administration Federal Records Center that services the area.

(4) Duplicate or working contract files should contain no originals of materials that properly belong in the official files. Destroy working files as soon as practicable once they are no longer needed.

(5) Retain pricing review files, containing documents related to reviews of the contractor's price proposals, subject to certification of cost or pricing data (see FAR 15.804-2), for six years. If it is impossible to determine the final payment date in order to measure the six year period, retain the files for nine years.

Subpart 204.9—Information Reporting to the Internal Revenue Service

204.902 General.

(b) DoD uses the DD Form 350, Individual Contract Action Report, (see 204.670) to meet these reporting requirements.

Subpart 204.70—Uniform Procurement Instrument Identification Numbers

204.7000 Scope.

This subpart prescribes policies and procedures for assigning numbers to all solicitations, contracts, and related instruments. This subpart—

(a) Does not apply to solicitations or contracts issued by the Defense Commercial Communications Office of the Defense Information Systems Agency; and

(b) Is optional for solicitations and contracts that will be completely administered by the purchasing office or the consignee, except that—

(1) The procurement instrument identification (PII) number, including supplemental modification numbers, shall not exceed 19 characters (excluding hyphens); and

(2) The number shall begin with the purchasing office identifier and the fiscal year in accordance with 204.7003(a) (1) and (2) and appendix G.

[56 FR 36289, July 31, 1991, as amended at 56 FR 67212, Dec. 30, 1991]

204.7001 Policy.

(a) Use the uniform PII numbering system prescribed by this subpart for the solicitation/contract instruments described in 204.7003 and 204.7004.

(b) Retain the basic PII number unchanged for the life of the instrument.

204.7002 Procedures.

(a) In assigning PII numbers—

(1) Use only the alpha-numeric characters, as prescribed in this subpart; and

(2) Do not use the letters "I" or "O," except as noted in 204.7003(a)(1)(i) (J) and (K).

(b) If department/agency procedures require other identification on the solicitation, contract, or other related instrument forms, enter it in such a location so as to separate it clearly from the PII number.

(c) Enter the basic PII number, including Federal supply contract numbers and any supplementary numbers, in the spaces provided on the solicitation, contract, or related instrument forms. Separate the major elements by dashes, e.g., N00023-90-D-0009. If there is no space provided on the form, enter the number in the upper right corner of the form and identify what it is (e.g., Supplementary Number N00023-90-F-0120).

204.7003 Basic PII number.

(a) *Elements of a number.* The number consists of 13 alpha-numeric characters grouped to convey certain information.

(1) *Positions 1 through 6.* The first of the six positions, in upper case letters, identify the department/agency and office issuing the instrument.

(i) Department/agency identification:

- (A) Department of the Army DA
- (B) Department of the Navy (except Marine Corps) N
- (C) Department of the Air Force F
- (D) Defense Information Systems Agency DCA
- (E) Defense Logistics Agency S
- (F) Defense Special Weapons Agency DSWA
- (G) Defense Mapping Agency DMA
- (H) Miscellaneous Defense Activities MDA
- (I) Marine Corps M
- (J) Ballistic Missile Defense Organization HQ0006
- (K) On Site Inspection Agency OSIA
- (L) Defense Commissary Agency DECA
- (M) United States Special Operations Command USZA

(ii) Issuing office identification. The remaining positions are the alpha-numeric characters that identify the

issuing office. These characters are in appendix G.

(iii) Use all six positions. If necessary, enter zeros between the department/agency identifier and the issuing office identifier.

(2) *Positions 7 through 8.* The seventh and eighth positions are the last two digits of the fiscal year in which the PII number was assigned.

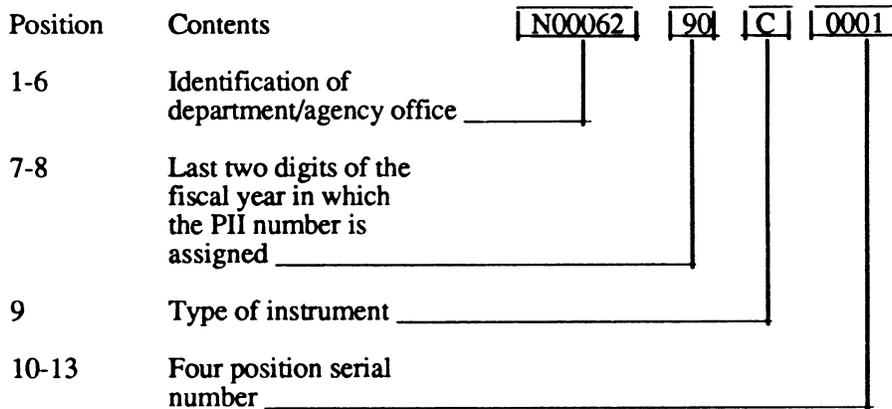
(3) *Position 9.* Indicate the type of instrument by entering one of the following upper case letters in position nine—

- (i) Blanket purchase agreements—A
- (ii) Invitations for bids—B
- (iii) Contracts of all types except indefinite delivery contracts, facilities contracts, sales contracts, and contracts placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside the DoD—C
- (iv) Indefinite delivery contracts—D
- (v) Facilities contracts—E
- (vi) Contracting actions placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside the DoD (including actions with the National Industries for the Blind (NIB), the National Industries for the Severely Handicapped (NISH), and the Federal Prison Industries (UNICOR))—F
- (vii) Basic ordering agreements—G
- (viii) Agreements, including basic agreements and loan agreements, but excluding basic purchasing agreements, basic ordering agreements, and leases—H

- (ix) Do not use—I
- (x) Reserved—J
- (xi) Short form research contract—K
- (xii) Lease agreement—L
- (xiii) Purchase orders—manual (assign W when numbering capacity of M is exhausted during the fiscal year)—M
- (xiv) Notice of intent to purchase—N
- (xv) Do not use—O
- (xvi) Purchase order—automated (assign V when numbering capacity of P is exhausted during a fiscal year)—P
- (xvii) Request for quotation—manual—Q
- (xviii) Request for proposal—R
- (xix) Sales contract—S
- (xx) Request for quotation—automated (assign U when numbering capacity of T is exhausted during a fiscal year)—T
- (xxi) See T—U
- (xxii) See P—V
- (xxiii) See M—W
- (xxiv) Reserved for departmental use—X
- (xxv) Imprest fund—Y
- (xxvi) Reserved for departmental use—Z

(4) *Position 10 through 13.* Enter the serial number of the instrument in these positions. A separate series of serial numbers may be used for any type of instrument listed in paragraph (a)(3) of this section. Activities shall assign such series of PII numbers sequentially. An activity may reserve blocks of numbers or alpha-numeric numbers for use by its various components.

(b) *Illustration of PII number.* The following illustrates a properly configured PII number—



[56 FR 36289, July 31, 1991, as amended at 56 FR 67212, Dec. 30, 1991; 59 FR 27668, May 27, 1994; 60 FR 61592, Nov. 30, 1995; 61 FR 50451, Sept. 26, 1996]

204.7004 Supplementary PII numbers.

(a) *Uses of the supplementary number.* Use supplementary numbers with the basic PII number, to identify—

- (1) Amendments to solicitations;
- (2) Modifications to contracts and agreements, including provisioned item orders; and
- (3) Calls or orders under contracts, basic ordering agreements, or blanket purchase agreements, issued by the contracting office or by a DoD activity other than the contracting office, including DoD orders against Federal supply schedules.

(b) *Amendments to solicitations.* Number amendments to solicitations sequentially using a four position numeric serial number added to the basic PII number and beginning with 0001, e.g., N00062-91-R-1234-0001.

(c) *Modifications to contracts and agreements.* (1) Number modifications to contracts and agreements using a six position alpha-numeric added to the basic PII number.

(2) *Position 1.* Identify the office issuing the modification—

- (i) Contract administration office—A
- (ii) Contracting office—P

(3) *Positions 2 through 3.* These are the first two digits in a serial number. They may be either alpha or numeric. Use the letters K, L, M, N, P, Q, S, T, U, V, W, X, Y, or Z only in the second

position and only in the following circumstances—

(i) Use K, L, M, N, P, and Q in the second position only if the modification is issued by the Air Force and is a provisioned item order.

(ii) Use S, and only S, in the second position to identify modifications issued to provide initial or amended shipping instructions when—

- (A) The contract has either FOB origin or destination delivery terms; and
- (B) The price changes.

(iii) Use T, U, V, W, X, or Y, and only those characters, in the second position to identify modifications issued to provide initial or amended shipping instructions when—

- (A) The contract has FOB origin delivery terms; and
- (B) The price does not change.

(iv) Only use Z in the second position to identify a modification which definitizes a letter contract.

(4) *Positions 4 through 6.* These positions are always numeric. Use a separate series of serial numbers for each type of modification listed in paragraph (c)(3) of this section. Examples of proper numbering for positions 2-6 (the first position will be either “A” or “P”) are as follows:

Normal modification	Provisioned items order (reserved for exclusive use by the Air Force only)	Shipping instructions
00001–99999	K0001–K9999	S0001–S9999
then	KA001–KZ999	SA001–SZ999
A0001–A9999	L0001–L9999	T0001–T9999
B0001–B9999	LA001–LZ999	TA001–TZ999
and so on to	M0001–M9999	U0001–U9999
H0001–H9999	MA001–MZ999	UA001–UZ999
then	N0001–N9999	V0001–V9999
J0001–J9999	NA001–NZ999	VA001–VZ999
then	P0001–P9999	W0001–W9999
R0001–R9999	PA001–PZ999	WA001–WZ999
then	Q0001–Q9999	X0001–X9999
AA001–HZ999	QA001–QZ999	XA001–XZ999
then		Y0001–Y9999
JA001–JZ999		YA001–YZ999
RA001–RZ999.		

(5) If the contract administration office is changing the contract administration or disbursement office for the first time and is using computer generated modifications to notify many offices, it uses the six position supplementary number ARZ999. If either office has to be changed again during the life of the contract, the supplementary number will be ARZ998, and on down as needed.

(6) Each office authorized to issue modifications shall assign the supplementary identification numbers in sequence. Do not assign the numbers until it has been determined that a modification is to be issued.

(d) *Delivery orders under indefinite delivery contracts, orders under basic ordering agreements, and calls under blanket purchase agreements.* (1) Calls or orders issued by the office issuing the contract or agreement. Use a four position alpha-numeric call or order serial number added to the basic PII number. These shall be identified by using serial numbers beginning 0001 through 9999. When the numeric identifiers run out, use alpha characters in the third and fourth positions. Never use alpha characters in the first and second positions.

(2) Orders placed against another activity's contract or agreement.

(i) If the office placing the order or call is different from the office identified in the basic PII number, assign a serial number to the order or call. The first and second positions contain the call/order code assigned to the ordering office by appendix G. Do not use the letters A or P in the first position. The

third and fourth positions are a two position serial number assigned by the ordering office. The series will begin with 01. When the numbers exceed 99, the office will assign a uniform series of identifiers containing alpha and/or numeric characters, e.g., Basic #: N00383–91–D–0001 serial #: TU01.

(ii) If an office is placing calls or orders with NIB, NISH, or UNICOR, the office shall identify the instrument with a 13 position supplementary PII number using an F in the 9th position. Modifications to these calls or orders shall be numbered in accordance with paragraph (c) of this section, e.g., Order #: DLA100–91–F–0001 modification #: A00001.

(e) *Modifications to calls or orders.* Use a two position alpha-numeric suffix, known as a call or order modification indicator, to identify a modification to a call or order.

(1) Modifications to a call or order issued by a purchasing office begin with 01, 02, and so on through 99, then B1 through B9, BA through BZ, C1 through C9, and so on through ZZ.

(2) Modifications to a call or order issued by a contract administration office begin with 1A, 1B, and so on through 9Z, followed by A1, A2, and so on to A9, then AA, AB, and so on through AZ.

Subpart 204.71—Uniform Contract Line Item Numbering System

204.7100 Scope.

This subpart prescribes policies and procedures for assigning contract line item numbers.

204.7101 Definitions.

Accounting classification reference number (ACRN) means a two position alpha or alpha/numeric control code used as a method of relating the accounting classification citation to detailed line item information contained in the schedule.

Attachment means any documentation, appended to a contract or incorporated by reference, which does not establish a requirement for deliverables.

Definitized item, as used in this subpart, means an item for which a firm

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price has been established in the basic contract or by modification.

Exhibit means a document, referred to in a contract, which is attached and establishes requirements for deliverables. The term shall not be used to refer to any other kind of attachment to a contract. The DD Form 1423, Contract Data Requirements List, is always an exhibit, rather than an attachment.

Nonseverable deliverable, as used in this subpart, means a deliverable item that is a single end product or undertaking, entire in nature, that cannot be feasibly subdivided into discrete elements or phases without losing its identity.

Undefinitized item, as used in this subpart, means an item for which a price has not been established in the basic contract or by modification.

[56 FR 36289, July 31, 1991, as amended at 60 FR 34468, July 3, 1995]

204.7102 Policy.

(a) The numbering procedures of this subpart shall apply to all—

- (1) Solicitations;
- (2) Solicitation line and subline item numbers, if practicable;
- (3) Contracts as defined in FAR Subpart 2.1;
- (4) Contract line and subline item numbers;
- (5) Exhibits;
- (6) Exhibit line and subline items; and
- (7) Any other document expected to become part of the contract.

(b) The numbering procedures are mandatory for all contracts where separate contract line item numbers are assigned, unless—

- (1) There are no postaward contract administration functions that the contracting officer will assign to an office listed in the DoD Directory of Contract Administration Services Components;
- (2) The contract is an indefinite delivery type for petroleum products against which posts, camps, and stations issue delivery orders for products to be consumed by them; or
- (3) The contract is a communications service authorization issued by the Defense Information Systems Agency's

Office of Defense Commercial Communications.

[56 FR 36289, July 31, 1991, as amended at 56 FR 67212, Dec. 30, 1991; 60 FR 34468, July 3, 1995]

204.7103 Contract line items.

204.7103-1 Criteria for establishing.

Contracts shall identify the items or services to be acquired as separate contract line items unless it is not feasible to do so.

(a) Contract line items shall have all four of the following characteristics; however, there are exceptions within the characteristics, which may make establishing a separate contract line item appropriate even though one of the characteristics appears to be missing—

(1) *Single unit price*. The item shall have a single unit price or a single total price, except—

(i) If the item is not separately priced (NSP) but the price is included in the unit price of another contract line item, enter NSP instead of the unit price;

(ii) When there are associated subline items, established for other than informational reasons, and those subline items are priced in accordance with 204.7104;

(iii) When the items or services are being acquired on a cost-reimbursement contract;

(iv) When the contract is for maintenance and repair services (e.g., a labor hour contract) and firm prices have been established for elements of the total price of an item but the actual number and quantity of the elements are not known until performance. The contracting officer may structure these contracts to reflect a firm or estimated total amount for each line item;

(v) When the contract line item is established to refer to an exhibit or an attachment (if management needs dictate that a unit price be entered, the price shall be set forth in the item description block and enclosed in parentheses); or

(vi) When the contract is an indefinite delivery type contract and provides that the price of an item shall be determined at the time a delivery

order is placed and the price is influenced by such factors as the quantity ordered (e.g., 10-99 @ \$1.00, 100-249 @ \$.98, 250+ @ \$.95), the destination, the FOB point, or the type of packaging required.

(2) *Separately identifiable.* A contract line item must be identified separately from any other items or services on the contract.

(i) Supplies are separately identifiable if they have no more than one—

(A) National stock number (NSN);

(B) Item description; or

(C) Manufacturer's part number.

(ii) Services are separately identifiable if they have no more than one—

(A) Scope of work; or

(B) Description of services.

(iii) This requirement does not apply if there are associated subline items, established for other than informational reasons, and those subline items include the actual detailed identification in accordance with 204.7104. Where this exception applies, use a general narrative description instead of the contract item description.

(3) *Separate delivery schedule.* Each contract line item or service shall have its own delivery schedule, period of performance, or completion date expressly stated ("as required" constitutes an expressly stated delivery term).

(i) The fact that there is more than one delivery date, destination, performance date, or performance point may be a determining factor in the decision as to whether to establish more than one contract line item.

(ii) If a contract line item has more than one destination or delivery date, the contracting officer may create individual contract line items for the different destinations or delivery dates, or may specify the different delivery dates for the units by destination in the delivery schedule.

(4) *Single accounting classification citation.* (i) Each contract line item shall reference a single accounting classification citation except as provided in paragraph (a)(4)(ii) of this subsection.

(ii) The use of multiple accounting classification citations for a contract line item is authorized in the following situations:

(A) A single, nonseverable deliverable to be paid for with R&D or other funds properly incrementally obligated over several fiscal years in accordance with DoD policy;

(B) A single, nonseverable deliverable to be paid for with different authorizations or appropriations, such as in the acquisition of a satellite or the modification of production tooling used to produce items being acquired by several activities; or

(C) A modification to an existing contract line item for a nonseverable deliverable that results in the delivery of a modified item(s) where the item(s) and modification are to be paid for with different accounting classification citations.

(iii) When the use of multiple accounting classification citations is authorized for a single contract line item, establish informational subline items for each accounting classification citation in accordance with 204.7104-1(a).

(b) Exhibits may be used as an alternative to putting a long list of contract line items in the schedule. If exhibits are used, create a contract line item citing the exhibit's identifier. See 204.7105(a).

(c) If the contract involves a test model or a first article which must be approved, establish a separate contract line item or subline item for each item of supply or service which must be approved. If the test model or first article consists of a lot composed of a mixture of items, a single line item or subline item may be used for the lot.

(d) If a supply or service involves ancillary functions, like packaging and handling, transportation, payment of state or local taxes, or use of reusable containers, and these functions are normally performed by the contractor and the contractor is normally entitled to reimbursement for performing these functions, do not establish a separate contract line item solely to account for these functions. However, do identify the functions in the contract schedule. If the offeror separately prices these functions, contracting officers may establish separate contract line items for the functions; however, the separate

line items must conform to the requirements of paragraph (a) of this subsection.

[56 FR 36289, July 31, 1991, as amended at 60 FR 34468, July 3, 1995; 60 FR 43191, Aug. 18, 1995]

204.7103-2 Numbering procedures.

(a) Contract line items shall consist of four numeric digits 0001 through 9999. Do not use numbers beyond 9999. Within a given contract, the item numbers shall be sequential but need not be consecutive.

(b) The contract line item number shall be the same as the solicitation line item number unless there is a valid reason for using different numbers.

(c) Once a contract line item number has been assigned, it shall not be assigned to another, different, contract line item in the same contract.

204.7104 Contract subline items.

204.7104-1 Criteria for establishing.

Contract subline items provide flexibility to further identify elements within a contract line item for tracking performance or simplifying administration. There are only two kinds of subline items: those which are informational in nature and those which consist of more than one item that requires separate identification.

(a) *Informational subline items.* (1) This type of subline item identifies information that relates directly to the contract line item and is an integral part of it (e.g., parts of an assembly or parts of a kit). These subline items shall not be scheduled separately for delivery, identified separately for shipment or performance, or priced separately for payment purposes.

(2) The informational subline item may include quantities, prices, or amounts, if necessary to satisfy management requirements. However, these elements shall be included within the item description in the supplies/services column and enclosed in parentheses to prevent confusing them with quantities, prices, or amounts that have contractual significance. Do not enter these elements in the quantity and price columns.

(3) Informational subline items shall be used to identify each accounting classification citation assigned to a single contract line item number when use of multiple citations is authorized (see 204.7103-1(a)(4)(ii)).

(b) *Separately identified subline items.*

(1) Subline items will be used instead of contract line items to facilitate payment, delivery tracking, contract funds accounting, or other management purposes. Such subline items shall be used when items bought under one contract line item number—

(i) Are to be paid for from more than one accounting classification. A subline item shall be established for the quantity associated with the single accounting classification citation. Establish a line item rather than a subline item if it is likely that a subline item may be assigned additional accounting classification citations at a later date. Identify the funding as described in 204.7104-1(a)(3);

(ii) Are to be packaged in different sizes, each represented by its own NSN;

(iii) Have collateral costs, such as packaging costs, but those costs are not a part of the unit price of the contract line item;

(iv) Have different delivery dates or destinations or requisitions, or a combination of the three; or

(v) Identify parts of an assembly or kit which—

(A) Have to be separately identified at the time of shipment or performance; and

(B) Are separately priced.

(2) Each separately identified contract subline item shall have its own—

(i) Delivery schedule, period of performance, or completion date;

(ii) Unit price or single total price or amount (not separately priced (NSP) is acceptable as an entry for price or amount if the price is included in another subline item or a different contract line item). This requirement does not apply—

(A) If the subline item was created to refer to an exhibit or an attachment. If management needs dictate that a unit price be entered, the price shall be set forth in the item description block of the schedule and enclosed in parentheses; or

(B) In the case of indefinite delivery contracts described at 204.7103-1(a)(1)(vi).

(iii) Identification (e.g., NSN, item description, manufacturer's part number, scope of work, description of services).

(3) Unit prices and extended amounts.

(i) The unit price and total amount for all subline items may be entered at the contract line item number level if the unit price for the subline items is identical. If there is any variation, the subline item unit prices shall be entered at the subline item level only.

(ii) The unit price and extended amounts may be entered at the subline items level.

(iii) The two methods in paragraphs (b)(3) (i) and (ii) of this subsection shall not be combined in a contract line item.

(iv) When the price for items not separately priced is included in the price of another subline item or contract line item, it may be necessary to withhold payment on the priced subline item until all the related subline items that are not separately priced have been delivered. In those cases, use the clause at 252.204-7002, Payment for Subline Items Not Separately Priced.

[56 FR 36289, July 31, 1991, as amended at 60 FR 34468, July 3, 1995]

204.7104-2 Numbering procedures.

(a) Number subline items by adding either two numeric characters or two alpha characters to the basic contract line item number.

(1) *Information subline item numbers.* Use numeric characters only for information subline items, running 01 through 99. Do not use spaces or special characters to separate the subline item number from the contract line item number that is its root. For example, if the contract line item number is 0001, the first three subline items would be 000101, 000102, and 000103. Do not use a designation more than once within a contract line item.

(2) *Separately identified subline items.*

Use alpha characters only for separately identified subline items, running AA through ZZ. Do not use spaces or special characters to separate the subline item number from the contract line item number that is its root. For example, if the contract line item number is 0001, the first three subline items would be 0001AA, 0001AB, and 0001AC.

(i) Do not use the letters I or O as alpha characters.

(ii) Use all 24 available alpha characters in the second position before selecting a different alpha character for the first position. For example, AA, AB, AC, through AZ before beginning BA, BB, and BC.

(b) Within a given contract line item, the subline item numbers shall be sequential but need not be consecutive.

(c) Exhibits may be used as an alternative to setting forth in the schedule a long list of contract subline items. If exhibits are used, create a contract subline item citing the exhibit's identifier. See 204.7105.

(d) If a contract line item involves ancillary functions, like packaging and handling, transportation, payment of state or local taxes, or use of reusable containers, and these functions are normally performed by the contractor and the contractor is normally entitled to reimbursement for performing these functions, do not establish a separate subline item solely to account for these functions. However, do identify the functions in the contract schedule. If offeror separately prices these functions, then contracting officers may establish separate subline items for the functions; however, the separate subline items must conform to the requirements of 204.7104-1.

(e) The following examples illustrate subline items numbering—

(1) Subline items structured to identify destinations for identical items, identically priced (delivery schedule shall be established for each subline item, not the contract line item).

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0001	NSN 1615-00-591-6620 Shim, Aluminum Alloy, Apbl, Rotor, Helicopter PRON A1-9-63821-M1-M1 ACRN:AA.
0001AA	A3168R-9030-4025 A2537M IPD: 2 RDD: 334 PROJ: 501.	10	EA	\$100.00	\$1,000.00

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Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0001AB	A3168R-9030-4026 A51AXB IPD: 2 RDD: 325 PROJ: 502.	10	EA	\$100.00	\$1,000.00
0001AC	A3168R-9030-4027 A67KBCM IPD: 2 RDD: 349 PROJ: 503.	15	EA	\$100.00	\$1,500.00

(2) Subline items structured to identify destinations for identical items, not identically priced (delivery schedule shall be established for each subline item, not the contract line item).

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0001	NSN 1615-00-591-6620 Shim, Aluminum Alloy, Apbl, Rotor, Helicopter PRON A1-9-63821-M1-M1 ACRN:AA.	.....		.....	.....
0001AA	A3168R-9030-4025 A2537M IPD: 2 RDD: 334 PROJ: 501.	10	EA	\$100.00	\$1,000.00
0001AB	A3168R-9030-4026 A51AXB IPD: 2 RDD: 325 PROJ: 502.	20	EA	\$99.00	\$1,980.00
0001AC	A3168R-9030-4027 A67KBCM IPD: 2 RDD: 349 PROJ: 503.	30	EA	\$98.00	\$2,940.09

Note: Difference in prices for identical items is due to separate destinations for FOB destination delivery.

(3) Subline items structured to identify different sizes of an item that are identically priced (delivery schedule shall be established for each subline item, not the contract line item).

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0013	Boots Insulated, Cold Weather White, Type II, Class 1 ...	.....	PR	\$38.35	\$13,422.50
0013AA	8430-00-655-5541 Size 5N	50		.....	.....
0013AB	8430-00-655-5544 Size 8N	70		.....	.....
0013AC	8430-00-655-5551 Size 9N	30		.....	.....
0013AD	8430-00-655-5535 Size 9R	200		.....	.....

Note: Unit price and total amount shown at line item level rather than at subline item level.

(4) Subline items structured to identify different sizes of an item that are not identically priced (delivery schedule shall be established for each subline item, not the contract line item).

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0002	Body Armor Ground Troops Variable Type Small Arms, Fragmentation Protective Nylon Felt Vest, Front and Back Plates, Ceramic Plate, Type I.	.....		.....	.....
0002AA	First Article	1	LO	NSP	.....
0002AB	8470-00-141-0935, Medium Regular	1936	SE	\$331.77	\$642,306.72
0002AC	8470-00-141-0936, Large Regular	625	SE	355.77	222,356.25
0002AD	8470-00-141-0937, Medium Long	1237	SE	346.77	428,954.49
0002AE	8470-00-141-0938, Large Long	804	SE	365.77	294,079.08

(5) Subline items structured to provide the capability for relating subordinate separately priced packaging costs to the overall contract line item. (Separate delivery schedules shall be established for the subline item identifying the contractor's product and for the subline item identifying packaging. No schedule will be established for the contract line item.)

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0001	6105-00-635-6568 50380 Ref No 63504-WZ Armature				

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0001AA	6105-00-635-6568 50380 Ref No 63504-WZ Armature Motor ACRN:AA	2	Ea	\$2,895.87	\$5,791.74
0001AB	Packaging ACRN:AA	2	Ea	\$289.58	\$579.16

(6) Subline items structured to identify different accounting classifications for identical items (delivery schedule shall be established for each subline item, not the contract line item).

AJ: 17X150518350315069100000192B000000000000000000
 AK: 17X150518370317569100000192B000000000000000000
 AL: 17X150519350314369100000192B000000000000000000

Item no.	Supplies/service	Quantity	Unit	Unit price	Amount
0002	Pulse Decoder, KY-312/A5Q-19 .....	.....	EA	\$3,037.40	.....
0002AA	Pulse Decoder, KY-312/A5Q-19 ACRN: AJ	2	.....	.....	6,074.80
0002AB	Pulse Decoder, K1Y-312/A5Q-19 ACRN: AK	6	.....	.....	18,224.40
0002AC	Pulse Decoder, KY-312/A5Q-19 ACRN: AL	2	.....	.....	\$6,074.80

Note: Unit price may be shown at line item level and total amounts shown at subline item level.

(7) Informational subline items established to identify multiple accounting classification citations assigned to a single contract line item.

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0001	Air Vehicle	1	Ea	\$6,700,000	\$6,700,000
000101	ACRN:AA \$3,300,000				
000102	ACRN:AB \$2,000,000				
000103	ACRN:AC \$1,400,000				

(8) Subline items structured to identify parts of an assembly (delivery schedule and price shall be established for each identified part at the subline item level, not for the assembly at the contract line item level).

Item no.	Supplies/service	Quantity	Unit	Unit price	Amount
0003	Automatic Degaussing System Consisting of: (2 ea @ \$52,061; \$104,122 total).	.....		.....	.....
0003AA	Switchboard	2	EA	\$52,061.00	\$104,122.00
0003AB	Remote Control Panel	2	EA	NSP	.....
0003AC	Power Supply (M Coil) SSM Type 145 Amps, 220 V DC	2	EA	NSP	.....
0003AF	Power Supply (A Coil) SSM Type (118 Amps, 220 V DC)	2	EA	NSP	.....

(9) Subline items structured to identify parts of a kit (delivery schedule and price shall be established for each identified part at the subline item level, not for the kit at the contract line item level).

Item no.	Supplies/service	Quantity	Unit	Unit price	Amount
0031	Conversion Kit to Convert Torpedo MK 45 Mod 0 to Torpedo MK 45 Mod 1, (50 Kt @ \$10,868.52; \$543,426 total).	.....		.....	.....
0031AA	Integrator Assy LD 620106	50	EA	\$10,868.52	\$543,426.00
0031AB	Pulse Generator Assy LD 587569	50	EA	NSP	.....
0031AC	Drive Shaft Assy LD 587559	50	EA	NSP	.....
0031BF	Actual Panel Assy LD 542924	50	EA	NSP	.....

Note: In this example, the prices of subline items 0031AB through 0031BF are included in the Integrator Assembly.

[56 FR 36289, July 31, 1991, as amended at 60 FR 34468, July 3, 1995]

204.7105 Contract exhibits and attachments.

(a) *Use of exhibits.* (1) Exhibits may be used instead of putting a long list of contract line items or subline items in the contract schedule. Exhibits are particularly useful in buying spare parts.

(2) When using exhibits, establish a contract line or subline item and refer to the exhibit.

(3) Identify exhibits individually.

(4) Each exhibit shall apply to only one contract line item or subline item, except—

(i) One exhibit may apply to one or more option line item(s) when the data required under the exhibits is identical in all respects except the period during which the option is to be exercised; and

(ii) An exhibit may apply to more than one contract line item if the exhibit is not separately priced and the exhibit deliverable is identical for all applicable contract line items.

(5) More than one exhibit may apply to a single contract line item.

(6) Data items on a DD Form 1423, Contract Data Requirements List, may be either separately priced or not separately priced.

(i) *Separately priced.* When data are separately priced, enter the price in only one place in the contract: in either Section B of the contract schedule or on the DD Form 1423. Whichever place, display the price there consistently.

(A) Section B. If the prices are entered in section B of the schedule, detach Blocks 17 and 18 of the DD Form 1423 and file elsewhere in the contract file. If the prices are entered on the DD Form 1423, do not detach Blocks 17 and 18 of the DD Form 1423.

(B) DD Form 1423. If the prices are entered on the DD Form 1423, the price of all separately priced deliverable data items attributable to a line item shall be totalled and included, for information purposes, in parentheses, below the supplies services for that line item, in section B of the schedule.

(ii) *NSP.* Include prices in a priced contract line item or subline item. Detach Blocks 17 and 18 of the DD Form

1423 and retain them elsewhere as required.

(7) The contracting officer may append attachments to exhibits, as long as the attachment does not identify a deliverable requirement which has not been established by a contract or exhibit line or subline item.

(b) *Numbering exhibits and attachments.* (1) Use alpha characters to identify exhibits. The alpha characters shall be either single or double capital letters. Do not use the letters I or O.

(2) Exhibit identifiers need not be either consecutive or sequential.

(3) Once an identifier has been assigned to an exhibit, do not use it on another exhibit in the same contract.

(4) The identifier shall always appear in the first or first and second positions of all applicable exhibit line item numbers.

(5) If the exhibit has more than one page, cite the procurement instrument identification number, exhibit identifier, and applicable contract line or subline item number on each page.

(6) Use numbers to identify attachments.

(c) *Numbering exhibit line items and subline items—*(1) *Criteria for establishing.* The criteria for establishing exhibit line items and subline items is the same as those for establishing contract line items and subline items (see 204.7103 and 204.7104, respectively).

(2) *Procedures for numbering.* (i) Number items in an exhibit in a manner similar to contract line items and subline items.

(ii) Number line items using a four position number.

(A) The first position or the first and second position contain the exhibit identifier.

(B) The third and fourth positions contain the alpha or numeric character serial numbers assigned to the line item.

(iii) Assign alpha or numeric characters to the line item on the basis of the same criteria outlined in contract subline items at 204.7104.

(iv) Exhibit line item numbers shall be sequential within the exhibit.

(3) *Examples—*(i) *Two position serial number for double letter exhibit identifier.*

Cumulative No. of line items	Serial number sequence
1-33	01 thru 09, then OA thru OZ, then
34-67	10 thru 19, then 1A thru 1Z, then
68-101	20 thru 29, then 2A thru 2Z, then
102-135	30 thru 39, then 3A thru 3Z, then
136-169	40 thru 49, then 4A thru 4Z, then
170-203	50 thru 59, then 5A thru 5Z, then
204-237	60 thru 69, then 6A thru 6Z, then
238-271	70 thru 79, then 7A thru 7Z, then
272-305	80 thru 89, then 8A thru 8Z, then
306-339	90 thru 99, then 9A thru 9Z, then
340-373	A0 thru A9, then AA thru AZ, then
374-407	B0 thru B9, then BA thru BZ, then
408-441	C0 thru C9, then CA thru CZ, then
442-475	D0 thru D9, then DA thru DZ, then
476-509	E0 thru E9, then EA thru EZ, then
510-543	F0 thru F9, then FA thru FZ, then
544-577	G0 thru G9, then GA thru GZ, then
578-611	H0 thru H9, then HA thru HZ, then
612-645	J0 thru J9, then JA thru JZ, then
646-679	K0 thru K9, then KA thru KZ, then
680-713	L0 thru L9, then LA thru LZ, then
714-747	M0 thru M9, then MA thru MZ, then
748-781	N0 thru N9, then NA thru NZ, then
782-815	P0 thru P9, then PA thru PZ, then
816-849	Q0 thru Q9, then QA thru QZ, then
850-883	R0 thru R9, then RA thru RZ, then
884-917	S0 thru S9, then SA thru SZ, then
918-951	T0 thru T9, then TA thru TZ, then
952-985	U0 thru U9, then UA thru UZ, then
986-1019	V0 thru V9, then VA thru VZ, then
1020-1053	W0 thru W9, then WA thru WZ, then
1054-1087	X0 thru X9, then XA thru XZ, then
1088-1121	Y0 thru Y9, then YA thru YZ, then
1122-1155	Z0 thru Z9, then ZA thru ZZ

(ii) *Three position numbers.*

Cumulative No. of line items	Serial number sequence
(ii) Three position numbers.	
1-33	001 thru 009, then 00A thru 00Z, then
34-67	010 thru 019, then 01A thru 01Z, then
68-101	020 thru 029, then 02A thru 02Z, then
102-135	030 thru 039, then 03A thru 03Z, and so on to
136-305	090 thru 099, then 09A thru 09Z, then
306-339	0A0 thru 0A9, then 0AA thru 0AZ, then
340-373	0B0 thru 0B9, then 0BB thru 0BZ, then
374-407	0C0 thru 0C9, then 0CA thru 0CZ, and so on to
408-441	0Z0 thru 0Z9, then 0ZA thru 0ZZ, then
442-1121	100 thru 109, then 10A thru 10Z, then
1122-1155	110 thru 119, then 11A thru 11Z, then
1156-1189	120 thru 129, then 12A thru 12Z, and so on to
1190-1223	190 thru 199, then 19A thru 19Z, then
1224-1257	1A0 thru 1A9, then 1AA thru 1AZ, then
1258-1461	1B0 thru 1B9, then 1BA thru 1BZ, and so on to
1462-1495	1Z0 thru 1Z9, then 1ZA thru 1ZB, then
1496-1529	200 thru 109, then 10A thru 10Z, then
1530-1563	210 thru 219, then 21A thru 21Z, then
1564-2277	220 thru 229, then 22A thru 22Z, and so on to
2278-2311	290 thru 299, then 29A thru 29Z, then
2312-2345	2A0 thru 2A9, then 2AA thru 2AZ, then
2346-2379	2B0 thru 2B9, then 2BA thru 2BZ, and so on to
2380-2413	2Z0 thru 2Z9, then 2ZA thru 2ZZ, then
2414-2617	300 thru 309, then 30Z thru 30Z, and so on to
2618-2651	
2652-2685	
2686-2719	
2720-3433	
3434-3467	
3468-3501	
3502-10403	

Cumulative No. of line items	Serial number sequence
10404-10437	900 thru 909, then 90A thru 90Z, then
10438-10471	910 thru 919, then 91A thru 91Z, and so on to
10472-10709	990 thru 999, then 99A thru 99Z, then
10710-10743	9A0 thru 9A9, then 9AA thru 9AZ, then
10744-10777	9B0 thru 9B9, then 9BA thru 9BZ, and so on to
10778-10811	9Z0 thru 9Z9, then 9ZA thru 9ZZ
10812-11525	
11526-11559	

204.7106 Contract modifications.

(a) If new items are added, assign new contract line or subline item numbers or exhibit line item numbers, in accordance with the procedures established at 204.7103, 204.7104, and 204.7105.

(b) Modifications to existing contract line items or exhibit line items. (1) If the modification relates to existing contract line items or exhibit line items, the modification shall refer to those item numbers.

(2) If the contracting officer decides to assign new identifications to existing contract or exhibit line items, the following rules apply—

(i) *Definitized and undefinitized items.* (A) The original line item or subline item number may be used if the modification applies to the total quantity of the original line item or subline.

(B) The original line item or subline item number may be used if the modification makes only minor changes in the specifications of some of the items ordered on the original line item or subline item and the resulting changes in unit price can be averaged to provide a new single unit price for the total quantity. If the changes in the specifications make the item significantly distinguishable from the original item or the resulting changes in unit price cannot be averaged, create a new line item.

(C) If the modification affects only a partial quantity of an existing contract or exhibit line item or subline item and the change does not involve either the delivery date or the ship-to/mark-for data, the original contract or exhibit line item or subline item number shall remain with the unchanged quantity. Assign the changed quantity the next available number.

(ii) *Undefinitized items.* In addition to the rules in paragraph (b)(2)(i), the following additional rules apply to undefinitized items—

(A) If the modification is undefinitized and increases the quantity of an existing definitized item, assign the undefinitized quantity the next available number.

(B) If the modification increases the quantity of an existing undefinitized item, the original contract or exhibit line item or subline item may be used if the unit price for the new quantity is expected to be the same as the price for the original quantity. If the unit prices of the two quantities will be different, assign the new quantity the next available number.

(C) If the modification both affects only a partial quantity of the existing contract or exhibit line or subline item and definitizes the price for the affected portion, the definitized portion shall retain the original item number. If there is any undefinitized portion of the item, assign it the next available number. However, if the modification definitizes the price for the whole quantity of the line item, and price impact of the changed work can be apportioned equally over the whole to arrive at a new unit price, the quantity with the changes can be added into the quantity of the existing item.

(D) If the modification affects only a partial quantity of an existing contract or exhibit line or subline item but does not change the delivery schedule or definitize price, the unchanged portion shall retain the original contract or exhibit line or subline item number. Assign the changed portion the next available number.

204.7107 Contract accounting classification reference number (ACRN).

(a) When a contract contains more than one accounting classification citation, contracting offices shall use ACRNs. Assigning the ACRNs is the responsibility of the contracting office issuing the contract, basic ordering agreement, or blanket purchase agreement. This authority shall not be delegated. If more than one office will use the contract (e.g., ordering officers, other contracting officers), the contract must contain instructions for assigning ACRNs.

(b) ACRNs are used to process certain contract data through the Military Standard Contract Administration

Procedures (MILSCAP) system. The MILSCAP system uses the ACRN to relate certain contract administration records to the accounting classification citation used to obligate funds on the contract. Among these records are the accounting classification trailer record, the supplies schedules data record, and the services line item data record. ACRNs are also used to associate the various record formats of the contract payment notice as described in chapter 9 of the MILSCAP Manual, DoD 4000.25-5-M.

(c) *Procedures for establishing ACRNs.* ACRNs consist of a two position alpha or alpha/numeric code assigned to each discrete accounting classification citation within each contract. ACRNs shall be established in accordance with the following guidelines:

(1) Do not use the letters I and O.

(2) In no case shall an ACRN apply to more than one accounting classification citation, nor shall more than one ACRN be assigned to one accounting classification citation.

(d) *Using the ACRN in the contract.* (1) Show the ACRN as a detached prefix to the accounting classification citation in the accounting and appropriation data block or, if there are too many accounting classification citations to fit reasonably in that block, in section G (Contract Administration Data).

(2) ACRNs need not prefix accounting classification citations if the accounting classification citations are present in the contract only for the transportation officer to cite to Government bills of lading.

(3) If the contracting officer is making a modification to a contract and using the same accounting classification citations, which have had ACRNs assigned to them, the modification need cite only the ACRNs in the accounting and appropriations data block or on the continuation sheets.

(e) *Showing the ACRN in the contract.* If there is more than one ACRN in a contract, all the ACRNs will appear in several places in the schedule (e.g., ACRN:AA).

(1) *Ship-to/mark-for block.* Show the ACRN beside the identity code of each activity in the ship-to/mark-for block unless only one accounting classification citation applies to a line item or

subline item. Only one ACRN may be assigned to the same ship-to/mark-for within the same contract line or subline item number unless multiple accounting classification citations apply to a single nonseverable deliverable unit such that the item cannot be related to an individual accounting classification citation.

(2) *Supplies/services column.* (i) If only one accounting classification citation applies to a line item or a subline item, the ACRN may be shown in the supplies/services column near the item description.

(ii) If more than one accounting classification citation applies to a single contract line item, identify each assigned ACRN and the amount of associated funds using informational subline items (see 204.7104-1(a)).

(3) *Payment instructions.* (i) When a contract line item is funded by multiple accounting classification citations, the contracting officer shall provide adequate instructions in section G (Contract Administration Data), under the heading "Payment Instructions for Multiple Accounting Classification Citations," to permit the paying office to charge the accounting classification citations assigned to that contract line item (see 204.7104-1(a)) in a manner that reflects the performance of work on the contract. If additional accounting classification citations are subsequently added, the payment instructions must be modified to include the additional accounting classification citations.

(ii) Payment instructions shall provide a methodology for the paying office to assign payments to the appropriate accounting classification citation(s), based on anticipated contract work performance. The method established should be consistent with the reasons for the establishment of the line items. The payment method may be based upon a unique distribution profile devised to reflect how the funds represented by each of the accounting classification citations support contract performance. Payment methods that direct that payments be made from the earliest available fiscal year funding sources, or that provide for proration across accounting classification citations assigned to the line

item, or a combination thereof, may be used if that methodology reasonably reflects how each of the accounting classification citations supports contract performance.

[60 FR 34469, July 3, 1995; 60 FR 43191, Aug. 18, 1995]

Subpart 204.72—Contractor Identification

204.7200 Scope of subpart.

This subpart prescribes uniform policies and procedures for identification of commercial and Government entities when it is necessary to:

(a) Exchange data with another contracting activity, including contract administration activities and contract payment activities, or to comply with the reporting requirements of subpart 204.6; or

(b) Identify contractors for the purposes of developing computerized acquisition systems or solicitation mailing lists.

204.7201 Definitions.

(a) *Commercial and Government entity (CAGE) code* means—

(1) A code assigned by the Defense Logistics Services Center (DLSC) to identify a commercial or Government entity; or

(2) A code assigned by a member of the North Atlantic Treaty Organization (NATO) and maintained by the Defense Logistics Services Center.

(b) *Contractor identification code* means any code required by the contracting office for the purpose of identifying the offeror. CAGE code and contractor identification numbers are two examples of contractor identification codes.

[56 FR 36289, July 31, 1991, as amended at 61 FR 51031, Sept. 30, 1996]

204.7202 General.

Various coding systems are in use to identify commercial and government entities. Codes are requested by contracting and contract administration offices for various reasons. This guidance is designed to improve the accuracy of the initial code assignment and to help ensure that the data are maintained accurately and are up-to-date.

204.7202-1 CAGE codes.

(a) CAGE codes are assigned or maintained by the Defense Logistics Services Center (DLSC) to identify commercial and Government activities. Their use is prescribed by 253.204-70(b)(5)(ii)(C) and DoD 4000.25-5-M, Military Standard Contract Administration Procedures (MILSCAP).

(b) CAGE codes have also been known in the past as federal supply codes for manufacturers (FSCM) and federal supply codes for nonmanufacturers (FSCNM).

(c) If the CAGE code is not already available in the contracting office, and the apparent awardee does not respond to the provision at 252.204-7001, Commercial and Government Entity (CAGE) Code Reporting, use the following procedures in the order listed—

(1) Use the bimonthly H-8 microfiche or CD ROM publication issued by DLSC. (Their address is: DLSC-RP, Federal Center, 74 N. Washington, Battle Creek, MI 49017-3084. Their telephone numbers are: DSN 932-4725, FTS 552-4725, or commercial (616) 961-4725.);

(2) Use the on-line access to the CAGE file through the Defense Logistics Information System;

(3) Use the on-line access to the Defense Logistics Agency CAGE file through the DLA Network or dial-up capability; or

(4) Ask DLSC to assign a CAGE code. Submit a DD Form 2051, Request for Assignment of a CAGE Code, (or electronic equivalent) to the address in paragraph (c)(1) of this subsection, ATTN: DLSC-SBB. The contracting activity completes Section A of the DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code, and the contractor completes section B. The contracting activity must verify section B before the form is submitted.

(5) Direct questions on obtaining computer tapes, electronic updates, or code assignments to DLSC (DLSC-SBB) at DSN 932-4358, FTS 552-4358, or commercial (616) 961-4358.

[56 FR 36289, July 31, 1991, as amended at 57 FR 53598, Nov. 12, 1992; 61 FR 51031, Sept. 30, 1996]

204.7202-2 Contractor identification number.

Use of the contractor identification number for contract data reporting is prescribed by 253.204-70(b)(5)(ii)(A). A Data Universal Numbering System (DUNS) number, which is a nine-digit number assigned by Dun and Bradstreet Information Services to an establishment, is the contractor identification number for Federal contractors. When the contractor identification number is not already available to the contracting activity, use the following procedures in the order listed:

(a) Contact the offeror and obtain the DUNS number.

(b)(1) Dun & Bradstreet Information Services for a DUNS number by—

(i) Telephone (610) 882-7741.

(ii) Facsimile (610) 882-7140.

(iii) Writing to FPDC Department, Dun & Bradstreet Information Services, 899 Eaton Avenue, Bethlehem, PA 18025-0013.

(2) All requesters should provide the following information:

(i) Name of requesting contracting office;

(ii) Contracting office code (Block A3 on the DD Form 350) assigned by the departmental data collection point;

(iii) Appropriate agency code as follows:

(A) Army activities—2100;

(B) Navy activities—1700;

(C) Air Force activities—5700;

(D) Defense Logistics Agency—97AS;

(E) Other DoD contracting activities—9700.

(iv) Contracting office area code and commercial telephone number;

(v) Name of individual making the request;

(vi) Total number of DUNS requests, if more than one; and

(vii) Contractor establishment name, street address, P.O. Box, city/town, state, ZIP code, and telephone number (if available). For foreign offerors, include province, country, and postal code.

[57 FR 42629, Sept. 15, 1992, as amended at 61 FR 51031, Sept. 30, 1996]

204.7202-3 Taxpayer identification numbers.

The taxpayer identification number (TIN) is prescribed in FAR subpart 4.9.

204.7202-4 Locally developed coding systems.

Locally developed coding systems may be used to identify contractors as long as the contracting activity is able to comply with the identification requirements of the activities with which it must share data, e.g., furnish the CAGE code to the contract administration activity.

204.7203 Responsibilities of contracting officers.

(a) The contracting officer shall assist the offeror in obtaining the required contractor code(s).

(b) Prospective offerors may not be denied a solicitation or bid set because the offeror does not have a contractor code.

(c) The contracting officer or designee shall not request a new code assignment until the appropriate microfiche, hardcopy or computer files have been screened in an effort to identify a current code for the entity. If the contracting officer does not have access to the files or listings, then initiate action to obtain the files or listings and any equipment necessary to use those files and/or listings (see 204.7202-1 and 2).

(d) If a CAGE code is being requested, it is the responsibility of the contracting activity to request the assignment of the CAGE code by completing section A of the DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code (see 253.303-2051). The prospective contractor will complete section B of the form. The completed form or electronic equivalent will be submitted by the contracting activity to DLSC-SBB for processing and code assignment after the contracting activity has verified the data submitted by the contractor. CAGE codes may be requested at the time the offeror is sent a solicitation package or added to the mailing list to ensure that a code is assigned in sufficient time to process the DD Form 350, Individual Contracting Action Report, without delay.

[56 FR 36289, July 31, 1991, as amended at 57 FR 53598, Nov. 12, 1992; 61 FR 51031, Sept. 30, 1996]

204.7204 Maintenance.

Maintenance transactions such as changes in name or address are to be submitted to the maintenance activity.

204.7204-1 Maintenance of the CAGE file.

(a) Changes, except name changes, may be submitted in writing—

(1) By the entity identified by the code, using company letterhead, through the contract administration office;

(2) By the contracting office; or

(3) By the contract administration office (see also FAR Subpart 42.12, Novation and Change-of-Name Agreements.)

(4) Using the DD Form 2051, facsimile or electronic equivalent to: Defense Logistics Services Center, DLSC-SBB, Federal Center, 74 N. Washington, Battle Creek, MI 49017-3084. Telephone Numbers: DSN 932-4358, FTS 552-4358, commercial (616) 961-4358. Facsimile: (616) 961-4528, 4352, 4265. Bulletin Board: (616) 961-4589, 4527, 5262, 5303; Message: RUEBUAA.

(b) The change-of-name agreement shall be submitted to DLSC-SBB by the contracting officer responsible for execution of the agreement (see FAR subpart 42.12). In the event there are no current contracts in force, each contracting and contract administration office receiving notification of changes from the commercial entity shall forward a copy of the change notice annotated with the CAGE code to the DLSC-SBB unless the change notice indicates that DLSC-SBB has already been notified.

(c) Additional guidance for maintaining CAGE codes is set forth at Volume 7 of DoD 4100.39-M, Defense Integrated Data System (DIDS) Manual.

[56 FR 36289, July 31, 1991, as amended at 57 FR 53598, Nov. 12, 1991; 61 FR 51031, Sept. 30, 1996]

204.7204-2 Maintenance of contractor identification number codes.

Changes, except name changes, may be submitted in writing using company letterhead by the entity identified by the code through the contract administration office, by the contracting office or the contract administration office (see also FAR Subpart 42.12, Novation

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and Change-of-Name Agreements), using the agency letterhead, by mail, facsimile or electronic equivalent to FPDC Department, Dun & Bradstreet Information Services, 899 Eaton Avenue, Bethlehem, PA 18025-0013.

[56 FR 67212, Dec. 30, 1991]

204.7205 Novation agreements, mergers and sales of assets.

Contracting officers shall process and execute novation agreements in accordance with FAR Subpart 42.12, Novation and Change-of-Name Agreements. These actions are independent of code and name assignments made as a result of the occasion which created the need for the novation agreement. The maintenance activity will determine which entity(s) will retain the existing code(s) and which entities will be assigned new codes. The contracting officer responsible for processing the novation agreement shall provide the maintenance activity with the following information:

(a) Name(s), address(es), and code(s) of the contractor(s) transferring the original contractual rights and obligations.

(b) Name(s), address(es), and code(s) (if any) of the entity who is the successor in interest (transferor).

(c) Name(s), address(es), and code(s) (if any) of the entity who is retaining

or receiving the rights to the technical data.

(d) Description of the circumstances surrounding the novation agreement and especially the relationship of each entity to the other.

204.7206 Using CAGE codes to identify agents and brokers.

Authorized agents and brokers are entities and, as such, may be assigned CAGE codes and contractor identification number codes for identification and processing purposes.

(a) A single CAGE code will be assigned to the agent/broker establishment in addition to any codes assigned to the entities represented by the agent/broker, i.e., only one code will be assigned to a specific agent/broker entity regardless of the number of firms represented by that agent/broker.

(b) Additional codes may be assigned to an agent/broker if they meet the criteria for assigning additional codes for entities, e.g., different location.

(c) Codes will not be assigned to an agent/broker in care of the entity being represented or in any way infer that the agent/broker is a separate establishment bearing the name of the entity represented by the agent/broker.

[56 FR 36289, July 31, 1991, as amended at 61 FR 51032, Sept. 30, 1996]

SUBCHAPTER B—ACQUISITION PLANNING

PART 205—PUBLICIZING CONTRACT ACTIONS

Sec.

Subpart 205.2—Synopsis of Proposed Contract Actions

- 205.203 Publicizing and response time.
205.207 Preparation and transmittal of syn-
opses.

Subpart 205.3—Synopsis of Contract Awards

- 205.303 Announcement of contract awards.

Subpart 205.4—Release of Information

- 205.470 Contractor information to be pro-
vided cooperative agreement holders.
205.470-1 Statutory requirement.
205.470-2 Contract clause.

Subpart 205.5—Paid Advertisements

- 205.502 Authority.
AUTHORITY: 41 U.S.C. 421 and 48 CFR chap-
ter 1.
SOURCE: 56 FR 36302, July 31, 1991, unless
otherwise noted.

Subpart 205.2—Synopsis of Proposed Contract Actions

205.203 Publicizing and response time.

(b) Allow at least 45 days response time when requested by a qualifying or designated country source (as these terms are used in part 225) and the request is consistent with the Government's requirement.

205.207 Preparation and transmittal of synopses.

(d)(i) For small disadvantaged business set-asides under 219.502-2-70, use CBD Numbered Note 4.

(ii) For acquisitions being considered for small disadvantaged business set-aside, use CBD Numbered Note 6.

(iii) For historically black college and university and minority institution set-asides under 226.7003, use CBD Numbered Note 5.

(iv) For acquisitions being considered for historically black college and uni-

versity and minority institution set-aside, state:

This proposed contract is being considered as a 100 percent set-aside for historically black colleges and universities (HBCUs) and minority institutions (MIs), as defined by the clause at 252.226-7000 of the Defense Federal Acquisition Regulation Supplement. Interested HBCUs and MIs should provide the contracting office as early as possible, but not later than 15 days after this notice, evidence of their capability to perform the contract, and a positive statement of their eligibility as an HBCU or MI. If adequate response is not received from HBCUs and MIs, the solicitation will instead be issued, without further notice, as: _____ (indicate if unrestricted, or restricted for small business or small disadvantaged business, etc.). Therefore, replies to this notice are also requested from

(enter the types of firms to be solicited in the event an HBCU or MI set-aside is not made)."

(v) For broad agency announcement (BAA) (see 235.016) notices, indicate which, if any, portion of the BAA will be set-aside for historically black colleges and universities and minority institutions.

(e) For acquisitions restricted to domestic sources under the authority of FAR 6.302-3, use CBD Numbered Note 13.

Subpart 205.3—Synopsis of Contract Awards

205.303 Announcement of contract awards.

(a) *Public announcement.* (i) The threshold for DoD awards is \$5 million. Report all contractual actions, including modifications, that have a face value, excluding unexercised options, of more than \$5 million.

(A) For undefinitized contractual actions, report the not-to-exceed (NTE) amount. Later, if the definitized amount exceeds the NTE amount by more than \$5 million, report only the amount exceeding the NTE.

(B) For indefinite delivery, time and material, labor hour, and similar contracts, report the initial award if the estimated face value, excluding

unexercised options, is more than \$5 million. Do not report orders up to the estimated value, but after the estimated value is reached, report subsequent modifications and orders that have a face value of more than \$5 million.

(C) Do not report the same work twice.

(ii) Departments and agencies submit the information—

(A) To the Office of the Assistant Secretary of Defense (Public Affairs);

(B) By the close of business the day before the date of the proposed award;

(C) Using report control symbol DD-LA- (AR) 1279;

(D) Including, as a minimum, the following—

(1) *Contract data.* Contract number, modification number, or delivery order number, face value of this action, total cumulative face value of the contract, description of what is being bought, contract type, whether any of the buy was for foreign military sales (FMS) and identification of the FMS customer;

(2) *Competition information.* Number of solicitations mailed and number of offers received;

(3) *Contractor data.* Name, address, and place of performance (if significant work is performed at a different location);

(4) *Funding data.* Type of appropriation and fiscal year of the funds, and whether the contract is multiyear (see FAR Subpart 17.1); and

(5) *Miscellaneous data.* Identification of the contracting office, the contracting office point of contact, known congressional interest, and the information release date.

(iii) Departments and agencies, in accordance with department/agency procedures and concurrent with the public announcement, shall provide information similar to that required by paragraph (a)(ii) of this section to members of Congress in whose state or district the contractor is located and the work is to be performed.

[56 FR 36302, July 31, 1991, as amended at 56 FR 67212, Dec. 30, 1991]

Subpart 205.4—Release of Information

205.470 Contractor information to be provided cooperative agreement holders.

205.470-1 Statutory requirement.

(a) As required by 10 U.S.C. 2413, the Defense Logistics Agency enters into cooperative agreements—

(1) With—

(i) State and local governments;

(ii) Non-profit organizations;

(iii) Indian tribal organizations; and

(iv) Indian-owned economic enterprises

(2) For the provision of technical assistance to business entities.

(b) Contractors receiving defense contracts valued at more than \$500,000 must provide cooperative agreement holders, at their request, the information specified in the clause at 252.205-7000, Provision of Information to Cooperative Agreement Holders.

205.470-2 Contract clause.

Use the clause at 252.205-7000, Provision of Information to Cooperative Agreement Holders, in solicitations and contracts expected to exceed \$500,000.

Subpart 205.5—Paid Advertisements

205.502 Authority.

For paid advertisements to recruit civilian personnel, see section 332-1-9 of the Federal Personnel Manual.

(a) *Newspapers.* (i) Heads of contracting activities are delegated authority to approve the publication of paid advertisements in newspapers. They may redelegate this authority in accordance with agency procedures.

(ii) Submit DD Form 1535, Request/Approval for Authority to Advertise, to the approval authority to obtain special or general authority.

(A) Special authority permits the publication of a given advertisement for a specified number of times in designated newspapers.

(B) General authority permits the publication of such advertisements as may be required during a designated fiscal year.

**PART 206—COMPETITION
REQUIREMENTS**

Sec.

206.001 Applicability.

**Subpart 206.2—Full and Open Competition
After Exclusion of Sources**

206.202 Establishing or maintaining alternative sources.

206.203 Set-asides for small business and labor surplus area concerns.

**Subpart 206.3—Other Than Full and Open
Competition**

206.302 Circumstances permitting other than full and open competition.

206.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

206.302-2 Unusual and compelling urgency.

206.302-3 Industrial mobilization; or engineering, development, or research capability.

206.302-3-70 Solicitation provision.

206.302-4 International agreement.

206.302-5 Authorized or required by statute.

206.302-7 Public interest.

206.303 Justifications.

206.303-1 Requirements.

206.303-2 Content.

206.304 Approval of the justification.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36303, July 31, 1991, unless otherwise noted.

206.001 Applicability.

(b) Contracts awarded using the procedures in 237.104(b)(ii) are expressly authorized by 10 U.S.C. 1091.

[60 FR 61592, Nov. 30, 1995]

**Subpart 206.2—Full and Open
Competition After Exclusion of
Sources**

**206.202 Establishing or maintaining
alternative sources.**

(a) Agencies may use this authority to totally or partially exclude a particular source from a contract action.

(b) The determination and findings (D&F) and the documentation supporting the D&F must identify the source to be excluded from the contract action.

(i) Include the following information, as applicable, and any other informa-

tion that may be pertinent, in the supporting documentation:

(A) The acquisition history of the supplies or services, including sources, prices, quantities, and dates of award;

(B) The circumstances which make it necessary to exclude the particular source from the contract action, including—

(1) The reasons for the lack of or potential loss of alternative sources; e.g., the technical complexity and criticality of the supplies or services; and

(2) The current annual requirement and projected needs for the supplies or services;

(C) Whether the existing source must be totally excluded from the contract action or whether a partial exclusion is sufficient;

(D) The potential effect of exclusion on the excluded source in terms of loss of capability to furnish the supplies or services in the future;

(E) When FAR 6.202(a)(1) is the authority, the basis for—

(1) The determination of future competition; and

(2) The determination of reduced overall costs. Include, as a minimum, a discussion of start-up costs, facility costs, duplicative administration costs, economic order quantities, and life cycle cost considerations; and

(F) When FAR 6.202(a)(2) is the authority—

(1) The current annual and mobilization requirements for the supplies or services, citing the source of, or the basis for, the data;

(2) A comparison of current production capacity with that necessary to meet mobilization requirements;

(3) An analysis of the risks of relying on the present source; and

(4) A projection of the time required for a new source to acquire the necessary facilities and achieve the production capacity necessary to meet mobilization requirements.

(ii) A sample format for Determination and Findings citing the authority of FAR 6.202(a) is in Table 6-1, Determinations and Findings.

TABLE 6-1—DETERMINATIONS AND FINDINGS

Determinations and Findings
 Authority to Exclude a Source
 In accordance with 10 U.S.C. 2304(b)(1), it is my determination that the following contract action may be awarded using full and open competition after exclusion of _____¹:

(Describe requirement.) Findings The exclusion of _____¹

Alternate 1: will increase or maintain competition for this requirement and is expected to result in a reduction of \$_____ in overall costs for the present and future acquisition of these supplies or services. (Describe how estimate was derived.)

Alternate 2: is in the interest of national defense because it will result in having a supplier available for furnishing these supplies or services in case of a national emergency or industrial mobilization. (Explain circumstances requiring exclusion of source.)

Alternate 3: is in the interest of national defense because it will result in establishment or maintenance of an essential engineering, research or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center. (Explain circumstances requiring exclusion of source.)

206.203 Set-asides for small business and labor surplus area concerns.

(b) Also no separate justification or determination and findings is required for contract actions processed as small disadvantaged business set-asides (219.502-2-70) or as historically black college and university and minority institution set-asides (226.7003).

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.

206.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) *Authority.* (2)(i) Section 8059 of Pub. L. 101-511 and similar sections in

¹Identify source being excluded.

subsequent defense appropriations acts prohibit departments and agencies from entering into contracts for studies, analyses, or consulting services (see FAR subpart 37.2) on the basis of an unsolicited proposal without providing for full and open competition, unless—

(1) The head of the contracting activity, or a designee no lower than chief of the contracting office, determines that—

(i) Following thorough technical evaluation, only one source is fully qualified to perform the proposed work;

(ii) The unsolicited proposal offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence; or

(iii) The contract benefits the national defense by taking advantage of a unique and significant industrial accomplishment or by ensuring financial support to a new product or idea;

(2) A civilian official of the DoD, whose appointment has been confirmed by the Senate, determines the award to be in the interest of national defense; or

(3) The contract is related to improvement of equipment that is in development or production.

(b) *Application.* This authority may be used for acquisitions of test articles and associated support services from a designated foreign source under the DoD Foreign Comparative Testing Program.

(4) Do not use this authority unless the equipment or parts have been adopted as standard items of supply in accordance with DoDI 5000.2, Defense Acquisition Management Policies and Procedures.

[56 FR 36303, July 31, 1991, as amended at 57 FR 14992, Apr. 23, 1992; 58 FR 28463, May 13, 1993]

206.302-2 Unusual and compelling urgency.

(b) *Application.* The circumstances under which use of this authority may be appropriate include, but are not limited to, the following:

(i) Supplies, services, or construction needed at once because of fire, flood, explosion, or other disaster;

206.302-3-70 Solicitation provision.

48 CFR Ch. 2 (10-1-96 Edition)

(ii) Essential equipment or repair needed at once to—

(A) Comply with orders for a ship;

(B) Perform the operational mission of an aircraft; or

(C) Preclude impairment of launch capabilities or mission performance of missiles or missile support equipment.

(iii) Construction needed at once to preserve a structure or its contents from damage;

(iv) Purchase requests citing an issue priority designator under DoDD 4410.6, Uniform Material Movement and Issue Priority System, of 4 or higher, or citing "Electronic Warfare QRC Priority."

206.302-3 Industrial mobilization; or engineering, development, or research capability.

206.302-3-70 Solicitation provision.

Use the provision at 252.206-7000, Domestic Source Restriction, in all solicitations that are restricted to domestic sources under the authority of FAR 6.302-3.

206.302-4 International agreement.

(c) *Limitations.* Pursuant to 10 U.S.C. 2304(f)(2)(E), the justifications and approvals described in FAR 6.303 and 6.304 are not required if—

(i) The head of the contracting activity prepares a document which describes the terms of an agreement or treaty or the written directions, such as a Letter of Offer and Acceptance, that have the effect of requiring the use of other than competitive procedures for the acquisition; and

(ii) The document in paragraph (c)(i) of this subsection is approved by the competition advocate for the contracting activity.

206.302-5 Authorized or required by statute.

(b) *Application.* Agencies may use this authority to—

(i) Acquire supplies and services from military exchange stores outside the United States for use by the armed forces outside the United States in accordance with 10 U.S.C. 2424(a) and subject to the limitations of 10 U.S.C. 2424(b). The limitations of 10 U.S.C. 2424(b) (1) and (2) do not apply to the

purchase of soft drinks that are manufactured in the United States. For the purposes of 10 U.S.C. 2424, soft drinks manufactured in the United States are brand name carbonated sodas, manufactured in the United States, as evidenced by product markings.

(ii) Acquire police, fire protection, airfield operation, or other community services from local governments at military installations to be closed under the circumstances in 237.7401 (Section 2907 of Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160)).

(c) *Limitations.* (i) 10 U.S.C. 2361 precludes use of this exception for awards to colleges or universities for the performance of research and development, or for the construction of any research or other facility, unless—

(A) The statute authorizing or requiring award specifically—

(1) States that the statute modifies or supersedes the provisions of 10 U.S.C. 2361,

(2) Identifies the particular college or university involved, and

(3) States that award is being made in contravention of 10 U.S.C. 2361(a); and

(B) The Secretary of Defense provides Congress written notice of intent to award. The contract cannot be awarded until 180 days have elapsed since the date Congress received the notice of intent to award. Contracting activities must submit a draft notice of intent with supporting documentation through channels to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology).

(ii) The limitation in paragraph (c)(i) of this subsection applies only if the statute authorizing or requiring award was enacted after September 30, 1989.

(iii) Subsequent statutes may provide different or additional constraints on the award of contracts to specified colleges and universities. Contracting officers should consult legal counsel on a case-by-case basis.

[56 FR 36303, July 31, 1991, as amended at 57 FR 14992, Apr. 23, 1992; 58 FR 28463, May 13, 1993; 59 FR 36089, July 15, 1994; 60 FR 29497, June 5, 1995; 60 FR 40107, Aug. 7, 1995]

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207.103

206.302-7 Public interest.

(c) *Limitations.* For the defense agencies, the written determination to use this authority must be made by the Secretary of Defense.

206.303 Justifications.

206.303-1 Requirements.

(b) Technical and requirements personnel must obtain any review and approval required by department or agency procedures before submission of a recommendation for other than full and open competition to the contracting officer.

(c) When conditions warrant, a class justification may provide for award of multiple contracts extending across more than one program phase.

[56 FR 36303, July 31, 1991, as amended at 60 FR 61592, Nov. 30, 1995]

206.303-2 Content.

(a) Include sufficient information in the justification to permit its approval as a stand-alone document, even though agency procedures may require supplementary documentation.

206.304 Approval of the justification.

(a)(4) The Under Secretary of Defense (Acquisition & Technology) may delegate this authority to—

(A) An Assistant Secretary of Defense; or

(B) For a defense agency, an officer or employee serving in, assigned, or detailed to that agency who—

(1) If a member of the armed forces, is serving in a rank above brigadier general or rear admiral (lower half); or

(2) If a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

[61 FR 10285, Mar. 13, 1995, as amended at 61 FR 50451, Sept. 26, 1996]

PART 207—ACQUISITION PLANNING

Subpart 207.1—Acquisition Plans

Sec.
207.102 Policy.

207.103 Agency-head responsibilities.

207.104 General procedures.

207.105 Contents of written acquisition plans.

207.106 Additional requirements for major systems.

Subpart 207.4—Equipment Lease or Purchase

207.401 Acquisition considerations.

207.470 Statutory requirements.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36305, July 31, 1991, unless otherwise noted.

Subpart 207.1—Acquisition Plans

207.102 Policy.

When a class justification for other than full and open competition has been approved, planning for competition shall be accomplished consistent with the terms of that approval.

[60 FR 61592, Nov. 30, 1995]

207.103 Agency-head responsibilities.

(c)(i) Military departments and agencies shall prepare written acquisition plans for—

(A) Acquisitions for development, as defined in FAR 35.001, when the total cost of all contracts for the acquisition program is estimated at \$5 million or more;

(B) Acquisitions for production or services when the total cost of all contracts for the acquisition program is estimated at \$30 million or more for all years or \$15 million or more for any fiscal year; and

(C) Any other acquisition considered appropriate by the department or agency.

(ii) Written plans are not required in acquisitions for a final buy out or one-time buy. The terms “final buy out” and “one-time buy” refer to a single contract which covers all known present and future requirements. This exception does not apply to a multiyear contract or a contract with options or phases.

(d) Prepare written acquisition plans for acquisition programs meeting the thresholds of paragraphs (c)(i) (A) and (B) of this section on a program basis. Other acquisition plans may be written

on either a program or an individual contract basis.

(f) The program manager, or other official responsible for the program, has overall responsibility for acquisition planning.

(h)(i) Apply design-to-cost principles—

(A) In all major defense acquisition programs (DoDD 5000.1, Defense Acquisition), unless exempted by the Secretary of Defense; and

(B) To the acquisition of systems, subsystems, and components below the thresholds for major defense acquisition programs, to the extent prescribed by DoDD 5000.1.

(ii) Consider life-cycle-cost in all acquisitions of systems and equipment.

[56 FR 36305, July 31, 1991, as amended at 61 FR 50451, Sept. 26, 1996]

207.104 General procedures.

(b) The planner should forward the requirements information to the contract administration organization when assistance in identification of potential sources of supply is necessary, when an existing contract is being modified or resolicited, or when contract administration resource requirements will be affected.

[61 FR 50451, Sept. 26, 1996]

207.105 Contents of written acquisition plans.

For acquisitions covered by 207.103(c)(i) (A) and (B), correlate the plan to the DoD Future Years Defense Program, applicable budget submissions, and the decision coordinating paper/program memorandum, as appropriate. It is incumbent upon the planner to coordinate the plan with all those who have a responsibility for the development, management, or administration of the acquisition. The acquisition plan should be provided to the contract administration organization to facilitate resource allocation and planning for the evaluation, identification, and management of contractor performance risk.

(a) *Acquisition background and objectives*—(1) *Statement of need.* Include—

(A) Applicability of a decision coordinating paper (DCP), acquisition decision memorandum, Defense Acquisition

Board (DAB), and/or internal service reviews. Describe the options in the DCP/acquisition decision memorandum and delineate which option the acquisition plan supports.

(B) The date approval for operational use has been or will be obtained. If waivers are requested, describe the need for the waivers.

(C) A milestone chart depicting the acquisition objectives.

(D) Milestones for updating the acquisition plan. Indicate when the plan will be updated. Program managers should schedule updates to coincide with DAB reviews and the transition from one phase to another (e.g., engineering and manufacturing development to production and deployment).

(8) *Acquisition streamlining.* DoDD 5000.1, Defense Acquisition, and DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, contain policy direction on acquisition streamlining. See MIL-HDBK 248, Acquisition Streamlining, for guidance on streamlining performance requirements, the technical package, and the contract strategy.

(b) *Plan of action*.—(5) *Budgeting and funding.* Include specific references to budget line items and program elements, where applicable, estimated production unit cost, and the total cost for remaining production.

(6) *Product descriptions.* For development acquisitions, describe the market research undertaken to identify commercial items, commercial items with modifications, or nondevelopmental items (see FAR part 10) that could satisfy the acquisition objectives.

(13) *Logistics considerations.* (i) Describe the extent of integrated logistics support planning to date, including references to approved plans.

(ii) Discuss the mission profile, reliability, and maintainability (R&M) program plan, R&M predictions, redundancy, qualified parts lists, parts and material qualification, R&M requirements imposed on vendors, failure analysis, corrective action and feedback, and R&M design reviews and trade-off studies.

(iv) See DoDD 5000.1, Defense Acquisition, and DoD 5000.2-R, Mandatory

Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, for procedures on standardization and on the DoD Parts Control Program. See MIL-STD-965, Parts Control Program, for procedures on the Standardized Military Drawing Program.

(S-70) Describe the extent of Computer-Aided Acquisition and Logistics Support (CALS) implementation (see MIL-HDBK 59, Department of Defense Computer-Aided Logistics Support (CALS) Program Guide, and MIL-STD-1840A, Automated Interchange of Technical Information.

(16) *Environmental and energy conservation objectives.* Discuss actions taken to ensure either elimination of or authorization to use class I ozone-depleting chemicals and substances (see 211.271).

(18) *Other considerations.* (A) National Technology and Industrial Base. For major defense acquisition programs, address the following (Pub. L. 102-484, section 4220)—

(1) An analysis of the capabilities of the national technology and industrial base to develop, produce, maintain, and support such program, including consideration of the following factors related to foreign dependency (Pub. L. 102-484, section 4219(h))—

(i) The availability of essential raw materials, special alloys, composite materials, components, tooling, and production test equipment for the sustained production of systems fully capable of meeting the performance objectives established for those systems; the uninterrupted maintenance and repair of such systems; and the sustained operation of such systems.

(ii) The identification of items specified in paragraph (b)(18)(A)(1)(i) of this section that are available only from sources outside the national technology and industrial base.

(iii) The availability of alternatives for obtaining such items from within the national technology and industrial base if such items become unavailable from sources outside the national technology industrial base; and an analysis of any military vulnerability that could result from the lack of reasonable alternatives.

(iv) The effects on the national technology and industrial base that result from foreign acquisition of firms in the United States.

(2) Consideration of requirements for efficient manufacture during the design and production of the systems to be procured under the program.

(3) The use of advanced manufacturing technology, processes, and systems during the research and development phase and the production phase of the program.

(4) To the maximum extent practicable, the use of contract solicitations that encourage competing offerors to acquire, for use in the performance of the contract, modern technology, production equipment, and production systems (including hardware and software) that increase the productivity of the offerors and reduce the life-cycle costs.

(5) Methods to encourage investment by U.S. domestic sources in advanced manufacturing technology production equipment and processes through—

(i) Recognition of the contractor's investment in advanced manufacturing technology production equipment, processes, and organization of work systems that build on workers' skill and experience, and work force skill development in the development of the contract objective; and

(ii) Increased emphasis in source selection on the efficiency of production.

(6) Expanded use of commercial manufacturing processes rather than processes specified by DoD.

(7) Elimination of barriers to, and facilitation of, the integrated manufacture of commercial items and items being produced under DoD contracts.

(8) Expanded use of commercial items, commercial items with modifications, or to the extent commercial items are not available, nondevelopmental items (see FAR part 10).

(B) *Industrial preparedness (IP).*

(1) Provide the program's IP strategy that assesses the capability of the U.S. industrial base to achieve identified surge and mobilization goals. If no IP strategy has been developed, provide supporting rationale for this position.

(2) If in the IP strategy, the development of a detailed IP plan was determined to be applicable, include the

plan by text or by reference. If the development of the IP plan was determined not to be applicable, summarize the details of the analysis forming the basis of this decision.

(3) If the program involves peacetime and wartime hardware configurations which are supported by logistics support plans, identify their impact on the IP plan.

(C) Ensure compliance with DoDD 4210.15, Hazardous Material Pollution Prevention.

(D) *Contract administration.* Discuss the level of Government administration anticipated or currently performed and any change proposed by the contract administration office.

[56 FR 36305, July 31, 1991, as amended at 58 FR 28463, May 13, 1993; 58 FR 32061, June 8, 1993; 60 FR 29497, June 5, 1995; 60 FR 61593, Nov. 30, 1995; 61 FR 50451, Sept. 26, 1996]

207.106 Additional requirements for major systems.

(b)(1)(A) The contracting officer is prohibited by 10 U.S.C. 2305(d)(4)(A) from requiring offers for development or production of major systems that would enable the Government to use technical data to competitively procure identical items or components of the system if the item or component were developed exclusively at private expense, unless the contracting officer determines that—

(1) The original supplier of the item or component will be unable to satisfy program schedule or delivery requirements;

(2) Proposals by the original supplier of the item or component to meet mobilization requirements are insufficient to meet the agency's mobilization needs; or

(3) The Government is otherwise entitled to unlimited rights in technical data.

(B) If the contracting officer makes a determination, under paragraphs (b)(1)(A) (1) and (2) of this section, for a competitive solicitation, 10 U.S.C. 2305(d)(4)(B) requires that the evaluation of items developed at private expense be based on an analysis of the total value, in terms of innovative design, life-cycle costs, and other pertinent factors, of incorporating such items in the system.

Subpart 207.4—Equipment Lease or Purchase

207.401 Acquisition considerations.

If the equipment will be leased for more than 60 days, the requiring activity must prepare and provide the contracting officer with the justification supporting the decision to lease or purchase.

§207.470 Statutory requirements.

(a) *Limitation on contracts with terms of 18 months or more.* As required by 10 U.S.C. 2401a, the contracting officer shall not enter into any contract for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement with a term of 18 months or more, or extend or renew any such contract for a term of 18 months or more, unless the head of the contracting activity has—

(1) Considered all costs of such a contract (including estimated termination liability); and

(2) Determined in writing that the contract is in the best interest of the Government.

(b) *Leasing of commercial vehicles and associated equipment.* Except as provided in paragraph (a) of this section, the contracting officer may use leasing in the acquisition of commercial vehicles and associated equipment whenever the contracting officer determines that leasing of such vehicles is practicable and efficient (10 U.S.C. 2401a).

[61 FR 16879, Apr. 18, 1996, as amended at 61 FR 50451, Sept. 26, 1996]

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.

208.001 Priorities for use of Government supply sources.

208.002 Use of other Government supply sources.

Subpart 208.4—Ordering from Federal Supply Schedules

208.404 Using schedules.

208.404-1 Mandatory use.

208.404-2 Optional use.

208.405 Ordering office responsibilities.

208.405-2 Order placement.

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Subpart 208.7—Acquisition from the Blind and Other Severely Handicapped

208.705 Procedures.

Subpart 208.70—Coordinated Acquisition

- 208.7000 Scope of subpart.
- 208.7001 Definitions.
- 208.7002 Assignment authority.
- 208.7002-1 Acquiring department responsibilities.
- 208.7002-2 Requiring department responsibilities.
- 208.7003 Applicability.
- 208.7003-1 Assignments under integrated material management (IMM).
- 208.7003-2 Assignments under coordinated acquisition.
- 208.7004 Procedures.
- 208.7004-1 Purchase authorization from requiring department.
- 208.7004-2 Acceptance by acquiring department.
- 208.7004-3 Use of advance MIPRs.
- 208.7004-4 Cutoff dates for submission of Category II MIPRs.
- 208.7004-5 Notification of inability to obligate on Category II MIPRs.
- 208.7004-6 Cancellation of requirements.
- 208.7004-7 Termination for default.
- 208.7004-8 Transportation funding.
- 208.7004-9 Status reporting.
- 208.7004-10 Administrative costs.
- 208.7005 MIPRs.
- 208.7006 Coordinated acquisition assignments.

Subpart 208.71—Acquisition for National Aeronautics and Space Administration (NASA)

- 208.7100 Authorization.
- 208.7101 Policy.
- 208.7102 Procedures.
- 208.7103 Purchase request and acceptance.
- 208.7104 Changes in estimated total prices.
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Subpart 208.72—Industrial Preparedness Production Planning

- 208.7201 Definitions.
- 208.7202 General.
- 208.7203 Authority.
- 208.7204 Procedures.

Subpart 208.73—Use of Government-Owned Precious Metals

- 208.7301 Definitions.
- 208.7302 Policy.
- 208.7303 Procedures.
- 208.7304 Refined precious metals.
- 208.7305 Contract clause.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36306, July 31, 1991, unless otherwise noted.

208.001 Priorities for use of Government supply sources.

(a)(1)(v) See subpart 208.70, Coordinated Acquisition.

(2)(iii) Information on General Services Administration (GSA) schedules for maintenance, repair, and rehabilitation of personal property is in the GSA supply catalog. The types of personal property for which GSA, Federal Supply Service has schedule contracts for maintenance, repair, and/or rehabilitation are—

(1) Furniture (office, household, quarters, institutional, and hospital type);

(2) Typewriters (manual, electric, and electronic);

(3) Repair and maintenance of Government owned vehicles; and

(4) Tire retreading and repair (except aircraft).

208.002 Use of other Government supply sources.

(f) Detailed information on strategic and critical materials in excess of national stockpile requirements (e.g., metals, ores, chemicals) is available from the Defense National Stockpile Center, 1745 Jefferson Davis Highway, Crystal Square Bldg. #4, suite 100, Arlington, VA 22202.

(g) Acquire helium (Pub. L. 86-777)—

(i) In bulk from—

(A) The Department of Interior (Bureau of Mines); or

(B) Eligible private helium distributors. A list of eligible private helium distributors is maintained by the Bureau of Mines, Helium Field Operations, 1100 South Fillmore Street, Amarillo, TX 79101.

(ii) In cylinders or trailers, from—

(A) The Department of Interior (Bureau of Mines); or

(B) Through GSA Federal Supply Schedule contracts.

Subpart 208.4—Ordering From Federal Supply Schedules

208.404 Using schedules.

(a) When a schedule lists both foreign and domestic items that will meet the needs of the requiring activity, the ordering office must apply the procedures

of part 225 and FAR part 25, Foreign Acquisition. When purchase of an item of foreign origin is specifically required, the requiring activity must furnish the ordering office sufficient information to permit the determinations required by part 225 and FAR part 25 to be made.

208.404-1 Mandatory use.

The DoD will not be a mandatory user of any schedule unless individual DoD activities elect to provide annual requirements estimates to GSA and become mandatory users. Examples of areas where this approach may be applied are:

- (1) Group 68—gases and chemicals;
- (2) Group 26—pneumatic tires and inner tubes;
- (3) Maintenance, repair, and/or rehabilitation of personal property; and
- (4) “Just-in-time” arrangements for delivery of material directly from vendors to users.

208.404-2 Optional use.

Make maximum use of the schedules. Other procedures may be used if further competition is judged to be in the best interest of the Government in terms of quality, responsiveness, or cost.

208.405 Ordering office responsibilities.

208.405-2 Order placement.

- (1) Ordering offices may use DD Form 1155, Order for Supplies or Services, to order items from schedules.
- (2) Orders may be placed orally if—
 - (i) The order does not exceed the small purchase threshold at FAR 13.000;
 - (ii) The contractor agrees to furnish a delivery ticket for each shipment under the order (in the number of copies required by the ordering office). The ticket must include the—
 - (A) Contract number;
 - (B) Order number under the contract;
 - (C) Date of order;
 - (D) Name and title of person placing order;
 - (E) Itemized listing of supplies or services furnished; and
 - (F) Date of delivery or shipment.

(iii) Invoicing procedures are agreed upon. Optional methods of submitting invoices for payment are permitted, such as—

- (A) An individual invoice with a receipted copy of the delivery ticket;
- (B) A summarized monthly invoice covering all oral orders made during the month, with receipted copies of the delivery tickets (this option is preferred if there are many oral orders); or
- (C) A contracting officer statement that the Government has received the supplies.

(3) For purchases where cash payment is an advantage, the use of imprest funds (see FAR 13.4) is authorized when—

- (i) The order does not exceed the threshold at FAR 13.404(a); and
- (ii) The contractor agrees to the procedure.

Subpart 208.7—Acquisition From the Blind and Other Severely Handicapped

208.705 Procedures.

Ordering offices may use DD Form 1155, Order for Supplies or Services, to place orders with central nonprofit agencies or workshops.

Subpart 208.70—Coordinated Acquisition

208.7000 Scope of subpart.

This subpart prescribes policy and procedures for acquisition of items for which contracting responsibility is assigned to one or more of the departments/agencies or the General Services Administration. Contracting responsibility is assigned through—

- (a) The Coordinated Acquisition Program (commodity assignments are listed in appendix B); or
- (b) The Integrated Materiel Management Program (assignments are in DoD 4140.26-M, Integrated Materiel Management for Consumable Items).

208.7001 Definitions.

For purposes of this subpart—
Acquiring department means the department, agency, or General Services Administration which has contracting

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responsibility under the Coordinated Acquisition Program.

Integrated materiel management means assignment of acquisition management responsibility to one department, agency, or the General Services Administration for all of DoD's requirements for the assigned item. Acquisition management normally includes computing requirements, funding, budgeting, storing, issuing, cataloging, standardizing, and contracting functions.

Requiring department means the department or agency which has the requirement for an item.

208.7002 Assignment authority.

(a) Under the DoD Coordinated Acquisition Program, contracting responsibility for certain commodities is assigned to a single department, agency, or the General Services Administration (GSA). Commodity assignments are made—

(1) To the departments and agencies, by the Assistant Secretary of Defense (Production and Logistics);

(2) To the GSA, through agreement with GSA, by the Assistant Secretary of Defense (Production and Logistics);

(3) Outside the continental United States, by the Unified Commanders; and

(4) For acquisitions to be made in the United States for commodities not assigned under paragraphs (a) (1), (2), or (3) of this section, by agreement of agency heads (10 U.S.C. 2308).

(i) Agreement may be on either a one-time or a continuing basis. The submission of a military interdepartmental purchase request (MIPR) by a requiring activity and its acceptance by the contracting activity of another department, even though based on an oral communication, constitutes a one-time agreement.

(ii) Consider repetitive delegated acquisition responsibilities for coordinated acquisition assignment. If not considered suitable for coordinated acquisition assignment, formalize continuing agreements and distribute them to all activities concerned.

(b) Under the Integrated Materiel Management Program, assignments are made by the Assistant Secretary of Defense (Production and Logistics)—

(1) To the departments and agencies; and

(2) To the GSA, through agreement with GSA.

208.7002-1 Acquiring department responsibilities.

The acquiring department generally is responsible under coordinated acquisition for—

(a) Operational aspects of acquisition planning (Phasing the submission of requirements to contracting, consolidating or dividing requirements, analyzing the market, and determining patterns for the phased placement of orders to avoid unnecessary production fluctuations and meet the needs of requiring departments at the lowest price);

(b) Purchasing;

(c) Performing or assigning contract administration, including follow up and expediting of inspection and transportation; and

(d) Obtaining licenses under patents and settling patent infringement claims arising out of the acquisition. (Acquiring departments must obtain approval from the department whose funds are to be charged for obtaining licenses or settling claims.)

208.7002-2 Requiring department responsibilities.

The requiring department is responsible for—

(a) Ensuring compliance with the order of priority in FAR 8.001 for use of Government supply sources before submitting a requirement to the acquiring department for contracting action.

(b) Providing the acquiring department—

(1) The complete and certified documentation required by FAR 6.303-2(b). A requiring department official, equivalent to the appropriate level in FAR 6.304, must approve the documentation before submission of the military interdepartmental purchase request (MIPR) to the acquiring department;

(2) Any additional supporting data which the acquiring department contracting officer requests (e.g., the results of any market survey or why none was conducted, and actions the requiring department will take to overcome barriers to competition in the future);

(3) The executed determination and findings required by FAR 6.302-7(c)(1);

(4) When a requiring department requests an acquiring department to contract for supplies or services using full and open competition after exclusion of sources, all data required by FAR 6.202(b)(2);

(5) When the requiring department specifies a foreign end product, any determinations required by part 225 or FAR part 25;

(6) A complete definition of the requirements, including a list (or copies) of specifications, drawings, and other data required for the acquisition. The requiring department need not furnish Federal, military, departmental, or other specifications or drawings or data which are available to the acquiring department;

(7) Justification required by FAR 17.205(a) for any option quantities requested;

(8) A statement as to whether used or reconditioned material, former Government surplus property, or residual inventory will be acceptable, and if so—

(i) A list of any supplies that need not be new; and

(ii) The basis for determining the acceptability of such supplies, including an analysis of the factors at FAR 10.010(b);

(9) A statement as to whether the acquiring department may exceed the total MIPR estimate, and if so, by what amount;

(10) Unless otherwise agreed between the departments, an original and six copies of each MIPR and its attachments (except specifications, drawings, and other data); and

(11) A list of all persons who have had access to proprietary or source selection information (see FAR 3.104-9(e)).

208.7003 Applicability.

208.7003-1 Assignments under integrated material management (IMM).

(a) All items assigned for IMM must be acquired from the IMM manager except—

(1) Items purchased under circumstances of unusual and compelling urgency as defined in FAR 6.302-2. After such a purchase is made, the requiring activity must send one copy of

the contract and a statement of the emergency to the IMM manager;

(2) Items for which the IMM manager assigns a supply system code for local purchase or otherwise grants authority to purchase locally; or

(3) When purchase by the requiring activity is in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement. This exception does not apply to items—

(i) Critical to the safe operation of a weapon system;

(ii) With special security characteristics; or

(iii) Which are dangerous (e.g., explosives, munitions).

(b) When an item assigned for IMM is to be acquired by the requiring activity under paragraph (a)(3) of this subsection, the contracting officer must—

(1) Document the contract file with a statement of the specific advantage of local purchase for an acquisition exceeding the micro-purchase threshold in FAR part 13; and

(2) Ensure that a waiver is obtained from the IMM manager before initiating an acquisition exceeding the simplified acquisition threshold in FAR part 13, if the IMM assignment is to the General Services Administration (GSA), the Defense Logistics Agency (DLA), or the Army Materiel Command (AMC). Submit requests for waiver to—

(i) For GSA:

Commissioner (F), Federal Supply Service, Washington, DC 20406

(ii) For DLA:

Defense Construction Supply Center,
ATTN: DCSC-BDA, P.O. Box 3990,
Columbus, OH 43216-5000

Defense Electronics Supply Center,
ATTN: DESC-ERM, 1507 Wilmington
Pike, Dayton, OH 45444-5000

Defense Fuel Supply Center, ATTN:
DFSC-OI, Cameron Station, VA
22304-6160

Defense General Supply Center,
ATTN: DGSC-X, Richmond, VA
23297-5000

Defense Industrial Supply Center,
ATTN: DISC-OPD, 700 Robbins Ave-
nue, Philadelphia, PA 19111-5096

Defense Personnel Support Center,
ATTN: DPSC-CSH, 2800 South 20th
Street, P.O. Box 8419, Philadelphia,
PA 19101-8419

(iii) For AMC:

Commander, U.S. Army Materiel
Command, ATTN: AMCLG-S, 5001
Eisenhower Avenue, Alexandria,
VA 22333-0001

[60 FR 61593, Nov. 30, 1995]

208.7003-2 Assignments under coordinated acquisition.

Requiring departments must submit to the acquiring department all contracting requirements for items assigned for coordinated acquisition, except—

(a) Items obtained through the sources in FAR 8.001(a)(1) (i) through (vii);

(b) Items obtained under 208.7003-1(a);

(c) Requirements not in excess of the simplified acquisition threshold in FAR part 13, when contracting by the requiring department is in the best interest of the Government;

(d) In an emergency. When an emergency purchase is made, the requiring department must send one copy of the contract and a statement of the emergency to the contracting activity of the acquiring department;

(e) Requirements for which the acquiring department's contracting activity delegates contracting authority to the requiring department;

(f) Items in a research and development stage (as described in FAR part 35). Under this exception, the military departments may contract for research and development requirements, including quantities for testing purposes and items undergoing in-service evaluation (not yet in actual production, but beyond prototype). Generally, this exception applies only when research and development funds are used.

(g) Items peculiar to nuclear ordnance material where design characteristics or test-inspection requirements are controlled by the Department of Energy (DoE) or by DoD to ensure reliability of nuclear weapons.

(1) This exception applies to all items designed for and peculiar to nuclear ordnance regardless of agency control, or to any item which requires test or inspection conducted or controlled by DoE or DoD.

(2) This exception does not cover items used for both nuclear ordnance and other purposes if the items are not

subject to the special testing procedures.

(h) Items to be acquired under FAR 6.302-6 (national security requires limitation of sources);

(i) Items to be acquired under FAR 6.302-1 (supplies available only from the original source for follow-on contract);

(j) Items directly related to a major system and which are design controlled by and acquired from either the system manufacturer or a manufacturer of a major subsystem;

(k) Items subject to rapid design changes, or to continuous redesign or modification during the production and/or operational use phases, which require continual contact between industry and the requiring department to ensure that the item meets the requirements:

(1) This exception permits the requiring department to contract for items of highly unstable design. For use of this exception, it must be clearly impractical, both technically and contractually, to refer the acquisition to the acquiring department. Anticipation that contracting by negotiation will be appropriate, or that a number of design changes may occur during contract performance is not in itself sufficient reason for using this exception.

(2) This exception also applies to items requiring compatibility testing, provided such testing requires continual contact between industry and the requiring department;

(l) Containers acquired only with items for which they are designed;

(m) One-time buy of a noncataloged item.

(1) This exception permits the requiring departments to contract for a non-recurring requirement for a noncataloged item. This exception could cover a part or component for a prototype which may be stock numbered at a later date.

(2) This exception does not permit acquisitions of recurring requirements for an item, based solely on the fact that the item is not stock numbered, nor may it be used to acquire items which have only slightly different

characteristics than previously cataloged items.

[56 FR 36306, July 31, 1991, as amended at 60 FR 61593, Nov. 30, 1995]

208.7004 Procedures.

208.7004-1 Purchase authorization from requiring department.

(a) Requiring departments send their requirements to acquiring departments on either a DD Form 448, Military Interdepartmental Purchase Request (MIPR), or a DD Form 416, Requisition for Coal, Coke or Briquettes. A MIPR or a DD Form 416 is the acquiring department's authority to acquire the supplies or services on behalf of the requiring department.

(b) The acquiring department is authorized to create obligations against the funds cited in a MIPR without further referral to the requiring department. The acquiring department has no responsibility to determine the validity of a stated requirement in an approved MIPR, but it should bring apparent errors in the requirement to the attention of the requiring department.

(c) Changes that affect the contents of the MIPR must be processed as a MIPR amendment regardless of the status of the MIPR. The requiring department may initially transmit changes electronically or by some other expedited means, but must confirm changes by a MIPR amendment.

(d) The requiring department must submit requirements for additional line items of supplies or services not provided for in the original MIPR as a new MIPR. The requiring department may use a MIPR amendment for increased quantities only if—

(1) The original MIPR requirements have not been released for solicitation; and

(2) The acquiring department agrees.

208.7004-2 Acceptance by acquiring department.

(a) Acquiring departments formally accept a MIPR by DD Form 448-2, Acceptance of MIPR, as soon as practicable, but no later than 30 days after receipt of the MIPR. If the 30 day time limit cannot be met, the acquiring department must inform the requiring department of the reason for the delay,

and the anticipated date the MIPR will be accepted. The acquiring department must accept MIPRs in writing before expiration of the funds.

(b) The acquiring department in accepting a MIPR will determine whether to use Category I (reimbursable funds citation) or Category II (direct funds citation) methods of funding.

(1) Category I method of funding is used under the following circumstances and results in citing the funds of the acquiring department in the contract—

(i) Delivery is from existing inventories of the acquiring department;

(ii) Delivery is by diversion from existing contracts of the acquiring department;

(iii) Production or assembly is through Government work orders in Government-owned plants;

(iv) Production quantities are allocated among users from one or more contracts, and the identification of specific quantities of the end item to individual contracts is not feasible at the time of MIPR acceptance;

(v) Acquisition of the end items involves separate acquisition of components to be assembled by the acquiring department;

(vi) Payments will be made without reference to deliveries of end items (e.g., cost-reimbursement type contracts and fixed price contracts with progress payment clauses); or

(vii) Category II method of funding is not feasible and economical.

(2) Category II method of funding is used in circumstances other than those in paragraph (b)(1) of this subsection. Category II funding results in citation of the requiring department's funds and MIPR number in the resultant contract.

(c) When the acquiring departments accepts a MIPR for Category I funding—

(1) The DD Form 448-2, Acceptance of MIPR, is the authority for the requiring department to record the obligation of funds;

(2) The acquiring department will annotate the DD Form 448-2 if contingencies, price revisions, or variations in quantities are anticipated. The acquiring department will periodically advise the requiring department, prior to submission of billings, of any

changes in the acceptance figure so that the requiring department may issue an amendment to the MIPR, and the recorded obligation may be adjusted to reflect the current price;

(3) If the acquiring department does not qualify the acceptance of a MIPR for anticipated contingencies, the price on the acceptance will be final and will be billed at time of delivery;

(4) Upon receipt of the final billing (SF 1080, Voucher for Transferring Funds), the requiring department may adjust the fiscal records accordingly without authorization from or notice to the acquiring department.

(d) When the MIPR is accepted for Category II funding, a conformed copy of the contract (see 204.802(1)(ii)) is the authority to record the obligation. When all awards have been placed to satisfy the total MIPR requirement, any unused funds remaining on the MIPR become excess to the acquiring department. The acquiring department will immediately notify the requiring department of the excess funds by submitting an Acceptance of MIPR (DD Form 448-2). This amendment is authorization for the requiring department to withdraw the funds. The acquiring department is prohibited from further use of such excess funds.

(e) When the acquiring department requires additional funds to complete the contracting action for the requiring department, the request for additional funds must identify the exact items involved, and the reason why additional funds are required. The requiring department shall act quickly to—

(1) Provide the funds by an amendment of the MIPR; or

(2) Reduce the requirements.

(f) The accepting activity of the acquiring department shall remain responsible for the MIPR even though that activity may split the MIPR into segments for action by other contracting activities.

208.7004-3 Use of advance MIPRs.

(a) An advance MIPR is an unfunded MIPR provided to the acquiring department in advance of the funded MIPR so that initial steps in planning the contract action can begin at an earlier date.

(b) In order to use an advance MIPR, the acquiring department and the requiring department must agree that its use will be beneficial. The departments may execute a blanket agreement to use advance MIPRs.

(c) The requiring department shall not release an advance MIPR to the acquiring department without obtaining proper internal approval of the requirement.

(d) When advance MIPRs are used, mark "ADVANCE MIPR" prominently on the DD Form 448.

(e) For urgent requirements, the advance MIPR may be transmitted electronically.

(f) On the basis of an advance MIPR, the acquiring department may take the initial steps toward awarding a contract, such as obtaining internal coordination and preparing an acquisition plan. Acquiring departments may determine the extent of these initial actions but shall not award contracts on the basis of advance MIPRs.

208.7004-4 Cutoff dates for submission of Category II MIPRs.

(a) Unless otherwise agreed between the departments, May 31 is the cutoff date for the receipt of MIPRs citing expiring appropriations which must be obligated by September 30 of that fiscal year. If circumstances arise which require the submission of MIPRs citing expiring appropriations after the cutoff date, the requiring department will communicate with the acquiring department before submission to find out whether the acquiring department can execute a contract or otherwise obligate the funds by the end of the fiscal year. Acquiring departments will make every effort to obligate funds for all such MIPRs accepted after the cutoff date. However, acceptance of a late MIPR does not constitute assurance by the acquiring department that all such funds will be obligated.

(b) Nothing in these instructions is intended to restrict the processing of MIPRs when the acquiring department is capable of executing contracts or otherwise obligating funds before the end of the fiscal year.

(c) The May 31 cutoff date does not apply to MIPRs citing continuing appropriations.

208.7004-5 Notification of inability to obligate on Category II MIPRs.

On August 1, the acquiring department will advise the requiring department of any Category II MIPRs on hand citing expiring appropriations they will be unable to obligate prior to the fund expiration date. If an unforeseen situation develops after August 1 which will prevent execution of a contract, the acquiring department will notify the requiring department as quickly as possible and return the MIPR. The letter of transmittal returning the MIPR will authorize purchase by the requiring department and state the reason that the acquisition could not be accomplished.

208.7004-6 Cancellation of requirements.

(a) *Category I MIPRs.* The requiring department will notify the acquiring department by electronic or other immediate means when cancelling all or part of the supplies or services requested in the MIPR. Within 30 days, the acquiring department will notify the requiring department of the quantity of items available for termination and the amount of funds in excess of the estimated settlement costs. Upon receipt of this information, the requiring department will issue a MIPR amendment to reduce the quantities and funds accordingly.

(b) *Category II MIPRs.* The requiring department will notify the acquiring department electronically or by other immediate means when cancelling all or any part of the supplies or services requested in the MIPR.

(1) If the acquiring department has not entered into a contract for the supplies or services to be cancelled, the acquiring department will immediately notify the requiring department. Upon receipt of such notification, the requiring department shall initiate a MIPR amendment to revoke the estimated amount shown on the original MIPR for the cancelled items.

(2) If the items to be cancelled have already been placed under contract—

(i) As soon as practicable, but in no event more than 45 days after receipt of the cancellation notice from the requiring department, the contracting officer shall issue a termination data let-

ter to the requiring department (original and four copies) containing, as a minimum, the information in Table 8-1, Termination Data Letter.

(ii) The termination contracting officer (TCO) will review the proceedings at least every 60 days to reassess the Government's probable obligation. If any additional funds are excess to the probable settlement requirements, or if it appears that previous release of excess funds will result in a shortage of the amount which will be required for settlement, the TCO will promptly notify the contracting office which will amend the termination data letter. The requiring department will process a MIPR amendment to reflect the reinstatement of funds within 30 days after receiving the amended termination data letter.

(iii) Upon receipt of a copy of the termination settlement agreement, the requiring department will prepare a MIPR amendment, if required, to remove any remaining excess funds.

TABLE 8-1, TERMINATION DATA LETTER

SUBJECT: Termination Data Re:

Contract No. _____

Termination No. _____

Contract _____

(a) As termination action is now in progress on the above contract, the following information is submitted:

(1) Brief Description of items terminated.

(2) You are notified that the sum of \$_____ is available for release under the subject contract. This sum represents the difference between \$_____, the value of items terminated under the contract, and \$_____, estimated to be required for settlement of the terminated contract. The estimated amount available for release is allocated by the appropriations cited on the contract as follows:

MIPR NO. _____ ACCOUNTING CLASSIFICATION _____ AMOUNT _____

Total available for release at this time \$_____

(b) Request you forward an amendment to MIPR _____ on DD Form 448-2 to reflect the reduced quantity and amount of funds available for release.

(c) Periodic reviews (not less than 60 days) will be made as termination proceedings progress to redetermine the Government's probable obligation.

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208.7004-7 Termination for default.

(a) When the acquiring department terminates a contract for default, they will ask the requiring department if the supplies or services to be terminated are still required so that repurchase action can be started.

(b) The requiring department will not deobligate funds on a contract terminated for default until receipt of a settlement modification or other written evidence from the acquiring department authorizing release of funds.

(c) On the repurchase action, the acquiring department will not exceed the unliquidated funds on the defaulted contract without receiving additional funds from the requiring department.

208.7004-8 Transportation funding.

The requiring department will advise the acquiring department or the transportation officer in the contract administration office of the fund account to be charged for transportation costs. The requiring department may cite the fund account on each MIPR or provide the funding cite to the transportation officer at the beginning of each fiscal year for use on Government bills of lading. When issuing a Government bill of lading, show the requiring department as the department to be billed and cite the appropriate fund account.

208.7004-9 Status reporting.

(a) The acquiring department will maintain a system of MIPR follow up to inform the requiring department of the current status of its requests. In addition, the contract administration office will maintain a system of follow up in order to advise the acquiring department on contract performance.

(b) If requested by the requiring department, the acquiring department will furnish the requiring department a copy of the solicitation when the MIPR is satisfied through Category II funding.

(c) Any reimbursement billings, shipping document, contractual documents, project orders, or related documentation furnished to the requiring department will identify the requiring department's MIPR number, quantities of items, and funding information.

208.7004-10 Administrative costs.

The acquiring department bears the administrative costs of acquiring supplies for the requiring department. However, when an acquisition responsibility is transferred to another department, funds appropriated or to be appropriated for administrative costs will transfer to the successor acquiring department. The new acquiring department must assume budget cognizance as soon as possible.

208.7005 MIPRs.

Instructions on preparation and use of DD Form 448, Military Interdepartmental Purchase Request, and DD Form 448-2, Acceptance of MIPR, are in 253.208.

208.7006 Coordinated acquisition assignments.

See appendix B for coordinated acquisition assignments.

Subpart 208.71—Acquisition for National Aeronautics and Space Administration (NASA)**208.7100 Authorization.**

NASA is authorized by Public Law 85-568 to use the acquisition services, personnel, equipment, and facilities of DoD departments and agencies with their consent, with or without reimbursement, and on a similar basis to cooperate with the departments/agencies in the use of acquisition services, equipment, and facilities.

208.7101 Policy.

Departments and agencies will—

(a) Cooperate fully with NASA in making acquisition services, equipment, personnel, and facilities available on the basis of mutual agreement.

(b) Not claim reimbursement for administrative costs incident to acquisitions for NASA, unless agreed otherwise prior to the time services are performed.

208.7102 Procedures.

(a) When contracting or performing field service functions for NASA, the departments and agencies will use

their own methods, except when otherwise required by the terms of the agreement.

(b) Departments and agencies normally will use their own funds when contracting for or performing services for NASA and will not cite NASA funds on any defense obligation or payment document.

208.7103 Purchase request and acceptance.

(a) NASA will use NASA Form 523, NASA-Defense Purchase Request, to request acquisition of supplies or services.

(b) Except as provided in paragraph (d) of this section, departments and agencies will respond within 30 days to a NASA purchase request by forwarding DD Form 448-2, Acceptance of MIPR. Forward each DD Form 448-2 in quadruplicate and indicate action status as well as the name and address of the DoD acquisition activity for future use by the NASA initiator.

(c) To the extent feasible, all documents related to the NASA action will reference the NASA-Defense Purchase Request number and the item number when appropriate.

(d) Departments and agencies are not required to accept NASA-Defense Purchase Requests for common-use standard stock items which the supplying department has on hand or on order for prompt delivery at published prices.

208.7104 Changes in estimated total prices.

When a department or agency determines that the estimated total price (Block 6F, NASA Form 523) for NASA items is not sufficient to cover the required reimbursement, or is in excess of the amount required, the department/agency will forward a request for amendment to the NASA originating office. Indicate in the request a specific dollar amount, rather than a percentage, and include justification for any upward adjustment requested. Upon approval of a request, NASA will forward an amendment of its purchase request to the contracting activity.

208.7105 Payments.

Departments and agencies will submit SF 1080, Voucher for Transferring

Funds, billings to the NASA office designated in Block 9 of the NASA-Defense Purchase Request, except where agreements provide that reimbursement is not required. Departments and agencies will support billings in the same manner as billings between departments and agencies.

Subpart 208.72—Industrial Preparedness Production Planning

208.7201 Definitions.

As used in this subpart—

Industrial base means that part of the total privately-owned and Government-owned industrial production and maintenance capacity of the United States and Canada, which will be available during national emergencies to manufacture and repair items required by the departments.

Industrial preparedness production planning means planning designed to maintain an adequate industrial base to support DoD requirements for selected essential military items in a national emergency.

National emergency means a condition declared by the President or the Congress which authorizes certain emergency action in the national interest, including partial or total mobilization of national resources.

Planned item means any item selected for industrial preparedness planning under the criteria of DoDI 4005.3, Industrial Preparedness Planning.

Planned producer means an industrial firm which has agreed by either non-binding memorandum of understanding or binding contract/contract clause to provide production capacity data, to maintain existing capacity for a negotiated period of time, and to accept contracts for planned items upon the request of the Government.

208.7202 General.

(a) Under the Industrial Preparedness Production Planning (IPPP) program, DoD components and industry work together to ensure essential military items are available during an emergency.

(b) Departments and agencies select weapon systems and items for planning in accordance with DoDI 4005.3, Industrial Preparedness Planning. Planning

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is conducted only with U.S. or Canadian sources.

(c) The use of privately-owned facilities is preferred to minimize the need for Government investment. Departments and agencies will include Government-owned production facilities in the industrial base only when—

(1) Private industry is unable to provide the facilities necessary to support DoD requirements; or

(2) The facilities are necessary—

(i) For reasons of national security; or

(ii) To ensure a quick response capability to meet fluctuating demands.

208.7203 Authority.

Authority under current contracting procedures to accomplish industrial planning actions includes—

(a) Leasing of Government-owned property to planned emergency producers under the authority of the Military Leasing Act of 1947, 10 U.S.C. 2667;

(b) Acquisitions in the interest of national defense under FAR 6.202(a)(2), or in case of a national emergency or to achieve industrial mobilization under FAR 6.302-3;

(c) Acquisition under 225.71 of—

(1) Miniature and instrument bearings;

(2) Precision components for mechanical time devices;

(3) High-purity silicon;

(4) High-carbon ferrochrome;

(5) Anti-friction bearings; and

(6) Forgings and welded shipboard anchor chain;

(d) Acquisition of jewel bearings (FAR 8.2);

(e) Use of multiyear contracting (FAR 17.1);

(f) Providing Government production and research property to contractors; and

(g) Use of direct payment for idle facilities or idle capacities reserved for defense mobilization production (FAR 31.205-17(d)).

[56 FR 36306, July 31, 1991, as amended at 57 FR 42629, Sept. 15, 1992]

208.7204 Procedures.

(a) Planned producers shall be solicited for all acquisitions of their planned items, when the acquisition is over the small purchase threshold in

FAR 13.000, except as provided in FAR or DFARS.

(b) The contracting officer may contract for industrial planning efforts for selected essential military items. These efforts may include, but are not limited to, the maintenance of Government-owned industrial facilities (real and personal property) or production data packages. These planning efforts may be acquired through an individual service contract or as a line item on a contract for a planned item.

Subpart 208.73—Use of Government-Owned Precious Metals

208.7301 Definitions.

As used in this subpart—

Defense Industrial Supply Center (DISC) means the Defense Logistics Agency field activity located at 700 Robbins Avenue, Philadelphia, PA 19111-5096, which is the assigned commodity integrated material manager for refined precious metals and is responsible for the storage and issue of such material.

Dual pricing evaluation procedure means a procedure where offerors submit two prices for precious metals bearing items—one based on Government-furnished precious metals and one based on contractor-furnished precious metals. The contracting officer evaluates the prices to determine which is in the Government's best interest.

Precious Metals Indicator Code (PMIC) means a single digit, alpha-numeric code assigned to national stock numbered items in The Defense Integrated Data System Total Item Record used to indicate the presence or absence of precious metals in the item. PMICs and the content value of corresponding items are listed in DoDD 4100.39M, Defense Integrated Data System (DIDS) Procedures Manual, chapter 10, Table 160.

Refined precious metal means recovered silver, gold, platinum, palladium, iridium, rhodium, or ruthenium, in bullion, granulation or sponge form, which has been purified to at least .999 percentage of fineness.

208.7302 Policy.

DoD policy is for maximum participation in the Precious Metals Recovery Program (PMRP). DoD components shall furnish recovered precious metals contained in the DISC inventory to production contractors rather than use contractor-furnished precious metals whenever the contracting officer determines it to be in the Government's best interest. (See DoDD 4160.22, Recovery and Utilization of Precious Metals.)

208.7303 Procedures.

(a) Item managers and contracting officers will use the PMIC and/or other relevant data furnished with a purchase request to determine the applicability of this subpart.

(b) When an offeror advises of a precious metals requirement, the contracting officer shall use the procedures in chapter X of DoD 4160.21-M, Defense Utilization and Disposal Manual, to determine availability of required precious metal assets and current government-furnished materiel (GFM) unit prices. If the precious metals are available, the contracting officer shall evaluate offers and award the contract on the basis of the offer which is in the best interest of the Government.

(c) When the clause prescribed by 208.7305 is included in a solicitation, the contracting officer will ensure that section B, Schedule of Supplies or Services and Prices, is structured to—

- (1) Permit insertion of alternate prices for each deliverable contract line item number that uses precious metals; and
- (2) Use dual pricing evaluation procedures.

208.7304 Refined precious metals.

The following refined precious metals are currently managed by DISC:

Precious metal	National Stock No. (NSN)
Silver Bullion/Granules	9660-00-106-9432
Gold Bullion/Granules	9660-00-042-7733
Platinum Granules	9660-00-042-7768
Platinum Sponge	9660-00-151-4050
Palladium Granules	9660-00-042-7765
Palladium Sponge	9660-01-011-0320
Rhodium Sponge	9660-01-011-2625
Iridium Sponge	9660-01-011-1937
Ruthenium Sponge	9660-01-039-0313

208.7305 Contract clause.

(a) Use the clause at 252.208-7000, Intent to Furnish Precious Metals as Government-Furnished Material, in all solicitations and contracts except—

- (1) When the contracting officer has determined that the required precious metals are not available from DISC;
- (2) When the contracting officer knows that the items being acquired do not require precious metals in their manufacture; or
- (3) For acquisitions below the small purchase threshold in FAR 13.000.

(b) To make the determination in paragraph (a)(1) of this section, the contracting officer shall consult with the end item inventory manager and comply with the procedures in Chapter X, DoD 4160.21-M, Defense Utilization and Disposal Manual.

PART 209—CONTRACTOR QUALIFICATIONS

Sec.

Subpart 209.1—Responsible Prospective Contractors

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Department of Defense

209.104-1

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- 209.470-3 Contract clause.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36313, July 31, 1991, unless otherwise noted.

Subpart 209.1—Responsible Prospective Contractors

209.101 Definitions.

“Entity controlled by a foreign government,” “foreign government,” and “proscribed information,” are defined in the provision at 252.209-7002, Disclosure of Ownership or Control by a Foreign Government.

[59 FR 51132, Oct. 7, 1994]

209.103 Policy.

(a)(i) Do not deny award to contractors subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) Treaty, or similar treaty, due to the actual or potential presence of Soviet inspectors at the contractor’s facility unless—

(A) Necessary for reasons of national security;

(B) The decision is based on full information, including comment from the potential contractor or subcontractor on the security issues involved; and

(C) The department or agency acquisition executive reviews the decision and the Under Secretary of Defense (Acquisition & Technology) approves the decision.

(ii) Make any decision to deny consideration for award under paragraph (a)(i) of this section as early as possible in the acquisition process. Notify the firm in writing of any decision not to consider the firm for award of a contract or subcontract.

(c) The additional cost of contract administration and audit due to a contractor’s performance risk may be considered in evaluating the contractor’s price.

[56 FR 36313, July 31, 1991, as amended at 60 FR 29497, June 5, 1995; 61 FR 50452, Sept. 26, 1996]

209.103-70 Contract clause.

Use the clause at 252.209-7000, Acquisition from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty, in all solicitations and contracts exceeding the simplified acquisition threshold, except solicitations and contracts for commercial items.

[60 FR 61593, Nov. 30, 1995, as amended at 61 FR 50452, Sept. 26, 1996]

209.104 Standards.

209.104-1 General standards.

(e) For cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, the prospective contractor’s accounting system and related internal controls must provide reasonable assurance that—

(i) Applicable laws and regulations are complied with;

(ii) The accounting system and cost data are reliable;

(iii) Risk of misallocations and mischarges are minimized; and

(iv) Contract allocations and charges are consistent with invoice procedures.

(g)(i) *Ownership or control by the government of a terrorist country.* (A) Under 10 U.S.C. 2327(b), a contracting officer shall not award a contract to a firm or to a subsidiary of a firm when a foreign government—

(1) Either directly or indirectly, has a significant interest—

(i) In the firm; or

(ii) In the subsidiary; and

(2) Has been determined by the Secretary of State under 50 U.S.C. App. 2405(j)(1)(A) to be a government of a country that has repeatedly provided support for acts of international terrorism.

(B) The Secretary of Defense may waive the prohibition in paragraph (g)(i)(A) of this subsection in accordance with 10 U.S.C. 2327(c). This waiver authority may not be delegated.

(ii) *Ownership or control by a foreign government when access to proscribed information is required to perform the contract.* (A) Under 10 U.S.C. 2536(a), no DoD contract under a national security program may be awarded to an entity controlled by a foreign government if

that entity requires access to proscribed information to perform the contract.

(B) Whenever the contracting officer has a question about application of the provision at 252.209-7002, the contracting officer may seek advice from the Director, Defense Security Programs, Office of the Assistant Secretary of Defense for Command, Control, Communications and Intelligence.

(C) In accordance with 10 U.S.C. 2536(b), the Secretary of Defense may waive the prohibition in subparagraph (g)(ii)(A) of this subsection upon determining that the waiver is essential to the national security interests of the United States. The Secretary has delegated authority to grant this waiver to the Assistant Secretary of Defense Command, Control, Communications and Intelligence. Waiver requests, prepared by the requiring activity in coordination with the contracting officer, shall be processed through the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), and shall include a proposed national interest determination. The proposed national interest determination, prepared by the requiring activity in coordination with the contracting officer, shall include:

(1) Identification of the proposed awardee, with a synopsis of its foreign ownership (include solicitation and other reference numbers to identify the action);

(2) General description of the acquisition and performance requirements;

(3) Identification of the national security interests involved and the ways award of the contract helps advance those interests;

(4) The availability of another entity with the capacity, capability and technical expertise to satisfy defense acquisition, technology base, or industrial base requirements; and

(5) A description of any alternate means available to satisfy the requirement, e.g., use of substitute products or technology or alternate approaches to accomplish the program objectives.

(iii) *Commercial transactions with the government of a terrorist country.* (A) In accordance with section 843 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160)—

(1) Each offeror submitting an offer exceeding \$5,000,000 must disclose each commercial transaction that it has conducted with the government of a terrorist country since February 28, 1994; and

(2) For each contract exceeding \$5,000,000, the contractor must annually report each commercial transaction that it conducts during the course of the contract (but not beyond September 30, 1996) with the government of a terrorist country.

(B) Upon award of a contract exceeding \$5,000,000 to an offeror disclosing that it has conducted commercial transactions with the government of a terrorist country, the contracting officer shall—

(1) Forward a copy of the offeror's disclosure to the Deputy Director of Defense Procurement (Foreign Contracting); and

(2) Include with the disclosure the following information:

(i) Offeror's name and address;

(ii) Contracting officer's name and telephone number; and

(iii) Contract number and award date.

[58 FR 28464, May 13, 1993, as amended at 59 FR 51131, 51132, Oct. 7, 1994; 60 FR 29497, June 5, 1995]

209.104-4 Subcontractor responsibility.

Generally, the Canadian Commercial Corporation's (CCC) proposal of a firm as its subcontractor is sufficient basis for an affirmative determination of responsibility. However, when the CCC determination of responsibility is not consistent with other information available to the contracting officer, the contracting officer shall request from CCC and any other sources whatever additional information is necessary to make the responsibility determination.

209.104-70 Solicitation provisions and contract clause.

(a) Use the provision at 252.209-7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, in all solicitations expected to result in contracts of \$100,000 or more.

(b) Use the provision at 252.209-7002, Disclosure of Ownership or Control by

a Foreign Government, in all solicitations, including those subject to the procedures in FAR part 13, when access to proscribed information is necessary to perform a DoD contract under a national security program.

(c) Use the provision at 252.209-7003, Disclosure of Commercial Transactions with the Government of a Terrorist Country, in all solicitations expected to result in contracts exceeding \$5,000,000.

(d) Use the clause at 252.209-7004, Reporting of Commercial Transactions with the Government of a Terrorist Country, in all solicitations that include the provision at 252.209-7003, and in all contracts exceeding \$5,000,000.

[58 FR 28464, May 13, 1993, as amended at 59 FR 51131, Oct. 7, 1994]

209.106 Preaward surveys.

209.106-1 Conditions for preaward surveys.

(a) If a preaward survey is requested, include the rationale in block 23 of the SF 1403, Preaward Survey of Prospective Contractor (General).

[60 FR 61593, Nov. 30, 1995]

209.106-2 Requests for preaward surveys.

(1) The surveying activity is the cognizant contract administration office as listed in DLAH 4105.4, DoD Directory of Contract Administration Services Components. When information is required as part of the survey on the adequacy of the contractor's accounting system or its suitability for administration of the proposed type of contract, the surveying activity will obtain the information from the auditor.

(2) Limited information may be requested by telephone.

(3) The contracting officer may request a formal survey by telephone but must confirm immediately with SF 1403, Preaward Survey of Prospective Contractor (General). For a formal survey, send original and three copies of SF 1403, including necessary drawings and specifications.

(a) List additional factors in item H, section III of the SF 1403 and explain them in block 23. For example—

(i) Information needed to determine a prospective contractor's eligibility

under the Walsh-Healey Public Contracts Act. (Note that the Walsh-Healey Public Contracts Act, block 12 of section I, only indicates what the contractor has represented its classification to be under Walsh-Healey.)

(ii) Evaluation of a contractor as a planned producer when the offered item is or may appear on the Industrial Preparedness Planning List (IPPL). When the preaward survey results in a recommendation for award, ask the office responsible for industrial preparedness planning to consider designating the prospective contractor as a planned producer. If the item is already on the IPPL or the prospective contractor is already a planned producer, note the information in block 23.

(iii) Evaluation of the prospective contractor's performance against small business subcontracting plans.

(c) On base level preaward surveys, technical personnel from the requiring installation should participate when there is concern about the ability of a prospective contractor to perform a base level service or construction contract.

(d) Allow more time for—

(i) Complex items;

(ii) New or inexperienced DoD contractors; and

(iii) Surveys with time-consuming requirements, e.g., secondary survey, accounting system review, financial capability analysis, or purchasing office participation.

(e) Only request those factors essential to the determination of responsibility. See 253.209-1(a) for an explanation of the factors in section III, blocks 19 and 20 of the SF 1403.

[56 FR 36313, July 31, 1991, as amended at 58 FR 28464, May 13, 1993]

Subpart 209.2—Qualifications Requirements

209.202 Policy.

(a)(1) The inclusion of qualification requirements in specifications for products which are to be included on a Qualified Products List, or manufactured by business firms included on a Qualified Manufacturers List, requires approval by the departmental standardization office in accordance with

DoD Manual 4120.3-M, Defense Standardization Program Policies and Procedures. The inclusion of other qualification requirements in an acquisition or group of acquisitions requires approval by the chief of the contracting office.

[60 FR 61593, Nov. 30, 1995]

Subpart 209.3—First Article Testing and Approval

209.303 Use.

(d) The contracting officer may require that first articles be manufactured using the same facilities, production processes, methods, and materials to be used for production units under the contract.

209.305 Risk.

The contracting officer may give this authorization to a contractor only after approval by a level higher than the contracting officer.

209.306 Solicitation requirements.

(a)(1) To be sure that the contractor and the Government clearly understand and interpret contract terms and conditions in the same manner, avoid describing first article requirements exclusively in general terms such as “visual,” “dimensional,” “workmanship,” or “specification compliance.”

209.308 Contract clauses.

Alternate I of the clauses at FAR 52.209-3, First Article Approval—Contractor Testing, or 52.209-4, First Article Approval—Government Testing, as appropriate, may be used when—

(1) The form, fit, or function of the product would be adversely affected by contractor changes in the production facilities, processes, methods, or materials subsequent to first article approval; and

(2) The Government has relied upon first article testing in the absence of complete design specifications to supplement a performance specification; or

(3) It is essential to have an approved first article to serve as a manufacturing standard.

Subpart 209.4—Debarment, Suspension, and Ineligibility

209.402 Policy.

(d) The uniform suspension and debarment procedures to be followed by all debarring and suspending officials are set out in appendix H to this chapter.

(e) The department or agency shall provide a copy of the Debarment and Suspension Procedures at DFARS appendix H to this chapter to contractors at the time of their suspension or when they are proposed for debarment, and upon request to other interested parties.

[59 FR 27668, May 27, 1994]

209.403 Definitions.

Debarring official. (1) For DoD, the designees are—

Army—Commander, U.S. Army Legal Services Agency
 Navy—the General Counsel of the Department of the Navy
 Air Force—Deputy General Counsel (Contractor Responsibility)
 Defense Advanced Research Projects Agency—The Director
 Defense Information Systems Agency—The General Counsel
 Defense Logistics Agency—The Special Assistant for Contracting Integrity
 Defense Mapping Agency—The General Counsel
 Defense Special Weapons Agency—The Director
 National Security Agency—The Director
 Ballistic Missile Defense Organization—The General Counsel
 Overseas installations—as designated by the agency head

(2) Overseas debarring officials—

(i) Are authorized to debar or suspend contractors located within the official’s geographic area of responsibility under any delegation of authority they receive from their agency head.

(ii) Debar or suspend in accordance with the procedures in FAR subpart 9.4 or under modified procedures approved by the agency head based on consideration of the laws or customs of the foreign countries concerned.

(iii) In addition to the bases for debarment in FAR 9.406-2, may consider the following additional bases—

(A) The foreign country concerned determines that a contractor has engaged in bid-rigging, price-fixing, or other anti-competitive behavior; or

(B) The foreign country concerned declares the contractor to be formally debarred, suspended, or otherwise ineligible to contract with that foreign government or its instrumentalities.

[56 FR 36313, July 31, 1991, as amended at 56 FR 67212, Dec. 30, 1991; 59 FR 27669, May 27, 1994; 60 FR 61593, Nov. 30, 1995; 61 FR 50452, Sept. 26, 1996]

209.405 Effect of listing.

Under 10 U.S.C. 2393b, when a department or agency determines that a compelling reason exists for it to conduct business with a contractor that is on the list of parties excluded from procurement programs, it shall provide written notice of the determination to the General Services Administration, Office of Acquisition Policy. Examples of compelling reasons are—

(1) Only a listed contractor can provide the supplies or services;

(2) Urgency requires contracting with a listed contractor;

(3) The contractor and a department or agency have an agreement covering the same events which resulted in the listing and the agreement includes the department/agency decision not to debar or suspend the contractor; or

(4) The national defense requires continued business dealings with the listed contractor.

209.405-1 Continuation of current contracts.

(b) Unless the agency head makes a written determination that a compelling reason exists to do so, ordering activities shall not—

(i) Place orders exceeding the guaranteed minimum under indefinite quantity contracts; or

(ii) When the agency is an optional user, place orders against Federal Supply Schedule contracts.

(c) This includes exercise of options.

[60 FR 29497, June 5, 1995, as amended at 60 FR 61593, Nov. 30, 1995]

209.406 Debarment.

209.406-1 General.

(a)(i) When the debarring official decides that debarment is not necessary, the official may require the contractor to enter into a written agreement which includes—

(A) A requirement for the contractor to establish, if not already established, and to maintain the standards of conduct and internal control systems prescribed by subpart 203.70; and

(B) Other requirements the debarring official considers appropriate.

(ii) Before the debarring official decides not to suspend or debar in the case of an indictment or conviction for a felony, the debarring official must determine that the contractor has addressed adequately the circumstances that gave rise to the misconduct, and that appropriate standards of ethics and integrity are in place and are working.

[57 FR 14992, Apr. 23, 1992]

209.406-2 Causes for debarment.

(a) Any person shall be considered for debarment if criminally convicted of intentionally affixing a label bearing a “Made in America” inscription to any product sold in or shipped to the United States that was not made in America (10 U.S.C. 2410f).

(i) The debarring official will make a determination concerning debarment not later than 90 days after determining that a person has been so convicted.

(ii) In cases where the debarring official decides not to debar, the debarring official will report that decision to the Director of Defense Procurement who will notify Congress within 30 days after the decision is made.

[58 FR 28464, May 13, 1993]

209.406-3 Procedures.

(a) *Investigation and referral.* (i) The contracting officer shall prepare a report containing the information required by paragraph (a)(ii) of this subsection when—

(A) A contractor has committed, or is suspected of having committed, any of

the acts described in FAR 9.406-2 and 9.407-2;

(B) FAR 49.106 requires a report;

(C) Part 203 requires a report;

(D) The Government suspects a contractor of violating the Buy American Act (see FAR 25.204); or

(E) The Government suspects a contractor of attempting to evade the prohibitions of debarment or suspension by changes of address, multiple addresses, formation of new companies, or by other devices.

(ii) Include the following information, when available, in the report required by paragraph (a)(i) of this subsection—

(A) Name, address, and telephone number of the point of contact for the activity making the report;

(B) Name, contractor and Government entity (CAGE) code, and address of the contractor;

(C) Name and addresses of the members of the board, principal officers, partners, owners, and managers;

(D) Name and addresses of all known affiliates, subsidiaries, or parent firms, and the nature of the business relationship;

(E) For each contract affected by the conduct being reported—

(1) The contract number;

(2) All office identifying numbers or symbols;

(3) Description of supplies or services;

(4) The amount;

(5) The percentage of completion;

(6) The amount paid the contractor;

(7) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom; and

(8) The amount due the contractor;

(F) For any other contracts outstanding with the contractor or any of its affiliates—

(1) The contract number;

(2) The amount;

(3) The amounts paid the contractor;

(4) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom; and

(5) The amount due the contractor;

(G) A complete summary of all pertinent evidence and the status of any legal proceedings involving the contractor;

(H) An estimate of any damages sustained by the Government as a result

of the contractor's action (explain how the estimate was calculated);

(I) The comments and recommendations of the contracting officer and of each higher level contracting review authority regarding—

(1) Whether to suspend or debar the contractor;

(2) Whether to apply limitations to the suspension or debarment;

(3) The period of any recommended debarment; and

(4) Whether to continue any current contracts with the contractor (explain why a recommendation regarding current contracts is not included);

(J) When appropriate, as an enclosure to the report—

(1) A copy or extracts of each pertinent contract;

(2) Witness statements or affidavits;

(3) Copies of investigative reports;

(4) Certified copies of indictments, judgments, and sentencing actions; and

(5) Any other appropriate exhibits or documentation.

(iii) Send three copies of each report, including enclosures, to the debarring official in 209.403.

209.470 Military recruiting on campus.

209.470-1 Policy.

(a)(1) Section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337) provides that no funds available to DoD may be provided by grant or contract to any institution of higher education that has a policy of denying or that effectively prevents the Secretary of Defense from obtaining for military recruiting purposes—

(i) Entry to campuses or access to students on campuses; or

(ii) Access to directory information pertaining to students.

(2) Section 541 of the National Defense Authorization Act for Fiscal Year 1996 (10 U.S.C. 983) provides that no funds appropriated or otherwise available to DoD may be obligated by contract or by grant, including a grant of funds to be available for student aid, to any institution of higher education that, as determined by the Secretary of Defense, has an anti-ROTC policy and at which, as determined by the Secretary, the Secretary would otherwise

maintain or seek to establish a unit of the Senior Reserve Officer Training Corps, or at which the Secretary would otherwise enroll or seek to enroll students for participation in a unit of the Senior Reserve Officer Training Corps at another nearby institution of higher education. This prohibition applies to new contracts and all contract modifications. (See 243.105.) This prohibition shall cease to apply to that institution upon a determination by the Secretary that the institution no longer has an anti-ROTC policy.

(b) Institutions of higher education that are determined under 32 CFR part 216 to have the policy or practice in paragraph (a)(1) or (a)(2) of this subsection shall be listed as ineligible on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the General Services Administration. (See FAR 9.404.)

(c) In cases where a determination is made under 32 CFR part 216 that specific subordinate elements of an institution of higher education, rather than the institution as a whole, have the policy or practice in paragraph (a)(1) or (a)(2) of this subsection, 32 CFR part 216 provides that the prohibition on use of DoD funds applies only to those subordinate elements.

[61 FR 25408, My 21, 1996]

209.470-2 Procedures.

(a) Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with ineligible contractors.

(b) After a determination of ineligibility under 209.470-1(a)(1), departments and agencies shall make no further payments under existing contracts with the institutions, and shall initiate termination action.

[61 FR 25408, My 21, 1996]

209.470-3 Contract clause.

Use the clause at 252.209-7005, Military Recruiting on Campus, in all solicitations and contracts with institutions of higher education.

[60 FR 13074, Mar. 10, 1995, as amended at 60 FR 51693, Nov. 30, 1995]

PART 211—DESCRIBING AGENCY NEEDS

Sec.

211.002 Policy.

211.002-70 Contract clause.

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211.201 Identification and availability of specifications.

211.204 Solicitation provisions and contract clauses.

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211.271 Elimination of use of class I ozone-depleting substances.

211.272 Alternate preservation, packaging, and packing.

Subpart 211.5—Liquidated Damages

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Subpart 211.6—Priorities and Allocations

211.602 General.

AUTHORITY: 41 U.S.C. 421 and 48 CFR Chapter 1.

SOURCE: 60 FR 61594, Nov. 30, 1995, unless otherwise noted.

211.002 Policy

All systems acquisition programs in the DoD are subject to the acquisition streamlining policies and procedures in DoDI 5000.2, Defense Acquisition Management Policies and Procedures.

211.002-70 Contract clause.

Use the clause at 252.211-7000, Acquisition Streamlining, in all solicitations and contracts for systems acquisition programs.

Subpart 211.2—Using and Maintaining Requirements Documents

211.201 Identification and availability of specifications.

(a) The DoD index of data item descriptions is DoD 5010.12-L, Acquisition Management Systems and Data Requirements Control List (AMSDDL).

(b) Also, furnish data item descriptions which are not listed in the AMSDDL, except when it is not feasible, e.g., documents are bulky or only a

limited number of copies are available at the contracting activity.

(d) The AMSDL, all unclassified specifications and standards listed in the DODISS, and data item descriptions listed in the AMSDL may also be purchased from the Standardization Documents Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111-5094. Include with the letter or DD Form 1425—

- (i) The requester's customer number; and
- (ii) Complete return mailing address, including any "mark for" instructions.

211.204 Solicitation provisions and contract clauses.

(c) When contract performance requires use of specifications and standards which are not listed in the DODISS and data item descriptions which are not listed in the AMSDL, use provisions, as appropriate, substantially the same as those at 252.211-7001, Availability of Specifications and Standards Not Listed in DODISS, Data Item Descriptions Not Listed in DoD 5010.12-L, and Plans, Drawings, and Other Pertinent Documents, and 252.211-7002, Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents.

211.270 Brand name or equal purchase descriptions.

211.270-1 Policy.

When a "brand name or equal" purchase description is used—

- (a) The purchase description—
 - (1) Should include a complete common generic identification of the item.
 - (2) Should reference all known acceptable brand name products, to include—
 - (i) Name of manufacturer, producer, or distributor of each brand name product referenced (and address if not well known); and
 - (ii) Model, make, or catalog number for each, and identity of the commercial catalog in which it appears.
 - (3) May, if necessary to adequately describe an item, use a commercial catalog description or an extract from the catalog. Ensure that a copy of each catalog referenced (except parts cata-

logs) is available at the contracting office for review by offerors.

(4) Should give prospective offerors the opportunity to offer products other than those specifically referenced by brand name, as long as they meet the needs of the Government in essentially the same manner as the brand name product.

(5) Must identify those salient physical, functional, or other characteristics which are essential to the needs of the Government.

(b) The solicitation—

(1) Shall be at or below the simplified acquisition threshold in FAR part 13.

(2) May require bid samples for "or equal" offers, but not for "brand name" offers.

(3) Must provide for full consideration and evaluation of "or equal" offers against the salient characteristic specified in the purchase description. Do not reject offers for minor differences in design, construction, or features which do not affect the suitability of the product for its intended use.

(4) Must include the following immediately after the item description—Offering:

Manufacturer's Name _____ Brand _____
Model or Part No. _____

(c) The contract shall—

(1) Not exceed the simplified acquisition threshold in FAR part 13.

(2) Identify, or incorporate by reference an identification of the specific products the contractor is to furnish. Include any brand name, make or model number, descriptive material, and any modifications of brand name products specified in the offer.

211.270-2 Solicitation provision.

(a) When a brand name or equal purchase description is included in a solicitation at or below the simplified acquisition threshold in FAR part 13, use the provision at 252.211-7003, Brand Name or Equal.

(b) When component parts of an end item are described by brand name or equal purchase descriptions and application of the provision at 252.211-7003

to some or all of the components is impracticable, either do not use the provision or limit its application to specified components.

211.271 Elimination of use of class I ozone-depleting substances.

(a) *Contracts.* No DoD contract may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard is specifically authorized at a level no lower than a general or flag officer or member of the Senior Executive Service of the requiring activity in accordance with Section 326, Public Law 102-484 (10 U.S.C. 2301 (repealed) note).

(b) *Modifications.* (1) Contracts awarded before June 1, 1993, with a value in excess of \$10 million, that are modified or extended (including option exercise) and, as a result of the modification or extension will expire more than one year after the effective date of the modification or extension, must be evaluated in accordance with agency procedures for the elimination of ozone-depleting substances.

(i) The evaluation must be carried out within 60 days after the first modification or extension.

(ii) No further modification or extension may be made to the contract until the evaluation is complete.

(2) If, as a result of this evaluation, it is determined that an economically feasible substitute substance or alternative technology is available, the contracting officer shall modify the contract to require the use of the substitute substance or alternative technology.

(3) If a substitute substance or alternative technology is not available, a written determination shall be made to that effect at a level no lower than a general or flag officer or member of the Senior Executive Service of the requiring activity.

211.272 Alternate preservation, packaging, and packing.

Use the provision at 252.211-7004, Alternate Preservation, Packaging, and Packing, in solicitations which include military preservation, packaging, or

packing specifications when it is feasible to evaluate and award using commercial or industrial preservation, packaging, or packing.

Subpart 211.5—Liquidated Damages

211.504 Contract clauses.

(b) Use the clause at FAR 52.211-12, Liquidated Damages—Construction, in all construction contracts exceeding \$500,000, except cost-plus-fixed-fee contracts or contracts where the contractor cannot control the pace of the work. Use of the clause in contracts of \$500,000 or less is optional.

Subpart 211.6—Priorities and Allocations

211.602 General.

DoD implementation of the Defense Priorities and Allocations System is in DoDI 4400.1, Priorities and Allocations—Delegation of DO and DX Priorities and Allocations Authorities, Rescheduling of Deliveries and Continuation of Related Manuals.

PART 212—ACQUISITION OF COMMERCIAL ITEMS—GENERAL

Subpart 212.2—Special Requirements for the Acquisition of Commercial Items

Sec.

212.211 Technical data.

Subpart 212.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

212.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Subpart 212.5—Applicability of Certain Laws to the Acquisition of Commercial Items

212.503 Applicability of certain laws to Executive Agency contracts for the acquisition of commercial items.

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

AUTHORITY: 41 U.S.C. 421 and 48 CFR Chapter 1.

212.211

SOURCE: 60 FR 61595, Nov. 30, 1995, unless otherwise noted.

Subpart 212.2—Special Requirements for the Acquisition of Commercial Items

212.211 Technical data.

The DoD policy for acquiring technical data for commercial items is at 227.7102.

Subpart 212.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f)(i) Use one of the following provisions as prescribed in part 225:

(A) 252.225-7000, Buy American Act—Balance of Payments Program Certificate.

(B) 252.225-7006, Buy American Act—Trade Agreements—Balance of Payments Program Certificate.

(C) 252.225-7035, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

(ii) Use the provision at 252.212-7000, Offeror Representations and Certifications—Commercial Items, in all solicitations for commercial items exceeding the simplified acquisition threshold. If an exception to 10 U.S.C. 2410i applies to a solicitation exceeding the simplified acquisition threshold (see 225.770-3), indicate on an addendum that “The certification in paragraph (b) of the provision at 252.225-7000 does not apply to this solicitation.”

(iii) Use the clause at 252.212-7001, Contract Terms and Conditions Required to Implement Statutes Applicable to Defense Acquisitions of Commercial Items, in all solicitations and contracts for commercial items, completing paragraph (b), as appropriate.

[60 FR 61595, Nov. 30, 1995, as amended at 61 FR 50452, Sept. 26, 1996]

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212.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(c) *Tailoring inconsistent with customary commercial practice.*

The head of the contracting activity is the approval authority within the DoD for waivers under FAR 12.302(c).

Subpart 212.5—Applicability of Certain Laws to the Acquisition of Commercial Items

212.503 Applicability of certain laws to Executive Agency contracts for the acquisition of commercial items.

(a) The following laws are not applicable to contracts for the acquisition of commercial items:

(i) Section 806, Public Law 102-190 (10 U.S.C. 2301 (repealed) note), Payment Protections for Subcontractors and Suppliers.

(ii) 10 U.S.C. 2306(b), Prohibition on Contingent Fees.

(iii) 10 U.S.C. 2324, Allowable Costs Under Defense Contracts.

(iv) 10 U.S.C. 2384(b), Requirement to Identify Suppliers.

(v) 10 U.S.C. 2397(a)(1), Reports by Employees or Former Employees of Defense Contractors.

(vi) 10 U.S.C. 2397b(f), Limits on Employment for Former DoD Officials.

(vii) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials.

(viii) 10 U.S.C. 2408(a), Prohibition on Persons Convicted of Defense Related Felonies.

(ix) 10 U.S.C. 2410b, Contractor Inventory Accounting System Standards (see 252.242-7004).

(x) 107 Stat 1720 (Section 843(a), Public Law 103-160), Reporting Requirement Regarding Dealings with Terrorist Countries.

(xi) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years.

(c) The applicability of the following laws has been modified in regard to contracts for the acquisition of commercial items:

(i) 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203-6).

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212.504

(ii) 10 U.S.C. 2306a, Truth in Negotiations Act (see FAR 15.804).

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components:

(i) 10 U.S.C. 2241 note, Limitations on Procurement of Food, Clothing, and Specialty Metals Not Produced in the United States.

(ii) Section 806, Public Law 102-190 (10 U.S.C. 2301 (repealed) note), Payment Protections for Subcontractors and Suppliers.

(iii) 10 U.S.C. 2306(b) Prohibition on Contingent Fees.

(iv) 10 U.S.C. 2313(c), Examination of Records of a Contractor.

(v) 10 U.S.C. 2320, Rights in Technical Data.

(vi) 10 U.S.C. 2321, Validation of Proprietary Data Restrictions.

(vii) 10 U.S.C. 2324, Allowable Costs Under Defense Contracts.

(viii) 10 U.S.C. 2327, Reporting Requirement Regarding Dealings with Terrorist Countries.

(ix) 10 U.S.C. 2384(b), Requirement to Identify Suppliers.

(x) 10 U.S.C. 2391 note, Notification of Substantial Impact on Employment.

(xi) 10 U.S.C. 2393, Prohibition Against Doing Business with Certain Offerors or Contractors.

(xii) 10 U.S.C. 2397(a)(1), Reports by Employees or Former Employees of Defense Contractors.

(xiii) 10 U.S.C. 2397b(f), Limits on Employment for Former DoD Officials.

(xiv) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials.

(xv) 10 U.S.C. 2408(a) Prohibition on Persons Convicted of Defense Related Felonies.

(xvi) 10 U.S.C. 2410b, Contractor Inventory Accounting System Standards.

(xvii) 10 U.S.C. 2501 note, Notification of Proposed Program Termination.

(xviii) 10 U.S.C. 2534, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods.

(xix) 10 U.S.C. 2534(c), Preference for United States and Canadian Valves and Machine Tools.

(xx) 10 U.S.C. 2534(d), Restriction on Acquisition of Carbonyl Iron Powder.

(xxi) 10 U.S.C. 2534(e), Restriction on Acquisition of Air Circuit Breakers.

(xxii) Effective May 1, 1996: 10 U.S.C. 2631, Transportation of Supplies by Sea.

(xxiii) 19 U.S.C. 2512, Trade Agreements Act.

(xxiv) 41 U.S.C. 10, Buy American Act.

(xxv) 10 U.S.C. 2327 (Section 843(a), Public Law 103-160), Reporting Requirement Regarding Dealings with Terrorist Countries.

(xxvi) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years.

(b) Certain requirements of the following laws have been eliminated for subcontracts at any tier for the acquisition of commercial items or commercial components:

(i) 10 U.S.C. 2393(d), Subcontractor Reports Under Prohibition Against Doing Business with Certain Offerors (see FAR 52.209-6).

(ii) 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203-6).

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

Sec.

213.000 Scope of part.

Subpart 213.1—General

213.101 Definitions.

Subpart 213.2—Blanket Purchase Agreements

213.203 Establishment of Blanket Purchase Agreements.

213.203-1 General.

213.203-2 Clauses.

213.204 Purchase under Blanket Purchase Agreements.

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213.401 General.

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213.403 Conditions for use.

Subpart 213.5—Purchase Orders

213.503 Obtaining contractor acceptance and modifying purchase orders.

213.504 Termination or cancellation of purchase orders.

213.505 Purchase order and related forms.

213.505-1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.

213.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

213.507 Provisions and clauses.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36324, July 31, 1991, unless otherwise noted.

213.000 Scope of part.

This part also implements 10 U.S.C. 2302(7) which increases the simplified acquisition threshold to \$200,000 for any contract to be awarded and performed outside the United States in

support of a contingency operation as defined in 10 U.S.C. 101(a)(13).

[59 FR 50851, Oct. 6, 1994, as amended at 61 FR 7742, Feb. 29, 1996]

Subpart 213.1—General

213.101 Definitions.

Contingency operation is defined in 10 U.S.C. 101(a)(13) as a military operation that—

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10, chapter 15 of Title 10, or any other provision of law during a war or during a national emergency declared by the President or Congress.

[59 FR 50851, Oct. 6, 1994, as amended at 61 FR 7742, Feb. 29, 1996]

Subpart 213.2—Blanket Purchase Agreements

213.203 Establishment of Blanket Purchase Agreements.

213.203-1 General.

(i) Prepare and issue blanket purchase agreements (BPAs) on DD Form 1155, Order for Supplies or Services.

213.203-2 Clauses.

(a) The clauses prescribed at 213.507 for purchase orders also apply to BPAs.

213.204 Purchase under Blanket Purchase Agreements.

(b) Individual purchases for subsistence may be made at any dollar value; however, the contracting officer shall satisfy the competition requirements

of FAR part 6 for any action not using simplified acquisition procedures.

[56 FR 36324, July 31, 1991, as amended at 61 FR 7742, Feb. 29, 1996]

Subpart 213.3—Fast Payment Procedure

§213.302 Conditions for use.

(a) Individual orders may exceed \$25,000 for—

- (i) Brand name commissary resale subsistence; and
- (ii) Medical supplies for direct shipment overseas.

Subpart 213.4—Imprest Fund

213.401 General.

See DoDD 7360.10, Disbursing Policies, and chapter 32 of the DoD Accounting Manual, DoD 7220.9-M.

[56 FR 36324, July 31, 1991. Redesignated at 61 FR 7742, Feb. 29, 1996]

213.402 Agency responsibilities.

(c) Installation commanders and commanders of other activities with contracting authority are responsible for approving the establishment of imprest funds.

[56 FR 36324, July 31, 1991. Redesignated at 61 FR 7742, Feb. 29, 1996]

213.403 Conditions for use.

(a) Overseas transactions in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) may use imprest funds up to \$2,500.

(c)(i) Additional conditions for use include—

(A) Availability for delivery within 60 days; and

(B) No requirement for detailed technical specifications or technical inspections.

(ii) When imprest funds are used for simplified acquisitions, the funds may also be used to pay charges for local delivery, parcel post, c.o.d. charges, and line haul or inter-city transportation charges when the supplier is to arrange for delivery.

[56 FR 36324, July 31, 1991, as amended at 59 FR 50851, Oct. 6, 1994. Redesignated and amended at 61 FR 7742, Feb. 29, 1996]

Subpart 213.5—Purchase Orders

213.503 Obtaining contractor acceptance and modifying purchase orders.

(a) Require written acceptance of purchase orders for classified acquisitions.

(b) Use Standard Form 30, Amendment of Solicitation/Modification of Contract, to modify purchase orders.

(d)(i) Unilateral modifications (see FAR 43.103) may also be used for—

(A) No cost amended shipping instructions (ASI) if—

(1) The ASI modifies a unilateral purchase order, and

(2) The contractor agrees verbally or in writing.

(B) Any change made before work begins if—

(1) The change is within the scope of the original order;

(2) The contractor agrees;

(3) The modification references the contractor's verbal or written agreement; and

(4) Block 13D of the Standard Form 30 is annotated to reflect the authority for issuance of the modification.

(ii) A supplemental agreement converts a unilateral purchase order to a bilateral agreement. If not previously included in the purchase order, incorporate the clauses prescribed in 213.507(a)(ii) in the Standard Form 30, Amendment of Solicitation/Modification of Contract, and obtain the contractor's acceptance by signature on the Standard Form 30.

213.504 Termination or cancellation of purchase orders.

(b) Use Standard Form 30 to cancel a unilateral purchase order.

213.505 Purchase order and related forms.

213.505-1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.

Departments and agencies shall not use Optional Forms 347, Order for Supplies or Services, and 348, Order for Supplies or Services Schedule-Continuation.

(b)(i) Use DD Form 1155, Orders for Supplies or Services, (see 253.213(e)), for purchases made using the simplified acquisition procedures of FAR part 13. The DD Form 1155 serves as—

(A) A purchase order or a blanket purchase agreement, when used with the clauses prescribed at 213.507(a);

(B) A delivery order under a Government contract or from Government agencies outside the DoD;

(C) A receiving and inspection report;

(D) A property voucher;

(E) A document for acceptance by the supplier; and

(F) A public voucher, when used as—

(1) A delivery order;

(2) The basis for payment of an invoice against blanket purchase agreements or basic ordering agreements when a firm price has been established; or

(3) A purchase order for acquisitions using simplified acquisition procedures.

(ii) The DD Form 1155 is also authorized for use for—

(A) Classified acquisitions when the purchase is made within the United States, its possessions, and Puerto Rico. Attach the DD Form 254, Contract Security Classification Specification, to the purchase order.

(B) Orders under departmental contracts or from Government agencies outside the DoD (see FAR subparts 8.4, 8.6, 8.7, and 16.5).

[56 FR 36324, July 31, 1991. Redesignated and amended at 61 FR 7742, Feb. 29, 1996; 61 FR 9532, Mar. 8, 1996]

213.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

(b)(1) The micro-purchase limitation applies to all purchases except that purchases up to the simplified acquisition threshold may be made for—

(A) Aviation fuel and oil;

(B) Overseas transactions by contracting officers in support of a contingency operation as defined in 10 U.S.C. 101(a)(13); and

(C) Transactions in support of intelligence and other specialized activities addressed by Part 2.7 of Executive Order 12333.

[59 FR 50851, Oct. 6, 1994, as amended at 61 FR 7742, Feb. 29, 1996; 61 FR 18195, Apr. 24, 1996]

213.507 Provisions and clauses.

(a) Use the clauses in paragraphs (a) (i) through (iii) of this section, as applicable, in all purchase orders and blanket purchase agreements. The clauses listed in the following paragraphs (i) and (ii) may be incorporated by reference, except for FAR 52.252-2, Clauses Incorporated by Reference. Any other clauses included in the purchase order shall be incorporated by reference or in full text as required by the matrix in FAR 52.3.

(i) Unilateral purchase orders—

(A) FAR 52.252-2, Clauses Incorporated by Reference (required only if other clauses are incorporated by reference);

(B) FAR 52.203-3, Gratuities;

(C) FAR 52.211-16, Variation in Quantity;

(D) FAR 52.222-3, Convict Labor (unless the order will be subject to the Walsh-Healey Public Contracts Act (see FAR subpart 22.6));

(E) FAR 52.222-26, Equal Opportunity (unless exempt under FAR 22.807);

(F) FAR 52.225-3, Buy American Act-Supplies;

(G) FAR 52.232,-1, Payments;

(H) FAR 52.232-25, Prompt Payment;

(I) FAR 52.232-28, Electronic Funds Transfer Payment Methods;

(J) FAR 52.233-1, Disputes;

(K) FAR 52.246-1, Contractor Inspection Requirements (except when an alternate level of quality assurance is necessary (see FAR 46.203 and 46.204)); and

(L) FAR 52.246-16, Responsibility for Supplies.

(ii) Bilateral purchase orders—

(A) The clauses in paragraph (a)(i) of this section;

(B) FAR 52.204-2, Security Requirements (if the acquisition is classified);

(C) FAR 52.243-1, Changes—Fixed Price (with appropriate alternate as necessary);

(D) 252.243-7001, Pricing of Contract Modifications;

(E) FAR 52.249-1, 52.249-4, or 52.249-5, Termination for Convenience of the Government; and

(F) FAR 52.249-8, 52.249-9, or 52.249-10, Default.

(iii) Any other clauses required by the prescription for their use.

[56 FR 36324, July 31, 1991, as amended at 61 FR 7742, Feb. 29, 1996]

PART 214—SEALED BIDDING

Sec.

Subpart 214.2—Solicitation of Bids

214.202 General rules for solicitation of bids.
214.202-5 Descriptive literature.

Subpart 214.4—Opening of Bids and Award of Contract

214.404 Rejection of bids.
214.404-1 Cancellation of invitations after opening.
214.406 Mistakes in bids.
214.406-3 Other mistakes disclosed before award.

Subpart 214.5—Two-Step Sealed Bidding

214.503 Procedures.
214.503-1 Step one.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36326, July 31, 1991, unless otherwise noted.

Subpart 214.2—Solicitation of Bids

214.202 General rules for solicitation of bids.

214.202-5 Descriptive literature.

(d) *Requirements of invitation for bids.* When brand name or equal purchase descriptions are used, use of the provision at 252.210-7000, Brand Name or Equal, satisfies this requirement.

Subpart 214.4—Opening of Bids and Award of Contract

214.404 Rejection of bids.

214.404-1 Cancellation of invitations after opening.

The contracting officer shall make the written determinations required by FAR 14.404-1 (c) and (e).

214.406 Mistakes in bids.

214.406-3 Other mistakes disclosed before award.

(e) Authority for making a determination under FAR 14.406-3(a), (b) and (d) is delegated for the defense agencies, without power of redelegation, as follows:

(i) Defense Advanced Research Projects Agency: General Counsel, DARPA.

(ii) Defense Information Systems Agency: General Counsel, DISA.

(iii) Defense Intelligence Agency: Principal Assistant for Acquisition.

(iv) Defense Logistics Agency:

(A) General Counsel, DLA; and

(B) Associate General Counsel, DLA.

(v) Defense Mapping Agency: General Counsel, DMA.

(vi) Defense Special Weapons Agency: General Counsel, DSWA.

(vii) National Security Agency: Director of Procurement, NSA.

(viii) On-Site Inspection Agency: General Counsel, OSIA.

(ix) Ballistic Missile Defense Organization: General Counsel, BMDO.

(h) Send a signed copy of the document authorizing correction of the bid to the appropriate finance center with its copy of the contract.

[57 FR 42629, Sept. 15, 1992, as amended at 59 FR 27669, May 27, 1994; 61 FR 50452, Sept. 26, 1996]

Subpart 214.5—Two-Step Sealed Bidding

214.503 Procedures.

214.503-1 Step one.

(a) Requests for technical proposals may be in the form of a letter.

[56 FR 36326, July 31, 1991, as amended at 57 FR 53599, Nov. 12, 1992]

PART 215—CONTRACTING BY NEGOTIATION

Sec.

Subpart 215.4—Solicitation and Receipt of Proposals and Quotations

215.401 Applicability.

215.406-2 Part I—The Schedule.

215.414 Forms.

215.401

Subpart 215.6—Source Selection

- 215.605 Evaluation factors and subfactors.
- 215.607 Disclosure of mistakes before award.
- 215.608 Proposal evaluation.
- 215.611 Best and final offers.
- 215.613 Alternate source selection procedures.
- 215.613-70 Four-step source selection procedures.

Subpart 215.7—Make-or-Buy Programs

- 215.704 Items and work included.

Subpart 215.8—Price Negotiation

- 215.801 Definitions.
- 215.804 Cost or pricing data.
 - 215.804-1 General.
 - 215.804-3 Exemptions from or waiver of submission of certified cost or pricing data.
 - 215.804-6 Procedural requirements.
 - 215.804-7 Defective cost or pricing data.
 - 215.804-8 Contract clauses.
- 215.805 Proposal analysis.
 - 215.805-5 Field pricing support.
 - 215.805-70 Cost realism analysis.
- 215.806 Subcontract pricing considerations.
 - 215.806-1 General.
 - 215.806-3 Field pricing reports.
- 215.807 Prenegotiation objectives.
- 215.808 Price negotiation memorandum.
- 215.809 Forward pricing rate agreements.
- 215.810 Should-cost review.
 - 215.810-2 Program should-cost review.
 - 215.810-3 Overhead should-cost review.
- 215.811 Estimating systems.
- 215.811-70 Disclosure, maintenance, and review requirements.
- 215.870—215.871 [Reserved]
- 215.872 Work measurement systems.
 - 215.872-1 Definition.
 - 215.872-2 Policy.
 - 215.872-3 General.
 - 215.872-4 Applicability.
- 215.873 Estimated data prices.

Subpart 215.9—Profit

- 215.902 Policy.
- 215.903 Contracting officer responsibilities.
- 215.905 Profit-analysis factors.
 - 215.905-1 Common factors.
 - 215.970 DD Form 1547, Record of Weighted Guidelines Method Application.
- 215.971 Weighted guidelines method.
 - 215.971-1 General.
 - 215.971-2 Performance risk.
 - 215.971-3 Contract type risk and working capital adjustment.
 - 215.971-4 Facilities capital employed.
- 215.972 Modified weighted guidelines method for nonprofit organizations.
- 215.973 Alternate structured approaches.
- 215.974 Fee requirements for cost-plus-award-fee contracts.
- 215.975 Reporting profit and fee statistics.

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Subpart 215.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

- 215.1001 Notifications to unsuccessful offerors.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36326, July 31, 1991, unless otherwise noted.

Subpart 215.4—Solicitation and Receipt of Proposals and Quotations

215.401 Applicability.

See 225.872 for additional guidance on procedures for purchasing from qualifying countries.

215.406-2 Part I—The Schedule.

(g) When a contract contains both fixed-priced and cost-reimbursement line items or subline items, the contracting officer shall provide, in Section B, Supplies or Services and Prices/Costs, an identification of contract type specified for each contract line item or subline item to facilitate appropriate payment.

[60 FR 34470, July 3, 1995; 60 FR 43191, Aug. 18, 1995]

215.414 Forms.

This does not preclude use of letter RFPs and RFQs, provided their use complies with other requirements of the FAR and this regulation.

Subpart 215.6—Source Selection

215.605 Evaluation factors and subfactors.

(b)(2)(A) In acquisitions which require use of the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the extent of participation of small and small disadvantaged business in performance of the contract shall be addressed in source selection.

(I) For acquisitions other than those based only on cost or price competition, the contracting officer shall evaluate the extent to which offerors identify and commit to small business and to small disadvantaged business,

historically black college and university, or minority institution performance of the contract, whether as a joint venture, teaming arrangement, or subcontractor.

(2) Criteria for evaluation may include—

(i) The extent which such firms are specifically identified in proposals;

(ii) The extent of commitment to use such firms (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones);

(iii) The complexity and variety of the work small firms are to perform;

(iv) The realism of the proposal;

(v) When not otherwise required by 215.608(a)(2), past performance of the offerors in complying with requirements of the clauses at FAR 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, and 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan; and

(vi) The extent of participation of such firms in terms of the value of the total acquisition.

(3) Proposals addressing the extent of small and small disadvantaged business performance may be separate from subcontracting plans submitted pursuant to the clause at FAR 52.219-9 and should be structured to allow for consideration of offers from small businesses.

(4) When an evaluation includes the criterion in paragraph (b)(2)(A)(2)(i) of this section, the small, small disadvantaged, or women-owned small businesses considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219-9 to facilitate compliance with 252.219-7003(g).

(B) The costs or savings related to contract administration and audit may be considered when the offeror's past performance or performance risk is likely to result in significant costs or savings.

(c) In competitive acquisitions of services—

(i) Evaluation and award should be based, to the maximum extent practicable, on best overall value to the Government in terms of quality and other factors.

(ii) The weighting of costs must be commensurate with the nature of the services being acquired.

(A) It may be appropriate to award to an offeror, based on technical and quality considerations, at other than the lowest price when—

(1) The effort being contracted for departs from clearly defined efforts; or

(2) Highly skilled personnel are required.

(B) It may be appropriate to award to the technically acceptable offeror with the lowest price when—

(1) Services being acquired are of a routine or simple nature;

(2) Highly skilled personnel are not required; or

(3) The product to be delivered is clearly defined at the outset of the acquisition.

[56 FR 36326, July 31, 1991, as amended at 56 FR 67213, Dec. 30, 1991; 57 FR 14992, Apr. 23, 1992; 59 FR 27669, May 27, 1994; 61 FR 18687, Apr. 29, 1996; 61 FR 50452, Sept. 26, 1996]

215.607 Disclosure of mistakes before award.

(c)(3) The designee is the head of the contracting activity, who may redelegate this authority to the chief of the contracting office.

215.608 Proposal evaluation.

(a)(1) Contracting officers shall ensure that the use of uncompensated overtime in contracts to acquire services on the basis of the number of hours provided (see 237.170) will not degrade the level of technical expertise required to fulfill the Government's requirements. When acquiring such services, contracting officers shall conduct a risk assessment, and evaluate for award on that basis, any proposals received that reflect factors such as—

(i) Unrealistically low labor rates or other costs that may result in quality or service shortfalls; and

(ii) Unbalanced distribution of uncompensated overtime among skill levels and its use in key technical positions.

(2) When a past performance evaluation is required by FAR 15.605, and the solicitation includes the clause at FAR 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned

Small Business Concerns, the evaluation shall include the past performance of offerors in complying with requirements of that clause. When a past performance evaluation is required by FAR 15.605, and the solicitation includes the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the evaluation shall include the past performance of offerors in complying with requirements of that clause.

(b) Except for determinations based on violations or possible violations of section 27 of the Office of Federal Procurement Policy (OFPP) Act, and unless otherwise specified in department/agency regulations, the contracting officer shall make the written determination. Determinations based on violations or possible violations of section 27 of the OFPP Act shall be made at the level specified in FAR 3.104-11(g).

[56 FR 36326, July 31, 1991, as amended at 56 FR 67213, Dec. 30, 1991; 61 FR 18687, Apr. 29, 1996]

215.611 Best and final offers.

(c)(i) Before requesting an additional (second or subsequent) best and final offer, the contracting officer shall obtain approval from—

(A) The source selection authority and the senior procurement executive (SPE) for competitive negotiated acquisitions under formal source selection (see FAR 15.612). The SPE may delegate this authority to a level no lower than the head of the contracting activity.

(B) The head of the contracting activity (HCA) for all other competitive negotiated acquisitions. The HCA may delegate this authority to the chief of the contracting office.

(ii) Each HCA shall establish a system for reporting and documenting additional requests for best and final offers. Systems shall include as a minimum—

(A) The total number of competitive negotiated acquisitions awarded;

(B) The number of those acquisitions for which an additional request for best and final offers was approved and issued; and

(C) The reasons for approving each additional request for best and final offers.

(iii) To ensure that additional requests for best and final offers are used only when necessary and unavoidable, HCAs shall—

(A) Periodically analyze data collected under paragraph (c)(ii) of this section;

(B) Take appropriate corrective action, e.g., training, revising approval levels; and

(C) Provide periodic summary reports to the SPE as specified in department/agency regulations.

215.613 Alternate source selection procedures.

215.613-70 Four-step source selection procedures.

(a) *General.* The four-step source selection procedure is designed for those situations where the Government wishes to focus on technical excellence. Proposals are evaluated, a competitive range established, and an apparent successful offeror selected without discussions of proposal deficiencies (a deficiency is defined as that part of an offeror's proposal which would not satisfy the Government's requirements). Negotiations are conducted only in the final step and only with the apparent successful offeror.

(b) *Applicability.* Four-step source selection procedures may be used for—

(1) Competitively negotiated research and development acquisitions with an estimated value of \$2 million or more; or

(2) Other acquisitions as permitted by department/agency regulations, except those in paragraph (c) of this subsection.

(c) *Restrictions.* Four-step source selection procedures shall not be used for acquisitions which—

(1) Will require extensive discussion and negotiations;

(2) Use the authority of FAR 6.302-2;

(3) Are solely for personal or non-personal services;

(4) Are for architect-engineer services; or

(5) Have an estimated value of less than \$2 million.

(d) *Presolicitation.* Establish early and open dialogue with prospective offerors

to ensure their understanding of the Government's needs, since the evaluation will be conducted with limited discussions and without disclosing deficiencies in offeror proposals. Ways of establishing this dialogue are—

- (1) Presolicitation notices;
- (2) Presolicitation conferences;
- (3) Preproposal conferences;
- (4) Solicitations for information or planning purposes; and
- (5) Tailoring of specifications.

(e) *Solicitations*. Include the following special provisions in four-step source selection solicitations—

- (1) Explanation of the four-step concept and procedures;

(2) Statement regarding the relative importance of technical/system performance criteria;

(3) Notification that the contracting officer may reject proposals with unrealistic technical, schedule, cost, or price commitments since unrealistic commitments reflect an inherent lack of technical competence or indicate a failure to comprehend the complexity and risks of the requirements;

(4) Schedule of planned source selection events, including specific dates for the sequential submission of separate technical and cost proposal.

(5) Requirement for the technical proposal to include—

- (i) Identification, when appropriate, of trade-offs (with illustrative cost estimate impacts) among performance, production costs, operating and support costs, schedule and logistics support factors; and

(ii) Information showing that the goals for design to cost and operating and support costs (when used) will be achieved when the item enters production.

(6) Requirement for the cost proposal to include detailed cost information supporting the technical proposal and the cost factors in the evaluation criteria;

(7) Statement that both technical and cost discussions will be limited as described in paragraphs (f) and (g) of this subsection; and

(8) Notification that the contracting officer will only negotiate with the selected offeror, and that offerors' initial technical and cost proposals should be their best offer.

(f) *Step one—evaluation of technical proposals*. (1) The sequence of step one—

- (i) Evaluate all technical proposals;
- (ii) Conduct limited discussions with all offerors; and

(iii) Ask for any necessary clarifications and additional supporting data when necessary (normally, ask that this be submitted with the cost proposal).

(2) In conducting step one—

(i) Limit discussions to only what is necessary to ensure that both parties understand each other;

(ii) Do not tell offerors about deficiencies in their proposals; and

(iii) Provide written clarification to all offerors when it appears the Government's requirements have been misinterpreted.

(g) *Step two—evaluation of cost proposals*. (1) The sequence of step two—

- (i) Request cost proposals;
- (ii) Evaluate all cost proposals;
- (iii) Establish the competitive range;
- (iv) Eliminate those proposals outside the range and advise those offerors;

(v) Conduct limited discussions with remaining offerors; and

(vi) Eliminate proposals which cannot be made acceptable and advise the offerors.

(2) In conducting step two—

(i) Limit discussions to—
(A) Clarifying inconsistencies or correcting mathematical errors;

(B) Correlating cost elements with technical effort in order to assess cost realism; and

(C) Ensuring a complete understanding of the Government's requirements, the offeror's offer, and other contract terms;

(ii) Do not tell an offeror that any of its cost elements are either too high or too low; and

(iii) Follow the guidelines in paragraph (f) of this subsection if further discussions of technical proposals or clarifications are required.

(h) *Step three—common cut-off and selection of an offeror for final contract negotiations*. (1) The sequence of step three—

(i) Notify offerors of the common cut-off date for receipt of best and final offers (technical and cost);

(ii) Evaluate the offers;

(iii) Select the best offeror (see paragraph (h)(2)(iv) of this subsection for multiple sources);

(iv) Tell the selected source that the decision is conditional based on negotiation of a definitive contract within the time period prescribed by the source selection authority; and

(v) Advise the other offerors of the source selected.

(2) In conducting step three—

(i) Remind offerors, when notifying them of the common cut-off date, that any changes incorporated in the final proposal must be fully documented;

(ii) Do not accept lump sum reductions in final cost proposals without supporting data;

(iii) Do not request additional best and final offers without the approval required by 215.611(c); and

(iv) Do not select two or more offerors, rather than a single source, for final contract negotiations, unless the HCA makes a written determination that final selection of a single source should not be made until the prospective contracts have been tentatively negotiated.

(i) *Step four—final negotiations and contract award.* (1) The sequence of step four (single selectee)—

(i) Negotiate the final contract price, terms, and conditions; and

(ii) Award the contract.

(2) The sequence of step four (multiple selectees)—

(i) Negotiate tentative final contract terms and conditions;

(ii) Select the best source; and

(iii) Award.

(3) In conducting step four—

(i) Complete negotiations and award the contract within the time prescribed by the source selection authority;

(ii) Terminate negotiations and make a new source selection decision if the condition in paragraph (i)(3)(i) cannot be met;

(iii) Do not permit changes in the Government's requirements or the offeror's proposal which would affect the source selection decision; and

(iv) Follow the procedures in FAR 15.606 if changes in the Government's requirements are necessary.

Subpart 215.7—Make-or-Buy Programs

215.704 Items and work included.

The minimum dollar amount is \$1 million.

Subpart 215.8—Price Negotiation

215.801 Definitions.

Cost realism analysis means a review of the overall costs in an offeror's proposal to determine if they—

(1) Are realistic for the work to be performed;

(2) Reflect a clear understanding of the requirements; and

(3) Are consistent with the various elements of the offeror's technical proposal.

215.804 Cost or pricing data.

215.804-1 General.

(a) When certified cost or pricing data are not required, the contracting officer may ask for partial or limited data when the data are necessary for the Government's analysis. The contracting officer shall not ask the contractor to certify these data.

[57 FR 42629, Sept. 15, 1992]

215.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a)(1) The contracting officer rarely should need to require the submission or certification of cost or pricing data on acquisitions where adequate price competition is expected (regardless of the type of contract anticipated).

(b) *Adequate price competition.* (1) Adequate price competition may exist for any contract, including cost-reimbursement contracts, as long as price is a substantial factor in the evaluation. If, after receipt of proposals, the contracting officer determines that adequate price competition does not exist, the contracting officer shall obtain, as appropriate (see FAR 15.804-2), certified cost or price data.

(3)(A) Examples of a price "based on" adequate price competition are:

(1) Exercise of an option in a contract where adequate price competition existed, if the contracting officer has determined that the option price is reasonable under FAR 17.207(d);

(2) Acquisition of an item that has multiple suppliers, where the contracting officer only solicits or receives one offer, but the price is clearly reasonable in comparison with recent purchases where adequate price competition existed.

(B) Dual or multiple source programs. (1) In dual or multiple source programs, the determination of adequate price competition must be made on a case-by-case basis. Contracting officers must exercise deliberation and thorough review in making the determination. Even when adequate price competition exists, in certain cases it may be appropriate to obtain some data to assist in price analysis.

(2) Adequate price competition normally exists when—

(i) Prices are solicited across a full range of step quantities, normally including a 0-100 percent split, from at least two offerors who are individually capable of producing the full quantity; and

(ii) The price reasonableness of all prices awarded is clearly established on the basis of price analysis (see FAR section 15.805-2).

(3) If price reasonableness cannot be determined on the basis of price analysis, including the results of negotiations, the exemption at FAR section 15.804-3(a)(1) from submission of certified cost of pricing data shall not apply.

(i) *Waiver for exceptional cases.* (i) The DoD has exempted the Canadian Commercial Corporation and its subcontractors from submission and certification of cost or pricing data on all acquisitions.

(ii) The DoD has waived certain cost or pricing data certification requirements for nonprofit organizations (including educational institutions) on cost-reimbursement-no-fee contracts. The contracting officer—

(A) Shall require cost or pricing data, including cost or pricing data from subcontractors;

(B) Shall not require certification of data submitted by the organization on

its own behalf or on behalf of subcontractors which are also nonprofit organizations;

(C) Shall require certification of cost or pricing data from subcontractors which are not nonprofit organizations or educational institutions.

(iii) Use the following format when preparing an authorization for waiver in accordance with FAR 15.804-3(i):

(MILITARY DEPARTMENT OR DEFENSE AGENCY)

Authority to Waive Submission of Certified Cost or Pricing Data

1. The (contracting activity) proposes to award a contract to (name of contractor) for acquisition of (brief description of supplies or services).

2. Under FAR 15.804-2, the prospective contractor is required to submit certified cost or pricing data. However, for the following reasons, I am waiving the requirement for certification of the data (The waiver may be partial, e.g., limited to particular cost or pricing data. If so, describe the cost or pricing data for which the certification is to be waived): Explain the circumstances and conditions which make the prospective contract action an exceptional case. State the reasons why the waiver is justified.)

3. I make this waiver under the authority of 10 U.S.C. 2306a(b)(2), as implemented by FAR 15.804-3(i).

Date _____
Signed _____

[56 FR 36326, July 31, 1991, as amended at 57 FR 42629, Sept. 15, 1992; 57 FR 53599, Nov. 12, 1992; 59 FR 27669, May 27, 1994]

215.804-6 Procedural requirements.

(b)(2)(A) When the solicitation requires contractor compliance with the Contractor Cost Data Reporting (CCDR) System (Army—AMCP 715-8, Navy—NAV PUB P-5241, and Air Force—AFMCP 800-15), require the contractor to submit DD Forms 1921 or 1921-1 with its SF 1411.

(B) Contracting offices may develop contract pricing proposal supporting schedules for use by offerors in providing supporting data for the SF 1411. Schedules should only ask for data that are necessary and reasonable based on industry, company, or commodity practices.

[56 FR 36326, July 31, 1991, as amended at 59 FR 27669, May 27, 1994]

215.804-7 Defective cost or pricing data.

(b)(2) Unless there is clear evidence to the contrary, the contracting officer may presume the defective data were relied on and resulted in a contract price increase equal to the amount of the defect plus related overhead and profit or fee. The contracting officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the non-defective data had been known.

215.804-8 Contract clauses.

If the solicitation or contract includes one of the clauses at FAR 52.215-23, FAR 52.215-24, or FAR 52.215-25, also use the clause at 252.215-7000, Pricing Adjustments.

[60 FR 61596, Nov. 30, 1995]

215.805 Proposal analysis.**215.805-5 Field pricing support.**

(a)(1)(A) Contracting officers shall request field pricing reports for—

(1) Fixed-price proposals exceeding \$500,000;

(2) Cost-type proposals exceeding \$500,000 from offerors with significant estimating system deficiencies (see 215.811-70(a)(3) and (c)(2)(i)); or

(3) Cost-type proposals exceeding \$10 million from offerors without significant estimating system deficiencies.

(B) Contracting officers may, with adequate written justification, waive the requirement for these reports.

(2)(A) The contract administration office price/cost analyst supports the administrative contracting officer in preparing a complete and accurate field pricing report for the contracting officer. The analyst—

(1) In concert with the auditor and in consideration of the auditor's workload, establishes a deadline for the auditor's input, subject to adjustments when considered necessary;

(2) Identifies areas for special consideration;

(3) Arranges for exchanges of technical and audit information; and

(4) Must be fully responsive to a request for technical information from the auditor.

(B) The pricing report—

(1) Details the price/cost analyst's comprehensive review and evaluation of the proposal;

(2) Includes information specifically requested by the contracting officer; and

(3) Summarizes what was analyzed, how it was analyzed, and the conclusions reached.

(c)(i) In requesting field pricing support—

(A) Mark all requests "FIELD PRICING REQUEST" in bold letters on the mailing envelope;

(B) On urgent requests, provide facsimile numbers to facilitate return of the completed report; and

(C) Send an advance copy to the audit activity.

(ii) When the contracting officer knows in advance that field pricing support will be required, the contracting officer may request field pricing support before the offeror submits a proposal.

(A) Give the administrative contracting officer (ACO) and auditor a copy of the solicitation;

(B) Tell them when to expect the proposal; and

(C) Tell the offeror to provide the ACO and auditor copies of the proposal.

(iii) Where audit reports are received on contracting actions that are subsequently cancelled or unsuccessful, notify the cognizant auditor in writing.

(iv) For spare parts or support equipment, identify all line items where the proposed price exceeds by 25 percent or more the lowest price the Government has paid within the most recent 12-month period. The field pricing report will include, as a minimum—

(A) A detailed analysis of each line item identified by the contracting officer in the request;

(B) A detailed analysis of those line items where a comparison of the item description and the proposed price indicates a potential for overpricing;

(C) An analysis of the significant high-dollar-value items. If there are no obvious high-dollar-value items, include an analysis of a random sample of items; and

(D) An analysis of a random sample of the remaining low-dollar value items. Sample size may be determined

by subjective judgment, e.g., experience with the contractor and reliability of its estimating and accounting systems.

(v) For spare parts proposals that have been identified as Spares Acquisition Integrated with Production (SAIP) items (see DoD Instruction 4245.12, Spares Acquisition Integrated with Production (SAIP))—

(A) Include a copy of the data entitled “Contractor’s Procurement Schedule for SAIP” (Data Item DI-V-7200), or equivalent, in the request so that the benefits of combining new and in process quantities can be assured (these data are delivered by the contractor on contracts that include SAIP requirements); or

(B) Require the contractor to include these data in its proposal.

(e)(6) The contract administration office price/cost analyst is responsible for providing a complete and accurate field pricing report. This includes quantifying technical findings; however, if the auditor requests a technical analysis, the auditor normally will incorporate the financial effect of the analysis in the audit report.

(7) The contracting officer shall, with the advice of the ACO and auditor, ensure that the contractor initiates necessary corrective action before contract award.

(8) The administrative contracting officer and auditor shall confer with the contractor during the course of the field pricing review to fully understand the basis for each item in the proposal and to remove any doubts as to the validity and accuracy of their conclusions and findings.

(g) The audit activity sends the original to the administrative contracting officer and a copy to the contracting officer.

[56 FR 36326, July 31, 1991, as amended at 60 FR 61596, Nov. 30, 1995]

215.805-70 Cost realism analysis.

(a) In competitive acquisitions, even when adequate price competition exists, to ensure that proposed costs are consistent with the technical proposal, the contracting officer—

(1) Should perform a cost realism analysis when—

(i) A cost-reimbursement contract is anticipated;

(ii) The solicitation contains new requirements that may not be fully understood by competing contractors;

(iii) There are quality concerns; or

(iv) Past experience indicates that contractors proposed costs have resulted in quality or service shortfalls.

(2) May perform a cost realism analysis on other acquisitions.

(b) The contracting officer should determine what data are necessary for the cost realism analysis during acquisition planning and development of the solicitation. Unless these data are already available from Government sources, the contracting officer will need to ask the offerors for them.

(1) Request only necessary data; and

(2) Do not request submission or certification of cost or pricing data.

215.806 Subcontract pricing considerations.

215.806-1 General.

Price redeterminable or fixed-price incentive contracts may include subcontracts placed on the same basis. When the contracting officer wants to reprice the prime contract even though the contractor has not yet established final prices for the subcontracts, the contracting officer may negotiate a firm contract price—

(1) If cost or pricing data on the subcontracts show the amounts to be reasonable and realistic; or

(2) If cost or pricing data on the subcontracts are too indefinite to determine whether the amounts are reasonable and realistic, but—

(i) Circumstances require prompt negotiation; and

(ii) A statement substantially as follows is included in the repricing modification of the prime contract:

As soon as the Contractor establishes firm prices for each subcontract listed below, the Contractor shall submit (in the format and with the level of detail specified by the Contracting Officer) to the Contracting Officer the subcontractor’s cost incurred in performing the subcontract and the final subcontract price. The Contractor and Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect the final subcontract price.

(a)(1) Contractor and subcontractor proposals may reflect the selection of sources whose proposals offer the greatest value to the Government in terms of performance and other factors. If the selection is based on greatest value rather than lowest price, the analysis supporting subcontractor selection should include a discussion of the factors considered in the selection (see also FAR 15.605(c) and 215.605(c)). If the contractor's analysis is not adequate, return it for correction of deficiencies.

(d) The contracting officer shall make every effort to ensure that fees negotiated by contractors for cost-plus-fixed-fee subcontracts do not exceed the fee limitations in FAR 15.903(d).

[56 FR 36326, July 31, 1991, as amended at 60 FR 29497, June 5, 1995]

215.806-3 Field pricing reports.

(a)(i) If, in the opinion of the contracting officer or auditor, the review of a prime contractor's proposal requires further review of subcontractors' cost estimates at the subcontractors' plants (after due consideration of reviews performed by the prime contractor), these reviews should be fully coordinated with the administrative contracting officer (ACO) having cognizance of the prime contractor before being initiated. The ACO for the prime contractor will initiate the request to the ACO for the subcontractor, with an information copy to the auditor for the subcontractor. The ACO for the subcontractor sends the resulting field pricing report to the prime ACO with an information copy to the prime auditor. Requests for field pricing support on lower tier subcontractors are handled in a like manner.

(ii) Notify the appropriate contract administration activities when extensive, special, or expedited field pricing assistance will be needed to review and evaluate subcontractors' proposals under a major weapon system acquisition.

215.807 Prenegotiation objectives.

(a)(i) Also consider data resulting from application of work measurement systems in developing prenegotiation objectives.

(ii) Consider field pricing support personnel participation in planned prenegotiation and negotiation activities.

(b) Prenegotiation objectives, including objectives related to disposition of findings and recommendations contained in preaward and postaward contract audit and other advisory reports, shall be documented and reviewed in accordance with Departmental procedures.

[56 FR 36326, July 31, 1991, as amended at 59 FR 27669, May 27, 1994]

215.808 Price negotiation memorandum.

(a)(8) Include the principal factors related to the disposition of findings and recommendations contained in preaward and postaward contract audit and other advisory reports.

(10) The memorandum—

(A) Must document significant deviations from the prenegotiation profit objective;

(B) Should include the DD Form 1547, Record of Weighted Guidelines Application (see subpart 215.9), if used, with supporting rationale; and

(C) Must document the rationale for not using the weighted guidelines method when its use is required by 215.9.

215.809 Forward pricing rate agreements.

(e)(i) Use forward pricing rate agreement (FPRA) rates when such rates are available, unless waived on a case-by-case basis by the head of the contracting activity.

(ii) Advise the ACO of each case waived.

(iii) Contact the ACO for questions on FPRAs or recommended rates.

215.810 Should-cost review.

215.810-2 Program should-cost review.

(b) DoD contracting activities should consider performing a program should-cost review before award of a definitive major systems contract exceeding \$100 million.

[61 FR 7742, Feb. 29, 1996]

215.810-3 Overhead should-cost review.

(a) Contact the DCMC/DLA Overhead Center, Fort Belvoir, VA 22060-6221, at (703) 767-3387, for questions on overhead should-cost analysis.

(b)(i) The Defense Contract Management Command/Defense Logistics Agency (DCMC/DLA), or the military department responsible for performing contract administration functions (e.g., Navy SUPSHIP), should consider, based on risk assessment, performing an overhead should-cost review of a contractor business unit (as defined in FAR 31.001) when all of the following conditions exist:

(A) Projected annual sales to DoD exceed \$1 billion;

(B) Projected DoD versus total business exceeds 30 percent;

(C) Level of sole-source DoD contracts is high;

(D) Significant volume of proposal activity is anticipated;

(E) Production or development of a major weapon system or program is anticipated; and

(F) Contractor cost control/reduction initiatives appear inadequate.

(ii) The head of the contracting activity may request an overhead should-cost review for a business unit which does not meet the criteria in paragraph (b)(i) of this subsection.

(iii) Overhead should-cost reviews are labor intensive. These reviews generally involve participation by the contracting, contract administration, and contract audit elements. The extent of availability of military department, contract administration, and contract audit resources to support DCMC/DLA-led teams should be considered when determining whether a review will be conducted. Overhead should-cost reviews generally shall not be conducted at a contractor business segment more frequently than every three years.

[61 FR 7743, Feb. 29, 1996; 61 FR 18195, Apr. 24, 1996]

215.811 Estimating systems.**215.811-70 Disclosure, maintenance, and review requirements.**

(a) *Definitions.* (1) *Adequate estimating system* means an estimating system that—

(i) Is established, maintained, reliable, and consistently applied; and

(ii) Produces verifiable, supportable, and documented cost estimates.

(2) *Contractor* means a business unit as defined in FAR 31.001.

(3) *Estimating system* is as defined in the clause at 252.215-7002 Cost Estimating System Requirements.

(4) *Significant estimating system deficiency* means a shortcoming in the estimating system which is likely to consistently result in proposal estimates for total cost or a major cost element(s) which do not provide an acceptable basis for negotiation of fair and reasonable prices.

(b) *Applicability.* (1) DoD policy is that all contractors have estimating systems that—

(i) Are adequate;

(ii) Consistently produce well supported proposals that are acceptable as a basis for negotiation of fair and reasonable prices;

(iii) Are consistent with and integrated with the contractor's related management systems; and

(iv) Are subject to applicable financial control systems.

(2) A large business contractor is subject to estimating system disclosure, maintenance, and review requirements if—

(i) In its preceding fiscal year the contractor received DoD prime contracts or subcontracts totalling \$50 million or more for which certified cost or pricing data were required; or

(ii) If in its preceding fiscal year the contractor received DoD prime contracts or subcontracts totalling \$10 million or more (but less than \$50 million) for which certified cost or pricing data were required and the contracting officer, with concurrence or at the request of the administrative contracting officer, determines it to be in the best interest of the Government (e.g., significant estimating problems are believed to exist or the contractor's sales are predominantly Government).

(c) *Responsibilities.* (1) The contracting officer shall—

(i) Through use of the clause at 252.215-7002 Cost Estimating System Requirements, apply the disclosure, maintenance and review requirements to large business contractors meeting

the criteria in paragraph (b)(2)(i) of this subsection;

(ii) Consider whether to apply the disclosure, maintenance, and review requirements to large business contractors under paragraph (b)(2)(ii) of this subsection; and

(iii) Not apply the disclosure, maintenance, and review requirement to other than large business contractors.

(2) The cognizant administrative contracting officer, for contractors subject to paragraph (b)(2) of this subsection, shall—

(i) Determine the adequacy of the disclosure and system; and

(ii) Pursue correction of any deficiencies.

(3) The cognizant auditor, on behalf of the ACO, serves as team leader in conducting estimating system reviews.

(4) A contractor subject to estimating system disclosure, maintenance, and review requirements shall—

(i) Maintain an adequate system;

(ii) Describe its system to the administrative contracting officer (ACO);

(iii) Provide timely notice of changes in the system; and

(iv) Correct system deficiencies identified by the ACO.

(d) *Characteristics of an adequate estimating system*—(1) *General*. An adequate system should provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures.

(2) *Evaluation*. In evaluating the adequacy of a contractor's estimating system, the ACO should consider whether the contractor's estimating system, for example—

(i) Establishes clear responsibility for preparation, review and approval of cost estimates;

(ii) Provides a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates;

(iii) Assures that relevant personnel have sufficient training, experience and guidance to perform estimating tasks in accordance with the contractor's established procedures;

(iv) Identifies the sources of data and the estimating methods and rationale used in developing cost estimates;

(v) Provides for appropriate supervision throughout the estimating process;

(vi) Provides for consistent application of estimating techniques;

(vii) Provides for detection and timely correction of errors;

(viii) Protects against cost duplication and omissions;

(ix) Provides for the use of historical experience, including historical vendor pricing information, where appropriate;

(x) Requires use of appropriate analytical methods;

(xi) Integrates information available from other management systems, where appropriate;

(xii) Requires management review including verification that the company's estimating policies, procedures and practices comply with this regulation;

(xiii) Provides for internal review of and accountability for the adequacy of the estimating system, including the comparison of projected results to actual results and an analysis of any differences;

(xiv) Provides procedures to update cost estimates in a timely manner throughout the negotiation process; and

(xv) Addresses responsibility for review and analysis of the reasonableness of subcontract prices.

(3) *Indicators of potentially significant estimating deficiencies*. The following examples indicate conditions that may produce or lead to significant estimating deficiencies—

(i) Failure to ensure that historical experience is available to and utilized by cost estimators, where appropriate;

(ii) Continuing failure to analyze material costs or failure to perform subcontractor cost reviews as required.

(iii) Consistent absence of analytical support for significant proposed cost amounts;

(iv) Excessive reliance on individual personal judgment where historical experience or commonly utilized standards are available;

(v) Recurring significant defective pricing findings within the same cost element(s);

(vi) Failure to integrate relevant parts of other management systems

(e.g., production control or cost accounting) with the estimating system so that the ability to generate reliable cost estimates is impaired; and

(vii) Failure to provide established policies, procedures, and practices to persons responsible for preparing and supporting estimates.

(e) *Review Procedures.* Cognizant audit and contract administration activities shall—

(1) Establish and manage regular programs for reviewing selected contractors' estimating systems.

(2) Conduct reviews as a team effort.

(i) The contract auditor will be the team leader.

(ii) The team leader will—

(A) Coordinate with the ACO to ensure that team membership includes qualified contract administration technical specialists.

(B) Advise the ACO and contractor of significant findings during the conduct of the review and during the exit conference.

(C) Prepare a team report.

(f) The ACO or a representative should—

(i) Coordinate the contract administration activity's review;

(ii) Consolidate findings and recommendations; and

(iii) When appropriate, prepare a comprehensive written report for submission to the auditor.

(2) The contract auditor will attach the ACO's report to the team report.

(3) Tailor reviews to take full advantage of the day-to-day work done by both organizations.

(4) Conduct a review every three years of contractors subject to the disclosure requirements. The ACO and auditor may lengthen or shorten the three-year period based on their joint risk assessment of the contractor's past experience and current vulnerability.

(f) *Disposition of survey team findings—*

(1) *Reporting of survey team findings.* The auditor will document the findings and recommendations of the survey team in a report to the ACO. If there are significant estimating deficiencies, the auditor will recommend disapproval of all or portions of the estimating system.

(2) *Initial notification to the contractor.*

The ACO will provide a copy of the team report to the contractor and, unless there are no deficiencies mentioned in the report, ask the contractor to submit a written response in 30 days, or a reasonable extension.

(i) If the contractor agrees with the report, the contractor has 60 days from the date of initial notification to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(ii) If the contractor disagrees, the contractor should provide rationale in its written response.

(3) *Evaluation of contractor's response.* The ACO, in consultation with the auditor, will evaluate the contractor's response to determine whether—

(i) The estimating system contains deficiencies which need correction;

(ii) The deficiencies are significant estimating deficiencies which would result in disapproval of all or a portion of the contractor's estimating system; or

(iii) The contractor's proposed corrective actions are adequate to eliminate the deficiency.

(4) *Notification of ACO determination.* The ACO will notify the contractor and the auditor of the determination and, if appropriate, of the Government's intent to disapprove all or selected portions of the system. The notice shall—

(i) List the cost elements covered;

(ii) Identify any deficiencies requiring correction; and

(iii) Require the contractor to correct the deficiencies within 45 days or submit an action plan showing milestones and actions to eliminate the deficiencies.

(5) *Notice of disapproval.* If the contractor has neither submitted an acceptable corrective action plan nor corrected significant deficiencies within 45 days, the ACO shall disapprove all or selected portions of the contractor's estimating system. The notice of disapproval must—

(i) Identify the cost elements covered;

(ii) List the deficiencies which prompted the disapproval; and

(iii) Be sent to the cognizant auditor, and each contracting and contract administration office having substantial business with the contractor.

(6) *Monitoring contractor's corrective action.* The auditor and ACO will monitor the contractor's progress in correcting deficiencies. If the contractor fails to make adequate progress, the ACO shall take whatever action is necessary to ensure that the contractor corrects the deficiencies. Examples of actions the ACO can take are: Bringing the issue to the attention of higher level management, reducing or suspending progress payments (see FAR 32.503-6), and recommending nonaward of potential contracts.

(7) *Withdrawal of estimating system disapproval.* The ACO will withdraw the disapproval when the ACO determines that the contractor has corrected the significant system deficiencies. The ACO will notify the contractor, the auditor, and affected contracting and contract administration activities of the withdrawal.

(g) *Impact of estimating system deficiencies on specific proposals.* (1) Field pricing teams will discuss identified estimating system deficiencies and their impact in all reports on contractor proposals until the deficiencies are resolved.

(2) The contracting officer responsible for negotiation of a proposal generated by an estimating system with an identified deficiency shall evaluate whether the deficiency impacts the negotiations. If it does not, the contracting officer should proceed with negotiations. If it does, the contracting officer should consider other alternatives, e.g.—

(i) Allowing the contractor additional time to correct the estimating system deficiency and submit a corrected proposal;

(ii) Considering another type of contract, e.g., an FPIF instead of an FFP;

(iii) Using additional cost analysis techniques to determine the reasonableness of the cost elements affected by the system's deficiency;

(iv) Segregating the questionable areas as a cost reimbursable line item;

(v) Reducing the negotiation objective for profit or fee; or

(vi) Including a contract (reopener) clause that provides for adjustment of the contract amount after award.

(3) The contracting officer who incorporates a reopener clause into the contract is responsible for negotiating price adjustments required by the clause. Any reopener clause necessitated by an estimating deficiency should—

(i) Clearly identify the amounts and items which are in question at the time of negotiation;

(ii) Indicate a specific time or subsequent event by which the contractor will submit a supplemental proposal, including cost or pricing data, identifying the cost impact adjustment necessitated by the deficient estimating system. The clause should require that the contractor certify cost or pricing data submitted as part of the supplemental proposal;

(iii) Provide for the contracting officer to unilaterally adjust the contract price if the contractor fails to submit the supplemental proposal; and

(iv) Provide that failure of the Government and the contractor to agree to the price adjustment shall be a dispute under the Disputes clause.

(h) *Contract clause.* Use the clause at 252.215-7002, Cost Estimating System Requirements, in all solicitations and contracts to be awarded on the basis of certified cost or pricing data.

[56 FR 36326, July 31, 1991, as amended at 56 FR 67213, Dec. 30, 1991]

215.870—215.871 [Reserved]

215.872 Work measurement systems.

215.872-1 Definition.

Work measurement systems (WMS), as used in this section, means systems used—

(a) To analyze the touch labor content of a manufacturing operation,

(b) To establish labor standards for that operation;

(c) To measure and analyze variances from those standards;

(d) To continuously improve both the manufacturing operation and the labor standards used in that operation.

215.872-2 Policy.

DoD policy is to use WMS, when appropriate, to provide data for use in planning, cost estimating, and monitoring contract performance.

215.872-3 General.

(a) The contracting officer, in coordination with the program manager, shall include provisions in the contract to implement the program's work measurement system requirements.

(b) An example of an acceptable set of criteria for WMS is found in MIL-STD-1567A. Tailor either MIL-STD-1567A or the contractor's existing WMS, if acceptable to the Government, for the specific program or contract.

215.872-4 Applicability.

The contracting officer—

(a) Should include provisions for WMS in solicitations and resulting production contracts for major weapons systems or subsystems in excess of—

- (1) \$100 million total cost; or
- (2) \$20 million annually.

(b) Should tailor the provisions to be consistent with program requirements and compatible with existing contractor technical and management processes and procedures;

(c) May include WMS requirements in full scale development contracts exceeding \$100 million, when appropriate (e.g., to assist in transitioning from full scale development to production).

(d) Should not include WMS when—

- (1) Acquiring commercial products (FAR 11.001);
- (2) There will be low volume, non-repetitive production runs;
- (3) Submission and certification of cost or pricing data are not required; or
- (4) There will be no cost benefit from the imposition of these systems.

215.873 Estimated data prices.

(a) The Department of Defense requires estimates of the prices of data in order to evaluate the cost to the Government of data items in terms of their management, product, or engineering value.

(b) When data are required to be delivered under a contract, the solicitation will include DD Form 1423, Contract Data Requirements List. The

form and the provision included in the solicitation request the offeror to state what portion of the total price is estimated to be attributable to the production or development of the listed data for the Government (not to the sale of rights in the data). However, offerors' estimated prices may not reflect all such costs; and different offerors may reflect these costs in a different manner, for the following reasons—

- (1) Differences in business practices in competitive situations;
- (2) Differences in accounting systems among offerors;
- (3) Use of factors or rates on some portions of the data;
- (4) Application of common effort to two or more data items; and
- (5) Differences in data preparation methods among offerors.

(c) Data price estimates should not be used for contract pricing purposes without further analysis.

(d) The contracting officer shall ensure that the contract does not include a requirement for data which the contractor has delivered or is obligated to deliver to the Government under another contract or subcontract, and that the successful offeror furnishes any certification required by the solicitation. However, where duplicate data are desired, the contract price shall include the costs of duplication, but not of preparation, of such data.

Subpart 215.9—Profit**215.902 Policy.**

Departments and agencies shall use a structured approach for developing a prenegotiation profit or fee objective (profit objective) on any negotiated contract action that requires cost analysis, except on cost-plus-award-fee contracts (but see 215.974). There are three approaches—

- (1) The weighted guidelines method;
- (2) The modified weighted guidelines method; and
- (3) An alternate structured approach.

215.903 Contracting officer responsibilities.

(a) Also, do not perform a profit analysis when assessing cost realism in competitive acquisitions.

(b) The contracting officer—

(1) Shall use the weighted guidelines method (see 215.971), unless—

(A) The modified weighted guidelines method applies; or

(B) An alternate approach is justified.

(2) Shall use the modified weighted guidelines method (see 215.972) on contract actions with nonprofit organizations;

(3) May use an alternate structured approach (see 215.973) when—

(i) The contract action is—

(A) Under \$500,000;

(B) For architect-engineer or construction work;

(C) Primarily for delivery of material from subcontractors; or

(D) A termination settlement; or

(ii) The weighted guidelines method does not produce a reasonable overall profit objective and the head of the contracting activity approves use of the alternate approach in writing.

(4) Shall use the weighted guidelines method to establish a basic profit rate under a formula type pricing agreement, and may then use the basic rate on all actions under the agreement, provided that conditions affecting profit do not change.

(5) Shall document the profit analysis in the price negotiation memorandum.

(e) Although specific agreement on the applied weights or values for individual profit factors shall not be attempted, the contracting officer may encourage the contractor to—

(1) Present the details of its proposed profit amounts in the weighted guidelines format or similar structured approach; and

(2) Use the weighted guidelines method in developing profit objectives for negotiated subcontracts.

(f) The contracting officer must also verify that relevant variables have not materially changed (e.g., performance risk, interest rates, progress payment rates, distribution of facilities capital).

215.905 Profit-analysis factors.

215.905-1 Common factors.

The common factors are embodied in the DoD structured approaches and need not be further considered by the contracting officer.

215.970 DD Form 1547, Record of Weighted Guidelines Method Application.

(a) The DD Form 1547—

(1) Provides a vehicle for performing the analysis necessary to develop a profit objective;

(2) Provides a format for summarizing profit amounts subsequently negotiated as part of the contract price; and

(3) Serves as the principal source document for reporting profit statistics to DoD's management information system.

(b) The Military Departments are responsible for establishing policies and procedures for feeding the DoD-wide management information system on profit and fee statistics (see 215.975).

(c) The contracting officer shall—

(1) Use and prepare a DD Form 1547 whenever a structured approach to profit analysis is required by 215.902. (See 215.971, 215.972, and 215.973 for guidance on using the structured approaches.) Administrative instructions for completing the form are in 253.215-70.

(2) Ensure that the DD Form 1547 is accurately completed. The contracting officer is responsible for the correction of any errors detected by the management system auditing process.

215.971 Weighted guidelines method.

215.971-1 General.

(a) The weighted guidelines method focuses on three profit factors—

(1) Performance risk;

(2) Contract type risk; and

(3) Facilities capital employed.

(b) The contracting officer assigns values to each profit factor; the value multiplied by the base results in the profit objective for that factor. Each profit factor has a normal value and a designated range of values. The normal value is representative of average conditions on the prospective contract when compared to all goods and services acquired by DoD. The designated range provides values based on above normal or below normal conditions. In the price negotiation memorandum, the contracting officer need not explain assignment of the normal value,

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but should address conditions that justify assignment of other than the normal value.

215.971-2 Performance risk.

(a) *Description.* This profit factor addresses the contractor's degree of risk in fulfilling the contract requirements. The factor consists of three parts—

(1) Technical—the technical uncertainties of performance.

(2) Management—the degree of management effort necessary to ensure that contract requirements are met.

(3) Cost control—the contractor's efforts to reduce and control costs.

(b) *Determination.* The following extract from the DD Form 1547 is annotated to describe the process.

Item	Contractor Risk Factors	Assigned Weighting	Assigned Value	Base (Item 18)	Profit Objective
21	Technical	(1)	(2)	N/A	N/A
22	Management	(1)	(2)	N/A	N/A
23	Cost Control	(1)	(2)	N/A	N/A
24	Performance Risk (Composite)	N/A	(3)	(4)	(5)

(1) Assign a weight (percentage) to each element according to its input to the total performance risk. The total of the three weights equals 100%.

(2) Select a value for each element from the list in paragraph (c) of this subsection using the evaluation criteria in paragraphs (d), (e), and (f) of this subsection.

(3) Compute the composite as shown in the following example—

Assigned—	Assigned weighting (percent)	Assigned value (percent)	Weighted value (percent)
Technical	30	5.0	1.5
Management	30	4.0	1.2
Cost Control	40	4.5	1.8
Composite Value	100		4.5

(4) Insert the amount from Block 18 of the DD Form 1547. Block 18 is total contract costs, excluding general and administrative expenses, contractor independent research and development/ bid and proposal expenses, and facilities capital cost of money.

(5) Multiply (3) by (4).

(c) *Values:* Normal and designated ranges.

Standard Alternate	Normal value (percent)	Designated range (percent)
Standard	4	2 to 6.
Alternate	6	4 to 8

(1) Standard. The standard designated range should apply to most contracts.

(2) Alternate. Contracting officers may use the alternate designated range for research and development and serv-

ice contractors when these contractors require relatively low capital investment in buildings and equipment when compared to the defense industry overall. If the alternate designated range is used, do not give any profit for facilities capital employed (see 215.971-4(c)(3)).

(d) *Evaluation criteria for technical.* (1) Review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Factors to consider include—

(i) Technology being applied or developed by the contractor;

(ii) Technical complexity;

(iii) Program maturity;

(iv) Performance specifications and tolerances;

(v) Delivery schedule; and

(vi) Extent of a warranty or guarantee.

(2) Above normal conditions. (i) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk. Indicators are—

(A) The contractor is either developing or applying advanced technologies;

(B) Items are being manufactured using specifications with stringent tolerance limits;

(C) The efforts require highly skilled personnel or require the use of state of the art machinery;

(D) The services and analytical efforts are extremely important to the Government and must be performed to exacting standards;

(E) The contractor's independent development and investment has reduced the Government's risk or cost;

(F) The contractor has accepted an accelerated delivery schedule to meet DoD requirements; or

(G) The contractor has assumed additional risk through warranty provisions.

(ii) Extremely complex, vital efforts to overcome difficult technical obstacles which require personnel with exceptional abilities, experience, and professional credentials may justify a value significantly above normal.

(iii) The following may justify a maximum value—

(A) Development or initial production of a new item, particularly if performance or quality specifications are tight; or

(B) A high degree of development or production concurrency.

(3) Below normal conditions.

(i) The contracting officer may assign a lower than normal value in those cases where the technical risk is low. Indicators are—

(A) Acquisition is for off-the-shelf items;

(B) Requirements are relatively simple;

(C) Technology is not complex;

(D) Efforts do not require highly skilled personnel;

(E) Efforts are routine;

(F) Programs are mature; or

(G) Acquisition is a follow-on effort or a repetitive type acquisition.

(ii) The contracting officer may assign a value significantly below normal for—

(A) Routine services;

(B) Production of simple items;

(C) Rote entry or routine integration of Government furnished information; or

(D) Simple operations with Government-furnished property.

(e) *Evaluation criteria for management.*

(1) The contracting officer should—

(i) Assess the contractor's management and internal control systems using contracting office information and reviews made by field contract administration offices or other DoD field offices;

(ii) Assess the management involvement expected on the prospective contract action;

(iii) Consider the degree of cost mix as an indication of the types of resources applied and value-added by the contractor; and

(iv) Consider the contractor's support of Federal socioeconomic programs.

(2) Above normal conditions. (i) The contracting officer may assign a higher than normal value when the management effort is intense. Indicators of this are—

(A) The contractor's value-added is both considerable and reasonably difficult;

(B) The effort involves a high degree of integration or coordination; or

(C) The contractor has a substantial record of active participation in Federal socioeconomic programs.

(ii) The contracting officer may justify a maximum value when the effort—

(A) Requires large scale integration of the most complex nature;

(B) Involves major international activities with significant management coordination (e.g., offsets with foreign vendors); or

(C) Has critically important milestones.

(3) Below normal conditions. (i) The contracting officer may assign a lower than normal value when the management effort is minimal. Indicators of this are—

(A) The program is mature and many end item deliveries have been made;

(B) The contractor adds minimum value to an item;

(C) The efforts are routine and require minimal supervision;

(D) The contractor provides poor quality, untimely proposals;

(E) The contractor fails to provide an adequate analysis of subcontractor costs; or

(F) The contractor does not cooperate in the evaluation and negotiation of the proposal.

(ii) The following may justify a value significantly below normal—

(A) Reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems (e.g., quality

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assurance, property control, safety, security); or

(B) The effort requires an unusually low degree of management involvement.

(f) *Evaluation criteria for cost control.*

(1) The contracting officer should evaluate—

(i) The expected reliability of the contractor's cost estimates (including the contractor's cost estimating system);

(ii) The contractor's cost reduction initiatives (e.g., competition advocacy programs, dual sourcing, spare parts pricing reform, value engineering);

(iii) The adequacy of the contractor's management approach to controlling cost and schedule; and

(iv) Any other factors which affect the contractor's ability to meet the cost targets, e.g., foreign currency exchange rates and inflation rates.

(2) Above normal conditions. The contracting officer may assign a higher than normal value if the contractor can demonstrate a highly effective cost control program. Indicators of this are—

(i) The contractor provides fully documented and reliable cost estimates;

(ii) The contractor has an aggressive cost reduction program that has demonstrable benefits;

(iii) The contractor uses a high degree of subcontract competition (e.g., aggressive dual sourcing); or

(iv) The contractor has a proven record of cost tracking and control.

(3) Below normal conditions. The contracting officer may assign a lower than normal value if the contractor demonstrates minimal concern for cost control. Indicators are—

(i) The contractor's cost estimating system is marginal;

(ii) The contractor has made minimal effort to initiate cost reduction programs;

(iii) The contractor's cost proposal is inadequate;

(iv) The contractor has a record of cost overruns or other indication of unreliable cost estimates and lack of cost control.

215.971-3 Contract type risk and working capital adjustment.

(a) *Description.* The contract type risk factor focuses on the degree of cost risk accepted by the contractor under varying contract types. The working capital adjustment is an adjustment added to the profit objective for contract type risk. It only applies to fixed-price contracts that provide for progress payments. Though it uses a formula approach, it is not intended to be an exact calculation of the cost of working capital. Its purpose is to give general recognition to the contractor's cost of working capital under varying contract circumstances, financing policies, and the economic environment.

(b) *Determination.* The following extract from the DD 1547 is annotated to explain the process.

Item	Contractor risk factors	Assigned value	Base (Item 18)	Profit objective	
25	Contract Type Risk	(1)	(2)	(3)	
		Cost financed	Length factor	Interest rate	
26	Working Capital (4)	(5)	(6)	(7)	(8)

(1) Select a value from the list of contract types in paragraph (c) of this subsection using the evaluation criteria in paragraph (d) of this subsection.

(2) Insert the amount from Block 18, i.e., the total allowable costs excluding general and administrative expenses, independent research and development/

bid proposal expenses, and facilities capital cost of money.

(3) Multiply (1) by (2).

(4) Only complete this Block when the prospective contract is a fixed-price contract containing provisions for progress payments.

(5) Insert the amount computed per paragraph (e) of this subsection.

(6) Insert the appropriate figure from paragraph (f) of this subsection.

(7) Use the interest rate established by the Secretary of the Treasury (230.7101(a)). Do not use any other interest rate.

(8) Multiply (5) by (6) by (7). This is the working capital adjustment. It shall not exceed 4 percent of the contract costs in Block 20.

(c) *Values:* Normal and designated ranges.

Contract type	Notes	Normal value (percent)	Designated range (percent)
Firm fixed-price, no financing.	(1)	5	4 to 6.
Firm fixed-price, with financing.	(2)	3	2 to 4.
Fixed-price-incentive, no financing.	(1)	3	2 to 4.
Fixed-price with redeterminable provision.	(3)		
Fixed-price-incentive, with financing.	(2)	1	0 to 2.
Cost-plus-incentive-fee.	(4)	1	0 to 2.
Cost-plus-fixed-fee	(4)	.5	0 to 1.
Time and material contracts (including overhaul contracts priced on time and material basis).	(5)	.5	0 to 1.
Labor-hour contracts.	(5)	.5	0 to 1.
Firm fixed-price-level-of-effort-term.	(5)	.5	0 to 1.

(1) *No financing* means that the contract either does not provide progress payments, or provides them only on a limited basis, such as financing of first articles. Do not compute a working capital adjustment.

(2) *With financing* means progress payments. When progress payments are present, compute a working capital adjustment (Block 26).

(3) For the purposes of assigning profit values, treat a fixed-price contract with redeterminable provisions as if it were a fixed-price-incentive contract with below normal conditions.

(4) Cost-plus contracts shall not receive the working capital adjustment.

(5) These types of contracts are considered cost-plus-fixed-fee contracts for the purposes of assigning profit values. They shall not receive the working capital adjustment in Block 26. How-

ever, they may receive higher than normal values within the designated range to the extent that portions of cost are fixed.

(d) *Evaluation criteria*—(1) *General.* The contracting officer should consider elements that affect contract type risk such as—

- (i) Length of contract;
- (ii) Adequacy of cost data for projections;
- (iii) Economic environment;
- (iv) Nature and extent of subcontracted activity;
- (v) Protection provided to the contractor under contract provisions (e.g., economic price adjustment clauses);
- (vi) The ceilings and share lines contained in incentive provisions; and
- (vii) Risks associated with contracts for foreign military sales (FMS) which are not funded by U.S. appropriations.

(2) *Mandatory*—The contracting officer shall assess the extent to which costs have been incurred prior to definitization of the contract action (see also 217.7404-6(a)). The assessment shall include any reduced contractor risk on both the contract before definitization and the remaining portion of the contract. When costs have been incurred prior to definitization, generally regard the contract type risk to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, the contracting officer may assign a value as low as 0%, regardless of contract type.

(3) *Above normal conditions.* The contracting officer may assign a higher than normal value when there is substantial contract type risk. Indicators of this are—

- (i) Efforts where there is minimal cost history;
- (ii) Long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty;
- (iii) Incentive provisions (e.g., cost and performance incentives) which place a high degree of risk on the contractor; or
- (iv) FMS sales (other than those under DoD cooperative logistics support arrangements or those made from U.S. Government inventories or stocks) where the contractor can demonstrate

that there are substantial risks above those normally present in DoD contracts for similar items.

(4) *Below normal conditions.* The contracting officer may assign a lower than normal value when the contract type risk is low. Indicators of this are—

- (i) Very mature product line with extensive cost history;
 - (ii) Relatively short-term contracts;
 - (iii) Contractual provisions which substantially reduce the contractor's risk; or
 - (iv) Incentive provisions which place a low degree of risk on the contractor.
- (e) *Costs financed.* (1) Costs financed equal total costs multiplied by the portion (percent) of costs financed by the contractor.

(2) Total costs equal Block 20 (i.e., all allowable costs, including general and administrative and independent research and development/bid and proposal, but excluding facilities capital cost of money), reduced as appropriate when—

- (i) The contractor has little cash investment (e.g., subcontractor progress payments liquidated late in period of performance);
- (ii) Some costs are covered by special financing provisions, such as advance payments; or
- (iii) The contract is multiyear and there are special funding arrangements.

(3) The portion financed by the contractor is generally the portion not covered by progress payments, i.e., 100% minus the customary progress payment rate (FAR 32.501). For example, if a contractor receives progress payments at 75%, the portion financed by the contractor is 25%. On contracts that provide flexible progress payments (252.232-7003) or progress payments to small businesses, use the customary progress payment rate for large businesses.

(f) *Contract length factor.* (1) This is the period of time that the contractor has a working capital investment in the contract. It—

- (i) Is based on the time necessary for the contractor to complete the substantive portion of the work;
- (ii) Is not necessarily the period of time between contract award and final

delivery (or final payment), as periods of minimal effort should be excluded;

(iii) Should not include periods of performance contained in option provisions; and

(iv) Should not, for multiyear contracts, include periods of performance beyond that required to complete the initial program year's requirements.

(2) The contracting officer—

- (i) Should use the following table to select the contract length factor;
- (ii) Should develop a weighted average contract length when the contract has multiple deliveries; and
- (iii) May use sampling techniques provided they produce a representative result.

TABLE

Period to perform substantive portion (in months)	Contract length factor
21 or less .....	.40
22 to 27 .....	.65
28 to 33 .....	.90
34 to 39	1.15
40 to 45	1.40
46 to 51	1.65
52 to 57	1.90
58 to 63	2.15
64 to 69	2.40
70 to 75	2.65
76 or more	2.90

(3) Example: A prospective contract has a performance period of 40 months with end items being delivered in the 34th, 36th, 38th, and 40th months of the contract. The average period is 37 months and the contract length factor is 1.15.

[56 FR 36326, July 31, 1991, as amended at 59 FR 27669, May 27, 1994]

215.971-4 Facilities capital employed.

(a) *Description.* This factor focuses on encouraging and rewarding aggressive capital investment in facilities that benefit DoD. It recognizes both the facilities capital that the contractor will employ in contract performance and the contractor's commitment to improving productivity.

(b) *Determination.* The following extract from the DD Form 1547 has been annotated to explain the process.

Item	Contractor facilities capital employed	Assigned value	Amount employed	Profit objective
27	Land	N/A	(2)	N/A
28	Buildings	(1)	(2)	(3)
29	Equipment	(1)	(2)	(3)

(1) Select a value from the list in paragraph (c) of this subsection using the evaluation criteria in paragraph (d) of this subsection.

(2) Use the allocated facilities capital attributable to land, buildings, and equipment, as derived in DD Form 1861, "Contract Facilities Capital Cost of Money" (see 215.871-5 and 230.7001).

(i) In addition to the net book value of facilities capital employed, consider facilities capital that is part of a formal investment plan if the contractor submits reasonable evidence that—

(A) Achievable benefits to DoD will result from the investment; and

(B) The benefits of the investment are included in the forward pricing structure.

(ii) If the value of intracompany transfers has been included in Block 18 at cost (i.e., excluding general and administrative (G&A) expenses and profit), add to the contractor's allocated facilities capital, the allocated facilities capital attributable to the buildings and equipment of those corporate divisions supplying the intracompany transfers. Do not make this addition if the value of intracompany transfers has been included in Block 18 at price (i.e., including G&A expenses and profit).

(3) Multiply (1) by (2).

(c) *Values: Normal and designated ranges.*

Notes	Asset type	Normal value (percent)	Designated range
(1)	Land	0	N/A.
(1)	Buildings	15	10% to 20%.
(1)	Equipment	35	20% to 50%.
(2)	Land	0	N/A.
(2)	Buildings	5	0% to 10%.
(2)	Equipment	20	15% to 25%.
(3)	Land	0	N/A.
(3)	Buildings	0	0%.
(3)	Equipment	0	0%.

(1) These are the normal values and ranges. They apply to all situations except those noted in (2) and (3).

(2) These alternate values and ranges apply to situations where a highly

facilitized manufacturing firm will be performing a research and development or services contract. They balance the method used to allocate facilities capital cost of money, which may produce disproportionate allocation of assets to these types of efforts.

(3) When using a value from the alternate designated range for the performance risk factor (215.971-2(c)(2)), do not allow profit on facilities capital employed.

(d) *Evaluation criteria.* (1) In evaluating facilities capital employed, the contracting officer—

(i) Should relate the usefulness of the facilities capital to the goods or services being acquired under the prospective contract;

(ii) Should analyze the productivity improvements and other anticipated industrial base enhancing benefits resulting from the facilities capital investment, including—

(A) The economic value of the facilities capital, such as physical age, undepreciated value, idleness, and expected contribution to future defense needs; and

(B) The contractor's level of investment in defense related facilities as compared with the portion of the contractor's total business which is derived from DoD;

(iii) Should consider any contractual provisions that reduce the contractor's risk of investment recovery, such as termination protection clause, capital investment indemnification, and productivity saving rewards (215.870-3); and

(iv) Shall ensure that increases in facilities capital investments are not merely asset revaluations attributable to mergers, stock transfers, take-overs, sales of corporate entities, or similar actions.

(2) *Above normal conditions.* (i) The contracting officer may assign a higher than normal value if the facilities capital investment has direct, identifiable,

and exceptional benefits. Indicators are—

(A) New investments in state-of-the-art technology which reduce acquisition cost or yield other tangible benefits such as improved product quality or accelerated deliveries;

(B) Investments in new equipment for research and development applications; or

(C) Contractor demonstration that the investments are over and above the normal capital investments necessary to support anticipated requirements of DoD programs.

(ii) The contracting officer may assign a value significantly above normal when there are direct and measurable benefits in efficiency and significantly reduced acquisition costs on the effort being priced. Maximum values apply only to those cases where the benefits of the facilities capital investment are substantially above normal.

(3) *Below normal conditions.* (i) The contracting officer may assign a lower than normal value if the facilities capital investment has little benefit to DoD. Indicators are—

(A) Allocations of capital apply predominantly to commercial item lines;

(B) Investments are for such things as furniture and fixtures, home or group level administrative offices, corporate aircraft and hangars, gymnasiums; or

(C) Facilities are old or extensively idle.

(ii) The contracting officer may assign a value significantly below normal when a significant portion of defense manufacturing is done in an environment characterized by outdated, inefficient, and labor-intensive capital equipment.

[56 FR 36326, July 31, 1991, as amended at 60 FR 61596, Nov. 30, 1995]

215.972 Modified weighted guidelines method for nonprofit organizations.

(a) *Definition.* As used in this subpart, a nonprofit organization is a business entity—

(1) Which operates exclusively for charitable, scientific, or educational purposes;

(2) Whose earnings do not benefit any private shareholder or individual;

(3) Whose activities do not involve influencing legislation or political campaigning for any candidate for public office; and

(4) Which is exempted from Federal income taxation under section 501 of the Internal Revenue Code.

(b) For nonprofit organizations which are Federally funded research and development centers (FFRDCs), the contracting officer—

(1) Should consider whether any fee is appropriate. Considerations shall include the FFRDC's—

(i) Proportion of retained earnings (as established under generally accepted accounting methods) that relates to DoD contracted effort;

(ii) Facilities capital acquisition plans;

(iii) Working capital funding as assessed on operating cycle cash needs;

(iv) Contingency funding; and

(v) Provision for funding unreimbursed costs deemed ordinary and necessary to the FFRDC.

(2) Shall, when a fee is considered appropriate, compute the fee objective using the weighted guidelines method in 215.971, with the following modifications—

(i) *Modifications to performance risk (Blocks 21-24 of the DD Form 1547).* (A) If the contracting officer assigns a value from the standard designated range (215.971-2(c)), reduce the fee objective by an amount equal to 1% of the costs in Block 18 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

(B) If the contracting officer assigns a value from the alternate designated range, reduce the fee objective by an amount equal to 2% of the costs in Block 18 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

(ii) *Modifications to contract type risk (Block 25 of the DD Form 1547).* Use a designated range of -1% to 0% in lieu of the values in 215.971-3. There is no normal value.

(c) For nonprofit organizations which are entities that have been identified by the Secretary of Defense or a Secretary of a Department as receiving sustaining support on a cost-plus-fixed-

fee basis from a particular DoD department or agency, compute a fee objective for covered actions using the weighted guidelines method in 215.971, modified as described in paragraph (b)(2) of this section.

(d) For all other nonprofit organizations, compute a fee objective for covered actions using the weighted guidelines method in 215.971, modified as described in paragraph (b)(2)(i) of this section.

215.973 Alternate structured approaches.

(a) The contracting officer may use an alternate structured approach under 215.903.

(b) The contracting officer may design the structure of the alternate, but it shall include—

(1) Consideration of the three basic components of profit—performance risk, contract type risk (including working capital), and facilities capital employed. However, the contracting officer is not required to complete Blocks 21 through 30 of the DD Form 1547.

(2) Offset for facilities capital cost of money.

(i) The contracting officer shall reduce the overall prenegotiation profit objective by the lesser of 1% of total cost or the amount of facilities capital cost of money. The profit amount in the negotiation summary of the DD Form 1547 must be net of the offset.

(ii) This adjustment is needed for the following reason: The values of the profit factors used in the weighted guidelines method were adjusted to recognize the shift in facilities capital cost of money from an element of prof-

it to an element of contract cost (FAR 31.205–10) and reductions were made directly to the profit factors for performance risk. In order to ensure that this policy is applied to all DoD contracts which allow facilities capital cost of money, similar adjustments shall be made to contracts which use alternate structured approaches.

215.974 Fee requirements for cost-plus-award-fee contracts.

In developing a fee objective for cost-plus-award-fee contracts, the contracting officer shall—

(a) Follow the guidance in FAR 16.404–2 and 216.404–2;

(b) Not use the weighted guidelines method or alternate structured approach;

(c) Apply the offset policy in 215.973(b)(2) for facilities capital cost of money, i.e., reduce the base fee by the lesser of 1% of total costs or the amount of facilities capital cost of money; and

(d) Not complete a DD Form 1547.

215.975 Reporting profit and fee statistics.

(a) Contracting officers in contracting offices which participate in the management information system for profit and fee statistics send completed DD Forms 1547 on actions of \$500,000 or more, where the contracting officer used either the weighted guidelines method, an alternate structured approach, or the modified weighted guidelines method, to their designated office within 30 days after contract award.

(b) Participating contracting offices and their designated offices are—

Department of Defense

215.1001

Contracting office	Designated office
Army: All	Army Procurement Research and Analysis Office, ATTN: SFRD-KPR(WGL), Bldg 12500, C Wing, Ft. Lee, VA 23801-6045.
Navy: Naval Air Systems Command ¹	Commander, Naval Supply Systems Command, ATTN: SUP 026, Washington, DC 20376-5000.
Naval Sea Systems Command ¹	
Space and Naval Warfare Systems Command ¹	
Naval Facilities Engineering Command ¹	
Naval Supply Systems Command ¹	
Office of Naval Research ¹	
Headquarters, United States Marine Corps ¹	
Strategic Systems Programs Office ¹	
Military Sealift Command ¹	
Automatic Data Processing Selection Office ¹	
Navy Regional Data Automation Center ¹	
Naval Research Laboratory ¹	
Navy Commercial Communications Center ¹	
Naval Aviation Depot Operations Center ¹	
Air Force: Air Force Materiel Command (all field offices)	Air Force Materiel Command, 645 CCSG/SCOS, ATTN: J010 Clerk, 2721 Sacramento Street, Wright-Patterson Air Force Base, Ohio 45433.

¹ Includes all subordinate field offices.

(c) When negotiation of a contract action over \$500,000 has been delegated to another contracting agency (e.g., to an administrative contracting officer), that agency shall ensure that a copy of the DD Form 1547 is provided to the delegating office for reporting purposes within 30 days from negotiation of the contract action.

(d) Contracting offices outside the United States, its possessions, and Puerto Rico are exempt from reporting.

(e) Designated offices send a quarterly (non-cumulative) report of DD Form 1547 data to: Washington Headquarters Service, Directorate for Information Operations and Reports (WHS/DIOR), 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202-4302.

(f) In preparing/sending the quarterly report, designated offices—

(1) Perform the necessary audits to ensure information accuracy;

(2) Do not enter classified information;

(3) Transmit the report via computer magnetic tape using the procedures, format, and editing process issued by the Director of Defense Procurement; and

(4) Send the reports not later than the 30th day after the close of the quarterly reporting periods.

(g) These reporting requirements have been assigned report control symbol: P&L(Q) 1751.

[56 FR 36326, July 31, 1991, as amended at 57 FR 53599, Nov. 12, 1992; 59 FR 27669, May 27, 1994]

Subpart 215.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

215.1001 Notifications to unsuccessful offerors.

(b) *Preaward notices.*

(2) Acquisitions processed under small purchase procedures are exempt from the requirements of FAR 15.1001(b)(2).

PART 216—TYPES OF CONTRACTS

Sec.

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Subpart 216.7—Agreements

216.703 Basic ordering agreements.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36340, July 31, 1991, unless otherwise noted.

**Subpart 216.1—Selecting Contract
Types**

216.104 Factors in selecting contract types.

(d) Design stability should also be considered.

216.104-70 Research and development.

(a) *General.* There are several categories of research and development (R&D) contracts: research, exploratory development, advanced development, engineering development, and operational systems development (see 235.001 for definitions). Each category has a primary technical or functional objective. Different parts of a project may fit several categories. The contract type must fit the work required, not just the classification of the overall program.

(b) *Research and exploratory development.* (1) Price is not necessarily the primary factor in determining the contract type.

(2) The nature of the work to be performed will usually result in a cost-plus award fee, cost-plus fixed fee term, cost-no-fee, or cost-sharing contract.

(3) If the Government and the contractor can identify and agree upon the level of contractor effort required, the contracting officer may select a firm fixed-price level-of-effort contract, except see 235.006.

(4) If the Government and the contractor agree that an incentive arrangement is desirable and capable of being evaluated after completion of the work, the contracting officer may use an incentive type contract.

(c) *Advanced development.* (1) The nature of the work to be performed often results in a cost-plus fixed fee completion type contract.

(2) Contracting officers may select incentive contracts if—

(i) Realistic and measurable targets are identified; and

(ii) Achievement of those targets is predictable with a reasonable degree of accuracy.

(3) Contracting officers should not use contracts with only cost incentives where—

(i) There will be a large number of major technical changes; or

(ii) Actions beyond the control of the contractor may influence the contractor's achievement of cost targets.

(d) *Engineering development and operational systems development.* (1) When selecting contract types, also consider—

(i) The degree to which the project is clearly defined, which in turn affects the contractor's ability to provide accurate cost estimates;

(ii) The need for effort that will overlap that of earlier stages;

(iii) The need for firm technical direction by the Government; and

(iv) The degree of configuration control the Government will exercise.

(2) For development efforts, particularly for major defense systems, the preferred contract type is cost reimbursement.

(3) Contracting officers should use fixed-price type contracts when risk has been reduced to the extent that realistic pricing can occur; e.g., when a program has reached the final stages of development and technical risks are minimal, except see 235.006.

Subpart 216.2—Fixed-Price Contracts

216.203 Fixed-price contracts with economic price adjustment.

216.203-4 Contract clauses.

(a) *Adjustment based on established prices-standard supplies.* Generally, use the clause at FAR 52.216-2, Economic Price Adjustment-Standard Supplies only when—

(i) The total contract price is over the small purchase threshold in FAR 13.000; and

(ii) Delivery will not be completed within 6 months after the contract date.

(b) *Adjustment based on established prices-semistandard supplies.* Generally, use the clause at FAR 52.216-3, Economic Price Adjustment-Semistandard Supplies, only when—

(i) The total contract price is over the small purchase threshold in FAR 13.000; and

(ii) Delivery will not be completed within 6 months after the contract date.

(c) *Adjustments based on actual cost of labor or material.*

(2) Limit use of the clause at FAR 52.216-4, Economic Price Adjustment-Labor and Material, to contracts in which the price exceeds \$50,000 and the period of performance exceeds 6 months, unless otherwise approved by the chief of the contracting office. Use an appropriate modification of the clause in sealed bidding.

(4) Apply the full amount of the decrease in the labor rates and fringe benefits or unit prices for materials.

(d) *Adjustments based on cost indexes of labor or material.* Use the following guidelines—

(i) Do not make the clause unnecessarily complex.

(ii) Normally, the clause should not provide either a ceiling or a floor for adjustment unless adjustment is based on indices below the four digit level of the Bureau of Labor Statistics—

(A) Producer Price Index;

(B) Employment Cost Index for wages and salaries, benefits, and compensation costs for aerospace industries; or

(C) Wage and Income Series by Standard Industrial Classification (Labor).

(iii) Normally, the clause should cover all potential economic fluctuations within the original contract period of performance.

(iv) The clause must accurately identify the index(es) upon which adjustments will be based.

(A) It must provide for a means to adjust for appropriate economic fluctuation in the event publication of the movement of the designated index is discontinued. This might include the substitution of another index if the time remaining would justify doing so and an appropriate index is reasonably available, or some other method for repricing the remaining portion of work to be performed.

(B) Normally, there should be no need to make an adjustment if computation of the identified index is altered. However, it may be appropriate to provide for adjustment of the economic fluctuation computations in the event there is such a substantial alteration in the method of computing the index that the original intent of the parties is negated.

(C) When an index to be used is subject to revision (e.g., the Bureau of Labor Statistics Producer Price Indexes), the economic price adjustment clause must specify that any economic price adjustment will be based on a revised index and must identify which revision to the index will be used.

(v) Construct the index to encompass a large sample of relevant items while still bearing a logical relationship to the type of contract costs being measured. The basis of the index should not be so large and diverse that it is significantly affected by fluctuations not relevant to contract performance, but it must be broad enough to minimize the effect of any single company, including the anticipated contractor(s).

(vi) Construction of an index is largely dependent upon three general series published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS). These are the—

(A) Industrial Commodities portion of the Producer Price Index;

(B) Employment Cost Index for wages and salaries, benefits, and compensation costs for aerospace industries; and

(C) Wage and Income Series by Standard Industrial Classification (Labor). Since there is no BLS published series currently available that relates directly to total prices of delivered DoD aircraft, ships, missiles, electronics, etc., it will be necessary to construct composite indices from major portions of the three series identified.

(vii) Normally, do not use more than two indices, i.e., one for labor (direct and indirect) and one for material (direct and indirect).

(viii) The clause must establish and properly identify a base period comparable to the contract periods for which adjustments are to be made as a reference point for application of an index.

(ix) The clause should not provide for an adjustment beyond the original contract performance period, including options. The start date for the adjustment may be the beginning of the contract or a later time, as appropriate, based on the projected rate of expenditures.

(x) The expenditure profile for both labor and material should be based on a predetermined rate of expenditure (expressed as the percentage of material or labor usage as it relates to the total contract price) in lieu of actual cost incurred.

(A) If the clause is to be used in a competitive acquisition, determine the labor and material allocations, with regard to both mix of labor and material and rate of expenditure by percentage, in a manner which will, as nearly as possible, approximate the average expenditure profile of all companies to be solicited so that all companies may compete on an equal basis.

(B) If the clause is to be used in a noncompetitive acquisition, the labor and material allocations may be subject to negotiation and agreement.

(C) For multiyear contracts, establish predetermined expenditure profile tables for each of the annual increments in the multiyear buy. Each of the second and subsequent year tables must be cumulative to reflect the total

expenditures for all increments funded through the latest multiyear funding.

(xi) The clause should state the percentage of the contract price subject to price adjustment.

(A) Normally, do not apply adjustments to the profit portion of the contract.

(B) Examine the labor and material portions of the contract to exclude any areas that do not require adjustment. For example, it may be possible to exclude—

(1) Subcontracting for short periods of time during the early life of the contract which could be covered by firm-fixed-priced subcontracting;

(2) Certain areas of overhead, e.g., depreciation charges, prepaid insurance costs, rental costs, leases, certain taxes, and utility charges;

(3) Labor costs for which a definitive union agreement exists; and

(4) Those costs not likely to be affected by fluctuation in the economy.

(C) Allocate that part of the contract price subject to adjustment to specific periods of time (e.g., quarterly, semi-annually, etc.) based on the most probable expenditure or commitment basis (expenditure profile).

(xii) The clause should provide for definite times or events that trigger price adjustments. Adjustments should be frequent enough to afford the contractor appropriate economic protection without creating a burdensome administrative effort. The adjustment period should normally range from quarterly to annually.

(xiii) When the contract contains cost incentives, any sums paid to the contractor on account of economic price adjustment provisions must be subtracted from the total of the contractor's allowable costs for the purpose of establishing the total costs to which the cost incentive provisions apply. If the incentive arrangement is cited in percentage ranges, rather than dollar ranges, above and below target costs, structure the economic price adjustment clause to maintain the original contract incentive range in dollars.

(xiv) The economic price adjustment clause should provide that once the labor and material allocations and the portion of the contract price subject to

price adjustment have been established, they remain fixed through the life of the contract and shall not be modified except in the event of significant changes in the scope of the contract. The clause should state that pricing actions pursuant to the Changes clause or other provisions of the contract will be priced as though there were no provisions for economic price adjustment. However, subsequent modifications may include a change to the delivery schedule or significantly change the amount of, or mix of, labor or material for the contract. In such cases, it may be appropriate to prospectively apply economic price adjustment coverage. This may be accomplished by—

(A) Using an economic price adjustment (EPA) clause that applies only to the effort covered by the modification;

(B) Revising the baseline data or period in the EPA clause for the basic contract to include the new work; or

(C) Using an entirely new EPA clause for the entire contract, including the new work.

(xv) Consistent with the factors in paragraphs (d)(i) through (xiv) of this subsection, it may also be appropriate to provide in the prime contract for similar economic price adjustment arrangements between the prime contractor and affected subcontractors to allocate risks properly and ensure that those subcontractors are provided similar economic protection.

(xvi) When economic price adjustment clauses are included in contracts that do not require submission of cost or pricing data as provided for in FAR 15.804-3, the contracting officer must obtain adequate information to establish the baseline from which adjustments will be made. The contracting officer may require verification of the data submitted to the extent necessary to permit reliance upon the data as a reasonable baseline.

216.203-4-70 Additional clauses.

(a) *Price adjustment for basic steel, aluminum, brass, bronze, or copper mill products.* (1) The price adjustment clause at 252.216-7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products, may be used in fixed-price supply contracts

for basic steel, aluminum, brass, bronze, or copper mill products, such as sheets, plates, and bars, when an established catalog or market price—

(i) Exists for the particular product being acquired; and

(ii) Has been verified in accordance with the criteria at FAR 15.804-3(c).

(2) Do not make an adjustment under this clause until the adjustment has been verified in accordance with the criteria set forth in FAR 15.804-3.

(3) The ten percent figure in paragraph (d)(1) of the clause shall not be exceeded unless approval is obtained at a level above the contracting officer.

(b) *Price adjustment for nonstandard steel items.* (1) The price adjustment clause at 252.216-7001, Economic Price Adjustment—Nonstandard Steel Items, may be used in fixed-price supply contracts when—

(i) The contractor is a steel producer and actually manufacture the standard steel mill item referred to in the “base steel index” definition of the clause; and

(ii) The items being acquired are non-standard steel items made wholly or in part of standard steel mill items.

(2) When this clause is included in invitations for bids, omit Note 6 of the clause and all references to Note 6.

(3) Solicitations shall instruct offerors to complete all blanks in accordance with the applicable notes.

(4) When the clause is to provide for adjustment based on the contractor’s “established price” (see paragraphs (a) and (f) and Note 6 of the clause), verify the established price before contract award in accordance with FAR 15.804-3.

(5) When the clause is to provide for adjustment on a basis other than “established price” (see Note 6 of the clause), that price must be verified.

(6) Make no adjustment in contract price under this clause until the requested adjustment has been verified in accordance with the criteria in FAR 15.804-3 (but see Note 6 of the clause) and as required by paragraph (f) of the clause.

(7) The ten percent figure in paragraph (e)(4) of the clause shall not be exceeded unless approval is obtained at a level above the contracting officer.

**Subpart 216.3—Cost-
Reimbursement Contracts**

216.301 General.**216.301-3 Limitations.**

(c) The contracting officer executes the determination and findings.

216.306 Cost-plus-fixed-fee contracts.(c) *Limitations.*

(i) Annual military construction appropriations acts restrict the use of cost-plus-fixed-fee contracts that—

(A) Are funded by a military construction appropriations act:

(B) Are estimated to exceed \$25,000; and

(C) Will be performed within the United States, except Alaska.

(ii) The Secretaries of the military departments are authorized to approve contracts described in paragraph (c)(i) of this section that are for environmental work only, provided the environmental work is not classified as construction, as defined by 10 U.S.C 2801.

(iii) The Secretary of Defense or designee must specifically approve contracts described in paragraph (c)(i) of this section that are not for environmental work only.

[61 FR 7743, Feb. 29, 1996; 61 FR 18195, Apr. 24, 1996]

216.307 Contract clauses.

(i) Use the clause at FAR 52.216-15, Predetermined Indirect Cost Rates, with 252.216-7002, Alternate A, in solicitations and contracts when a cost-reimbursement research and development contract with an educational institution (see FAR 42.705-3(b)) is contemplated and predetermined indirect cost rates are to be used.

[59 FR 53116, Oct. 21, 1994]

**Subpart 216.4—Incentive
Contracts**

216.402 Application of predetermined, formula-type incentives.**216.402-2 Technical performance incentives.**

Contractor performance incentives should relate to specific performance areas of milestones, such as delivery or test schedules, quality controls, maintenance requirements, and reliability standards.

216.403 Fixed-price incentive contracts.(b) *Application.*

(3) Individual line items may have separate incentive provisions; e.g., when dissimilar work calls for separate formulas.

216.403-2 Fixed-price incentive (successive targets) contracts.

(a) *Description.* (1)(iii) The formula does not apply for the life of the contract. It is used to fix the firm target profit for the contract. To provide an incentive consistent with the circumstances, the formula should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset.

216.403-70 Fixed-price contracts with award fees.

Award fee provisions may be used in fixed price contracts as provided in 216.470.

216.404 Cost-reimbursement incentive contracts.**216.404-1 Cost-plus-incentive-fee contracts.**(b) *Application.*

(3) Give appropriate weight to basic acquisition objectives in negotiating the range of fee and the fee adjustment formula. For example—

(A) In an initial product development contract, it may be appropriate to provide for relatively small adjustments

in fee tied to the cost incentive feature, but provide for significant adjustments if the contractor meets or surpasses performance targets.

(B) In subsequent development and test contracts, it may be appropriate to negotiate an incentive formula tied primarily to the contractor's success in controlling costs.

216.404-2 Cost-plus-award-fee contracts.

(a) *Description.* (i) Normally, award fee is not earned when the fee-determining official has determined that contractor performance has been submarginal or unsatisfactory.

(ii) The basis for all award fee determinations shall be documented in the contract file.

(b) *Application.* (1) The cost-plus-award-fee (CPAF) contract is also suitable for level of effort contracts where mission feasibility is established but measurement of achievement must be by subjective evaluation rather than objective measurement. See Table 16-1, Performance Evaluation Criteria, for sample performance evaluation criteria and Table 16-2, Contractor Performance Evaluation Report, for a sample evaluation report.

(2) The contracting activity may—

(A) Establish a board to—

(1) Evaluate the contractor's performance; and

(2) Determine the amount of the award or recommend an amount to the contracting officer.

(B) Afford the contractor an opportunity to present information on its own behalf.

(c) *Limitations.* The CPAF contract shall not be used—

(i) To avoid—

(A) Establishing CPFF contracts when the criteria for CPFF contracts apply, or

(B) Developing objective targets so a CPIF contract can be used.

(ii) For either engineering development or operational system development acquisitions which have specifications suitable for simultaneous research and development and production, except a CPAF contract may be used for individual engineering development or operational system development acquisitions ancillary to the development of a major weapon system or equipment, where—

(A) It is more advantageous; and

(B) The purpose of the acquisition is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(2)(A) Do not apply the weighted guidelines method to CPAF contracts for either the base (fixed) fee or the award fee.

(B) The base fee shall not exceed three percent of the estimated cost of the contract exclusive of the fee.

216.470 Other applications of award fees.

The "award amount" portion of the fee may be used in other types of contracts under the following conditions—

(1) The Government wishes to motivate and reward a contractor for management performance in areas which cannot be measured objectively and where normal incentive provisions cannot be used. For example, logistics support, quality, timeliness, ingenuity, and cost effectiveness are areas under the control of management which may be susceptible only to subjective measurement and evaluation.

(2) The "base fee" (fixed amount portion) is not used.

(3) The chief of the contracting office approves the use of the "award amount."

(4) An award review board and procedures are established for conduct of the evaluation.

(5) The administrative costs of evaluation do not exceed the expected benefits.

TABLE 16-1—PERFORMANCE EVALUATION CRITERIA

		Submarginal	Marginal	Good	Very good	Excellent
A—Time of Delivery.	(A-1) Adherence to plan schedule.	Consistently late on 20% of plans.	Late on 10% plans w/o prior agreement.	Occasional plan late w/o justification.	Meets plan schedule.	Delivers all plans on schedule & meets prod. change requirements on schedule.
	(A-2) Action on Anticipated delays.	Does not expose changes or resolve them as soon as recognized.	Exposes changes but is dilatory in resolution on plans.	Anticipates changes, advise Shipyard but misses completion of design plans 10%.	Keeps Yard posted on delays, resolves independently on plans.	Anticipates in good time, advises Shipyard, resolves independently and meets production schedule.
	(A-3) Plan Maintenance.	Does not complete inter-related systems studies concurrently.	System studies completed but constr. plan changes delayed.	Major work plans coordinated in time to meet production schedules.	Design changes from studies and inter-related plans issued in time to meet product schedules.	Design changes, studies resolved and test data issued ahead of production requirements.
B—Quality of Work.	(B-1) Work Appearance.	25% dwgs. not compatible with Shipyard repro. processes and use.	20% not compatible with Shipyard repro. processes and use.	10% not compatible with Shipyard repro. processes and use.	0% dwgs. prepared by Des. agent not compatible with Shipyard repro. processes and use.	0% dwgs. presented incl. Des. agent, vendors, subcontr. not compatible with Shipyard repro. processes and use.
	(B-2) Thoroughness and Accuracy of Work.	Is brief on plans tending to leave questionable situations for Shipyard to resolve.	Has followed guidance, type and standard dwgs.	Has followed guidance, type and standard dwgs. questioning and resolving doubtful areas.	Work complete with notes and thorough explanations for anticipated questionable areas.	Work of highest caliber incorporating all pertinent data required including related activities.
	(B-3) Engineering Competence.	Tendency to follow past practice with no variation to meet reqmts. job in hand.	Adequate engrg. to use & adapt existing designs to suit job on hand for routine work.	Engineered to satisfy specs., guidance plans and material provided.	Displays excellent knowledge of constr. reqmts. considering systems aspect, cost, shop capabilities and procurement problems.	Exceptional knowledge of Naval shipwork & adaptability to work process incorporating knowledge of future planning in Design.
	(B-4) Liaison Effectiveness.	Indifferent to requirements of associated activities, related systems, and Shipyard advice.	Satisfactory but dependent on Shipyard to force resolution of problems without constructive recommendations to subcontr. or vendors.	Maintains normal contact with associated activities depending on Shipyard for problems requiring military resolution.	Maintains independent contact with all associated activities, keeping them informed to produce compatible design with little assistance for Yard.	Maintains expert contact, keeping Yard informed, obtaining info from equip., supplies w/o prompting by Shipyard.

TABLE 16-1—PERFORMANCE EVALUATION CRITERIA—Continued

		Submarginal	Marginal	Good	Very good	Excellent
C—Effectiveness in Controlling and/or Reducing Costs.	(B-5) Independence and Initiative.	Constant surveillance req'd to keep job from slipping—assign to low priority to satisfy needs.	Requires occasional prod- ing to stay on schedule & expects Shipyard res- olution of most prob- lems.	Normal interest and desire to provide work- able plans with average assistance & direction by Shipyard.	Complete & ac- curate job. Free of in- compatibilities with little or no direction by Shipyard.	Develops com- plete and ac- curate plans, seeks out problem areas and re- solves with assoc. act. ahead of schedule.
	(C-1) Utilization of Personnel.	Planning of work left to designers on drafting boards.	Supervision sets & re- views goals for designers.	System plan- ning by su- pervisory, personnel, studies checked by engineers.	Design param- eters estab- lished by sys- tem engi- neers & held in design plans.	Mods. to design plans limited to less than 5% as result lack engrg. system cor- relation.
	(C-2) Control Direct Charges (Ex- cept Labor).	Expenditures not controlled for services.	Expenditures reviewed oc- casionally by supervision.	Direct charges set & ac- counted for on each work package.	Provides serv- ices as part of normal de- sign function w/o extra charges.	No cost over- runs on origi- nal estimates absorbs serv- ice demands by Shipyard.
	(C-3) Perform- ance to Cost Estimate.	Does not meet cost estimate for original work or changes 30% time.	Does not meet cost estimate for original work or changes 20% time.	Exceeds origi- nal est. on change or- ders 10% time and meets original design costs.	Exceeds origi- nal est. on change or- ders 5% time.	Never exceeds estimates of original pack- age or change or- ders.

TABLE 16-2.—CONTRACTOR PERFORMANCE EVALUATION REPORT

Category	Criteria	Rating	Item factor	Evaluation rating	Category factor	Efficiency rating
A	TIME OF DELIVERY:					
	A-1 Adherence to Plan Schedule	_____	.40 =	_____		
	A-2 Action on Anticipated Delays	_____	.30 =	_____		
B	A-3 Plan Maintenance	_____	.30 =	_____		
	Total Item Weighed Rating .....				.30 =	
	QUALITY OF WORK:					
	B-1 Work Appearance	_____	.15 =	_____		
	B-2 Thoroughness and Accuracy of Work	_____	.30 =	_____		
C	B-3 Engineering Competence	_____	.20 =	_____		
	B-4 Liaison Effectiveness	_____	.15 =	_____		
	B-5 Independence and Initiative	_____	.20 =	_____		
	Total Item Weighed Rating .....				.40 =	
	EFFECTIVENESS IN CONTROLLING AND/OR REDUCING COSTS:					
C	C-1 Utilization of Personnel	_____	.30 =	_____		
	C-2 Control of all Direct Charges Other than Labor	_____	.30 =	_____		
	C-3 Performance to Cost Estimate	_____	.40 =	_____		
	Total Item Weighed Rating .....				.30 =	
TOTAL WEIGHED RATING:						
Rated by: _____						
Signature(s): _____						

Ratings—Excellent; Very good; Good; Marginal; Submarginal;
 Period of _____ 19____
 Contract Number _____
 Contractor _____
 Date of Report _____
 PNS Technical Monitor/s _____
Note: Provide supporting data and/or justification for below average or outstanding item ratings.

Subpart 216.5—Indefinite-Delivery Contracts

216.501 General.

(a)(i) For items with a shelf-life of less than 6 months, consider the use of indefinite delivery type contracts with orders to be placed either—

(A) Directly by the users; or

(B) By central purchasing offices with deliveries direct to users.

(ii) Whenever an indefinite delivery contract is issued, the issuing office must furnish all ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities under 204.670-2. This data must be furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within 3 working days of the order.

[56 FR 36340, July 31, 1991, as amended at 57 FR 42630, Sept. 15, 1992]

216.505 Contract clauses.

(d) If the contract is for the preparation of personal property for shipment or storage (see 247.271-4), substitute paragraph (f) at 252.247-7015, Requirements, for paragraph (f) of the clause at FAR 52.216-21, Requirements.

216.506 Ordering.

Orders placed under indefinite delivery contracts may be issued on DD Form 1155, Order for Supplies or Services.

Subpart 216.6—Time-And-Materials, Labor-Hour, and Letter Contracts

216.603 Letter contracts.

216.603-3 Limitations.

See subpart 217.74 for additional limitations on the use of letter contracts.

216.603-4 Contract clauses.

(b)(2) See 217.7406(a) for additional guidance regarding use of the clause at FAR 52.216-24, Limitation of Government Liability.

(3) Use the clause at 252.217-7027, Contract Definitization, in accordance with its prescription at 217.7406(b), in-

stead of the clause at FAR 52.216-25, Contract Definitization.

[61 FR 7743, Feb. 29, 1996]

Subpart 216.7—Agreements

216.703 Basic ordering agreements.

(c) *Limitations.* The period during which orders may be placed against a basic ordering agreement may not exceed three years. The contracting officer, with the approval of the chief of the contracting office, may grant extensions for up to two years. No single extension shall exceed one year. See subpart 217.74 for additional limitations on the use of undefinitized orders under basic ordering agreements.

(d) *Orders.* (i) The contracting officer issuing an order under a basic ordering agreement shall be responsible for ensuring compliance with the provisions and limitations of this section.

(ii) Individual orders under a basic ordering agreement shall be individually closed following completion of the orders (see FAR 4.804).

(1)(iii) The office issuing the agreement shall furnish all authorized ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities under 204.670-2 or, in the case of civilian agencies, the Federal Procurement Data System reporting requirement. Data furnished to civilian agencies must contain uncoded information about the data elements and the meanings of the codes to permit these users to translate the data into the federal format. This data must be furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within 3 working days of the order.

(2)(i) Any activity listed in the agreement may issue orders on DD Form 1155, Order for Supplies or Services, or Standard Form 26, Award/Contract.

(3) Incentive provisions consistent with this part are permitted.

[56 FR 36340, July 31, 1991, as amended at 61 FR 7743, Feb. 29, 1996; 61 FR 18195, Apr. 24, 1996]

PART 217—SPECIAL CONTRACTING METHODS**Subpart 217.72—Bakery and Dairy Products**

Sec.

Subpart 217.1—Multiyear Contracting

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Subpart 217.73—Identification of Sources of Supply

- 217.7300 Scope.
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- 217.7400 Scope.
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- 217.7402 Exceptions.
- 217.7403 Policy.
- 217.7404 Limitations.
- 217.7404-1 Authorization.
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- 217.7404-3 Definitization schedule.
- 217.7404-4 Limitations on obligations.
- 217.7404-5 Exceptions.
- 217.7404-6 Allowable profit.
- 217.7405 Definitizations.
- 217.7406 Contract clauses.

Subpart 217.75—Acquisition of Replenishment Parts

- 217.7500 Scope of subpart.
- 217.7501 General.
- 217.7502 Spares acquisition integrated with production (SAIP).
- 217.7503 Acquisition of parts when data is not available.
- 217.7504 Limitations on price increases.

Subpart 217.76—Contracts with Provisioning Requirements

- 217.7600 Scope of subpart.
- 217.7601 Definitions.
- 217.7602 Contracting requirements.
- 217.7602-1 Contractual provisions.
- 217.7602-2 Issuance of provisioned items orders.
- 217.7603 Contract administration requirements.
- 217.7603-1 Provisioning conferences.
- 217.7603-2 Contract administration office monitoring.
- 217.7603-3 Negotiating and executing supplemental agreements.

Subpart 217.77—Over and Above Work

- 217.7700 Scope of subpart.
- 217.7701 Procedures.
- 217.7702 Contract clause.

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36345, July 31, 1991, unless otherwise noted.

Subpart 217.1—Multiyear Contracting

217.102 Policy.

217.102-2 General.

(b) The applicable program year is that shown in the DoD Future Years Defense Program.

217.102-3 Objectives.

(d)(3) For additional restrictions on inclusion of recurring costs in the cancellation ceiling in DoD multiyear contracts, see 217.103-1(a)(iii) and the DoD Budget Guidance Manual (DoD 7110.1-M).

[57 FR 53599, Nov. 12, 1992]

217.103 Procedures.

217.103-1 General.

(a) *Criteria.* 10 U.S.C. 2306(h) and annual DoD authorization and appropriations acts have established the following additional criteria:

(i) The use of such a contract will promote the national security of the United States (10 U.S.C. 2306(h)(1)).

(ii) The contract provides for a production rate at not less than minimum economic production rates given the existing tooling and facilities (10 U.S.C. 2306(h)(9)).

(iii) Any advance economic order quantity acquisition (see FAR 17.101) is funded at least to the limits of the Government's liability. Recurring costs for such economic order quantities shall not be included in the unfunded cancellation ceiling. (Section 9021, Pub. L. 101-165 and similar sections in subsequent Defense appropriations acts).

(b) *Limitations.*

(i) *Public Law 90-378 (10 U.S.C. 2306(g)).*

(A) DoD may enter into multiyear acquisitions for the following services (and items of supply relating to such services), even though funds are limited by statute to obligation during the fiscal year in which the contract is executed:

(1) Operation, maintenance, and support of facilities and installations;

(2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(3) Specialized training requiring high quality instructor skills (e.g., training for pilots and other aircrew members or foreign language training); and

(4) Base services (e.g., ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal).

(B) This authority may be used as long as the contract—

(1) Does not extend beyond five years;

(2) Complies with FAR 17.101 through 17.105; and

(3) Performance years do not extend beyond the end of any fiscal year.

(ii) *Public Law 97-214 (10 U.S.C. 2829).*

(A) DoD may enter into multiyear contracts for supplies and services required for management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year out of annual appropriations for that year.

(B) This authority may be used as long as the contract—

(1) Does not extend beyond four years;

(2) Complies with FAR 17.101 through 17.105; and

(3) Performance years do not extend beyond the end of any fiscal year.

(iii) Award of a multiyear contract for services requires a written determination by the head of the contracting activity (10 U.S.C. 2306(g)(1)) that—

(A) There will be a continuing need for the services and incidental supplies;

(B) Furnishing the services and incidental supplies will require—

(1) A substantial initial investment in plant or equipment;

(2) The upfront commitment of substantial financial resources for the assembly, training or transportation of a specialized work force; or

(3) Other substantial startup costs; and

(C) Using a multiyear contract will be in the best interest of the United States by encouraging effective competition and promoting economical business operations.

(iv) The appropriate Secretary must provide a 30-day advance notification to the Committees on Appropriations and Armed Services of the House of Representatives and the Senate before the award of any—

(A) Multiyear contract that contains a cancellation ceiling in excess of \$100 million (10 U.S.C. 2306(h)(3));

(B) Multiyear contract that provides for economic order quantity purchases in excess of \$20 million in any year (Section 9021, Pub. L. 101-165 and similar sections in subsequent appropriations acts);

(C) Multiyear contract that includes an unfunded contingent liability in excess of \$20 million (Section 9021, Pub. L. 101-165 and similar sections in subsequent appropriations acts); or

(D) Contract for advance procurement leading to a multiyear contract with an economic order quantity procurement in excess of \$20 million in any year (Section 9021, Pub. L. 101-165 and similar sections in subsequent appropriations acts).

(v) Departments/agencies shall establish reporting procedures to meet the requirements of paragraph (b)(iv) of this subsection. Submit copies of the notifications to the Under Secretary of Defense (Acquisition & Technology), Director of Defense Procurement (USD(A&T)DP) and the Under Secretary of Defense (Comptroller) (Program/Budget) (USD(C)(P/B)).

(vi) Do not initiate a multiyear contract—

(A) In excess of \$500 million for any system or component thereof unless—

(1) Specifically provided for in a Defense appropriations act (section 9021, Pub. L. 101-165 and similar sections in subsequent appropriations acts); and

(2) The Secretary of Defense certifies to Congress that the current Future Years Defense Program fully funds the support costs associated with the multiyear program. Forward documentation to support this certification to the Under Secretary of Defense (Acquisition & Technology), Director of Defense Procurement.

(B) Without using present value analysis to determine the lowest cost to the Government of a multiyear contract compared to annual contracts (Section 9021, Pub. L. 101-165 and simi-

lar sections in subsequent appropriations acts).

(vii) Do not terminate a multiyear contract under a program approved by Congress without providing a ten-day advance notification to the Committees on Appropriations and Armed Services of the House of Representatives and the Senate (Section 9021, Pub. L. 101-165 and similar sections in subsequent appropriations acts).

(viii) The Secretary of Defense may ask Congress for relief from any conditions established by law for that particular procurement program (10 U.S.C. 2306(h)(11)).

(A) A request for relief from the requirement to achieve specific cost savings may be made if it appears, after negotiations with the contractors, that such savings cannot be achieved, but that substantial savings could nevertheless be achieved by using a multiyear contract.

(B) Include in such request details concerning the reasons for requesting use of a multiyear contract as well as details about the negotiated contract terms and conditions.

(C) Forward supporting documentation to the Under Secretary of Defense (Acquisition & Technology), Director of Defense Procurement.

(ix) Departments/agencies also must comply with any other restrictions or notification requirements contained in annual authorization or appropriation acts.

(d) *Cancellation.* State cancellation ceilings in the schedule as a not-to-exceed amount.

[56 FR 36345, July 31, 1991, as amended at 57 FR 14992, Apr. 23, 1992; 58 FR 28465, May 13, 1993; 60 FR 61596, Nov. 30, 1995]

Subpart 217.2—Options

217.202 Use of options.

(1) Options may be used for foreign military sales requirements.

(2) Consider use of surge options to support the Industrial Preparedness Production Planning program (see subpart 208.72). A surge option allows the Government, prior to final delivery, to—

(i) Accelerate the contractor's production rate in accordance with a surge production plan or a delivery schedule

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provided by the contractor under the terms of the contract; and

(ii) Purchase additional quantities of supplies or services.

(3) See subpart 217.74 for limitations on the use of undefinitized options.

[56 FR 36345, July 31, 1991, as amended at 61 FR 7743, Feb. 29, 1996]

217.208 Solicitation provisions and contract clauses.

Sealed bid solicitations shall not include provisions for evaluations of options unless the contracting officer determines that there is a reasonable likelihood that the options will be exercised (10 U.S.C. 2301(a)(7)). This limitation also applies to sealed bid solicitations for the contracts excluded by FAR 17.200.

217.208-70 Additional clauses.

(a) Use the clause at 252.217-7000, Exercise of Option to Fulfill Foreign Military Sales Commitments, when an option may be used for foreign military sale requirements.

(1) Use Alternate I when the foreign military sale country is not known at the time of solicitation or award.

(2) Do not use this clause in contracts for establishment or replenishment of DoD inventories or stocks, or acquisitions made under DoD cooperative logistics support arrangements.

(b) When a surge option is needed in support of industrial preparedness production planning (see subpart 208.72), use the clause at 252.217-7001, Surge Option, in solicitations and contracts.

(1) Insert the percentage of increase the option represents in paragraph (a) of the clause.

(2) Change 30 days in paragraphs (b)(2) and (d)(1) to longer periods, if appropriate.

(3) Change the 24-month period in paragraph (c)(3), if appropriate.

Subpart 217.4—Leader Company Contracting

217.401 General.

When leader company contracting is to be considered, take special effort to select a small disadvantaged business (SDB) concern as the follower company. Where other than an SDB is se-

lected as the follower company, the contracting officer shall document the contract file to reflect—

(1) The extent of actions taken to identify SDB concerns for participation in the acquisition; and

(2) The rationale for selection of a non-SDB as the follower company.

Subpart 217.5—Interagency Acquisitions Under the Economy Act

217.500 Scope of subpart.

Acquisitions from required sources, as described in FAR part 8, are not orders under the Economy Act.

[59 FR 22760, May 3, 1994]

217.502 General.

If requested, the contracting officer who normally would contract for the requesting activity should advise in the determination process.

[59 FR 22760, May 3, 1994]

217.504 Ordering procedures.

(b) Do not send invitations for bids or requests for proposals to other Government agencies.

Subpart 217.6—Management and Operating Contracts

217.600 Scope of subpart.

FAR subpart 17.6 does not apply to DoD.

Subpart 217.70—Exchange of Personal Property

217.7000 Scope of subpart.

This subpart prescribes policy and procedures for exchange of nonexcess personal property concurrent with an acquisition. Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)) permits exchange of personal property and application of the exchange allowance to the acquisition of similar property. This subpart does not authorize the sale of non-excess personal property.

217.7001 Definitions.

As used in this subpart,

(a) *Exchange (trade-in) property* means property which—

(1) Is not excess but is eligible for replacement (because of obsolescence, unserviceability, or other reason); and

(2) Is applied as whole or partial payment toward the acquisition of similar items (i.e., items designed and constructed for the same purpose).

(b) *Property* means items which fall within one of the generic categories listed in DoDI 4140.51, Exchange of Nonexcess Personal Property in the Department of Defense.

217.7002 Policy.

DoD policy is to exchange, rather than replace, eligible nonexcess property whenever exchange promotes economical and efficient program accomplishment. Exchange policy, authority, and applicability are governed by—

(a) The Federal Property Management Regulations issued by the Administrator of the General Services Administration; and

(b) DoDI 4140.51, Exchange of Nonexcess Personal Property in the Department of Defense.

217.7003 Purchase request.

Ensure that the requiring activity provides all of the following in support of the purchase request—

(a) A certification that the property is eligible for exchange and complies with all conditions and limitations of DoDI 4140.51;

(b) A written determination of economic advantage indicating—

(1) The anticipated economic advantage to the Government from use of the exchange authority;

(2) That exchange allowances shall be applied toward, or in partial payment of, the items to be acquired; and

(3) That, if required, the exchange property has been rendered safe or innocuous or has been demilitarized;

(c) All applicable approvals for the exchange; and

(d) A description of the property available for exchange (e.g., nomenclature, location, serial number, estimated travel value).

217.7004 Solicitation and award.

(a) Solicitations shall include a request for offerors to state prices—

(1) For the new items being acquired without any exchange; and

(2) For the new items with the exchange (trade-in allowance) for the exchange property listed.

(b) The contracting officer is not obligated to award on an exchange basis. If the lowest evaluated offer is an offer for the new items without any exchange, the contracting officer may award on that basis and forgo the exchange.

(c) Exchanges may be made only with the successful offeror. When the successful offer includes an exchange, award one contract for both the acquisition of the new property and the trade-in of the exchange property. The only exception is when the items must be acquired against a mandatory Federal supply schedule contract, in which case, award a separate contract for the exchange.

217.7005 Solicitation provision.

Use the provision at 252.217-7002, Offering Property for Exchange, when offering nonexcess personal property for exchange. Allow a minimum of 14 calendar days for the inspection period in paragraph (b) of the clause if the exchange property is in the continental United States. Allow at least 21 calendar days outside the United States.

Subpart 217.71—Master Agreement for Repair and Alteration of Vessels

217.7100 Scope of subpart.

This subpart contains acquisition policies and procedures for master agreements for repair and alteration of vessels.

217.7101 Definitions.

(a) *Master agreement for repair and alteration of vessels*—

(1) Is a written instrument of understanding, negotiated between a contracting activity and a contractor that—

(A) Contains contract clauses, terms, and conditions applying to future contracts for repairs, alterations, and/or additions to vessels; and

(B) Contemplates separate future contracts that will incorporate by reference or attachment the required and applicable clauses agreed upon in the master agreement.

(2) Is not a contract.

(b) *Job order*—

(1) Is a fixed price contract incorporating, by reference or attachment, a master agreement for repair and alteration of vessels;

(2) May include clauses pertaining to subjects not covered by the master agreement; but applicable to the job order being awarded; and

(3) Applies to a specific acquisition and sets forth the scope of work, price, delivery date, and other appropriate terms that apply to the particular job order.

217.7102 General.

(a) Activities shall enter into master agreements for repair and alteration of vessels with all prospective contractors located within the United States, its possessions, or Puerto Rico, which—

(1) Request ship repair work; and

(2) Which possess the organization and facilities to perform the work satisfactorily. (Issuance of a master agreement does not indicate approval of the contractor's facility for any particular acquisition and is not an affirmative determination of responsibility under FAR subpart 9.1 for any particular acquisition.)

(b) Activities may use master agreements in work with prospective contractors located outside the United States, its possessions, or Puerto Rico.

(c) Activities may issue job orders under master agreements to effect repairs, alterations, and/or additions to vessels belonging to foreign governments.

(1) Contractors shall treat vessels of a foreign government as if they were vessels of the U.S. Government whenever requested to do so by the contracting officer.

(2) Identify the vessel and the foreign government in the solicitation and job order.

217.7103 Procedures.

217.7103-1 Content and format.

(a) A Master agreement shall contain all clauses required by 217.7104(a), statute and executive order.

(b) The following format may be adapted to fit specific circumstances:

MASTER AGREEMENT FOR REPAIR AND ALTERATION OF VESSELS

(1) This agreement is entered into this ____ day of _____ 19____, by the United States of America (the "Government") represented by _____, the Contracting Officer, and, _____ a corporation organized and existing under the laws of the State of _____ (the "Contractor").

(2) The clauses in this agreement, shall be incorporated, by reference or attachment, in job orders issued under this agreement to effect repairs, alterations, and/or additions to vessels.

(3) By giving 30 days written notice, either party to this agreement has the right to cancel it without affecting the rights and liabilities under any job order existing at the time of cancellation. The Contractor shall perform, under the terms of this agreement, all work covered by any job order awarded before the effective date of the cancellation.

(4) This agreement may be modified only by mutual agreement of the parties. A modification of this agreement shall not affect any job order in existence at the time of modification, unless the parties agree otherwise.

(5) The rights and obligations of the parties to this agreement are set forth in this agreement and the clauses of any job orders issued under this agreement. In the event there is an inconsistency between this agreement and any job order, the provisions of this agreement shall govern.

(6) This agreement shall remain in effect until canceled by either party.

THE UNITED STATES OF AMERICA
by _____
(Contracting Officer)

(Contractor)
by _____
(Authorized Individual)

(Title)

217.7103-2 Period of agreement.

(a) Master agreements remain in effect until canceled by either the contractor or the contracting officer.

(b) Master agreements can be canceled by either the contractor or the contracting officer by giving 30 days written notice to the other.

(c) Cancellation of a master agreement does not affect the rights and liabilities under any job order existing at the time of cancellation. The contractor must continue to perform all work covered by any job order issued before the effective date of cancellation of the master agreement.

217.7103-3 Solicitations for job orders.

(a) When a requirement arises within the United States, its possessions, or Puerto Rico for the type of work covered by the master agreement, solicit offers from prospective contractors that—

(1) Previously executed a master agreement; or

(2) Have not previously executed a master agreement, but possess the necessary qualifications to perform the work and agree to execute a master agreement before award of a job order.

(b) Prepare the solicitation in the uniform contract format and in accordance with FAR subparts 14.2 or 15.4, as applicable.

(c) Include in the solicitation—

(1) The nature of the work to be performed;

(2) The date the vessel will be available to the contractor;

(3) The date the work is to be completed; and

(4) Whether bulk ammunition is aboard the vessel.

(d) Unless the solicitation states otherwise, offers are to be based on performance at the contractor's site.

(e) Solicitations processed under negotiated acquisition procedures shall require offerors to include a breakdown of the price with reasonable supporting detail in whatever format and detail the contracting officer may request.

(f) Where practicable, afford potential offerors an opportunity to inspect the item needing repair or alteration.

217.7103-4 Award of a job order.

Award job orders in accordance with FAR subparts 14.4 or 15.10.

217.7103-5 Emergency work.

(a) The contracting officer, without soliciting offers, may issue a written job order to a contractor that has previously executed a master agreement when—

(i) Delay in the performance of necessary repair work would endanger a vessel, its cargo or stores; or

(ii) Military necessity requires immediate work on a vessel.

(b) Process this type of undefinitized contract action in accordance with subpart 217.74.

(c) Negotiate a price as soon as practicable after the issuance of an undefinitized order and definitize the job order upon completing negotiations.

217.7103-6 Repair costs not readily ascertainable.

If the nature of any repairs is such that their extent and probable cost cannot be ascertained readily, the solicitation should—

(a) Solicit offers for determining the nature and extent of the repairs;

(b) Provide that upon determination by the contracting officer of what work is necessary, the contractor, if requested by the contracting officer, shall negotiate prices for performance of the repairs; and

(c) Provide that prices for the repairs, if ordered, will be set forth in a modification of the job order.

217.7103-7 Modification of master agreements.

(a) Review each master agreement at least annually before the anniversary of its effective date and revise it as necessary to conform to the requirements of the FAR and DFARS. Statutory or other mandatory changes may require review and revision earlier than one year.

(b) A master agreement shall be changed only by modifying the master agreement itself. It shall not be changed through a job order.

(c) A modification to a master agreement shall not affect job orders issued before the effective date of the modification.

217.7104 Contract clauses.

(a) Use the following clauses in solicitations for, and in, master agreements for repair and alteration of vessels:

- (1) 252.217-7003, Changes.
- (2) 252.217-7004, Job Orders and Compensation.
- (3) 252.217-7005, Inspection and Manner of Doing Work.
- (4) 252.217-7006, Title.
- (5) 252.217-7007, Payments.
- (6) 252.217-7008, Bonds.
- (7) 252.217-7009, Default.
- (8) 252.217-7010, Performance.
- (9) 252.217-7011, Access to Vessel.
- (10) 252.217-7012, Liability and Insurance.
- (11) 252.217-7013, Guarantees.
- (12) 252.217-7014, Discharge of Liens.
- (13) 252.217-7015, Safety and Health.
- (14) 252.217-7016, Plant Protection, as applicable.

(b)(1) Incorporate in solicitations for, and in, job orders, the clauses in the master agreement, and any other clauses on subjects not covered by the master agreement, but applicable to the job order to be awarded.

(2) Use the clause at 252.217-7016, Plant Protection, in job orders where performance is to occur at the contractor's facility.

Subpart 217.72—Bakery and Dairy Products**217.7200 Scope.**

This subpart provides special policies and requirements for acquisition of perishable bakery and dairy products.

217.7201 Contract requirements for dairy products.

(a) Include the following chemical and microbiological requirements in solicitations and resulting contracts for milk, milk products, and cultured products (as defined in the Veterinary/Medical Wholesomeness Assurance Program for Fresh and Cultured Dairy Products and Frozen Desserts (AR-40-70/NAVSUPINST 4355.6/AFR 161-46/MCO 10110.44)):

(1) *Chemical requirements.* Products shall meet the chemical requirements for each specification cited in the contract on the date of award.

(2) *Microbiological requirements.* Products shall meet microbiological requirements stated in Public Health Service Publication 229, Grade A Pasteurized Milk Ordinance, in effect on the date of award. In the event of conflict between these requirements and individual product specifications, the requirements of Public Health Service Publication 229 take precedence.

(b) When the contractor is required to furnish its own cabinets for dispensing milk from bulk containers—

(1) Include the following information in the solicitation—

(i) The number (or estimated number) of dispenser cabinets required;

(ii) Whether metal stands for the cabinets are required;

(iii) The number of cabinets required with a capacity of two containers each; and

(iv) The number required with a capacity of three containers each.

(2) Include the contractor's list of cabinet equipment in the schedule of the contract.

(c) The contracting officer shall notify the Government quality assurance representative of code changes approved under the clause at 252.217-7022, Code Dating.

217.7202 Contract type.

Normally use requirements contracts for bakery and dairy products. Other indefinite delivery contracts and other contract types may be used as appropriate.

217.7203 Contract clauses.

(a) Use the following additional clauses in solicitations and contracts for perishable bakery and dairy products—

(1) 252.217-7017, Time of Delivery. Use Alternate I when the contract is other than a requirements contract. Insert the number of hours in paragraph (c) of Alternate I.

(2) 252.217-7018, Change in Plant Location.

(3) 252.217-7019, Sanitary Conditions. Use Alternate I when the contract is other than a requirements contract.

(4) 252.217-7022, Code Dating. Use this clause only when the schedule or a specification requires labels showing

the date of pasteurization, manufacture, production, or processing.

(5) 252.217-7023, Marking. Do not use this clause when MIL-STD-129, Marking for Shipment and Storage, is required.

(6) 252.217-7024, Responsibility for Containers and Equipment. Use when contractor is required to provide reusable containers and equipment.

(b) Use the following additional clauses in solicitations and contracts for perishable dairy products—

(1) 252.217-7020, Examination and Testing. Use Alternate I when the contract is an indefinite quantity contract.

(2) 252.217-7021, Deficiency Adjustment.

(3) 252.217-7025, Containers and Equipment.

Subpart 217.73—Identification of Sources of Supply

217.7300 Scope.

This subpart implements 10 U.S.C. 2384. It contains policy and procedures for requiring contractors to identify the actual manufacturer of supplies furnished to DoD.

217.7301 Policy.

Contractors shall identify their sources of supply in contracts for supplies. Contractor identification of sources of supply enables solicitation, in subsequent acquisitions, of actual manufacturers or other suppliers of items. This enhances competition and potentially avoids payment of additional costs for no significant added value.

217.7302 Procedures.

(a) Whenever practicable, include a requirement for contractor identification of sources of supply in all contracts for the delivery of supplies. The identification shall include—

(1) The item's actual manufacturer or producer, or all the contractor's sources for the item;

(2) The item's national stock number (if there is one);

(3) The item identification number used by—

(i) The actual manufacturer or producer of the item; or

(ii) Each of the contractor's sources for the item; and

(4) The source of any technical data delivered under the contract.

(b) The requirement in paragraph (a) of this section does not apply to commercial items.

[56 FR 36345, July 31, 1991, as amended at 60 FR 61596, Nov. 30, 1995]

217.7303 Solicitation provision.

(a) Use the provision at 252.217-7026, Identification of Sources of Supply, or one substantially the same, in all solicitations for supplies when the acquisition is being conducted under other than full and open competition, except when—

(1) Using FAR 6.302-5;

(2) The contracting officer already has the information required by the provision (e.g., the information was obtained under other acquisitions);

(3) The contract is for subsistence, clothing or textiles, fuels, or supplies purchased and used outside the United States;

(4) The contracting officer determines that it would not be practicable to require offerors/contractors to provide the information, e.g., nonrepetitive local purchases; or

(5) The contracting officer determines that the exception at 217.7302(b) applies to all items under the solicitation.

(b) If appropriate, use the provision at 252.217-7026, Identification of Sources of Supply, or one substantially the same, in service contracts requiring the delivery of supplies.

Subpart 217.74—Undefined Contract Actions

217.7400 Scope.

This subpart prescribes policies and procedures implementing 10 U.S.C. 2326.

217.7401 Definitions.

As used in this subpart—

(a) *Contract action* means an action which results in a contract.

(1) It includes contract modifications for additional supplies or services.

(2) It does not include change orders, administrative changes, funding modifications, or any other contract modifications that are within the scope and under the terms of the contract, e.g., engineering change proposals, value engineering change proposals, and over and above work requests as described in subpart 217.77.

(b) *Definitization* means the agreement on, or determination of, contract terms, specifications, and price, which converts the undefinitized contract action to a definitive contract.

(c) *Qualifying proposal* means a proposal containing sufficient information for the DoD to do complete and meaningful analyses and audits of the—

(1) Information in the proposal; and

(2) Any other information that the contracting officer has determined DoD needs to review in connection with the contract.

(d) *Undefinitized contract action* means any contract action for which the contract terms, specifications, or price are not agreed upon before performance is begun under the action. Examples are letter contracts, orders under basic ordering agreements, and provisioned item orders, for which the price has not been agreed upon before performance has begun.

217.7402 Exceptions.

The following undefinitized contract actions (UCAs) are not subject to this subpart, but the contracting officer should apply the policy to them (and to changes under the Changes clause) to the maximum extent practicable—

(a) UCAs for foreign military sales;

(b) Purchases at or below the simplified acquisition threshold;

(c) Special access programs;

(d) Congressionally mandated long-lead procurement contracts.

[56 FR 36345, July 31, 1991, as amended at 61 FR 7743, Feb. 29, 1996]

217.7403 Policy.

DoD policy is that undefinitized contract actions shall—

(a) Be used only when—

(1) The negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and

(2) The Government's interest demands that the contractor be given a binding commitment so that contract performance can begin immediately.

(b) Be as complete and definite as practicable under the particular circumstances.

217.7404 Limitations.

217.7404-1 Authorization.

The contracting officer shall obtain approval from the head of the contracting activity before—

(a) Entering into a UCA. The request for approval must fully explain the need to begin performance before definitization, including the adverse impact on agency requirements resulting from delays in beginning performance.

(b) Including requirements for non-urgent spare parts and support equipment in a UCA. The request should show that inclusion of the non-urgent items is consistent with good business practices and in the best interest of the United States.

(c) Modifying the scope of a UCA when performance has already begun. The request should show that the modification is consistent with good business practices and in the best interests of the United States.

217.7404-2 Price ceiling.

UCAs shall include a not-to-exceed price.

217.7404-3 Definitization schedule.

(a) UCAs shall contain definitization schedules which provide for definitization by the earlier of the following dates—

(1) The date which is 180 days after issuance of the action (this date may be extended but may not exceed the date which is 180 days after the contractor submits a qualifying proposal); or

(2) The date on which the amount of funds obligated under the contract action is equal to more than 50 percent of the not-to-exceed price.

(b) Submission of a qualifying proposal in accordance with the definitization schedule is a material element of the contract. If the contractor does not submit a timely qualifying

proposal, the contracting officer may suspend or reduce progress payments under FAR 32.503-6, or take other appropriate action.

[56 FR 36345, July 31, 1991, as amended at 60 FR 29498, June 5, 1995; 61 FR 7743, Feb. 29, 1996]

217.7404-4 Limitations on obligations.

The Government shall not obligate more than 50 percent of the not-to-exceed price before definitization. However, if a contractor submits a qualifying proposal before 50 percent of the not-to-exceed price has been obligated by the Government, then the limitation on obligations before definitization may be increased to no more than 75 percent (see 232.102-70 for coverage on provisional delivery payments).

[60 FR 29498, June 5, 1995]

217.7404-5 Exceptions.

(a) The limitations in 217.7404-2, 217.7404-3, and 217.7404-4 do not apply to UCAs for the purchase of initial spares.

(b) The head of an agency may waive the limitations in 217.7404-2, 217.7404-3, and 217.7404-4 for UCAs if the head of the agency determines that the waiver is necessary to support a contingency operation.

[60 FR 29498, June 5, 1995]

217.7404-6 Allowable profit.

When the final price of a UCA is negotiated after a substantial portion of the required performance has been completed, the head of the agency shall ensure the profit allowed reflects—

(a) Any reduced cost risk to the contractor for costs incurred during contract performance before negotiation of the final price; and

(b) The contractor's reduced cost risk for costs incurred during performance of the remainder of the contract.

217.7405 Definitizations.

For each definitization modification, the contracting officer shall include all data required by 243.171.

[60 FR 34470, July 3, 1995]

217.7406 Contract clauses.

(a) Use the clause at FAR 52.216-24, Limitation of Government Liability, in all UCAs, solicitations associated with UCAs, basic ordering agreements, indefinite delivery contracts, and any other type of contract providing for the use of UCAs.

(b) Use the clause at 252.217-7027, Contract Definitization, in all UCAs, solicitations associated with UCAs, basic ordering agreements, indefinite delivery contracts, and any other type of contract providing for the use of UCAs. Insert the applicable information in paragraphs (a), (b), and (d) of the clause. If, at the time of entering into the UCA, the contracting officer knows that the definitive contract action will meet the criteria of FAR 15.804-1 for not requiring submission of cost or pricing data, the words "and cost or pricing data" may be deleted from paragraph (a) of the clause.

[61 FR 7743, Feb. 29, 1996]

Subpart 217.75—Acquisition of Replenishment Parts

217.7500 Scope of subpart.

This subpart provides guidance on additional requirements related to acquisition of replenishment parts (as defined in appendix E).

217.7501 General.

Departments and agencies—

(a) May acquire replenishment parts concurrently with production of the end item.

(b) Shall provide for full and open competition when fully adequate drawings and any other needed data are available with the right to use for acquisition purposes (see part 227). However—

(1) When data is not available for a competitive acquisition, use one of the procedures in 217.7503.

(2) Replenishment parts must be acquired so as to ensure the safe, dependable, and effective operation of the equipment. Where this assurance is not possible with new sources, competition may be limited to the original manufacturer of the equipment or other

sources that have previously manufactured or furnished the parts as long as the action is justified.

(c) Shall follow the limitations on price increases in 217.7504.

217.7502 Spares acquisition integrated with production (SAIP).

(a) Spares acquisition integrated with production (SAIP) is a technique used to acquire replenishment parts concurrently with parts being produced for the end item.

(b) DoD acquisition managers select parts for SAIP under the criteria in DoDI 4245.12, Spares Acquisition Integrated With Production (SAIP).

(c) Include appropriately tailored provisions in the contract when SAIP is used.

217.7503 Acquisition of parts when data is not available.

When acquiring a part for which the Government does not have necessary data with rights to use in a specification or drawing for competitive acquisition, use one of the following procedures in order of preference—

(a) When items of identical design are not required, the acquisition may still be conducted through full and open competition by using a performance specification or other similar technical requirement or purchase description that does not contain data with restricted rights. Two methods are—

(1) Two-step sealed bidding; and

(2) Brand name or equal purchase descriptions.

(b) When other than full and open competition is authorized under FAR part 6, acquire the part from the firm which developed or designed the item or process, or its licensees, provided productive capacity and quality are adequate and the price is fair and reasonable.

(c) When additional sources are needed and the procedures in paragraph (a) of this section are not practicable, consider the following alternatives—

(1) Encourage the developer to license others to manufacture the parts;

(2) Acquire the necessary rights in data;

(3) Use a leader company acquisition technique (FAR subpart 17.4) when

complex technical equipment is involved and establishing satisfactory additional sources will require technical assistance as well as data; or

(4) Incorporate a priced option in the contract which allows the Government to require the contractor to establish a second source.

(d) As a last alternative, the contracting activity may develop a design specification for competitive acquisition through reverse engineering. Contracting activities shall not do reverse engineering unless—

(1) Significant cost savings can be demonstrated; and

(2) The action is authorized by the head of the contracting activity.

217.7504 Limitations on price increases.

This section provides implementing guidance for section 1215 of Public Law 98-94 (10 U.S.C. 2452 note).

(a) The contracting officer shall not award, on a sole source basis, a contract for any centrally managed replenishment part when the price of the part has increased by 25 percent or more over the most recent 12-month period.

(1) Before computing the percentage difference between the current price and the prior price, adjust for quantity, escalation, and other factors necessary to achieve comparability.

(2) Departments and agencies may specify an alternate percentage or percentages for contracts within the small purchase limitation in FAR part 13.

(b) The contracting officer may award a contract for a part, the price of which exceeds the limitation in paragraph (a) of this section, if the contracting officer certifies in writing to the head of the contracting activity before award that—

(1) The contracting officer has evaluated the price of the part and concluded that the price increase is fair and reasonable; or

(2) The national security interests of the United States require purchase of the part despite the price increase.

(c) The fact that a particular price has not exceeded the limitation in paragraph (a) of this section does not relieve the contracting officer of the

responsibility for obtaining a fair and reasonable price.

(d) Contracting officers may include a provision in sole source solicitations requiring that the offeror supply with its proposal, price and quantity data on any government orders for the replenishment part issued within the most recent 12 months.

Subpart 217.76—Contracts with Provisioning Requirements

217.7600 Scope of subpart.

This subpart contains contract requirements and procedures for items to be provisioned. For technical requirements of provisioning, see DoDD 4140.40, Provisioning of End Items of Material. For breakout requirements, see appendix E.

217.7601 Definitions.

As used in this subpart,

(a) *Provisioning* means the process of determining and acquiring the range and quantity of spare and repair parts, and support and test equipment required to operate and maintain an end item for an initial period of service.

(b) *Provisioned item* means any item selected under provisioning procedures.

(c) *Provisioned items order* (PIO) means an undefinitized order issued under a contract which includes the Government's requirements for provisioned items. (Provisioned items with firm prices are acquired by supplemental agreement or by separate contract.)

(d) *Provisioning activity* means the organization responsible for selecting and determining requirements for provisioned items.

(e) *Provisioning requirements statement* means the contractual document listing the specific provisioning requirements for that contract. The statement normally includes:

- (1) Instructions, such as the provisioning method to be used;
- (2) The extent of provisioning technical documentation and data needed (including administrative requirements for submission and distribution);
- (3) The type and location of provisioning conferences;
- (4) Sample article requirements;
- (5) The delivery schedule;

(6) Packaging and marking requirements for provisioned items; and

(7) Requirements for provisioning screening.

(f) *Provisioning technical documentation* means the data needed for the identification, selection, determination of initial requirements, and cataloging of support items to be acquired through the provisioning process. It includes such things as provisioning lists and logistics support analysis summaries. Descriptive data such as drawings and photographs are referred to as *supplementary provisioning technical documentation*.

217.7602 Contracting requirements.

217.7602-1 Contractual provisions.

Contracts containing provisioning requirements shall—

(a) List the provisioning functions to be performed and who will perform them;

(b) Include a provisioning requirements statement or specify a time limit for its incorporation into the contract by modification (revisions to the provisioning requirements statement shall also be incorporated by contract modification);

(c) Include on the DD Form 1423, Contract Data Requirements List, a schedule for delivery of provisioning technical documentation, or provide for the schedule to be incorporated later by contract modification;

(d) Require flowdown of the appropriate provisioning technical documentation requirement when the subcontractor prepares the documentation;

(e) Specify any applicable procedures for interim release by the contractor of long lead time items, and include ordering and funding instructions for such items. As a minimum, the instructions shall require the contractor to advise the contracting officer or provisioning activity at least 30 days before release of the items, their estimated costs, and the effective date of release;

(f) Specify the activity designated to issue provisioned items orders, i.e., contracting officer, provisioning activity, or administrative contracting officer. When it is expected that more than

one activity will place provisioned items orders against the contract, state the requirements for provisioned items of each activity as separate contract line items;

(g) Provide a definitization schedule (normally 120 days after receipt of the contractor's proposal), and a time-frame for the contractor to furnish price proposals for provisioned items orders (normally 60 days after order issuance);

(h) Specify exhibit identifiers applicable to the contract line/subline items; and

(i) Include procedures for processing changes (including cancellations) in quantities of items ordered.

217.7602-2 Issuance of provisioned items orders.

(a) Use the Standard Form 30, Amendment of Solicitation/Modification of Contract, to—

(1) Issue provisioned items orders;

(2) Decrease or cancel quantities of items ordered; and

(3) Cover the contractor's interim release of long lead items when the contracting officer approves the release (if the release is not approved, the contracting officer shall notify the contractor to cancel the items).

(b) Include in Block 14 of the Standard Form 30—

(1) The term PROVISIONED ITEMS ORDER in capital letters and underlined; and

(2) The appropriate exhibit identifier(s) for all attached exhibits.

(c) Obligate funds to cover the estimated price of the items being ordered. Show individual estimated prices for each exhibit line item on the accounting and payment office copies.

(d) Distribution is the same as for the basic contract (see FAR 4.2). However, if the exhibits are voluminous, the contracting officer may restrict distribution of the exhibits to the contract administration office.

(e) See subpart 217.74 for additional guidance and limitations on the use of undefinitized contract actions.

217.7603 Contract administration requirements.

217.7603-1 Provisioning conferences.

When requested by the contracting officer or provisioning activity, the contract administration office shall assist the contracting officer or provisioning activity in scheduling and determining the types of provisioning conferences required, e.g., guidance meetings, long lead time items conferences, source coding meetings.

217.7603-2 Contract administration of office monitoring.

The contract administration office (CAO) shall monitor contracts containing provisioning requirements. As a minimum the CAO shall—

(a) Ensure that the contractor understands the provisioning requirements;

(b) Review contractor progress in the preparation of provisioning technical documentation and, if requested by the contracting officer or provisioning activity, inspect it for format and content;

(c) Ensure the prime contractor flows-down provisioning requirements to any subcontractor charged with preparation of documentation;

(d) Advise the contracting office or provisioning activity of delays in delivery of provisioning technical documentation or other related problems (see FAR subpart 42.11);

(e) Ensure contractor compliance with contract requirements concerning the assignment of national stock numbers; and

(f) Ensure that the contractor complies with contractual criteria for release of long lead time items.

217.7603-3 Negotiating and executing supplemental agreements.

(a) The administrative contracting officer (ACO) shall definitize provisioned items orders within the prescribed schedule.

(b) If the provisioned items order does not contain a delivery date, or the contractor cannot meet the date, the ACO shall coordinate the negotiated schedule with the contracting officer

or provisioning activity before execution of the supplemental agreement.

(c) The ACO shall maintain records of provisioned items orders showing—

- (1) The adequacy of obligated funds;
- (2) Due dates for price proposals; and
- (3) Actions taken to obtain additional funds or to deobligate excess funds.

Subpart 217.77—Over and Above Work

217.7700 Scope of subpart.

This subpart prescribes policies and procedures for acquisition of over and above work.

217.7701 Procedures.

(a) Contracts for the performance of maintenance, overhaul, modification, and repair of various items (e.g., aircraft, engines, ground support equipment, ships) generally contain over and above work requirements. When they do, the contracting officer shall establish a separate contract line item for the over and above work.

(b) Over and above requirements task the contractor to identify needed repairs and recommend corrective action during contract performance. The contractor submits a work request to identify the over and above work and, as

appropriate, the Government authorizes the contractor to proceed.

(c) The clause at 252.217-7028, Over and Above Work, requires the contractor and the contracting officer responsible for administering the contract to negotiate specific procedures for Government administration and contractor performance of over and above work requests.

(d) The contracting officer may issue a blanket work request authorization describing the manner in which individual over and above work requests will be administered and setting forth a dollar limitation for all over and above work under the contract. The blanket work request authorization may be in the form of a letter or contract modification (Standard Form 30).

(e) Over and above work requests are within the scope of the contract. Therefore, procedures in subpart 217.74, Undefined Contractual Actions, do not apply.

(f) To the maximum extent practical, over and above work shall be negotiated prior to performance of the work.

217.7702 Contract clause.

Use the clause at 252.217-7028, Over and Above Work, in solicitations and contracts containing requirements for over and above work, except as provided for in subpart 217.71.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS**PART 219—SMALL BUSINESS PROGRAMS**

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36353, July 31, 1991, unless otherwise noted.

219.000 Scope of part.

This part also implements 10 U.S.C. 2323, which sets a goal for DoD for each of fiscal years 1987 through 2000 to—

(1) Award five percent of contract and subcontract dollars to small disadvantaged business (SDB) concerns, historically black colleges and universities (HBCUs), and minority institutions (MIs) (See part 226 for policy/procedures on HBCU/MIs); and

(2) Maximize the number of such entities in DoD contracting and subcontracting.

[56 FR 36353, July 31, 1991, as amended at 59 FR 27670, May 27, 1994]

219.001 Definitions.

The definition of *small disadvantaged business concern* to be used for DoD contracts is in the provision at 252.219-7000 and is more restrictive than the definition in FAR 19.001.

Subpart 219.2—Policies

219.201 General policy.

(a) The DoD will use the section 8(a) program, small disadvantaged business set asides and evaluation preferences, advance payments, outreach, and technical assistance to meet its five percent goal for contract and subcontract awards to small disadvantaged businesses.

(c)(2) For the defense agencies, the director of the Office of Small and Disadvantaged Business Utilization shall be appointed by, be responsible to, and report directly to the director deputy director of the defense agency.

(7) The responsibility for assigning small business technical advisors is delegated to the head of the contracting activity.

(9) Contracting activity small business specialists perform this function by—

(A) Reviewing and making recommendations for all acquisitions over \$10,000, except small business-small purchase set-asides;

(B) Making the review before issue of the solicitation or contract modification and documenting it on DD Form 2579, Small Business Coordination Record;

(C) Referring recommendations which have been rejected by the contracting officer to the Small Business Administration (SBA) procurement center representative. However, in the case of a rejected small disadvantaged business set-aside recommendation or if an SBA representative is not assigned or available, the specialist refers the matter to the specialist's appointing authority.

(d) Contracting and contract administration activities appoint small business specialists as directed by DoDD 4205.1, DoD Small Business and Small Disadvantaged Business Utilization Programs. Specialists—

(i) Report directly and are responsible only to their appointing authority;

(ii) Make sure that the contracting activity takes the necessary actions to implement small business, historically black college and university/minority institution, and labor surplus area programs;

(iii) Advise and assist contracting, program manager, and requirements personnel on all matters which affect small businesses, historically black colleges and universities or minority institutions, and labor surplus area concerns;

(iv) Aid, counsel, and assist small business, small disadvantaged business, historically black colleges and universities, and minority institutions by providing—

(A) Advice concerning acquisition procedures;

(B) Information regarding proposed acquisitions; and

(C) Instructions on preparation of proposals in the interpretation of standard clauses, representations, and certifications;

(v) Maintain an outreach program (including participation in Government-industry conferences and regional interagency small business councils) designed to locate and develop information on the technical competence of small business, small disadvantaged business concerns, historically black colleges and universities, and minority institutions;

(vi) Ensure that financial assistance, available under existing regulations, is offered and also assist small business concerns in obtaining payments under their contracts, late payment, interest penalties, or information on contractual payment provisions;

(vii) Provide assistance to contracting officers in determining the need for and acceptability of subcontracting plans and assist administrative contracting officers (see 219.706(a)(ii)) in evaluating, monitoring, reviewing, and documenting contract performance to determine compliance with subcontracting plans; and

(viii) Recommend to the appointing authority the activity's small and disadvantaged business program goals, including goal assignments to subordinate contracting offices; monitor the activity's performance against these goals; and recommend action to correct reporting errors/deficiencies.

219.202 Specific policies.

219.202-1 Encouraging small business participation in acquisitions.

The DoD will maximize the use of small business concerns as planned producers in the Industrial Readiness Planning Program.

219.202-5 Data collection and reporting requirements.

Determine the premium percentage to be entered in Item D4E of the Individual Contract Action Report (DD Form 350), (see 253.204-70), as follows —

(1) For small disadvantaged business or historically black college and university/minority institution set-asides, divide the difference between the fair

market price and the award price by the fair market price.

(2) For 219.7000 evaluation preference awards, divide the difference between the low responsive offer and the award price by the low responsive offer.

(3) For 219.502-3 preferential consideration awards, divide the difference between the award price on the non-set-aside portion and the award price on the set-aside portion by the award price on the non-set-aside portion.

(b) Within 60 days after the end of each fiscal year, departments and agencies shall submit the report to the Secretary of Defense, who will report to the SBA on behalf of all DoD departments and agencies. Reports must include—

(i) Justification for failure to meet goals established by the Office of the Secretary of Defense; and

(ii) Planned actions for increasing participation by such firms in future contract awards.

Subpart 219.3—Determination of Status as a Small Business Concern

219.301 Representation by the offeror.

(a) A concern must qualify as a small disadvantaged business (SDB) on the date of submission of its initial offer including price to be eligible for—

(i) Award under a small disadvantaged business set-aside;

(ii) Preferential consideration as an SDB under a partial set-aside; or

(iii) An evaluation preference for SDBs.

(b) The contracting officer shall protest an offeror's representation that it is a small disadvantaged business concern when—

(i) There is conflicting evidence;

(ii) The offeror certifies that the Small Business Administration previously determined the concern to be non-disadvantaged; or

(iii) The offeror represents its ownership as other than Black American, Hispanic American, Native American (including Indian tribes and Native Hawaiian organizations), Asian Pacific American, or Subcontinent Asian American; unless the offeror—

(A) Represents that it currently is in the section 8(a) program; or

(B) Certifies that—

(1) Within the six months preceding submission of its offer, the offeror was determined by the Small Business Administration to be socially and economically disadvantaged; and

(2) No circumstances have changed to vary that determination.

[56 FR 36353, July 31, 1991, as amended at 59 FR 22131, Apr. 29, 1994]

219.302 Protesting a small business representation.

219.302-70 Protesting a small disadvantaged business representation.

This section applies to protests of a small business concern's status as socially and economically disadvantaged. Protests of a concern's size are processed under FAR 19.302. Any offeror, the contracting officer, or the Small Business Administration (SBA) may protest a concern's representation of disadvantaged status.

(a) An offeror may protest a concern's representation of disadvantaged status by filing a protest with the contracting officer. The protest—

(1) Must be filed within the times specified in FAR 19.302(d)(1); and

(2) Must contain specific detailed evidence supporting the basis of protest.

(b) The contracting officer or the SBA may protest a concern's representation of disadvantaged status at any time.

(1) If a contracting officer's protest is based on information brought to his/her attention by a party ineligible to protest directly or ineligible to protest under the timeliness standard, the contracting officer must be persuaded by the evidence presented before adopting the grounds for protest as his or her own.

(2) The SBA protests a concern's representation of disadvantaged status by filing directly with its Office of Program Eligibility and notifying the contracting officer.

(c) The contracting officer shall return untimely protests to the protestor. This includes protests filed before bid opening or notification of apparent successful offeror.

(d) Upon receipt of a timely protest, the contracting officer shall withhold

award and forward the protest to the SBA Office of Program Eligibility, Office of Minority Small Business and Capitol Ownership Development, 409 3rd Street, SW., Washington, DC 20416. Send SBA—

(1) The protest;

(2) The date the protest was received and a determination of timeliness;

(3) A copy of the protested concern's self-certification of disadvantaged status; and

(4) The date of bid opening or date on which notification of apparent successful offeror was sent to unsuccessful offerors.

(e) Do not withhold award when—

(1) The contracting officer makes a written determination that award must be made to protect the public interest or

(2) The offeror has certified that—

(i) Within the six months preceding submission of its offer, the SBA has determined the concern to be socially and economically disadvantaged; and

(ii) No circumstances have changed to vary that determination.

(f) The SBA Director, Office of Program Eligibility, will determine the disadvantaged status of the challenged offeror and notify the contracting officer, the challenged offeror, and the protestor. Award may be made on the basis of that determination. The determination is final for purposes of the instant acquisition, unless—

(1) It is appealed; and

(2) The contracting officer receives the appeal decision before award.

(g) If the contracting officer does not receive an SBA determination within 15 working days after the SBA's receipt of the protest, the contracting officer shall presume that the challenged offeror is socially and economically disadvantaged. Do not use the presumption as a basis for award without first inquiring as to when a determination can be expected and waiting for the determination, unless further delay in award would be disadvantageous to the Government.

(h) An SBA determination may be appealed by—

(1) The interested party whose protest has been denied;

(2) The concern whose status was protested; or

(3) The contracting officer.

The appeal must be filed with the SBA's Associate Administrator for Minority Small Business and Capital Ownership Development within five working days after receipt of the determination. If the contracting officer receives the SBA's decision on the appeal before award, the decision shall apply to the instant acquisition. If the decision is received after award, it will apply to future acquisitions.

219.304 Solicitation provisions.

(b) Use the provision at 252.219-7000, Small Disadvantaged Business Concern Representation (DoD Contracts) instead of the provision at FAR 52.219-2, Small Disadvantaged Business Concern Representation.

Subpart 219.4—Cooperation With the Small Business Administration

219.401 General.

(b) The contracting activity small business specialist is the primary activity focal point for interface with the SBA.

Subpart 219.5—Set-Asides for Small Business

219.501 General.

(g) This repetitive set-aside procedure applies to DoD.

(S-70) When a product or service has been acquired successfully by a contracting office as a small disadvantaged business set-aside, all future requirements of that office for that product or service shall be acquired as small disadvantaged business set-asides, except those—

(1) Processed under small purchase procedures; or

(2) For which the contracting officer determines there is no reasonable expectation that the criteria for a small disadvantaged business set-aside can be met (see 219.502-2-70(a)).

EFFECTIVE DATE NOTE: At 60 FR 54955, Oct. 27, 1995, in §219.501, (S-70) was stayed indefinitely.

219.502 Setting aside acquisitions.

219.502-1 Requirements for setting aside acquisitions.

Do not set aside acquisitions for—

(1) Supplies which were developed and financed, in whole or in part, by Canadian sources under the U.S.-Canadian Defense Development Sharing Program; or

(2) Architect-engineer services for military construction or family housing projects of \$85,000 or more (10 U.S.C. 2855), including indefinite delivery and indefinite quantity contracts if the value of all anticipated orders is expected to total \$85,000 or more.

[58 FR 28465, May 13, 1993]

219.502-2 Total set-asides.

(a) Unless the contracting officer determines that the criteria for set-aside cannot be met, set aside for small business concerns acquisitions for—

(i) Construction, including maintenance and repairs, under \$2 million;

(ii) Dredging under \$1 million; and

(iii) Architect-engineer services for military construction or family housing projects of under \$85,000.

[58 FR 28465, May 13, 1993]

219.502-2-70 Total set-asides for small disadvantaged business concerns.

(a) Except as provided in paragraphs (b) and (c), the contracting officer shall set aside an acquisition for small disadvantaged businesses when there is a reasonable expectation that—

(1) Offers will be received from at least two responsible small disadvantaged business (SDB) concerns who—

(i) Can comply with the FAR 52.219-14 limitations on subcontracting; or

(ii) In the case of an SDB regular dealer owned by an Indian tribe, including an Alaska Native Corporation, will provide the supplies of a small business for contracts awarded during fiscal years 1994 and 1995, as provided in section 8051 of Pub. L. 103-139 and section 8012 of Pub. L. 103-335; or,

(iii) In the case of other SDB regular dealers, will provide the supplies of SDBs (except as provided in Alternate I of the clause at 252.219-7002, Notice of Small Disadvantaged Business Set-Aside).

(2) Award will be made at not more than ten percent above fair market price; and

(3) Scientific and/or technological talent consistent with the demands of the acquisition will be offered.

(b) Do not set aside acquisitions for SDBs when—

(1) The product or service has been successfully acquired as a small business set-aside (see FAR 19.501(g));

(2) The acquisition is for construction, including maintenance and repairs, and is under \$2 million, or is for dredging under \$1 million;

(3) The acquisition is for architect-engineer services or construction design for military construction projects, without regard to dollar value;

(4) The acquisition is reserved for the 8(a) program;

(5) The acquisition is processed under small purchase procedures; or

(6) The acquisition is for commissary or exchange resale items.

(c) Pursuant to 10 U.S.C. 2323(g), the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition & Technology), is responsible for determining whether use of small disadvantaged business (SDB) set-asides has caused a particular industry category to bear a disproportionate share of the contracts awarded by a particular contracting activity to achieve its SDB goal. Upon making a determination that a particular industry is bearing a disproportionate share, the OUSD(A&T) SADBU shall limit the use of total SDB set-asides in the affected industry category, at the contracting activity. This limitation shall not apply to solicitations that already had been synopsisized as SDB set-asides. Forward requests for a determination through agency channels to OUSD(A&T) SADBU and include—

(1) The standard industrial (SIC) code(s) affected;

(2) Supporting information to justify the request, including dollars and percentages by the contracting activity, under the affected SIC code(s) for the previous two fiscal years and current fiscal year to date for—

(i) Total awards;

(ii) Total awards to small businesses;

(iii) Total awards to SDBs; and

(iv) Awards to SDBs under the SDB set-aside program.

(d) See 205.207(d) for information on Commerce Business Daily synopsis.

[56 FR 36353, July 31, 1991, as amended at 59 FR 24959, May 13, 1994; 59 FR 27670, May 27, 1994; 60 FR 29498, June 5, 1995]

EFFECTIVE DATE NOTE: At 60 FR 54955, Oct. 27, 1995, §219.502-2-70 was stayed indefinitely.

219.502-3 Partial set-asides.

When a portion of an acquisition is to be set aside for small business concerns, except acquisitions for commissary or exchange resale, the contracting officer shall give small disadvantaged business concerns preferential consideration by using the procedures in 252.219-7001, Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business (SDB) Concerns.

219.502-4 Methods of conducting set-asides.

(b) Offers on a small disadvantaged business (SDB) set-aside from concerns that do not qualify as SDB concerns shall be considered nonresponsive and shall be rejected.

EFFECTIVE DATE NOTE: At 60 FR 54955, Oct. 27, 1995, §219.502-4 was stayed indefinitely.

219.504 Set-aside program order of precedence.

(b) The order of precedence for DoD is (except see 219.803(c) and 226.71)—

(i) Total set-aside for small disadvantaged business concerns;

(ii) Total set-aside for small business concerns;

(iii) Partial set-aside for small business concerns with preferential consideration for small disadvantaged business concerns.

[56 FR 36353, July 31, 1991, as amended at 59 FR 12192, Mar. 16, 1994]

EFFECTIVE DATE NOTE: At 60 FR 54955, Oct. 27, 1995, in §219.504, paragraph (b)(i) was stayed indefinitely.

219.505 Rejecting Small Business Administration recommendations.

(b) The designee shall be at a level no lower than chief of the contracting office.

219.506 Withdrawing or modifying set-asides.

(a) Do not withdraw small disadvantaged business set-asides for reasons of price reasonableness unless the low responsive responsible offer exceeds fair market price by more than ten percent.

EFFECTIVE DATE NOTE: At 60 FR 54955, Oct. 27, 1995, §219.506 was stayed indefinitely.

219.508 Solicitation provisions and contract clauses.

(d) Use the clause at 252.219-7001, Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns, instead of the clause in FAR 52.219-7, Notice of Partial Small Business Set-Aside. Use the clause with its Alternate I when the contracting officer determines that there are no small disadvantaged business manufacturers that can meet the requirements of the solicitation.

(e) Use the clause at 52.219-14, Limitations on Subcontracting, also in small disadvantaged business set-asides.

[56 FR 36353, July 31, 1991, as amended at 57 FR 42630, Sept. 15, 1992]

EFFECTIVE DATE NOTE: At 60 FR 54955, Oct. 27, 1995, in §219.508, paragraph (e) was stayed indefinitely.

219.508-70 Solicitation provisions and contract clauses.

Use the clause at 252.219-7002, Notice of Small Disadvantaged Business Set-Aside, in solicitations and contracts for small disadvantaged business set-asides. Use the clause with its Alternate I when the contracting officer determines that there are no small disadvantaged business manufacturers that can meet the requirements of the solicitation.

EFFECTIVE DATE NOTE: At 60 FR 54955, Oct. 27, 1995, §219.508-70 was stayed indefinitely.

Subpart 219.6—Certificates of Competency and Determinations of Eligibility**219.602 Procedures.****219.602-1 Referral.**

When making a nonresponsibility determination on a small business concern, the contracting officer shall notify the contracting activity's small business specialist.

[58 FR 28465, May 13, 1993, as amended at 60 FR 40107, Aug. 7, 1995]

219.602-3 Resolving differences between the agency and the Small Business Administration.

(c)(i) If the contracting officer believes the agency should appeal, the contracting officer shall immediately inform the departmental director of the Office of Small and Disadvantaged Business Utilization, and send the director, through departmental channels—

(A) A request for appeal, summarizing the issues. The request must be sent to arrive within five working days after receipt of the SBA Central Office's written position.

(B) An appeal file, documenting the contracting activity's position. The file must be sent to arrive within five working days after transmission of the request.

(ii) The departmental director will determine whether the agency will appeal and will notify the SBA of the agency's intent.

Subpart 219.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns**219.702 Statutory requirements.**

(a) Section 834 of Public Law 101-189, as amended, requires the DoD to establish a test program to determine whether comprehensive subcontracting

plans on a corporate, division, or plant-wide basis will reduce administrative burdens while enhancing subcontracting opportunities for small and small disadvantaged business concerns.

(i) The test program—

(A) Will be conducted—

(1) From October 1, 1990, through September 30, 1998;

(2) In accordance with the DoD test plan, "Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans;" and

(3) By the military departments and agencies through specifically designated contracting activities; and

(B) Permits contractors selected by the designated contracting activities to—

(1) Negotiate plant, division, or company-wide comprehensive subcontracting plans instead of individual contract subcontracting plans; and

(2) Use the comprehensive plans in all DoD contracts which require a subcontracting plan.

(ii) The comprehensive subcontracting plans will—

(A) Be negotiated on an annual basis by the designated contracting activities;

(B) Be incorporated by the contractors' cognizant contract administration activity into all of the contractors' active DoD contracts which require a plan;

(C) Be used by all DoD contracting officers in contracts, which require a plan, awarded the selected contractors during the test period; and

(D) Not be subject to application of liquidated damages during the period of the test program (section 402, Pub. L. 101-574).

[56 FR 36353, July 31, 1991, as amended at 60 FR 35668, July 10, 1995; 61 FR 39900, July 31, 1996]

219.703 Eligibility requirements for participating in the program.

(a) Qualified nonprofit agencies for the blind and other severely disabled, that have been approved by the Committee for Purchase from People Who Are Blind or Severely Disabled under the Javits-Wagner-O'Day Act (41 U.S.C. 46-48), are eligible as a result of section 9077 of Pub. L. 102-396, and subsequent Appropriations Acts, and sections 808

of Pub. L. 102-484 and 804 of Pub. L. 103-337 through September 30, 1997, to participate in the program. Under this authority, subcontracts awarded to such entities may be counted toward the prime contractor's small business subcontracting goal through fiscal year 1997.

(2)(A) To be eligible as an SDB subcontractor, a concern must meet the definition in the provision at 252.219-7000, Small Disadvantaged Business Concern Representation (DoD Contracts).

(B) To be eligible as a historically black college or university or minority institution subcontractor, such entity must meet the definition in the clause at 252.219-7003, Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).

(b) A contractor may also rely on the written representation as to status of—

(i) A historically black college or university or minority institution; or

(ii) A qualified nonprofit agency for the blind and other severely handicapped approved by the Committee for Purchase from the Blind and Other Severely Handicapped.

[57 FR 42630, Sept. 15, 1992, as amended at 58 FR 28465, May 13, 1993; 60 FR 13075, Mar. 10, 1995; 60 FR 41157, Aug. 11, 1995; 60 FR 61596, Nov. 30, 1995; 61 FR 50535, Sept. 26, 1996]

219.704 Subcontracting plan requirements.

(a)(1) The goal for use of small disadvantaged business concerns shall include subcontracts with historically black colleges and universities and minority institutions (see subpart 226.70), in addition to subcontracts with small disadvantaged business concerns. Subcontracts with historically black colleges and universities and minority institutions do not have to be included in the small disadvantaged business goal in commercial items subcontracting plans.

(4) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, prime contractors shall notify the administrative contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the

subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

[60 FR 61596, Nov. 30, 1995, as amended at 61 FR 18687, Apr. 29, 1996]

219.705 Responsibilities of the contracting officer under the subcontracting assistance program.

219.705-2 Determining the need for a subcontracting plan.

(d) See 215.605 for unique DoD requirements.

[59 FR 27670, May 27, 1994]

219.705-4 Reviewing the subcontracting plan.

(d) Challenge any subcontracting plan that does not contain positive goals and consider the extent to which an offeror plans to use competition restricted to small disadvantaged business concerns, historically black colleges and universities, or minority institutions. A small disadvantaged business goal of less than five percent must be approved two levels above the contracting officer.

219.706 Responsibilities of the cognizant administrative contracting officer.

(a)(i) The contract administration office also is responsible for reviewing, evaluating, and approving master subcontracting plans.

(ii) The small business specialist supports the administrative contracting officer in evaluating a contractor's performance and compliance with its subcontracting plan.

219.708 Solicitation provisions and contract clauses.

(b)(1)(A) Use the clause at 252.219-7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts), in solicitations and contracts that contain the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

(B) In contracts with contractors which have comprehensive sub-

contracting plans approved under the test program described in 219.702(a), use the clause at 252.219-7004, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program), instead of the clauses at 252.219-7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts), and FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

(2) In contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a), do not use the clause at FAR 52.219-16, Liquidated Damages—Small Business Subcontracting Plan.

(c)(1) Do not use the clause at FAR 52.219-10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns.

(A) When contracting by negotiation, use the clause at 252.219-7005, Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities, and Minority Institutions, in all solicitations and contracts that contain the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan. Incentives for exceeding SDB subcontracting goals shall be paid only if an SDB subcontracting goal was exceeded as a result of actual subcontract awards to SDBs, and not as a result of developmental assistant credit under the Pilot Mentor-Protege Program (see subpart 219.71).

(B) Use the clause at 252.219-7005 with its Alternate I when, in the judgement of the contracting officer, inclusion of an incentive is necessary to increase subcontracting opportunities for other small businesses.

(C) Determine the percentage to be negotiated and used in the clause by considering the type and extent of effort required to exceed the goal, for example—

(1) Unique outreach programs;

(2) Use of small disadvantaged businesses, historically black colleges and universities, and minority institutions in nontraditional areas;

(3) Technical assistance to qualify or assist these entities; and

(4) Proximity of subcontractors to the prime.

(D) Do not use the clauses at 252.219–7005 and FAR 52.219–10 in contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a).

(c)(2) For negotiated acquisitions of \$10 million or more, the contracting officer may use an award fee provision instead of the incentive provision required by (c)(1)(A). When an award fee provision is used, do not use the clauses at 252.219–7005, Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities, and Minority Institutions, and FAR 52.219–10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns. Do not use award fee provisions in contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a).

[56 FR 36353, July 31, 1991, as amended at 56 FR 67213, Dec. 30, 1991; 61 FR 39901, July 31, 1996]

Subpart 219.8—Contracting With the Small Business Administration (The 8(a) Program)

219.803 Selecting acquisitions for the 8(a) Program.

(b) Contracting activities should respond to SBA requests for contract support within 30 calendar days after receipt.

(c) Before considering the set-aside order of precedence in 219.504(b), review the acquisition for offering under the 8(a) Program.

219.804 Evaluation, offering, and acceptance.

219.804–1 Agency evaluation.

When SBA asks for a requirement for the 8(a) Program, offer the requirement if appropriate, and do not use the small disadvantaged business set-aside procedure. If an acquisition, other than a repetitive acquisition (as described in FAR 19.804–4), was synopsisized using either of the notices in 205.207(d) (i) or (ii) before receipt of the SBA request,

the request does not have to be honored.

(f) The 8(a) firms should be offered the opportunity to give a technical presentation.

219.808 Contract negotiation.

219.808–1 Sole source.

(b) Section 813 of Pub. L. 102–190 authorizes DoD to waive Miller Act requirements for performance and payment bonds under 8(a) construction contracts awarded before October 1, 1994. Section 813 requires for each of fiscal years 1992, 1993, and 1994, that DoD make every reasonable effort to award no fewer than 30 contracts using this bond waiver authority.

(i) A determination to waive bonds shall be approved at a level above the contracting officer. The contracting officer may consider waiver of bonding when—

(A) The contractor is unable to obtain the requisite bonds from a surety. The contracting officer will verify with surety companies, SBA, and other appropriate sources that the contractor cannot obtain the required bonding.

(B) The contractor has received less than five bond waivers while a participant in the 8(a) program.

(C) The contractor is otherwise responsible as determined in accordance with FAR 9.104. Also, see 232.172.

(ii) The authority of Section 813 shall not be used—

(A) When SBA notifies the contracting officer that it will waive bonding requirements in accordance with 13 CFR 124.305;

(B) For requirements expected to exceed \$3 million; or

(C) When competitive procedures described in 19.805 are anticipated.

(iii) The contracting officer shall require the contractor to establish a special bank account before award (see 252.219–7007) to ensure protection of all suppliers and subcontractors expected to provide materials or services for performance of the contract.

(iv) Upon award of a contract using these procedures, the contracting officer shall prepare a report to include the following information (RCS DD-ACQ(AR)1930). Accumulate reports at each buying activity and forward, at

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the end of each fiscal quarter, through agency channels to the Director, Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition and Technology.

(A) Title/Description of construction project.

(B) Estimated dollar amount of the contract.

(C) Name of contracting activity and contracting officer.

(D) Name and address of contractor.

(E) Contract number and award date.

[57 FR 38287, Aug. 24, 1992, as amended at 58 FR 28465, May 13, 1993; 59 FR 27670, May 27, 1994]

219.811 Preparing the contracts.

219.811-1 Sole source.

(b)(5) See also 219.808-1(b).

[57 FR 38287, Aug. 24, 1992]

219.811-3 Contract clauses.

(a) Use the clause at FAR 52.219-11, Special 8(a) Contract Conditions, with 252.219-7007, Alternate A, when the contracting office has waived performance and payment bond requirements in accordance with 219.808-1(b).

(b) Use the clause at FAR 52.219-12, Special 8(a) Subcontract Conditions, with 252.219-7007, Alternate B, when the contracting office has waived performance and payment bond requirements in accordance with 219.808-1(b).

(c) Use the clause at FAR 52.219-17, Section 8(a) Award, with 252.219-7007, Alternate C, when the contracting office has waived performance and payment bond requirements in accordance with 219.808-1(b).

[57 FR 38287, Aug. 24, 1992]

Subpart 219.10—Small Business Competitiveness Demonstration Program

219.1005 Applicability.

(a) Dredging (SIC 1629, FPDS Y216 and Z216) applies only to the Army Corps of Engineers.

(3)(A) Architect-engineering services in support of military construction projects or military family housing projects are exempt from the Small Business competitiveness Demonstration Program, except for the emerging small business (ESB) set-aside requirements. Accordingly, these shall—

(1) Be reviewed for possible award under the 8(a) program regardless of dollar value.

(2) Not be set-aside for small business or small disadvantaged business if the estimated value is \$85,000 or more (including indefinite delivery-indefinite quantity contracts if the value of all anticipated orders exceeds \$85,000).

(3) Be considered for ESB set-aside if the estimated value is both less than the emerging small business reserve amount and less than \$85,000.

(4) Be considered for small business set-aside (but not SDB set-aside) if the estimated value is less than \$85,000, regardless of whether small business set-asides for other architect-engineer services are prohibited under the Small Business Competitiveness Demonstration Program, when an ESB set-aside is not appropriate.

(B) All requirements of the Small Business Competitiveness Demonstration Program apply to architect-engineer services in support of other than military construction projects or military housing objects, which otherwise meet criteria at FAR 19.1005(a)(3).

(b) The targeted industry categories for DoD are:

(b) The targeted industry categories for DoD are:

Table with 2 columns: Standard industrial classification (SIC) and SIC Code. Lists categories like Pharmaceutical preparations, Ammunition, Ordnance, Turbines, Aircraft engines, Guided missiles, Space vehicle equipment, Tanks, Search and navigation equipment, and Communication services.

[56 FR 36353, July 31, 1991, as amended at 59 FR 27670, May 27, 1994]

219.1006 Procedures.

(b)(1) During the period when small business set-asides cannot be considered for acquisitions in the four designated industry groups—

(A) The restrictions at 219.502-2-70(b)(1) and (2) do not apply and the acquisitions shall be considered for small disadvantaged business set-asides; and

219.1007

(B) The evaluation preference at 219.70 shall not be used. However, note the test program at 219.72 for construction acquisitions.

(2) The Director, Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition & Technology), will determine whether reinstatement of small business set-asides are necessary to meet the agency goal and will recommend reinstatement to the Director, Defense Procurement. Military departments and defense agencies shall not reinstate small business set-asides unless directed by the Director, Defense Procurement.

(d) Reporting requirements are at 204.670-9.

[58 FR 28466, May 13, 1993, as amended at 60 FR 61596, Nov. 30, 1995; 61 FR 18687, Apr. 29, 1996]

219.1007 Solicitation provisions.

Do not use the clause at 252.219-7006, Notice of Evaluation Preference for Small Disadvantaged Business Concerns, in solicitations or contracts for the four designated industry groups.

[56 FR 36353, July 31, 1991, as amended at 57 FR 42630, Sept. 15, 1992]

Subpart 219.70—Evaluation Preference for Small Disadvantaged Business (SDB) Concerns

219.7000 Policy.

Offers from small disadvantaged business concerns shall be given an evaluation preference in accordance with this subpart.

219.7001 Applicability.

(a) The evaluation preference shall be used in competitive acquisitions except as provided in paragraph (b) of this section and in 219.1006(b)(1)(B).

(b) Do not use the evaluation preference in acquisitions which—

- (1) Use small purchase procedures;
- (2) Are set-aside for small disadvantaged businesses;
- (3) Are set-aside for small businesses;
- (4) Are for commissary or exchange resale; or

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(5) Are for long distance telecommunications services.

[56 FR 36353, July 31, 1991, as amended at 60 FR 43563, Aug. 22, 1995; 61 FR 18687, Apr. 29, 1996]

219.7002 Procedures.

(a) Give offers from small disadvantaged business concerns a preference in evaluation by adding a factor of ten percent to the price of all offers, except—

(1) Offers from small disadvantaged business concerns, which have not waived the evaluation preference;

(2) Offers from historically black colleges and universities or minority institutions, which have not waived the evaluation preference;

(3) Otherwise successful offers of—

(i) Eligible products under the Trade Agreements Act when the acquisition equals or exceeds the dollar threshold in FAR 25.402; or

(ii) Qualifying country end products (see the definition in 225.101); and

(4) Offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(b) Apply the factor on a line item by line item basis or apply it to any group of items on which award may be made. Add other evaluation factors such as transportation costs or rent-free use of Government facilities to the offers before applying the ten percent factor.

(c) Do not evaluate offers using the preference when it would cause award to be made at a price which exceeds fair market price by more than ten percent.

(d) In partial small business set-asides, use the evaluation preference procedures set forth in the clause at 252.219-7001, Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns, instead of the procedures in paragraphs (a) through (c) of this section.

219.7003 Solicitation provisions and contract clauses.

Use the clause at 252.219-7006, Notice of Evaluation Preference for Small Disadvantaged Business Concerns, in solicitations and contracts involving the

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evaluation preference, except those which include the clause at 252.219-7001, Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns. Use the clause with its Alternate I when the contracting officer determines that there are no small disadvantaged business manufacturers that can meet the requirements of the solicitation.

Subpart 219.71—Pilot Mentor-Protege Program

SOURCE: 59 FR 27670, May 27, 1994, unless otherwise noted.

219.7100 Scope.

This subpart implements the Pilot Mentor-Protege Program established under section 831 of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, as amended. The purpose of the Program is to provide incentives for DoD contractors to assist small disadvantaged businesses in enhancing their capabilities and to increase participation of such firms in Government and commercial contracts. Qualified organizations employing the severely disabled, as defined in section 8064A of Public Law 102-172, are also eligible to participate as protege firms.

219.7101 Policy.

DoD policy and procedures for implementation of the Program are contained in appendix I to chapter 2, Policy and Procedures for the DoD Pilot Mentor-Protege Program.

219.7102 General.

The Program includes—

(a) Mentor firms, which are prime contractors with at least one active subcontracting plan negotiated under FAR subpart 19.7.

(b) Protege firms, which are small disadvantaged business (SDB) concerns or qualified organizations employing the severely disabled, eligible for receipt of Federal contracts and selected by the mentor firm.

(c) Mentor-protege agreements, which establish a developmental assistance program for a protege firm.

(d) Incentives, which may be provided to mentor firms by the DoD including:

(1) Reimbursement for developmental assistance costs through—

- (i) A separate contract;
- (ii) A separately priced contract line item on a DoD contract; or
- (iii) Inclusion of program cost in indirect expense pools.

(2) Credit toward SDB subcontracting goals, established under a subcontracting plan negotiated under FAR subpart 19.7, for developmental assistance costs which are either reimbursed through indirect expense pools or are not reimbursed; or

(3) A combination of reimbursement and credit.

219.7103 Procedures.

219.7103-1 General.

The procedures for application, acceptance, and participation in the program are in appendix I to chapter 2, Policy and Procedures for the DoD Pilot Mentor-Protege Program. The Director of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition and Technology) approves contractors as mentor firms, approves mentor-protege agreements, and forwards approved mentor-protege agreements to the contracting officer when program funding is available through a DoD Program Manager.

219.7103-2 Contracting officer responsibilities.

Contracting officers shall—

(a) Negotiate an advance agreement on the treatment of developmental assistance costs for credit, reimbursement, or both, if the mentor firm proposes such an agreement, or delegate authority to negotiate to the administrative contracting officer (see FAR 31.109).

(b) Modify (without consideration) applicable contract(s) to incorporate the clause at 252.232-7005, Reimbursement of Subcontractor Advance Payments-DoD Pilot Mentor-Protege Program, when advance payments are provided by a mentor firm to a protege firm under the Program and the mentor firm requests reimbursement of advance payments.

(c) Modify (without consideration) applicable contract(s) to incorporate other than customary progress payments for small disadvantaged businesses in accordance with FAR 32.504(c) if such payments are provided by a mentor firm to a protege firm and the mentor firm requests reimbursement.

(d) Modify applicable contract(s) to establish a contract line item for reimbursement of developmental assistance costs—

(1) When funds have been made available for that purpose by a DoD program manager; and

(2) The contractor has an approved mentor-protege agreement.

(e) Advise contractors of reporting requirements in appendix I to chapter 2.

219.7104 Developmental assistance costs eligible for reimbursement or credit.

(a) Developmental assistance provided under an approved mentor-protege agreement is distinct from, and shall not duplicate, any effort that is the normal and expected product of the award and administration of the mentor firm's subcontracts. Costs associated with the latter shall be accumulated and charged in accordance with the contractor's approved accounting practices. Mentor firm costs which are eligible for reimbursement are set forth in appendix I to chapter 2.

(b) Before incurring any costs under the Program, mentor firms need to establish the accounting treatment of developmental assistance costs eligible for reimbursement or credit. Advance agreements are encouraged. To be eligible for reimbursement under the Program, costs must be incurred before October 1, 1996.

(c) If the mentor firm is suspended or debarred while performing under an approved mentor-protege agreement, the mentor firm may not be reimbursed or credited for developmental assistance costs incurred more than 30 days after the imposition of the suspension or debarment.

(d) Developmental assistance costs, incurred by a mentor firm before October 1, 1999, that are eligible for crediting under the Program may be credited

towards subcontracting plan goals as set forth in appendix I to chapter 2.

219.7105 Reporting.

Mentor firms shall report on the progress made under active mentor-protege agreements semi-annually as indicated in section I-111 of appendix I to chapter 2.

Subpart 219.72—Evaluation Preference for Small Disadvantaged Business (SDB) Concerns in Construction Acquisitions—Test Program

SOURCE: 61 FR 18688, Apr. 29, 1996, unless otherwise noted.

219.7200 Policy.

DoD policy is to ensure that, during this test program, offers from small disadvantaged business (SDB) concerns shall be given an evaluation preference in construction acquisitions.

219.7201 Administration of the test program.

The test program will be conducted over a 36-month period. The test program will be conducted by all DoD contracting activities that award construction contracts. The focal point for the test program is the Director, Small and Disadvantaged Business Utilization (SADBU), Office of the Deputy Under Secretary of Defense (International and Commercial Programs). The military departments and defense agencies shall submit status reports to the Director, SADBU. The first status report shall be submitted 18 months after initiation of the test program; the second status report shall be submitted 36 months after initiation of the test program. These reports shall specify the impact of the evaluation preference over each of the reporting periods of the test program, and shall provide recommendations with respect to continuation and/or modification of the evaluation preference.

[61 FR 18688, Apr. 29, 1996, as amended at 61 FR 50452, Sept. 26, 1996]

219.7202 Applicability.

(a) The evaluation preference shall be used in competitive acquisitions for construction (see definition in FAR Subpart 36.1) when work is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(b) Do not use the evaluation preference in acquisitions which—

(1) Are less than or equal to the simplified acquisition threshold;

(2) Are set aside for small businesses;

or

(3) Are awarded under section 8(a) procedures.

(c) The evaluation preference need not be applied when the head of the contracting activity determines that the evaluation preference is having a disproportionate impact on non-SDB concerns or nondisadvantaged small business concerns.

219.7203 Procedures.

(a) Solicitations that require bonding shall require offerors to separately state bond costs in the offer. Bond costs include the costs of bid, performance, and payment bonds.

(b) Evaluate total offers. If the apparently successful offeror is an SDB concern, no preference-based evaluation is required under this subpart.

(c) If the apparently successful offeror is not an SDB concern, evaluate offers excluding bond costs. If, after excluding bond costs, the apparently successful offeror is an SDB concern, add bond costs back to all offers, and give offers from SDB concerns a preference in evaluation by adding a factor of 10 percent to the total price of all offers, except—

(1) Offers from SDBs which have not waived the evaluation preference; and

(2) Offers from historically black colleges and universities or minority institutions, which have not waived the evaluation preference.

(d) When using the procedures in 236.303-70, Additive or deductive items, the evaluation preference in this subpart shall be applied.

219.7204 Contract clause.

Use the clause at 252.219-7008, Notice of Evaluation Preference for Small Dis-

advantaged Business Concerns—Construction Acquisitions—Test Program, in all solicitations—

(1) That involve the evaluation preference of this subpart; and

(2) Where work is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Sec.

222.001 Definition.

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222.407 Contract clauses.

SOURCE: 56 FR 36358, July 31, 1991, unless otherwise noted.

Subpart 222.6—Walsh-Healey Public Contracts Act

222.001 Definition.

222.604 Exemptions.
222.604-2 Regulatory exemptions.
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Labor advisor, as used in this part, means the departmental or agency headquarters labor advisor.

Subpart 222.8—Equal Employment Opportunity

Subpart 222.1—Basic Labor Policies

222.804 Affirmative action programs.
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222.101-1 General.

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222.1003-1 General.
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222.1008 Procedures for preparing and submitting notice (SF 98/98a).
222.1008-2 Preparation of SF 98a.
222.1008-7 Required time of submission of Notice.
222.1014 Delay of acquisition dates over 60 days.

(a) Contracting offices shall—
(i) Obtain departmental approval before contacting a national office of a labor organization, a Government agency headquarters, or any other organization on a labor relations matter;

Subpart 222.13—Special Disabled and Vietnam Era Veterans

222.1303 Waivers.
222.1306 Complaint procedures.
222.1308 Contract clauses.

(ii) Notify departmental headquarters as required in departmental procedures when contacted by the national office of any labor organization or Government agency headquarters;

Subpart 222.14—Employment of the Handicapped

222.1403 Waivers.
222.1406 Complaint procedures.

(iii) Obtain the approval of the agency head on major policy decisions regarding labor relations matters such as recommendations for plant seizure or injunctive action relating to potential or actual work stoppages; and

Subpart 222.70—Restrictions on the Employment of Personnel for Work on Construction/Service Contracts in Alaska and Hawaii

222.7000 Scope of subpart.
222.7001 General.
222.7002 Waivers.
222.7003 Contract clause.

(iv) Submit questions involving FAR part 22 or other contractor labor relations matters to the labor advisor.

Subpart 222.71—Right of First Refusal of Employment

222.7100 Scope of subpart.
222.7101 Policy.
222.7102 Contract clause.

222.101-3 Reporting labor disputes.

The contract administration office shall—

(1) Notify the labor advisor, the contracting officer, and the head of the contracting activity when interference is likely;

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

(2) Disseminate information on labor disputes in accordance with departmental procedures; and

(3) File an initial labor dispute report using DD Form 1507, Work Stoppage Report, when a work stoppage is imminent or when a work stoppage occurs. File a follow-up report when a significant change occurs in the dispute. This reporting requirement is assigned Report Control Symbol DD-ACQ (AR) 1153.

[56 FR 36358, July 31, 1991, as amended at 56 FR 67215, Dec. 30, 1991; 59 FR 27671, May 27, 1994]

222.101-3-70 Impact of labor disputes on defense programs.

(a) Each department and agency shall determine the degree of impact of potential or actual labor disputes on its own programs and requirements. In making these determinations, consider, for example—

(1) Whether the dispute involves a product, project (including construction), or service which must be obtained in order to meet schedules for urgently needed military programs or requirements; and

(2) Whether alternative sources of supply for the product, project, or service are reasonably available to fulfill the requirement or program in time to maintain essential military schedules.

(b) Each contracting activity involved shall obtain and develop data reflecting the impact of a labor dispute on its requirements and programs. Upon determining the impact, the head of the contracting activity shall submit a report of findings and recommendations to the labor advisor. The report must be in narrative form and include—

(1) Location of dispute and name of contractor or subcontractor involved;

(2) A description of the impact, including how the specific items or services affect the specific programs or requirements;

(3) Identity of alternate sources available to furnish the supply or service within the time required; and

(4) A description of any action taken to reduce the impact.

(c) The head of the contracting activity shall submit impact reports to the agency head when—

(1) Specifically requested; or

(2) The department or agency considers the impact to be of sufficient urgency to warrant the attention of the agency head.

(d) The labor advisor will expand the report submitted under paragraph (c) of this subsection by addressing the following, as appropriate—

(1) *Description of military program, project, or service.* Identify item, project, or service which will be or is being affected by the work stoppage. Describe its normal use and current functions in combat, combat support, or deterrent operations. For compo-

nents or raw materials, identify the end item(s) for which they are used.

(2) *Requirements and assets.* Identify requirements and assets in appropriate detail in terms commonly used by the DoD component.

(i) For production programs, include requirements for each using military service. Where applicable, state in detail production schedule, inventory objectives, assets against these objectives, and critical shortages. For spares and highly expendable items, such as ground and air ammunition, show usage (consumption) rates and assets in absolute terms and in terms of daily, weekly, or monthly supplies. For components, include requirements for spares.

(ii) For projects, describe the potential adverse effects of a delay in meeting schedules, and its impact on the national security.

(iii) For services, describe how a loss or interruption affects the ability to support Defense operations in terms of traffic requirements, assets, testing programs, etc.

(3) *Possible measures to minimize strike impact.* Describe—

(i) Capabilities, if any, to substitute items or to use alternate sources and indicate the number of other facilities available and the relative capabilities of such facilities in meeting total requirements;

(ii) How much time would be required to replace the loss of the facilities or service affected by a work stoppage; and

(iii) The feasibility of transferring assets from theater to theater to relieve deficits in some areas of urgency.

(4) *Conclusion.* (i) Describe the impact on operations of a 15-30, 30-60, and a 60-90 day work stoppage.

(ii) Project the degree of criticality of a program, project, or service resulting from a work stoppage on a calendar basis, indicating the increased impact, if any, as the stoppage lengthens. Criticality is measured by the number of days required for the work stoppage to have an effect on operational capability. This time must be stated in terms of days.

222.101-4 Removal of items from contractors' facilities affected by work stoppages.

(a) When a contractor is unable to deliver urgent and critical items because of a work stoppage at its facility, the contracting officer, before removing any items from the facility, shall—

(i) Before initiating any action, contact the labor advisor to obtain the opinion of the national office of the Federal Mediation and Conciliation Service or other mediation agency regarding the effect movement of the items would have on labor negotiations. Normally removals will not be made if they will adversely affect labor negotiations.

(ii) Upon the recommendation of the labor advisor, provide a written request for removal of the material to the cognizant contract administration office. Include the following information in the request—

(A) Contract number;

(B) A statement as to the urgency and criticality of the item needed;

(C) A description of the items to be moved (nature of the item, amount, approximate weight and cubic feet, item number, etc.);

(D) Mode of transportation by which the items are to be moved, if different than in the contract, and whether by Government or commercial bill of lading; and

(E) Destination of the material, if different from that specified in the contract.

(iii) With the assistance of the labor advisor or the commander of the contract administration office, attempt to have both the management and the labor representatives involved agree to shipment of the material by normal means.

(iv) If agreement for removal of the needed items cannot be reached following the procedures in paragraphs (a) (i) through (iii) of this subsection, the commander of the contract administration office, after obtaining approval from the labor advisor, may seek the concurrence of the parties to the dispute to permit movement of the material by military vehicles with military personnel. On receipt of such concurrences, the commander may proceed to

make necessary arrangements to move the material.

(v) If agreement for removal of the needed items cannot be reached following any of the procedures in paragraphs (a) (i) through (iv) of this subsection, refer the matter to the labor advisor with the information required by 222.101-3-70(b). If the labor advisor is unsuccessful in obtaining concurrence of the parties for the movement of the material and further action to obtain the material is deemed necessary, refer the matter to the agency head. Upon review and verification that the items are urgently or critically needed and cannot be moved with the consent of the parties, the agency head, on a non-delegable basis, may order removal of the items from the facility.

222.101-70 Acquisition of stevedoring services during labor disputes.

(a) Use the following procedures only in the order listed when a labor dispute delays performance of a contract for stevedoring services which are urgently needed.

(1) Attempt to have management and labor voluntarily agree to exempt military supplies from the labor dispute by continuing the movement of such material.

(2) Divert vessels to alternate ports able to provide necessary stevedoring services.

(3) Consider contracting with reliable alternative sources of supply within the stevedoring industry.

(4) Utilize civil service stevedores to perform the work performed by contract stevedores.

(5) Utilize military personnel to handle the cargo which was being handled by contract stevedores prior to the labor dispute.

(b) Notify the labor advisor when a deviation from the procedures in paragraph (a) of this subsection is required.

222.102 Federal and State labor requirements.**222.102-1 Policy.**

(1) The Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act (OSHA). Contracting officers shall—

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(i) Direct all inquiries from contractors or contractor employees regarding the applicability or interpretation of the OSHA regulations to the Department of Labor; and

(ii) Upon request, provide the address of the appropriate field office of the Occupational Safety and Health Administration of the Department of Labor.

(2) Do not initiate any application for the suspension or relaxation of labor requirements without prior coordination with the labor advisor.

222.103 Overtime.

222.103-4 Approvals.

(a) The department/agency approving official shall—

(i) Obtain the concurrence of other appropriate approving officials; and

(ii) Seek agreement as to the contracts under which overtime premiums will be approved when—

(A) Two or more contracting offices have current contracts at the same contractor facility; and

(B) The approval of overtime by one contracting office will affect the performance or cost of contracts of another office. In the absence of evidence to the contrary, a contracting officer may rely on a contractor's statement that approval of overtime premium pay for one contract will not affect performance or payments under any other contract.

Subpart 222.3—Contract Work Hours and Safety Standards Act

222.302 Liquidated damages and overtime pay.

Upon receipt of notification of Contract Work Hours and Safety Standards Act violations, the contracting officer shall—

(1) Immediately withhold such funds as are available;

(2) Give the contractor written notification of the withholding and a statement of the basis for the liquidated damages assessment. The written notification shall also inform the contractor of its 60 days right to appeal the assessment, through the contracting officer, to the agency official responsible for acting on such appeals; and

(3) If funds available for withholding are insufficient to cover liquidated damages, ask the contractor to pay voluntarily such funds as are necessary to cover the total liquidated damage assessment.

(d)(i) The assessment shall become the final administrative determination of contractor liability for liquidated damages when—

(A) The contractor fails to appeal to the contracting agency within 60 days from the date of the withholding of funds;

(B) The department agency, following the contractor's appeals, issues a final order which affirms the assessment of liquidated damages or waives damages of \$500 or less; or

(C) The Secretary of Labor takes final action on a recommendation of the agency head to waive or adjust liquidated damages in excess of \$500.

(ii) Upon final administrative determination of the contractor's liability for liquidated damages, the contracting officer shall transmit withheld or collected funds determined to be owed the Government as liquidated damages to the servicing finance and accounting officer for crediting to the appropriate Government Treasury account. The contracting officer shall return any excess withheld funds to the contractor.

Subpart 222.4—Labor Standards for Contracts Involving Construction

222.402 Applicability.

222.402-70 Installation support contracts.

(a) Apply both the Service Contract Act (SCA) and the Davis-Bacon Act (DBA) to installation support contracts if—

(1) The contract is principally for services but also requires a substantial and segregable amount of construction, alteration, renovation, painting, or repair work; and

(2) The aggregate dollar value of such construction work exceeds or is expected to exceed \$2,000.

(b) SCA coverage under the contract. Contract installation support requirements, such as plant operation and installation services (i.e., custodial, snow

removal, etc.) are subject to the SCA. Apply SCA clauses and minimum wage and fringe benefit requirements to all contract service calls or orders for such maintenance and support work.

(c) DBA coverage under the contract. Contract construction, alteration, renovation, painting, and repair requirements (i.e., roof shingling, building structural repair, paving repairs, etc.) are subject to the DBA. Apply DBA clauses and minimum wage requirements to all contract service calls or orders for construction, alteration, renovation, painting, or repairs to buildings or other works.

(d) Repairs versus maintenance. Some contract work may be characterized as either DBA painting/repairs or SCA maintenance. For example, replacing broken windows, spot painting, or minor patching of a wall could be covered by either the DBA or the SCA. In those instances where a contract service call or order requires construction trade skills (i.e., carpenter, plumber, painter, etc.), but it is unclear whether the work required is SCA maintenance or DBA painting/repairs, apply the following rules—

(1) Individual service calls or orders which will require a total of 32 or more work-hours to perform shall be considered to be repair work subject to the DBA.

(2) Individual service calls or orders which will require less than 32 work-hours to perform shall be considered to be maintenance subject to the SCA.

(3) Painting work of 200 square feet or more to be performed under an individual service call or order shall be considered to be subject to the DBA regardless of the total work-hours required.

(e) The determination of labor standards application shall be made at the time the solicitation is prepared in those cases where requirements can be identified. Otherwise, the determination shall be made at the time the service call or order is placed against the contract. The service call or order shall identify the labor standards law and contract wage determination which will apply to the work required.

(f) Contracting officers may not avoid application of the DBA by split-

ting individual tasks between orders or contracts.

222.403 Statutory and regulatory requirements.

222.403-4 Department of Labor regulations.

Direct all questions regarding Department of Labor regulations to the labor advisor.

222.404 Davis-Bacon Act wage determinations.

Not later than April 1 of each year, each department and agency shall furnish the Administrator, Wage and Hour Division, with a general outline of its proposed construction program for the coming fiscal year. The Department of Labor uses this information to determine where general wage determination surveys will be conducted.

(1) Indicate by individual project of \$500,000 or more—

(i) The anticipated type of construction;

(ii) The estimated dollar value; and

(iii) The location in which the work is to be performed (city, town, village, county, or other civil subdivision of the state).

(2) The report format is contained in Department of Labor All Agency Memo 144, December 27, 1985.

(3) The report control number is 1671-DOL-AN.

222.404-2 General requirements.

(c)(5) Information concerning the proper application of wage rate schedules to the type or types of construction involved shall be obtained from the appropriate district commander, Corps of Engineers, for the Army; from the cognizant Naval Facilities Engineering Command division for the Navy; from the appropriate Regional Industrial Relations Office for the Air Force; and from the appropriate Defense Contract Management District, ATTN: Industrial Labor Relations Office, for the Defense Logistics Agency.

222.404-3 Procedures for requesting wage determinations.

(b) *Requests for project wage determinations.* Submit requests for project wage

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determinations directly to the Department of Labor.

222.404-11 Wage determination appeals.

Send a copy of a petition for review filed by the contracting agency to the labor advisor.

222.406 Administration and enforcement.

222.406-1 Policy.

(a) *General.* The program shall also include—

(i) Training appropriate contract administration, labor relations, inspection, and other labor standards enforcement personnel in their responsibilities; and

(ii) Periodic review of field enforcement activities to ensure compliance with applicable regulations and instructions.

(b) *Preconstruction letters and conferences.* (1) Promptly after award of the contract, the contracting officer shall provide a preconstruction letter to the prime contractor. This letter should accomplish the following, as appropriate—

(A) Indicate that the labor standards requirements contained in the contract are based on the following statutes and regulations—

(1) Davis-Bacon Act;

(2) Contract Work Hours and Safety Standards Act;

(3) Copeland (Anti-Kickback) Act;

(4) Parts 3 and 5 of the Secretary of Labor's Regulations (parts 3 and 5, subtitle A, title 29, CFR); and

(5) Executive Order 11246 (Equal Employment Opportunity);

(B) Call attention to the labor standards requirements in the contract which relate to—

(1) Employment of foremen, laborers, mechanics, and others;

(2) Wages and fringe benefits payments, payrolls, and statements;

(3) Differentiation between subcontractors and suppliers;

(4) Additional classifications;

(5) Benefits to be realized by contractors and subcontractors in keeping complete work records;

(6) Penalties and sanctions for violations of the labor standards provisions; and

(7) The applicable provisions of FAR 22.403; and

(C) Ensure that the contractor sends a copy of the preconstruction letter to each subcontractor.

(2) Before construction begins, the contracting officer shall confer with the prime contractor and any subcontractor designated by the prime to emphasize their labor standards obligations under the contract when—

(A) The prime contractor has not performed previous Government contracts;

(B) The prime contractor experienced difficulty in complying with labor standards requirements on previous contracts; or

(C) It is necessary to determine whether the contractor and its subcontractors intend to pay any required fringe benefits in the manner specified in the wage determination or to elect a different method of payment. If the latter, inform the contractor of the requirements of FAR 22.406-2.

222.406-6 Payrolls and statements.

(a) *Submission.* Contractors who do not use Department of Labor Form WH 347 or its equivalent must submit a DD Form 879, Statement of Compliance, with each payroll report.

222.406-8 Investigations.

(a) The following guidance and procedures apply to investigations conducted by the contracting activity. (i) *Beginning of the investigation.* The investigator shall—

(A) Inform the contractor of the investigation in advance;

(B) Verify the exact legal name of the contractor, its address, and the names and titles of its principal officers;

(C) Outline the general scope of the investigation and that it includes examining pertinent records and interviewing employees; and

(D) Inform the contractor that the names of the employees to be interviewed will not be divulged to the contractor;

(E) When requested, provide a letter from the contracting officer verifying the investigator's authority.

(ii) *Conduct of the investigation—(A) Review of the contract.*

(1) Verify that all required labor standards and clauses and the wage determination are included in the contract.

(2) Review the following items in the contract file, if applicable—

- (i) List of subcontractors;
- (ii) Payroll statements for the contractor and subcontractors;
- (iii) Approvals of additional classifications;
- (iv) Data regarding apprentices and trainees as required by FAR 22.406-4;
- (v) Daily inspector's report or other inspection reports;
- (vi) Employee interview statements; and
- (vii) SF 1413, Statement and Acknowledgement.

(B) *Interview of the complainant.* Interview the complainant except when this is impractical. The interview shall cover all aspects of the complaint to ensure that all pertinent information is obtained. Whenever an investigation does not include an interview of the complainant, explain such omission in the investigator's report.

(C) *Interview of employees and former employees.* (1) Interview a sufficient number of employees or former employees, who represent all classifications, to develop information regarding the method and amount of payments, deductions, hours worked, and the type of work performed.

(2) Interview employees at the job site if the interviews can be conducted privately and in such a manner so as to cause the least inconvenience to the employer and employees.

(3) Former employees may be interviewed elsewhere.

(4) Do not disclose to any employee any information, finding, recommendation, or conclusion relating to the investigation except to the extent necessary to obtain required information.

(5) Do not disclose any employee's statement to anyone, except a Government representative working on the case, without the employee's written permission.

(6) Obtain information by mail when personal interviews are impractical.

(7) Use SF 1445, Labor Standards Interview, for employee interviews.

(8) Request employees to sign their statements and to initial any changes.

(9) Provide an evaluation of each employee's credibility.

(D) *Interview of foremen.* Interview foremen to obtain information concerning the contractor's compliance with the labor standards provisions with respect to employees under the foreman's supervision and the correctness of the foreman's classification as a supervisory employee. All procedures established for the conduct of employee interviews, and the recording and use of information obtained, apply to foremen interviews.

(E) *Interview of the contractor.* (1) Interview the contractor whenever the investigation indicates the possibility of a violation.

(2) Inform the contractor that—

(i) The interview does not mean that a violation has been found or that a requirement for corrective action exists; and

(ii) The purpose of the interview is to obtain only such data as the contractor may desire to present in connection with the investigation.

(3) Do not disclose the identity of any individual who filed a complaint or was interviewed.

(F) *Review of contractor and subcontractor records.* (1) Review contractor and subcontractor records such as basic time cards, books, cancelled payroll checks, fringe benefits, and payment records. Compare them with submitted payrolls. When discrepancies are found, include pertinent excerpts or copies of the records in the investigation report with a statement of the discrepancy and any explanation the investigator obtains. When wages include contributions or anticipated costs for fringe payments requiring approval of the Secretary of Labor, examine the contractor records to ensure such approval has been obtained and that any requirements specified in the approval have been met. (See FAR 22.406-2(a)(3)).

(2) Review contractor's and subcontractor's weekly payrolls and payroll statements for completeness and accuracy regarding the following—

(j) Identification of employees, payroll amount, the contract, contractor, subcontractor, and payroll period;

(ii) Inclusion of only job classifications and wage rates specified in the contract specifications, or otherwise established for the contract or subcontract;

(iii) Computation of daily and weekly hours;

(iv) Computation of time-and-one-half for work in excess of 40 hours per week in accordance with FAR 22.406-2(c);

(v) Gross weekly wages;

(vi) Deductions;

(vii) Computation of net weekly wages paid to each employee;

(viii) Ratio of helpers, apprentices, and trainees to laborers and mechanics;

(ix) Apprenticeship and trainee registration and ratios; and

(x) Computation of fringe benefits payments.

(3) Transcribe the contractor's records whenever they contain information at variance with payrolls or other submitted documents.

(j) Make the transcriptions in sufficient detail to permit them to be used to check computations of restitution and to determine amounts to be withheld from the contractor.

(ii) Follow the form used by the contractor.

(iii) Place comments or explanations concerning the transcriptions on separate memoranda or in the narrative report.

(iv) Determine whether the wage determination, any modifications of the determination, and any additional classifications are posted as required.

(iii) *Submission of the report of investigation.* The investigator shall submit a report of the investigation in accordance with agency procedures. Each report shall include at least the—

(A) Basis for the investigation, including the name of the complainant;

(B) Names and addresses of prime contractors and subcontractors involved, and names and titles of their principal officers;

(C) Contract number, date, dollar value of prime contract, and date and number of wage determination included in the contract;

(D) Description of the contract and subcontract work involved;

(E) Summary of the findings with respect to each of the items listed in 222.406-8(a)(ii);

(F) Concluding statement concerning—

(1) The types of violations, including the amount of kickbacks under the Copeland Act, underpayments of basic hourly rates and fringe benefits under the Davis-Bacon Act, or underpayments and liquidated damages under the Contract Work Hours and Safety Standards Act;

(2) Whether violations are considered to be willful or due to the negligence of the contractor or its agent;

(3) The amount of funds withheld from the contractor; and

(4) Other violations found.

(G) Exhibits indexed and appropriately tabbed, including copies of the following, when applicable—

(1) Complaint letter;

(2) Contract wage determination;

(3) Preconstruction letter and memorandum of preconstruction conference;

(4) Payrolls and statements indicating violations;

(5) Transcripts of pertinent records of the contractor, and approvals of fringe benefit payments;

(6) Employee interview statements;

(7) Foreman interview statements;

(8) Statements of others interviewed, including Government personnel;

(9) Detailed computations showing kickbacks, underpayments, and liquidated damages;

(10) Summary of all payments due to each employee or to a fund plan or program, and liquidated damages; and

(11) Receipts and cancelled checks.

(c) *Notification to the contractor.*

(4)(A) Notify the contractor by certified mail of any finding that it is liable for liquidated damages under the Contract Work Hours and Safety Standards Act (CWHSSA). The notification shall inform the contractor that—

(1) It has 60 days after receipt of the notice to appeal the assessment of liquidated damages; and

(2) The appeal must demonstrate either that the alleged violations did not occur at all, occurred inadvertently notwithstanding the exercise of due

care, or the assessment was computed improperly.

(B) If an appeal is received, the contracting officer shall process the appeal in accordance with department or agency regulations.

(d) *Contracting officer's report.* (1) In accordance with agency procedures, the contracting officer shall forward a detailed enforcement report or summary report in duplicate. These reports shall include at least the following—

(A) SF 1446, Labor Standards Investigation Summary Sheet;

(B) Contracting officer's findings;

(C) Statement as to the disposition of any contractor rebuttal to the findings;

(D) Statement as to whether the contractor has accepted the findings and has paid any restitution or liquidated damages;

(E) Statement as to the disposition of funds available;

(F) Recommendations as to disposition or further handling of the case (when appropriate, include recommendations as to the reduction, waiver, or assessment of liquidated damages, whether the contractor should be debarred, and whether the file should be referred for possible criminal prosecution); and

(G) When applicable the following exhibits—

(1) Investigator's report;

(2) Copy of the contractor's written rebuttal or a summary of the contractor's oral rebuttal of the contracting officer's findings;

(3) Copies of correspondence between the contractor and contracting officer, including a statement of specific violations found, corrective action requested, and the contractor's letter of acceptance or rejection;

(4) Evidence of the contractor's payment of restitution or liquidated damages. (Copies of receipts, canceled checks, or supplemental payrolls); and

(5) Letter from the contractor requesting relief from the liquidated damage provisions of the CWHSSA.

222.406-9 Withholding from or suspension of contract payments.

(a) *Withholding from contract payments.* The contracting officer shall contact the labor advisor for assistance

when payments due a contractor are not available to satisfy that contractor's liability for Davis-Bacon or CWHSSA wage underpayments or liquidated damages.

(c) *Disposition of contract payments withheld or suspended.*

(3) *Limitation on forwarding or returning funds.* When disposition of withheld funds remains the final action necessary to close out a contract, the Department of Labor has given blanket approval to forward withheld funds to the Comptroller General pending completion of an investigation or other administrative proceedings.

(4) *Liquidated damages.*

(A) The agency head may adjust liquidated damages of \$500 or less when the amount assessed is incorrect or waive the assessment when the violations—

(1) Were nonwillful or inadvertent; and

(2) Occurred notwithstanding the exercise of due care by the contractor, its subcontractor, or their agents.

(B) The agency head may recommend to the Administrator, Wage and Hour Division, that the liquidated damages over \$500 be adjusted because the amount assessed is incorrect. The agency head may also recommend the assessment be waived when the violations—

(1) Were nonwillful or inadvertent; and

(2) Occurred notwithstanding the exercise of due care by the contractor, the subcontractor, or their agents.

222.406-10 Disposition of disputes concerning construction contract labor standards enforcement.

(d) Forward the contracting officer's findings and the contractor's statement through the labor advisor.

222.406-13 Semiannual enforcement reports.

Forward these reports through the head of the contracting activity to the labor advisor within 15 days following the end of the reporting period. These reports shall not include information from investigations conducted by the Department of Labor. These reports shall contain the following information, as applicable, for construction

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work subject to the Davis-Bacon Act and the CWHSSA—

- (1) Period covered;
- (2) Number of prime contracts awarded;
- (3) Total dollar amount of prime contracts awarded;
- (4) Number of contractors/subcontractors against whom complaints were received;
- (5) Number of investigations conducted;
- (6) Number of contractors/subcontractors found in violation;
- (7) Amount of wage restitution found due under—
 - (i) Davis-Bacon Act
 - (ii) CWHSSA;
- (8) Number of employees due wage restitution under—
 - (i) Davis-Bacon Act
 - (ii) CWHSSA;
- (9) Amount of liquidated damages assessed under the CWHSSA—
 - (i) Total amount
 - (ii) Number of contracts involved;
 - (10) Number of employees and amount paid/withheld under—
 - (i) Davis-Bacon Act
 - (ii) CWHSSA
 - (iii) Copeland Act; and
 - (11) Preconstruction activities—
 - (i) Number of compliance checks performed
 - (ii) Preconstruction letters sent.

222.407 Contract clauses.

In contracts with a State or political subdivision, use the contract clauses prescribed in FAR 22.407, but preface these clauses with the following—

The Contractor agrees to comply with the requirements of the Contract Work Hours and Safety Standards Act and to insert the following clauses in all subcontracts under this contract with private persons or firms.

Subpart 222.6—Walsh-Healey Public Contracts Act

222.604 Exemptions.

222.604-2 Regulatory exemptions.

(c) Submit all applications for such exemptions through contracting channels to the labor advisor.

222.608 Procedures.

222.608-4 Award pending final determination.

(b)(1) The head of the contracting activity is the approval authority for the contracting officer's certification.

Subpart 222.8—Equal Employment Opportunity

222.804 Affirmative action programs.

222.804-2 Construction.

(b) Contracting officers forward requests for instructions directly to the servicing Office of Federal Contract Compliance Programs (OFCCP) regional office (see FAR 22.609).

222.805 Procedures.

(a)(2) See FAR 22.609 for a list of OFCCP regional offices.

222.806 Inquiries.

(b) Refer inquiries through the labor advisor.

222.807 Exemptions.

(c) Submit the request for exemption with a justification through contracting channels to the labor advisor who will forward them to the agency head. If the request is submitted under FAR 22.807(a)(1), the agency head shall act on the request. If the exemption is granted, the agency head shall notify the Director, OFCCP of such action within 30 days. If the request is submitted under FAR 22.807(a)(2) or (b)(5), the agency head will forward it to the Director, OFCCP for action.

Subpart 222.10—Service Contract Act of 1965, as Amended

222.1003 Applicability.

222.1003-1 General.

For contracts having a substantial amount of construction, alteration, renovation, painting, or repair work, see 222.402-70.

222.1003-7 Questions concerning applicability of the Act.

Contracting officers may contact the labor advisor by telephone for informal

222.1008-2

advice. Submit requests for formal determinations as to the Act's applicability to the labor advisor in writing through appropriate channels.

222.1008 Procedures for preparing and submitting Notice (SF 98/98a).

222.1008-2 Preparation of SF 98a.

(b)(1) The contracting officer shall secure the assistance of cognizant customer/technical personnel to ensure maximum use of the Service Contract Act Directory of Occupations (Directory) and incorporation of all service employee classes (Directory and non-directory) expected to be utilized.

(2)(A) When the statement of work job title, for which there is a Directory equivalent, differs from the Directory job title, make a written cross-reference either directly on the SF 98a file copy or on an attached sheet to the SF 98a file copy.

(B) Include and note as such any classifications and minimum hourly wage rates conformed under any predecessor contract. Where a previously conformed classification is not included in the Directory, attach the job description to the SF 98a.

222.1008-7 Required time of submission of notice.

(d) Submit requests for immediate wage determination responses for emergency acquisitions through the labor advisor. If the request is justified, the labor advisor will contact Department of Labor headquarters officials.

222.1014 Delay of acquisition dates over 60 days.

Send update requests in writing directly to the Wage and Hour Division and provide a copy to the labor advisor. The update request shall—

(1) State that one or more dates on the original notice have been delayed more than 60 days;

(2) List the new dates; and

(3) Include a copy of the original notice and SF 98a as enclosures.

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Subpart 222.13—Special Disabled and Vietnam Era Veterans

222.1303 Waivers.

(c) The contracting officer shall submit a waiver request through contracting channels to the labor advisor. If the request is justified, the labor advisor will endorse the request and forward it for action to—

(i) The agency head for waivers under FAR 22.1303(a); or

(ii) The Secretary of Defense, without the power of redelegation, for waivers under FAR 22.1303(b).

222.1306 Complaint procedures.

The contracting officer shall—

(1) Forward each complaint received as indicated in FAR 22.1306; and

(2) Notify the complainant of the referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

222.1308 Contract clauses.

(a)(1) Use of the clause at FAR 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans, with its paragraph (c), Listing Openings, also satisfies the requirement of 10 U.S.C. 2410d.

[58 FR 28466, May 13, 1993]

Subpart 222.14—Employment of the Handicapped

222.1403 Waivers.

(c) The contracting officer shall submit a waiver request through contracting channels to the labor advisor. If the request is justified, the labor advisor will endorse the request and forward it for action to—

(i) The agency head for waivers under FAR 22.1403(a). For the defense agencies, waivers must be approved by the Under Secretary of Defense for Acquisition.

(ii) The Secretary of Defense, without the power of redelegation, for waivers under FAR 22.1403(b).

222.1406 Complaint procedures.

The contracting officer shall—

(1) Forward each complaint received as indicated in FAR 22.1406 (see FAR 22.609 for a listing of Department of Labor regional/area offices); and

(2) Notify the complainant of such referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

Subpart 222.70—Restrictions on the Employment of Personnel for Work on Construction/Service Contracts in Alaska and Hawaii

222.7000 Scope of subpart.

(a) This subpart implements section 8078 of the 1986 Defense Appropriations Act, Public Law 99-190, and similar sections in subsequent Defense Appropriations Acts.

(b) This subpart applies only—

(1) To construction and service contracts to be performed in whole or in part within the states of Alaska or Hawaii; and

(2) When the unemployment rate in the state is in excess of the national average rate of unemployment as determined by the Secretary of Labor.

[56 FR 36358, July 31, 1991, as amended at 57 FR 14993, Apr. 23, 1992]

222.7001 General.

A contractor awarded a contract subject to this subpart must employ for the purpose of performing that portion of the contract work within the state, individuals who are residents of that state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

222.7002 Waivers.

Waivers may be granted, in the interest of national security, at a level no lower than the Assistant Secretary of any department.

222.7003 Contract clause.

Use the clause at 252.222-7000, Restrictions on Employment of Person-

nel, in all solicitations and contracts subject to this subpart.

Subpart 222.71—Right of First Refusal of Employment

SOURCE: 57 FR 52593, Nov. 4, 1992, unless otherwise noted.

222.7100 Scope of subpart.

This subpart prescribes policies and procedures for use in acquisitions arising from closure of military installations.

222.7101 Policy.

(a) DoD policy is to minimize the adverse impact on civil service employees affected by the closure of military installations. One means of implementing this policy is to give employees adversely affected by closure of a military installation the right of first refusal for jobs created by award of contracts arising from the closure effort that the employee is qualified to fill.

(b) Closure efforts include the acquisitions for preparing the installation for closure (such as environmental restoration and utilities modification) and maintaining the property after closure (such as security and fire prevention services).

222.7102 Contract clause

Use the clause at 252.222-7001, Right of First Refusal of Employment—Closure of Military Installations, in all solicitations and contracts arising from the closure of the military installation where the contract will be performed.

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORK-PLACE

Sec.

Subpart 223.1—Pollution Control and Clean Air and Water

223.104 Exemptions.

Subpart 223.3—Hazardous Material Identification and Material Safety Data

223.300 Scope of subpart.

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- 223.303 Contract clause.
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- 223.370–1 Scope.
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- 223.370–4 Procedures.
- 223.370–5 Contract clauses.

Subpart 223.4—Use of Recovered Materials

- 223.404 Procedures.

Subpart 223.5—Drug-Free Workplace

- 223.570 Drug-free work force.
- 223.570–1 Definitions.
- 223.570–2 Policy.
- 223.570–3 General.
- 223.570–4 Contract clause.

Subpart 223.8—Ozone-Depleting Substances

- 223.803 Policy.

Subpart 223.70—Hazardous Waste Disposal

- 223.7000 Scope of subpart.
- 223.7001 Definitions.
- 223.7002 Contract clause.

Subpart 223.71—Storage and Disposal of Toxic and Hazardous Materials

- 223.7100 Policy.
- 223.7101 Procedures.
- 223.7102 Exceptions.
- 223.7103 Contract clause.

Subpart 223.72—Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives

- 223.7200 Definition.
- 223.7201 Policy.
- 223.7202 Preaward responsibilities.
- 223.7203 Contract clause.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36365, July 31, 1991, unless otherwise noted.

Subpart 223.1—Pollution Control and Clean Air and Water**223.104 Exemptions.**

(c) The authority to act for the agency head under this subpart is limited to a level no lower than an official who is appointed by and with the advice of the Senate. For the defense agencies, this is the Under Secretary of Defense (Acquisition and Technology).

[60 FR 61596, Nov. 30, 1995]

Subpart 223.3—Hazardous Material Identification and Material Safety Data**223.300 Scope of subpart.**

DoD procedures for use in acquisitions involving ammunition and explosives are in 223.370.

223.302 General.

(b) Successful offerors are also required to submit hazard warning labels under the clause at 252.223–7001, Hazard Warning Labels.

(e) The contracting officer shall also provide hazard warning labels received from apparent successful offerors to the cognizant safety officer or other designated official in order to facilitate—

(i) Inclusion of relevant data in the department/agency's material safety data sheet information system or label information system; and

(ii) Other control, safety, or information purposes.

[56 FR 67215, Dec. 30, 1991]

223.303 Contract clause.

Use the clause at 252.223–7001, Hazard Warning Labels, in solicitations and contracts which require submission of hazardous material data sheets (see FAR 23.302(c)).

[56 FR 67215, Dec. 30, 1991]

223.370 Safety precautions for ammunition and explosives.**223.370–1 Scope.**

(a) This section applies to all acquisitions involving the use of ammunition and explosives, including acquisitions for—

- (1) Development;
- (2) Testing;
- (3) Research;
- (4) Manufacturing;
- (5) Handling or loading;
- (6) Assembling;
- (7) Packaging;
- (8) Storage;
- (9) Transportation;
- (10) Renovation;
- (11) Demilitarization;
- (12) Modification;
- (13) Repair;
- (14) Disposal;