Federal Acquisition Regulations System

Containing a codification of documents of general applicability and future effect

As of October 1, 2002

With Ancillaries

Published by
Office of the Federal Register
National Archives and Records Administration

A Special Edition of the Federal Register
# Table of Contents

<table>
<thead>
<tr>
<th>Explanation</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explanation</td>
<td>v</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Title 48:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 2—Department of Defense</td>
<td>3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Finding Aids:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Table of CFR Titles and Chapters</td>
<td>669</td>
</tr>
<tr>
<td>Alphabetical List of Agencies Appearing in the CFR</td>
<td>687</td>
</tr>
<tr>
<td>List of CFR Sections Affected</td>
<td>697</td>
</tr>
</tbody>
</table>
Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 48 CFR 201.104 refers to title 48, part 201, section 104.
Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

- Title 1 through Title 16: as of January 1
- Title 17 through Title 27: as of April 1
- Title 28 through Title 41: as of July 1
- Title 42 through Title 50: as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, October 1, 2002), consult the “List of CFR Sections Affected (LSA),” which is issued monthly, and the “Cumulative List of Parts Affected,” which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cutoff date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires Federal agencies to display an OMB control number with their information collection request.
Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS


CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of “Title 3—The President” is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the “Contents” entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, key to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

INQUIRIES

For a legal interpretation or explanation of any regulation in this volume, contact the issuing agency. The issuing agency’s name appears at the top of odd-numbered pages.

For inquiries concerning CFR reference assistance, call 202–741–6000 or write to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 or e-mail info@fedreg.nara.gov.

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

October 1, 2002.
Title 48—FEDERAL ACQUISITION REGULATIONS SYSTEM is composed of seven volumes. The chapters in these volumes are arranged as follows: Chapter 1 (parts 1 to 51), chapter 1 (parts 52 to 99), chapter 2 (parts 201 to 299), chapters 3 to 6, chapters 7 to 14, chapters 15 to 28 and chapter 29 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 2002.

The Federal acquisition regulations in chapter 1 are those government-wide acquisition regulations jointly issued by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration. Chapters 2 through 99 are acquisition regulations issued by individual government agencies. Parts 1 to 69 in each of chapters 2 through 99 are reserved for agency regulations implementing the Federal acquisition regulations in chapter 1 and are numerically keyed to them. Parts 70 to 99 in chapters 2 through 99 contain agency regulations supplementing the Federal acquisition regulations.

The OMB control numbers for the Federal Acquisition Regulations System appear in section 1.106 of chapter 1. For the convenience of the user section 1.106 is reprinted in the Finding Aids section of the second volume containing chapter 1 (parts 52 to 99).

The first volume, containing chapter 1 (parts 1 to 51), includes an index to the Federal acquisition regulations.
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Federal Register Index
The index covers the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $38 per year.

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Title 48—Federal Acquisition Regulations System

(This book contains chapter 2, parts 201 to 299)

Part

CHAPTER 2—Department of Defense ........................................... 201
## CHAPTER 2—DEPARTMENT OF DEFENSE

### SUBCHAPTER A—GENERAL

<table>
<thead>
<tr>
<th>Part</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>201</td>
<td>Federal Acquisition Regulations System</td>
<td>7</td>
</tr>
<tr>
<td>202</td>
<td>Definitions of words and terms</td>
<td>12</td>
</tr>
<tr>
<td>203</td>
<td>Improper business practices and personal conflicts of interest</td>
<td>14</td>
</tr>
<tr>
<td>204</td>
<td>Administrative matters</td>
<td>17</td>
</tr>
</tbody>
</table>

### SUBCHAPTER B—ACQUISITION PLANNING

<table>
<thead>
<tr>
<th>Part</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>205</td>
<td>Publicizing contract actions</td>
<td>44</td>
</tr>
<tr>
<td>206</td>
<td>Competition requirements</td>
<td>46</td>
</tr>
<tr>
<td>207</td>
<td>Acquisition planning</td>
<td>49</td>
</tr>
<tr>
<td>208</td>
<td>Required sources of supplies and services</td>
<td>53</td>
</tr>
<tr>
<td>209</td>
<td>Contractor qualifications</td>
<td>66</td>
</tr>
<tr>
<td>210</td>
<td>Market research</td>
<td>74</td>
</tr>
<tr>
<td>211</td>
<td>Describing agency needs</td>
<td>74</td>
</tr>
<tr>
<td>212</td>
<td>Acquisition of commercial items</td>
<td>77</td>
</tr>
</tbody>
</table>

### SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

<table>
<thead>
<tr>
<th>Part</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>213</td>
<td>Simplified acquisition procedures</td>
<td>81</td>
</tr>
<tr>
<td>214</td>
<td>Sealed bidding</td>
<td>85</td>
</tr>
<tr>
<td>215</td>
<td>Contracting by negotiation</td>
<td>86</td>
</tr>
<tr>
<td>216</td>
<td>Types of contracts</td>
<td>105</td>
</tr>
<tr>
<td>217</td>
<td>Special contracting methods</td>
<td>116</td>
</tr>
</tbody>
</table>

### SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

<table>
<thead>
<tr>
<th>Part</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>219</td>
<td>Small business programs</td>
<td>133</td>
</tr>
<tr>
<td>222</td>
<td>Application of labor laws to government acquisitions</td>
<td>145</td>
</tr>
<tr>
<td>223</td>
<td>Environment, conservation, occupational safety, and drug-free workplace</td>
<td>158</td>
</tr>
<tr>
<td>224</td>
<td>Protection of privacy and freedom of information</td>
<td>163</td>
</tr>
<tr>
<td>225</td>
<td>Foreign acquisition</td>
<td>164</td>
</tr>
<tr>
<td>226</td>
<td>Other socioeconomic programs</td>
<td>206</td>
</tr>
</tbody>
</table>

### SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

<table>
<thead>
<tr>
<th>Part</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>227</td>
<td>Patents, data, and copyrights</td>
<td>211</td>
</tr>
</tbody>
</table>
### 48 CFR Ch. 2 (10–1–02 Edition)

<table>
<thead>
<tr>
<th>Part</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>228</strong></td>
<td>Bonds and insurance</td>
</tr>
<tr>
<td><strong>229</strong></td>
<td>Taxes</td>
</tr>
<tr>
<td><strong>230</strong></td>
<td>Cost accounting standards administration</td>
</tr>
<tr>
<td><strong>231</strong></td>
<td>Contract cost principles and procedures</td>
</tr>
<tr>
<td><strong>232</strong></td>
<td>Contract financing</td>
</tr>
<tr>
<td><strong>233</strong></td>
<td>Protests, disputes, and appeals</td>
</tr>
<tr>
<td><strong>SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING</strong></td>
<td></td>
</tr>
<tr>
<td><strong>234</strong></td>
<td>Major system acquisition</td>
</tr>
<tr>
<td><strong>235</strong></td>
<td>Research and development contracting</td>
</tr>
<tr>
<td><strong>236</strong></td>
<td>Construction and architect-engineer contracts</td>
</tr>
<tr>
<td><strong>237</strong></td>
<td>Service contracting</td>
</tr>
<tr>
<td><strong>239</strong></td>
<td>Acquisition of information technology</td>
</tr>
<tr>
<td><strong>241</strong></td>
<td>Acquisition of utility services</td>
</tr>
<tr>
<td><strong>SUBCHAPTER G—CONTRACT MANAGEMENT</strong></td>
<td></td>
</tr>
<tr>
<td><strong>242</strong></td>
<td>Contract administration and audit services</td>
</tr>
<tr>
<td><strong>243</strong></td>
<td>Contract modifications</td>
</tr>
<tr>
<td><strong>244</strong></td>
<td>Subcontracting policies and procedures</td>
</tr>
<tr>
<td><strong>245</strong></td>
<td>Government property</td>
</tr>
<tr>
<td><strong>246</strong></td>
<td>Quality assurance</td>
</tr>
<tr>
<td><strong>247</strong></td>
<td>Transportation</td>
</tr>
<tr>
<td><strong>249</strong></td>
<td>Termination of contracts</td>
</tr>
<tr>
<td><strong>250</strong></td>
<td>Extraordinary contractual actions</td>
</tr>
<tr>
<td><strong>251</strong></td>
<td>Use of government sources by contractors</td>
</tr>
<tr>
<td><strong>SUBCHAPTER H—CLAUSES AND FORMS</strong></td>
<td></td>
</tr>
<tr>
<td><strong>252</strong></td>
<td>Solicitation provisions and contract clauses</td>
</tr>
<tr>
<td><strong>253</strong></td>
<td>Forms</td>
</tr>
</tbody>
</table>
## Department of Defense

### SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

<table>
<thead>
<tr>
<th>Appendix</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Armed Services Board of Contract Appeals</td>
<td>568</td>
</tr>
<tr>
<td>B</td>
<td>Coordinated Acquisition Assignments</td>
<td>577</td>
</tr>
<tr>
<td>C</td>
<td>Component Breakout</td>
<td>587</td>
</tr>
<tr>
<td>D</td>
<td>DoD Spare Parts Breakout Program</td>
<td>589</td>
</tr>
<tr>
<td>E</td>
<td>Material Inspection and Receiving Report</td>
<td>609</td>
</tr>
<tr>
<td>F</td>
<td>Activity Address Numbers</td>
<td>624</td>
</tr>
<tr>
<td>G</td>
<td>Debarment and Suspension Procedures</td>
<td>657</td>
</tr>
<tr>
<td>I</td>
<td>Policy and Procedures for the DOD Pilot Mentor-Protege Program</td>
<td>658</td>
</tr>
</tbody>
</table>

**NOTE:** Although the text of Manuals and Supplements to the Defense FAR Supplement are not published in the Code of Federal Regulations, they were listed for the convenience of the user. All of the Supplements have been deleted. The only manuals which remain in effect are: Armed Services Pricing Manual (1986) and Armed Services Pricing Manual, Volume 2, Price Analysis (1987).
SUBCHAPTER A—GENERAL

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 201.1—Purpose, Authority, Issuance

Sec. 201.104 Applicability.
Sec. 201.105 Issuance.
Sec. 201.105–3 Copies.
Sec. 201.107 Certifications.

Subpart 201.2—Administration

Sec. 201.201 Maintenance of the FAR.
Sec. 201.201–1 The two councils.

Subpart 201.3—Agency Acquisition Regulations

Sec. 201.301 Policy.
Sec. 201.303 Publication and codification.
Sec. 201.304 Agency control and compliance procedures.

Subpart 201.4—Deviations From the FAR

Sec. 201.402 Policy.
Sec. 201.403 Individual deviations.
Sec. 201.404 Class deviations.

Subpart 201.6—Contracting Authority and Responsibilities

Sec. 201.602 Contracting officers.
Sec. 201.602–2 Responsibilities.
Sec. 201.602–70 Contract clause.
Sec. 201.603 Selection, appointment, and termination of appointment.
Sec. 201.603–2 Selection.
Sec. 201.603–3 Appointment.

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

Subpart 201.1—Purpose, Authority, Issuance

Sec. 201.104 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.

[56 FR 36284, July 31, 1991. Redesignated at 64 FR 39430, July 22, 1999]

Sec. 201.105 Issuance.

Sec. 201.105–3 Copies.


[64 FR 39430, July 22, 1999]

Sec. 201.107 Certifications.

In accordance with Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), a new requirement for a certification by a contractor or offeror may not be included in the DFARS unless—

(1) The certification requirement is specifically imposed by statute; or

(2) Written justification for such certification is provided to the Secretary of Defense by the Under Secretary of Defense (Acquisition, Technology, and Logistics), and the Secretary of Defense approves in writing the inclusion of such certification requirement.

[63 FR 11528, Mar. 9, 1998, as amended at 65 FR 39704, June 27, 2000]

Subpart 201.2—Administration

Sec. 201.201 Maintenance of the FAR.

(c) The composition and operation of the DAR Council is prescribed in DoDI 5000.63, Defense Acquisition Regulations (DAR) System.

(d)(1) 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, OSD(AT&L), 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 the change to the regulation.
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, conforming 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 that addresses the requirements of 201.402(2). The justification should be in the form of a memorandum for the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).

(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)(1) of this subsection, to the Director of the DAR Council.


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 Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD (AT&L)) 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.

Department of Defense

201.402

(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

<table>
<thead>
<tr>
<th>FAR</th>
<th>Is implemented as</th>
<th>Is supplemented as</th>
</tr>
</thead>
<tbody>
<tr>
<td>19</td>
<td>219</td>
<td>219.70</td>
</tr>
<tr>
<td>19.5</td>
<td>219.5</td>
<td>219.570</td>
</tr>
<tr>
<td>19.501–1(a)</td>
<td>219.501–1(a)</td>
<td>219.501–1–70</td>
</tr>
</tbody>
</table>

(56 FR 36284, July 31, 1991, as amended at 64 FR 51074, Sept. 21, 1999)

201.304 Agency control and compliance procedures.

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

(1)(i) Approval of the USD (AT&L) is required before including in a department/agency or component supplement, or any other contracting regulation document such as a policy letter or clause book, any policy, procedure, clause, or form that—

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

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

(ii) Except as provided in paragraph (2) of this section, the USD(AT&L) has delegated authority to the Director of Defense Procurement (USD(AT&L)DP) to approve or disapprove the policies, procedures, clauses, and forms subject to paragraph (1)(i) of this section.

(2) In accordance with Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), a new requirement for a certification by a contractor or offeror may not be included in a department/agency or component procurement regulation unless—

(i) The certification requirement is specifically imposed by statute; or

(ii) Written justification for such certification is provided to the Secretary of Defense by USD(AT&L), and the Secretary of Defense approves in writing the inclusion of such certification requirement.

(3) Contracting activities must obtain the appropriate approval (see 201.404) 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 regulation document such as a policy letter or clause book.

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

(5) Departments and agencies must submit requests for the Secretary of Defense, USD(AT&L), and USD(AT&L)DP approvals required by this section through the Director of the DAR Council.


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, and Logistics) (USD(AT&L)DP), is the approval authority within DoD for any individual or class deviation from—

(i) FAR 3.104, Procurement Integrity, or DFARS 203.104, Procurement Integrity;

(ii) FAR Subpart 27.4, Rights in Data and Copyrights, or DFARS Subpart 227.4, Rights in Data and Copyrights;

(iii) FAR part 30, Cost Accounting Standards Administration, or DFARS part 230, Cost Accounting Standards Administration;

(iv) FAR subpart 31.1, Applicability, or DFARS subpart 231.1, Applicability (contract cost principles);
201.403 Individual deviations.

(1) Individual deviations, except those described in 201.402(1) and paragraph (2) of this section, must be approved in accordance with the Department/Agency plan prescribed by 201.304(4).

(2) Submit requests for deviation approval through Department/Agency channels to the approval authority in paragraph (1) of this section, 201.403, or 201.404, as appropriate. Submit deviations that require USD(AT&L)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.


201.404 Class deviations.

(b)(1) Except as provided in paragraph (b)(ii) of this section, USD(AT&L)DP is the approval authority within DoD for any class deviation.


(A) Have a significant effect beyond the internal operating procedures of the department or agency;

(B) Have a significant cost or administrative impact on contractors or offerors;

(C) Diminish any preference given small business concerns by the FAR or DFARS; or

(D) Extend to requirements imposed by statute or by regulations of other agencies such as the Small Business
Department of Defense 201.603–2

201.602 Contracting officers.

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 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.

(1) Pursuant to 10 U.S.C. 1724, in order to qualify to serve as a contracting officer with authority to award or administer contracts for amounts above the simplified acquisition threshold, 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.


201.603–3 Appointment.

(a) 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.

(b) Agency heads may delegate the purchase authority in 213.301 to DoD civilian employees and members of the U.S. Armed Forces.

[56 FR 36284, July 31, 1991, as amended at 64 FR 56705, Oct. 21, 1999]

PART 202—DEFINITIONS OF WORDS AND TERMS


Subpart 202.1—Definitions

202.101 Definitions.

Congressional defense committees means—

(1) The Committee on Armed Services of the Senate;

(2) The Subcommittee on Defense of the Committee on Appropriations of the Senate;

(3) The Committee on Armed Services of the House of Representatives; and

(4) The Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.


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

Department of Defense Education Activity

TRICARE Management Activity

Real Estate and Facilities Directorate, Washington Headquarters Services

ARMY

Contract Support Agency

Office of the Deputy Chief of Staff for Research, Development, and Acquisition, Headquarters, U.S. Army Materiel Command

Aviation and Missile Command

Industrial Operations Command

Communications-Electronics Command

Tank-Automotive and Armaments Command

Training and Doctrine 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 Command

U.S. Army, Pacific

Military Traffic Management Command

Space and Strategic Defense Command

Eighth U.S. Army

Intelligence and Security Command

U.S. Army, South

Defense Supply Service-Washington

Directorate of Information Systems for Command, Control, Communications and Computers, Office of the Secretary of the Army

NAVY

Deputy, Acquisition and Business Management, Office of the Assistant Secretary of the Navy (Research, 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

Marine Corps Materiel Command
Departments and agencies, as used in DFARS, means the military departments and the defense agencies. The military departments are the Departments 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 Research Projects Agency, the Defense Contract Management Agency, the Defense Contracting Organization, the Defense Threat Reduction Agency, the National Imagery and Mapping Agency, the Defense Threat Reduction Agency, the Ballistic Missile Defense Organization, and the 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, Technology, and Logistics), 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, and Logistics);

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, and Logistics).

[56 FR 36287, July 31, 1991]

EDITORIAL NOTE: For Federal Register citations affecting section 202.101, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 203.1—Safeguards

Sec. 203.103 Independent pricing.

203.103 Independent pricing.  
203.103-2 Evaluating the certification.  
203.104 Procurement integrity.  
203.104-5 Disclosure of proprietary and source selection information.  
203.104-10 Violations or possible violations.

(b)(3) Report the matter in accordance with 209.406-3 or 209.407-3, and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

[64 FR 62984, Nov. 18, 1999]

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.

Subpart 203.4—Contingent Fees

203.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 203.5—Other Improper Business Practices

203.502 Subcontractor kickbacks.  
203.502-2 General.  
203.570 Prohibition on persons convicted of frauds or other defense-contract-related felonies.  
203.570-1 Scope.  
203.570-2 Policy.  
203.570-3 Waiver.  
203.570-4 Reporting.  
203.570-5 Contract clause.

[64 FR 62984, Nov. 18, 1999; 65 FR 4864, Feb. 1, 2000]

Subpart 203.7—Voiding and Rescinding Contracts

203.703 Authority.

Subpart 203.70—Contractor Standards of Conduct

203.700 Policy.  
203.701 Procedures.  
203.702 Contract clause.


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

Subpart 203.1—Safeguards

203.103 Independent pricing.

(b)(3) Report the matter in accordance with 209.406-3 or 209.407-3, and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

[64 FR 62984, Nov. 18, 1999]

203.104 Procurement integrity.

203.104-5 Disclosure of proprietary and source selection information.

(d)(4) For purposes of FAR 3.104-5(d)(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.


203.104-10 Violations or possible violations.

(d)(3) When referring a violation to the agency debarring and suspending official, use the procedures at 209.406-3 or 209.407-3, and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

[64 FR 62984, Nov. 18, 1999; 65 FR 4864, Feb. 1, 2000]

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...
Department of Defense

209.406-3 or 209.407–3, and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

[56 FR 36288, July 31, 1991, as amended at 64 FR 62984, Nov. 18, 1999]

Subpart 203.3—Reports of Suspected Antitrust Violations

203.301 General.

(b) Report suspected antitrust violations in accordance with 209.406-3 or 209.407–3, and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

[56 FR 36288, July 31, 1991, as amended at 64 FR 62984, Nov. 18, 1999]

Subpart 203.4—Contingent Fees

203.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(b) Report suspected fraud or other criminal conduct in accordance with 209.406-3 or 209.407–3, 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 or 209.407–3, and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

[56 FR 36288, July 31, 1991, as amended at 64 FR 62984, Nov. 18, 1999]

203.502–2 General.

(b) 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 Prohibition on persons convicted of frauds or other defense-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) A contractor or subcontractor 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;

(2) On its board of directors;

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

(4) In any capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.

(b) DoD has sole responsibility for determining the period of the prohibition described in paragraph (a) of this subsection. The prohibition period—

(1) Shall not be less than 5 years from the date of conviction unless the agency head or a designee grants a waiver in the interest of national security; and

(2) May be more than 5 years from the date of conviction if the agency head or a designee makes a written determination of the need for the longer period. The agency shall provide a copy of the determination to the Bureau of Justice Assistance, U.S. Department of Justice, 810 Seventh Street, NW, Washington, DC 20531.

[64 FR 14398, Mar. 25, 1999]

203.570–3 Waiver.

(a) The contracting officer shall—

(1) Review any request for waiver; and
203.570–4  
(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, Technology, and Logistics), 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, report the matter in accordance with 209.406–3 or 209.407–3, and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

[64 FR 62984, Nov. 18, 1999]

203.570–5  Contract clause.  
Use the clause at 252.203–7001, Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies, in all solicitations and contracts exceeding the simplified acquisition threshold, except solicitations and contracts for commercial items.

[64 FR 14398, Mar. 25, 1999]

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, and Logistics).  


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

Subpart 204.1—Contract Execution

Sec.

204.101 Contracting officer’s signature.

Subpart 204.2—Contract Distribution

204.201 Procedures.

204.202 Agency distribution requirements.

204.203 Taxpayer identification information.

Subpart 204.4—Safeguarding Classified Information Within Industry

204.402 General.

204.404 Contract clause.

204.404–70 Additional contract clauses.

Subpart 204.6—Contract Reporting

204.600 Scope of subpart.

204.601 Record requirements.

204.602 Federal Procurement Data System.

204.603 Solicitation provisions.

204.670 Defense Contract Action Data System (DCADS).

204.670–1 Definitions.

204.670–2 Reportable contracting actions.

204.670–3 Contracting office responsibilities.

204.670–4 Contract administration office responsibilities.

204.670–5 Departmental data collection point responsibilities.

204.670–6 Types of DD Form 350 reports.

204.670–7 Security classification.

Subpart 204.8—Contract Files

204.802 Contract files.

204.804 Closeout of contract files.

204.804–1 Closeout by the office administering the contract.

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

204.805 Disposal of contract files.

Subpart 204.9—Taxpayer Identification Number Information

204.902 General.

204.904 Reporting payment information to the IRS.

204.905 Solicitation provision.

Subpart 204.70—Uniform Procurement Instrument Identification Numbers

204.700 Scope.

204.701 Policy.

204.702 Procedures.

204.703 Basic PIN number.

204.704 Supplementary PIN numbers.

Subpart 204.71—Uniform Contract Line Item Numbering System

204.7100 Scope.

204.7101 Definitions.

204.7102 General.

204.7104 Contract subline items.

204.7104–1 Definitions.

204.7104–2 Numbering procedures.

204.7105 Contract exhibits and attachments.

204.7106 Contract modifications.

204.7107 Contract accounting classification reference number (ACRN).

Subpart 204.72—Contractor Identification

204.7200 Scope of subpart.

204.7201 Definitions.

204.7202 General.

204.7202–1 CAGE codes.

204.7202–2 DUNS numbers.

204.7202–3 TINs.

204.7203 Responsibilities of contracting officers.

204.7204 Maintenance of the CAGE file.

204.7205 Novation agreements, mergers and sales of assets.

204.7206 Using CAGE codes to identify agents and brokers.

204.7207 Solicitation provision.

Subpart 204.73—Central Contractor Registration

204.7300 Scope.

204.7301 Definitions.

204.7302 General.

204.7303 Procedures.

204.7304 Contract clause.

204.101 Contracting officer’s signature.

(a)(i) Include the contracting officer’s telephone number and, when available, e-mail/Internet address 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) retained the original signed contract for the official contract file. Administrative contracting officers and termination 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.

(c) Distribute one copy to each Defense Finance and Accounting Service (DFAS) accounting station cited in the contract, in addition to the copy provided to each DFAS funding office.

(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 DCAAP 5100.1, Directory of DCAA Offices, available on the World Wide Web, Internet address http://www.deskbook.osd.mil, under reference library documents)—

(A) Cost reimbursement;
(B) Time-and-materials;
(C) Labor-hour;
(D) Fixed-price contracts with provisions for redetermination, cost incentives, economic price adjustment based on cost, 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.


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 Supply Center Philadelphia European Region;

(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 the payment office (see the Federal Directory of Contract Administration Services Components); and

(v) One copy, or an extract of the pertinent information, to the cognizant Defense Security Service office listed in DoD 5100.76–M, Physical Security of
Safeguarding 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.


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. 102–196, 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, National Industrial Security Program Operating 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, as amended at 64 FR 51975, Sept. 21, 1999]

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.

(c) Use the clause at 252.204–7005, Oral Attestation of Security Responsibilities, in solicitations and contracts that include the clause at FAR 52.204–2, Security Requirements.

[57 FR 14992, Apr. 23, 1992, as amended at 64 FR 45197, Aug. 19, 1999]

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 that supports the uniform reporting requirements for—

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

(2) DD Form 1057, Monthly Summary of Contracting Actions.

[65 FR 39708, June 27, 2000]

204.601 Record requirements.

(a) The DCADS meets FAR Subpart 4.6 record retention requirements.

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

[65 FR 39708, June 27, 2000]

204.602 Federal Procurement Data System.


[66 FR 47096, Sept. 11, 2001]

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 action related to the purchasing, renting, or leasing of supplies, services, or construction. The term does not include grants, cooperative agreements, or training authorizations. The term includes, but is not limited to, the following:

(1) Definitive contracts, including notices of award.

(2) Letter contracts.

(3) Purchase orders.

(4) Purchases made using the Governmentwide commercial purchase card.

(5) Actions for purchase of land or rental or lease of real property.

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

(i) Orders against basic ordering agreements, including service orders issued on DD Form 1164, Service Order for Personal Property, 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. 
(7) Contract modifications, e.g.—
(i) Change orders; 
(ii) Supplemental agreements; 
(iii) Funding actions; and 
(iv) Option exercises. 
(c) Departmental data collection points means—
(1) For the Army (including Corps of Engineers Civil Works): Department of the Army, ATTN: SAAL-PA, 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041–3201. 
(6) For other DoD contracting activities: Department of the Army, ATTN: SAAL-PA, 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041–3201. 
(d) United States and outlying areas is defined in Federal Information Processing Standard Publication (FIPS PUB) 55, 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. 

204.670–2 Reportable contracting actions.

(a) Except as provided in paragraph (c) of this subsection, complete a DD Form 350 for the following types of contracting actions in accordance with the instructions in 253.204–70:
(1) Actions that obligate or deobligate more than $25,000, except actions summarized on DD Form 1057 in accordance with paragraph (b)(2) or (3) of this subsection. 
(2) Actions that obligate or deobligate $25,000 or less and are—
(i) Under a very small business set-aside (see FAR Subpart 19.9); 
(ii) Requirements that DoD is processing for a non-DoD Federal agency; 
(iii) Multiple reports required by 204.670–6(c)(1) to separate foreign military sales (FMS) requirements from non-FMS requirements; or 
(iv) In a designated industry group under the Small Business Competitiveness Demonstration Program (see FAR Subpart 19.10), except for—
(A) Foreign military sales; 
(B) Orders or modifications under Federal schedules; 
(C) Actions with government agencies; 
(D) Actions with non-U.S. business firms; and 
(E) Actions where the place of performance is other than the United States and its outlying areas. 
(3) Actions that establish an indefinite-delivery contract not reported under other paragraphs of this subsection. 
(4) Actions of any dollar value that the contracting office chooses to report on a DD Form 350. 
(b) Except as provided in paragraph (c) of this subsection, summarize the following types of contracting actions on the monthly DD Form 1057 in accordance with the instructions in 253.204–71:
(1) Actions that obligate or deobligate $25,000 or less, except actions reported on DD Form 350 in accordance with paragraph (a)(2), (3), or (4) of this subsection.

(2) Actions that obligate or deobligate more than $25,000, but not more than $200,000, and support—
   (i) A contingency operation as defined in 10 U.S.C. 101(a)(13); or
   (ii) A humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8).

(3) Actions that obligate or deobligate more than $25,000, but not more than $200,000, and are placed by a contracting officer on a Navy vessel.

(c) Do not report the following types of contracting action 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 Government-wide commercial purchase card.
   (2) Transactions that cite only non-appropriated funds (Treat funds held in trust accounts for foreign governments as appropriated funds).
   (3) Transactions for purchase of land, or rental or lease of real property, when the General Services Administration (GSA) executes the 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 basic ordering agreements.
   (6) Requisitions transferring supplies within or among the departments or agencies.
   (7) Pursuant to 204.670–6(b), orders placed by other contracting activities against indefinite-delivery contracts awarded by the—
      (i) Military Traffic Management Command;
      (ii) Defense Energy Support Center for petroleum and petroleum products; or
      (iii) Defense Supply Center, Richmond, for petroleum products

acquisition. Each contracting office with a separate code must submit its own DD Form 1057.

(2) Complete the DD Form 1057 within three working days after the cutoff of the reporting month. Contracting offices may not cut off the reporting month before the 25th calendar day. The cutoff date for September is September 30. Submit the DD Form 1057 to the departmental data collection point in accordance with departmental or 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.

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 offices;

(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 and 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. Report Control Symbol DD–AT&L(M)1014 applies to reports for DD Form 350 actions, and Report Control Symbol DD–AT&L(M)1015 applies to reports for DD Form 1057 actions.

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 action.

(b) A consolidated report combines several actions.

(1) Prepare consolidated reports for—

(i) Military Traffic Management 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.

(ii) Defense Energy Support Center or 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.

(iii) Orders placed by the Defense Commissary Agency (DeCA) for resale items over $25,000. DeCA consolidates the orders monthly and reports the cumulative dollar amounts and actions on one DD Form 350.

(iv) 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 amounts and actions on one DD Form 350.

(2) Consolidated reports may be prepared in accordance with departmental or 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 action includes FMS requirements in addition to non-FMS requirements (Line 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.

(2) The action includes more than one type of contract (Line C5 on the DD Form 350) and the type with the least dollar value exceeds $500,000. Prepare a separate DD Form 350 for each contract type.

(3) The action includes non-DoD Federal agency requirements and DoD requirements. Submit one DD Form 350 for the non-DoD requirements and another DD Form 350 for the DoD requirements.

§204.670–7 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 any information on the DD Form 350. If contact cannot be made for security reasons, obtain instructions from the Director of Security, Office of the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence), (703) 614–0578, or DSN 224–0578.

§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 simplified acquisition 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 cost or pricing data (see FAR 15.403–4), 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—Taxpayer Identification Number Information

Source: 64 FR 43099, Aug. 9, 1999, unless otherwise noted.

204.902 General.
(b) DoD uses DD Form 350, Individual Contracting Action Report, (see 204.670) to meet these reporting requirements.
[64 FR 43099, Aug. 9, 1999]

204.904 Reporting payment information to the IRS.
(1) 26 U.S.C. 6041 and 6041A and 26 CFR 1.6041 require Government payors to report to the IRS, on IRS Form 1099, payments of an annual cumulative value of $600 or more provided to a contractor, except payments for—
   (i) Supplies, unless the supplies are incidental to the furnishing of services;
   (ii) Telegram, telephone, freight, storage, or similar charges;
   (iii) Income that the payor must report on IRS Form W-2 (e.g., payments to employees or payments under contracts for personal services);
   (iv) Any contract with a Federal agency;
   (v) Any contract with a State, the District of Columbia, or a possession of the United States; or a political subdivision, agency, or instrumentality of any of the foregoing;
   (vi) Any contract with an organization exempted from taxation by 26 U.S.C. 501(a). Such organizations may include charitable, social welfare, labor, agricultural, veterans’, and political organizations; business leagues; social clubs; fraternal societies; and employees’ associations. Contracting officers may obtain additional information to assist in determining an organization’s tax-exempt status via the Internet at http://www.irs.ustreas.gov/prod/bus_info/oo/oo-types.html;
   (vii) Any contract with a foreign government or a political subdivision of a foreign government;
   (viii) Any contract with an international organization listed in 22 U.S.C. 288;
   (ix) Any classified contract excepted by 26 U.S.C. 6050M. As used in this section only, a contract is classified if—
      (A) DoD designates the existence of the contract or the contract subject matter as classified (i.e., the contract requires a specific degree of protection against unauthorized disclosure for reasons of national security); or
      (B) The head of the agency determines that filing IRS Form 1099 would interfere with the effective conduct of a confidential law enforcement or foreign intelligence activity; or
   (x) Such other services as the IRS may specify in regulations.
   (2) Unless an exception in paragraph (1) of this section applies, the contracting officer must provide, as the last page of the copy of the contract sent to the payment office—
      (i) A statement that the contractor is providing services subject to Form 1099 payment information reporting to the IRS, as required by 26 U.S.C. 6041 and 6041A; and
      (ii) The contractor’s Taxpayer Identification Number and type of organization, if the contract does not include the clause at 252.204–7004, Required Central Contractor Registration.

204.905 Solicitation provision.
Do not use the provision at FAR 52.204–3, Taxpayer Identification, in solicitations that include the clause at 252.204–7004, Required Central Contractor Registration.

Subpart 204.70—Uniform Procurement Instrument Identification Numbers

204.7000 Scope.
This subpart prescribes policies and procedures for assigning numbers to all solicitation, 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.


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 letter “I” or “O”.

(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).
(C) Department of the Air Force F
(D) Defense Information Systems DCA Agency.
(E) Defense Logistics Agency ...... S
(F) Defense Threat Reduction Agency.
(G) National Imagery and Mapping Agency.
(H) Miscellaneous Defense Activities.
(I) Marine Corps ....................... M
(J) Ballistic Missile Defense Organization.
(K) Defense Commissary Agency DECA
(L) United States Special Operations Command.
(M) Defense Microelectronics Activity DMEA

(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
204.7004 Supplementary PII numbers.

(a) Uses of the supplementary PII 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

<table>
<thead>
<tr>
<th>Position</th>
<th>Contents</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-6</td>
<td>Identification of department/agency office</td>
</tr>
<tr>
<td>7-8</td>
<td>Last two digits of the fiscal year in which the PII number is assigned</td>
</tr>
<tr>
<td>9</td>
<td>Type of number</td>
</tr>
<tr>
<td>10-13</td>
<td>Four position serial number</td>
</tr>
</tbody>
</table>

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 defines 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:

<table>
<thead>
<tr>
<th>Normal modification</th>
<th>Provisioned items order (reserved for exclusive use by the Air Force only)</th>
<th>Shipping instructions</th>
</tr>
</thead>
<tbody>
<tr>
<td>A0001–A9999.........</td>
<td>L0001–L9999 RA001–R9999</td>
<td>X0001–X9999</td>
</tr>
<tr>
<td>B0001–B9999.........</td>
<td>M0001–M9999</td>
<td>Y0001–Y9999</td>
</tr>
<tr>
<td>and so on to</td>
<td>and so on to</td>
<td>and so on to</td>
</tr>
<tr>
<td>H0001–H9999.........</td>
<td>MA001–M9999 UA001–U9999</td>
<td>WA001–W9999</td>
</tr>
<tr>
<td>N0001–N9999.........</td>
<td>MA001–M9999 UA001–U9999</td>
<td>WA001–W9999</td>
</tr>
<tr>
<td>J0001–J9999.........</td>
<td>NA001–N9999 VA001–V9999</td>
<td></td>
</tr>
</tbody>
</table>

(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 ARZ999, 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 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 Federal 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 Defense Information Technology Contracting Organization.

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 @ $.96, 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;
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

(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 offerer 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 section.

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

(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).

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Supplies/service</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0001AA</td>
<td>A3168R–9030–4025 A2537M IPD: 2 RDD: 334 PROJ: 501.</td>
<td>10</td>
<td>EA</td>
<td>$100.00</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>0001AB</td>
<td>A3168R–9030–4026 A51AXBM IPD: 2 RDD: 325 PROJ: 502.</td>
<td>10</td>
<td>EA</td>
<td>$100.00</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>0001AC</td>
<td>A3168R–9030–4027 A67KBCM IPD: 2 RDD: 349 PROJ: 503.</td>
<td>15</td>
<td>EA</td>
<td>$100.00</td>
<td>$1,500.00</td>
</tr>
</tbody>
</table>

(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).

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Supplies/service</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0001AA</td>
<td>A3168R–9030–4025 A2537M IPD: 2 RDD: 334 PROJ: 501.</td>
<td>10</td>
<td>EA</td>
<td>$100.00</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>0001AB</td>
<td>A3168R–9030–4026 A51AXBM IPD: 2 RDD: 325 PROJ: 502.</td>
<td>20</td>
<td>EA</td>
<td>$99.00</td>
<td>$1,980.00</td>
</tr>
<tr>
<td>0001AC</td>
<td>A3168R–9030–4027 A67KBCM IPD: 2 RDD: 349 PROJ: 503.</td>
<td>30</td>
<td>EA</td>
<td>$98.00</td>
<td>$2,940.09</td>
</tr>
</tbody>
</table>

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).

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Supplies/service</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0013</td>
<td>Boots Insulated, Cold Weather White, Type II, Class 1</td>
<td></td>
<td>PR</td>
<td>$38.35</td>
<td>$13,422.50</td>
</tr>
<tr>
<td>0013AA</td>
<td>8430–00–655–5541 Size 8N</td>
<td>50</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0013AB</td>
<td>8430–00–655–5544 Size 9N</td>
<td>70</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0013AC</td>
<td>8430–00–655–5551 Size 9R</td>
<td>30</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0013AD</td>
<td>8430–00–655–5535 Size 8R</td>
<td>200</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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).

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Supplies/service</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0002</td>
<td>Body Armor Ground Troops Variable Type Small Arms, Fragmentation Protective Nylon Felt Vest, Front and Back Plates, Ceramic Plate, Type I.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0002AA</td>
<td>First Article</td>
<td>1</td>
<td>LO</td>
<td>NSP</td>
<td></td>
</tr>
<tr>
<td>0002AB</td>
<td>8470–00–140–0935, Medium Regular</td>
<td>1936</td>
<td>SE</td>
<td>$331.77</td>
<td>$642,306.72</td>
</tr>
<tr>
<td>0002AC</td>
<td>8470–00–140–0936, Large Regular</td>
<td>625</td>
<td>SE</td>
<td>355.77</td>
<td>222,356.25</td>
</tr>
<tr>
<td>0002AD</td>
<td>8470–00–140–0937, Medium Long</td>
<td>1237</td>
<td>SE</td>
<td>346.77</td>
<td>428,954.49</td>
</tr>
<tr>
<td>0002AE</td>
<td>8470–00–140–0938, Large Long</td>
<td>804</td>
<td>SE</td>
<td>365.77</td>
<td>294,079.08</td>
</tr>
</tbody>
</table>

(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.)

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Supplies/service</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0001</td>
<td>6105–00–635–6568 50380</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0001AA</td>
<td>Ref No 63504–WZ Armature ........................................</td>
<td>2</td>
<td>Ea</td>
<td>$2,895.87</td>
<td>$5,791.74</td>
</tr>
<tr>
<td>0001AB</td>
<td>Ref No 63504–WZ Armature Motor ACRN:AA</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0001AB</td>
<td>Packaging ACRN:AA ...............................................</td>
<td>2</td>
<td>Ea</td>
<td>$289.58</td>
<td>$579.16</td>
</tr>
</tbody>
</table>

(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).

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Supplies/service</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0002</td>
<td>Pulse Decoder, KY–312/ASQ–19 ACRN: AJ</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0002AB</td>
<td>Pulse Decoder, KY–312/ASQ–19 ACRN: AB</td>
<td>2</td>
<td></td>
<td></td>
<td>6,074.80</td>
</tr>
<tr>
<td>0002AC</td>
<td>Pulse Decoder, KY–312/ASQ–19 ACRN: AL</td>
<td>6</td>
<td></td>
<td>18,224.40</td>
<td></td>
</tr>
<tr>
<td>0002AC</td>
<td>Pulse Decoder, KY–312/ASQ–19 ACRN: AC</td>
<td>2</td>
<td></td>
<td></td>
<td>6,074.80</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Supplies/service</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0001</td>
<td>Air Vehicle ...........................................................</td>
<td>1</td>
<td>Ea</td>
<td>$6,700,000</td>
<td>$6,700,000</td>
</tr>
<tr>
<td>000101</td>
<td>ACRN:AB $3,300,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>000102</td>
<td>ACRN:AC $2,000,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>000103</td>
<td>ACRN:AC $1,400,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(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).
### 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 exhibit line items Serial number sequence.

(c) Numbering exhibit line items and subline items—

(1) 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 sequences.

(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.

<table>
<thead>
<tr>
<th>Cumulative No. of line items</th>
<th>Serial number sequence</th>
</tr>
</thead>
<tbody>
<tr>
<td>1–33</td>
<td>01 thru 99, then OA thru OZ, then 10 thru 19, then 1A thru 1Z, then 20 thru 29, then 2A thru 2Z, then 30 thru 39, then 3A thru 3Z, then 40 thru 49, then 4A thru 4Z, then 50 thru 59, then 5A thru 5Z, then 60 thru 69, then 6A thru 6Z, then 70 thru 79, then 7A thru 7Z, then 80 thru 89, then 8A thru 8Z, then 90 thru 99, then 9A thru 9Z, then A0 thru A9, then AA thru AZ, then B0 thru B9, then BA thru BZ, then C0 thru C9, then CA thru CZ, then D0 thru D9, then DA thru DZ, then E0 thru E9, then EA thru EZ, then F0 thru F9, then FA thru FZ, then</td>
</tr>
</tbody>
</table>

| 34–67                        | 01 thru 99, then OA thru OZ, then |
| 68–101                       | 01 thru 99, then OA thru OZ, then |
| 102–135                      | 01 thru 99, then OA thru OZ, then |
| 136–169                      | 01 thru 99, then OA thru OZ, then |
| 170–203                      | 01 thru 99, then OA thru OZ, then |
| 204–237                      | 01 thru 99, then OA thru OZ, then |
| 238–271                      | 01 thru 99, then OA thru OZ, then |
| 272–305                      | 01 thru 99, then OA thru OZ, then |
| 306–339                      | 01 thru 99, then OA thru OZ, then |
| 340–373                      | 01 thru 99, then OA thru OZ, then |
| 374–407                      | 01 thru 99, then OA thru OZ, then |
| 408–441                      | 01 thru 99, then OA thru OZ, then |
| 442–476                      | 01 thru 99, then OA thru OZ, then |
| 476–509                      | 01 thru 99, then OA thru OZ, then |
| 510–543                      | 01 thru 99, then OA thru OZ, then |

(ii) Three position numbers.

<table>
<thead>
<tr>
<th>Cumulative No. of line items</th>
<th>Serial number sequence</th>
</tr>
</thead>
<tbody>
<tr>
<td>1–33</td>
<td>01 thru 99, then OA thru OZ, then 10 thru 19, then 1A thru 1Z, then 20 thru 29, then 2A thru 2Z, then 30 thru 39, then 3A thru 3Z, then 40 thru 49, then 4A thru 4Z, then 50 thru 59, then 5A thru 5Z, then 60 thru 69, then 6A thru 6Z, then 70 thru 79, then 7A thru 7Z, then 80 thru 89, then 8A thru 8Z, then 90 thru 99, then 9A thru 9Z, then A0 thru A9, then AA thru AZ, then B0 thru B9, then BA thru BZ, then C0 thru C9, then CA thru CZ, then D0 thru D9, then DA thru DZ, then E0 thru E9, then EA thru EZ, then F0 thru F9, then FA thru FZ, then</td>
</tr>
</tbody>
</table>

| 34–67                        | 01 thru 99, then OA thru OZ, then |
| 68–101                       | 01 thru 99, then OA thru OZ, then |
| 102–135                      | 01 thru 99, then OA thru OZ, then |
| 136–169                      | 01 thru 99, then OA thru OZ, then |
| 170–203                      | 01 thru 99, then OA thru OZ, then |
| 204–237                      | 01 thru 99, then OA thru OZ, then |
| 238–271                      | 01 thru 99, then OA thru OZ, then |
| 272–305                      | 01 thru 99, then OA thru OZ, then |
| 306–339                      | 01 thru 99, then OA thru OZ, then |
| 340–373                      | 01 thru 99, then OA thru OZ, then |
| 374–407                      | 01 thru 99, then OA thru OZ, then |
| 408–441                      | 01 thru 99, then OA thru OZ, then |
| 442–476                      | 01 thru 99, then OA thru OZ, then |
| 476–509                      | 01 thru 99, then OA thru OZ, then |
| 510–543                      | 01 thru 99, then OA thru OZ, then |

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 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. (1) 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).

(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 comply with the reporting requirements of subpart 204.6; or

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

[64 FR 43099, Aug. 9, 1999]

204.7201 Definitions.

(a) Commercial and Government Entity (CAGE) code means—

(1) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or

(2) A code assigned by a member of the North Atlantic Treaty Organization (NATO) that DLIS records and maintains in the CAGE master file. This type of code is known as an "NCAGE code."

(b) Contractor identification code means a code that the contracting office uses to identify an offeror. The three types of contractor identification codes are CAGE codes, Data Universal Numbering System (DUNS) numbers, and Taxpayer Identification Numbers (TINs).

[64 FR 43099, Aug. 9, 1999]

204.7202 General.

204.7202–1 CAGE codes.


(b)(1) If a prospective contractor must register in the Central Contractor Registration (CCR) database (see subpart 204.73) and does not have a CAGE code, DLIS will assign a CAGE code when the prospective contractor submits its request for registration in the CCR database.

(2) If registration in the CCR database is not required, the prospective contractor’s CAGE code is not already available in the contracting office, and the prospective contractor does not respond to the provision at 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting, use the following procedures:

(i) To identify the prospective contractor’s CAGE code, use—

(A) The monthly H-series CD ROM that contains the H-4/H-8 CAGE master file issued by DLIS (Their address is: Customer Service, Federal Center, 74 Washington Avenue, North, Battle Creek, MI 49017-3084. Their telephone number is: toll-free 1–888–352-9333);

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

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

(D) The Internet to access the CAGE Lookup Server at http://www.dlis.dla.mil/cageserve.htm.

(ii) If no CAGE code is identified through use of the procedures in paragraph (b)(2)(i) of this subsection, ask DLIS to assign a CAGE code. Submit a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code, (or electronic equivalent) to the address in paragraph (b)(2)(i)(A) of this subsection. ATTN: DLIS–SBB. The contracting office completes Section A of the DD Form 2051, and the contractor completes Section B. The contracting office must verify Section B before submitting the form.

(c) Direct questions on obtaining computer tapes, electronic updates, or code assignments to DLIS Customer Service: toll-free (888) 227–2423 or (888) 362–9333; DSN 932–4725; or commercial (616) 961–4725.

204.7202–2 **DUNS numbers.**

> Requirements for use of DUNS numbers are in FAR 4.602(d) and 4.603.
> 
> [64 FR 43100, Aug. 9, 1999]

204.7202–3 **TINs.**

> Requirements for use of TINs are in FAR subpart 4.9.
> 
> [64 FR 43100, Aug. 9, 1999]

204.7203 **Responsibilities of contracting officers.**

(a) Assist offerors in obtaining the required CAGE codes.

(b) Do not deny a potential offeror a solicitation package because the offeror does not have a contractor identification code.

(c) Consider requesting a CAGE code at the time a potential 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.

[64 FR 43100, Aug. 9, 1999]

204.7204 **Maintenance of the CAGE file.**

(a) DLIS will accept written requests for changes to CAGE files, other than name changes, from the following entities:

1. The entity identified by the code.
   The entity must use company letterhead to forward the request.
2. The contracting office.
3. The contract administration office.

(b) Submit requests for changes to CAGE files on DD Form 2051, or electronic equivalent, to—Defense Logistics Information Service, DLIS–SBB, Federal Center, 74 Washington Avenue, North, Battle Creek, MI 49017–3084.

(c) The contracting officer responsible for execution of a change-of-name agreement (see FAR subpart 42.12) must submit the agreement to DLIS–SBB. If there are no current contracts, each contracting and contract administration office receiving notification of changes from the commercial entity must forward a copy of the change notice annotated with the CAGE code to DLIS–SBB unless the change notice indicates that DLIS–SBB already has been notified.


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 (transferor).

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

(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 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.


204.7207 Solicitation provision.

Use the provision at 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting, in solicitations when—

(a) The solicitation does not include the clause at 252.204–7004, Required Central Contractor Registration; and

(b) The CAGE codes for the potential offerors are not available to the contracting office.

[66 FR 47097, Sept. 11, 2001]

Subpart 204.73—Central Contractor Registration

SOURCE: 63 FR 1317, Mar. 31, 1998, unless otherwise noted.

204.7300 Scope.

This subpart prescribes policies and procedures for requiring contractor registration in the DoD Central Contractor Registration (CCR) database to comply with the Debt Collection Improvement Act of 1996 (31 U.S.C. 3332; 31 U.S.C. 7701), and to increase visibility of vendor sources for specific supplies and services and their geographical locations.

204.7301 Definitions.

Central Contractor Registration (CCR) database, Data Universal Numbering System (DUNS) number, Data Universal Numbering System+(4) (DUNS+(4)) number, and Registered in the CCR database are defined in the clause at 252.204–7004, Required Central Contractor Registration.

204.7302 Policy.

Prospective contractors must be registered in the CCR database prior to award of a contract, basic agreement, basic ordering agreement, or blanket purchase agreement, except for—

(a) Purchases paid for with a Governmentwide commercial purchase card;

(b) Awards made to foreign vendors for work performed outside the United States;

(c) Classified contracts or purchases (see FAR 4.401) when registration in the CCR database, or use of CCR data, could comprise the safeguarding of classified information or national security;

(d) Contracts awarded by deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) or humanitarian or peacekeeping operations as defined in 10 U.S.C. 2302(7), or contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies; and

(e) Purchases to support unusual or compelling needs of the type described in FAR 6.302–2.

[64 FR 43100, Aug. 9, 1999]

204.7303 Procedures.

(a)(1) Except as provided in 204.7302, the contracting officer must require each offeror to provide a DUNS number (see 204.603(2)) or, if applicable, a DUNS+(4) number, with its verbal or written offer, regardless of the dollar amount of the offer.

(2) Before awarding a contract, basic agreement, basic ordering agreement, or blanket purchase agreement, the contracting officer must verify that the prospective contractor is registered in the CCR database (but see paragraph (b) of this section). The contracting officer may verify registration using the DUNS number or, if applicable, the DUNS+(4) number, by calling toll-free: 1–888–227–2423, commercial: (616) 961–5757, or DSN: 932–5757; via the Internet at http://www.ccr.gov; or as otherwise provided by agency procedures.

(3) The contracting officer need not verify registration before placing an
order or call under a DoD contract or agreement.

(4) The contracting officer must verify registration before placing an order or call under a non-DoD contract or agreement. If the contracting is not registered, the contracting officer must follow the procedures in paragraph (b) of this section.

(5) As part of the annual review of basic agreements, basic ordering agreements, and blanket purchase agreements, contracting officers must modify these agreements to incorporate the clause at 252.204–7004, Required Central Contractor Registration.

(b) If the contracting officer determines that a prospective contractor is not registered in the CCR database and an exception to the registration requirements for the award does not apply (see 204.7302), the contracting officer must—

(1) If the needs of the requiring activity allow for a delay, proceed to award after the contractor is registered; or

(2) If the needs of the requiring activity do not allow for a delay, proceed to award to the next otherwise successful registered offeror, provided that written approval is obtained at one level above the contracting officer.

(c) Agencies must protect against improper disclosure of contractor CCR information.

(d) The contracting officer must, on contractual documents transmitted to the payment office, provide either the Commercial and Government Entity code or the DUNS number in accordance with agency procedures.


§ 204.7304 Contract clause.

Except as provided in 204.7302, use the clause at 252.204–7004, Required Central Contractor Registration, in solicitations and contracts.

[64 FR 43101, Aug. 9, 1999]
SUBCHAPTER B—ACQUISITION PLANNING

PART 205—PUBLICIZING CONTRACT ACTIONS

Subpart 205.2—Synopses of Proposed Contract Actions

Sec. 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 historically black college and university and minority institution set-asides under 226.7003, use CBD Numbered Note 5.

(ii) For acquisitions being considered for historically black colleges and universities 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).

Subpart 205.3—Synopses 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

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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.

written approval from the agency official designated in accordance with paragraph (a)(i) of this section.


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.

(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 information 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

48 CFR Ch. 2 (10–1–02 Edition)
of FAR 6.202(a) is in Table 6–1, Determinations and Findings.

TABLE 6–1—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 ________:

(Describe requirement.) Findings The exclusion of ________ 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 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 establishing 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.)

Alternate 3: is in the interest of national defense because it will result in improvement of equipment that is in development or production.

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 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—

(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

1Identify source being excluded.


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;
(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 DoD 4140.1–R, DoD Materiel Management Regulation, 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 the head of the contracting activity prepares a document that 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.

[63 FR 67803, Dec. 9, 1998]

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, and Logistics).

(ii) The limitation in paragraph (c)(1) of this subsection applies only if the statute authorizing or requiring award was enacted after September 30, 1989.
(ii) 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.


PART 207—ACQUISITION PLANNING

Subpart 207.1—Acquisition Plans

Sec. 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.

(d)(i) 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 that covers all known present and future requirements. This exception does not apply to a multiyear contract or a contract with options or phases.

(e) Prepare written acquisition plans for acquisition programs meeting the thresholds of paragraphs (d)(1) (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.

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

(i)(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.

(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.

For acquisitions covered by 207.103(d)(1) (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. Also see DoD 4120.24-M, Defense Standardization Program (DSP) Policies and Procedures.


(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).

(19) 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)(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, 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 DoD Instruction 4715.4, Pollution Prevention.

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

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 reproduce 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.
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 US.C. 2401a).


207.471 Funding requirements.


(b) DoD leases are either capital leases or operating leases. The difference between the two types of leases is described in FMR 7000.14-R, Volume 4, Chapter 7, Section 070207.

(c) Capital leases are essentially installment purchases of property. Use procurement funds for capital leases.

[64 FR 31732, June 14, 1999, as amended at 66 FR 55121, Nov. 1, 2001]
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, 8725 John J. Kingman Road, Suite 4616, Fort Belvoir, VA 22060-6223.

(g) Acquire helium (Pub. L. 86–777)—

(1) 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.

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(ii) In cylinders or trailers, from—

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

(B) Through GSA Federal Supply Schedule contracts.

208.004 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.

208.004–1 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.

208.004–2 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) When ordering from schedules, ordering offices—

(i) May use DD Form 1155, Order for Supplies or Services, to place orders for—

(A) Commercial items at or below the simplified acquisition threshold; and

(B) Other than commercial items at any dollar value (see 213.307);

(ii) Shall use SF 1449, Solicitation/Order for Commercial Items, to place orders for commercial items exceeding the simplified acquisition threshold (see FAR 12.204); and

(iii) May use SF 1449 to place orders for other than commercial items at any dollar value.

(2) Schedule orders may be placed orally if—

(i) 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 the order;

(E) Itemized listing of supplies or services furnished; and

(F) Date of delivery or shipment; and

(ii) 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 in accordance with 213.305 is authorized when—

(i) The order does not exceed the threshold at FAR 13.305–3(a); and

(ii) The contractor agrees to the procedure.

(4) If permitted under the schedule contract, use of the Governmentwide commercial purchase card—

(i) Is mandatory for placement of orders valued at or below the micro-purchase threshold; and

(ii) Is optional for placement of orders valued above the micro-purchase threshold.


Subpart 208.6—Acquisition from Federal Prison Industries, Inc.

208.602 Policy.

(a) Before purchasing a product listed in the FPI Schedule, departments and agencies shall conduct market research to determine whether the FPI product is comparable to products available from the private sector that best meet the Government’s needs in terms of price, quality, and time of delivery (10 U.S.C. 2410n). This is a unilateral decision made solely at the discretion of the department or agency.

(i) If the FPI product is comparable, follow the policy at FAR 8.602(a).

(ii) If the FPI product is not comparable—

(A) Use competitive procedures to acquire the product; and

(B) Consider a timely offer from FPI for award in accordance with the specifications and evaluation factors in the solicitation.

[67 FR 20688, Apr. 26, 2002]

208.606 Exceptions.

For DoD, FPI clearances also are not required—

(1) For orders of listed items totaling $250 or less that require delivery within 10 days; or

(2) If market research shows that the FPI product is not comparable to products available from the private sector that best meet the Government’s needs in terms of price, quality, and time of delivery.

[67 FR 20688, Apr. 26, 2002]
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

208.7001 Definitions.

For purposes of this subpart—

**Acquiring department** means the department, agency, or General Services Administration which has contracting 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 Deputy Under Secretary of Defense (Logistics);
(2) To GSA, through agreement with GSA, by the Deputy Under Secretary of Defense (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. 2311).

(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 Deputy Under Secretary of Defense (Logistics)—

(1) To the departments and agencies; and
(2) To GSA, through agreement with GSA.

[56 FR 36306, July 31, 1991, as amended at 64 FR 51075, Sept. 21, 1999]
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 6.302(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 (see FAR 11.302(b));
(9) A statement as to whether the acquiring department may exceed the total MIPR estimate, and if so, by what amount; and
(10) Unless otherwise agreed between the departments, an original and six copies of each MIPR and its attachments (except specifications, drawings, and other data).


208.7003 Applicability.

208.7003–1 Assignments under integrated materiel 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 2; and

(2) Ensure that a waiver is obtained from the IMM manager before initiating an acquisition exceeding the simplified acquisition threshold in FAR part 2, 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 Supply Center, Columbus, ATTN: DSCC–BDL, P.O. Box 3990, Columbus, OH 43216–5000
Defense Energy Support Center, ATTN: DESC–FI, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6222
Defense Supply Center, Richmond, ATTN: DSCR–RZO, 8000 Jefferson Davis Highway, Richmond, VA 23297–5000
Defense Supply Center, Philadelphia, ATTN: DSCP–ILSI (for General and Industrial), DSCP–OCS (for Medical, Clothing, and Textiles), 700 Robbins Avenue, Bldg. 4, Philadelphia, PA 19111–5096

In addition, forward a copy of each request to:

(iii) For AMC:

[60 FR 61993, Nov. 30, 1995, as amended at 64 FR 51075, Sept. 21, 1999; 64 FR 61031, Nov. 9, 1999]

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 2, 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 nonrecurring 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.

[b]208.7004-2 Acceptance by acquiring department.[/b]

(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 requiring department will notify the acquiring 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 requiring 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 letter 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

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<tr>
<th>SUBJECT: Termination Data Re:</th>
<th>Contract No.</th>
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<tr>
<td>Termination No.</td>
<td>Contract</td>
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(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:

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<tr>
<th>MIPR NO.</th>
<th>ACCOUNTING CLASSIFICATION</th>
<th>AMOUNT</th>
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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.

Contracting Officer

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 include 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 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 6.302(a)(2), or in case of a national emergency or to achieve industrial mobilization under FAR 6.302-3; 

(c) Acquisition of items restricted under 225.7010 and 225.71; 

(d) Use of multiyear contracting (FAR subpart 17.1); 

(e) Providing Government production and research property to contractors; and

(f) Use of direct payment for idle facilities or idle capacities reserved for defense mobilization production (FAR 31.205–17(d)).


208.7204 Procedures.

(a) Except as otherwise provided in FAR or DFARS, solicit planned producers for all acquisitions of their planned items, when the acquisition exceeds the simplified acquisition threshold.

(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—
Department of Defense 208.7305

Defense Supply Center, Philadelphia (DSCP) 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 DoD 4100.39–M, Federal Logistics Information System (FLIS) Procedures Manual, Volume 10, Chapter 4, 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 DSCP 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.

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 11 of DoD 4100.21–M, Defense Materiel Disposition 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.

Refined precious metals.

The following refined precious metals are currently managed by DSCP:

<table>
<thead>
<tr>
<th>Precious metal</th>
<th>National stock number (NSN)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gold</td>
<td>9660-00-042-7733</td>
</tr>
<tr>
<td>Silver</td>
<td>9660-00-106-9432</td>
</tr>
<tr>
<td>Platinum Granules</td>
<td>9660-00-042-7768</td>
</tr>
<tr>
<td>Platinum Sponge</td>
<td>9660-00-151-4050</td>
</tr>
<tr>
<td>Palladium Granules</td>
<td>9660-00-042-7765</td>
</tr>
<tr>
<td>Palladium Sponge</td>
<td>9660-01-039-0320</td>
</tr>
<tr>
<td>Rhodium</td>
<td>9660-01-010-2625</td>
</tr>
<tr>
<td>Iridium</td>
<td>9660-00-011-1907</td>
</tr>
<tr>
<td>Ruthenium</td>
<td>9660-01-039-0313</td>
</tr>
</tbody>
</table>

208.7304 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 DSCP;

(2) When the contracting officer knows that the items being acquired do not require precious metals in their manufacture; or
(3) For acquisitions at or below the simplified acquisition threshold.

(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 11, DoD 4160.21–M, Defense Materiel Disposition Manual.


PART 209—CONTRACTOR QUALIFICATIONS

Subpart 209.1—Responsible Prospective Contractors

Sec.
209.101 Definitions.
209.103 Policy.
209.103–70 Contract clause.
209.104 Standards.
209.104–1 General standards.
209.104–4 Subcontractor responsibility.
209.104–70 Solicitation provisions.
209.105–2 Determinations and documentation.
209.106 Preaward surveys.
209.106–1 Conditions for preaward surveys.
209.106–2 Requests for preaward surveys.

Subpart 209.2—Qualifications Requirements

209.202 Policy.

Subpart 209.3—First Article Testing and Approval

209.303 Use.
209.305 Risk.
209.306 Solicitation requirements.
209.308 Contract clauses.

Subpart 209.4—Debarment, Suspension, and Ineligibility

209.402 Policy.
209.403 Definitions.
209.405 Effect of listing.
209.405–1 Continuation of current contracts.
209.405–2 Restrictions on subcontracting.
209.406 Debarment.
209.406–1 General.
209.406–2 Causes for debarment.
209.407 Suspension.
209.407–3 Procedures.
209.409 Solicitation provision and contract clause.
209.470 Reserve Officer Training Corps and military recruiting on campus.
209.470–1 Definition.

209.470–2 Policy.
209.470–3 Procedures.
209.470–4 Contract clause.
209.471 Congressional Medal of Honor.


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 5132, 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, and Logistics) 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.

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.


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 of $100,000 or more to a firm or to a subsidiary of a firm when a foreign government—
(1) Either directly or indirectly, has a significant interest—
(A) In the firm; or
(B) In the subsidiary or the firm that owns 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)(1)(A), the Secretary of Defense may waive the prohibition in paragraph (g)(i)(A) of this subsection upon determining that the waiver is essential to the national security interest 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 Logistics), 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.
(D) In accordance with 10 U.S.C. 2536(b)(1)(B), the Secretary of Defense may, in the case of a contract awarded...
for environmental restoration, remediation, or waste management at a DoD facility, waive the prohibition in paragraph (g)(ii)(A) of this subsection upon—

(i) Determining that—

(i) The waiver will advance the environmental restoration, remediation, or waste management objectives of DoD and will not harm the national security interests of the United States; and

(ii) The entity to which the contract is awarded is controlled by a foreign government with which the Secretary is authorized to exchange Restricted Data under section 144c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)); and

(ii) Notifying Congress of the decision to grant the waiver. The contract may be awarded only after the end of the 45-day period beginning on the date the notification is received by the appropriate Congressional committees.


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.

(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. Any disclosure that the government of a terrorist country has a significant interest in an offeror or a subsidiary of an offeror shall be forwarded through the head of the agency to the Director of Defense Procurement, ATTN: OUSD(AT&L) DP/FC, 3060 Defense Pentagon, Washington, DC 20101–3060.

(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.


209.105–2 Determinations and documentation.

(a) When the contracting officer considers such action appropriate, the contracting officer must submit a copy of the determination to the appropriate debarring and suspending official (see 209.403).

[64 FR 62585, Nov. 18, 1999]

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 the Federal 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.


Subpart 209.2—Qualifications Requirements

209.202 Policy.

(a)(1) The inclusion of qualification requirements in specifications for products that 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 4120.24–M, Defense Standardization Program (DSP) 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, as amended at 65 FR 63804, Oct. 25, 2000]

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 and suspending 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
National Imagery and Mapping Agency—The General Counsel
Defense Threat Reduction 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 and suspending 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.

(3) The Defense Logistics Agency Special Assistant for Contracting Integrity is the exclusive representative of the Secretary of Defense to suspend and debar contractors from the purchase of Federal personal property under the Federal Property Management Regulations (41 CFR 101-45.6) and the Defense Materiel Disposition Manual (DoD 4160.21-M).


209.405 Effect of listing.

(a) Under 10 U.S.C. 2393(b), when a department or agency determines that a compelling reason exists for it to conduct business with a contractor that is debarred or suspended from procurement programs, it must provide written notice of the determination to the General Services Administration, Office of Acquisition Policy. Examples of compelling Reasons are—

(i) Only a debarred or suspended contractor can provide the supplies or services;

(ii) Urgency requires contracting with a debarred or suspended contractor;

(iii) The contractor and a department or agency have an agreement covering the same events that resulted in the debarment or suspension and the agreement includes the department or agency decision not to debar or suspend the contractor; or

(iv) The national defense requires continued business dealings with the debarred or suspended contractor.

(b)(i) The Procurement Cause and Treatment Code ‘‘H’’ annotation in the GSA List of Parties Excluded from...
Federal Procurement and Nonprocurement Programs identifies contractors that are declared ineligible for award of a contract or subcontract because of a violation of the Clean Air Act (42 U.S.C. 7606) or the Clean Water Act (33 U.S.C. 1368).

(ii) Under the authority of 40 CFR 32.215(b), the agency head may grant an exception permitting award to a Code "H" ineligible contractor if it is in the paramount interest of the United States.

(A) The agency head may delegate this exception authority to a level no lower than a general or flag officer or a member of the Senior Executive Service.

(B) The official granting the exception must provide written notice to the Environmental Protection Agency debarring official.

[65 FR 52955, Aug. 31, 2000]

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]

209.405–2 Restrictions on subcontracting.

(a) The contracting officer shall not consent to any subcontract with a firm, or a subsidiary of a firm, that is identified by the Secretary of Defense as being owned or controlled by the government of a terrorist country unless the agency head states in writing the compelling reasons for the subcontract.

[63 FR 14837, Mar. 27, 1998]

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]


(a) Investigation and referral.

(i) Refer all matters appropriate for consideration by an agency debarring and suspending official as soon as practicable to the appropriate debarring official identified in 209.403. Any person may refer a matter to the debarring and suspending official.

(ii) Use the following format when referring a matter to the agency debarring and suspending official for consideration. To the extent practicable, provide all specified information.
(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) If a contracting office initiates the report, 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 (or explain why a recommendation for suspension or debarment is not included).

(J) When appropriate, as an enclosure to the report—
   (1) A copy or pertinent extracts of each pertinent contract;
   (2) Witness statements or affidavits;
   (3) Copies of investigative reports when authorized by the investigative agency;
   (4) Certified copies of indictments, judgments, and sentencing actions;
   (5) A copy of any available determinations of nonresponsibility in accordance with FAR 9.105-2(a)(1); and
   (6) Any other appropriate exhibits or documentation.

(iii) Send three copies of each report, including enclosures, to the appropriate debarring and suspending official.

(iv) If a referral lacks sufficient evidence of a cause for debarment, the debarring and suspending official may initiate a review or investigation, as appropriate, by reporting the referral to the appropriate Government entity, e.g., contracting activity, inspector general, or criminal investigative agency.

(b) Decisionmaking process.

(i) The agency debarring and suspending official may initiate the debarment process by issuing a notice of proposed debarment in accordance with FAR 9.406-3(c) when the debarring and suspending official finds that the administrative record contains sufficient evidence of one or more of the causes for debarment stated in FAR 9.406-2 or 209.406-2.

(A) The absence of a referral in accordance with paragraph (a)(i) of this subsection, or the absence of any information specified in the report format in paragraph (a)(ii) of this subsection, will not preclude the debarring and suspending official from making such a finding.

(B) The signature of the debarring and suspending official on the notice of proposed debarment is sufficient evidence that the debarring and suspending official has made such a finding.

(ii) The agency debarring and suspending official must use the decisionmaking process stated in FAR 9.406-3(b), DFARS Appendix H, and any agency-specific procedures that were
provided to the contractor in advance of the decision.

(d) **Debarring official’s decision.** The absence of a referral in accordance with paragraph (a)(i) of this subsection, or the absence of any information specified in the report format in paragraph (a)(ii) of this subsection, will not preclude the debarring and suspending official from making a decision.

*64 FR 62985, Nov. 18, 1999; 65 FR 4864, Feb. 1, 2000*

**209.407 Suspension.**

**209.407–3 Procedures.**

(a) **Investigation and referral.**

(i) Refer all matters appropriate for consideration by an agency debarring and suspending official as soon as practicable to the appropriate debarring and suspending official identified in 209.403. Any person may refer a matter to the debarring and suspending official.

(ii) Use the format at 209.406–3(a)(ii) when referring a matter to the agency debarring and suspending official for consideration. To the extent practicable, provide all information specified in the format.

(iii) If a referral lacks sufficient evidence of a cause for suspension, the debarring and suspending official may initiate a review or investigation, as appropriate, by reporting the referral to the appropriate Government entity, e.g., contracting activity, inspector general, or criminal investigative agency.

(b) **Decisionmaking process.**

(i) The agency debarring and suspending official may initiate the suspension process by issuing a notice of suspension in accordance with FAR 9.407–3(c) when the debarring and suspending official finds that the administrative record contains sufficient evidence of one or more of the causes for suspension stated in FAR 9.407–2.

(A) The absence of a referral in accordance with paragraph (a)(i) of this subsection, or the absence of any information specified in the report format at 209.406–3(a)(ii), will not preclude the debarring and suspending official from making such a finding.

(B) The signature of the debarring and suspending official on the notice of suspension is sufficient evidence that the debarring and suspending official has made such a finding.

(ii) In deciding whether to terminate a suspension following a submission of matters in opposition, the agency debarring and suspending official must use the decisionmaking process stated in FAR 9.407–3(b), DFARS Appendix H, and any agency-specific procedures that were provided to the contractor in advance of the decision.

(d) **Suspending official’s decision.** The absence of a referral in accordance with paragraph (a)(i) of this subsection, or the absence of any information specified in the report format at 209.406–3(a)(ii), will not preclude the debarring and suspending official from making a decision.

*64 FR 62985, Nov. 18, 1999; 65 FR 4864, Feb. 1, 2000*

**209.409 Solicitation provision and contract clause.**

Use the clause at 252.209–7004, Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country, in solicitations and contracts with a value of $100,000 or more.

*63 FR 14837, Mar. 27, 1998*

**209.470 Reserve Officer Training Corps and military recruiting on campus.**

**209.470–1 Definition.**

*Institution of higher education, as used in this section, means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.*

*65 FR 2056, Jan. 13, 2000*

**209.470–2 Policy.**

(a) Except as provided in paragraph (b) of this subsection, 10 U.S.C. 983 prohibits DoD from providing funds by contract or grant to an institution of higher education if the Secretary of Defense determines that the institution has a policy or practice that prohibits or in effect prevents—
(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) at that institution;

(2) A student at that institution from enrolling in a unit of the senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Transportation from gaining entry to campuses, or access to students on campuses, for purposes of military recruiting; or

(4) Military recruiters from accessing certain information pertaining to students enrolled at that institution.

(b) The prohibition in paragraph (a) of this subsection does not apply to an institution of higher education if the Secretary of Defense determines that—

(1) The institution has ceased the policy or practice described in paragraph (a) of this subsection; or

(2) The institution has a long-standing policy of pacifism based on historical religious affiliation.

[65 FR 2056, Jan. 13, 2000]

209.470–3 Procedures.

If the Secretary of Defense determines that an institution of higher education is ineligible to receive DoD funds because of a policy or practice described in 209.470–2(a)—

(a) The Secretary of Defense will list the institution on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by General Services Administration (also see FAR 9.404 and 32 CFR part 216); and

(b) DoD components—

(1) Shall not solicit offers from, award contracts to, or consent to subcontract with the institution;

(2) Shall make no further payments under existing contracts with the institution; and

(3) Shall terminate existing contracts with the institution.

[65 FR 2057, Jan. 13, 2000, as amended at 67 FR 49254, July 30, 2002]

209.470–4 Contract clause.

Use the clause at 252.209-7005, Reserve Officer Training Corps and Military Recruiting on Campus, in all solicitations and contracts with institutions of higher education.

[65 FR 2057, Jan. 13, 2000]

209.471 Congressional Medal of Honor.

In accordance with Section 8118 of Pub. L. 105–362, do not award a contract to, extend a contract with, or approve the award of a subcontract to any entity that, within the preceding 15 years, has been convicted under 18 U.S.C. 704 of the unlawful manufacture or sale of the Congressional Medal of Honor. Any entity so convicted will be listed as ineligible on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the General Services Administration.

[64 FR 31733, June 14, 1999]
211.271 Elimination of use of class I ozone-depleting substances.
211.272 Alternate preservation, packaging, and packing.
211.273 Substitutions for military or Federal specifications and standards.
211.273-1 Definition.
211.273-2 Policy.
211.273-3 Procedures.
211.273-4 Contract clause.

Subpart 211.5—Liquidated Damages
211.503 Contract clauses.

Subpart 211.6—Priorities and Allocations
211.602 General.


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

Subpart 211.1—Selecting and Developing Requirements Documents

211.107 Solicitation provision.

(b) DoD uses the categorical method of reporting. Do not use the provision at FAR 52.211–7, Alternatives to Government-Unique Standards, in DoD solicitations.

[65 FR 6553, Feb. 10, 2000]

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 (AMSDL).

(b) Also, furnish data item descriptions that are not listed in the AMSDL, 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 also may be obtained from the Department of Defense Single Stock Point (DoDSSP), Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111–5094; telephone (215) 697–2179; http://assist.daps.mil. Include with the request—

(i) The requester’s customer number; and

(ii) Complete return mailing address, including any “mark for” instructions.

[60 FR 61594, Nov. 30, 1995, as amended at 64 FR 8727, Feb. 23, 1999; 64 FR 51075, Sept. 21, 1999]

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 [Reserved]

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.

(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.

(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.

(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.
211.273–4 Contract clause.

Use the clause at 252.211–7005, Substitutions for Military or Federal Specifications and Standards, in solicitations and contracts exceeding the micro-purchase threshold, when procuring previously developed items.


Subpart 211.5—Liquidated Damages

211.503 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 DoDD 4400.1, Defense Production Act Programs.

[64 FR 51075, Sept. 21, 1999]

PART 212—ACQUISITION OF COMMERCIAL ITEMS

Subpart 212.1—Acquisition of Commercial Items—General

Sec. 212.102 Applicability.

Subpart 212.2—Special Requirements for the Acquisition of Commercial Items

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.

212.303 Contract format.

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.

Subpart 212.6—Streamlined Procedures for Evaluation and Solicitation for Commercial Items

212.602 Streamlined evaluation of offers.


SOURCE: 60 FR 61595, Nov. 30, 1995, unless otherwise noted.

Subpart 212.1—Acquisition of Commercial Items—General

212.102 Applicability.

(a)(i) In accordance with Section 821 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398), the contracting officer also may use FAR part 12 for any performance-based contracting for services if the procedures in FAR Subpart 13.5 are not used, and the contract or task order—

(A) Is entered into on or before October 30, 2003;

(B) Has a value of $5 million or less;

(C) Meets the definition of performance-based contracting at FAR 2.101;

(D) Uses quality assurance surveillance plans;

(E) Includes performance incentives where appropriate;

(F) Specifies a firm-fixed price; and

(G) Is awarded to an entity that provides similar services at the same time to the general public under terms and conditions similar to those in the contract.

(ii) In exercising the authority specified in paragraph (a)(i) of this section, the contracting officer should modify paragraph (a) of the clause at FAR 52.212–4 as may be necessary to ensure the contract’s remedies adequately protect the Government’s interests.

[66 FR 63336, Dec. 6, 2001]
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.

(b)(2) Paragraph (b) of the provision at FAR 52.212-3 does not apply when the solicitation includes the clause at 252.204-7004, Required Central Contractor Registration.

(f)(i) Use one of the following provisions as prescribed in part 225:


(B) 252.225-7006, Buy American Act—Trade Agreements—Balance of Payments Program Certificate.

(C) 252.225-7020, Trade Agreements 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 252.212-7000 does not apply to this solicitation.”

(iii) Use the clause at 252.212-7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items, in all solicitations and contracts for commercial items, completing paragraphs (a) and (b), as appropriate.

(iv) Use the clause at 252.204-7004, Required Central Contractor Registration, as prescribed in 204.7304.

(v) Use the provision at 252.209-7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, as prescribed in 209.104-70(a).

(vi) Use the provision at 252.225-7017, Prohibition on Award to Companies Owned by the People’s Republic of China, as prescribed in 225.771.

(vii) Use the clause at 252.232-7009, Mandatory Payment by Governmentwide Commercial Purchase Card, as prescribed in 232.1110.

(3) A contracting officer supporting a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8) also may use the Governmentwide commercial purchase card to make a purchase that exceeds the micro-purchase threshold but does not exceed the simplified acquisition threshold, if:

(i) The supplies or services being purchased are immediately available;

(ii) One delivery and one payment will be made; and

(iii) The requirements of paragraphs (2)(i) and (ii) of this section are met.


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).

212.303 Contract format.

Structure awards valued above the micro-purchase threshold (e.g., contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

[65 FR 46625, July 31, 2000]
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.
   (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. 2397(f), Limits on Employment for Former DoD Officials.
   (vii) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials.
   (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, unless the restriction specifically applies to commercial items. For the restriction that specifically applies to commercial ball or roller bearings as end items, see 225.7019–2(b) (Section 8064 of Public Law 106–259).
   (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).
      (ii) 10 U.S.C. 2306a, Truth in Negotiations Act (see FAR 15.403–4).

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) [Reserved]
   (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.
   (vi) 10 U.S.C. 2321, Validation of Proprietary Data Restrictions.
   (viii) 10 U.S.C. 2327, Reporting Requirement Regarding Dealings with Terrorist Countries.
   (x) 10 U.S.C. 2393, Prohibition Against Doing Business with Certain Offerors or Contractors.
   (xi) 10 U.S.C. 2397(a)(1), Reports by Employees or Former Employees of Defense Contractors.
   (xii) 10 U.S.C. 2397b(f), Limits on Employment for Former DoD Officials.
   (xiii) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials.
   (xxvii) (xxviii) [Reserved]
212.602

(xxi) 10 U.S.C. 2631, Transportation of Supplies by Sea (except as provided in the clause at 252.247-7023, Transportation of Supplies by Sea).


(xxv) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial items. For the restriction that specifically applies to commercial ball or roller bearings as end items, see 225.7019-2(b) (Section 8064 of Public Law 106-259).

(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).


Subpart 212.6—Streamlined Procedures for Evaluation and Solicitation for Commercial Items

212.602 Streamlined evaluation of offers.

(b)(i) For the acquisition of transportation and transportation-related services, also consider evaluating offers in accordance with the criteria at 247.206(1).

(ii) For the acquisition of transportation in supply contracts that will include a significant requirement for transportation of items outside the continental United States, also evaluate offers in accordance with the criterion at 247.301-71.

(iii) For the direct purchase of ocean transportation services, also evaluate offers in accordance with the criterion at 247.572-2(c)(2).

[65 FR 50143, Aug. 17, 2000]
SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 213.1—Procedures

Sec. 213.101 General.
213.106-3 Award and documentation.

Subpart 213.2—Actions at or Below the Micro-Purchase Threshold

213.270 Use of the Governmentwide commercial purchase card.

Subpart 213.3—Simplified Acquisition Methods

213.301 Governmentwide commercial purchase card.
213.302 Purchase orders.
213.302-3 Obtaining contractor acceptance and modifying purchase orders.
213.302-5 Clauses.
213.303 Blanket purchase agreements (BPAs).
213.303-5 Purchases under BPAs.
213.305 Imprest funds and third party drafts.
213.305-1 General.
213.305-3 Conditions for use.
213.306 SF 44, Purchase Order-Invoice-Voucher.
213.307 Forms.

Subpart 213.4—Fast Payment Procedure

213.402 Conditions for use.

Subpart 213.70—Simplified Acquisition Procedures Under the 8(a) Program

213.7001 Policy.
213.7002 Procedures.
213.7003 Purchase orders.
213.7003-1 Obtaining contractor acceptance and modifying purchase orders.
213.7003-2 Contract clauses.


SOURCE: 64 FR 2596, Jan. 15, 1999, unless otherwise noted.

Subpart 213.1—Procedures

213.101 General.

Structure awards valued above the micro-purchase threshold (e.g., contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

[65 FR 46625, July 31, 2000]

§ 213.106-3 Award and documentation.

(e) The procedures at FAR 13.106–3(e) do not apply when the contract includes the clause at 252.204–7004, Required Central Contractor Registration.

[64 FR 43101, Aug. 9, 1999]

Subpart 213.2—Actions at or Below the Micro-Purchase Threshold

213.270 Use of the Governmentwide commercial purchase card.

Use the Governmentwide commercial purchase card as the method of purchase and/or method of payment for purchases valued at or below the micro-purchase threshold. This policy applies to all types of contract actions authorized by the FAR unless:

(a) The Deputy Secretary of Defense has approved an exception for an electronic commerce/electronic data interchange system or operational requirement that results in a more cost-effective payment process;

(b)(1) A general or flag officer or a member of the Senior Executive Service (SES) makes a written determination that—

(i) The source or sources available for the supply or service do not accept the purchase card; and

(ii) The contracting office is seeking a source that accepts the purchase card.

(b)(2) To prevent mission delays, if an activity does not have a resident general or flag officer of SES member, delegation of this authority to the level of the senior local commander or director is permitted; or

(c) The purchase or payment meets one or more of the following criteria:

(i) The place of performance is entirely outside of any State, territory, or possession of the United States, the
213.301

District of Columbia, and the Commonwealth of Puerto Rico.

(2) The purchase is a Standard Form 44 purchase for aviation fuel or oil.

(3) The purchase is an overseas transaction by a contracting officer in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8).

(4) The purchase is a transaction in support of intelligence or other specialized activities addressed by Part 2.7 of Executive Order 12333.

(5) The purchase is for training exercises in preparation for overseas contingency, humanitarian, or peacekeeping operations.

(6) The payment is made with an accommodation check.

(7) The payment is for a transportation bill.

(8) The purchase is under a Federal Supply Schedule contract that does not permit use of the Governmentwide commercial purchase card.

(9) The purchase is for medical services and—

(i) It involves a controlled substance or narcotic;

(ii) It requires the submission of a Health Care Summary Record to document the nature of the care purchased;

(iii) The ultimate price of the medical care is subject to an independent determination that changes the price paid based on application of a mandatory CHAMPUS Maximum Allowable Charge determination that reduces the Government liability below billed charges;

(iv) The Government already has entered into a contract to pay for the services without the use of a purchase card;

(v) The purchaser is a beneficiary seeking medical care; or

(vi) The senior local commander or director of a hospital or laboratory determines that use of the purchase card is not appropriate or cost-effective. The Medical Prime Vendor Program and the DoD Medical Electronic Catalog Program are two examples where use of the purchase card may not be cost-effective.

[65 FR 46629, July 31, 2000]
(i) The supplies or services being purchased are immediately available;
(ii) One delivery and one payment will be made; and
(iii) The requirements of paragraphs (2)(i) and (ii) of this section are met.


213.302 Purchase orders.

213.302–3 Obtaining contractor acceptance and modifying purchase orders.

(1) Require written acceptance of purchase orders for classified acquisitions.

(2) Generally, use unilateral modifications (see FAR 43.103) for—

(i) No-cost amended shipping instructions if—

(A) The amended shipping instructions modify a unilateral purchase order; and

(B) The contractor agrees orally or in writing;

(ii) Any change made before work begins if—

(A) The change is within the scope of the original order;

(B) The contractor agrees;

(C) The modification references the contractor’s oral or written agreement; and

(D) Block 13D of Standard Form 30, Amendment of Solicitation/Modification of Contract, is annotated to reflect the authority for issuance of the modification.

(3) A supplemental agreement converts a unilateral purchase order to a bilateral agreement. If not previously included in the purchase order, incorporate the clause at 252.243–7001, Pricing of Contract Modifications, in the Standard Form 30, and obtain the contractor’s acceptance by signature on the Standard Form 30.

§ 213.302–5 Clauses.

(a) Use the clause at 252.243–7001, Pricing of Contract Modifications, in all bilateral purchase orders.

(d) When using the clause at FAR 52.213–4, delete the reference to the clause at FAR 52.225–1, buy American Act-Balance of Payments Program-Supplies. Instead, if the Buy American Act applies to the acquisition, use the clause at—

(i) 252.225–7001, Buy American Act and Balance of Payments Program, as prescribed at 225.1101(2); or


213.303 Blanket purchase agreements (BPAs).

213.303–5 Purchases under BPAs.

(b) Individual purchases for subsistence may be made at any dollar value; however, the contracting officer must satisfy the competition requirements of FAR Part 6 for any action not using simplified acquisition procedures.

213.305 Imprest funds and third party drafts.

213.305–1 General.

(1) As a matter of policy, DoD does not support the use of cash payments from imprest funds. This policy is based, in part, on the mandatory electronic funds transfer requirements of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

(2) On a very limited basis, installation commanders and commanders of other activities with contracting authority may be granted authority to establish imprest funds and third party draft (accommodation check) accounts.

(3) Third party draft accounts, when established in accordance with DoD 7000.14–R, DoD Financial Management Regulation, Volume 5, Disbursing Policy and Procedures—

(i) Provide an alternative to cash and U.S. Treasury checks when the use of Government purchase or travel cards is not feasible;

(ii) Eliminate the need for cash on hand for imprest fund transactions; and

(iii) Give issuing activities the flexibility to issue low-volume and low-dollar value payment on site.
213.305–3 Conditions for use.

(d)(1) Use of imprest funds—
(A) Must comply with the conditions stated in—
(1) DoD 7000.14–R, DoD Financial Management Regulation, Volume 5, Disbursing Policy and Procedures; and
(2) The Treasury Financial Manual, Part 4, Chapter 3000, Section 3020; and
(B) Except as provided in paragraph (d)(ii) of this subsection, requires approval by the Director for Financial Commerce, Office of the Deputy Chief Financial Officer, Office of the Under Secretary of Defense (Comptroller).

(ii) Imprest funds are authorized for use without further approval for—
(A) Overseas transactions at or below the micro-purchase threshold in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(7); and
(B) Classified transactions.

213.306 SF 44, Purchase Order-Invoice-Voucher.

(a)(1) The micro-purchase limitation applies to all purchases, except that purchases not exceeding 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) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(7); and
(C) Transactions in support of intelligence and other specialized activities addressed by Part 2.7 of Executive Order 12333.

213.307 Forms.

(a) If SF 1449 is not used, use DD Form 1155 in accordance with paragraph (b)(1) of this section.

(b)(1) Use DD Form 1155. Order for Supplies or Services, for purchases made using simplified acquisition procedures.

(A) The DD Form 1155 serves as a—
(1) Purchase order or blanket purchase agreement;
(2) Delivery order or task order;
(3) Receiving and inspection report;
(4) Property voucher;
(5) Document for acceptance by the supplier; and
(6) Public voucher, when used as—
(i) A delivery order;
(ii) The basis for payment of an invoice against blanket purchase agreements or basic ordering agreements when a firm-fixed-price has been established; or
(iii) A purchase order for acquisitions using simplified acquisition procedures.

(B) The DD Form 1155 is also authorized for use for—
(1) Orders placed in accordance with FAR Subparts 8.4, 8.6, 8.7, and 16.5; and
(2) Classified acquisition 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.

(ii) Do not use Optional Form 347, Order for Supplies or Services, or Optional Form 348, Order for Supplies or Services Schedule—Continuation.

(iii) Use Standard Form 30, Amendment of Solicitation/Modification of Contract, to—
(A) Modify a purchase order; or
(B) Cancel a unilateral purchase order.

Subpart 213.4—Fast Payment Procedure

213.402 Conditions for use.

(a) Individual orders may exceed the simplified acquisition threshold for—
(i) Brand-name commissary resale subsistence; and
(ii) Medical supplies for direct shipment overseas.

Subpart 213.70—Simplified Acquisition Procedures Under the 8(a) Program

213.7001 Policy.

For sole source acquisitions under the 8(a) Program, contracting officers may use the procedures established in the Memorandum of Understanding cited in 219.800.
Department of Defense

213.7002 Procedures.

For acquisitions that are otherwise appropriate to be conducted using procedures set forth in this part, and also eligible for the 8(a) Program, contracting officers may use—

(a)(1) For sole source purchase orders not exceeding the simplified acquisition threshold, the procedures in 219.804–2(2); or

(2) For other types of acquisitions, the procedures in Subpart 219.8, excluding the procedures in 219.804–2(2); or

(b) The procedures for award to the Small Business Administration in FAR Subpart 19.8.

213.7003 Purchase orders.

213.7003–1 Obtaining contractor acceptance and modifying purchase orders.

The contracting officer need not obtain a contractor’s written acceptance of a purchase order or modification of a purchase order for an acquisition under the 8(a) Program pursuant to 219.804–2(2).

213.7003–2 Contract clauses.

Use the clauses prescribed in 219.811–3 (1) and (3) for purchase orders under the 8(a) Program pursuant to 219.804–2(2).

PART 214—SEALED BIDDING

Subpart 214.2—Solicitation of Bids

Sec.
214.201–1 Uniform contract format.
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.
214.407 Mistakes in bids.
214.407–3 Other mistakes disclosed before award.

Subpart 214.5—Two-Step Sealed Bidding

214.503 Procedures.
214.503–1 Step one.


Source: 56 FR 36326, July 31, 1991, unless otherwise noted.

Subpart 214.2—Solicitation of Bids

214.201–1 Uniform contract format.

Structure awards valued above the micro-purchase threshold (e.g., contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

[65 FR 46626, July 31, 2000]


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 FAR 52.211–6, 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).

214.407 Mistakes in bids.

214.407–3 Other mistakes disclosed before award.

(e) Authority for making a determination under FAR 14.407–3(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.
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.


PART 215—CONTRACTING BY NEGOTIATION

Sec. 215.000 Scope of part.

Subpart 215.2—Solicitation and Receipt of Proposals and Information

215.204-1 Uniform contract format.

215.204-2 Part I—The Schedule.

Subpart 215.3—Source Selection

215.303 Responsibilities.

215.304 Evaluation factors and significant subfactors.

215.305 Proposal evaluation.

Subpart 215.4—Contract Pricing

215.403 Obtaining cost or pricing data.

215.403-1 Prohibition on obtaining cost or pricing data.

215.403-5 Instructions for submission of cost or pricing data or information other than cost or pricing data.

215.404 Proposal analysis.

215.404-1 Proposal analysis techniques.

215.404-2 Information to support proposal analysis.

215.404-3 Subcontract pricing considerations.

215.404-4 Profit.
§ 215.305 Proposal evaluation.

(a)(2) Past performance evaluation. When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause. When a
past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause.

(b) Any determination to reject a proposal based on a violation or possible violation of Section 27 of the OFPP Act shall be made as specified in FAR 3.104.


Subpart 215.4—Contract Pricing

215.403 Obtaining cost or pricing data.

§ 215.403–1 Prohibition on obtaining cost or pricing data.

(c) Standards for exceptions from cost or pricing data requirements—

(1) Adequate price competition. For acquisitions under dual or multiple source programs:

(A) The determination of adequate price competition must be made on a case-by-case basis. Even when adequate price competition exists, in certain cases it may be appropriate to obtain additional information to assist in price analysis.

(B) 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 that are individually capable of producing the full quantity; and

(ii) The reasonableness of all prices awarded is clearly established on the basis of price analysis (see FAR 15.404–1(b)).

(4) Waivers. (A) DoD has waived the requirement for submission of cost or pricing data for the Canadian Commercial Corporation and its subcontractors.

(B) DoD has waived cost or pricing data requirements for nonprofit organizations (including education institutions) on cost-reimbursement-no-fee contracts. The contracting officer shall require—

(1) Submission of information other than cost or pricing data to the extent necessary to determine reasonableness and cost realism; and

(2) Cost or pricing data from subcontractors that are not nonprofit organizations when the subcontractor’s proposal exceeds the cost or pricing data threshold at FAR 15.403–4(a)(1).

215.403–5 Instructions for submission of cost or pricing data or information other than cost or pricing data.

(b) When the solicitation requires contractor compliance with the Contractors 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 Form 1921 or 1921–1 with its pricing proposal.

215.404 Proposal analysis.

215.404–1 Proposal analysis techniques.

(a) General. For spare parts or support equipment, perform an analysis of—

(i) Those 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 based on reasonably available information;

(ii) Those line items where a comparison of the item description and the proposal price indicates a potential for overpricing;

(iii) Significant high-dollar-value items. If there are no obvious high-dollar-value items, include an analysis of a random sample of items; and

(iv) A random sample of the remaining low-dollar value items. Sample size may be determined by subjective judgment, e.g., experience with the offeror and the reliability of its estimating and accounting systems.

(d) Cost realism analysis. The contracting officer should determine what information other than cost or pricing data is necessary for the cost realism analysis during acquisition planning and development of the solicitation. Unless such information is available from sources other than the offerors (see FAR 15.402(a)(2)), the contracting officer will need to request data from the offerors. The contracting officer—
§ 215.404–3 Subcontract pricing considerations.

(a)(i) When obtaining field pricing assistance on a prime contractor’s proposal, the contracting officer should request audit or field pricing assistance to analyze and evaluate the proposal of a subcontractor at any tier (notwithstanding availability of data or analyses performed by the prime contractor) if the contracting officer believes that such assistance is necessary to ensure the reasonableness of the total proposed price. Such assistance may be appropriate when, for example—

(A) There is a business relationship between the contractor and the subcontractor not conducive to independence and objectivity;

(B) The contractor is a sole source supplier and the subcontract costs represent a substantial part of the contract cost;

(C) The contractor has been denied access to the subcontractor’s records;

(D) The contracting officer determines that, because of factors such as the size of the proposed subcontract price, audit or field pricing assistance for a subcontract at any tier is critical to a fully detailed analysis of the prime contractor’s proposal;

(E) The contractor or higher-tier subcontractor has been cited for having significant estimating system deficiencies in the area of subcontract pricing, especially the failure to perform adequate cost analyses of proposed subcontract costs or to perform subcontract analyses prior to negotiation of the prime contract with the Government; or

(F) A lower-tier subcontractor has been cited as having significant estimating system deficiencies.

(ii) It may be appropriate for the contracting officer or the ACO to provide assistance to a contractor or subcontractor at any tier, when the contractor or higher-tier subcontractor has been denied access to a subcontractor’s records in carrying out the responsibilities at FAR 15.404–3 to conduct price or cost analysis to determine the reasonableness of proposed subcontract prices. Under these circumstances, the contracting officer or
(vi) 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 15.404–4(c)(4).

215.404–4 Profit.

(b) Policy. (1) Departments and agencies must use a structured approach for developing a prenegotiation profit or fee objective on any negotiated contract action when cost or pricing data is obtained, except for cost-plus-award-fee contracts (see 215.404–74) or contracts with Federally Funded Research and Development Centers (FFRDCs) (see 215.404–75). There are three structured approaches—

(A) The weighted guidelines method;

(B) The modified weighted guidelines method; and

(C) An alternate structured approach.

(c) Contracting officer responsibilities. (1) Also, do not perform a profit analysis when assessing cost realism in competitive acquisitions.

(2) When using a structured approach, the contracting officer—

(A) Shall use the weighted guidelines method (see 215.404–71), except as provided in paragraphs (c)(2)(B) and (c)(2)(C) of this subsection.

(B) Shall use the modified weighted guidelines method (see 215.404–72) on contract actions with nonprofit organizations other than FFRDCs.

(C) May use an alternate structured approach (see 215.404–73) when—

(i) The contract action is—

(i) At or below the cost or pricing data threshold (see FAR 15.403–4(a)(1));

(ii) For architect-engineer or construction work;

(iii) Primarily for delivery of material from subcontractors; or

(iv) A termination settlement; or

(2) 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.

(D) 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.

(vi) The ACO should consider whether providing audit or field pricing assistance will serve a valid Government interest.

(iii) When DoD performs the subcontract analysis, DoD shall furnish to the prime contractor or higher-tier subcontractor, with the consent of the subcontractor reviewed, a summary of the analysis performed in determining any unacceptable costs included in the subcontract proposal. If the subcontractor withholds consent, DoD shall furnish a range of unacceptable costs for each element in such a way as to prevent disclosure of subcontractor proprietary data.

(iv) 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—

(A) If cost or pricing data on the subcontracts show the amounts to be reasonable and realistic; or

(B) If cost or pricing data on the subcontracts are too indefinite to determine whether the amounts are reasonable and realistic, but—

(1) Circumstances require prompt negotiation; and

(2) 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.

(v) If the selection of the subcontractor is based on a trade-off among cost or price and other non-cost factors rather than lowest price, the analysis supporting subcontractor selection should include a discussion of the factors considered in the selection (also see FAR 15.301 and 15.304 and 215.304). If the contractor’s analysis is not adequate, return it for correction of deficiencies.
(E) Shall document the profit analysis in the contract file.

(5) 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—

(A) Present the details of its proposed profit amounts in the weighted guidelines format or similar structured approached; and

(B) Use the weighted guidelines method in developing profit objectives for negotiated subcontracts.

(6) 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).

(d) Profit-analysis factors.—(1) Common factors. The common factors are embodied in the DoD structured approaches and need not be further considered by the contracting officer.

§ 215.404–70 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 profit objectives;

(2) Provides a format for summarizing profit amounts subsequently negotiated as part of the contract price; and

(3) Serves as the principal source documents 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 215.404–75).


(a) The weighted guidelines method focuses on four profit factors—

(1) Performance risk;

(2) Contract type risk;

(3) Facilities capital employed; and

(4) Cost efficiency.

(b) The contracting officer assigns values to each profit factor; the value multiplied by the base results in the profit objective for that factor. Except for the cost efficiency special 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 documentation, the contracting officer need not explain assignment of the normal value, but should address conditions that justify assignment of other than the normal value. The cost efficiency special factor has no normal value. The contracting officer shall exercise sound business judgment in selecting a value when this special factor is used (see 215.404–71–5).


(a) Description. This profit factor addresses the contractor’s degree of risk in fulfilling the contract requirements. The factor consists of two parts:

(1) Technical—the technical uncertainties of performance.

(2) Management/cost control—the degree of management effort necessary—

(i) To ensure that contract requirements are met; and

(ii) To reduce and control costs.

(b) Determination. The following extract from the DD Form 1547 is annotated to describe the process.
(1) Assign a weight (percentage) to each element according to its input to the total performance risk. The total of the two weights equals 100 percent.

(2) Select a value for each element from the list in paragraph (c) of this subsection using the evaluation criteria in paragraphs (d) and (e) of this subsection.

(3) Compute the composite as shown in the following example:

<table>
<thead>
<tr>
<th>Item</th>
<th>Contractor risk factors</th>
<th>Assigned weighting</th>
<th>Assigned value</th>
<th>Base (item 20)</th>
<th>Profit objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>21</td>
<td>Technical</td>
<td>(1)</td>
<td>(2)</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>22</td>
<td>Management/Cost Control</td>
<td>(1)</td>
<td>(2)</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>23</td>
<td>Performance Risk (Composite)</td>
<td>N/A</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
</tr>
</tbody>
</table>

(4) Insert the amount from Block 20 of the DD Form 1547. Block 20 is total contract costs, excluding facilities capital cost of money.

(5) Multiply (3) by (4).

(c) Values: Normal and designated ranges.

<table>
<thead>
<tr>
<th></th>
<th>Normal value (percent)</th>
<th>Designated range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard</td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>Technology Incentive</td>
<td>9</td>
<td>3% to 7%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7% to 11%</td>
</tr>
</tbody>
</table>

(1) Standard. The standard designated range should apply to most contracts.

(2) Technology incentive. For the technical factor only, contracting officers may use the technology incentive range for acquisitions that include development, production, or application of innovative new technologies. The technology incentive range does not apply to efforts restricted to studies, analyses, or demonstrations that have a technical report as their primary deliverable.

(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.

(1) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk. Indicators are—

(A) Items are being manufactured using specifications with stringent tolerance limits;
(B) The efforts require highly skilled personnel or require the use of state-of-the-art machinery;
(C) The services and analytical efforts are extremely important to the Government and must be performed to exacting standards;
(D) The contractor’s independent development and investment has reduced the Government’s risk or cost;
(E) The contractor has accepted an accelerated delivery schedule to meet DoD requirements; or
(F) The contractor has assumed additional risk through warranty provisions.

(ii) Extremely complex, vital efforts to overcome difficult technical obstacles that 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 produc-
tion of a new item, particularly if per-
formance or quality specifications are
tight; or
(B) A high degree of development or
production concurrency.
(3) Below normal conditions.
(i) The contracting officer may as-
sign a lower than normal value in
those cases where the technical risk is
low. Indicators are—
(A) Requirements are relatively sim-
ple;
(B) Technology is not complex;
(C) Efforts do not require highly
skilled personnel;
(D) Efforts are routine;
(E) Programs are mature; or
(F) Acquisition is a follow-on effort
or a repetitive type acquisition.
(ii) The contracting officer may as-
sign 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 Govern-
ment-furnished property.
(4) Technology incentive range.
(i) The contracting officer may as-
sign values within the technology in-
centive range when contract perform-
ance includes the introduction of new,
significant technological innovation.
Use the technology incentive range
only for the most innovative contract
efforts. Innovation may be in the form of—
(A) Development or application of
new technology that fundamentally
changes the characteristics of an exist-
ing product or system and that results in
increased technical performance, improved
reliability, or reduced costs; or
(B) New products or systems that
contain significant technological ad-
ces over the products or systems they are replacing.
(ii) When selecting a value within the
technology incentive range, the con-
tracting officer should consider the rela-
tive value of the proposed innovation
to the acquisition as a whole. When the
innovation represents a minor benefit,
the contracting officer should consider
using values less than the norm. For
innovative efforts that will have a
major positive impact on the product
or program, the contracting officer
may use values above the norm.
(e) Evaluation criteria for management/
cost control.
(1) The contracting officer should eval-
uate—
(i) The contractor’s management and
internal control systems using con-
tracting office information and reviews
made by field contract administration
offices or other DoD field offices;
(ii) The management involvement ex-
pected on the prospective contract
action;
(iii) The degree of cost mix as an in-
dication of the types of resources ap-
plied and value added by the con-
tactor;
(iv) The contractor’s support of Fed-
eral socioeconomic programs;
(v) The expected reliability of the
contractor’s cost estimates (including
the contractor’s cost estimating sys-
tem);
(vi) The adequacy of the contractor’s
management approach to controlling
cost and schedule; and
(vii) Any other factors that affect the
contractor’s ability to meet the cost
targets (e.g., foreign currency exchange
rates and inflation rates).
(2) Above normal conditions.
(i) The contracting officer may as-
sign a higher than normal value when
there is a high degree of management
effort. Indicators of this are—
(A) The contractor’s value added is
both considerable and reasonably dif-
ficult;
(B) The effort involves a high degree
of integration or coordination;
(C) The contractor has a good record
of past performance;
(D) The contractor has a substantial
record of active participation in Fed-
eral socioeconomic programs;
(E) The contractor provides fully doc-
umented and reliable cost estimates;
(F) The contractor makes appro-
priate make-or-buy decisions; or
(G) The contractor has a proven
record of cost tracking and control.
(ii) The contracting officer may jus-
tify a maximum value when the ef-
fort—
(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 minimal 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;
(F) The contractor does not cooperate in the evaluation and negotiation of the proposal;
(G) The contractor’s cost estimating system is marginal;
(H) The contractor has made minimal effort to initiate cost reduction programs;
(I) The contractor’s cost proposal is inadequate;
(J) The contractor has a record of cost overruns or another indication of unreliable cost estimates and lack of cost control; or
(K) The contractor has a poor record of past performance.
(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 assurance, property control, safety, security); or
(B) The effort requires an unusually low degree of management involvement.
(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.

<table>
<thead>
<tr>
<th>Item</th>
<th>Contractor risk factors</th>
<th>Assigned value</th>
<th>Base (item 20)</th>
<th>Profit objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>24.</td>
<td>CONTRACT type risk ......</td>
<td>Cost financed</td>
<td>(1) Length factor</td>
<td>(2) Interest rate</td>
</tr>
<tr>
<td>25.</td>
<td>WORKING capital (4) ......</td>
<td></td>
<td>(5)</td>
<td>(6)</td>
</tr>
</tbody>
</table>

(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 20, i.e., the total allowable costs excluding 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 (see 230.7101–1(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.
(1) “No financing” means either that the contract does not provide progress payments or performance-based payments, or that the contract provides them only on a limited basis, such as financing of first articles. Do not compute a working capital adjustment.

(2) When the contract contains provisions for progress payments, compute a working capital adjustment (Block 25).

(3) For the purposes of assigning profit values, treat a fixed-price contract with redetermination 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 25. However, they may receive higher than normal values within the designated range to the extent that portions of cost are fixed.

(6) When the contract contains provisions for performance-based payments, do not compute a working capital adjustment.

(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;

(vii) Risks associated with contracts for foreign military sales (FMS) that are not funded by U.S. appropriations; and

(viii) When the contract contains provisions for performance-based payments—

(A) The frequency of payments;

(B) The total amount of payments compared to the maximum allowable amount specified at FAR 32.1004(b)(2); and

(C) The risk of the payment schedule to the contractor.

(2) Mandatory. The contracting officer shall assess the extent to which costs have been incurred prior to the definitization of the contract action (also see 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, the contracting officer may assign a value as low as 0 percent, 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;
§215.404–71–3  

(iii) Incentive provisions (e.g., cost and performance incentives) that place a high degree of risk on the contractor;

(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; or

(v) An aggressive performance-based payment schedule that increases risk.

(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) Relative short-term contracts;

(iii) Contractual provisions that substantially reduce the contractor’s risk;

(iv) Incentive provisions that place a low degree of risk on the contractor;

(v) Performance-based payments totaling the maximum allowable amount(s) specified at FAR 32.1004(b)(2); or

(vi) A performance-based payment schedule that is routine with minimal risk.

(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 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 that the contractor finances is generally the portion not covered by progress payments, i.e., 100 percent minus the customary progress payment rate (see FAR 32.501). For example, if a contractor receives progress payments at 90 percent, the portion that the contractor finances is 10 percent. On contracts that provide 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>
<thead>
<tr>
<th>Period to perform substantive portion (in months)</th>
<th>Contract length factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>21 or less</td>
<td>.40</td>
</tr>
<tr>
<td>22 to 27</td>
<td>.65</td>
</tr>
<tr>
<td>28 to 33</td>
<td>.90</td>
</tr>
<tr>
<td>34 to 39</td>
<td>1.15</td>
</tr>
<tr>
<td>40 to 45</td>
<td>1.40</td>
</tr>
<tr>
<td>46 to 51</td>
<td>1.65</td>
</tr>
<tr>
<td>52 to 57</td>
<td>1.90</td>
</tr>
<tr>
<td>58 to 63</td>
<td>2.15</td>
</tr>
<tr>
<td>64 to 69</td>
<td>2.40</td>
</tr>
<tr>
<td>70 to 75</td>
<td>2.65</td>
</tr>
<tr>
<td>76 or more</td>
<td>2.90</td>
</tr>
</tbody>
</table>

(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.

(a) Description. This factor focuses on encouraging and rewarding 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.

<table>
<thead>
<tr>
<th>Item</th>
<th>Contractor facilities capital employed</th>
<th>Assigned value</th>
<th>Amount employed</th>
<th>Profit objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>26</td>
<td>Land</td>
<td>N/A</td>
<td>(2)</td>
<td>N/A</td>
</tr>
<tr>
<td>27</td>
<td>Buildings</td>
<td>N/A</td>
<td>(2)</td>
<td>N/A</td>
</tr>
<tr>
<td>28</td>
<td>Equipment</td>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
</tr>
</tbody>
</table>

(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 that is derived from DoD; and

(iii) Should consider any contractual provisions that reduce the contractor's risk of investment recovery, such as termination protection clauses and capital investment indemnification.

(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 that reduce acquisition cost or yield other tangible benefits such as improved product quality or accelerated deliveries; or

(B) Investments in new equipment for research and development applications.

(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.


215.404–71–5 **Cost efficiency factor.**

(a) This special factor provides an incentive for contractors to reduce costs. To the extent that the contractor can demonstrate cost reduction efforts that benefit the pending contract, the contracting officer may increase the prenegotiation profit objective by an amount not to exceed 4 percent of total objective cost (Block 20 of the DD Form 1547) to recognize these efforts (Block 29).

(b) To determine if using this factor is appropriate, the contracting officer shall consider criteria, such as the following, to evaluate the benefit the contractor's cost reduction efforts will have on the pending contract:

1. The contractor's participation in Single Process Initiative improvements;
2. Actual cost reductions achieved on prior contracts;
3. Reduction or elimination of excess or idle facilities;
4. The contractor's cost reduction initiatives (e.g., competition advocacy programs, technical insertion programs, obsolete parts control programs, spare parts pricing reform, value engineering, outsourcing of functions such as information technology). Metrics developed by the contractor such as fully loaded labor hours (i.e., cost per labor hour, including all direct and indirect costs) or other productivity measures may provide the basis for assessing the effectiveness of the contractor's cost reduction initiatives over time;
5. The contractor's adoption of process improvements to reduce costs;
6. Subcontractor cost reduction efforts;
7. The contractor's effective incorporation of commercial items and processes; or
8. The contractor's investment in new facilities when such investments contribute to better asset utilization or improved productivity.

(c) When selecting the percentage to use for this special factor, the contracting officer has maximum flexibility in determining the best way to evaluate the benefit the contractor's cost reduction efforts will have on the pending contract. However, the contracting officer shall consider the impact that quantity differences, learning, changes in scope, and economic factors such as inflation and deflation will have on cost reduction.


215.404–72 **Modified weighted guidelines method for nonprofit organizations other than FFRDCs.**

(a) **Definition.** As used in this subpart, a nonprofit organization is a business entity—

1. That 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. That is exempted from Federal income taxation under section 501 of the Internal Revenue Code.

(b) For nonprofit organizations that 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 215.404–71, with the following modifications.

1. Modifications to performance risk (Blocks 21–23 of the DD Form 1547).

   (i) If the contracting officer assigns a value from the standard designated range (see 215.404–71–2(c)), reduce the fee objective by an amount equal to 1 percent of the costs in Block 20 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

   (ii) Do not assign a value from the technology incentive designated range.

2. Modifications to contract type risk (Block 24 of the DD Form 1547).

   Use a designated range of $0 to 1 percent instead of the values in 215.404–71–3. There is no normal value.

3. For all other nonprofit organizations except FFRDCs, compute a fee objective for covered actions using the weighted guidelines method in 215.404–71, modified as described in paragraph (b)(1) of this subsection.


   (a) The contracting officer may use an alternate structured approach under 215.404–4(c).

   (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 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 profit to an element of contract cost (see 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 that allow facilities capital cost of money, similar adjustments shall be made to contracts that use alternate structured approaches.


215.404–74 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 16.405–2 and 216.405–2;

   (b) Not use the weighted guidelines method or alternate structured approach;

   (c) Apply the offset policy in 215.404–73(b)(2) for facilities capital cost of money, i.e., reduce the base fee by the amount of facilities capital cost of money; and

   (d) Not complete a DD Form 1547.


215.404–75 Fee requirements for FFRDCs.

   For nonprofit organizations that are FFRDCs, the contracting officer—

   (a) Should consider whether any fee is appropriate. Considerations shall include the FFRDC’s—

   (1) Proportion of retained earnings (as established under generally accepted accounting methods) that relates to DoD contracted effort;

   (2) Facilities capital acquisition plans;

   (3) Working capital funding as assessed on operating cycle cash needs; and

   (4) Provision for funding unreimbursed costs deemed ordinary and necessary to the FFRDC.

   (b) Shall, when a fee is considered appropriate, establish the fee objective in accordance with FFRDC fee policies in the DoD FFRDC Management Plan.
215.404–76  Reporting profit and fee statistics.

(a) Contracting officers in contracting offices that participate in the management information system for profit and fee statistics must send completed DD Forms 1547 on actions that exceed the cost or pricing data threshold, where the contracting officer used 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—

<table>
<thead>
<tr>
<th>Contracting office</th>
<th>Designated office</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARMY</td>
<td></td>
</tr>
<tr>
<td>All</td>
<td>Headquarters, Department of the Army, ATTN: SAAL–PA, Skyline 6, Suite 322, 5109 Leesburg Pike, Falls Church, VA 22041–3201.</td>
</tr>
<tr>
<td>AIR FORCE</td>
<td>Air Force Materiel Command, (all field offices).</td>
</tr>
<tr>
<td></td>
<td>Air Force Materiel Command, 645 CCSG/SCGS, ATTN: J010 Clerk, 2721 Sacramento Street, Wright-Patterson Air Force Base, OH 45433–5506.</td>
</tr>
</tbody>
</table>

(c) When the contracting officer delegates negotiation of a contract action that exceeds the cost or pricing data threshold to another agency (e.g., to an ACO), that agency must ensure that a copy of the DD Form 1547 is provided to the delegating office for reporting purposes within 30 days after 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 Services, Directorate for Information Operations and Reports, (WHS/DIOR), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302

(f) In preparing and 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.

(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 DD–AT&L(Q) 1751.

215.406–1  Prenegotiation objectives.

(a) Also consider—

(i) Data resulting from application of work measurement systems in developing prenegotiation objectives; and

(ii) Field pricing assistance 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 an reviewed in accordance with Departmental procedures.

215.406–3  Documenting the negotiation.

(a)(7) 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 documentation—

(A) Must address significant deviations from the prenegotiation profit objective;
(B) Should include the DD Form 1547, Record of Weighted Guidelines Application (see 215.404–70), if used, with supporting rationale; and

(C) Must address the rationale for not using the weighted guidelines method when its use would otherwise be required by 215.404–70.

215.407–2 Make-or-buy programs.

(e) Program requirements—(1) Items and work included. The minimum dollar amount is $1 million.


(b)(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 FPRA or recommended rates.

215.407–4 Should-cost review.

(b) Program should-cost review. (2) DoD contracting activities should consider performing a program should-cost review before award of a definitive contract for a major system as defined by DoDI 5000.2. See DoDI 5000.2 regarding industry participation.

(c) Overhead should-cost review. (1) Contact the Defense Contract Management Agency (DCMA) (http://www.dcmc.hq.dla.mil/) for questions on overhead should-cost analysis.

(2)(A) DCMA or the military department responsible for performing contact 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 2.101) when all of the following conditions exist:

(1) Projected annual sales to DoD exceed $1 billion;

(2) Projected DoD versus total business exceeds 30 percent;

(3) Level of sole source DoD contracts is high;

(4) Significant volume of proposal activity is anticipated;

(5) Production or development of a major weapon system or program is anticipated; and

(6) Contractor cost control/reduction initiatives appear inadequate.

(B) The head of the contracting activity may request an overhead should-cost review for a business unit that does not meet the criteria in paragraph (c)(2)(A) of this subsection.

(C) 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 DCMA–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 3 years.


215.407–5–70 Disclosure, maintenance, and review requirements.

(a) Definitions.

(1) Acceptable 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 2.101.

(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 that is likely to consistently result in proposal estimates for total cost or a major cost element(s) that 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 acceptable;

(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 totaling $50 million or more for which cost or pricing data were required; or
(ii) In its preceding fiscal year, the contractor received DoD prime contracts or subcontracts totaling $10 million or more (but less than $50 million) for which cost or pricing data were required and the contracting officer, with concurrence or at the request of the ACO, 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 requirements to other than large business contractors.

(2) The cognizant ACO, for contractors subject to paragraph (b)(2) of this subsection, shall—
(i) Determine the acceptability 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 acceptable system;
(ii) Describe its system to the ACO:
(iii) Provide timely notice of changes in the system; and
(iv) Correct system deficiencies identified by the ACO.

(d) Characteristics of an acceptable estimating system—(1) General. An acceptable 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 acceptability 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) 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;

(3) Verification. The ACO shall verify that a contractor’s estimating system is acceptable.
(xiii) Provides for internal review of and accountability for the acceptability 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 judgments 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 the contractor of significant findings during the conduct of the review and during the exit conference.

(C) Prepare a team report.

(1) 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 3 years, of contractors subject to the disclosure requirements. The ACO and the auditor may lengthen or shorten the 3-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, will 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 that need correction;
(ii) The deficiencies are significant estimating deficiencies that 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 that prompted the disapproval; and

(iii) Be sent to the cognizant auditor, and each contracting and contract administration officer having substantial business with the contractor.

(6) Monitoring contractor’s corrective action. The auditor and the 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., FPIF instead of 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 that 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;

(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.


215.408 Solicitation provisions and contract clauses.

(1) Use the clause at 252.215–7000, Pricing Adjustments, in solicitations and contracts that contain the clause at—
   (i) FAR 52.215–11, Price Reduction for Defective Cost or Pricing Data—Modifications;
   (ii) FAR 52.215–12, Subcontractor Cost or Pricing Data; or
   (iii) FAR 52.215–13, Subcontractor Cost or Pricing Data—Modifications.

(2) Use the clause at 252.215–7002, Cost Estimating System requirements, in all solicitations and contracts to be award on the basis of cost or pricing data.

215.470 Estimated data prices.

(a) DoD 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 offerers 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 that the contractor has delivered or is obligated to deliver to the government under another contract or subcontract, and that the successful offeror identifies any such data 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.

PART 216—TYPES OF CONTRACTS

Subpart 216.1—Selecting Contract Types

Sec.
216.104 Factors in selecting contract types.
216.104–70 Research and development.

Subpart 216.2—Fixed-Price Contracts

216.203 Fixed-price contracts with economic price adjustment.
216.203–4 Contract clauses.
216.203–4–70 Additional clauses.

Subpart 216.3—Cost-Reimbursement Contracts

216.306 Cost-plus-fixed-fee contracts.

Subpart 216.4—Incentive Contracts

216.402 Application of predetermined, formula-type incentives.
216.402–2 Technical performance incentives.
216.403 Fixed-price incentive contracts.
216.403–2 Fixed-price incentive (successive targets) contracts.
216.404 Fixed-price contracts with award fees.
216.405 Cost-reimbursement incentive contracts.
216.405–1 Cost-plus-incentive-fee contracts.
216.405–2 Cost-plus-award-fee contracts.
216.470 Other applications of award fees.

Subpart 216.5—Indefinite-Delivery Contracts

216.501 General.
216.505 Ordering.
216.506 Solicitation provisions and contract clauses.

Subpart 216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

216.603 Letter contracts.
216.603–3 Limitations.
216.603–4 Contract clauses.
216.104

Subpart 216.7—Agreements

216.703 Basic ordering agreements.


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 exceeds the simplified acquisition threshold; 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 exceeds the simplified acquisition threshold; 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 re-pricing 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 15.403-1, 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 exists for the particular product being acquired.

(2) The 10 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 nonstandard 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 on a basis other than “established price” (see Note 6 of the clause), that price must be verified.

(5) 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.

(c) Price adjustment for wage rates or material prices controlled by a foreign government.

(1) The price adjustment clause at 252.216–7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government, may be used in fixed-price supply and service contracts when—

(i) The contract is to be performed wholly or in part in a foreign country; and

(ii) A foreign government controls wage rates or material prices and may, during contract performance, impose a mandatory change in wages or prices of material.

(2) Verify the base wage rates and material prices prior to contract award and prior to making any adjustment in the contract price.


Subpart 216.3—Cost-Reimbursement Contracts

216.306 Cost-plus-fixed-fee contracts.

(c) Limitations.

(1) Except as provided in paragraph (c)(ii) of this section, annual military construction appropriations acts prohibit 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) Revising the baseline data or period in the EPA clause for the basic contract to include the new work; or

(D) 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 15.403-1, 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.

216.402 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.

216.404 Fixed-price contracts with award fees.

Award-fee provisions may be used in fixed-price contracts as provided in 216.470

[63 FR 11529, Mar. 9, 1998]

216.405 Cost-reimbursement incentive contracts.

216.405–1 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.

[56 FR 36340, July 31, 1991. Redesignated at 63 FR 11529, Mar. 9, 1998]

216.405–2 Cost-plus-award-fee contracts.

(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—
(1) 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.

[56 FR 36340, July 31, 1991. Redesignated at 63 FR 11529, Mar. 9, 1998]

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>
<thead>
<tr>
<th>Table 16–1—Performance Evaluation Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A—Time of Delivery</strong></td>
</tr>
<tr>
<td>(A–1) Adherence to plan schedule.</td>
</tr>
<tr>
<td>Consistently late on 20% of plans.</td>
</tr>
<tr>
<td>Late on 10% plans w/o prior agreement.</td>
</tr>
<tr>
<td>Occasional plan late w/o justification.</td>
</tr>
<tr>
<td>Meets plan schedule.</td>
</tr>
<tr>
<td>Delivers all plans on schedule &amp; meets prod. change requirements on schedule.</td>
</tr>
<tr>
<td>Anticipates in good time, advises Shipyard, resolves independently and meets production schedule.</td>
</tr>
<tr>
<td>(A–2) Action on Anticipated delays.</td>
</tr>
<tr>
<td>Does not expose changes or resolve them as soon as recognized.</td>
</tr>
<tr>
<td>Exposes changes but is dilatory in resolution on plans.</td>
</tr>
<tr>
<td>Anticipates changes, advise Shipyard but misses completion of design plans 10%.</td>
</tr>
<tr>
<td>Keeps Yard posted on delays, resolves independently on plans.</td>
</tr>
</tbody>
</table>

111
### Table 16-1—Performance Evaluation Criteria—Continued

<table>
<thead>
<tr>
<th>Subcategory</th>
<th>Subcategory Details</th>
<th>Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A-3) Plan Maintenance</td>
<td>Does not complete interrelated systems studies concurrently.</td>
<td>Design changes, studies resolved and test data issued ahead of production requirements.</td>
</tr>
<tr>
<td>(B-1) Work Appearance</td>
<td>25% dwgs. not compatible with Shipyard repro, processes and use.</td>
<td>0% dwgs. prepared by Des. agent, not compatible with Shipyard repro, processes and use.</td>
</tr>
<tr>
<td>(B-2) Thoroughness and Accuracy of Work</td>
<td>Is brief on plans tending to leave questionable situations for Shipyard to resolve.</td>
<td>Work of highest caliber incorporating all pertinent data required including related activities.</td>
</tr>
<tr>
<td>(B-3) Engineering Competence</td>
<td>Tendency to follow past practice with no variation to meet reqmts. job in hand.</td>
<td>Exceptional knowledge of Naval shipwork &amp; adaptability to work process incorporating knowledge of future planning in design.</td>
</tr>
<tr>
<td>(B-4) Liaison Effectiveness</td>
<td>Indifferent to requirements of associated activities, related systems, and Shipyard advice.</td>
<td>Maintains expert contact, keeping Yard informed, obtaining info from equip., supplies w/o prompting by Shipyard.</td>
</tr>
<tr>
<td>(B-5) Independence and Initiative</td>
<td>Constant surveillance required to keep job from slipping—assign to low priority to satisfy needs.</td>
<td>Develops complete and accurate plans, seeks out problem areas, and resolves with assoc. act. ahead of schedule.</td>
</tr>
<tr>
<td>(C-1) Utilization of Personnel</td>
<td>Planning of work left to designers on drafting boards.</td>
<td>Mods. to design plans limited to less than 5% as result lack engng. sys. tem correl.</td>
</tr>
</tbody>
</table>

**Note:**
- The table continues with similar criteria for each subcategory. The highlighted rows are illustrative and not exhaustive.
- The table is a continuation of the performance evaluation criteria, focusing on various aspects such as plan maintenance, work appearance, thoroughness, engineering competence, liaison effectiveness, independence, and utilization of personnel.
- Each criterion is rated based on a scale of Submarginal, Marginal, Good, Very good, and Excellent.
- The document is a page from 216.470, with references to 48 CFR Ch. 2 (10–1–02 Edition).
### TABLE 16—PERFORMANCE EVALUATION CRITERIA—Continued

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Submarginal</th>
<th>Marginal</th>
<th>Good</th>
<th>Very good</th>
<th>Excellent</th>
</tr>
</thead>
<tbody>
<tr>
<td>(C–2) Control Direct Charges</td>
<td>Expenditures not controlled for services.</td>
<td>Expenditures reviewed occasionally by supervision.</td>
<td>Direct charges set &amp; accounted for on each work package.</td>
<td>Provides services as part of normal design function w/o extra charges</td>
<td>No cost over-runs on original estimates w/ extra charges</td>
</tr>
<tr>
<td>(Except Labor).</td>
<td>Does not meet cost estimate for original work or changes 30% time.</td>
<td>Does not meet cost estimate for original work or changes 20% time.</td>
<td>Exceeds original est. on change orders 10% time and meets original design costs</td>
<td>Exceeds original est. on change orders 5% time.</td>
<td>Next exceeds estimates of original package or change orders.</td>
</tr>
<tr>
<td>(C–3) Performance to Cost Estimate.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

VerDate Oct 09 2002 06:00 Oct 22, 2002 Jkt 197195 PO 00000 Frm 00113 Fmt 8010 Sfmt 8010 Y:\SGML\197195T.XXX 197195T
### TABLE 16-2.—CONTRACTOR PERFORMANCE EVALUATION REPORT

<table>
<thead>
<tr>
<th>Category</th>
<th>Criteria</th>
<th>Rating</th>
<th>Item factor</th>
<th>Evaluation rating</th>
<th>Category factor</th>
<th>Efficiency rating</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A</strong></td>
<td>TIME OF DELIVERY.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>A–1 Adherence to Plan Schedule</td>
<td>____</td>
<td>×</td>
<td>.40 =</td>
<td>____</td>
<td></td>
</tr>
<tr>
<td></td>
<td>A–2 Action on Anticipated Delays</td>
<td>____</td>
<td>×</td>
<td>.30 =</td>
<td>____</td>
<td></td>
</tr>
<tr>
<td></td>
<td>A–3 Plan Maintenance</td>
<td>____</td>
<td>×</td>
<td>.30 =</td>
<td>____</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total Item Weighed Rating</td>
<td>____</td>
<td>×</td>
<td>.30 =</td>
<td>____</td>
<td></td>
</tr>
<tr>
<td><strong>B</strong></td>
<td>QUALITY OF WORK.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>B–1 Work Appearance</td>
<td>____</td>
<td>×</td>
<td>.15 =</td>
<td>____</td>
<td></td>
</tr>
<tr>
<td></td>
<td>B–2 Thoroughness and Accuracy of Work</td>
<td>____</td>
<td>×</td>
<td>.30 =</td>
<td>____</td>
<td></td>
</tr>
<tr>
<td></td>
<td>B–3 Engineering Competence</td>
<td>____</td>
<td>×</td>
<td>.20 =</td>
<td>____</td>
<td></td>
</tr>
<tr>
<td></td>
<td>B–4 Liaison Effectiveness</td>
<td>____</td>
<td>×</td>
<td>.15 =</td>
<td>____</td>
<td></td>
</tr>
<tr>
<td></td>
<td>B–5 Independence and Initiative</td>
<td>____</td>
<td>×</td>
<td>.20 =</td>
<td>____</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total Item Weighed Rating</td>
<td>____</td>
<td>×</td>
<td>.40 =</td>
<td>____</td>
<td></td>
</tr>
<tr>
<td><strong>C</strong></td>
<td>EFFECTIVENESS IN CONTROLLING AND/OR REDUCING COSTS.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>C–1 Utilization of Personnel</td>
<td>____</td>
<td>×</td>
<td>.30 =</td>
<td>____</td>
<td></td>
</tr>
<tr>
<td></td>
<td>C–2 Control of all Direct Charges Other than Labor</td>
<td>____</td>
<td>×</td>
<td>.30 =</td>
<td>____</td>
<td></td>
</tr>
<tr>
<td></td>
<td>C–3 Performance to Cost Estimate</td>
<td>____</td>
<td>×</td>
<td>.40 =</td>
<td>____</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total Item Weighed Rating</td>
<td>____</td>
<td>×</td>
<td>.30 =</td>
<td>____</td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL WEIGHED RATING:**

Rated by:

Signature(s): — s0

Ratings—Excellent; Very good; Good; Marginal; Submarginal;

Period of: 19

Contract Number

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.


216.505 Ordering.

Orders placed under indefinite-delivery contracts may be issued on DD Form 1155, Order for Supplies or Services.

[63 FR 11529, Mar. 9, 1998]

216.506 Solicitation provisions and 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 232.247–7015, Requirements, for paragraph (f) of the clause at FAR 52.216–21, Requirements.

[63 FR 11529, Mar. 9, 1998]

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), instead 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.
Incentive provisions consistent with this part are permitted.

PART 217—SPECIAL CONTRACTING METHODS

Subpart 217.1—Multiyear Contracting

Sec.
217.103 Definitions.
217.170 General.
217.171 Multiyear contracts for services.
217.172 Multiyear contracts for supplies.
217.173 Multiyear contracts for weapon systems.
217.174 Multiyear contracts that employ economic order quantity procurement.

Subpart 217.2—Options

217.202 Use of options.
217.208 Solicitation provisions and contract clauses.

Subpart 217.4—Leader Company Contracting

217.401 General.

Subpart 217.5—Interagency Acquisitions Under the Economy Act

217.500 Scope of subpart.
217.503 Determinations and findings requirements.
217.504 Ordering procedures.

Subpart 217.6—Management and Operating Contracts

217.600 Scope of subpart.

Subpart 217.70—Exchange of Personal Property

217.7000 Scope of subpart.
217.7001 Definitions.
217.7002 Policy.
217.7003 Purchase request.
217.7004 Solicitation and award.

Subpart 217.71—Master Agreement for Repair and Alteration of Vessels

217.7100 Scope of subpart.
217.7101 Definitions.
217.7102 General.
217.7103 Procedures.
217.7103–1 Content and format.
217.7103–2 Period of agreement.
217.7103–3 Solicitations for job orders.
217.103 Definitions.

Advance procurement, as used in this subpart, means an exception to the full funding policy that allows acquisition of long lead time items (advance long lead acquisition) or economic order quantities (EOQ) of items (advance EOQ acquisition) in a fiscal year in advance of that in which the related end item is to be acquired. Advance procurements may include materials, parts, components, and effort that must be funded in advance to maintain a planned production schedule.

217.170 General.

(a) Before awarding a multiyear contract, the head of the agency must compare the cost of that contract to the cost of an annual procurement approach, using a present value analysis. Do not award the multiyear contract unless the analysis shows that the multiyear contract will result in the lower cost (10 U.S.C. 2306b(1)(7); Section 8008(b) of Public Law 105–56 and similar sections in subsequent DoD appropriations acts).

(b) The head of the agency must provide written notice to the congressional defense committees at least 10 days before termination of any multiyear contract (10 U.S.C. 2306b(1)(6); 10 U.S.C. 2306c(d)(3); Section 8008(a) of Public Law 105–56 and similar sections in subsequent DoD appropriations acts).

(c) Every multiyear contract must comply with FAR 17.104(c), unless an exception is approved through the budget process in coordination with the cognizant comptroller.

(d)(1) DoD must receive authorization from, or provide notification to, Congress before entering into a multiyear contract for certain procurements, including those expected to—

(i) Exceed $500 million (see 217.171(a)(5); 217.172(c); and 217.173(b)(4));

(ii) Employ economic order quantity procurement in excess of $20 million in any one year (see 217.174(a)(1));

(iii) Employ an unfunded contingent liability in excess of $20 million (see 217.171(a)(4)(i) and 217.172(d)(1));

(iv) Include a cancellation ceiling in excess of $100 million (see 217.171(a)(4)(ii) and 217.172(d)(2)); or

(v) Include a cancellation ceiling in excess of $100 million (see 217.171(a)(4)(i) and 217.172(d)(2)).

(2) A DoD component must submit a request for authority to enter into multiyear contracts described in paragraphs (d)(1)(i) through (iv) of this section as part of the component’s budget submission for the fiscal year in which the multiyear contract will be initiated. DoD will include the request, for each candidate it supports, as part of the President’s Budget for that year and in the Appendix to that budget as part of proposed legislative language for the appropriations bill for that year (Section 8008(b) of Public Law 105–56).

(3) If the advisability of using a multiyear contract becomes apparent too late to satisfy the requirements in paragraph (d)(2) of this section, the request for authority to enter into a multiyear contract must be—

(i) Formally submitted by the President as a budget amendment; or

(ii) Made by the Secretary of Defense, in writing, to the congressional defense committees. (Section 8008(b) of Public Law 105–56)

(4) Agencies must establish reporting procedures to meet the congressional notification requirements of paragraph (d)(1) of this section. The head of the agency must submit a copy of each notice to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and
217.171 Multiyear contracts for services.

(a) 10 U.S.C. 2306c. (1) The head of the agency may enter into a multiyear contract for a period of not more than 5 years for the following types of services (and items of supply relating to such services), even though funds are limited by statute to obligation only during the fiscal year for which they were appropriated:
   (i) Operation, maintenance, and support of facilities and installations.
   (ii) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment.
   (iii) Specialized training requiring high quality instructor skills (e.g., training for pilots and aircrew members or foreign language training).
   (iv) Base services (e.g., ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal).

(b) The head of the agency must be guided by the following principles when entering into a multiyear contract for services:
   (i) The portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of the plant or equipment. As used in this section, “useful commercial life” means the commercial utility of the facilities rather than the physical life, with due consideration given to such factors as the location, specialized nature, and obsolescence of the facilities.
   (ii) Consider the desirability of obtaining an option to extend the term of the contract for a reasonable period not to exceed 3 years at prices that do not include charges for plant, equipment, or other nonrecurring costs already amortized.
   (iii) Consider the desirability of reserving the right to take title, under the appropriate circumstances, to the plant or equipment upon payment of the unamortized portion of the cost.

(3) Before entering into a multiyear contract for services, the head of the agency must make a written determination that—
   (i) There will be a continuing requirement for the services consistent with current plans for the proposed contract period;
   (ii) Furnishing the services will require—
      (A) A substantial initial investment in plant or equipment; or
      (B) The incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and
   (iii) Using a multiyear contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operations.

(b) The head of the agency must provide written notice to the congressional defense committees at least 30 days before award of a multiyear contract for services that include—
   (i) An unfunded contingent liability in excess of $20 million (Section 8008(a) of Public Law 105-56 and similar sections in subsequent DoD appropriations acts); or
   (ii) A cancellation ceiling in excess of $100 million.

(5) The head of the agency must not initiate a multiyear contract for services exceeding $500 million unless a law specifically provides authority for the contract.

(b) 10 U.S.C. 2629. (1) The head of the agency 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 from annual appropriations for that year.

(2) The head of the agency may use this authority only if the term of the contract does not exceed 4 years.

217.172 Multiyear contracts for supplies.

(a) This section applies to all multiyear contracts for supplies, including weapon systems. For policies that apply only to multiyear contracts for weapon systems, see 217.173.
(b) The head of the agency may enter into a multiyear contract for supplies if, in addition to the conditions listed in FAR 17.105–1(b), the use of such a contract will promote the national security of the United States.

(c) The head of the agency must not enter into or extend a multiyear contract that exceeds $500 million (when entered into or when extended) until the Secretary of Defense identifies the contract and any extension in a report submitted to the congressional defense committees (10 U.S.C. 2306b(i)(5)).

(d) The head of the agency must provide written notice to the congressional defense committees at least 30 days before award of a multiyear contract that includes—

(1) An unfunded contingent liability in excess of $20 million (10 U.S.C. 2306b(i)(1); Section 8008(a) of Public Law 105–56 and similar sections in subsequent DoD appropriations acts); or

(2) A cancellation ceiling in excess of $100 million (10 U.S.C. 2306b(g)).

(e) The Secretary of Defense may instruct the head of the agency proposing a multiyear contract to include in that contract negotiated priced options for varying the quantities of end items to be procured over the life of the contract (10 U.S.C. 2306b(j)).

(66 FR 63338, Dec. 6, 2001)

217.173 Multiyear contracts for weapon systems.

(a) As authorized by 10 U.S.C. 2306b(h) and subject to the conditions in paragraph (b) of this section, the head of the agency may enter into a multiyear contract for—

(1) A weapon system and associated items, services, and logistics support for a weapon system; and

(2) Advance procurement of components, parts, and materials necessary to manufacture a weapon system, including advance procurement to achieve economic lot purchases or more efficient production rates (see 217.174 regarding economic order quantity procurement).

(b) The head of the agency must ensure that the following conditions are satisfied before awarding a multiyear contract under the authority described in paragraph (a) of this section:

(1) The multiyear exhibits required by DoD 7000.14–R, Financial Management Regulation, are included in the agency’s budget estimate submission and the President’s budget request.

(2) The Secretary of Defense certifies to Congress that the current 5-year defense program fully funds the support costs associated with the multiyear program (10 U.S.C. 2306b(i)(1)(A)). The head of the agency must submit information supporting this certification to USD(C) (P/B) for transmission to Congress through the Secretary of Defense.

(3) The proposed multiyear contract provides for production at not less than minimum economic rates, given the existing tooling and facilities (10 U.S.C. 2306b(i)(1)(B)). The head of the agency must submit information supporting the agency’s determination that this requirement has been met.

(4) If the value of a multiyear contract for a particular system or component exceeds $500 million, use of a multiyear contract is specifically authorized by—

(i) An appropriations act (10 U.S.C. 2306b(i)(3)); and

(ii) A law other than an appropriations act (10 U.S.C. 2306b(i)(3)).

(5) All other requirements of law are met and there are no other statutory restrictions on using a multiyear contract for the specific system or component (10 U.S.C. 2306b(i)(2)). One such restriction may be the achievement of specified cost savings. If the agency finds, after negotiations with the contractor(s), that the specified savings cannot be achieved, the head of the agency must assess the savings that, nevertheless, could be achieved by using a multiyear contract. If the savings are substantial, the head of the agency may request relief from the law’s specific savings requirement. The request must—

(i) Quantify the savings that can be achieved;

(ii) Explain any other benefits to the Government of using the multiyear contract;

(iii) Include details regarding the negotiated contract terms and conditions; and
217.174 Multiyear contracts that employ economic order quantity procurement.

(a) The head of the agency must provide written notice to the congressional defense committees at least 30 days before awarding—

(1) A multiyear contract providing for economic order quantity procurement in excess of $20 million in any one year; or

(2) A contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20 million in any one year. (10 U.S.C. 2306b(1); Section 8008(a) of Public Law 105–56 and similar sections in subsequent DoD appropriations acts)

(b) Before initiating an advance procurement, the contracting officer must verify that it is consistent with DoD policy (e.g., Chapter 2 of DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, and the full funding policy in Volume 2A, Chapter 1, of DoD 7000.14–R, Financial Management Regulation).

(66 FR 63338, Dec. 6, 2001)

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 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.


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.

(1) When leader company contracting is to be considered, take special effort to select a small disadvantaged business (SDB) concern as the follower company if—

(i) The follower company will be a subcontractor and the North American Industry Classification System
Department of Defense

121

(NAICS) Industry Subsector of the acquisition is one in which use of an evaluation factor or subfactor for participation of SDB concerns is currently authorized (see FAR 19.201(b)); or

(ii) The follower company will be a prime contractor and the NAICS Industry Subsector of the acquisition is one in which use of a price evaluation adjustment is currently authorized (see FAR 19.201(b)).

(2) If special effort is required by paragraph (1) of this section and an SDB is not selected as the follower company, the contracting officer shall document the contract file to reflect—

(i) The extent of actions taken to identify SDB concerns for participation in the acquisition; and

(ii) The rationale for selection of a non-SDB as the follower company.


Subpart 217.5—Interagency Acquisitions Under the Economy Act

SOURCE: 63 FR 11530, Mar. 9, 1998, unless otherwise noted.

217.500 Scope of subpart.

(b) Unless more specific statutory authority exists, the procedures in FAR Subpart 17.5, this subpart, and DODI 4000.19 apply to all purchases, except micro-purchases, made for DoD by another agency. This includes orders under a task or delivery order contract entered into by the other agency. (Pub. L. 105–261, Section 814.)

[64 FR 14400, Mar. 25, 1999]

217.503 Determinations and findings requirements.

(c) If requested, the contracting officer who normally would contract for the requesting activity should advise in the determination process.

217.504 Ordering procedures.

(a) When the requesting agency is within DoD, a copy of the executed D&F shall be furnished to the servicing agency as an attachment to the order. When a DoD contracting office is acting as the servicing agency, a copy of the executed D&F shall be obtained from the requesting agency and placed in the contract file for the Economy Act order.

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 nonexcess 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 that fall within one of the generic categories listed in DoD 4140.1–R, DoD Materiel Management Regulation, Chapter 6.2, Exchange or Sale of Nonexcess Personal Property.

[56 FR 36345, July 31, 1991, as amended at 65 FR 39705, June 27, 2000]

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—
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 DoD 4140.1–R, Chapter 6.2.
(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).

[56 FR 36345, July 31, 1991, as amended at 65 FR 39705, June 27, 2000]

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 Subpart 14.2 or 15.2, 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 Subpart 14.4 or 15.5.

[64 FR 55052, Oct. 14, 1998]

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 ascertained.

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.
   (12) 252.217–7014, Discharge of Liens.
   (13) 252.217–7015, Safety and Health.
   (14) 252.217–7016, Plant Protection, as applicable.

(b) 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 Ordnance, 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—

(i) Include the following information in the solicitation—

(A) The number (or estimated number) of dispenser cabinets required;

(B) Whether metal stands for the cabinets are required;

(C) 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
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 contracts that are—

(1) For commercial items; or

(2) Valued at or below the simplified acquisition threshold.


217.7303  Solicitation provision.

(a) Use the provision at 252.217–7026, Identification of Sources of Supply, or one substantially the same, in solicitation 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—Undefinitized 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.


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 that provide for definitization by the earlier of—
1. The date that is 180 days after issuance of the action (this date may be extended but may not exceed the date that 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.


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.
217.7404–6  

(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—

1. A contingency operation as defined in 10 U.S.C. 101(a)(13); or

2. A humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(7).

[60 FR 29498, June 5, 1995, as amended at 63 FR 67804, Dec. 9, 1998]

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 31470, 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 232.217–7027, 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 15.403–1, 15.403–2, or 15.403–3 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.


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) Include appropriately tailored provisions in the contract when SAIP is used.

[56 FR 36345, July 31, 1991, as amended at 65 FR 39705, June 27, 2000]

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 at or below the simplified acquisition threshold.

(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.

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 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 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, Undefinitized 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

Sec.
219.000 Scope of part.
219.001 Definitions.

Subpart 219.2—Policies

219.201 General policy.
219.202 Specific policies.
219.202–1 Encouraging small business participation in acquisitions.
219.202–5 Data collection and reporting requirements.

Subpart 219.4—Cooperation With the Small Business Administration

219.401 General.

Subpart 219.5—Set-Asides for Small Business

219.502 Setting aside acquisitions.
219.502–1 Requirements for setting aside acquisitions.
219.505 Rejecting Small Business Administration recommendations.

Subpart 219.6—Certificates of Competency

219.602 Procedures.
219.602–1 Referral.
219.602–3 Resolving differences between the agency and the Small Business Administration.

Subpart 219.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

219.702 Statutory requirements.
219.703 Eligibility requirements for participating in the program.
219.704 Subcontracting plan requirements.
219.705 Responsibilities of the contracting officer under the subcontracting assistance program.
219.705–4 Determining the need for a subcontracting plan.
219.705–5 Reviewing the subcontracting plan.
219.706 Responsibilities of the cognizant administrative contracting officer.
219.708 Solicitation provisions and contract clauses.

Subpart 219.8—Contracting With the Small Business Administration (The 8(a) Program)

219.800 General.
219.803 Selecting acquisitions for the 8(a) Program.
219.804 Evaluation, offering, and acceptance.
219.804–1 Agency evaluation.
219.804–2 Agency offering.
219.804–3 SBA acceptance.
219.805 Competitive 8(a).
219.805–2 Procedures.
219.806 Pricing the 8(a) contract.
219.808 Contract negotiations.
219.808–1 Sole source.
219.811 Preparing the contracts.
219.811–1 Sole source.
219.811–2 Competitive.
219.811–3 Contract clauses.
219.812 Contract administration.

Subpart 219.10—Small Business Competitiveness Demonstration Program

219.1005 Applicability.
219.1007 Procedures.

Subpart 219.11—Price Evaluation Adjustments for Small Disadvantaged Business Concerns

219.1102 Applicability.

Subpart 219.12—Small Disadvantaged Business Participation Program

219.1203 Incentive subcontracting with small disadvantaged business concerns.
219.1204 Solicitation provisions and contract clauses.

Subpart 219.70 [Reserved]

Subpart 219.71—Pilot Mentor-Protege Program

219.7100 Scope.
219.7101 Policy.
219.7102 General.
219.7103 Procedures.
219.7103–1 General.
219.7103–2 Contracting officer responsibilities.
219.7104 Developmental assistance costs eligible for reimbursement or credit.
219.7105 Reporting.
219.7106 Performance reviews.


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 2003 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.


219.001 Definitions.

Small disadvantaged business concern is defined:

(1) At FAR 52.219–23(a) (i.e., a firm is considered a small disadvantaged business (SDB) concern by receiving certification by the Small Business Administration and meeting the other listed criteria), except as specified in paragraph (2) of this definition.

(2) At FAR 52.219–23(a) or 52.219–1(b)(2) for the following purposes (i.e., a firm is considered an SDB concern by either receiving certification by the Small Business Administration and meeting the other listed criteria or self-representing its status for general statistical purposes):

(i) A higher customary progress payment rate for SDB concerns (see 232.501–1(a)(1) and 252.232–7004(c)).

(ii) A lower threshold for inclusion of customary progress payments in contracts with SDB concerns (see 232.502–1).

(iii) The prompt payment policy for SDB concerns in 232.903 and 232.905(2).

(iv) Reporting contract actions with SDB concerns (“Type of Business” on the DD Form 350, Individual Contracting Action Report (see 253.204–70(d)(5)(i)(A)) or “Small Disadvantaged Business (SDB) Actions” on the DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less (see 253.204–71(g)(2)).

[63 FR 64429, Nov. 20, 1999]

Subpart 219.2—Policies

219.201 General policy.

(a) The DoD will use the Section 8(a) program, small disadvantaged business evaluation preferences, advance payments, outreach, and technical assistance to meet its five percent goal for contract and subcontract awards to small disadvantaged businesses.

(d) For the defense agencies, the director of the Office of Small and Disadvantaged Business Utilization must be appointed by, be responsible to, and report directly to the director or deputy director of the defense agency.

(b) The responsibility for assigning small business technical advisors is delegated to the head of the contracting activity.

(10) Contracting activity small business specialists perform this function by—

(A) Reviewing and making recommendations for all acquisitions over $10,000;

(B) Making the review before issue of the solicitation or contract modification and documenting it on DD Form 2579, Small Business Coordination Record; and

(C) Referring recommendations that have been rejected by the contracting officer to the Small Business Administration (SBA) procurement center representative. However, if an SBA representative is not assigned or available, the specialist refers the matter to the specialist’s appointing authority.

(e) 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.

The Directors, Office of Small and Disadvantaged Business Utilization, of the military departments and defense agencies are responsible for determining whether use of the price evaluation adjustment to achieve a small disadvantaged business goal has caused non-SDB firms in a particular North American Industry Classification System Industry Subsector to bear an undue burden or other inappropriate effect. A copy of each determination shall be forwarded to the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), simultaneously with submittal to the Office of Federal Procurement Policy.


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 D4C of the Individual Contracting 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 price evaluation adjustment awards (see FAR Subpart 19.11), divide the difference between the low responsive offer and the award price by the low responsive offer.
(3) For partial small business set-asides with preferential consideration for small disadvantaged business concerns, 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 219.4—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

219.502 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]

219.502-3 Partial set-asides.

(c)(1) If the North American Industry Classification System Industry Subsector of the acquisition is one in which use of a price evaluation adjustment for small disadvantaged business concerns is currently authorized (see FAR 19.201(b)), apply the adjustment to the non-set-aside portion.

[65 FR 50149, Aug. 17, 2000]

Subpart 219.6—Certificates of Competency

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 Headquarters’ 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 101–180, as amended, requires 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, 2005;  
(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 defense agencies through specifically designated contracting activities; and  
(B) Permits contractors selected for participation in the test program 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 when performing any DoD contract or subcontract that requires a subcontracting plan. 
(ii) During the test period, 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 that require a plan;  
(C) Be accepted for use by contractors participating in the test, whether performing at the prime or subcontract level; and  
(D) Not be subject to application of liquidated damages during the period of the test program (Section 402, Pub. L. 101–574).  
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 to participate in the program as a result of 10 U.S.C. 2410d and Section 9077 of Pub. L. 102–386 and similar sections in subsequent Defense appropriations acts. Under this authority, subcontracts awarded to such entities may be counted toward the prime contractor's small business subcontracting goal.  
(2)(A) To be eligible as an SDB subcontractor, a concern must meet the definition in 219.001.  
(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, Small Disadvantaged and Women-Owned Small 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 or other severely disabled approved by the Committee for Purchase from People Who Are Blind or Severely Disabled.  
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 215.304 for unique DoD requirements.

[59 FR 27670, May 27, 1994, as amended at 64 FR 51076, Sept. 21, 1999]

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 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.

[56 FR 36353, July 31, 1991, as amended at 63 FR 41974, Aug. 6, 1998]

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 Business Subcontracting Plan.

(B) In contracts with contractors which have comprehensive subcontracting 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 Business Subcontracting Plan.

(2) In contracts with contractors that 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—Subcontracting Plan.

(c)(1) Do not use the clause at FAR 52.219–10, Incentive Subcontracting Program, in contracts with contractors that have comprehensive subcontracting plans approved under the test program described in 219.702(a).


Subpart 219.8—Contracting With the Small Business Administration (The 8(a) Program)

219.800 General.

(a) By Partnership Agreement (PA) dated February 1, 2002, between the Small Business Administration (SBA) and the Department of Defense (DoD), the SBA delegated to the Under Secretary of Defense (Acquisition, Technology, and Logistics) its authority under paragraph 8(a)(1)(A) of the Small Business Act (15 U.S.C. 637(a)) to enter
139

Department of Defense

219.804–2

into (a) prime contracts, and its au-

thority under (a)(1)(B) of the Small

Business Act to award the performance

of those contracts to eligible (a) Pro-

gram participants. However, the SBA

remains the prime contractor on all

(a) contracts, continues to determine

eligibility of concerns for contract

award, and retains appeal rights under

FAR 19.810. The SBA delegates only

the authority to sign contracts on its be-

half. Consistent with the provisions of

this subpart, this authority is hereby

redelegated to DoD contracting officers

within the United States, its territ-

ories and possessions, Puerto Rico,

the Trust Territory of the Pacific Is-

lands, and the District of Columbia, to

to the extent that it is consistent with

any dollar or other restrictions estab-

lished in individual warrants. This au-


(b) Contracts awarded under the PA

may be awarded directly to the (a) par-

ticipant on either a sole source or

competitive basis. An SBA signature

on the contract is not required.

(c) Notwithstanding the PA, the con-

tracting officer may elect to award a

contract pursuant to the provisions of

FAR Subpart 19.8.

[67 FR 11436, Mar. 14, 2002]

219.803 Selecting acquisitions for the

(a) Program.

(b) Contracting activities should re-

spond to SBA requests for contract

support within 30 calendar days after

receipt.

c) Before considering a small busi-

ness set-aside, review the acqui-

sition for offering under the (a) Pro-

gram.

[56 FR 36353, July 31, 1991, as amended at 63

FR 41974, Aug. 6, 1998]

219.804 Evaluation, offering, and ac-

ceptance.

219.804–1 Agency evaluation.

(f) The (a) firms should be offered

the opportunity to give a technical

presentation.

[63 FR 41974, Aug. 6, 1998]

219.804–2 Agency offering.

(1) For requirements processed under

the PA cited in 219.800 (but see para-

graph (2) of this subsection for proce-

dures related to purchase orders that
do not exceed the simplified acquisi-
tion threshold), the notification to the
SBA shall clearly indicate that the re-
quirement is being processed under the
PA. All notifications should be sub-
mitted in writing, using facsimile or
electronic mail, when possible, and
shall specify that—

(i) Under the PA, an SBA acceptance
or rejection of the offering is required
within 5 working days of receipt of the
offering; and

(ii)(A) For sole source requirements,
an SBA acceptance shall include a size
verification and a determination of the
(a) firm’s program eligibility, and,
upon acceptance, the contracting offi-
cer will solicit a proposal, conduct ne-
gotiations, and make award directly to
the (a) firm; or

(B) For competitive requirements,
upon acceptance, the contracting offi-
cer will solicit offers, conduct source
selection, and, upon receipt of an eligi-
bility verification, award a contract di-
rectly to the selected (a) firm.

(2) Under the PA cited in 219.800, no
separate agency offering or SBA ac-
ceptance is needed for requirements
that are issued under purchase orders
that do not exceed the simplified ac-
quision threshold. After an (a) con-
tractor has been identified, the con-
tracting officer shall establish the
prices, terms, and conditions with the
(a) contractor and shall prepare a pur-
chase order consistent with the proce-
dures in Part 213 and FAR Part 13, in-
cluding the applicable clauses required
by this subpart. No later than the day
that the purchase order is provided to
the (a) contractor, the contracting offi-
cer shall provide to the cognizant
SBA Business Opportunity Specialist,
using facsimile, electronic mail, or any
other means acceptable to the SBA dis-

tric office—

(i) A copy of the signed purchase
order; and

(ii) A notice stating that the pur-
chase order is being processed under
the PA. The notice also shall indicate
that the (a) contractor will be deemed
eligible for award and will automati-
cally begin work under the purchase
order unless, within 2 working days
after SBA’s receipt of the purchase
order, the 8(a) contractor and the contracting officer are notified that the 8(a) contractor is ineligible for award.

(3) The notification to SBA shall identify any joint venture proposed for performance of the contract. SBA shall approve a joint venture before award of an 8(a) contract involving the joint venture.

(4) For competitive requirements for construction to be performed overseas, submit the notification to SBA Headquarters.


219.804–3 SBA acceptance. For requirements processed under the PA cited in 219.800, SBA’s acceptance is required within 5 working days (but see 219.804–2(2) for purchase orders that do not exceed the simplified acquisition threshold).


(c) For requirements processed under the PA cited in 219.800—

(i) For sealed bid and negotiated acquisitions, the SBA will determine the eligibility of the firms and will advise the contracting officer within 2 working days after its receipt of a request for an eligibility determination; and

(ii) For negotiated acquisitions, the contracting officer may submit a request for an eligibility determination on all firms in the competitive range if discussions are to be conducted, or on all firms with a realistic chance of award if no discussions are to be conducted.


219.806 Pricing the 8(a) contract. For requirements processed under the PA cited in 219.800—

(1) The contracting officer shall obtain cost or pricing data from the 8(a) contractor, if required by FAR subpart 15.2; and

(2) SBA concurrence in the negotiated price is not required. However, except for purchase orders not exceeding the simplified acquisition threshold, the contracting officer shall notify the SBA prior to withdrawing a requirement from the 8(a) Program due to failure to agree on price or other terms and conditions.


219.808 Contract negotiations.

219.808–1 Sole source.

For requirements processed under the PA cited in 219.800—

(1) The agency may negotiate directly with the 8(a) contractor. The contracting officer is responsible for initiating negotiations;

(2) The 8(a) contractor is responsible for negotiating within the time established by the contracting officer;

(3) If the 8(a) contractor does not negotiate within the established time and the agency cannot allow additional time, the contracting officer may, after notifying the SBA, proceed with the acquisition from other sources;

(4) If requested by the 8(a) contractor, the SBA may participate in negotiations; and

(5) SBA approval of the contract is not required.


219.811 Preparing the contracts.

219.811–1 Sole source.

(a) Awards under the PA cited in 219.800 may be made directly to the 8(a) contractor and, except as provided in paragraph (b) of this subsection and in 219.811–3, award documents shall be prepared in accordance with procedures established for non-8(a) contracts, using any otherwise authorized award forms. The “Issued by” block shall identify the awarding DoD contracting office. The contractor’s name and address shall be that of the 8(a) participant.

(b) Use the following alternative procedures for direct awards made under the PA cited in 219.800:

(1) Cite 19 U.S.C. 2304(c)(5) as the authority for use of other than full and open competition;
(ii) Include the clause at 252.219-7009, which allows for direct award to the 8(a) contractor, and identify the cognizant SBA district office for the 8(a) contractor;

(iii) No SBA contract number is required; and

(iv) Do not require an SBA signature on the award document.


219.811-2 Competitive.

Awards made under the PA cited in 219.800 shall be prepared in accordance with 219.811-1.


219.811-3 Contract clauses.

(1) Use the clause at 252.219-7009, Section 8(a) Direct Award, instead of the clauses at FAR 52.219-11, Special 8(a) Contract Conditions, FAR 52.219-12, Special 8(a) Subcontract Conditions, and FAR 52.219-17, Section 8(a) Award, in solicitations and contracts processed in accordance with the PA cited in 219.800.

(2) Use the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, with 252.219-7010, Alternate A, in solicitations and contracts processed in accordance with the PA cited in 219.800.

(3) Use the clause at 252.219-7011, Notification to Delay Performance, in solicitations and purchase orders issued in accordance with 219.804-2(2).


219.812 Contract administration.

(d) Awards under the PA cited in 219.800 are subject to Section 407 of Pub. L. 100-656. These contracts include the clause at 252.219-7009, Section 8(a) Direct Award, which requires the 8(a) contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

North American Industry Classification System (NAICS) Description |
| NAICS Code |
| (i) Research and Development in the Physical, Engineering, and Life Sciences (Aircraft Engines and Engine Parts only) | 54171 |
| (ii) Guided Missile and Space Vehicle Manufacturing | 336414 |
| (ii) Research and Development in the Physical, Engineering, and Life Sciences (Guided Missiles and Space Vehicles only) | 54171 |
| (7)(i) Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing | 336419 |
| (ii) Research and Development in the Physical, Engineering, and Life Sciences (Guided Missile and Space Vehicle Parts and Auxiliary Equipment only) | 54171 |
| (8) Military Armored Vehicle, Tank and Tank Component Manufacturing | |
| (9) Search and Navigation System and Instrument Manufacturing | 513311 |
| (10)(i) Cellular and Other Wireless Telecommunications | 513332 |
| (ii) Satellite Telecommunications | |
| (iii) Other Telecommunications | |


219.1007 Procedures.

(b)(1) The Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)), will determine whether reinstatement of small business set-asides is necessary to meet the agency goal and will recommend reinstatement to the Director of Defense Procurement (OUSD(AT&L)). Military departments and defense agencies shall not reinstate small business set-asides unless directed by the Director of Defense Procurement.

(d) Reporting requirements are at 204.670-2.

[65 FR 39705, June 27, 2000]
19.1203. The contracting officer may include an award fee provision in lieu of the incentive; in such cases, however, the contracting officer shall not use the clause at FAR 52.219–26. Do not use award fee provisions in contracts with contractors that have comprehensive subcontracting plans approved under the test program described in 219.702(a).

Subpart 219.70 [Reserved]

Subpart 219.71—Pilot Mentor-Protege Program

Source: 65 FR 6555, Feb. 10, 2000, 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; 10 U.S.C. 2302 note). The purpose of the Program is to provide incentives for DoD contractors to assist protege firms in enhancing their capabilities and to increase participation of such firms in Government and commercial contracts.

[66 FR 47108, Sept. 11, 2001]

219.7101 Policy.

DoD policy and procedures for implementation of the Program are contained in Appendix I, Policy and Procedures for the DoD Pilot Mentor-Protege Program.

219.7102 General.

The Program includes—

(a) Mentor firms that are prime contractors with at least one active subcontracting plan negotiated under FAR Subpart 19.7;

(b) Protege firms that are—

(1) Small disadvantaged business concerns as defined at 219.001(1);

(2) Eligible for receipt of Federal contracts; and

(3) Selected by the mentor firm.

(c) Mentor-protege agreements that establish a developmental assistance program for a protege firm.

(d) Incentives that DoD may provide to mentor firms, including:

(1) Reimbursement for developmental assistance costs through—

(i) A separately priced contract line item on a DoD contract; or

(ii) A separate contract, upon written determination by the Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (SADBU, OSD (AT&L)), that unusual circumstances justify reimbursement using a separate contract; or

(2) Credit toward applicable subcontracting goals, established under a subcontracting plan negotiated under FAR Subpart 19.7, for developmental assistance costs that are not reimbursed.


219.7103 Procedures.

219.7103–1 General.

The procedures for application, acceptance, and participation in the Program are in Appendix I, Policy and Procedures for the DoD Pilot Mentor-Protege Program. The Director, SADBU, OSD (AT&L), 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 must—

(a) Negotiate an advance agreement on the treatment of developmental assistance costs for either credit or reimbursement 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(a) to incorporate
the clause at 252.232-7005, Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protege Program, when a mentor firm provides advance payments 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 protege firms in accordance with FAR 32.504(c) if a mentor firm provides such payments 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 if—
   (1) A DoD program manager has made funds available for that purpose; and
   (2) The contractor has an approved mentor-protege agreement.

(e) Negotiate and award a separate contract for reimbursement of developmental assistance costs only if—
   (1) A DoD program manager has made funds available for that purpose; and
   (2) The contractor has an approved mentor-protege agreement; and
   (3) The Director, SADBU, OUSD (AT&L), has made a determination in accordance with 219.7102(d)(1)(ii).

(f) Not authorize reimbursement for costs of assistance furnished to a protege firm in excess of $1,000,000 in a fiscal year unless a written determination from the Director, SADBU, OUSD (AT&L), is obtained.

(g) Advise contractors of reporting requirements in Appendix I.

(h) Provide a copy of the approved Mentor-Protege agreement to the Defense Contract Management Agency administrative contracting officer responsible for conducting the annual performance review (see appendix I, section I–112).


219.7104 Developmental assistance costs eligible for reimbursement or credit.

(a) Developmental assistance provided under an approved mentor-protege agreement is distinct from, and must not duplicate, any effort that is the normal and expected product of the award and administration of the mentor firm's subcontracts. The mentor firm must accumulate and charge costs associated with the latter in accordance with its approved accounting practices. Mentor firm costs that are eligible for reimbursement are set forth in appendix I.

(b) Before incurring any costs under the Program, mentor firms must 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, the mentor firm must incur the costs before October 1, 2005.

(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, 2005, that are eligible for crediting under the Program, may be credited toward subcontracting plan goals as set forth in appendix I.

[65 FR 6555, Feb. 10, 2000; 65 FR 30191, May 10, 2000]

219.7105 Reporting.

Mentor and protege firms must report on the progress made under mentor-protege agreements as indicated in appendix I, section I–111.

219.7106 Performance reviews.

The Defense Contract Management Agency will conduct annual performance reviews of all mentor-protege agreements as indicated in appendix I, section I–112. The determinations made in these reviews should be a major factor in determinations of amounts of reimbursement, if any, that the mentor firm is eligible to receive in the remaining years of the Program participation term under the agreement.

[65 FR 50150, Aug. 17, 2000]
PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Sec. 222.001 Definition.

Subpart 222.1—Basic Labor Policies

222.101 Labor relations.

222.101–3 Reporting labor disputes.

222.101–3–70 Impact of labor disputes on defense programs.

222.101–4 Removal of items from contractors’ facilities affected by work stoppages.

222.101–70 Acquisition of stevedoring services during labor disputes.

222.102 Federal and State labor requirements.

Subpart 222.3—Contract Work Hours and Safety Standards Act

222.302 Liquidated damages and overtime pay.

Subpart 222.4—Labor Standards for Contracts Involving Construction

222.402 Applicability.

222.402–70 Installation support contracts.

222.403 Statutory and regulatory requirements.

222.403–4 Department of Labor regulations.

222.404 Davis-Bacon Act wage determinations.

222.404–2 General requirements.

222.404–3 Procedures for requesting wage determinations.

222.404–11 Wage determination appeals.

222.406 Administration and enforcement.

222.406–1 Policy.

222.406–6 Payrolls and statements.

222.406–8 Investigations.

222.406–9 Withholding from or suspension of contract payments.

222.406–10 Disposition of disputes concerning construction contract labor standards enforcement.

222.406–13 Semiannual enforcement reports.

222.407 Contract clauses.

Subpart 222.6—Walsh-Healey Public Contracts Act

222.604 Exemptions.

222.604–2 Regulatory exemptions.

Subpart 222.8—Equal Employment Opportunity

222.804–2 Construction.

222.805 Procedures.

222.806 Inquiries.

222.807 Exemptions.

Subpart 222.10—Service Contract Act of 1965, as Amended

222.1003 Applicability.

222.1003–1 General.

222.1003–7 Questions concerning applicability of the Act.

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.

Subpart 222.13—Special Disabled and Vietnam Era Veterans

222.1303 Waivers.

222.1306 Complaint procedures.

222.1308 Contract clauses.

Subpart 222.14—Employment of the Handicapped

222.1403 Waivers.

222.1406 Complaint procedures.

Subpart 222.70—Restrictions on the Employment of Personnel for Work on Construction and Service Contracts in Noncontiguous States

222.7000 Scope of subpart.

222.7001 Definition.

222.7002 General.

222.7003 Waivers.

222.7004 Contract clause.

Subpart 222.71—Right of First Refusal of Employment

222.7100 Scope of subpart.

222.7101 Policy.

222.7102 Contract clause.

Subpart 222.72—Compliance with Labor Laws of Foreign Governments

222.7200 Scope of subpart.

222.7201 Contract clauses.

Subpart 222.73—Limitations Applicable to Contracts Performed on Guam

222.7300 Scope of subpart.

222.7301 Prohibition on use of nonimmigrant aliens.

222.7302 Exception.

222.7303 Contract clause.

222.001 Definition.

Labor advisor, as used in this part, means the departmental or agency headquarters labor advisor.

Subpart 222.1—Basic Labor Policies

222.101 Labor relations.

222.101–1 General.

(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;

(ii) Notify departmental headquarters as required in departmental procedures when contacted by the national office of any labor organization or Government agency headquarters;

(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

(iv) Submit questions involving FAR part 22 or other contractor labor relations matters to the labor advisor.

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; and

(2) Disseminate information on labor disputes in accordance with departmental procedures.

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. This reporting requirement is assigned Report Control Symbol DD-AT&L(AR)-1153. The report must be in narrative form and must 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 components 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—

(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)(1) 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 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 splitting 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 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. (1) **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—
   
   (i) 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);

3. Transcribe the contractor’s records whenever they contain information at variance with payrolls or other submitted documents.

   (i) 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.

(E) **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.

(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.
222.406–10 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—

(i) Were nonwillful or inadvertent; and

(ii) 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—

(i) Were nonwillful or inadvertent; and

(ii) 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 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.

(b) Submit all applications for such exemptions through contracting channels to the labor advisor.

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 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 conforming 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.

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.
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 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.

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 22.1303(a); or
(ii) The Secretary of Defense, without the power of redelegation, for waivers under FAR 22.1303(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 and Service Contracts in Noncontiguous States

SOURCE: 65 FR 14403, Mar. 16, 2000, unless otherwise noted.

222.7000 Scope of subpart.

(a) This subpart implements Section 8071 of the Fiscal Year 2000 Defense Appropriations Act, Public Law 106–79, 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 a noncontiguous State; and
(2) When the unemployment rate in the noncontiguous State is in excess of the national average rate of unemployment as determined by the Secretary of Labor.

222.7001 Definition.

“Noncontiguous State,” as used in this subpart, means Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Island.

[65 FR 50151, Aug. 17, 2000]

222.7002 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 noncontiguous State, individuals who are residents of that noncontiguous State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform this contract.

222.7003 Waivers.

The head of the agency may waive the requirements of 222.7002 on a case-
Department of Defense

by-case basis in the interest of national security.
[65 FR 50151, Aug. 17, 2000]

222.7004 Contract clause.
Use the clause at 252.222-7000, Restrictions on Employment of Personnel, in all solicitations and contracts subject to this subpart. Insert the name of the appropriate noncontiguous State in paragraph (a) of the clause.

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.

Subpart 222.72—Compliance with Labor Laws of Foreign Governments

222.7200 Scope of subpart.
This subpart prescribes contract clauses, with respect to labor laws of foreign governments, for use when contracting for services or construction within a foreign country.

222.7201 Contract clauses.
(a) Use the clause at 252.222-7002, Compliance with Local Labor Laws (Overseas), in solicitations and contracts for services or construction to be performed outside the United States, its possessions, and Puerto Rico.
(b) Use the clause at 252.222-7003, Permit from Italian Inspectorate of Labor, in solicitations and contracts for porter, janitorial, or ordinary facility and equipment maintenance services to be performed in Italy.
(c) Use the clause at 252.222-7004, Compliance with Spanish Social Security Laws and Regulations, in solicitations and contracts for services or construction to be performed in Spain.

Subpart 222.73—Limitations Applicable to Contracts Performed on Guam

SOURCE: 64 FR 52672, Sept. 30, 1999, unless otherwise noted.

222.7300 Scope of subpart.
(a) This subpart implements—
(1) 10 U.S.C. 2864; and
(2) Section 390 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85).
(b) This subpart applies to—
(1) Contracts for military construction projects on Guam; and
(2) Contracts for base operations support on Guam that—
(i) Are awarded as a result of a competition conducted under OMB Circular A-76; and
222.7301  Prohibition on use of non-immigrant aliens.  
(a) Any alien who is issued a visa or otherwise provided nonimmigrant status under Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)) is prohibited from performing work under a contract for—
(1) A military construction project on Guam; or
(2) Base operations support on Guam.
(b) Lawfully admitted citizens of the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau are not subject to the prohibition in paragraph (a) of this section.

222.7302  Exception.  
The prohibition in 222.7301(a)(1) does not apply to a military construction project if—
(a) There is no acceptable offer in response to a solicitation for the project;
(b) The Secretary concerned makes a determination that the prohibition is a significant deterrent to obtaining offers on the project; and
(c) Another solicitation is issued for the project.

222.7303  Contract clause.  
Use the clause at 252.222–7005, Prohibition on Use of Nonimmigrant Aliens, in solicitations and contracts subject to this subpart, except those issued in accordance with 222.7302.

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 223.3—Hazardous Material Identification and Material Safety Data

223.300  Scope of subpart.
223.302  General.
223.303  Contract clause.
223.370  Safety precautions for ammunition and explosives.
223.370–1  Scope.
223.370–2  Definition.
223.370–3  Policy.
223.370–4  Procedures.
223.370–5  Contract clauses.

48 CFR Ch. 2 (10–1–02 Edition)

Subpart 223.4—Use of Recovered Materials
223.405  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 [Reserved]

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.


SOURCE: 56 FR 36365, July 31, 1991, unless otherwise noted.

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
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;
(15) Inspection; or

(b) This section does not apply to acquisitions solely for—

(1) Inert components containing no explosives, propellants, or pyrotechnics;
(2) Flammable liquids;
(3) Acids;
(4) Oxidizers;
(5) Powdered metals; or

223.370–2 Definition.

Ammunition and explosives, as used in this section, is defined in the clause at 223.370–3 Policy.

(a) DoD policy is to ensure that its contractors take reasonable precautions in handling ammunition and explosives so as to minimize the potential for mishaps that could—

(1) Interrupt DoD operations;
(2) Delay project or product completion dates;
(3) Adversely impact DoD mission readiness, production base, or production capabilities;
(4) Damage or destroy DoD property; or

(b) This policy is implemented by DoD Manual 4145.26–M, DoD Contractors’ Safety Manual for Ammunition and Explosives, which is incorporated into contracts under which ammunition and explosives are handled. The manual contains mandatory safety requirements for contractors. When work is to be performed on a Government-owned installation, the contracting officer may use the ammunition and explosives regulation of the DoD component or installation as a substitute for, or supplement to, DoD Manual 4145.26–M, as long as the contract cites these regulations.

223.370–4 Procedures.

(a) Preaward phase—(1) Waiver of the mandatory requirements. (i) Before either omitting the clause at 223.370–4 Procedures.

(ii) If the contracting officer decides to waive the mandatory requirements before award, the contracting officer shall set forth in the solicitation, or in an amendment of the solicitation, the specific requirements to be waived.
(iii) If the head of the contracting activity declines to approve a request for waiver, but the prospective contractor agrees to take corrective action to bring the operation into compliance, make the corrective action a part of the resulting contract.

(2) Transportation considerations—If shipment of ammunition and explosives is involved in the contract, address in the schedule of the contract the applicable Department of Transportation or Military Traffic Management Command requirements and any other requirements for transportation, packaging, marking, and labeling.

(3) Disposition of excess—Include instructions within the contract concerning final disposition of excess Government furnished material containing ammunition and explosives, including defective or rejected supplies.

(4) Preaward survey—Before awarding any contract, including purchase orders, involving ammunition and explosives, obtain a preaward ammunition and explosives safety survey. If the prospective contractor proposes subcontracting any ammunition or explosive work, include a review of the subcontractor’s facility in the preaward survey.

(b) Postaward phase—(1) Contract administration office responsibility. (i) The contract administration office is responsible for verifying that the safety requirements of the clause at 252.223–7002, Safety Precautions for Ammunition and Explosives, are being implemented in a manner that will reduce, to the maximum extent practicable, or eliminate the probability of a mishap occurring.

(ii) The clause at 252.223–7002, Safety Precautions for Ammunition and Explosives, requires the contractor to submit to the administrative contracting officer (ACO) any postaward requests for a waiver of the contract safety standards, a site plan modification, or a construction review. The ACO shall review any request and make recommendations to the contracting officer. The contracting officer shall make a decision after considering recommendations of the ACO and safety personnel responsible for ammunition and explosive safety.

(A) If the request arrives at the contracting office without evidence that the ACO has seen it, immediately send it to the ACO for review and recommendations.

(B) When the contracting officer has made a determination approving or disapproving the contractor’s request, send the determination to the ACO for transmission to the contractor.

(2) Subcontracts—(i) The clause at 252.223–7002, Safety Precautions for Ammunition and Explosives, requires the contractor to notify the contracting officer when placing a subcontract for ammunition and explosives. The contracting officer should coordinate with the safety personnel and request supporting contract administration in accordance with FAR 42.202(e). If the contracting officer believes the nature of the subcontract work poses a potential danger to Government property, Government personnel, production capability, or contract completion, request supporting contract administration.

(ii) If the preaward safety survey identified areas in which a subcontractor was not complying with the manual, and the subcontractor was supposed to correct the deficiencies before start-up, the contracting officer shall require a preoperations survey to verify that the corrections were made.

(iii) When postaward safety reviews by the Government uncover any safety deficiencies in the subcontractor’s operation, the review team shall inform the ACO cognizant of the subcontractor, who shall immediately notify the ACO cognizant of the prime contractor. The ACO cognizant of the prime shall inform the prime contractor of deficiencies requiring correction. The notifications shall be made by the most expeditious means appropriate to the circumstance. If a critical safety deficiency poses an imminent danger, the ACO cognizant of the prime shall make the notifications by the most expeditious means available.

223.370–5 Contract clauses.

Use the clauses at 252.223–7002, Safety Precautions for Ammunition and Explosives, and 252.223–7003, Change in Place of Performance—Ammunition and Explosives, in all solicitations and contracts for acquisition to which this section applies.

Subpart 223.4—Use of Recovered Materials

223.405 Procedures.

(d) Departments and agencies must centrally collect information submitted in accordance with the clause at FAR 52.223–9 for reporting to the Office of the Deputy Under Secretary of Defense (Environmental Security).

[66 FR 49864, Oct. 1, 2001]

Subpart 223.5—Drug-Free Workplace

Source: 57 FR 32737, July 23, 1992, unless otherwise noted.

223.570 Drug-free work force.

223.570–1 Definitions.

Employee in a sensitive position and illegal drugs, as used in this section, are defined in the clause at 252.223–7004, Drug-Free Work Force.

223.570–2 Policy.

DoD policy is to ensure that its contractors maintain a program for achieving a drug-free work force.

223.570–3 General.

(a) The use of illegal drugs is inconsistent with the law-abiding behavior expected of all citizens. Employees who use illegal drugs tend to be less productive, less reliable, and prone to greater absenteeism. The use of illegal drugs by contractor employees results in the potential for increased cost, delay, and risk in the performance of a Government contract.

(b) If a contractor’s employees use illegal drugs at any time, it can—

(1) Impair their ability to perform tasks that are critical to proper contract performance;

(2) Increase the potential for accidents and for failures that can pose a serious threat to the national security, health, and safety;

(3) Cause less than the complete reliability, stability, and good judgment required of an individual who has access to sensitive information;

(4) Create the possibility of coercion, influence, and irresponsible action under pressure that may post a serious risk to national security, health, and safety.

223.570–4 Contract clause.

(a) Use the clause at 252.223–7004, Drug-Free Work Force, in all solicitations and contracts—

(1) That involve access to classified information; or

(2) When the contracting officer determines that the clause is necessary for reasons of national security or for the purpose of protecting the health or safety of those using or affected by the product of, or performance of, the contract.

(b) Do not use the clause in solicitations and contracts—

(1) For commercial items;

(2) When performance or partial performance will be outside the United States, its territories, and possessions, unless the contracting officer determines such inclusion to be in the best interest of the Government; or

(3) When the value of the acquisition is at or below the simplified acquisition threshold.

[57 FR 32737, July 23, 1992, as amended at 64 FR 2598, Jan. 15, 1999]

Subpart 223.8—Ozone-Depleting Substances

223.803 Policy.

Section 211.271, Elimination of use of class I ozone-depleting substances, places restrictions on award or modification of DoD contracts requiring the use of class I ozone-depleting substances. These restrictions are in addition to any imposed by the Clean Air Act and apply after June 1, 1993, to all DoD contracts, regardless of place of performance.

[61 FR 50452, Sept. 26, 1996]
Subpart 223.70 [Reserved]

Subpart 223.71—Storage and Disposal of Toxic and Hazardous Materials

Source: 58 FR 28466, May 13, 1993, unless otherwise noted.

223.7100 Policy.

10 U.S.C. 2692 prohibits storage or disposal of non-DoD-owned toxic or hazardous materials on DoD installations, except as provided in 223.7102. DoD Instruction 4715.6, Environmental Compliance, implements 10 U.S.C. 2692.


223.7101 Procedures.

(a) If the contracting officer is uncertain as to whether particular activities are prohibited or fall under one of the exceptions in 223.7102, the contracting officer should seek advice from the cognizant office of counsel.

(b) When storage, treatment, or disposal of non-DoD-owned toxic or hazardous materials is authorized in accordance with this subpart, the contract or authorization should specify the types, conditions, and quantities of toxic or hazardous materials that may be temporarily stored, treated, or disposed of in connection with the contract or as a result of the authorized commercial use of a DoD industrial-type facility.

[60 FR 61597, Nov. 30, 1995]

223.7102 Exceptions.

(a) The prohibition of 10 U.S.C. 2692 does not apply to—

(1) The storage of strategic and critical materials in the National Defense Stockpile under an agreement for such storage with the Administrator of General Services Administration;

(2) The temporary storage or disposal of explosives in order to protect the public or to assist agencies responsible for Federal law enforcement in storing or disposing of explosives when no alternative solution is available, if such storage or disposal is made in accordance with an agreement between the Secretary of Defense and the head of the Federal agency concerned;

(3) The temporary storage or disposal of explosives in order to provide emergency lifesaving assistance to civil authorities;

(4) The disposal of excess explosives produced under a DoD contract, if the head of the military department concerned determines, in each case, that an alternative feasible means of disposal is not available to the contractor, taking into consideration public safety, available resources of the contractor, and national defense production requirements;

(5) The temporary storage of nuclear materials or nonnuclear classified materials in accordance with an agreement with the Secretary of Energy;

(6) The storage of materials that constitute military resources intended to be used during peacetime civil emergencies in accordance with applicable DoD regulations;

(7) The temporary storage of materials of other Federal agencies in order to provide assistance and refuge for commercial carriers of such material during a transportation emergency;

(8) The storage of any material that is not owned by DoD, if the Secretary of the military department concerned determines that the material is required or generated by a private person in connection with the authorized and compatible commercial use by that person of an industrial-type DoD facility; or

(9) The treatment and disposal of any non-DoD-owned material if the Secretary of the military department concerned—

(i) Determines that the material is required or generated by a private person in connection with the authorized and compatible commercial use by that person of an industrial-type facility of that military department; and

(ii) Enters into a contract with that person that—

(A) Is consistent with the best interest of national defense and environmental security; and

(B) Provides for that person’s continued financial and environmental responsibility and liability with regard to the material.

(b) The Secretary of Defense, where DoD Instruction 4715.6 applies, may
grant exceptions to the prohibition of 10 U.S.C. 2692 when essential to protect the health and safety of the public from imminent danger.


223.7103 Contract clause.

(a) Use the clause at 252.223–7006, Prohibition on Storage and Disposal of Toxic and Hazardous Materials, in all solicitations and contracts which require, may require, or permit contractor performance on a DoD installation.

(b) Use the clause at 252.223–7006 with its Alternate I, when the Secretary of the military department issues a determination under the exception at 223.7102(a)(9).

[60 FR 13076, Mar. 10, 1995]

Subpart 223.72—Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives

SOURCE: 61 FR 7743, Feb. 29, 1996, unless otherwise noted.

223.7200 Definition.

“Arms, ammunition, and explosives (AA&E),” as used in this subpart, means those items within the scope (chapter 1, paragraph B) of DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

223.7201 Policy.

(a) The requirements of DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives, shall be applied to contracts when—

(1) AA&E will be provided to the contractor or subcontractor as Government-furnished property; or

(2) The principal development, production, manufacture, or purchase of AA&E is for DoD use.

(b) The requirements of DoD 5100.76–M need not be applied to contracts when—

(1) The AA&E to be acquired under the contract is a commercial item within the meaning of FAR 2.101; or

(2) The contract will be performed in a Government-owned contractor-operated ammunition production facility. However, if subcontracts issued under such a contract will meet the criteria of paragraph (a) of this section, the requirements of DoD 5100.76–M shall apply.

223.7202 Preaward responsibilities.

When an acquisition involves AA&E, technical or requirements personnel shall specify in the purchase request—

(a) That AA&E is involved; and

(b) Which physical security requirements of DoD 5100.76–M apply.

223.7203 Contract clause.

Use the clause at 252.223–7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives, in all solicitations and contracts to which DoD 5100.76–M applies, in accordance with the policy at 223.7201. Complete paragraph (b) of the clause based on information provided by cognizant technical or requirements personnel.

[61 FR 7743, Feb. 29, 1996; 61 FR 18195, Apr. 24, 1996]

PART 224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 224.1—Protection of Individual Privacy

Sec. 224.102 General.

224.103 Procedures.

Subpart 224.2—Freedom of Information Act

224.203 Policy.


SOURCE: 56 FR 36367, July 31, 1991, unless otherwise noted.

Subpart 224.1—Protection of Individual Privacy

224.102 General.

The Act does not apply to—

(1) Systems of records the contractor maintains on its employees; or

(2) The records generated by a State or private educational organization under a contract with the Government
to provide training, when the records (admission forms, grade reports) are similar to and commingled with those maintained on other students.

224.103 Procedures.
(b)(2) DoD rules and regulations are contained in DoDD 5400.11, Department of Defense Privacy Program, and DoD 5400.11–R, Department of Defense Privacy Program.

Subpart 224.2—Freedom of Information Act

224.203 Policy.
(a) DoD implementation is in DoDD 5400.7, DoD Freedom of Information Act Program, and DoD 5400.7–R, DoD Freedom of Information Act Program.


PART 225—FOREIGN ACQUISITION

Sec.
225.000 Scope of part.
225.001 General.
225.003 Definitions.

Subpart 225.1—Buy American Act—Supplies
225.103 Exceptions.
225.104 Nonavailable articles.
225.170 Acquisition from or through other Government agencies.
225.171 Solicitations.

Subpart 225.2—Buy American Act—Construction Materials
225.202 Exceptions.
225.206 Noncompliance.

Subpart 225.4—Trade Agreements
225.401 Exceptions.
225.401–70 Products subject to trade agreement acts.
225.402 General.
225.403 Trade Agreements Act.
225.408 Procedures.

Subpart 225.5—Evaluating Foreign Offers—Supply Contracts
225.502 Application.
225.504 Evaluation examples.

Subpart 225.7—Prohibited Sources
225.701 Restrictions.

225.770 Secondary Arab boycott of Israel.
225.770–1 Restriction.
225.770–2 Procedures.
225.770–3 Exceptions.
225.770–4 Waivers.
225.770–5 Solicitation provision and contract clause.
225.771 Prohibition on acquisition from the People’s Republic of China.
225.771–1 Definition.
225.771–2 Legal authority.
225.771–3 Prohibition on contract award.
225.771–4 Procedures.
225.771–5 Solicitation provision.

Subpart 225.8—Other International Agreements and Coordination
225.801 General.
225.802 Procedures.
225.802–70 Contracts for performance outside the United States and Canada.
225.802–71 End user certificates.
225.870 Contracting with Canadian contractors.
225.870–1 General.
225.870–2 Solicitation of Canadian contractors.
225.870–3 Submission of offers.
225.870–4 Contracting procedures.
225.870–5 Contract administration.
225.870–6 Termination procedures.
225.870–7 Acceptance of Canadian supplies.
225.870–8 Industrial security.
225.871 North Atlantic Treaty Organization (NATO) cooperative projects.
225.871–1 Scope.
225.871–2 Definitions.
225.871–3 General.
225.871–4 Statutory waivers.
225.871–5 Directed subcontracting.
225.871–6 Disposal of property.
225.871–7 Congressional notification.
225.872 Contracting with qualifying country sources.
225.872–1 General.
225.872–2 Applicability.
225.872–3 Solicitation procedures.
225.872–4 Evaluation of offers.
225.872–5 Contract administration.
225.872–6 Audit.
225.872–7 Industrial security for qualifying countries.
225.872–8 Subcontracting with qualifying country sources.
225.873 Waiver of United Kingdom commercial exploitation levies.
225.873–1 Policy.
225.873–2 Procedures.
225.873–3 Contract clause.

Subpart 225.9—Customs and Duties
225.901 Policy.
225.902 Procedures.
225.903 Exempted supplies.


Department of Defense

Subpart 225.10—Additional Foreign Acquisition Regulations

225.1070 Clause deviations in overseas contracts.

Subpart 225.11—Solicitation Provisions and Contract Clauses

225.1101 Acquisition of supplies.
225.1103 Other provisions and clauses.

Subpart 225.70—Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Acquisition

225.7000 Scope of subpart.
225.7001 Definitions.
225.7002–1 Restrictions.
225.7002–2 Exceptions.
225.7002–3 Contract clauses.
225.7003 Restriction on overseas military construction.
225.7004 Restriction on overseas architect-engineer services.
225.7005 Waiver of certain restrictions.
225.7006 Restrictions on construction or repair of vessels in foreign shipyards.
225.7007 Restriction on acquisition of foreign buses.
225.7007–1 Restriction.
225.7007–2 Applicability.
225.7007–3 Exceptions.
225.7007–4 Waiver.
225.7008 Restriction on research and development.
225.7009 [Reserved]
225.7010 Restriction on certain chemical weapons antidote.
225.7010–1 Restriction.
225.7010–2 Exception.
225.7010–3 Waiver.
225.7011 Restriction on Ballistic Missile Defense research, development, test, and evaluation.
225.7011–1 Definitions.
225.7011–2 Restriction.
225.7011–3 Exceptions.
225.7011–4 Procedures.
225.7011–5 Solicitation provision.
225.7012 Restrictions on anchor and mooring chain.
225.7012–1 Restrictions.
225.7012–2 Waiver.
225.7012–3 Contract clauses.
225.7013–225.7014 [Reserved]
225.7015 Restriction on night vision image intensifier tubes and devices.
225.7015–1 Restriction.
225.7015–2 Exception.
225.7015–3 Contract clause.
225.7016 Restriction on air circuit breakers for naval vessels.
225.7016–1 Restriction.
225.7016–2 Exceptions.
225.7016–3 Waiver.
225.7016–4 Contract clause.

Subpart 225.71—Other Restrictions on Foreign Acquisition

225.7100 Scope of subpart.
225.7101 Definitions.
225.7102 Forgings.
225.7102–1 Policy.
225.7102–2 Exceptions.
225.7102–3 Waiver.
225.7102–4 Contract clause.
225.7103 Polyacrylonitrile (PAN) carbon fiber.
225.7103–1 Policy.
225.7103–2 Waivers.
225.7103–3 Contract clause.

Subpart 225.72—Reporting Contract Performance Outside the United States

225.7200 Scope of subpart.
225.7201 Exception.
225.7202 Distribution of reports.
225.7203 Contract clause.

Subpart 225.73—Acquisitions for Foreign Military Sales

225.7300 Scope of subpart.
225.7301 General.
225.7302 Procedures.
225.7303 Pricing acquisitions for FMS.
225.000 Scope of part.

This part also provides policy and procedures for—
(1) Purchasing foreign defense supplies, services, and construction materials;
(2) Foreign military sale acquisitions;
(3) Coordinating acquisitions involving work to be performed in foreign countries;
(4) Cooperative programs.

225.001 General.

To apply the policies and procedures of this part, analyze and evaluate offers of foreign end products generally as follows:
(1) Statutory or policy restrictions.
(i) Determine whether the product is restricted by—
(A) Defense authorization or appropriations acts (see subpart 225.79); or
(B) DoD policy (see subpart 225.71 and FAR 6.302-3).
(ii) Where an exception to or waiver of a restriction would result in award of a foreign end product, apply the policies and procedures of the Buy American Act or the Balance of Payments Program, and, if applicable the trade agreements.
(2) Memoranda of understanding or other international agreements.
(i) Determine whether the offered product is the product of one of the countries (qualifying country), listed in 225.872–1.
(ii) If the product is the product of a qualifying country, evaluate the offer under subpart 225.5 and 225.872–4.
(3) Trade agreements.
(i) Determine whether the product is covered by the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see subpart 225.4).
(ii) If the product is an eligible product under subpart 225.4, evaluate the offer under subpart 225.5.
(iii) If the product is not an eligible product, a qualifying country end product, or a U.S. made end product, purchase of the foreign end product may be prohibited (see FAR 25.403(c) and 225.403(c).
(4) Contractors controlled by terrorist nations.
(i) Determine whether the contractor is controlled by a terrorist nation.
(ii) If the contractor is controlled by a terrorist nation, comply with 209.104–1(g).
(5) Buy American Act and Balance of Payments Program. See the evaluation procedures in subpart 225.5.

[65 FR 19850, Apr. 13, 2000]

225.003 Definitions.

As used in this part—
(1) “Caribbean Basin country end product” includes petroleum or any product derived from petroleum.
(2) “Defense equipment” means any equipment, item of supply, component, or end product purchased by the DoD.
(3) “Domestic concern” means—
(i) A concern incorporated in the United States (including a subsidiary that is incorporated in the United States, even if the parent corporation is a foreign concern); or
(ii) An unincorporated concern having its principal place of business in the United States.


(5) "Eligible product" means, instead of the definition at FAR 25.003, a designated, NAFTA, or Caribbean Basin country end product in the categories listed in 225.401–70.

(6) "Foreign concern" means any concern other than a domestic concern.

(7) "Nondesignated country end product" means any end product which is not a U.S. made end product or a designated country end product.

(8) "Nonqualifying country" means a country other than the United States or a qualifying country.

(9) "Nonqualifying country end product" means an end product which is neither a domestic nor qualifying country end product.

(10) "Nonqualifying country offer" means an offer of a nonqualifying country end products, including the price of transportation to destination.

(11) "Qualifying country" is a term used to describe certain countries with memoranda of understanding or international agreements with the United States. These countries are listed in 225.872–1.

(12) "Qualifying country component" and "qualifying country end product" are defined in the clauses at 252.225–7001, Buy American Act and Balance of Payments Program; 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program; and 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. "Qualifying country end product" is also defined in the clause at 252.225–7021, Trade Agreements.

(13) "Qualifying country offer" means an offer of a qualifying country end product, including the price of transportation to destination.

(14) "Source" when restricted by such words as foreign, domestic, qualifying country, etc., refers to the actual manufacturer or producer of the end product or component.

made after consideration of the factors in 10 U.S.C. 2533—

(1) At a level above the contracting officer for acquisitions valued at less than $100,000;

(2) By the head of the contracting activity for acquisitions valued at $100,000 or more but less than $1,000,000; or

(3) By the agency head for acquisitions valued at $1,000,000 or more.

(b)(i) A determination that an article, material, or supply is not reasonably available is required where no domestic offer is received or when domestic offers are insufficient to meet the requirement and award is to be made on a nonqualifying country end product.

(ii) Except as provided in FAR 25.103(b)(3), the determination must be approved—

(A) At a level above the contracting officer if the acquisition is estimated not to exceed $25,000;

(B) By the chief of the contracting officer if the acquisition is estimated not to exceed $250,000;

(C) By the head of the contracting activity (HCA) or immediate deputy if the acquisition is estimated not to exceed $2 million; or

(D) By the head of the agency, or designee at a level no lower than an HCA, if the acquisition is estimated to exceed $2 million.

(iii) A determination as to whether an article, material, or supply is reasonably available is not required for—

(A) End products or components listed in 225.104(a)(iii) or FAR 25.104(a);

(B) Acquisitions for spare/replacement parts when the acquisition is restricted to the original manufacturer or supplier; or

(C) Acquisition of foreign drugs by the Defense Supply Center, Philadelphia, when the Director, Pharmaceuticals Group, Directorate of Medical Materiel, determines that only the requested foreign drug will fulfill the requirements.

(iv) Under coordinated acquisition (see Subpart 208.70), the determination is the responsibility of the requiring department when the requiring department specifies acquisition of a foreign end product.

(c) The cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated under Subpart 225.5.

225.104 Nonavailable articles.

(a)(i) DoD has determined that the articles, materials, and supplies listed in FAR 25.104(a) and in paragraph (a)(iii) of this section, when purchased as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. Regardless these items or components as being of domestic origin when incorporated in—

(A) An end product or construction material manufactured in the United States; or

(B) A qualifying country end product or construction material. (For construction material, see FAR Subpart 25.2.)

(ii) Scrap is domestic in origin if generated in, collected in, and prepared for processing in the United States.

(iii)(A) Aluminum clad steel wire.

(B) Sperm oil.

225.170 Acquisition from or through other Government agencies.

Contracting activities must apply the evaluation procedures in subpart 225.5 when using Federal supply schedules.

225.171 Solicitations.

(a) For oral solicitations, inform prospective vendors that only domestic and qualifying country end products are acceptable, except nonqualifying country end products are acceptable if—

(1) The items are excepted either on a blanket or an individual basis; or

(2) The price of the nonqualifying country end product is the low offer under the evaluation procedures in subpart 225.5.

(b) When only domestic end products are acceptable, the solicitation must make a statement to that effect.
Subpart 225.2—Buy American Act—Construction Materials

225.202 Exceptions.

(a)(2) A nonavailability determination is not required for construction materials listed in FAR 25.104(a) or in 225.104(a)(iii). For other materials, a nonavailability determination must be approved at the levels specified in 225.103(b)(ii). Use the estimated value of the construction materials to determine the approval level.

[65 FR 19851, Apr. 13, 2000]

225.206 Noncompliance.

(c)(4) Prepare any report of noncompliance in accordance with the procedures at 209.406-3 or 209.407-3.

[64 FR 62986, Nov. 18, 1999]

Subpart 225.4—Trade Agreements

SOURCE: 65 FR 19852, Apr. 13, 2000, unless otherwise noted.

225.401 Exceptions.

(b)(i) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR subpart 25.4, it may submit a request with supporting rationale to the Director of Defense Procurement (USD (AT&L) DP).

(ii) The following national security/national defense exceptions do not require approval by USD (AT&L) DP:

(A) Where purchase from foreign sources is restricted by the DoD annual appropriations or authorization acts (see subpart 225.70) or by the establishment of required sources of supplies and services under FAR part 8.

(B) Where competition from foreign sources is restricted under the authority of FAR 6.302-3(a)(2)(i). Provide USD (AT&L) DP a copy of the justification for restricting competition (see FAR 6.303-1(d)).

(C) Where competition from foreign sources is restricted under subpart 225.71.

225.401–70 Products subject to trade agreement acts.

Foreign end products subject to the Trade Agreements Act and NAFTA are those in the following Federal supply groups (FSG). If a product is not in one of the listed groups, the Trade Agreements Act and NAFTA do not apply. The definition of Caribbean Basin country end products in FAR 25.003 excludes those end products that are not eligible for duty-free treatment under 19 U.S.C. 2703(b). However, 225.003 expands the definition of Caribbean Basin country end products to include petroleum and any product derived from petroleum. The list of products has been annotated to indicate those products that are eligible for designated and NAFTA countries, but are not presently eligible for Caribbean Basin countries.

<table>
<thead>
<tr>
<th>FSG</th>
<th>Category/Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>02</td>
<td>Railway equipment</td>
</tr>
<tr>
<td>03</td>
<td>Motor vehicles, trailers, and cycles (except 2350 and buses under 2310)</td>
</tr>
<tr>
<td>04</td>
<td>Tractors</td>
</tr>
<tr>
<td>05</td>
<td>Vehicular equipment components</td>
</tr>
<tr>
<td>06</td>
<td>Tires and tubes</td>
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<tr>
<td>07</td>
<td>Engine accessories</td>
</tr>
<tr>
<td>08</td>
<td>Mechanical power transmission equipment</td>
</tr>
<tr>
<td>09</td>
<td>Woodworking machinery and equipment</td>
</tr>
<tr>
<td>10</td>
<td>Metalworking machinery</td>
</tr>
<tr>
<td>11</td>
<td>Service and trade equipment</td>
</tr>
<tr>
<td>12</td>
<td>Special industry machinery (except 3680)</td>
</tr>
<tr>
<td>13</td>
<td>Agricultural machinery and equipment</td>
</tr>
<tr>
<td>14</td>
<td>Construction, mining, excavating, and highway maintenance equipment</td>
</tr>
<tr>
<td>15</td>
<td>Materials handling equipment</td>
</tr>
<tr>
<td>16</td>
<td>Rope, cable, chain and fittings</td>
</tr>
<tr>
<td>17</td>
<td>Refrigeration and air conditioning equipment</td>
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<tr>
<td>18</td>
<td>Fire fighting, rescue and safety equipment</td>
</tr>
<tr>
<td>19</td>
<td>Pumps and compressors</td>
</tr>
<tr>
<td>20</td>
<td>Furnace, steam plant and drying equipment (except 4470)</td>
</tr>
<tr>
<td>21</td>
<td>Plumbing, heating, and sanitation equipment</td>
</tr>
<tr>
<td>22</td>
<td>Water purification and sewage treatment equipment</td>
</tr>
<tr>
<td>23</td>
<td>Piping, tubing, hose, and fitting</td>
</tr>
<tr>
<td>24</td>
<td>Valves</td>
</tr>
<tr>
<td>25</td>
<td>Maintenance and repair shop equipment (except 4920–4927, 4931–4935, 4960)</td>
</tr>
<tr>
<td>26</td>
<td>Hardware and abrasives</td>
</tr>
</tbody>
</table>
225.402 General.

(1) To estimate the value of the acquisition, use the total estimated value of end products subject to trade agreement acts (see 225.401–70).

(2) See subpart 225.5 for evaluation of eligible products and U.S. made end products, except when acquiring information technology end products in Federal Supply Group 70 or 74 that are subject to the Trade Agreements Act.

225.403 Trade Agreements Act.

(c)(i) Except as provided in paragraphs (c)(ii) and (iii) of this section, do not purchase nondesignated country end products subject to the Trade Agreements Act unless they are NAFTA, Caribbean Basin, or qualifying country end products (see 225.872–1).

(ii) The prohibition in paragraph (c)(i) of this section does not apply when the contracting officer determines that offers of U.S. made, qualifying country, or eligible products from responsive, responsible offerors are either—

(A) Not received; or

(B) Insufficient to fill the Government’s requirements.

In these cases, accept all responsive, responsible offers of U.S. made, qualifying country, and eligible products before accepting any other offers.

(iii) National interest waivers under section 302(b)(2) of the Trade Agreements Act are approved on a case-by-case basis. Except as delegated in paragraphs (c)(iii)(A) and (B) of this section, a request for a national interest waiver shall include supporting rationale and be submitted under department/agency procedures to the Director of Defense Procurement.

(A) The head of the contracting activity may approve a national interest waiver for a purchase by an overseas activity of products critical to the support of U.S. forces stationed abroad. The waiver must be supported by a written statement from the requiring activity stating that the requirement is critical for the support of U.S. forces stationed abroad.

(B) The Commander, Defense Energy Support Center, may approve national interest waivers for purchases of fuel for use by U.S. forces overseas.

§ 225.408 Procedures.

(a)(4) The requirements of FAR 25.408(a)(4) do not apply to offshore acquisitions or to Defense Energy Support Center post, camp, or station overseas requirements.
Subpart 225.5—Evaluating Foreign Offers—Supply Contracts

SOURCE: 65 FR 19853, Apr. 13, 2000, unless otherwise noted.

§ 225.502 Application.

Use the following procedures instead of those in FAR 25.502. These procedures do not apply to acquisitions of information technology end products in Federal Supply Group 70 or 74 that are subject to the Trade Agreements Act.

(1) Treat offers of eligible end products under acquisitions subject to the Trade Agreements Act or NAFTA as if they were qualifying country offers. As used in this section, the term "nonqualifying country offer" may also apply to an offer that is not an eligible offer under a trade agreement (see 225.504(4)).

(2) Except as provided in paragraph (3) of this section, evaluate offers by adding a 50 percent factor to the price (including duty) of each nonqualifying country offer (see 225.504(1)).

(i) Nonqualifying country offers include duty in the offered price. When applying the factor, evaluate based on the inclusion of duty, whether or not duty is to be exempted. If award is made on the nonqualifying country offer and duty is to be exempted through inclusion of the clause at FAR 52.225–7003, Information for Duty-Free Entry Evaluation (see 225.504(2)(ii) and (3)(ii)). If award is made on the nonqualifying country offer, award at the offered price minus duty.

(ii) When a nonqualifying country offer includes more than one line item, apply the 50 percent factor—

(A) On an item-by-item basis; or

(B) On a group of items, if the solicitation specifically provides for award on a group basis.

(3) When application of the factor would not result in the award of a domestic end product, i.e., when no domestic offers are received (see 225.504(3)) or when a qualifying country offer is lower than the domestic offer (see 225.504(2)), evaluate nonqualifying country offers without the 50 percent factor.

(i) If duty is to be exempted through inclusion of the clause at FAR 52.225–8, Duty-Free Entry, evaluate the nonqualifying country offer exclusive of duty by reducing the offered price by the amount of duty identified in the clause at 252.225–7003, Information for Duty-Free Entry Evaluation (see 225.504(2)(ii) and (3)(ii)). If award is made on the nonqualifying country offer, award at the offered price minus duty.

(ii) If duty is not to be exempted, evaluate the nonqualifying country offer inclusive of duty (see 225.504(2)(i) and (3)(i)).

(4) If these evaluation procedures result in a tie between a nonqualifying country offer and a domestic offer, make award on the domestic offer.

(5)(i) There are two tests that must be met to determine whether a manufactured item is a domestic end product—

(A) The end product must have been manufactured in the United States; and

(B) The cost of its U.S. and qualifying country components must exceed 50 percent of the cost of all of its components. This test is applied to end products only, and not to individual components.

(ii) Because of the component test, the definition of “domestic end production” is more restrictive than the definition for—

(A) “U.S. made end product” under trade agreements;

(B) “Domestically produced or manufactured products” under small business set-asides or small business reservations; and

(C) Products of small businesses under FAR Part 19.

(iii) If an offer is for a “U.S. made end product,” “domestically produced end product,” or the product of a small business, but is not a “domestic end product” as defined in the clause at 252.225–7001, Buy American Act and Balance of Payments Program, treat the offer as a nonqualifying country offer (see 225.504(4)).

225.504 Evaluation examples.

(1) Example 1.

(i) Alternate I: Duty Not Exempt for Nonqualifying Country Offers:

| Nonqualifying Country Offer (including $100 duty) | $6,000 |

Duty-Free Entry, evaluate the nonqualifying country offer exclusive of duty by reducing the offered price by the amount of duty identified in the clause at 252.225–7003, Information for Duty-Free Entry Evaluation (see 225.504(2)(ii) and (3)(ii)). If award is made on the nonqualifying country offer, award at the offered price minus duty.
Domestic Offer ......................... 8,900
Qualifying Country Offer .......... 9,100

Award on Domestic Offer. The 50% evaluation factor is added to the nonqualifying country offer, inclusive of duty, yielding an evaluated price of $9,000.

(ii) Alternate II: Duty Exempted:

Nonqualifying Country Offer
(including $1,000 duty .......... $680,000
Domestic Offer ......................... 910,000
Qualifying Country Offer .......... 920,000

Award on Nonqualifying Country Offer. The addition of the evaluation factor yields an evaluated price of $900,000. Since duty is being exempted for nonqualifying country offers, the duty is subtracted from the offered price, which is awarded at $599,000.

(2) Example 2.

(i) Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

Nonqualifying Country Offer
(including $100 duty .......... $6,000
Domestic Offer ......................... 8,500
Qualifying Country Offer .......... 7,800

Award on Nonqualifying Country Offer. Since the qualifying country offer is lower than the domestic offer, the nonqualifying country offer is evaluated without the factor. Since duty is not being exempted for nonqualifying country offers, the offer is evaluated and award is made at the price inclusive of duty ($6,000).

(ii) Alternate II: Duty Exempted:

Nonqualifying Country Offer
(including $1,000 duty .......... $880,500
Domestic Offer ......................... 950,000
Qualifying Country Offer .......... 880,000

Award on Nonqualifying Country Offer. Again, the qualifying country offer is lower than the domestic offer. The nonqualifying country offer is, therefore, evaluated without the factor. Since duty is being exempted for nonqualifying country offers, the duty identified by the offeror is subtracted from the offered price, which is evaluated and awarded at $879,500.

(3) Example 3.

(i) Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

Nonqualifying Country Offer
(including $150 duty .......... $9,600
Qualifying Country Offer .......... 9,500

Award on Qualifying Country Offer. Since no domestic offers are received, the nonqualifying country offer is evaluated without the evaluation factor. Since duty is not being exempted and would be paid by the Government, the nonqualifying country offer is evaluated inclusive of duty.

(ii) Alternate II: Duty Exempted:

Nonqualifying Country Offer
(including $1,000 duty .......... $880,500
Qualifying Country Offer .......... 880,000

Award on Nonqualifying Country Offer. Since no domestic offers are received, the nonqualifying country offer is evaluated without the evaluation factor. Since duty is being exempted, duty is subtracted from the nonqualifying country offer, which is evaluated and awarded at $879,500.

(4) Example 4.

(i) Alternate I:

Offer of U.S. Made End Product which is not a Domestic Offer $800,000
Domestic Offer ......................... 820,000
Eligible Product ....................... 830,000

Award on Domestic End Product. U.S. made end products which are not also domestic end products are evaluated the same as nonqualifying country end products. Adding the 50% evaluation factor yields an evaluated price of $1,200,000.

(ii) Alternate II:

Offer of U.S. Made End Product which is not a Domestic Offer $800,000
Eligible Product ....................... 820,000
Domestic Offer ......................... 830,000

Award on U.S. Made End Product. Adding the 50% evaluation factor to the U.S. made end product would not result in the award of a domestic end product since the eligible product, which is evaluated the same as a qualifying country offer, is lower. All offers are evaluated without the factor.

Subpart 225.7—Prohibited Sources

225.701 Restrictions.

See 209.104–1(g)(i) for restrictions on contracting with firms owned or controlled by foreign governments that support terrorism. See 209.104–1(g)(ii)
225.770 Secondary Arab boycott of Israel.

225.770–1 Restriction.

In accordance with 10 U.S.C. 2410i, do not enter into a prime contract with a foreign person, company, or entity unless it has certified that it does not comply with the secondary Arab boycott of Israel.

[58 FR 28467, May 13, 1993]

225.770–2 Procedures.

For contracts awarded to the Canadian Commercial Corporation (CCC), the CCC will submit a certification from its proposed subcontractor with the other required precontractual material (see 225.870).

[57 FR 53599, Nov. 12, 1992]

225.770–3 Exceptions.

The restriction does not apply to—
(a) Purchases at or below the simplified acquisition threshold;
(b) Contracts for consumable supplies, provisions, or services for the support of the United States or of allied forces in a foreign country; or
(c) Contracts pertaining to any equipment, technology, data, or services for intelligence or classified purposes, or the acquisition or lease thereof in the interest of national security.

[57 FR 53599, Nov. 12, 1992, as amended at 64 FR 2598, Jan. 15, 1999]

225.770–4 Waivers.

The Secretary of Defense may waive the restriction on the basis of national security interests. Waiver requests should be forwarded to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).

[57 FR 53599, Nov. 12, 1992, as amended at 60 FR 61597, Nov. 30, 1995; 65 FR 39705, June 27, 2000]

225.770–5 Solicitation provision and contract clause.

Unless an exception applies or a waiver has been granted, use the clause at 252.225–7017, Secondary Arab Boycott of Israel, in all solicitations and contracts.

[57 FR 53599, Nov. 12, 1992]
(b) Upon verification of the information, the Director of Defense Procurement will ask the General Services Administration to list the company as ineligible on the List of Parties Excluded from Federal Procurement and Non-procurement Programs.  

[65 FR 6554, Feb. 10, 2000]

225.771–5 Solicitation provision.  

Use the provision at 252.225–7017, Prohibition on Award to Companies Owned by the People’s Republic of China, in solicitations for contracts that will use fiscal year 1999 funds made available by Title III or IV of Pub. L. 105–262.

[65 FR 6554, Feb. 10, 2000]

Subpart 225.8—Other International Agreements and Coordination

225.801 General.  

(1) Treaties and agreements between the U.S. and foreign governments affect both—  

(i) The way offers from foreign contractors are evaluated in DoD acquisitions; and  

(ii) Performance of DoD contracts in foreign countries.  

(2) This subpart covers acquisition policy and procedures based on treaties and international agreements.  

(3) Information on specific agreements is available as follows—  

(i) Memoranda of understanding (MOU) and other international agreements between the United States and the countries listed in 225.872–1 are maintained in the Office of the Deputy Assistant Secretary of Defense (Procurement) (Foreign Contracting) (703) 697–9351, DSN 227–9351.

(ii) Military Assistance Advisory Groups, Naval Missions, and Joint U.S. Military Aid Groups normally have copies of the agreements applicable to the countries concerned.  

(iii) Copies of international agreements covering existing agreements in the United Kingdom of Great Britain and Northern Ireland, Western European countries, North Africa, and in the Middle East are filed with the U.S. European Command (EUCOM).

(iv) Agreements with countries in the Pacific and Far East are filed with the U.S. Pacific Command (CINCPAC).  

225.802 Procedures.  

225.802–70 Contracts for performance outside the United States and Canada.  

(a) When a purchasing activity anticipates placement of a contract for performance outside the United States or Canada and the contracting activity is not under the command jurisdiction of a unified or specified command for the country involved, the purchasing activity shall maintain liaison with the cognizant contract administration office (CAO) during preaward negotiations and postaward administration. The CAO will provide pertinent information for contract negotiations, effect appropriate coordination, and obtain required approvals for the performance of the contract.

(b) Where the acquisition requires the performance of work in the foreign country by U.S. personnel or a third country contractor, or where the acquisition will require logistics support for contract employees, source inspection, or additional Government employees—  

(1) The contracting activity must coordinate with the cognizant contract administration office before contract award.  

(2) The contracting officer shall request the following information from the contract administration office—  

(i) The applicability of any international agreements to the acquisition;  

(ii) Security requirements applicable to the area;  

(iii) The standards of conduct required to be observed by the prospective contractor and its employees, and any action that may be taken in the event required standards are not maintained;  

(iv) Requirements for use of foreign currencies, including applicability of U.S. holdings of excess foreign currencies;  

(v) Availability of logistics support for contractor employees; and  

(vi) Information on taxes and duties from which the Government may be exempt.  

(3) The contracting officer shall furnish the following information to the contract administration office—
(i) A synopsis of the work to be performed and, if practical, a copy of the solicitation;
(ii) Any contractor logistical support desired in support of U.S. or foreign military sale requirements;
(iii) Contract performance period and estimated contract value;
(iv) Number and nationality of contractor employees and date of planned arrival of contractor personnel;
(v) Contract security requirements; and
(vi) Other pertinent information to effect complete coordination and cooperation.


225.802–71 End user certificates.

Contracting officers considering the purchase of an item from a foreign source may encounter a request for the signing of a certificate to the effect that the Armed Forces of the United States is the end user of the equipment, and that it will not be transferred to third parties without authorization from the Government of the country selling the item. When encountering this situation, refer to DoD Directive 2040.3, End User Certificates, for guidance.

[57 FR 42630, Sept. 15, 1992]

225.870 Contracting with Canadian contractors.

225.870–1 General.

(a) The Canadian Government guarantees to the U.S. Government all commitments, obligations, and covenants of the Canadian Commercial Corporation under any contract or order issued to the Corporation by any contracting activity of the U.S. Government. The Canadian Government has waived notice of any change or modification which may be made, from time to time, in these commitments, obligations, or covenants.

(b) For production planning purposes, Canada is considered to be part of the defense industrial base (see 225.870–2(b)).

(c) Contracts with contractors located in Canada should be awarded to and administered by the Canadian Commercial Corporation, except for—

(1) Negotiated purchases for experimental, developmental, or research work unless the contract is for a project under the Defense Development Sharing Program;
(2) Purchases of unusual or compelling urgency;
(3) Small purchases; or
(4) Purchases made by DoD activities located in Canada.

(d) The Canadian Commercial Corporation, in placing contracts with Canadian or U.S. concerns, uses provisions in the contracts that give DoD the same production rights, data, and information that DoD would obtain in contracts with U.S. concerns.

(e) When contracts are placed with the Canadian Commercial Corporation, the government of Canada will provide the following services, without charge to DoD departments and agencies—

(1) Contract administration services, including—

(i) Cost and pricing analysis;
(ii) Industrial security;
(iii) Accountability and disposal of Government property;
(iv) Production expediting;
(v) Compliance with Canadian labor laws;
(vi) Processing termination claims and disposing of termination inventory;
(vii) Customs documentation;
(viii) Processing of disputes and appeals; and
(ix) Such other related contract administration functions as may be required with respect to the Canadian Commercial Corporation contract with the Canadian supplier; and

(2) Audits. When required, audits are performed by the Audit Service Group, Supply and Services Canada. Requests for audit on non-Canadian Commercial Corporation contracts should be routed through the cognizant contract management office of the Defense Contract Management Agency.

(3) Inspection. The Department of National Defence (Canada) provides inspection personnel, services, and facilities, at no charge to DoD departments and agencies (see 225.870–7).

225.870–2 Solicitation of Canadian contractors.

(a) Except for the acquisitions in 225.870–1(c) (1) through (4), include Canadian firms on bidders mailing lists and comparable source lists only at the request of the Canadian Commercial Corporation.

(b) Include Canadian planned producers under the Industrial Readiness Planning Program on bidders mailing lists for their planned items (see FAR 14.205–1).

(c) Send solicitations directly to Canadian firms appearing on the appropriate bidders mailing lists. Send a complete copy of the solicitation and a listing of Canadian firms solicited to the Canadian Commercial Corporation, 11th Floor, 50 O’Connor Street, Ottawa, Ontario, K1A–0S6, Canada.

(d) Furnish a solicitation, if requested, to the Canadian Commercial Corporation even if no Canadian firm is solicited.

(e) Handle small purchases (see FAR part 13) directly with Canadian firms and not through the Canadian Commercial Corporation.


225.870–3 Submission of offers.

(a) As indicated in 225.870–4, the Canadian Commercial Corporation is the prime contractor. To indicate acceptance of offers by individual Canadian companies, the Canadian Commercial Corporation issues a letter, supporting the Canadian offer, containing the following information—

(1) Name of the Canadian offeror;
(2) Confirmation and endorsement of the offer in the name of the Canadian Commercial Corporation; and
(3) A statement that the Corporation shall subcontract 100 percent with the offeror.

(b) When a Canadian offer cannot be processed through the Canadian Commercial Corporation in time to meet the bid-opening requirement or the closing date for receipt of proposals, the Corporation may permit Canadian firms to submit offers directly. The Canadian Commercial Corporation’s endorsement of award, however, must be received by the contracting officer before contract award.

(c) All sealed bids will be submitted by the Canadian Commercial Corporation in terms of U.S. currency. Do not adjust contracts awarded under sealed bidding for losses or gains from fluctuation in exchange rates.

(d) Except for sealed bids, all offers and quotations submitted by the Canadian Commercial Corporation are normally in terms of Canadian currency. The Corporation may, at the time of submitting an offer, elect to quote and receive payment in terms of U.S. currency, in which case the contract shall—

(1) Provide for payment in U.S. currency; and
(2) Shall not be adjusted for losses or gains from fluctuation in exchange rates.

225.870–4 Contracting procedures.

(a) Award individual contracts covering purchases from suppliers located in Canada, except for those in 225.870–1(c)(1) through (4), to the Canadian Commercial Corporation, 11th Floor, 50 O’Connor Street, Ontario, Canada, K1A–0S6.

(b) Direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract; provided, that the Corporation’s approval is obtained on any matters involving changes to the contract.

(c) Identify in the contract, the type of currency, i.e., U.S. or Canadian. Contracts that provide for payment in Canadian currency shall quote the contract price in terms of Canadian dollars and shall identify the amount by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the U.S./Canadian conversion rate at the time of award and the U.S. dollar equivalent of the Canadian dollar contract amount.


225.870–5 Contract administration.

(a) Assign contract administration in accordance with part 242. When contract administration is performed in Canada by the cognizant contract management office of the Defense Contract
Management Agency, the paying office to be named in the contract for disbursement of DoD funds (DoD Department Code: 17-Navy; 21-Army; 57-Air Force; 97-all other DoD components), whether payment is in Canadian or U.S. dollars, shall be: DFAS-Columbus Center, DFAS-CO/New Dominion Division, PO Box 182041, Columbus, OH 43218-2041.

(b) For cost-reimbursement type contracts—
(1) Audits on contracts with the Canadian Commercial Corporation (CCC) are automatically arranged by the Department of Supplies and Services (DSS), Canada. Audit reports are furnished to DSS. Upon advice from DSS, the CCC will certify the invoice and forward it with SF 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing office.

(2) On contracts placed directly with Canadian firms, the administrative contracting officer requests audits from the Audit Services Bureau (ASB), Ottawa, Ontario, Canada.
   (i) Invoices are approved by the ASB/DSS auditor on a provisional basis pending completion of the contract and final audit.
   (ii) The ASB/DSS forwards these invoices, accompanied by SF 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing officer.
   (iii) ASB/DSS furnishes periodic advisory audit reports directly to the administrative contracting officer.


225.870–6 Termination procedures.

(a) The Canadian Commercial Corporation will continue administering contracts that may be terminated by the U.S. contracting officer.

(b) The Corporation will settle all Canadian subcontracts in accordance with the policies, practices, and procedures of the Canadian Government.

(c) The U.S. agency administering the contract with the Canadian Commercial Corporation shall provide any services required by the Canadian Commercial Corporation, including disposal of inventory, for settlement of any subcontract placed in the United States. Settlement of such U.S. subcontracts is made under this regulation.

225.870–7 Acceptance of Canadian supplies.

(a) When contracts placed in Canada, either with the Canadian Commercial Corporation or directly with Canadian suppliers, require contract quality assurance (CQA) and/or acceptance before shipment, CQA and/or acceptance, as applicable, will be performed by the Department of National Defence (Canada), under paragraph 6 of the Letter of Agreement.

(b) Signature by the Department of National Defence (Canada) quality assurance representative on the DoD inspection and acceptance form is satisfactory evidence of acceptance for payment purposes.

225.870–8 Industrial security.

Industrial security for Canada shall be in accordance with the U.S.-Canada Industrial Security Agreement of March 31, 1952, as amended.

225.871 North Atlantic Treaty Organization (NATO) cooperative projects.

225.871–1 Scope.

(a) This section provides guidance on awarding contracts based on NATO cooperative projects.

(b) The authority is 22 U.S.C. 2767 and 10 U.S.C. 2350b.

225.871–2 Definitions.

(a) Cooperative project means a jointly managed arrangement—
   (1) Described in a written agreement between the parties;
   (2) Undertaken to further the objectives of standardization, rationalization, and interoperability of the armed forces of North Atlantic Treaty Organization member countries; and
   (3) Providing for—
      (i) One or more of the other participants to share with the United States the cost of research and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;
      (ii) Concurrent production in the United States and in another member
country of a defense article jointly developed; or
(iii) Acquisition by the United States of a defense article or defense service from another member country.
(b) *Other participant* means a cooperative project participant other than the United States.

225.871–3 General.

(a) Cooperative project authority. (1) Departments or agencies, that have authority to do so, may enter into a cooperative project agreement with NATO or with one or more member countries of that organization under DoD Directive 5530.3, International Agreements.
(2) Under laws and regulations governing the negotiation and implementation of cooperative project agreements, departments and agencies may enter into contracts, or incur other obligations, on behalf of other participants without charge to any appropriation or contract authorization.
(3) Agency heads have authority to solicit and award contracts to implement cooperative projects.
(b) Contracts implementing cooperative projects shall comply with all applicable laws relating to Government acquisition, unless a waiver is granted under 225.871–4. A waiver of certain laws and regulations may be obtained if—
(1) Required by the terms of a written cooperative project agreement;
(2) It will significantly further NATO standardization, rationalization, and interoperability; and
(3) It is approved by the appropriate DoD official.

225.871–4 Statutory waivers.

(a) The Deputy Secretary of Defense may waive for contracts or subcontracts placed outside the United States any provision of law that specifically prescribes—
(1) Procedures for the formation of contracts;
(2) Terms and conditions for inclusion in contracts;
(3) Requirements for, or preferences to be given—
(i) To goods grown, produced, or manufactured in the United States or in U.S. Government-owned facilities; or
(ii) For services to be performed in the United States; or
(4) Requirements regulating the performance of contracts.
(b) There is no authority for waiver of—
(1) Any provision of the Arms Export Control Act (22 U.S.C. 2751);
(2) Any provision of 10 U.S.C. 2304;
(3) The cargo preference laws of the United States, including the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)); or
(4) Any of the financial management responsibilities administered by the Secretary of the Treasury.
(c) If a waiver is contemplated under the terms of a cooperative project agreement, forward a request for the waiver to the Deputy Secretary of Defense, through the Director of Defense Procurement. The waiver request must include a draft Determination and Findings for signature by the Deputy Secretary of Defense establishing that the waiver is necessary to significantly further NATO standardization, rationalization, and interoperability.
(d) The approval of the Deputy Secretary of Defense must be obtained before committing to make waivers in an agreement or an amendment to an agreement or contract.

225.871–5 Directed subcontracting.

(a) The Director of Defense Procurement may authorize the direct placement of subcontracts with particular subcontractors. Directed subcontracting is not authorized unless specifically addressed in the cooperative project agreement.
(b) In some instances, it may not be feasible to name specific subcontractors at the time the agreement is concluded. The general provisions for work sharing at the prime and subcontractor level, however, must be clearly delineated in the agreement. This will provide the authority necessary to implement such arrangements during the acquisition phase.
(c) The agreement is the authority necessary for including a contractual provision requiring the prime contractor to place certain subcontracts.
with particular subcontractors. No separate justification and approval during the acquisition process is required.

225.871–6 Disposal of property.
Dispose of property that is jointly acquired by the members of a cooperative project under the procedures established in the agreement or in a manner consistent with the terms of the agreement.

225.871–7 Congressional notification.
(a) Congress must be notified whenever DoD determines to award a prime contract or subcontract to a particular contractor if the determination was not part of the certification made under Section 27(f) of the Arms Export Control Act before finalizing the cooperative agreement.

(1) Departments and agencies must provide a proposed Congressional notice to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), in sufficient time to forward to Congress before the time of contract award.

(2) The proposed notice shall include the reason why the authority to designate a particular contractor or subcontractor should be used.

(b) Congressional notification is also required each time a statutory waiver is exercised under 225.871–4, if such information was not provided in the certification to Congress before finalizing the cooperative agreement. Exercise of the waiver means a contract award or modification which provides for a statutory exception.


225.872 Contracting with qualifying country sources.
225.872–1 General.
(a) As a result of memoranda of understanding and other international agreements, the DoD has determined it inconsistent with the public interest to apply restrictions of the Buy American Act/Balance of Payments Program to the acquisition of defense equipment which is mined, produced, or manufactured in any of the following countries (referred to in this part as “qualifying countries”)—

- Australia
- Belgium
- Canada
- Denmark
- Egypt
- Federal Republic of Germany
- France
- Greece
- Israel
- Italy
- Luxembourg
- Netherlands
- Norway
- Portugal
- Spain
- Switzerland
- Turkey
- United Kingdom of Great Britain and Northern Ireland

(b) Individual acquisitions for products of the following qualifying countries may, on a purchase-by-purchase basis, be exempted from application of the Buy American Act and Balance of Payments Program as inconsistent with the public interest—

- Austria
- Finland
- Sweden

(c) The determination in paragraph (a) of this subsection does not limit the authority of the cognizant Secretary to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a qualifying country source in instances where considered necessary for national defense reasons.


225.872–2 Applicability.
(a) This section applies to all acquisitions of supplies except where restricted by—


(2) U.S. defense mobilization base requirements purchased under the authority of FAR 6.302-3(a)(2)(i) except for quantities in excess of that required to maintain the defense mobilization base. This restriction does not apply to Canadian planned producers—
(i) Review individual solicitations to determine whether this restriction applies.

(ii) Information concerning restricted items may be obtained from the Deputy Under Secretary of Defense (Industrial Affairs);

(3) Other U.S. laws or regulations (e.g., the annual defense appropriations act); and

(4) U.S. industrial security requirements.

(b) This section does not apply to construction contracts.


225.872–3 Solicitation procedures.

(a) Include qualifying country sources on bidders mailing lists and comparable source lists upon their request (see FAR 14.205).

(b) Except for items developed under the U.S./Canadian Development Sharing Program, use the criteria for soliciting and making awards under FAR part 19 for small business concerns without regard to whether there are potential qualifying country sources for the end product. Do not consider an offer of a qualifying country end product if the solicitation is identified for the exclusive participation of small business firms.

(c) Send solicitations directly to qualifying country sources. Solicit Canadian sources through the Canadian Commercial Corporation in accordance with 225.870.

(d) Use international air mail if solicitation destinations are outside the United States and security classification permits such use (see FAR 14.202 and FAR 14.203).

(e) If unusual technical or security requirements preclude the acquisition of otherwise acceptable defense equipment from qualifying country sources, review the need for such requirements. Do not impose unusual technical or security requirements solely for the purpose of precluding the acquisition of defense equipment from qualifying countries.

(f) Do not automatically exclude qualifying country sources from submitting offers because their supplies have not been tested and evaluated by the department/agency.

(1) Consider the adequacy of qualifying country service testing on a case-by-case basis. Departments or agencies that must limit solicitations to sources whose items have been service tested and evaluated by the department/agency shall consider supplies from qualifying country sources that have been tested and accepted by the qualifying country for service use.

(2) The department/agency may perform a confirmatory test, if necessary.

(3) Apply U.S. test and evaluation standards, policies, and procedures when the department/agency decides that confirmatory tests of qualifying country end products are necessary.

(4) Where it appears that these provisions might adversely delay service programs, obtain the concurrence of the DoD Acquisition Executive, Under Secretary of Defense (Acquisition, Technology, and Logistics), before excluding the qualifying country source from consideration.

(g) Permit industry representatives from a qualifying country to attend symposia, program briefings, prebid conferences (see FAR 14.207 and 15.201(c)), and similar meetings that address U.S. defense equipment needs and requirements. When practical, structure these meetings to allow attendance by representatives of qualifying country concerns.


225.872–4 Evaluation of offers.

(a) Qualifying country sources competing for DoD requirements must be responsive to the terms and conditions of DoD solicitations.

(b) Evaluate offers of end products from the qualifying country sources in 225.872–1(a) without application of the 50 percent Buy American Act or Balance of Payments Program evaluation factor, in accordance with 225.304 and 225.502.

(c) Evaluate offers of end products from the qualifying country sources in 225.872–1(b) without application of the 50 percent Buy American Act or Balance of Payments Program evaluation factor. If the offer, as evaluated, is low
or otherwise eligible for award, the contracting officer shall request an exemption of the Buy American Act/Balance of Payments Program as inconsistent with the public interest, unless another exception such as the Trade Agreements Act applies.

(1) To obtain an exemption, process a Determination and Findings for signature—
   (i) At a level above the contracting officer, for acquisitions of $25,000 or less;
   (ii) By the chief of the contracting office, for acquisitions of $250,000 or less;
   (iii) By the head of the contracting activity (HCA), for acquisitions of $2 million or less; or
   (iv) By the head of the agency, or designee at a level no lower than an HCA, for acquisitions over $2 million.

(2) The Determination and Findings shall be substantially as follows for end items, or modified as necessary for components—

**SERVICE OR AGENCY**

Exemption of the Buy American Act/Balance of Payments Program

Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of FAR 25.102, acquisition of (qualifying country—identify country) (describe item) may be made as provided below.

Findings

1. The (contracting activity) proposes to purchase under contract number, mined, produced, or manufactured in (country of origin). The total estimated cost of this acquisition is ____________.

2. The United States Government and the Government of (country of origin) have agreed to remove barriers to procurement at the prime and subcontract level for defense equipment produced in each other's countries insofar as laws and regulations permit.

3. The agreement provides that competitive offers of (qualifying country) end products will be evaluated by the Department of Defense without imposing any price differential under the Buy American Act or Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that (qualifying country) items may better compete for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of (qualifying country) items must fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. To achieve the above objectives, the solicitation contained the (title and number of the Buy American Act clause contained in the contract). Offers were solicited from other sources and the offer received for (qualifying country end item) is found to be otherwise eligible for award.

Determination

Pursuant to the Buy American Act and Balance of Payments Program, I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American Act or the Balance of Payments Program to the proposed offer.

(Date)

225.872–5 Contract administration.

(a) Arrangements exist with some qualifying countries to provide reciprocal contract administration services. Some arrangements are at no cost to either government. To determine whether such an arrangement has been negotiated and what contract administration functions are covered, contact the Deputy Director of Defense Procurement (Foreign Contracting), ((703) 697–9351, DSN 227–9351).

(b) When contract administration services are required on contracts to be performed in qualifying countries, direct the request to the cognizant activity under DLAH 4105.4, section II, part 2 (DoD Directory of Contract Administration Services Components). Contract administration services for DoD subcontracts placed by qualifying country sources in the United States will be arranged by the cognizant activity under DLAH 4105.4, section II, part 2.

(c) The contract administration activity receiving a delegation or secondary delegation shall review the delegation to determine whether any portion of the delegation are covered by memoranda of understanding annexes, and delegate those functions to the appropriate organization in the qualifying country's government.

225.872–5
225.872–6 Audit.

(a) Memoranda of understanding with some qualifying countries contain annexes that provide for reciprocal "no-cost" audits of contracts and subcontracts (pre- and post-award).

(b) To determine if such an annex is applicable to a particular qualifying country, contact the Deputy Director of Defense Procurement (Foreign Contracting), (703) 697–9351/2/3, DSN 227–9351/2/3.

(c) Handle requests for audits in qualifying countries under 215.404–2(c).

(1) Except for the United Kingdom (UK), send the request to the administrative contracting officer at the cognizant activity listed in Section 2B of the Federal Directory of Contract Administration Services Components. Send the request for audit from the UK directly to their Ministry of Defence.

(2) Send an advance copy of the request to the focal point identified by the Foreign Contracting Directorate, Office of the Director of Defense Procurement.

225.872–7 Industrial security for qualifying countries.

The required procedures for safeguarding classified defense information necessary for the performance of contracts awarded to qualifying country sources are in the DoD Industrial Security Regulation DoD 5220.22–R (implemented for the Army by AR 330–49; for the Navy by SECNAV Instruction 5510.1H; for the Air Force by AFI 31–601; for the Defense Information Systems Agency by DCA Instruction 240–110–8; and for the National Imagery and Mapping Agency by NIMA Instruction 5220.22).

225.872–8 Subcontracting with qualifying country sources.

In reviewing contractor subcontracting procedures, the contracting officer shall ensure that the prime contract does not preclude qualifying country sources from competing for subcontracts, except when restricted by national security interest reasons, mobilization base considerations, or applicable U.S. laws or regulations. (See the clause at 252.225–7002, Qualifying Country Sources as Subcontractors.)

225.873 Waiver of United Kingdom commercial exploitation levies.

225.873–1 Policy.

DoD and the Government of the United Kingdom (U.K.) have agreed to waive U.K. commercial exploitation levies and U.S. nonrecurring cost recoupment charges on a reciprocal basis. In order for U.K. levies to be waived, they must be identified and a waiver must be requested before award of the contract or subcontract under which the levies are charged.

225.873–2 Procedures.

(a) Waiver of U.K. levies must be approved by the Government of the U.K. When an offeror or contractor identifies a levy included in an offered or contract price, the contracting officer shall provide written notification to the Defense Security Cooperation Agency, Attn: PSD–PMD, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306, telephone (703) 601–3864. The Defense Security Cooperation Agency will request a waiver of the levy from the Government of the U.K. The notification shall include—

(1) Name of the U.K. firm;
(2) Prime contract number;
(3) Description of item for which waiver is being sought;
(4) Quantity being acquired; and
(5) Amount of levy.

(b) Waiver may occur after contract award. Where levies are waived before contract award, the offer will be evaluated without the levy. Where levies are...
identified but not waived before contract award, the offer will be evaluated inclusive of the levies.

[57 FR 53599, Nov. 12, 1992, as amended at 64 FR 51076, Sept. 21, 1999]

225.873–3 Contract clause.

Use the clause at 252.225–7032, Waiver of United Kingdom Levies, in all solicitations and contracts for supplies—

(a) Where U.K. firms are expected to participate as offerors/prime contractors; or

(b) If a subcontract over $1 million with a U.K. firm is anticipated.

[57 FR 53599, Nov. 12, 1992]

Subpart 225.9—Customs and Duties

SOURCE: 65 FR 19855, Apr. 13, 2000, unless otherwise noted.

225.901 Policy.

(1) Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States authorizes duty-free importation of defense supplies.

(2) 19 U.S.C. 1309 authorizes duty-free importation of certain supplies (not including equipment) for vessels or aircraft operated by the United States (see FAR 25.503(b)).

(3) Unless the supplies are entitled to duty-free treatment under a special category in the Harmonized Tariff Schedule of the United States (e.g., the Caribbean Basin Economic Recovery Act or NAFTA), or unless the supplies already have entered into the customs territory of the United States and duty already has been paid, DoD will issue duty-free entry certificates for—

(i) Qualifying country supplies (end products and components) on all defense contracts;

(ii) Eligible products (end products but not components) on defense contracts subject to the Trade Agreement Act or NAFTA; and

(iii) Other foreign supplies, if there is reasonable assurance that the administrative and other costs of processing and controlling the certificates will not exceed the amount of duty that would be paid.

225.902 Procedures.

(1) General.

(i) Preaward.

(A) Unless duty was paid prior to submission of the offer, an offer of domestic end products with no nonqualifying country components, an offer of qualifying country end products, or an offer of eligible products under the Trade Agreements Act or NAFTA, should not include duty.

(B) Offers of U.S. made end products with nonqualifying country components, and offers that are neither qualifying country offers nor offers of eligible products under a trade agreement, should contain applicable duty.

(c) Exclude from the evaluation of domestic end products, or information technology end products in Federal Supply Group 70 or 74 in acquisitions subject to the Trade Agreements Act, any duty for nonqualifying country components listed in the provision at 252.225–7003, Information for Duty-Free Entry Evaluation, for which duty-free entry will be granted.

(D) Except for acquisitions of information technology end products in Federal Supply Group 70 or 74 subject to the Trade Agreements Act, apply the evaluation procedures for the Buy American Act in accordance with 225.502.

(ii) Award. Exclude duty from the contract price for supplies (end products or components) that are to be accorded duty-free entry. If duty-free entry is granted to the successful offeror in accordance with the clause at FAR 52.225–8, Duty-Free Entry, and the clause at 252.225–7003, Information for Duty-Free Entry Evaluation, request that the offeror provide the list of foreign supplies that are subject to such duty-free entry, and list such supplies in the contract clause at 252.225–7008, Supplies to be Accorded Duty-Free Entry.

(iii) Postaward.

(A) Issue duty-free entry certificates for all qualifying country supplies in accordance with the policy at 225.901(3)(i) and the clause at 252.225–7009, Duty-Free Entry—Qualifying Country Supplies (End Products and Components); for all eligible products subject to trade agreements in accordance with the policy at 225.901(3)(ii) and
the clause at 225.225–7037, Duty-Free Entry—Eligible End Products; and for other foreign supplies in accordance with the policy at 225.901(3)(iii) on contracts containing the clause at FAR 52.225–8, Duty-Free Entry; or (following to the extent practicable the procedures required by the clause at FAR 52.225–8, Duty-Free Entry, and the clause at 225.225–7010, Duty-Free Entry—Additional Provisions) on other contracts—

(1) That fall within one of the following categories:

(i) Direct purchases of foreign supplies under a DoD prime contract, whether title passes at point of origin or at destination in the United States, provided the contract states that the final price is exclusive of duty.

(ii) Purchases of foreign supplies by a domestic prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime or fixed-price subcontract intervenes between the purchaser and the Government), whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, follow the criteria stated in paragraph (a)(ii)(A)(i)(iii) of this section.

(iii) Purchases of foreign supplies by a fixed-price domestic prime contractor, a fixed-price subcontractor, or a cost-type subcontractor where a fixed-price prime contract or fixed-price subcontract intervenes, provided the fixed-price prime contract and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty;

(2) For which the supplies so purchased will be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and for which duty will be paid if such supplies or any portion are used for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and

(3) For which such acquisition abroad is authorized by the terms of the contract or subcontract or by the contracting officer.

(B) Under a fixed-price contract, negotiate an equitable reduction in the contract price if duty-free entry is granted for any nonqualifying country component not listed in the Schedule as duty-free, even if contract award was based on furnishing a domestic component or a qualifying country component.

(2) Formal entry and release.

(i) The administrative contracting officer must—

(A) Ensure that prime contractors are aware of and understand any Duty-Free Entry clause requirements. Contractors should understand that failure by them or their subcontractors to include the data required by the clause will result in treatment of the shipment as without benefit of free entry under Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States.

(B) Upon receipt of the required notice of purchase of foreign supplies from the contractor or any tier subcontractor—

(1) Verify the duty-free entitlement of goods entering under the contract; and

(2) Review the prime contract to ensure that performance of the contract requires the foreign supplies (quantity and price) identified in the notice.

(C) Upon receipt of notification from the contractor that it is placing a foreign purchase that was not identified at the time of contract award—

(1) Determine whether a reduction in the contract price is required under the clause at FAR 52.225–8, Duty-Free Entry;

(2) If so, make an equitable adjustment in the contract price, unless the procuring contracting officer waives this adjustment;

(3) Determine the price of the foreign supplies exclusive of duty, and advise the contractor that that amount will be the maximum dollar value of supplies for which duty-free entry certificates will be issued.

(D) Within 20 days after receiving the notification of purchase of foreign supplies, forward the following information in the format indicated to the Commander, DCM New York, ATTN: Customs Team, DCMDE–GNIC, 207 New...
We have received a contractor notification of the purchase of foreign supplies. I have verified that foreign supplies are required for the performance of the contract. If required, the prime contract price has been or will be adjusted.

Prime Contractor Name and Address:
Prime Contractor CAGE Code:
Prime Contract Number plus Delivery Order Number, if applicable:
Total Dollar Value of the Prime Contract or Delivery Order:
Expiration Date of the Prime Contract or Delivery Order:
Foreign Supplier Name and Address:
Number of Subcontract/Purchase Order for Foreign Supplies:
Total Dollar Value of the Subcontract for Foreign Supplies:
Expiration Date of the Subcontract for Foreign Supplies:
CAO Activity Address Number:
ACO Name and Telephone Number:
ACO Code:
Signature:
Title:

(E) If a contract modification results in a change to any data verifying duty-free entitlement previously furnished, forward a revised notification including the changed data to DCM New York.

(ii) The responsibility for issuing duty-free entry certificates for foreign supplies purchased under a DoD contract or subcontract rests with the Customs Team, DCMDE-GNIC, DCM New York. Upon receipt of import documentation for incoming shipments from the contractor, its agent, or the U.S. Customs Service, DCM New York will verify the duty-free entitlement and execute the duty-free entry certificate.

(iii) Upon arrival of foreign supplies at ports of entry, the consignee, generally the contractor or its agent (import broker) for shipments to other than a military installation, will file U.S. Customs Form 7501, 7501A, or 7506, with the District Director of Customs.

(3) Immediate entry and release. Importations made in the name of a DoD military facility or being shipped directly to a military facility are entitled to release under the immediate delivery procedure.

(i) A DoD immediate delivery application has been approved and is on file at Customs Headquarters.

(ii) The application is for an indefinite period and is good for all Customs districts, areas, and ports.

[65 FR 19855, Apr. 13, 2000, as amended at 65 FR 52852, Aug. 31, 2000]

225.903 Exempted supplies.

(b)(i) The term “supplies”—
(A) Includes articles known as “stores,” such as food, medicines, and toiletries, as well as all consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, grease, paint, cleaning compounds, solvents, wiping rags, and polishes.
(B) Does not include portable articles necessary and appropriate for the navigation, operation, or maintenance of vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term “equipment.”

(ii) The duty-free certificate shall be printed, stamped, or typed on the face of Customs Form 7501, or attached, and shall be executed by a duly designated officer or civilian official of the appropriate department or agency in the following form:

(Date)
I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name)

(Title)

(Organization)

Subpart 225.10—Additional Foreign Acquisition Regulations

225.1070 Clause deviations in overseas contracts.

See 201.403(2) for approval authority for clause deviations in overseas contracts with governments of North Atlantic Treaty Organization (NATO) countries or other allies or with United Nations or NATO organizations.

[65 FR 19856, Apr. 13, 2000]
225.1101 Acquisition of supplies.

(1) Use the provision at 252.225–7000, Buy American Act—Balance of Payments Program Certificate, instead of the clause at FAR 52.225–2, Buy American Act Certificate. Use the provision in any solicitation that includes the clause at 252.225–7001, Buy American Act and Balance of Payments Program.

(2) Use the clause at 252.225–7001, Buy American Act and Balance of Payments Program, instead of the clause at FAR 52.225–1, Buy American Act—Supplies, in solicitations and contracts for supplies or services that require the furnishing of supplies.

(i) Do not use the clause if an exception to the Buy American Act or Balance of Payments Program is known to apply or if using the clause at 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program; 252.225–7021, Trade Agreements; or 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

(ii) The clause need not be used if nonqualifying country end products are ineligible for award, including—

(A) End products restricted to domestic or domestic and qualifying country sources under appropriations and authorization act restrictions (see subpart 225.70);

(B) End products restricted to domestic or domestic and Canadian sources (see subpart 225.71); and

(C) End products restricted under the authority of FAR 6.302–3.

(iii) The clause may be used if the contracting officer anticipates a waiver of the restriction in paragraph (2)(i)(A) or (B) of this section.

(3) Use the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, in solicitations and contracts that include one of the following clauses:

(i) 252.225–7001, Buy American Act and Balance of Payments Program.


(iii) 252.225–7021, Trade Agreements.


(4) Use the provision at 252.225–7003, Information for Duty-Free Entry Evaluation, in solicitations that include the clause at FAR 52.225–8, Duty-Free Entry. Use the provision with its Alternate I when the clause at 252.225–7021, Trade Agreements, is used.

(5) Use the provision at 252.225–7006, Buy American Act—Trade Agreements—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–6, Trade Agreements Certificate, in all solicitations that include the clause at 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program.

(6) Except as provided in paragraph (11) of this section, use the clause at 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program; 252.225–7021, Trade Agreements; or 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

(7) Use the clause at 252.225–7008, Supplies to be Accorded Duty-Free Entry, in solicitations and contracts that provide for duty-free entry and that include the clause at FAR 52.225–8, Duty-Free Entry.

(8) Use the clause at 252.225–7009, Duty-Free Entry—Qualifying Country Supplies (End Products and Components), in solicitations and contracts for supplies and in solicitations and contracts for supplies for exclusive use outside the United States.

(9) Use the clause at 252.225–7010, Duty-Free Entry—Additional Provisions, in solicitations and contracts that include the clause at FAR 52.225–8, Duty-Free Entry.

(10) Use the provision at 252.225–7020, Trade Agreements Certificate, in all solicitations that include the clause at 252.225–7021, Trade Agreements.

(11) Use the clause at 252.225–7021, Trade Agreements, instead of the
clause at FAR 52.225-5, Trade Agreements, when acquiring information technology products in Federal Supply Group 70 or 74.


(i) Use the basic provision when the basic clause at 252.225–7036 is used.

(ii) Use the provision with its Alternate I when the clause at 252.225–7036 is used with its Alternate I.

(13) Use the clause at 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the clause at FAR 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act. The clause need not be used where purchase from foreign sources is restricted (see 225.401 (b)(ii)). The clause may be used where the contracting officer anticipates a waiver of the restriction.

(i)(A) Use the clause in all solicitations and contracts for the items listed at 225.401–70, when the estimated value is $56,190 or more and the Trade Agreements Act does not apply. Include the clause in solicitations for multiple line items if any line item is subject to NAFTA.

(B) Use the clause with its Alternate I when the estimated value is between $25,000 and $56,190.

(ii) Application of the procedures in 225.402 and the acquisition of non-eligible and eligible products under the same solicitation may result in the application of the North American Free Trade Agreement Implementation Act to only some of the items solicited. In such case, indicate in the Schedule those items covered by the Act.


225.1103 Other provisions and clauses.

(1) Unless the contracting officer knows that the prospective contractor is not a domestic concern, use the clause at 252.225–7038 is used.

(2) Use the provision with its Alternate I when the clause at 252.225–7036 is used with its Alternate I.

(13) Use the clause at 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the clause at FAR 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act. The clause need not be used where purchase from foreign sources is restricted (see 225.401 (b)(ii)). The clause may be used where the contracting officer anticipates a waiver of the restriction.

(i)(A) Use the clause in all solicitations and contracts for the items listed at 225.401–70, when the estimated value is $56,190 or more and the Trade Agreements Act does not apply. Include the clause in solicitations for multiple line items if any line item is subject to NAFTA.

(B) Use the clause with its Alternate I when the estimated value is between $25,000 and $56,190.

(ii) Application of the procedures in 225.402 and the acquisition of non-eligible and eligible products under the same solicitation may result in the application of the North American Free Trade Agreement Implementation Act to only some of the items solicited. In such case, indicate in the Schedule those items covered by the Act.


225.1103 Other provisions and clauses.

(1) Unless the contracting officer knows that the prospective contractor is not a domestic concern, use the clause at 252.225–7038 is used.

(2) Use the provision with its Alternate I when the clause at 252.225–7036 is used with its Alternate I.

(13) Use the clause at 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the clause at FAR 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act. The clause need not be used where purchase from foreign sources is restricted (see 225.401 (b)(ii)). The clause may be used where the contracting officer anticipates a waiver of the restriction.

(i)(A) Use the clause in all solicitations and contracts for the items listed at 225.401–70, when the estimated value is $56,190 or more and the Trade Agreements Act does not apply. Include the clause in solicitations for multiple line items if any line item is subject to NAFTA.

(B) Use the clause with its Alternate I when the estimated value is between $25,000 and $56,190.

(ii) Application of the procedures in 225.402 and the acquisition of non-eligible and eligible products under the same solicitation may result in the application of the North American Free Trade Agreement Implementation Act to only some of the items solicited. In such case, indicate in the Schedule those items covered by the Act.


225.7000 Scope of subpart.

(a) This subpart contains restrictions on the acquisition of foreign products and services, imposed by Defense appropriations and authorization acts and other statutes. Refer to the acts to verify current applicability of the restrictions.

(b) Nothing in this subpart affects the applicability of the Buy American Act or Balance of Payments Program.

225.7001 Definitions.
As used in this subpart—
(a) Bearing components and miniature and instrument ball bearings are defined in the clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings.
(b) Component and end product are defined in the clause at 252.225–7012, Preference for Certain Domestic Commodities.
(c) Hand or measuring tools means those tools listed in Federal supply classifications 51 and 52, respectively.
(d) Specialty metals is defined in the clause at 252.225–7014, Preference for Domestic Specialty Metals.


225.7002–1 Restrictions.
The following restrictions implement 10 U.S.C. 2533a. Except as provided in subsection 225.7002–2, do not acquire—
(a) Any of the following items, either as end products or components, unless the items have been grown, reprocessed, reused, or produced in the United States:
(1) Food.
(2) Clothing.
(3) Tents, tarpaulins, or covers.
(4) Cotton and other natural fiber products.
(5) Woven silk or woven silk blends.
(6) Spun silk yarn for cartridge cloth.
(7) Synthetic fabric or coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.
(8) Canvas products.
(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).
(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing any of the fibers, yarns, fabrics, or materials listed in this paragraph (a).
(b) Specialty metals, including stainless steel flatware, unless the metals were melted in steel manufacturing facilities located within the United States.

225.7002–2 Exceptions.
Acquisitions in the following categories are not subject to the restrictions in 225.7002–1:
(a) Acquisitions at or below the simplified acquisition threshold.
(b) Acquisitions of any of the items in 225.7002–1(a) or (b), if the Secretary concerned determines that items grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices.
(c) Acquisitions of items listed in FAR 25.104(a), unless the items are hand or measuring tools.
(d) Acquisitions outside the United States in support of combat operations.
(e) Acquisitions of perishable foods by activities located outside the United States for personnel of those activities.
(f) Emergency acquisitions by activities located outside the United States for personnel of those activities.
(g) Acquisitions by vessels in foreign waters.
(h) Acquisitions of items specifically for commissary resale.
(i) Acquisitions of end products incidentally incorporating cotton, other natural fibers, or wool, for which the estimated value of the cotton, other natural fibers, or wool—
(1) Is not more than 10 percent of the total price of the end product; and
(2) Does not exceed the simplified acquisition threshold.
(j) Acquisitions of foods manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced.
(k) Purchases of specialty metals by subcontractors at any tier for programs other than—
(1) Aircraft;
(2) Missile and space systems;
(3) Ships;
(4) Tank-automotive;
(5) Weapons; and
(6) Ammunition.
(l) Acquisitions of specialty metals and chemical warfare protective clothing when the acquisition furthers an agreement with a qualifying country (see 225.872).

(m) Acquisitions of fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but not the purchase of the synthetic or coated synthetic fabric itself), if—
(1) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include—
(i) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);
(ii) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;
(iii) Upholstered seats (whether for household, office, or other use); and
(iv) Parachutes (Federal Supply Class 1670); or
(2) The fibers and yarns are para-aramid fibers and yarns manufactured in—
(i) The Netherlands; or
(ii) Another qualifying country (see 225.872) if the Under Secretary of Defense (Acquisition, Technology, and Logistics) makes a determination in accordance with Section 807 of Public Law 105–261 that—
(A) Procuring articles that contain only para-aramid fibers and yarns manufactured from suppliers within the United States would result in sole source contracts or subcontracts for the supply of such para-aramid fibers and yarns;
(B) Such sole source contracts or subcontracts would not be in the best interest of the Government or consistent with the objectives of the Competition in Contracting Act (10 U.S.C. 2304); and
(C) The qualifying country permits U.S. firms that manufacture para-aramid fibers and yarns to compete with foreign firms for the sale of para-aramid fibers and yarns in that country.

225.7002–3 Contract clauses.

Unless an exception applies—
(a) Use the clause at 252.225–7012, Preference for Certain Domestic Commodities, in solicitations and contracts exceeding the simplified acquisition threshold.
(b)(1) Use the clause at 225.225–7014, Preference for Domestic Specialty Metals, in solicitations and contracts exceeding the simplified acquisition threshold that require delivery of an article containing specialty metals.
(2) Use the clause with its Alternate I in solicitations and contracts exceeding the simplified acquisition threshold requiring delivery, for one of the following major programs, of an article containing specialty metals:
(i) Aircraft.
(ii) Missile and space systems.
(iii) Ships.
(iv) Tank-automotive.
(v) Weapons.
(vi) Ammunition.
(c) Use the clause at 225.225–7015, Preference for Domestic Hand or Measuring Tools, in all solicitations and contracts over the simplified acquisition threshold calling for delivery of hand or measuring tools.

225.7003 Restriction on overseas military construction.

For restriction on award of military construction contracts to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, see 236.274(a).

225.7004 Restriction on overseas architect-engineer services.

For restriction on award of architect-engineer contracts to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, see 236.602–70.
225.7005 Waiver of certain restrictions.

(a) Where provided for elsewhere in this subpart, the restrictions on certain foreign purchases under 10 U.S.C. 2534(a) may be waived as follows:

(1)(i) The Under Secretary of Defense (Acquisition, Technology, and Logistics) , without power of delegation, may waive the restriction for a particular item for a particular foreign country upon determination that—

(A) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country; or

(B) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, or would impede the reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in that country.

(ii) A notice of determination to exercise the waiver authority must be published in the FEDERAL REGISTER and submitted to the congressional defense committees at least 15 days before the effective date of the waiver.

(iii) Such waiver shall be in effect for a period not greater than 1 year.

(iv) For contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, such waiver shall be applied as directed or authorized in the waiver to—

(A) Subcontracts entered into on or after the effective date of the waiver; and

(B) Options for the procurement of items that are exercised after the effective date of the waiver, if the option prices are adjusted for any reason other than the application of the waiver.

(b) In accordance with the provisions of paragraphs (a)(1)(i) through (a)(1)(iii) of this section, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restrictions of 10 U.S.C. 2534(a) for certain items manufactured in the United Kingdom, including air circuit breakers for naval vessels and totally enclosed lifeboats (see 225.7016 and 225.7022). This waiver applies to—

(1) Procurements under solicitations issued on or after August 4, 1998; and

(2) Subcontracts and options under contracts entered into prior to August 4, 1998, under the conditions described in paragraphs (a)(1)(iv) of this section.


225.7006 Restrictions on construction or repair of vessels in foreign shipyards.

10 U.S.C. 7309 restricts constructing or repairing vessels in foreign shipyards.

(a) Do not award a contract to construct either of the following in a foreign shipyard—

(1) A vessel constructed for any of the armed forces; or

(2) A major component of the hull or superstructure of any such vessel.
Department of Defense

(b) Do not overhaul, repair, or maintain in a foreign shipyard, a naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) homeported in the United States. This restriction does not apply to voyage repairs.

225.7007 Restriction on acquisition of foreign buses.

225.7007–1 Restriction.

In accordance with 10 U.S.C. 2534, do not acquire a multipassenger motor vehicle (bus) unless it is manufactured in the United States or Canada.

[83 FR 5745, Feb. 4, 1998]

225.7007–2 Applicability.

Apply this restriction if the buses are purchased, leased, rented, or made available under contracts for transportation services.

[60 FR 19533, Apr. 19, 1995]

225.7007–3 Exceptions.

This restriction does not apply in any of the following circumstances:

(a) Buses manufactured outside the United States and Canada are needed for temporary use because buses manufactured in the United States or Canada are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the United States or Canada.

(b) The requirement for buses is temporary in nature. For example, to meet a special, nonrecurring requirement or a sporadic and infrequent recurring requirement, buses manufactured outside the United States and Canada may be used for temporary periods of time. Such use may not, however, exceed the period of time needed to meet the special requirement.

(c) Buses manufactured outside the United States and Canada are available at no cost to the U.S. Government.

(d) The acquisition is for an amount that does not exceed the simplified acquisition threshold.

[83 FR 5745, Feb. 4, 1998]

225.7007–4 Waiver.

The waiver criteria at 225.7005(a) apply to this restriction.

[63 FR 43888, Aug. 17, 1998]

225.7008 Restriction on research and development.

(a) Public Law 92–570 precludes use of DoD appropriations for award to any foreign corporation, organization, person, or entity for research and development in connection with any weapon system or other military equipment if there is a U.S. corporation, organization, person, or entity—

(1) Equally competent; and

(2) Willing to perform at a lower cost.

(b) The statutory restriction in paragraph (a) of this section does not change the rules for selecting research and development contractors in FAR part 35. However, when a U.S. source and a foreign source are equally competent, award to the source that will provide the services at the lower cost.

225.7009 [Reserved]

225.7010 Restriction on certain chemical weapons antidote.

225.7010–1 Restriction.

In accordance with 10 U.S.C. 2534 and defense industrial mobilization requirements (see subpart 208.72), do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless the chemical weapons antidote or component is manufactured in the United States or Canada by a company that—

(a) Is a producer under the industrial preparedness program at the time of contract award;

(b) Has received all required regulatory approvals; and

(c) Has the plant, equipment, and personnel to perform the contract in the United States or Canada at the time of contract award.


225.7010–2 Exception.

The restriction of 225.7010–1 does not apply if—the acquisition is for an
amount that does not exceed the simplified acquisition threshold.
[83 FR 5745, Feb. 4, 1998]

225.7010–3 Waiver.
The waiver criteria at 225.7005(a) apply to this restriction.
[83 FR 4988, Aug. 17, 1998]

225.7011 Restriction on Ballistic Missile Defense research, development, test, and evaluation.

225.7011–1 Definitions.
Competent, foreign firm, and U.S. firm have the meanings given in the provision at 252.225–7018, Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense RDT&E.

225.7011–2 Restriction.
(a) Section 222 of the Defense Authorization Act for FY1988 and 1989 (Pub. L. 100–180) prohibits the award of certain contracts for the conduct of Ballistic Missile Defense (BMD) Program research, development, test, and evaluation (RDT&E), to foreign governments or firms unless the Secretary of Defense certifies to Congress in writing at any time during the applicable fiscal year that work cannot be competently performed by a U.S. firm at a price equal to or less than the price of the foreign government or firm.

(b) For purposes of implementing this section, heads of contracting activities are authorized to make this certification (see 225.7011–3(b)).

(c) Except as provided in 225.7011–3, do not use any funds appropriated to, or for the use of, DoD to enter into or carry out any contract, including any contract awarded as a result of a broad agency announcement, with a foreign government or firm if the contract provides for the conduct of RDT&E in connection with the BMD.

(d) This prohibition is not intended to deny access to foreign expertise when contract performance requires a level of competency unavailable in the United States.

225.7011–3 Exceptions.
This prohibition shall not apply—
(a) To contracts awarded to a foreign government or firm if the contracting officer determines that—
(1) The contract will be performed within the United States;
(2) The contract is exclusively for RDT&E in connection with antitactical ballistic missile systems; or
(3) The foreign government or foreign firm agrees to share a substantial portion of the total contract cost. Consider the foreign share as substantial if it is equitable with respect to the relative benefits to be derived from the contract by the United States and the foreign parties. For example, if the contract is more beneficial to the foreign party, its share of the cost should be correspondingly higher; or
(b) If the head of the contracting activity certifies in writing, before contract award, that a contract for research, development, testing, or evaluation (other than for RDT&E described in paragraph (a)(2) of this subsection) cannot be competently performed by a U.S. firm at a price equal to or less than the price at which the RDT&E would be performed by a foreign government or firm.

225.7011–4 Procedures.
(a) When awarding a prime contract to a foreign government or firm under 225.7011–3(b), the contracting officer or source selection authority, as applicable, shall make a determination that will be the basis for the certification.

(1) The determination must—
(i) Describe the contract effort;
(ii) State the number of proposals solicited and received from both U.S. and foreign firms;
(iii) Identify the proposed awardee and the amount of the contract;
(iv) State that selection of the contractor was based on the evaluation factors contained in the solicitation, or the criteria contained in the broad agency announcement; and
(v) State that the effort cannot be competently performed by a U.S. firm at a price equal to, or less than, the price at which it would be performed by the foreign awardee.
(2) When either a broad agency announcement (BAA) or program research and development announcement (PRDA) is used, or when the determination is otherwise not based on direct competition between foreign and domestic proposals, the determination must not be merely conclusory.

(i) The determination must specifically explain its basis, include a description of the method used to determine the competency of U.S. firms, and describe the cost or price analysis performed.

(ii) Alternately, the determination may contain—

(A) A finding, including the basis for such finding, that the proposal was submitted solely in response to the terms of a BAA or PRDA, or other solicitation document without any technical guidance from the program office; and

(B) A finding, including the basis for such finding, that disclosure of the information in the proposal for the purpose of conducting a competitive acquisition is prohibited.

(b) Forward a copy of the certification (from 225.7011–3(b)) and, as appropriate, the determination or justification and approval (J&A) within 30 days of contract award to the Ballistic Missile Defense Organization, Attn: BMDO/DRI, 7100 Defense Pentagon, Washington, DC 20301–7100, if award is based on—

(1) A determination under paragraph (a) of this subsection;

(2) Other than full and open competition under FAR subpart 6.3; or

(3) An unsolicited proposal under FAR subpart 15.6.


225.7012 Restrictions on anchor and mooring chain.

225.7012–1 Restrictions.

(a) Under Public Law 101–511, Section 8041, and similar sections in subsequent Defense appropriations acts, DoD appropriations for fiscal years 1991 and after may not be used to acquire welded shipboard anchor and mooring chain, four inches in diameter and under, unless—

(1) It is manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States exceeds 50 percent of the total cost of components.

(b) Acquisition of welded shipboard anchor and mooring chain, four inches in diameter and under, when used as a component of a naval vessel, is also restricted under 10 U.S.C. 2534(a)(3)(ii). However, the more stringent restriction under 225.7012–1(a) takes precedence.

[61 FR 13107, Mar. 26, 1996]

225.7012–2 Waiver.

The restriction in 225.7012–1(a) may be waived by the Secretary of the Department responsible for acquisition, on a case-by-case basis, where sufficient domestic suppliers are not available to meet DoD requirements on a timely basis and the acquisition is necessary to acquire capability for national security purposes.

(a) Document the waive in a written D&F containing—

(1) The factors supporting the waiver; and

(2) A certification that the acquisition must be made in order to acquire capability for national security purposes.

(b) Provide a copy of the D&F to the House and Senate Committees on Appropriations.

[61 FR 13107, Mar. 26, 1996]
225.7012–3 Contract clause.

Use the clause at 252.225–7019, Restriction on Acquisition of Foreign Anchor and Mooring Chain, in all solicitations and contracts—

(a) Using fiscal year 1991 or later funds; and

(b) Requiring welded shipboard anchor or mooring chain of four inches in diameter or less.


225.7013–225.7014 [Reserved]

225.7015 Restriction on night vision image intensifier tubes and devices.

225.7015–1 Restriction.

In accordance with Pub. L. 101–165 and 101–511, fiscal years 1990 and 1991 funds may not be used to acquire second and third generation night vision image intensifier tubes and devices unless they are manufactured in the United States or Canada.

[58 FR 28467, May 13, 1993]

225.7015–2 Exception.

Second and third generation night vision image intensifier tubes and devices manufactured outside the United States or Canada may be acquired if—

(a) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(b) The Secretary of the Department responsible for the acquisition certifies to the House and Senate Committees on Appropriations that the acquisition of tubes and devices manufactured outside the United States or Canada is necessary in order to acquire capability for national security purposes.


225.7016–3 Waiver.

The waiver criteria at 225.7005(a) apply to this restriction.

[63 FR 43888, Aug. 17, 1998]

225.7016–4 Contract clause.

Use the clause at 252.225–7029, Preference for United States or Canadian Air Circuit Breakers, in all solicitations and contracts requiring air circuit breakers for naval vessels, unless—

(a) An exception under 225.7016–2 is known to apply; or

(b) A waiver has been granted in accordance with 225.7016–3.

[60 FR 19534, Apr. 19, 1995]

225.7017 Restriction on carbon, alloy, and armor steel plate.

225.7017–1 Restriction.

In accordance with section 8111 of Pub. L. 102–172, and similar sections in subsequent appropriations acts, all carbon, alloy, and armor steel plate in Federal stock class 9515 or described by American Society for Testing Materials (ASTM) or American Iron and Steel Institute (AISI) specifications,
Department of Defense

purchased by the Government or a contractor for use in a Government-owned facility or in a facility controlled (e.g., leased) by DoD, shall be melted and rolled in the United States or Canada.

[58 FR 28468, May 13, 1993]

225.7017–2 Exceptions.

This restriction does not apply to—

(a) Contracts in effect as of November 26, 1991;

(b) Direct purchases by DoD using other than fiscal year 1992 or subsequent year funds; or

(c) Purchases by contractors unless the prime contract uses fiscal year 1992 or subsequent year funds.

[58 FR 28468, May 13, 1993]

225.7017–3 Waiver.

The restriction may be waived by the Secretary of the department responsible for acquisition, on a case-by-case, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate U.S. or Canadian supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

[58 FR 14994, Apr. 23, 1992]

225.7017–4 Contract clause.

Unless an exception under 225.7017–2 is known to apply or a waiver has been granted in accordance with 225.7017–3, use the clause at 252.225–7030, Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate, in all solicitations and contracts which—

(a) Require the delivery to the Government of carbon, alloy, or armor steel plate which will be used in a facility owned by the Government or under the control of DoD; or

(b) Require contractors operating in a Government-owned facility or a facility under the control of DoD to purchase carbon, alloy, or armor steel plate.

[57 FR 14994, Apr. 23, 1992, as amended at 57 FR 53600, Nov. 12, 1992]

225.7018 Restriction on four ton dolly jacks.

225.7018–1 Restriction.

In accordance with section 9108 of Public Law 102–396, no fiscal year 1993 funds shall be used to procure four ton dolly jacks manufactured outside the United States.

[59 FR 27672, May 27, 1994]

225.7018–2 Waiver.

The restriction is 225.7018–1 may be waived on a case-by-case basis where the Secretary of the Military Department or the Under Secretary of Defense (Acquisition, Technology, and Logistics) certifies to the Committees on Appropriations of the House and Senate that—

(a) Adequate domestic supplies are available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

[58 FR 28468, May 13, 1993, as amended at 60 FR 61597, Nov. 30, 1995; 65 FR 39705, June 27, 2000]

225.7018–3 Contract clause.

Use the clause at section 252.225–7033, Restriction on Acquisition of Four Ton Dolly Jacks, in solicitations and contracts that use fiscal year 1993 funds for the acquisition of four ton dolly jacks.

[59 FR 27672, May 27, 1994]

225.7019 Restrictions on ball and roller bearings.

225.7019–1 Restrictions.

(a) In accordance with 10 U.S.C. 2534 and 225.7019–3(b)(5), through fiscal year 2005, do not acquire ball and roller bearings or bearing components that are not manufactured in the United States, Canada, or the United Kingdom.

(b) In accordance with Section 8099 of Public Law 104–61 and similar sections in subsequent Defense appropriations acts, do not use fiscal year 1996 or subsequently appropriated funds to acquire ball and roller bearings other than those produced by a domestic source and of domestic origin, i.e.,
bearings and bearing components manufactured in the United States or Canada.


225.7019–2 Exceptions.

(a) The restriction in 225.7019–1(a) does not apply to—

(1) Acquisitions using simplified acquisition procedures, unless ball or roller bearings or bearing components are the end items being purchased;

(2) Purchases of commercial items incorporating ball or roller bearings;

(3) Miniature and instrument ball bearings when necessary to meet urgent military requirements;

(4) Items acquired overseas for use overseas; or

(5) Ball and roller bearings or bearing components or items containing bearings for use in a cooperative or co-production project under an international agreement. This exception does not apply to miniature and instrument ball bearings.

(b) The restriction in 225.7019–1(b) does not apply to contracts or subcontracts for acquisition of commercial items, except for commercial ball and roller bearings acquired as end items.


225.7019–3 Waiver.

(a) The head of the contracting activity may waive the restriction in 225.7019–1(a)—

(1) Upon execution of a determination and findings that—

(i) No domestic (U.S. or Canadian) bearing manufacturer meets the requirement;

(ii) It is not in the best interests of the United States to qualify a domestic bearing to replace a qualified non-domestic bearing. This determination must be based on a finding that the qualification of a domestically manufactured bearing would cause unreasonable costs or delay. A finding that a cost is unreasonable should take into consideration DoD policy to assist the domestic industrial mobilization base.

Contracts should be awarded to domestic bearing manufacturers to increase their capability to reinvest and become more competitive;

(iii) Application of the restriction would result in the existence of only one source for the item in the United States or Canada;

(iv) Application of the restriction is not in the national security interests of the United States; or

(v) Application of the restriction would adversely affect a U.S. company.

(2) If the acquisition is for an amount less than the simplified acquisition threshold and simplified acquisition procedures are being used.

(3) For multiyear contracts or contracts exceeding 12 months, except those for miniature and instrument ball bearings, only if—

(i) The head of the contracting activity executes a determination and findings in accordance with paragraph (a) of this subsection;

(ii) The contractor submits a written plan for transitioning from the use of non-domestic to domestically manufactured bearings;

(iii) The plan—

(A) States whether a domestically manufactured bearing can be qualified, at a reasonable cost, for use during the course of the contract period;

(B) Identifies any bearings that are not domestically manufactured, their application, and source of supply; and

(C) Describes, including cost and timetable, the transition to a domestically manufactured bearing. (The timetable for the transition should normally take no longer than 24 months from the date the waiver is granted); and

(iv) The contracting officer accepts the plan and incorporates it in the contract.

(4) For miniature and instrument ball bearings, only if the contractor agrees to acquire a like quantity and type of domestic manufacture for non-governmental use.

(b)(1) The Under Secretary of Defense (Acquisition, Technology, and Logistics), without power of delegation, may waive the restriction in 225.7019–1(a) for a particular foreign country upon determination that—
(i) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country; or

(ii) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(2) A notice of the determination to exercise the waiver authority must be published in the FEDERAL REGISTER and submitted to the congressional defense committees at least 15 days before the effective date of the waiver.

(3) Such waiver shall be in effect for a period not greater than 1 year.

(4) For contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, such waiver shall be applied as directed or authorized in the waiver to—

(i) Subcontracts entered into on or after the effective date of the waiver; and

(ii) Options for the procurement of items that are exercised after the effective date of the waiver, if the option prices are adjusted for any reason other than the application of the waiver.

(5) In accordance with the provisions of paragraphs (b)(1) through (b)(3) of this subsection, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restrictions of 10 U.S.C. 2334(a)(5) for ball and roller bearings manufactured in the United Kingdom. This waiver applies to—

(i) Procurements under solicitations issued on or after August 4, 1998; and

(ii) Subcontracts and options under contracts entered into prior to August 4, 1998, under the conditions described in paragraph (b)(4) of this subsection.

(c) The Secretary of the department responsible for the acquisition may waive the restriction in 225.7019–1(b) on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(1) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(2) The acquisition must be made in order to acquire capability for national security purposes.


225.7019–4 Contract clause.

(a) Use the clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings, in solicitations and contracts, unless—

(1) The restrictions in 225.7019 do not apply or a waiver has been granted; or

(2) The contracting officer knows that the items being acquired do not contain ball or roller bearings.

(b) In solicitations and contracts that use simplified acquisition procedures, use the clause with its Alternate I.

[65 FR 77828, Dec. 13, 2000]

225.7020 Restriction on vessel propellers.

225.7020–1 Restriction.

In accordance with Section 8064 of the National Defense Appropriations Act for Fiscal Year 2001 (Public Law 106–259), do not use fiscal year 2000 or 2001 funds to acquire vessel propellers other than those produced by a domestic source of domestic origin, i.e., vessel propellers—

(a) Manufactured in the United States or Canada; and

(b) For which all component castings were poured and finished in the United States or Canada.

[65 FR 77828, Dec. 13, 2000]
225.7020-2 Exceptions.

This restriction does not apply to contracts or subcontracts for acquisition of commercial items.

[65 FR 77828, Dec. 13, 2000]

225.7020-3 Waiver.

The Secretary of the department responsible for acquisition may waive this restriction on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate U.S. supplies are not available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

[65 FR 77828, Dec. 13, 2000]

225.7020-4 Contract clause.

Use the clause at 252.225-7023, Restriction on Acquisition of Vessel Propellers, in solicitations and contracts that use fiscal year 2000 or 2001 funds for the acquisition of vessels or vessel propellers, unless—

(a) An exception under 225.7020-2 is known to apply or a waiver has been granted in accordance with 225.7020-3; or

(b) The vessels being acquired do not contain vessel propellers.


225.7021 Restriction on aircraft fuel cells.

225.7021-1 Restriction.

In accordance with section 8090 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103–139) and section 8075 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103–335), do not purchase aircraft fuel cells unless they are produced or manufactured in the United States by a domestic-operated entity.

[60 FR 29498, June 5, 1995]

225.7021-2 Waiver.

The restriction may be waived by the Secretary of the department responsible for the acquisition, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate U.S. supplies are not available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

[59 FR 11729, Mar. 14, 1994]

225.7021-3 Contract clause.

Unless a waiver has been granted in accordance with 225.7021-2, use the clause at 252.225–7038, Restriction on Acquisition of Aircraft Fuel Cells, in all solicitations and contracts which—

(a) Use fiscal year 1994 or 1995 funds; and

(b) Require delivery of aircraft fuel cells.

[60 FR 29498, June 5, 1995]

225.7022 Restrictions on totally enclosed lifeboat survival systems.

225.7022-1 Restrictions.

(a) In accordance with Section 8124 of the Fiscal Year 1994 Defense Appropriations Act (Public Law 103–139) and Section 8093 of the Fiscal Year 1995 Defense Appropriations Act (Public Law 103–335), do not purchase a totally enclosed lifeboat survival system, which consists of the lifeboat and associated davits and winches, unless 50 percent or more of the components are manufactured in the United States, and 50 percent or more of the labor in the final manufacture and assembly of the entire system is performed in the United States.

(b) In accordance with 10 U.S.C. 2534(a)(3)(B) and 225.7005(b), do not purchase a totally enclosed lifeboat that is a component of a naval vessel, unless it is manufactured in the United States, Canada, or the United Kingdom. In accordance with 10 U.S.C. 2534(h), this restriction may not be implemented through the use of a contract clause or certification. Implementation shall be effected through management and oversight techniques that achieve the...
objective of the restriction without imposing a significant management burden on the Government or the contractor involved.


225.7022–2 Exceptions.

The restriction in 225.7022–1(b) does not apply if—

(a) The acquisition is for an amount that does not exceed the simplified acquisition threshold; or

(b) Spare or repair parts are needed to support totally enclosed lifeboats manufactured outside the United States.


225.7022–3 Waiver.

The waiver criteria at 225.7005(a) apply only to the restriction of 225.7022–1(b).

[60 FR 34471, July 3, 1995]

225.7023 Restriction on supercomputers.

225.7023–1 Restriction.

In accordance with section 8112 of Pub. L. 100–202, and similar sections in subsequent Defense Appropriations Acts, do not purchase any supercomputer that is not manufactured in the United States.

[60 FR 34471, July 3, 1995, as amended at 60 FR 61597, Nov. 30, 1995]

225.7023–2 Waiver.

The restriction in 225.7023–1 may be waived by the Secretary of Defense on a case-by-case basis, after the Secretary of Defense certifies to the Armed Services and Appropriations Committees of Congress that—

(a) Adequate U.S. supplies are not available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

[60 FR 34471, July 3, 1995]
225.7102–3 Waiver.
Upon request from a prime contractor, the contracting officer may waive the requirement for domestic manufacture of the items covered by the policy in 225.7102–1.

225.7102–4 Contract clause.
(a) Use the clause at 252.225–7025, Restriction on Acquisition of Forgings, in solicitations and contracts, except for acquisitions—
(1) Excepted in 225.7102–2; or
(2) Where the contracting officer knows that the supplies being acquired do not contain the restricted items.
(b) If an exception under 225.7102–2 applies to any portion of the acquisition, specify the exception in the solicitation and contract.

225.7103 Polyacrylonitrile (PAN) carbon fiber.

225.7103–1 Policy.
DoD has imposed restrictions on the acquisitions of PAN carbon fiber from foreign sources. DoD is phasing out the restrictions over the 5-year period ending May 31, 2005. Contractors with contracts that contain the clause at 252.225–7022 must use U.S. or Canadian manufacturers or producers for all PAN carbon fiber requirements.

[65 FR 77832, Dec. 13, 2000]

225.7103–2 Waivers.
Contracting officers may, with the approval of the chief of the contracting office, waive, in whole or in part, the requirement of the clause at 252.225–7022. For example, a waiver may be justified if a qualified U.S. or Canadian source cannot meet scheduling requirements.

225.7103–3 Contract clause.
Use the clause at 252.225–7022, Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber, in solicitations and contracts for major systems as follows:
(a) In solicitations and contracts issued on or before May 31, 2003, if—
(1) The system is not yet in production (milestone III as defined in DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPS) and Major Automated Information System (MAIS) Acquisition Programs); or
(2) The clause was used in prior program contracts.
(b) In solicitations and contracts issued during the period beginning June 1, 2003, and ending May 31, 2005, if the system is not yet in engineering and manufacturing development (milestone II as defined in DoD 5000.2–R).

[65 FR 77832, Dec. 13, 2000]
225.7202 Distribution of reports.

The contracting officer shall forward a copy of reports submitted by successful offerors as required by the clause at 252.225–7026, Reporting of Contract Performance Outside the United States, to the Deputy Director of Defense Procurement (Foreign Contracting), OUSD(AT&L)/DP(FC), Washington, DC 20301–3060. This is necessary to satisfy the requirement of 10 U.S.C. 2410g that the notifications (or copies) be maintained in compiled form for five years after the date of submission.

[58 FR 28469, May 13, 1993, as amended at 60 FR 29499, June 5, 1995; 65 FR 39705, June 27, 2000]

225.7203 Contract clause.

Except for acquisitions in 225.7201, use the clause at 252.225–7026, Reporting of Contract Performance Outside the United States, in all solicitations and contracts with an estimated or actual value exceeding $500,000, including those modified to exceed $500,000.

225.7300 Scope of subpart.

(a) This subpart contains policies and procedures for acquisitions for foreign military sales (FMS) under the Arms Export Control Act (22 U.S.C. Chapter 39). Section 22 of the Arms Export Control Act (22 U.S.C. 2762) authorizes DoD to enter into contracts for resale to foreign countries or international organizations.

(b) This subpart does not apply to:
   (1) FMS made from inventories or stocks;
   (2) Acquisitions for replenishment of inventories or stocks; or
   (3) Acquisitions made under DoD cooperative logistic supply support arrangements.

[83 FR 43889, Aug. 17, 1998]

225.7301 General.

(a) The U.S. Government sells defense articles and services to foreign governments or international organizations through FMS agreements. The agreement is documented in a Letter of Offer and Acceptance (LOA) (see DoD 5105.38–M, Security Assistance Management Manual). The LOA—
   (1) Lists the items and services, estimated costs, and terms and conditions of the sale;
   (2) Is presented to the foreign customer; and
   (3) Provides for signature of the foreign customer to indicate acceptance.

(b) Acquisitions for FMS are conducted under the same acquisition and contract management procedures as other defense acquisitions.

(c) Solicitations shall separately identify known FMS requirements and the FMS customer.

(d) Contracts for known FMS requirements shall clearly be marked “FMS requirement” on the face of the contract along with the FMS customer and the case identifier code.


225.7302 Procedures.

On FMS programs that will require an acquisition, the contracting officer assists the departmental/agency activity responsible for preparing the LOA by—

(a) Working with prospective contractors to—
   (1) Identify, in advance of the LOA, any unusual provisions or deviations.
   (2) Advise the contractor if the departmental/agency activity expands, modifies, or does not accept any requirements proposed by the contractor;
   (3) Identify any logistics support necessary to perform the contract; and
   (4) For acquisitions over $10,000 that are to be awarded noncompetitively, asking the prospective contractor(s) for information on price, delivery, and other relevant factors. The request for information must identify the fact that the information is for a potential foreign military sale and must identify the foreign customer.

(b) Working with the departmental/agency activity responsible for preparing the LOA to—
   (1) Assist, as necessary, in preparation of the LOA;
   (2) Identify and explain all unusual contractual requirements or requests for deviations; and
(3) Assist in preparing the price and availability data.


225.7303 Pricing acquisitions for FMS.

(a) Price FMS contracts using the same principles as are used in pricing other defense contracts. Application of the pricing principles in FAR parts 15 and 31 to an FMS contract may result in prices that differ from other defense contract prices for the same item due to the considerations in this section.

(b) If the foreign government has conducted a competition resulting in adequate price competition (see FAR 15.403–1(b)(1)), the contracting officer must not require the submission of cost or pricing data. The contracting officer should consult with the foreign government through security assistance personnel to determine if adequate price competition has occurred.

[64 FR 49683, Sept. 14, 1999]

225.7303–1 Contractor sales to other foreign customers.

If the contractor has made sales of the item required for the foreign military sale to foreign customers under comparable conditions, including quantity and delivery, price the FMS contract in accordance with FAR part 15.

225.7303–2 Cost of doing business with a foreign government or an international organization.

(a) In pricing FMS contracts where non-U.S. Government prices as described in 225.7303–1 do not exist, except as provided in 225.7303–5, recognize the reasonable and allocable costs of doing business with a foreign government or international organization, even though such costs might not be recognized in the same amounts in pricing other defense contracts. Examples of such costs include, but are not limited to—

(1) Selling expenses (not otherwise limited by FAR part 31), e.g.—

(i) Maintaining international sales and service organizations;

(ii) Sales commissions and fees in accordance with FAR subpart 3.4;

(iii) Sales promotions, demonstrations, and related travel for sales to foreign governments. Paragraph 126.8 of the International Traffic in Arms Regulations (ITAR) (22 CFR part 121) may require Government approval for these costs to be allowable. If Government approval is required for promotion or demonstration costs to be allowable, the approval must be obtained.

(iv) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

(2) Product support and post-delivery service expenses, such as—

(i) Operations or maintenance training, training or tactics films, manuals, or other related data; and

(ii) Technical field services provided in a foreign country related to accident investigations, weapon system problems, operations/tactics enhancement, and related travel to foreign countries.

(3) Offset costs.

(i) A U.S. defense contractor may recover all costs incurred for offset agreements with a foreign government or international organization if the LOA is financed wholly with customer cash or repayable foreign military finance credits.

(ii) The U.S. Government assumes no obligation to satisfy or administer the offset requirement or to bear any of the associated costs.

(4) Costs that are the subject of advance agreement under the appropriate provisions of FAR part 31; or where the advance understanding places a limit on the amounts of cost that will be recognized as allowable in defense contract pricing, and the agreement contemplated that it will apply only to DoD contracts for the U.S. Government’s own requirement (as distinguished from contracts for FMS).

(b) Costs not allowable under FAR part 31 are not allowable in pricing FMS contracts, except as noted in paragraph (c) of this subsection.

(c) The cost limitations for major contractors on independent research and development and bid and proposal (IR&D/B&P) costs for projects that are of potential interest to DoD, in 231.205–18(c)(iii), do not apply to FMS contracts, except as provided in 225.7303–5. Therefore, the cost limitations on independent research and development and bid and proposal (IR&D/B&P) costs in
FAR 31.205-18 do not apply to such contracts, except as provided in 225.7303-5. The allowability of IR&D/B&P costs on contracts for FMS not wholly paid for from funds made available on a nonrepayable basis shall be limited to the contract’s allocable share of the contractor’s total IR&D/B&P expenditures. In pricing contracts for such FMS—

(1) Use the best estimate of reasonable costs in forward pricing.

(2) Use actual expenditures, to the extent that they are reasonable, in determining final cost.

(d) Under paragraph (e)(1)(A) of Section 21 of the Arms Export Control Act (22 U.S.C. 2761), the United States must charge for administrative services to recover the estimated cost of administration of sales made under the Army Export Control Act.


225.7303-3 Government-to-government agreements.

If a government-to-government agreement between the United States and a foreign government for the sale, coproduction, or cooperative logistic support of a specifically defined weapon system, major end item, or support item, contains language in conflict with the provisions of this section, the language of the government-to-government agreement prevails.

225.7303-4 Contingent fees.

(a) Except as provided in paragraph (b) of this subsection, contingent fees are generally allowable under DoD contracts, provided the fees are determined by the contracting officer to be fair and reasonable and are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor for the purpose of securing business (see FAR Part 31 and FAR Subpart 3.4).

(b)(1) Under DoD 5105.38–M, LOAs for requirements for the governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) must provide that all U.S. Government contacts resulting from the LOAs prohibit the reimbursement of contingent fees as an allowable cost under the contract, unless the payments have been identified and approved in writing by the foreign customer before contract award (see 225.7303(a)).

(2) For FMS to countries not listed in paragraph (b)(1) of this subsection, contingent fees exceeding $50,000 per FMS case shall be unallowable under DoD contracts, unless payment has been identified and approved in writing by the foreign customer before contract award.

[63 FR 11534, Mar. 9, 1998, as amended at 63 FR 43890, Aug. 17, 1998]

225.7303-5 Acquisitions wholly paid for from nonrepayable funds.

(a) In accordance with 22 U.S.C. 2762(d), FMS wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis with regard to profit, overhead, IR&D/B&P, and other costing elements, as is applicable to acquisitions of like items purchased by DoD for its own use.

(b) Direct costs associated with meeting a foreign customer’s additional or unique requirements will be allowable under such contracts. Indirect burden rates applicable to such direct costs shall be permitted at the same rates applicable to acquisitions of like items purchased by DoD for its own use.

(c) A U.S. defense contractor may not recover costs incurred for offset agreements with a foreign government or international organization if the LOA is financed with funds made available on a nonrepayable basis.


225.7304 Source selection.

(a) FMS customers may request that a defense article or defense service be obtained from a particular contractor. In such cases, FAR 6.302–4 provides authority to contract without full-and-open competition. The FMS customer may also request that a subcontract be
placed with a particular firm. The contracting officer shall honor such requests from the FMS customer only if the LOA or other written direction sufficiently fulfills the requirements of FAR subpart 6.3.

(b) Do not allow representatives of the FMS customer to—

(1) Direct the deletion of names of firms from bidders mailing lists or slates of proposed architect-engineer firms. (They may suggest the inclusion of certain firms);

(2) Interfere with a contractor’s placement of subcontracts; or

(3) Participate in the price negotiations between the U.S. Government and the contractor.

(c) Do not accept directions from the FMS customer on source selection decisions or contract terms (except that, upon timely notice, the contracting officer may attempt to obtain any special contract provisions and warranties requested by the FMS customer).

(d) Do not honor any requests by the FMS customer to reject any bid or proposal.


225.7305 Limitation of liability.

The contracting officer must advise the contractor whenever the foreign customer will assume the risk for loss or damage under the appropriate limitation of liability clause(s) (see FAR subpart 46.8). Consider the costs of necessary insurance, if any, obtained by the contractor to cover the risk of loss or damage in establishing the FMS contract price.

225.7306 Exercise of options for FMS.

Consider changes to cost and profit attributable to pricing differences between U.S. and FMS requirements when exercising an option to satisfy an FMS requirement. Also consider such changes if the option is already identified for FMS, but it is exercised for country B requirements instead of the country A requirements for which it was priced.

225.7307 Offset arrangements.

In accordance with the Presidential policy statement of April 16, 1990, DoD does not encourage, enter into, or commit U.S. firms to FMS offset arrangements. The decision whether to engage in offsets, and the responsibility for negotiating and implementing offset arrangements, resides with the companies involved.


225.7308 Contract clauses.

(a) Use the clause at 252.225–7027, Restriction on Contingent Fees for Foreign Military Sales, in all solicitations and contracts for FMS.

(b) Use the clause at 252.225–7028, Exclusionary Policies and Practices of Foreign Governments, in all solicitations and contracts for the purchase of goods and services for international military education training and FMS.


Subpart 225.74—Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States

SOURCE: 63 FR 31937, June 11, 1998, unless otherwise noted.

225.7400 Scope of subpart.

This subpart pertains to antiterrorism/force protection policy for contracts that require performance or travel outside the United States.

225.7401 General.

Information and guidance pertaining to DoD antiterrorism/force protection can be obtained from the following offices:

(a) For Navy contracts: Naval Criminal Investigative Service (NCIS), Code 24; telephone, DSN 228–9113 or commercial (202) 433–9113.

(b) For Army contracts: HQDA (DAMO–ODL)/ODCSOP; telephone, DSN 225–4991 or commercial (703) 695–8491.

(c) For Marine Corps contracts: CMC Code POS–10; telephone, DSN 224–4177 or commercial (703) 614–4177.

(d) For Air Force contracts: HQ AFSFC/SFPT; telephone, DSN 473–8927/0928 or commercial (210) 671–8927/0928.

(e) For Combatant Command contracts: The appropriate Antiterrorism
Department of Defense

Force Protection Office at the Command Headquarters.

(f) For Defense Agencies: The appropriate agency security office.

(g) For additional information: Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, ASD (SOLIC); telephone, DSN 255-0044 or commercial (703) 695-0044.

225.7402 Contract clause.

Use the clause at 252.225-7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in solicitations and contracts that require performance or travel outside the United States, except for contracts with—

(a) Foreign governments;

(b) Representatives of foreign governments;

(c) Foreign corporations wholly owned by foreign governments.

Subpart 225.75—Balance of Payments Program

SOURCE: 67 FR 20694, Apr. 26, 2002, unless otherwise noted.

225.7500 Scope of subpart.

This subpart provides policies and procedures implementing the Balance of Payments Program. It applies to contracts for the acquisition of—

(a) Supplies for use outside the United States; and

(b) Construction to be performed outside the United States.

225.7501 Policy.

Acquire only domestic end products for use outside the United States, and use only domestic construction material for construction to be performed outside the United States, including end products and construction material for foreign military sales, unless—

(a) Before issuing the solicitation—

(1) The estimated cost of the acquisition or the value of a particular construction material is at or below the simplified acquisition threshold;

(2) The end product or particular construction material is—

(i) Listed in FAR 25.104 or 225.104(a)(ii);

(ii) A petroleum product;

(iii) A spare part for foreign-manufactured vehicles, equipment, machinery, or systems, provided the acquisition is restricted to the original manufacturer or its supplier in accordance with DoD standardization policy (see DoD Directive 4120.3, Defense Standardization and Specification Program);

(iv) An industrial gas; or

(v) A brand drug specified by the Defense Medical Materiel Board;

(3) The acquisition of foreign end products or construction material is required by a treaty or executive agreement between governments;

(4) The end product is acquired for commissary resale; or

(5) The contracting officer determines that a requirement can best be filled by a foreign end product or construction material, including determinations that—

(i) A subsistence product is perishable and delivery from the United States would significantly impair the quality at the point of consumption;

(ii) An end product or construction material, by its nature or as a practical matter, can best be acquired in the geographic area concerned, e.g., ice or books; or bulk material, such as sand, gravel, or other soil material, stone, concrete masonry units, or fired brick;

(iii) A particular domestic construction material is not available;

(iv) The cost of domestic construction material would exceed the cost of foreign construction material by more than 50 percent, calculated on the basis of—

(A) A particular construction material; or

(B) The comparative cost of application of the Balance of Payments Program to the total acquisition; or

(v) Use of a particular domestic construction material is impracticable;

(b) After receipt of offers—

(1) The evaluated low offer (see subpart 225.5) is an offer of an end product that—

(i) Is a qualifying country end product;

(ii) Is an eligible product subject to the Trade Agreements Act or NAFTA;

(iii) For acquisitions subject to the Trade Agreements Act, is an information technology product in Federal
Supply Group 70 or 74 that is substantially transformed in the United States; or
(iv) Is a nonqualifying country end product, but application of the Balance of Payments Program evaluation factor would not result in award on a domestic offer; or
(2) The construction material is designated country construction material or NAFTA country construction material, and the acquisition is subject to the Trade Agreements Act or NAFTA respectively; or
(c) At any time during the acquisition process, the head of the agency determines that it is not in the public interest to apply the restrictions of the Balance of Payments Program to the end product or construction material.

225.7502 Procedures.
(a) Solicitation of offers. Identify, in the solicitation, supplies and construction material known in advance to be exempt from the Balance of Payments Program.
(b) Evaluation of offers. (1) Supplies. Unless the entire acquisition is exempt from the Balance of Payments Program, evaluate offers for supplies that are subject to the Balance of Payments Program using the evaluation procedures in subpart 225.5. However, treatment of duty may differ when delivery is overseas.
   (i) Duty may not be applicable to nonqualifying country offers.
   (ii) The U.S. Government cannot guarantee the exemption of duty for components or end products imported into foreign countries.
   (iii) Foreign governments may impose duties. Evaluate offers including such duties as offered.
(2) Construction. Because the contracting officer evaluates the estimated cost of foreign and domestic construction material in accordance with 225.7501(a)(5)(iv) before issuing the solicitation, no special procedures are required for evaluation of construction offers.
(c) Postaward. For construction contracts, the procedures at FAR 25.206, for noncompliance under the Buy American Act, also apply to noncompliance under the Balance of Payments Program.

225.7503 Contract clauses.
Unless the entire acquisition is exempt from the Balance of Payments Program—
(a) Use the clause at 252.225-7044, Balance of Payments Program—Construction Material, in solicitations and contracts for construction to be performed outside the United States with a value greater than the simplified acquisition threshold but less than $6,481,000.
(b) Use the clause at 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with a value of $6,481,000 or more. For acquisitions with a value of $6,481,000 or more, but less than $7,304,733, use the clause with its Alternate I.


PART 226—OTHER SOCIOECONOMIC PROGRAMS

Subpart 226.1—Indian Incentive Program
Sec.
226.103 Procedures.
226.104 Contract clause.

Subpart 226.70—Historically Black Colleges and Universities and Minority Institutions
226.700 Scope of subpart.
226.7001 Definitions.
226.7002 General policy.
226.7003 Set-asides for HBCUs and MIs.
226.7003-1 Set-aside criteria.
226.7003-2 Set-aside procedures.
226.7004 [Reserved]
226.7005 Eligibility as an HBCU or MI.
226.7006 Protesting an HBCU or MI representation.
226.7007 Goals and incentives for subcontracting with HBCU/MIs.
226.7008 Solicitation provision and contract clause.

Subpart 226.71—Preference for Local and Small Businesses
226.7100 Scope of subpart.
226.7101 Definition.
226.7102 Policy.
226.7103 Procedure.
226.7104 Other considerations.
Subpart 226.72—Base Closures and Realignments

226.7200 Scope.


SOURCE: 56 FR 36388, July 31, 1991, unless otherwise noted.

Subpart 226.1—Indian Incentive Program

226.103 Procedures.

(f) The contracting officer must submit a request for funding of the Indian incentive to the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD (AT&L) SADBU, 1777 North Kent Street, Suite 9100, Arlington, VA 22209. Upon receipt of funding from OUSD (AT&L) SADBU, the contracting officer must issue a contract modification to add the Indian incentive funding for payment of the contractor’s request for adjustment as described at FAR 52.226–1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

[65 FR 19859, Apr. 13, 2000]

226.104 Contract clause.

Use the clause at 252.226–7001, Utilization of Indian Organizations and Indian-Owned Economic Enterprises-DoD Contracts, in solicitations and contracts that—

(1) Do not use FAR part 12 procedures; and

(2) Are for supplies or services expected to exceed the simplified acquisition threshold.


Subpart 226.70—Historically Black Colleges and Universities and Minority Institutions

226.7000 Scope of subpart.

This subpart implements the historically black college and university (HBCU) and minority institution (MI) provisions of 10 U.S.C. 2323, which—

(a) Set a goal for DoD for each of fiscal years 1987 through 2003 to award five percent of contract and subcontract dollars to small disadvantaged business concerns and HBCU/MIs; and

(b) Require a separate goal, for each of fiscal years 1991 through 2003, as a subset of the five percent goal, for the participation of HBCUs and MIs.

[59 FR 27672, May 27, 1994, as amended at 64 FR 62987, Nov. 18, 1999]

226.7001 Definitions.

Definitions of HBCUs and MIs are in the clause at 252.226–7000.

226.7002 General policy.

The DoD will use outreach efforts, technical assistance programs, advance payments, HBCU/MI set-asides, and evaluation preferences to meet its contract and subcontract goal for use of HBCUs and MIs. In addition, DoD will establish “infrastructure assistance” (e.g., scholarships, faculty development, teaming agreements with defense laboratories, and laboratory renovation) at colleges, universities, and institutions that agree to bear a substantial portion of the costs associated with the programs.

[56 FR 67216, Dec. 30, 1991]

226.7003 Set-asides for HBCUs and MIs.

226.7003–1 Set-aside criteria.

Set-aside acquisitions for exclusive HBCU and MI participation when the acquisition is for research, studies, or services of the type normally acquired from higher educational institutions and there is a reasonable expectation that—

(a) Offers will be submitted by at least two responsible HBCUs or MIs which can comply with the subcontracting limitations in the clause at FAR 52.219–14;

(b) Award will be made at not more than ten percent above fair market price; and

(c) Scientific and/or technological talent consistent with the demands of the acquisition will be offered.
226.7003–2  Set-aside procedures.

(a) As a general rule, use competitive negotiation for HBCU/MI set-asides.

(b) When using a broad agency announcement (FAR 35.016) for basic or applied research, make partial set-asides for HBCU/MIs as explained in 235.016.

(c) Follow the special synopsis instructions in 205.207(d) (iii), (iv), and (v).

(d) Cancel the set-aside if the low responsible offer exceeds the fair market price (defined in FAR part 19) by more than ten percent.

226.7004  [Reserved]

226.7005  Eligibility as an HBCU or MI.

(a) To be eligible for award as an HBCU or MI under the preference procedures of this subpart, an offeror must—

(1) Be an HBCU or MI, as defined in the clause at 252.226–7000, Notice of Historically Black College or University and Minority Institution Set-Aside, at the time of submission of its initial offer including price; and

(2) Provide the contracting officer with evidence of its HBCU or MI status upon request.

(b) The contracting officer shall accept an offeror’s HBCU or MI status under the provision at 252.226–7001, unless—

(1) Another offeror challenges the status; or

(2) The contracting officer has reason to question the offeror’s HBCU/MI status. (A list of HBCUs is published periodically by the Department of Education.)

[56 FR 36388, July 31, 1991, as amended at 63 FR 64429, Nov. 20, 1998]

226.7006  Protesting an HBCU or MI representation.

Any offeror or other interested party may challenge an offeror’s HBCU or MI representation by filing a protest with the contracting officer. The protest must contain specific detailed evidence supporting the basis for the challenge. Such protests are handled in accordance with FAR 33.103 and are decided by the contracting officer.

226.7007  Goals and incentives for subcontracting with HBCU/MIs.

(a) In reviewing subcontracting plans submitted under the clause at FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, the contracting officer shall—

(1) Ensure that the contractor included anticipated awards to HBCU/MIs in the small disadvantaged business goal;

(2) Consider whether subcontracts are contemplated which involve research or studies of the type normally performed by higher educational institutions.

(b) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause similar to the clause at FAR 52.219–10, Incentive Subcontracting Program, when a subcontracting plan is required, and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for historically black colleges or universities and minority institutions. The clause should include a separate goal for historically black colleges or universities and minority institutions.


Subpart 226.71—Preference for Local and Small Businesses

Source: 59 FR 12192, Mar. 16, 1994, unless otherwise noted.
226.7100 Scope of subpart.


[60 FR 5870, Jan. 31, 1995]

226.7101 Definition.

Vicinity, as used in this subpart, means the county or counties in which the military installation to be closed or realigned is located and all adjacent counties, unless otherwise defined by the agency head.

[60 FR 29499, June 5, 1995]

226.7102 Policy.

Businesses located in the vicinity of a military installation that is being closed or realigned under a base closure law, including 10 U.S.C. 2687, and small and small disadvantaged businesses shall be provided maximum practicable opportunity to participate in acquisitions that support the closure or realignment, including acquisitions for environmental restoration and mitigation.


226.7103 Procedure.

In considering acquisitions for award through the section 8(a) program (subpart 219.8 and FAR subpart 19.8) or in making set-aside decisions under subpart 219.5 and FAR subpart 19.5 for acquisitions in support of a base closure or realignment, the contracting officer shall—

(a) Determine whether there is a reasonable expectation that offers will be received from responsible business concerns located in the vicinity of the military installation that is being closed or realigned.

(b) If offers can not be expected from business concerns in the vicinity, proceed with section 8(a) or set-aside consideration as otherwise indicated in part 219 and FAR part 19.

(c) If offers can be expected from business concerns in the vicinity—

(1) Consider section 8(a) only if at least one eligible 8(a) contractor is located in the vicinity.

(2) Set aside the acquisition for small business only if at least one of the expected offers is from a small business located in the vicinity.


226.7104 Other considerations.

When planning for contracts for services related to base closure activities at a military installation affected by a closure or realignment under a base closure law, contracting officers shall consider including, as a factor in source selection, the extent to which offerors specifically identify and commit, in their proposals, to a plan to hire residents of the vicinity of the military installation that is being closed or realigned.

[60 FR 61598, Nov. 30, 1995]
## Subpart 226.72—Base Closures and Realignments

### 226.7200 Scope.

This subpart identifies the various policies and statutory authorities that affect contracts associated with the closure and realignment of military installations. These policies and authorities are—

(a) Right of first refusal of employment. This authority is embodied in a clause for use in solicitations and contracts arising from the closure of a military installation. The clause establishes employment rights for Government employees who are adversely affected by closure of the installation (see subpart 222.71).

(b) Preference for local and small business. This authority allows contracting officers, when entering into a contract as part of the closure or realignment of a military installation, to give preference, to the greatest extent practicable, to qualified businesses located in the vicinity of the installation and to small and small disadvantaged business concerns (see subpart 226.71).

(c) Services at installations being closed. This authority allows DoD, under certain conditions, to contract with local governments for police, fire protection, airfield operations and other community services at installations being closed (see subpart 237.74).

[59 FR 36089, July 15, 1994, as amended at 60 FR 29499, June 5, 1995]
SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 227—PATENTS, DATA, AND COPYRIGHTS

Subpart 227.3—Patent Rights Under Government Contracts

Sec.
227.303 Contract clauses.
227.304 Procedures.
227.304-1 General.
227.304-4 Subcontracts.

Subpart 227.4—Rights in Data and Copyrights

227.400 Scope of subpart.

Subpart 227.6—Foreign License and Technical Assistance Agreements

227.670 Scope of subpart.
227.671 General.
227.672 Policy.
227.673 Foreign license and technical assistance agreements between the Government and domestic concerns.
227.674 Supply contracts between the Government and a foreign government or concern.
227.675 Foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.
227.676-1 International Traffic in Arms Regulations.
227.676-2 Review of agreements.
227.676 Foreign patent interchange agreements.

Subpart 227.70—Infringement Claims, Licenses, and Assignments

227.7000 Scope.
227.7001 Policy.
227.7002 Statutes pertaining to administrative claims of infringement.
227.7003 Claims for copyright infringement.
227.7004 Requirements for filing an administrative claim for patent infringement.
227.7005 Indirect notice of patent infringement claims.
227.7006 Investigation and administrative disposition of claims.
227.7007 Notification and disclosure of claims.
227.7008 Settlement of indemnified claims.
227.7009 Patent releases, license agreements, and assignments.
227.7009-1 Required clauses.
227.7009-2 Clauses to be used when applicable.
227.7009-3 Additional clauses—contracts except running royalty contracts.
227.7009-4 Additional clauses—contracts providing for payment of a running royalty.
227.7010 Assignments.
227.7011 Procurement of rights in inventions, patents, and copyrights.
227.7012 Contract format.
227.7013 Recordation.

Subpart 227.71—Rights in Technical Data

227.7100 Scope of subpart.
227.7101 Definitions.
227.7102 Commercial items, components, or processes.
227.7102-1 Policy.
227.7102-2 Rights in technical data.
227.7102-3 Contract clause.
227.7103 Noncommercial items or processes.
227.7103-1 Policy.
227.7103-2 Acquisition of technical data.
227.7103-3 Early identification of technical data to be furnished to the Government with restrictions on use, reproduction or disclosure.
227.7103-4 License rights.
227.7103-5 Government rights.
227.7103-6 Contract clauses.
227.7103-7 Use and non-disclosure agreement.
227.7103-8 Deferred delivery and deferred ordering of technical data.
227.7103-9 Copyright.
227.7103-10 Contractor identification and marking of technical data to be furnished with restrictive markings.
227.7103-11 Contractor procedures and records.
227.7103-12 Government right to establish conformity of markings.
227.7103-13 Government right to review, verify, challenge and validate asserted restrictions.
227.7103-14 Conformity, acceptance, and warranty of technical data.
227.7103-15 Subcontractor rights in technical data.
227.7103-16 Providing technical data to foreign governments, foreign contractors, or international organizations.
227.7103-17 Overseas contracts with foreign sources.
227.7104 Contracts under the Small Business Innovation Research (SBIR) Program.
227.7105 Contracts for the acquisition of existing works.
227.7105-1 General.
227.7105-2 Acquisition of existing works without modification.
227.7105-3 Acquisition of modified existing works.
227.7106 Contracts for special works.
227.7107 Contracts for architect-engineer services.
227.303

227.7107–1 Architectural designs and data clauses for architect-engineer or construction contracts.
227.7107–2 Contracts for construction supplies and research and development work.
227.7107–3 Approval of restricted designs.
227.7108 Contractor data repositories.

Subpart 227.72—Rights in Computer Software and Computer Software Documentation

227.7200 Scope of subpart.
227.7201 Definitions.
227.7202 Commercial computer software and commercial computer software documentation.
227.7202–1 Policy.
227.7202–2 [Reserved]
227.7202–3 Rights in commercial computer software or commercial computer software documentation.
227.7202–4 Contract clause.
227.7203 Noncommercial computer software and noncommercial computer software documentation.
227.7203–1 Policy.
227.7203–2 Acquisition of noncommercial computer software and computer software documentation.
227.7203–3 Early identification of computer software or computer software documentation to be furnished to the Government with restrictions on use, reproduction or disclosure.
227.7203–4 License rights.
227.7203–5 Government rights.
227.7203–6 Contract clauses.
227.7203–7 [Reserved]
227.7203–8 Deferred delivery and deferred ordering of computer software and computer software documentation.
227.7203–9 Copyright.
227.7203–10 Contractor identification and marking of computer software or computer software documentation to be furnished with restrictive markings.
227.7203–11 Contractor procedures and records.
227.7203–12 Government right to establish conformity of markings.
227.7203–13 Government right to review, verify, challenge and validate asserted restrictions.
227.7203–14 Conformity, acceptance, and warranty of computer software and computer software documentation.
227.7203–15 Subcontractor rights in computer software or computer software documentation.
227.7203–16 Providing computer software or computer software documentation to foreign governments, foreign contractors, or international organizations.

48 CFR Ch. 2 (10–1–02 Edition)

227.7203–17 Overseas contracts with foreign sources.
227.7204 Contracts under the Small Business Innovative Research Program.
227.7205 Contracts for special works.
227.7206 Contracts for architect-engineer services.
227.7207 Contractor data repositories.


Source: 56 FR 36389, July 31, 1991, unless otherwise noted.

Subpart 227.3—Patent Rights Under Government Contracts

227.303 Contract clauses.

(a) Pursuant to FAR 27.304–1(e), the contracting officer shall insert the clause at 252.227–7039, Patents—Reporting of Subject Inventions, in solicitations and contracts containing the clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form).

227.304 Procedures.

227.304–1 General.

Interim and final invention reports and notification of all subcontracts for experimental, developmental, or research work (FAR 27.304–1(e)(2)(ii)) may be submitted on DD Form 882, Report of Inventions and Subcontracts.

[56 FR 36389, July 31, 1991, as amended at 57 FR 53600, Nov. 12, 1992]

227.304–4 Subcontracts.

The contracting officer shall insert the clause at 252.227–7034, Patents-Subcontracts, in solicitations and contracts containing the clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form).

Subpart 227.4—Rights in Data and Copyrights

227.400 Scope of subpart.

DoD activities shall use the guidance in subparts 227.71 and 227.72 instead of the guidance in FAR subpart 27.4.

[60 FR 33471, June 28, 1995]
227.670 Scope.

This subpart prescribes policy with respect to foreign license and technical assistance agreements.

227.671 General.

In furtherance of the Military Assistance Program or for other national defense purposes, the Government may undertake to develop or encourage the development of foreign additional sources of supply. The development of such sources may be accomplished by an agreement, often called a foreign licensing agreement or technical assistance agreement, wherein a domestic concern, referred to in this subpart as a “primary source,” agrees to furnish to a foreign concern or government, herein referred to as a “second source,” foreign patent rights; technical assistance in the form of data, know-how, trained personnel of the primary source, instruction and guidance of the personnel of the second source, jigs, dies, fixtures, or other manufacturing aids, or such other assistance, information, rights, or licenses as are needed to enable the second source to produce particular supplies or perform particular services. Agreements calling for one or more of the foregoing may be entered into between the primary source and the Government, a foreign government, or a foreign concern. The consideration for providing such foreign license and technical assistance may be in the form of a lump sum payment, payments for each item manufactured by the second source, an agreement to exchange data and patent rights on improvements made to the article or service, capital stock transactions, or any combination of these. The primary source’s bases for computing such consideration may include actual costs; charges for the use of patents, data, or know-how reflecting the primary source’s investment in developing and engineering and production techniques; and the primary source’s “price” for setting up a second source. Such agreements often refer to the compensation to be paid as a royalty or license fee whether or not patent rights are involved.

227.672 Policy.

It is Government policy not to pay in connection with its contracts, and not to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for use of patents in which it holds a royalty-free license or charges for data which it has a right to use and disclose to others, or which is in the public domain, or which the Government has acquired without restriction upon its use and disclosure to others. This policy shall be applied by the Departments in negotiating contract prices for foreign license technical assistance contracts (227.675) or supply contracts with second sources (227.674); and in commenting on such agreements when they are referred to the Department of Defense by the Department of State pursuant to section 414 of the Mutual Security Act of 1954 as amended (22 U.S.C. 1934) and the International Traffic in Arms Regulations (see 227.675).

227.673 Foreign license and technical assistance agreements between the Government and domestic concerns.

(a) Contracts between the Government and a primary source to provide technical assistance or patent rights to a second source for the manufacture of supplies or performance of services shall, to the extent practicable, specify the rights in patents and data and any other rights to be supplied to the second source. Each contract shall provide, in connection with any separate agreement between the primary source and the second source for patent rights or technical assistance relating to the articles or services involved in the contract, that—

(1) The primary source and its subcontractors shall not make, on account of any purchases by the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, any charge to the second source for royalties or amortization for patents or inventions in which the Government
227.674 Supply contracts between the Government and a foreign concern.

In negotiating contract prices with a second source, including the redetermination of contract prices, or in determining the allowability of costs under a cost-reimbursement contract with a second source, the contracting officer:

(a) Shall obtain from the second source a detailed statement (see FAR 27.204-1(a)(2)) of royalties, license fees, and other compensation paid or to be paid to a primary source (or any of his subcontractors) for patent rights, rights in data, and other technical assistance provided to the second source, including identification and description of such patents, data, and technical assistance; and

(b) Shall not accept or allow charges which in effect are—

(1) For royalties or amortization for patents or inventions in which the Government holds a royalty-free license; or

(2) For data which the Government has the right to possess, use, and disclose to others; or

(3) For any technical assistance provided to the second source for which the Government has paid under a contract between the Government and a primary source.

227.675 Foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.

227.675–1 International Traffic in Arms Regulations.

Pursuant to section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934), the Department of State controls the exportation of data relating to articles designated in the United States Munitions List as arms, ammunition, or munitions of war. (The Munitions List and pertinent procedures are set forth in the International Traffic in Arms Regulations, 22 CFR, et seq.) Before authorizing such exportation, the Department of State generally requests comments from the Department of Defense. On request of the Office of the Assistant Secretary of Defense (International Security Affairs), each Department shall submit comments thereon as the basis for a Department of Defense reply to the Department of State.


(a) In reviewing foreign license and technical assistance agreements between primary and second sources, the Department concerned shall, insofar as its interests are involved, indicate whether the agreement meets the requirements of §§124.07–124.10 of the International Traffic in Arms Regulations or in what respects it is deficient. Paragraphs (b) through (g) of this subsection provide general guidance.

(b) When it is reasonably anticipated that the Government will purchase from the second source the supplies or services involved in the agreement, or that Military Assistance Program
funds will be provided for the procurement of the supplies or services, the following guidance applies.

(1) If the agreement specifies a reduction in charges thereunder, with respect to purchases by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, in recognition of the Government’s rights in patents and data, the Department concerned shall evaluate the amount of the reduction to determine whether it is fair and reasonable in the circumstances, before indicating its approval.

(2) If the agreement does not specify any reduction in charges or otherwise fails to give recognition to the Government’s rights in the patents or data involved, approval shall be conditioned upon amendment of the agreement to reflect a reduction, evaluated by the Department concerned as acceptable to the Government, in any charge thereunder with respect to purchases made by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, in accordance with §124.10 of the International Traffic in Arms Regulations.

(3) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent to which the Government has rights, the Department concerned shall evaluate the acceptability of the provision before indicating its approval.

(4) If time or circumstances do not permit the evaluation called for in (b) (1), (2), or (3) of this subsection, the guidance in (c) of this subsection shall be followed.

(c) When it is not reasonably anticipated that the Government will purchase from the second source the supplies or services involved in the agreement nor that Military Assistance Program funds will be provided for the purchase of the supplies or services, then the following guidance applies.

(1) If the agreement provides for charges to the second source for data or patent rights, it may suffice to fulfill the requirements of §124.10 insofar as the Department of Defense is concerned if:

(i) The agreement requires the second source to advise the primary source when he has knowledge of any purchase made or to be made from him by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government;

(ii) The primary source separately agrees with the Government that upon such advice to him from the second source or from the Government or otherwise as to any such a purchase or prospective purchase, he will negotiate with the Department concerned an appropriate reduction in his charges to the second source in recognition of any Government rights in patents or data; and

(iii) The agreement between the primary and second sources further provides that in the event of any such purchase and resulting reduction in charges, the second source shall pass on this reduction to the Government by giving the Government a corresponding reduction in the purchase price of the article or service.

(2) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent to which the Government has rights, the Department concerned shall:

(i) Evaluate the acceptability of the provision before indicating its approval; or

(ii) Explicitly condition its approval on the right to evaluate the acceptability of the provision at a later time.

(d) When there is a technical assistance agreement between the primary source and the Government related to the agreement between the primary and second sources that is under review, the latter agreement shall reflect the arrangements contemplated with respect thereto by the Government’s technical assistance agreement with the primary source.

(e) Every agreement shall provide that any license rights transferred under the agreement are subject to existing rights of the Government.

(f) In connection with every agreement referred to in (b) of this section, a request shall be made to the primary source—
(1) To identify the patents, data, and other technical assistance to be provided to the second source by the primary source or any of his subcontractors,

(2) To identify any such patents and data in which, to the knowledge of the primary source, the Government may have rights, and

(3) To segregate the charges made to the second source for each such category or item of patents, data, and other technical assistance.

Reviewing personnel shall verify this information or, where the primary source does not furnish it, obtain such information from Governmental sources so far as practicable.

(g) The Department concerned shall make it clear that its approval of any agreement does not necessarily recognize the propriety of the charges or the amounts thereof, or constitute approval of any of the business arrangements in the agreement, unless the Department expressly intends by its approval to commit itself to the fairness and reasonableness of a particular charge or charges. In any event, a disclaimer should be made to charges or business terms not affecting any purchase made by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government.

227.676 Foreign patent interchange agreements.

(a) Patent interchange agreements between the United States and foreign governments provide for the use of patent rights, compensation, free licenses, and the establishment of committees to review and make recommendations on these matters. The agreements also may exempt the United States from royalty and other payments. The contracting officer shall ensure that royalty payments are consistent with patent interchange agreements.

(b) Assistance with patent rights and royalty payments in the United States European Command (USEUCOM) area of responsibility is available from HQ USEUCOM, ATTN: ECLA, Unit 30400, Box 1000, APO AE 09128; Telephone: DSN 430-8001/7363, Commercial 49-0711-680-8001/7363; Telefax: 49-0711-680-5732. [62 FR 34125, June 24, 1997, as amended at 63 FR 11589, Mar. 9, 1998]

Subpart 227.70—Infringement Claims, Licenses, and Assignments

227.7000 Scope.

This subpart prescribes policy, procedures, and instructions for use of clauses with respect to processing licenses, assignments, and infringement claims.

227.7001 Policy.

Whenever a claim of infringement of privately owned rights in patented inventions or copyrighted works is asserted against any Department or Agency of the Department of Defense, all necessary steps shall be taken to investigate, and to settle administratively, deny, or otherwise dispose of such claim prior to suit against the United States. This subpart 227.70 does not apply to licenses or assignments acquired by the Department of Defense under the Patent Rights clauses.

227.7002 Statutes pertaining to administrative claims of infringement.


227.7003 Claims for copyright infringement.

The procedures set forth herein will be followed, where applicable, in copyright infringement claims.

227.7004 Requirements for filing an administrative claim for patent infringement.

(a) A patent infringement claim for compensation, asserted against the United States under any of the applicable statutes cited in 227.7002, must be actually communicated to and received by a Department, agency, organization,
office, or field establishment within the Department of Defense. Claims must be in writing and should include the following:

1. An allegation of infringement;
2. A request for compensation, either expressed or implied;
3. A citation of the patent or patents alleged to be infringed;
4. A sufficient designation of the alleged infringing item or process to permit identification, giving the military or commercial designation, if known, to the claimant;
5. A designation of at least one claim of each patent alleged to be infringed; or
6. As an alternative to (4) and (5) of this section, a declaration that the claimant has made a bona fide attempt to determine the item or process which is alleged to infringe, but was unable to do so, giving reasons, and stating a reasonable basis for his belief that his patent or patents are being infringed.

(b) In addition to the information listed in (a) of this section, the following material and information is generally necessary in the course of processing a claim of patent infringement. Claimants are encouraged to furnish this information at the time of filing a claim to permit the most expeditious processing and settlement of the claim.

1. A copy of the asserted patent(s) and identification of all claims of the patent alleged to be infringed.
2. Identification of all procurements known to claimant which involve the alleged infringing item or process, including the identity of the vendor or contractor and the Government procuring activity.
3. A detailed identification of the accused article or process, particularly where the article or process relates to a component or subcomponent of the item procured, an element by element comparison of the representative claims with the accused article or process. If available, this identification should include documentation and drawings to illustrate the accused article or process in suitable detail to enable verification of the infringement comparison.
4. Names and addresses of all past and present licenses under the patent(s), and copies of all license agreements and releases involving the patent(s).
5. A brief description of all litigation in which the patent(s) has been or is now involved, and the present status thereof.
6. A list of all persons to whom notices of infringement have been sent, including all departments and agencies of the Government, and a statement of the ultimate disposition of each.
7. A description of Government employment or military service, if any, by the inventor and/or patent owner.
8. A list of all Government contracts under which the inventor, patent owner, or anyone in privity with him performed work relating to the patented subject matter.
9. Evidence of title to the patent(s) alleged to be infringed or other right to make the claim.
10. A copy of the Patent Office file of each patent if available to claimant.
11. Pertinent prior art known to claimant, not contained in the Patent Office file, particularly publications and foreign art.

In addition in the foregoing, if claimant can provide a statement that the investigation may be limited to the specifically identified accused articles or processes, or to a specific procurement, it may materially expedite determination of the claim.

(c) Any Department receiving an allegation of patent infringement which meets the requirements of this paragraph shall acknowledge the same and supply the other Departments which may have an interest therein with a copy of such communication and the acknowledgement thereof.

1. For the Department of the Army—Chief, Patents, Copyrights, and Trademarks Division, U.S. Army Legal Services Agency;
2. For the Department of the Navy—The Patent Counsel for Navy, Office of Naval Research;
3. For the Department of the Air Force—Chief, Patents Division, Office of The Judge Advocate General;
4. For the Defense Logistics Agency—The Office of Counsel; for the National Security Agency, the General Counsel;
227.7005 Indirect notice of patent infringement claims.

(a) A communication by a patent owner to a Department of Defense contractor alleging that the contractor has committed acts of infringement in performance of a Government contract shall not be considered a claim within the meaning of 227.7004 until it meets the requirements specified therein.

(b) Any Department receiving an allegation of patent infringement which meets the requirements of 227.7004 shall acknowledge the same and supply the other Departments (see 227.7004(c)) which may have an interest therein with a copy of such communication and the acknowledgement thereof.

(c) If a communication covering an infringement claim or notice which does not meet the requirements of 227.7004(a) is received from a contractor, the patent owner shall be advised in writing as covered by the instructions of 227.7004(d).

227.7006 Investigation and administrative disposition of claims.

An investigation and administrative determination (denial or settlement) of each claim shall be made in accordance with instructions and procedures established by each Department, subject to the following:

(a) When the procurement responsibility for the alleged infringing item or process is assigned to a single Department or only one Department is the purchaser of the alleged infringing item or process, and the funds of that Department only are to be charged in the settlement of the claim, that Department shall have the sole responsibility for the investigation and administrative determination of the claim and for the execution of any agreement in settlement of the claim. Where, however, funds of another Department are to be charged, in whole or in part, the approval of such Department shall be obtained as required by 208.7002. Any agreement in settlement of the claim, approved pursuant to 208.7002 shall be executed by each of the Departments concerned.

(b) When two or more Departments are the respective purchasers of alleged infringing items or processes and the funds of those Departments are to be charged in the settlement of the claim, the investigation and administrative determination shall be the responsibility of the Department having the predominant financial interest in the claim or of the Department or Departments as jointly agreed upon by the Departments concerned. The Department responsible for negotiation shall, throughout the negotiation, coordinate with the other Departments concerned and keep them advised of the status of the negotiation. Any agreement in the settlement of the claim shall be executed by each Department concerned.

227.7007 Notification and disclosure to claimants.

When a claim is denied, the Department responsible for the administrative determination of the claim shall so notify the claimant or his authorized representative and provide the claimant a reasonable rationale of the basis for denying the claim. Disclosure of information or the rationale referred to above shall be subject to applicable statutes, regulations, and directives pertaining to security, access to official records, and the rights of others.
227.7008 Settlement of indemnified claims.

Settlement of claims involving payment for past infringement shall not be made without the consent of, and equitable contribution by, each indemnifying contractor involved, unless such settlement is determined to be in the best interests of the Government and is coordinated with the Department of Justice with a view to preserving any rights of the Government against the contractors involved. If consent of and equitable contribution by the contractors are obtained, the settlement need not be coordinated with the Department of Justice.

227.7009 Patent releases, license agreements, and assignments.

This section contains clauses for use in patent release and settlement agreements, license agreements, and assignments, executed by the Government, under which the Government acquires rights. Minor modifications of language (e.g., pluralization of “Secretary” or “Contracting Officer”) in multi-departmental agreements may be made if necessary.

227.7009–1 Required clauses.

(a) Covenant Against Contingent Fees. Insert the clause at FAR 52.203–5.
(b) Gratuities. Insert the clause at FAR 52.203–3.
(c) Assignment of Claims. Insert the clause at FAR 52.232–23.
(d) Disputes. Pursuant to FAR 33.014, insert the clause at FAR 52.233–1.
(e) Non-Estoppel. Insert the clause at 252.227–7000.


227.7009–2 Clauses to be used when applicable.

(a) Release of past infringement. The clause at 252.227–7001, Release of Past Infringement, is an example which may be modified or omitted as appropriate for particular circumstances, but only upon the advice of cognizant patent or legal counsel. (See footnotes at end of clause.)
(b) Readjustment of payments. The clause at 252.227–7002, Readjustment of Payments, shall be inserted in contracts providing for payment of a running royalty.
(c) Termination. The clause at 252.227–7003, Termination, is an example for use in contracts providing for the payment of a running royalty. This clause may be modified or omitted as appropriate for particular circumstances, but only upon the advice of cognizant patent or legal counsel (see 227.7004(c)).

227.7009–3 Additional clauses—contracts except running royalty contracts.

The following clauses are examples for use in patent release and settlement agreements, and license agreements not providing for payment by the Government of a running royalty.

(a) License Grant. Insert the clause at 252.227–7004.
(b) License Term. Insert one of the clauses at 252.227–7005 Alternate I or Alternate II, as appropriate.

227.7009–4 Additional clauses—contracts providing for payment of a running royalty.

The clauses set forth below are examples which may be used in patent release and settlement agreements, and license agreements, when it is desired to cover the subject matter thereof and the contract provides for payment of a running royalty.

(a) License grant—running royalty. No Department shall be obligated to pay royalties unless the contract is signed on behalf of such Department. Accordingly, the License Grant clause at 252.227–7006 should be limited to the practice of the invention by or for the signatory Department or Departments.
(b) License term—running royalty. The clause at 252.227–7007 is a sample form for expressing the license term.
(c) Computation of royalties. The clause at 252.227–7008 providing for the computation of royalties, may be of varying scope depending upon the nature of the royalty bearing article, the volume of procurement, and the type of contract pursuant to which the procurement is to be accomplished.
(d) Reporting and payment of royalties. (1) The contract should contain a provision specifying the office designated within the specific Department involved to make any necessary reports.
to the contractor of the extent of use of the licensed subject matter by the entire Department, and such office shall be charged with the responsibility of obtaining from all procuring offices of that Department the information necessary to make the required reports and corresponding vouchers necessary to make the required payments. The clause at 252.227–7009 is a sample for expressing reporting and payment of royalties requirements.

(2) Where more than one Department or Government Agency is licensed and there is a ceiling on the royalties payable in any reporting period, the licensing Departments or Agencies shall coordinate with respect to the pro rata share of royalties to be paid by each.

(e) License to other government agencies. When it is intended that a license on the same terms and conditions be available to other departments and agencies of the Government, the clause at 252.227–7010 is an example which may be used.

227.7010 Assignments.

(a) The clause at 252.227–7011 is an example which may be used in contracts of assignment of patent rights to the Government.

(b) To facilitate proof of contracts of assignments, the acknowledgement of the contractor should be executed before a notary public or other officer authorized to administer oaths (35 U.S.C. 261).

227.7011 Procurement of rights in inventions, patents, and copyrights.

Even though no infringement has occurred or been alleged, it is the policy of the Department of Defense to procure rights under patents, patent applications, and copyrights whenever it is in the Government’s interest to do so and the desired rights can be obtained at a fair price. The required and suggested clauses at 252.227–7001 and 252.227–7010 shall be required and suggested clauses, respectively, for license agreements and assignments made under this paragraph. The instructions at 227.7009–3 and 227.7010 concerning the applicability and use of those clauses shall be followed insofar as they are pertinent.

227.7012 Contract format.

The format at 252.227–7012 appropriately modified where necessary, may be used for contracts of release, license, or assignment.

227.7013 Recordation.

Executive Order No. 9424 of 18 February 1944 requires all executive Departments and agencies of the Government to forward through appropriate channels to the Commissioner of Patents and Trademarks, for recording, all Government interests in patents or applications for patents.

Subpart 227.71—Rights in Technical Data

SOURCE: 60 FR 33471, June 28, 1995, unless otherwise noted.

227.7100 Scope of subpart.

This subpart—

(a) Prescribes policies and procedures for the acquisition of technical data and the rights to use, modify, reproduce, release, perform, display, or disclose technical data. It implements requirements in the following laws and Executive Order:

(1) 10 U.S.C. 2302(4).
(2) 10 U.S.C. 2305 (subsection (d)(4)).
(3) 10 U.S.C. 2320.
(4) 10 U.S.C. 2321.
(5) 10 U.S.C. 2325.
(7) Executive Order 12591 (Subsection 1(b)(6)).

(b) Does not apply to computer software or technical data that is computer software documentation (see subpart 227.72).

227.7101 Definitions.

(a) As used in this subpart, unless otherwise specifically indicated, the terms “offeror” and “contractor” include an offeror’s or contractor’s subcontractors, suppliers, or potential subcontractors or suppliers at any tier.

(b) Other terms used in this subpart are defined in the clause at 252.227–7013, Rights in Technical Data—Non-commercial Items.

[56 FR 36389, July 31, 1991, as amended at 60 FR 61598, Nov. 30, 1995]
227.7102 Commercial items, components, or processes.

Section 2320(b)(1) of Title 10 U.S.C. establishes a presumption that commercial items are developed at private expense whether or not a contractor submits a justification in response to a challenge notice. Therefore, do not challenge a contractor’s assertion that a commercial item, component, or process was developed at private expense unless the Government can demonstrate that it contributed to development of the item, component, or process. Follow the procedures in 227.7103–13 and the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, when information provided by the Department of Defense demonstrates that an item, component, or process was not developed exclusively at private expense. However, when a challenge is warranted, a contractor’s or subcontractor’s failure to respond to the challenge notice cannot be the sole basis for issuing a final decision denying the validity of an asserted restriction.

227.7102–1 Policy.

(a) DoD shall acquire only the technical data customarily provided to the public with a commercial item or process, except technical data that—

(1) Are form, fit, or function data;

(2) Are required for repair or maintenance of commercial items or processes, or for the proper installation, operating, or handling of a commercial item, either as a stand alone unit or as a part of a military system, when such data are not customarily provided to commercial users or the data provided to commercial users is not sufficient for military purposes; or

(3) Describe the modifications made at Government expense to a commercial item or process in order to meet the requirements of a Government solicitation.

(b) To encourage offerors and contractors to offer or use commercial products to satisfy military requirements, offerors, and contractors shall not be required, except for the technical data described in paragraph (a) of this subsection, to—

(1) Furnish technical information related to commercial items or processes that is not customarily provided to the public; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose technical data pertaining to commercial items or processes except for a transfer of rights mutually agreed upon.

227.7102–2 Rights in technical data.

(a) The clause at 252.227–7015, Technical Data—Commercial Items, provides the Government specific license rights in technical data pertaining to commercial items or processes. DoD may use, modify, reproduce, release, perform, display, or disclose data only within the Government. The data may not be used to manufacture additional quantities of the commercial items and, except for emergency repair or overhaul, may not be released or disclosed to, or used by, third parties without the contractor’s written permission. Those restrictions do not apply to the technical data described in 227.7102–1(a).

(b) If additional rights are needed, contracting activities must negotiate with the contractor to determine if there are acceptable terms for transferring such rights. The specific additional rights granted to the Government shall be enumerated in a license agreement made part of the contract.

227.7102–3 Contract clause.

(a) Except as provided in paragraph (b) of this subsection, use the clause at 252.227–7015, Technical Data—Commercial Items, in all solicitations and contracts when the contractor will be required to deliver technical data pertaining to commercial items or processes. Do not require the contractor to include this clause in its subcontracts.

(b) Use the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, in lieu of the clause at 252.227–7015 if the Government will pay any portion of the development costs. Do not require the contractor to include this clause in its subcontracts for commercial items or commercial components.

(c) Use the clause at 252.227–7037, Validation of Restrictive Markings on
Technical Data, in all solicitations and contracts for commercial items that include the clause at 252.227–7015 or the clause at 252.227–7013, Do not require the contractor to include this clause in its subcontracts for commercial items or commercial components.

[56 FR 36389, July 31, 1991, as amended at 60 FR 61598, Nov. 30, 1995]

227.7103 Noncommercial items or processes.

227.7103–1 Policy.

(a) DoD policy is to acquire only the technical data, and the rights in that data, necessary to satisfy agency needs.

(b) Solicitations and contracts shall—

(1) Specify the technical data to be delivered under a contract and delivery schedules for the data;

(2) Establish or reference procedures for determining the acceptability of technical data;

(3) Establish separate contract line items, to the extent practicable, for the technical data to be delivered under a contract and require offerors and contractors to price separately each deliverable data item; and

(4) Require offerors to identify, to the extent practicable, technical data to be furnished with restrictions on the Government’s rights and require contractors to identify technical data to be delivered with such restrictions prior to delivery.

(c) Offerors shall not be required, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish to the Government any rights in technical data related to items, components or processes developed at private expense except for the data identified at 227.7103–5(a)(2) and (a)(4) through (9).

(d) Offerors and contractors shall not be prohibited or discouraged from furnishing or offering to furnish items, components, or processes developed at private expense solely because the Government’s rights to use, modify, release, reproduce, perform, display, or disclose technical data pertaining to those items may be restricted.

(e) As provided in 10 U.S.C. 2305, solicitation for major systems development contracts shall not require offerors to submit proposals that would permit the Government to acquire competitively items identical to items developed at private expense unless a determination is made at a level above the contracting officer that—

(1) The offeror will not be able to satisfy program schedule or delivery requirements; or

(2) The offeror’s proposal to meet mobilization requirements does not satisfy mobilization needs.

227.7103–2 Acquisition of technical data.

(a) Contracting officers shall work closely with data managers and requirements personnel to assure that data requirements included in solicitations are consistent with the policy expressed in 227.7103–1.

(b) (1) Data managers or other requirements personnel are responsible for identifying the Government’s minimum needs for technical data. Data needs must be established giving consideration to the contractor’s economic interests in data pertaining to items, components, or processes that have been developed at private expense; the Government’s costs to acquire, maintain, store, retrieve, and protect the data; reprocurement needs; repair, maintenance and overhaul philosophies; spare and repair part considerations; and whether procurement of the items, components, or processes can be accomplished on a form, fit, or function basis. When it is anticipated that the Government will obtain unlimited or government purpose rights in technical data that will be required for competitive spare or repair parts procurements, such data should be identified as deliverable data items. Reprocurement needs may not be a sufficient reason to acquire detailed manufacturing or process data when items or components can be acquired using performance specifications, form, fit and function data, or when there are a sufficient number of alternate sources which can reasonably be expected to provide such items on a performance specification or form, fit, or function basis.
(2) When reviewing offers received in response to a solicitation or other request for data, data managers must balance the original assessment of the Government’s data needs with data prices contained in the offer.

(c) Contracting officers are responsible for ensuring that, wherever practicable, solicitations and contracts—

(1) Identify the type and quantity of the technical data to be delivered under the contract and the format and media in which the data will be delivered;

(2) Establish each deliverable data item as a separate contract line item (this requirement may be satisfied by listing each deliverable data item on an exhibit to the contract);

(3) Identify the prices established for each deliverable data item under a fixed-price type contract;

(4) Include delivery schedules and acceptance criteria for each deliverable data item; and

(5) Specifically identify the place of delivery for each deliverable item of technical data.

227.7103–4 License rights.

(a) Grant of license. The Government obtains rights in technical data, including a copyright license, under and irrevocable license granted or obtained for the Government by the contractor. The contractor or licensor retains all rights in the data not granted to the Government. For technical data that pertain to items, components, or processes, the scope of the license is generally determined by the source of funds used to develop the item, component, or process. When the technical data do not pertain to items, components, or processes, the scope of the license is determined by the source of funds used to create the data.

(1) Technical data pertaining to items, components, or processes. Contractors or licensors may, with some exceptions (see 227.7103–5(a)(2) and (a)(4) through (9)), restrict the Government’s rights to use, modify, release, reproduce, perform, display or disclose technical data pertaining to items, components, or processes developed exclusively at private expense (limited rights). They may not restrict the Government’s rights in items, components, or processes developed exclusively at Government expense (unlimited rights) without the Government’s approval. When an item, component, or process is developed with mixed funding, the Government may use, modify, release, reproduce, perform, display or disclose the data pertaining to such items, components, or processes within the Government without restriction but may release or disclose the data outside the Government only for government purposes (government purpose rights).

(2) Technical data that do not pertain to items, components, or processes. Technical data may be created during the performance of a contract for a conceptual design or similar effort that does not require the development, manufacture, construction, or production of items, components or processes. The Government generally obtains unlimited rights in such data when the data were created exclusively with Government funds, government purpose rights when the data were created with mixed funding, and limited rights when the data were created exclusively at private expense.
(b) **Source of funds determination.** The determination of the source of development funds for technical data pertaining to items, components, or processes should be made at any practical sub-item or subcomponent level or for any segregable portion of a process. Contractors may assert limited rights in a segregable sub-item, sub-component, or portion of a process which otherwise qualifies for limited rights under the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items.

### 227.7103–5 Government rights.

The standard license rights that a licensor grants to the Government are unlimited rights, government purpose rights, or limited rights. Those rights are defined in the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items. In unusual situations, the standards rights may not satisfy the Government’s needs or the Government may be willing to accept lesser rights in data in return for other consideration. In those cases, a special license may be negotiated. However, the licensor is not obligated to provide the Government greater rights and the contracting officer is not required to accept lesser rights than the rights provided in the standard grant of license. The situations under which a particular grant of license applies are enumerated in paragraphs (a) through (d) of this subsection.

(a) **Unlimited rights.** The Government obtains unlimited rights in technical data that are—

1. Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;
2. Studies, analyses, test data, or similar data produced in the performance of a contract when the study, analysis, test, or similar work was specified as an element of performance;
3. Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;
4. Form, fit, and function data;
5. Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
6. Corrections or changes to technical data furnished to the contractor by the Government;
7. Publicly available or have been released or disclosed by the contractor or subcontractor without restrictions on further use, release or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;
8. Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or
9. Data furnished to the Government, under a Government contract or subcontract thereunder, with—
   i. Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or
   ii. Government purpose rights and the contractor’s exclusive right to use such data for commercial purposes has expired.

(b) **Government purpose rights.** (1) The Government obtains government purpose rights in technical data—

   i. That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights as provided in paragraphs (a)(2) and (a)(4) through (9) of this subsection; or
   ii. Created with unlimited rights in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(2) The period during which government purpose rights are effective is negotiable. The clause at 252.227–7013 provides a nominal five-year period. Either party may request a different period. Changes to the government purpose rights period may be made at any time prior to delivery of the technical data without consideration from either party. Longer periods should be negotiated when a five-year period does not provide sufficient time to apply the data for commercial purposes or when necessary to recognize subcontractors’ interests in the data.
(3) The government purpose rights period commences upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required the development. Upon expiration of the Government rights period, the Government has unlimited rights in the data including the right to authorize others to use the data for commercial purposes.

(4) During the government purpose rights period, the government may not use, or authorize other persons to use, technical data marked with government purpose rights legends for commercial purposes. The Government shall not release or disclose data in which it has government purpose rights to any person, or authorize others to do so, unless—

(i) Prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at 227.7103-7; or

(ii) The intended recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(5) When technical data marked with government purpose rights legends will be released or disclosed to a Government contractor performing a contract that does not include the clause at 252.227–7025, the contract may be modified, prior to release or disclosure, to include that clause in lieu of requiring the contractor to complete a use and non-disclosure agreement.

(6) Contracting activities shall establish procedures to assure that technical data marked with government purpose rights legends are released or disclosed, including a release or disclosure through a Government solicitation, only to persons subject to the use and non-disclosure restrictions. Public announcements in the Commerce Business Daily or other publications must provide notice of the use and non-disclosure requirements. Class use and non-disclosure agreements (e.g., agreements covering all solicitations received by the XYZ company within a reasonable period) are authorized and may be obtained at any time prior to release or disclosure of the government purpose rights data. Documents transmitting government purpose rights data to persons under class agreements shall identify the technical data subject to government purpose rights and the class agreement under which such data are provided.

(c) Limited rights. (1) The Government obtains limited rights in technical data—

(i) That pertain to items, components, or processes developed exclusively at private expense except when the Government is entitled to unlimited rights as provided in paragraphs (a)(2) and (a)(4) through (9) of this subsection; or

(ii) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(2) Data in which the Government has limited rights may not be used, released, or disclosed outside the Government without the permission of the contractor asserting the restriction except for a use, release or disclosure that is—

(i) Necessary for emergency repair and overhaul; or

(ii) To a foreign government, other than detailed manufacturing or process data, when use, release, or disclosure is in the interest of the United States and is required for evaluation or informational purposes.

(3) The person asserting limited rights must be notified of the Government’s intent to release, disclose, or authorize others to use such data prior to release or disclosure of the data except notification of an intended release, disclosure, or use for emergency repair or overhaul which shall be made as soon as practicable.

(4) When the person asserting limited rights permits the Government to release, disclose, or have others use the data subject to restrictions on further use, release, or disclosure, or for a release under paragraph (c)(2)(i) or (ii) of this subsection, the intended recipient
must complete the use and non-disclosure agreement at 227.7103–7 prior to release or disclosure of the limited rights data.

(d) **Specifically negotiated license rights.** (1) Negotiate specific licenses when the parties agree to modify the standard license rights granted to the government or when the government wants to obtain rights in data in which it does not have rights. When negotiating to obtain, relinquish, or increase the Government’s rights in technical data, consider the acquisition strategy for the item, component, or process, including logistics support and other factors which may have relevance for a particular procurement. The Government may accept lesser rights when it has unlimited or government purpose rights in data but may not accept less than limited rights in such data. The negotiated license rights must stipulate what rights the Government has to release or disclose the data to other persons or to authorize others to use the data. Identify all negotiated rights in a license agreement made part of the contract.

(2) When the Government needs additional rights in data acquired with government purpose or limited rights, the contracting officer must negotiate with the contractor to determine whether there are acceptable terms for transferring such rights. Generally, such negotiations should be conducted only when there is a need to disclose the data outside the Government or if the additional rights are required for competitive reprocurement and the anticipated savings expected to be obtained through competition are estimated to exceed the acquisition cost of the additional rights. Prior to negotiating for additional rights in limited rights data, consider alternatives such as—

(i) Using performance specifications and form, fit, and function data to acquire or develop functionally equivalent items, components, or processes;

(ii) Obtaining a contractor’s contractual commitment to qualify additional sources and maintain adequate competition among the sources; or

(iii) Reverse engineering, or providing items from Government inventories to contractors who request the items to facilitate the development of equivalent items through reverse engineering.

227.7103–6 **Contract clauses.**

(a) Use the clause at 252.227–7013, Rights in Technical Data—Non-commercial Items, in solicitations and contracts when the successful offeror(s) will be required to deliver technical data to the Government. Do not use the clause when the only deliverable items are computer software or computer software documentation (see 227.72), commercial items (see 227.7102–3), existing works (see 227.7105), special works (see 227.7106), or when contracting under the Small Business Innovation Research Program (see 227.7104). Except as provided in 227.7107–2, do not use the clause in architect-engineer and construction contracts.

(b) Use the clause at 252.227–7013 with its Alternate I in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor would be—

(1) In the interest of the government; and

(2) Facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

(c) Use the clause at 252.227–7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends, in solicitations and contracts when it is anticipated that the Government will provide the contractor, for performance of its contract, technical data marked with another contractor’s restrictive legend(s).

(d) Use the provision at 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government, in solicitations when the resulting contract will require the contractor to deliver technical data. The provision requires offerors to identify any technical data specified in the solicitations as deliverable data items that are the same or substantially the same as data items the offeror has delivered or is obligated to deliver, either as a contractor or subcontractor, under any other federal agency contract.
(e) Use the following clauses in solicitations and contracts that include the clause at 252.227–7013:

(1) 252.227–7016, Rights in Bid or Proposal Information;
(2) 252.227–7030, Technical Data—Withholding of Payment;
(3) 252.227–7036, Declaration of Technical Data Conformity; and
(4) 252.227–7037, Validation of Restrictive Markings on Technical Data (paragraph (e) of the clause contains information that must be included in a challenge).


227.7103–7 Use and non-disclosure agreement.

(a) Except as provided in paragraph (b) of this subsection, technical data or computer software delivered to the Government with restrictions on use, modification, reproduction, release, performance, display, or disclosure may not be provided to third parties unless the intended recipient completes and signs the use and non-disclosure agreement at paragraph (c) of this subsection prior to release, or disclosure of the data.

(1) The specific conditions under which an intended recipient will be authorized to use, modify, reproduce, release, perform, display, or disclose technical data subject to limited rights or computer software subject to restricted rights must be stipulated in an attachment to the use and non-disclosure agreement.

(2) For an intended release, disclosure, or authorized use of technical data or computer software subject to special license rights, modify paragraph (1)(d) of the use and non-disclosure agreement to enter the conditions, consistent with the license requirements, governing the recipient’s obligations regarding use, modification, reproduction, release, performance, display or disclosure of the data or software.

(b) The requirement for use and non-disclosure agreements does not apply to Government contractors which require access to a third party’s data or software for the performance of a Government contract that contains the clause at 252.227–7025. Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(c) The prescribed use and non-disclosure agreement is:

Use and Non-Disclosure Agreement

The undersigned, ______________ (Insert Name) __________________________, an authorized representative of the ______________ (Insert Company Name) __________________________ (which is hereinafter referred to as the “Recipient”) requests the Government to provide the Recipient with technical data or computer software (hereinafter referred to as “Data”) in which the Government’s use, modification, reproduction, release, performance, display or disclosure rights are restricted. Those Data are identified in an attachment to this Agreement. In consideration for receiving such Data, the Recipient agrees to use the Data strictly in accordance with this Agreement:

(1) The Recipient shall—

(a) Use, modify, reproduce, release, perform, display, or disclose Data marked with government purpose rights or SBIR data rights legends only for government purposes and shall not do so for any commercial purpose. The Recipient shall not release, perform, display, or disclose these Data, without the express written permission of the contractor whose name appears in the restrictive legend (the “Contractor”), to any person other than its subcontractors or suppliers, or prospective subcontractors or suppliers, who require these Data to submit offers for, or perform, contracts with the Recipient. The Recipient shall require its subcontractors or suppliers, or prospective subcontractors or suppliers, to sign a use and non-disclosure agreement prior to disclosing or releasing these Data to such persons. Such agreement must be consistent with the terms of this agreement.

(b) Use, modify, reproduce, release, perform, display, or disclose technical data marked with limited rights legends only as specified in the attachment to this Agreement. Release, performance, display, or disclosure to other persons is not authorized unless specified in the attachment to this Agreement or expressly permitted in writing by the Contractor. The Recipient shall promptly notify the Contractor of the execution of this Agreement and identify the Contractor’s Data that has been or will be provided to the Recipient, the date and place the Data were or will be received, and the name and address of the Government office that has provided or will provide the Data.

(c) Use computer software marked with restricted rights legends only in performance of Contract Number __________________ (Insert
contract number(s). The recipient shall not, for example, enhance, decompile, disassemble, or reverse engineer the software; time share, or use a computer program (whether or not written by the contractor) simultaneously with more than one computer at a time. The recipient may not release, perform, display, or disclose such software to others unless expressly permitted in writing by the licensor whose name appears in the restrictive legend. The recipient shall promptly notify the software licensor of the execution of this Agreement and identify the software that has been or will be provided to the recipient, the date and place the software were or will be received, and the name and address of the Government office that has provided or will provide the software.

(d) Use, modify, reproduce, release, perform, display, or disclose Data marked with special license rights legends (To be completed by the contracting officer. See 227.7103–7(a)(2). Omit if none of the Data requested is marked with special license rights legends).

(2) The Recipient agrees to adopt or establish operating procedures and physical security measures designed to protect these Data from inadvertent release or disclosure to unauthorized third parties.

(3) The Recipient agrees to accept these Data “as is” without any Government representation as to suitability for intended use or warranty whatsoever. This disclaimer does not affect any obligation the Government may have regarding Data specified in a contract for the performance of that contract.

(4) The Recipient may enter into any agreement directly with the Contractor with respect to the use, modification, reproduction, release, performance, display, or disclosure of these Data.

(5) The Recipient agrees to indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of Data received from the Government with restrictive legends by the Recipient or any person to whom the Recipient has released or disclosed the Data.

(6) The Recipient is executing this Agreement for the benefit of the Contractor. The Contractor is a third party beneficiary of this Agreement who, in addition to any other rights it may have, is intended to have the rights of direct action against the Recipient or any other person to whom the Recipient has released or disclosed the Data, to seek damages from any breach of this Agreement or to otherwise enforce this Agreement.

(7) The Recipient agrees to destroy these Data, and all copies of the Data in its possession, no later than 30 days after the date shown in paragraph (8) of this Agreement, to have all persons to whom it released the Data do so by that date, and to notify the Contractor that the Data have been destroyed.

(8) This Agreement shall be effective for the period commencing with the Recipient’s execution of this Agreement and ending upon execution of this Agreement and identifying the software that has been or will be provided to the Recipient, the date and place the software were or will be received, and the name and address of the Government office that has provided or will provide the software.

Deferred delivery and deferred ordering of technical data.

(a) Deferred delivery. Use the clause at 252.227–7026, Deferred Delivery of Technical Data or Computer Software, when it is in the Government’s interests to defer the delivery of technical data. The clause permits the contracting officer to require the delivery of technical data identified as “deferred delivery” data at any time until two years after acceptance by the Government of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors or suppliers to deliver such technical data expires two years after the date the prime contractor accepts the last item from the subcontractor or supplier for use in the performance of the contract. The contract must specify which technical data is subject to deferred delivery. The contracting officer shall notify the contractor sufficiently in advance of the desired delivery date for such data to permit timely delivery.

(b) Deferred ordering. Use the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, when a firm requirement for a particular data item(s) has not been established prior to contract award but there is a potential need for the data. Under this clause, the contracting officer may order any data that has been generated in the performance of the...
contract or any subcontract thereunder at any time until three years after acceptance of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such data expires three years after the date the contractor accepts the last item under the subcontract. When the data are ordered, the delivery dates shall be negotiated and the contractor compensated only for converting the data into the prescribed form, reproduction costs, and delivery costs.

227.7103–9 Copyright.

(a) Copyright license. (1) The clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, requires a contractor to grant or obtain for the Government license rights which permit the Government to reproduce data, distribute copies of the data, publicly perform or display the data or, through the right to modify data, prepare derivative works. The extent to which the Government, and others acting on its behalf, may exercise these rights varies for each of the standard data rights licenses obtained under the clause. When non-standard license rights in technical data will be negotiated, negotiate the right to modify data, prepare derivative works. The extent to which the Government, and others acting on its behalf, may exercise these rights varies for each of the standard data rights licenses obtained under the clause. When non-standard license rights in technical data will be negotiated, negotiate the extent of the copyright license concurrent with negotiations for the data rights license. Do not negotiate a copyright license that provides less rights than the standard limited rights license in technical data.

(2) The clause at 252.227–7013 does not permit a contractor to incorporate a third party’s copyrighted data into a deliverable data item unless the contractor has obtained an appropriate license for the Government and, when applicable, others acting on the Government’s behalf, or has obtained the contracting officer’s written approval to do so. Grant approval to use third party copyrighted data in which the Government will not receive a copyright license only when the Government’s requirements cannot be satisfied without the third party material or when the use of the third party material will result in cost savings to the Government which outweigh the lack of a copyright license.

(b) Copyright considerations—acquisition of existing and special works. See 227.7105 or 227.7106 for copyright considerations when acquiring existing or special works.

227.7103–10 Contractor identification and marking of technical data to be furnished with restrictive markings.

(a) Identification requirements. (1) The solicitation provision at 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, requires offerors to identify to the contracting officer, prior to contract award, any technical data that the offeror asserts should be provided to the Government with restrictions on use, modification, reproduction, release or disclosure. This requirement does not apply to restrictions based solely on copyright. The notification and identification must be submitted as an attachment to the offer. If an offeror fails to submit the attachment or fails to complete the attachment in accordance with the requirements of the solicitation provision, such failure shall constitute a minor informality. Provide offerors an opportunity to remedy a minor informality in accordance with the procedures at FAR 14.405 or 15.607. An offeror’s failure to correct the informality within the time prescribed by the contracting officer shall render the offer ineligible for award.

(2) The procedures for correcting minor informalities shall not be used to obtain information regarding asserted restrictions or an offeror’s suggested asserted rights category. Questions regarding the justification for an asserted restriction or asserted rights category must be pursued in accordance with the procedures at 227.7103–13.

(3) The restrictions asserted by a successful offeror shall be attached to its contract unless, in accordance with the procedures at 227.7103–13, the parties have agreed that an asserted restriction is not justified. The contract attachment shall provide the same information regarding identification of the technical data, the asserted rights category, the basis for the assertion, and the name of the person asserting the restrictions as required by paragraph (d) of the solicitation provision at
252.227-7017. Subsequent to contract award, the clause at 252.227-7013, Rights in Technical Data—Noncommercial Items, permits the contractor to make additional assertions under certain conditions. The additional assertions must be made in accordance with the procedures and in the format prescribed by that clause.

(4) Neither the pre- or post-award assertions made by the contractor, nor the fact that certain assertions are identified in the attachment to the contract, determine the respective rights of the parties. As provided at 227.7103-13, the Government has the right to review, verify, challenge and validate restrictive markings.

(5) Information provided by offerors in response to the solicitation provision may be used in the source selection process to evaluate the impact on evaluation factors that may be created by restrictions on the Government's ability to use or disclose technical data. However, offerors shall not be prohibited from offering products for which the offeror is entitled to provide the Government limited rights in the technical data pertaining to such products and offerors shall not be required, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish any greater rights in technical data when the offeror is entitled to provide the technical data with limited rights.

(b) Contractor marking requirements. The clause at 252.227-7013, Rights in Technical Data—Noncommercial Items—

(1) Requires a contractor that desires to restrict the Government's rights in technical data to place restrictive markings on the data, provides instructions for the placement of the restrictive markings, and authorizes the use of certain restrictive markings; and

(2) Requires a contractor to deliver, furnish, or otherwise provide to the Government any technical data in which the Government has previously obtained rights with the Government's pre-existing rights in that data unless the parties have agreed otherwise or restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired. When restrictions are still applicable, the contractor is permitted to mark the data with the appropriate restrictive legend for which the data qualified.

(c) Unmarked technical data. (1) Technical data delivered or otherwise provided under a contract without restrictive markings shall be presumed to have been delivered with unlimited rights and may be released or disclosed without restriction. To the extent practicable, if a contractor has requested permission (see paragraph (c)(2) of this subsection) to correct an inadvertent omission of markings, do not release or disclose the technical data pending evaluation of the request.

(2) A contractor may request permission to have appropriate legends placed on unmarked technical data at its expense. The request must be received by the contracting officer within six months following the furnishing or delivery of such data, or any extension of that time approved by the contracting officer. The person making the request must:

(i) Identify the technical data that should have been marked;

(ii) Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and conforms with the requirements for the marking of technical data contained in the clause at 252.227-7013; and

(iii) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the technical data made prior to the addition of the marking or resulting from the omission of the marking.

(3) Contracting officers should grant permission to mark only if the technical data were not distributed outside the Government or were distributed outside the Government with restrictions on further use or disclosure.

227.7103-11 Contractor procedures and records.

(a) The clause at 252.227-7013, Rights in Technical Data—Noncommercial Items, requires a contractor, and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, to establish and follow written procedures to assure that
restrictive markings are used only when authorized and to maintain records to justify the validity of asserted restrictions on delivered data.

(b) The clause at 252.227-7037, Validation of Restrictive Markings on Technical Data requires contractors and their subcontractors at any tier to maintain records sufficient to justify the validity of restrictive markings on technical data delivered or to be delivered under a Government contract.

227.7103–12 Government right to establish conformity of markings.

(a) Nonconforming markings. (1) Authorized markings are identified in the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items. All other markings are nonconforming markings. An authorized marking that is not in the form, or differs in substance, from the marking requirements in the clause at 252.227–7013 is also a nonconforming marking.

(2) The correction of nonconforming markings on technical data is not subject to 252.227–7037, Validation of Restrictive Markings on Technical Data. To the extent practicable, the contracting officer should return technical data bearing nonconforming markings to the person who has placed the nonconforming markings on such data to provide that person an opportunity to correct or strike the nonconforming marking at that person’s expense. If that person fails to correct the nonconformity and return the corrected data within 60 days following the person’s receipt of the data, the contracting officer may correct or strike the nonconforming marking at his or her election, either—

(i) Strike or correct the unjustified marking at that person’s expense; or

(ii) Return the technical data to the person asserting the restriction for correction at that person’s expense. If the data are returned and that person fails to correct or strike the unjustified restriction and return the corrected data to the contracting officer within 60 days following receipt of the data, the unjustified marking shall be corrected or stricken at that person’s expense.

227.7103–13 Government right to review, verify, challenge and validate asserted restrictions.

(a) General. An offeror’s assertion(s) of restrictions on the Government’s rights to use, modify, reproduce, release, or disclose technical data do not, by themselves, determine the extent of the Government’s rights in the technical data. Under 10 U.S.C. 2321, the Government has the right to challenge asserted restrictions when there are reasonable grounds to question the validity of the assertion and continued adherence to the assertion would make it impractical to later procure competitively the item to which the data pertain.

(b) Pre-award considerations. The challenge procedures required by 10 U.S.C. 2321 could significantly delay awards under competitive procurements. Therefore, avoid challenging asserted
restrictions prior to a competitive contract award unless resolution of the assertion is essential for successful completion of the procurement.

(c) Challenge and validation. Contracting officers must have reasonable grounds to challenge the current validity of an asserted restriction. Before issuing a challenge to an asserted restriction, carefully consider all available information pertaining to the assertion. All challenges must be made in accordance with the provisions of the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data.

(1) Challenge period. Asserted restrictions should be reviewed before acceptance of technical data deliverable under the contract. Assertions must be challenged within three years after final payment under the contract or three years after delivery of the data, whichever is later. However, restrictive markings may be challenged at any time if the technical data—

(i) Are publicly available without restrictions;

(ii) Have been provided to the United States without restriction; or

(iii) Have been otherwise made available without restriction other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party.

(2) Pre-challenge requests for information. (i) After consideration of the situation described in paragraph (c)(3) of this subsection, contracting officers may request the person asserting a restriction to furnish a written explanation of the facts and supporting documentation for the assertion in sufficient detail to enable the contracting officer to ascertain the basis of the restrictive markings. Additional supporting documentation may be requested when the explanation provided by the person making the assertion does not, in the contracting officer’s opinion, establish the validity of the assertion.

(ii) If the person asserting the restriction fails to respond to the contracting officer’s request for information or additional supporting documentation, or if the information submitted or any other available information pertaining to the validity of a restrictive marking does not justify the asserted restriction, a challenge should be considered.

(3) Transacting matters directly with subcontracts. The clause at 252.227–7037 obtains the contractor’s agreement that the Government may transact matters under the clause directly with a subcontractor, at any tier, without creating or implying privity of contract. Contracting officers should permit a subcontractor or supplier to transact challenge and validation matters directly with the Government when—

(i) A subcontractor’s or supplier’s business interests in its technical data would be compromised if the data were disclosed to a higher tier contractor;

(ii) There is reason to believe that the contractor will not respond in a timely manner to a challenge and an untimely response would jeopardize a subcontractor’s or suppliers right to assert restrictions; or

(iii) Requested to do so by a subcontractor or supplier.

(4) Challenge notice. Do not issue a challenge notice unless there are reasonable grounds to question the validity of an assertion. Assertions may be challenged whether or not supporting documentation was requested from the person asserting the restriction. Challenge notices must be in writing and issued to the contractor or, after consideration of the situations described in paragraph (c)(3) of this subsection, the person asserting the restriction. The challenge notice must include the information in paragraph (e) of the clause at 252.227–7037.

(5) Extension of response time. The contracting officer, at his or her discretion, may extend the time for response contained in a challenge notice, as appropriate, if the contractor submits a timely written request showing the need for additional time to prepare a response.

(6) Contracting officer’s final decision. Contracting officers must issue a final decision for each challenged assertion, whether or not the assertion has been justified.

(i) A contracting officer’s final decision that an assertion is not justified
must be issued as soon as practicable following the failure of the person asserting the restriction to respond to the contracting officer's challenge within 60 days, or any extension to that time granted by the contracting officer.

(ii) A contracting officer who, following a challenge and response by the person asserting the restriction, determines that an asserted restriction is justified, shall issue a final decision sustaining the validity of the asserted restriction. If the asserted restriction was made subsequent to submission of the contractor's offer, add the asserted restriction to the contract attachment.

(iii) A contracting officer who determines that the validity of an asserted restriction has not been justified shall issue a contracting officer's final decision within the time frames prescribed in 252.227-7037. As provided in paragraph (g) of that clause, the Government is obligated to continue to respect the asserted restrictions through final disposition of any appeal unless the agency head notifies the person asserting the restriction that urgent or compelling circumstances do not permit the Government to continue to respect the asserted restriction.

(7) Multiple challenges to an asserted restriction. When more than one contracting officer challenges an asserted restriction, the contracting officer who made the earliest challenge is responsible for coordinating the Government challenges. That contracting officer shall consult with all other contracting officers making challenges, verify that all challenges apply to the same asserted restriction and, after consulting with the contractor, subcontractor, or supplier asserting the restriction, issue a schedule that provides that person a reasonable opportunity to respond to each challenge.

(8) Validation. Only a contracting officer's final decision, or actions of an agency board of contract appeals or a court of competent jurisdiction, that sustain the validity of an asserted restriction constitute validation of the asserted restriction.

227.7103-14 Conformity, acceptance, and warranty of technical data.

(a) Statutory requirements. 10 U.S.C. 2320—

(1) Requires contractors to furnish written assurance, at the time technical data are delivered or are made available to the Government, that the technical data are complete, accurate, and satisfy the requirements of the contract concerning such data;

(2) Provides for the establishment of remedies applicable to technical data found to be incomplete, inadequate, or not to satisfy the requirements of the contract concerning such data; and

(3) Authorizes agency heads to withhold payments (or exercise such other remedies an agency head considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data.

(b) Conformity and acceptance. (1) Solicitations and contracts requiring the delivery of technical data shall specify the requirements the data must satisfy to be acceptable. Contracting officers, or their authorized representatives, are responsible for determining whether technical data tendered for acceptance conform to the contractual requirements.

(2) The clause at 252.227-7030, Technical Data—Withholding of Payment, provides for withholding up to 10 percent of the contract price pending correction or replacement of the nonconforming technical data or negotiation of an equitable reduction in contract price. The amount subject to withholding may be expressed as a fixed dollar amount or as a percentage of the contract price. In either case, the amount shall be determined giving consideration to the relative value and importance of the data. For example—

(i) When the sole purpose of a contract is to produce the data, the relative value of that data may be considerably higher than the value of data produced under a contract where the production of the data is a secondary objective; or

(ii) When the Government will maintain or repair items, repair and maintenance data may have a considerably
higher relative value than data that merely describe the item or provide performance characteristics.

(3) Do not accept technical data that do not conform to the contractual requirements in all respects. Except for nonconforming restrictive markings (see paragraph (b)(4) of this subsection), correction or replacement of nonconforming data or an equitable reduction in contract price when correction or replacement of the nonconforming data is not practicable or is not in the Government's interests, shall be accomplished in accordance with—

(i) The provisions of a contract clause providing for inspection and acceptance of deliverables and remedies for nonconforming deliverables; or

(ii) The procedures at FAR 46.407(c) through (g), if the contract does not contain an inspection clause providing remedies for nonconforming deliverables.

(4) Follow the procedures at 227.7103–12(a)(2) if nonconforming markings are the sole reason technical data fail to conform to contractual requirements. The clause at 252.227–7030 may be used to withhold an amount for payment, consistent with the terms of the clause, pending correction of the nonconforming markings.

(c) Warranty. (1) The intended use of the technical data and the cost, if any, to obtain the warranty should be considered before deciding to obtain a data warranty (see FAR 46.703). The fact that a particular item, component, or process is or is not warranted is not a consideration in determining whether or not to obtain a warranty for the technical data that pertain to the item, component, or process. For example, a data warranty should be considered if the Government intends to repair or maintain an item and defective repair or maintenance data would impair the Government's effective use of the item or result in increased costs to the Government.

(2) As prescribed in 246.710, use the clause at 252.246–7001, Warranty of Data, and its alternates, or a substantially similar clause when the Government needs a specific warranty of technical data.

227.7103–15 Subcontractor rights in technical data.

(a) 10 U.S.C. 2320 provides subcontractors at all tiers the same protection for their rights in data as is provided to prime contractors. The clauses at 252.227–7013, Rights in Technical Data—Noncommercial Items, and 252.227–7037, Validation of Restrictive Markings on Technical Data, implement the statutory requirements.

(b) 10 U.S.C. 2321 permits a subcontractor to transact directly with the Government matters relating to the validation of its asserted restrictions on the Government's rights to use or disclose technical data. The clause at 252.227–7037 obtains a contractor's agreement that the direct transaction of validation or challenge matters with subcontractors at any tier does not establish or imply privity of contract. When a subcontractor or supplier exercises its right to transact validation matters directly with the Government, contracting officers shall deal directly with such persons, as provided at 227.7103–13(c)(3).

(c) Require prime contractors whose contracts include the following clauses to include those clauses, without modification except for appropriate identification of the parties, in contracts with subcontractors or suppliers, at all tiers, who will be furnishing technical data for non-commercial items in response to a Government requirement:

(1) 252.227–7013, Rights in Technical Data—Noncommercial Items;

(2) 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(3) 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government;

(4) 252.227–7037, Validation of Restrictive Markings on Technical Data.

(d) Do not require contractors to have their subcontractors or suppliers at any tier relinquish rights in technical data to the contractor, a higher tier subcontractor, or to the Government, as a condition for award of any contract, subcontract, purchase order, or similar instrument except for the rights obtained by the Government under the Rights in Technical Data—Noncommercial Items clause contained
in the contractor’s contract with the Government.

[56 FR 36389, July 31, 1991, as amended at 60 FR 61598, Nov. 30, 1995]

227.7103–16 Providing technical data to foreign governments, foreign contractors, or international organizations.

Technical data may be released or disclosed to foreign governments, foreign contractors, or international organizations only if release or disclosure is otherwise permitted both by Federal export controls and other national security laws or regulations. Subject to such laws and regulations, the Department of Defense—

(a) May release or disclose technical data in which it has obtained unlimited rights to such foreign entities or authorize the use of such data by those entities; and

(b) Shall not release or disclose technical data for which restrictions on use, release, or disclosure have been asserted to foreign entities, or authorize the use of technical data by those entities, unless the intended recipient is subject to the same provisions as included in the use and non-disclosure agreement at 227.7103–7 and the requirements of the clause at 227.7103, Rights in Technical Data—Noncommercial Items, governing use, modification, reproduction, release, performance, display, or disclosure of such data have been satisfied.

227.7103–17 Overseas contracts with foreign sources.

(a) The clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign), may be used in contracts with foreign contractors to be performed overseas, except Canadian purchases (see paragraph (c) of this subsection), in lieu of the clause at 252.227–7103, Rights in Technical Data—Noncommercial Items, governing use, modification, reproduction, release, performance, display, or disclosure of technical data to be delivered under the contract. Do not use the clause in contracts for existing or special works.

(b) When the Government does not require unlimited rights, the clause at 252.227–7032 may be modified to accommodate the needs of a specific overseas procurement situation. The Government should obtain rights in the technical data that are not less than the rights the Government would have obtained under the data rights clause(s) prescribed in this part for a comparable procurement performed within the United States or its possessions.

(c) Contracts for Canadian purchases shall include the appropriate data rights clause prescribed in this part for a comparable procurement performed within the United States or its possessions.

227.7104 Contracts under the Small Business Innovation Research (SBIR) Program.

(a) Use the clause at 252.227–7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program, when technical data or computer software will be generated during performance of contracts under the SBIR program.

(b) Under the clause at 252.227–7018, the Government obtains a royalty-free license to use technical data marked with an SBIR data rights legend only for government purposes during the period commencing with contract award and ending five years after completion of the project under which the data were generated. Upon expiration of the five-year restrictive license, the Government has unlimited rights in the SBIR data. During the license period, the Government may not release or disclose SBIR data to any person other than its support services contractors except—

(1) For evaluational purposes;

(2) As expressly permitted by the contractor; or

(3) A use, release, or disclosure that is necessary for emergency repair or overhaul of items operated by the Government.

(c) Do not make any release or disclosure permitted by paragraph (b) of this section unless, prior to release or disclosure, the intended recipient is subject to the use and nondisclosure agreement at 227.7103–7.

(d) Use the clause at 252.227–7018 with its Alternate I in research contracts
when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor would be—

(1) In the interest of the Government; and

(2) Facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

(e) Use the following provision and clauses in SBIR solicitations and contracts that include the clause at 252.227–7018:

(1) 252.227–7016, Rights in Bid or Proposal Information;

(2) 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions;

(3) 252.227–7019, Validation of Asserted Restrictions—Computer Software;

(4) 252.227–7030, Technical Data—Withholding of Payment;

(5) 252.227–7036, Declaration of Technical Data Conformity; and

(6) 252.227–7037, Validation of Restrictive Markings on Technical Data (paragraph (e) of the clause contains information that must be included in a challenge).

(f) Use the following clauses and provision in SBIR solicitations and contracts in accordance with the guidance at 227.7106 for works which will be first created, developed, generated, originated, prepared, or produced under a Government contract and the Government needs to control distribution of the work or has a specific need to obtain indemnity for liabilities that may arise out of the creation, content, performance, use, or disclosure of the work or from libelous or other unlawful material contained in the work. Follow the procedures at 227.7103 when the Government does not need to control distribution of such works or obtain such indemnities.

227.7105–2 Acquisition of existing works without modification.

(a) Use the clause at 252.227–7021, Rights in Data—Existing Works, in lieu of the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, in solicitations and contracts exclusively for existing works when—

(1) The existing works will be acquired without modification; and

(2) The Government requires the right to reproduce, prepare derivative works, or publicly perform or display the existing works; or

(3) The Government has a specific need to obtain indemnity for liabilities that may arise out of the content, performance, use, or disclosure of such data.

(b) The clause at 252.227–7021 provides the Government, and others acting on its behalf, a paid-up, non-exclusive, irrevocable, world-wide license to reproduce, prepare derivative works and publicly perform or display the works
227.7105–3 Acquisition of modified existing works.

Use the clause at 252.227–7020, Rights in Special Works, in solicitations and contracts for modified existing works in lieu of the clause at 252.227–7021, Rights in Data—Existing Works.

227.7106 Contracts for special works.

(a) Use the clause at 252.227–7020, Rights in Special Works, in solicitations and contracts where the Government has a specific need to control the distribution of works first produced, created, or generated in the performance of a contract and required to be delivered under that contract, including controlling distribution by obtaining an assignment of copyright, or a specific need to obtain indemnity for liabilities that may arise out of the creation, delivery, use, modification, reproduction, release, performance, display, or disclosure of such works. Use the clause—

(1) In lieu of the clause at 252.227–7013, Rights in Technical Data—Non-commercial Items, when the Government must own or control copyright in all works first produced, created, or generated and required to be delivered under a contract; or

(2) In addition to the clause at 252.227–7013 when the Government must own or control copyright in a portion of a work first produced, created, or generated and required to be delivered under a contract. The specific portion in which the Government must own or control copyright must be identified in a special contract requirement.

(b) Although the Government obtains an assignment of copyright and unlimited rights in a special work under the clause at 252.227–7020, the contractor retains use and disclosure rights in that work. If the Government needs to restrict a contractor’s rights to use or disclose a special work, it must also negotiate a special license which specifically restricts the contractor’s use or disclosure rights.

(c) The clause at 252.227–7020 does not permit a contractor to incorporate into a special work any works copyrighted by others unless the contractor obtains the contracting officer’s permission to do so and obtains for the Government a non-exclusive, paid up, world-wide license to make and distribute copies of that work, to prepare derivative works, to perform or display publicly any portion of the work, and to permit others to do so for government purposes. Grant permission only when the Government’s requirements cannot be satisfied unless the third party work is included in the deliverable work.

(d) Examples of works which may be procured under the Rights in Special Works clause include, but are not limited, to audiovisual works, computer data bases, computer software documentation, scripts, soundtracks, musical compositions, and adaptations; histories of departments, agencies, services or units thereof; surveys of Government establishments; instructional works or guidance to Government officers and employees on the discharge of their official duties; reports, books, studies, surveys or similar documents; collections of data containing information pertaining to individuals that, if disclosed, would violate the right of privacy or publicity of the individuals to whom the information relates; or investigative reports.

227.7107 Contracts for architect-engineer services.

This section sets forth policies and procedures, pertaining to data, copyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

227.7107–1 Architectural designs and data clauses for architect-engineer or construction contracts.

(a) Except as provided in paragraph (b) of this subsection and in 227.7107–2, use the clause at 252.227–7022, Government Rights (Unlimited), in solicitations and contracts for architect-engineer services and for construction involving architect-engineer services.
(b) When the purpose of a contract for architect-engineer services, or for construction involving architect-engineer services, is to obtain a unique architectural design of a building, a monument, or construction of similar nature, which for artistic, aesthetic or other special reasons the Government does not want duplicated, the Government may acquire exclusive control of the data pertaining to the design by including the clause at 252.227–7023, Drawings and Other Data to Become Property of Government, in solicitations and contracts.

(c) The Government shall obtain unlimited rights in shop drawings for construction. In solicitations and contracts calling for delivery of shop drawings, include the clause at 252.227–7033, Rights in Shop Drawings.

227.7107–2 Contracts for construction supplies and research and development work.

Use the provisions and clauses required by 227–7103–6 and 227.7203–6 when the acquisition is limited to—

(a) Construction supplies or materials;

(b) Experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or

(c) Both.

227.7107–3 Approval of restricted designs.

The clause at 252.227–7024, Notice and Approval of Restricted Designs, may be included in architect-engineer contracts to permit the Government to make informed decisions concerning noncompetitive aspects of the design.

227.7108 Contractor data repositories.

(a) Contractor data repositories may be established when permitted by agency procedures. The contractual instrument establishing the data repository must require, as a minimum, the data repository management contractor to—

(1) Establish and maintain adequate procedures for protecting technical data delivered to or stored at the repository from unauthorized release or disclosure;

(2) Establish and maintain adequate procedures for controlling the release or disclosure of technical data from the repository to third parties consistent with the Government’s rights in such data;

(3) When required by the contracting officer, deliver data to the Government on paper or in other specified media;

(4) Be responsible for maintaining the currency of data delivered directly by Government contractors or subcontractors to the repository;

(5) Obtain use and non-disclosure agreements (see 227.7103–7) from all persons to whom government purpose rights data is released or disclosed; and

(6) Indemnify the Government from any liability to data owners or licensors resulting from, or as a consequence of, a release or disclosure of technical data made by the data repository contractor or its officers, employees, agents, or representatives.

(b) If the contractor is or will be the data repository manager, the contractor’s data management and distribution responsibilities must be identified in the contract or the contract must reference the agreement between the Government and the contractor that establishes those responsibilities.

(c) If the contractor is not and will not be the data repository manager, do not require a contractor or subcontractor to deliver technical data marked with limited rights legends to a data repository managed by another contractor unless the contractor or subcontractor who has asserted limited rights agrees to release the data to the repository or has authorized, in writing, the Government to do so.

(d) Repository procedures may provide for the acceptance, delivery, and subsequent distribution of technical data in storage media other than paper, including direct electronic exchange of data between two computers. The procedures must provide for the identification of any portions of the data provided with restrictive legends, when appropriate. The acceptance criteria must be consistent with the authorized delivery format.
Subpart 227.72—Rights in Computer Software and Computer Software Documentation

227.7200 Scope of subpart.
This subpart—
(a) Prescribes policies and procedures for the acquisition of computer software and computer software documentation, and the rights to use, modify, reproduce, release, perform, display, or disclose such software or documentation. It implements requirements in the following laws and Executive Order:
(1) 10 U.S.C. 2302(4).
(2) 10 U.S.C. 2305 (subsection (d)(4)).
(3) 10 U.S.C. 2320.
(4) 10 U.S.C. 2321.
(5) 10 U.S.C. 2325.
(6) Executive Order 12591 (subsection 1(b)(6)).
(b) Does not apply to computer software or computer software documentation acquired under GSA schedule contracts.

227.7201 Definitions.
(a) As used in this subpart, unless otherwise specifically indicated, the terms “offeror” and “contractor” include an offeror’s or contractor’s subcontractors, suppliers, or potential subcontractors or suppliers at any tier.
(b) Other terms used in this subpart are defined in the clause at 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

227.7202 Commercial computer software and commercial computer software documentation.

227.7202–1 Policy.
(a) Commercial computer software or commercial computer software documentation shall be acquired under the licenses customarily provided to the public unless such licenses are inconsistent with Federal procurement law or do not otherwise satisfy user needs.
(b) Commercial computer software and commercial computer software documentation shall be obtained competitively, to the maximum extent practicable, using firm-fixed-price contracts or firm-fixed-priced orders under available pricing schedules.
(c) Offerors and contractors shall not be required to—
(1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public except for information documenting the specific modifications made at Government expense to such software or documentation to meet the requirements of a Government solicitation; or
(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except for a transfer of rights mutually agreed upon.

227.7202–2 [Reserved]

227.7202–3 Rights in commercial computer software or commercial computer software documentation.
(a) The Government shall have only the rights specified in the license under which the commercial computer software or commercial computer software documentation was obtained.
(b) If the Government has a need for rights not conveyed under the license customarily provided to the public, the Government must negotiate with the contractor to determine if there are acceptable terms for transferring such rights. The specific rights granted to the Government shall be enumerated in the contract license agreement or an addendum thereto.

227.7202–4 Contract clause.
A specific contract clause governing the Government’s rights in commercial computer software or commercial computer software documentation is not prescribed. As required by 227.7202–3, the Government’s rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation shall be identified in a license agreement.
227.7203 Noncommercial computer software and noncommercial computer software documentation.

227.7203–1 Policy.

(a) DoD policy is to acquire only the computer software and computer software documentation, and the rights in such software or documentation, necessary to satisfy agency needs.

(b) Solicitations and contracts shall—

1. Specify the computer software or computer software documentation to be delivered under a contract and the delivery schedules for the software or documentation;

2. Establish or reference procedures for determining the acceptability of computer software or computer software documentation;

3. Establish separate contract line items, to the extent practicable, for the computer software or computer software documentation to be delivered under a contract and require offerors and contractors to price separately each deliverable data item; and

4. Require offerors to identify, to the extent practicable, computer software or computer software documentation to be furnished with restrictions on the Government’s rights and require contractors to identify computer software or computer software documentation to be delivered with such restrictions prior to delivery.

(c) Offerors shall not be required, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish to the Government any rights in computer software developed exclusively at private expense except for the software identified at 227.7203–5(a) (3) through (6).

(d) Offerors and contractors shall not be prohibited or discouraged from furnishing or offering to furnish computer software developed exclusively at private expense solely because the Government’s rights to use, modify, release, reproduce, perform, display, or disclose the software may be restricted.

227.7203–2 Acquisition of noncommercial computer software and computer software documentation.

(a) Contracting officers shall work closely with data managers and requirements personnel to assure that computer software and computer software documentation requirements included in solicitations are consistent with the policy expressed in 227.7203–1.

(b) (1) Data managers or other requirements personnel are responsible for identifying the Government’s minimum needs. In addition to desired software performance, compatibility, or other technical considerations, needs determinations should consider such factors as multiple site or shared use requirements, whether the Government’s software maintenance philosophy will require the right to modify or have third parties modify the software, and any special computer software documentation requirements.

(2) When reviewing offers received in response to a solicitation or other request for computer software or computer software documentation, data managers must balance the original assessment of the Government’s needs with prices offered.

(c) Contracting officers are responsible for ensuring that, wherever practicable, solicitations and contracts—

1. Identify the types of computer software and the quantity of computer programs and computer software documentation to be delivered, any requirements for multiple users at one site or multiple site licenses, and the format and media in which the software or documentation will be delivered;

2. Establish each type of computer software or computer software documentation to be delivered as a separate contract line item (this requirement may be satisfied by an exhibit to the contract);

3. Identify the prices established for each separately priced deliverable item of computer software or computer software documentation under a fixed-price type contract;

4. Include delivery schedules and acceptance criteria for each deliverable item; and

(3) Specifically identify the place of delivery for each deliverable item.
227.7203–3 Early identification of computer software or computer software documentation to be furnished to the Government with restrictions on use, reproduction or disclosure.

(a) Use the provision at 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, in all solicitation that include the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation. The provision requires offerors to identify any computer software or computer software documentation for which restrictions, other than copyright, on use, modification, reproduction, release, performance, display, or disclosure are asserted and to attach the identification and assertion to the offer.

(b) Subsequent to contract award, the clause at 252.227–7014 permits a contractor, under certain conditions, to make additional assertions of restrictions. The prescriptions for the use of that clause and its alternates are at 227.7203–6(a).

227.7203–4 License rights.

(a) Grant of license. The Government obtains rights in computer software or computer software documentation, including a copyright license, under an irrevocable license granted or obtained by the contractor which developed the software or documentation or the licensor of the software or documentation if the development contractor is not the licensor. The contractor or licensor retains all rights in the software or documentation not granted to the Government. The scope of a computer software license is generally determined by the source of funds used to develop the software. Contractors or licensees may, with some exceptions, restrict the Government’s rights to use, modify, reproduce, release, perform, display, or disclose computer software developed exclusively or partially at private expense (see 227.7203–5 (b) and (c)). They may not, without the Government’s agreement (see 227.7203–5(d)), restrict the Government’s rights in computer software developed exclusively with Government funds or in computer software documentation required to be delivered under a contract.

(b) Source of funds determination. The determination of the source of funds used to develop computer software should be made at the lowest practicable segregable portion of the software or documentation (e.g., a software sub-routine that performs a specific function). Contractors may assert restricted rights in a segregable portion of computer software which otherwise qualifies for restricted rights under the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

227.7203–5 Government rights.

The standard license rights in computer software that a licensor grants to the Government are unlimited rights, government purpose rights, or restricted rights. The standard license in computer software documentation conveys unlimited rights. Those rights are defined in the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation. In unusual situations, the standard rights may not satisfy the Government’s needs or the Government may be willing to accept lesser rights in return for other consideration. In those cases, a special license may be negotiated. However, the licensor is not obligated to provide the Government greater rights and the contracting officer is not required to accept lesser rights than the rights provided in the standard grant of license. The situations under which a particular grant of license applies are enumerated in paragraphs (a) through (d) of this subsection.

(a) Unlimited rights. The Government obtains an unlimited rights license in—

(1) Computer software developed exclusively with Government funds;

(2) Computer software documentation required to be delivered under a Government contract;

(3) Corrections or changes to computer software or computer software documentation furnished to the contractor by the Government;
227.7203–5 48 CFR Ch. 2 (10–1–02 Edition)

(4) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restrictions on further use, release or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(5) Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or

(6) Computer software or computer software documentation furnished to the Government, under a Government contract or subcontract with—

(i) Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or

(ii) Government purpose rights and the contractor’s exclusive right to use such software or documentation for commercial purposes has expired.

(b) Government purpose rights. (1) Except as provided in paragraph (a) of this subsection, the Government obtains government purpose rights in computer software developed with mixed funding.

(2) The period during which government purpose rights are effective is negotiable. The clause at 227.7103–7 provides a nominal five-year period. Either party may request a different period. Changes to the government purpose rights period may be made at any time prior to delivery of the software without consideration from either party. Longer periods should be negotiated when a five-year period does not provide sufficient time to commercialize the software or, for software developed by subcontractors, when necessary to recognize the subcontractors’ interests in the software.

(3) The government purpose rights period commences upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the computer software. Upon expiration of the government purpose rights period, the Government has unlimited rights in the software including the right to authorize others to use data for commercial purposes.

(4) During the government purpose rights period, the Government may not use, or authorize other persons to use, computer software marked with government purpose rights legends for commercial purposes. The Government shall not release or disclose, or authorize others to release or disclose, computer software in which it has government purpose rights to any person unless—

(i) Prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at 227.7103–7; or

(ii) The intended recipient is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(5) When computer software marked with government purpose rights legends will be released or disclosed to a Government contractor performing a contract that does not include the clause at 252.227–7025, the contract may be modified, prior to release or disclosure, to include such clause in lieu of requiring the contractor to complete a use and non-disclosure agreement.

(6) Contracting activities shall establish procedures to assure that computer software or computer software documentation marked with government purpose rights legends are released or disclosed, including a release or disclosure through a Government solicitation, only to persons subject to the use and non-disclosure restrictions. Public announcements in the Commerce Business Daily or other publications must provide notice of the use and non-disclosure requirements. Class use and non-disclosure agreements (e.g., agreements covering all solicitations received by the XYZ company within a reasonable period) are authorized and may be obtained at any time prior to release or disclosure of the government purpose rights software or
documentation. Documents transmitting government purpose rights software or documentation to persons under class agreements shall identify the specific software or documentation subject to government purpose rights and the class agreement under which such software or documentation are provided.

(c) Restricted rights. (1) The Government obtains restricted rights in non-commercial computer software required to be delivered or otherwise provided to the Government under a contract that were developed exclusively at private expense.

(2) Contractors are not required to provide the Government additional rights in computer software delivered or otherwise provided to the Government with restricted rights. When the Government has a need for additional rights, the Government must negotiate with the contractor to determine if there are acceptable terms for transferring such rights. List or describe all software in which the contractor has granted the Government additional rights in a license agreement made part of the contract (see paragraph (d) of this subsection). The license shall enumerate the specific additional rights granted to the Government.

(d) Specifically negotiated license rights. Negotiate specific licenses when the parties agree to modify the standard license rights granted to the Government or when the Government wants to obtain rights in computer software in which it does not have rights. When negotiating to obtain, relinquish, or increase the Government’s rights in computer software, consider the planned software maintenance philosophy, anticipated time or user sharing requirements, and other factors which may have relevance for a particular procurement. If negotiating to relinquish rights in computer software documentation, consider the administrative burden associated with protecting documentation subject to restrictions from unauthorized release or disclosure. The negotiated license rights must stipulate the rights granted the Government to use, modify, reproduce, release, perform, display, or disclose the software or documentation and the extent to which the Government may authorize others to do so. Identify all negotiated rights in a license agreement made part of the contract.

(e) Rights in derivative computer software or computer software documentation. The clause at 252.227–7014 protects the Government’s rights in computer software, computer software documentation, or portions thereof that the contractor subsequently uses to prepare derivative software or subsequently embeds or includes in other software or documentation. The Government retains the rights it obtained under the development contract in the unmodified portions of the derivative software or documentation.

227.7203–6 Contract clauses.

(a)(1) Use the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, in solicitations and contracts when the successful offeror(s) will be required to deliver computer software or computer software documentation. Do not use the clause when the only deliverable items are technical data (other than computer software documentation), commercial computer software or commercial computer software documentation, commercial items (see 227.7102–3), special works (see 227.7205), or contracts under the Small Business Innovative Research Program (see 227.7104). Except as provided in 227.7107–2, do not use the clause in architect-engineer and construction contracts.

(2) Use the clause at 252.227–7014 with its Alternate I in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor would be—

(i) In the interest of the Government; and

(ii) Facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

(b) Use the clause at 252.227–7016, Rights in Bid or Proposal Information, in solicitations and contracts that include the clause at 252.227–7014.
(c) Use the clause at 252.227–7018, Validation of Asserted Restrictions—Computer Software, in solicitations and contracts that include the clause at 252.227–7014. The clause provides procedures for the validation of asserted restrictions on the Government’s rights to use, release, or disclose computer software.

(d) Use the provision at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, in solicitations and contracts when it is anticipated that the Government will provide the contractor, for performance of its contract, computer software or computer software documentation marked with another contractor’s restrictive legend(s).

(e) Use the provision at 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government, in solicitations when the resulting contract will require the contractor to deliver computer software or computer software documentation. The provision requires offerors to identify any software or documentation specified in the solicitation as deliverable items that are the same or substantially the same as software or documentation which the offeror has delivered or is obligated to deliver, either as a contractor or subcontractor, under any other federal agency contract.

(f) Use the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, in solicitations and contracts that include the clause at 252.227–7014 when the contractor will be required to deliver noncommercial computer software documentation (technical data). The clause implements statutory requirements under 10 U.S.C. 2321. Paragraph (e) of the clause contains information that must be included in a formal challenge.

227.7203–7 [Reserved]

227.7203–8 Deferred delivery and deferred ordering of computer software and computer software documentation.

(a) Deferred delivery. Use the clause at 252.227–7026, Deferred Delivery of Technical Data or Computer Software, when it is in the Government’s interests to defer the delivery of computer software or computer software documentation. The clause permits the contracting officer to require the delivery of data identified as “deferred delivery” data or computer software at any time until two years after acceptance by the Government of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors or suppliers to deliver such data expires two years after the date the prime contractor accepts the last item from the subcontractor or supplier for use in the performance of the contract. The contract must specify the computer software or computer software documentation that is subject to deferred delivery. The contracting officer shall notify the contractor sufficiently in advance of the desired delivery date for such software or documentation to permit timely delivery.

(b) Deferred ordering. Use the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, when a firm requirement for software or documentation has not been established prior to contract award but there is a potential need for computer software or computer software documentation. Under this clause the contracting officer may order any computer software or computer software documentation generated in the performance of the contract or any subcontract thereunder at any time until three years after acceptance of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such technical data or computer software expires three years after the date the contractor accepts the last item under the subcontract. When the software or documentation are ordered, the delivery dates shall be negotiated and the contractor compensated only for converting the software or documentation into the prescribed form, reproduction costs, and delivery costs.

227.7203–9 Copyright.

(a) Copyright license. (1) The clause at 252.227–7014, Rights in Noncommercial...
Computer Software and Noncommercial Computer Software Documentation, requires a contractor to grant, or obtain for the Government license rights which permit the Government to reproduce the software or documentation, distribute copies, perform or display the software or documentation and, through the right to modify data, prepare derivative works. The extent to which the Government, and others acting on its behalf, may exercise these rights varies for each of the standard data rights licenses obtained under the clause. When non-standard license rights in computer software or computer software documentation will be negotiated, negotiate the extent of the copyright license concurrent with negotiations for the data rights license. Do not negotiate copyright licenses for computer software that provide less rights than the standard restricted rights in computer software license. For computer software documentation, do not negotiate a copyright license that provides less rights than the standard limited rights in technical data license.

(2) The clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, does not permit a contractor to incorporate a third party’s copyrighted software into a deliverable software item unless the contractor has obtained an appropriate license for the Government and, when applicable, others acting on the Government’s behalf, or has obtained the contracting officer’s written approval to do so. Grant approval to use third party copyrighted software in which the Government will not receive a copyright license only when the Government’s requirements cannot be satisfied without the third party material or when the use of the third party material will result in cost savings to the Government which outweigh the lack of a copyright license.

(b) Copyright considerations—special works. See 227.7205 for copyright considerations when acquiring special works.

227.7203–10 Contractor identification and marking of computer software or computer software documentation to be furnished with restrictive markings.

(a) Identification requirements. (1) The solicitation provision at 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, requires offerors to identify, prior to contract award, any computer software or computer software documentation that an offeror asserts should be provided to the Government with restrictions on use, modification, reproduction, release, or disclosure. This requirement does not apply to restrictions based solely on copyright. The notification and identification must be submitted as an attachment to the offer. If an offeror fails to submit the attachment or fails to complete the attachment in accordance with the requirements of the solicitation provision, such failure shall constitute a minor informality. Provide offerors an opportunity to remedy a minor informality in accordance with the procedures at FAR 14.405 or 15.306(a). An offeror’s failure to correct an informality within the time prescribed by the contracting officer shall render the offer ineligible for award.

(2) The procedures for correcting minor informalities shall not be used to obtain information regarding asserted restrictions or an offeror’s suggested asserted rights category. Questions regarding the justification for an asserted restriction or asserted rights category must be pursued in accordance with the procedures at 227.7203–13.

(3) The restrictions asserted by a successful offeror shall be attached to its contract unless, in accordance with the procedures at 227.7203–13, the parties have agreed that an asserted restriction is not justified. The contract attachment shall provide the same information regarding identification of the computer software or computer software documentation, the asserted rights category, the basis for the assertion, and the name of the person asserting the restrictions as required by paragraph (d) of the solicitation provision at 252.227–7017. Subsequent to contract award, the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, permits a contractor to make additional assertions under certain conditions. The additional assertions must be
made in accordance with the procedures and in the format prescribed by that clause.

(4) Neither the pre- or post-award assertions made by the contractor nor the fact that certain assertions are identified in the attachment to the contract, determine the respective rights of the parties. As provided at 227.7203-13, the Government has the right to review, verify, challenge and validate restrictive markings.

(5) Information provided by offerors in response to the solicitation provision at 252.227-7017 may be used in the source selection process to evaluate the impact on evaluation factors that may be created by restrictions on the Government’s ability to use or disclose computer software or computer software documentation.

(b) Contractor marking requirements. The clause at 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation—

(1) Requires a contractor who desires to restrict the Government’s rights in computer software or computer software documentation to place restrictive markings on the software or documentation, provides instructions for the placement of the restrictive markings, and authorizes the use of certain restrictive markings. When it is anticipated that the software will or may be used in combat or situations which simulate combat conditions, do not permit contractors to insert instructions into computer programs that interfere with or delay operation of the software to display a restrictive rights legend or other license notice; and

(2) Requires a contractor to deliver, furnish, or otherwise provide to the Government any computer software or computer software documentation in which the Government has previously obtained rights with the Government’s pre-existing rights in that software or documentation unless the parties have agreed otherwise or restrictions on the Government’s rights to use, modify, produce, release, or disclose the software or documentation have expired. When restrictions are still applicable, the contractor is permitted to mark the software or documentation with the appropriate restrictive legend.

(c) Unmarked computer software or computer software documentation. (1) Computer software or computer software documentation delivered or otherwise provided under a contract without restrictive markings shall be presumed to have been delivered with unlimited rights and may be released or disclosed without restriction. To the extent practicable, if a contractor has requested permission (see paragraph (c)(2) of this subsection) to correct an inadvertent omission of markings, do not release or disclose the software or documentation pending evaluation of the request.

(2) A contractor may request permission to have appropriate legends placed on unmarked computer software or computer software documentation at its expense. The request must be received by the contracting officer within six months following the furnishing or delivery of such software or documentation, or any extension of that time approved by the contracting officer. The person making the request must—

(i) Identify the software or documentation that should have been marked;

(ii) Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and conforms with the requirements for the marking of computer software or computer software documentation contained in the clause at 252.227-7014; and

(iii) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the software or documentation made prior to the addition of the marking or resulting from the omission of the marking.

(3) Contracting officers should grant permission to mark only if the software or documentation were not distributed outside the Government or were distributed outside the Government with restrictions on further use or disclosure.


227.7203-11 Contractor procedures and records.

(a) The clause at 252.227-7014, Rights in Noncommercial Computer Software
and Noncommercial Computer Software Documentation, requires a contractor, and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, to establish and follow written procedures to assure that restrictive markings are used only when authorized and to maintain records to justify the validity of restrictive markings.

(b) The clause at 252.227–7019, Validation of Asserted Restrictions—Computer Software, requires contractors and their subcontractors or suppliers at any tier to maintain records sufficient to justify the validity of markings that assert restrictions on the use, modification, reproduction, release, performance, display, or disclosure of computer software.

227.7203–12 Government right to establish conformity of markings.

(a) Nonconforming markings. (1) Authorized markings are identified in the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation. All other markings are nonconforming markings. An authorized marking that is not in the form, or differs in substance, from the marking requirements in the clause at 252.227–7014 is also a nonconforming marking.

(2) The correction of nonconforming markings on computer software is not subject to 252.227–7019, Validation of Asserted Restrictions—Computer Software, and the correction of nonconforming markings on computer software documentation (technical data) is not subject to 252.227–7037, Validation of Restrictive Markings on Technical Data. To the extent practicable, the contracting officer should return computer software or computer software documentation bearing nonconforming markings to the person who has placed the nonconforming markings on the software or documentation to provide that person an opportunity to correct or strike the nonconforming markings at that person’s expense. If that person fails to correct the nonconformity and return the corrected software or documentation within 60 days following the person’s receipt of the software or documentation, the contracting officer may correct or strike the nonconformity at the person’s expense. When it is impracticable to return computer software or computer software documentation for correction, contracting officers may unilaterally correct any nonconforming markings at Government expense. Prior to correction, the software or documentation may be used in accordance with the proper restrictive marking.

(b) Unjustified markings. (1) An unjustified marking is an authorized marking that does not depict accurately restrictions applicable to the Government’s use, modification, reproduction, release, or disclosure of the marked computer software or computer software documentation. For example, a restricted rights legend placed on computer software developed under a Government contract either exclusively at Government expense or with mixed funding (situations under which the Government obtains unlimited or government purpose rights) is an unjustified marking.

(2) Contracting officers have the right to review and challenge the validity of unjustified markings. However, at any time during performance of a contract and notwithstanding existence of a challenge, the contracting officer and the person who has asserted a restrictive marking may agree that the restrictive marking is not justified. Upon such agreement, the contracting officer may, at his or her election, either—

(i) Strike or correct the unjustified marking at that person’s expense; or

(ii) Return the computer software or computer software documentation to the person asserting the restriction for correction at that person’s expense. If the software or documentation are returned and that person fails to correct or strike the unjustified restriction and return the corrected software or documentation to the contracting officer within 60 days following receipt of the software or documentation, the unjustified marking shall be corrected or stricken at that person’s expense.
227.7203–13 Government right to review, verify, challenge and validate asserted restrictions.

(a) General. An offeror’s or contractor’s assertion(s) of restrictions on the Government’s rights to use, modify, reproduce, release, or disclose computer software or computer software documentation do not, by themselves, determine the extent of the Government’s rights in such software or documentation. The Government may require an offeror or contractor to submit sufficient information to permit an evaluation of a particular asserted restriction and may challenge asserted restrictions when there are reasonable grounds to believe that an assertion is not valid.

(b) Requests for information. Contracting officers should have a reason to suspect that an asserted restriction might not be correct prior to requesting information. When requesting information, provide the offeror or contractor the reason(s) for suspecting that an asserted restriction might not be correct. A need for additional license rights is not, by itself, a sufficient basis for requesting information concerning an asserted restriction. Follow the procedures at 227.7203–5(d) when additional license rights are needed but there is no basis to suspect that an asserted restriction might not be valid.

(c) Transacting matters directly with subcontractors. The clause at 252.227–7019, Validation of Asserted Restrictions—Computer Software, obtains the contractor’s agreement that the Government may transact matters under the clause directly with a subcontractor or supplier, at any tier, without creating or implying privity of contract. Contracting officers should permit a subcontractor or supplier to transact challenge and validation matters directly with the Government when—

(1) A subcontractor’s or supplier’s business interests in its technical data would be compromised if the data were disclosed to a higher tier contractor.

(2) There is reason to believe that the contractor will not respond in a timely manner to a challenge and an untimely response would jeopardize a subcontractor’s or supplier’s right to assert restrictions; or

(3) Requested to do so by a subcontractor or supplier.

(d) Challenging asserted restrictions—

(1) Pre-award considerations. The challenge procedures in the clause at 252.227–7019 could significantly delay competitive procurements. Therefore, avoid challenging asserted restrictions prior to a competitive contract award unless resolution of the assertion is essential for successful completion of the procurement.

(2) Computer software documentation. Computer software documentation is technical data. Challenges to asserted restrictions on the Government’s rights to use, modify, reproduce, release, perform, display, or disclose computer software documentation must be made in accordance with the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, and the guidance at 227.7103–13. The procedures in the clause at 252.227–7037 implement requirements contained in 10 U.S.C. 2321. Resolution of questions regarding the validity of asserted restrictions using the process described at 227.7103–12(b)(2) is strongly encouraged.

(3) Computer software. (i) Asserted restrictions should be reviewed before acceptance of the computer software deliverable under a contract. The Government’s right to challenge an assertion expires three years after final payment under the contract or three years after delivery of the software, whichever is later. Those limitations on the Government’s challenge rights do not apply to software that is publicly available, has been furnished to the Government without restrictions, or has been otherwise made available without restrictions.

(ii) Contracting officers must have reasonable grounds to challenge the current validity of an asserted restriction. Before challenging an asserted restriction, carefully consider all available information pertaining to the asserted restrictions. Resolution of questions regarding the validity of asserted restrictions using the process described at 227.7203–12(b)(2) is strongly encouraged. After consideration of the situations described in paragraph (c) of this
subsection, contracting officers may request the person asserting a restriction to furnish a written explanation of the facts and supporting documentation for the assertion in sufficient detail to enable the contracting officer to determine the validity of the assertion. Additional supporting documentation may be requested when the explanation provided by that person does not, in the contracting officer’s opinion, establish the validity of the assertion.

(iii) Assertions may be challenged whether or not supporting documentation was requested. Challenges must be in writing and issued to the person asserting the restriction.

(4) Extension of response time. The contracting officer, at his or her discretion, may extend the time for response contained in a challenge, as appropriate, if the contractor submits a timely written request showing the need for additional time to prepare a response.

(e) Validating or denying asserted restrictions. (1) Contracting officers must promptly issue a final decision denying or sustaining the validity of each challenged assertion unless the parties have agreed on the disposition of the assertion. When a final decision denying the validity of an asserted restriction is made following a timely response to a challenge, the Government is obligated to continue to respect the asserted restrictions through final disposition of any appeal unless the agency head notifies the person asserting the restriction that urgent or compelling circumstances do not permit the Government to continue to respect the asserted restriction. See 252.227-7019(g) for restrictions applicable following a determination of urgent and compelling circumstances.

(2) Only a contracting officer’s final decision, or actions of an agency Board of Contract Appeals or a court of competent jurisdiction, that sustain the validity of an asserted restriction constitute validation of the restriction.

(f) Multiple challenges to an asserted restriction. When more than one contracting officer challenges an asserted restriction, the contracting officer who made the earliest challenge is responsible for coordinating the Government challenges. That contracting officer shall consult with all other contracting officers making challenges, verify that all challenges apply to the same asserted restriction and, after consulting with the contractor, subcontractor, or supplier asserting the restriction, issue a schedule that provides that person a reasonable opportunity to respond to each challenge.

227.7203–14 Conformity, acceptance, and warranty of computer software and computer software documentation.

(a) Computer software documentation. Computer software documentation is technical data. See 227.7103–14 for appropriate guidance and statutory requirements.

(b) Computer software. (1) Conformity and acceptance. Solicitations and contracts requiring the delivery of computer software shall specify the requirements the software must satisfy to be acceptable. Contracting officers, or their authorized representatives, are responsible for determining whether computer software tendered for acceptance conforms to the contractual requirements. Except for nonconforming restrictive markings (follow the procedures at 227.7203–12(a) if nonconforming markings are the sole reason computer software tendered for acceptance fails to conform to contractual requirements), do not accept software that does not conform in all respects to applicable contractual requirements. Correction or replacement of nonconforming software, or an equitable reduction in contract price when correction or replacement of the nonconforming data is not practicable or is not in the Government’s interests, shall be accomplished in accordance with—

(i) The provisions of a contract clause providing for inspection and acceptance of deliverables and remedies for nonconforming deliverables; or

(ii) The procedures at FAR 46.407(c) through (g), if the contract does not contain an inspection clause providing remedies for nonconforming deliverables.

(2) Warranties—(i) Weapon systems. Computer software that is a component of a weapon system or major subsystem should be warranted as part of
the weapon system warranty. Follow the procedures at 46.703.

(ii) Non-weapon systems. Approval of the chief of the contracting office must be obtained to use a computer software warranty other than a weapon system warranty. Consider the factors at FAR 46.703 in deciding whether to obtain a computer software warranty. When approval for a warranty has been obtained, the clause at 252.246–7001, Warranty of Data, and its alternates, may be appropriately modified for use with computer software or a procurement specific clause may be developed.

227.7203–15 Subcontractor rights in computer software or computer software documentation.

(a) Subcontractors and suppliers at all tiers should be provided the same protection for their rights in computer software or computer software documentation as are provided to prime contractors.

(b) The clauses at 252.227–7019, Validation of Asserted Restrictions—Computer Software, and 252.227–7037, Validation of Restrictive Markings on Technical Data, obtain a contractor’s agreement that the Government’s transaction of validation or challenge matters directly with subcontractors at any tier does not establish or imply privity of contract. When a subcontractor or supplier exercises its right to transact validation matters directly with the Government, contracting officers shall deal directly with such persons, as provided at 227.7203–13(c) for computer software and 227.7103–13(c)(3) for computer software documentation (technical data).

(c) Require prime contractors whose contracts include the following clauses to include those clauses, without modification except for appropriate identification of the parties, in contracts with subcontractors or suppliers who will be furnishing computer software in response to a Government requirement (see 227.7103–15(c) for clauses required when subcontractors or suppliers will be furnishing computer software documentation (technical data));

1. 252.227.7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation;

2. 252.227.7019, Validation of Asserted Restrictions—Computer Software;

3. 252.227.7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends; and

4. 252.227.7028, Technical Data or Computer Software Previously Delivered to the Government.

(d) Do not require contractors to have their subcontractors or suppliers at any tier relinquish rights in technical data to the contractor, a higher tier subcontractor, or to the Government, as a condition for award of any contract, subcontract, purchase order, or similar instrument except for the rights obtained by the Government under the provisions of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the contractor’s contract with the Government.

227.7203–16 Providing computer software or computer software documentation to foreign governments, foreign contractors, or international organizations.

Computer software or computer software documentation may be released or disclosed to foreign governments, foreign contractors, or international organizations only if release or disclosure is otherwise permitted both by Federal export controls and other national security laws or regulations. Subject to such laws and regulations, the Department of Defense—

(a) May release or disclose computer software or computer software documentation in which it has obtained unlimited rights to such foreign entities or authorize the use of such data by those entities; and

(b) Shall not release or disclose computer software or computer software documentation for which restrictions on use, release, or disclosure have been asserted to such foreign entities or authorize the use of such data by those entities, unless the intended recipient is subject to the same provisions as included in the use and non-disclosure agreement at 227.7103–7 and the requirements of the clause at 252.227–7014, Rights in Noncommercial Computer
Software and Noncommercial Computer Software Documentation, governing use, modification, reproduction, release, performance, display, or disclosure of such data have been satisfied.

227.7203–17 Overseas contracts with foreign sources.

(a) The clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign), may be used in contracts with foreign contractors to be performed overseas, except Canadian purchases (see paragraph (c) of this subsection) in lieu of the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, when the Government requires the unrestricted right to use, modify, reproduce, release, perform, display, or disclose all computer software or computer software documentation to be delivered under the contract. Do not use the clause in contracts for special works.

(b) When the Government does not require unlimited rights, the clause at 252.227–7032 may be modified to accommodate the needs of a specific overseas procurement situation. The Government should obtain rights to the computer software or computer software documentation that are not less than the rights the Government would have obtained under the software rights clause(s) prescribed in this part for a comparable procurement performed within the United States or its possessions.

(c) Contracts for Canadian purchases shall include the appropriate software rights clause prescribed in this part for a comparable procurement performed within the United States or its possessions.

227.7204 Contracts under the Small Business Innovative Research Program.

When contracting under the Small Business Innovative Research Program, follow the procedures at 227–7104.

227.7205 Contracts for special works.

(a) Use the clause at 252.227–7020, Rights in Special Works, in solicitations and contracts where the Government has a specific need to control the distribution of computer software or computer software documentation first produced, created, or generated in the performance of a contract and required to be delivered under that contract, including controlling distribution by obtaining an assignment of copyright, or a specific need to obtain indemnity for liabilities that may arise out of the creation, delivery, use, modification, reproduction, release, performance, display, or disclosure of such software or documentation. Use the clause—

(1) In lieu of the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, when the Government must own or control copyright in all computer software or computer software documentation first produced, created, or generated and required to be delivered under a contract; or

(2) In addition to the clause at 252.227–7014 when the Government must own or control copyright in some of the computer software or computer software documentation first produced, created, or generated and required to be delivered under a contract. The specific software or documentation in which the Government must own or control copyright must be identified in a special contract requirement.

(b) Although the Government obtains an assignment of copyright and unlimited rights in the computer software or computer software documentation delivered as a special work under the clause at 252.227–7020, the contractor retains use and disclosure rights in that software or documentation. If the Government needs to restrict a contractor’s rights to use or disclose a special work, it must also negotiate a special license which specifically restricts the contractor’s use or disclosure rights.

(c) The clause at 252.227–7020 does not permit a contractor to incorporate into a special work any work copyrighted by others unless the contractor obtains the contracting officer’s permission to do so and obtains for the Government a non-exclusive, paid up, world-wide license to make and distribute copies of that work, to prepare derivative works,
to perform or display any portion of that work, and to permit others to do so for government purposes. Grant permission only when the Government’s requirements cannot be satisfied unless the third party work is included in the deliverable work.

(d) Examples of other works which may be procured under the clause at 252.227–7020 include, but are not limited to, audiovisual works, scripts, soundtracks, musical compositions, and adaptations; histories of departments, agencies, services or units thereof; surveys of Government establishments; instructional works or guidance to Government officers and employees on the discharge of their official duties; reports, books, studies, surveys or similar documents; collections of data containing information pertaining to individuals that, if disclosed, would violate the right of privacy or publicity of the individuals to whom the information relates; or investigative reports.

227.7206 Contracts for architect-engineer services.

Follow 227.7107 when contracting for architect-engineer services.

227.7207 Contractor data repositories.

Follow 227.7108 when it is in the Government’s interests to have a data repository include computer software or to have a separate computer software repository. Contractual instruments establishing the repository requirements must appropriately reflect the repository manager’s software responsibilities.

PART 228—BONDS AND INSURANCE

Subpart 228.1—Bonds

Sec.
228.102 Performance and payment bonds for construction contracts.
228.102–1 General.
228.105 Other types of bonds.
228.106 Administration.
228.106–7 Withholding contract payments.
228.170 Solicitation provision.

Subpart 228.3—Insurance

228.304 Risk-pooling arrangements.
228.305 Overseas workers’ compensation and war-hazard insurance.
(ii) A performance bond in an equal amount if available at no additional cost.


228.105 Other types of bonds.

Fidelity and forgery bonds generally are not required but may be used when—
(1) Necessary for the protection of the Government or the contractor; or
(2) The investigative and claims services of a surety company are desired.

228.106 Administration.

228.106-7 Withholding contract payments.

(a) Withholding may be appropriate in other than construction contracts (see 232.970–1(b)).

[57 FR 42707, Sept. 16, 1992]

228.170 Solicitation provision.

When a requirement for a performance bond or other security is included in a solicitation for dismantling, demolition, or removal of improvements (see FAR 37.300), use the provision at 252.228–7004, Bonds or Other Security. Set a period of time (normally ten days) for return of executed bonds.

Subpart 228.3—Insurance

228.304 Risk-pooling arrangements.

The DoD has established the National Defense Projects Rating Plan, also known as the Special Casualty Insurance Rating Plan, as a risk-pooling arrangement to minimize the cost to the Government of purchasing the liability insurance listed in FAR 28.307–2. Use the plan in accordance with the following guidelines when it provides the necessary coverage more advantageously than commercially available coverage.

(1) The plan—

(i) Is implemented by attaching an endorsement to standard insurance policy forms for workers' compensation, employer's liability, comprehensive general, and automobile liability. The endorsement states that the instant policy is subject to the National Defense Projects Rating Plan.

(ii) Applies to eligible Defense projects of one or more departments/agencies. For purpiles of this section, a Defense project is any eligible contract or group of contracts with the same contractor.

(A) A Defense project is eligible when—

(1) Eligible contracts represent, at the inception of the plan, at least 90 percent of the payroll for the total operations at project locations; and

(2) The annual insurance premium is estimated to be at least $10,000.

(B) A contract is eligible when it is—

(1) Either domestic or foreign;

(2) Cost-reimbursement type; or

(3) Fixed price with redetermination provisions.

(2) Under construction contracts, include construction subcontractors in the prime contractor's plan only when subcontractor operations are at the project site, and the subcontract provides that the prime contractor will furnish insurance.

(3) Use the agreement in Table 28–1, Insurance Rating Plan Agreement, when the Government assumes contractor premium payments upon contract termination or completion.

(4) The Federal Tort Claims Act provides protection for Government employees while driving Government-owned vehicles in the performance of their assigned duties. Include the endorsement in Table 28–2, Automobile Insurance Policy Endorsement, in automobile liability insurance policies provided under the National Defense Projects Rating Plan.

Table 28-1.—Insurance Rating Plan Rating Agreement

Special Casualty Insurance Rating Plan Assignment-Assumption of Premium Obligations

It is agreed that 100 percent* of the return premiums and premium refunds (and dividends) due to or become due the prime contractor under the policies to which the National Defense Projects Rating Plan Endorsement made a part of policy

*In the event the Government has less than a 100 percent interest in premium funds
228.305 Overseas workers' compensation and war-hazard insurance.

(d) Submit requests for waiver through department/agency channels. Include the following—

(i) Name and address of contractor;
(ii) Contract number;
(iii) Date of award;
(iv) Place of performance;
(v) Name of insurance company providing Defense Base Act coverage;
(vi) Nationality of employees to whom waiver is to apply; and
(vii) Reason for waiver.

or dividends, modify the assignment to reflect the percentage of interest and extent of the Government's assumption of additional premium obligation.

228.307 Insurance under cost-reimbursement contracts.

228.307-1 Group insurance plans.

The Defense Department Group Term Insurance Plan is available for contractor use under cost-reimbursement type contracts when approved as provided in department or agency regulations. A contractor is eligible if—

(a) The number of covered employees is 500 or more; and
(b) The contractor has all cost-reimbursement contracts; or
(c) At least 90 percent of the payroll for contractor operations to be covered by the Plan is under cost-reimbursement contracts.

228.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

228.311-1 Contract clause.

Use the clause at FAR 52.228-7, Insurance—Liability to Third Persons, in solicitations and contracts, other than those for construction and those for architect-engineer services, when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause.


228.370 Additional clauses.

(a) Use the clause at 252.228-7000, Reimbursement for War-Hazard Losses, when—

(1) The clause at FAR 52.228-4, Worker's Compensation and War-Hazard Insurance Overseas, is used; and
(2) The head of the contracting activity decides not to allow the contractor to buy insurance for war-hazard losses.

(b)(1) Use the clause at 252.228-7061, Ground and Flight Risk, in negotiated fixed-price contracts for aircraft production, modification, maintenance, repair, or overhaul, unless—

(i) The aircraft is being acquired for a foreign military sale and the foreign government has not agreed to assume the risk; or
(ii) The cost of insurance for damage, loss, or destruction of aircraft does not
exceed $500, and the contracting officer agrees to recognize the insurance costs.

(2) If appropriate, revise the clause at 252.228–7001, Ground and Flight Risk, as follows—

(i) Include a modified definition of "aircraft" if the contract covers other than conventional types of winged aircraft, i.e., helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional aircraft. The modified definition should describe a stage of manufacture comparable to the standard definition.

(ii) Modify "in the open" to include "hush houses," test hangars and comparable structures, and other designated areas.

(iii) Expressly define the "contractor's premises" where the aircraft will be located during and for contract performance. These locations may include contract premises which are owned, leased, or premises where the contractor is a permittee or licensee or has a right to use, including Government airfields.

(iv) Revise paragraph (d)(iii) of the clause to provide Government assumption of risk for transportation by conveyance on streets or highways when transportation is—

(A) Limited to the vicinity of contractor premises; and

(B) Incidental to work performed under the contract.

(c)(1) Use the clause at 252.228–7002, Aircraft Flight Risk, in cost reimbursement contracts—

(i) For the development, production, modification, maintenance, repair, or overhaul of aircraft; or

(ii) Otherwise involving the furnishing of aircraft to the contractor by the Government.

(iii) With the definition of "aircraft" modified, if appropriate, to include helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional aircraft.

(2) Use the clause at 252.228–7002, Aircraft Flight Risk, appropriately modified, in fixed price contracts when—

(i) The clause at 252.228–7001, Ground and Flight Risk, is not used; and

(ii) Contract performance involves the flight of Government furnished aircraft.

(d) The clause at 252.228–7003, Capture and Detention, may be used when contractor employees are subject to capture and detention and may not be covered by the War Hazards Compensation Act (42 U.S.C. 1701 et seq.).

(e) The clause at 252.228–7005, Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, may be used in solicitations and contracts which involve the manufacture, modification, overhaul, or repair of these items.

(f) Use the clause at 252.228–7006, Compliance with Spanish Laws and Insurance, in solicitations and contracts for services or construction to be performed in Spain, unless the contractor is a Spanish concern.

and for the Army, the Chief, Contract Law Division, Office of the Judge Advocate General.

(c) The contracting officer may direct the contractor to litigate the applicability of a particular tax if—

(i) The contract is either a cost reimbursement type or a fixed price type with a tax escalation clause; and

(ii) The direction is coordinated with the agency-designated legal counsel through the DoD Tax Policy and Advisory Group.

(d)(i) Tax relief agreements between the United States and foreign governments in Europe that exempt the United States from payment of specific taxes on purchases made for common defense purposes are maintained by the United States European Command (USEUCOM). For further information contact HQ USEUCOM, ATTN: ECLA, 49 Unit 30400, Box 1000, APO AE 09128; Telephone: DSN 430-8001/7263; Commercial 49-0711-680-8001/7263; Telefax. 49-0711-680-5732.

(ii) Tax relief also may be available in countries that have not signed tax relief agreements. The potential for such relief should be explored in accordance with paragraph (d)(iii) of this section.

(iii) Review DoDD 5100.64, Department of Defense Foreign Tax Relief Program, before contracting with a foreign source. Refer questions on implementation of the program to the Commanding Officers in Table 29—Designated Commanding Officers, which have been designated under subsection E.7 of DoDD 5100.64 to serve as—

(A) Single point of contact for U.S. contracting offices for investigation and resolution of specific foreign tax relief matters; and

(B) Liaison with responsible diplomatic mission and local foreign tax authorities.

(iv) Refer foreign tax relief questions which have not been resolved by the designated Commanding Officer to the agency-designated legal counsel.

(v) When an acquisition is for a contract to be performed in a country or area listed in Table 29—Designated Commanding Officers—

(A) Obtain from the designated Commanding Officer detailed information concerning the taxes and duties from which the Government of the United States is exempt, and

(B) Provide the information to prospective offerors.

(C) Do not provide prospective offerors any other information about foreign taxes or duties.

(D) Issue tax exemption certificates, as appropriate, to assist the contractor in obtaining relief from foreign taxes and duties which were excluded from the contract price.

(E) Seek advice and assistance from the designated Commanding Officer and, if necessary, the agency-designated legal counsel if the contractor notifies the contracting officer that it has been assessed a tax or duty by a foreign government which could increase the contract price.

(vi) Also see subpart 229.70 for special procedures for obtaining tax relief and duty-free import privileges when conducting U.S. Government acquisitions in certain foreign countries.

<table>
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<tr>
<th>Table 29—Designated Commanding Officers</th>
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<tr>
<td><strong>Country or area</strong></td>
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<td>Australia</td>
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<td>Azores</td>
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<td>Bahrain</td>
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<td>Canada</td>
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<td>Caribbean Islands (including Bahamas)</td>
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<td>Philippines</td>
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<td>Portugal</td>
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<td>Spain</td>
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TABLE 29-1—DESIGNATED COMMANDING OFFICERS—Continued

<table>
<thead>
<tr>
<th>Country or area</th>
<th>Designated commanding officer</th>
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<tbody>
<tr>
<td>Taiwan</td>
<td>Commander, U.S. Military Assistance Command, Thailand.</td>
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<tr>
<td>Turkey</td>
<td>Commander in Chief, U.S. Air Forces, Europe.</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Commander in Chief, U.S. Air Forces, Europe.</td>
</tr>
</tbody>
</table>


Subpart 229.4—Contract Clauses

SOURCE: 62 FR 34125, June 24, 1997, unless otherwise noted.

229.402 Foreign contracts.

229.402−1 Foreign fixed-price contracts.

Use the clause at 252.229−7000, Invoices Exclusive of Taxes or Duties, in solicitations and contracts when a fixed-price contract will be awarded to a foreign concern.

229.402−70 Additional clauses.

(a) Use the clause at 252.229−7001, Tax Relief, in solicitations and contracts when a contract will be awarded to a foreign concern in a foreign country. When contract performance will be in Germany, use the clause with its Alternate I.

(b) Use the clause at 252.229−7002, Customs Exemptions (Germany), in solicitations and contracts requiring the import of U.S. manufactured products into Germany.

(c) Use the clause at 252.229−7003, Tax Exemptions (Italy), in solicitations and contracts when contract performance will be in Italy.

(d) Use the clause at 252.229−7004, Status of Contractor as a Direct Contractor (Spain), in solicitations and contracts requiring the import into Spain of supplies for construction, development, maintenance, or operation of Spanish-American installations and facilities.

(e) Use the clause at 252.229−7005, Tax Exemptions (Spain), in solicitations and contracts when contract performance will be in Spain.

(f) Use the clause at 252.229−7006, Value Added Tax Exclusion (United Kingdom), in solicitations and contracts when contract performance will be in the United Kingdom.

(g) Use the clause at 252.229−7007, Verification of United States Receipt of Goods, in solicitations and contracts when contract performance will be in the United Kingdom.

(h) Use the clause at 252.229−7008, Relief from Import Duty (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom.

(i) Use the clause at 252.229−7009, Relief from Customs Duty and Value Added Tax on Fuel (Passenger Vehicles) (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom for fuels (gasoline or diesel) and lubricants used in passenger vehicles (excluding taxis).

(j) Use the clause at 252.229−7010, Relief from Customs Duty on Fuel (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom that require the use of fuels (gasoline or diesel) and lubricants in taxis or vehicles other than passenger vehicles.

Subpart 229.70—Special Procedures for Overseas Contracts

SOURCE: 62 FR 34125, June 24, 1997, unless otherwise noted.

229.7000 Scope of subpart.

This subpart prescribes procedures to be used by contracting officers to obtain tax relief and duty-free import privileges when conducting U.S. Government acquisitions in certain foreign countries.

229.7001 Tax exemption in Spain.

(a) The Joint United States Military Group (JUSMG), Spain Policy Directive 400.4, or subsequent directive, applies to U.S. contracting offices acquiring supplies or services in Spain when the introduction of material or equipment into Spain is required for contract performance.

(b) Upon award of a contract with a Direct Contractor, as defined in the clause at 252.229−7004, the contracting officer will notify JUSMG—MAAG Madrid, Spain, and HQ 16AF/LGTT and
forward three copies of the contract to JUSMG–MAAG, Spain.

(c) If copies of the contract are not available and duty-free import of equipment or materials is urgent, the contracting officer will send JUSMG–MAAG three copies of the Letter of Intent or a similar document indicating the pending award. In these cases, authorization for duty-free import will be issued by the Government of Spain. Upon formal award, the contracting officer will forward three copies of the completed contract to JUSMG–MAAG, Spain.

(d) The contracting officer will notify JUSMG–MAAG, Spain, and HQ 16 AF/LGTT of ports-of-entry and identify the customs agents who will clear property on their behalf. Additional documents required for port-of-entry and customs clearance can be obtained by contacting HQ 16AF/LGTT. This information will be passed to the Secretaria General Tecnica del Ministerio de Hacienda (Technical General Secretariat of the Ministry of Finance). A list of customs agents may be obtained from the 600 ABG, APO AE 90646.

229.7002 Tax exemption in the United Kingdom.

This section contains procedures to be followed in securing relief from the British value added tax and import duties.

229.7002–1 Value added tax.

(a) U.S. Government purchases qualifying for tax relief are equipment, materials, facilities, and services for the common defense effort and for foreign aid programs.

(b) To facilitate the resolution of issues concerning specific waivers of import duty or tax exemption for U.S. Government purchases (see 229.7002–3), contracting offices shall provide the name and activity address of personnel who have been granted warranted contracting authority to Her Majesty’s (HM) Customs and Excise at the following address: HM Customs and Excise, International Customs Division G, Branch 4, Adelaide House, London Bridge, London EC4R 9DB.

229.7002–2 Import duty.

No import duty shall be paid by the United States and contract prices shall be exclusive of duty, except when the administrative cost compared to the low dollar value of a contract makes it impracticable to obtain relief from contract import duty. In this instance, the contracting officer shall document the contract file with a statement that—

(a) The administrative burden of securing tax relief under the contract was out of proportion to the tax relief involved;

(b) It is impracticable to secure tax relief;

(c) Tax relief is therefore not being secured; and

(d) The acquisition does not involve the expenditure of any funds to establish a permanent military installation.

229.7002–3 Value added tax or import duty problem resolution.

In the event a value added tax or import duty problem cannot be resolved at the contracting officer’s level, refer the issue to HQ Third Air Force, Staff Judge Advocate, Unit 4840, Box 45, APO AE 09459. Direct contact with HM Customs and Excise in London is prohibited.

229.7002–4 Information required by HM Customs and Excise.

(a) School bus contacts. Provide one copy of the contract and all modifications to HM Customs and Excise.

(b) Road fuel contracts. For contracts that involve an application for relief from duty on the road fuel used in performance of the contract, provide—

(1) To HM Customs and Excise—

(i) Contract number;

(ii) Name and address of contractor;

(iii) Type of work (e.g., laundry, transportation);

(iv) Area of work; and

(v) Period of performance.

(2) To the regional office of HM Customs and Excise to which the contractor applied for relief from the duty on road fuel—copy of the contract.

(c) Other contracts awarded to United Kingdom firms. Provide information when requested by HM Customs and Excise.
Department of Defense

PART 230—COST ACCOUNTING STANDARDS ADMINISTRATION

Subpart 230.2—CAS Program Requirements

Sec. 230.201-5 Waiver.

Subpart 230.70—Facilities Capital Employed for Facilities in Use

230.7000 Contract facilities capital estimates.

230.7001 Use of DD Form 1861.

230.7001-1 Purpose.

230.7001-2 Completion instructions.

230.7002 Preaward facilities capital applications.

230.7003 Postaward facilities capital applications.

230.7003-1 Interim billings based on costs incurred.

230.7003-2 Final settlement.

230.7004 Administrative procedures.

230.7004-1 Forms CASB-CMF.

230.7004-2 DD Form 1861.

Subpart 230.71—Facilities Capital Employed for Facilities Under Construction

230.7100 Definitions.

230.7101 Calculations.

230.7101-1 Cost of money.

230.7102 Determining imputed cost of money.

230.7103 Preaward capital employed application.


Subpart 230.2—CAS Program Requirements

230.201-5 Waiver.

(a)(1)(A) The military departments—
(1) May grant CAS waivers that meet the conditions in FAR 30.201-5(b); and
(2) Unless otherwise authorized by the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), must submit each CAS waiver request to the Director of Defense Procurement for review at least 14 days before granting the waiver.

(B) DoD contracting activities that are not within a military department must submit CAS waiver requests that meet the conditions in FAR 30.201-5(b) to the Director of Defense Procurement for approval at least 30 days before the anticipated contract award date.

(2) The military departments must not delegate CAS waiver authority below the individual responsible for issuing contracting policy for the department.

(e)(1) by November 15th of each year, the military departments must provide a report of all waivers granted under FAR 30.201-5(a) during the previous fiscal year to the Director of Defense Procurement.

(ii) The Director of Defense Procurement will submit a consolidated DoD report to the CAS Board.

[65 FR 36035, June 6, 2000]

Subpart 230.70—Facilities Capital Employed for Facilities in Use

230.7000 Contract facilities capital estimates.

(a) The contracting officer will estimate the facilities capital cost of money and capital employed using—

(1) An analysis of the appropriate Forms CASB-CMF and cost of money factors; and

(2) DD Form 1861, Contract Facilities Capital Cost of Money.

230.7001 Use of DD Form 1861.

230.7001-1 Purpose.

The DD Form 1861 provides a means of linking the Form CASB-CMF and DD Form 1547, Record of Weighted Guidelines Application. It—

(a) Enables the contracting officer to differentiate profit objectives for various types of assets (land, buildings, equipment). The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(b) Is designed to record and compute the contract facilities capital cost of money and capital employed which is carried forward to DD Form 1547.

230.7001-2 Completion instructions.

Complete a DD Form 1861 only after evaluating the contractor’s cost proposal, establishing cost of money factors, and establishing a prenegotiation
objective on cost. Complete the form as follows:
(a) List overhead pools and direct-charging service centers (if used) in the same structure as they appear on the contractor’s cost proposal and Form CASB–CMF. The structure and allocation base units-of-measure must be compatible on all three displays.
(b) Extract appropriate contract overhead allocation base data, by year, from the evaluated cost breakdown or prenegotiation cost objective and list against each overhead pool and direct-charging service center.
(c) Multiply each allocation base by its corresponding cost of money factor to get the facilities capital cost of money estimated to be incurred each year. The sum of these products represents the estimated contract facilities capital cost of money for the year’s effort.
(d) Total contract facilities cost of money is the sum of the yearly amounts.
(e) Since the facilities capital cost of money factors reflect the applicable cost of money rate in Column 1 of Form CASB–CMF, divide the contract cost of money by that same rate to determine the contract facilities capital employed.

230.7002 Preaward facilities capital applications.

To establish cost and price objectives, apply the facilities capital cost of money and capital employed, as determined under 230.7000, as follows:
(a) Cost of Money—(1) Cost Objective. Use the imputed facilities capital cost of money, with normal, booked costs, to establish a cost objective or the target cost when structuring an incentive type contract. Do not adjust target costs established at the outset even though actual cost of money rates become available during the period of contract performance.
(2) Profit Objective. When measuring the contractor’s effort for the purpose of establishing a prenegotiation profit objective, restrict the cost base to normal, booked costs. Do not include cost of money as part of the cost base.
(b) Facilities Capital Employed. Assess and weight the profit objective or risk associated with facilities capital employed in accordance with the profit guidelines at 215.404–71–4.


230.7003 Postaward facilities capital applications.

230.7003–1 Interim billings based on costs incurred.

(a) The contractor may include contract facilities capital cost of money in cost reimbursement and progress payment invoices. To determine the amount that qualifies as cost incurred, multiply the incurred portions of the overhead pool allocation bases by the latest available cost of money factors. These cost of money calculations are interim estimates subject to adjustment.
(b) As actual cost of money factors under CAS 414 and FAR 31.205–10 are finalized, use the new factors to calculate contract facilities cost of money for the next accounting period.

230.7003–2 Final settlement.

(a) Contract facilities capital cost of money for final cost determination or repricing is based on each year’s final cost of money factors determined under CAS 414 and supported by separate Forms CASB–CMF.
(b) Separately compute contract facilities cost of money in a manner similar to yearly final overhead rates. Also like overhead costs, include in the final settlement an adjustment from interim to final contract cost of money. Do not, however, adjust estimated or target cost.

230.7004 Administrative procedures.

230.7004–1 Forms CASB–CMF.

(a) Forms CASB–CMF are normally initiated by the contractor under the same circumstances as Forward Pricing Rate Agreements (see FAR Subpart 42.17) and evaluated as complementary documents and procedures.
(b) Separate forms are required for each prospective cost accounting period of contract performance.
(c) The contractor may submit annually or with individual contract price proposals, as agreed with the administrative contracting officer (ACO).
(d) The contractor must submit a final form under CAS 414 as soon as possible after the end of each accounting period, together with a proposal for actual overhead costs and rates.


230.7004–2 DD Form 1861.

(a) The contracting officer may ask the ACO to complete the forms as part of field pricing support.

(b) When the Weighted Guidelines Method is used, completion of the DD Form 1861 requires information not included on the Form CASB-CMF, i.e., distribution percentages of land, building, and equipment for the business unit performing the contract. Choose the most practical method for obtaining this information, for example—

(1) Contract administration offices could obtain the information through the process used to establish factors for facilities capital cost of money or could establish advance agreements on distribution percentages for inclusion in field pricing reports;

(2) The corporate ACO could obtain distribution percentages;

(3) The contracting officer could request the information through a solicitation provision.

Subpart 230.71—Facilities Capital Employed for Facilities Under Construction

230.7100 Definitions.

(a) Intangible capital asset is an asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefit it yields.

(b) Tangible capital asset is an asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the service it yields.

(c) Cost of money rate is either—

(1) The interest rate determined by the Secretary of the Treasury under Public Law 92-41 (85 Stat. 97); or

(2) The time-weighted average of the interest rate for each cost accounting period during which the asset is being constructed, fabricated, or developed.

(d) Representative investment is the calculated amount considered invested by the contractor during the cost accounting period to construct, fabricate, or develop the asset.

230.7101 Calculations.

230.7101–1 Cost of money.

(a) The interest rate in 230.7100(c)(1) is established semi-annually and is published in the Federal Register during the fourth week of December and June.

(b) To calculate the time-weighted average interest rate—

(1) Multiply the various rates in effect during the months of construction by the number of months each rate was in effect; and

(2) Divide the sum of the products by the total number of months in which the rates were experienced.

230.7101–2 Representative investment.

(a) The calculation of the representative investment requires consideration of the rate or expenditure pattern of the costs to construct, fabricate, or develop a capital asset.

(b) If a majority of the costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor shall either—

(1) Determine a representative investment amount for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

(2) Treat month-end balances as individual representative investment amounts.

(c) If the costs were incurred in a fairly uniform expenditure pattern throughout the construction, fabrication, or development period, the contractor may—

(1) Determine a representative investment amount for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period; or
(2) Treat month-end balances as individual representative investment amounts.

230.7102 Determining imputed cost of money.

(a) Determine the imputed cost of money for an asset under construction, fabrication, or development by applying a cost of money rate (see 230.7101–1) to the representative investment amount (see 230.7101–2).

(1) When a representative investment amount is determined for a cost accounting period in accordance with 230.7101–2(b)(1) or 230.7101–2(c)(1), the cost of money will be the time-weighted average rate.

(2) When a monthly representative investment amount is used in accordance with 230.7101–2(b)(2) or 230.7101–2(c)(2), the cost of money will be the interest rate in effect each month. (Under this method, the cost of money is determined monthly and the total for the cost accounting period is the sum of the monthly amounts.)

(b) The imputed cost of money will be capitalized only once in any cost accounting period, either at the end of the period or at the end of the construction, fabrication, or development period, whichever comes first.

(c) When the construction of an asset takes more than one cost accounting period, the cost of money capitalized for the first cost accounting period will be included in determining the representative investment amount for any future cost accounting periods.

230.7103 Preaward capital employed application.

An offset to the profit objectives as set forth in FAR 15.404–4 is not required for CAS 417 cost of money.


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PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 231.1—Applicability

Sec.
231.100 Scope of subpart.
231.100–70 Contract clause.

48 CFR Ch. 2 (10–1–02 Edition)

Subpart 231.2—Contracts With Commercial Organizations

231.205 Selected costs.
231.205–6 Compensation for personal services.
231.205–10 Cost of money.
231.205–18 Independent research and development and bid and proposal costs.
231.205–22 Legislative lobbying costs.
231.205–70 External restructuring costs.

Subpart 231.3—Contracts With Educational Institutions

231.303 Requirements.

Subpart 231.6—Contracts With State, Local, and Federally Recognized Indian Tribal Governments

231.603 Requirements.

Subpart 231.7—Contracts With Nonprofit Organizations

231.703 Requirements.


SOURCE: 56 FR 36408, July 31, 1991, unless otherwise noted.

Subpart 231.1—Applicability

231.100 Scope of subpart.

231.100–70 Contract clause.

Use the clause at 252.231–7000, Supplemental Cost Principles, in all solicitations and contracts which are subject to the principles and procedures described in FAR subpart 31.1, 31.2, 31.6, or 31.7.

[59 FR 27672, May 27, 1994]

Subpart 231.2—Contracts With Commercial Organizations

231.205 Selected costs.

231.205–6 Compensation for personal services.

(f)(1) In accordance with Section 8122 of Pub. L. 104–61, and similar sections in subsequent Defense appropriations acts, costs for bonuses or other payments in excess of the normal salary paid by the contractor to an employee, that are part of restructuring costs associated with a business combination, are unallowable under DoD contracts.
funded by fiscal year 1996 or subsequent appropriations. This limitation does not apply to severance payments or early retirement incentive payments. (See 231.205–70(b) for the definitions of “business combination” and “restructuring costs.”)


231.205–10 Cost of money.

The contractor also must comply with subpart 230.70 and maintain records to demonstrate compliance.

231.205–18 Independent research and development and bid and proposal costs.

(a) Definitions. As used in this subsection—

(i) Covered contract means a DoD prime contract for an amount exceeding the simplified acquisition threshold, except for a fixed-price contract without cost incentives. The term also includes a subcontract for an amount exceeding the simplified acquisition threshold, except for a fixed-price subcontract without cost incentives under such a prime contract.

(ii) Covered segment means a product division of the contractor that allocated more than $1,100,000 in independent research and development and bid and proposal (IR&D/B&P) costs to covered contracts during the preceding fiscal year. In the case of a contractor that has no product divisions, the term means that contractor as a whole. A product division of the contractor that allocated less than $1,100,000 in IR&D/B&P costs to covered contracts during the preceding fiscal year is not subject to the limitations in paragraph (c) of this subsection.

(iii) Major contractor means any contractor whose covered segments allocated a total of more than $11,000,000 in IR&D/B&P costs to covered contracts during the preceding fiscal year. For purposes of calculating the dollar threshold amounts to determine whether a contractor meets the definition of “major contractor,” do not include contractor segments allocating less than $1,100,000 of IR&D/B&P costs to covered contracts during the preceding fiscal year.

(c) Allowability.

(i) Departments/agencies shall not supplement this regulation in any way that limits IR&D/B&P cost allowability.

(ii) See 225.7303–2(c) for allowability provisions affecting foreign military sale contracts.

(iii) For major contractors, the following limitations apply:

(A) The amount of IR&D/B&P costs allowable under DoD contracts shall not exceed the lesser of—

(1) Such contracts’ allocable share of total incurred IR&D/B&O costs; or

(2) The amount of incurred IR&D/B&P costs for projects having potential interest to DoD.

(B) Allowable IR&D/B&P costs are limited to those for projects that are of potential interest to DoD, including activities intended to accomplish any of the following:

(1) Enable superior performance of future U.S. weapon systems and components.

(2) Reduce acquisition costs and life-cycle costs of military systems.

(3) Strengthen the defense industrial and technology base of the United States.

(4) Enhance the industrial competitiveness of the United States.

(5) Promote the development of technologies identified as critical under 10 U.S.C. 2522.

(6) Increase the development and promotion of efficient and effective applications of dual-use technologies.

(7) Provide efficient and effective technologies for achieving such environmental benefits as: Improved environmental data gathering, environmental cleanup and restoration, pollution reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(iv) For major contractors, the cognizant administrative contracting officer (ACO) or corporate ACO shall—

(A) Determine whether IR&D/B&P projects are of potential interest to DoD; and
(B) Provide the results of the determination to the contractor.

(v) The cognizant contract administration office shall furnish contractors with guidance on financial information needed to support IR&D/B&P costs and on technical information needed from major contractors to support the potential interest to DoD determination (also see 242.771–3).

[64 FR 8729, Feb. 23, 1999]

231.205–22 Legislative lobbying costs.

(a) Preparing any material, report, list, or analysis on the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed (10 U.S.C. 2249).


231.205–70 External restructuring costs.


(b) Definitions. As used in this subsection:

(1) Business combination means a transaction whereby assets or operations of two or more companies not previously under common ownership or control are combined, whether by merger, acquisition, or sale/purchase of assets.

(2) External restructuring activities means restructuring activities occurring after a business combination that affect the operations of companies not previously under common ownership or control. They do not include restructuring activities occurring after a business combination that affect the operations of only one of the companies not previously under common ownership or control, or, when there has been no business combination, restructuring activities undertaken within one company. External restructuring activities are a direct outgrowth of a business combination. They normally will be initiated within 3 years of the business combination.

(3) Restructuring activities means non-routine, nonrecurring, or extraordinary activities to combine facilities, operations, or workforce, in order to eliminate redundant capabilities, improve future operations, and reduce overall costs. Restructuring activities do not include routine or ongoing repositionings and redeployments of a contractor’s productive facilities or workforce (e.g., normal plant rearrangement or employee relocation), nor do they include other routine or ordinary activities charged as indirect costs that would otherwise have been incurred (e.g., planning and analysis, contract administration and oversight, or recurring financial and administrative support).

(4) Restructuring costs means the costs, including both direct and indirect, of restructuring activities. Restructuring costs that may be allowed include, but are not limited to, severance pay for employees, early retirement incentive payments for employees, employee retraining costs, relocation expense for retained employees, and relocation and rearrangement of plant and equipment. For purposes of this definition, if restructuring costs associated with external restructuring activities allocated to DoD contracts are less than $2.5 million, the costs shall not be subject to the audit, review, certification, and determination requirements of paragraph (c)(1) of this subsection; instead, the normal rules for determining cost allowability in accordance with FAR part 31 shall apply.

(5) Restructuring savings means cost reductions, including both direct and indirect cost reductions, that result from restructuring activities. Reassignments of cost to future periods are not restructuring savings.

(c) Limitations on cost allowability. (1) Restructuring costs associated with external restructuring activities shall not be allowed unless—
(i) Such costs are allowable in accordance with FAR part 31 and DFARS part 231; 
(ii) An audit of projected restructuring costs and restructuring savings is performed; 
(iii) The cognizant administrative contracting officer (ACO) reviews the audit report and the projected costs and projected savings, and negotiates an advance agreement in accordance with paragraph (d)(8) of this subsection; and 
(iv) For business combinations that occur— 
(A) Prior to October 1, 1996, the Under Secretary of Defense (Acquisition, Technology, and Logistics) or the Principal Deputy certifies that projections of future restructuring savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for DoD. 
(B) October 1, 1996, through November 18, 1997, the Under Secretary of Defense (Acquisition, Technology, and Logistics) or the Principal Deputy— 
(1) Certifies that projections of future restructuring savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for DoD; and 
(2) Determines in writing that the audited projected savings for DoD resulting from the restructuring will exceed either— 
(i) The costs allowed by a factor of at least two to one; or 
(ii) The costs allowed, and the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD. 
(C) After November 18, 1997, the Under Secretary of Defense (Acquisition, Technology, and Logistics) or the Principal Deputy determines in writing that the audited projected savings for DoD resulting from restructuring will exceed either— 
(1) The costs allowed by a factor of at least two to one; or 
(2) The costs allowed, and the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD. 
(d) Procedures and ACO responsibilities. 
As soon as it is known that the contractor will incur restructuring costs for external restructuring activities, the cognizant ACO shall: 
(1) Promptly execute a novation agreement, if one is required, in accordance with FAR subpart 42.12 and DFARS subpart 242.12 and include the provision at DFARS 242.1204(e). 
(2) Direct the contractor to segregate restructuring costs and to suspend these amounts from any billings, final contract price settlements, and overhead settlements until the certification, or determination, or both, as applicable, in paragraph (c)(1)(iv) of this subsection is obtain. 
(3) Require the contractor to submit an overall plan of restructuring activities and an adequately supported proposal for planned restructuring projects. The proposal must include a breakout by year by cost element, showing the present value of projected restructuring costs and projected restructuring savings. 
(4) Notify major buying activities of contractor restructuring actions and inform them about any potential monetary impacts on major weapons programs, when known. 
(5) Upon receipt of the contractor’s proposal, as soon as practicable, adjust forward pricing rates to reflect the impact of projected restructuring savings. If restructuring costs are included in forward pricing rates prior to execution of an advance agreement in accordance with paragraph (d)(8) of this subsection, the contracting officer shall include a repricing clause in each fixed-price action that is priced based on the rates. The repricing clause must provide for a downward price adjustment to remove restructuring costs if the certification, or determination, or
both, as applicable, required by paragraph (c)(1)(iv) of this subsection is not obtained.

(6) Upon receipt of the contractor’s proposal, immediately request an audit review of the contractor’s proposal.

(7) Upon receipt of the audit report, determine if restructuring savings will exceed restructuring costs on a present value basis. However, for business combinations that occur on or after October 1, 1996, the audited projected savings for DoD must exceed the costs allowed by a factor of at least two to one on a present value basis, unless the determination in paragraph (c)(1)(iv)(B)(2)(ii) or (c)(1)(iv)(C) (2) of this subsection applies.

(8) Negotiate an advance agreement with the contractor setting forth, at a minimum, a cumulative cost ceiling for restructuring projects and, when necessary, a cost amortization schedule. The costs may not exceed the amount of projected restructuring savings on a present value basis. The advance agreement shall not be executed until the certification, or determination, or both, as applicable, required by paragraph (c)(1)(iv) of this subsection is obtained.

(9) Submit to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), ATTN: OUSD (AT&L) DP/CPF, a recommendation for certification, or determination, or both, as applicable. Include the information described in paragraph (e) of this subsection.

(10) Consult with the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), when paragraph (c)(1)(iv)(B)(2)(ii) or (c)(1)(iv)(C) (2) of this subsection applies.

(e) Information needed to obtain certification and determination. (1) The novation agreement (if one is required).

(2) The contractor’s restructuring proposal.

(3) The proposed advance agreement.

(4) The audit report.

(5) Any other pertinent information.

(f) Contracting officer responsibilities.

(1) The contracting officer, in consultation with the cognizant ACO, should:

(i) Consider including a repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between

(ii) The time a business combination is announced; and

(ii) The time the contractor’s forward pricing rates are adjusted to reflect the impact of restructuring.

(ii) The decision to use a repricing clause will depend upon the particular circumstances involved, including

(i) When the restructuring will take place;

(ii) When restructuring savings will begin to be realized;

(iii) The contract performance period;

(iv) Whether the contracting parties are able to make a reasonable estimate of the impact of restructuring on the contract; and

(v) The size of the potential dollar impact of restructuring on the contract.

(2) If the contracting officer decides to use a repricing clause, the clause must provide for a downward-only price adjustment to ensure that DoD receives its appropriate share of restructuring net savings.

231.303 Requirements.

(1) Pursuant to section 841 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160), no limitation may be placed on the reimbursement of otherwise allowable indirect costs incurred by an institution of higher education under a DoD contract awarded on or after November 30, 1993, unless that same limitation is applied uniformly to all other organizations performing similar work under DoD contracts. The 26 percent limitation imposed on administrative indirect costs by OMB Circular No. A-21 shall not be applied to DoD contracts awarded on or after November 30, 1993, to institutions of higher education because the same limitation is not applied to other organizations performing similar work.

(2) The cognizant administrative contracting officer may waive the prohibition in 231.303(1) if the governing body of the institution of higher education requests the waiver to simplify the institution’s overall management of DoD cost reimbursements under DoD contracts.

(3) Under 10 U.S.C. 2249, the costs cited in 231.205-22(a) are unallowable.

231.703 Requirements.

Under 10 U.S.C. 2249, the costs cited in 231.205-22(a) are unallowable.

PART 232—CONTRACT FINANCING

232.006 Reduction or suspension of contract payments upon finding of fraud.

232.006-5 Reporting.

232.070 Responsibilities.

232.071 Contract Finance Committee.

232.072 Financial responsibility of contractors.

232.072-1 Required financial reviews.

232.072-2 Appropriate information.

232.072-3 Cash flow forecasts.

Subpart 232.1—Non-Commercial Item Purchase Financing

232.102 Description of contract financing methods.

232.102-70 Provisional delivery payments.


Subpart 232.2—Commercial Item Purchase Financing


232.206 Solicitation provisions and contract clauses.

232.207 Administration and payment of commercial financing payments.

Subpart 232.3—Loan Guarantees for Defense Production

232.302 Authority.

Subpart 232.4—Advance Payments

232.404 Exclusions.

232.409 Contracting officer action.

232.409-1 Recommendation for approval.

232.410 Findings, determination, and authorization.

232.412 Contract clause.

232.412-70 Additional clauses.

232.470 Advance payment pool.
232.006 Reduction or suspension of contract payments upon finding of fraud.

Subpart 232.11—Electronic Funds Transfer

232.1106 Payment by Governmentwide commercial purchase card.


SOURCE: 56 FR 36409, July 31, 1991, unless otherwise noted.

232.006 Reduction or suspension of contract payments upon finding of fraud.

Subpart 232.6—Contract Debts

232.605 Responsibilities and cooperation among Government officials.

232.606 Debt determination and collection.

232.610 Demand for payment of contract debt.

232.617 Contract clause.

232.670 Transfer of responsibility for debt collection.

232.671 Bankruptcy reporting.

Subpart 232.7—Contract Funding

232.702 Policy.

232.703 Contract funding requirements.

232.703-1 General.

232.703-3 Contracts crossing fiscal years.

232.704 Limitation of cost or funds.

232.704-70 Incrementally funded fixed-price contracts.

232.705 Contract clauses.

232.705-70 Clause for limitation of Government’s obligation.

Subpart 232.8—Assignment of Claims

232.803 Policies.

232.805 Procedure.

232.806 Contract clause.

Subpart 232.9—Prompt Payment

232.903 Policy.

232.905 Invoice payments.

232.906 Contract financing payments.

Subpart 232.10—Performance-Based Payments

232.1001 Policy.

232.1004 Procedure.

232.1007 Administration and payment of performance-based payments.
department or agency is the focal point for financing matters at the department/agency headquarters. Departments and agencies may establish contract financing offices at operational levels.

(1) Department/agency contract financing offices are—
   (i) Army: Office of the Assistant Secretary of the Army (Financial Management);
   (ii) Navy: Office of the Assistant Secretary of the Navy (Financial Management and Comptroller), Office of Financial Operations;
   (iii) Air Force: Air Force Contract Financing Office (SAF/FMPB);
   (iv) Defense agencies: Office of the agency comptroller.

(2) Contract financing offices should participate in—
   (i) Developing regulations for contract financing;
   (ii) Developing contract provisions for contract financing; and
   (iii) Resolving specific cases that involve unusual contract financing requirements.

[63 FR 11535, Mar. 9, 1998, as amended at 65 FR 39705, June 27, 2000]

232.071 Contract Finance Committee.

(a) The Contract Finance Committee consists of—
   (1) A representative of OUSD(AT&L)/DP, serving as the Chair;
   (2) A representative of the Comptroller of the Department of Defense;
   (3) A representative of the Defense Finance and Accounting Service;
   (4) A representative of the Civilian Agency Acquisition Council (for matters pertaining to the FAR);
   (5) A representative of the National Aeronautics and Space Administration (for matters pertaining to the FAR);
   (6) An advisory consultant from the Defense Contract Audit Agency; and
   (7) Two representatives of each military department and the Defense Logistics Agency (one representing contracting and one representing the contract finance office).

(b) The Committee—
   (1) Advises and assists OUSD(AT&L)/DP in ensuring proper and uniform application of policies, procedures, and forms;
   (2) Is responsible for formulating, revising, and promulgating uniform contract financing regulations;
   (3) May recommend to the Secretary of Defense through OUSD(AT&L)/DP further policy directives on financing; and
   (4) Meets at the request of the Chair or a member.

[63 FR 11535, Mar. 9, 1998, as amended by 65 FR 39706, June 27, 2000]

232.072 Financial responsibility of contractors.

Use the policies and procedures in this section in determining the financial capability of current or prospective contractors.

[63 FR 11535, Mar. 9, 1998]

232.072–1 Required financial reviews.

The contracting officer shall perform a financial review when the contracting officer does not otherwise have sufficient information to make a positive determination of financial responsibility. In addition, the contracting officer shall consider performing a financial review—

(a) Prior to award of a contract, when—
   (1) The contractor is on a list requiring preaward clearance or other special clearance before award;
   (2) The contractor is listed on the Consolidated List of Contractors Indebted to the Government (Hold-Up List), or is otherwise known to be indebted to the Government;
   (3) The contractor may receive Government assets such as contract financing payments or Government property;
   (4) The contractor is experiencing performance difficulties on other work; or
   (5) The contractor is a new company or a new supplier of the item.

(b) At periodic intervals after award of a contract, when—
   (1) Any of the conditions in paragraphs (a)(2) through (a)(5) of this subsection are applicable; or
   (2) There is any other reason to question the contractor’s ability to finance performance and completion of the contract.

[63 FR 11535, Mar. 9, 1998]
232.072–2 Appropriate information.

(a) The contracting officer shall obtain the type and depth of financial and other information that is required to establish a contractor’s financial capability or disclose a contractor’s financial condition. While the contracting officer should not request information that is not necessary for protection for the Government’s interests, the contracting officer must insist upon obtaining the information that is necessary. The unwillingness or inability of a contractor to present reasonably requested information in a timely manner, especially information that a prudent business person would be expected to have and to use in the professional management of a business, may be a material fact in the determination of the contractor’s responsibility and prospects for contract completion.

(b) The contracting officer shall obtain the following information to the extent required to protect the Government’s interest. In addition, if the contracting officer concludes that information not listed in paragraphs (b)(1) through (b)(10) of this subsection is required to comply with 232.072–1, that information should be requested. The information must be for the person(s) who are legally liable for contract performance. If the contractor is not a corporation, the contracting officer shall obtain the required information for each individual/joint venturer/partner:

1. Balance sheet and income statement—
   (i) For the current fiscal year (interim);
   (ii) For the most recent fiscal year and, preferably, for the 2 preceding fiscal years. These should be certified by an independent public accountant or by an appropriate officer of the firm; and
   (iii) Forecasted for each fiscal year for the remainder of the period of contract performance.

2. Summary history of the contractor and its principal managers, disclosing any previous insolvencies—corporate or personal, and describing its products or services.

3. Statement of all affiliations disclosing—
   (i) Material financial interests of the contractor;
   (ii) Material financial interests in the contractor;
   (iii) Material affiliations of owners, officers, directors, major stockholders; and
   (iv) The major stockholders if the contractor is not a widely-traded, publicly-held corporation.

4. Statement of all forms of compensation to each officer, manager, partner, joint venturer, or proprietor, as appropriate—
   (i) Planned for the current year;
   (ii) Paid during the past 2 years; and
   (iii) Deferred to future periods.

5. Business base and forecast that—
   (i) Shows, by significant markets, existing contracts and outstanding offers, including those under negotiation; and
   (ii) Is reconcilable to indirect cost rate projections.

6. Cash forecast for the duration of the contract (see 232.072–3).

7. Financing arrangement information that discloses—
   (i) Availability of cash to finance contract performance;
   (ii) Contractor’s exposure to financial crisis from creditor’s demands;
   (iii) Degree to which credit security provisions could conflict with Government title terms under contract financing;
   (iv) Clearly stated confirmations of credit with no unacceptable qualifications;
   (v) Unambiguous written agreement by a creditor if credit arrangements include deferred trade payments or creditor subordinations/repayment suspensions.

8. Statement of all state, local, and Federal tax accounts, including special mandatory contributions, e.g., environmental superfund.

9. Description and explanation of the financial effect of issues such as—
   (i) Leases, deferred purchase arrangements, or patent or royalty arrangements;
   (ii) Insurance, when relevant to the contract;
   (iii) Contemplated capital expenditures, changes in equity, or contractor debt load;
   (iv) Pending claims either by or against the contractor;
(v) Contingent liabilities such as guarantees, litigation, environmental, or product liabilities;
(vi) Validity of accounts receivable and actual value of inventory, as assets; and
(vii) Status and aging of accounts payable.
(10) Significant ratios such as—
(i) Inventory to annual sales;
(ii) Inventory to current assets;
(iii) Liquid assets to current assets;
(iv) Liquid assets to current liabilities;
(v) Current assets to current liabilities; and
(vi) Net worth to net debt.
[63 FR 11535, Mar. 9, 1998]

232.072–3 Cash flow forecasts.

(a) A contractor must be able to sustain a sufficient cash flow to perform the contract. When there is doubt regarding the sufficiency of a contractor’s cash flow, the contracting officer should require the contractor to submit a cash flow forecast covering the duration of the contract.

(b) A contractor’s inability of refusal to prepare and provide cash flow forecasts or to reconcile actual cash flow with previous forecasts is a strong indicator of serious managerial deficiencies or potential contract cost or performance problems.

(c) Single or one-time cash flow forecasts are of limited forecasting power. As such, they should be limited to preaward survey situations. Reliability of cash flow forecasts can be established only by comparing a series of previous actual cash flows with the corresponding forecasts and examining the causes of any differences.

(d) Cash flow forecasts must—
(1) Show the origin and use of all material amounts of cash within the entire business unit responsible for contract performance, period by period, for the length of the contract (or until the risk of a cash crisis ends); and
(2) Provide an audit trail to the data and assumptions used to prepare it.

(e) Cash flow forecasts can be no more reliable than the assumptions on which they are based. Most important of these assumptions are—
(1) Estimated amounts and timing of purchases and payments for materials, parts, components, subassemblies, and services;
(2) Estimated amounts and timing of payments of purchase or production of capital assets, test facilities, and tooling;
(3) Amounts and timing of fixed cash charges such as debt installments, interest, rentals, taxes, and indirect costs;
(4) Estimated amounts and timing of payments for projected labor, both direct and indirect;
(5) Reasonableness of projected manufacturing and production schedules;
(6) Estimated amounts and timing of billings to customers (including progress payments), and customer payments;
(7) Estimated amounts and timing of cash receipts from lenders or other credit sources, and liquidation of loans; and
(8) Estimated amount and timing of cash receipt from other sources.

(f) The contracting officer should review the assumptions underlying the cash flow forecasts. In determining whether the assumptions are reasonable and realistic, the contracting officer should consult with—
(1) The contractor;
(2) Government personnel in the areas of finance, engineering, production, cost, and price analysis; or
(3) Prospective supply, subcontract, and loan or credit sources.
[63 FR 11536, Mar. 9, 1998]

Subpart 232.1—Non-Commercial Item Purchase Financing

SOURCE: 63 FR 11536, Mar. 9, 1998, unless otherwise noted.

232.102 Description of contract financing methods.

(e)(2) Progress payments based on percentage or stage of completion are authorized only for contracts for construction (as defined in FAR 36.102), shipbuilding, and ship conversion, alteration, or repair. However, percentage or stage of completion methods of measuring contractor performance may be used for performance-based payments in accordance with FAR Subpart 32.10.
232.102–70 Provisional delivery payments.

(a) The contracting officer may establish provisional delivery payments to pay contractors for the costs of supplies and services delivered to and accepted by the Government under the following contract actions if indefinitized:

(1) Letter contracts contemplating a fixed-price contract.
(2) Orders under basic ordering agreements.
(3) Spares provisioning documents annexed to contracts.
(4) Unpriced equitable adjustments on fixed-price contracts.
(5) Orders under indefinite-delivery contracts.

(b) Provisional delivery payments shall be—

(1) Used sparingly;
(2) Priced conservatively; and
(3) Reduced by liquidating previous progress payments in accordance with the Progress Payments clause.

(c) Provisional delivery payments shall not—

(1) Include profit;
(2) Exceed funds obligated for the indefinitized contract action; or
(3) Influence the definitized contract price.


See 232.070 for offices to be consulted regarding financial matters with DoD.

Subpart 232.2—Commercial Item Purchase Financing

Source: 63 FR 11537, Mar. 9, 1998, unless otherwise noted.


(a)(2) When determining whether an offeror’s financial condition is adequate security, see 232.072–2 and 232.072–3 for guidance. It should be noted that an offeror’s financial condition may be sufficient to make the contractor responsible for award purposes, but may not be adequate security for commercial contract financing.

232.206 Solicitation provisions and contract clauses.

(d) Instructions for multiple appropriations. If the contract contains foreign military sales requirements, the contracting officer shall provide instructions for distribution of the contract financing payments to each country’s account.

(f) Prompt payment for commercial purchase payments. The contracting officer shall incorporate the following standard prompt payment terms for commercial item contract financing:

(i) Commercial advance payments: The contractor entitlement date specified in the contract, or 30 days after receipt by the designated billing office of a proper request for payment, whichever is later.

(ii) Commercial interim payments: The contractor entitlement date specified in the contract, or 14 days after receipt by the designated billing office of a proper request for payment, whichever is later. The prompt payment standards for commercial delivery payments shall be the same as specified in FAR Subpart 32.9 for invoice payments for the item delivered.

(g) Installment payment financing for commercial items. Installment payment financing shall not be used for DoD contracts, unless market research has established that this form of contract financing is both appropriate and customary in the commercial marketplace. When installment payment financing is used, the contracting officer shall use the ceiling percentage of contract price that is customary in the particular marketplace (not to exceed the maximum rate established in FAR 52.232–30).

232.207 Administration and payment of commercial financing payments.

(b)(2) If the contract contains foreign military sales requirements, each approval shall specify the amount of contract financing to be charged to each country’s account.
Subpart 232.3—Loan Guarantees for Defense Production

232.302 Authority.
(a) The use of guaranteed loans as a contract financing mechanism requires the availability of certain congressional authority. The DoD has not requested such authority in recent years, and none is now available.

Subpart 232.4—Advance Payments

232.404 Exclusions.
(a)(9) The requirements of FAR subpart 32.4 do not apply to advertisements in high school and college publications for military recruitment efforts under 10 U.S.C. 503 when the contract cost does not exceed $500.

232.409 Contracting officer action.
232.409-1 Recommendation for approval.
To ensure uniform application of this subpart (see FAR 32.402(e)(1)), the departmental/agency contract financing office shall prepare the documents required by FAR 32.409-1 (e) and (f).

232.410 Findings, determination, and authorization.
(b) If an advance payment procedure is used without a special bank account, replace paragraph (a)(4) of the Findings, Determination, and Authorization for Advance Payments at FAR 32.410 with:

(d) The proposed advance payment clause contains appropriate provisions as security for advance payments. These provisions include a requirement that the outstanding advance payments will be liquidated from cost reimbursements as they become due the contractor. This security is considered adequate to protect the interest of the Government.

232.412 Contract clause.
232.412-70 Additional clauses.
(a) Use the clause at 252.232-7000, Advance Payment Pool, in any contract that will be subject to the terms of an advance payment pool agreement with a nonprofit organization or educational institution. Normally, use the clause in all cost reimbursement type contracts with the organization or institution.
(b) Use the clause at 252.232-7001, Disposition of Payments, in contracts when payments under the contract are to be made by a disbursing office not designated in the advance payment pool agreement.
(c) Use the clause at 252.232-7005, Reimbursement of Subcontractor Advance Payments-DoD Pilot Mentor-Protege Program, when advance payments will be provided by the contractor to a subcontractor pursuant to an approved mentor-protege agreement (See subpart 219.71).

232.470 Advance payment pool.
(a) An advance payment pool agreement—
1) Is a means of financing the performance of more than one contract held by a single contractor;
2) Is especially convenient for the financing of cost-type contracts with nonprofit educational or research institutions for experimental or research and development work when several contracts require financing by advance payments. When appropriate, pooled advance payments may also be used to finance other types of contracts held by a single contractor; and
3) May be established—
   (i) Without regard to the number of appropriations involved;
   (ii) To finance contracts for one or more department(s) or contracting activity(ies); or
   (iii) In addition to any other advance payment pool agreement at a single contractor location when it is more convenient or otherwise preferable to have more than one agreement.

Subpart 232.5—Progress Payments Based on Costs

232.501 General.
232.501-1 Customary progress payment rates.
(a) The customary progress payment rates for DoD contracts, including contracts that contain foreign military
sales (FMS) requirements, are 80 percent for large business concerns, 90 percent for small business concerns, and 95 percent for small disadvantaged business concerns.

[66 FR 49865, Oct. 1, 2001]

232.501–2 Unusual progress payments.

(a) Unusual progress payment arrangements require the advance approval of the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)DP). Contracting officers must submit all unusual progress payment requests to the department or agency contract financing office for approval, coordination with the Contract Finance Committee (see 232.071), and submission to OUSD(AT&L)DP.

[65 FR 39722, June 27, 2000]


(b) The contracting officer may approve progress payments when the contract price exceeds the funds obligated under the contract; provided, the contract contains an appropriate Limitation of Funds clause. However, the contracting officer must limit such payments to the lesser of—

(i) The applicable rate (i.e., the lower of the progress payment rate, the liquidation rate, or the loss-ratio adjusted rate); or
(ii) 100 percent of the funds obligated.

[56 FR 36409, July 31, 1991, as amended at 60 FR 29499, June 5, 1995; 65 FR 39722, June 27, 2000]

232.502 Preaward matters.

232.502–1 Use of customary progress payments.

(b)(1) If the contractor is a small disadvantaged business, progress payments may be provided when the contract will involve $50,000 or more.


(a) Use the clause at 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, in solicitations and contracts that—

(i) Contain FMS requirements; and
(ii) Provide for progress payments.

(b) Use the clause at 252.232–7004, DoD Progress Payment Rates, instead of Alternate I of the clause at FAR 52.232–16, if the contractor is a small business or small disadvantaged business concern.


232.503 Postaward matters.

232.503–6 Suspension or reduction of payments.

(b) Contractor noncompliance. See also 242.7503.

(g) Loss contracts. Use the following loss ratio adjustment procedures for making adjustments required by FAR 32.503–6(f) and (g)—

(i) Except as provided in paragraph (g)(ii) of this subsection, the contracting officer must prepare a supplementary analysis of the contractor’s request for progress payments and calculate the loss ratio adjustment using the procedures in FAR 32.503–6(g).

(ii) The contracting officer may request the contractor to prepare the supplementary analysis as an attachment to the progress payment request when the contracting officer determines that the contractor’s methods of estimating the “Costs to Complete” are reliable, accurate, and not susceptible to improper influences.

(iii) To maintain an audit trail and permit verification of calculations, do not make the loss ratio adjustments by altering or replacing data on the contractor’s original request for progress payment (SP 1483, Contractor’s Request for Progress Payment, or computer generated equivalent).

[56 FR 36409, July 31, 1991, as amended at 60 FR 29499, June 5, 1995; 65 FR 39722, June 27, 2000]


(d) An administrative contracting officer (ACO) determination that the contractor’s material management and accounting system conforms to the standard at 252.242–7004(f)(7) constitutes the contracting officer approval requirement of FAR 32.503–15(d).

Prior to granting blanket approval of
cost transfers between contracts, the ACO should determine that—
(i) The contractor retains records of the transfer activity that took place in the prior month;
(ii) The contractor prepares, at least monthly, a summary of the transfer activity that took place in the prior month; and
(iii) The summary report includes as a minimum, the total number and dollar value of transfers.

Subpart 232.6—Contract Debts

232.605 Responsibilities and cooperation among Government officials.

(b) Disbursing officers are those officials designated to make payments under a contract or to receive payments of amounts due under a contract. At installations where integrated accounting is in effect, the finance and accounting officer is a disbursing officer. The disbursing officer is responsible for determining the amount and collecting contract debts whenever overpayments or erroneous payments have been made. The disbursing officer also has primary responsibility when the amounts due and dates for payment are contained in the contract, and a copy of the contract has been furnished to the disbursing officer with notice to collect as amounts become due.

232.606 Debt determination and collection.

(c)(9)(vii) Upon transfer of a case to the contract financing office, the contracting officer shall close the debt record by reference to the date of transfer.

232.610 Demand for payment of contract debt.

(a)(i) For contract debts resulting from other than a termination for default, the office which first determines an amount due, whether it be the contract administration office, the contracting office, the disbursing office, or the selling office/agency, shall—
(A) Make a demand for payment; and
(B) Provide a copy of the demand to the payment office cited in the contract.
(ii) For contract debts resulting from a termination for default, the contracting officer shall make the demand and direct the debtor to make such payment to the designated office.
(b)(3) The contracting office shall forward deferment requests to the contract financing office of the contracting department or agency for a decision on granting the deferment.

232.616 Compromise actions.

Only the department/agency contract financing offices (232.108(1)) are authorized to compromise debts covered by this subpart.

232.617 Contract clause.

(a) The DoD Contract Finance Committee, with the approval of the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)DP), may exempt the contracts in FAR 32.617(a) (2) through (5) and other contracts, in exceptional circumstances, from the administrative interest charges required by this subpart.
(a)(7) Other exceptions—
(A) Contracts for instructions of military or ROTC personnel at civilian schools, colleges, and universities;
(B) Basic agreements with telephone companies for communications services and facilities, and purchases under such agreements; and
(C) Transportation contracts with common carriers for common carrier services.

232.670 Transfer of responsibility for debt collection.

Disbursing officers will transfer responsibility for debt collection to departmental/agency contract financing offices in accordance with comptroller regulations. Notwithstanding the transfer of the debt collection responsibility, contracting officers shall continue to provide assistance as requested by the debt collection office.
232.671 Bankruptcy reporting.
(a) For those debts covered by this subpart, the department or agency which awarded the contract shall furnish the Department of Justice any claims in bankruptcy, insolvency, or in proceedings for reorganization or arrangement. Furnish claims which—
(1) Have been transferred to a contract financing office;
(2) Are on the way to a contract financing office at the inception of bankruptcy or insolvency proceedings;
(3) Are pending and not forwarded to a contract financing office at the inception of bankruptcy or insolvency proceedings; and
(4) Are the result of bankruptcy or insolvency proceedings.
(b) The contract financing office or other office designated within a department or agency will furnish proof of claims to the Department of Justice.
(c) The office of origin of a debt will provide, as soon as possible, information on a bankruptcy, insolvency, reorganization, or rearrangement to the office designated within a department or agency to receive this information.
(d) The information and proof of claim requirements in paragraphs (b) and (c) of this section do not apply to debts of less than $600.

Subpart 232.7—Contract Funding

SOURCE: 58 FR 46092, Sept. 1, 1993, unless otherwise noted.

232.702 Policy.
Fixed-price contracts shall be fully funded except as permitted by 232.703–1.

232.703 Contract funding requirements.

232.703–1 General.
(1) A fixed-price contract may be incrementally funded only if—
   (i) The contract is funded with research and development appropriations;
   (ii) Congress has otherwise incrementally appropriated program funds; or
   (iii) The head of the contracting activity approves the use of incremental funding for either base services contracts or hazardous/toxic waste remediation contracts.
   (2) Incrementally funded fixed-price contracts shall be fully funded as soon as practicable after full funding is available.

232.703–3 Contracts crossing fiscal years.
   (b) The contracting officer may enter into a contract, exercise an option, or place an order under a contract for separable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed 1 year (10 U.S.C. 2410a).

[64 FR 28110, May 25, 1999]

232.703–70 Military construction appropriations act restriction.
Annual military construction appropriations acts restrict the use of funds appropriated by the acts for payments under cost-plus-fixed-fee contracts (see 216.306(c)).

[61 FR 7744, Feb. 29, 1996]

232.704 Limitation of cost or funds.

232.704–70 Incrementally funded fixed-price contracts.
   (a) Upon receipt of the contractor's notice under paragraph (c) of the clause at 232.232–7007, Limitation of Government’s Obligation, the contracting officer shall promptly provide written notice to the contractor that the Government is—
   (1) Allotting additional funds for continued performance and increasing the Government’s limitation of obligation in a specified amount;
   (2) Terminating the contract; or
   (3) Considering whether to allot additional funds; and
   (i) The contractor is entitled by the contract terms to stop work when the Government’s limitation of obligation is reached; and
   (ii) Any costs expended beyond the Government’s limitation of obligation are at the contractor’s risk.
   (b) Upon learning that the contract will receive no further funds, the contracting officer shall promptly give the contractor written notice of the Government’s decision and terminate for the convenience of the Government.
(c) The contracting officer shall ensure that, in accordance with paragraph (b) of the clause at 252.232–7007, Limitation of Government’s Obligation, sufficient funds are allotted to the contract to cover the total amount payable to the contractor in the event of termination for the convenience of the Government.

232.705 Contract clauses.

232.705–70 Clause for limitation of Government’s obligation.

Use the clause at 252.232–7007, Limitation of Government’s Obligation, in solicitations and resultant incrementally funded fixed-price contracts. The contracting officer may revise the contractor’s notification period, in paragraph (c) of the clause, from “ninety” to “thirty” or “sixty” days, as appropriate.

Subpart 232.8—Assignment of Claims

232.803 Policies.

(b) Only contracts for personal services may prohibit the assignment of claims.

(d) Pursuant to Section 3737(e) of the Revised Statutes (41 U.S.C. 15), and in accordance with Presidential delegation dated October 3, 1993, Secretary of Defense delegation dated February 5, 1996, and Under Secretary of Defense (Acquisition, Technology, and Logistics) delegation dated February 23, 1996, the Director of Defense Procurement determined on May 10, 1996, that a need exists for DoD to agree not to reduce or set off any money due or to become due under the contract when the proceeds under the contract have been assigned in accordance with the Assignment of Claims provision of the contract. This determination was published in the FEDERAL REGISTER on June 11, 1996, as required by law. Nevertheless, if departments/agencies decide it is in the Government’s interests, or if the contracting officer makes a determination in accordance with FAR 32.803(d) concerning a significantly indebted offeror, they may exclude the no-setoff commitment.


232.805 Procedure.

(b) The assignee shall forward—

(i) To the administrative contracting officer (ACO), a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The ACO shall acknowledge receipt by signing and dating all copies of the notice of assignment and shall—

(A) File the true copy of the instrument of assignment and the original of the notice in the contract file;

(B) Forward two copies of the notice to the disbursing officer of the payment office cited in the contract;

(C) Return a copy of the notice to the assignee; and

(D) Advise the contracting officer of the assignment.

(ii) To the surety or sureties, if any, a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The surety shall return three acknowledged copies of the notice to the assignee, who shall forward two copies to the disbursing officer designated in the contract.

(iii) To the disbursing officer of the payment office cited in the contract, a true copy of the instrument of assignment and an original and one copy of the notice of assignment. The disbursing officer shall acknowledge and return to the assignee the copy of the notice and shall file the true copy of the instrument and original notice.

232.806 Contract clause.

(a)(1) Use the clause at 252.232–7008, Assignment of Claims (Overseas), instead of the clause at FAR 52.232–23, Assignment of Claims, in solicitations and contracts when contract performance will be in a foreign country.

(2) Use Alternate I with the clause at FAR 52.232–23, Assignment of Claims, unless otherwise authorized under 232.803(d).
Subpart 232.9—Prompt Payment

232.903 Policy.
DoD policy is to assist small disadvantaged business concerns by paying them as quickly as possible after invoices are received and before normal payment due dates established in the contract (see 232.905(2)).

232.905 Invoice payments.
(1) In most cases, Government acceptance or approval can occur within the 7 day constructive acceptance period specified in the FAR Prompt Payment clauses. Government payment of construction progress payments can, in most cases, be made within the 14 day period allowed by the Prompt Payment for Construction Contracts clause. While the contracting officer may specify a longer period because the period specified in the contract is not reasonable or practical, such change should be coordinated with the Government offices responsible for acceptance or approval and for payment. Reasons for specifying a longer period include but are not limited to: the nature of the work or supplies or services, inspection or testing requirements, shipping and acceptance terms, and resources available at the acceptance activity. A constructive acceptance period of less than the cited 7 or 14 days is not authorized.

(2) Designated payment offices are encouraged to pay small disadvantaged business (SDB) concerns as quickly as possible after invoices are received and before normal payment due dates established in the contract. The restrictions of FAR 32.903 prohibiting early payment do not apply to invoice payments made to SDBs. Contractors shall not, however, be entitled to interest penalties if invoice payments are not made before the normal payment due dates established in the contract.

232.1001 Policy.
(d) The contracting officer shall use the following standard prompt payment terms for performance-based payments: The contractor entitlement date, if any, specified in the contract, or 14 days after receipt by the designated billing office of a proper request for payment, whichever is later.

232.1004 Procedure.
(c) Instructions for multiple appropriations. If the contract contains foreign
military sales requirements, the contracting officer shall provide instructions for distribution of the contract financing payments to each country’s account.

232.1007 Administration and payment of performance-based payments.
(b)(2) If the contract contains foreign military sales requirements, each approval shall specify the amount of contract financing to be charged to each country’s account.

Subpart 232.11—Electronic Funds Transfer

232.1108 Payment by Governmentwide commercial purchase card.
The Governmentwide commercial purchase card is the mandatory EFT payment method for purchases valued at or below the micropurchase threshold, except as provided in 213.270.

232.1110 Solicitation provision and contract clauses.
Use the clause at 252.232-7009, Mandatory Payment by Governmentwide Commercial Purchase Card, in solicitations, contracts, and agreements when—
(1) Placement of orders or calls valued at or below the micropurchase threshold is anticipated; and
(2) Payment by Governmentwide commercial purchase card is required for orders or calls valued at or below the micropurchase threshold under the contract or agreement.

PART 233—PROTESTS, DISPUTES, AND APPEALS

Subpart 233.2—Disputes and Appeals

233.204 Policy.
When it would be helpful in reviewing the current claim, the contracting officer should get information on claims previously filed by the contractor with other contracting officers.

233.204-70 Limitations on payment.
See 10 U.S.C. 2410(b) for limitations on Congressionally directed payment of a claim under the Contract Disputes Act of 1978, a request for equitable adjustment to contract terms, or a request for relief under Pub. L. 85-804.

233.210 Contracting officer’s authority.
DFARS 243.105(a) limits contracting officer authority.

233.215 Contract clause.
Use Alternate I of the clause at FAR 52.233-1, Disputes, when—
(1) The acquisition is for—
(i) Aircraft
(ii) Spacecraft and launch vehicles
(iii) Naval vessels
(iv) Missile systems
(v) Tracked combat vehicles
(vi) Related electronic systems;
(2) The contracting officer determines that continued performance is—
(i) Vital to the national security, or
(ii) Vital to the public health and welfare; or
(3) The head of the contracting activity determines that continued performance is necessary pending resolution of any claim that might arise under or be related to the contract.

233.215-70 Additional contract clause.
Use the clause at 252.233-7001, Choice of Law (Overseas), in solicitations and contracts when contract performance will be outside of the United States, its possessions, and Puerto Rico, unless otherwise provided for in a government-to-government agreement.
SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 234—MAJOR SYSTEM ACQUISITION

Sec. 234.001 Definitions.
234.003 Responsibilities.
234.005 General requirements.
234.005–70 Earned value management systems.
234.005–71 Solicitation provision and contract clause.


234.001 Definitions.

Systems means a combination of elements that will function together to produce the capabilities required to fulfill a mission need.

Systems acquisition means the design, development, and production of new systems. It also includes modifications to existing systems that involve redesign of the systems or subsystems.

[60 FR 61598, Nov. 30, 1995]

234.003 Responsibilities.

DoD 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 the DoD implementation of OMB Circular A–109.


234.005 General requirements.

234.005–70 Earned value management systems.

When an offeror provides an earned value management system (EVMS) plan as part of its proposal in accordance with paragraph (b) of the provision at 252.234–7000, the contracting officer shall forward a copy of the plan to the cognizant administrative contracting officer (ACO). The procuring contracting officer shall obtain the assistance of the ACO in determining the adequacy of the proposed EVMS plan.


PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

Sec. 235.001 Definitions.
235.006 Contracting methods and contract type.
235.006–70 Manufacturing Technology Program.
235.007 Solicitations.
235.010 Scientific and technical reports.
235.015 Contracts for research with educational institutions and nonprofit organizations.
235.015–70 Special use allowances for research facilities acquired by educational institutions.
235.016 Broad agency announcement.
235.017 Federally Funded Research and Development Centers.
235.017–1 Sponsoring agreements.
235.070 Indemnification against unusually hazardous risks.
235.070–1 Indemnification under research and development contracts.
235.070–2 Indemnification under contracts involving both research and development and other work.
235.070–3 Contract clauses.
235.071 Additional contract clauses.

Subpart 235.70—Research and Development Streamlined Contracting Procedures

235.7000 Scope.
235.7001 Definitions.
235.7002 Applicability.
235.7003 Research and development streamlined solicitation and contract.
235.7003–1 General.
235.7003–2 RDSS process.
235.7003–3 Proposal evaluation and contract award.
235.7003–4 Additional provisions and clauses.
235.001 Definitions.

"Research and development" means those efforts described by the Research, Development, Test, and Evaluation (RDT&E) budget activity definitions found in the DoD Financial Management Regulation (DoD 7000.14-R), Volume 2B, Chapter 5.

235.006 Contracting methods and contract type.

(b)(i) Do not award a fixed-price type contract for a development program effort unless—
(A) The level of program risk permits realistic pricing;
(B) The use of a fixed-price type contract permits an equitable and sensible allocation of program risk between the Government and the contractor; and
(C) A written determination that the criteria of paragraphs (b)(i)(A) and (B) of this section have been met is executed—
(1) By the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) for—
(i) Research and development for non-major systems, if the contract is over $25 million;
(ii) The lead ship of a class; or
(iii) The development of a major system (as defined in FAR 2.101) or subsystem thereof, if the contract is over $25 million; or
(2) By the contracting officer for any development not covered by paragraph (b)(i)(C)(1) of this section.

(ii) Obtain USD (AT&L) approval of the Government’s prenegotiation position before negotiations begin, and obtain USD (AT&L) approval of the negotiated agreement with the contractor before the agreement is executed, for any action that is—
(A) An increase of more than $250 million in the price or ceiling price of a fixed-price type development contract, or a fixed-price type contract for the lead ship of a class;
(B) A reduction in the amount of work under a fixed-price type development contract or a fixed-price type contract for the lead ship of a class, when the value of the work deleted is $100 million or more; or
(C) A repricing of fixed-price type production options to a development contract, or a contract for the lead ship of a class, that increases the price or ceiling price by more than $250 million for equivalent quantities.

(iii) Notify the USD (AT&L) of an intent not to exercise a fixed-price production option on a development contract for a major weapon system reasonably in advance of the expiration of the option exercise period.

235.006–70 Manufacturing Technology Program.

In accordance with 10 U.S.C. 2525(d), for acquisitions under the Manufacturing Technology Program—
(a) Award all contracts using competitive procedures; and
(b) Include in all solicitations an evaluation factor that addresses the extent to which offerors propose to share in the cost of the project (see FAR 15.304).

235.007 Solicitations.

(g) To ensure that prospective offerors fully understand the details of the work, the contracting officer may include the Government’s estimate of the man-year effort under a research contract.

235.010 Scientific and technical reports.

(b) The Defense Technical Information Center (DTIC) is responsible for collecting all scientific or technological observations, findings, recommendations, and results derived from DoD endeavors, including both in-house and contracted efforts. The DTIC has eligibility and registration requirements for use of its services. Requests for eligibility and registration information should be addressed to DTIC-BCS, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060-0944.

235.015 Contracts for research with educational institutions and non-profit organizations.

(b) Basic agreements.

(3) When using a basic agreement—

(i) Incorporate it by reference in section I of the contract; and

(ii) Incorporate any special clause requirements in section H.

[59 FR 27673, May 27, 1994]

235.015–70 Special use allowances for research facilities acquired by educational institutions.

(a) Definitions. As used in this subsection—

(1) Research facility means—

(i) Real property, other than land; and

(ii) Includes structures, alterations, and improvements, acquired for the purpose of conducting scientific research under contracts with departments and agencies of the DoD.

(2) Special use allowance means a negotiated direct or indirect allowance—

(i) For construction or acquisition of buildings, structures, and real property, other than land; and

(ii) Where the allowance is computed at an annual rate exceeding the rate which normally would be allowed under FAR subpart 31.3.

(b) Policy. (1) Educational institutions are to furnish the facilities necessary to perform Defense contracts. FAR 31.3 governs how much the Government will reimburse the institution for the research programs. However, in extraordinary situations, the Government may give special use allowances to an educational institution when the institution is unable to provide the capital for new laboratories or expanded facilities needed for Defense contracts.

(2) Decisions to provide a special use allowance must be made on a case-by-case basis, using the criteria in paragraph (c) of this subsection.

(c) Authorization for special use allowance. The head of a contracting activity may approve special use allowances only when all of the following conditions are met—

(1) The research facility is essential to the performance of DoD contracts;

(2) Existing Government or nongovernment, cannot meet program requirements practically or effectively;

(3) The proposed agreement for special use allowances is a sound business arrangement;

(4) The Government’s furnishing of Government-owned facilities is undesirable or impractical; and

(5) The proposed use of the research facility is to conduct essential Government research which requires the new or expanded facilities.

(d) Application of the special use allowance. (1) In negotiating a special use allowance—

(i) Compare the needs of DoD and of the institution for the research facility to determine the amount of the special use allowance;

(ii) Consider rental costs for similar space in the area where the research facility is or will be located to establish the annual special use allowance;

(iii) Do not include or allow—

(A) The costs of land; or

(B) Interest charges on capital;

(iv) Do not include maintenance, utilities, or other operational costs;

(v) The period of allowance generally will be—

(A) At least ten years; or

(B) A shorter period if the total amount to be allowed is less than the construction or acquisition cost for the research facility;

(vi) Generally, provide for allocation of the special use allowance equitably among the Government contracts using the research facility;

(vii) Special use allowances apply only in the years in which the Government has contracts in effect with the institution. However, if in any given year there is a reduced level of Government research effort which results in the special use allowance being excessive compared to the Government research funding, a separate special use allowance may be negotiated for that year;

(viii) Special use allowances may be adjusted for the period before construction is complete if the facility is partially occupied and used for Government research during that period.

(2) A special use allowance may be based on either total or partial cost of construction or acquisition of the research facility.
Department of Defense

235.070 Indemnification against unusually hazardous risks.

(a) Under 10 U.S.C. 2354, and if authorized by the Secretary concerned, contracts for research and/or development may provide for indemnification of the contractor or subcontractors for—

(1) Claims by third persons (including employees) for death, bodily injury, or loss of or damage to property; and

(2) Loss of or damage to the contractor’s property to the extent that the liability, loss, or damage—

(i) Results from a risk that the contract defines as “unusually hazardous”; and

(ii) Arises from the direct performance of the contract; and

(iii) Is not compensated by insurance or other means.

235.017 Federally Funded Research and Development Centers.

(a) Policy.

(2) No DoD fiscal year 1992 or later funds may be obligated or expended to finance activities of a DoD Federally Funded Research and Development Center (FFRDC) if a member of its board of directors or trustees simultaneously serves on the board of directors or trustees of a profit-making company under contract to DoD, unless the FFRDC has a DoD-approved conflict of interest policy for its members (section 8107 of Pub. L. 102–172 and similar sections in subsequent Defense appropriations acts).

[58 FR 28471, May 13, 1993]

235.017–1 Sponsoring agreements.

(c)(4) DoD-sponsoring FFRDCs that function primarily as research laboratories (C3I Laboratory operated by the Institute for Defense Analysis, Lincoln Laboratory operated by Massachusetts Institute of Technology, and Software Engineering Institute) may respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology (Section 217, Public Law 103–337).

[60 FR 61598, Nov. 30, 1995]
(b) Clearly define the specific unusually hazardous risks to be indemnified. Submit this definition for approval with the request for authorization to grant indemnification. Include the approved definition in the contract.

[56 FR 36416, July 31, 1991, as amended at 64 FR 51076, Sept. 21, 1999]

235.070–2 Indemnification under contracts involving both research and development and other work.

These contracts may provide for indemnification under the authority of both 10 U.S.C. 2354 and Public Law 85–804. Public Law 85–804 will apply only to work to which 10 U.S.C. 2354 does not apply. Actions under Public Law 85–804 must also comply with FAR subpart 50.4.

235.070–3 Contract clauses.

When the contractor is to be indemnified in accordance with 235.070–1, use either—

(a) The clause at 252.235–7000, Indemnification Under 10 U.S.C. 2354—Fixed Price; or

(b) The clause at 252.235–7001, Indemnification Under 10 U.S.C. 2354—Cost-Reimbursement, as appropriate.

235.071 Additional contract clauses.

(a) Use the clause at 252.235–7002, Animal Welfare, or one substantially the same, in solicitations and contracts awarded in the United States, its possessions, and Puerto Rico involving research on live vertebrate animals.

(b) Use the clause at 252.235–7003, Frequency Authorization, in solicitations and contracts for developing, producing, constructing, testing, or operating a device requiring a frequency authorization.

(c) Use the clause at 252.235–7010, Acknowledgement of Support and Disclaimer, in solicitations and contracts for research and development.

(d) Use the clause at 252.235–7011, Final Scientific or Technical Report, in solicitations and contracts for research and development.

[56 FR 36416, July 31, 1991, as amended at 60 FR 29600, June 5, 1995]
(5) Acquisition of laboratory supplies and equipment, base support services, or other services identified in paragraphs (a) through (h) of the definition of "service contract" at FAR 37.101.

(c) Regardless of whether the RDSS is used, the RDSC may be used for any acquisition that meets the criteria in paragraph (a) of this section.

235.7003 Research and development streamlined solicitation and contract.

235.7003–1 General.

The procedures and standard format are published at the RDSS/C website. The RDSS/C Managing Committee is responsible for updating the website.

235.7003–2 RDSS process.

(a) Synopsis. The synopsis required by FAR 5.203 shall include—

(1) The information required by FAR 5.207; and

(2) A statement that the solicitation will be issued in the research and development streamlined solicitation format shown at the RDSS/C Web site.

(b) Solicitation.

(1) The solicitation, to be made available consistent with the requirements of FAR 5.102—

(i) Shall be in the format shown at the RDSS/C Web site;

(ii) Shall include the applicable version number of the RDSS standard format; and

(iii) Shall incorporate by reference the appropriate terms and conditions of the RDSS standard format.

(2) To encourage preparation of better cost proposals, consider allowing a delay between the due dates for technical and cost proposals.

[67 FR 20699, Apr. 26, 2002]

235.7003–3 Proposal evaluation and contract award.

(a) Evaluate proposals in accordance with the evaluation factors set forth in the RDSS.

(b) RDSC. (1) The RDSC shall include—

(i) Standard Form (SF) 33, Solicitation, Offer and Award, or SF 26, Award/Contract; and

(ii) Sections B through J of the RDSS or other solicitation, with applicable fill-in information inserted.

(2) When an RDSC is awarded to an educational or nonprofit institution—

(i) Remove provisions and clauses that do not apply to educational or nonprofit institutions; and

(ii) As necessary, insert appropriate replacement provisions and clauses.

235.7003–4 Additional provisions and clauses.

Use of FAR and DFRAS provisions and clauses, and nonstandard provisions and clauses approved for agency use, that are not in the RDSS/C standard format, shall be approved in accordance with agency procedures.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 236.1—General

Sec. 236.102 Definitions.

Subpart 236.2—Special Aspects of Contracting for Construction

Subpart 236.5—Contract Clauses

Subpart 236.6—Architect-Engineer Services

236.601 Policy.

236.602 Selection of firms for architect-engineer contracts.

236.602–1 Selection criteria.

236.602–2 Evaluation boards.

236.602–4 Selection authority.

236.604 Performance evaluation.

236.606 Negotiations.

236.570 Additional provisions and clauses.

Subpart 236.5—Contract Clauses

236.570 Additional provisions and clauses.
236.102 Definitions.

(1) A–E means architect-engineer.

(2) Construction activity means an activity at any organizational level of the DoD that—
   (i) Is responsible for the architectural, engineering, and other related technical aspects of the planning, design, and construction of facilities; and
   (ii) Receives its technical guidance from the Army Office of the Chief of Engineers, Naval Facilities Engineering Command, or Air Force Directorate of Civil Engineering.

(3) Marshallese firm is defined in the provision at 252.236–7012, Military Construction on Kwajalein Atoll—Evaluation Preference.

(4) Network analysis system means recognized scheduling systems that show the duration, sequential relationship, and interdependence of various work activities, e.g., critical path method.

(5) United States firm is defined in the provisions at 252.236–7010, Overseas Military Construction-Preference for United States Firms, and 252.236–7011, Overseas Architect-Engineer Services—Restriction to United States firms.

236.201 Government estimate of construction costs.

(c)(i) Designate the Government estimate as “For Official Use Only,” unless the information is classified. If it is,
handle the estimate in accordance with security regulations.

(ii) For sealed bid acquisitions—

(A) File a sealed copy of the Government estimate with the bids. (In the case of two-step acquisitions, this is done in the second step.)

(B) After the bids are read and recorded, remove the “For Official Use Only” designation and read and record the estimate as if it were a bid, in the same detail as the bids.

236.204 Disclosure of the magnitude of construction projects.

Additional price ranges are—

(i) Between $10,000,000 and $25,000,000;

(ii) Between $25,000,000 and $100,000,000;

(iii) Between $100,000,000 and $250,000,000;

(iv) Between $250,000,000 and $500,000,000; and

(v) Over $500,000,000.

[61 FR 7749, Feb. 29, 1996]

236.206 Liquidated damages.

See 211.503 for instructions on use of liquidated damages.


236.213 Special procedures for sealed bidding in construction contracting.

236.213-70 Additive or deductive items.

(a) If it appears that sufficient funds may not be available for all the desired construction features, consider using a bid schedule with—

(1) A first or base bid item covering the work generally as specified; and

(2) A list of priorities that contains one or more additive or deductive bid items that progressively add or omit specified features of the work in a stated order of priority. (Normally, do not mix additive and deductive bid items in the same solicitation.)

(b) Before opening the bids, record in the contract file the amount of funds available for the project.

(c) Determine the low bidder and the bid items to be awarded as follows:

(1) Use the recorded amount of available funds to determine the low bidder, which will be the bidder that—

(i) Is otherwise eligible for award; and

(ii) Offers the lowest aggregate amount for the first or base bid item, plus or minus (in order of listed priority), those additive or deductive bid items that provide the most features within the funds available.

(2) Evaluate all bids on the basis of the same additive or deductive bid items.

(i) If adding another item from the bid schedule list of priorities would make the award exceed the available funds, skip that item and go to the next item from the list of priorities.

(ii) Add the next item if an award can be made that includes the item and is still within the available funds.

(3) Use the list of priorities only to determine the low bidder. After determining the low bidder, an award may be made on any contribution if—

(i) It is in the best interests of the Government;

(ii) Funds are available at time of award; and

(iii) The low bidder’s price for the combination is less than the price offered by any other responsive, responsible bidder.

[65 FR 39706, June 27, 2000]

236.270 Expediting construction contracts.

(a) 10 U.S.C. 2858 requires agency head approval to expedite the completion date of a contract funded by a Military Construction Appropriations Act, if additional costs are involved. This approval authority may not be re-delegated. The approval authority must—

(1) Certify that the additional expenditures are necessary to protect the National interest; and

(2) Establish a reasonable completion date for the project.

(b) The contracting officer may approve an expedited completion date if no additional costs are involved.

236.271 Cost-plus-fixed-fee contracts.

Annual military construction appropriations acts restrict the use of cost-plus-fixed-fee contracts (see 216.306(c)).

[61 FR 7749, Feb. 29, 1996]
236.272 Prequalification of sources.

(a) Prequalification procedures may be used when necessary to ensure timely and efficient performance of critical construction projects. Prequalification—

(1) Results in a list of sources determined to be qualified to perform a specific construction contract; and

(2) Limits offerors to those with proven competence to perform in the required manner.

(b) The head of the contracting activity must—

(1) Authorize the use of prequalification by determining, in writing, that a construction project is of an urgency or complexity that requires prequalification; and

(2) Approve the prequalification procedures.

(c) For small businesses, the prequalification procedures must require the qualifying authority to—

(1) Request a preliminary recommendation from the appropriate Small Business Administration regional office, if the qualifying authority believes a small business is not responsible;

(2) Permit the small business to submit a bid or proposal if the preliminary recommendation is that the small business is responsible; and

(3) Follow the procedures in FAR 19.6, if the small business is in line for award and is found nonresponsible.

236.273 Network analysis systems.

Use head of the contracting activity approved procedures for preparing and using network analysis systems, whether contractor prepared, or Government prepared.

236.274 Construction in foreign countries.

(a) In accordance with Section 112 of Pub. L. 105–45 and similar sections in subsequent military construction appropriations acts, military construction contracts funded with military construction appropriations, that are estimated to exceed $1,000,000 and are to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, shall be awarded only to United States firms, unless—

(1) The lowest responsive and responsible offer of a United States firm exceeds the lowest responsive and responsible offer of a foreign firm by more than 20 percent; or

(2) The contract is for military construction on Kwajalein Atoll and the lowest responsive and responsible offer is submitted by a Marshallese firm.

(b) When a technical working agreement with a foreign government is required for a construction contract—

(1) Consider inviting the Army Office of the Chief of Engineers, or the Naval Facilities Engineering Command to participate in the negotiations.

(2) The agreement should, as feasible and where not otherwise provided for in other agreements, cover all elements necessary for the construction that are required by laws, regulations, and customs of the United States and the foreign government, including—

(i) Acquisition of all necessary rights;

(ii) Expeditious, duty-free importation of labor, material, and equipment;

(iii) Payment of taxes applicable to contractors, personnel, materials, and equipment;

(iv) Applicability of workers’ compensation and other labor laws to citizens of the U.S., the host country, and other countries;

(v) Provision of utility services;

(vi) Disposition of surplus materials and equipment;

(vii) Handling of claims and litigation; and

(viii) Resolution of any foreseeable problems that can be appropriately included in the agreement.

236.570 Additional provisions and clauses.

(a) Use the following clauses in all fixed-price construction solicitations and contracts—

(1) 252.236-7000, Modification Proposals-Price Breakdown; and

Department of Defense

236.602–1

(2) 252.236–7001, Contract Drawings and Specifications.

(b) Use the following provisions and clauses in fixed-price construction contracts and solicitations as applicable—

(1) 252.236–7002, Obstruction of Navigable Waterways, when the contract will involve work near or on navigable waterways.

(2) When the head of the contracting activity has approved use of a separate bid item for mobilization and preparatory work, use either—

(i) 252.236–7003, Payment for Mobilization and Preparatory Work. Use this clause for major construction contracts that require—

(A) Major or special items of plant and equipment; or

(B) Large stockpiles of material which are in excess of the type, kind, and quantity which would be normal for a contractor qualified to undertake the work; or

(ii) 252.236–7004, Payment for Mobilization and Demobilization. Use this clause for contracts involving major mobilization expense, or plant equipment and material (other than the situations covered in paragraph (b)(2)(i) of this section) made necessary by the location or nature of the work.

(A) Generally, allocate 60 percent of the lump sum price in paragraph (a) of the clause to the cost of mobilization.

(B) Vary this percentage to reflect the circumstances of the particular contract, but in no event should mobilization exceed 80 percent of the payment item.

(3) 252.236–7005, Airfield Safety Precautions, when construction will be performed on or near airfields.

(4) 252.236–7006, Cost Limitation, if the solicitation’s bid schedule contains one or more items subject to statutory cost limitations, and if a waiver has not been granted (FAR 36.205).

(5) 252.236–7007, Additive or Deductive Items, if the procedures in 236.303–70 are being used.

(6) 252.236–7008, Contract Prices—Bidding Schedule, if the contract will contain only unit prices for some items.

(c) Use the following provisions in solicitations for military construction contracts that are funded with military construction appropriations and are estimated to exceed $1,000,000:

(1) 252.236–7010, Overseas Military Construction—Preference for United States Firms, when contract performance will be in a United States territory or possession in the Pacific or in a country bordering the Arabian Gulf.

(2) 252.236–7012, Military Construction on Kwajalein Atoll—Evaluation Preference, when contract performance will be on Kwajalein Atoll.

(d) Also see 246.710(4) for an additional clause applicable to construction contracts to be performed in Germany.


Subpart 236.6—Architect-Engineer Services

236.601 Policy.

(1) 10 U.S.C. 2807(b) requires notice to Congress 21 days before the initial obligation of funds if a contract is for—

(i) A–E services or construction design for military construction, military family housing, or restoration or replacement of damaged or destroyed facilities; and

(ii) An estimated total contract price of $500,000 or more.

(2) During the 21 day period, synopsis of the proposed contract action and administrative actions leading to the award may be started.


236.602 Selection of firms for architect-engineer contracts.

236.602–1 Selection criteria.

(a)(1) Establish the evaluation criteria before making the public announcement required by FAR 5.205(c) and include the criteria and their relative order of importance in the announcement. The evaluation criteria should be project specific. Use the information in the DD Form 1391, FY Military Construction Project Data, when available, and other pertinent project data in preparing the evaluation criteria.

(4) Use performance evaluation data from the central data base identified in 236.201.
(6) The primary factor in A-E selection is the determination of the most highly qualified firm. Also consider secondary factors such as geographic proximity and equitable distribution of work, but do not attribute greater significance to the secondary factors than to qualifications and past performance. Do not reject the overall most highly qualified firm solely in the interest of equitable distribution of contracts.

(A) Consider the volume of work awarded by DoD during the previous 12 months. In considering equitable distribution of work among A-E firms, include small business concerns; historically black colleges and universities and minority institutions; firms that have not had prior DoD contracts; and small disadvantaged business concerns and joint ventures with small disadvantaged business participants if the North American Industry Classification System (NAICS) Industry Subsector of the acquisition is one in which use of a price evaluation adjustment is currently authorized (see FAR 19.201(b)).

(B) Consider as appropriate superior performance evaluations on recently completed DoD contracts.

(C) Consider the extent to which potential contractors identify and commit to small business, to small disadvantaged business (SDB) if the NAICS Industry Subsector of the subcontracted effort is one in which use of an evaluation factor or subfactor for participation of SDB concerns is currently authorized (see FAR 19.201(b)), and to historically black college or university and minority institution performance as subcontractors.


236.602–2 Evaluation boards.

(a) Preselection boards may be used to identify to the section board the qualified firms that have a reasonable chance of being considered as most highly qualified by the selection board.

[63 FR 11538, Mar. 9, 1998]

236.602–4 Selection authority.

(a) The selection authority shall be at a level appropriate for the dollar value and nature of the proposed contract.

(c) A finding that some of the firms on the selection report are unqualified does not preclude approval of the report, provided that a minimum of three most highly qualified firms remains. The reasons for finding a firm or firms unqualified must be recorded.

[63 FR 11538, Mar. 9, 1998]

236.602–70 Restriction on award of overseas architect-engineer contracts to foreign firms.

In accordance with Section 111 of Public Law 104–32 and similar sections in subsequent military construction appropriations acts, A-E contracts funded by military construction appropriations that are estimated to exceed $500,000 and are to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, shall be awarded only to United States firms or to joint ventures of United States and host nation firms.


236.604 Performance evaluation.

(a) Preparation of performance reports. Use DD Form 2631, Performance Evaluation (Architect-Engineer), instead of SF 1421.

(2) Prepare a separate performance evaluation after actual construction of the project. Ordinarily, the evaluating official should be the person most familiar with the A-E’s performance.
(c) Distribution and use of performance reports.
   (i) Forward each performance report to the central data base identified in
   236.201(c) after completing the review. The procedures in 236.201 also apply to
   A–E contracts.
   (ii) File and use the DD Form 2631, Performance Evaluation (Architect-
   Engineer), in a manner similar to the SF 254, Architect-Engineer and Related
   Services Questionnaire.

[56 FR 36421, July 31, 1991, as amended at 61 FR 7749, Feb. 29, 1996; 64 FR 51076, Sept. 21,
1999]

236.606 Negotiations.

236.606–70 Statutory fee limitation.
   (a) 10 U.S.C. 4540, 7212, and 9540 limit the contract price (or fee) for A–E services for the preparation of designs,
   plans, drawings, and specifications to six percent of the project’s estimated construction cost.
   (b) The six percent limit also applies to contract modifications, including modifications involving—
   (1) Work not initially included in the contract. Apply the six percent limit to the revised total estimated construction cost.
   (2) Redesign. Apply the six percent limit as follows—
   (i) Add the estimated construction cost of the redesign features to the original estimated construction cost;
   (ii) Add the contract cost for the original design to the contract cost for redesign; and
   (iii) Divide the total contract design cost by the total estimated construction cost. The resulting percentage
may not exceed the six percent statutory limitation.
   (c) The six percent limit applies only to that portion of the contract (or modification) price attributable to the preparation of designs, plans, drawings, and specifications. If a contract or modification also includes other services, the part of the price attributable to the other services is not subject to the six percent limit.

[56 FR 36421, July 31, 1991, as amended at 62 FR 2858, Jan. 17, 1997; 63 FR 11539, Mar. 9,
1998]

Subpart 236.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

236.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.
   (c) Do not use Optional Form 347, Order for Supplies or Services (see 213.307).


PART 237—SERVICE CONTRACTING

Subpart 237.1—Service Contracts—General

Sec. 237.102–70 Prohibition on contracting for firefighting or security-guard functions.

237.104 Personal services contracts.
237.106 Funding and term of service contracts.
237.109 Services of quasi-military armed forces.

Subpart 237.2—Advisory and Assistance Services
237.201 Definition.
237.203 Policy.
237.270 Acquisition of audit services.
237.271 Management controls.
237.272 Requesting activity responsibilities.

Subpart 237.6—Performance-Based Contracting
237.601 General.

Subpart 237.70—Mortuary Services
237.7000 Scope.
237.7001 Method of acquisition.
237.7002 Area of performance.
237.7003 Distribution of contracts.
237.7004 Solicitation provisions and contract clauses.

Subpart 237.71—Laundry and Dry Cleaning Services
237.7100 Scope.
237.7101 General.
237.7102 Solicitation provisions and contract clauses.

Subpart 237.72—Educational Service Agreements
237.7200 Scope.
237.7201 Educational service agreement.
237.7202 Limitations.
237.7203 Duration.
237.7204 Format and clauses for educational service agreements.

Subpart 237.73—Services of Students at Research and Development Laboratories
237.7300 Scope.
237.7301 Definitions.
237.7302 General.
237.7303 Contract clauses.

Subpart 237.74—Services at Installations Being Closed
237.7400 Scope.
237.7401 Policy.
237.7402 Contract clause.


source: 56 FR 36424, July 31, 1991, unless otherwise noted.

237.102–70

(a) Under 10 U.S.C. 2465, the DoD is prohibited for entering into contracts for the performance of firefighting or security-guard functions at any military installation or facility unless—

1. The contract is to be carried out at a location outside the United States (to include any U.S. commonwealth, territory, or possession) at which members of the armed forces would have to be used for the performance of firefighting or security-guard functions at the expense of unit readiness;
2. The contract will be carried out on a Government-owned but privately operated installation; or
3. The contract (or renewal of a contract) is for the performance of a function under contract on September 24, 1983.

(b) Under Section 2907 of Public Law 103–160, this prohibition does not apply to services at installations being closed (see subpart 237.74).

(c) Under Section 1010 of Public Law 107–56, this prohibition does not apply to any contract that—

1. Is entered into during the period of time that United States armed forces are engaged in Operation Enduring Freedom or during the period 180 days thereafter;
2. Is for the performance of security functions at any military installation or facility in the United States;
3. Is awarded to a proximately located local or State government, or a combination of such governments, whether or not any such government is obligated to provide such services to the general public without compensation; and
4. Prescribes standards for the training and other qualifications of local government law enforcement personnel who perform security functions under the contract in accordance with criteria established by the Secretary of the department concerned.

237.104 Personal services contracts.

(b)(i) Authorization to acquire the personal services of experts and consultants is included in Public Law 101–165, section 9002. Personal service contracts for expert and consultant services must also be authorized by a determination and findings (D&F) in accordance with department/agency regulations.

(A) Generally, the D&F should authorize one contract at a time; however, an authorizing official may issue a blanket D&F for classes of contracts. Prepare each D&F in accordance with FAR 1.7 and include a determination that—

(1) The duties are of a temporary or intermittent nature;
(2) Acquisition of the services is advantageous to the national defense;
(3) DoD personnel with necessary skills are not available;
(4) Excepted appointment cannot be obtained;
(5) A nonpersonal services contract is not practicable;
(6) Statutory authority, 5 U.S.C. 3109 and other legislation, apply; and
(7) Any other determination required by statutes has been made.

(ii) Personal services contracts for health care are authorized by 10 U.S.C. 1091.

(A) This authority may be used to acquire—

(1) Direct health care personal service contracts (see 237.104(b)(ii)(A)(1)) and a pay cap are in DoD 6025.5, Personal Services Contracts for Health Care Providers. Requests to enter into a personal service contract for direct health care services must be approved by the commander of the medical/dental treatment facility where the services will be performed.

(2) Services of clinical counselors, family advocacy program staff, and victim’s services representatives (see 237.104(b)(ii)(A)(2)), shall be in accordance with agency procedures.

(B) Sources for personal services contracts with individuals under the authority of 10 U.S.C. 1091 shall be selected through the procedures in this section. These procedures do not apply to contracts awarded to business entities other than individuals. Selections made using the procedures in this section are exempt by statute from FAR part 6 competition requirements (see 206.001(b)).

(C) Approval requirements for—

(1) Direct health care personal service contracts (see 237.104(b)(ii)(A)(1)) and a pay cap are in DoD 6025.5, Personal Services Contracts for Health Care Providers. Requests to enter into a personal service contract for direct health care services must be approved by the commander of the medical/dental treatment facility where the services will be performed.

(2) Services of clinical counselors, family advocacy program staff, and victim’s services representatives (see 237.104(b)(ii)(A)(2)), shall be in accordance with agency procedures.

(D) The contracting officer must ensure that the requiring activity provides a copy of the approval with the purchase request.

(E) The contracting officer must provide adequate advance notice of contracting opportunities to individuals residing in the area of the facility. The notice must include the qualification criteria against which individuals responding will be evaluated. The contracting officer shall solicit applicants through at least one local publication which serves the area of the facility. Acquisitions under this section for personal service contracts are exempt from the posting and synopsis requirements of FAR part 5.

(F) The contracting officer shall provide the qualifications of individuals responding to the notice to the commander of the facility for evaluation and ranking in accordance with agency procedures. Individuals must be considered solely on the basis of the professional qualifications established for the particular personal services being acquired and the Government’s estimate of reasonable rates, fees, or other costs. The commander of the facility shall provide the contracting officer with rationale for the ranking of individuals, consistent with the required qualifications.
(G) Upon receipt from the facility of the ranked listing of applicants, the contracting officer shall either—

(1) Enter into negotiations with the highest ranked applicant. If a mutually satisfactory contract cannot be negotiated, the contracting officer shall terminate negotiations with the highest ranked applicant and enter into negotiations with the next highest.

(2) Enter into negotiations with all qualified applicants and select on the basis of qualifications and rates, fees, or other costs.

(H) In the event only one individual responds to an advertised requirement, the contracting officer is authorized to negotiate the contract award. In this case, the individual must still meet the minimum qualifications of the requirement and the contracting officer must be able to make a determination that the price is fair and reasonable.

(I) If a fair and reasonable price cannot be obtained from a qualified individual, the requirement should be canceled and acquired using procedures other than those set forth in this section.

(f)(i) Payment to each expert or consultant for personal services under 5 U.S.C. 3109 shall not exceed the highest rate fixed by the Classification Act Schedules for grade GS–15 (see 5 CFR 304.105(a)).

(ii) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station.

(iii) Coordinate with the civilian personnel office on benefits, taxes, personnel ceilings, and maintenance of records.

§ 237.109 Services of quasi-military armed forces.

See 237.102–70b for prohibition on contracting for firefighting or security-guard functions.

Subpart 237.2—Advisory and Assistance Services

§ 237.201 Definition.

Advisory and assistance services, as used in this subpart, means services in the following three major categories when provided by nongovernmental sources (10 U.S.C. 2212):

(1) Management and professional support services. This category consists of services that—

   (i) Provide engineering or technical support, assistance, advice, or training for the efficient and effective management and operation of organizations, activities, or systems;

   (ii) Include efforts that support or contribute to improved organization or program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, auditing, and administrative or technical support for conferences and training programs.

(2) Studies, analyses, and evaluations. This category consists of services that—

   (i) Provide organized, analytic assessments to understand or evaluate complex issues to improve policy development, decision-making, management, or administration;
(ii) Result in documents containing data or leading to conclusions or recommendations; and
(iii) May include databases, models, methodologies, and related software created in support of a study, analysis, or evaluation.

(3) **Engineering and technical services.**

This category consists of services that take the form of advice, assistance, training, or hands-on training necessary to maintain and operate fielded weapon systems, equipment, and components (including software when applicable) at design or required levels of effectiveness.


**237.203 Policy.**

(1) Every contract for engineering and technical services, alone or as part of an end item, shall—

(i) Show those services as a separately priced line item;

(ii) Contain definitive specifications for the services; and

(iii) Show the work-months involved.

(2) Agency heads may authorize personal service contracts for engineering and technical services provided on site at Defense locations to meet an unusual essential mission need. The authorization will be for an interim period only.

[63 FR 11539, Mar. 9, 1998, as amended at 64 FR 39431, July 22, 1999]

**237.270 Acquisition of audit services.**

(a) **General policy.**

(1) Departments and agencies shall not contract for audit services unless the cognizant DoD audit organization determines that expertise required to perform the audit is not available within the DoD audit organization, or temporary audit assistance is required to meet audit reporting requirements mandated by law or DoD regulation.

(2) DoDD 7600.2, Audit Policies, provides DoD audit policies.

(3) DoDI 7600.6, Audit of Non-appropriated Fund Instrumentalities and Related Activities, provides guidance to audit organizations for audits of nonappropriated fund organizations.

(4) DoD 7600.7-M, Internal Audit Manual, chapter 20, provides policy and guidance to DoD audit organizations for the monitoring of audit services provided by non-Federal auditors.

(b) **Contract period.** Except in unusual circumstances, contracts for recurring audit services shall be awarded for a 1-year period with at least 2 option years.

(c) **Approvals.** Contracting officers shall not issue a solicitation for audit services unless the requiring activity provides evidence that the cognizant DoD audit organization has approved the statement of work. The requiring agency shall obtain the same evidence of approval for subsequent material changes to the statement of work.

(d) **Solicitation provisions and contract clauses.**

(1) Use the provision of 252.237–7000, Notice of Special Standards of Responsibility, in solicitations for audit services.

(2) Use the clause at 252.237–7001, Compliance with Audit Standards, in solicitations and contracts for audit services.


§ 237.271 Management controls.

DoD procedures are in DoDD 4205.2, Acquiring and Managing Contracted Advisory and Assistance Services (CAAS).

[64 FR 39431, July 22, 1999]

**237.272 Requesting activity responsibilities.**

(b) On acquisitions for studies, the purchase request package must contain a signed statement from the technical officer responsible for the study stating that the Defense Technical Information Center (DTIC) and other information sources have been queried, that evidence of those queries are on file, and no existing scientific or technical report could fulfill the requirement.

(c) The authority, without redelegation authority (see DoDD 4205.2), to approve the use of advisory and assistance services in contracts over $50,000 is—

(i) An SES manager;

(ii) A general or flag officer;

(iii) An officer in O-6 grade filling a general or flag officer level position; or
237.601 General.
See 212.102 for the use of FAR part 12 procedures with performance-based contracting.

[66 FR 63336, Dec. 6, 2001]

Subpart 237.70—Mortuary Services

237.7000 Scope.
This subpart contains acquisition procedures for contracts for mortuary services (the care of remains) for military personnel within the U.S. Departments/agencies may use these procedures as guidance in areas outside the U.S. for both deceased military and civilian personnel.

237.7001 Method of acquisition.
(a) Requirements type contract. By agreement among the military activities, one activity in each geographical area will contract for the estimated requirements for the care of remains for all military activities in the area. Use a requirements type contract (see FAR 16.503) when the estimated annual requirements for the activities in the area are ten or more.
(b) Purchase order. Where no contract exists, use DD Form 1155, Order for Supplies and Services/Request for Quotations, to obtain mortuary services.

237.7002 Area of performance.
Determine and define the geographical area to be covered by the contract using the following general guidelines—
(a) Use political boundaries, streets, or other features as demarcation lines.
(b) The size should be roughly equivalent to the contiguous metropolitan or municipal area enlarged to include the activities served.
(c) If the area of performance best suited to the needs of a particular contract is not large enough to include a carrier terminal commonly used by people within such area, the contract area of performance shall specifically state that it includes such terminal as a pickup or delivery point.

237.7003 Distribution of contracts.
In addition to normal contract distribution, send three copies of each contract to each activity authorized to use the contract, and two copies to each of the following—
(a) HQDA (TAPC–PEC–D), Alexandria, VA 22331.
(b) Commander, Naval Medical Command, Department of the Navy (MED 3141), 23rd and E Streets, NW, Washington, DC 20372.
(c) Headquarters, AFMPC–MPCCM, Randolph AFB, TX 78150.

237.7004 Solicitation provisions and contract clauses.
(a) Use the provision at 252.237–7002, Award to Single Offeror, in all sealed bid solicitations for mortuary services. Use the basic provision with its Alternate I in all negotiated solicitations for mortuary services.
(b) Use the following clauses in all mortuary service solicitations and contracts, except do not use the clauses at 252.237–7004, Area of Performance, and 252.237–7010, Facility Requirements, in solicitations or contracts that include port of entry requirements—
(1) 252.237–7003, Requirements, (insert activities authorized to place orders in paragraph (e) of the clause);
(2) 252.237–7004, Area of Performance;
(3) 252.237–7005, Performance and Delivery;
(4) 252.237–7006, Subcontracting;
(5) 252.237–7007, Termination for Default;
(6) 252.237–7008, Group Interment;
(7) 252.237–7009, Permits;
(8) 252.237–7010, Facility Requirements; and
(9) 252.237–7011, Preparation History.
(c) Use the clause at FAR 52.245–4, Government-Furnished Property (Short Form), in solicitations and contracts that include port of entry requirements.
Subpart 237.71—Laundry and Dry Cleaning Services

237.7100 Scope.

This subpart contains acquisition procedures for laundry and dry cleaning services within the United States. It may be used as guidance in all other locations.

237.7101 General.

(a) Except for hospital requirements, acquire laundry and dry cleaning services on a count-of-articles basis.

(b) Laundry services in support of hospitals may be acquired on the basis of a count-of-articles or by bulk weight.

(1) Acquisitions by weight may be on either a presorted (bag type) or unsorted (simple bulk weight) basis.

(2) In selecting the basis, consider such factors as price, administrative costs, aseptic requirements, risk of contamination or cross-contamination, and volume and nature of articles to be serviced.

237.7102 Solicitation provisions and contract clauses.

(a) Use the provision at 252.237–7012, Instruction to Offerors (Count-of-Articles), in solicitations for laundry and dry cleaning services to be provided on a count-of-articles basis.

(b) Use the provision at 252.237–7013, Instruction to Offerors (Bulk Weight), in solicitations for laundry services to be provided on a bulk weight basis.

(c) Use the clause at 252.237–7014, Loss or Damage (Count-of-Articles), in solicitations and contracts for laundry and dry cleaning services to be provided on a count-of-articles basis.

(d) Use the clause at 252.237–7015, Loss or Damage (Weight of Articles), in solicitations and contracts for laundry and dry cleaning services to be provided on a bulk weight basis.

(1) Insert a reasonable per pound price in paragraph (b) of the clause, based on the average per pound value. When the contract requires laundry services on a bag type basis, insert reasonable per pound prices by bag type.

(2) Insert an appropriate percentage in paragraph (e) of the clause, not to exceed eight percent.

(e) Use the clause at 252.237–7016, Delivery Tickets, in all solicitations and contracts for laundry and dry cleaning services.

(1) Use the clause with its Alternate I when services are for bag type laundry to be provided on a bulk weight basis.

(2) Use the clause with its Alternate II when services are unsorted laundry to be provided on a bulk weight basis.

(f) Use the clause at 252.237–7017, Individual Laundry, in solicitations and contracts for laundry and dry cleaning services to be provided to individual personnel.

(1) Insert the number of pieces of outer garments in paragraphs (d) (1) and (2) of the clause.

(2) The number of pieces and composition of a bundle in paragraphs (d) (1) and (2) of the clause may be modified to meet local conditions.

(g) Use the clause at 252.237–7018, Special Definitions of Government Property, in all solicitations and contracts for laundry and dry cleaning services.


Subpart 237.72—Educational Service Agreements

237.7200 Scope.

(a) This subpart prescribes acquisition procedures for educational services from schools, colleges, universities, or other educational institutions. This subpart does not include tuition assistance agreements, i.e., payment by the Government of partial tuition under the off-duty educational program.

(b) As used in the subpart—

(1) “Facilities” do not include the institution’s dining rooms or dormitories; and

(2) “Fees” does not include charges for meals or lodging.

237.7201 Educational service agreement.

(a) An educational service agreement is not a contract, but is an ordering agreement under which the Government may order educational services.

(b) Educational service agreements provide for ordering educational services when—
237.7202

(1) The Government pays normal tuition and fees for educational services provided to a student by the institution under its normal schedule of tuition and fees applicable to all students generally; and

(2) Enrollment is at the institution under the institution’s normal rules and in courses and curricula which the institution offers to all students meeting admission requirements.

237.7202 Limitations.

(a) Make no agreement under this subpart which will result in payment of Government funds for tuition or other expenses for training in any legal profession, except in connection with the detailing of commissioned officers to law schools under 10 U.S.C. 2004.

(b) Educational service agreements are not used to provide special courses or special fees for Government students.

237.7203 Duration.

(a) Educational service agreements are for an indefinite duration and remain in effect until terminated.

(b) The issuing activity must establish procedures to review each educational service agreement at least once each year. Review dates should consider the institution’s academic calendar and occur at least 30 days before the beginning of a term. The purpose of the review is to incorporate changes to reflect requirements of any statute, Executive Order, FAR, or DFARS.

(c) If the contracting officer and the institution do not agree on required changes, terminate the agreement.

237.7204 Format and clauses for educational service agreements.

Educational service agreements under this subpart shall be in the following format. Add to the schedule any other provisions necessary to describe the requirements, if they are consistent with the following provisions and the policy of acquiring educational services in the form of standard course offerings at the prevailing rates of the institution.

48 CFR Ch. 2 (10–1–02 Edition)

EDUCATIONAL SERVICE AGREEMENT

Agreement No. ______

1. This agreement entered into on the day of ___ 19 ___, is between the Government, represented by the Contracting Officer, and the Contractor, (name of institution), an educational institution located in ___ (city), ___ (state).

2. This agreement is for educational services to be provided by the Contractor to Government personnel at the Contractor’s institution. The Contractor shall provide instruction with standard offerings of courses available to the public.

3. The Government shall pay for services under the Contractor’s normal schedule of tuition and fees applicable to the public and in effect at the time the services are performed.

4. The Government will review this agreement annually before the anniversary of its effective date for the purpose of incorporating changes required by statutes, executive orders, the Federal Acquisition Regulation, or the Defense Federal Acquisition Regulation Supplement. Changes required to be made by modification to this agreement or by issuance of a superseding agreement. If mutual agreement on the changes cannot be reached, the Government will terminate this agreement.

5. The parties may amend this agreement only by mutual consent.

6. This agreement shall start on the date in paragraph 1 and shall continue until terminated.

7. The estimated annual cost of this agreement is $ ______. This estimate is for administrative purposes only and does not impose any obligation on the Government to request any services or make any payment.


9. Submit invoices to: _______ (name and address of activity).

SCHEDULE PROVISIONS

1. Ordering procedures and services to be provided. (a) The Contractor shall promptly deliver to the Contracting Officer one copy of each catalog applicable to this agreement, and one copy of any subsequent revision.

(b) The Government will request educational services under this agreement by a (insert type of request, such as, delivery order, official Government order, or other written communication). The (insert type of request, such as, delivery order, official Government order, or other written communication) will contain the number of this agreement and will designate as students at the Contractor’s institution one or more Government-selected persons who have already been accepted for admission under the Contractor’s usual admission standards.
(c) All students under this agreement shall register in the same manner, be subject to the same academic regulations, and have the same privileges, including the use of all facilities and equipment as any other students enrolled in the institution.

(d) Upon enrolling each student under this agreement, the Contractor shall, where the resident or nonresident status involves a difference in tuition or fees—

(i) Determine the resident or nonresident status of the student;

(ii) Notify the student and the Contracting Officer of the determination. If there is an appeal of the determination;

(iii) If there is an appeal of the determination, process the appeal under the Contractor’s standard procedures;

(iv) Notify the student and Contracting Officer of the result; and

(v) Make the determination a part of the student’s permanent record.

(e) The Contractor shall not furnish any instruction or other services to any student under this agreement before the effective date of a request for services in the form specified in paragraph (b) of this schedule.

2. Change in curriculum. The Contracting Officer may vary the curriculum for any student enrolled under this agreement but shall not require or make any change in any course without the Contractor’s consent.

3. Payment. (a) The Government shall pay the Contractor the normal tuition and fees which the Contractor charges any students pursuing the same or similar curricula, except for any tuition and fees which this agreement excludes. The Contractor may change any tuition and fees, provided—

(1) The Contractor publishes the revisions in a catalog or otherwise publicly announces the revisions;

(2) Applies the revisions uniformly to all students studying the same or similar curricula;

(3) Provides the Contracting Officer notice of changes before their effective date.

(b) The Contractor shall not establish any tuition or fees which apply solely to students under this agreement.

(c) If the Contractor regularly charges higher tuition and fees for nonresident students, the Contractor may charge the Government the normal nonresident tuition and fees for students under this agreement who are nonresidents. The Government shall not claim resident tuition and fees for any student solely on the basis of the student residing in the State as a consequence of enrollment under this agreement.

(d) The Contractor shall charge the Government only the tuition and fees which relate directly to enrollment as a student. Tuition and fees may include—

(i) Penalty fees for late registration or change of course caused by the Government; (ii) Mandatory health fees and health insurance charges; and

(iii) Any flat rate charge applicable to all students registered for research that appears in the Contractor’s publicly announced fee schedule.

(e) The Contractor shall not charge the Government for—

(i) Permit charges, such as vehicle registration or parking fees, unless specifically authorized in the request for service; and

(ii) Any equipment, refundable deposits, or any items or services (such as computer time) related to student research.

(f) Normally, the Contractor shall not directly charge individual students for application fees or any other fee chargeable to this agreement. However, if the Contractor’s standard procedures require payment of any fee before the student is enrolled under this agreement, the Contractor may charge the student. When the Contractor receives payment from the Government, the Contractor shall fully reimburse the student.

(g) For each term the Contractor enrolls students under this agreement, the Contractor shall submit__ copies of an invoice listing charges for each student separately. The Contractor shall submit invoices within days after the start of the term and shall include—

(i) Agreement number and inclusive dates of the term;

(ii) Name of each student;

(iii) A list showing each course for each student if the school charges by credit hour;

(iv) The resident or nonresident status of each student (if applicable to the Contractor’s school); and

(v) A breakdown of charges for each student, including credit hours, tuition, application fee, and other fees. Provide a total for each student and a grand total for all students listed on the invoice.

(h) If unforeseen events require additional charges that are otherwise payable under the Contractor’s normal tuition and fee schedule, the Contractor may submit a supplemental invoice or make the adjustment on the next regular invoice under this agreement. The Contractor shall clearly identify and explain the supplemental invoice or the adjustment.

(i) The Contractor shall apply any credits resulting from withdrawal of students, or from any other cause under its standard procedures, to subsequent invoices submitted under this agreement. Credits should appear on the first invoice submitted after the action resulting in the credits. If no subsequent invoice is submitted, the Contractor shall deliver to the Contracting Officer a check drawn to the order of the office designated for contract administration. The Contractor shall identify the reason for the credit and the applicable term dates in all cases.
4. Withdrawal of students. (a) The Government may, at its option and at any time, withdraw financial support for any student by issuing official orders. The Government will notify the Contractor within a reasonable time after publication.

(b) The Contractor may request withdrawal by the Government of any student for academic or disciplinary reasons.

(c) If withdrawal occurs before the end of a term, the Government will pay any tuition and fees due for the current term. The Contractor shall credit the Government with any charges eligible for refund under the Contractor’s standard procedures, for any students in effect on the date of withdrawal.

(d) Withdrawal of students by the Government will not be the basis for any special charge or claim by the Contractor other than charges under the Contractor’s standard procedures.

5. Transcripts. Within a reasonable time after withdrawal of a student for any reason, or after graduation, the Contractor shall send to the Contracting Officer (or to an address supplied by the Contracting Officer) one copy of an official transcript showing all work by the student at the institution until such withdrawal or graduation.

6. Student teaching. The Government does not anticipate the Contractor awarding fellowships and assistantships to students attending school under this agreement. However, for graduate students, should both the student and the Contractor decide it to be in the student’s best interests to assist in the institution’s teaching program, the Contractor may provide nominal compensation for part-time service. Base the compensation on the Contractor’s practices and procedures for other students of similar accomplishment in that department or field. The Contractor shall apply the compensation as a credit against any invoices presented for payment for any period in which the student performed the part-time teaching service.

7. Termination of agreement. (a) Either party may terminate this agreement by giving 30 days advance written notice of the effective date of termination. In the event of termination, the Government shall have the right, at its option, to continue to receive educational services for those students already enrolled in the contractor’s institution under this agreement until such time that the students complete their courses or curricula or the Government withdraws them from the Contractor’s institution. The terms and conditions of this agreement in effect on the effective date of the termination shall continue to apply to such students remaining in the Contractor’s institution.

(b) Withdrawal of students under Schedule provision 4 shall not be considered a termination within the meaning of this provision.
Department of Defense

CONFLICTS BETWEEN AGREEMENT AND CATALOG

If there is any inconsistency between this agreement and any catalog or other document incorporated in this agreement by reference or any of the Contractor’s rules and regulations, the provisions of this agreement shall govern.

8. FAR 52.222–3, Convict Labor.
9. Under FAR 22.802, FAR 22.807, and FAR 22.810, use the appropriate clause from FAR 52.222–26, Equal Opportunity.
10. FAR 52.233–1, Disputes.
11. Assignment of Claims. Insert the following clause:

ASSIGNMENT OF CLAIMS

No claim under this agreement shall be assigned.
12. FAR 52.232–4, Alterations in Contract, if required by department/agency procedures.

SIGNATURE PAGE

Agreement No.
Date

The United States of America
By:

(Activity)
Location

(Name of Contractor)
By:

(Title)


Subpart 237.73—Services of Students at Research and Development Laboratories

237.7300 Scope.

This subpart prescribes procedures for acquisition of temporary or intermittent services of students at institutions of higher learning for the purpose of providing technical support at Defense research and development laboratories (10 U.S.C. 2360).

237.7301 Definitions.

As used in this subpart—

(a) Institution of higher learning means any public or private post-secondary school, junior college, college, university, or other degree granting educational institution that—

(1) Is located in the United States, its possessions, and Puerto Rico;

(2) Has an accredited education program approved by an appropriate accrediting body; and

(3) Offers a program of study at any level beyond high school.

(b) Nonprofit organization means any organization described by section 501(c)(3) of title 26 of the U.S.C. which is exempt from taxation under section 501(a) of title 26.

(c) Student means an individual enrolled (or accepted for enrollment) at an institution of higher learning before the term of the student technical support contract. The individual shall remain in good standing in a curriculum designed to lead to the granting of a recognized degree, during the term of the contract.

(d) Technical support means any scientific or engineering work in support of the mission of the DoD laboratory involved. It does not include administrative or clerical services.

237.7302 General.

Generally, agencies will acquire services of students at institutions of higher learning by contract between a nonprofit organization employing the student and the Government. When it is in the best interest of the Government, contracts may be made directly with students. These services are not subject to the requirements of FAR part 19, FAR 13.003(b)(1), or DFARS part 219. Award authority for these contracts is 10 U.S.C. 2304(a)(1) and 10 U.S.C. 2360.

[56 FR 36424, July 31, 1991, as amended at 60 FR 29500, June 5, 1995; 64 FR 2598, Jan. 15, 1999]

237.7303 Contract clauses.

Contracts made directly with students are nonpersonal service contracts but shall include the clauses at FAR 52.232–3, Payments Under Personal Services Contracts, and FAR 52.239–12, Termination (Personal Services).

Subpart 237.74—Services at Installations Being Closed

SOURCE: 59 FR 36089, July 15, 1994, unless otherwise noted.
237.7400  **Scope.**

This subpart prescribes procedures for contracting, through use of other than full and open competition, with local governments for police, fire protection, airfield operation, or other community services at military installations to be closed under the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100–526), as amended, and the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510), as amended.

[59 FR 36089, July 15, 1994, as amended at 60 FR 29500, June 5, 1995]

237.7401  **Policy.**

The authority in 206.302–5(b)(ii) to contract with local governments—

(a) May be exercised without regard to the provisions of 10 U.S.C. Chapter 146, Contracting for Performance of Civilian Commercial or Industrial Type Functions;

(b) May not be exercised earlier than 180 days before the date the installation is scheduled to be closed;

(c) Requires a determination by the head of the contracting activity that the services being acquired under contract with the local government are in the best interests of the Department of Defense.

(d) Includes the requirement of subpart 222.71, Right of First Refusal of Employment, unless it conflicts with the local government’s civil service selection procedures.

[59 FR 36089, July 15, 1994, as amended at 60 FR 29500, June 5, 1995]

237.7402  **Contract clause.**

Use the clause at 252.237–7022, Services at Installations Being Closed, in solicitations and contracts based upon the authority of this subpart.

[59 FR 36089, July 15, 1994, as amended at 60 FR 29500, June 5, 1995]
Subpart 239.70 Exchange or Sale of Information Technology (IT)

SOURCE: 62 FR 1059, Jan. 8, 1997, unless otherwise noted.

239.7000 Scope of subpart.
This subpart contains unique DoD procedures for the exchange or sale of information technology using the exchange authority of the General Services Administration (GSA). This subpart only applies to items with an original acquisition cost of $1,000,000 or more.

239.7001 Policy.
Agencies should consider exchange/sale when replacing Government-owned information technology. Exchange/sale is a method of—
(a) Transferring the equipment to be replaced to—
(1) Another Government agency, with reimbursement (sale); or
(2) The supplier of the replacement information technology for a trade-in allowance (exchange).
(b) Applying the proceeds of sale or the exchange allowance toward the purchase of replacement information technology.

239.7002 Conditions for using exchange/sale.
(a) The requiring activity must make a written determination that—
(1) The trade-in allowance of the exchange or the proceeds of the sale will be applied to acquire the replacement information technology; and
(2) The exchange/sale transaction will foster the economic and efficient accomplishment of a continuing requirement.
(b) The replacement equipment must be information technology—
(1) Similar to the resource being sold or exchanged;
(2) Which will satisfy the continuing requirement currently met by the resource being replaced.

239.7003 Procedures.
(a) Comply with—
(1) This subpart;
(2) Subpart 217.70; and
(b) Solicit offers both on an exchange (trade-in for allowance) or no exchange (no trade-in) basis.
(c) Retain the option to exercise any exchange offer at the time of award.
(d) List and describe the information technology to be exchanged in the solicitation. At a minimum include—
(1) A brief description of each item:
(2) Name of manufacturer;
(3) Equipment type;
(4) Model number; and
(5) The condition code and explanation of the code.
(e) Allow sufficient time in the contracting schedule to permit screening within the Government of the information technology to be exchanged prior to contract award.
(f) Immediately upon receipt of offers, determine the highest exchange offer (if any) and use it to initiate screening under the Defense Automation Resources Management Manual.
(g) Evaluate offers using the solicitation criteria, including consideration of any exchange allowance offers. Award can be made whether or not the replaced information technology is exchanged.

Exchange/"Sale" Property
A written administrative determination has been (will be) made to apply the exchange allowance or proceeds of "sale" to the acquisition of similar items.
(2) Include the following additional information with the SF 120:
(i) The identity of the offeror of the exchange;
(ii) The type of replacement equipment;
(iii) The acquisition method for the replacement equipment;
(iv) The anticipated purchase price for the replacement equipment; and
(v) The name and telephone number of the contracting officer.
(g) Evaluate offers using the solicitation criteria, including consideration of any exchange allowance offers. Award can be made whether or not the replaced information technology is exchanged.
(h) Before a contract is awarded, consider the results of the screening. Do not make an exchange if another Government agency wants to acquire the replaced equipment.

(1) If another agency is going to acquire the replaced equipment, do not include the exchange allowance in the contract price.

(2) The actual sale price to the agency acquiring the replaced equipment will be the exchange allowance (if any) of the successful offeror.

(i) If no Government agency wants to acquire the replaced equipment, the contract price shall include the exchange allowance, if any.

(j) If no exchange allowance was offered by the successful contractor, see the Defense Automation Resources Management Manual for disposal instructions.


Subpart 239.71—Security and Privacy for Computer Systems

239.7100 Scope of subpart.

This subpart applies to all acquisitions for computer systems. It covers both security and Privacy Act considerations.

239.7101 General.

Security requirements are in addition to provisions concerning protection of privacy of individuals (see FAR subpart 24.1).

239.7102 Security against compromising emanations.

239.7102–1 General.

(a) The National Security or Atomic Energy Acts, as amended, may require protection of information that is—

(1) Processed;

(2) Transmitted;

(3) Stored;

(4) Retrieved; or

(5) Displayed.

(b) When acquiring computer equipment to be used to process classified information, the contracting officer shall obtain from the requiring activity—

(1) A determination as to whether the equipment must provide protection against compromising emanations; and

(2) Identification of an established National TEMPEST standard (e.g., NACSEM 5100, NACSIM 5100A) or a standard used by other authority.

(c) When contracts will require the use of FIP resources involving classified data, programs, etc., the contracting officer shall obtain from the requiring activity—

(1) Advice to whether to require contractors performing these services to use equipment meeting the requirements in paragraph (a) of this subsection (as prescribed in the clause at 252.239–7000, Protection Against Compromising Emanations;

(2) Information concerning any requirement for marking of TEMPEST—certified equipment (especially if to be reused); and

(3) Information on how to validate TEMPEST equipment compliance with required standards.

239.7102–2 Validation of TEMPEST compliance.

Include requirements for validation of TEMPEST compliance in section E (Inspection and Acceptance) of the contract.

239.7102–3 Contract clause.

When contracting for computer equipment or systems that are to be used to process classified information, use the clause at 252.239–7000, Protection Against Compromising Emanations.


Subpart 239.72—Standards

239.7200 Scope of subpart.

This subpart contains guidance for implementing—

(a) Federal Information Processing Standards (FIPS); and

(b) Federal Telecommunications Standards (FED-STD).

239.7201 [Reserved]

239.7202 Waivers.

(a) The Secretary of Commerce has delegated to the Secretary of Defense the authority to waive FIP standards,
in accordance with procedures established by the Secretary of Commerce. The Secretary of Defense redelegated that waiver authority to the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C3I)). The ASD(C3I) has redelegated to the senior information technology official of each military department the authority to approve waivers to FIP standards that are applicable to military department requirements. Waivers to FIP standards that are applicable to the requirements of DoD components outside the military departments must be approved by the ASD(C3I).

(b) Contracting officers shall ensure that all applicable FIP standards are incorporated into solicitations, except for those FIP standards for which the requiring activity has obtained a waiver from the appropriate military department or DoD senior information technology official.

(c) As part of the Commerce Business Daily synopsis of a solicitation, contracting officers shall publish a notice of any determinations to waive any FIP standards that are applicable to the solicitation. If the waiver determination is made after the notice of the solicitation is published, the contracting officer shall amend the notice to announce the waiver determination.

[b]239.7302 Approvals and screening.[/b]

(a) The requirements of this section highlight the redistribution requirements of the Defense Automation Resources Management Manual, and are in addition to those at FAR 45.302.

(b) If the contractor proposes acquiring ADPE subject to 239.7301, and the unit acquisition cost is $50,000 or more—

1. The contracting officer shall require the contractor to submit, through the administrative contracting officer, the documentation in 239.7303.

2. The administrative contracting officer—
   (i) Submits a request for screening the requirement against the pool of Government-owned ADPE to determine if available excess equipment could satisfy the contractor’s needs. The request should include the contractor’s supporting documentation. The request is sent to—
   Defense Information Systems Agency, Chief Information Officer, Defense Automation Resources Management Program Division, Attn: D03D, 701 South Courthouse Road, Arlington, VA 22204-2199; or
   (ii) Uses the Automation Resources Management System (ARMS) to screen on-line. System access may be requested from the Defense Information Systems Agency, Chief Information Officer, Defense Automation Resources Management Program (DARMP) Division. Customers may apply for an ARMS Account Number by calling the DARMP Help Desk at (703) 696-1904; DSN 426-1904, FAX (703) 696-1908; E-mail DARMP@NCR.DIS.A.MIL.
   (iii) Documents the result of the System query.
   (iv) Upon receipt of and based on screening results from DARMP, advises the contractor that excess ADPE—
      (A) Is available pursuant to the Defense Automation Resources Management Manual; or
      (B) Is not available and the contractor may proceed with acquisition of the equipment.
(3) The contracting officer—
   (i) Reviews the contractor’s documentation;
   (ii) Decides whether to authorize the acquisition; and
   (iii) Advises—
      (A) The contractor if authorization is not granted; and
      (B) The administrative contracting officer if authorization is granted.


239.7303 Contractor documentation.
   Contracting officers may tailor the documentation requirements in paragraphs (a) through (d) of this section.
   (a) List of existing ADPE and an analysis of its use.
      (1) List of each component identified by manufacturer, type, model number, location, date of installation, and how acquired (lease, purchase, Government-furnished). Identify those acquired specifically to perform a Government contract.
      (2) Reliability and usage data on each component for the past 12 months.
      (3) Identification of users supported by each component, including how much time each user requires the component and the related contract or task involved.
   (b) List of new ADPE needed and reasons why it is needed.
      (1) Estimates of the new equipment’s useful life.
      (2) List of tasks the new equipment is needed for and why, including estimated monthly usage for each major task or project.
      (3) Anticipated software and telecommunications requirements.
   (c) Selection of computer equipment.
      (1) If the acquisition is competitive—
         (i) List sources solicited and proposals received;
         (ii) Show how the evaluation was performed; and
         (iii) Provide an explanation if the selected offer is not the lowest evaluated offer.
      (2) If the acquisition is not competitive, state why.
   (d) Cost. State the ADPE cost.

Department of Defense

239.7403

cable, satellite, fiber optics, laser, radio, or any other electronic, electric, electromagnetic, or acoustically coupled means.

(g) Telecommunications services means the services acquired, whether by lease or contract, to meet the Government’s telecommunications needs. The term includes the telecommunications facilities and equipment necessary to provide such services.

239.7402 Policy.

(a) Acquisition. (1) DoD policy is to acquire telecommunications services from common and noncommon telecommunications carriers—

(i) On a competitive basis, except when acquisition using other than full and open competition is justified.

(ii) Recognizing the regulations, practices, and decisions of the Federal Communications Commission (FCC) and other governmental regulatory bodies on rates, cost principles, and accounting practices;

(iii) Making provision in telecommunications services contracts for adoption of—

(A) FCC approved practices; or

(B) The generally accepted practices of the industry on those issues concerning common carrier services where—

(1) The governmental regulatory body has not expressed itself;

(2) The governmental regulatory body has declined jurisdiction; or

(3) There is no governmental regulatory body to decide.

(2) DoD’s unique consumer needs in both volume and technology require DoD to participate actively in the rule making process of cognizant governmental regulatory bodies. DoD also must work with the government regulatory bodies and common carriers to be sure that in those areas in which the FCC cannot or will not rule, sound regulatory practices are followed. DoD should make every effort to avoid the time and expense of litigation by full and fair disclosure of both the carrier’s and the DoD’s position in advance.

(3) If actions do not produce reasonable or lawful rates, or when there is a refusal to provide required services or file appropriate tariffs, DoD should litigate. All contracts with the regulatory bodies should be through counsel under department/agency and Defense Information Systems Agency procedures.

(b) Security. (1) The contracting officer shall ensure, in accordance with agency procedures, that purchase requests identify—

(i) The nature and extent of information requiring security during telecommunications;

(ii) The requirement for the contractor to secure telecommunications systems;

(iii) The telecommunications security equipment, devices, techniques, or services with which the contractor’s telecommunications security equipment, devices, techniques, or services must be interoperable; and

(iv) The approved telecommunications security equipment, devices, techniques, or services, such as found in the National Security Agency’s Information Systems Security Products and Services Catalogue.

(2) Contractors and subcontractors shall provide all telecommunications security techniques or services required for performance of Government contracts.

(3) Except as provided in paragraph (b)(4) of this subsection, contractors and subcontractors shall normally provide all required telecommunications security equipment or devices as plant equipment in accordance with FAR part 45. In some cases, such as for communications security (COMSEC) equipment designated as controlled cryptographic item (CCI), contractors or subcontractors must also meet ownership eligibility conditions.

(4) When the contractor or subcontractor does not meet ownership eligibility conditions, the head of the agency may authorize provision of the necessary facilities as Government-furnished property or acquisition as contractor-acquired property, as long as conditions of FAR 45.303 are met.


239.7403 Regulatory bodies.

The FCC and other governmental regulatory bodies publish rules and
regulations on the operations of common carriers and prescribe accounting principles to use to establish rates.

239.7404  Foreign carriers.

(a) Frequently, foreign carriers are owned by the government of the country in which they operate. The foreign governments often prescribe the methods of doing business. In many countries, an international agreement with the host country sets guidelines for acquiring communication services. In some countries, a corporate subsidiary of a carrier not indigenous to the country (often a U.S. parent) is the sole source for telecommunications services.

(b) Contracts for telecommunications services in foreign countries should describe rates and practices in as much detail as possible. It is DoD policy not to pay discriminatory rates. DoD should pay a reasonable rate for telecommunications services or the rate charged the military of that country, whichever is less.

(c) Refer special problems with telecommunications acquisition in foreign countries to higher headquarters for resolution with appropriate State Department representatives.

239.7405  Multiyear contracting authority for telecommunications resources.

(a) The General Services Administration (GSA) has exclusive multiyear contracting authority for telecommunications resources. However, GSA may delegate this authority in certain instances (see Federal Property Management Regulations (FPMR) 101–35.6).

(b) In accordance with FPMR 101–35.6, executive agencies may enter into multiyear contracts for telecommunications resources if—

(1) The agency notifies GSA prior to using GSA’s multiyear contracting authority;

(2) The contract life, including options, does not exceed 10 years; and

(3) The agency complies with OMB budget and accounting procedures relating to appropriated funds.

[63 FR 11539, Mar. 9, 1998]

239.7406  Cost or pricing data and information other than cost or pricing data.

(a) Common carriers are not required to submit cost or pricing data before award of contracts for tariffed services. Rates or preliminary estimates quoted by a common carrier for tariffed telecommunications services are considered to be prices set by regulation within the provisions of 10 U.S.C. 2306a. This is true even if the tariff is set after execution of the contract.

(b) Rates or preliminary estimates quoted by a common carrier for nontariffed telecommunications services or by a noncommon carrier for any telecommunications service are not considered prices set by law or regulation.

(c) Contracting officers shall obtain sufficient information to determine that the prices are reasonable. For example, cost or pricing data, if required in accordance with FAR 15.403–4, or information other than cost or pricing data, if required in accordance with FAR 15.403–3, may be necessary to support the reasonableness of—

(1) Nontariffed services;

(2) Special rates and charges not included in a tariff, whether filed or to be filed;

(3) Special assembly rates and charges;

(4) Special construction and equipment charges;

(5) Contingent liabilities that are fixed at the outset of the service;

(6) Proposed cancellation and termination charges under the clause at 252.239–7007, Cancellation or Termination of Orders—Common Carriers, and reuse arrangements under the clause at 252.239–7008, Reuse Arrangements;

(7) Rates contained in voluntary tariffs filed by nondominant common carriers; or

(8) A tariff, whether filed or to be filed, for new services installed or developed primarily for Government use.

239.7407–1 General.

In addition to acquisition methods described in the FAR, the method described in this section may be used to acquire telecommunications services.

239.7407–2 Communication service authorizations (CSAs).

Basic agreements (see FAR 16.702) are used widely in conjunction with communication service authorizations to facilitate award of telecommunications services.

(a) Use DD Form 428, Communication Service Authorization (CSA), or an electronic data processing substitute to award, modify, cancel, or terminate telecommunications services. The CSA shall—

1) Refer to the basic agreement;
2) Specify the types and quantities and equipment to be provided as well as the tariff (or other price if a tariff is not available) of those services and equipment;
3) Specify the premises involved;
4) Cite the address for billing;
5) Identify the disbanding office; and
6) Provide funding information.

(b) Before awarding a CSA, comply with the requirements in FAR and DFARS, e.g., for competition, reviews, approvals, and determinations and findings.

(c) Include an expiration date in each CSA.

(d) Modify CSAs to reflect any price increases.

239.7408 Special construction.

239.7408–1 General.

(a) Special construction normally involves a common carrier giving a special service or facility related to the performance of the basic telecommunications service requirements.

This may include—

1) Moving or relocating equipment;
2) Providing temporary facilities;
3) Expediting provision of facilities; or
4) Providing specially constructed channel facilities to meet Government requirements.

(b) Use this subpart instead of FAR part 36 for acquisition of “special construction.”

(c) Special construction costs may be—

1) A contingent liability for using telecommunications services for a shorter time than the minimum to reimburse the contractor for unamortized nonrecoverable costs. These costs are usually expressed in terms of a termination liability, as provided in the contract or by tariff;
2) A one time special construction charge;
3) Recurring charges for constructed facilities;
4) A minimum service charge;
5) An expediting charge; or
6) A move or relocation charge.

(d) When a common carrier submits a proposal or quotation which has special construction requirements, the contracting officer shall require a detailed special construction proposal. Analyze all special construction proposals to—

1) Determine the adequacy of the proposed construction;
2) Disclose excessive or duplicative construction; and
3) When different forms of charge are possible, provide for the form of charge most advantageous to the Government.

(e) When possible, analyze and approve special construction charges before receiving the service. Impose a ceiling on the special construction costs before authorizing the contractor to proceed, if prior approval is not possible. Do not make final payment for special construction charges unless the charges are approved by the contracting officer.

239.7408–2 Applicability of construction labor standards for special construction.

(a) The construction labor standards in FAR 22.4 ordinarily do not apply to special construction. However, if the special construction includes construction (as defined in FAR 36.102) of a public building or public work, the construction labor standards may apply. Determine applicability under FAR 22.402.

(b) Each CSA or other type contract which is subject to construction labor standards under FAR 22.402 shall cite that fact.
239.7409 Special assembly.

(a) Special assembly is the designing, manufacturing, arranging, assembling, or wiring of equipment to provide telecommunications services that cannot be provided with general use equipment.

(b) Special assembly rates and charges shall be based on estimated costs. The contracting officer shall negotiate special assembly rates and charges before starting service whenever possible. When it is not possible to negotiate in advance, use provisional rates and charges subject to adjustment, until final rates and charges are negotiated. The CSAs authorizing the special assembly shall be modified to reflect negotiated final rates and charges.

239.7410 Cancellation and termination.

(a)(1) Cancellation is stopping a requirement after placing of an order but before service starts.

(2) Termination is stopping a requirement after placing an order and after service starts.

(b) Determine cancellation or termination charges under the provisions of the applicable tariff or agreement/contract.

239.7411 Contract clauses.

(a) In addition to other appropriate FAR and DFARS clauses, use the following clauses in solicitations, contracts, and basic agreements for telecommunications services. Modify the clauses only if necessary to meet the requirements of a governmental regulatory agency—

(1) 252.239–7002, Access;

(2) 252.239–7003, Facilities and Services to be Furnished—Common Carriers;

(3) 252.239–7004, Orders for Facilities and Services—Common Carriers;

(4) 252.239–7005, Rates, Charges, and Services—Common Carriers;

(5) 252.239–7006, Tariff Information;

(6) 252.239–7007, Cancellation or Termination of Orders—Common Carriers;

(7) 252.239–7008, Reuse Arrangements.

(b) Use the following clauses in solicitations, contracts, and basic agreements for telecommunications services when the acquisition includes or may include special construction. Modify the clauses only if necessary to meet the requirements of a governmental regulatory agency—

(1) 252.239–7011, Special Construction and Equipment Charges; and

(2) 252.239–7012, Title to Telecommunication Facilities and Equipment.

(c) Use the following clauses in basic agreements for telecommunications services—

(1) 252.239–7013, Obligation of the Government;

(2) 252.239–7014, Term of Agreement, and insert the effective date of the agreement in paragraph (a) of the clause; and

(3) 252.239–7015, Continuation of Communication Service Authorizations, as appropriate, and insert in paragraph (a) of the clause, the name of the contracting office and the basic agreement or contract number which is being superseded.

(d) Use the clause at 252.239–7016, Telecommunications Security Equipment, Devices, Techniques, and Services, in solicitations and contracts when performance of a contract requires a securing telecommunications.


Subpart 239.75—Appropriations Act Restrictions

SOURCE: 57 FR 14995, Apr. 23, 1992, unless otherwise noted.

239.7500 Scope of subpart.

This subpart contains restrictions on the acquisition of information technology, imposed by Defense appropriations acts.


239.7501 Major automated information systems restriction.

Section 8028 of the FY 1992 Defense Appropriations Act (Pub. L. 102–172) and similar sections of the FY 1993, FY 1994, and FY 1995 Defense appropriations acts prohibit use of DoD appropriations for acquisition of major automated information systems, unless the systems have successfully completed
oversight reviews required by DoD regulations.

PART 241—ACQUISITION OF UTILITY SERVICES

Subpart 241.1—General

Sec.
241.101 Definitions.
241.102 Applicability.
241.103 Statutory and delegated authority.

Subpart 241.2—Acquiring Utility Services

241.201 Policy.
241.202 Procedures.
241.203 GSA assistance.
241.205 Separate contracts.
241.270 Preaward contract review.

Subpart 241.5—Solicitation Provision and Contract Clauses

241.501–70 Additional clauses.


SOURCE: 63 FR 11539, Mar. 9, 1998, unless otherwise noted.

Subpart 241.1—General

241.101 Definitions.

As used in this part—

Definite term contract means a contract for utility services for a definite period of not less than one nor more than ten years.

Dual service area means a geographical area in which two or more utility suppliers are authorized under State law to provide services.

Indefinite term contract means a month-to-month contract for utility services which may be terminated by the Government upon proper notice.

Independent regulatory body means the Federal Energy Regulatory Commission, a state-wide agency, or an agency with less than state-wide jurisdiction when operating pursuant to state authority. The body has the power to fix, establish, or control the rates and services of utility suppliers.

Nonindependent regulatory body means a body that regulates a utility supplier which is owned or operated by the same entity that created the regulatory body, e.g., a municipal utility.

Regulated utility supplier means a utility supplier regulated by an independent regulatory body.

Service power procurement officer means the—

Army, the Chief of Engineers;
Navy, the Commander, Naval Facilities Engineering Command;
Air Force, the head of a contracting activity; and
Defense Logistics Agency, the Executive Director of Contracting.

241.102 Applicability.

(a) This part applies to purchase of utility services from nonregulated and regulated utility suppliers. It includes the acquisition of liquefied petroleum gas as a utility service when purchased from regulated utility suppliers.

(b)(7) This part does not apply to third party financed projects. However, it may be used for any purchased utility services directly resulting from such projects, including those authorized by—

(A) 10 U.S.C. 2394 for energy, fuels, and energy production facilities for periods not to exceed 30 years;

(B) 10 U.S.C. 2394a for renewable energy for periods not to exceed 25 years;

(C) 10 U.S.C. 2689 for geothermal resources that result in energy production facilities;

(D) 10 U.S.C. 2809 for potable and waste water treatment plants for periods not to exceed 32 years; and

(E) 10 U.S.C. 2812 for lease/purchase of energy production facilities for periods not to exceed 32 years.

241.103 Statutory and delegated authority.

The contracting officer may enter into a utility service contract related to the conveyance of a utility system for a period not to exceed 50 years (10 U.S.C. 2688(c)(3)).

[65 FR 2059, Jan. 13, 2000; 65 FR 19818, Apr. 12, 2000]
241.201 Policy.

(1) Except as provided in FAR 41.201, DoD, as a matter of comity, will comply with the current regulations, practices and decisions of independent regulatory bodies which are subject to judicial appeal. This policy does not extend to regulatory bodies whose decisions are not subject to appeal nor does it extend to nonindependent regulatory bodies.

(2) Purchases of utility services outside the United States may use—
   (i) Formats and technical provisions consistent with local practice; and
   (ii) Dual language forms and contracts.

(3) Rates established by an independent regulatory body are considered "prices set by law or regulation" and do not require submission of cost or pricing data (see FAR Subpart 15.4).

241.202 Procedures.

(a)(i) Competitive proposals. When a new major utility service load develops or a new military installation is established, the contracting officer shall—
   (A) Determine whether more than one supplier can provide the required utility services.
   (I) Competition may be possible where dual franchises exist or where no franchise exists.
   (2) Competition should also be considered when an installation is served by one supplier and other potential suppliers exist even though one supplier has entered into a General Services Administration area-wide contract.
   (B) Where competition exists, solicit competitive proposals from all potential suppliers.
   (ii) Periodic reviews for competition. Conduct periodic review of ongoing contracts to determine the availability of competition. If available, evaluate the need to rewrite the contract considering—
   (A) The possible loss of rights vested in the Government under the existing contract;
   (B) The age and quality of the contract; and
   (C) The number of contract modifications and the ease of administration with the existing contract documents.

(iii) Connection and service charges. The Government may pay a connection charge when required to cover the cost of the necessary connecting facilities. A connection charge based on the estimated labor cost of installing and removing the facility shall not include salvage cost. A lump-sum connection charge shall be no more than the agreed cost of the connecting facilities, less net salvage. The order of precedence for contractual treatment of connection and service charges is—
   (A) No connection charge.
   (B) Termination liability. Use when an obligation is necessary to secure the required services. The obligation must be not more than the agreed connection charge, less any net salvage material costs. Use of a termination liability instead of a connection charge requires the approval of the service power procurement officer or designee.
   (C) Connection charge, refundable. Use a refundable connection charge when the supplier refuses to provide the facilities based on lack of capital or published rules which prohibit providing up-front funding. The contract should provide for refund of the connection charge within five years unless a longer period or omission of the refund requirement is authorized by the service power procurement officer or designee.
   (D) Connection and service charges, nonrefundable. The Government may pay certain nonrefundable, non-recurring charges including service initiation charges, a contribution in aid of construction, membership fees, and charges required by the supplier's rules and regulations to be paid by the customer. If possible, consider sharing with other than Government users the use of and costs for facilities when large nonrefundable charges are required.

(iv) Construction and labor requirements. (A) Do not use the connection charge provisions for the installation of Government-owned distribution lines and facilities. The acquisition of such facilities must be authorized by legislation and accomplished in accordance with FAR Part 36. Also, do not
use the connection charge provisions for the installation of new facilities related to the supplier’s production and general “backbone” system unless authorized by legislation.

(B) Construction labor standards ordinarily do not apply to construction accomplished under the connection charge provisions of this part. However, if installation includes construction of a public building or public work as defined in FAR 36.102, construction labor standards may apply.

241.203 GSA assistance.

The General Services Administration (GSA) has delegated to DoD the authority to enter into utility service contracts (see FAR 41.103); therefore, contracting officers need not seek assistance or approval from GSA.

241.205 Separate contracts.

(a)(i) Requests for proposals shall state the anticipated service period in terms of months or years. Where the period extends beyond the current fiscal year, evaluate offers of incentives for a definite term contract.

(ii) The solicitation may permit offerors the choice of proposing on the basis of—

(A) A definite term not to exceed the anticipated service period; or

(B) An indefinite term contract.

(iii) Where the expected service period is less than the current fiscal year, the solicitation shall be on the basis of an indefinite term contract.

(iv) Contracts for utility services for leased premises shall identify the lease document on the face of the contract.

(d) Use an indefinite term utility service contract when it is considered to be in the Government’s best interest to—

(i) Have the right to terminate on a 30-day (or longer) notice. A notice of up to one year may be granted by an installation if needed to obtain a more favorable rate, more advantageous conditions, or for other valid reasons; or

(ii) Grant the supplier the right to terminate the contract when of benefit to the Government in the form of lower rates, larger discounts or more favorable terms and conditions.

241.270 Preaward contract review.

Departments/agencies shall conduct their own preaward contract reviews.

Subpart 241.5—Solicitation Provision and Contract Clauses

241.501−70 Additional clauses.

(a) If the Government must execute a superseding contract and capital credits, connection charge credits, or termination liability exist, use the clause at 252.241−7000, Superseding Contract.

(b) Use the clause at 252.241−70001, Government Access, when the clause at FAR 52.241−5, Contractor’s Facilities, is used.
## SUBCHAPTER G—CONTRACT MANAGEMENT

### PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

<table>
<thead>
<tr>
<th>Sec.</th>
<th>Subpart</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>242.102</td>
<td>242.200-70</td>
<td>Scope of subpart.</td>
</tr>
<tr>
<td>242.200</td>
<td>242.200</td>
<td>Assignment of contract administration.</td>
</tr>
<tr>
<td>242.301</td>
<td>242.301</td>
<td>General.</td>
</tr>
<tr>
<td>242.302</td>
<td>242.301</td>
<td>Contract administration functions.</td>
</tr>
<tr>
<td>242.402</td>
<td>242.402</td>
<td>Visits to contractors’ facilities.</td>
</tr>
<tr>
<td>242.503</td>
<td>242.503</td>
<td>Postaward conferences.</td>
</tr>
<tr>
<td>242.570</td>
<td>242.570</td>
<td>Contract clause.</td>
</tr>
<tr>
<td>242.602</td>
<td>242.602</td>
<td>Assignment and location.</td>
</tr>
<tr>
<td>242.705</td>
<td>242.705</td>
<td>Final indirect cost rates.</td>
</tr>
<tr>
<td>242.705-1</td>
<td>242.705-1</td>
<td>Contracting officer determination procedure.</td>
</tr>
<tr>
<td>242.771-1</td>
<td>242.771-1</td>
<td>Scope.</td>
</tr>
<tr>
<td>242.771-3</td>
<td>242.771-3</td>
<td>Responsibilities.</td>
</tr>
<tr>
<td>242.801</td>
<td>242.801</td>
<td>Notice of intent to disallow costs.</td>
</tr>
<tr>
<td>242.803</td>
<td>242.803</td>
<td>Disallowing costs after incurrence.</td>
</tr>
<tr>
<td>242.104</td>
<td>242.104</td>
<td>Surveillance requirements.</td>
</tr>
<tr>
<td>242.106</td>
<td>242.106</td>
<td>Reporting requirements.</td>
</tr>
<tr>
<td>242.1107</td>
<td>242.1107</td>
<td>Solicitation provision and contract clause.</td>
</tr>
<tr>
<td>242.12</td>
<td>242.12</td>
<td>Novation and Change-of-Name Agreements.</td>
</tr>
<tr>
<td>242.1203</td>
<td>242.1203</td>
<td>Processing agreements.</td>
</tr>
<tr>
<td>242.1204</td>
<td>242.1204</td>
<td>Agreement to recognize a successor in interest (novation agreement).</td>
</tr>
<tr>
<td>242.1402</td>
<td>242.1402</td>
<td>Volume movements within the continental United States.</td>
</tr>
<tr>
<td>242.1403</td>
<td>242.1403</td>
<td>Shipping documents covering f.o.b. origin shipments.</td>
</tr>
<tr>
<td>242.1404</td>
<td>242.1404</td>
<td>Shipments by parcel post or other classes of mail.</td>
</tr>
<tr>
<td>242.1404-1</td>
<td>242.1404-1</td>
<td>Parcel post eligible shipments.</td>
</tr>
<tr>
<td>242.1405</td>
<td>242.1405</td>
<td>Discrepancies incident to shipment of supplies.</td>
</tr>
<tr>
<td>242.1470</td>
<td>242.1470</td>
<td>Demurrage and detention charges.</td>
</tr>
<tr>
<td>242.70</td>
<td>242.70</td>
<td>Reserved</td>
</tr>
<tr>
<td>242.71</td>
<td>242.71</td>
<td>Voluntary Refunds.</td>
</tr>
<tr>
<td>242.7101</td>
<td>242.7101</td>
<td>Solicited refunds.</td>
</tr>
<tr>
<td>242.7102</td>
<td>242.7102</td>
<td>Disposition of voluntary refunds.</td>
</tr>
<tr>
<td>242.72</td>
<td>242.72</td>
<td>Contractor Material Management and Accounting System.</td>
</tr>
<tr>
<td>242.7200</td>
<td>242.7200</td>
<td>Scope of subpart.</td>
</tr>
<tr>
<td>242.7202</td>
<td>242.7202</td>
<td>Policy.</td>
</tr>
<tr>
<td>242.7203</td>
<td>242.7203</td>
<td>Review procedures.</td>
</tr>
<tr>
<td>242.7204</td>
<td>242.7204</td>
<td>Contract clause.</td>
</tr>
<tr>
<td>242.73</td>
<td>242.73</td>
<td>Contractor Insurance/Pension Review.</td>
</tr>
<tr>
<td>242.7300</td>
<td>242.7300</td>
<td>Scope of subpart.</td>
</tr>
<tr>
<td>242.7301</td>
<td>242.7301</td>
<td>General.</td>
</tr>
<tr>
<td>242.7302</td>
<td>242.7302</td>
<td>Requirements.</td>
</tr>
<tr>
<td>242.7303</td>
<td>242.7303</td>
<td>Responsibilities.</td>
</tr>
<tr>
<td>242.74</td>
<td>242.74</td>
<td>Technical Representation at Contractor Facilities.</td>
</tr>
<tr>
<td>242.7400</td>
<td>242.7400</td>
<td>General.</td>
</tr>
<tr>
<td>242.7401</td>
<td>242.7401</td>
<td>Procedures.</td>
</tr>
</tbody>
</table>
Department of Defense

Subpart 242.75—Contractor Accounting Systems and Related Controls

242.7500 Scope of subpart.
242.7501 Definition.
242.7502 Policy.
242.7503 Procedures.

SOURCE: 56 FR 36437, July 31, 1991, unless otherwise noted.

242.002 Interagency agreements.

(b)(i) DoD requires reimbursement, at a rate set by the Under Secretary of Defense (Comptroller/Chief Financial Officer), from non-DoD organizations, except for—
(A) Quality assurance, contract administration, and audit services provided under a no-charge reciprocal agreement;
(B) Services performed under subcontracts awarded by the Small Business Administration under FAR subpart 19.8; and
(C) Quality assurance and pricing services performed for the Supply and Services Canada.
(ii) Departments and agencies may request an exception from the reimbursement policy in paragraph (b)(i) of this section from the Under Secretary of Defense (Comptroller/Chief Financial Officer). A request must show that an exception is in the best interest of the Government.
(iii) Departments and agencies must pay for services performed by non-DoD activities, foreign governments, or international organizations, unless otherwise provided by reciprocal agreements.

(S–70)(i) Foreign governments and international organizations may request contract administration services on their direct purchases from U.S. producers. Direct purchase is the purchase of defense supplies in the United States through commercial channels for use by the foreign government or international organization.
(ii) Supply and Services Canada (SSC) is permitted to submit its requests for contract administration services directly to the cognizant contract administration office.
(iii) Other foreign governments (including Canadian government organizations other than SSC) and international organizations send their requests for contract administration services to the DoD Central Control Point (CCP) at the Headquarters, Defense Contract Management Agency, International and Federal Business Team. Contract administration offices provide services only upon request from the CCP. The CCP shall—
(A) Determine whether the request is from a friendly foreign government or an international agency in which the United States is a participant;
(B) Determine whether the services are consistent with the DoD mutual security program policies (the Assistant Secretary of Defense (International Security Affairs) is the source of information for questions as to the eligibility of foreign governments to receive services);
(C) Ensure that the reimbursement arrangements are consistent with paragraph (b) of this section;
(D) Coordinate with appropriate contract administration offices to determine whether DoD can provide the services;
(E) Notify the requestor that the request is accepted, or provide reasons why it cannot be accepted;
(F) Coordinate with appropriate contract administration offices to determine whether DoD can provide the services;
(G) Receive statements of costs incurred by contract administration offices for reimbursable services and forward them for billing to the Security Assistance Accounting Center.


Subpart 242.2—Contract Administration Services

SOURCE: 64 FR 61029, Nov. 9, 1999, unless otherwise noted.

242.200–70 Scope of subpart.

This subpart does not address the contract administration role of a contracting officer's representative (see 201.602).
242.202 Assignment of contract administration.

(a)(i) DoD activities shall not retain any contract for administration that requires performance of any contract administration function at or near contractor facilities, except contracts for—
   (A) The National Security Agency;
   (B) Research and development with universities;
   (C) Flight training;
   (D) Consultant support services;
   (E) Mapping, charting, and geodesy services;
   (F) Base, post, camp, and station purchases;
   (G) Operation or maintenance of, or installation of equipment at, radar or communication network sites;
   (H) Communications services;
   (I) Installation, operation, and maintenance of space-track sensors and relays;
   (J) Dependents Medicare program contracts;
   (K) Stevedoring contracts;
   (L) Construction and maintenance of military and civil public works, including harbors, docks, port facilities, military housing, development of recreational facilities, water resources, flood control, and public utilities;
   (M) Architect-engineer services;
   (N) Airlift and sealift services (Air Mobility Command and Military Sealift Command may perform contract administration services at contractor locations involved solely in performance of airlift or sealift contracts);
   (O) Subsistence supplies;
   (P) Ballistic missile sites (contract administration offices may perform supporting administration of these contracts at missile activation sites during the installation, test, and checkout of the missiles and associated equipment); and
   (Q) Operation and maintenance of, or installation of equipment at, military test ranges, facilities, and installations.

(iii) DCMA shall provide preaward survey assistance for post, camp, and station work performed on a military installation. The contracting office and the DCMA preaward survey monitor should jointly determine the scope of the survey and individual responsibilities.

(iv) To avoid duplication, contracting offices shall not locate their personnel at contractor facilities, except—
   (A) In support of contracts retained for administration in accordance with paragraph (a)(i) of this section; or
   (B) As permitted under subpart 242.74.

(e)(1)(A) In special circumstances, a contract administration office may request support from a component not listed in the Federal Directory of Contract Administration Services Components (available via the Internet at http://home.dcma.mil/casbook/casbook.htm). An example is a situation where the contractor’s work site is on a military base and a base organization is asked to provide support. Before formally sending the request, coordinate with the office concerned to ensure that resources are available for, and capable of, providing the support.

   (B) When requesting support on a subcontract that includes foreign contract military sale (FMS) requirements, the contract administration office shall—
      (i) Mark “FMS Requirement” on the face of the documents; and
      (2) For each FMS case involved, provide the FMS case identifier, associated item quantities, DoD prime contract number, and prime contract line/subline item number.


Subpart 242.3—Contract Administration Office Functions

242.301 General.

Contract administration services performed outside the U.S. should be performed in accordance with FAR 42.301 unless there are no policies and procedures covering a given situation. In
this case, coordinate proposed actions with the appropriate U.S. country teams or commanders of unified and specified commands.

242.302 Contract administration functions.
(a)(4) Also, review and evaluate—
(A) Contractor estimating systems (see FAR 15.407–5); and
(B) Contractor material management and accounting systems under subpart 242.72.

(7) See 242.7503 for ACO responsibilities with regard to receipt of an audit report identifying significant accounting system or related internal control deficiencies.

(9) For additional contract administration functions related to IR&D/B&P projects performed by major contractors, see 242.771–3(a).

(13)(A) Do not delegate the responsibility to make payments to the Defense Contract Management Agency (DCMA).

(B) For contracts assigned to DCMA for contract administration, designate as the payment office—

(1) The cognizant Defense Finance and Accounting Service (DFAS) payment office as specified in the Federal Directory of Contract Administration Services Components (available via the Internet at http://home.dcm.mil/casbook/casbook.htm), for contracts funded with DoD funds;

(2) The department or agency payment office, if authorized by defense financial management regulations or if the contract is funded with non-DoD funds; or

(3) Multiple payment offices under paragraphs (a)(13)(B)(1) and (2) of this section, if the contract is funded with both DoD and non-DoD funds.

(C) For contracts not assigned to DCMA, select a payment office or offices under department/agency procedures. DoD personnel may use the DFAS Reference Tool, available via the Internet at http://referencetool.dfas.mil, to identify cognizant DFAS payment offices.

(19) Also negotiate and issue contract modifications reducing contract prices in connection with the provisions of paragraph (c) of the clause at FAR 52.225–8, Duty-Free Entry.

(33) Also perform industrial readiness and mobilization production planning field surveys and negotiate schedules.

(39) See 223.370 for safety requirements on contracts for ammunition and explosives.

(41) DCMA has responsibility for reviewing earned value management system (EVMS) plans and verifying initial and continuing contractor compliance with DoD EVMS criteria.

(67) Also support program offices and buying activities in precontractual efforts leading to a solicitation or award.

(b)(S–70) Serve as the single point of contact for all Single Process Initiative (SPI) Management Council activities. The ACO shall negotiate and execute facilitywide class modifications and agreements for SPI processes, when authorized by the affected components.

(b)(S–70) Issue, negotiate and execute orders under basic ordering agreements for overhaul, maintenance and repair.

317

Subpart 242.4—Correspondence and Visits

242.402 Visits to contractors’ facilities.
(a) If a visit to a contractor facility will require access to classified information, the visitors must give the contractor advance written notice (DoD 5220.22–R, Industrial Security Regulation).

242.503 Postaward conferences.

242.503–2 Postaward conference procedure.

Use the conference program outlined on the DD Form 1484, Post-Award Conference Record, in conducting the conference.
242.503–3 Postaward conference report.
The DD Form 1484, Post-Award Conference Record, may be used for this report.

242.570 Contract clause.
Use the clause at 252.242–7000, Postaward Conference, in solicitations and contracts.

Subpart 242.6—Corporate Administrative Contracting Officer

242.602 Assignment and location.
(c)(2) If the agencies cannot agree, refer the matter to the Director of Defense Procurement.

Subpart 242.7—Indirect Cost Rates

242.704 Billing rates.
(c) The administrative contracting officer or auditor shall periodically review billing rates for continued applicability. Billing rates should be established on a year-to-year basis.

242.705 Final indirect cost rates.

242.705–1 Contracting officer determination procedure.
(a) Applicability and responsibility. (1) The corporate administrative contracting officer (CSCO) and individual administrative contracting officers (ACOs) shall jointly decide whether negotiations will be conducted on a coordinated or centralized basis. When they are conducted on a coordinated basis, individual ACOs are responsible for coordinating with the CSCO to ensure consistency of cost determinations.

(b) Procedures. (2)(ii) When agreement cannot be reached with the contractor, the auditor will issue a DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved, in addition to the advisory report to the administrative contracting officer. The DCAA Form 1 details the items of exception and advises the contractor that requests for reconsideration should be submitted in writing to the administrative contracting officer.

242.705–3 Educational institutions.
(b) Predetermined final indirect cost rates. (4)(i) Predetermined indirect cost rate proposals may cover a period of two to four years when the cognizant Contracting Officer determines that the educational institution’s cost experience and other pertinent facts available are sufficient to enable the parties to reach an informed judgment on the probable levels of indirect costs and allocation base costs for the applicable future accounting periods. Predetermined rates covering two to four year periods are expected to be the norm in those situations.
(6) Predetermined indirect cost rates may be established to cover up to four years.

242.771 Independent research and development and bid and proposal costs.

242.771–1 Scope.
This section implements 10 U.S.C. 2372, Independent research and development and bid and proposal costs: Payments to contractors.

242.771–2 Policy.
Defense contractors are encouraged to engage in independent research and development and bid and proposal (IR&D/B&P) activities of potential interest to DoD, including activities cited in 231.205–18(c)(iii)(B).

242.771–3 Responsibilities.
(a) The cognizant administrative contracting officer (ACO) or corporate ACO shall—
(1) Determine cost allowability of IR&D/B&P costs as set forth in 231.205–18 and FAR 31.205–18.
(2) Determine whether IR&D/B&P projects performed by major contractors (see 231.205–18(a)) are of potential interest to DoD; and
(3) Notify the contractor promptly of any IR&D/B&P activities that are not of potential interest to DoD.
(b) The Defense Contract Management Agency or the military department responsible for performing contract administration functions is responsible for providing the Defense Contract Audit Agency (DCAA) with IR&D/B&P statistical information, as necessary, to assist DCAA in the annual report required by paragraph (c) of this subsection.
(c) DCAA is responsible for submitting an annual report to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics (OUSD (AT&L))) setting forth required statistical information relating to the DoD-wide IR&D/B&P program.
(d) The Director, Defense Research and Engineering (OUSD(AT&L)DDR&E), is responsible for establishing a regular method for communication—
(1) From DoD to contractors, of timely and comprehensive information regarding planned or expected DoD future needs; and
(2) From contractors to DoD, of brief technical descriptions of contractor IR&D projects.

Subpart 242.8—Disallowance of Costs

242.801 Notice of intent to disallow costs.

(e) A corporate administrative contracting officer need not obtain the approval of the individual administrative contracting officers to disallow items of corporate expense.

242.803 Disallowing costs after incurrence.

(a) Contracting officer receipt of vouchers. Contracting officer receipt of vouchers is applicable only for cost-reimbursement contracts with the Canadian Commercial Corporation. See 225.870–5(b) for invoice procedures.
(b) Auditor receipt of voucher.
(i) The contract auditor is the authorized representative of the contracting officer for—
(A) Receiving vouchers from contractors;
(B) Approving interim vouchers for provisional payment (this includes approving the fee portion of vouchers in accordance with the contract schedule and administrative contracting officer instructions) and sending them to the disbursing office;
(C) Authorizing direct submission of interim vouchers for provisional payment to the disbursing office for contractors with approved billing systems;
(D) Reviewing completion/final vouchers and sending them to the administrative contracting officer; and
(E) Issuing DCAA Forms 1, Notice of Contract Costs Suspended and/or Disapproved, to deduct costs where allowability is questionable.
(ii) The administrative contracting officer—
(A) Approves all completion/final vouchers and sends them to the disbursing officer; and
(B) May issue or direct the issuance of DCAA Form 1 on any cost when there is reason to believe it should be suspended or disallowed.

Subpart 242.11—Production Surveillance and Reporting

242.1104 Surveillance requirements.

(a) The cognizant contract administration office (CAO) must—
(i) Conduct a periodic risk assessment of each contractor to determine the degree of production surveillance needed for contracts awarded to that contractor. The risk assessment must consider information provided by the contractor and the contracting officer;
(ii) Develop a production surveillance plan based on the risk level determined during the risk assessment; and
(iii) Modify the production surveillance plan to incorporate any special
surveillance requirements for individual contracts, including any requirements identified by the contracting officer; and
(iv) Monitor contract progress and identify potential contract delinquencies in accordance with the production surveillance plan.

(65 FR 39723, June 27, 2000)

242.1105 Assignment of criticality designator.

(1) Contracting officers shall—
(i) Assign criticality designator A to items with a priority 01, 02, 03, or 06 (if emergency supply of clothing) under DoD 4140.1–R, DoD Materiel Management Regulation; and
(ii) Ordinarily assign criticality designator C to unilateral purchase orders.

(2) Only the contracting officer shall change the assigned designator.


242.1106 Reporting requirements.

(a) See DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs.

(b)(i) Within four working days after receipt of the contractor’s report, the CAO must provide the report and any required comments to the contracting officer and, unless otherwise specified in the contract, the inventory control manager.

(ii) If the contractor’s report indicates that the contract is on schedule and the CAO agrees, the CAO does not need to add further comments. In all other cases, the CAO must add comments and recommend a course of action.

(65 FR 39723, June 27, 2000)

242.1107 Contract clause.

(b) When using the clause at FAR 52.242–2, include the following instructions in the contract schedule—
(i) Frequency and timing of reporting (normally 5 working days after each reporting period);
(ii) Contract line items, exhibits, or exhibit line items requiring reports;
(iii) Offices (with addressees/codes) where reports should be sent (always include the contracting office and contract administration office); and
(iv) The following requirements for report content—
(A) The problem, actual or potential, and its cause;
(B) Items and quantities affected;
(C) When the delinquency started or will start;
(D) Actions taken to overcome the delinquency;
(E) Estimated recovery date; and/or
(F) Proposed schedule revision.

242.1107–70 Solicitation provision and contract clause.

(a) Use the clause at 252.242-7005, Cost/Schedule Status Report, in solicitations and contracts for other than major systems that require cost/schedule status reports (i.e., when the Contract Data Requirements List includes DI-MGMT-61467 in accordance with DoD 5000.2–R).

(b) Use the provision at 252.242-7006, Cost/Schedule Status Report Plans, in solicitation for other than major systems that require cost/schedule status reports.

[63 FR 11541, Mar. 9, 1998]

Subpart 242.12—Novation and Change-of-Name Agreements

242.1202 Responsibility for executing agreements.

The contracting officer responsible for processing and executing novation and change-of-name agreements shall ensure agreements are executed promptly.

[60 FR 1749, Jan. 5, 1995]

242.1203 Processing agreements.

(b)(2)(A) For contracts awarded by the Military Departments, provide notices to the following addressees instead of individual contracting or contract administration offices—

Navy .......... Office of the Assistant Secretary of the Navy, Research, Development & Acquisition, Acquisition and Business Management, 2211 South Clark Place, Room 578, Arlington, VA 22202–3788.
242.1204 Agreement to recognize a successor in interest (novation agreement).

(i) When a novation agreement is required and the transferee intends to incur restructuring costs as defined at 213.205-70, the cognizant contracting officer shall include the following provision as paragraph (b)(7) of the novation agreement instead of the paragraph (b)(7) provided in the sample format at FAR 42.1204(i):

"(7)(i) Except as set forth in subparagraph (7)(ii) below, the Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contracts.

(ii) The Government recognizes that restructuring by the Transferee incidental to the acquisition/merger may be in the best interests of the Government. Restructuring costs that are allowable under Part 31 of the Federal Acquisition Regulation (FAR) or Part 231 of the Defense Federal Acquisition Regulation Supplement (DFARS) may be reimbursed under flexibly-priced novated contracts, provided the Transferee demonstrates that the restructuring will reduce overall costs to the Department of Defense (DoD) (and to the National Aeronautics and Space Administration (NASA), where there is a mix of DoD and NASA contracts), and the requirements included in DFARS 231.205–70 are met. Restructuring costs shall not be allowed on novated contracts unless there is an audit of the restructuring proposal; a determination by the contracting officer of overall reduced costs to DoD/NASA; and an Advance Agreement setting forth a cumulative cost ceiling for restructuring projects and the period to which such costs shall be assigned."

Subpart 242.14—Traffic and Transportation Management

242.1402 Volume movements within the continental United States.

(a) (2) In reporting planned and actual volume movements—
(A) The contracting officer—
(1) Provides production schedules and planned destinations to the servicing transportation office as soon as the information is available to permit the transportation office to determine if volume movements will occur. If a volume movement appears likely, the transportation office reports a planned volume movement in accordance with DoD 4500.9–R, Defense Transportation Regulation, Part II, Chapter 201.
(2) Sends a copy of the volume movement report to the contract administration office.
(B) The contract administration office submits a volume movement report when—
(i) Significant changes are made to the movement requirements; or
(ii) The contracting office did not submit a report.
(C) Include the destination country, freight forwarder, and, if known, port of embarkation on volume movement reports for foreign military sale shipments.


242.1403 Shipping documents covering f.o.b. origin shipments.

(a)(i) Procedures for the contractor to obtain Government bills of lading are in the clause at 252.242–7003, Application for U.S. Government Shipping Documentation/Instructions.
(ii) The term “commercial bills of lading” includes the use of any commercial form or procedure.


242.1404 Shipments by parcel post or other classes of mail.

242.1404–1 Parcel post eligible shipments.


[56 FR 67220, Dec. 30, 1991]
Subpart 242.70 [Reserved]

Subpart 242.71—Voluntary Refunds

242.7100 General.
(a) A voluntary refund is a payment or credit (adjustment under one or more contracts or subcontracts) to the Government from a contractor or subcontractor which is not required by any contractual or other legal obligation.
(b) A voluntary refund may be solicited (requested by the Government) or unsolicited.
(1) Generally, request voluntary refunds only after determining that no contractual remedy is readily available to recover the amount sought.
(2) Acceptance of unsolicited refunds does not prejudice remedies otherwise available to the Government.
(c) Before soliciting a voluntary refund or accepting an unsolicited one, the contracting officer should have legal counsel review the contract and related data to—
   (1) Confirm that there are no readily available contractual remedies; and
   (2) Advise whether the proposed action would jeopardize or impair the Government’s rights.

242.7101 Solicited refunds.
(a) Request voluntary refunds only when—
(1) The contracting officer concludes that the contractor overcharged under a contract, or inadequately compensated the Government for the use of Government-owned property, or inadequately compensated the Government in the disposition of contractor inventory; and
(2) Retention of the amount in question by the contractor or subcontractor would be contrary to good conscience and equity.
(b) Do not solicit voluntary refunds without approval of the head of the contracting activity, or as provided in department/agency regulations.
(c) Voluntary refunds may be requested during or after contract performance.

Subpart 242.72—Contractor Material Management and Accounting System

242.7200 Scope of subpart.
(a) This subpart provides policies, procedures, and standards for use in the evaluation of a contractor’s material management and accounting system (MMAS).
(b) The policies, procedures, and standards in this subpart—
(1) Apply only when the contractor has contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial items and are either—
   (i) Cost-reimbursement contracts; or
   (ii) Fixed-price contracts with progress payments made on the basis of costs incurred by the contractor as work progresses under the contract; and
(2) Do not apply to small businesses, educational institutions, or nonprofit organizations.

242.7201 Definitions.

Material management and accounting system and valid time-phased requirements are defined in the clause at 252.242–7004, Material Management and Accounting System.

242.7202 Policy.

DoD policy is for its contractors to have an MMAS that conforms to the standards in paragraph (e) of the clause at 252.242–7004, so that the system—

(a) Reasonably forecasts material requirements;

(b) Ensures the costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(c) Maintains a consistent, equitable, and unbiased logic for costing of material transactions.

242.7203 Review procedures.

(a) Criteria for conducting reviews. Conduct an MMAS review when—

(1) A contractor has $40 million of qualifying sales to the Government during the contractor’s preceding fiscal year; and

(2) The administrative contracting officer (ACO), with advice from the auditor, determines an MMAS review is needed based on a risk assessment of the contractor’s past experience and current vulnerability.

(b) Qualifying sales. Qualifying sales are sales for which cost or pricing data were required under 10 U.S.C. 2306a, as implemented in FAR 15.403, or that are contracts priced on other than a firm-fixed-price or fixed-price with economic price adjustment basis. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(c) System evaluation. Cognizant contract administration and audit activities must jointly establish and manage programs for evaluating the MMAS systems of contractors and must annually establish a schedule of contractors to be reviewed. In addition, they must—

(1) Conduct reviews as a team effort.

(i) the ACO—

(A) Appoints a team leader; and

(B) Ensures that the team includes appropriate functional specialists (e.g., industrial specialist, engineer, property administrator, auditor).

(ii) The team leader—

(A) Advises the ACO and the contractor of findings during the review and at the exit conference; and

(B) Makes every effort to resolve differences regarding questions of fact during the review.

(iii) The contract auditor—

(A) Participates as a member of the MMAS team or serves as the team leader (see paragraph (c)(1)(i) of this section); and

(B) Issues an audit report for incorporation into the MMAS report based on an analysis of the contractor’s books, accounting records, and other related data.

(2) Tailor reviews to take full advantage of the day-to-day work done by both organizations.

(3) Prepare the MMAS report.

(d) Disposition of evaluation team findings. The team leader must document the evaluation team findings and recommendations in the MMAS report to the ACO. If there are any significant MMAS deficiencies, the report must provide an estimate of the adverse impact on the Government resulting from those deficiencies.

(1) Initial notification to the contractor. The ACO must provide a copy of the report to the contractor immediately upon receipt from the team leader.

(i) The ACO must notify the contractor in a timely manner if there are no deficiencies.

(ii) If there are any deficiencies, the ACO must request the contractor to provide a written response within 30 days (or such other date as may be mutually agreed to by the ACO and the contractor) from the date of initial notification.

(iii) If the contractor agrees with the report, the contractor has 60 days (or such other date as may be mutually agreed to by the ACO and the contractor) to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.
(iv) If the contractor disagrees with the report, the contractor must provide rationale in the written response.

(2) **Evaluation of the contractor’s response.** The ACO, in consultation with the auditor, evaluates the contractor’s response and determines whether—

(i) The MMAS contains any deficiencies and, if so, any corrective action is needed;

(ii) The deficiencies are significant enough to result in the reduction of progress payments or disallowance of costs on vouchers; and

(iii) Proposed corrective actions (if the contractor submitted them) are adequate to correct the deficiencies.

(3) **Notification of ACO determination.**

(i) The ACO must notify the contractor in writing (copy to auditor and functional specialists) of—

(A) Any deficiencies and the necessary corrective action;

(B) Acceptability of the contractor’s corrective action plan (if one was submitted) or the need for a corrective action plan; and

(C) Any decision to reduce progress payments or disallow costs on vouchers.

(ii) The Government does not approve or disapprove the contractor’s MMAS. ACO notifications should avoid any such implications.

(iii) From the time the ACO determines that there are any significant MMAS deficiencies until the time the deficiencies are corrected, all field pricing reports for that contractor must contain a recommendation relating to proposed adjustments necessary to protect the Government’s interests.

(iv) The ACO should consider the effect of any significant MMAS deficiencies in reviews of the contractor’s estimating system (see 215.407–5).

(4) **Reductions or disallowances.**

(i) When the ACO determines the MMAS deficiencies have a material impact on Government contract costs, the ACO must reduce progress payments by an appropriate percentage based on affected costs (in accordance with FAR 32.503–6) and/or disallow costs on vouchers (in accordance with FAR 42.803). The reductions or disallowances must remain in effect until the ACO determines that—

(A) The deficiencies are corrected; or

(B) The amount of the impact is immaterial.

(ii) The maximum payment adjustment is the adverse material impact to the Government as specified in the MMAS report. The ACO should use the maximum adjustment when the contractor did not submit a corrective action plan with its response, or when the plan is unacceptable. In other cases, the ACO should consider the quality of the contractor’s corrective action plan in determining the appropriate percentage.

(iii) As the contractor implements its accepted corrective action plan, the ACO should reinstate a portion of withheld amounts commensurate with the contractor’s progress in making corrections. However, the ACO must not fully reinstate withheld amounts until the contractor corrects the deficiencies, or until the impact of the deficiencies become immaterial.

(5) **Monitoring contractor’s corrective action.** The ACO and the auditor must monitor the contractor’s progress in correcting deficiencies. When the ACO determines the deficiencies have been corrected, the ACO must notify the contractor in writing. If the contractor fails to make adequate progress, the ACO must take further action. The ACO may—

(i) Elevate the issue to higher level management;

(ii) Further reduce progress payments and/or disallow costs on vouchers;

(iii) Notify the contractor of the inadequacy of the contractor’s cost estimating system and/or cost accounting system; and

(iv) Issue cautions to contracting activities regarding the award of future contracts.

242.7204 **Contract clause.**

Use the clause at 252.242–7004, **Material Management and Accounting System**, in all solicitations and contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial items and—

(a) Are not awarded to small businesses, educational institutions, or nonprofit organizations; and

(b) Are either—

(1) Cost-reimbursement contracts; or
326 48 CFR Ch. 2 (10–1–02 Edition)

242.7300 (2) Fixed-price contracts with progress payments made on the basis of costs incurred by the contractor as work progresses under the contract.

Subpart 242.73—Contractor Insurance/Pension Review

242.7300 Scope of subpart.

This subpart provides the requirements for conducting a Contractor Insurance/Pension Review (CIPR).

242.7301 General.

(a) The administrative contracting officer (ACO) is responsible for determining the allowability of insurance/pension costs in Government contracts. Defense Contract Management Agency (DCMA) insurance/pension specialists and Defense Contract Audit Agency (DCAA) auditors assist ACOs in making these determinations by conducting CIPRs.

(1) A CIPR is an in-depth evaluation of a contractor’s—

(i) Insurance program;

(ii) Pension plans;

(iii) Other deferred compensation plans; and

(iv) Related policies, procedures, practices, and costs.

(2) A special CIPR is a joint DCMA/DCAA review that concentrates on specific areas of the contractor’s insurance program, pension plan, or other deferred compensation plan.

(b) DCMA is the DoD Executive Agency for the performance of all CIPRs conducted under 242.7302.


242.7302 Requirements.

(a)(1) A CIPR shall be conducted only when—

(i) A contractor has $40 million of qualifying sales to the Government during the contractor’s preceding fiscal year; and

(ii) The ACO, with advice from DCMA insurance/pension specialists and DCAA auditors, determines a CIPR is needed based on a risk assessment of the contractor’s past experience and current vulnerability.

(2) Qualifying sales are sales for which cost or pricing data were required under 10 U.S.C. 2306a, as implemented in FAR 15.403, or that are contracts priced on other than a firm-fixed-price or fixed-price with economic price adjustment basis. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(b) A special CIPR shall be performed for a contractor (including, but not limited to, a contractor meeting the requirements in paragraph (a) of this section) when any of the following circumstances exists, but only if the circumstance(s) may result in a material impact on Government contract costs:

(1) Information reveals a deficiency in the contractor’s insurance/pension program.

(2) The contractor proposes or implements changes in its insurance, pension, or deferred compensation plans.

(3) The contractor is involved in a merger, acquisition, or divestiture.

(4) The Government needs to follow up on contractor implementation of prior CIPR recommendations.

(c) The DCAA auditor shall use relevant findings and recommendations of previously performed CIPRs in determining the scope of any audits of insurance and pension costs.

(d) When a Government organization believes that a review of the contractor’s insurance/pension program should be performed, that organization should provide a recommendation for a review to the ACO. If the ACO concurs, the review should be performed as part of an ACO-initiated special CIPR or as part of a CIPR already scheduled for the near future.


242.7303 Responsibilities.

(a)(1) The ACO is responsible for—

(i) Determining the need for a CIPR under 242.7302;

(ii) Requesting and scheduling the reviews with the appropriate DCMA activity;

(iii) Notifying the contractor of the proposed date and purpose of the review, and obtaining any preliminary data needed by the DCMA insurance/pension specialist or the DCAA auditor;
(4) Reviewing the CIPR report, advising the contractor of the recommendations contained therein, considering contractor comments, and rendering a decision on those recommendations;
(5) Providing other interested contracting officers copies of documents related to the CIPR;
(6) Ensuring adequate follow-up on all CIPR recommendations; and
(7) Performing contract administration responsibilities related to Cost Accounting Standards administration as described in FAR Subparts 30.2 and 30.6.

(b) The DCMA insurance/pension specialist is responsible for—
(1) Preparing and maintaining the schedule of CIPRs to be performed during the next 12 months and providing the military departments and DCAA a copy of the schedule;
(2) Issuing a technical report on the contractor’s insurance/pension plans for incorporation into the final CIPR report based on an analysis of the contractor’s pension program, insurance program, and other related data;
(3) Leading the team that conducts the review. Another individual may serve as the team leader when both the insurance/pension specialist and the individual agree. The team leader is responsible for—
   (i) Maintaining complete documentation for CIPR reports;
   (ii) To the extent possible, resolving discrepancies between audit reports and CIPR draft reports prior to releasing the final CIPR report;
   (iii) Preparing and distributing the final CIPR report;
   (iv) Providing the final audit report and/or the insurance/pension specialist’s report as an attachment to the CIPR report; and
   (v) Preparing a draft letter for the administrative contracting officer’s use in notifying the contractor of CIPR results; and
(4) When requested, advising administrative contracting officers and other Government representatives concerning contractor insurance/pension matters.
(c) The DCAA auditor is responsible for—
(1) Participating as a member of the CIPR team or serving as the team leader (see paragraph (b)(3) of this section);
(2) Issuing an audit report for incorporation into the final CIPR report based on an analysis of the contractor’s books, accounting records, and other related data; and
(3) Performing contract audit responsibilities related to Cost Accounting Standards administration as described in FAR Subparts 30.2 and 30.6.

Subpart 242.74—Technical Representation at Contractor Facilities

242.7400 General.
(a) Contract administration offices (CAOs) are the designated representatives of DoD for the administration of contracts (see FAR 42.202 and 42.302). DoD activities shall use CAOs to perform contract administration service functions at or near contractor facilities (see 242.202(a)).
(b) Program managers may conclude that they need technical representation in contractor facilities to perform non-contract administration service (CAS) technical duties and to provide liaison, guidance, and assistance on systems and programs. In these cases, the program manager may assign technical representatives under the procedures in 242.7401.
(c) Program managers should carefully assess the number of technical representatives required to perform the non-CAS technical functions so as to keep the total assigned in-plant to the minimum necessary.
(d) A technical representative is a representative of a DoD program, project, or system office performing non-CAS technical duties at or near a contractor facility. A technical representative is not—
   (1) A representative of a contract administration or contract audit component; or
   (2) A contracting officer’s representative (COR) (see 201.602).

242.7401 Procedures.

(a) When the program, project, or system manager determines that a technical representative is required, the manager shall issue a letter of intent to the contract administration office commander listing the assignment location, starting and ending assignment dates, technical duties assigned, delegated authority, and support required from the contract administration office. Any issues regarding the assignment of a technical representative should be resolved promptly. However, final decision on the assignment remains with the program manager. Issues regarding the assignment of technical duties which cannot be resolved between the program office and the defense plant representative office will be escalated.

(b) The program, project, or system manager shall furnish the designated technical representative a letter of assignment of delegated technical duties, with copies to the contract administration office, the contracting officer, and contractor, at least 30 days before the assignment date (or termination date). Any changes to the requirements of the assignment letter will be made by a new letter of intent and processed in accordance with paragraph (a) of this section.

(c) The contract administration office normally provides the technical representative with office space, equipment, supplies, and part-time clerical support. The program, project, or system manager provides supervision, technical direction, administrative services (e.g., pay, travel, maintenance of personnel records), and, when required, full-time clerical support.

(d) The program manager or designee and the contract administration office, at the local level, shall negotiate a memorandum of agreement (MOA) delineating their functional administrative interrelationships, with annual updates as necessary. The agreements may be included in an existing MOA, if one exists, or as a separate MOA.

(e) The technical representative shall keep the contract administration office commander fully informed of matters discussed with the contractor. The contract administration office shall also keep the technical representative fully informed of contractor discussions which relate to technical matters within the purview of the technical representative’s assigned duties.

Subpart 242.75—Contractor Accounting Systems and Related Controls

SOURCE: 60 FR 29500, June 5, 1995, unless otherwise noted.

242.7500 Scope of subpart.

This subpart provides policies and procedures applicable to contractor accounting systems and related internal controls.

242.7501 Definition.

Internal controls means those policies and procedures established by contractor management to provide reasonable assurance that applicable laws and regulations are complied with and that actual and estimated costs are equitably allocated within the accounting system.

242.7502 Policy.

Contractors receiving cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, shall maintain an accounting system and related internal controls throughout contract performance which provide reasonable assurance that—

(a) Applicable laws and regulations are complied with;
(b) The accounting system and cost data are reliable;
(c) Risk of misallocations and mischarges are minimized; and
(d) Contract allocations and charges are consistent with invoice procedures.

242.7503 Procedures.

(a) Upon receipt of an audit report identifying significant accounting system or related internal control deficiencies, the ACO will—

(1) Provide a copy of the report to the contractor and allow 30 days, or a reasonable extension, for the contractor to respond;
(2) 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.

(3) If the contractor disagrees, the contractor should provide rationale in its written response.

(4) The ACO will consider whether it is appropriate to suspend a percentage of progress payments or reimbursement of costs proportionate to the estimated cost risk to the Government, considering audit reports or other relevant input, until the contractor submits a corrective action plan acceptable to the ACO and corrects the deficiencies. (See FAR 32.503–6 (a) and (b) and FAR 42.302(a)(7)).

PART 243—CONTRACT MODIFICATIONS

Subpart 243.1—General

Sec.
243.102 Policy.
243.105 Availability of funds.
243.107 Contract clause.
243.107–70 Notification of substantial impact on employment.
243.170 Identification of foreign military sale (FMS) requirements.
243.171 Obligation or deobligation of funds.

Subpart 243.2—Change Orders

243.204 Administration.
243.204–70 Certification of requests for equitable adjustment.
243.204–71 Engineering change proposals.
243.205 Contract clauses.
243.205–70 Pricing of contract modifications.
243.205–71 Requests for equitable adjustment.


SOURCE: 56 FR 36446, July 31, 1991, unless otherwise noted.

Subpart 243.1—General

243.102 Policy.

(b)(i) See subpart 217.74 for limitations on issuing undefinitized contract actions.

(ii) Modifications of letter contracts are subject to the same policies and procedures as modifications of definitive contracts.

243.105 Availability of funds.

(a)(i) 10 U.S.C. 2405 prohibits adjustments in price under a shipbuilding contract entered into after December 7, 1993, for a claim, request for equitable adjustment, or demand for payment under the contract, arising out of events occurring more than 18 months before submission of the claim, request, or demand.

(ii) In accordance with 10 U.S.C. 983, do not provide funds by contract or contract modification, or make contract payments, to an institution of higher education that has a policy or practice of hindering Senior Reserve Officer Training Corps units or military recruiting on campus as described at 209.470.


243.107 Contract clause.

For DoD, the specifically authorized representative (SAR) referred to in the clause at FAR 52.243–7, Notification of Changes, is a contracting officer’s representative as defined in 202.101 and as discussed in subpart 201.6.

243.107–70 Notification of substantial impact on employment.

The Secretary of Defense is required to notify the Secretary of Labor if a modification of a major defense contract or subcontract will have a substantial impact on employment. The clause prescribed at 249.7002(c) requires that the contractor notify the contracting officer when a contract modification will have a substantial impact on employment.

[56 FR 67220, Dec. 30, 1991]

243.170 Identification of foreign military sale (FMS) requirements.

Identify contract modifications that add FMS requirements by clearly marking “FMS Requirement” on the front. Within the modification, cite each FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY–D–DCA.

243.171 Obligation or deobligation of funds.

For each contract modification, the contracting officer shall identify, in Section G, Contract Administration Data (Uniform Contract Format), or the contract schedule (Simplified Contract Format), under the heading “Summary for the Payment Office,” information sufficient to permit the paying office to readily identify the changes for each contract line and subline item as follows—

(a) The amount of funds obligated by prior contract actions, to include the total cost and fee if a cost-type contract; the target fee at time of contract award if a cost-plus-incentive-fee contract; the base fee if a cost-plus-award-fee contract; or the target price and target profit if a fixed-price incentive contract;

(b) The amount of funds obligated or deobligated by the instant modification, categorized by the types of contracts specified in paragraph (a) of this section; and

(c) The total cumulative amount of obligated or deobligated funds, categorized by the types of contracts specified in paragraph (a) of this section.

[60 FR 34747, July 3, 1995]

Subpart 243.2—Change Orders

243.204 Administration.

(b) Definitization. The administrative contracting officer (ACO) must review change orders issued by the contracting officer to ensure compatibility with the status of performance. If the contractor has progressed beyond the effective point specified in the change order, the ACO must determine the earliest practical point at which the change order could be made effective and advise the contracting officer. The contracting officer must issue another change order to correct, revise, or supersede the first change order, then definitize by supplemental agreement citing both change orders.

243.204–70 Certification of requests for equitable adjustment.

(a) A request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold may not be paid unless the contract certifies the request in accordance with the clause at 252.243–7002.

(b) The aggregate amount of both the increased and decreased costs shall be used in determining when the dollar threshold requiring certification is met (see example in FAR 15.403-4(a)(1)(iii)).

(c) The certification required by 10 U.S.C. 2419(a), as implemented in the clause at 252.243–7002, is different from the certification required by the Contract Disputes Act of 1978 (41 U.S.C. 605(c)). If the contractor has certified a request for equitable adjustment in accordance with 10 U.S.C. 2419(a), and desires to convert the request to a claim under the Contract Disputes Act, the contractor shall certify the claim in accordance with FAR Subpart 33.2.


243.204–71 Engineering change proposals.

Engineering changes can originate with either the contractor or the Government. In either case, the Government will need detailed information from the contractor for evaluation of the technical, cost, and schedule effects of implementing the change.

[66 FR 49865, Oct. 1, 2001]

243.205 Contract clauses.

243.205–70 Pricing of contract modifications.

Use the clause at 252.243–7001, Pricing of Contract Modifications, in solicitations and contracts when anticipating and using a fixed price type contract.


243.205–71 Requests for equitable adjustment.

Use the clause at 252.243–7002, Requests for Equitable Adjustment, in solicitations and contracts estimated to exceed the simplified acquisition threshold.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 244.2—Consent to Subcontracts

Sec. 244.202 Contracting officer’s evaluation.

Subpart 244.3—Contractors’ Purchasing Systems Reviews

244.301 Objective.

244.303 Extent of review.

Also review the adequacy of rationale documenting commercial item determinations to ensure compliance with the definition of “commercial item” in FAR 2.101.

[67 FR 38023, May 31, 2002]

244.304 Surveillance.

(b) The ACO, or the purchasing system analyst (PSA) with the concurrence of the ACO, may initiate a special review of specific weaknesses in the contractor’s purchasing system. The weaknesses, for example—

(i) May arise because of—

(A) Major changes in the contractor’s purchasing policies, procedures, or key personnel; or

(B) Changes in plant workload or type of work.

(ii) May be discovered—

(A) During reviews of subcontracts submitted under advance notification and consent (FAR subpart 44.2); or

(B) From information provided by Government personnel.


244.305 Granting, withholding, or withdrawing approval.

244.305–70 Granting, withholding, or withdrawing approval.

Use this subsection instead of FAR 44.305–2(c) and 44.305–3(b).

(a) At the completion of the in-plant portion of the review, the ACO shall hold an exit conference with the contractor. At the conference, the ACO should—

(1) Present the review team’s recommendations, signed by the ACO;

(2) Request the contractor submit its plan for correcting deficiencies or making improvements within 15 days; and

(3) Not comment on the pending or planned decision to grant or withhold approval of the contractor’s purchasing system.

(b) The PSA should submit the complete report to the ACO, or any department or agency established review board, within ten days after receipt of the contractor’s response under paragraph (a)(2) of this subsection.
244.402

(c) The ACO should completely review the report and consider the contractor's response before making a decision on granting, withholding, or withdrawing purchasing system approval. The ACO shall notify the contractor of the decision within ten days after receipt of the report with a copy of the decision to the PSA and the contracting office, when requested.

(d) When a contractor advises that it has corrected deficiencies that led the ACO to withhold or withdraw the purchasing system approval, the ACO—
1. Shall request the PSA to verify that the contractor has—
   i. Corrected the deficiencies; and
   ii. Implemented any other ACO recommendations.
2. Should ask for a review of purchasing policies and procedures issued since the last review.

Subpart 244.4—Subcontracts for Commercial Items and Commercial Components

244.402 Policy requirements.

(a) Contractors shall determine whether a particular subcontract item meets the definition of a commercial item. This requirement does not affect the contracting officer’s responsibilities or determinations made under FAR 15.403-1(c)(3). Contractors are expected to exercise reasonable business judgment in making such determinations, consistent with the guidelines for conducting market research in FAR part 10.

[67 FR 38023, May 31, 2002]

244.403 Contract clause.

Use the clause at 252.244-7000. Subcontracts for Commercial Items and Commercial Components (DoD contracts), in solicitations and contracts for supplies or services other than commercial items, that contain any of the following clauses: 252.225-7014 Preference for Domestic Specialty Metals, Alternate I, 252.247-7023 Transportation of Supplies by Sea, and 252.247-7024 Notification of Transportation of Supplies by Sea.

[65 FR 14401, Mar. 16, 2000]
Department of Defense

245.607–2 Recovering precious metals.
245.607–7 Scrap warranty.
245.608 Screening of contractor inventory.
245.608–1 General.
245.608–2 Standard screening.
245.608–5 Special items screening.
245.608–7 Reimbursement of cost for transfer of contractor inventory.
245.608–70 Contractor inventory redistribution system (CIIRS).
245.608–71 Screening industrial plant equipment.
245.608–72 Screening excess automatic data processing equipment (ADPE).

Subpart 245.70—Appointment of Property Administrators and Plant Clearance Officers

245.7001 Selection, appointment, and termination.
245.7002 Duties and responsibilities of plant clearance officers.

Subpart 245.71—Plant Clearance Forms

245.7101 Forms.
245.7101–1 Standard Form 97, Certificate of Release of a Motor Vehicle (Agency Record Copy).
245.7101–2 DD Form 1149, Requisition and Invoice Shipping Document.
245.7101–4 DD Form 1640, Request for Plant Clearance.

Subpart 245.72—Special Instructions

245.7201 Performing inventory verification and determination of allocability.
245.7202 Establishing a plant clearance case.
245.7203 Assigning plant clearance case numbers.
245.7204 Preparing inventory disposal report.
245.7205 Reporting excess and surplus contractor inventory.
245.7206 Transmitting DD Form 1342, DoD Property Record.

Subpart 245.73—Sale of Surplus Contractor Inventory

245.7301 Policy.
245.7302 Competitive sales.
245.7302–1 Property descriptions.

245.7302–2 Lotting.
245.7302–3 Alternate bids.
245.7302–4 Basis for sale.
245.7302–5 Mailing lists.
245.7303 Formal bid procedures.
245.7304 Informal bid procedures.
245.7305 Sale approval and award.
245.7306 Sales services.
245.7307 Non-competitive sales.
245.7307–1 General.
245.7307–2 Justification.
245.7308 Antitrust notification.
245.7309 Mandatory terms and conditions—formal invitations.
245.7309–1 Inspection.
245.7309–2 Condition and location of property.
245.7309–3 Consideration of bids.
245.7309–4 Payment.
245.7309–5 Title.
245.7309–6 Delivery and removal of property.
245.7309–7 Default.
245.7309–8 Variations in quantity or weight.
245.7309–9 Weighing.
245.7309–10 Risk of loss.
245.7309–11 Liability.
245.7309–12 Oral statements.
245.7309–13 Eligibility of bidders.
245.7309–14 Claims liability.
245.7310 Special term and conditions.
245.7310–1 Demilitarization.
245.7310–2 Performance bond.
245.7310–3 Liability and insurance.
245.7310–4 Dangerous property.
245.7310–5 Controlled substances.
245.7310–6 Radioactive material.
245.7310–7 Scrap warranty.
245.7310–8 Antitrust clearance.
245.7311 Optional conditions.
245.7311–1 Sales and use tax liability.
245.7311–2 Safety, security, and fire regulations.
245.7311–3 Bid deposits.
245.7311–4 Other special conditions.

SOURCE: 56 FR 36448, July 31, 1991, unless otherwise noted.

Subpart 245.1—General

245.104 Review and correction of contractor’s property control systems.

(a) The property administrator shall perform property administration in accordance with DoD 4161.2–M, Manual for the Performance of Contract Property Administration.

Subpart 245.3—Providing Government Property to Contractors

245.301 Definitions.

Agency-peculiar property, as used in DoD, means military property and includes end items and integral components of military weapons systems, along with the related peculiar support equipment which is not readily available as a commercial item.

Facilities project means a Government project to provide, modernize or replace facilities for use by a contractor in performing a Government contract or subcontract.

Industrial plant equipment (IPE) means plant equipment in Federal stock group 34 with an acquisition cost of $15,000 or more used for cutting, abrading, grinding, shaping, forming, joining, heating, treating, or otherwise altering the physical properties of materials, components or end items entailed in manufacturing, maintenance, supply, processing, assembly, or research and development operations. IPE is further identified in AR 700–43/NAVSUP PUB 5009/AFM 78–9/DLAM 4215.1, Management of Defense-Owned Industrial Plant Equipment.

Mapping, charting, and geodesy (MC&G) property is defined in the clause at 252.245–7000, Government Furnished Mapping, Charting and Geodesy Property.

Other plant equipment (OPE) means plant equipment regardless of dollar value, used in or in conjunction with the manufacture of components or end items relative to maintenance, supply, processing, assembly or research and development operations. OPE excludes equipment categorized as IPE.

Provide means either to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

245.302 Providing facilities.

245.302–1 Policy.

(a)(4)(A) Comply with DoD Directive 4275.5, Acquisition and Management of Industrial Resources, in processing a request for facilities. Submit requests for approval of facilities projects—
(i) Is a research and development-funded effort not exceeding $3 million per fiscal year; or
(ii) Is funded from procurement appropriations, approved on a location basis, and does not exceed $5 million for all property efforts during one fiscal year; or
(iii) Is in support of a major system or subsystem (including ammunition-related projects) and the total investment will not exceed $25 million during the projected acquisition or maintenance effort.

(2) To the Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations) for projects exceeding the limitations in paragraph (a)(4)(A)(1) of this subsection.

(B) The contracting officer shall coordinate the Determination and Finding with the program or project manager.

(C) Departments and agencies must submit reports of facilities projects to the House and Senate Armed Services Committees—
(1) At least 30 days before starting facilities projects involving real property (10 U.S.C. 2662); and
(2) In advance of starting construction for a facilities project regardless of cost. Use DD Form 1391, FY ___, Military Construction Project Data, to notify congressional committees of projects that are not included in the annual budget.

(b)(1)(A) Industrial plant equipment.

Before acquiring industrial plant equipment—


(2) Do not acquire any item listed on the DD Form 1419 until a certificate of nonavailability is received from DSCR.

(B) Automatic data processing equipment. The administrative contracting


245.302–2 Facilities contracts.

Terminate facilities contracts when Government production and research property is no longer required for the performance of Government contracts or subcontracts, unless termination is not in the best interest of the Government. The contractor is not allowed to extend the time for use of property provided under the facilities contract without Government authorization.

245.302–7 Optional property-related clauses for facilities contracts.

Use the clause at 252.225–7030, Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate, as prescribed in 225.7017–4.

[57 FR 14995, Apr. 23, 1992]

245.303 Providing material.

245.303–2 Procedures.

When a contractor will be responsible for preparing requisitioning documentation, include in the contract the requirement to prepare the documentation in accordance with DoD 4000.25–1–M, Military Standard Requisitioning and Issue Procedures (MILSTRIP). Copies are available from the address cited at 251.102(e)(2).b(2).

245.307 Providing special test equipment.

245.307–2 Acquiring special test equipment.

(b) Notice and approval. (1) The review requires a written evaluation from the appropriate technical specialist.

245.310 Providing agency-peculiar property.

(c) All Government-furnished mapping, charting, and geodesy (MC&G) property is under the control of the Director, National Imagery and Mapping Agency (NIMA).

(i) MC&G property shall not be duplicated, copied, or otherwise reproduced for purposes other than those necessary for contract performance.

(ii) Upon completion of contract performance, the contracting officer shall—

(A) Contact the Director, NIMA (PP), 8613 Lee Highway, Fairfax, VA 22031–2137, for disposition instructions;

(B) Direct the contractor to destroy or return all Government-furnished MC&G property not consumed during contract performance; and

(C) Specify the destination and means of shipment for material to be returned to the Government.


245.310–70 Contract clause.

Use the clause at 252.245–7000, Government-Furnished Mapping, Charting, and Geodesy Property, in solicitations and contracts when mapping, charting, and geodesy property is to be furnished.

[57 FR 42632, Sept. 15, 1992]

Subpart 245.4—Use and Rental of Government Property

245.401 Policy.

Government use includes use on contracts for foreign military sales. Use on contracts for foreign military sales shall be on a rent-free basis.

245.403 Rental—Use and charges clause.

(1) The DoD normally recovers a fair share of nonrecurring costs of special tooling and special test equipment by including these costs in its calculation of the nonrecurring cost recoupment charge when major defense equipment
is sold by foreign military sales or direct commercial sales to foreign governments or international organizations. Major defense equipment is defined in DODD 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Items, as any item of significant military equipment on the United States Munitions List having a nonrecurring RDT&E cost of more than $50 million or a total production cost of more than $200 million.

(2) When these cost thresholds are not met, the contracting officer shall assess rental charges for use of special tooling and special test equipment pursuant to the Use and Charges clause when administratively practicable.


245.407 Non-Government use of plant equipment.

(a)(i) Non-Government use of industrial plant equipment (IPE) exceeding 25 percent requires prior approval of the—

(A) Assistant Secretary of the Army (RD&A);

(B) Assistant Secretary of the Navy (RD&A);

(C) Assistant Secretary of the Air Force (Acquisition); or

(D) Director, Defense Logistics Agency.

(ii) The authority in paragraph (a)(i) of this section may be delegated to the head of a contracting activity. Any redelegation requires the approval of the Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

(iii) To determine percentage—

(A) Compute the percentage of non-Government use on time available for use. Use contractor’s normal work schedule as represented by the scheduled production shift hours.

(B) Use a base time period which is neither less than three months nor more than one year.

(C) Use may be averaged at a single plant for all items costing less than $25,000.

(iv) Contractors should submit requests for non-Government use of IPE to the contract administration office at least six weeks before the projected use. The requests shall include:

(A) Total number and acquisition cost of IPE items; and
Department of Defense

(B) For each unit of IPE with an acquisition cost of $25,000 or more, an itemized list including nomenclature, plant equipment code, year of manufacture and acquisition cost.

(v) Approving officials shall retain for periodic review, documentation of the circumstances justifying non-Government use of IPE.


Subpart 245.5—Management of Government Property in the Possession of Contractors

245.505 Records and reports of Government property.

245.505-3 Records of material.

If adequate controls are in place to meet the requirements of the clause at 252.242-7004, Material Management and Accounting System, the contractor’s material control system may physically commingle inventories that may include materials for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts. Government-furnished material (GFM) may not be physically commingled with other material, nor may GFM be used on contractor’s commercial work.

245.505-5 Records of plant equipment.

(a) The contractor may use DD Form 1342, DoD Property Record, as a source document for setting up prescribed records.

245.505-6 Special reports of plant equipment.

The contractor shall prepare a DD Form 1342 in accordance with instructions contained in AR 700–43/NAVSUP PUB 5009/AFM 78-9/DLAM 4215.1, Management of Defense-Owned Industrial Plant Equipment (IPE)—

(1) Upon receipt and acceptance of each item of IPE including items which, though part of a manufacturing system, would otherwise qualify as IPE;

(2) Whenever major changes occur in the data initially submitted to Defense Supply Center Richmond (DSCR) (as specified by DLAM 4215.1);

(3) When IPE, including general purpose components of special test equipment which otherwise qualify as IPE, is no longer required for the purpose authorized or provided; or

(4) When disposal is completed.


245.505-14 Reports of Government property.

(a) Use the clause at 252.245–7001, Reports of Government Property, in all solicitations and contracts containing one of the following clauses—

(1) FAR Section 52.245-2, Government Property (Fixed-Price Contracts);

(2) FAR Section 52.245-5, Government Property (Cost Reimbursement, Time- and-Material, or Labor-Hour Contracts);

(3) FAR Section 52.245-7, Government Property (Consolidated Facilities);

(4) FAR Section 52.245-10, Government Property (Facilities Acquisition); or

(5) FAR Section 52.245-11, Government Property (Facilities Use).

[59 FR 27674, May 27, 1994]

Subpart 245.6—Reporting, Redistribution, and Disposal of Contractor Inventory

245.601 Definitions.

(1) Controlled substances means—

(i) Narcotic, depressant, stimulant, or hallucinogenic drug or substance;

(ii) Any other drug or substance controlled under Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970; or

(iii) A drug or substance required to be controlled by international treaty, convention or protocol.

(2) Demilitarization means the act of destroying the offensive or defensive characteristics of equipment or material to prevent its further military or lethal use.

(3) Production scrap means material left over from the normal production process that has only remelting or reprocessing value, e.g., textile and metal clippings, borings, and faulty castings and forgings.

(4) Serviceable or usable property means property that has a potential for use or sale value “as is” or with minor
245.603 Disposal methods.

245.603-70 Contractor performance of plant clearance duties.

(a) Authorization. (1) Contract administration offices (CAOs) may, with head of the contracting activity approval and contractor concurrence, authorize selected contractors to perform certain plant clearance functions if the volume of plant clearance warrants performance by the contractor.

(2) The written authorization shall, as a minimum—

(i) Designate the contractor as an “accredited contractor”;

(ii) Identify the plant clearance actions to be performed;

(iii) State that the Government may cancel part of or all of the authorization to perform plant clearance actions; and

(iv) Provide for plant clearance officer participation when required.

(b) Government oversight and assistance. (1) The contract administration office will ensure regular evaluation of the contractor’s performance of the plant clearance function and any corrective action required.

(2) The plant clearance officer shall—

(i) Evaluate the adequacy and ensure compliance with contractor procedures;

(ii) Ensure discrepancies are promptly resolved;

(iii) Advise the contractor of screening and inventory schedule requirements;

(iv) Respond to contractor requests to withdraw Government-furnished property from inventory schedules;

(v) Evaluate physical, quantitative, and technical allocability of contractor inventory prior to disposal using Standard Form 1423, Inventory Verification Survey, as a guide;

(vi) Direct contractor to delay disposition of nonallocable inventory pending a contracting officer decision;

(vii) With the contractor’s assistance, establish criteria for review and approval of selected contractor disposal decisions;

(viii) Complete first endorsement section of DD Form 1640, Request for Plant Clearance, on referrals from plant clearance officers at prime contract administration offices for the disposal of subcontractor inventory; forward inventory schedules to the contractor for processing; and forward completed case file to the referring activity; and

(ix) Work with the contractor, screeners, and buyers to ensure that the Government receives maximum reutilization and disposal proceeds.

(c) Accredited contractor plant clearance duties. The accredited contractor shall—

(1) Ensure inventory schedule acceptability. Use DD Form 1637, Notice of Acceptance of Inventory, if desired;

(2) Suspend disposition of property when assets are determined nonallocable (FAR 45.606-3);

(3) Withdraw property from inventory schedules and notify the affected screening activities. Obtain plant clearance officer approval for withdrawal of Government furnished property from inventory schedules (FAR 45.606-4);

(4) Determine method of disposal under established priorities and document disposal decisions and actions;

(5) Assign the automatic release date and the surplus release date;

(6) Initiate prescribed release and effect resulting transfers and donations;

(7) Account for disposal of all contractor inventory and application of proceeds and submit to the plant clearance officer a Standard Form 1424, Inventory Disposal Report, or equivalent;

(8) Maintain the donable file and release property to eligible donees (FAR 45.609);

(9) Prepare, approve, sign, and maintain official plant clearance files and required forms (245.7101);

(10) Not conduct noncompetitive sales of surplus contractor inventory; and

(11) Notify the plant clearance officer in advance when bidding on property.

245.603–71 Disposal of contractor inventory for NATO cooperative projects.

(a) North Atlantic Treaty Organization (NATO) cooperative project agreements may include disposal provisions of jointly acquired property without regard to any applicable disposal laws of the United States.

(b) Disposal of such property may include a transfer of the U.S. interest in the property to one of the other governments participating in the agreement, or the sale of the property.

(c) Payment for the transfer or sale of any U.S. interest shall be made in accordance with the terms of the project agreement.

245.604 Restrictions on purchase or retention of contractor inventory.

(1) Contractors authorized to sell inventory may not knowingly sell the inventory to any person or that person’s agent, employee, or household member if that person—
   (i) Is a civilian employee of the DoD or the U.S. Coast Guard; or
   (ii) Is a member of the armed forces of the United States, including the Coast Guard; and
   (iii) Has any functional or supervisory responsibilities for or within the Defense Reutilization and Marketing Program, or for the disposal of contractor inventory.

(2)(i) A contractor’s authority to approve a subcontractor’s sale, purchase, or retention at less than cost, and the subcontractor’s authority to sell, purchase, or retain at less than cost if approved by a higher-tier contractor, does not include authority to approve—
   (A) A sale by a subcontractor to the next-higher tier contractor or to an affiliate of such contractor or of the subcontractor; or
   (B) A sale, purchase, or retention at less than cost, by a subcontractor affiliated with the next higher-tier contractor.

(ii) The written approval of the plant clearance officer is required for each excluded sale, purchase, or retention at less than cost.

(3) **Demilitarization.** The contractor shall demilitarize contractor inventory possessing offensive or defense characteristics, and not required within the DoD, in accordance with Defense Demilitarization Manual, DoD 4160.21–M–1. In unusual cases the plant clearance officer may authorize the purchaser to perform the demilitarization; however, the purchaser shall not be granted such authorization if the inventory is dangerous.

(4) **Classified inventory.** Classified contractor inventory shall be disposed of in accordance with applicable security regulations or as directed by the contracting officer.

(5) **Dangerous inventory.** Contractor inventory dangerous to public health or safety shall not be donated or otherwise disposed of unless rendered innocuous or until adequate safeguards have been provided.

245.606 Inventory schedules.

245.606–3 Acceptance.

(a) If the schedules are acceptable, the plant clearance officer shall, within 15 days, complete and send the contractor a DD Form 1637, Notice of Acceptance of Inventory.

(b) To assist in verifying inventory allocability, the plant clearance officer shall follow the instructions in 245.7201.

245.606–5 Instructions for preparing and submitting schedules of contractor inventory.

(d) **General instructions for completing forms.**

(4) The contractor shall use the following codes together with the disposal codes 1 through 9, X, and S (e.g., A1, P7, SS) to indicate the condition of the property—

A—New, used, repaired, or reconditioned property; serviceable and issuable to all customers without limitations or restrictions; includes material with remaining shelf life of more than six months.

B—New, used, repaired, or reconditioned property; serviceable and issuable for its intended purpose but restricted from issue to specific units, activities, or geographical areas because of its limited usefulness or short service-life expectancy; includes material and remaining shelf life of three to six months.
F—Economically repairable property which requires repair, overhaul or reconditioning; includes reparable items which are radioactively contaminated.

H—Property which has been determined to be unserviceable and does not meet repair criteria.

S—Property that has no value except for its basic material content.

(e) Instructions for completing specific forms.

(4) Inventory Schedule D (Special Tooling and Special Test Equipment) (SF 1432).

(ii) Description.
For termination inventory included in a settlement proposal, include cost of inventory acquired for performance of the entire contract in column F1 and cost of inventory acquired solely for the terminated portion of the contract in column F2. Cost of inventory acquired for the entire contract must be prorated between the terminated and nonterminated portions.

245.607 Scrap.

245.607–1 General.

(a)(i) The contractor may request a pre-inventory scrap determination, made by the plant clearance officer after an on-site survey, if inventory is considered without value except for scrap. If approved, the contractor may make a single descriptive entry on an inventory schedule, generally describing the property and indicating its approximate total cost. The plant clearance officer will establish a plant clearance case and perform limited screening.

(ii) If the contractor has an approved scrap procedure, routine disposal of production scrap and spoilage is authorized, and a plant clearance case is unnecessary. The contractor may similarly dispose of worn, broken, mutilated, or otherwise rejected parts from overhaul and repair contracts with the approval of the plant clearance officer.

(iii) In addition to segregating scrap to maximize proceeds, the contractor may also consolidate sales of Government and contractor scrap if approved by the plant clearance officer. When a consolidated sale is approved, the plant clearance officer shall waive the scrap warranty required at 245.607–70.

(iv) When a contractor’s approved scrap procedure does not require physical segregation of Government and contractor scrap, the plant clearance officer shall ensure the proceeds of scrap sale are equitably distributed.

245.607–2 Recovering precious metals.

(b) Precious metals are silver, gold, platinum, palladium, rhodium, iridium, osmium, and ruthenium.

(i) At the beginning of every fiscal year, the Defense Reutilization and Marketing Service (DRMS) will provide each contract administration office with disposition instructions for certain categories of precious metals-bearing property, including scrap and usable items containing recoverable quantities of these metals. The disposition instructions—

(A) Will remain in effect for the entire fiscal year, unless modified by DRMS; and

(B) Will contain a fund citation to be used when disposition requires shipment of precious metals-bearing property for recovery.

(ii) Plant clearance officers shall obtain disposition instructions for precious metals-bearing property not covered by the annual disposition instructions from the Defense Reutilization and Marketing Service, Attn: DRMS-OC, 74 N. Washington Avenue, Battle Creek, MI 49017–3092.

[59 FR 27674, May 27, 1994]
245.607–70 Scrap warranty.

(a) If the contractor sells its inventory as scrap to anyone, including a holding contractor, the contractor shall include in the sales contract a signed copy of DD Form 1639, Scrap Warranty.

(b) The contracting officer may release the contractor from the terms of the scrap warranty in return for consideration paid to the Government. The consideration will represent the difference between—

(1) The sale price of the scrap; and
(2) A fair and reasonable price for the material if it had been sold for purposes other than scrap.

(c) The contractor shall pay the consideration to the Government and the Government may execute the release even though the contract containing the warranty was not made directly with the Government.

(d) If the scrap is resold to a second buyer, the first buyer shall obtain a scrap warranty from the second buyer. Upon receipt of the second buyer’s scrap warranty, the Government will release the first buyer from liability under the original warranty.

245.608 Screening of contractor inventory.

245.608–1 General.

(a) The plant clearance officer shall arrange for inspection of property at the contractor’s plant if requested by a prospective transferee, in such a manner as to avoid interruption of the contractor’s operations.

245.608–2 Standard screening.

(b)(1) For the first 30 days, property screening will be limited to the contracting agency and the requiring agency, when they are not the same. The requiring agency shall have priority for retention of listed items.

245.608–5 Special items screening.

(a) Special test equipment with standard components. (1) The contractor shall report any excess special test equipment (STE) using SF 1432, Inventory Schedule D (Special Tooling and Special Test Equipment). The contractor shall list and describe on the inventory schedule all general-purpose components which, if economically severable from the STE, would otherwise be classified as industrial plant equipment (IPE), other plant equipment (OPE), or automatic data processing equipment (ADPE).

(b) The plant clearance officer will perform the initial screening of the composite STE unit.

(A) If the contracting department/agency and the requiring department/agency decline the STE or the standard components or do not approve their transfer to another contract; then,

(B) The plant clearance officer will screen the STE and any severable components with the—

(1) General Services Administration—STE unit, less any standard components, and nonreportable standard components;
(2) Defense Supply Center Richmond—IPE components;
(3) Contractor Inventory Redistribution System—OPE components; and

245.608–7 Reimbursement of cost for transfer of contractor inventory.

The Defense Logistics Agency will pay for the movement of industrial plant equipment under the direction and control of the Defense Industrial Plant Equipment Center.

245.608–70 Contractor inventory redistribution system (CIRS).

(a) Screen serviceable and usable contractor inventory through CIRS when it—

(1) Is listed on SF 1428, Inventory Schedule B, or SF 1434, Inventory Schedule E; and
(2) Has a national stock number, and line item acquisition value in excess of $50; or
(3) Has a line item acquisition value in excess of $1,000 ($500 for furniture) but no national stock number.

(b) Using Standard Form 120, Report of Excess Personal Property, the plant clearance officer will send two copies of SF 1428 or SF 1434 (or authorized
245.608–71 Screening industrial plant equipment.

(a) Reporting. Within 15 days of receipt, the plant clearance officer will forward two copies of the DD Form 1342, DoD Property Record, to the Defense Supply Center Richmond (DSCR), ATTN: JH, 8000 Jefferson Davis Highway, Richmond, VA 23297–5100, for all IPE not condition coded “X” or “S.” Process IPE condition coded “X” or “S” in accordance with department or agency procedures.

(b) Screening. (1) First 30 days. DSCR will—
   (i) Screen excess IPE against all DoD requirements with priority given to requirements of the owning department/agency through the 30th day.
   (ii) For items selected, issue shipping instructions containing accounting, funding, transportation, routing recommendations, and preservation instructions.

(2) 31st through 75th day. (i) DSCR will report excess IPE to GSA on 31st day.
   (ii) GSA will—
      (A) Approve department/agency requests on first come-first served basis;
      (B) Approve and forward transfer orders to the contract administration office; and
      (C) Forward copies of approved transfer orders to DSCR.

(3) 76th through 90th day. GSA will—
   (i) Provide for screening for donation;
   (ii) Receive, approve and forward donation applications to the contract administration office; and
   (iii) Send copies of approved applications to DSCR.

(4) After 90th day. If DoD requirement is identified, and item is available, ship item against the requirement unless compelling reasons exist for not shipping item.

(c) The plant clearance officer shall ensure that a copy of the shipping document is submitted to DSCR when IPE is transferred use-to-use or use-to-storage within DoD.

(d) When GSA sells IPE that is excess to ownership but not to DoD requirements, report the sale to DSCR in accordance with department/agency procedures.

245.608–72 Screening excess automatic data processing equipment (ADPE).

Report ADPE that is Government-owned or leased by the contractor (with Government purchase option or other interests, including use rights) to the Defense Information Systems Agency, Defense Automation Resources Management Program Division (DARM). DARM does all required screening, including General Services Administration screening, for ADPE. (See the Defense Automation Resources Management Manual.)

245.609 Donations.

Agencies may donate, with GSA approval and without expense to the United States, certain material not needed by DoD to certain organizations such as veterans’ organizations, soldiers’ monument associations, State
museums, and incorporated educational, not for profit museums. For further guidance, see DoD 4160.21-M, Defense Materiel Disposition Manual.


245.610 Sale of surplus contractor inventory.

245.610-1 Responsibility.

(a) See Subpart 245.73 for sales of contractor inventory under the control of DoD.

245.610-3 Proceeds of sale.

(1) Unless otherwise provided in the contract, the proceeds of any sale, purchase, or retention shall be—

(i) Credited to the Government as part of the settlement agreement;

(ii) Credited to the price or cost of the contract;

(iii) Applied as otherwise directed by the contracting officer; or

(iv) Forwarded to the plant clearance officer. The plant clearance officer—

(A) Within two days after receipt will send the proceeds and a DD Form 1131, Cash Collection Voucher, to the designated disbursing officer. Identify on the DD Form 1131 the contractor name and contract number; or

(B) For contractors with an approved scrap procedure, will ensure the proceeds are appropriately applied to an overhead account. The plant clearance officer may assign a representative who, with the assistance of the contract auditor, shall periodically validate that proceeds from sales of production generated scrap are collected and applied to the appropriate account.

(2) Except as prescribed in paragraph (1)(iv)(B) of this subsection, the plant clearance officer will not close the plant clearance case until verification is received that the credit has, in fact, been properly applied.

245.610-4 Contractor inventory in foreign countries.

(1) Normally, DRMS disposal activities shall be used to dispose of surplus contractor inventory located outside the United States or Canada. However, if authorized by the contracting officer, a contractor may sell or make other disposition of inventory in foreign countries.

(2) Sale or other disposition of foreign inventory by the contractor, including sale to foreign governments, requires that—

(i) The sales contract or other document transferring title include the following certificate:

The Purchaser certifies that the property covered by this contract will be used in (name of country). In the event of resale or export by the Purchaser of any of the property acquired at a price in excess of $1,000 United States dollars or equivalent in other currency at the official exchange rate, the Purchaser agrees to obtain the approval of (name and address of Contracting Officer); and

(ii) The contracting officer approve sales contracts, resales, or exports. Approval is permitted only if—

(A) The proposed purchaser’s name is not on the list of Parties Excluded from Procurement Programs; and

(B) The sales contract or other document forbids exports by purchasers and subpurchasers to communist areas (FAR 25.702) or other prohibited destinations.

245.612 Removal and storage.

245.612-3 Special storage at the Government’s expense.

(a) Before authorizing storage, the contracting officer shall ensure funds are available to pay for the storage and related tasks. In addition, the contracting officer shall ensure an annual review of the need for continued storage at Government expense.

(b) All storage contracts or agreements shall be fully funded and separately priced and shall include all allocable costs.

245.613 Property disposal determinations.

The plant clearance officer shall—

(1) Record the reason for disposing of the property—

(i) As scrap and salvage;

(ii) By abandonment or destruction; and

(iii) By noncompetitive sale;

(2) Use DD Form 1641, Disposal Determination/Approval, to record disposal determinations; and

(3) File the completed form in the plant clearance case file.
245.7001 Subpart 245.70—Appointment of Property Administrators and Plant Clearance Officers

245.7001 Selection, appointment, and termination.

(a) The head of a contracting activity for the Defense Logistics Agency, or the head of the contract administration office for other departments and agencies shall select, appoint, or terminate (in writing) property administrators and plant clearance officers.

(b) In selecting qualified property administrators and plant clearance officers, the appointment authority shall consider experience, training, education, business acumen, judgment, character, and ethics.

245.7002 Duties and responsibilities of plant clearance officers.

The plant clearance officer shall—

(a) Instruct the contractor on the preparation of inventory schedules;

(b) Make pre-inventory scrap determinations;

(c) Determine the acceptability of inventory schedules and DD Forms 1342, DoD Property Record;

(d) Prepare and maintain plant clearance cases and disposal documents;

(e) Initiate screening and provide technical support to screeners in the selection of assets;

(f) Conduct or arrange for verification of the following—

(1) Quantity, condition, description, and special processing requirements of property listed on inventory schedules;

(2) Technical and quantitative allocability of property;

(g) Ensure the timely shipment or release by the contractor of property selected for transfer and donation;

(h) Determine the appropriate method of disposal for items not selected for Federal agency use or donation and ensure final plant clearance is accomplished;

(i) Evaluate and monitor the contractor’s surplus property sales program;

(j) For individual surplus property sales—

(1) Approve method of sale;

(2) Ensure the sales offerings meet prescribed requirements;

(3) Witness bid openings;

(4) Evaluate bids;

(5) Approve sale awards;

(6) Secure anti-trust clearances, as required;

(7) Recommend the reasonableness of selling expenses; and

(k) Monitor ongoing plant clearance actions to ensure delays are minimized and, when necessary, work with the contractor and property administrator to implement improvements;

(l) Evaluate the adequacy of the contractor’s property disposal procedures;

(m) Support the property administrator during the compliance analysis of the disposition portion of the contractor’s property control procedures;

(n) Report all disposal deficiencies to the property administrator;

(o) Account for all contractor inventory reported for disposal by the contractor and prepare prescribed plant clearance reports; and

(p) Advise and assist the contractor, contracting officer, inventory manager, Federal agencies, and eligible donees in actions related to the proper and timely disposal of contractor inventory.

[57 FR 42632, Sept. 15, 1992]

Subpart 245.71—Plant Clearance Forms

245.7101 Forms.

Use the forms listed below in performance of plant clearance actions.

245.7101–1 Standard Form 97, Certificate of Release of a Motor Vehicle (Agency Record Copy).

Use for transfers, donations, and sales of motor vehicles. The contracting officer shall execute the SF 97 and furnish it to the purchaser.

245.7101–2 DD Form 1149, Requisition and Invoice Shipping Document.

Use for transfer and donation of contractor inventory. Donations of industrial plant equipment may be shipped via DD Form 1149. This form may also be used to consolidate contractor inventory redistribution system-directed shipments going to the same destination.

Use for shipments of excess industrial plant equipment and contractor inventory redistribution system (CIRS) inventory.

245.7101–4 DD Form 1640, Request for Plant Clearance.

Use to request plant clearance assistance or transfer plant clearance.

Subpart 245.72—Special Instructions

245.7201 Performing inventory verification and determination of allocability.

Use the following guidance for verifying inventory schedules—

(a) Allocability. (1) Review contract requirements, delivery schedules, bills of material, and other pertinent material. Determine whether schedules include material which—

(i) Is more than required or reasonably expected to be required for completion of the contract; or

(ii) Might be usable on the current contract, or diverted to other commercial work or Government use.

(2) Review the contractor’s—

(i) Recent purchases of similar material;

(ii) Plans for current and scheduled production;

(iii) Stock record entries; and

(iv) Bills of material for similar items.

(b) Quantity. Ensure available inventory is in accordance with quantities listed on the inventory schedules. While a complete physical count of each item is not required, perform sufficient checks to ensure accurate quantities.

(c) Condition. Ensure the inventory condition matches that shown on the inventory schedules.

245.7202 Establishing a plant clearance case.

(a) Upon receipt of an acceptable inventory schedule or a DD Form 1342, DoD Property Record, the plant clearance officer shall establish a plant clearance case file. The case folder will—

(1) Identify the case number (see 245.7203);

(2) Indicate the contractor’s name and contract number;

(3) Note the word “Termination” if applicable; and

(4) Consolidate all inventory schedules applicable to one contract at the same location, if possible.

(b) As a minimum, include in the plant clearance case file—

(1) Inventory schedules or DD Form 1342, DoD Property Record, annotated to show all disposal actions;

(2) Copies of documents forwarding inventory schedules to the appropriate screening activity;

(3) Shipping or other instructions and correspondence directing disposition of contractor inventory;

(4) Shipping documents transferring inventory;

(5) Inventory verification survey or other documents showing completion of allocability review;

(6) Forms authorizing donation or sale;

(7) Document showing disposition of proceeds from plant clearance actions; and

(8) Any other documents pertinent to disposal actions, including review board cases, antitrust clearances, and inventory disposal reports.

245.7203 Assigning plant clearance case numbers.

(a) Use a three-part, 11-character number constructed as follows:

(1) Part 1: DoD Activity Address Number (6-character alphanumeric code) assigned to the contract administering activity.

(2) Part 2: Locally assigned 4-character consecutive alphanumeric code, beginning each calendar year with 001 continuing as necessary through ZZZ. The fourth digit is the last number of the calendar year.

(3) Part 3: The 11th character is a single letter identifying the department/agency:

C—Army
Q—Navy
E—Air Force
L—Marine Corps
U—Defense Logistics Agency
N—Defense Nuclear Agency
M—National Imagery and Mapping Agency
S—NARA

345
245.7204 Preparing inventory disposal report.

(a) Prepare Standard Form 1424, Inventory Disposal Report, for each completed plant clearance case. For terminated contracts, prepare a consolidated Inventory Disposal Report for each termination docket.

(b) Distribute the report to the contracting officer and to any other activities having an interest in the inventory disposal.

(c) Items on the form are self-explanatory except:

1. Insert net change due to shortages, overages, errors, pricing, or withdrawals, etc. Explain in item 16, Remarks.

2. Insert amount contractor is retaining or purchasing at full acquisition cost (see FAR 45.605–1).

3. Insert acquisition cost and net credit (full credit less approved handling, transportation, and restocking charges for items returned to supplier).

4. Insert the acquisition cost for all transfers accomplished. For lines 16A and 16B, insert subtotals as indicated.

5. Insert acquisition cost and gross proceeds. When approved sale costs are reimbursed from proceeds, show net proceeds in Item 26, Remarks.

6. Items 20 and 21—Use to identify and report transactions not otherwise identified, such as assets shipped to a Government precious metals reclamation activity, etc. Further explanation may be provided in Item 26, Remarks, if necessary.

7. Totals dispossession must equal amounts on line 13 and must reflect all disposal actions within the case.

8. Show the specific disposition of proceeds reported in Items 14, 15, and 18. Also indicate amounts deleted for specific contractor claims, or applied as a credit to the claim. Explain any entry requiring explanation.

245.7205 Reporting excess and surplus contractor inventory.

(a) Contract administration offices with plant clearance responsibilities will—

1. Use DD Form 1638, Report of Excess and Surplus Contractor Inventory, or mechanized equivalent, to report the disposition of contractor inventory. Do not include disposition actions transferred to other offices. Unless headquarters of the administering activity directs otherwise, complete only the column total for each line of this report.

2. Prepare quarterly reports for periods ending March 31, June 30, September 30, and December 31. Activities preparing manual reports will submit duplicate reports to the headquarters of the administering activity within ten working days after the close of the report period. (Report Control Symbol DD(I&L)(Q)1430).

(b) Items on the report are self-explanatory except:

1. Insert totals from line 7 of the preceding report.

2. Insert net changes due to shortages, overages, errors, or withdrawals (other than purchases or retention at cost).

3. Insert total excess inventory reported by contractors during the report period.

4. Insert total plant clearance cases completed during the report period. Do not report cases as completed until all property is disposed. Acquisition cost must equal line 19.

5. Insert amount retained or withdrawn at full cost.

6. Insert acquisition cost in the “Acquisition Cost” column and insert acquisition cost less handling, transportation, or restocking charges, in the “Proceeds” column.

7. Insert acquisition cost of all transfers completed during the report period. On lines 10A through 10H, insert subtotals representing transfers to the agency indicated. Exclude amounts on lines 10A through 10H when computing line 19 totals.

8. Insert the acquisition cost and gross proceeds. When sale
costs are reimbursed from proceeds, show net proceeds in remarks.

(9) Lines 14 and 15—Used to identify and report other transactions.

(10) Line 18—Insert Section II totals. Line 18 acquisition cost must equal acquisition cost on line 5.

245.7206 Transmitting DD Form 1342, DoD Property Record.

As a minimum, the plant clearance officer will provide the following information in a letter forwarding DD Forms 1342 to DSCR—

(a) Number of DD Forms 1342 included;

(b) Automatic release date;

(c) Screening complete date;

(d) Contractor’s name and address;

(e) Contract number;

(f) Contracting activity that awarded the contract under which the contractor acquired the equipment;

(g) Location of the industrial plant equipment;

(h) Total acquisition cost;

(i) A statement advising that the automatic release date will not be extended;

(j) A note stating that—

(1) Request for transfer or shipment must include appropriate fund citations for packing, crating, and handling charges; and

(2) Government bills of lading (GBLs) should be furnished or, if shipment will be accomplished by other than GBL, DSCR must cite transportation funds; and

(k) The plant clearance officer’s signature block.


Subpart 245.73—Sale of Surplus Contractor Inventory

245.7301 Policy.

(a) Screening must be completed before any surplus contractor inventory sale.

(b) Except as provided in 245.7307, sales of surplus contractor inventory shall be competitive.

(c) The commander of the contract administration office must approve the use of auctions, spot bids, or retail sales.

[56 FR 36448, July 31, 1991, as amended at 63 FR 31938, June 11, 1998]

245.7302 Competitive sales.

245.7302–1 Property descriptions.

(a) Describe the property as “used” or “unused.” Indicate if unused property is still in the manufacturer’s original containers. Qualifying statements such as “well-preserved” or “repairs required” are authorized. Do not use condition codes or the terms “new” or “salvage.”

(b) Property descriptions must be accurate and adequate for identification by prospective bidders. Use commercial terminology and original manufacturer and brand name, if applicable.

245.7302–2 Lotting.

(a) Consider combining property into lots when the quantities, value, or nature of the property makes it uneconomical to sell separately.

(b) When lotting is appropriate and economically practical—

(1) Size the lots to encourage bidding by small businesses or individuals;

(2) Lot unused items by make or manufacturer, except when quantities or dollar values are small;

(3) Lot commercially similar items when practicable;

(4) Lot used and unused items separately unless quantities, value, or nature of property makes it uneconomical to sell separately;

(5) Size lots large enough to ensure the selling costs are not disproportionate to the anticipated proceeds.

245.7302–3 Alternate bids.

Offerors may be solicited to bid for groups or for the entire offering by use of the following:

Item ______ (Alternate Bid)

This item consists of all property listed and described in Items ______ to ______, inclusive. Award under this item will be made only if the highest acceptable bid on this item is equal to, or greater than, the total of the highest acceptable bids on Items ______ to ______, inclusive.
245.7302–4 Basis for sale.

(a) Unit price basis—requires the offeror to state the bid price in terms of the quantity or weight generally applied in commercial sales of similar items.

(b) Lot price basis—requires the offeror to submit a bid for the entire lot. Use the lot price basis of sale only when property cannot be sold by unit measure or the potential sales return is small.

245.7302–5 Mailing lists.

(a) The plant clearance officer will ensure the contractor solicits a sufficient number of bidders to obtain adequate competition.

(b) When large quantities of property, special commodities, or unusual geographic locations are involved, the plant clearance officer is encouraged to obtain additional listings from: Defense Reutilization and Marketing Service, Attn: DRMS-OCR, 74 North Washington Avenue, Battle Creek, MI 49017–3092.

245.7303 Formal bid procedures.

(a) The contractor will use formal invitations for bid unless the plant clearance officer approves use of informal bid procedures.

(b) The contractor shall solicit bids at least 15 calendar days before bid opening to allow adequate opportunity to inspect property and prepare bids.

(c) For large sales, the contractor may use summary lists of items offered as bid sheets with detailed descriptions attached.

(d) In addition to mailing or delivering notice of the proposed sale to prospective bidders, the contractor may, when the results are expected to justify the additional expense—

(1) Display a notice of the proposed sale in appropriate public places.

(2) Publish a sales notice in appropriate trade journals or magazines and local newspapers.

(e) When the acquisition cost of the property to be sold at one time, in one place, is $250,000 or more, the contractor shall send a notice of the proposed sale to: U.S. Department of Commerce, Commerce Business Daily, Sales Section, P.O. Box 5999, Chicago, IL 60680.

(1) The contractor shall send the CBD notice at least 20 days before bid opening, or date of sale.

(2) CBD notices shall be—

(i) Double spaced and in synopsis form suitable for printing;

(ii) Transmitted by fastest mail available; and

(iii) Contain the following information in the order listed:

(A) Name and address of contractor issuing the invitation for bids;

(B) Name or title, address, and telephone number of the official from whom copies of the sales offering and other information can be obtained;

(C) Description of the property to be sold including, when desired, the total estimated acquisition cost;

(D) The number of the invitation or sale;

(E) The date of the sale or bid opening;

(F) The type of sale, i.e., sealed bid, spot bid, auction; and

(G) The location of the property.

(f) The plant clearance officer or representative will witness the bid opening. Within two working days after bid opening, the contractor will submit to the plant clearance officer two copies of an abstract of all bids, signed by the witnessing Government representative.

245.7304 Informal bid procedures.

(a) Upon approval of the plant clearance officer, the contractor may issue informal invitations to bid (orally, telephonically, or by other informal media), provided—

(1) Maximum practical competition is maintained;

(2) Sources solicited are recorded; and

(3) Informal bids are confirmed in writing.

(b) Bids by the contractor or its employees shall be submitted to the plant clearance officer prior to soliciting bids from other prospective bidders.

245.7305 Sale approval and award.

The plant clearance officer will—

(1) Evaluate bids to establish that the sale price is fair and reasonable, taking into consideration—

(i) Knowledge or tests of the market;

(ii) Current published prices for the property;

(iii) Knowledge or tests of the market; and

(iv) The sale price is fair and reasonable.
(iii) The nature, condition, quantity, and location of the property; and
(iv) Information from the Defense Reutilization and Marketing Service.

(2) Approve award to the responsible bidder whose bid is most advantageous to the Government, price and other factors considered. Award shall not be approved to any bidder who is not eligible to enter into a contract with the DoD due to inclusion on the list of Parties Excluded from Procurement Programs. If a compelling reason exists to award to a bidder on the excluded list, the plant clearance officer shall request approval from the headquarters of the administering activity.

(3) Notify the contractor within five working days of the bidder to whom an award shall be made. The contractor shall make the award, collect the proceeds of the sale, and release the property to the purchaser. The contractor shall provide the plant clearance officer with evidence of delivery reflecting actual quantities released to the purchaser.

245.7306 Sales services.

When sale services are needed, the plant clearance officer will document the reasons in the case file and make arrangements directly with the Defense Reutilization and Marketing Service (DRMS) or General Services Administration (GSA). The arrangements will include a requirement to return all proceeds to the plant clearance officer for crediting in compliance with FAR 45.610–3.

245.7307 Non-competitive sales.

245.7307–1 General.

(a) Non-competitive sales include purchases or retention at less than cost by the contractor.

(b) Non-competitive sales may be made when—

(1) The contracting department/agency or the plant clearance officer determines that this method is essential to expeditious plant clearance;

(2) The sale is otherwise justified on the basis of circumstances listed in 245.7307–2;

(3) The Government’s interests are adequately protected; and

(4) FAR subpart 1.7 requirements are met.

(c) Non-competitive sales shall be at fair and reasonable prices not less than those reasonably expected under competitive sale.

245.7307–2 Justification.

(a) Conditions justifying non-competitive sales are—

(1) Scientific equipment allocated to terminated research and development contracts with educational institutions;

(2) No acceptable bids received under an advertised competitive sale;

(3) Property value so small that anticipated proceeds would not warrant formal competitive sale;

(4) Sale to States, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained;

(5) Specialized nature of the property would not create bidder interest;

(6) Removal of the property would reduce its value or result in disproportionate handling expenses; or

(7) Such action is essential to the Government’s interests.

(b) The contracting department/agency will provide the contract administration office the sales justification and any special sales provisions when the department/agency decides to sell production equipment to the contractor by non-competitive sale.

245.7308 Antitrust notification.

(a) When contractor inventory with an estimated fair market value of $3 million or more or any patents, processes, techniques, or inventions, regardless of cost, are sold or otherwise disposed of to private interests notify the Attorney General and the General Services Administration (GSA) of the proposed terms and conditions of disposal. Submit the following information to the Department of Justice and the GSA through the contract administration agency channels. Report Control Symbol DD-ACQ(AR) 1492 applies.

(1) Location and description of property (specify tonnage if scrap);
(2) Proposed sale price (explain if the proposed purchaser was not highest bidder);
(3) Acquisition cost of property;
(4) Manner of sale, indicating whether—
   (i) Sealed bid (specify number of bidders solicited and bids received);
   (ii) Auction or spot bid (state how sale was advertised); or
   (iii) Negotiation (explain why property was not sold competitively);
(5) Proposed purchaser’s name, address, and trade name (if any) under which proposed purchaser is doing business;
(6) If a corporation, provide state and date of incorporation, and name and address of—
   (i) Each holder of 25 percent or more of the corporate stock;
   (ii) Each subsidiary; and
   (iii) Each company under common control with proposed purchaser;
(7) If a partnership, provide—
   (i) Name and address of each partner; and
   (ii) Other business connections of each partner;
(8) Nature of proposed purchaser’s business (indicate whether its scope is local, statewide, regional, or national);
(9) Estimated dollar volume of sales of proposed purchaser (as of latest calendar or fiscal year);
(10) Estimated net worth of proposed purchaser; and
(11) Intended use of property.
(b) Do not dispose of property until the Attorney General determines whether the proposed disposal action would tend to create or maintain a situation inconsistent with the antitrust laws.
(c) If the Attorney General advises that the proposed disposition is inconsistent with the antitrust laws, do not continue with the proposed disposition.
(d) Under non-competitive sales, the prospective purchaser shall be informed that final consummation of the sale is subject to determination by the Attorney General.
(e) Under competitive or non-competitive sales, the purchaser is required to provide the information required in paragraph (a) of this subsection.

245.7309 Mandatory terms and conditions—formal invitations.
Sale by formal invitation shall include, as a minimum, the terms and conditions in this section.

245.7309–1 Inspection.
The Bidder is invited to inspect the property prior to submitting a bid. Property will be available for inspection at the places and times specified in the Invitation. Failure to inspect property does not constitute grounds for the withdrawal of a bid after opening.

245.7309–2 Condition and location of property.
(a) Unless otherwise specifically provided in the Invitation, all property is offered for sale “as is” and “where is.” If the Invitation provides that the Contractor will load, then “where is” means f.o.b. conveyance at the point specified in the Invitation.
(b) The description is based on the best available information. However, the Contractor makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of the property or its fitness for any use or purpose.
(c) Except as provided in Conditions 245.7306–8, Variations in Quantity or Weight, and 245.7306–10, Risk of Loss, no request for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

245.7309–3 Consideration of bids.
(a) Bidder agrees that this bid is firm and irrevocable within the acceptance period specified in the Invitation (or, if not specified, not less than ten or more than 60 days).
(b) The right is reserved to reject any or all bids, to waive any technical defects in bids, and, unless otherwise specified in the offering or by the Bidder, to accept any one item or group of items in the bid. Unless the invitation provides otherwise, bids—
   (1) May be on any or all items;
(2) Must be submitted on the unit basis specified for that item;
(3) Must cover the total number of units designated for that item; and
(4) Unit prices govern.

245.7309–4 Payment.
(a) Purchaser agrees to pay the full purchase price for awarded property at the prices quoted in the bid. Unless an adjustment is required pursuant to Condition 245.7306–8, Variations in Quantity or Weight, payment must be made within the time specified for removal and prior to delivery of any of the property. In the event that any adjustment is made, payment must be made immediately after such adjustment.
(b) The full purchase price, or balance if a bid deposit was required, shall be paid to the Contractor in cash or by certified check, cashier’s check, traveler’s check, bank draft, or postal or express money order. The Contractor is not required to extend credit to any purchaser.
(c) The Contractor reserves the right to apply any bid deposits made under this Invitation by a bidder against any amounts due under a contract awarded by the Contractor under this Invitation. If the total sum due to the contractor is less than the amount deposited with the bid, the difference shall be promptly refunded. Deposits accompanying bids which are not accepted shall be promptly returned.

245.7309–5 Title.
(a) Unless otherwise specified in the Invitation, title to property sold under this Invitation shall vest in the Purchaser when full payment is made. If the Invitation provides for loading by the Contractor, title shall not vest until payment and loading are completed.
(b) A Standard Form 97, Certificate of Release of a Motor Vehicle, (or a State certificate of title) shall be furnished for motor vehicles and motor-propelled or motor-drawn equipment requiring licensing.

245.7309–6 Delivery and removal of property.
(a) Unless otherwise specified in the Invitation, the Purchaser shall be entitled to obtain the property upon vesting of title in the Purchaser. Delivery shall be made at the designated location, and removal will be at the Purchaser’s expense within the time frame specified in the Invitation or any additional time allowed by the Contractor.
(b) The Purchaser shall reimburse the Contractor for any damage to the Contractor’s property caused by Purchaser’s removal operations. If additional time is required to remove the property, the Contractor, without limiting any other rights, may require the Purchaser to pay reasonable storage charges.

245.7309–7 Default.
If the successful Bidder fails to make full payment, remove property by the specified date, or comply with any other terms and conditions of sale, the Contractor reserves the right to sell or otherwise dispose of any or all such property and to charge losses and incidental expenses to the defaulting Bidder. Bid deposits received (if required in the Invitation) shall be applied against such losses and expenses.

245.7309–8 Variations in quantity or weight.
When property is sold on a “unit price” basis, the Contractor reserves the right to vary by up to 15 percent the quantity or weight listed in the Invitation and the Purchaser agrees to accept delivery of any quantity or weight within these limits. The purchase price shall be adjusted in accordance with the unit price and on the basis of the quantity or weight delivered.

245.7309–9 Weighing.
(a) When weighing is necessary to determine the exact purchase price, the Purchaser shall arrange for and pay all weighing expenses. When removal is by truck, weighing shall be subject to supervision and accomplished on—
(1) Contractor scales;
(2) Certified scales; or
(3) Other scales acceptable to both parties.
(b) When removal is by rail, weighing shall be on railroad scales or by other means acceptable to the railroad for
freight purposes. The Purchaser shall pay switching charges.

245.7309–10 Risk of loss.

The Contractor is responsible for reasonable care and protection of the property until the date specified for removal. All risk of loss, damage, or destruction from any cause whatsoever shall be borne by the Purchaser after passage of title.

245.7309–11 Liability.

Contractor and Government liability, when liability has been established, shall not exceed the refund of any portion of the purchase price already received by the Contractor.

245.7309–12 Oral statements.

Any oral statement by the Contractor changing or supplementing the contract or any condition thereof is unauthorized.

245.7309–13 Eligibility of bidders.

The Bidder shall certify that the Bidder is not—

(a) A civilian employee of the Department of Defense or the United States Coast Guard whose duties include any functional or supervisory responsibility for disposal of contractor inventory;

(b) A member of the United States Armed Forces, including the Coast Guard, whose duties include any functional or supervisory responsibility for disposal of contractor inventory;

(c) An agent, employee or immediate member of the household of personnel in paragraphs (a) and (b).

245.7309–14 Claims liability.

The Purchaser or Bidder agrees to save the Contractor and Government harmless from and on account of damages of any kind which the Contractor may suffer as the result of the acts of any of the Purchaser’s agents, servants, or employees while in or about the said sites.

245.7310 Special term and conditions.

When necessary, include the special conditions of this section in formal invitations.

245.7310–1 Demilitarization.

When demilitarization of property is required, whether on or off contractor or Government premises, the invitation must include the following clause:

(a) Demilitarization.

Item(s) require demilitarization by the Purchaser in the manner and to the degree set forth below:

(1) For property located in the United States insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Part 2 of Defense Demilitarization Manual;

(2) For property located outside the United States, insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Part 3 of DoD 4160.21-M-1, Defense Demilitarization Manual.

(b) Demilitarization on Government Premises.

Property requiring demilitarization shall not be removed, and title shall not pass to the Purchaser, until demilitarization has been completed and approved by an authorized Contractor and Government representative. Demilitarization will be accomplished as specified in the contract. Component parts vital to the military or lethal purpose of the property shall be rendered unusable. The Purchaser agrees to assume all costs incident to the demilitarization and to restore the working area to its present condition after removing the demilitarized property.

(c) Demilitarization on Non-Government Premises. Property requiring demilitarization shall be demilitarized by the Purchaser under supervision of qualified Department of Defense personnel. Title shall not pass to the Purchaser until demilitarization has been completed by the Purchaser and approved by an authorized Contractor and Government representative. Demilitarization will be accomplished as specified in the contract. Component parts vital to the military or lethal purpose of the property shall be rendered unusable. The Purchaser agrees to assume all costs incident to the demilitarization.
(d) Failure to Demilitarize. If the Purchaser fails to demilitarize the property as specified in the contract, the Contractor may, upon giving ten days written notice from date of mailing to the Purchaser—

(1) Repossess, demilitarize, and return the property to the Purchaser. The Purchaser hereby agrees to pay the Contractor, prior to the return of the property, all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property to the Purchaser.

(2) Repossess, demilitarize, and resell the property, and charge the defaulting Purchaser will all excess costs incurred by the Contractor. The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser. In the event the excess costs exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

(3) Repossess and resell the property under similar terms and conditions. In the event this option is exercised, the Contractor shall charge the defaulting Purchaser with all excess costs incurred by the Contractor. The Contractor shall deduct these excess costs from the original purchase price and refund the balance of the purchase price, if any, to the defaulting Purchaser. Should the excess costs to the Contractor exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

245.7310–2 Performance bond.

Performance bonds are required when work, other than loading, is to be performed by the purchaser and a bond is considered necessary to ensure performance. Generally, performance bonds shall be 100 percent of the estimated cost of the work to be performed. If a 100 percent performance bond would be disadvantageous to the Contractor or to the Government, the amount may be reduced to not less than 50 percent of the estimated cost of the work. Include the following condition when performance bonds are required:

**Performance Bond**

Within ten days after notice of award, the Purchaser shall furnish a performance bond in the sum of $ to cover the Purchaser’s obligations. Such bond shall remain in full force and effect during the term of the contract and any extensions as may be agreed upon. The Purchaser shall not be permitted to begin performance until the bond has been received.

245.7310–3 Liability and insurance.

When the work to be performed by the purchaser warrants, use the following:

**Liability and Insurance**

The Purchaser shall at the Purchaser’s own expense purchase and maintain during the term of the contract insurance as follows:

(a) Standard workers’ compensation and employer’s liability insurance required under State and Federal statutes. However, the Contractor may waive this requirement upon receipt of satisfactory evidence that the Purchaser is qualified as a self-insurer under applicable provisions of law.

(b) Bodily injury liability insurance in an amount not less than $300,000 for any one occurrence; and

(c) Property damage liability insurance.

245.7310–4 Dangerous property.

The following warning shall be included when it cannot be certified that the property is completely harmless:

**Dangerous Property**

Purchasers are warned that the property purchased may contain items of an explosive, toxic, or inflammable nature, notwithstanding reasonable care exercised by the Contractor to render the property harmless. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or the Purchaser’s employees, or to any other person, arising from or incident to the purchase of the property, or its use or disposition by the Purchaser. The Purchaser shall save the Contractor and the Government harmless from any and all such claims.

245.7310–5 Controlled substances.

The sale of controlled substances, e.g., narcotics, stimulants, depressants, or hallucinogenic drugs, shall be subject to the following special conditions:

(a) Controlled Substances. Bids will be rejected unless the Bidder submits the following certification with its bid:

The undersigned represents and warrants that it is registered under The Comprehensive Drug Abuse Prevention and Control Act of 1970, and is authorized under the law and by the Attorney General, U.S. Department of Justice (Bureau of Narcotics and Dangerous Drugs) to buy controlled substances as a medical practitioner, dealer or manufacturer of controlled substances.
(b) Narcotic Drugs and Chemicals. Bids will be rejected unless the Bidder submits the following certification with its bid:

The undersigned represents and warrants that it is registered under Federal narcotics laws and is authorized by law and by the Bureau of Narcotics, United States Treasury Department, as a manufacturer of narcotics.

245.7310–6 Radioactive material.

The following shall be used whenever the property offered for sale is capable of emitting ionized radiation:

RADIOACTIVE MATERIAL

Purchasers are warned that the property may be capable of emitting ionized radiation. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or the Purchaser’s employees, or to any other person arising from or incident to the purchase of the property or its use or disposition by the Purchaser. The Purchaser shall hold the Contractor and the Government harmless from all such claims. The Purchase should warn possessors or users of the property that it may be capable of emitting ionized radiation.

245.7310–7 Scrap warranty.

The following condition shall be used whenever property, other than production scrap, is offered for sale as scrap:

SCRAP WARRANTY

The Purchaser represents and warrants that the property will be used only as scrap, and will not be resold until:

(a) Scrapping has been accomplished; or
(b) The Purchaser obtains an identical warranty from any subsequent purchaser.

245.7310–8 Antitrust clearance.

When property with an acquisition cost of $3 million or more is to be sold, include the following in the invitation:

ANTITRUST

When the property offered for sale has an acquisition cost of $3 million or more, or consists of patents, processes, techniques, or inventions, irrespective of cost, the successful Bidder shall be required to furnish additional information and shall allow up to 60 days for acceptance of its bid. Award shall be made only upon advice from the Department of Justice that the proposed sale would not create or maintain a situation inconsistent with the antitrust laws.

245.7311 Optional conditions.

The following special conditions of sale may be added at the option of the contractor:

245.7311–1 Sales and use tax liability.

For purchases of property subject to a state sales or use tax, a special condition of sale may stipulate that the Purchaser shall pay and the Contractor shall collect the amount of the tax, which shall be itemized separately on the billing document.

245.7311–2 Safety, security, and fire regulations.

245.7311–3 Bid deposits.

245.7311–4 Other special conditions.

Other special conditions considered necessary by the Contractor are subject to the prior approval of the plant clearance officer. Approval will normally be granted provided the prescribed conditions of sale are not altered or affected and the interest of the Government is not adversely affected.

PART 246—QUALITY ASSURANCE

Subpart 246.1—General

Sec.
246.101 Definitions.
246.102 Policy.
246.103 Contracting office responsibilities.
246.104 Contract administration office responsibilities.

Subpart 246.2—Contract Quality Requirements

246.202 Types of contract quality requirements.
246.202–4 Higher-level contract quality requirements.
246.203 Criteria for use of contract quality requirements.

Subpart 246.3—Contract Clauses

246.370 Material inspection and receiving report.

Subpart 246.4—Government Contract Quality Assurance

246.406 Foreign governments.
246.407 Nonconforming supplies or services.
246.408 Single-agency assignments of Government contract quality assurance.
246.488–70 Subsistence.
246.408–71 Aircraft.
246.408–72 Construction projects.
246.470 Government contract quality assurance actions.
246.470–1 Planning.
246.470–2 Evidence of conformance.
246.470–3 Assessment of additional costs.
246.470–4 Maintenance of Government records.
246.470–5 Quality evaluation data.
246.471 Authorizing shipment of supplies.
246.472 Inspection stamping.

Subpart 246.6—Material Inspection and Receiving Reports
246.670 General.
246.671 Procedures.

Subpart 246.7—Warranties
246.701 Definitions.
246.702 General.
246.703 Criteria for use of warranties.
246.704 Authority for use of warranties.
246.705 Limitations.
246.706 Warranty terms and conditions.
246.708 Warranties of data.
246.710 Contract clauses.


Source: 56 FR 36460, July 31, 1991, unless otherwise noted.

Subpart 246.1—General
246.101 Definitions.

Metrology is the science of weights and measures used to determine conformance to technical requirements including the development of standards and systems for absolute and relative measurements.

Quality means the composite of material attributes including performance features and characteristics of a product or service to satisfy a given need.

Quality assurance is a planned and systematic pattern of all actions necessary to provide adequate confidence that adequate technical requirements are established; products and services conform to established technical requirements; and satisfactory performance is achieved.

Quality audit is a systematic examination of the acts and decisions with respect to quality in order to independently verify or evaluate the operational requirements of the quality program or the specification or contract requirements of the product or service.

Quality program is a program which is developed, planned, and managed to carry out cost-effectively all efforts to effect the quality of materials and services from concept exploration and definition through demonstration and validation, engineering and manufacturing development, production and deployment, and operations and support.

[56 FR 36460, July 31, 1991, as amended at 60 FR 33145, June 27, 1995]

246.102 Policy.

Departments and agencies shall also—

(1) Develop and manage a cost effective quality program to ensure that contract performance conforms to specified requirements. Apply the quality program to all contracts for services and products designed, developed, purchased, produced, stored, distributed, operated, maintained, or disposed of by contractors.

(2) Conduct quality audits to ensure the quality of products and services meet contractual requirements.

(3) Base the type and extent of Government contract quality assurance actions on the particular acquisition.

(4) Provide contractors the maximum flexibility in establishing efficient and effective quality programs to meet contractual requirements. Contractor quality programs may be modeled on military, commercial, national, or international quality standards.

[56 FR 36460, July 31, 1991, as amended at 60 FR 33145, June 27, 1995]

246.103 Contracting office responsibilities.

The contracting office may conduct product-oriented surveys and evaluations to determine—

(1) The adequacy of the technical requirements relating to quality; and

(2) Product conformance to design intent. Consider conducting the surveys and evaluations in conjunction with the activity responsible for technical requirements.

(a) Contracting offices are also responsible for—

(1) Assisting the technical activity in improving the quality requirements for
contracts when first identified for competitive acquisition; and

(ii) Assisting in determining the cause of problems noted in user experience reports.

(b) The contracting office must coordinate with the quality assurance activity before changing any quality requirement.

(c) The activity responsible for technical requirements may prepare instructions covering the type and extent of Government inspections for acquisitions that are complex, have critical applications, or have unusual requirements.

(i) In preparing the instructions, the technical activity shall consider, as applicable—

(A) The past quality history of the contractor;
(B) The criticality of the material procured in relation to its intended use, considering such factors as—

(1) Reliability;
(2) Safety;
(3) Interchangeability; and
(4) Maintainability;
(C) Problems encountered in the development of the material;
(D) Problems encountered in other procurements of the same or similar material;
(E) Available feedback data from contract administration, receiving, testing, or using activities; and
(F) The experience of other contractors in overcoming manufacturing problems.

(ii) The instructions shall—

(A) Be kept to a minimum;
(B) Comply with 246.470–2; and
(C) Be prepared on a contract-by-contract basis.

(iii) The instructions shall not—

(A) Serve as a substitute for incomplete contract quality requirements;
(B) Impose greater inspection requirements than are in the contract;
(C) Use broad or general designations such as—

(1) All requirements;
(2) All characteristics; or
(3) All characteristics in the classification of defects;
(D) Be used for routine administrative procedures; or
(E) Specify continued inspection requirements when statistically sound sampling will provide an adequate degree of protection.

(iv) After issuing the instructions, the technical activity—

(A) Must provide the contract administration office available information regarding those factors which resulted in the requirement for Government inspection;
(B) Must periodically analyze the need to continue, change, or discontinue the instructions; and
(C) Must advise the contract administration office of the results of the periodic analyses.

246.104 Contract administration office responsibilities.

(f) The contract administration office shall continue to follow any specific written instructions received from the contracting office until the contracting office acts on a recommendation.

Subpart 246.2—Contract Quality Requirements

246.202 Types of contract quality requirements.

246.202–4 Higher-level contract quality requirements.

(1) Higher-level contract quality requirements are used in addition to a standard inspection requirement.

(2) Higher-level contract quality requirements, including nongovernment quality system standards adopted to meet DoD needs, are listed in the DoD Index of Specifications and Standards.

[60 FR 33145, June 27, 1995. Redesignated and amended at 60 FR 61599, Nov. 30, 1995]

246.203 Criteria for use of contract quality requirements.

(c) Criticality. Acquisitions of critical items, whether peculiar or common, shall have contract quality requirements.

Subpart 246.3—Contract Clauses

246.370 Material inspection and receiving report.

(a) Use the clause at 252.246–7000, Material Inspection and Receiving Report, in solicitations and contracts when there will be separate and distinct
deliverables, even if the deliverables are not separately priced.

(b) When contract administration is retained by the contracting office, the clause at 252.246–7000, Material Inspection and Receiving Report, is not required for:

(1) Contracts awarded using simplified acquisition procedures;
(2) Negotiated subsistence contracts;
(3) Contracts for fresh milk and related fresh dairy products;
(4) Contracts for which the deliverable is a scientific or technical report;
(5) Research and development contracts not requiring the delivery of separately priced end items;
(6) Base, post, camp, or station contracts;
(7) Contracts in overseas areas when the preparation and distribution of the DD Form 250, Material Inspection and Receiving Report, by the contractor would not be practicable. In these cases, arrange for the contractor to provide the information necessary for the contracting office to prepare the DD Form 250;
(8) Contracts for services when hardware is not acquired as an item in the contract; and
(9) Indefinite delivery type contracts placed by central contracting offices which authorize only base, post, camp, or station activities to issue orders.

Subpart 246.4—Government Contract Quality Assurance

246.406 Foreign governments.


(A) Contains the processes, procedures, terms, and conditions under which one NATO member nation will perform quality assurance for another NATO member nation or NATO organization;

(B) Standardizes the development, updating, and application of the Allied Quality Assurance Publications; and

(C) Has been ratified by the United States and other nations in NATO with certain reservations identified in STANAG 4107.

(ii) Departments and agencies shall follow STANAG 4107 when—

(A) Asking a NATO member nation to perform quality assurance; or

(B) Performing quality assurance when requested by a NATO member nation or NATO organization.

(2) International military sales (non-NATO). Departments and agencies shall—

(i) Perform quality assurance services on international military sales contracts or in accordance with existing agreements;

(ii) Ensure conformance to the technical and quality requirements of international military sales contracts;

(iii) Inform host or U.S. Government personnel and contractors on the use of quality assurance publications;

(iv) Specify appropriate quality requirements in contracts awarded to other countries; and

(v) Delegate quality assurance to the host government when satisfactory services are available.

(3) Reciprocal quality assurance agreements. A Memorandum of Understanding (MOU) with a foreign country may contain an annex that provides for the reciprocal performance of quality assurance services. MOUs should be checked to determine whether such an annex exists for the country where a defense contract will be performed. (See subpart 225.8 for more information about MOUs.)

246.407 Nonconforming supplies or services.

(f) If nonconforming material or services are discovered after acceptance, the defect appears to be the fault of the contractor, any warranty has expired, and there are no other contractual remedies, the contracting officer—

(i) Shall notify the contractor in writing of the nonconforming material or service;
246.408 Single-agency assignments of Government contract quality assurance.

246.408–70 Subsistence.

(a) The Surgeons General of the military departments are responsible for—

(1) Acceptance criteria;

(2) Technical requirements; and

(3) Inspection procedures needed to assure wholesomeness of foods.

(b) The contracting office may designate any Federal activity, capable of assuring wholesomeness and quality in food, to perform quality assurance for subsistence contract items. The designation may—

(1) Include medical service personnel of the military departments; and

(2) Be on a reimbursable basis.

246.408–71 Aircraft.

(a) The Federal Aviation Administration (FAA) has certain responsibilities and prerogatives in connection with some commercial aircraft and of aircraft equipment and accessories (Pub. L. 85–726 (72 Stat 776, 49 U.S.C. 1423)). This includes the issuance of various certificates applicable to design, manufacture, and airworthiness.

(b) FAA evaluations are not a substitute for normal DoD evaluations of the contractor’s quality assurance measures. Actual records of FAA evaluations may be of use to the contract administration office (CAO) and should be used to their maximum advantage.

(c) The CAO shall ensure that—

(1) The supplies and services conform to the terms of the contract; and

(2) The contractor possesses any required FAA certificates and approvals prior to acceptance.

246.408–72 Construction projects.

(a) The department or agency responsible for the construction of a building or other structure is normally responsible for on-site inspection.

(b) The contract administration office performs quality assurance for construction materials and supplies acquired for military and civil works projects.

(c) The offices responsible for on-site inspection and for quality assurance of materials and supplies must coordinate their efforts to ensure the compatibility of buildings and structures and installed equipment.

246.470 Government contract quality assurance actions.

246.470–1 Planning.

In systematically planning Government contract quality assurance actions used to determine a contractor’s compliance with contract quality requirements, consider—

(a) The relative importance of the product; and

(b) The variety of tasks required of the available resources.

246.470–2 Evidence of conformance.

Use objective evidence of quality to determine conformance to contract quality requirements.

246.470–3 Assessment of additional costs.

(a) Under the clause at FAR 52.246–2, Inspection of Supplies—Fixed-Price, the Government may charge the contractor for additional costs incurred by the Government due to delays in tests or inspections caused by the contractor, or due to the necessity for reinspection or retest. This action may be necessary when—

(1) Supplies are not ready at the time such inspection and test are requested by the contractor; or

(2) Reinspection or retest is necessitated by prior rejection.

(b) After considering the factors in paragraph (d) of this subsection, the quality assurance representative (QAR) may believe that the assessment of additional costs is warranted. If so, the representative shall recommend that
the contracting officer take the necessary action and provide a recommendation as to the amount of additional costs. Costs are based on the applicable Federal agency, foreign military sale, or public rate in effect at the time of the delay, reinspection, or retest.

(c) If the contracting officer agrees with the QAR, the contracting officer shall—

(1) Notify the contractor, in writing, of the determination to exercise the Government’s right under the clause at FAR 52.246-2, Inspection of Supplies—Fixed Price; and

(2) Demand payment of the costs in accordance with the collection procedures contained in FAR subpart 32.6.

(d) In making a determination to assess additional costs, the contracting officer shall consider—

(1) The frequency of delays, reinspection, or retest under both current and prior contracts;

(2) The cause of such delay, reinspection, or retest; and

(3) The expense of recovering the additional costs.

246.470–4 Maintenance of Government records.

The contract administration office shall maintain suitable records of the quality assurance performance of contractors.

246.470–5 Quality evaluation data.

The contract administration office shall establish a system that provides, as a minimum, for the collection, evaluation, and use of—

(a) Quality data developed by the contractor during performance;

(b) Data developed by the Government through contract quality assurance actions; and

(c) Reports by users and customers.

246.471 Authorizing shipment of supplies.

(a) General. (1) Ordinarily, a representative of the contract administration office signs or stamps the shipping papers that accompany Government source-inspected supplies to release them for shipment. This is done for both prime and subcontracts.

(2) An alternative procedure (see paragraph (b) of this section) permits the contractor to assume the responsibility for releasing the supplies for shipment.

(3) The alternative procedure may include prime contractor release of supplies inspected at a subcontractor’s facility.

(b) Alternative Procedures—Contract Release for Shipment. (1) The contract administration office may authorize, in writing, the contractor to release supplies for shipment when—

(i) The stamping or signing of the shipping papers by a representative of the contract administration office interferes with the operation of the Government contract quality assurance program or takes too much of the Government representative’s time;

(ii) There is sufficient continuity of production to permit the Government to establish a systematic and continuing evaluation of the contractor’s control of quality; and

(iii) The contractor has a record of satisfactory quality, including that pertaining to preparation for shipment.

(2) The contract administration office shall withdraw, in writing, the authorization when there is an indication that the conditions in paragraph (b)(1) of this subsection no longer exist.

(3) When the alternative procedure is used, require the contractor to—

(i) Type or stamp, and sign, the following statement on the required copy or copies of the shipping paper(s), or on an attachment—

The supplies in this shipment—

1. Have been subjected to and have passed all examinations and tests required by the contract;

2. Were shipped in accordance with authorized shipping instructions;

3. Conform to the quality, identity, and condition called for by the contract; and

4. Are of the quantity shown on this document.

This shipment was—

1. Released in accordance with section 246.471 of the Defense FAR Supplement; and
246.472 Inspection stamping.

(a) There are two DoD quality inspection approval marking designs (stamps). Both stamps are used—

(1) Only by, or under the direct supervision of, the Government representative; and

(2) For both prime and subcontracts.

(b) The designs of the two stamps and the differences in their uses are—

(1) Partial (Circle) Inspection Approval Stamp. (i) This circular stamp is used to identify material inspected for conformance to only a portion of the contract quality requirements.

(ii) Further inspection is to be performed at another time and/or place.

(iii) Material not inspected is so listed on the associated DD Form 250 (Material Inspection and Receiving Report), packing list, or comparable document.

(2) Complete (Square) Inspection Approval Stamp. (i) This square stamp is used to identify material completely inspected for all contract quality requirements at source.

(ii) The material satisfies all contract quality requirements and is in complete conformance with all contract quality requirements applicable at the time and place of inspection.

(iii) Complete inspection approval establishes that material which once was partially approved has subsequently been completely approved.

(iv) One imprint of the square stamp voids multiple imprints of the circle stamp.

(c) The marking of each item is neither required nor prohibited. Ordinarily, the stamping of shipping containers, packing lists, or routing tickets serves to adequately indicate the status of the material and to control or facilitate its movement.

(d) Stamping material does not mean that it has been accepted by the Government. Evidence of acceptance is ordinarily a signed acceptance certificate on the DD Form 250, Material Inspection and Receiving Report.

(e) Policies and procedures regarding the use of National Aeronautics and Space Administration (NASA) quality status stamps are contained in NASA publications. When requested by NASA centers, the DoD inspector shall use NASA quality status stamps in accordance with current NASA requirements.

Subpart 246.6—Material Inspection and Receiving Reports

246.670 General.

(a) Material Inspection and Receiving Reports (MIRRs) are used to document—

(1) Contract quality assurance;

(2) Acceptance of supplies and services; and

(3) Shipments.

(b) MIRRs are used by activities responsible for—

(1) Receiving;

(2) Status control;

(3) Technical requirements;

(4) Contracting;

(5) Inventory control;

(6) Requisitioning; and

(7) Payment.

246.671 Procedures.

See Appendix F, Material Inspection and Receiving Report, for procedures and instructions for the use, preparation, and distribution of—

(a) The Material Inspection and Receiving Report (DD Form 250 series) and;

(b) Supplier’s commercial shipping/packing lists used to evidence Government contract quality assurance.

Subpart 246.7—Warranties

246.701 Definitions.

Acceptance, as defined in FAR 46.701 and as used in this subpart and in the warranty clauses at FAR 52.246–17, Warranty of Supplies of a Noncomplex Nature; FAR 52.246–18, Warranty of Supplies of a Complex Nature; FAR 52.246–19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria; and FAR...
52.246-20, Warranty of Services, includes the execution of an official document (e.g., DD Form 250, Material Inspection and Receiving Report) by an authorized representative of the Government.

Defect, as used in this subpart, means any condition or characteristic in any supply or service furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

246.702 General.

(c) Departments and agencies shall establish procedures to track and accumulate data on warranty costs.

246.703 Criteria for use of warranties.

(b) Cost. Contracting officers may include the cost of a warranty as part of an item’s price or as a separate contract line item.

[63 FR 6109, Feb. 6, 1998]

246.704 Authority for use of warranties.

The chief of the contracting office must approve use of a warranty, except in acquisitions for—

(1) Commercial items (see FAR 46.709);

(2) Technical data, unless the warranty provides for extended liability (see 246.708);

(3) Supplies and services in fixed-price type contracts containing quality assurance provisions that reference higher-level contract quality requirements (see 246.202-4); or

(4) Supplies and services in construction contracts when using the warranties that are contained in Federal, military, or construction guide specifications.

[56 FR 36460, July 31, 1991, as amended at 60 FR 33145, June 27, 1995; 60 FR 61599, Nov. 30, 1995; 63 FR 6109, Feb. 6, 1998]

246.705 Limitations.

(a) Warranties in the clause at 252.246-7001, Warranty of Data, are also an exception to the prohibition on use of warranties in cost-reimbursement contracts.

246.706 Warranty terms and conditions.


246.708 Warranties of data.

Obtain warranties on technical data when practicable and cost effective. Consider the factors in FAR 46.703 in deciding whether to obtain warranties of technical data. Consider the following in deciding whether to use extended liability provisions—

(1) The likelihood that correction or replacement of the nonconforming data, or a price adjustment, will not give adequate protection to the Government; and

(2) The effectiveness of the additional remedy as a deterrent against furnishing nonconforming data.

246.710 Contract clauses.

(1) Use a clause substantially the same as the clause at 252.246-7001, Warranty of Data, in solicitations and contracts that include the clause at 252.227-7013, Rights in Technical Data and Computer Software, and there is a need for greater protection or period of liability than provided by other contract clauses, such as the clauses at—

(i) FAR 52.246-3, Inspection of Supplies—Cost-Reimbursement;

(ii) FAR 52.246-6, Inspection—Time-and-Material and Labor-Hour;

(iii) FAR 52.246-8, Inspection of Research and Development—Cost-Reimbursement; and

(iv) FAR 52.246-19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria.

(2) Use the clause at 252.246-7001, Warranty of Data, with its Alternate I when extended liability is desired and a fixed price incentive contract is contemplated.

(3) Use the clause at 252.246-7001, Warranty of Data, with its Alternate II when extended liability is desired and a firm fixed price contract is contemplated.

(4) Use the clause at 252.246-7002, Warranty of Construction (Germany), instead of the clause at FAR 52.246-21,
Warranty of Construction, in solicitations and contracts for construction when a fixed-price contract will be awarded and contract performance will be in Germany.


PART 247—TRANSPORTATION

Sec.
247.001 Definitions.

Subpart 247.1—General


247.105 Citation of Government rate tenders.

247.106 Transportation assistance.

Subpart 247.2—Contracts for Transportation or for Transportation-Related Services

247.200 Scope of subpart.

247.206 Preparation of solicitations and contracts.

247.270 Stevedoring contracts.

247.270-1 Scope of section.

247.270-2 Definitions.

247.270-3 Technical provisions.

247.270-4 Evaluation of bids and proposals.

247.270-5 Award of contract.

247.270-6 Contract clauses.

247.271 Contracts for the preparation of personal property for shipment or storage.

247.271-1 Scope of section.

247.271-2 Policy.

247.271-3 Procedures.

247.271-4 Solicitation provisions, schedule formats, and contract clauses.

Subpart 247.3—Transportation in Supply Contracts

247.301 General.

247.301-70 Definition.

247.301-71 Evaluation factor or subfactor.

247.305 Solicitation provisions, contract clauses, and transportation factors.

247.305-10 Packing, marking, and consignment instructions.

247.305-70 Returnable containers other than cylinders.

247.370 Use of Standard Form 30 for consignment instructions.

247.371 DD Form 1384, Transportation Control and Movement Document.

247.372 DD Form 1653, Transportation Data for Solicitations.

247.373 DD Form 1654, Evaluation of Transportation Cost Factors.


SOURCE: 56 FR 36466, July 31, 1991, unless otherwise noted.

247.001 Definitions.

For definitions of “Civil Reserve Air Fleet” and “Voluntary Intermodal Sealift Agreement,” see Joint Pub. 1–02, DoD Dictionary of Military and Associated Terms.

[65 FR 50144, Aug. 17, 2000]

Subpart 247.1—General


247.105 Citation of Government rate tenders.

(a) See DoD 4500.9–R, Defense Transportation Regulation, Part II, Chapter 206, for instructions on converting commercial bills of lading to Government bills of lading within CONUS.

[65 FR 50144, Aug. 17, 2000]

247.105 Transportation assistance.

(b)(i) Transportation assistance includes all transportation factors, such as—

(A) Rates and prices (for evaluation of bids or routing purposes);

(B) Other transportation costs;

(C) Transit agreements;

(D) Time in transit;

(E) Port handling charges; and

(F) Port capabilities.

(ii) Within CONUS, the Military Traffic Management Command (MTMC) is responsible for the performance of traffic management functions. These functions include the direction, control,
and supervision of all functions incident to the acquisition and use of commercial freight and passenger transportation services.

(iii) For assistance with international shipments—

(A) Originating in CONUS, request assistance from the appropriate military activity: i.e., the Air Mobility Command (AMC), Military Sealift Command (MSC), MTMC, or the military service sponsoring the cargo;

(B) For all modes of transportation originating overseas, request assistance from the overseas Theater Commander assigned responsibility for common-user, military-operated land transportation;

(C) Of bulk petroleum via ocean tanker, request assistance, rates, or other costs from the MSC;

(D) Of supplies between points outside CONUS, including Alaska and Hawaii, request assistance, rates, or other costs from the military service sponsoring the cargo. Direct the requests to:

Army: Deputy Chief of Staff for Logistics, ATTN: DALO–TSP, Washington, DC 20310–0500

Navy: Naval Supply Systems Command, Code 4D, 5450 Carlisle Pike, PO Box 2050, Mechanicsburg, PA 17055–0791

Air Force: Applicable Overseas Air Force Command:

HQ PACAF/LGT, 25 East Street, Suite I–305, Hickam AFB, HI 96853–5427

HQ USAFE/LGT, Unit 305, Box 105, APO AE 09094–0105

HQ AFSPACECOM/LGT, 150 Vandenberg Street, Suite 1105, Peterson AFB, CO 80914–4540


Subpart 247.2—Contracts for Transportation or for Transportation-Related Services

247.200 Scope of subpart.

This subpart does not apply to the operation of vessels owned by, or bareboat chartered by, the Government.

[65 FR 50144, Aug. 17, 2000]

247.206 Preparation of solicitations and contracts.

(1) Consistent with FAR 15.304 and 215.304, consider using the following as evaluation factors or subfactors:

(i) Record of claims involving loss or damage;

(ii) Provider availability; and

(iii) Commitment of transportation assets to readiness support (e.g., Civil Reserve Air Fleet and Voluntary Intermodal Sealift Agreement).

(2) To the maximum extent practicable, structure contracts and agreements to allow for their use by DoD contractors.

[65 FR 50144, Aug. 17, 2000]

247.270 Stevedoring contracts.

247.270–1 Scope of section.

This section contains procedures unique to stevedoring. Other portions of the FAR and DFARS dealing with service contracting also apply to stevedoring contracts.


247.270–2 Definitions.

Commodity rate is—

(1) The price quoted for handling a ton (weight or measurement) of a specified commodity; and

(2) Computed by dividing the hourly stevedoring gang cost by the estimated number of tons of the specified commodity that can be handled in 1 hour.

Gang cost is—

(1) The total hourly wages paid to the workers in the gang, in accordance with the collective bargaining agreement between the maritime industry and the unions at a specific port; and

(2) Payments for workmen’s compensation, social security taxes, unemployment insurance, taxes, liability and property damage insurance, general and administrative expenses, and profit.

Stevedoring is the—

(1) Loading of cargo from an agreed point of rest on a pier or lighter and its storage aboard a vessel; or
(2) Breaking out and discharging of cargo from any space in the vessel to an agreed point of rest dockside or in a lighter.


247.270–3 Technical provisions.

(a) Because conditions vary at different ports, and sometimes within the same port, it is not practical to develop standard technical provisions covering all phases of stevedoring operations.

(b) When including rail car, truck, or intermodal equipment loading and unloading, or other dock and terminal work under a stevedoring contract, include these requirements as separate items of work.

[65 FR 50144, Aug. 17, 2000]

247.270–4 Evaluation of bids and proposals.

As a minimum, require that offers include—

(a) Tonnage or commodity rates that apply to the bulk of the cargo worked under normal conditions;

(b) Labor-hour rates that apply to services not covered by commodity rates, or to work performed under hardship conditions; and

(c) Rates for equipment rental.

[65 FR 50144, Aug. 17, 2000]

247.270–5 Award of contract.

Make the award to the offeror submitting the offer most advantageous to the Government, considering cost or price and other factors specified in the solicitation. Evaluation will include, but is not limited to—

(a) Total estimated cost of tonnage to be moved at commodity rates;

(b) Estimated cost at labor-hour rates; and

(c) Cost of equipment rental.

[65 FR 50144, Aug. 17, 2000]

247.270–6 Contract clauses.

Use the following clauses in solicitations and contracts for stevedoring services as indicated:

(a) 252.247–7000, Hardship Conditions, in all solicitations and contracts.

(b) 252.247–7001, Price Adjustment, when using sealed bidding.

(c) 252.247–7002, Revision of Prices, when using negotiation.

(d) 252.247–7004, Indefinite Quantities—Fixed Charges, when the contract is an indefinite-quantity type and will provide for the payment of fixed charges.

(e) 252.247–7005, Indefinite Quantities—No Fixed Charges, when the contract is an indefinite-quantity type and will not provide for the payment of fixed charges.

(f) 252.247–7006, Removal of Contractor’s Employees, in all solicitations and contracts.

(g) 252.247–7007, Liability and Insurance, in all solicitations and contracts.

[65 FR 50144, Aug. 17, 2000]

247.271 Contracts for the preparation of personal property for shipment or storage.

247.271–1 Scope of section.

This section contains procedures unique to the preparation of personal property for shipment or storage, and for the performance of intra-area or intra-city movement. Other portions of the FAR and DFARS dealing with service contracting also apply to these services.


247.271–2 Policy.

(a) Annual contracts. Normally—

(1) Use requirements contracts to acquire services for the—

(i) Preparation of personal property for shipment or storage; and

(ii) Performance of intra-area movement.

(2) Award contracts on a calendar year basis.

(3) Provide for option years.

(4) Award contracts, or exercise option years, before November 1 of each year, if possible.

(b) Areas of performance. Define clearly in the solicitation each area of performance.

(1) Establish one or more areas; however, hold the number to a minimum consistent with local conditions.

(2) Each schedule may provide for the same or different areas of performance. Determine the areas as follows—
(i) Use political boundaries, streets, or any other features as lines of demarcation. Consider such matters as—
(A) Total volume;
(B) Size of overall area; and
(C) The need to service isolated areas of high population density.
(ii) Specifically identify frequently used terminals, and consider them as being included in each area of performance described in the solicitation.

(c) Maximum requirements—minimum capability. The contracting officer must—
(1) Establish realistic quantities on the Estimated Quantities Report in DoD 4500.9–R, Defense Transportation Regulation, Part IV;
(2) Ensure that the Government’s minimum acceptable daily capability—
(i) Will at least equal the maximum authorized individual weight allowance as prescribed by the Joint Federal Travel Regulations; and
(ii) Will encourage maximum participation of small business concerns as offerors.


247.271–3 Procedures.

(a) CONUS military activities assigned multi-service personal property areas of responsibility. (1) When two or more military installations or activities have personal property responsibilities in a given area, one activity must contract for the estimated requirements of all activities in the area. The installation commanders concerned must designate the activity by mutual agreement.

(2) The Commander, Military Traffic Management Command (MTMC), must designate the contracting activity when local commanders are unable to reach agreement.

(b) Additional services and excess requirements.

(1) Excess requirements are those services that exceed contractor capabilities available under contracts. Use simplified acquisition procedures to satisfy excess requirements.

(2) Additional services are those not specified in the bid items.

(i) Additional services may include—
(A) Hoisting or lowering of articles;
(B) Waiting time;
(C) Special packaging; and
(D) Stuffing or unstuffing of sea van containers.

(ii) Consider contracting for local moves that do not require drayage by using hourly rate or constructive weight methods. The rate will include those services necessary for completion of the movement, including—
(A) Packing and unpacking;
(B) Movement;
(C) Inventorying; and
(D) Removal of debris.

(iii) Each personal property shipping activity must determine if local requirements exist for any additional services.

(iv) The contracting officer may obtain additional services by—
(A) Including them as items within the contract; provided, they are not used in the evaluation of bids (see 252.247–7008, Evaluation of Bids); or
(B) Using simplified acquisition procedures.

(v) Either predetermine prices for additional services with the contractor, or negotiate them on a case-by-case basis.

(vi) The contracting officer must authorize the contractor to perform any additional services, other than attempted pick up or delivery, regardless of the contracting method.

(vii) To the maximum extent possible, identify additional services required that are incidental to an order before placing the order; or, when applicable, during the premove survey.

(c) Contract distribution. In addition to the distribution requirements of FAR subpart 4.2, furnish one copy of each contract as follows:

(1) CONUS personal property shipping activities must send the copy to the Commander, Military Traffic Management Command, Attn: MTPP-CI, Room 408, 5611 Columbia Pike, Falls Church, VA 22041–5050.

(2) In the European and Pacific areas, personal property shipping activities must send the copy to either the Property Directorate, MTMC Europe, or the MTMC Field Office-Pacific.

(3) Other overseas personal property shipping activities must send the copy to the Commander, Military Traffic Management Command, Attn: MTPP-
247.271–4 Solicitation provisions, schedule formats, and contract clauses.

When acquiring services for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement, use the following provisions, clauses, and schedules. Revise solicitation provisions and schedules, as appropriate, if using negotiation rather than sealed bidding. Overseas commands, except those in Alaska and Hawaii, may modify these clauses to conform to local practices, laws, and regulations.

(a) The provision at 252.247–7008, Evaluation of Bids. When adding “additional services” items to any schedule, use the basic clause with Alternate I.

(b) The provision at 252.247–7009, Award.

(c) In solicitations and resulting contracts, the schedules contained in DoD 4500.9–R, Defense Transportation Regulation, Part IV, as provided by the installation personal property shipping office.

(1) When there is no requirement for an item or subitem in a schedule, indicate that item or subitem number, in its proper numerical sequence, and add the statement “No Requirement.”

(2) Within Schedules I (Outbound) and II (Inbound), item numbers are reserved to permit inclusion of additional items as required by local conditions.

(3) Overseas activities, except those in Alaska and Hawaii, may modify the schedules when necessary to conform with local trade practices, laws, and regulations.

(4) All generic terminology, schedule, and item numbers in proper sequence must follow those contained in the basic format.

(5) When it is in the Government’s best interest to have both outbound and inbound services within a given area of performance furnished by the same contractor, modify the schedule format to combine both services in a single schedule. However, items must follow the same sequential order as in the basic format.

(6) Process any modification of schedule format, other than those authorized in paragraphs (c)(1) through (5) of this subsection, as a request for deviation to the Commander, MTMC.

(d) The clause at 252.247–7010, Scope of Contract.

(e) The clause at 252.247–7011, Period of Contract. When the period of performance is less than a calendar year, modify the clause to indicate the beginning and ending dates. However, the contract period must not end later than December 31 of the year in which the contract is awarded.

(f) In addition to designating each ordering activity, as required by the clause at FAR 52.216–18, Ordering, identify by name or position title the individuals authorized to place orders for each activity. When provisions are made for placing oral orders in accordance with FAR 16.505(a)(4), document the oral orders in accordance with department or agency instructions.

(g) The clause at 252.247–7012, Ordering Limitation.


(i) The clause at 252.247–7014, Demurrage.

(j) When using the clause at FAR 52.216–21, Requirements, see 216.506(d), which prescribes an alternate to the clause.

(k) The clause at 252.247–7016, Contractor Liability for Loss and Damage.


(m) The clause at 252.247–7018, Subcontracting.

(n) The clause at 252.247–7019, Drayage.

(o) The clause at 252.247–7020, Additional Services.

(p) The clauses at FAR 52.247–8, Estimated Weight or Quantities Not Guaranteed, and FAR 52.247–13, Accessorial Services—Moving Contracts.

247.301 General.

247.301-70 Definition. “Integrated logistics managers” or “third-party logistics providers” means providers of multiple logistics services. Some examples of logistics services are the management of transportation, demand forecasting, information management, inventory maintenance, warehousing, and distribution.

[65 FR 50145, Aug. 17, 2000]

247.301-71 Evaluation factor or subfactor.

For contracts that will include a significant requirement for transportation of items outside CONUS, include an evaluation factor or subfactor that favors suppliers, third-party logistics providers, and integrated logistics managers that commit to using carriers that participate in one of the readiness programs (e.g., Civil Reserve Air Force Fleet and Voluntary Intermodal Sealift Agreement).

[65 FR 50145, Aug. 17, 2000]

247.305 Solicitation provisions, contract clauses, and transportation factors.

247.305-10 Packing, marking, and consignment instructions.

(b) Consignment instructions must include, as a minimum—

(i) The clear text and coded MILSTRIP data as follows:

(A) Consignee code and clear text identification of consignee and destination as published in—

(1) DoD 4000.25–6–M, Department of Defense Activity Address Directory (DODAAD);
(2) DoD 4000.25–8–M, Military Assistance Program Address Directory (MAPAD) System; or
(3) Transportation Control and Movement Document. Reporting procedures and instructions must comply with DoD 4500.9–R, Defense Transportation Regulation.

(B) Project code, when applicable.

(C) Transportation priority.

(D) Required delivery date.

(ii) Non-MILSTRIP shipments must include data similar to that described in paragraphs (b)(i)(A) through (D) of this subsection.

(iii) In amended shipping instructions include, in addition to the data requirements of paragraphs (b)(i)(A) through (D) of this subsection, the following, when appropriate:

(A) Name of the activity originally designated, from which the stated quantities are to be deducted.

(B) Any other features of the amended instructions not contained in the basic contract.

(iv) When assigning contract administration responsibility in accordance with FAR 42.202, include in instructions the—

(A) Modification serial number; and

(B) If a new line item is created by the issuance of shipping instructions—

(1) New line item number; and

(2) Existing line item number, if affected.

(v) For petroleum, oil, and lubricant products, instructions for diversions need not include the modification serial number and new line item number, when the instructions are—

(A) For diversions overseas to new destinations;

(B) Issued by an office other than that issuing the contract or delivery order; and

(C) Issued by telephone or electronic media.


247.305-70 Returnable containers other than cylinders.

Use the clause at 252.247-7021, Returnable Containers Other Than Cylinders, in solicitations and contracts for supplies involving contractor-furnished returnable reels, spools, drums, carboys, liquid petroleum gas containers, or other returnable containers if the contractor is to retain title to the containers.

[60 FR 26501, June 5, 1995]

247.370 Use of Standard Form 30 for consignment instructions.

When complete consignment instructions are not known initially, use the Standard Form (SP) 30, Amendment of Solicitation/Modification of Contract,
247.371 DD Form 1384, Transportation Control and Movement Document.

Reporting procedures and instructions for this form will be in compliance with DoD 4500.9-R, Defense Transportation Regulation.


247.372 DD Form 1653, Transportation Data for Solicitations.

(a) The transportation specialist prepares the DD Form 1653 at the request of the contracting officer. The completed form will contain recommendations concerning f.o.b. terms best suited for a particular acquisition, and other suggested transportation provisions for inclusion in the solicitation.

(b) When appropriate, the DD Form 1653 will also include information on combined port handling and transportation charges for inclusion in the solicitation in connection with export shipments.

247.373 DD Form 1654, Evaluation of Transportation Cost Factors.

Contracting personnel may use the DD Form 1654 to furnish information to the transportation office for development of cost factors for use by the contracting officer in the evaluation of f.o.b. origin offers.

Subpart 247.5—Ocean Transportation by U.S.-Flag Vessels

247.570 Scope.

This subpart—

(a) Implements the Cargo Preference Act of 1904 (“the 1904 Act”), 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by, or destined for use by, DoD;

(b) Does not specifically implement the Cargo Preference Act of 1954 (“the 1954 Act”), 46 U.S.C. 1241(b). The 1954 Act is applicable to DoD, but DFARS coverage is not required because compliance with the 1904 Act historically has resulted in DoD exceeding the 1954 Act’s requirements; and

(c) Does not apply to ocean transportation of the following products, in which case FAR subpart 47.5 applies:

(1) Products obtained for contributions to foreign assistance programs.

(2) Products owned by agencies other than DoD, unless the products are clearly identifiable for eventual use by DoD.

[65 FR 50146, Aug. 17, 2000]

247.571 Policy.

(a) DoD contractors must transport supplies, as defined in the clause at 252.247-7023, Transportation of Supplies by Sea, exclusively on U.S.-flag vessels unless—

(1) Those vessels are not available, and the procedures at 247.572-1(d)(1) or 247.572-2(d)(1) are followed;

(2) The proposed charges to the Government are higher than charges to private persons for the transportation of like goods, and the procedures at 247.572-1(d)(2) or 247.572-2(d)(2) are followed; or

(3) The Secretary of the Navy or the Secretary of the Army determines that the proposed freight charges are excessive or unreasonable in accordance with 247.572-1(d)(3) or 247.572-2(d)(3).
(b) Contracts must provide for the use of Government-owned vessels when security classifications prohibit the use of other than Government-owned vessels.

(c)(1) Any vessel used under a time charter contract for the transportation of supplies under this section must have any reflagging or repair work, as defined in the clause at 252.247-7025, Reflagging or Repair Work, performed in the United States or its territories, if the reflagging or repair work is performed—

(i) On a vessel for which the contractor submitted an offer in response to the solicitation for the contract; and

(ii) Prior to the acceptance of the vessel by the Government.

(2) The Secretary of Defense may waive this requirement if the Secretary determines that such waiver is critical to the national security of the United States.

[65 FR 50146, Aug. 17, 2000]

247.572-1 Ocean transportation incidental to a contract for supplies, services, or construction.  

(a) This subsection applies when ocean transportation is not the principal purpose of the contract, and the cargo to be transported is owned by DoD or is clearly identifiable for eventual use by DoD.

(b) The contracting officer must obtain assistance from the cognizant transportation activity (see 247.105) in developing—

(1) The Government estimate for transportation costs, irrespective of whether freight will be paid directly by the Government; and

(2) Shipping instructions and delivery terms for inclusion in solicitations and contracts that may involve transportation of supplies by sea.

(c) If the contractor notifies the contracting officer that the contractor or a subcontractor considers that—

(1) No U.S.-flag vessels are available, the contracting officer must request confirmation of the nonavailability from—

(i) The Commander, Military Sealift Command (MSC), through the Contracts and Business Management Directorate, MSC; or

(ii) The Commander, Military Traffic Management Command (MTMC), through the Principal Assistant Responsible for Contracting, MTMC.

(2) The proposed freight charges to the Government, the contractor, or any subcontractor are higher than charges for transportation of like goods to private persons, the contracting officer may approve a request for an exception to the requirement to ship on U.S.-flag vessels for a particular shipment.

(i) Prior to granting an exception, the contracting officer must request advice, oral or written, from the Commander, MSC; or the Commander, MTMC.

(ii) In advising the contracting officer whether to grant the exception, the Commander, MSC, or the Commander, MTMC, must consider, as appropriate, evidence from—

(A) Published tariffs;

(B) Industry publications;

(C) The Maritime Administration; and

(D) Any other available sources.

(3) The freight charges proposed by U.S.-flag carriers are excessive or otherwise unreasonable—

(i) The contracting officer must prepare a report in determination and finding format, and must—

(A) Take into consideration that the 1904 Act is, in part, a subsidy of the U.S.-flag commercial shipping industry that recognizes that lower prices may be available from foreign-flag carriers. Therefore, a lower price for use of a foreign-flag vessel is not a sufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a price differential may indicate a need for further review;

(B) Consider, accordingly, not only excessive profits to the carrier (to include vessel owner or operator), if ascertainable, but also excessive costs to the Government (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition) resulting from the use of U.S.-flag vessels in extraordinarily inefficient circumstances; and
(C) Include an analysis of whether the cost is excessive, taking into account factors such as—

(1) The differential between the freight charges proposed by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis;
(2) A comparison of U.S.-flag rates charged on comparable routes;
(3) Efficiency of operation regardless of rate differential (e.g., suitability of the vessel for the required transportation in terms of cargo requirements or vessel capacity, and the commercial reasonableness of vessel positioning required); and
(4) Any other relevant economic and financial considerations.

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

(A) The Commander, MSC, through the Contracts and Business Management Directorate, MSC; or
(B) The Commander, MTMC, through the Principal Assistant Responsible for Contracting, MTMC.

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


247.572–2 Direct purchase of ocean transportation services.

(a) This subsection applies when ocean transportation is the principal purpose of the contract, including—

(1) Time charters;
(2) Voyage charters;
(3) Contracts for charter vessel services;
(4) Dedicated contractor contracts for charter vessel services;
(5) Ocean bills of lading; and
(6) Subcontracts under Government contracts or agreements for ocean transportation services.

(b) Coordinate these acquisitions, as appropriate, with the U.S. Transportation Command, the DoD single manager for commercial transportation and related services, other than Service-unique or theater-assigned transportation assets, in accordance with DoD 5158.4, United States Transportation Command.

(c) All solicitations within the scope of this subsection must provide—

(1) A preference for U.S.-flag vessels in accordance with the 1904 Act; and
(2) An evaluation factor or subfactor for offeror participation in the Voluntary Intermodal Sealift Agreement.

(d) Do not award a contract of the type described in paragraph (a) of this subsection for a foreign-flag vessel unless—

(1) The Commander, MSC, or the Commander, MTMC, determines that no U.S.-flag vessels are available.

(i) The Commander, MSC, and the Commander, MTMC, are authorized to make any determinations as to the availability of U.S.-flag vessels to ensure the proper use of Government and private U.S. vessels.

(ii) The contracting officer must request such determinations—

(A) For voyage and time charters, through the Contracts and Business Management Directorate, MSC; and
(B) For ocean and intermodal transportation of DoD and DoD-sponsored cargoes, as applicable under contracts awarded by MTMC, including contracts for shipment of military household goods, through the Chiefs of the MTMC Ocean Cargo Clearance Authority.

(iii) In the absence of regularly scheduled U.S.-flag service to fulfill stated DoD requirements under MTMC solicitations or rate requests, the Commander, MTMC, may grant, on a case-by-case basis, an on-going nonavailability determination for foreign-flag service approval with pre-determined review date(s):

(2) The contracting officer determines that the U.S.-flag carrier has proposed to the Government freight charges that are higher than charges to private persons for transportation of like goods, and obtains the approval of the Commander, MSC, or the Commander, MTMC; or

(3) The Secretary of the Navy or the Secretary of the Army determines that the proposed freight charges for U.S.-flag vessels are excessive or otherwise unreasonable.
(i) After considering the factors in 247.572–1(d)(3)(i)(A) and (B), if the contracting officer concludes that the freight charges proposed by U.S.-flag carriers may be excessive or otherwise unreasonable, the contracting officer must prepare a report in determination and finding format that includes, as appropriate—

(A) An analysis of the carrier’s costs in accordance with FAR Subpart 15.4, or profit in accordance with 215.404–4. The costs or profit should not be so high as to make it unreasonable to apply the preference for U.S.-flag vessels;

(B) A description of efforts taken pursuant to FAR 15.405, to negotiate a reasonable price. For the purpose of FAR 15.405(d), this report is the referral to a level above the contracting officer; and

(C) An analysis of whether the costs are excessive (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition), taking into consideration factors such as those listed at 247.572–1(d)(3)(i)(C).

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

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

(B) The Commander, MTMC, through the Principal Assistant Responsible for Contracting, MTMC.

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

[65 FR 50147, Aug. 17, 2000]

247.573 Solicitation provision and contract clauses.

(a) Use the provision at 252.247–7022, Representation of Extent of Transportation by Sea, in all solicitations except—

(1) Those for direct purchase of ocean transportation services; or

(2) Those with an anticipated value at or below the simplified acquisition threshold.

(b)(1) Use the clause at 252.247–7023, Transportation of Supplies by Sea, in all solicitations and resultant contracts, except those for direct purchase of ocean transportation services.

(2) Use the clause with its Alternate I in other than construction contracts, if any of the supplies to be transported are commercial items that are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations.

(3) Use the clause with its Alternate II in other than construction contracts, if any of the supplies to be transported are commercial items that are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(4) Use the clause with its Alternate III in solicitations and contracts with an anticipated value at or below the simplified acquisition threshold.

(c) Use the clause at 252.247–7024, Notification of Transportation of Supplies by Sea, in all contracts for which the offeror made a negative response to the inquiry in the provision at 252.247–7022, Representation of Extent of Transportation by Sea.

(d) Use the clause at 252.247–7025, Reflagging or Repair Work, in all time charter solicitations and contracts for the use of a vessel for the transportation of supplies, unless a waiver has been granted in accordance with 247.571(c).


PART 249—TERMINATION OF CONTRACTS

Subpart 249.1—General Principles

Sec.

249.105 Duties of termination contracting officer after issuance of notice of termination.

249.105–1 Termination status report.

249.105–2 Release of excess funds.

249.106 Fraud or other criminal conduct.

249.108 Settlement of subcontract settlement proposals.

249.108–4 Authorization for subcontract settlements without approval or ratification.
When the contract administration office receives a termination notice, it will, under Report Control Symbol DD–AT&L(AR)1411–(i) Prepare a DD Form 1598, Contract Termination Status Report; (ii) Within 30 days, send one copy to the purchasing office and one copy to the headquarters office to which the contract administration office is directly responsible; (iii) Continue reporting semiannually to cover the 6 month periods ending March and September. The semiannual reports must be submitted within 30 days after the end of the reporting period; and (iv) Submit a final report within 30 days after closing the termination case. 

use this format, appropriately modified, for subcontract settlements submitted for review and approval.

(ii) Cost-reimbursement contracts. Use Part I of the format in Table 49–1 and Part II of the format in Table 49–2, Settlement Memorandum for Cost-Reimbursement Contracts, for the termination contracting officer’s settlement memorandum for cost-reimbursement contracts:

**TABLE 49–1—SETTLEMENT MEMORANDUM—FIXED PRICE CONTRACTS**

**Part I—General Information**

1. Identification. (Identify memorandum as to its purpose and content.)
   a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.
   b. Names and titles of both contractor and Government personnel who participated in the negotiation.

2. Description of terminated contract.
   a. Date of contract and contract number.
   b. Type of contract (e.g., fixed price, fixed price incentive).
   c. General description of contract items.
   d. Total contract price.
   e. Furnish reference to the contract termination clauses (cite FAR/DFARS designation or other special provisions).

3. Termination notice.
   a. Reference termination notice and state effective date of termination.
   b. Scope and nature of termination (complete or partial), items terminated, unit price and total price of items terminated.
   c. State whether termination notice was amended, and explain any amendment.
   d. State whether contractor stopped work on effective termination date. If not, furnish details.
   e. State whether the contractor promptly terminated subcontracts.
   f. Statement as to the diversion of common items and return of goods to suppliers, if any.
   g. Furnish information as to contract performance and timeliness of deliveries by the contractor.

4. Contractor’s settlement proposal.
   a. Date and amount. Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)
   b. Basis of claim. State whether claim was filed on inventory, total cost or other basis. Explain rationale for approval when claim is filed on other than inventory basis.
   c. Examination of proposal. State type of reviews made and by whom (audit, engineering, legal, or other).

**Part II—Summary of Contractor’s Claim and Negotiated Settlement**

Prepare a summary substantially as follows:

<table>
<thead>
<tr>
<th>Item claimed</th>
<th>Contractor’s proposal</th>
<th>Dollars accepted</th>
<th>Costs questioned</th>
<th>Unresolved items</th>
<th>TCO negotiated amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Contractor’s costs as set forth on settlement proposal. Metals, raw materials, etc.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Profit</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Settlement expenses</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Settlement with subs.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Acceptable finished product</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Gross Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Disposal and other credits</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Net settlement</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Partial, progress &amp; advance payments</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. Net payments requested</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Part III—Discussion of Settlement

1. Contractor’s cost.
   a. If the settlement was negotiated on the basis of individual items, specify the factors and consideration for each item.
   b. In the case of a lump sum settlement, comment on the general basis for and major factors concerning each element of cost and profit included.
   c. Comment on any important adjustments made to costs claimed or any significant amounts in relation to the total claim.
   d. If a partial termination is involved, state whether the contractor has requested an equitable adjustment in the price of the continued portion of the contract.
   e. Comment on any unadjusted contractual changes which are included in the settlement.
   f. Comment on whether or not a loss would have been incurred and explain adjustment for loss, if any.
   g. Furnish other information believed helpful to any reviewing authority in understanding the recommended settlement.

2. Profit. Explain the basis and factors considered in arriving at a fair profit.

3. Settlement expenses. Comment on and summarize those expenses not included in the audit review.

4. Subcontractor’s settlements. Include the number of no costs settlements, settlements concluded by the contractor under delegation of authority and those approved by the termination contracting officer, as well as the net amount of each.

5. Partial payments. Furnish the total amount of partial payments, if any.

6. Progress or advance payments. Furnish the total of unliquidated amounts, if any.

7. Claims of the Government against the contractor included in settlement agreement reservations. List all outstanding claims, if any, which the Government has against the contractor in connection with the terminated contract or terminated portion of the contract.

8. Assignments. List any assignments, giving name and address of assignee.

9. Disposal credits. Furnish information as to applicable disposal credits and give dollar amounts of all disposal credits.

10. Plant clearance. State whether plant clearance action has been completed and all inventory sold, retained, or otherwise properly disposed of in accordance with applicable plant clearance regulations. Comment on any unusual matters pertaining to plant clearances. Attach consolidated closing plant clearance report.

11. Government property. State whether all Government property has been accounted for.

12. Special tooling. If involved, furnish comment on disposition.

13. Summary of settlement. Summarize the settlement in tabular form substantially as follows:

<table>
<thead>
<tr>
<th>Tabular Summary for Complete or Partial Termination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prime contractors charges (before disposal credits).</td>
</tr>
<tr>
<td>Plus: Subcontractor charges (after disposal credits).</td>
</tr>
<tr>
<td>Gross settlement:</td>
</tr>
<tr>
<td>Less: disposal credits—Prime.</td>
</tr>
<tr>
<td>Net settlement—Less:</td>
</tr>
<tr>
<td>Prior payment credits (this settlement).</td>
</tr>
<tr>
<td>Previous partial settlements.</td>
</tr>
<tr>
<td>Other credits or deductions.</td>
</tr>
<tr>
<td>Net payment:</td>
</tr>
<tr>
<td>Total contract price (complete termination).</td>
</tr>
<tr>
<td>Contract Price of Items Terminated (for partial termination)—Less:</td>
</tr>
<tr>
<td>Total payments to date.</td>
</tr>
<tr>
<td>Net payment from this settlement.</td>
</tr>
<tr>
<td>Fund reserved for reservations.</td>
</tr>
<tr>
<td>Reduction in contract price.</td>
</tr>
</tbody>
</table>

14. Exclusions. Describe any proposed reservation of rights to the Government or to the contractor.

15. Include statement that the settlement is fair and reasonable for the Government and the contractor. The contracting officer shall sign and date the memorandum.

(End of memorandum)
TABLE 49—SETTLEMENT MEMORANDUM FOR COST-REIMBURSEMENT CONTRACTS

Part II—Summary of Settlement

1. Summary. Summarize the proposed settlement in tabular form substantially as shown in Tables 49–3 and 49–4. Partial settlements may be summarized on Table 49–4.

2. Comments. Explain tabular summaries.
   a. Summary of final settlement (see Table 49–3).
      (1) Explain why the auditor’s final report was not available for consideration, if applicable.
      (2) Explain how the fixed fee was adjusted. Identify basis used such as percentage of completion. Include a description of factors considered and how they were considered. Include any tabular summaries and breakdowns deemed helpful to an understanding of the process. Factors which may be given consideration are outlined in FAR 49.305.
      (3) Briefly identify matters included in liability for property and other charges against the contractor arising from the contract.
      (4) Identify reservations included in the settlement that are other than standard reservations required by regulations and which are concerned with pending claims and refunds.
      (5) Explain substantial or otherwise important adjustments made in cost figures submitted by the contractor in arriving at the proposed settlement.
      (6) If unreimbursed costs were settled on a lump sum basis, explain the general basis for and the major factors considered in arriving at this settlement.
      (7) Comment on any unusual items of cost included in the claim and on any phase of cost allocation requiring particular attention and not covered above.
      (8) If auditor’s recommendations for nonacceptance were not followed, explain briefly the main reasons why such recommendations were not followed.
      (9) On items recommended for further consideration by the auditor, explain, in general, the basis for the action taken.
      (10) If any cost previously disallowed by a contracting officer is included in the proposed settlement, identify and explain the reason for inclusion of such costs.
      (11) Show number and amounts of settlements with subcontractors.
      (12) Use the following summary where settlement includes costs and fixed fee in a complete termination:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount claimed</th>
<th>Amount allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross settlement</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Less: Disposal credits</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Net settlement</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Less: Prior payments</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Other credits or deductions</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Net payment</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Total contract estimated cost plus fixed fee</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Less: Net settlement</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Estimated reserve for exclusions</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Final contract price</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>(Consisting of $ for reimbursement of costs and $ for adjusted fixed fee)</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Reduction in contract price (credit)</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

(13) Plant clearance. Indicate dollar value of termination inventory and state whether plant clearance has been completed. Attach consolidated plant clearance report (SF 1424, Inventory Disposal Report).

(14) Government property. State whether all Government property has been accounted for.

(15) Include a statement that the settlement is fair and reasonable to the Government and the contractor. The contracting officer shall sign and date the memorandum.

(End of memorandum)

TABLE 49–3—SUMMARY OF SETTLEMENT

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount claimed</th>
<th>Amount allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Previous reimbursed costs—Prime and Subs</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>2. Previous unreimbursed costs</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>3. Total cost settlement</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>4. Previous fees paid—Prime</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>5. Previous fees unpaid—Prime</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>
TABLE 49—SUMMARY OF SETTLEMENT—Continued

<table>
<thead>
<tr>
<th>Amount claimed</th>
<th>Amount allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>$</td>
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<tr>
<td>$</td>
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<td>$</td>
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<tr>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

TABLE 49—UNREIMBURSED COSTS SUBMITTED ON SF 1437 *

<table>
<thead>
<tr>
<th>Costs</th>
<th>Amounts claimed by contractor’s proposal</th>
<th>Auditor’s recommendation</th>
<th>TCO’s computation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cost questioned</td>
<td>Unresolved items</td>
<td></td>
</tr>
<tr>
<td>1. Direct material.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Direct labor.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Indirect factory expense.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Dies, jigs, fixtures and special tools.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Other costs.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. General and administrative expenses.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Fee.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Settlement expense.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Settlement with subs.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Total costs (Items 1–9).</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


Subpart 249.5—Contract Termination Clauses

249.501 General.

249.501-70 Special termination costs.

(a) The clause at 252.249-7000. Special Termination Costs, may be used in an incrementally funded contract when its use is approved by the agency head.

(b) The clause is authorized when—

(1) The contract term is 2 years or more;

(2) The contract is estimated to require—

(i) Total RDT&E financing in excess of $25 million; or

(ii) Total production investment in excess of $100 million; and

(c) Adequate funds are available to cover the contingent reserve liability for special termination costs.

(c) The contractor and the contracting officer must agree upon an amount that represents their best estimate of the total special termination costs to which the contractor would be entitled in the event of termination of the contract. Insert this amount in paragraph (c) of the clause.

(d)(1) Consider substituting an alternate paragraph (c) for paragraph (c) of the basic clause when—

(i) The contract covers an unusually long performance period; or

(ii) The contractor’s cost risk associated with contingent special termination costs is expected to fluctuate extensively over the period of the contract.

(2) The alternate paragraph (c) should provide for periodic negotiation and adjustment of the amount reserved for special termination costs. Occasions for periodic adjustment may include—
The Government’s incremental assignment of funds to the contract; (ii) The time when certain performance milestones are accomplished by the contractor; or (iii) Other specific time periods agreed upon by the contracting officer and the contractor.

Subpart 249.70—Special Termination Requirements

249.7000 Terminated contracts with Canadian Commercial Corporation.

(a) Termine contracts with the Canadian Commercial Corporation in accordance with—

(1) The Letter of Agreement (LOA) between the Department of Defense Production (Canada) and the U.S. DoD, “Canadian Agreement” (for a copy of the LOA or for questions on its currency, contact the Foreign Contracting Directorate, Office of the Director of Defense Procurement, (703) 697-9351, DSN 227-9351);

(2) Policies in the Canadian Agreement and part 249; and


(b) Contracting officers shall ensure that the Canadian Commercial Corporation submits termination settlement proposals in the format prescribed in FAR 49.602 and that they contain the amount of settlements with subcontractors. The termination contracting officer (TCO) shall prepare an appropriate settlement agreement. (See FAR 49.603.) The letter transmitting a settlement proposal must certify—

(1) That disposition of inventory has been completed; and

(2) That the Contract Claims Resolution Board of the Public Works and Government Services Canada has approved settlements with Canadian subcontractors when the Procedures Manual on Termination of Contracts requires such approval.

(c)(1) The Canadian Commercial Corporation will—

(i) Settle all Canadian subcontractor termination claims under the Canadian Agreement; and

(ii) Submit schedules listing serviceable and usable contractor inventory for screening to the TCO (see FAR 45.6).

(2) After screening, the TCO must provide guidance to the Canadian Commercial Corporation for disposition of the contractor inventory.

(3) Settlement of Canadian subcontractor claims are not subject to the approval and ratification of the TCO. However, when the proposed negotiated settlement exceeds the total contract price of the prime contract, the TCO shall obtain from the U.S. contracting officer prior to final settlement—

(i) Ratification of the proposed settlement; and

(ii) A contract modification increasing the contract price and obligating the additional funds.

(d) The Canadian Commercial Corporation should send all termination settlement proposals submitted by U.S. subcontractors and suppliers to the TCO of the cognizant contract administration office of the Defense Contract Management Agency for settlement. The TCO will inform the Canadian Commercial Corporation of the amount of the net settlement of U.S. subcontractors and suppliers so that this amount can be included in the Canadian Commercial Corporation termination proposal. The Canadian Commercial Corporation is responsible for execution of the settlement agreement with these subcontractors.


249.7001 Congressional notification on significant contract terminations.

(a) Congressional notification is required for any termination involving a reduction in employment of 100 or more contractor employees. Proposed terminations must be cleared through department/agency liaison offices before release of the termination notice, or any information on the proposed termination, to the contractor.

(b) Department and agency liaison offices will coordinate timing of the congressional notification and public release of the information with release of the termination notice to the contractor. Department and agency liaison offices are—

(1) Army—Chief, Legislative Liaison (SALL–SPA)
(2) Navy—Chief of Legislative Affairs (OLA–N)
(3) Air Force—SAF/AQC
(4) Defense Advanced Research Projects Agency—CMO
(6) Defense Intelligence Agency—RSQ
(7) Defense Logistics Agency—DLSC–P
(8) National Imagery and Mapping Agency—HQ NIMA (AQ)
(9) Defense Threat Reduction Agency—Acquisition Management Office (AM)
(10) National Security Agency/Central Security Service—Chief, Office of Contracting
(11) Ballistic Missile Defense Organization—Director of Contracts (BMDO–DCT)

(c) Request clearance to release information in accordance with departmental procedures as soon as possible after the decision to terminate is made. Until clearance has been obtained, treat this information as "For Official Use Only" unless the information is classified.

(d) Include the following in the request for clearance—
(1) Contract number, date, and type of contract;
(2) Name of the company;
(3) Nature of contract or end item;
(4) The reason for the termination;
(5) Contract price of the items terminated;
(6) Total number of contractor employees involved, including the Government's estimate of the number who may be discharged;
(7) Statement of anticipated impact on the company and the community;
(8) The area labor category, whether the contractor is a large or small business, and any known impact on hard core disadvantaged employment programs;
(9) Total number of subcontractors involved and the impact in this area; and
(10) An unclassified draft of a suggested press release.

(e) To minimize termination costs, liaison offices will act promptly on all requests for clearances and provide a response not later than two working days after receipt of the request.

(f) This reporting requirement is assigned Report Control Symbol DD–AT&L/AR/1412.


249.7002 [Reserved]

249.7003 Notification of anticipated contract terminations or reductions.

(a) Section 1372 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160) and Section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–201) are intended to help establish benefit eligibility under the Job Training Partnership Act (29 U.S.C. 1661 and 1662) for employees of DoD contractors and subcontractors adversely affected by termination or substantial reductions in major defense programs.

(b) Departments and agencies are responsible for establishing procedures to:
(1) Identify which contracts (if any) under major defense programs will be terminated or substantially reduced as a result of the funding levels provided in an appropriations act.
(2) Within 60 days of the enactment of such an act, provide notice of the anticipated termination of or substantial reduction in the funding of affected contracts—
   (i) Directly to the Secretary of Labor; and
   (ii) Through the contracting officer to each prime contractor.

(c) Use the clause at 252.249–7002, Notification of Anticipated Contract Termination or Reduction, in all contracts under a major defense program.


PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 250.1—General

Sec. 250.001 Definitions.

250.102–70 Limitations on payment.
250.105 Records.

Subpart 250.2—Delegation of and Limitations on Exercise of Authority

250.201 Delegation of authority.
250.201–70 Delegations.
250.202 Contract adjustment boards.

Subpart 250.3—Contract Adjustments

250.303 Contractor requests.
250.305 Processing cases.
250.305–70 Record of request.
250.305–71 Processing cases to contract adjustment boards.
250.305–72 Processing by the board.
250.306 Disposition.
250.306–70 Record of disposition.

Subpart 250.4—Residual Powers

250.403 Special procedures for unusually hazardous or nuclear risks.
250.403–70 Indemnification under contracts involving both research and development and other work.

SOURCE: 56 FR 36475, July 31, 1991, unless otherwise noted.

250.001 Definitions.
As used in this part,
Secretarial level means—
(1) An official at or above the level of an Assistant Secretary (or Deputy) of Defense or of the Army, Navy, or Air Force; and
(2) A contract adjustment board established by the Secretary concerned.

Subpart 250.1—General

250.102–70 Limitations on payment.
See 10 U.S.C. 2410b for limitations on Congressionally directed payment of a request for equitable adjustment to contract terms or a request for relief under Pub. L. 85–804.
[83 FR 11541, Mar. 9, 1998]

250.105 Records.
(1) Departments and agencies will—
(i) Prepare a preliminary record when a request for a contract adjustment under FAR 50.3 is filed (see 250.305–70).
(ii) Prepare a final record stating the disposition of the request (see 250.306–70).
(iii) Designate the offices or officials responsible for preparing, submitting, and receiving all records required by this part 250. Records shall be maintained by the contract adjustment boards of the Army, Navy, and Air Force, respectively, and by the headquarters of the defense agencies.
(2) A suggested format for the record is in Table 50–1, Record of Request for Adjustment. This format permits the information required for the preliminary and final records to be combined on one form.
(3) The following instructions are provided for those items which are not self-explanatory:
(i) Extent of performance as of date of request. State degree of completion of contract; e.g., 50 percent completed or performance not yet begun. If work is completed, state date of completion and whether final payment has been made.
(ii) Award procedure. State whether contract was awarded under sealed bidding or negotiated procedures. Cite specific authority for using other than full and open competition, if applicable, e.g., 10 U.S.C. 2304(c)(1).
(iii) Type of contract. State type of contract (see FAR part 16); e.g., FFP (firm fixed-price).
(iv) Category of case. State whether the request involves a modification without consideration, a mistake, or an informal commitment. If the case involves more than one category, identify both; list the most significant category first.
(v) Amount or description of request. If the request is expressed in dollars, state the amount and whether it is an increase or decrease. If the request cannot be expressed in monetary terms, provide a brief description; e.g., “Cancellation” or “Modification.” Even if the adjustment is not easily expressed in terms of dollars, if the contractor has made an estimate in the request, that estimate should be stated.
(vi) Action below Secretarial level. State the disposition of the case, the office that took the action and the date the action was taken. The disposition should be stated as “Withdrawn,” “Denied,” “Approved,” or “Forwarded.” If the request was approved, in whole or in part, state the dollar amount or nature of the action (as explained in paragraph (v) of this section).
should correspond with the date of the memorandum of decision or of the letter forwarding the request to the contract adjustment board or other deciding body.

(vii) **Action by contract adjustment board and date.** State the disposition and date of disposition of the case by the contract adjustment board. Provide the same information as for paragraph (vi).

(viii) **Implementation and date.** State the appropriate action; e.g., "Modification," "New Contract," or "Letter of Denial."

```
<table>
<thead>
<tr>
<th>PRELIMINARY</th>
<th>FINAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE OF REQUEST</td>
<td>REQUEST FOR ADJUSTMENT</td>
</tr>
<tr>
<td>DATE RECEIVED BY GOVERNMENT</td>
<td></td>
</tr>
</tbody>
</table>

CONTRACTOR'S NAME AND ADDRESS

NAME AND ADDRESS OF CONTRACTOR'S REPRESENTATIVE, IF ANY

Cognizant contracting officer or office

Procuring activity

Property or service involved

Extent of performance as of date of request

Contract number

Date advertised or negotiated

Type of contract

Category of case

Amount or description of request

Action below secretarial level

Date

Action by cab

Date

Implementation

Date

Additional data or remarks

Date this record signed

Signature
```
250.201 Delegation of authority.

(b) Authority under FAR subpart 50.4 to approve actions obligating $50,000 or less may not be delegated below the level of the head of the contracting activity.

d) In accordance with the acquisition authority of the Under Secretary of Defense (Acquisition, Technology, and Logistics (USD (AT&L)) under 10 U.S.C. 133, in addition to the Secretary of Defense and the Secretaries of the military departments, the USD (AT&L) may exercise authority to indemnify against unusually hazardous or nuclear risks.

[65 FR 77836, Dec. 13, 2000]

250.201–70 Delegations.

(a) Military Departments. The Departments of the Army, Navy and Air Force will specify delegations and levels of authority for actions under the Act and the Executive Order in departmental supplements.

(b) Defense Agencies. Subject to the restrictions on delegations of authority in 250.201(b) and FAR 50.201, the directors of the defense agencies may exercise and redelegate the authority contained in the Act and the Executive Order. The agency supplements shall specify the delegations and levels of authority.

(1) Requests to obligate the Government in excess of $50,000 must be submitted to the USD (AT&L) for approval.

(2) Requests for indemnification against unusually hazardous or nuclear risks must be submitted to the USD(AT&L) for approval before using the indemnification clause at FAR 52.250-1, Indemnification Under Public Law 85-801.

(c) Approvals. The Secretary of the military department or the agency director must approve any delegations in writing.


250.202 Contract adjustment boards.

The Departments of the Army, Navy, and Air Force each have a contract adjustment board. The board consists of a Chair and not less than two nor more than six other members, one of whom may be designated the Vice-Chair. A majority constitutes a quorum for any purpose and the concurring vote of a majority of the total board membership constitutes an action of the board. Alternates may be appointed to act in the absence of any member.

Subpart 250.3—Contract Adjustments

250.303 Contractor requests.

Requests should be filed with the procuring contracting officer (PCO). If a request is filed with an administrative contracting officer (ACO), the ACO shall promptly forward it to the PCO for appropriate action. If filing with the PCO is impracticable, requests may be filed with the following addresses for forwarding to the cognizant PCO:


(2) Army—Forward to the head of the contracting activity listed in Part 202 that appears to be the cognizant office for the contract or commitment involved.

(3) Navy—Assistant Secretary of the Navy (RD&A), Attn: Deputy for Acquisition and Business Management.

(4) Air Force—Deputy Assistant Secretary (Contracting), Attn: SAF/AQCX.

(5) Defense Advanced Research Projects Agency—Director, CMO.


(9) National Imagery and Mapping Agency—Director, NIMA, Attn: AQ.

(10) Defense Threat Reduction Agency—Director, DTRA, Attn: AM.

(11) National Security Agency—Director, NSA.
250.305  
(12) Ballistic Missile Defense Organization—Director, BMDO.


250.305  Processing cases.

250.305–70  Record of request.
At the time the request is filed, the activity will prepare the record described at 250.105(1)(i) and forward it to the appropriate official within 30 days after the close of the month in which the record is prepared.

250.305–71  Processing cases to contract adjustment boards.
(a) The officer or official responsible for the case shall forward to the contract adjustment board, through departmental channels, two copies of the following:
   (1) A letter stating—
      (i) The nature of the case;
      (ii) The basis for the board’s authority to act;
      (iii) The findings of fact essential to the case (see FAR 50.304). Arrange the findings chronologically with cross references to supporting enclosures;
      (iv) The conclusions drawn;
      (v) The recommended disposition; and
      (vi) If contractual action is recommended, a statement by the signer that the action will facilitate the national defense.
   (2) The contractor’s request
   (3) All evidentiary materials
   (4) All endorsements, reports and comments of cognizant Government officials
   (b) A letter to the Board recommending an amendment without consideration where essentiality is a factor (see FAR 50.302–1(a)) should also provide—
      (1) The information required by FAR 50.304 (a) and (b), and
      (2) Findings as to—
         (i) The contractor’s performance record, including the quality of product, rate of production, and promptness of deliveries;
         (ii) The importance to the Government, particularly to the active duty military, of the performance of the contract and the importance of the contractor to the national defense;
         (iii) The forecast of future contracts with the contractor; and
         (iv) Other available sources of supply for the supplies or services covered by the contract, and the time and cost of having contract performance completed by such other sources.

250.305–72  Processing by the board.
Contract adjustment boards will render decisions as expeditiously as practicable. The Chair shall sign a memorandum of decision disposing of the case. The decision shall be dated and shall contain the information required by FAR 50.306. The memorandum of decision shall not contain any information classified “Confidential” or higher. The board’s decision will be sent to the appropriate official for implementation.

250.306  Disposition.

250.306–70  Record of disposition.
(a) When the request for relief is denied or approved below the Secretarial level, submit the following documents to the appropriate office within 30 days after the close of the month in which the decision is executed:
   (1) Two copies of the memorandum of decision;
   (2) Except for the Army, one copy of the contractual document implementing any decision approving contractual action; and
   (3) One copy of a final record, as described at 250.105.
(b) When a contract adjustment board decision is implemented, the activity which forwarded the case to the board shall prepare and submit to the board the documents identified in paragraphs (a) (2) and (3) of this subsection.

Subpart 250.4—Residual Powers

250.403  Special procedures for unusually hazardous or nuclear risks.

250.403–70  Indemnification under contracts involving both research and development and other work.

When indemnification is to be provided on contracts requiring both research and development work and
other work, the contracting officer
shall insert an appropriate clause using
the authority of both 10 U.S.C. 2354 and
Public Law 85-804.
(a) The use of Public Law 85-804 is
limited to work which cannot be in-
demnified under 10 U.S.C. 2354 and is
subject to compliance with FAR sub-
part 50.4.
(b) Indemnification under 10 U.S.C.
2354 is covered by 235.070.

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 251.1—Contractor Use of Government Supply Sources

Sec. 251.102 Authorization to use Government supply sources.

251.105 Payment for shipments.

251.107 Contract clause.

Subpart 251.2—Contractor Use of Inter-agency Fleet Management System (IFMS) Vehicles


251.205 Contract clause.


SOURCE: 56 FR 36479, July 31, 1991, unless
otherwise noted.

Subpart 251.1—Contractor Use of Government Supply Sources

251.102 Authorization to use Government supply sources.

(e) Use the format in Table 51–1, Au-
thorization to Purchase from Govern-
ment Supply Sources. Specify the
terms of the purchase, including con-
tactor acceptance of any Government
materiel, payment terms, and the ad-
dresses required by paragraph (f) of the
clause at 252.251–7000, Ordering from
Government Supply Sources.

3(ii) In addition to the procedure
and form authorized by FAR
51.102(e)(3)(ii), contractors may use the
DD Form 1155 when requisitioning from the
Department of Veterans Affairs.

(f) The authorizing agency shall also
be responsible for promptly considering
requests of the DoD supply source for
authority to refuse to honor requi-
sitions from a contractor which is in-
debted to the DoD and has failed to pay
proper invoices in a timely manner.

TABLE 51–1—AUTHORIZATION TO PURCHASE FROM GOVERNMENT SUPPLY SOURCES

Subject: Authorization to Purchase from Government Supply Sources

<table>
<thead>
<tr>
<th>(Contractor’s Name)</th>
</tr>
</thead>
</table>

| (Contractor’s Address) |

1. You are hereby authorized to use Government sources in performing Contract No. for the Department of , as follows: (Insert applicable purchasing authority given to the con-
tactor.)

2a. Purchase Orders Under Federal Supply Sched-
ules or Personal Property Rehabilitation Price Schedules. Place orders in accordance with the terms and conditions of the attached Schedule(s) and this authorization. Attach a copy of this au-
thorization to the order (unless a copy was pre-
viously furnished to the Federal Supply Schedule or Personal Property Rehabilitation Price Sched-
ule contractor). Insert the following statement in
the order:

This order is placed under written authorization
from dated .

In the event of any inconsistency between the terms and conditions of this order and those of the Federal Supply Schedule or Personal Prop-
erty Rehabilitation Price Schedule contract, the
latter will govern.

b. Requisitioning from the General Services Admin-
istration (GSA) or the Department of Defense
(DoD). Place orders in accordance with this au-
thorization and, as appropriate, the following:

1. Federal Standard Requisitioning and Issues Procedures (FEDSTRIP) (GSA FEDSTRIP Op-
erating Guide: FPMR 101–26.2 (41 CFR 101–26.2)). Copies are available from the Super-
intendent of Documents, Government Printing

Copies are available from the Defense Logis-
tics Agency, Administrative Support Center
East, ATTN: ASCE–WS, 14 Dedication Drive,
Suite 3, POD 43, New Cumberland, PA 17070–
5011; telephone 1–888–DLA–PUBS (352–7827), or (717) 770–6034; telefax (717) 770–
4817.

3. ( )

4. This authority is not transferable or assignable.

5. The DoD Activity Address Directory (DoDAAD) (DoD 4000.25–6–M) Activity Address Code 2 to
which this Authorization applies is .

6. This Authorization expires.

(Certifying Officer)

1 Insert “a copy of which is attached,” “a copy of which
you have on file,” or other suitable language, as appropriate.
251.105 Payment for shipments.

Contractor payments for purchases from DoD supply sources are due within 30 days of the date of a proper invoice (see FAR 32.902 for definition of “due date” and “payment date;” also see FAR 32.905(e)).

(56 FR 36479, July 31, 1991, as amended at 60 FR 29501, June 5, 1995; 64 FR 61031, Nov. 9, 1999)

251.107 Contract clause.

Use the clause at 252.251–7000, Ordering From Government Supply Sources, in solicitations and contracts which include the clause at FAR 52.251–1, Government Supply Sources.

48 CFR Ch. 2 (10–1–02 Edition)

Subpart 251.2—Contractor Use of Interagency Fleet Management System (IFMS) Vehicles


(a)(2)(A) See FAR 28.307–2(c) for policy on contractor insurance.

(B) See FAR 28.308 for policy on self-insurance.

(C) See FAR 31.205–19 for allowability of insurance costs.

(5) Paragraph (d) of the clause at 252.251–7001 satisfies the requirement of FAR 51.202(a)(5) for a written statement.

251.205 Contract clause.

Use the clause at 252.251–7001, Use of Interagency Fleet Management System (IFMS) Vehicles and Related Services, in solicitations and contracts which include the clause at FAR 52.251–2, Interagency Fleet Management System (IFMS) Vehicles and Related Services.
SUBCHAPTER H—CLAUSES AND FORMS

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 252.1—Instructions for Using Provisions and Clauses

Sec.
252.101 Using part 252.

Subpart 252.2—Text of Provisions and Clauses

252.201–7000 Contracting officer’s representative.
252.202–7000 Prohibition on persons convicted of fraud or other defense-contract-related felonies.
252.203–7000 Display of DoD hotline poster.
252.204–7000 Disclosure of Information.
252.205–7000 Commercial and Government Entity (CAGE) code reporting.
252.206–7000 Payment for subline items not separately priced.
252.207–7000 Control of government personnel work product.
252.208–7000 Required central contractor registration.
252.209–7000 Oral attestation of security responsibilities.
252.210–7000 Provision of information to cooperative agreement holders.
252.211–7000 Domestic source restriction.
252.212–7000 Intent to furnish precious metals as Government-furnished material.
252.213–7000 Acquisition from subcontractors subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) Treaty.
252.214–7000 Disclosure of ownership or control by the government of a terrorist country.
252.215–7000 Disclosure of ownership or control by a foreign government.
252.216–7003 Subcontracting with firms that are owned or controlled by the government of a terrorist country.
252.217–7005 Reserve Officer Training Corps and military recruiting on campus.
252.218–7000 Acquisition streamlining.
252.219–7001 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.
252.220–7002 Availability for examination of specifications, standards, plans, drawings, data item descriptions, and other pertinent documents.
252.221–7003 [Reserved]
252.222–7000 Alternate preservation, packaging, and packing.
252.223–7005 Substitutions for military or Federal specifications and standards.
252.224–7000 Offeror representations and certifications—Commercial items.
252.225–7000 Contract terms and conditions required to implement statutes or Executive Orders applicable to Defense acquisitions of commercial items.
252.226–7000 Pricing adjustments.
252.227–7001 [Reserved]
252.228–7002 Cost estimating system requirements.
252.229–7000 Economic price adjustment—basic steel, aluminum, brass, bronze, or copper mill products.
252.230–7001 Economic price adjustment—nonstandard steel items.
252.231–7002 [Reserved]
252.232–7003 Economic price adjustment—wage rates or material prices controlled by a foreign government.
252.233–7000 Exercise of option to fulfill foreign military sales commitments.
252.237–7001 Surge option.
252.238–7002 Offering property for exchange.
252.239–7003 Changes.
252.240–7004 Job orders and compensation.
252.241–7005 Inspection and manner of doing work.
252.242–7006 Title.
252.243–7007 Payments.
252.244–7008 Bonds.
252.245–7009 Default.
252.246–7010 Performance.
252.247–7011 Access to vessel.
252.248–7012 Liability and insurance.
252.249–7013 Guarantees.
252.250–7014 Discharge of liens.
252.251–7015 Safety and health.
252.252–7016 Plant protection.
252.254–7018 Change in plant location—bakery and dairy products.
252.255–7019 Sanitary conditions.
252.256–7020 Examination and testing.
252.257–7021 Deficiency adjustment.
252.258–7022 Code dating.
252.259–7023 Marking.
252.260–7024 Responsibility for containers and equipment.
252.261–7025 Containers and equipment.
252.262–7026 Identification of sources of supply.
252.263–7027 Contract definitization.
252.264–7028 Over and above work.
252.265–7000–252.269–7002 [Reserved]
252.266–7000 Small, small disadvantaged and women-owned small business subcontracting plan (DoD contracts).
252.267–7001 Small, small disadvantaged and women-owned small business subcontracting plan (test program).
252.268–7005–252.269–7008 [Reserved]
252.219–7009 Section 8(a) direct award.
252.219–7010 Alternate A.
252.219–7011 Notification to delay performance.
252.219–7000 Restrictions on employment of personnel.
252.223–7001 Right of first refusal of employment—Closure of military installations.
252.223–7002 Compliance with local labor laws (overseas).
252.223–7003 Permit from Italian Inspectorate of Labor.
252.223–7004 Compliance with Spanish social security laws and regulations.
252.223–7005 Prohibition on use of non-immigrant aliens—Guam.
252.223–7000 (Reserved)
252.223–7001 Hazard warning labels.
252.223–7002 Safety precautions for ammunition and explosives.
252.223–7003 Change in place of performance—Ammunition and explosives.
252.223–7004 Drug-free work force.
252.223–7005 (Reserved)
252.223–7006 Prohibition on storage and disposal of toxic and hazardous materials.
252.223–7007 Safeguarding sensitive conventional arms, ammunition, and explosives.
252.223–7001 Buy American Act and Balance of Payments Program.
252.223–7002 Qualifying country sources as subcontractors.
252.223–7003 Information for duty-free entry evaluation.
252.223–7004 (Reserved)
252.223–7008 Supplies to be accorded duty-free entry.
252.223–7009 Duty-free entry—Qualifying country supplies (end products and components).
252.223–7010 Duty-free entry—additional provisions.
252.223–7011 Restriction on acquisition of supercomputers.
252.223–7012 Preference for certain domestic commodities.
252.223–7013 (Reserved)
252.223–7014 Preference for domestic specialty metals.
252.223–7015 Preference for domestic hand or measuring tools.
252.223–7016 Restriction on acquisition of ball and roller bearings.
252.223–7017 Prohibition on award to companies owned by the People’s Republic of China.
252.223–7018 Notice of prohibition of certain contracts with foreign entities for the conduct of Ballistic Missile Defense RDT&E.
252.223–7019 Restriction on acquisition of foreign anchor and mooring chain.
252.223–7020 Trade agreements certificate.
252.223–7021 Trade agreements.
252.223–7022 Restriction on acquisition of polyacrylonitrile (PAN) carbon fiber.
252.223–7023 Restriction on acquisition of vessel propellers.
252.223–7024 Restriction on acquisition of night vision image intensifier tubes and devices.
252.223–7025 Restriction on acquisition of forgings.
252.223–7027 Restriction on contingent fees for foreign military sales.
252.223–7028 Exclusionary policies and practices of foreign governments.
252.223–7029 Preference for United States or Canadian air circuit breakers.
252.223–7030 Restriction on acquisition of carbon, alloy, and armor steel plate.
252.223–7031 Secondary Arab boycott of Israel.
252.223–7032 Waiver of United Kingdom levies.
252.223–7033 Restriction on acquisition of four ton dolly jacks.
252.223–7034 (Reserved)
252.223–7037 Duty-free entry—Eligible end products.
252.223–7038 Restriction on acquisition of aircraft fuel cells.
252.223–7039 Restriction on acquisition of totally enclosed lifeboat survival systems.
252.223–7040 (Reserved)
252.223–7041 Correspondence in English.
252.223–7042 Authorization to perform.
252.223–7043 Antiterrorism/force protection policy for defense contractors outside the United States.
252.223–7000 Notice of historically black college or university and minority institution set-asides.
252.223–7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises-DoD Contracts.
252.227–7000 Non-estoppel.
252.227–7001 Release of past infringement.
Department of Defense

252.227-7002 Readjustment of payments.
252.227-7003 Termination.
252.227-7004 License grant.
252.227-7005 License term.
252.227-7006 License grant—running royalty.
252.227-7007 License term—running royalty.
252.227-7008 Computation of royalties.
252.227-7009 Reporting and payment of royalties.
252.227-7010 License to other Government agencies.
252.227-7011 Assignments.
252.227-7012 Patent license and release contract.
252.227-7013 Rights in technical data—Noncommercial items.
252.227-7014 Rights in noncommercial computer software and noncommercial computer software documentation.
252.227-7015 Technical data—Commercial items.
252.227-7016 Rights in bid or proposal information.
252.227-7017 Identification and assertion of use, release, or disclosure restrictions.
252.227-7018 Rights in noncommercial technical data and computer software—Small Business Innovation Research (SBIR) Program.
252.227-7019 Validation of asserted restrictions—Computer software.
252.227-7020 Rights in special works.
252.227-7021 Rights in data—existing works.
252.227-7022 Government rights (unlimited).
252.227-7023 Drawings and other data to become property of Government.
252.227-7024 Notice and approval of restricted designs.
252.227-7025 Limitations on the use or disclosure of government-furnished information marked with restrictive legends.
252.227-7026 Deferred delivery of technical data or computer software.
252.227-7027 Deferred ordering of technical data or computer software.
252.227-7028 Technical data or computer software previously delivered to the government.
252.227-7029 [Reserved]
252.227-7030 Technical data—withholding of payment.
252.227-7031 [Reserved]
252.227-7032 Rights in technical data and computer software (foreign).
252.227-7033 Rights in shop drawings.
252.227-7034 Patents—subcontracts.
252.227-7035 [Reserved]
252.227-7036 Declaration of Technical Data Conformity.
252.227-7037 Validation of restrictive markings on technical data.
252.227-7038 [Reserved]
252.227-7039 Patents—reporting of subject inventions.
252.228-7000 Reimbursement for war-hazard losses.
252.228-7001 Ground and flight risk.
252.228-7002 Aircraft flight risk.
252.228-7003 Capture and detention.
252.228-7004 Bonds or other security.
252.228-7005 Accident reporting and investigation involving aircraft, missiles, and space launch vehicles.
252.228-7006 Compliance with Spanish laws and insurance.
252.228-7007 Invoices exclusive of taxes or duties.
252.228-7008 Tax relief.
252.228-7009 Customs exemptions (Germany).
252.228-7010 Tax exemptions (Italy).
252.228-7011 Status of contractors as a direct contractor (Spain).
252.228-7012 Tax exemptions (Spain).
252.228-7013 Value added tax exclusion (United Kingdom).
252.228-7014 Verification of United States receipt of goods.
252.228-7015 Relief from import duty (United Kingdom).
252.228-7016 Relief from customs duty and value added tax on fuel (passenger vehicles) (United Kingdom).
252.228-7017 Relief from customs duty on fuel (United Kingdom).
252.228-7018 Supplemental cost principles.
252.228-7019 Advance payment pool.
252.228-7020 DoD progress payment rates.
252.228-7021 Reimbursement of subcontractor advance payments—DoD pilot mentor-protege program.
252.228-7022 [Reserved]
252.228-7023 Choice of law (overseas).
252.228-7024 Notice of earned value management system.
252.228-7025 Earned value management system.
252.228-7026 Indemnification under 10 U.S.C. 2354—fixed price.
252.228-7027 Indemnification under 10 U.S.C. 2354—cost reimbursement.
252.228-7028 Animal welfare.
252.228-7029 Frequency authorization.
252.228-7030 Acknowledgement of support and disclaimer.
252.228-7031 Final scientific or technical report.
252.228-7032 Modification proposals—price breakdown.
252.228-7033 Contract drawings and specifications.
Pt. 252

252.236–7002 Obstruction of navigable waterways.
252.236–7003 Payment for mobilization and preparatory work.
252.236–7004 Payment for mobilization and demobilization.
252.236–7005 Airfield safety precautions.
252.236–7006 Cost limitation.
252.236–7007 Additive or deductive items.
252.236–7008 Contract prices—bidding schedules.
252.236–7009 Option for supervision and inspection services.
252.236–7011 Overseas architect-engineer services—Restriction to United States firms.
252.236–7012 Military construction on Kwajalein Atoll—evaluation preference.
252.237–7000 Notice of special standards of responsibility.
252.237–7001 Compliance with audit standards.
252.237–7002 Award to single offeror.
252.237–7003 Requirements.
252.237–7005 Performance and delivery.
252.237–7006 Subcontracting.
252.237–7007 Termination for default.
252.237–7008 Group interment.
252.237–7009 Permits.
252.237–7010 Facility requirements.
252.237–7011 Preparation history.
252.237–7012 Instruction to offerors (count-of-articles).
252.237–7013 Instruction to offerors (bulk weight).
252.237–7014 Loss or damage (count-of-articles).
252.237–7015 Loss or damage (weight of articles).
252.237–7016 Delivery tickets.
252.237–7022 Services at installations being closed.
252.239–7000 Protection against compromising emanations.
252.239–7001 [Reserved]
252.239–7002 Access.
252.239–7003 Facilities and services to be furnished—common carriers.
252.239–7004 Orders for facilities and services—common carriers.
252.239–7005 Rates, charges, and services—common carriers.
252.239–7006 Tariff information.
252.239–7007 Cancellation or termination of orders—common carriers.
252.239–7008 Reuse arrangements.
252.239–7009–252.239–7010 [Reserved]
252.239–7011 Special construction and equipment charges.

48 CFR Ch. 2 (10–1–02 Edition)

252.239–7012 Title to telecommunication facilities and equipment.
252.239–7013 Obligation of the Government.
252.239–7014 Term of agreement.
252.239–7015 Continuation of communication service authorizations.
252.239–7016 Telecommunications security equipment, devices, techniques, and services.
252.241–7000 Superseding contract.
252.241–7001 Government access.
252.242–7000 Postaward conference.
252.242–7001–252.242–7002 [Reserved]
252.242–7004 Material management and accounting system.
252.243–7000 [Reserved]
252.243–7001 Pricing of contract modifications.
252.243–7002 Requests for equitable adjustment.
252.244–7000 Subcontracts for commercial items and commercial components (DoD contracts).
252.245–7000 Government-furnished mapping, charting, and geodesy property.
252.246–7001 Reports of Government property.
252.246–7000 Material inspection and receiving report.
252.246–7001 Warranty of data.
252.246–7002 Warranty of construction (Germany).
252.247–7000 Hardship conditions.
252.247–7001 Price adjustment.
252.247–7002 Revision of prices.
252.247–7003 [Reserved]
252.247–7004 Indefinite quantities—fixed charges.
252.247–7005 Indefinite quantities—no fixed charges.
252.247–7006 Removal of contractor’s employees.
252.247–7007 Liability and insurance.
252.247–7009 Award.
252.247–7010 Scope of contract.
252.247–7011 Period of contract.
252.247–7012 Ordering limitation.
252.247–7014 Demurrage.
252.247–7015 Requirements.
252.247–7016 Contractor liability for loss or damage.
252.247–7018 Subcontracting.
252.247–7019 Drayage.
252.247–7020 Additional services.
252.247–7021 Returnable containers other than cylinders.
252.247–7022 Representation of extent of transportation by sea.
252.247–7023 Transportation of supplies by sea.
252.247–7024 Notification of transportation of supplies by sea.
252.249–7000 Special termination costs.
252.249–7001 [Reserved]
252.249–7023 Notification of transportation of supplies by sea.
252.249–7024 Notification of anticipated contract termination or reduction.
252.251–7000 Ordering from Government supply sources.
252.251–7001 Use of Interagency Fleet Management System (IFMS) vehicles and related services.

SOURCE: 56 FR 36479, July 31, 1991, unless otherwise noted.

Subpart 252.1—Instructions for Using Provisions and Clauses

252.101 Using part 252.
(b) Numbering.
(ii)(B) DFARS provisions or clauses use a four digit sequential number in the 7000 series, e.g., –7000, –7001, –7002. Department or agency supplemental provisions or clauses use four digit sequential numbers in the 9000 series.

Subpart 252.2—Text of Provisions And Clauses

252.201–7000 Contracting officer’s representative.
As prescribed in 201.602–70, use the following clause:

CONTRACTING OFFICER’S REPRESENTATIVE (DEC 1991)

(a) Definition. Contracting officer’s representative means an individual designated in accordance with subsection 201.602–2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer’s representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR’s authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of clause)


252.203–7000 [Reserved]

252.203–7001 Prohibition on persons convicted of fraud or other defense-contract-related felonies.
As prescribed in 203.570–5, use the following clause:

PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (MAR 1999)

(a) Definitions.
As used in this clause—
(i) Arising out of a contract with the DoD means any act in connection with—
(ii) Attempting to obtain;
(iii) Obtaining; or
(iv) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) Conviction of fraud or any other felony means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of nolo contendere, for which sentence has been imposed.

(3) Date of conviction means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving—
(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;
(2) On the board of directors of any DoD contractor or first-tier subcontractor;
(3) As a consultant, agent, or representative for any DoD contractor or first-tier subcontractor; or
(4) In any other capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

(d) 10 U.S.C. 2408 provides that a defense contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than $500,000 if convicted of knowingly—
(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or
(2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government
may consider other available remedies, such as—

(1) Suspension or debarment;
(2) Cancellation of the contract at no cost to the Government; or
(3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—

(1) The person involved;
(2) The nature of the conviction and resultant sentence or punishment imposed;
(3) The reasons for the requested waiver; and
(4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (202) 616-3507.

(End of clause)

§252.204-7000 Disclosure of information.

As prescribed in 204.404-70(a), use the following clause:

DISCLOSURE OF INFORMATION (DEC 1991)

(a) The Contractor shall not release to anyone outside the Contractor’s organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless—

(1) The Contracting Officer has given prior written approval; or
(2) The information is otherwise in the public domain before the date of release.

(b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 45 days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.

(End of clause)

§252.204-7001 Commercial and Government Entity (CAGE) code reporting.

As prescribed in 204.7207, use the following provision:

COMMERCIAL AND GOVERNMENT ENTITY (CAGE) CODE REPORTING (AUG 1999)

(a) The offeror is requested to enter its CAGE code on its offer in the block with its name and address. The CAGE code entered must be for that name and address. Enter “CAGE” before the number.

(b) If the offeror does not have a CAGE code, it may ask the Contracting Officer to request one from the Defense Logistics Information Service (DLIS). The Contracting Officer will—

(1) Ask the Contractor to complete section B of a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code;
(2) Complete section A and forward the form to DLIS; and
(3) Notify the Contractor of its assigned CAGE code.

(c) Do not delay submission of the offer pending receipt of a CAGE code.
252.204–7002 Payment for subline items not separately priced.

As prescribed in 204.7104–1(b)(3)(iv), use the following clause:

**PAYMENT FOR SUBLINE ITEMS NOT SEPARATELY PRICED (DEC 1991)**

(a) If the schedule in this contract contains any contract subline items or exhibit subline items identified as not separately priced (NSP), it means that the unit price for that subline item is included in the unit price of another, related line or subline item.

(b) The Contractor shall not invoice the Government for any portion of a contract line item or exhibit line item which contains an NSP until—

(1) The Contractor has delivered the total quantity of all related contract subline items or exhibit subline items; and

(2) The Government has accepted them.

(c) This clause does not apply to technical data.

(End of clause)

252.204–7003 Control of government personnel work product.

As prescribed in 204.404–70(b), use the following clause:

**CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)**

The Contractor’s procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the contractor.

(End of clause)

252.204–7004 Required central contractor registration.

As prescribed in 204.7304, use the following clause:

**REQUIRED CENTRAL CONTRACTOR REGISTRATION (NOV 2001)**

(a) Definitions. As used in this clause—

(1) Central Contractor Registration (CCR database) means the primary DoD repository for contractor information required for the conduct of business with DoD.

(2) Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.

(4) Registered in the CCR database means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code, is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.

(2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(b)(2) Lack of registration in the CCR database will make an offeror ineligible for award.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government’s reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1-888-227-2423, or via the Internet at http://www.ccr.gov.

(End of clause)
252.204–7005 Oral attestation of security responsibilities.

As prescribed in 204.404–70(c), use the following clause:

ORAL ATTESTATION OF SECURITY RESPONSIBILITIES (NOV 2001)

(a) Contractor employees cleared for access to Top Secret (TS), Special Access Program (SAP), or Sensitive Compartmented Information (SCI) shall attest orally that they will conform to the conditions and responsibilities imposed by law or regulation on those granted access. Reading aloud the first paragraph of Standard Form 312, Classified Information–Nondisclosure Agreement, in the presence of a person designated by the Contractor for this purpose, and a witness, will satisfy this requirement. Contractor employees currently cleared for access to TS, SAP, or SCI may attest orally to their security responsibilities when being briefed into a new program or during their annual refresher briefing. There is no requirement to retain a separate record of the oral attestation.

(b) If an employee refuses to attest orally to security responsibilities, the Contractor shall deny the employee access to classified information and shall submit a report to the Contractor’s security activity.

(End of clause)


252.205–7000 Provision of information to cooperative agreement holders.

As prescribed in 205.470–2, use the following clause:

PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (DEC 1991)

(a) Definition.

Cooperative agreement holder means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–286; 25 U.S.C. 450(c))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93–362; 25 U.S.C. 1452(e))); whether such economic enterprise is organized for profit or nonprofit purposes, which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The Contractor shall provide cooperative agreement holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year.

(End of clause)

252.206–7000 Domestic source restriction.

As prescribed at 206.302–3–70, use the following provision:

DOMESTIC SOURCE RESTRICTION (DEC 1991)

This solicitation is restricted to domestic sources under the authority of 10 U.S.C. 2304(c)(3). Foreign sources, except Canadian sources, are not eligible for award.

(End of provision)

252.208–7000 Intent to furnish precious metals as Government-furnished material.

As prescribed in 208.7305(a), use the following clause:

INTENT TO FURNISH PRECIOUS METALS AS GOVERNMENT-FURNISHED MATERIAL (DEC 1991)

(a) The Government intends to furnish precious metals required in the manufacture of items to be delivered under the contract if the Contracting Officer determines it to be in the Government’s best interest. The use of Government-furnished silver is mandatory when the quantity required is one hundred troy ounces or more. The precious metal(s) will be furnished pursuant to the Government Furnished Property clause of the contract.

(b) The Offeror shall cite the type (silver, gold, platinum, palladium, iridium, rhodium, and ruthenium) and quantity in whole troy ounces of precious metals required in the performance of this contract (including precious metals required for any first article or production sample), and shall specify the national stock number (NSN) and nomenclature, if known, of the deliverable item requiring precious metals.

<table>
<thead>
<tr>
<th>Precious metal</th>
<th>Quantity</th>
<th>Deliverable item (NSN and nomenclature)/troy oz</th>
</tr>
</thead>
<tbody>
<tr>
<td>Silver</td>
<td></td>
<td></td>
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<tr>
<td>Gold</td>
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<tr>
<td>Platinum</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Palladium</td>
<td></td>
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</tr>
<tr>
<td>Iridium</td>
<td></td>
<td></td>
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<tr>
<td>Rhodium</td>
<td></td>
<td></td>
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<tr>
<td>Ruthenium</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*If platinum or palladium, specify whether sponge or granules are required.

(c) Offerors shall submit two prices for each deliverable item which contains precious metals—one based on the Government furnishing precious metals, and one based on the Contractor furnishing precious metals.
252.209-7000 Acquisition from subcontractors subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) Treaty.

As prescribed in 209.103-70, use the following clause:

ACQUISITION FROM SUBCONTRACTORS SUBJECT TO ON-SITE INSPECTION UNDER THE INTERMEDIATE-RANGE NUCLEAR FORCES (INF) TREATY (NOV 1995)

(a) The Contractor shall not deny consideration for a subcontract award under this contract to a potential subcontractor subject to on-site inspection under the INF Treaty, or a similar treaty, solely or in part because of the actual or potential presence of Soviet inspectors at the subcontractor’s facility, unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, including this paragraph (b), in all solicitations and contracts exceeding the simplified acquisition threshold in part 13 of the Federal Acquisition Regulation, except those for commercial items.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 61600, Nov. 30, 1995]

252.209-7001 Disclosure of ownership or control by the government of a terrorist country.

As prescribed in 209.104-70(a), use the following provision:

DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) Definitions. As used in this provision—

(1) Government of a terrorist country includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) Terrorist country means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2406(j)(1)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) Significant interest means—

(i) Ownership of or beneficial interest in 5 percent or more of the firm’s or subsidiary’s securities. Beneficial interest includes holding 5 percent or more of any class of the firm’s securities in “nominee shares,” “street names,” or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) Prohibition on award. In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) Disclosure. If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include—

(1) Identification of each government holding a significant interest; and

(2) A description of the significant interest held by each government.

(End of provision)


252.209-7002 Disclosure of ownership or control by a foreign government.

As prescribed in 209.104-70(b), use the following provision:

DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT (SEP 1994)

(a) Definitions. As used in this provision—

(1) Effectively owned or controlled means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the Offeror’s officers or a majority of the Offeror’s board of directors by any means, e.g., ownership,
§ 252.209–7003

48 CFR Ch. 2 (10–1–02 Edition)

(End of provision)


§ 252.209–7003 [Reserved]

252.209–7004 Subcontracting with firms that are owned or controlled by the government of a terrorist country.

As prescribed in 209.409, use the following clause:

SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTY (MAR 1998)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of $25,000 with a firm, or a subsidiary of a firm, that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor and the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

(End of clause)

[63 FR 14837, Mar. 27, 1998]

252.209–7005 Reserve Officer Training Corps and military recruiting on campus.

As prescribed in 209.470–4, use the following clause:

RESERVE OFFICER TRAINING CORPS AND MILITARY RECRUITING ON CAMPUS (JAN 2000)

(a) Definition. ‘‘Institution of higher education,’’ as used in this clause, means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

(b) Limitation on contract award. Except as provided in paragraph (c) of this clause, an
institution of higher education is ineligible for contract award if the Secretary of Defense determines that the institution has a policy or practice (regardless of when implemented) that prohibits or in effect prevents—

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) (in accordance with 10 U.S.C. 654 and other applicable Federal laws) at that institution;

(2) A student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Transportation from gaining entry to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting; or

Military recruiters from accessing, for purposes of military recruiting, the following information pertaining to students (who are 17 years of age or older) enrolled at that institution:

(i) Name.
(ii) Address.
(iii) Telephone number.
(iv) Date and place of birth.
(v) Educational level.
(vi) Academic major.
(vii) Degrees received.
(viii) Most recent educational institution enrollment.

(c) Exception. The limitation in paragraph (b) of this clause does not apply to an institution of higher education if the Secretary of Defense determines that—

(1) The institution has ceased the policy or practice described in paragraph (b) of this clause; or

(2) The institution has a long-standing policy of pacifism based on historical religious affiliation.

(d) Agreement. The Contractor represents that it does not now have, and agrees that during performance of this contract it will not adopt, any policy or practice described in paragraph (b) of this clause, unless the Secretary of Defense has granted an exception in accordance with paragraph (c)(2) of this clause.

(e) Notwithstanding any other clause of this contract, if the Secretary of Defense determines that the Contractor misrepresented its policies and practices at the time of contract award or has violated the agreement in paragraph (d) of this clause—

(1) The Contractor will be ineligible for further payments under this and other contracts with the Department of Defense; and

(2) The Government will terminate this contract for default for the Contractor’s material failure to comply with the terms and conditions of award.

(End of clause)

[65 FR 2057, Jan. 13, 2000]

252.211–7000 Acquisition streamlining.

As prescribed in 211.002-70, use the following clause:

ACQUISITION STREAMLINING (DEC 1991)

(a) The Government’s acquisition streamlining objectives are to—

(1) Acquire systems that meet stated performance requirements;

(2) Avoid over-specification; and

(3) Ensure that cost effective requirements are included in future acquisitions.

(b) The Contractor shall—

(1) Prepare and submit acquisition streamlining recommendations in accordance with the statement of work of this contract; and

(2) Format and submit the recommendations as prescribed by data requirements on the contract data requirements list of this contract.

(c) The Government has the right to accept, modify, or reject the Contractor’s recommendations.

(d) The Contractor shall insert this clause, including this paragraph (d), in all subcontracts over $1 million, awarded in the performance of this contract.

(End of clause)


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.

As prescribed in 211.204(c), use the following provision:

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 (DEC 1991)

Offerors may obtain the specifications, standards, plans, drawings, data item descriptions, and other pertinent documents cited in this solicitation by submitting a request to:

(Activity) ___________________________________________________________________

(Complete Address) ___________________________________________________________________

Include the number of the solicitation and the title and number of the specification, standard, plan, drawing, or other pertinent document.
(End of provision)


252.211–7002 Availability for examination of specifications, standards, plans, drawings, data item descriptions, and other pertinent documents.

As prescribed in 211.204(c), use the following provision:

AVAILABILITY FOR EXAMINATION OF SPECIFICATIONS, STANDARDS, PLANS, DRAWINGS, DATA ITEM DESCRIPTIONS, AND OTHER PERTINENT DOCUMENTS (DEC 1991)

The specifications, standards, plans, drawings, data item descriptions, and other pertinent documents cited in this solicitation are not available for distribution but may be examined at the following location:

(Insert complete address)

(End of provision)


252.211–7003 [Reserved]

252.211–7004 Alternate preservation, packaging, and packing.

As prescribed in 211.272, use the following provision:

ALTERNATE PRESERVATION, PACKAGING, AND PACKING (DEC 1991)

(a) The Offeror may submit two unit prices for each item—one based on use of the military preservation, packaging, or packing requirements of the solicitation; and an alternate based on use of commercial or industrial preservation, packaging, or packing of equal or better protection than the military.

(b) If the Offeror submits two unit prices, the following information, as a minimum, shall be submitted with the offer to allow evaluation of the alternate—

(1) The per unit/item cost of commercial or industrial preservation, packaging, and packing;

(2) The per unit/item cost of military preservation, packaging, and packing;

(c) The description of commercial or industrial preservation, packaging, and packing procedures, including material specifications, when applicable, to include—

(i) Method of preservation;

(ii) Quantity per unit package;

(iii) Cleaning/drying treatment;

(iv) Preservation treatment;

(v) Wrapping materials;

(vi) Cushioning/dunnage material;

(vii) Thickness of cushioning;

(viii) Unit container;

(ix) Unit package gross weight and dimensions;

(x) Packing; and

(xi) Packing gross weight and dimensions;

and

(4) Item characteristics, to include—

(i) Material and finish;

(ii) Net weight;

(iii) Net dimensions; and

(iv) Fragility.

(c) If the Contracting Officer does not evaluate or accept the Offeror’s proposed alternate commercial or industrial preservation, packaging, or packing, the Offeror agrees to preserve, package, or pack in accordance with the specified military requirements.

(End of provision)


252.211–7005 Substitutions for military or Federal specifications and standards.

As prescribed in 211.273–4, use the following clause:

SUBSTITUTIONS FOR MILITARY OR FEDERAL SPECIFICATIONS AND STANDARDS (OCT 2001)

(a) Definition. “SPI process,” as used in this clause, means a management or manufacturing process that has been accepted previously by the Department of Defense under the Single Process Initiative (SPI) for use in lieu of a specific military or Federal specification or standard at specific facilities. Under SPI, these processes are reviewed and accepted by a Management Council, which includes representatives of the Contractor, the Defense Contract Management Agency, the Defense Contract Audit Agency, and the military departments.

(b) Offerors are encouraged to propose SPI processes in lieu of military or Federal specifications and standards cited in the solicitation. A listing of SPI processes accepted at specific facilities is available via the Internet in Excel format at http://www.dcma.mil/onebook/0.0/0.2/reports/modified.xls.

(c) An offeror proposing to use an SPI process in lieu of military or Federal specifications or standards cited in the solicitation shall—

(1) Identify the specific military or Federal specification or standard for which the SPI process has been accepted;

(2) Identify each facility at which the offeror proposes to use the specific SPI process in lieu of military or Federal specifications or standards cited in the solicitation;
Department of Defense

252.212–7001

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS

As prescribed in 212.301(f)(ii), use the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (NOV 1996)

(a) Definitions.

As used in this clause—

(1) Foreign person means any person other than a United States person as defined in Section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec. 2415).

(2) United States person is defined in Section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

(b) Certification.

By submitting this offer, the Offeror, if a foreign person, company or entity, certifies that it—

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec. 2407(a) prohibits a United States person from taking.

(c) Representation of Extent of Transportation by Sea. (This representation does not apply to solicitations for the direct purchase of ocean transportation services).

(1) The Offeror shall indicate by checking the appropriate blank in paragraph (c)(2) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term "supplies" is defined in the Transportation of Supplies by Sea clause of this solicitation.

(2) Representation.

The Offeror represents that it—

_____ Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

_____ Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(3) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense Federal Acquisition Regulation Supplement clause at 252.247–7024, Notification of Transportation of Supplies by Sea.

(End of provision)


252.212–7001 Contract terms and conditions required to implement statutes or Executive orders applicable to Defense acquisitions of commercial items.

As prescribed in 212.301(f)(iii), use the following clause:
252.215-7000

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (JUL 2002)

(a) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) clause which, if checked, is included in this contract by reference to implement provisions of law applicable to acquisitions of commercial items or components.


(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.


252.225–7029 Preference for United States or Canadian Air Circuit Breakers (AUG 1998) (10 U.S.C. 2594(a)(3)).


(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items clause of this contract (FAR 52.212-3), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:


(End of clause)


252.215–7000 Pricing adjustments.

As prescribed in 215.408(1), use the following clause:

PRICING ADJUSTMENTS (DEC 1991)

The term “pricing adjustment,” as used in paragraph (a) of the clauses entitled “Price Reduction for Defective Cost or Pricing Data—Modifications,” “Subcontractor Cost or Pricing Data—Modifications,” means the aggregate increases and/or decreases in cost plus applicable profits.

(End of clause)

252.215–7001 [Reserved]

252.215–7002 Cost estimating system requirements.

As prescribed in 215.408(2), use the following clause:

**COST ESTIMATING SYSTEM REQUIREMENTS**  
(OCT 1998)

(a) **Definition.**

*Estimating system* means the Contractor’s policies, procedures, and practices for generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards. Estimating system includes the Contractor’s—

1. Organizational structure;
2. Established lines of authority, duties, and responsibilities;
3. Internal controls and managerial reviews;
4. Flow of work, coordination, and communication; and
5. Estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.

(b) **General.** (1) The Contractor shall establish, maintain, and comply with an estimating system that is consistently applied and produces reliable, verifiable, supportable, and documented cost estimates that are an acceptable basis for negotiation of fair and reasonable prices.

(2) The system should be—

1. Consistent and integrated with the Contractor’s related management systems; and
2. Subject to applicable financial control systems.

(c) **Applicability.** Paragraphs (d) and (e) of this clause apply if the Contractor is a large business and either—

1. In its fiscal year preceding award of this contract, received Department of Defense (DoD) prime contracts or subcontracts, totaling $10 million or more (but less than $50 million) for which cost or pricing data were required; or
2. In its fiscal year preceding award of this contract—

1. Received DoD prime contracts or subcontracts totaling $10 million or more (but less than $50 million) for which cost or pricing data were required; and
2. Was notified in writing by the Contracting Officer that paragraphs (d) and (e) of this clause apply.

(d) **System requirements.** (1) The Contractor shall disclose its estimating system to the Administrative Contracting Officer (ACO) in writing. If the Contractor wishes the Government to protect the information as privileged or confidential, the Contractor must mark the documents with the appropriate legends before submission.

(2) An estimating system disclosure is acceptable when the Contractor has provided the ACO with documentation that—

(i) Accurately describes those policies, procedures, and practices that the Contractor currently uses in preparing cost proposals; and

(ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the acceptability of the Contractor’s estimating practices.

(3) The Contractor shall—

(i) Comply with its disclosed estimating system; and

(ii) Disclose significant changes to the cost estimating system to the ACO on a timely basis.

(e) **Estimating system deficiencies.** (1) The Contractor shall respond to a written report from the Government that identifies deficiencies in the Contractor’s estimating system as follows:

1. If the Contractor agrees with the report findings and recommendations, the Contractor shall—

(A) Within 30 days, state its agreement in writing; and

(B) Within 60 days, correct the deficiencies or submit a corrective action plan showing proposed milestones and actions leading to elimination of the deficiencies.

(ii) If the Contractor disagrees with the report, the Contractor shall, within 30 days, state its rationale for disagreeing.

(2) The ACO will evaluate the Contractor’s response and notify the Contractor of the determination concerning remaining deficiencies and/or the adequacy of any proposed or completed corrective action.

(End of clause)


252.216–7000 Economic price adjustment—basic steel, aluminum, brass, bronze, or copper mill products.

As prescribed in 216.203–4–70(a), use the following clause:

**ECONOMIC PRICE ADJUSTMENT—BASIC STEEL, ALUMINUM, BRASS, BRONZE, OR COPPER MILL PRODUCTS**  
(JUL 1997)

(a) **Definitions.**

As used in this clause—

*Established price* means a price which is an established catalog or market price for a commercial item sold in substantial quantities to the general public.

*Unit price* excludes any part of the price which reflects requirements for preservation, packaging, and packing beyond standard commercial practice.
(b) The Contractor warrants that the unit price stated for (Identify the item) is not in excess of the Contractor’s established price in effect on the date set for opening of bids (or the contract date if this is a negotiated contract) for like quantities of the same item. This price is the net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price.

(c) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any established price.

(1) Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased.

(2) This decrease shall apply to items delivered on or after the effective date of the decrease in the Contractor’s established price.

(3) This contract shall be modified accordingly.

(d) If the Contractor’s established price is increased after the date set for opening of bids (or the contract date if this is a negotiated contract), upon the Contractor’s written request to the Contracting Officer, the corresponding contract unit price shall be increased by the same percentage that the established price is increased, and this contract shall be modified accordingly, provided—

1) The aggregate of the increases in any contract unit price under this contract shall not exceed 10 percent of the original contract unit price;

2) The increased contract unit price shall be effective on the effective date of the increase in the applicable established price if the Contractor’s written request is received by the Contracting Officer within ten days of the change. If it is not, the effective date of the increased unit price shall be the date of receipt of the request by the Contracting Officer; and

3) The increased contract unit price shall not apply to quantities scheduled for delivery before the effective date of the increased contract unit price unless the Contractor’s failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause of this contract.

(e) The Contracting Officer shall not execute a modification incorporating an increase in a contract unit price under this clause until the increase is verified.

(f) If the Contractor receives the cancellation notice, provided the Contractor notifies the Contracting Officer of such items within 10 days after the Contractor receives the cancellation notice.

(2) The Government shall pay for those items at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(3) Any standard steel supply item shall be deemed to be in the process of manufacture when the steel for that item is in the state of processing after the beginning of the furnace melt.

(f) Pending any cancellation of this contract under paragraph (e) of this clause, or if there is no cancellation, the Contractor shall continue deliveries according to the delivery schedule of the contract. The Contractor shall be paid for those deliveries at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(End of clause)


252.216–7001 Economic price adjustment—nonstandard steel items.

As prescribed in 216.203–4–70(b), use the following clause:

ECONOMIC PRICE ADJUSTMENT—NONSTANDARD STEEL ITEMS (JUL 1997)

(a) Definitions.

As used in this clause—

Base labor index means the average of the labor indices for the three months which consist of the month of bid opening (or offer submission) and the months immediately preceding and following that month.

Base steel index means the Contractor’s established price (see note 6) including all applicable extras of $ per unit. (see note 1) for (see note 2) on the date set for bid opening (or the date of submission of the offer).

Current labor index means the average of the labor indices for the month in which delivery of supplies is required to be made and the month preceding.

Current steel index means the Contractor’s established price (see note 6) for that item, including all applicable extras in effect days (see note 3) prior to the first day of the month in which delivery is required.

Established price is—

1. A price which is an established catalog or market price of a commercial item sold in substantial quantities to the general public; and

2. The net price after applying any applicable standard trade discounts offered by the
Labor index means the average straight time hourly earnings of the Contractor's employees in the shop of the Contractor's plant (see note 4) for any particular month.

Month means calendar month. However, if the Contractor's accounting period does not coincide with the calendar month, then that accounting period shall be used in lieu of month.

Each contract unit price shall be subject to revision, under the terms of this clause, to reflect changes in the cost of labor and steel. For purpose of this price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified under the base steel index definition in paragraph (a) shall be percent, and the proportion of the contract unit price attributable to the cost of steel shall be percent. (See note 5.)

Whenever otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the shop identified in paragraph (a) for any given month by the total number of straight time hours worked by those employees in that month.

Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the base labor index and the current labor index.

Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the base steel index and the current steel index.

Each contract unit price shall be revised for each month in which delivery of supplies is required to be made.

The revised contract unit price shall apply to the deliveries of those quantities required to be made in that month regardless of when actual delivery is made.

Each revised contract unit price shall be computed by adding—

(i) The adjusted cost of labor (obtained by multiplying percent of the contract unit price by a fraction, of which the numerator shall be the current labor index and the denominator shall be the base labor index);

(ii) The adjusted cost of steel (obtained by multiplying percent of the contract unit price by a fraction, of which the numerator shall be the current steel index and the denominator shall be the base steel index);

and

(iii) The amount equal to percent of the original contract unit price (representing that portion of the unit price which relates neither to the cost of labor nor the cost of steel, and which is therefore not subject to revision (see note 5)).

The aggregate of the increases in any contract unit price under this contract shall not exceed ten percent of the original contract unit price.

Computations shall be made to the nearest one-hundredth of one cent.

(1) Pending any revisions of the contract unit prices, the Contractor shall be paid the contract unit price for deliveries made.

(2) Within 30 days after final delivery (or such other period as may be authorized by the Contracting Officer), the Contractor shall furnish a statement identifying the correctness of—

(i) The average straight time hourly earnings of the Contractor's employees in the shop identified in paragraph (a) that are relevant to the computations of the base labor index and the current labor index; and

(ii) The Contractor's established prices (see note 6), including all applicable extras for like quantities of the item that are relevant to the computation of the base steel index and the current steel index.

Upon request of the Contracting Officer, the Contractor shall make available all records used in the computation of the labor indices.

Upon receipt of the statement, the Contracting Officer will compute the revised contract unit prices and modify the contract accordingly. No modification to this contract will be made pursuant to this clause until the Contracting Officer has verified the revised established price (see note 6).

In the event any item of this contract is terminated for default, any price revision shall be limited to the quantity of the item that is relevant to the computation of the base steel index and the current steel index under paragraphs (c) and (d).

For any item which is not terminated for convenience, the month in which delivery is required under the contract shall continue to apply for determining those indices with respect to the quantity of the non-terminated item.

If this contract is terminated for default, any price revision shall be limited to the quantity of the item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of the notice of termination.

If the Contractor's failure to make delivery of any required quantity arises out of causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the clause of this contract entitled "Default," the quantity not delivered shall be delivered as promptly as possible after the cessation of the cause of the failure, and the delivery schedule set forth in this contract shall be amended accordingly.
Notes:
1 Offeror insert the unit price and unit measure of the standard steel mill item to be used in the manufacture of the contract item.
2 Offeror identify the standard steel mill item to be used in the manufacture of the contract item.
3 Offeror insert best estimate of the number of days required for processing the standard steel mill item in the shop identified under the labor index definition.
4 Offeror identify the shop and plant in which the standard steel mill item identified under the base steel index definition will be finally fabricated or processed into the contract item.
5 Offeror insert the same percentage figures for the corresponding blanks in paragraphs (b), (e)(3)(i), and (e)(3)(ii). In paragraph (e)(3)(iii), insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.
6 In negotiated acquisitions of nonstandard steel items, when there is no established price or when it is not desirable to use this price, this paragraph may refer to another appropriate price basis, e.g., an established interplant price.

(End of clause)


252.216-7002 [Reserved]

252.216-7003 Economic price adjustment—wage rates or material prices controlled by a foreign government.

As prescribed in 216.203–4–70(c), use the following clause:

ECONOMIC PRICE ADJUSTMENT—WAGE RATES OR MATERIAL PRICES CONTROLLED BY A FOREIGN GOVERNMENT (JUN 1997)

(a) The Contractor represents that the prices set forth in this contract—

(1) Are based on the wage rate(s) or material price(s) established and controlled by the Government of [Offeror insert name of host country]; and

(2) Do not include contingency allowances to pay for possible increases in wage rates or material prices.

(b) If wage rates or material prices are revised by the government named in paragraph (a) of this clause, the Contracting Officer shall make an equitable adjustment in the contract price and shall modify the contract to the extent that the Contractor’s actual costs of performing this contract are increased or decreased, as a direct result of the revision, subject to the following:

(1) For increases in established wage rates or material prices, the increase in contract unit price(s) shall be effective on the same date that the government named in paragraph (a) of this clause increased the applicable wage rate(s) or material price(s), but only if the Contracting Officer receives the Contractor’s written request for contract adjustment within 10 days of the change. If the Contractor’s request is received later, the effective date shall be the date that the Contracting Officer received the Contractor’s request.

(2) For decreases in established wage rates or material prices, the decrease in contract unit price(s) shall be effective on the same date that the government named in paragraph (a) of this clause decreased the applicable wage rate(s) or material price(s). The decrease in contract unit price(s) shall apply to all items delivered on and after the effective date of the government’s rate or price decrease.

(c) No modification changing the contract unit price(s) shall be executed until the Contracting Officer has verified the applicable change in the rates or prices set by the government named in paragraph (a) of this clause. The Contractor shall make available its books and records that support a requested change in contract price.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of this contract.

(End of clause)


252.217-7000 Exercise of option to fulfill foreign military sales commitments.

As prescribed in 217.208–70(a), use the following clause:

EXERCISE OF OPTION TO FULFILL FOREIGN MILITARY SALES COMMITMENTS (DEC 1991)

(a) The Government may exercise the option(s) of this contract to fulfill foreign military sales commitments.

(b) The foreign military sales commitments are for:

(Insert name of country, or To Be Determined)

(Insert applicable CLIN)

(End of clause)

Alternate I (DEC 1991). As prescribed in 217.208–70(a)(1), substitute the following paragraph (b) for paragraph (b) of the basic clause:
(b) On the date the option is exercised, the Government shall identify the foreign country for the purpose of negotiating any equitable adjustment attributable to foreign military sales. Failure to agree on an equitable adjustment shall be treated as a dispute under the Disputes clause of this contract.

252.217-7001 Surge option.

As prescribed in 217.208-70(b), use the following clause:

SURGE OPTION (AUG 1992)

(a) General. The Government has the option to—
(1) Increase the quantity of supplies or services called for under this contract by no more than ___ percent; and/or
(2) Accelerate the rate of delivery called for under this contract, at a price or cost established before contract award or to be established by negotiation as provided in this clause.

(b) Schedule. (1) When the Production Surge Plan (DI-MGMT-80969) is included in the contract, the option delivery schedule shall be the production rate provided with the Plan. If the Plan was negotiated before contract award, then the negotiated schedule shall be used.

(2) If there is no Production Surge Plan in the contract, the Contractor shall, within 30 days from the date of award, furnish the Contracting Officer a delivery schedule showing the maximum sustainable rate of delivery for items in this contract. This delivery schedule shall provide acceleration by month up to the maximum sustainable rate of delivery achievable within the Contractor’s existing facilities, equipment, and subcontracting structure.

(3) The Contractor shall not revise the option delivery schedule without approval from the Contracting Officer.

(c) Exercise of option. (1) The Contracting Officer may exercise this option at any time before acceptance by the Government of the final scheduled delivery.

(2) The Contracting Officer will provide a preliminary oral or written notice to the Contractor stating the quantities to be added or accelerated under the terms of this clause, followed by a contract modification incorporating the transmitted information and instructions. The notice and modification will establish a not-to-exceed price equal to the highest contract unit price or cost of the added or accelerated items as of the date of the notice.

(3) The Contractor will not be required to deliver at a rate greater than the maximum sustainable delivery rate under paragraph (b)(2) of this clause, nor will the exercise of this option extend delivery more than 24 months beyond the scheduled final delivery.

(d) Price negotiation. (1) Unless the option cost or price was previously agreed upon, the Contractor shall, within 30 days from the date of option exercise, submit to the Contracting Officer a cost or price proposal (including a cost breakdown) for the added or accelerated items.

(2) Failure to agree on a cost or price in negotiations resulting from the exercise of this option shall constitute a dispute concerning a question of fact within the meaning of the Disputes clause of this contract. However, nothing in this clause shall excuse the Contractor from proceeding with the performance of the contract, as modified, while any resulting claim is being settled.

[End of clause]

252.217-7002 Offering property for exchange.

As prescribed in 217.7005, use the following provision:

OFFERING PROPERTY FOR EXCHANGE (DEC 1991)

(a) The property described in item number ___ of the Property Offering plan (DI-MGMT-80969), is being offered in accordance with the exchange provisions of section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384 (40 U.S.C. 481(c)).

(b) The property is located at (insert address). Offerors may inspect the property during the period (insert beginning and ending dates and insert hours during day).

[End of provision]

252.217-7003 Changes.

As prescribed in 217.7104(a), use the following clause:

CHANGES (DEC 1991)

(a) The Contracting Officer may, at any time and without notice to the sureties, by written change order, make changes within the general scope of any job order issued under the Master Agreement in—

(1) Drawings, designs, plans, and specifications;
(2) Work itemized;
(3) Place of performance of the work;
(4) Time of commencement or completion of the work; and
(5) Any other requirement of the job order.

(b) If a change causes an increase or decrease in the cost of, or time required for, performance of the job order, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in
the price or date of completion, or both, and shall modify the job order in writing.

(1) Within ten days after the Contractor receives notification of the change, the Contractor shall submit to the Contracting Officer a request for price adjustment, together with a written estimate of the increased cost.

(2) The Contracting Officer may grant an extension of this period if the Contractor requests it within the ten day period.

(3) If the circumstances justify it, the Contracting Officer may accept and grant a request for equitable adjustment at any later time prior to final payment under the job order, except that the Contractor may not receive profit on a payment under a late request.

(c) If the Contractor includes in its claim the cost of property made obsolete or excess as a result of a change, the Contracting Officer shall have the right to prescribe the manner of disposition of that property.

(d) Failure to agree to any adjustment shall be a dispute within the meaning of the Disputes clause.

(e) Nothing in this clause shall excuse the Contractor from proceeding with the job order as changed.

(End of clause)

252.217-7004 Job orders and compensation.

As prescribed in 217.7104(a), use the following clause:

JOBS AND COMPENSATION (DEC 1991)

(a) The Contracting Officer shall solicit bids or proposals and make award of job orders in accordance with FAR part 14 or 15, as applicable. The issuance of a job order signed by the Contracting Officer constitutes award. The job order shall incorporate the terms and conditions of the Master Agreement.

(b) Whenever the Contracting Officer determines that a vessel, its cargo or stores, would be endangered by delay, or whenever the Contracting Officer determines that military necessity requires that immediate work on a vessel is necessary, the Contracting Officer may issue a written order to perform that work and the Contractor hereby agrees to comply with that order and to perform work on such vessel within its capabilities.

(1) As soon as practicable after the issuance of the order, the Contracting Officer and the Contractor shall negotiate a price for the work and the Contracting Officer shall issue a job order covering the work.

(2) The Contractor shall, upon request, furnish the Contracting Officer with a breakdown of costs incurred by the Contractor and an estimate of costs expected to be incurred in the performance of the work. The Contractor shall maintain, and make available for inspection by the Contracting Officer or the Contracting Officer's representative, records supporting the cost of performing the work.

(3) Failure of the parties to agree upon the price of the work shall constitute a dispute within the meaning of the Disputes clause of the Master Agreement. In the meantime, the Contractor shall diligently proceed to perform the work ordered.

(c) (1) If the nature of any repairs is such that their extent and probable cost cannot be ascertained readily, the Contracting Officer may issue a job order (on a sealed bid or negotiated basis) to determine the nature and extent of required repairs.

(2) 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 that work. The prices agreed upon shall be set forth in a modification of the job order.

(3) Failure of the parties to agree upon the price shall constitute a dispute under the Disputes clause. In the meantime, the Contractor shall diligently proceed to perform the work ordered.

(End of clause)

252.217-7005 Inspection and manner of doing work.

As prescribed in 217.7104(a), use the following clause:

INSPECTION AND MANNER OF DOING WORK (JAN 1997)

(a) The Contractor shall perform work in accordance with the job order, any drawings and specifications made a part of the job order, and any change or modification issued under the Changes clause of the Master Agreement.

(b)(1) Except as provided in paragraph (b)(2) of this clause, and unless otherwise specifically provided in the job order, all operational practices of the Contractor and all workmanship, material, equipment, and articles used in the performance of work under the Master Agreement shall be in accordance with the best commercial marine practices and the rules and requirements of the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of Contractor's submission of bid (or acceptance of the job order, if negotiated).

(2) When Navy specifications are specified in the job order, the Contractor shall follow Navy standards of material and workmanship. The solicitation shall prescribe the Navy standard whenever applicable.

(c) The Government may inspect and test all material and workmanship at any time
during the Contractor’s performance of the work.

(1) If, prior to delivery, the Government finds any material or workmanship is defective or not in accordance with the job order, in addition to its rights under the Guarantees clause of the Master Agreement, the Government may reject the defective or non-conforming material or workmanship and require the Contractor to correct or replace it at the Contractor’s expense.

(2) If the Contractor fails to proceed promptly with the replacement or correction of the material or workmanship, the Government may replace or correct the defective or nonconforming material or workmanship and charge the Contractor the excess costs incurred.

(3) As specified in the job order, the Contractor shall provide and maintain an inspection system acceptable to the Government.

(4) The Contractor shall maintain complete records of all inspection work and shall make them available to the Government during performance of the job order and for 90 days after the completion of all work required.

(5) The Contractor shall not permit any welder to work on a vessel unless the welder is, at the time of the work, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of welding being performed. Qualifications of a welder shall be as specified in the job order.

(6) The Contractor shall provide Government personnel attached to the vessel access to the vessel at all times.

(7) The Contractor shall maintain a reasonable system of inspection over activities taking place in the vicinity of the vessel’s magazines, fuel oil tanks, or storerooms containing flammable materials;

(8) Maintain a reasonable number of hose lines ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor’s pier or in dry dock or on a marine railway;

(9) Unless otherwise provided in a job order, provide sufficient security patrols to reasonably maintain a fire watch for protection of the vessel when it is in the Contractor’s custody;

(10) To the extent necessary, clean, wash, and steam out or otherwise make safe, all tanks under alteration or repair;

(11) Furnish the Contracting Officer or designated representative with a copy of the “gas-free” or “safe-for-hotwork” certificate, provided by a Marine Chemist or Coast Guard authorized person in accordance with Occupational Safety and Health Administration regulations (29 CFR 1915.14) before any hot work is done on a tank;

(12) Treat the contents of any tank as Government property in accordance with the Government Property (Fixed-Price Contracts) clause; and

(13) Dispose of the contents of any tank only at the direction, or with the concurrence, of the Contracting Officer.

(14) Except as otherwise provided in the job order, when the vessel is in the custody of the Contractor or in dry dock or on a marine railway and the temperature is expected to go as low as 35 °F, the Contractor shall take all necessary steps to—

(15) Keep all hose pipe lines, fixtures, traps, tanks, and other receptacles on the vessel from freezing; and

(16) Protect the stern tube and propeller hubs from frost damage.

(17) The Contractor shall, whenever practicable—

(18) Perform the required work in a manner that will not interfere with the berthing and mooring of Government personnel attached to the vessel; and

(19) Provide Government personnel attached to the vessel access to the vessel at all times.

(20) Government personnel attached to the vessel shall not interfere with the Contractor’s work or workers.

(21) The Government does not guarantee the correctness of the dimensions, sizes, and shapes set forth in any job order, sketches, drawings, plans, or specifications prepared or furnished by the Government, unless the job order requires that the Contractor perform the work prior to any opportunity to inspect.

(22) Except as stated in paragraph (i)(1) of this clause, and other than those parts furnished by the Government, the Contractor shall be responsible for the correctness of the dimensions, sizes, and shapes of parts furnished under this agreement.

(23) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by its employees or the work. At the completion of the work, unless the job order specifies otherwise, the Contractor shall remove all rubbish from the site of the work and leave the immediate vicinity of the work area “broom clean.”

(End of clause)
at the location specified for the performance of the work.

(b) Upon completion of the job order, or with the approval of the Contracting Officer during performance of the job order, all Contractor-furnished materials and equipment not incorporated in, or placed on, any vessel, shall become the property of the Contractor, unless the Government has reimbursed the Contractor for the cost of the materials and equipment.

(c) The vessel, its equipment, movable stores, cargo, or other ship’s materials shall not be considered Government-furnished property.

(End of clause)

252.217–7007 Payments.

As prescribed in 217.7104(a), use the following clause:

PAYMENTS (DEC 1991)

(a) Progress payments, as used in this clause, means payments made before completion of work in progress under a job order.

(b) Upon submission by the Contractor of invoices in the form and number of copies directed by the Contracting Officer, and as approved by the Contracting Officer, the Government will make progress payments as work progresses under the job order.

(1) Generally, the Contractor may submit invoices on a semi-monthly basis, unless expenditures justify a more frequent submission.

(2) The Government need not make progress payments for invoices aggregating less than $5,000.

(3) The Contracting Officer shall approve progress payments based on the value, computed on the price of the job order, of labor and materials incorporated in the work, materials suitably stored at the site of the work, and preparatory work completed, less the aggregate of any previous payments.

(4) Upon request, the Contractor will furnish the Contracting Officer any reports concerning expenditures on the work to date that the Contracting Officer may require.

(c) The Government will retain until final completion and acceptance of all work covered by the job order, an amount estimated or approved by the Contracting Officer under paragraph (b) of this clause. The amount retained will be in accordance with the rate authorized by Congress for Naval vessel repair contracts at the time of job order award.

(d) The Contracting Officer may direct that progress payments be based on the price of the job order as adjusted as a result of change orders under the Changes clause of the Master Agreement. If the Contracting Officer does not so direct—

(1) Payments of any increases shall be made from time to time after the amount of the increase is determined under the Changes clause of the Master Agreement; and

(2) Reductions resulting from decreases shall be made for the purposes of subsequent progress payments as soon as the amounts are determined under the Changes clause of the Master Agreement.

(e) Upon completion of the work under a job order and final inspection and acceptance, and upon submission of invoices in such form and with such copies as the Contracting Officer may prescribe, the Contractor shall be paid for the price of the job order, as adjusted pursuant to the Changes clause of the Master Agreement, less any performance reserves deemed necessary by the Contracting Officer, and less the amount of any previous payments.

(f) All materials, equipment, or any other property or work in process covered by the progress payments made by the Government, upon the making of those progress payments, shall become the sole property of the Government, and are subject to the provisions of the Title clause of the Master Agreement.

(End of clause)

252.217–7008 Bonds.

As prescribed in 217.7104(a), use the following clause:

BONDS (DEC 1991)

(a) If the solicitation requires an offeror to submit a bid bond, the Offeror may furnish, instead, an annual bid bond (or evidence thereof) or an annual performance and payment bond (or evidence thereof).

(b) If the solicitation does not require a bid bond, the Offeror shall not include in the price any contingency to cover the premium of such a bond.

(c) Even if the solicitation does not require bonds, the Contracting Officer may nevertheless require a performance and payment bond, in form, amount, and with a surety acceptable to the Contracting Officer. Where performance and payment bond is required, the offer price shall be increased upon the award of the job order in an amount not to exceed the premium of a corporate surety bond.

(d) If any surety upon any bond furnished in connection with a job order under this agreement fails to submit requested reports as to its financial condition or otherwise becomes unacceptable to the Government, the
Contracting Officer may require the Contractor to furnish whatever additional security the Contracting Officer determines necessary to protect the interests of the Government and of persons supplying labor or materials in the performance of the work contemplated under the Master Agreement.

(End of clause)

252.217–7009 Default.

As prescribed in 217.7104(a), use the following clause:

DEFAULT (DEC 1991)

(a) The Government may, subject to the provisions of paragraph (b) of this clause, by written notice of default to the Contractor, terminate the whole or any part of a job order if the Contractor fails to—

(1) Make delivery of the supplies or to perform the services within the time specified in a job order or any extension;

(2) Make progress, so as to endanger performance of the job order; or

(3) Perform any of the other provisions of this agreement or a job order.

(b) Except for defaults of subcontractors, the Contractor shall not be liable for any excess costs if failure to perform the job order arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

(c) If the Contractor's failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to perform the job order within the time specified.

(d) If the Government terminates the job order in whole or in part as provided in paragraph (a) of this clause—

(1) The Government may, upon such terms and in such manner as the Contracting Officer may deem appropriate, arrange for the completion of the work so terminated, at such plant or plants, including that of the Contractor, as may be designated by the Contracting Officer.

(2) The Contractor shall continue the performance of the job order to the extent not terminated under the provisions of this clause.

(ii) If the work is to be completed at the plant, the Government may use all tools, machinery, facilities, and equipment of the Contractor determined by the Contracting Office to be necessary for that purpose.

(iii) If the cost to the Government of the work procured or completed (after adjusting such cost to exclude the effect of changes in the plans and specifications made subsequent to the date of termination) exceeds the price fixed for work under the job order (after adjusting such price on account of changes in the plans and specifications made before the date of termination), the Contractor, or the Contractor's surety, if any, shall be liable for such excess.

(2) The Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and delivery to the Government, in the manner and to the extent directed by the Contracting Officer, any completed supplies and such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called “manufacturing materials”) as the Contractor has specifically produced or specifically acquired for the performance of the terminated part of the job order.

(i) The Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest.

(ii) The Government shall pay to the Contractor the job order price for completed items of work delivered to and accepted by the Government, and the amount agreed upon by the Contractor and the Contracting Officer for manufacturing materials delivered to and accepted by the Government, and for the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause.

(e) If, after notice of termination of the job order, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued for the convenience of the Government.

(f) If the Contractor fails to complete the performance of a job order within the time specified, or any extension, the actual damage to the Government for the delay will be difficult or impossible to determine.

(1) In lieu of actual damage, the Contractor shall pay to the Government as fixed, agreed, and liquidated damages for each calendar day of delay the amount, if any, set forth in the job order (prorated to the nearest hour for fractional days).
(2) If the Government terminates the job order, the Contractor shall be liable, in addition to the excess costs provided in paragraph (d) of this clause, for liquidated damages accruing until such time as the Government may reasonably obtain completion of the work.

(3) The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor. Subject to the provisions of the Disputes clause of the Master Agreement, the Contracting Officer shall ascertain the facts and the extent of the delay and shall extend the time for performance when in the judgment of the Contracting Officer, the findings of fact justify an extension.

(g) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law under this agreement.

(End of clause)

252.217–7010 Performance.

As prescribed in 217.7104(a), use the following clause:

PERFORMANCE (DEC 1991)

(a) Upon the award of a job order, the Contractor shall promptly start the work specified and shall diligently prosecute the work to completion. The Contractor shall not start work until the job order has been awarded except in the case of emergency work ordered by the Contracting Officer under the Job Orders and Compensation clause of the Master Agreement.

(b) The Government shall deliver the vessel described in the job order at the time and location specified in the job order. Upon completion of the work, the Government shall accept delivery of the vessel at the time and location specified in the job order.

(c) The Contractor shall, without charge and without specific requirement in a job order—

(1) Make available at the plant to personnel of the vessel while in dry dock or on a marine railway, sanitary lavatory and similar facilities acceptable to the Contracting Officer;

(2) Supply and maintain suitable brows and gangways from the pier, dry dock, or marine railway to the vessel;

(3) Treat salvage, scrap or other ship’s material of the Government resulting from performance of the work as items of Government-furnished property, in accordance with the Government Property (Fixed Price Contracts) clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel’s machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work for the Government’s use.

(d) The job order will state whether dock and sea trials are required to determine whether or not the Contractor has satisfactorily performed the work.

(1) If dock and sea trials are required, the vessel shall be under the control of the vessel’s commander and crew.

(2) The Contractor shall not conduct dock and sea trials not specified in the job order without advance approval of the Contracting Officer. Dock and sea trials not specified in the job order shall be at the Contractor’s expense and risk.

(3) The Contractor shall provide and install all fittings and appliances necessary for dock and sea trials. The Contractor shall be responsible for care, installation, and removal of instruments and apparatus furnished by the Government for use in the trials.

(End of clause)

252.217–7011 Access to vessel.

As prescribed at 217.7104(a), use the following clause:

ACCESS TO VESSEL (DEC 1991)

(a) Upon the request of the Contracting Officer, the Contractor shall grant admission to the Contractor’s facilities and access to the vessel, on a non-interference basis, as necessary to perform their respective responsibilities, to a reasonable number of:

(1) Government and other Government contractor employees (in addition to those Government employees attached to the vessel); and

(2) Representatives of offerors on other contemplated Government work.

(b) All personnel granted access shall comply with Contractor rules governing personnel at its shipyard.

(End of clause)

252.217–7012 Liability and insurance.

As prescribed in 217.7104(a), use the following clause:

LIABILITY AND INSURANCE (DEC 1991)

(a) The Contractor shall exercise its best efforts to prevent accidents, injury, or damage to all employees, persons, and property, in and about the work, and to the vessel or part of the vessel upon which work is done.

(b) Loss or damage to the vessel, materials, or equipment. (1) Unless otherwise directed or
approved in writing by the Contracting Officer, the Contractor shall not carry insurance against any form of loss or damage to the vessel(s) or to the materials or equipment to which the Contractor has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to that property.

(2) The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise resulting from risks with respect to which the Contractor has failed to maintain insurance, if available, as required or approved by the Contracting Officer.

(3) The Government does not assume risk of and will not pay for any costs of the following:

(a) Inspection, repair, replacement, or renewal of any defects in the vessel(s) or material and equipment due to—

(1) Defective workmanship performed by the Contractor or its subcontractors;

(2) Defective materials or equipment furnished by the Contractor or its subcontractors;

(b) Workmanship, materials, or equipment which do not conform to the requirements of the contract, whether or not the defect is latent or whether or not the nonconformance is the result of negligence.

(1) Loss, damage, liability, or expense caused by, resulting from, or incurred as a consequence of any delay or disruption, willful misconduct or lack of good faith by the Contractor or any of its representatives that have supervision or direction of—

(A) All or substantially all of the Contractor’s business; or

(B) All or substantially all of the Contractor’s operation at any one plant.

(2) The Contractor shall ensure that all subcontractors engaged on the work obtain and maintain the insurance required in paragraph (c) of this clause.

(3) Upon request of the Contracting Officer, the Contractor shall provide evidence of the insurance required by paragraph (d) of this clause.

(e) The Contractor shall not make any allowance in the job order price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance, as approved by the Contracting Officer, for coverage against any risk assumed by the Government under this clause.

(f) The Contractor shall give the Contracting Officer written notice as soon as practicable after the occurrence of a loss or damage for which the Government has assumed the risk.

(1) The notice shall contain full details of the loss or damage.

(2) If a claim or suit is later filed against the Contractor as a result of the event, the Contractor shall immediately deliver to the Government every demand, notice, summons, or other process received by the Contractor or its employees or representatives.

(3) The Contractor shall cooperate with the Government and, upon request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits. The Government shall reimburse the Contractor for
252.217–7013

As prescribed in 217.7104(a), use the following clause:

Guarantees (DEC 1991)

(a) In the event any work performed or materials furnished by the contractor under the Master Agreement prove defective or deficient within 90 days from the date of redelivery of the vessel(s), the Contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency to the satisfaction of the Contracting Officer.

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 90 day period, the Government shall be entitled to rely upon the longer guarantee until its expiration.

(c) With respect to any individual work item identified as incomplete at the time of redelivery of the vessel(s), the guarantee period shall run from the date the item is completed.

(d) If practicable, the Government shall give the Contractor an opportunity to correct the deficiency.

(1) If the Contracting Officer determines it is not practicable or is otherwise not advisable to return the vessel(s) to the Contractor, or the Contractor fails to proceed with the repairs promptly, the Contracting Officer may direct that the repairs be performed elsewhere, at the Contractor’s expense.

(2) If correction and repairs are performed by other than the Contractor, the Contracting Officer may discharge the Contractor’s liability by making an equitable deduction in the price of the job order.

(e) The Contractor’s liability shall extend for an additional 90 day guarantee period on those defects or deficiencies that the Contractor corrected.

(f) At the option of the Contracting Officer, defects and deficiencies may be left uncorrected. In that event, the Contractor and Contracting Officer shall negotiate an equitable reduction in the job price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this agreement.

(End of clause)
Department of Defense

252.217–7015 Safety and health.

As prescribed in 217.7104(a), use the following clause:

SAFETY AND HEALTH (DEC 1991)

Nothing contained in the Master Agreement or any job order shall relieve the Contractor of any obligations it may have to comply with—

(a) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq.);
(b) The Safety and Health Regulations for Ship Repairing (29 CFR part 1915); or
(c) Any other applicable Federal, State, and local laws, codes, ordinances, and regulations.

(End of clause)

252.217–7016 Plant protection.

As prescribed in 217.7104(a), use the following clause:

PLANT PROTECTION (DEC 1991)

(a) The Contractor shall provide, for the plant and work in process, reasonable safeguards against all hazards, including unauthorized entry, malicious mischief, theft, vandalism, and fire.
(b) The Contractor shall also provide whatever additional safeguards are necessary to protect the plant and work in process from espionage, sabotage, and enemy action.
(1) The Government shall reimburse the Contractor for that portion of the costs of the additional safeguards that is allocable to the contract in the same manner as if the Contracting Officer had issued a change order for the additional safeguards.
(2) The costs reimbursed shall not include any overhead allowance, unless the overhead is incident to the construction or installation of necessary security devices or equipment.
(c) Upon payment by the Government of the cost of any device or equipment required or approved under paragraph (b) of this clause, title shall vest in the Government.
(1) The Contractor shall comply with the instructions of the Contracting Officer concerning its identification and disposition.
(2) No such device or equipment shall become a fixture as a result of its being affixed to realty not owned by the Government.

(End of clause)

252.217–7019 Sanitary conditions.

As prescribed in 217.7203(a)(3), use the following clause:

SANITARY CONDITIONS (DEC 1991)

(a) The Contractor shall ensure that all supplies delivered under this contract, and all plant facilities, machinery, equipment,
and apparatus used in the production, processing, handling, storage, or delivery of these supplies, meet the sanitary standards (including bacteriological requirements) prescribed by the specifications cited in this contract.

(b) The Government reserves the right to inspect and test at any reasonable times all plant facilities, machinery, equipment, and parts used in the production, processing, handling, storage, transportation, or delivery of supplies under this contract.

(c) The Contracting Officer or representative shall notify the Contractor in writing of any failure to meet the sanitary standards (including bacteriological requirements) prescribed by this contract. If the Contractor does not correct the failure within three days from receipt of notice, the Contracting Officer may—

(1) Terminate for default all or part of this contract; or

(2) Suspend work (wholly or partially) under the contract for ten days or any longer period considered necessary to allow correction of the failure.

(d) The suspension does not extend the life of this contract and shall not be considered sufficient reason for extending the delivery time.

(e) During the suspension period, the Government reserves the right to acquire similar supplies from other sources, on whatever terms and in whatever manner the Contracting Officer considers appropriate. The Contractor shall be liable to the Government for any excess costs for those similar supplies.

(f) If the Contractor does not correct the failure within the suspension period, the Contracting Officer may terminate the unexpired portion of this contract without allowing additional time for correction, notwithstanding paragraph (a)(2) of the Default (Fixed-Price Supply and Service) clause of this contract.

(End of clause)

Alternate I (DEC 1991). As prescribed in 217.7203(a)(3), add the following to paragraph (d) of the basic clause:

In a suspension, the quantity of supplies designated in the schedule as a minimum shall be reduced by an amount proportionate to the ratio between (1) the number of days the work is suspended; and (2) the number of days in the contract period. The quantity of supplies designated as maximum shall not be reduced.

252.217–7020 Examination and testing.

As prescribed in 217.7203(b)(1), use the following clause:

EXAMINATION AND TESTING (DEC 1991)

(a) The Government reserves the right to examine and test all products to be delivered under the contract. Examination and testing of dairy products shall be in accordance with the Veterinary/Medical Wholesomeness Assurance Program for Fresh and Cultured Dairy Products and Frozen Desserts (AR 40–70; NAVSUPINST 4355.6; AFR 161–46; and MCO 10110.44).

(b) Samples. (1) The Government shall select the samples. For purposes of this clause, the Contractor agrees that a lot consists of a day’s production of the type of product delivered, or intended to be delivered, under this contract.

(2) Samples selected at origin shall be furnished at the Contractor’s expense, and shall be considered representative of all the products delivered to the Government from the lot sampled.

(3) Samples selected at destination shall be furnished at Government expense, and shall be considered representative of all of that type product delivered to the Government on the date sampled.

(4) When samples are selected from containers of 1/2 gallon size or smaller, the entire contents of the container shall constitute the sample. When samples are selected from containers larger than 1/2 gallon, a 1/2 pint sample shall be taken for laboratory analysis.

(c) Deficiencies in amounts. The Contractor shall reimburse the Government for deficiencies (i.e., amounts less than required in this contract) in the amount of butterfat, milk solids non-fat, or total solids of any type of product as determined by chemical analysis. The amount of the reimbursement shall be determined in accordance with the Deficiency Adjustment clause of this contract. The Government shall not reimburse the Contractor for butterfat, milk solids non-fat, and total solids content in excess of the amount required by this contract.

(d) Deficiencies in products. (1) The Contracting Officer or representative shall notify the Contractor orally (with written confirmation) or in writing when two of the last four consecutive lots tested are nonconforming for the same specification requirements. The notice shall be in effect as long as two of the last four consecutive lots tested exceed the same limit of the specification. The Government will take additional samples between 3 and 14 days after the date of the notice.

(2) The Contracting Officer may suspend work under this contract for up to ten days when three out of the last five consecutive lots tested are nonconforming for the same specification requirement, or when any deficiency causes the production of a product which is considered to be a health hazard.
Department of Defense 252.217-7021

(e) Suspension. (1) During the suspension period, the Government reserves the right to acquire similar supplies from other sources, on whatever terms and in whatever manner the Contracting Officer considers appropriate. The Contractor shall be liable to the Government for any excess costs for those similar supplies.
(2) The Contractor shall use the suspension period to correct the deficiencies. The Contracting Officer shall notify the Government when corrective action is complete.
(b) The Contracting Officer shall lift the suspension only after the Government has verified the corrective action and notified the Contractor in writing.
(3) The suspension does not extend the life of this contract and shall not be considered sufficient reason for extending the delivery time.
(4) If the Contractor does not correct the failure within the suspension period, the Contracting Officer may terminate for default the unexpired portion of this contract without allowing additional time for correction, notwithstanding paragraph (a)(2) of the Default (Fixed-Price Supply and Service) clause of this contract.

(End of clause)

Alternate I (DEC 1991). As prescribed in 217.7203(b)(1), add the following to paragraph (d)(2) of the basic clause:
In a suspension, the quantity of supplies designated in the schedule as minimum shall be reduced by an amount proportionate to the ratio between (i) the number of days the work is suspended; and (ii) the number of days in the contract period. The quantity of supplies designated as maximum shall not be reduced.

252.217-7021 Deficiency adjustment.
As prescribed in 217.7203(b)(2), use the following clause:

DEFICIENCY ADJUSTMENT (DEC 1991)
(a) When the Contractor is required under the Examination and Testing clause of the contract to reimburse the Government for deficiencies in the amount of butterfat, milk solids non-fat, or total solids, reimbursement shall be determined by the following formula—
(1) Butterfat. Subtract the total pounds of butterfat delivered from the total pounds of butterfat required to be delivered, and multiply the remainder by the butterfat value. The butterfat value is 1.36 multiplied by the average Central States top "Wholesale Selling Price" of Grade A, 92 score butter during the monthly period for which the deficiency is computed, as reported in the Dairy Market News, published by the Department of Agriculture, Agricultural Marketing Service, Madison, Wisconsin.
(2) Milk solids nonfat. Subtract the total pounds of milk solids non-fat delivered from the total pounds of milk solids non-fat required to be delivered, and multiply the remainder by the milk solids non-fat value. The milk solids non-fat value is 1.45 multiplied by the average Central States top price for “Extra Grade, Non-fat Dry Milk, Spray (bags)” during the monthly period for which the deficiency is computed, as reported in the Dairy Market News.
(b) The Contractor shall furnish the tare weight and identifying documents, and furnish a copy to the Government inspector at destination. The tare weight of dispenser containers shall include all parts of the container delivered as a unit, including lids, tubes, and seals. If different types of containers with different tares are included in a single delivery, the Contractor shall furnish the tare weight and identifying characteristics of each type of container.
(c) The Government shall inspect a representative sample of the line item. If volume and net weight shortages are found, the Government will adjust the entire quantity of the line item delivered on the day the shortage is discovered. For the purpose of determining net weight, the following weight factors apply:

<table>
<thead>
<tr>
<th>Product</th>
<th>Weight factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chocolate flavored milk or drink</td>
<td>8.8 pounds/gallon</td>
</tr>
<tr>
<td>Milk whole fresh, buttermilk</td>
<td>8.6 pounds/gallon</td>
</tr>
<tr>
<td>fluid, milk whole fresh, cultured, and milk skim fresh</td>
<td>8.5 pounds/gallon</td>
</tr>
<tr>
<td>Fresh cream (18 percent butterfat or less), half and half fresh, and cream sour cultured</td>
<td>8.4 pounds/gallon</td>
</tr>
<tr>
<td>Fresh cream (more than 18 percent butterfat)</td>
<td>Weight on container</td>
</tr>
<tr>
<td>Cottage cheese, butter, and other non-frozen products</td>
<td></td>
</tr>
</tbody>
</table>
(f) Contractor reimbursement for deficient supplies does not prejudice the Government’s right to terminate for default or to pursue any other remedy under this contract or as provided by law.

(End of clause)

As prescribed in 217.7203(a)(4), use the following clause:

CODE DATING (DEC 1991)
(a) The Contractor may use a code to comply with the requirement stated in the schedule or specifications of this contract for showing a date on the labels of delivered items.
(b) Before using a code, the Contractor shall—
(1) Provide a written explanation to the Contracting Officer; and
(2) Obtain the Contracting Officer’s approval in writing.
(c) The Contractor shall also obtain the Contracting Officer’s written approval before making any changes in the code symbols, system, or explanation.

(End of clause)

252.217–7023 Marking.
As prescribed in 217.7203(a)(5), use the following clause:

MARKING (DEC 1991)
Commercial markings are acceptable, notwithstanding any specification references to MIL–STD–129.

(End of clause)

252.217–7024 Responsibility for containers and equipment.
As prescribed in 217.7203(a)(6), use the following clause:

RESPONSIBILITY FOR CONTAINERS AND EQUIPMENT (DEC 1991)
(a) The Contractor shall—
(1) Maintain all reusable containers and equipment in a sanitary condition and in a good state of repair and working order; and
(2) Remove all empty, reusable containers from Government premises at the time of each delivery, unless the Contracting Officer grants permission in writing for less frequent removal.

(End of clause)

252.217–7025 Containers and equipment.
As prescribed in 217.7203(b)(3), use the following clause:

CONTAINERS AND EQUIPMENT (DEC 1991)
(a) The Contractor shall ensure that dispenser containers and filling equipment used in the performance of this contract, and any Contractor-furnished refrigerated bulk milk dispenser cabinets, comply with MIL–STD–175, Minimum Sanitary Standards for the Equipment and Methods for Handling of Milk and Milk Products in Bulk Milk Dispensing Operations.
(b) The Contractor shall install, service, and maintain any Contractor-furnished bulk milk dispenser cabinets to the Contracting Officer’s satisfaction. The Contractor has sole responsibility for the supply, installation, maintenance, and removal of the cabinets, including labor and material costs, and for any damage to, or loss or destruction of, such cabinets.
(c) When the Contractor fails to furnish milk dispenser cabinets or milk dispenser containers as required in the schedule, or does not properly service, maintain, and repair such dispenser cabinets, so that milk cannot be dispensed as needed by the Government, the Contractor shall, for as long as such conditions exist, deliver a sufficient quantity of milk in half-pint containers to satisfy orders for milk dispenser containers. The price per gallon for milk dispenser containers shall apply.
(d) When any loss of contents of a dispenser container occurs (including loss due to contamination, spoilage, or leakage) as a result of functional failure of the dispenser cabinet or dispenser containers, the Contractor shall immediately replace the lost contents without cost to the Government, unless such functional failure was due to a general power failure at the Government installation.

(End of clause)

252.217–7026 Identification of sources of supply.
As prescribed in 217.7303, use the following provision:

IDENTIFICATION OF SOURCES OF SUPPLY (NOV 1995)
(a) The Government is required under 10 U.S.C. 2384 to obtain certain information on
the actual manufacturer or sources of supplies it acquires.

(b) The apparently successful Offeror agrees to complete and submit the following table before award:

<table>
<thead>
<tr>
<th>Line items</th>
<th>National stock No.</th>
<th>Commercial item (Y or N)</th>
<th>Source of supply</th>
<th>Actual mfg?</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
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<td></td>
<td>Company Address</td>
<td>Part No.</td>
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(1) List each deliverable item of supply and item of technical data.
(2) If there is no national stock number, list “none.”
(3) Use “Y” if the item is a commercial item; otherwise use “N.” If “Y” is listed, the Offeror need not complete the remaining columns in the table.
(4) For items of supply, list all sources. For technical data, list the source.
(5) For items of supply, list each source’s part number for the item.
(6) Use “Y” if the source of supply is the actual manufacturer; “N” if it is not; and “U” if unknown.

(End of provision)


As prescribed in 217.7406(b), use the following clause:

CONTRACT DEFINITIZATION (OCT 1998)

(a) All [insert specific type of contract action] is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the underfinitized contract action, (2) all clauses required by law on the date of execution of the definitive contract action, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a [insert type of proposal; e.g., fixed-price or cost-and-fee] proposal and cost or pricing data supporting its proposal.

(b) The schedule for definitizing this contract is as follows [insert target date for definitization of the contract action and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of the make-or-buy and subcontracting plans and cost or pricing data].

(c) If agreement on a definitive contract action to supersede this underfinitized contract action is not reached by the target date in paragraph (b) of this clause, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with subpart 15.4 and part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer’s determination of price or fee, the contract shall be governed by—

(i) All clauses required by the FAR on the date of execution of this underfinitized contract action for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer’s determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with paragraph (c)(1) of this clause, all clauses, terms, and conditions included in this underfinitized contract action shall continue in effect, except those that by their nature apply only to an underfinitized contract action.

(d) The definitive contract resulting from this underfinitized contract action will include a negotiated [insert “cost/price ceiling” or “firm-fixed price”) in no event to exceed [insert the not-to-exceed amount].

(End of clause)


252.217–7028 Over and above work.

As prescribed in 217.7702, use a clause substantially as follows:

OVER AND ABOVE WORK (DEC 1991)

(a) Definitions.
252.219–7000

As used in this clause—

(1) Over and above work means work discovered during the course of performing overhaul, maintenance, and repair efforts that
is—

(i) Within the general scope of the contract;

(ii) Not covered by the line item(s) for the basic work under the contract; and

(iii) Necessary in order to satisfactorily complete the contract.

(2) Work request means a document prepared by the Contractor which describes over and above work being proposed.

(b) The Contractor and Administrative Contracting Officer shall mutually agree to procedures for Government administration and Contractor performance of over and above work requests. If the parties cannot agree upon the procedures, the Administrative Contracting Officer has the unilateral right to direct the over and above work procedures to be followed. These procedures shall, as a minimum, cover—

(1) The format, content, and submission of work requests by the Contractor. Work requests shall contain data on the type of discrepancy disclosed, the specific location of the discrepancy, and the estimated labor hours and material required to correct the discrepancy. Data shall be sufficient to satisfy contract requirements and obtain the authorization of the Contracting Officer to perform the proposed work;

(2) Government review, verification, and authorization of the work; and

(3) Proposal pricing, submission, negotiation, and definitization.

(c) Upon discovery of the need for over and above work, the Contractor shall—

1. Promptly review the work request;

2. Verify that the proposed work is required and not covered under the basic contract line item(s);

3. Verify that the proposed corrective action is appropriate; and

4. Authorize over and above work as necessary.

(e) The Contractor shall promptly submit to the Contracting Officer, a proposal for the over and above work. The Government and Contractor will then negotiate a settlement for the over and above work. Contract modifications will be executed to definitize all over and above work.

(f) Failure to agree on the price of over and above work shall be a dispute within the meaning of the Disputes clause of this contract.
(2) Former protege firms that meet the criteria in Section 831(g)(4) of Pub. L. 101–510.

(f) The master plan approval referred to in paragraph (f) of the FAR 52.219–9 clause is approval by the Contractor’s cognizant contract administration activity.

(g) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, the Contractor 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.

(End of clause)


252.219–7004 Small, small disadvantaged and women-owned small business subcontracting plan (test program). As prescribed in 219.708(b)(1)(B), use the following clause:

SMALL, SMALL DISADVANTAGED AND WOMAN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (JUN 1997)

(a) Definition. Subcontract, as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(b) The Offeror’s comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the test program of Section 834 of Pub. L. 101–189, as amended, shall be included in and made a part of the resultant contract. Upon expulsion from the test program or expiration of the test program, the Contractor shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of Section 211 of Pub. L. 95–507.

(c) The Contractor shall submit Standard Form (SF) 295, Summary Subcontract Report, in accordance with the instructions on the form, except—

(1) One copy of the SF 295 and attachments shall be submitted to Director, Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (International and Commercial Programs), 9861 Defense Pentagon, Room 2A338, Washington, DC 20301–9861; and

(2) Item 14, Remarks, shall be completed to include semi-annual cumulative—

(i) Small business, small disadvantaged business, and women-owned small business goals; and

(ii) Small business and small disadvantaged business goals, actual accomplishments, and percentages for each of the two designated industry categories.

(d) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled “Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns,” or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)


252.219–7005—252.219–7008 [Reserved]

252.219–7009 Section 8(a) direct award.

As prescribed in 219.811–3(1), use the following clause:

SECTION 8(a) DIRECT AWARD (MAR 2002)

(a) This contract is issued as a direct award between the contracting office and the 8(a) Contractor pursuant to the Partnership Agreement dated February 1, 2002, between the Small Business Administration (SBA) and the Department of Defense. Accordingly, the SBA, even if not identified in Section A of this contract, is the prime contractor and retains responsibility for 8(a) certification, for 8(a) eligibility determinations and related issues, and for providing counseling and assistance to the 8(a) Contractor under the 8(a) Program. The cognizant SBA district office is:

[To be completed by the Contracting Officer at the time of award]

(b) The contracting office is responsible for administering the contract and for taking any action on behalf of the Government under the terms and conditions of the contract; provided that the contracting office shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting office also shall coordinate with the SBA prior to processing any novation agreement. The contracting office may assign contract administration
functions to a contract administration office.

(c) The 8(a) Contractor agrees that—
(1) It will notify the Contracting Officer, simultaneous with its notification to the SBA (as required by SBA's 8(a) regulations at 13 CFR 124.308), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with Section 407 of Pub. L. 100–656, transfer of ownership or control shall result in termination of the contract for convenience, unless the SBA waives the requirement for termination prior to the actual relinquishing of ownership and control; and
(2) It will not subcontract the performance of any of the requirements of this contract without the prior written approval of the SBA and the Contracting Officer.

(End of clause)


252.219–7010 Alternate A.

ALTERNATE A (JUN 1998)

As prescribed in 219.811–3(2), substitute the following paragraph (c) for paragraph (c) of the clause at FAR 52.219–18:

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

[63 FR 33588, June 19, 1998]

252.219–7011 Notification to delay performance.

As prescribed in 219.811–3(3), use the following clause:

NOTIFICATION TO DELAY PERFORMANCE (JUN 1998)

The Contractor shall not begin performance under this purchase order until 2 working days have passed from the date of its receipt. Unless the Contractor receives notification from the Small Business Administration that it is ineligible for this 8(a) award, or otherwise receives instructions from the Contracting Officer, performance under this purchase order may begin on the third working day following receipt of the purchase order. If a determination of ineligibility is issued within the 2-day period, the purchase order shall be considered canceled.

(End of clause)

[63 FR 33588, June 19, 1998]

252.222–7000 Restrictions on employment of personnel.

As prescribed in 222.7004, use the following clause:

RESTRICTIONS ON EMPLOYMENT OF PERSONNEL (MAR 2000)

(a) The Contractor shall employ, for the purpose of performing that portion of the contract work in , individuals who are residents thereof 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.
(b) The Contractor shall insert the substance of this clause, including this paragraph (b), in each subcontract awarded under this contract.

(End of clause)

[65 FR 14403, Mar. 16, 2000]

252.222–7001 Right of first refusal of employment—Closure of military installations.

As prescribed in 222.7102, use the following clause:

RIGHT OF FIRST REFUSAL OF EMPLOYMENT—CLOSURE OF MILITARY INSTALLATIONS (APR 1992)

(a) The Contractor shall give Government employees, who have been or will be adversely affected by the closure of the military installation where this contract will be performed, the right of first refusal for employment openings under the contract. This right applies to positions for which the employee is qualified, if consistent with post-Government employment conflict of interest standards.
(b) Government personnel seeking preference under this clause shall provide the Contractor with evidence from the Government personnel office.

(End of clause)

[57 FR 52594, Nov. 4, 1992, as amended at 58 FR 28472, May 13, 1993]

252.222–7002 Compliance with local labor laws (overseas).

As prescribed in 222.7201(a), use the following clause:

COMPLIANCE WITH LOCAL LABOR LAWS (OVERSEAS) (JUNE 1997)

(a) The Contractor shall comply with all—
(1) Local laws, regulations, and labor union agreements governing work hours; and
(2) Labor regulations including collective bargaining agreements, workers’ compensation, working conditions, fringe benefits, and labor standards or labor contract matters.

(b) The Contractor indemnifies and holds harmless the United States Government from all claims arising out of the requirements of this clause. This indemnity includes the Contractor’s obligation to handle and settle, without cost to the United States Government, any claims or litigation concerning allegations that the Contractor or the United States Government, or both, have not fully complied with local labor laws or regulations relating to the performance of work required by this contract.

(c) Notwithstanding paragraph (b) of this clause, consistent with paragraphs 31.205-15(a) and 31.205-45(d) of the Federal Acquisition Regulation, the Contractor will be reimbursed for the costs of all fines, penalties, and reasonable litigation expenses incurred as a result of compliance with specific contract terms and conditions or written instructions from the Contracting officer.

(End of clause)


252.222–7003 Permit from Italian Inspectorate of Labor.

As prescribed in 222.7201(b), use the following clause:

Permit from Italian Inspectorate of Labor (JUN 1997)

Prior to the date set for commencement of work and services under this contract, the Contractor shall obtain the prescribed permit from the Inspectorate of Labor having jurisdiction over the work site, in accordance with Article 5g of Italian Law Number 1369, dated October 23, 1960. The Contractor shall ensure that a copy of the permit is available at all reasonable times for inspection by the Contracting Officer or an authorized representative. Failure to obtain such permit may result in termination of the contract under the clause of the contract entitled “Default.”

(End of clause)


252.222–7004 Compliance with Spanish social security laws and regulations.

As prescribed in 222.7201(c), use the following clause:

Compliance with Spanish Social Security Laws and Regulations (JUN 1997)

(a) The Contractor shall comply with all Spanish Government social security laws and regulations. Within 30 calendar days after the start of contract performance, the Contractor shall ensure that copies of the documents identified in paragraph (a)(1) through (a)(5) of this clause are available at all reasonable times for inspection by the Contracting Officer or an authorized representative. The Contractor shall retain the records in accordance with the Audit and Records clause of this contract.

(1) TC1—Certificate of Social Security Payments;
(2) TC2—List of Employees;
(3) TC21—Certificate of Social Security Payments for Trainees;
(4) Nominal (pay statements) signed by both the employee and the Contractor; and
(5) Informa de Situacion de Empresa (Report of the Condition of the Enterprise) from the Ministerio de Trabajo y S.S., Tesoreria General de la Seguridad Social (annotated with the pertinent contract number(s) next to the employee’s name).

(b) All TC1’s, TC2’s, and TC21’s shall contain a representation that they have been paid by either the Social Security Administration office or the Contractor’s bank or savings institution.

(End of clause)

[64 FR 52673, Sept. 30, 1999]
252.223–7000

252.223–7000 [Reserved]

252.223–7001 Hazard warning labels.

As prescribed in 223.303, use the following clause:

HAZARD WARNING LABELS (DEC 1991)

(a) “Hazardous material,” as used in this clause, is defined in the Hazardous Material Identification and Material Safety Data clause of this contract.

(b) The Contractor shall label the item package (unit container) of any hazardous material to be delivered under this contract in accordance with the Hazard Communication Standard (29 CFR 1910.1200 et seq). The Standard requires that the hazard warning label conform to the requirements of the standard unless the material is otherwise subject to the labelling requirements of one of the following statutes:

(1) Federal Insecticide, Fungicide and Rodenticide Act;
(2) Federal Food, Drug and Cosmetics Act;
(3) Consumer Product Safety Act;
(4) Federal Hazardous Substances Act; or
(5) Federal Alcohol Administration Act.

(c) The Offeror shall list which hazardous material listed in the Hazardous Material Identification and Material Safety Data clause of this contract will be labelled in accordance with one of the Acts in paragraphs (b) (1) through (5) of this clause instead of the Hazard Communication Standard. Any hazardous material not listed will be interpreted to mean that a label is required in accordance with the Hazard Communication Standard.

Material (if none, insert “none.”) Act

(d) The apparently successful Offeror agrees to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of this clause. The Offeror shall submit the label with the Material Safety Data Sheet being furnished under the Hazardous Material Identification and Material Safety Data clause of this contract.

(e) The Contractor shall also comply with MIL–STD–129, Marking for Shipment and Storage (including revisions adopted during the term of this contract).

(End of clause)

252.223–7002 Safety precautions for ammunition and explosives.

As prescribed in 223.370–5, use the following clause:

SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (MAY 1994)

(a) Definition. Ammunition and explosives, as used in this clause—
(1) Means liquid and solid propellants and explosives, pyrotechnics, incendiaries and smokes in the following forms:
(i) Bulk,
(ii) Ammunition;
(iii) Rockets;
(iv) Missiles;
(v) Warheads;
(vi) Devices; and
(vii) Components of (i) through (vi), except for wholly inert items.
(2) This definition does not include the following, unless the Contractor is using or incorporating these materials for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition or explosive end item, or of a weapon system—
(i) Inert components containing no explosives, propellants, or pyrotechnics;
(ii) Flammable liquids;
(iii) Acids;
(iv) Oxidizers;
(v) Powdered metals; or
(vi) Other materials having fire or explosive characteristics.
(b) Safety requirements. (1) The Contractor shall comply with the requirements of the DoD Contractors’ Safety Manual for Ammunition and Explosives, DoD 4145.26–M, hereafter referred to as “the manual,” in effect on the date of the solicitation for this contract. The Contractor shall also comply with any other additional requirements included in the schedule of this contract.
(2) The Contractor shall allow the Government access to the Contractor’s facilities, personnel, and safety program documentation. The Contractor shall allow authorized Government representatives to evaluate safety programs, implementation, and facilities.
(c) Noncompliance with the manual. (1) If the Contracting Officer notifies the Contractor of any noncompliance with the manual or schedule provisions, the Contractor shall take immediate steps to correct the noncompliance. The Contractor is not entitled to reimbursement of costs incurred to correct noncompliances unless such reimbursement is specified elsewhere in the contract.
(2) The Contractor has 30 days from the date of notification by the Contracting Officer to correct the noncompliance and inform the Contracting Officer of the actions taken. The Contracting Officer may direct a different time period for the correction of noncompliances.
(3) If the Contractor refuses or fails to correct noncompliances within the time period specified by the Contracting Officer, the
Government has the right to direct the Contractor to cease performance on all or part of this contract. The Contractor shall not resume performance until the Contracting Officer is satisfied that the corrective action was effective and the Contracting Officer so informs the Contractor.

(4) The Contracting Officer may remove Government personnel at any time the Contractor is in noncompliance with any safety requirement of this clause.

(5) If the direction to cease work or the removal of Government personnel results in increased costs to the Contractor, the Contractor shall not be entitled to an adjustment in the contract price or a change in the delivery or performance schedule unless the Contracting Officer later determines that the Contractor had in fact compiled with the requirements. If the Contractor is entitled to an equitable adjustment, it shall be made in accordance with the Changes clause of this contract.

(6) Mishaps. If a mishap involving ammunition or explosives occurs, the Contractor shall—

(1) Notify the Contracting Officer immediately;

(2) Conduct an investigation in accordance with other provisions of this contract or as required by the Contracting Officer; and

(3) Submit a written report to the Contracting Officer.

(e) Contractor responsibility for safety. (1) Nothing in this clause, nor any Government action or failure to act in surveillance of this contract, shall relieve the Contractor of its responsibility for the safety of—

(i) The Contractor’s personnel and property;

(ii) The Government’s personnel and property; or

(iii) The general public.

(2) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, State, and local laws, ordinances, codes, and regulations (including those requiring the obtaining of licenses and permits) in connection with the performance of this contract.

(f) Contractor responsibility for contract performance. (1) Neither the number or frequency of inspections performed by the Government, nor the degree of surveillance exercised by the Government, relieve the Contractor of its responsibility for contract performance.

(2) If the Government acts or fails to act in surveillance or enforcement of the safety requirements of this contract, this does not impose or add to any liability of the Government.

(g) Subcontractors. (1) The Contractor shall insert this clause, including this paragraph (g), in every subcontract that involves ammunition or explosives.

(1) The clause shall include a provision allowing authorized Government safety representatives to evaluate subcontractor safety programs, implementation, and facilities as the Government determines necessary.

(ii) NOTE: The Government Contracting Officer or authorized representative shall notify the prime Contractor of all findings concerning subcontractor safety and compliance with the manual. The Contracting Officer or authorized representative may furnish copies to the subcontractor. The Contractor in turn shall communicate directly with the subcontractor, substituting its name for references to “the Government”. The Contractor and higher tier subcontractors shall also include provisions to allow direction to cease performance of the subcontracts if a serious uncorrected or recurring safety deficiency potentially causes an imminent hazard to DoD personnel, property, or contract performance.

(2) The Contractor agrees to ensure that the subcontractor complies with all contract safety requirements. The Contractor will determine the best method for verifying the adequacy of the subcontractor’s compliance.

(3) The Contractor shall ensure that the subcontractor understands and agrees to the Government’s right to access to the subcontractor’s facilities, personnel, and safety program documentation to perform safety surveys. The Government performs these safety surveys of subcontractor facilities solely to prevent the occurrence of any mishap which would endanger the safety of DoD personnel or otherwise adversely impact upon the Government’s contractual interests.

(4) The Contractor shall notify the Contracting Officer or authorized representative before issuing any subcontract when it involves ammunition or explosives. If the proposed subcontract represents a change in the place of performance, the Contractor shall request approval for such change in accordance with the clause of this contract entitled ‘‘Change in Place of Performance—Ammunition and Explosives’’.

(End of clause)
CHANGE IN PLACE OF PERFORMANCE—AMMUNITION AND EXPLOSIVES (DEC 1991)

(a) The Offeror shall identify, in the “Place of Performance” provision of this solicitation, the place of performance of all ammunition and explosives work covered by the Safety Precautions for Ammunition and Explosives clause of this solicitation. Failure to furnish this information with the offer may result in rejection of the offer.

(b) The Offeror agrees not to change the place of performance of any portion of the offer covered by the Safety Precautions for Ammunition and Explosives clause contained in this solicitation after the date set for receipt of offers without the written approval of the Contracting Officer. The Contracting Officer shall grant approval only if there is enough time for the Government to perform the necessary safety reviews on the new proposed place of performance.

(c) If a contract results from this offer, the Contractor agrees not to change any place of performance previously cited without the advance written approval of the Contracting Officer.

(End of clause)

252.223-7004 Drug-free work force.

As prescribed in 223.570-4, use the following clause:

DRUG-FREE WORK FORCE (SEP 1988)

(a) Definitions. (1) Employee in a sensitive position, as used in this clause, means an employee who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) Illegal drugs, as used in this clause, means controlled substances included in Schedules I and II, as defined by section 802(6) of title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that title. The term “illegal drugs” does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objectives of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources.

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee’s duties, the efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing—

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employee has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of subpart B of the “Mandatory Guidelines for Federal Workplace Drug Testing Programs” (53 FR 11980 (April 11, 1988)), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such times as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing program shall not apply to the extent they are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees that those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.
252.223–7006 Prohibition on storage and disposal of toxic and hazardous materials.

As prescribed in 223.7103(a), use the following clause:

PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 1993)

(a) Definitions.

As used in this clause—

(1) Storage means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.

(2) Toxic or hazardous materials means:


(ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or

(iii) Materials otherwise identified by the Secretary of Defense as specified in DoD regulations.

(b) In accordance with 10 U.S.C. 2692, the Contractor is prohibited from storing or disposing of non-DoD-owned toxic or hazardous materials on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense or his designee.

Alternate I (NOV 1995). As prescribed in 223.7103(b), add the following paragraphs (c) and (d) to the basic clause:

(c) With respect to treatment or disposal authorized pursuant to 10 U.S.C. 2692(b)(9), and notwithstanding any other provision of the contract, the Contractor assumes all financial and environmental responsibility and liability resulting from any treatment or disposal of non-DoD-owned toxic or hazardous materials on a military installation. The Contractor shall indemnify, defend, and hold the Government harmless for all costs, liability, or penalties resulting from the Contractor’s treatment or disposal of non-DoD-owned toxic or hazardous materials on a military installation.

(d) The Contractor shall include this clause, including this paragraph (d), in each subcontract which requires, may require, or permits a subcontractor to treat or dispose of non-DoD-owned toxic or hazardous materials as defined in this clause.

252.223–7007 Safeguarding sensitive conventional arms, ammunition, and explosives.

As prescribed in 223.7203, use the following clause:

SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES (SEP 1999)

(a) Definition.

“Arms, ammunition, and explosives (AA&E),” as used in this clause, means those items within the scope (chapter 1, paragraph B) of DoD 5100.76-M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

(b) The requirements of DoD 5100.76-M apply to the following items of AA&E being developed, produced, manufactured, or purchased for the Government, or provided to the Contractor as Government-furnished property under this contract:

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<th>National stock number</th>
<th>Sensitivity category</th>
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(c) The Contractor shall comply with the requirements of DoD 5100.76-M, as specified in the statement of work. The edition of DoD 5100.76-M in effect on the date of issuance of the solicitation for this contract shall apply.

(d) The Contractor shall allow representatives of the Defense Security Service (DSS), and representatives of other appropriate offices of the Government, access at all reasonable times into its facilities and those of its subcontractors, for the purpose of performing surveys, inspections, and investigations necessary to review compliance with the physical security standards applicable to this contract.

(e) The Contractor shall notify the cognizant DSS field office of any subcontract involving AA&E within 10 days after award of the subcontract.

(f) The Contractor shall ensure that the requirements of this clause are included in all subcontracts, at every tier—

(1) For the development, production, manufacture, or purchase of AA&E; or

(2) When AA&E will be provided to the subcontractor as Government-furnished property.

(g) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, state, and
local laws, ordinances, codes, and regulations (including requirements for obtaining licenses and permits) in connection with the performance of this contract.

(End of clause)

[61 FR 7750, Feb. 29, 1996, as amended at 64 FR 51077, Sept. 21, 1999]


As prescribed in 225.1101(1), use the following provision:

BUY AMERICAN ACT—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (SEP 1999)

(a) Definitions. Domestic end product, qualifying country, qualifying country end product, and qualifying country end product have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

(b) Evaluation. Offers will be evaluated by giving preference to domestic end products and qualifying country end products over nonqualifying country end products.

(c) Certifications.

(1) The Offeror certifies that—
   (i) Each end product, except those listed in paragraphs (c) (2) or (3) of this provision, is a domestic end product; and
   (ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror certifies that the following end products are qualifying country end products:

<table>
<thead>
<tr>
<th>Qualifying Country End Products</th>
</tr>
</thead>
<tbody>
<tr>
<td>Line item No.</td>
</tr>
<tr>
<td>----------------</td>
</tr>
<tr>
<td>(List only qualifying country end products.)</td>
</tr>
</tbody>
</table>

(3) The Offeror certifies that the following end products are nonqualifying country end products:

<table>
<thead>
<tr>
<th>Nonqualifying Country End Products</th>
</tr>
</thead>
<tbody>
<tr>
<td>Line item No.</td>
</tr>
<tr>
<td>----------------</td>
</tr>
</tbody>
</table>

(End of provision)

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(b) This clause implements the Buy American Act (41 U.S.C. Section 10a–d) in a manner that will encourage a favorable international balance of payments by providing a preference to domestic end products over other end products, except for end products which are qualifying country end products.

(c) The Contractor agrees that it will deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act—Balance of Payments Program Certificate provision of the solicitation. An offer certifying that a qualifying country end product will be supplied requires the Contractor to deliver a qualifying country end product or a domestic end product.

(d) The offered price of qualifying country end products should not include custom fees or duty. The offered price of nonqualifying country end products, and products manufactured in the United States that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, when the Buy American Act is applicable, each nonqualifying country offer is adjusted for the purpose of evaluation by adding 50 percent of the offer, inclusive of duty.

(End of clause)

§ 252.225–7003 Information for duty-free entry evaluation.

As prescribed in 225.1101(4), use the following provision:

INFORMATION FOR DUTY-FREE ENTRY EVALUATION (MAR 1998)

(a) Does the offeror propose to furnish—

1) A domestic end product with nonqualifying country components for which the offeror requests duty-free entry; or

2) A foreign end product consisting of end items, components, or material of foreign origin other than those for which duty-free entry is to be accorded pursuant to the Duty-Free Entry—Qualifying Country Supplies (End Products and Components) clause or, if applicable, the Duty-Free Entry—Eligible End Products clause of this solicitation?

Yes ( ) No ( )

(b) If the answer in paragraph (a) is yes, answer the following questions:

1) Are such foreign supplies now in the United States?

Yes ( ) No ( )

2) Has the duty on such foreign supplies been paid?

Yes ( ) No ( )

3) If the answer to paragraph (b)(2) is no, what amount is included in the offer to cover such duty? $ .

(c) If the duty has not been paid, the Government may elect to make award on a duty-free basis. If so, the offered price will be reduced in the contract award by the amount specified in paragraph (b)(3). The Offeror agrees to identify, at the request of the Contracting Officer, the foreign supplies which are subject to duty-free entry.

(End of provision)

Alternate I (MAR 1998). As prescribed in 225.1101(4), substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) Does the offeror propose to furnish a U.S. made end product with nonqualifying country components for which the offeror requests duty-free entry?

Yes ( ) No ( )

§ 252.225–7004 [Reserved]


As prescribed in 225.1103(1), use the following clause:
IDENTIFICATION OF EXPENDITURES IN THE UNITED STATES (APR 2002)

(a) This clause applies only if the Contractor is—

(i) A concern incorporated in the United States (including a subsidiary that is incorporated in the United States, even if the parent corporation is not incorporated in the United States); or

(ii) An unincorporated concern having its principal place of business in the United States.

(b) On each invoice, voucher, or other request for payment under this contract, the Contractor shall identify that part of the requested payment that represents estimated expenditures in the United States. The identification—

(i) May be expressed either as dollar amounts or as percentages of the total amount of the request for payment;

(ii) Should be based on reasonable estimates; and

(iii) Shall state the full amount of the payment requested, subdivided into the following categories:

(A) U.S. products—expenditures for material and equipment manufactured or produced in the United States, including end products, components, or construction material, but excluding transportation;

(B) U.S. services—expenditures for services performed in the United States, including all charges for overhead, other indirect costs, and profit under construction or service contracts;

(C) Transportation on U.S. carriers—expenditures for transportation furnished by U.S. flag, ocean, surface, and air carriers; and

(D) Expenditures not identified under paragraphs (b)(3)(i) through (iii) of this clause.

(c) Nothing in this clause requires the establishment or maintenance of detailed accounting records or gives the U.S. Government any right to audit the Contractor’s books or records.

(End of clause)

[67 FR 20695, Apr. 26, 2002]


As prescribed in 225.1101(5), use the following provision:

BUY AMERICAN ACT—TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (MAR 1998)

(a) Definitions. Caribbean Basin country end product, designated country end product, domestic end product NAFTA country end product, nondesignated country end product, qualifying country end product, and U.S. made end product have the meanings given in the Buy American Act—Trade Agreements—Balance of Payments Program clause of this solicitation.

(b) Evaluation. Offers will be evaluated in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement. Offers of foreign end products that are not U.S. made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end products will not be considered for award, unless the Contracting Officer determines that there are no offers of such end products; or the offers of such end products are insufficient to fulfill the requirements; or a national interest exception to the Trade Agreements Act is granted.

(c) Certifications. (1) The Offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror must identify all end products that are not domestic end products.

(i) The Offeror certifies that the following supplies qualify as "U.S. made end products" but do not meet the definition of "domestic end product":

(End of clause)
(vi) The following supplies are other non-designated country end products.
(insert line item number)

(insert country of origin)

(End of provision)


As prescribed in 225.1101(6), use the following clause:

BUY AMERICAN ACT—TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM (SEP 2001)

(a) Definitions. As used in this clause—

(1) Caribbean Basin country means—

Antigua and Barbuda
Aruba
Bahamas
Barbados
Belize
British Virgin Islands
Costa Rica
Dominica
El Salvador
Grenada
Guatemala
Guatemala
Guyana
Haiti
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
St. Kitts-Nevis
St. Lucia
St. Vincent and the Grenadines
Trinidad and Tobago

(2) Caribbean Basin country end product—

(i) Means an article that—

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself; and

(ii) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of—

(A) Textiles, apparel articles, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, and handloomed, handmade, or folklore articles that are not granted duty-free status in the Harmonized Tariff Schedule of the United States (HTSUS);

(B) Tuna, prepared or preserved in any manner in airtight containers; and

(C) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the HTSUS column 2 rates of duty (HTSUS General Note 3(b)) apply.

(3) Components means those articles, materials, and supplies directly incorporated into end products.

(4) Designated country means—

Aruba
Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Canada
Cape Verde
Central African Republic
Chad
Comoros
Denmark
Djibouti
Equatorial Guinea
Finland
France
Gambia
Germany
Greece
Guinea
Guinea-Bissau
Haiti
Hong Kong
Iceland
Ireland
Israel
Italy
Japan
Kiribati
Lesotho
Liechtenstein
Luxembourg
Malawi
Maldives
Mali
Mozambique
Nepal

427
mines would be inconsistent with the public
quantities and of a satisfactory quality; or
sufficient and reasonably available commercial
or manufactured in the United States in suf-
fer of those incidental services does not exceed the
value of the product itself.
value of the end product includes services
 incidental to its supply, provided that the value of
those incidental services does not exceed the
value of the product itself.

(5) Designated country end product means an
article that—
(i) Is wholly the growth, product, or manu-
facture of the designated country; or
(ii) In the case of an article that consists
in whole or in part of materials from another
country or instrumentality, has been sub-
stantially transformed in a designated coun-
try into a new and different article of com-
merce with a name, character, or use dis-
tinct from that of the article or articles from
which it was so transformed. The term refers
to a product offered for purchase under a
supply contract, but for purposes of calculat-
ing the value of the end product includes services
(except transportation services) incidental to its supply, provided that the value of
those incidental services does not exceed the
value of the product itself.

(6) Domestic end product means—
(i) An unmanufactured end product that
has been mined or produced in the United
States; or
(ii) An end product manufactured in the
United States if the cost of its qualifying
country components and its components
that are mined, produced, or manufactured
in the United States exceeds 50 percent of
the cost of all its components. The cost of
components shall include transportation
costs to the place of incorporation into the
end product and U.S. duty (whether or not a
duty-free entry certification may be issued).
A component shall be considered to have
been mined, produced, or manufactured in
the United States (regardless of its source in
fact) if the end product in which it is incor-
porated is manufactured in the United
States and the component is of a class or
kind—
(A) Determined to be not mined, produced,
or manufactured in the United States in suf-
ficient and reasonably available commercial
quantities and of a satisfactory quality; or
(B) That the Secretary concerned deter-
mines would be inconsistent with the public
interest to apply the restrictions of the Buy
American Act.

(7) End product means those articles, mate-
rials, and supplies to be acquired for public
use under the contract. For this contract,
the end products are the line items to be de-
Hailed to the Government (including sup-
plies to be acquired by the Government for
public use in connection with service con-
tracts, but excluding installation and other
services to be performed after delivery).

(8) NAFTA country end product means an ar-
ticle that—
(i) Is wholly the growth, product, or manu-
facture of the NAFTA country; or
(ii) In the case of an article that consists
in whole or in part of materials from another
country or instrumentality, has been sub-
stantially transformed in a NAFTA country
into a new and different article of commerce
with a name, character, or use distinct from
that of the article or articles from which it
was so transformed. The term refers to a
product offered for purchase under a supply
contract, but for purposes of calculating the
value of the end product includes services
(except transportation services) incidental
to its supply, provided that the value of
those incidental services does not exceed the
value of the product itself.

(9) Nondesignated country end product means
any end product that is not a U.S. made end
product or a designated country end product.

(10) North American Free Trade Agreement
(NAFTA) country means Canada or Mexico.

(11) Qualifying country means any country
set forth in subsection 225.872 (NAFTA) country
Supplement.

(12) Qualifying country component means an
item mined, produced, or manufactured in a
qualifying country.

(13) Qualifying country end product means—
(i) An unmanufactured end product mined
or produced in a qualifying country; or
(ii) An end product manufactured in a
qualifying country if the cost of the compo-
nents mined, produced, or manufactured
in the qualifying country and its components
mined, produced or manufactured in the
United States exceeds 50 percent of the cost
of all its components.

(14) United States means the United States,
its possessions, Puerto Rico, and any other
place subject to its jurisdiction, but does not
include leased bases or trust territories.

(15) U.S. made end product means an article
that—
(i) Is wholly the growth, product, or manu-
facture of the United States; or
(ii) In the case of an article that consists
in whole or in part of materials from another
country or instrumentality, has been sub-
stantially transformed in the United
States into a new and different article of commerce
with a name, character, or use distinct from

Netherlands
Niger
Norway
Portugal
Republic of Korea
Rwanda
Sao Tome and Principe
Sierra Leone
Singapore
Somalia
Spain
Sweden
Switzerland
Tanzania U.R.
Togo
Tuvalu
Uganda
United Kingdom
Vanuatu
Western Samoa
Yemen

Bozor
that of the article or articles from which it was so transformed.


(c)(1) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specified delivery of U.S. made, qualifying country, designated country, Caribbean Basin country, NAFTA country, or other nondesignated country end products in the Buy American Act—Trade Agreements—Balance of Payments Program Certificate provision of the solicitation.

(2) The Contractor may not supply a non-designated country end product unless—

(i) It is a qualifying country end product, a Caribbean Basin country end product, or a NAFTA country end product;

(ii) The Contracting Officer has determined that offers of U.S. made end products or qualifying, designated, NAFTA, or Caribbean Basin country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government’s requirements; or

(iii) A national interest waiver has been granted under section 302 of the Trade Agreements Act of 1979.

(d) The offered price of qualifying country end products and the offered price of designated country end products, NAFTA country end products, and Caribbean Basin country end products, for line items subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of end products listed in paragraphs (c)(2)(vi) of the Buy American Act—Trade Agreements—Balance of Payments Program Certificate provision of the solicitation, or the offered price of U.S. made end products that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, each offer of a U.S. made end product that does not meet the definition of “domestic end product” is adjusted for the purpose of evaluation by adding 50 percent of the offered price, inclusive of duty.

(e) The HTSUS is available on the Internet at http://www.customs.us Treasure.gov/impospex/t http://www.customs.us teen.gov/impospex.htm. The following sections of the HTSUS provide information regarding duty-free status of articles specified in paragraph (a)(2)(i)(A) of this clause.

(1) General Note 3(c), Products Eligible for Special Tariff Treatment.


(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).


(End of clause)

252.225–7008 Supplies to be accorded duty-free entry.

As prescribed in 225.1101(7), use the following clause:

SUPPLIES TO BE ACCORDED DUTY-FREE ENTRY

(MAR 1998)

In accordance with paragraph (b) of the Duty-Free Entry clause of this contract, in addition to duty-free entry for all qualifying country supplies (end products and components) and all eligible end products subject to applicable trade agreements (if this contract contains the Buy American Act—Trade Agreements—Balance of Payments Program clause or the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause), the following foreign end products that are neither qualifying country end products nor eligible end products under a trade agreement, and the following nonqualifying country components, are accorded duty-free entry.

(End of clause)

252.225–7009 Duty-free entry—Qualifying country supplies (end products and components).

As prescribed in 225.1101(8), use the following clause:

DUTY-FREE ENTRY—QUALIFYING COUNTRY SUPPLIES (END PRODUCTS AND COMPONENTS)

(AUG 2000)

(a) Definitions. Qualifying country and qualifying country end products have the meaning given in the Buy American Act and Balance of Payments Program clause, Buy American Act—Trade Agreements—Balance of Payments Program clause, Buy American Act—
North American Free Trade Agreement Implementation Act—Balance of Payments Program clause, or Trade Agreements clause of this contract.

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve supplies to be accorded duty-free entry whether placed—

(1) Directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, or unless supplies were imported into the United States before the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor, before the date of the sub-contract, no amount is or will be included in the contract price for duty for—

(1) End items that are qualifying country end products; or

(2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in the end items to be delivered under this contract, provided that the end items are manufactured in the United States or in a qualifying country.

(d) The Contractor warrants that—

(1) All qualifying country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract; and

(2) The Contractor will pay duty to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use, other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(e) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate to obtain the duty-free entry of qualifying country supplies for which the shipping documents bear the notation specified in paragraph (f) of this clause, except as the Contractor may otherwise agree,

(f) The Government shall be accorded duty-free entry and supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(g) The contractor agrees—

(i) To prepare (if this contract is placed directly with a foreign supplier), or to instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(ii) To consign the shipment as specified in paragraph (f) of this clause; and

(iii) To mark the exterior of all packages as follows:
Department of Defense

252.225–7010

DUTY-FREE ENTRY—ADDITIONAL PROVISIONS

As prescribed in 225.1101(9), use the following clause:

DUTY-FREE ENTRY—ADDITIONAL PROVISIONS

(AUG 2000)

(a) The requirements of this clause supplement the Duty-Free Entry clause of this contract.

(b) The Contractor shall send the notification required by paragraph (b)(1) of the Duty-Free Entry clause of this contract to the Contracting Officer administering this contract.

(c) In addition to any data required by paragraph (b)(1) of the Duty-Free Entry clause, the Contractor shall furnish the following for all foreign supplies to be imported pursuant to paragraph (a) or (b) of the Duty-Free Entry clause. The Contractor shall furnish this information to the Contracting Officer administering the prime contract immediately upon award of any contract or subcontract involving supplies to be accorded duty-free entry.

(1) Prime contractor’s name, address, and CAGE code;

(2) Prime contract number plus delivery order number, if applicable;

(3) Total dollar value of the prime contract or delivery order;

(4) Expiration date of the prime contract or delivery order;

(5) Foreign supplier’s name and address;

(6) Number of the subcontract/purchase order for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

(8) Expiration date of the subcontract for foreign supplies;

(9) List of items purchased;

(10) An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage), are diverted to non-governmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer;

(11) The qualifying country; and

(12) The scheduled delivery date(s).

(k) The Contractor agrees to insert the substance of this clause, including this paragraph (k) in all subcontracts for supplies.

(End of clause)
(10) An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage), are diverted to non-governmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(d) The Contractor agrees to incorporate the substance of this clause, including this paragraph (d), in any subcontract (including purchase orders) in accordance with paragraph (f) of the Duty-Free Entry clause of this contract. The Contractor agrees that the name and address of the Contracting Officer administering the prime contract (name and address of the contract administration office cognizant of the prime contract and its activity address number (appendix G of the Defense FAR Supplement)) and the information required by paragraphs (c)(1), (2), and (3) of this clause will be included in applicable subcontracts.

(e) To properly complete the shipping documentation required by paragraph (f) of the Duty-Free Entry clause, the Contractor shall insert Defense Contract Management (DCM) New York, ATTN: Customs Team, DCM95-361, 267 New York Avenue, Building 120, Staten Island, New York 10305–5013, as the cognizant contract administration office (for paragraph (f) only) in those cases when the shipment is consigned directly to a military installation. When the shipment will be consigned to a location other than a military installation, e.g., a domestic contractor’s plant, change the shipping document notation required by paragraph (f) of the clause to insert the name and address of the Contractor, agent or broker that will prepare the customs documentation for execution of the Duty-Free Entry certificates. In either case, the shipping documents will contain the following items in addition to those required by paragraph (f) of the Duty-Free Entry clause:

(1) Delivery order number on the Government prime contract, if applicable;
(2) Number of the subcontract/purchase order for foreign supplies, if applicable;
(3) Activity address number of the contract administration office actually administering the prime contract, e.g., for DCM Dayton, S3695A.

(i) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry into the United States, its possessions, or Puerto Rico of foreign supplies in connection with DoD contracts. The Contractor shall submit the completed customs forms to the District Director of Customs with a copy to DCM New York for execution of any required duty-free entry certificates. For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items which are eligible for duty-free entry under the provisions of the Duty-Free Entry clause. Shipments consigned directly to a military installation will be released in accordance with §§10.101 and 10.102 of the U.S. Customs regulations.

(g) The Contractor shall ensure that all exterior containers are marked in accordance with paragraph (g) of the Duty-Free Entry clause, including the following additional data—

1. “UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE;” and
2. The activity address number for the contract administration office actually administering the prime contract.

(End of clause)


252.225–7011 Restriction on acquisition of supercomputers.

As prescribed in 225.7023–3, use the following clause:

RESTRICION ON ACQUISITION OF SUPERCOMPUTERS (JUL 1995)

The Contractor agrees that any supercomputers furnished under this contract have been manufactured in the United States.

(End of clause)

[60 FR 34471, July 3, 1995]

252.225–7012 Preference for Certain Domestic Commodities.

As prescribed in 225.7002–3(a), use the following clause:

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (APR 2002)

(a) Definitions. As used in this clause—
(1) Component means any item supplied to the Government as part of an end product or of another component.
(2) End product means supplies delivered under a line item of this contract.
(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico:

(1) Food;
(2) Clothing;
(3) Tents, tarps, or covers;
(4) Cotton and other natural fiber products;
(5) Woven silk or woven silk blends;
(6) Spun silk yarn for cartridge cloth.
Department of Defense

252.225–7014 Preference for domestic specialty metals.

As prescribed in 225.7002–3(b), use the following clause:

PREFERENCE FOR DOMESTIC SPECIALTY METALS (MAR 1998)

(a) Definitions. As used in this clause—


(2) Specialty metals means—

(i) Steel—

(A) Where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) That contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium base alloys.

(b) The Contractor agrees that any specialty metals incorporated in articles delivered under this contract will be melted in the United States, its possessions, or Puerto Rico.

(c) This clause does not apply to the extent that—

(1) The Secretary or designee determines that a satisfactory quality and sufficient quantity of such articles cannot be acquired when needed at U.S. market prices;

(2) The specialty metal is melted in a qualifying country or is incorporated in an article manufactured in a qualifying country;

(3) The acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources to offset sales made by the U.S. Government or U.S. firms under approved programs; or

(4) The specialty metal is purchased by a subcontractor at any tier.

(End of clause)

Alternate I (MAR 1998). As prescribed in 225.7002–3(b), substitute the following paragraph (c) for paragraph (c) of the basic clause, and add the following paragraph (d) to the basic clause:

(c) This clause does not apply to the extent that—

(1) The Secretary or designee determines that a satisfactory quality and sufficient quantity of such articles cannot be acquired when needed at U.S. market prices;

(2) The specialty metal is melted in a qualifying country or is incorporated in an article manufactured in a qualifying country;

(3) The acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources to offset sales made by the U.S. Government or U.S. firms under approved programs; or

(4) The specialty metal is purchased by a subcontractor at any tier.

(End of clause)
(1) The Secretary or designee determines that a satisfactory quality and sufficient quantity of such articles cannot be acquired when needed at U.S. market prices;
(2) The specialty metal is melted in a qualifying country or is incorporated in an article manufactured in a qualifying country; or
(3) The acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources to offset sales made by the U.S. Government or U.S. firms under approved programs.

(d) The Contractor agrees to include the terms of this clause, including this paragraph (d), in every subcontract or purchase order awarded under this contract unless the item being purchased contains no specialty metals.


252.225–7015 Preference for domestic hand or measuring tools.

As prescribed in 225.7002-3(c), use the following clause:

PREFERENCE FOR DOMESTIC HAND OR MEASURING TOOLS (DEC 1991)

The Contractor agrees to deliver under this contract only hand or measuring tools produced in the United States or its possessions.

(End of clause)


252.225–7016 Restriction on acquisition of ball and roller bearings.

As prescribed in 225.7019–4, use the following clause:

RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (DEC 2000)

(a) Definitions.

As used in this clause—

1. “Bearing components” means the bearing element, retainer, inner race, or outer race.

2. “Miniature and instrument ball bearings” means all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, regardless of material, tolerance, performance, or quality characteristics.

(b) The Contractor agrees that, except as provided in paragraph (c) of this clause, all ball and roller bearings and ball and roller bearing components (including miniature and instrument ball bearings) delivered under this contract, either as end items or components of end items, shall be wholly manufactured in the United States or Canada. Unless otherwise specified, raw materials, such as performed bar, tube, or rod stock and lubricants, need not be mined or produced in the United States or Canada.

(c)(1) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as components if—

1. The end items or components containing ball or roller bearings are commercial items; or

2. The ball or roller bearings are commercial components manufactured in the United Kingdom.

(2) The commercial item exception in paragraph (c)(1) of this clause does not include items designed or developed under a Government contract or contracts where the end item is bearings and bearing components.

(d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7019–3 of the Defense Federal Acquisition Regulation Supplement. If the restriction is waived for miniature and instrument ball bearings, the Contractor agrees to acquire a like quantity and type of domestic manufacture for nongovernmental use.

(e) The Contractor agrees to retain records showing compliance with this restriction until 3 years after final payment and to make records available upon request of the Contracting Office.

(f) The Contractor agrees to insert this clause, including this paragraph (f), in every subcontract and purchase order issued in performance of this contract, unless items acquired are—

1. Commercial items other than ball or roller bearings; or

2. Items that do not contain ball or roller bearings.

(End of clause)

Alternate I (Dec 2000). As prescribed in 225.7019–4(b), substitute the following paragraph (c)(1)(ii) for paragraph (c)(1)(ii) of the basic clause:

(c)(1)(ii) The ball or roller bearings are commercial components.


252.225–7017 Prohibition on award to companies owned by the People's Republic of China.

As prescribed in 225.771–5, use the following provision:
PROHIBITION ON AWARD TO COMPANIES OWNED BY THE PEOPLE’S REPUBLIC OF CHINA (FEB 2000)

(a) Definition. “People’s Republic of China,” as used in this provision, means the government of the People’s Republic of China, including its political subdivisions, agencies, and instrumentalities.

(b) Prohibition on award. Section 8120 of the Department of Defense Appropriations Act for fiscal year 1999 (Pub. L. 105-262), as amended by Section 144 of Title I, Division C, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105-277), prohibits the award of a contract under this solicitation to any company in which the Director of Defense Procurement (Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)) has determined that the People’s Republic of China or the People’s Liberation Army of the People’s Republic of China owns more than 50 percent interest.

(c) Representation. By submission of an offer, the offeror represents that the People’s Republic of China or the People’s Liberation Army of the People’s Republic of China does not own more than 50 percent interest in the offeror.

(End of provision)

1997]

252.225–7018 Notice of prohibition of certain contracts with foreign entities for the conduct of Ballistic Missile Defense RDT&E.

As prescribed in 225.7011–5, use the following provision:

NOTICE OF PROHIBITION OF CERTAIN CONTRACTS WITH FOREIGN ENTITIES FOR THE CONDUCT OF BALLISTIC MISSILE DEFENSE RDT&E (JAN 1997)

(a) Definitions.

1. (Competent) means the ability of an offeror to satisfy the requirements of the solicitation. This determination is based on a comprehensive assessment of each offeror’s proposal including consideration of the specific areas of evaluation criteria in the relative order of importance described in the solicitation.

2. (Foreign firm) means a business entity owned or controlled by one or more foreign nationals or a business entity in which more than 50 percent of the stock is owned or controlled by one or more foreign nationals.

3. (U.S. firm) means a business entity other than a foreign firm.

(b) This provision implements section 222 of the Defense Authorization Act for FY’s 1988 and 1989 (Pub. L. 100-180) prohibiting the award of certain contracts, for the conduct of Ballistic Missile Defense (BMD) Program research, development, test, or evaluation (RDT&E), to foreign governments or firms.

(c) Exception as provided in paragraph (d) of this provision, any funds appropriated to, or for the use of, the DoD, may not be used to enter into or carry out any contract, including any contract awarded as a result of a broad agency announcement (BAA), with a foreign government or firm if the contract provides for the conduct of RDT&E in connection with the BMD. Foreign governments and firms, however, are encouraged to submit offers since this provision is not intended to restrict BMD access to unique foreign expertise when contract performance requires a level of competency unavailable in the United States.

(d) The prohibition does not apply to a foreign government or firm if—

1. The contract will be performed within the United States;

2. The contract is exclusively for RDT&E in connection with antitactical ballistic missile systems;

3. The foreign government or firm agrees to share a substantial portion of the total contract cost. The foreign share is considered substantial where it is equitable with respect to the relative benefits to be derived from the contract by the United States and the foreign parties. For example, if the contract is more beneficial to the foreign party, its share of the costs should be correspondingly higher; or

4. The U.S. Government determines that the contract cannot be competently performed by a U.S. firm at a price equal to or less than the price at which the RDT&E can be performed by a foreign government or firm.

(e) The offeror (______) is (______) is not a U.S. firm.

(End of provision)

1997]

252.225–7019 Restriction on acquisition of foreign anchor and mooring chain.

As prescribed in 225.7012–3, use the following clause:

RESTRICTION ON ACQUISITION OF FOREIGN ANCHOR AND MOORING CHAIN (DEC 1991)

(a) Welded shipboard anchor and mooring chain, four inches in diameter and under, delivered under this contract—

1. Shall be manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and
(2) The cost of the components manufactured in the United States shall exceed 50 percent of the total cost of components.

(b) The Contractor may request a waiver of this restriction if adequate domestic supplies meeting the above requirements are not available to meet the contract delivery schedule.

(c) The Contractor shall include this clause, including this paragraph (c), in all subcontracts, unless the items acquired contain none of the restricted welded shipboard anchor and mooring chain.

(End of clause)


252.225-7021 Trade agreements.

As prescribed in 225.1101(11), use the following clause:

TRADE AGREEMENTS (SEP 2001)

(a) Definitions. Caribbean Basin country end product, designated country end product, NAFTA country end product, nondesignated country end product, qualifying country end product, and U.S. made end product have the meanings given in the Trade Agreements clause of this solicitation.

(b) Evaluation. Offers will be evaluated in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement. Offers of foreign end products that are not U.S. made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end products will not be considered for award, unless the Contracting Officer determines that there are not offers of such end products; or the offers of such end products are insufficient to fulfill the requirements; or a national interest exception to the Trade Agreements Act is granted.

(c) Certifications. (1) The offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2) of this provision, is a U.S. made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end product.

(2) The following supplies are other nondesignated country end products:

<table>
<thead>
<tr>
<th>Line Item</th>
<th>Country of Origin</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(End of provision)

[63 FR 11545, Mar. 9, 1998, as amended at 65 FR 19858, Apr. 13, 2000]
Department of Defense 252.225–7021

quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the HTSUS column 2 rates of duty (HTSUS General Note 3(b)) apply.

(3) Components means those articles, materials, and supplies directly incorporated into end products.

(4) Designated country means—

Aruba
Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Canada
Cape Verde
Central African Republic
Chad
Comoros
Denmark
Djibouti
Equatorial Guinea
Finland
France
Gambia
Germany
Greece
Guinea
Guinea-Bissau
Haiti
Hong Kong
Iceland
Ireland
Israel
Italy
Japan
Kiribati
Lesotho
Liechtenstein
Luxembourg
Malawi
Mali
Maldives
Mauritania
Mauritius
Mexico
Moldova
Monaco
Mongolia
Montenegro
Morocco
Namibia
Nauru
Nepal
Netherlands
Niger
Norway
Portugal
Republic of Korea
Rwanda
Sao Tome and Principe
Sierra Leone
Singapore
Somalia
Spain
Sweden
Switzerland
Tanzania U.R.
Togo
Tuvalu
Uganda
United Kingdom
Vanuatu
Western Samoa
Yemen

(5) Designated country end product means an article that—

(i) Is wholly the growth, product, or manufacture of the designated country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(6) End product means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(7) NAFTA country end product means an article that—

(i) Is wholly the growth, product, or manufacture of the NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(8) Nondesignated country end product means any end product that is not a U.S. made end product or a designated country end product.

(9) North American Free Trade Agreement (NAFTA) country means Canada or Mexico.


(11) Qualifying country end product means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the
United States exceeds 50 percent of the cost of all its components.

(12) United States means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(13) U.S. made end product means an article that—

(i) Is wholly the growth, product, or manufacture of the United States; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.


(1)(1) The Contractor agrees to deliver under this contract only U.S. made, qualifying country, designated country, Caribbean Basin country or NAFTA country end product unless, in its offer, it specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation.

(2) The Contractor may not supply a nondesignated country end product other than a qualifying country end product, a Caribbean Basin country end product, or a NAFTA country end product, unless—

(i) The Contracting Officer has determined that offers of U.S. made end products or qualifying, designated, Caribbean Basin, or NAFTA country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government’s requirements; or

(ii) A national interest waiver has been granted under section 302 of the Trade Agreements Act of 1979.

(d) The offered price of end products listed in paragraph (c)(2) of the Trade Agreements Certificate provision of the solicitation must include all applicable duty, whether or not a duty-free entry certificate will be granted. The offered price of qualifying country, designated country, Caribbean Basin country, or NAFTA country end products, for line items subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of U.S. made end products should not include duty for qualifying country components.

(e) The HTSUS is available on the Internet at http://www.customs.usaitreas.gov/impoexpo/impoexpo.htm. The following sections of the HTSUS provide information regarding duty-free status of articles specified in paragraph (a)(2)(i)(A) of this clause:

(1) General Note 3(c), Products Eligible for Special Tariff Treatment.


3. As prescribed in 225.7103-3, use the following clause:

RESTRICTION ON ACQUISITION OF POLYACRYLONITRILE (PAN) CARBON FIBER

(a) This clause applies only if the end product furnished under this contract contains PAN-based carbon fibers (alternatively referred to as PAN-based carbon fibers or PAN-based graphite fibers).

(b) PAN carbon fibers contained in the end product shall be manufactured in the United States or Canada using PAN precursor produced in the United States or Canada.

(c) The Contracting Officer may waive the requirement in paragraph (b) of this clause in whole or in part. The Contractor may request a waiver from the Contracting Officer by identifying the circumstances and including a plan to qualify U.S. or Canadian sources expeditiously.

(End of clause)

As prescribed in 225.7023, use the following clause:

RESTRICTION ON ACQUISITION OF VESSEL PROPPELLERS

As prescribed in 225.7024, use the following clause:

RESTRICTION ON ACQUISITION OF VESSEL PROPPELLERS

(a) Except as provided in paragraph (b) of this clause, the Contractor shall deliver under this contract, whether as end items or components of end items, vessel propellers—

(1) Manufactured in the United States or Canada; and
Department of Defense


As prescribed in 225.7203, use the following clause:

REPORTING OF CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES (JUN 2000)

(a) Reporting criteria. Reporting under this clause is required for—

(1) Offers exceeding $10 million, if the Offeror is aware at the time the offer is submitted that it or its first-tier subcontractor intends to perform any part of the contract that exceeds $500,000 outside the United States and Canada, if that part could be performed inside the United States or Canada; and

(2) Contracts exceeding $10 million, when any part that exceeds the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation will be performed outside the United States, unless a foreign place of performance is—

(i) The principal place of performance; and

(ii) Indicated by the Offeror's entry in the Place of Performance provision of the solicitation.

(b) Submission of reports. (1) The Offeror shall submit reports required by paragraph (a)(1) of this clause with its offer.

(2) The Contractor shall submit reports required by paragraph (a)(2) of this clause to the Contracting Officer as soon as the information is known, with a copy to the addressee in paragraph (b)(3) of this clause. With respect to performance by a first-tier supplier, the Contractor shall submit the report required in paragraph (a)(2) to the Contracting Officer no later than 10 days after the close of the first quarter of each fiscal year.

(b) The Contractor agrees that end items and their components delivered under this contract shall contain forging items that are of domestic manufacture only.

(c) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7102-3 of the Defense Federal Acquisition Regulation Supplement.

(d) The Contractor agrees to retain records showing compliance with this restriction until 3 years after final payment and to make records available upon request of the Contracting Officer.

(e) The Contractor agrees to insert this clause, including this paragraph (e), in subcontracts and purchase orders issued in performance of this contract, when products purchased contain restricted forging items.

(End of clause)


252.225-7024 Restriction on acquisition of night vision image intensifier tubes and devices.

As prescribed in 225.7015-3, use the following clause:

RESTRICTION ON ACQUISITION OF NIGHT VISION IMAGE INTENSIFIER TUBES AND DEVICES (DEC 1991)

All second and third generation night vision image intensifier tubes and devices provided under this contract shall be manufactured in the United States or Canada.

(End of clause)

[65 FR 77829, Dec. 13, 2000]

252.225-7025 Restriction on acquisition of forgings.

As prescribed in 225.7102-4, use the following clause:

RESTRICTION ON ACQUISITION OF FORGINGS (JUN 1997)

(a) Definitions. As used in this clause—

(1) “Domestic manufacture” means manufactured in the United States or Canada if the Canadian firm—

(i) Normally produces similar items or is currently producing the item in support of DoD contracts (as prime or subcontractor); and

(ii) Agrees to become (upon receiving a contract/order) a planned producer under DoD’s Industrial Preparedness Production Planning Program, if it is not already a planned producer for the item.

(2) “Forging items” means—

<table>
<thead>
<tr>
<th>Items</th>
<th>Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ship propulsion shafts</td>
<td>Excludes service and landing craft shafts.</td>
</tr>
<tr>
<td>Periscope tubes</td>
<td>All.</td>
</tr>
<tr>
<td>Ring forgings for bull gears</td>
<td>All greater than 120 inches in diameter.</td>
</tr>
</tbody>
</table>

(b) The Contractor agrees that end items and their components delivered under this contract shall contain forging items that are of domestic manufacture only.

(c) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7102-3 of the Defense Federal Acquisition Regulation Supplement.

(d) The Contractor agrees to retain records showing compliance with this restriction until 3 years after final payment and to make records available upon request of the Contracting Officer.

(e) The Contractor agrees to insert this clause, including this paragraph (e), in subcontracts and purchase orders issued in performance of this contract, when products purchased contain restricted forging items.

(End of clause)

48 CFR Ch. 2 (10–1–02 Edition)

252.225–7027 Restriction on contingent fees for foreign military sales.

As prescribed in 225.7308(a), use the following clause. Insert in paragraph (b)(1) of the clause the name(s) of any foreign country customer(s) listed in 225.7303–4(b).

RESTRICTION ON CONTINGENT FEES FOR FOREIGN MILITARY SALES (MAR 1998)

(a) Unless otherwise specified in its offer, the Contractor agrees that air circuit breakers for naval vessels provided under this contract shall be manufactured in the United States, Canada, or the United Kingdom.

(b) Unless an exception applies under Defense Federal Acquisition Regulation Supplement (DFARS) 225.7016–2 or a waiver is granted under DFARS 225.7005(a) (1) or (2), preference will be given to air circuit breakers manufactured in the United States or Canada by adding 50 percent for evaluation purposes to the offered price of all other air circuit breakers, except those manufactured in the United Kingdom.

[63 FR 11546, Mar. 9, 1998]

252.225–7028 Exclusionary policies and practices of foreign governments.

As prescribed in 225.7308(b), use the following clause:

EXCLUSIONARY POLICIES AND PRACTICES OF FOREIGN GOVERNMENTS (DEC 1991)

No person, partnership, corporation, or other entity performing functions pursuant to this contract, shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based on race, religion, national origin, or sex.

(End of clause)

252.225–7029 Preference for United States or Canadian air circuit breakers.

As prescribed in 225.7016–4, use the following clause:

PREFERENCE FOR UNITED STATES OR CANADIAN AIR CIRCUIT BREAKERS (AUG 1998)

(a) Unless otherwise specified in its offer, the Contractor agrees that air circuit breakers for naval vessels provided under this contract shall be manufactured in the United States, Canada, or the United Kingdom.

(b) Unless an exception applies under Defense Federal Acquisition Regulation Supplement (DFARS) 225.7016–2 or a waiver is granted under DFARS 225.7005(a) (1) or (2), preference will be given to air circuit breakers manufactured in the United States or Canada by adding 50 percent for evaluation purposes to the offered price of all other air circuit breakers, except those manufactured in the United Kingdom.

[63 FR 11546, Mar. 9, 1998]
Department of Defense

(End of clause)

[63 FR 43889, Aug. 17, 1998]

252.225–7030 Restriction on acquisition of carbon, alloy, and armor steel plate.

As prescribed in 225.7017–4, use the following clause:

RESTRICTION ON ACQUISITION OF CARBON, ALLOY, AND ARMOR STEEL PLATE (OCT 1992)

The Contractor agrees that all carbon, alloy, and armor steel plate in Federal supply class 9515, or described by American Society for Testing Materials (ASTM) or American Iron and Steel Institute (AISI) specifications, furnished as a deliverable under this contract, or purchased by the contractor as a raw material, for use in a Government-owned facility or a facility under the control of the Department of Defense, shall be melted and rolled in the United States or Canada.

(End of clause)

[57 FR 53601, Nov. 12, 1992]

252.225–7031 Secondary Arab boycott of Israel.

As prescribed in 225.770–5, use the following clause:

SECONDARY ARAB BOYCOTT OF ISRAEL (JUN 1992)

(a) Definitions.

As used in this clause—

Foreign person means any person other than a United States person as defined in section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec 2415).

United States person is defined in section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

(b) Certification. By submitting this offer, the Offeror, if a foreign person, company or entity, certifies that it—

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec. 2407(a) prohibits a United States person from taking.

(End of clause)

[57 FR 29041, June 30, 1992, as amended at 59 FR 27675, May 27, 1994]

252.225–7032 Waiver of United Kingdom levies.

As prescribed in 225.873–3, use the following clause:

WAIVER OF UNITED KINGDOM LEVIES (OCT 1992)

(a) Offered prices for contracts and subcontracts with United Kingdom (U.K.) firms may contain commercial exploitation levies assessed by the Government of the U.K. The Offeror shall identify to the Contracting Officer all levies included in the offered price by describing—

(1) The name of the U.K. firm;

(2) The item to which the levy applies and quantity; and

(3) The amount of levy plus any associated indirect costs and profit or fee.

(b) If, after award of the prime contract, the Contractor contemplates award of a subcontract over $1 million to a U.K. firm, the Contractor shall identify any levy before award of the subcontract and shall provide the following information to the Contracting Officer—

(1) Name of the U.K. firm;

(2) Prime contract number;

(3) Description of item to which levy applies;

(4) Quantity being acquired; and

(5) Amount of levy plus any associated indirect costs and profit or fee.

(c) The Offeror/Contractor should obtain assistance in identifying the levy from the levy from the U.K. firm. In the event of difficulty, the Offeror/Contractor may seek advice through Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue, NW, Washington, DC 20006.

(d) The U.S. Government may attempt to obtain a waiver of levies pursuant to the U.S./U.K. reciprocal waiver agreement of July 1987.

(1) Where levies are waived before contract award, the offer will be evaluated without the levy.

(2) Where levies are identified but not waived before contract award, the offer will be evaluated inclusive of the levies.

(3) Where a waiver of the levy is obtained after award, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs, profit or fee.
(e) The Contractor agrees to insert the substance of this clause, including this paragraph (e), in any subcontract for supplies where a lower tier subcontract over $1 million with a U.K. firm is anticipated.

(End of clause)

[57 FR 53602, Nov. 12, 1992]

252.225–7033 Restriction on acquisition of four ton dolly jacks.

As prescribed in 225.7018–3, use the following clause:

RESTRICTION ON ACQUISITION OF FOUR TON DOLLY JACKS (APR 1993)

Four ton dolly jacks delivered under this contract shall be manufactured in the United States unless a waiver is granted in accordance with subsection 225.7018–2 of the Defense Federal Acquisition Regulation Supplement.

(End of clause)

[58 FR 28474, May 13, 1993]

252.225–7034 [Reserved]


As prescribed in 225.1101(12), use the following provision:

BUY AMERICAN ACT—NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (MAR 1998)

(a) Definitions. Domestic end product, foreign end product, NAFTA country end product, and qualifying country end product have the meanings given in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this solicitation.

(b) Evaluation. Offers will be evaluated in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement. For line items subject to the North American Free Trade Agreement Implementation Act, offers of qualifying country end products or NAFTA country end products will be evaluated without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) Certifications. (1) The offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror must identify all end products that are not domestic end products.

(i) The Offeror certifies that the following supplies are qualifying country (except Canada) end products:

(insert line item number)

(insert country of origin)

(ii) The Offeror certifies that the following supplies quality as NAFTA country end products:

(insert line item number)

(insert country of origin)

(iii) The following supplies are other foreign end products:

(insert line item number)

(insert country of origin)

(End of provision)

Alternate I (MAR 1998). As prescribed in 225.1101(12)(ii), substitute the phrase "Canadian end product" for the phrase "NAFTA country end product" in paragraph (a); and substitute the phrase "Canadian end products" for the phrase "NAFTA country end products" in paragraphs (b) and (c)(2)(ii) of the basic clause.

[63 FR 11546, Mar. 9, 1998, as amended at 65 FR 19858, Apr. 13, 2000]


As prescribed in 225.1101(13), use the following clause:

BUY AMERICAN ACT—NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT—BALANCE OF PAYMENTS PROGRAM (MAR 1998)

(a) Definitions. As used in this clause—

(1) Components means those articles, materials, and supplies directly incorporated into end products.

(2) Domestic end product means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if the cost of its qualifying
country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind—

(A) Determined to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or

(B) That the Secretary concerned determines would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(3) End product means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(4) Foreign end product means an end product other than a domestic end product.

(5) North American Free Trade Agreement (NAFTA) country means Canada or Mexico.

(6) NAFTA country end product means an article that—

(i) Is wholly the growth, product, or manufacture of a NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.


(8) Qualifying country component means an item mined, produced, or manufactured in a qualifying country.

(b) Unless otherwise specified, the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3391 note) applies to all items in the Schedule.

(c) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or other foreign end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation. An offer certifying that a qualifying country end product or a NAFTA country end product will be supplied requires the Contractor to supply a qualifying country end product or a NAFTA country end product, whichever is certified, or, at the Contractor's option, a domestic end product.

(d) The offered price of qualifying country end products, or NAFTA country end products for line items subject to the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of foreign end products listed in paragraph (c)(2)(iii) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation, or the offered price of domestic end products that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, each foreign end product listed in paragraph (c)(2)(iii) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation is adjusted for the purpose of evaluation by adding 50 percent of the offered price, inclusive of duty.

(End of clause)

Alternate I (SEP 1999). As prescribed in 225.1101(13)(i)(B), substitute the following paragraphs (a)(6), (c), and (d) for paragraphs (a)(6), (c), and (d) of the basic clause:

(a)(6) Canadian end product, means an article that—

(i) Is wholly the growth, product, or manufacture of Canada; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of
the article or articles from which it so was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself.

(c) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, Canadian, or other foreign end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation. An offer certifying that a qualifying country end product or a Canadian end product will be supplied requires the Contractor to supply a qualifying country end product or a Canadian end product, whichever is certified, or, at the Contractor’s option, a domestic end product.

(d) The offered price of qualifying country end products, or Canadian end products for line items subject to the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of foreign end products listed in paragraph (c)(2)(ii) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation, or the offered price of domestic end products that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, each foreign end product listed in paragraph (c)(2)(ii) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation is adjusted for the purpose of evaluation by adding 50 percent of the offered price, inclusive of duty.


252.225–7037 Duty-free entry—Eligible end products.

As prescribed in 225.1101(14), use the following clause:

DUTY-FREE ENTRY—ELIGIBLE END PRODUCTS (AUG 2000)

(a) Definition. Eligible end product, as used in this clause, means

(1) Designated country end product, Caribbean country end product, or NAFTA country end product, as defined in the Trade Agreements clause of this contract;

(2) NAFTA country end product, as defined in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this contract;

(3) Canadian end product, as defined in Alternate I of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this contract.

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve delivery of eligible end products to be accorded duty-free entry whether placed—

(1) Directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price for duty for eligible end products.

(d) The Contractor warrants that—

(1) All eligible end products, for which duty-free entry is to be claimed under this clause, are intended to be delivered to the Government; and

(2) The Contractor will pay any applicable duty to the extent that such eligible end products, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use, other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(e) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate to obtain the duty-free entry of eligible end products for which the shipping documents bear the notation specified in paragraph (d) of this clause, except as the Contractor may otherwise agree.

(f) All shipping documents submitted to Customs, covering eligible end products for which duty-free entry certificates are to be issued under this clause, shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Contractor, including the Contractor’s delivery address; or

(ii) Military installation; and

(2) Include the following information—

(i) Prime contract number, and delivery order if applicable;

(ii) Number of the subcontract/purchase order for foreign supplies if applicable;

(iii) Identification of carrier;

(iv)(A) For direct shipments to a U.S. military installation, the notation;

UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at
the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 122, and notify Commander, Defense Contract Management (DCM) Department, DCM-New York, ATTN: Customs Team, DCM-New York, New York, 10305–5013, for execution of Customs Forms 7501, 7501A, or any required duty-free entry certificates.

(B) In cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor’s plant, the shipping document notation shall be altered to insert the name and address of the contractor, agent or broker who will notify Commander, DCM New York, for execution of the duty-free certificate. (Note: In those instances where the shipment will be consigned to a contractor’s plant and no duty-free entry certificate is required, the contractor or its agent shall claim duty-free entry under NAFTA or other trade agreement and shall comply with the U.S. Customs Service requirements. No notification to Commander, DCM New York, is required.)

(1) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight);

(vi) Estimated value in U.S. dollars; and

(vii) Activity Address Number of the contract administration office actually administering the prime contract, e.g., for DCM Dayton, S3605A.

(x) Preparation of customs forms. (1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of eligible end products in connection with DoD contracts into the United States, its possessions, or Puerto Rico. The completed customs forms shall be submitted to the District Director of Customs with a copy to DCM New York for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(b) The Contractor agrees—

(1) To prepare (if this contract is placed directly with a foreign supplier), or to instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) To consign the shipment as specified in paragraph (f) of this clause; and

(3) To mark the exterior of all packages as follows:

(1) “UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE:” and

(ii) The activity address number of the contract administration office actually administering the prime contract.

(i) The Contractor agrees to notify the Contracting Officer administering the prime contract in writing of any purchase under the contract of eligible end products to be accorded duty-free entry that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The notice shall be furnished to the contract administration office immediately upon award to the supplier of the eligible end products. The notice shall contain—

(1) Prime contractor’s name, address, and CAGE code;

(2) Prime contract number, and delivery order number if applicable;

(3) Total dollar value of the prime contract or delivery order;

(4) Expiration date of the prime contract or delivery order;

(5) Foreign supplier’s name and address;

(6) Number of the subcontract/purchase order for eligible end products;

(7) Total dollar value of the subcontract for eligible end products;

(8) Expiration date of the subcontract for eligible end products;

(9) List of items purchased;

(10) An agreement by the Contractor that any applicable duty shall be paid by the Contractor to the extent that such eligible end products are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer; and

(11) The scheduled delivery date(s).

(End of clause)


252.225–7038 Restriction on acquisition of aircraft fuel cells.

As prescribed in 225.7021–3, use the following clause:

**Restriction on Acquisition of Aircraft Fuel Cells (FEB 1994)**

The Contractor agrees that all aircraft fuel cells furnished under this contract have been manufactured in the United States by a domestic-operated entity.

(End of clause)

252.225–7039 Restriction on acquisition of totally enclosed lifeboat survival systems.

As prescribed in 225.7022–4, use the following clause:

**RESTRICTION ON ACQUISITION OF TOTALLY ENCLOSED LIFEBOAT SURVIVAL SYSTEMS (APR 1996)**

For totally enclosed lifeboat survival systems furnished under this contract, which consist of lifeboat and associated davits and winches, the Contractor agrees that—

(a) 50 percent or more of the components have been manufactured in the United States, and

(b) 50 percent or more of the labor in the manufacture and assembly of the entire system has been performed in the United States.

(End of clause)


252.225–7040 [Reserved]

252.225–7041 Correspondence in English.

As prescribed in 225.1103(2), use the following clause:

**CORRESPONDENCE IN ENGLISH (JUNE 1997)**

The Contractor shall ensure that all contract correspondence that is addressed to the United States Government is submitted in English or with an English translation.

(End of clause)


252.225–7042 Authorization to perform.

As prescribed in 225.1103(3), use the following clause:

**AUTHORIZATION TO PERFORM (JUNE 1997)**

The Contractor represents that it has been duly authorized to operate and to do business in the country or countries in which this contract is to be performed. The Contractor also represents that it will fully comply with all laws, decrees, labor standards, and regulations of such country or countries, during the performance of this contract.

(End of clause)


252.225–7043 Antiterrorism/force protection policy for defense contractors outside the United States.

As prescribed in 225.7402, use the following clause:

**ANTITERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES (JUN 1998)**

(a) Except as provided in paragraph (b) of this clause, the Contractor and its subcontractors, if performing or traveling outside the United States under this contract, shall—

(1) Affiliating with the Overseas Security Advisory Council, if the Contractor or subcontractor is a U.S. entity;

(2) Ensure that Contractor and subcontractor personnel who are U.S. nationals and are in-country on a non-transitory basis, register with the U.S. Embassy, and that Contractor and subcontractor personnel who are third country nationals comply with any security related requirements of the Embassy of their nationality;

(3) Provide, to Contractor and subcontractor personnel, antiterrorism/force protection awareness information commensurate with that which the Department of Defense (DoD) provides to its military and civilian personnel and their families, to the extent such information can be made available prior to travel outside the United States; and

(4) Obtain and comply with the most current antiterrorism/force protection guidance for Contractor and subcontractor personnel.

(b) The requirements of this clause do not apply to any subcontractor that is—

(1) A foreign government;

(2) A representative of a foreign government; or

(3) A foreign corporation wholly owned by a foreign government.

(c) Information and guidance pertaining to DoD antiterrorism/force protection can be obtained from [Contracting Officer to insert applicable information cited in 225.7401].

(End of clause)

[63 FR 31937, June 11, 1998]


As prescribed in 225.7503(a), use the following clause:

**BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL (APR 2002)**

(a) Definitions. As used in this clause’ “Component’ means any article, material, or supply incorporated directly into construction material.
“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Domestic construction material” means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

“United States” means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) Domestic preference. This clause implements the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation; or

(2) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”]

(End of clause)


As prescribed in 225.7503(b), use the following clause:

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS (APR 2002)

(a) Definitions. As used in this clause—

“Component” means any article, material, or supply incorporated directly into construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Designated country” means any of the following countries:

Aruba
Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Designated country construction material means a construction material that—
(1) Is wholly the growth, product, or manufacture of a designated country; or
(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the material from which it was transformed.

Domestic construction material means—
(1) An unmanufactured construction material mined or produced in the United States; or
(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

“North American Free Trade Agreement (NAFTA) country” means Canada or Mexico.

“North American Free Trade Agreement (NAFTA) country construction material” means a construction material that—
(1) Is wholly the growth, product, or manufacture of a NAFTA country; or
(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the material from which it was transformed.

“United States” means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for designated country and NAFTA country construction materials.

(c) The Contractor shall use only domestic, designated country, or NAFTA country construction material in performing this contract, except for—
(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation; or
(2) The construction material or components listed by the Government as follows:
[Contracting Officer to list applicable excepted materials or indicate “none”.]

(End of clause)

Alternate I (APR 2002). As prescribed in 225.7503(b), delete the definitions of “North American Free Trade Agreement country” and “North American Free Trade Agreement country construction material” from the definitions in paragraph (a) of the basic clause and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

VerDate 0ct<09>2002 06:00 Oct 22, 2002 Jkt 197195 PO 00000 Frm 00448 Fmt 8010 Sfmt 8010 Y:\SGML\197195T.XXX 197195T
252.226–7000 Notice of historically black college or university and minority institution set-aside.

As prescribed in 226.104, use the following clause:

NOTICE OF HISTORICALLY BLACK COLLEGE OR UNIVERSITY AND MINORITY INSTITUTION SET-ASIDE

(a) Definitions. Historically black colleges and universities, as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any non-profit research institution that was an integral part of such a college or university before November 14, 1986.

Minority institutions, as used in this clause, means institutions meeting the requirements of section 104(e)(3) of the Higher Education Act of 1965 (20 U.S.C. 1155d–5(3)). The term also includes Hispanic-serving institutions as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

(b) General. (1) Offers are solicited only from historically black colleges or universities and minority institutions.

(2) Any award resulting from this solicitation will be made only to an offeror which is a historically black college or university or a minority institution at the time of submission of its initial offer including price.

(c) Agreements. The offeror will—

(1) Perform at least 50 percent of the cost of contract performance incurred for personnel with its own employees; and

(2) Upon request by the Contracting Officer, provide evidence prior to award that the Secretary of Education has determined the offeror to be a historically black college or university or minority institution.

(End of clause)
(d) In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs, Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street NW, MS-2626-MIR, Washington, DC 20240-4000. The BIA will determine the eligibility and will notify the Contracting Officer. No incentive payment will be made—

1. Within 50 working days of subcontract award;
2. While a challenge is pending; or
3. If a subcontractor is determined to be an ineligible participant.

(e)(1) The Contractor, on its own behalf or on behalf of a subcontractor at any tier, may request an adjustment under the Indian Incentive Program to the following:

(i) The estimated cost of a cost-type contract.
(ii) The target cost of a cost-plus-incentive-fee contract.
(iii) The target cost and ceiling price of a fixed-price incentive contract.
(iv) The price of a firm-fixed-price contract.

(2) The amount of the adjustment that may be made to the contract is 5 percent of the estimated cost, target cost, or firm-fixed price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(3) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(4) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor.

(5) If the Contractor requests and receives an adjustment on behalf of a subcontractor, the Contractor is obligated to pay the subcontractor the adjustment.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts that—

1. Are for other than commercial items; and
2. Are expected to exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation.

As prescribed at 227.7009–2(a), insert the following clause in patent releases, license agreements, and assignments:

RELEASE OF PAST INFRINGEMENT (AUG 1984)

The Contractor hereby releases each and every claim and demand which he now has or may hereafter have against the Government for the manufacture or use by or for the Government prior to the effective date of this contract, of any inventions covered by (i) any of the patents and applications for patent identified in this contract, and (ii) any other patent or application for patent owned or hereafter acquired by him, insofar as and only to the extent that such other patent or patent application covers the manufacture, use, or disposition of (description of subject matter).*

(End of clause)

252.227–7002 Readjustment of payments.

As prescribed at 227.7009–2(b), insert the following clause in patent releases, license agreements, and assignments:

READJUSTMENT OF PAYMENTS (OCT 1996)

(a) If any license, under substantially the same patents and authorizing substantially the same acts which are authorized under this contract, has been or shall hereafter be granted within the United States, on royalty terms which are more favorable to the licensee than those contained herein, the Government shall be entitled to the benefit of such more favorable terms with respect to all royalties accruing under this contract after the date such more favorable terms become effective, and the Contractor shall promptly notify the Secretary in writing of the granting of such more favorable terms.

(b) In the event any claim of any patent hereby licensed is construed or held invalid by decision of a court of competent jurisdiction, the requirement to pay royalties under this contract insofar as its arises solely by reason of such claim, and any other claim
Department of Defense

not materially different therefrom, shall be interpreted in conformity with the court’s decision as to the scope of validity of such claims; Provided, however, that in the event such decision is modified or reversed on appeal, the requirement to pay royalties under this contract shall be interpreted in conformity with the final decision rendered on such appeal.

(End of clause)

252.227-7003 Termination.

As prescribed at 227.7009-2(c), insert the following clause in patent releases, license agreements, and assignments:

TERMINATION (AUG 1984)

Notwithstanding any other provision of this contract, the Government shall have the right to terminate the within license, in whole or in part, by giving the Contractor not less than thirty (30) days notice in writing of the date such termination is to be effective; provided, however, that such termination shall not affect the obligation of the Government to pay royalties which have accrued prior to the effective date of such termination.

(End of clause)

252.227-7004 License grant.

As prescribed at 227.7009-3(a), insert the following clause in patent releases, license agreements, and assignments:

LICENSE GRANT (AUG 1984)

(a) The Contractor hereby grants to the Government an irrevocable, nonexclusive, nontransferable, and paid up license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division or continuation thereof, to practice by or cause to be practiced for the Government throughout the world, any and all of the inventions thereunder, in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. ____________________________
Date ____________________________
Application Serial No. ____________________________
Filing Date ____________________________

together with corresponding foreign patents and foreign applications for patents, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

252.227–7005 License term.

As prescribed at 227.7009–3(b), insert one of the following clauses in patent releases, license agreements, and assignments:

LICENSE TERM (OCT 2001)

Alternate I (AUG 1984). The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the “License Grant” clause of this contract and any and all patents hereafter issued on applications for patent referred to in such “License Grant” clause.

Alternate II (OCT 2001). The license hereby granted shall terminate on the ______ day of ______, 19________. Provided, however, that said termination shall be without prejudice to the completion of any contract entered into by the Government prior to said date of termination or to the use or disposition thereafter of any articles or materials manufactured by or for the Government under this license.


252.227–7006 License grant—running royalty.

As prescribed at 227.7009–4(a), insert the following clause in patent releases, license agreements, and assignments:

LICENSE GRANT—RUNNING ROYALTY (AUG 1984)

(a) The Contractor hereby grants to the Government, as represented by the Secretary of ______, an irrevocable, nonexclusive, nontransferable license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division, or continuation thereof to practice by or cause to be practiced for the Department of ______, throughout the world, any and all of the inventions thereunder in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. ____________________________
Date ____________________________
252.227–7007 License term—running royalty.

As prescribed at 227.7009–4(b), insert the following clause in patent releases, license agreements, and assignments:

**LICENSE TERM—RUNNING ROYALTY (AUG 1984)**

The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the “License Grant” clause of this contract and any and all patents hereafter issued on applications for patent referred to above unless sooner terminated as elsewhere herein provided.

(End of clause)

252.227–7008 Computation of royalties.

As prescribed at 227.7009–4(c), insert the following clause in patent releases, license agreements, and assignments:

**COMPUTATION OF ROYALTIES (AUG 1984)**

Subject to the conditions hereinafter stated, royalties shall accrue to the Contractor under this agreement on all articles or materials embodying, or manufactured by the use of, any or all inventions claimed under any unexpired United States patent licensed herein, upon acceptance thereof by the Department of , at the rate of percent of the net selling price of such articles or materials (amount) per (name of item)* whether manufactured by the Government or procured under a fixed price contract, and at the rate of (amount) per (name of item) acquired or manufactured by a Contractor performing under a cost-reimbursement contract. With respect to such articles or materials made by the Department of , “net selling price,” as used in this paragraph, means the actual cost of direct labor and materials without allowance for overhead and supervision.

(End of clause)

252.227–7009 Reporting and payment of royalties.

As prescribed at 227.7009–4(d), insert the following clause in patent releases, license agreements, and assignments:

**REPORTING AND PAYMENT OF ROYALTIES (AUG 1984)**

(a) The (procuring office) shall, on or before the sixtieth (60th) day next following the end of each yearly* period ending during which royalties have accrued under this license, deliver to the Contractor, subject to military security regulations, a report in writing furnishing necessary information relative to royalties which have accrued under this contract.

(b) Royalties which have accrued under this contract during the yearly* period ending shall be paid to the Contractor (if appropriations therefor are available or become available) within sixty (60) days next following the receipt of a voucher from the Contractor submitted in accordance with the report referred to in (a) of this clause; Provided, that the Government shall not be obligated to pay, in respect of any such yearly period, on account of the combined royalties accruing under this contract directly and under any separate licenses granted pursuant to the “License to Other Government Agencies” clause (if any) of this contract, an amount greater than dollars ($ ), and if such combined royalties exceed the said maximum yearly obligation, each department or agency shall pay a pro rata share of the said maximum yearly obligation as determined by the proportion the accrued royalties bear to the combined total of accrued royalties.

(End of clause)

252.227–7010 License to other Government agencies.

As prescribed at 227.7009–4(e), insert the following clause in patent releases, license agreements, and assignments:

**LICENSE TO OTHER GOVERNMENT AGENCIES (AUG 1984)**

The Contractor hereby agrees to grant a separate license under the patents, applications for patents, and improvements referred

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*Use bracketed matter as appropriate.
Department of Defense

252.227–7012

Patent license and release contract.

As prescribed at 227.7012, insert the following clause in a contract, license agreement, or releases, assignments, and agreements:

(Contract No.)

PATENT LICENSE AND RELEASE CONTRACT
(SEP 1999)

This CONTRACT is effective as of the day of [month, year], between the UNITED STATES OF AMERICA (hereinafter called the Government), and [name of contractor], (hereinafter called the Contractor), a corporation organized and existing under the laws of the State of [name of state], (a partnership consisting of [partners' names]), (an individual trading as [name]), of the City of [city], in the State of [state].

Whereas, the Contractor warrants that it has the right to grant the within license and release, and the Government desires to procure the same, and

Whereas, this contract is authorized by law, including 10 U.S.C. 2386.

Now Therefore, in consideration of the grant, release and agreements hereinafter recited, the parties have agreed as follows:

Article 1. License Grant.*

(Insert the clause at 252.227–7004 for a paid up license, or the clause at 252.227–7006 for a license on a running royalty basis.)

Article 2. License Term.*

(Insert the appropriate alternative clause at 252.227–7005 for a paid up license, or the clause at 252.227–7007 for a license on a running royalty basis.)


(Insert the clause at 252.227–7001.)


(Insert the clause at 252.227–7000.)

Article 5. Payment.

The Contractor shall be paid the sum of [$________] in full compensation for the rights herein granted and agreed to be granted. (For a license on a running royalty basis, insert the clause at 252.227–7006 in accordance with the instructions therein, and also the clause as specified at 252.227–7002 and 252.227–7009 and 252.227–7010.)

Article 6. Covenant Against Contingent Fees.

(Insert the clause at FAR 52.233–1.)

Article 7. Assignment of Claims.

(Insert the clause at FAR 52.232–23.)

Article 8. Gratuities.

(Insert the clause at FAR 52.233–3.)

Article 9. Disputes.

(Insert the clause at FAR 52.233–1.)

Article 10. Successors and Assignees.

This Agreement shall be binding upon the Contractor, its successors** and assignees, but nothing contained in this Article shall authorize an assignment of any claim against the Government otherwise than as permitted by law.

In Witness Whereof, the parties hereto have executed this contract.

THE UNITED STATES OF AMERICA

By

Date

(Signature and Title of Contractor Representative)

By

Date

*If only a release is procured, delete this article; if an assignment is procured, use the clause at 252.227–7011.

**When the Contractor is an individual, change “successors” to “heirs”; if a partnership, modify appropriately.
RIGHTS IN TECHNICAL DATA—NONCOMMERCIAL ITEMS

As prescribed in 227.7103-6(a), use the following clause:

RIGHTS IN TECHNICAL DATA—NONCOMMERCIAL ITEMS (NOV 1995)

(a) Definitions. As used in this clause:

(1) Computer data base means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

(2) Computer program means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(3) Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

(4) Computer software documentation means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(5) Detailed manufacturing or process data means technical data that describes the steps, sequences, and conditions of manufacturing, processing, or assembly used by the manufacturer to produce an item or component or to perform a process.

(6) Developed means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered “developed,” the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

(7) Developed exclusively at private expense means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(8) Developed exclusively with government funds means development was not accomplished exclusively or partially at private expense.

(9) Developed with mixed funding means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(10) Form, fit, and function data means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(11) Government purpose means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

(12) Government purpose rights means the rights to—

(i) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and

(ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

(13) Limited rights means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release or disclose such data or authorize the use or reproduction of the data by persons outside the
Government if reproduction, release, disclosure, or use is—

(i) Necessary for emergency repair and overhaul; or

(ii) A release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluative or informational purposes;

(iii) Subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(iv) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

(14) Technical data means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(15) Unlimited rights means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(b) Rights in technical data. The Contractor grants or shall obtain for the Government the following royalty free, world-wide, non-exclusive, irrevocable license rights in technical data other than computer software documentation (see the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract for rights in computer software documentation):

(1) Unlimited rights. The Government shall have unlimited rights in technical data that are—

(i) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(ii) Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;

(iii) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

(iv) Form, fit, and function data;

(v) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(vi) Corrections or changes to technical data furnished to the Contractor by the Government;

(vii) Otherwise publicly available or have been released or disclosed by the Contractor or subcontractor without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(viii) Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or

(ix) Data furnished to the Government, under this or any other Government contract or subcontract thereunder, with—

(A) Government purpose license rights or limited rights and the restrictive condition(s) have expired; or

(B) Government purpose rights and the Contractor’s exclusive right to use such data for commercial purposes has expired.

(2) Government purpose rights. (i) The Government shall have government purpose rights for a five-year period, or such other period as may be negotiated, in technical data—

(A) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in such data as provided in paragraphs (b)(ii) and (b)(iv) through (b)(ix) of this clause; or

(B) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The five-year period, or such other period as may have been negotiated, shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the items, components, or processes or creation of the data described in paragraph (b)(2)(i)(B) of this clause. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data.

(iii) The Government shall not release or disclose technical data in which it has government purpose rights unless—

(A) Prior to release or disclosure, the intended recipient is subject to the non-disclosure agreement at 227.7013-7 of the Defense Federal Acquisition Regulation Supplement (DFARS); or

(B) The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(iv) The Contractor has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this contract for any commercial purpose.
during the time period specified in the government purpose rights legend prescribed in paragraph (f)(2) of this clause.

(3) Limited rights. (i) Except as provided in paragraphs (b)(1) through (b)(1)(ix) of this clause, the Government shall have limited rights in technical data—

(A) Pertaining to items, components, or processes developed exclusively at private expense and marked with the limited rights legend prescribed in paragraph (f) of this clause; or

(B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The Government shall require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Contractor that the data have been destroyed.

(iii) The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a transmittal document.

(4) Specifically negotiated license rights. The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in technical data, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than are enumerated in paragraph (a)(13) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) Prior government rights. Technical data that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government’s rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) Release from liability. The Contractor agrees to release the Government from liability for any release or disclosure of technical data in accordance with paragraph (a)(13) or (b)(2)(i) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the data and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data marked with restrictive legends.

(c) Contractor rights in technical data. All rights not granted to the Government are retained by the Contractor.

(d) Third party copyrighted data. The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data of the appropriate scope set forth in paragraph (b) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.

(e) Identification and delivery of data to be furnished with restrictions on use, release, or disclosure. (1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, technical data that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any data with restrictive markings unless the data are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the data, in the following format, and signed by an official authorized to contractually obligate the Contractor: Identification and Assertion of Restrictions on the Government’s Use, Release, or Disclosure of Technical Data.

The Contractor asserts for itself, or the persons identified below, that the Government’s rights to use, release, or disclose the following technical data should be restricted—
Department of Defense

Technical data to be furnished with restrictions | Basis for assertion | Asserted rights category | Name of person asserting restrictions
--- | --- | --- | ---
(List) | (List) | (List) | (List)

1 If the assertion is applicable to items, components or processes developed at private expense, identify both the data and each such item, component, or process.
2 Generally, the development of an item, component, or process at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government’s rights to use, release, or disclose technical data pertaining to such items, components, or processes. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government’s rights should be restricted.
3 Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited or government purpose rights under this or a prior contract, or specifically negotiated licenses).
4 Corporation, individual, or other person, as appropriate.

Expiration Date

The Government’s rights to use, modify, reproduce, release, perform, display, or disclose technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) Limited rights markings. Data delivered or otherwise furnished to the Government with limited rights shall be marked with the following legend:

<table>
<thead>
<tr>
<th>Limited Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract No.</td>
</tr>
<tr>
<td>Contractor Name</td>
</tr>
<tr>
<td>Contractor Address</td>
</tr>
</tbody>
</table>

The Government’s rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Technical Data—Noncommercial Items clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(4) Special license rights markings. (1) Data in which the Government’s rights stem from a specifically negotiated license shall be marked with the following legend:

be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

Government Purpose Rights

Contract No. ___________________________
Contractor Name ______________________
Contractor Address ____________________

Expiration Date

The Government’s rights to use, modify, reproduce, release, perform, display, or disclose technical data transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) Government purpose rights markings. Data delivered or otherwise furnished to the Government purpose rights shall be marked as follows:

Government Purpose Rights

Contract No. ___________________________
Contractor Name ______________________
Contractor Address ____________________

Expiration Date

The Government’s rights to use, modify, reproduce, release, perform, display, or disclose technical data transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(End of legend)
Special License Rights

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No. _______ (Insert contract number) , License No. _______ (Insert license identifier) .

Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose licenses rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) Pre-existing data markings. If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data deliverable under this contract, and those restrictions are still applicable, the Contractor may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) Contractor procedures and records. Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive mark- ings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this contract.

(h) Removal of unjustified and nonconforming markings. (1) Unjustified technical data markings. The rights and obligations of the parties regarding the validation of restrictive markings on technical data furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data clause of this contract. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, remove or correct a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data clause of this contract, a restrictive marking is determined to be unjustified.

(2) Nonconforming technical data markings. A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking and the Contractor fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming marking.

(i) Relation to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) Limitation on charges for rights in technical data. (1) The Contractor shall not charge to this contract any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the data; or

(ii) The data are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier technical data, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data will be delivered.

(k) Applicability to subcontractors or suppliers. (1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of paragraph (e) of this clause are recognized and protected.

(2) Whenever any technical data for noncommercial items is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.

(3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such data directly to the
Government, rather than through a higher-tier contractor, subcontractor, or supplier.

(4) The Contractor and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data from their subcontractors or suppliers.

(5) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data as an excuse for failing to satisfy its contractual obligations to the Government.

(End of clause)

Alternate I (JUNE 1995). As prescribed in 227.7103–6(b), add the following paragraph (l) to the basic clause:

(1) Publication for sale. (1) This paragraph only applies to technical data in which the Government has obtained unlimited rights or a license to make an unrestricted release of technical data.

(2) The Government shall not publish a deliverable technical data item or items identified in this contract as being subject to paragraph (l) of this clause or authorize others to publish such data on its behalf if, prior to publication for sale by the Government and within twenty-four (24) months following the date specified in this contract for delivery of such data or the removal of any national security or export control restrictions, whichever is later, the Contractor publishes that item or items for sale and promptly notifies the Contracting Officer of such publication.

(3) This limitation on the Government’s right to publish for sale shall continue as long as the data are reasonably available to the public for purchase.

[60 FR 33490, June 28, 1995, as amended at 60 FR 61602, Nov. 30, 1995]

252.227–7014 Rights in noncommercial computer software and noncommercial computer software documentation.

As prescribed in 227.7103–6(a)(1), use the following clause.

RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (JUNE 1995)

(a) Definitions. As used in this clause:

Commercial computer software means software developed or regularly used for non-governmental purposes which—

(1) Has been sold, leased, or licensed to the public;

(2) Has been offered for sale, lease, or license to the public;

(iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(iv) Satisfies a criterion expressed in paragraph (a)(1)(i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this contract.

(2) Computer database means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

(3) Computer program means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(4) Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

(5) Computer software documentation means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(6) Developed means that—

(1) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose; or

(2) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(7) Developed exclusively at private expense means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.
(8) Developed exclusively with government funds means development was not accomplished exclusively or partially at private expense.

(9) Developed with mixed funding means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(10) Government purpose means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation for commercial purposes or authorize others to do so.

(11) Government purpose rights means the rights to—

(i) Use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation within the Government without restriction; and

(ii) Release or disclose computer software or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose the software or documentation for United States government purposes.

(12) Minor modification means a modification that does not significantly alter the nongovernmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.

(13) Noncommercial computer software means software that does not qualify as commercial computer software under paragraph (a)(1) of this clause.

(14) Restricted rights apply only to noncommercial computer software and mean the Government’s rights to—

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(14) (i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(14) (ii), (v) and (vi) of this clause;

(v) Permit contractors or subcontractors performing service contracts (see 77.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the use and non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(14)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitation in paragraph (a)(14)(i) of this clause; and

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103-7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; and

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(14)(iv) of this clause, for any other purpose.

(B) Unlimited rights means rights to use, modify, reproduce, release, perform, display,
or disclose computer software or computer software documentation in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

(b) Rights in computer software or computer software documentation. The Contractor grants or shall obtain for the Government the following royalty free, world-wide, non-exclusive, irrevocable license rights in non-commercial computer software or computer software documentation. All rights not granted to the Government are retained by the Contractor.

(1) Unlimited rights. The Government shall have unlimited rights in—

(i) Computer software developed exclusively with Government funds;

(ii) Computer software documentation required to be delivered under this contract;

(iii) Corrections or changes to computer software or computer software documentation furnished to the Contractor by the Government;

(iv) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the Contractor or subcontractor without restriction on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(v) Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or

(vi) Computer software or computer software documentation furnished to the Government, under this or any other Government contract or subcontract thereunder with—

(A) Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or

(B) Government purpose rights and the Contractor’s exclusive right to use such software or documentation for commercial purposes has expired.

(2) Government purpose rights. (i) Except as provided in paragraph (b)(1) of this clause, the Government shall have government purpose rights in computer software development with mixed funding.

(ii) Government purpose rights shall remain in effect for a period of five years unless a different period has been negotiated. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the computer software or computer software documentation. The government purpose rights period shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the computer software.

(iii) The Government shall not release or disclose computer software in which it has government purpose rights to any other person unless—

(A) Prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103-7; or

(B) The recipient is a Government contractor receiving access to the software or documentation for performance of a Government contract that contains the clause at DFARS 227.227-7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends.

(3) Restricted rights. (i) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that were developed exclusively at private expense.

(ii) The Contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in non-commercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(4) of this clause). The license shall enumerate the additional rights granted the Government.

(4) Specifically negotiated license rights. (i) The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in computer software, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in computer software than are enumerated in paragraph (a)(14) of this clause or lesser rights in computer software documentation than are enumerated in paragraph (a)(13) of the Rights in Technical Data—Noncommercial Items clause of this contract.

(ii) Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) Prior government rights. Computer software or computer software documentation that will be delivered, furnished, or otherwise provided to the Government under this
contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government’s rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) Release from liability. The Contractor agrees to release the Government from liability for any release or disclosure of computer software made in accordance with paragraph (a)(14) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the software, and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor software marked with restrictive legends.

(c) Rights in derivative computer software or computer software documentation. The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the Contractor uses to prepare, or includes in, derivative computer software or computer software documentation.

(1) Computer software, has provided a statement of the license rights obtained a form acceptable to the Contracting Officer; or

(2) Computer software documentation, has affixed to the transmittal document a statement of the license rights obtained.

(e) Identification and delivery of computer software and computer software documentation to be furnished with restrictions on use, release, or disclosure. (1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any software with restrictive markings unless the software is listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled data for delivery of the software, in the following format, and signed by an official authorized to contractually obligate the Contractor: Identification and Assertion of Restrictions on the Government’s Use, Release, or Disclosure of Computer Software.

The Contractor asserts for itself, or the persons identified below, that the Government’s rights to use, release, or disclose the following computer software should be restricted:

<table>
<thead>
<tr>
<th>Computer Software to be Furnished With Restrictions*</th>
<th>Basis for Assertion**</th>
<th>Asserted Rights Category***</th>
<th>Name of Person Asserting Restrictions****</th>
</tr>
</thead>
<tbody>
<tr>
<td>(LIST) (LIST) (LIST) (LIST)</td>
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</tr>
</tbody>
</table>

*Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government’s rights to use, release, or disclose computer software.

**Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government’s rights should be restricted.

***Enter asserted rights category (e.g., restricted or government purpose rights in computer software, government purpose license rights from a prior contract, rights in SBIR software generated under another contract, or specifically negotiated licenses).

****Corporation, individual, or other person, as appropriate.

Date
Printed Name and Title
Signature

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor’s assertions. The Contracting Officer reserves the right to add the Contractor’s assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Asserted Restrictions—Computer Software clause of this contract.

(f) Marking requirements. The Contractor, and its subcontractors or suppliers, may only assert restrictions on the rights to use, modify, reproduce, release, perform, display, or disclose computer software by marking the deliverable software or documentation subject to restriction. Except as provided in paragraph (f)(5) of this clause,
only the following legends are authorized under this contract; the government purpose rights legend at paragraph (f)(2) of this clause; the restricted rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) General marking instructions. The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all computer software that qualify for such markings. The authorized legends shall be placed on the transmitted document or software storage container and each page, or portions thereof, of printed material containing computer software for which restrictions are asserted. Computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer’s written permission to deliver such software has been obtained prior to delivery. Reproductions of computer software or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

(2) Government purpose rights markings. Computer software delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

Contract No. __________________________
Contractor Name _________________________
Contractor Address ______________________

Expiration Date

The Government’s rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(2) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of the software or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) Restricted rights markings. Software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

RESTRICTED RIGHTS

Contract No. __________________________
Contractor Name _________________________
Contractor Address ______________________

The Government’s rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(End of legend)

(4) Special license rights markings. (i) Computer software or computer documentation in which the Government’s rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

The Government’s rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by Contract No. __________________________. License No. __________________________. License Identifier: __________________________. Any reproduction of computer software, computer software documentation, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose licenses acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) Pre-existing markings. If the terms of a prior contract or license permitted the Contractor to restrict the Government’s rights to use, modify, release, perform, display, or disclose computer software or computer software documentation and those restrictions are still applicable, the Contractor may mark such software or documentation with the appropriate restrictive legend for which the software qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) Contractor procedures and records. Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver computer software
or computer software documentation with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on computer software or computer software documentation delivered under this contract.

(h) Removal of unjustified and nonconforming markings.

The rights and obligations of the parties regarding the validation of restrictive markings on computer software or computer software documentation furnished or to be furnished under this contract are contained in the Validation of Asserted Restrictions—Computer Software and the Validation of Restrictive Markings on Technical Data clauses of this contract, respectively. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor’s expense, correct or strike a marking if, in accordance with the procedures of those clauses, a restrictive marking is determined to be unjustified.

(2) Nonconforming computer software or computer software documentation markings. A nonconforming marking is a marking placed on computer software or computer software documentation delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Asserted Restrictions—Computer Software or the Validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within sixty (60) days, the Government may ignore or, at the Contractor’s expense, remove or correct any nonconforming markings.

(i) Relation to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(1) Limitation on charges for rights in computer software or computer software documentation. (1) The Contractor shall not charge to this contract any cost, including but not limited to license fees, royalties, or similar charges, for rights in computer software or computer software documentation to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the software or documentation; or
Department of Defense

252.227-7015 Technical data—Commercial items.

As prescribed in 227.7102-3, use the following clause: Technical data—Commercial items (Nov 1995)

(a) Definitions. As used in this clause:

(1) Commercial item does not include commercial computer software.

(2) Form, fit, and function data means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(3) The term item includes components or processes.

(4) Technical data means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(b) License. (1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data, and to permit others to do so, that—

(i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(ii) Are form, fit, and function data;

(iii) Are a correction or change to technical data furnished to the Contractor by the Government;

(iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose the data without restrictions.

(2) Except as provided in paragraph (b)(1) of this clause, the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government shall not—

(i) Use the technical data to manufacture additional quantities of the commercial items; or

(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Government without the Contractor’s written permission unless a release, disclosure or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this contract.

(c) Additional license rights. The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data. However, if the Government desires to obtain additional rights in technical data, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a special license agreement made part of this contract. The License shall enumerate the additional rights granted the Government in such data.

(d) Release from liability. The Contractor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data delivered or otherwise furnished under this contract, shall have no liability for any release or disclosure of technical data that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

[60 FR 33497, June 28, 1995, as amended at 60 FR 61602, Nov. 30, 1995]
252.227–7016 Rights in bid or proposal information.

As prescribed in 227.7103–6(e)(1), 227.7104(e)(1), or 227.7203–6(b), use the following clause:

RIGHTS IN BID OR PROPOSAL INFORMATION (JUN 1995)

(a) Definitions. (1) For contracts that require the delivery of technical data, the terms “technical data” and “computer software” are defined in the Rights in Technical Data—Noncommercial Item clause of this contract or, if this is a contract awarded under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause of this contract. (2) For contracts that do not require the delivery of technical data, the term “computer software” is defined in the Rights in Noncommercial Computer and Noncommercial Computer Software—Small Business Innovative Research (SBIR) Program clause of this contract.

(b) Government rights to contract award. By submission of its offer, the Offeror agrees that the Government—

(1) May reproduce the bid or proposal, or any portions thereof, to the extent necessary to evaluate the offer.

(2) Except as provided in paragraph (d) of this clause, shall use information contained in the bid or proposal only for evaluative purposes and shall not disclose, directly or indirectly, such information to any person including potential evaluators, unless that person has been authorized by the head of the agency, his or her designee, or the Contracting Officer to receive such information.

(c) Government rights subsequent to contract award. The Contractor agrees—

(1) Except as provided in paragraphs (c)(2), (d), and (e) of this clause, the Government shall have the rights to use, modify, reproduce, release, perform, display, or disclose information contained in the Contractor’s bid or proposal within the Government. The Government shall not release, perform, display, or disclose such information outside the Government without the Contractor’s written permission.

(2) The Government’s right to use, modify, reproduce, release, perform, display, or disclose information that is technical data or computer software required to be delivered under this contract are determined by the Rights in Technical Data—Noncommercial Items, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, or Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause(s) of this contract.

(d) Government-furnished information. The Government’s rights with respect to technical data or computer software contained in the Contractor’s bid or proposal that were provided to the Contractor by the Government are subject only to restrictions on use, modification, reproduction, release, performance, display, or disclosure, if any, imposed by the developer or licensor of such data or software.

(e) Information available without restrictions. The Government’s rights to use, modify, reproduce, release, perform, display, or disclose information contained in a bid or proposal, including technical data or computer software, and to permit others to do so, shall not be restricted in any manner if such information has been released or disclosed to the Government or to other persons without restrictions other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the information to another party or the sale or transfer of some or all of a business entity or its assets to another party.

(f) Flowdown. Contractor shall include this clause in all subcontracts or similar contractual instruments and require its subcontractors or suppliers to do so without alteration, except to identify the parties.

(End of clause)

48 CFR Ch. 2 (10–1–02 Edition)

252.227–7017 Identification and assertion of use, release, or disclosure restrictions.

As prescribed in 227.7103–3(b), 227.7104(e)(2), or 227.7203–3(a), use the following provision:

IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS (JUN 1995)

(a) The terms used in this provision are defined in the following clause or clauses contained in this solicitation—

(1) If a successful offeror will be required to deliver technical data, the Rights in Technical Data—Noncommercial Items clause, or, if this solicitation contains a contract under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause.

(2) If a successful offeror will not be required to deliver technical data, the Rights in Noncommercial Computer Software and
Noncommercial Computer Software Documentation clause, or, if this solicitation contemplates a contract under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause.

(b) The identification and assertion requirements in this provision apply only to technical data, including computer software documents, or computer software to be delivered with other than unlimited rights. For contracts to be awarded under the Small Business Innovative Research Program, the notification requirements do not apply to technical data or computer software that will be generated under the resulting contract. Notification and identification is not required for restrictions based solely on copyright.

(c) Offers submitted in response to this solicitation shall identify, to the extent known at the time an offer is submitted to the Government, the technical data or computer software that the Offeror, its subcontractors or suppliers, or potential subcontractors or suppliers, assert should be furnished to the Government with restrictions on use, release, or disclosure.

(d) The Offeror’s assertions, including the assertions of its subcontractors or suppliers or potential subcontractors or suppliers shall be submitted as an attachment to its offer in the following format, dated and signed by an official authorized to contractually obligate the Offeror:

Identification and Assertion of Restrictions on the Government’s Use, Release, or Disclosure of Technical Data or Computer Software

The Offeror asserts for itself, or the persons identified below, that the Government’s rights to use, release, or disclose the following technical data or computer software should be restricted:

<table>
<thead>
<tr>
<th>Technical Data or Computer Software to be Furnished With Restrictions</th>
<th>Basis for Assertion**</th>
<th>Asserted Rights Category***</th>
<th>Name of Person Asserting Restrictions****</th>
</tr>
</thead>
<tbody>
<tr>
<td>(LIST)</td>
<td>(LIST)</td>
<td>(LIST)</td>
<td>(LIST)</td>
</tr>
</tbody>
</table>

*For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such items, component, or process. For computer software or computer software documentation identify the software or documentation.

**Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government’s rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

***Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited, restricted, or government purpose rights under this or a prior contract, or specially negotiated licenses).

****Corporation, individual, or other person, as appropriate.

*****Enter "none" when all data or software will be submitted without restrictions.

Date
Printed Name and Title
Signature

(End of identification and assertion)

(e) An offeror’s failure to submit, complete, or sign the notification and identification required by paragraph (d) of this provision with its offer may render the offer ineligible for award.

(f) If the Offeror is awarded a contract, the assertions identified in paragraph (d) of this provision shall be listed in an attachment to that contract. Upon request by the Contracting Officer, the Offeror shall provide sufficient information to enable the Contracting Officer to evaluate any listed assertion.

(End of provision)

[60 FR 33498, June 28, 1994]
(iv) Satisfies a criterion expressed in paragraph (a)(1)(i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this contract.

(3) Computer program means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(4) Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, re-created, or recompiled. Computer software does not include computer databases or computer software documentation.

(5) Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(6) Detailed manufacturing or process data means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(7) Developed means—

(i) (Applicable to technical data other than computer software documentation.) An item, component, or process, exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable persons skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered “developed,” the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code;

(ii) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(iii) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(iv) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

(8) Developed exclusively at private expense means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(9) Developed exclusively with government funds means development was not accomplished exclusively or partially at private expense.

(10) Developed with mixed funding means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(11) Form, fit, and function data means technical data that describe the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process, to the extent necessary to permit identification of physically and functionally interchangeable items.

(12) Generated means technical data or computer software first created in the performance of this contract.

(13) Government purpose means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software for commercial purposes or authorize others to do so.

(14) Limited rights means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or permit the technical data to be used by another party, except that the
Government may reproduce, release or disclose such data or permit the use or reproduction of the data by persons outside the Government if reproduction, release, disclosure, or use is—

(i) Necessary for emergency repair and overhaul; or

(ii) A release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;

(iii) Subject to a prohibition on the further reproduction, release disclosure, or use of the technical data; and

(iv) The Contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

(15) Minor modification means a modification that does not significantly alter the nongovernmental function or purpose of computer software or is of the type customarily provided in the commercial marketplace.

(16) Noncommercial computer software means software that does not qualify as commercial computer software under paragraph (a)(1) of this clause.

(17) Restricted rights apply only to noncommercial computer software and mean the Government’s rights to—

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(17)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(17)(i), (v) and (vi) of this clause;

(v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the non-disclosure agreement at 227.7018–7 of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile disassemble, or reverse engineer the software, or use software decomplied, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(17)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitation in paragraph (a)(17)(i) of this clause; and

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items, procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The intended recipient is subject to the non-disclosure agreement at DFARS 227.7018–7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends; and

(B) The Government shall not permit the recipient to decompile disassemble, or reverse engineer the software, or use software decomplied, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(17)(iv) of this clause, for any other purpose.

(18) SBIR data rights means a royalty-free license for the Government, including its support service contractors, to use, modify, reproduce, release, perform, display, or disclose technical data or computer software generated and delivered under this contract for any United States Government purpose.

(19) Technical data means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(20) Unlimited rights means rights to use, modify, reproduce, release, perform, display,
or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

(Rights in data and computer software. The Contractor grants or shall obtain for the Government the following royalty-free, world-wide, nonexclusive, irrevocable license rights in technical data or noncommercial computer software. All rights not granted to the Government are retained by the Contractor.

(1) Unlimited rights. The Government shall have unlimited rights in technical data, including computer software documentation, or computer software generated under this contract that are—

(i) Form, fit, and function data;

(ii) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(iii) Corrections or changes to Government-furnished technical data or computer software;

(iv) Otherwise publicly available or have been released or disclosed by the Contractor or a subcontractor without restrictions on further use, release or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data or computer software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(v) Data or software in which the Government has acquired previously unlimited rights under another Government contract or through a specific license; and

(vi) SBIR data upon expiration of the SBIR data rights period.

(2) Limited rights. The Government shall have limited rights in technical data, that were not generated under this contract, pertinent to items, components or processes developed exclusively at private expense, and are marked, in accordance with the marking instructions in paragraph (f)(1) of this clause, with the legend prescribed in paragraph (f)(2) of this clause.

(3) Restricted rights in computer software. The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise furnished to the Government under this contract that were developed exclusively at private expense and were not generated under this contract.

(4) SBIR data rights. (i) Except for technical data, including computer software documentation, or computer software in which the Government has unlimited rights under paragraph (b)(1) of this clause, the Government shall have SBIR data rights in all technical data or computer software generated under this contract during the period commencing with contract award and ending upon the date five years after completion of the project from which such data were generated.

(ii) The Government may not release or disclose SBIR data to any person, other than its support services contractors, except—

(A) As expressly permitted by the Contractor;

(B) For evaluation purposes; or

(C) A release, disclosure, or use that is necessary for emergency repair or overhaul of items operated by the Government.

(iii) A release or disclosure of SBIR data to the Government’s support services contractors, or a release or disclosure under paragraph (b)(4)(ii)(B) or (C) of this clause, may be made only if, prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103–7 or is a Government contractor receiving access to the technical data or software for performance of a Government contract that contains the clause at DFARS 227.7103–7 or is a Government contractor receiving access to the technical data or software for performance of a Government contract that contains the clause at DFARS 227.7103–7 or is a Government contractor receiving access to the technical data or software for performance of a Government contract that contains the clause at DFARS 227.7103–7.

Any rights so negotiated shall be identified in a license agreement made part of this contract.

(iv) Prior government rights. Technical data, including computer software documentation, or computer software that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government’s rights to use, modify, release, perform, display, or disclose the technical data or computer software have expired or no longer apply.

(7) Release from liability. The Contractor agrees to release the Government from liability for any release or disclosure of technical data, computer software, or computer software documentation made in accordance with paragraph (a)(14), (a)(17), or (b)(4) of this clause, or in accordance with the terms of a license negotiated under paragraph (b)(5) of this clause, or by others to whom the recipient has released or disclosed the data, software, or documentation and to seek relief solely from the party who has improperly
used, modified, reproduced, released, performed, displayed, or disclosed Contractor data or software marked with restrictive legends.

(c) Rights in derivative computer software or computer software documentation. The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract so that the Contractor uses to prepare, or includes in, derivative software or documentation.

(d) Third party copyrighted technical data and computer software. The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted technical data, including computer software documentation, or computer software in the data or software to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data or software of the appropriate scope set forth in paragraph (b) of this clause and, prior to delivery of such—

(1) Technical data, has affixed to the transmittal document a statement of the license rights obtained; or

(2) Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer.

(e) Identification and delivery of technical data or computer software to be furnished with restrictions on use, release, or disclosure. (1) This paragraph does not apply to technical data or computer software that were or will be generated under this contract or to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, technical data or computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any technical data or computer software with restrictive markings unless the technical data or computer software are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the technical data or computer software, in the following format, and signed by an official authorized to contractually obligate the Contractor:

Identification and Assertion of Restrictions on the Government’s Use, Release, or Disclosure of Technical Data or Computer Software

The Contractor asserts for itself, or the persons identified below, that the Government’s rights to use, release, or disclose the following technical data or computer software should be restricted:

<table>
<thead>
<tr>
<th>Technical data or computer software to be furnished with restrictions</th>
<th>Basis for assertion</th>
<th>Asserted rights category</th>
<th>Name of person asserting restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>(LIST)</td>
<td>(LIST)</td>
<td>(LIST)</td>
<td>(LIST)</td>
</tr>
</tbody>
</table>

1 If the assertion is applicable to items, components, or processes developed at private expense, identify both the technical data and each such item, component, or process.

2 Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government’s rights to use, release, or disclose technical data or computer software. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government’s rights should be restricted.

3 Enter asserted rights category (e.g., limited rights, restricted rights, government purpose rights, or government purposes licensor rights from a prior contract, SBIR data rights under another contract, or specifically negotiated licenses)

4 Corporation, individual, or other person, as appropriate.

Date
Printed Name and Title
Signature

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor’s assertions. The Contracting Officer reserves the right to add the Contractor’s assertions to the Attachment and validate any listed assertions, at a later date, in accordance with the procedures of the Validation of Asserted Restrictions—Computer Software and/or Validation of Restrictive Markings on Technical Data clauses of this contract.

(f) Marking requirements. The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government’s rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software to be delivered under this contract by marking the deliverable data or software subject to restriction. Except as provided in paragraph (f)(6) of this clause, only the following markings are authorized under this contract: the limited rights legend at paragraph (f)(2) of this clause; the restricted rights legends at paragraph (f)(3) of this clause, the SBIR data rights.legend at paragraph (f)(4) of this clause, or the special license rights legend at paragraphs (f)(5) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) General marking instructions. The Contractor, or its subcontractors or suppliers,
shall conspicuously and legibly mark the appropriate legend to all technical data and computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data or computer software for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underlining, with a note, or other appropriate identifier. Technical data or computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer’s written permission to deliver such software has been obtained prior to delivery. Reproductions of technical data, computer software, or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) Limited rights markings. Technical data not generated under this contract that pertain to items, components, or processes developed exclusively at private expense and delivered or otherwise furnished with limited rights shall be marked with the following legend:

```
Limited Rights
Contract No.
Contractor Name
Contractor Address
```

The Government’s rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

4) SBIR data rights markings: Except for technical data or computer software in which the Government has acquired unlimited rights under paragraph (b)(1) of this clause, or negotiated special license rights as provided in paragraph (b)(5) of this clause, technical data or computer software generated under this contract shall be marked with the following legend. The Contractor shall enter the expiration date for the SBIR data rights period on the legend:

```
SBIR Data Rights
Contract No.
Contractor Name
Address
```

Expiration of SBIR Data Rights Period

The Government’s rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend are restricted during the period shown as provided in paragraph (b)(4) of the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

5) Special license rights markings. (1) Technical data or computer software in which the Government’s rights stem from a specifically negotiated license shall be marked with the following legend:
Special License Rights

The Government’s rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software are restricted by Contract No. [Insert contract number] , License No. [Insert license identifier]. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose licenses acquired under a prior contract (see paragraph (b)(6) of this clause).

(b) Pre-existing data markings. If the terms of a prior contract or license permitted the Contractor to restrict the Government’s rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software, and those restrictions are still applicable, the Contractor may mark such data or software with the appropriate restrictive legend for which the data or software qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) Contractor procedures and records. Throughout performance of this contract, the Contractor, and its subcontractors or suppliers that will deliver technical data or computer software with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and
(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data or computer software delivered under this contract.

(h) Removal of unjustified and nonconforming markings.

(1) Unjustified markings. The rights and obligations of the parties regarding the validation of restrictive markings on technical data or computer software furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data and the Validation of Asserted Restrictions—Computer Software clauses of this contract, respectively. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor’s expense, correct or strike a marking if, in accordance with the applicable procedures of these clauses, a restrictive marking is determined to be unjustified.

(2) Nonconforming markings. A nonconforming marking is a marking placed on technical data or computer software delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data or the Validation of Asserted Restrictions—Computer Software clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within sixty (60) days, the Government may ignore or, at the Contractor’s expense, remove or correct any nonconforming markings.

(1) Relation to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(i) Limitation on charges for rights in technical data or computer software. (1) The Contractor shall not charge to this contract any cost, including but not limited to, license fees, royalties, or similar charges, for rights in technical data or computer software to be delivered under this contract when—

(1) The Government has acquired, by any means, the same or greater rights in the data or software; or
(2) The data are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor of supplier technical data or computer software, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and
(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data or computer software will be delivered.

(k) Applicability to subcontractors or suppliers. (1) The Contractor shall assure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes required by paragraph (e) of this clause are recognized and protected.

(2) Whenever any noncommercial technical data or computer software is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. The Contractor shall use the Technical Data—Commercial Items clause of this contract to obtain technical
data pertaining to commercial items, components, or processes. No other clause shall be used to enlarge or diminish the Government’s, the Contractor’s, or a higher tier subcontractor’s or supplier’s rights in a subcontractor’s or supplier’s technical data or computer software.

(3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for technical data which may be identified with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such technical data directly to the Government, rather than through a higher tier contractor, subcontractor, or supplier.

(4) The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data or computer software from their subcontractors or suppliers.

(5) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data or computer software as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

Alternate I (JUN 1995). As prescribed in 227.7104(d), add the following paragraph (l) to the basic clause:

(l) Publication for sale. (1) This paragraph applies only to technical data or computer software delivered to the Government with SBIR data rights.

(2) Upon expiration of the SBIR data rights period, the Government will not exercise its right to publish or authorize others to publish an item of technical data or computer software identified in this contract as being subject to paragraph (l) of this clause if the Contractor did not, prior to the expiration of the SBIR data rights period, or within two years following delivery of the data or software item, or within twenty-four months following the removal of any national security or export control restrictions, whichever is later, publishes such data or software item(s) and promptly notifies the Contracting Officer of such publication(s). Any such publication(s) shall include a notice identifying the number of this contract and the Government’s rights in the published data.

(3) This limitation on the Government’s right to publish for sale shall continue as long as the technical data or computer software are reasonably available to the public for purchase.

[60 FR 33499, June 28, 1995, as amended at 60 FR 61602, Nov. 30, 1995]

252.227–7019 Validation of asserted restrictions—Computer software.

As prescribed in 227.7104(e)(3) or 227.7203–6(c), use the following clause:

VALIDATION OF ASSERTED RESTRICTIONS—
COMPUTER SOFTWARE (JUN 1995)

(a) Definitions. (1) As used in this clause, unless otherwise specifically indicated, the term “Contractor” means the Contractor and its subcontractors or suppliers.

(2) Other terms used in this clause are defined in the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract.

(b) Justification. The Contractor shall maintain records sufficient to justify the validity of any markings that assert restrictions on the Government’s rights to use, modify, reproduce, perform, display, release, or disclose computer software delivered or required to be delivered under this contract and shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a request for information under paragraph (d) or a challenge under paragraph (f) of this clause.

(c) Direct contact with subcontractors or suppliers. The Contractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors or suppliers at any tier who assert restrictions on the Government’s right to use, modify, reproduce, release, perform, display, or disclose computer software. Neither this clause, nor any action taken by the Government under this clause, creates or implies privity of contract between the Government and the Contractor’s subcontractors or suppliers.

(d) Requests for information. (1) The Contracting Officer may request the Contractor to provide sufficient information to enable the Contracting Officer to evaluate the Contractor’s asserted restrictions. Such information shall be based upon the records required by this clause or other information reasonably available to the Contractor.

(2) Based upon the information provided, if the—

(i) Contractor agrees that an asserted restriction is not valid, the Contracting Officer may—

(A) Strike or correct the unjustified marking at the Contractor’s expense; or

(B) Return the computer software to the Contractor for correction at the Contractor’s expense. If the Contractor fails to correct or strike the unjustified restrictions and return
the corrected software to the Contracting Officer within sixty (60) days following receipt of the software, the Contracting Officer may correct the strike the markings at the Contractor’s expense.

(ii) Contracting Officer concludes that the asserted restriction is appropriate for this contract, the Contracting Officer shall so notify the Contractor in writing.

(3) The Contractor’s failure to provide a timely response to a Contracting Officer’s request for information or failure to provide sufficient information to enable the Contracting Officer to evaluate an asserted restriction shall constitute reasonable grounds for questioning the validity of an asserted restriction.

(e) Government right to challenge and validate asserted restrictions. (1) The Government, when there are reasonable grounds to do so, has the right to review and challenge the validity of any restrictions asserted by the Contractor on the Government’s rights to use, modify, reproduce, release, perform, display, or disclose computer software delivered, to be delivered under this contract, or otherwise provided to the Government in the performance of this contract. Except for software that is publicly available, has been furnished to the Government without restrictions, or has been otherwise made available without restrictions, the Government may exercise this right only within three years after the date(s) the software is delivered or otherwise furnished to the Government, or three years following final payment under this contract, whichever is later.

(2) The absence of a challenge to an asserted restriction shall not constitute validation under this clause. Only a Contracting Officer’s final decision or actions of an agency Board of Contract Appeals or a court of competent jurisdiction that sustain the validity of an asserted restriction constitute validation of the restriction.

(f) Challenge procedures. (1) A challenge must be in writing and shall—

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require the Contractor to respond within sixty (60) days in writing;

(iii) Require the Contractor to provide justification for the assertion based upon records kept in accordance with paragraph (b) of this clause and such other documentation that are reasonably available to the Contractor, in sufficient detail to enable the Contracting Officer to determine the validity of the asserted restrictions; and

(iv) State that a Contracting Officer’s final decision, during the three-year period preceding this challenge, or action of a court of competent jurisdiction or Board of Contract Appeals that sustained the validity of an identical assertion made by the Contractor (or a licensee) shall serve as justification for the asserted restriction.

(2) The Contracting Officer shall extend the time for response if the Contractor submits a written request showing the need for additional time to prepare a response.

(3) The Contracting Officer may request additional supporting documentation if, in the Contracting Officer’s opinion, the Contractor’s explanation does not provide sufficient evidence to justify the validity of the asserted restrictions. The Contractor agrees to promptly respond to the Contracting Officer’s request for additional supporting documentation.

(4) Notwithstanding challenge by the Contracting Officer, the parties may agree on the disposition of an asserted restriction at any time prior to a Contracting Officer’s final decision or, if the Contractor has appealed that decision, filed suit, or provided notice of an intent to file suit, at any time prior to a decision by a court of competent jurisdiction or Board of Contract Appeals.

(5) If the Contractor fails to respond to the Contracting Officer’s request for information or additional information under paragraph (f)(1) of this clause, the Contracting Officer shall issue a final decision, in accordance with the Disputes clause of this contract, pertaining to the validity of the asserted restriction.

(6) If the Contracting Officer, after reviewing the written explanation furnished pursuant to paragraph (f)(1) of this clause, or any other available information pertaining to the validity of an asserted restriction, determines that the asserted restriction has—

(i) Not been justified, the Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this contract, denying the validity of the asserted restriction; or

(ii) Been justified, the Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this contract, validating the asserted restriction.

(7) A Contractor receiving challenges to the same asserted restriction(s) from more than one Contracting Officer shall notify each Contracting Officer of the other challenges. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer who initiated the first in time unanswered challenge, after consultation with the other Contracting Officers who have challenged the restrictions and the Contractor, shall formulate and distribute a schedule that provides the contractor a reasonable opportunity for responding to each challenge.

(g) Contractor appeal—Government obligation. (1) The Government agrees that, notwithstanding a Contracting Officer’s final decision denying the validity of an asserted restriction and except as provided in paragraph (g)(3) of this clause, it will honor the asserted restriction—
252.227–7020

(1) For a period of ninety (90) days from the date of the Contracting Officer’s final decision to allow the Contractor to appeal to the appropriate Board of Contract Appeals or to file suit in an appropriate court; or
(ii) For a period of one year from the date of the Contracting Officer’s final decision if, within the first ninety (90) days following the Contracting Officer’s final decision, the Contractor has provided notice of an intent to file suit in an appropriate court; or
(iii) Until final disposition by the appropriate Board of Contract Appeals or court of competent jurisdiction, if the Contractor has: (A) appealed to the Board of Contract Appeals or filed suit an appropriate court within ninety (90) days; or (B) submitted, within ninety (90) days, a notice of intent to file suit in an appropriate court and filed suit within one year;
(2) The Contractor agrees that the Government may strike, correct, or ignore the restrictive markings if the Contractor fails to—
(i) Appeal to a Board of Contract Appeals within ninety (90) days from the date of the Contracting Officer’s final decision;
(ii) File suit in an appropriate court within ninety (90) days from such date; or
(iii) File suit within one year after the date of the Contracting Officer’s final decision if the Contractor had provided notice of intent to file suit within ninety (90) days following the date of the Contracting Officer’s final decision.
(3) The agency head, on a nondelegable basis, may determine that urgent or compelling circumstances do not permit awaiting the filing of suit in an appropriate court, or the rendering of a decision by a court of competent jurisdiction or Board of Contract Appeals. In that event, the agency head shall notify the Contractor of the urgent or compelling circumstances. Notwithstanding paragraph (g)(1) of this clause, the Contractor agrees that the agency may use, modify, reproduce, release, perform, display, or disclose computer software marked with (i) government purpose legends for any purpose, and authorize others to do so; or (ii) restrict or special license rights for government purposes only. The Government agrees not to release or disclose such software unless, prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS), or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends. The agency head’s determination may be made at any time after the date of the Contracting Officer’s final decision and shall not affect the Contractor’s right to damages against the United States, or other relief provided by law, if its asserted restrictions are ultimately upheld.
(h) Final disposition of appeal or suit. If the Contractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contractor’s decision is:
(i) Sustained—
(i) Any restrictive marking on such computer software shall be struck or corrected at the contractor’s expense or ignored; and
(ii) If the asserted restriction is found not to be substantially justified, the Contractor shall be liable to the Government for payment of the cost to the Government of reviewing the asserted restriction and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the restriction, unless special circumstances would make such payment unjust.
(ii) Not sustained—
(i) The Government shall be bound by the asserted restriction; and
(ii) If the challenge by the Government is not sustained, the Government shall be liable to the Contractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor in defending the restriction.
(i) Flowdown. The Contractor shall insert this clause in all contracts, purchase orders, and other similar instruments with its subcontractors or suppliers, at any tier, who will be furnishing computer software to the Government in the performance of this contract. The clause may not be altered other than to identify the appropriate parties.
(End of clause)

[60 FR 33503, June 28, 1995]

252.227–7020 Rights in special works.

As prescribed in 227.7105–3, 227.7106(a) or 227.7205(a), use the following clause:

RIGHTS IN SPECIAL WORKS (JUN 1995)

(a) Applicability. This clause applies to works first created, generated, or produced and required to be delivered under this contract.

(b) Definitions. As used in this clause:
(1) “Computer data base” means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.
(2) “Computer program” means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.
(3) “Computer software” means computer programs, source code, source code listings,
Department of Defense

252.227-7021

Rights in data—existing works.

As prescribed at 227.7105-2(a), use the following clause:

RIGHTS IN DATA—EXISTING WORKS (MAR 1979)

(a) The term works as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of a similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to distribute, perform publicly, and display publicly the works called for under this contract and (2) to authorize others to do so for Government purposes.

(c) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents, and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity arising out of the creation, delivery, use, modification, reproduction, release, performance, display, or disclosure of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in such works.

477

As prescribed at 227.7107–1(a), use the following clause:

GOVERNMENT RIGHTS (UNLIMITED) (MAR 1979)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

252.227–7023 Drawings and other data to become property of Government.

As prescribed at 227.7107–1(b), use the following clause:

DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT (MAR 1979)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the “person for whom the work was prepared” for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b). With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

252.227–7024 Notice and approval of restricted designs.

As prescribed at 227.7107–3, use the following clause:

NOTICE AND APPROVAL OF RESTRICTED DESIGNS (APR 1984)

In the performance of this contract, the Contractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer, the Contractor shall not produce a design or specification that requires in this construction work the use of structures, products, materials, construction equipment, or processes that are known by the Contractor to be available only from a sole source. The Contractor shall promptly report any such design or specification to the Contracting Officer and give the reason why it is considered necessary to so restrict the design or specification.

(End of clause)
(3) For Small Business Innovative Research program contracts, the terms “limited rights” and “restricted rights” are defined in the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause of this contract.

(b) Technical data or computer software provided to the Contractor as Government furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) GFI marked with limited or restricted rights legends. The Contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends or computer software received with restricted rights legends only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any person.

(2) GFI marked with government purpose rights legends. The Contractor shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, release or disclose such data or software for any commercial purpose or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the Contractor shall require the persons to whom disclosure will be made to complete and sign the non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS).

(3) GFI marked with specially negotiated license rights legends. The Contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the non-disclosure agreement at DFARS 227.7103–7. The Contractor shall modify paragraph (1)(c) of the non-disclosure agreement to reflect the recipient’s obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(c) Indemnification and creation of third party beneficiary rights. The Contractor agrees—

(1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by the Contractor or any person to whom the Contractor has released or disclosed such data or software; and

(2) That the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the Contractor, or any person to whom the Contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.

(End of clause)

[60 FR 33505, June 28, 1995]

252.227–7026 Deferred delivery of technical data or computer software.

As prescribed at 227.7103–8(a), use the following clause:

DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR 1988)

The Government shall have the right to require, at any time during the performance of this contract, within two (2) years after either acceptance of all items (other than data or computer software) to be delivered under this contract or termination of this contract, whichever is later, delivery of any technical data or computer software item identified in this contract as “deferred delivery” data or computer software. The obligation to furnish such technical data required to be prepared by a subcontractor and pertaining to an item obtained from him shall expire two (2) years after the date Contractor accepts the last delivery of that item from that subcontractor for use in performing this contract.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 33505, June 28, 1995]

252.227–7027 Deferred ordering of technical data or computer software.

As prescribed at 227.7103–8(b), use the following clause:

As prescribed at 227.7103–6(e)(2) or 227.7104(e)(4), use the following clause:

TECHNICAL DATA—WITHHOLDING OF PAYMENT

(a) If technical data specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not identified in the list described in the clause at 252.227–7013(e)(2) or 227.227–7018(e)(2) of this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor’s failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

252.227–7030 Rights in technical data and computer software (foreign).

As prescribed in 227.7103–17, use the following clause:

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (FOREIGN) (JUN 1975)

The United States Government may duplicate, use, and disclose in any manner for any purposes whatsoever, including delivery to other governments for the furtherance of mutual defense of the United States Government and other governments, all technical data including reports, drawings and blueprints, and all computer software, specified to be delivered by the Contractor to the United States Government under this contract.
Department of Defense

252.227-7032

Rights in shop drawings.

As prescribed in 227.7107-1(c), use the following clause:

**RIGHTS IN SHOP DRAWINGS (APR 1966)**

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

252.227-7034

Patents—subcontracts.

As prescribed at 227.304–4, insert the following clause:

**PATENTS—SUBCONTRACTS (APR 1984)**

The Contractor will include the clause at FAR 52.227–12, Patent Rights—Retention by the Contractor (Long Form), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by other than a small business firm or nonprofit organization.

(End of clause)

252.227-7035

Reserved

252.227-7036

Declaration of Technical Data Conformity.

As prescribed at 227.7103-6(e)(3) or 227.7104(e)(5), use the following clause:

**DECLARATION OF TECHNICAL DATA CONFORMITY (JAN 1997)**

All technical data delivered under this contract shall be accompanied by the following written declaration: The Contractor, hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith under Contract No. ______________ is complete, accurate, and complies with all requirements of the contract.

Name and Title of Authorized Official

Date

(End of clause)
contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (d)(1) of this clause, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer shall follow the procedures in paragraph (e) of this clause.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer’s request for information under paragraph (d)(1) of this clause, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (e) of this clause.

(e) Challenge. (1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. Such challenge shall—

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction;

(iii) State that a DoD Contracting Officer’s final decision, issued pursuant to paragraph (g) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensor of such Contractor or subcontractor) to which such notice is being provided; and

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (f) of this clause.

(2) The Contracting Officer shall extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor’s or subcontractor’s written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, et seq.), and shall be certified in the form prescribed at 33.207 of the Federal Acquisition Regulation, regardless of dollar amount.

(4) A Contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the Contractor or subcontractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(f) Final decision when Contractor or subcontractor fails to respond. Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice, other than a failure to respond under a contract for commercial items, the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (e)(1)(ii) or (e)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (g)(2)(i) through (iv) of this clause.

(4) A Contractor or subcontractor responding. (1) if the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the Contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the Contractor’s or subcontractor’s response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the Contractor or subcontractor...
subcontractor in accordance with the Disputes clause of this contract. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the Contractor’s or subcontractor’s response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking of a period of ninety (90) days from the issuance of the Contracting Officer’s final decision under paragraph (g)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer’s final decision under paragraph (g)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (g)(2)(i) of this clause. If the Contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor’s or subcontractor’s right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, the head of an agency determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board or court. If the restrictive marking is found not to have been made in good faith, the Government will no longer be bound, and the Contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor’s or subcontractor’s right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(h) Final disposition of appeal or suit. (1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer’s decision is sustained—

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the Contractor or subcontractor for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer’s decision is not sustained—

(i) The Government shall be liable to the Contractor or subcontractor for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, if the challenge by the Government is found not to have been made in good faith.

(1) Duration of right to challenge. The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data—
shall not constitute strictive marking or asserted restriction. For purposes of this clause, the Government, or a determination by the Government, may transact matters under this clause directly with subcontractors at any tier asserting restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

1. Flowdown. The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

As prescribed at 227.303(a), insert the following clause:

**PATENTS—REPORTING OF SUBJECT INVENTIONS**

The Contractor shall furnish the Contracting Officer the following:

(a) Interim reports every twelve (12) months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no such inventions.

(b) A final report, within three (3) months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions.

(c) Upon request, the filing date, serial number and title, a copy of the patent application and patent number, and issue date for any subject invention for which the Contractor has retained title.

(d) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

As prescribed in 228.370(a), use the following clause:

**REIMBURSEMENT FOR WAR-HAZARD LOSSES**

(DEC 1991)

(a) Costs for providing employee war-hazard benefits in accordance with paragraph (b) of the Workers’ Compensation and War-Hazard Insurance clause of this contract are allowable if the Contractor:

(1) Submits proof of loss files to support payment or denial of each claim;

(2) Subject to Contracting Officer approval, makes lump sum final settlement of any open claims and obtains necessary release documents within one year of the expiration or termination of this contract, unless otherwise extended by the Contracting Officer; and

(3) Provides the Contracting Officer at the time of final settlement of this contract—

(i) A final report, within three (3) months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions or stating that there were no such inventions.

(ii) An estimate of the dollar amount involved should the potential claim mature.

(b) The cost of insurance for liabilities reimbursable under this clause is not allowable.

(c) The Contracting Officer may require the Contractor to assign to the Government all right, title, and interest to any refund, rebate, or recapture arising out of any claim settlements.

(d) The Contractor agrees to:

(1) Investigate and promptly notify the Contracting Officer in writing of any occurrence which may give rise to a claim or potential claim, including the estimated amount of the claim;

(2) Give the Contracting Officer immediate written notice of any suit or action filed which may result in a payment under this clause; and

(3) Provide assistance to the Government in connection with any third party suit or claim relating to this clause which the Government elects to prosecute or defend in its own behalf.

As prescribed in 228.370(b), use the following clause:

**GROUND AND FLIGHT RISK**

(SEP 1996)

(a) Definitions. As used in this clause—

(1) Aircraft, unless otherwise provided in the Schedule, means—

(i) Aircraft to be delivered to the Government under this contract (either before or
after Government acceptance, including complete aircraft and aircraft in the process of being manufactured, disassembled, or reassembled; provided that an engine, portion of a wing or a wing is attached to a fuselage of the aircraft; and

(ii) Aircraft, whether in a state of disassembly or reassembly, furnished by the Government to the Contractor under this contract, including all property installed, in the process of installation, or temporarily removed; provided that the aircraft and property are not covered by a separate bailment agreement.

(2) Contractor’s premises means those premises designated in the Schedule or in writing by the Contracting Officer, and any other place the aircraft is moved for safeguarding.

(3) Flight means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) For land based aircraft, flight begins with the taxi roll from a flight line on the Contractor’s premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor’s premises;

(ii) For seaplanes, flight begins with the launching from a ramp on the Contractor’s premises and continues until the aircraft has completed its landing run and is beached at a ramp on the Contractor’s premises;

(iii) For helicopters, flight begins upon engagement of the rotors for the purpose of take-off from the Contractor’s premises and continues until the aircraft has returned to the ground on the Contractor’s premises and the rotors are disengaged; and

(iv) For vertical take-off aircraft, flight begins upon disengagement from any launching platform or device on the Contractor’s premises and continues until the aircraft has been engaged to any launching platform or device on the Contractor’s premises;

(v) All aircraft off the Contractor’s premises shall be considered to be in flight when on the ground or water for reasonable periods of time following emergency landings, landings made in performance of this contract, or landings approved in writing by the Contracting Officer.

(4) Flight crew member means the pilot, the co-pilot, and, unless otherwise provided in the Schedule, the flight engineer, navigator, and bombardier-navigator when assigned to their respective crew positions for the purpose of conducting any flight on behalf of the Contractor. If required, a defense systems operator may also be assigned as a flight crew member.

(5) In the open means located wholly outside of buildings on the Contractor’s premises or other places described in the Schedule as being in the open. Government furnished aircraft shall be considered to be located in the open at all times while in the Contractor’s possession, care, custody, or control.

(6) Operation means operations and tests of the aircraft and its installed equipment, accessories, and power plants, while the aircraft is in the open or in motion. The term does not apply to aircraft on any production line or in flight.

(b) Except as may be specifically provided in the Schedule as an exception to this clause, the Government assumes the risk of damage to, or loss or destruction of aircraft in the open, during operation, and in flight. The Contractor shall not be liable to the Government for such damage, loss, or destruction.

(c) The Government’s assumption of risk for aircraft in the open shall continue unless the Contractor finds that the aircraft is in the open under unreasonable conditions, and the Contractor fails to take prompt corrective action.

(1) The Contracting Officer, when finding aircraft in the open under unreasonable conditions, shall notify the Contractor in writing of the unreasonable conditions and require the Contractor to make corrections within a reasonable time.

(2) Upon receipt of the notice, the Contractor shall promptly correct the cited conditions, regardless of whether there is agreement that the conditions are unreasonable. If the Contracting Officer later determines that the cited conditions were not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred in correcting the conditions. Any dispute as to the unreasonable nature of the conditions or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(3) If the Contracting Officer finds that the Contractor failed to act promptly to correct the cited conditions or failed to correct the conditions within a reasonable time, the Government’s assumption of risk for any aircraft in the open under the cited conditions. The termination will be effective at 12:01 am on the fifteenth day following the day the written notice is received by the Contractor.

If the Contracting Officer later determines that the Contractor acted promptly to correct the cited conditions or that the time taken by the Contractor was not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred as a result of termination of the Government’s assumption of risk. Any dispute as to the timeliness of the Contractor’s action or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(4) If the Government terminates its assumption of risk, the risk of loss for Government-furnished property shall be determined
in accordance with the Government Property clause of this contract.

(5) The Contractor shall promptly notify the Contracting Officer when unreasonable conditions exist which prevent the Contractor from assuming the risk of loss and relieve the Contractor of liabilities, the Contracting Officer will notify the Contractor. The Contractor shall be entitled to an equitable adjustment in the contract price for any insurance costs extending from the end of the third working day after the Contractor notice of correction until the Contractor is notified that the Government will assume the risk of loss. If the Government does not again assume the risk of loss and conditions have been corrected, the Contractor shall be entitled to an equitable adjustment for insurance costs, if any, extending after the third working day.

(d) The Government’s assumption of risk shall not extend to damage, loss, or destruction of aircraft which—

(1) Results from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor’s managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open and during operation in accordance with sound industrial practice. The term “Contractor’s managerial personnel” means the Contractor’s directors, officers, and any of the Contractor’s managers, superintendents, or other equivalent representatives who supervise or direct all or substantially all of the Contractor’s business; or all or substantially all of the Contractor’s operations at any one plant or separate location at which this contract is performed; or a separate and complete major industrial operation in connection with the performance of this contract;

(2) Is sustained during flight if the flight crew members have not been approved in writing by the Government Flight Representative, who has been authorized in accordance with the combined regulation entitled “Contractor’s Flight and Ground Operations” (Air Force Regulation 55-22, Army Regulation 95-20, NAVAIR Instruction 3710.1C, and Defense Logistics Agency Manual 8210.1);

(3) Occurs in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) Is covered by insurance;

(5) Consists of wear and tear; deterioration (including rust and corrosion); freezing; or mechanical, structural, or electrical breakdown or failure, unless these are the result of other loss, damage or destruction covered by this clause. (This exclusion does not apply to Government-furnished property if damage consists of reasonable wear and tear or deterioration, or results from inherent vice in the property); or

(6) Is sustained while the aircraft is being worked on and is a direct result of the work unless such damage, loss, or destruction would be covered by insurance which would have been maintained by the Contractor for the benefit of the Government’s assumption of risk.

(e) With the exception of damage, loss, or destruction in flight, the Contractor shall assume the risk and shall be responsible for the first $25,000 of loss or damage to aircraft in the open or during operation resulting from each separate event, except for reasonable wear and tear and to the extent the loss or damage is caused by negligence of Government personnel. If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar amount of the risk assumed by the Government. In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $25,000 (or the amount of the loss, if less) as directed by the Contracting Officer.

(f) A subcontractor shall not be relieved from liability for damage, loss, or destruction of aircraft in its possession or control, except to the extent that the subcontract shall contain provisions requiring the return of aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. Where a subcontractor has not been relieved from liability, and damage, loss, or destruction occurs, the Contractor shall enforce liability against the subcontractor for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as may be authorized in this clause, any charge or contingency reserve for insurance covering damage, loss, or destruction of aircraft while in the open, during operation, or in flight when the risk has been assumed by the Government, even if the assumption may be terminated for aircraft in the open.

(h) In the event of damage, loss, or destruction of aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, to separate damaged and undamaged aircraft, to put all aircraft in the best possible order and further, except in cases covered by paragraph (e) of this clause, the Contractor shall furnish to the Contracting Officer a statement of—

(1) The damaged, lost, or destroyed aircraft;

(2) The time and origin of the damage, loss, or destruction;
(3) All known interests in commingled property of which aircraft are a part; and

(4) The insurance, if any, covering the interest in commingled property.

Except in cases covered by paragraph (e) of this clause, the Contracting Officer will make an equitable adjustment in the contract price for expenditures made by the Contractor in performing the obligations under this paragraph.

(i) If prior to delivery and acceptance by the Government, aircraft is damaged, lost, or destroyed and the Government assumed the risk, the Government shall either—

(1) Require that the aircraft be replaced or restored by the Contractor to the condition immediately prior to the damage, in which event the Contracting Officer will make an equitable adjustment in the contract price and the time for contract performance; or

(2) Terminate this contract with respect to the aircraft, in which event the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amount the Contracting Officer determines—

(i) It would have cost the Contractor to complete the aircraft (or any work to be performed on the aircraft) together with anticipated profit on uncompleted work; and

(ii) Would be the value of the damaged aircraft or any salvage retained by the Contractor.

The Contracting Officer shall prescribe the manner of disposition of the damaged, lost, or destroyed aircraft, or any parts of the aircraft. If any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due the Contractor. Failure of the parties to agree upon termination costs or an equitable adjustment with respect to any aircraft shall be considered a dispute under the Disputes clause.

(j) In the event the Contractor is reimbursed or compensated by a third person for damage, loss, or destruction of aircraft and has also been compensated by the Government, the Contractor shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government’s right to recover against third parties for damage, loss, or destruction. Upon the request of the Contracting Officer or authorized representative, the Contractor shall at Government expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment of subrogation) in obtaining recovery.

(k) The Contractor agrees to be bound by the operating procedures contained in the combined regulation entitled “Contractor’s Flight and Ground Operations” in effect on the date of contract award.

252.228–7002 Aircraft flight risk.

As prescribed in 228.370(c), use the following clause:

AIRCRAFT FLIGHT RISK (SEP 1996)

(a) Definitions. As used in this clause—

(1) Aircraft, unless otherwise provided in the Schedule, means—

(i) Aircraft furnished by the Contractor under this contract (either before or after Government acceptance); or

(ii) Aircraft furnished by the Government to the Contractor, including all Government property placed on, installed or attached to aircraft; provided that the aircraft and property are not covered by a separate bailment agreement.

(2) Flight means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) For land-based aircraft, flight begins with the taxi roll from a flight line and continues until the aircraft has completed the taxi roll to a flight line.

(ii) For seaplanes, flight begins with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.

(iii) For helicopters, flight begins upon engagement of the rotors for the purpose of take-off and continues until the aircraft has returned to the ground and rotors are disengaged.

(iv) For vertical take-off aircraft, flight begins upon disengagement from any launching platform or device and continues until the aircraft has been reengaged to any launching platform or device.

(3) Flight crew members means the pilot, copilot, and unless otherwise provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defense systems operator as required, when assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(b) This clause takes precedence over any other provision of this contract (particularly paragraph (g) of the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance—Liability to Third Persons clause).

(c) Unless the flight crew members previously have been approved in writing by the Government Flight Representative, who has been authorized in accordance with the combined regulation entitled “Contractor’s
Flight and Ground Operations (Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1C, and Defense Logistics Agency Manual 8210.1), the Contractor shall not be—

(1) Relieved of liability for damage, loss, or destruction of aircraft sustained during flight; or

(2) Reimbursed for liabilities to third persons for loss or damage to property or for death or bodily injury caused by aircraft during flight.

(i)(i) The loss, damage, or destruction of aircraft during flight in an amount exceeding $100,000 or 20 percent of the estimated cost of this contract, whichever is less, is subject to an equitable adjustment when the Contractor is not liable under—

(1) The Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause, and

(ii) Paragraph (c) of this clause.

(2) The equitable adjustment under this contract for the resulting repair, restoration, or replacement of aircraft shall be made—

(i) In the estimated cost, the delivery schedule, or both; and

(ii) In the amount of any fee to be paid to the Contractor.

(3) In determining the amount of equitable adjustment in the fee, the Contracting Officer will consider any fault of the Contractor, its employees, or any subcontractor that materially contributed to the damage, loss, or destruction.

(4) Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(e) The Contractor agrees to be bound by the operating procedures contained in the combined regulation entitled “Contractor’s Flight and Found Operations” in effect on the date of contract award.

(End of clause)

252.228–7003 Capture and detention.

As prescribed in 228.370(d), use the following clause:

CAPTURE AND DETENTION (DEC. 1991)

(a) As used in this clause—

(1) Captured person means any employee of the Contractor who is—

(i) Assigned to duty outside the United States for the performance of this contract; and

(ii) Found to be missing from his or her place of employment under circumstances that make it appear probable that the absence is due to the action of the force of any power not allied with the United States in a common military effort; or

(iii) Known to have been taken prisoner, hostage, or otherwise detained by the force of such power, whether or not actually engaged in employment at the time of capture; provided, that at the time of capture or detention, the person was either—

(A) Engaged in activity directly arising out of and in the course of employment under this contract; or

(B) Captured in an area where required to be only in order to perform this contract.

(2) A period of detention begins with the day of capture and continues until the captured person is returned to the place of employment, the United States, or is able to be returned to the jurisdiction of the United States, or until the person’s death is established or legally presumed to have occurred by evidence satisfactory to the Contracting Officer, whichever occurs first.

(3) United States comprises geographically the 50 states and the District of Columbia.

(4) War Hazards Compensation Act refers to the statute compiled in chapter 12 of title 42, U.S. Code (sections 1701–1717), as amended.

(b) If pursuant to an agreement entered into prior to capture, the Contractor is obligated to pay and has paid detention benefits to a captured person, or the person’s dependents, the Government will reimburse the Contractor up to an amount equal to the lesser of—

(1) Total wage or salary being paid at the time of capture due from the Contractor to the captured person for the period of detention; or

(2) That amount which would have been payable if the detention had occurred under circumstances covered by the War Hazards Compensation Act.

(c) The period of detention shall not be considered as time spent in contract performance, and the Government shall not be obligated to make payment for that time except as provided in this clause.

(d) The obligation of the Government shall apply to the entire period of detention, except that it is subject to the availability of funds from which payment can be made. The rights and obligations of the parties under this clause shall survive prior expiration, completion, or termination of this contract.

(e) The Contractor shall not be reimbursed under this clause for payments made if the employees were entitled to compensation for capture and detention under the War Hazards Compensation Act, as amended.

(End of clause)
252.228–7004 Bonds or other security.

As prescribed in 228.170, use the following provision:

BONDS OR OTHER SECURITY (DEC. 1991)

(a) Offerors shall furnish a bid guarantee in the amount of $______ with their bids. The offeror receiving notice of award shall furnish—

(1) A performance bond in the penal amount of $______; and

(2) Payment in full of any sum due the Government.

(b) The Contractor shall furnish the performance bond to the Contracting Officer within ______ days after receipt of the notice of award. The Contracting Officer will not issue the notice to proceed until receipt of an acceptable performance bond and payment of any sum due the Government.

(c) Bonds supported by sureties whose names appear on the list contained in Treasury Department Circular 570 are acceptable. Performance bonds from individual sureties are acceptable if each person acting as a surety provides a SF 28, Affidavit of Individual Surety, and a pledge of assets acceptable to the Contracting Officer.

(End of provision)

252.228–7005 Accident reporting and investigation involving aircraft, missiles, and space launch vehicles.

As prescribed in 228.370(e), use the following clause:

ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (DEC. 1991)

(a) The Contractor shall report promptly to the Administrative Contracting Officer all pertinent facts relating to each accident involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled in connection with this contract.

(b) If the Government conducts an investigation of the accident, the Contractor will cooperate and assist the Government’s personnel until the investigation is complete.

(c) The Contractor will include a clause in subcontracts under this contract to require subcontractor cooperation and assistance in accident investigations.

(End of clause)

252.228–7006 Compliance with Spanish laws and insurance.

As prescribed at 228.370(f), use the following clause:

COMPLIANCE WITH SPANISH LAWS AND INSURANCE (DEC 1998)

(a) The requirements of this clause apply only if the Contractor is not a Spanish concern.

(b) The Contractor shall, without additional expense to the United States Government, comply with all applicable Spanish Government laws pertaining to sanitation, traffic, security, employment of labor, and all other laws relevant to the performance of this contract. The Contractor shall hold the United States Government harmless and free from any liability resulting from the Contractor’s failure to comply with such laws.

(c) The contractor shall, at its own expense, provide and maintain during the entire performance of this contract, all workmen’s compensation, employees’ liability, bodily injury insurance, and other required insurance adequate to cover the risk assumed by the Contractor. The Contractor shall indemnify and hold harmless the United States Government from liability resulting from all claims for damages as a result of death or injury to personnel or damage to real or personal property related to the performance of this contract.

(d) The Contractor agrees to represent in writing to the Contracting Officer, prior to commencement of work and not later than 15 days after the date of the Notice to Proceed, that the Contractor has obtained the required types of insurance in the following minimum amounts. The representation also shall state that the Contractor will promptly notify the Contracting Officer of any notice of cancellation of insurance or material change in insurance coverage that could affect the United States Government’s interests.

<table>
<thead>
<tr>
<th>Type of insurance</th>
<th>Coverage per person</th>
<th>Coverage per accident</th>
<th>Property damage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comprehensive</td>
<td>$300,000</td>
<td>$1,000,000</td>
<td>$100,000</td>
</tr>
</tbody>
</table>

(e) The Contractor shall provide the Contracting Officer with a similar representation for all subcontracts with non-Spanish concerns that will perform work in Spain under this contract.

(f) Insurance policies required herein shall be purchased from Spanish insurance companies or other insurance companies legally authorized to conduct business in Spain. Such policies shall conform to Spanish laws and regulations and shall—

(1) Contain provisions requiring submission to Spanish law and jurisdiction of any problem that may arise with regard to the interpretation or application of the clauses and conditions of the insurance policy;

(2) Contain a provision authorizing the insurance company, as subrogee of the insured
entity, to assume and attend to directly, with respect to any person damaged, the legal consequences arising from the occurrence of such damages;

(3) Contain a provision worded as follows:

“If the insurance company waives any right of subrogation against the United States of America that may arise by reason of any payment under this policy.”;

(4) Not contain any deductible amount or similar limitation; and

(5) Not contain any provisions requiring submission to any type of arbitration.

(End of clause)


252.229–7000 Invoices exclusive of taxes or duties.

As prescribed in 229.402–1, use the following clause:

INVOICES EXCLUSIVE OF TAXES OR DUTIES (JUNE 1997)

Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available.

(End of clause)


252.229–7001 Tax relief.

As prescribed in 229.402–70(a), use the following clause:

TAX RELIEF (JUNE 1997)

(a) Prices set forth in this contract are exclusive of all taxes and duties from which the United States Government is exempt by virtue of tax agreements between the United States Government and the Contractor’s government. The following taxes or duties have been excluded from the contract price:

NAME OF TAX: (Offeror Insert) RATE (PERCENTAGE): (Offeror Insert)

(b) The Contractor’s invoice shall list separately the gross price, amount of tax deducted, and net price charged.

(c) When items manufactured to United States Government specifications are being acquired, the Contractor shall identify the materials or components intended to be imported in order to ensure that relief from import duties is obtained. If the Contractor intends to use imported products from inventories on hand, the price of which includes a factor for import duties, the Contractor shall ensure the United States Government’s exemption from these taxes. The Contractor may obtain a refund of the import duties from its government or request the duty-free import of an amount of supplies or components corresponding to that used from inventory for this contract.

(End of clause)

ALTERNATE I (JUNE 1997)

As prescribed in 229.402–70(a), add the following paragraph (d) to the basic clause:

(d) Tax relief will be claimed in Germany pursuant to the provisions of the Agreement Between the United States of America and Germany Concerning Tax Relief to be Accorded by Germany to United States Expenditures in the Interest of Common Defense. The Contractor shall use Abwicklungsschein fuer abgabenbeguenstigte Lieferungen/Leistungen nach dem Offshore Steuerabkommen (Performance Certificate for Tax-Free Deliveries/Performance according to the Offshore Tax Relief Agreement) or other documentary evidence acceptable to the German tax authorities. All purchases made and paid for on a tax-free basis during a 30-day period may be accumulated, totaled, and reported as tax-free.


252.229–7002 Customs exemptions (Germany).

As prescribed in 229.402–70(b), use the following clause:

CUSTOMS EXEMPTIONS (GERMANY) (JUNE 1997)

Imported products required for the direct benefit of the United States Forces are authorized to be acquired duty-free by the Contractor in accordance with the provisions of the Agreement Between the United States of America and Germany Concerning Tax Relief to be Accorded by Germany to United States Expenditures in the Interest of Common Defense.

(End of clause)


252.229–7003 Tax Exemptions (Italy).

As prescribed in 229.402–70(c), use the following clause:

TAX EXEMPTIONS (ITALY) (JAN 2002)

(a) The Contractor represents that the contract price, including the prices in subcontracts awarded under this contract, does not include taxes from which the United States Government is exempt.

(b) The United States Government is exempt from payment of Imposta Valore
As prescribed in 229.402-70(d), use the following clause:

**252.229-7004 Status of contractors as a direct contractor (Spain).**

As prescribed in 229.402-70(d), use the following clause:

**STATUS OF CONTRACTOR AS A DIRECT CONTRACTOR (SPAIN) (JUNE 1997)**

(a) "Direct Contractor," as used in this clause, means an individual, company, or entity with whom an agency of the United States Department of Defense has executed a written agreement that allows duty-free import of equipment, materials, and supplies into Spain for the construction, development, maintenance, and operation of Spanish-American installations and facilities.

(b) The Contractor is hereby designated as a Direct Contractor under the provisions of Complementary Agreement 5, articles 11, 12, 15, 17, and 18 of the Agreement on Friendship, Defense and Cooperation between the United States Government and the Kingdom of Spain, dated July 2, 1982. The Agreement relates to contacts to be performed in whole or in part in Spain, the provisions of which are hereby incorporated into and made a part of this contract by reference.

(c) The Contractor shall apply to the appropriate Spanish authorities for approval of status as a Direct Contractor in order to complete duty-free import of non-Spanish equipment, materials, and supplies represented as necessary for contract performance by the Contracting Officer. Orders for equipment, materials, and supplies placed prior to official notification of such approval shall be at the Contractor’s own risk. The Contractor must submit its documentation in sufficient time to permit processing by the appropriate United States and Spanish Government agencies prior to the arrival of the equipment, material, or supplies in Spain. Seasonal variations in processing times are common, and the Contractor should program its projects accordingly. Any delay or expense arising directly or indirectly from this process shall not excuse untimely performance (except as expressly allowed in other provisions of this contract), constitute a direct or constructive change, or otherwise provide a basis for additional compensation or adjustment of any kind.

(d) To ensure that all duty-free imports are properly accounted for, exported, or disposed of, in accordance with Spanish law, the Contractor shall obtain a written bank letter of guaranty payable to the Treasurer of the United States, or such other authority as may be designated by the Contracting Officer, in the amount set forth in paragraph (g) of this clause, prior to effecting any duty-free imports for the performance of this contract.

(e) If the Contractor fails to obtain the required guaranty, the Contractor agrees that the Contracting Officer may withhold a portion of the contract payments in order to establish a fund in the amount set forth in paragraph (g) of this clause. The fund shall be used for the payment of import taxes in
252.229–7005  the event that the Contractor fails to properly account for, export, or dispose of equipment, materials, or supplies imported on a duty-free basis.

(f) The amount of the bank letter of guaranty or size of the fund required under paragraph (d) or (e) of this clause normally shall be 5 percent of the contract value. However, if the Contractor demonstrates to the Contracting Officer’s satisfaction that the amount retained by the United States Government or guaranteed by the bank is excessive, the amount shall be reduced to an amount commensurate with contingent import tax and duty-free liability. This bank guaranty or fund shall not be released to the Contractor until the Spanish General Directorate of Customs verifies the accounting, export, or disposition of the equipment, material, or supplies imported on a duty-free basis.

(g) The amount required under paragraph (d), (e), or (f) of this clause is (Contracting Officer insert amount at time of contract award).

(h) The Contractor agrees to insert the provisions of this clause, including this paragraph (h), in all subcontracts.

(End of clause)


252.229–7005 Tax exemptions (Spain).

As prescribed in 229.402–70(e), use the following clause:

TAX EXEMPTIONS (SPAIN) (JUNE 1997)

(a) The Contractor represents that the contract prices, including subcontract prices, do not include the taxes identified herein, or any other taxes from which the United States Government is exempt.

(b) In accordance with tax relief agreements between the United States Government and the Spanish Government, and because the incumbent contract arises from the activities of the United States Forces in Spain, the contract will be exempt from the following excise, luxury, and transaction taxes:

1. Derechos de Aduana (Customs Duties).
2. Impuesto de Compensacion a la Importacion (Compensation Tax on Imports).
3. Transmisiones Patronomiales (Property Transfer Tax).
4. Impuesto Sobre el Lucro (Luxury Tax).
5. Actos Juridicos Documentados (Legal Official Transactions).
6. Impuesto Sobre el Trafico de Empresas (Business Trade Tax).
7. Impuestos Especiales de Fabricacion (Special Products Tax).
8. Impuesto Sobre el Petroleo y Derivados (Tax on Petroleum and its By-Products).
9. Impuesto Sobre el Uso de Telefona (Telephone Tax).
10. Impuesto General Sobre la Renta de Sociedades y demas Entidades Juridicas (General Corporation Income Tax).
11. Impuesto Industrial (Industrial Tax).
12. Impuesto de Rentas sobre el Capital (Capital Gains Tax).
13. Plus Valia (Increase on Real Property).
14. Contribucion Territorial Urbana (Metropolitan Real Estate Tax).
15. Contribucion Territorial Rustica y Pecuaria (Farmland Real Estate Tax).
16. Impuestos de la Diputacion (County Service Charges).
17. Impuestos Municipal y Tasas Parafiscales (Municipal Tax and Charges).

(End of clause)


252.229–7006 Value added tax exclusion (United Kingdom).

As prescribed in 229.402–70(f), use the following clause:

VALUE ADDED TAX EXCLUSION (UNITED KINGDOM) (JUNE 1997)

The supplies or services identified in this contract are to be delivered at a price exclusive of value added tax under arrangements between the appropriate United States authorities and Her Majesty’s Customs and Excise (Reference Priv 467). By executing this contract, the Contracting Officer certifies that these supplies or services are being purchased for United States Government official purposes only.

(End of clause)


252.229–7007 Verification of United States receipt of goods.

As prescribed in 229.402–70(g), use the following clause:

VERIFICATION OF UNITED STATES RECEIPT OF GOODS (JUNE 1997)

The Contractor shall insert the following statement on all Material Inspection and Receiving Reports (DD Form 250 series) for Contracting Officer approval: “I certify that the items listed on this invoice have been received by the United States.”

(End of clause)

Department of Defense

252.229-7008 Relief from import duty (United Kingdom).

As prescribed in 229.402-70(h), use the following clause:

RELIEF FROM IMPORT DUTY (UNITED KINGDOM) (JUNE 1997)

Any import dutiable articles, components, or raw materials supplied to the United States Government under this contract shall be exclusive of any United Kingdom import duty. Any imported items supplied for which import duty already has been paid will be supplied at a price exclusive of the amount of import duty paid. The Contractor is advised to contact Her Majesty’s (HM) Customs and Excise to obtain a refund upon completion of the contract (Reference HM Customs and Excise Notice No. 431, February 1973, entitled “Relief from Customs Duty and/or Value Added Tax on United States Government Expenditures in the United Kingdom”).

(End of clause)


252.229-7009 Relief from customs duty and value added tax on fuel (passenger vehicles) (United Kingdom).

As prescribed in 229.402-70(1), use the following clause:

RELIEF FROM CUSTOMS DUTY AND VALUE ADDED TAX ON FUEL (PASSENGER VEHICLES) (UNITED KINGDOM) (JUNE 1997)

(a) Pursuant to an agreement between the United States Government and Her Majesty’s (HM) Customs and Excise, it is possible to obtain relief from customs duty on fuels and lubricants used in support of certain contracts. If vehicle fuels and lubricants are used in support of this contract, the Contractor shall seek relief from customs duty in accordance with HM Customs Notice No. 431, February 1973, entitled “Relief from Customs Duty and/or Value Added Tax on United States Government Expenditures in the United Kingdom.” Application should be sent to the Contractor’s local Customs and Excise Office.

(b) Specific information should be included in the request for tax relief, such as the number of vehicles involved, types of vehicles, rating of vehicles, fuel consumption, estimated mileage per contract period, and any other information that will assist HM Customs and Excise in determining the amount of relief to be granted.

(c) Within 30 days after the award of this contract, the Contractor shall provide the Contracting Officer with evidence that an attempt to obtain relief within the time specified, the Contracting Officer may deduct from the contract price the amount of relief that would have been allowed if HM Customs and Excise had favorably considered the request for relief.

(d) The amount of any rebate granted by HM Customs and Excise shall be paid in full to the United States Government. Checks shall be made payable to the Treasurer of the United States and forwarded to the Administrative Contracting Officer.

(End of clause)


252.231-7000 Supplemental cost principles.

As prescribed in 231.100-70, use the following clause:
SUPPLEMENTAL COST PRINCIPLES (DEC 1991)

When the allowability of costs under this contract is determined in accordance with part 31 of the Federal Acquisition Regulation (FAR), allowability shall also be determined in accordance with part 231 of the Defense FAR Supplement, in effect on the date of this contract.

(End of clause)

252.232–7000 Advance payment pool.
As prescribed in 232.412–70(a), use the following clause:

ADVANCE PAYMENT POOL (DEC. 1991)

(a) Notwithstanding any other provision of this contract, advance payments will be made for contract performance in accordance with the Determinations, Findings, and Authorization for Advance payment dated...

(b) Payments made in accordance with this clause shall be governed by the terms and conditions of the Advance Payment Pool Agreement between the United States of America and (insert the name of the contractor). The Agreement is incorporated in the contract by reference.

(End of clause)

252.232–7001 Disposition of payments.
As prescribed in 232.412–70(b), use the following clause:

DISPOSITION OF PAYMENTS (DEC 1991)

Payment will be by a dual payee Treasury check made payable to the contractor or the (insert the name of the disbursing office in the advance payment pool agreement), and will be forwarded to that disbursing office for appropriate disposition.

(End of clause)

252.232–7002 Progress payments for foreign military sales acquisitions.
As prescribed in 232.502–4–70(a), use the following clause:

PROGRESS PAYMENTS FOR FOREIGN MILITARY SALES ACQUISITIONS (DEC 1991)

If this contract includes foreign military sales (FMS) requirements, the Contractor shall—

(a) Submit a separate progress payment request for each progress payment rate; and

(b) Submit a supporting schedule showing—

(1) The amount of each request distributed to each country’s requirements; and

(2) Total price per contract line item applicable to each separate progress payment rate.

(c) Identify in each progress payment request the contract requirements to which it applies (i.e., FMS or U.S.);

(d) Calculate each request on the basis of the prices, costs (including costs to complete), subcontractor progress payments, and progress payment liquidations of the contract requirements to which it applies; and

(e) Distribute costs among contract line items and countries in a manner acceptable to the Administrative Contracting Officer.

(End of clause)

252.232–7003 [Reserved]

252.232–7004 DoD progress payment rates.
As prescribed in 232.502–4–70(b), use the following clause:

DOD PROGRESS PAYMENT RATES (OCT 2001)

(a) If the contractor is a small business concern, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), Limitations on Undefinitized Contract Actions) to 90 percent.

(b) If the contractor is a small disadvantaged business concern, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), Limitations on Undefinitized Contract Actions) to 95 percent.

(End of clause)

[66 FR 49865, Oct. 1, 2001]

252.232–7005 Reimbursement of subcontractor advance payments—DoD pilot mentor-protege program.
As prescribed in 232.412–70(c), use the following clause:

REIMBURSEMENT OF SUBCONTRACTOR ADVANCE PAYMENTS—DOD PILOT MENTOR-PROTEGE PROGRAM (SEP 2001)

(a) The Government will reimburse the Contractor for any advance payments made by the Contractor, as a mentor firm, to a protege firm, pursuant to an approved mentor-protege agreement, provided—

(1) The Contractor’s subcontract with the protege firm includes a provision substantially the same as FAR 52.232–12, Advance Payments;
(2) The Contractor has administered the advance payments in accordance with the policies of FAR subpart 32.4; and

(3) The Contractor agrees that any financial loss resulting from the failure or inability of the protege firm to repay any unliquidated advance payments is the sole financial responsibility of the Contractor.

(b) For a fixed price type contract, advance payments made to a protege firm shall be paid and administered as if there were 100 percent progress payments. The Contractor shall include as a separate attachment with each Standard Form (SF) 1443, Contractor’s Request for Progress Payment, a request for reimbursement of advance payments made to a protege firm. The attachment shall provide a separate calculation of lines 14a through 14e of SF 1443 for each protege, reflecting the status of advance payments made to that protege.

(c) For cost reimbursable, contracts, reimbursement of advance payments shall be made via public voucher. The Contractor shall show the amounts of advance payments made to each protege on the public voucher, in the form and detail directed by the cognizant contracting officer or contract auditor.

(End of clause)


252.232-7006 [Reserved]


As prescribed in 232.705-70, use the following clause:

LIMITATION OF GOVERNMENT’S OBLIGATION

(AUG 1993)

(a) Contract line item(s) __________ through __________ * are incrementally funded. For these item(s), the sum of $ _______ * of the total price is presently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (i) of this clause.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government’s convenience, approximates the total amount currently allotted to the contract. The Contractor will not be obligated to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled “Termination for Convenience of the Government.” As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (1) of this clause, the Contractor will notify the Contracting Officer in writing at least ninety days prior to the date when, in the Contractor’s best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (1) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause for a subsequent period as may be specified in the allotment schedule in paragraph (1) of this clause, or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor’s notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled “Termination for Convenience of the Government.”

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period required for the timely performance of the contract line item(s) identified in paragraph (a) of this clause, or to a mutually agreed upon substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of
252.232–7008

Assignment of claims (overseas).

As prescribed in 232.806(a)(1), use the following clause:

**Assignment of Claims (Overseas) (JUNE 1997)**

(a) No claims for monies due, or to become due, shall be assigned by the Contractor unless—

(1) Approved in writing by the Contracting Officer;  

(2) Made in accordance with the laws and regulations of the United States of America; and  

(3) Permitted by the laws and regulations of the Contractor’s country.

(b) In no event shall copies of this contract or any plans, specifications, or other similar documents relating to work under this contract, if marked “Top Secret,” “Secret,” or “Confidential” be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive such documents. However, a copy of any part or all of this contract so marked may be furnished, or any information contained herein may be disclosed, to such assignee upon the Contracting Officer’s prior written authorization.

(c) Any assignment under this contract shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing. On each invoice or voucher submitted for payment under this contract to which any assignment applies, and for which direct payment thereof is to be made to an assignee, the Contractor shall—

(1) Identify the assignee by name and complete address; and  

(2) Acknowledge the validity of the assignment and the right of the named assignee to receive payment in the amount invoiced or vouchedered.

(End of clause)

Alternate I (AUG 1993). If only one line item will be incrementally funded, substitute the following paragraph (a) for paragraph (a) of the basic clause.

(a) Contract line item is incrementally funded. The sum of $ is presently available for payment and allotted to this contract. An allotment schedule is contained in paragraph (i) of this clause.  

*To be inserted after negotiation.

(58 FR 46093, Sept. 1, 1993)

252.232–7008 Mandatory payment by Governmentwide commercial purchase card.

As prescribed in 232.1110, use the following clause:

Mandatory Payment by Governmentwide Commercial Purchase Card (JUL 2000)

The Contractor agrees to accept the Governmentwide commercial purchase card as the method of payment for orders or calls valued at or below $2,500 under this contract or agreement.

(End of clause)

(65 FR 64626, July 31, 2000)

252.233–7000 [Reserved]

252.233–7001 Choice of law (overseas).

As prescribed in 233.215–70, use the following clause:

Choice of Law (Overseas) (JUNE 1997)

This contract shall be construed and interpreted in accordance with the substantive laws of the United States of America. By the execution of this contract, the Contractor expressly agrees to waive any rights to invoke the jurisdiction of local national courts.

(62 FR 34134, June 24, 1997)

48 CFR Ch. 2 (10–1–02 Edition)
where this contract is performed and agrees to accept the exclusive jurisdiction of the United States Armed Services Board of Contract Appeals and the United States Court of Federal Claims for hearing and determination of any and all disputes that may arise under the Disputes clause of this contract.

(End of clause)

(62 FR 34135, June 24, 1997)

252.234–7000 Notice of earned value management system.

As prescribed in 234.005–71(a), use the following provision:

NOTICE OF EARNED VALUE MANAGEMENT SYSTEM (MAR 1998)

(a) The offeror shall provide documentation that the cognizant Administrative Contracting Officer (ACO) has recognized that the proposed earned value management system (EVMS) complies with the EVMS criteria of DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, or that the proposed cost/schedule control system has been accepted by the Department of Defense.

(b) If the offeror proposes to use a system that does not meet the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the EVMS criteria.

(1) The plan shall—

(A) Describe the EVMS the offeror intends to use in performance of the contract;

(B) Distinguish between the offeror’s existing management system and modifications proposed to meet the criteria;

(C) Describe the management system and its application in terms of the 32 EVMS criteria;

(D) Describe the proposed procedure for administration of the criteria as applied to subcontractors; and

(E) Provide documentation describing the process and results of any third-party or self-evaluation of the system’s compliance with EVMS criteria.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review the offeror’s plan for EVMS before contract award.

(c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the criteria. The prime contractor and the Government shall agree to subcontractors selected for application of the EVMS criteria.


252.234–7001 Earned value management system.

As prescribed in 234.005–71(b), use the following clause:

EARNED VALUE MANAGEMENT SYSTEM (MAR 1998)

(a) In the performance of this contract, the Contractor shall use an earned value management system (EVMS) that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the criteria provided in DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs.

(b) If, at the time of award, the Contractor’s EVMS has not been recognized by the cognizant ACO as complying with EVMS criteria (or the Contractor does not have an existing cost/schedule control system that has been accepted by the Department of Defense), the Contractor shall apply the system to the contract and shall be prepared to demonstrate to the ACO that the EVMS complies with the EVMS criteria referenced in paragraph (a) of this clause.

(c) The Government may require integrated baseline reviews. Such reviews shall be scheduled as early as practicable and should be conducted within 180 calendar days after (1) contract award, (2) the exercise of significant contract options, or (3) the incorporation of major modifications. The objective of the integrated baseline review is for the Government and the Contractor to jointly assess areas, such as the Contractor’s planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(d) Unless a waiver is granted by the ACO, Contractor-proposed EVMS changes require approval of the ACO prior to implementation. The ACO shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO, the Contractor shall disclose EVMS changes to the ACO at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the ACO or duly authorized representative. Access is to permit Government surveillance to ensure that the EVMS complies,
and continues to comply, with the criteria referenced in paragraph (a) of this clause.

(f) The Contractor shall require the following subcontractors to comply with the requirements of this clause:

Contracting Officer to insert names of subcontractors selected for application of EVMS criteria in accordance with 252.234-7000(c).)

(End of clause)

[83 FR 11548, Mar. 9, 1998]


As prescribed in 235.070-3, use the following clause:


(a) This clause provides for indemnification under 10 U.S.C. 2354 if the Contractor meets all the terms and conditions of this clause.

(b) Claims, losses, and damages covered—

(1) Claims by third persons for death, bodily injury, sickness, or disease, or the loss, damage, or lost use of property. Claims include those for reasonable expenses of litigation or settlement. The term third persons includes employees of the contractor;

(2) The loss, damage, and lost use of the Contractor’s property, but excluding lost profit; and

(3) Loss, damage, or lost use of the Government’s property.

(c) The claim, loss, or damage—

(1) Must arise from the direct performance of this contract;

(2) Must not be compensated by insurance or other means, or be within deductible amounts of the Contractor’s insurance;

(3) Must result from an unusually hazardous risk as specifically defined in the contract;

(4) Must not result from willful misconduct or lack of good faith on the part of any of the Contractor’s directors or officers, managers, superintendents, or other equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor’s business;

(ii) All or substantially all of the Contractor’s operations at any one plant or separate location where this contract is being performed; or

(iii) A separate and complete major industrial operation connected with the performance of this contract;

(5) Must not be a liability assumed under any contract or agreement (except for subcontractors covered by paragraph (h) of this clause), unless the Contracting Officer (or in contracts with the Department of the Navy, the Department) specifically approved the assumption of liability; and

(6) Must be certified as just and reasonable by the Secretary of the department or designated representative.

(d) The Contractor shall buy and maintain, to the extent available, insurance against unusually hazardous risks in the form, amount, period(s) of time, at the rate(s), and with such insurers, as the Contracting Officer (or, for Navy contracts, the Department) may from time to time require and approve. If the cost of this insurance is higher than the cost of the insurance the Contractor had as of the date of the contract, the Government shall reimburse the Contractor for the difference in cost, as long as it is properly allocable to this contract and is not included in the contract price. The Government shall not be liable for claims, loss, or damage if insurance was available and is either required or approved under this paragraph.

(e) A reduction of the insurance coverage maintained by the Contractor on the date of the execution of this contract shall not increase the Government’s liability under this clause unless the Contracting Officer consents, and the contract price is equitably adjusted, if appropriate, to reflect the Contractor’s consideration for the Government’s assumption of increased liability.

(f) Notice. The Contractor shall—

(1) Promptly notify the Contracting Officer of any occurrence, action, or claim that might trigger the Government’s liability under this clause;

(2) Furnish the proof or evidence of any claim, loss, or damage in the form and manner that the Government requires; and

(3) Immediately provide copies of all pertinent papers that the Contractor receives or has received.

(g) The Government may direct, participate in, and supervise the settlement or defense of the claim or action. The Contractor shall comply with the Government’s directions and execute any authorizations required.

(h) **Flowdown.** The Government shall indemnify the Contractor if the Contractor has an obligation to indemnify a subcontractor under any subcontract at any tier under this contract for the unusually hazardous risk identified in this contract only if—

(1) The Contracting Officer gave prior written approval for the Contractor to provide in a subcontract for the Contractor to indemnify the subcontractor for unusually hazardous risks defined in this contract;

(2) The Contracting Officer approved those indemnification provisions;
Department of Defense

(3) The subcontract indemnification provisions entitle the Contractor, or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims; and

(4) The subcontract provides the same rights and duties, the same provisions for notice, furnishing of papers and the like, between the Contractor and the subcontractor, as exist between the Government and the Contractor under this clause.

(i) The Government may discharge its obligations under paragraph (h) of this clause by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(ii) The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(End of clause)


As prescribed in 235.070–3, use the following clause:


(a) This clause provides for indemnification under 10 U.S.C. 2354 if the Contractor meets all the terms and conditions of this clause.

(b) Claims, losses, and damages covered—

(1) Claims by third persons for death, bodily injury, sickness, or disease, or the loss, damage, or lost use of property. Claims include those for reasonable expenses of litigation or settlement. The term “third persons” includes employees of the Contractor;

(2) The loss, damage, and lost use of the Contractor’s property, but excluding lost profit; and

(3) Loss, damage, or lost use of the Government’s property.

(c) The claim, loss, or damage—

(1) Must arise from the direct performance of this contract;

(2) Must not be compensated by insurance or other means, or be within deductible amounts of the Contractor’s insurance;

(3) Must result from an unusually hazardous risk as specifically defined in the contract;

(4) Must not result from willful misconduct or lack of good faith on the part of any of the Contractor’s directors or officers, managers, superintendents, or other equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor’s business;

(ii) All or substantially all of the Contractor’s operations at any one plant or separate location where this contract is being performed; or

(iii) A separate and complete major industrial operation connected with the performance of this contract;

(5) Must not be a liability assumed under any contract or agreement (except for subcontracts covered by paragraph (i) of this clause), unless the Contracting Officer (or in contracts with the Department of the Navy, the Department) specifically approved the assumption of liability; and

(6) Must be certified as just and reasonable by the Secretary of the department or designated representative.

(d) A reduction of the insurance coverage maintained by the Contractor on the date of the execution of this contract shall not increase the Government’s liability under this clause unless the Contracting Officer consents, and the contract price is equitably adjusted, if appropriate, to reflect the Contractor’s consideration for the Government’s assumption of increased liability.

(e) Notice. The Insurance—Liability to Third Persons clause of this contract applies also to claims under this clause. In addition, the Contractor shall—

(1) Promptly notify the Contracting Officer of any occurrence, action, or claim that might trigger the Government’s liability under this clause;

(2) Furnish the proof or evidence of any claim, loss, or damage in the form and manner that the Government requires;

(3) Immediately provide copies of all pertinent papers that the contractor receives or has received.

(f) The Government may direct, participate in, and supervise the settlement or defense of the claim or action. The Contractor shall comply with the Government’s directions, and execute any authorizations required.

(g) The Limitation of Cost clause of this contract does not apply to the Government’s obligations under this clause. The obligations under this clause are excepted from the release required by the Allowable Cost, Fee, and Payment clause of this contract.

(h) Under this clause, a claim, loss, or damage arises from the direct performance of this contract if the cause of the claim, loss, or damage occurred during the period of performance of this contract or as a result of the performance of this contract.

(i) Flowdown. The Government shall indemnify the Contractor if the Contractor has an obligation to indemnify a subcontractor under any subcontract at any tier under this contract for the unusually hazardous risk identified in this contract only if—

(1) The Contracting Officer gave prior written approval for the Contractor to provide in a subcontract for the Contractor to indemnify the subcontractor for unusually hazardous risks defined in this contract.
(2) The Contracting Officer approved those indemnification provisions;
(3) The subcontract indemnification provisions entitle the Contractor, or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims; and
(4) The subcontract provides the same rights and duties, the same provisions for notice, furnishing of paper and the like, between the Contractor and the subcontractor, as exist between the Government and the Contractor under this clause.
(j) The Government may discharge its obligations under paragraph (i) of this clause by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.
(k) The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(End of clause)

252.235–7002 Animal welfare.

As prescribed in 235.071(a), use the following clause:

ANIMAL WELFARE (DEC 1991)

(a) The Contractor shall register its research facility with the Secretary of Agriculture in accordance with 7 U.S.C. 2316 and 9 CFR subpart C, and §2.30, and furnish evidence of such registration to the Contracting Officer before beginning work under this contract.
(b) The Contractor shall acquire animals only from dealers licensed by the Secretary of Agriculture under 7 U.S.C. 2133 and 9 CFR subpart A, §§2.1 through 2.11, or from sources that are exempt from licensing under those sections.
(c) The Contractor agrees that the care and use of animals will conform with the pertinent laws of the United States and regulations of the Department of Agriculture (see 7 U.S.C. 2131 et seq. and 9 CFR subchapter A, parts 1 through 4).
(d) The Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract for failure to comply with the requirements of paragraphs (a) through (c) of this clause.
(1) The suspension will stay in effect until the Contractor complies with the requirements.
(2) Failure to complete corrective action within the time specified by the Contracting Officer may result in termination of this contract and removal of the Contractor's name from the list of contractors with approved Public Health Service Welfare Assurances.
(e) The Contractor may request registration of its facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), for the region in which its research facility is located. The location of the appropriate APHIS regional office, as well as information concerning this program may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, MD 20782.
(f) The Contractor shall include this clause, including this paragraph (f), in all subcontracts involving research of live vertebrate animals.

(End of clause)

252.235–7003 Frequency authorization.

As prescribed in 235.071(b), use the following clause:

FREQUENCY AUTHORIZATION (DEC 1991)

(a) The Contractor shall obtain authorization for radio frequencies required in support of this contract.
(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contract performance.
(c) The Contracting Officer shall furnish the procedures for obtaining radio frequency authorization.
(d) The Contractor shall include this clause, including this paragraph (d), in all subcontracts requiring the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

(End of clause)

Alternate I (DEC 1991). Substitute the following paragraph (c) for paragraph (c) of the basic clause if agency procedures authorize use of DD Form 1494, Application for Frequency Authorization:

(c) The Contractor shall use DD Form 1494, Application for Frequency Authorization, to obtain radio frequency authorization.

252.235–7004—252.235–7009 [Reserved]

252.235–7010 Acknowledgment of support and disclaimer.

As prescribed in 235.071(c), use the following clause:
(a) The Contractor shall include an acknowledgment of the Government’s support in the publication of any material based on or developed under this contract, stated in the following terms: This material is based upon work supported by the (name of contracting agency(ies)) under Contract No. (Contracting agency(ies) contract number(s)).

(b) All material, except scientific articles or papers published in scientific journals, must, in addition to any notices or disclaimers by the Contractor, also contain the following disclaimer: Any opinions, findings and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the (name of contracting agency(ies)).

(End of clause)

[60 FR 29503, June 5, 1995]

252.235–7011 Final scientific or technical report.

As prescribed in 235.071(d), use the following clause:

FINAL SCIENTIFIC OR TECHNICAL REPORT (SEP 1999)

The Contractor shall submit two copies of the approved scientific or technical report delivered under this contract to the Defense Technical Information Center (DTIC), Attn: DTIC–OC, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060–6218. The Contractor shall include a completed Standard Form 298, Report Documentation Page, with each copy of the report. For submission of reports in other than paper copy, contact the Defense Technical Information Center, Attn: DTIC–OC, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060–6218.

(End of clause)

[60 FR 29503, June 5, 1995, as amended at 64 FR 51977, Sept. 21, 1999]

252.236–7000 Modification proposals—price breakdown.

As prescribed in 236.570(a), use the following clause:

MODIFICATION PROPOSALS—PRICE BREAKDOWN (DEC 1991)

(a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown—

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for—

(i) Material;

(ii) Labor;

(iii) Equipment;

(iv) Subcontracts; and

(v) Overhead; and

(2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.

(c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

(d) The Contractor’s proposal shall include a justification for any time extension proposed.

(End of clause)

252.236–7001 Contract drawings and specifications.

As prescribed in 236.570(a), use the following clause:

CONTRACT DRAWINGS AND SPECIFICATIONS (AUG 2000)

(a) The Government will provide to the Contractor, without charge, one set of contract drawings and specifications, except publications incorporated into the technical provisions by reference, in electronic or paper media as chosen by the Contracting Officer.

(b) The Contractor shall—

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies;

(4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and

(5) Reproduce and print contract drawings and specifications as needed.

(c) In general—

(1) Large-scale drawings shall govern small-scale drawings; and

(2) The Contractor shall follow figures marked on drawings in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:
252.236–7002  Obstruction of navigable waterways.

As prescribed in 236.570(b)(1), use the following clause:

**OBSTRUCTION OF NAVIGABLE WATERWAYS**

(DEC 1991)

(a) The Contractor shall—

(1) Promptly recover and remove any material, plant, machinery, or appliance which the contractor loses, dumps, throws overboard, sinks, or misplaces, and which, in the opinion of the Contracting Officer, may be dangerous to or obstruct navigation;

(2) Give immediate notice, with description and locations of any such obstructions, to the Contracting Officer; and

(3) When required by the Contracting Officer, mark or buoys such obstructions until the same are removed.

(b) The Contracting Officer may—

(1) Remove the obstructions by contract or otherwise should the Contractor refuse, neglect, or delay compliance with paragraph (a) of this clause; and

(2) Deduct the cost of removal from any monies due or to become due to the Contractor; or

(3) Recover the cost of removal under the Contractor’s bond.

(c) The Contractor’s liability for the removal of a vessel wrecked or sunk without fault or negligence is limited to that provided in sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 410 et seq.).

(End of Clause)

252.236–7003  Payment for mobilization and preparatory work.

As prescribed in 236.570(b)(2), use the following clause:

**PAYMENT FOR MOBILIZATION AND PREPARATORY WORK**

(JAN 1997)

(a) The Government will make payment to the Contractor under the procedures in this clause for mobilization and preparatory work under item no.

(b) Payments will be made for actual payments by the Contractor on work preparatory to commencing actual work on the construction items for which payment is provided under the terms of this contract, as follows—

(1) For construction plant and equipment exceeding $25,000 in value per unit (as appraised by the Contracting Officer at the work site) acquired for the execution of the work;

(2) Transportation of all plant and equipment to the site;

(3) Material purchased for the prosecution of the contract, but not to be incorporated in the work;

(4) Construction of access roads or railroads, camps, trailer courts, mess halls, dormitories or living quarters, field headquarters facilities, and construction yards;

(5) Personal services; and

(6) Hire of plant.

(c) Requests for payment must include—

(1) An account of the Contractor’s actual expenditures;

(2) Supporting documentation, including receipted bills or copies of payrolls and freight bills; and

(3) The Contractor’s documentation—

(i) Showing that it has acquired the construction plant, equipment, and material free from all encumbrances;

(ii) Agreeing that the construction plant, equipment, and material will not be removed from the site without the written permission of the Contracting Officer; and

(iii) Agreeing that structures and facilities prepared or erected for the prosecution of the contract work will be maintained and not dismantled prior to the completion and acceptance of the entire work, without the written permission of the Contracting Officer.

(d) Upon receiving a request for payment, the Government will make payment, less any prescribed retained percentage, if—

(1) The Contracting Officer finds the—

(i) Construction plant, material, equipment, and the mobilization and preparatory work performed are suitable and necessary to the efficient prosecution of the contract; and

(ii) Preparatory work has been done with proper economy and efficiency.

(2) Payments for construction plant, equipment, material, and structures and facilities prepared or erected for prosecution of the contract work do not exceed—

(i) The Contractor’s cost for the work performed less the estimated value upon completion of the contract; and

(ii) 100 percent of the cost to the contractor of any items having no appreciable salvage value; and

(iii) 75 percent of the cost to the contractor of items which do have an appreciable salvage value.

(e) Payments will continue to be made for item no. , and all payments will be deducted from the contract price for this item, until the total deductions reduce this item to zero, after which no further payments will be made under this item.

(2) If the total of payments so made does not reduce this item to zero, the balance will
be paid to the Contractor in the final payment under the contract.

(3) The retained percentage will be paid in accordance with the Payments to Contractor clause of this contract.

(f) The Contracting Officer shall determine the value and suitability of the construction plant, equipment, materials, structures and facilities. The Contracting Officer’s determinations are not subject to appeal.

(End of clause)


252.236–7004 Payment for mobilization and demobilization.

As prescribed in 236.570(b)(2), use the following clause:

PAYMENT FOR MOBILIZATION AND DEMOBILIZATION (DEC 1991)

(a) The Government will pay all costs for the mobilization and demobilization of all of the Contractor’s plant and equipment at the contract lump sum price for this item.

(1) percent of the lump sum price upon completion of the contractor’s mobilization at the work site.

(2) The remaining percent upon completion of demobilization.

(b) The Contracting Officer may require the Contractor to furnish cost data to justify this portion of the bid if the Contracting Officer believes that the percentages in paragraphs (a) (1) and (2) of this clause do not bear a reasonable relation to the cost of the work in this contract.

(1) Failure to justify such price to the satisfaction of the Contracting Officer will result in payment, as determined by the Contracting Officer, of—

(i) Actual mobilization costs at completion of mobilization;

(ii) Actual demobilization costs at completion of demobilization; and

(iii) The remainder of this item in the final payment under this contract.

(2) The Contracting Officer’s determinations of the actual costs in paragraph (b)(1) of this clause is not subject to appeal.

(End of clause)

252.236–7005 Airfield safety precautions.

As prescribed in 236.570(b)(3), use the following clause. At some airfields, the width of the primary surface is 1,500 feet (750 feet on each side of the runway centerline). In such instances, substitute the proper width in the clause.

AIRFIELD SAFETY PRECAUTIONS (DEC 1991)

(a) Definitions. As used in this clause—

(1) Landing areas means—

(i) The primary surfaces, comprising the surface of the runway, runway shoulders, and lateral safety zones. The length of each primary surface is the same as the runway length. The width of each primary surface is 2,000 feet (1,000 feet on each side of the runway centerline);

(ii) The clear zone beyond the ends of each runway, i.e., the extension of the primary surface for a distance of 1,000 feet beyond each end of each runway;

(iii) All taxiways, plus the lateral clearance zones along each side for the length of the taxiways (the outer edge of each lateral clearance zone is laterally 250 feet from the far or opposite edge of the taxiway, e.g., a 75-foot-wide taxiway would have a combined width of taxiway and lateral clearance zones of 425 feet); and

(iv) All aircraft parking aprons, plus the area 125 feet in width extending beyond each edge all around the aprons.

(2) Safety precaution areas means those portions of approach-departure clearance zones and transitional zones where placement of objects incident to contract performance might result in vertical projections at or above the approach-departure clearance, or the transitional surface.

(i) The approach-departure clearance surface is an extension of the primary surface and the clear zone at each end of each runway, for a distance of 50,000 feet, first along an inclined (glide angle) and then along a horizontal plane, both flaring symmetrically about the runway centerline extended.

(A) The inclined plane (glide angle) begins in the clear zone 200 feet past the end of the runway (and primary surface) at the same elevation as the end of the runway. It continues upward at a slope of 90:1 (1 foot vertically for each 50 feet horizontally) to an elevation of 500 feet above the established airfield elevation. At that point the plane becomes horizontal, continuing at that same uniform elevation to a point 50,000 feet longitudinally from the beginning of the inclined plane (glide angle) and ending there.

(B) The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the clear zone. It then flares uniformly, reaching the maximum width of 16,000 feet at the end.

(ii) The approach-departure clearance zone is the ground area under the approach-departure clearance surface.

(iii) The transitional surface is a sideways extension of all primary surfaces, clear zones, and approach-departure clearance surfaces along inclined planes.

(A) The inclined plane in each case begins at the edge of the surface.
252.236-7006

(B) The slope of the incline plane is 7:1 (1 foot vertically for each 7 feet horizontally). It continues to the point of intersection with the—

(f) Inner horizontal surface (which is the horizontal plane 150 feet above the established airfield elevation); or

(2) Outer horizontal surface (which is the horizontal plane 100 feet above the established airfield elevation), whichever is applicable.

(iv) The “transitional zone” is the ground area under the transitional surface. (It adjoins the primary surface, clear zone, and approach-departure clearance zone.)

(b) General. (1) The Contractor shall comply with the requirements of this clause while—

(i) Operating all ground equipment (mobile or stationary);

(ii) Placing all materials; and

(iii) Performing all work, upon and around all airfields.

(2) The requirements of this clause are in addition to any other safety requirements of this contract.

(c) The Contractor shall—

(1) Report to the Contracting Officer before initiating any work;

(2) Notify the Contracting Officer of proposed changes to locations and operations;

(3) Not permit either its equipment or personnel to use any runway for purposes other than aircraft operation without permission of the Contracting Officer, unless the runway is—

(i) Closed by order of the Contracting Officer; and

(ii) Marked as provided in paragraph (d)(2) of this clause;

(4) Keep all paved surfaces, such as runways, taxiways, and hardstands, clean at all times and, specifically, free from small stones which might damage aircraft propellers or jet aircraft;

(5) Operate mobile equipment according to the safety provisions of this clause, while actually performing work on the airfield. At all other times, the Contractor shall remove all mobile equipment to locations—

(i) Approved by the Contracting Officer;

(ii) At a distance of at least 750 feet from the runway centerline, plus any additional distance; and

(iii) Necessary to ensure compliance with the other provisions of this clause; and

(6) Not open a trench unless material is on hand and ready for placing in the trench. As soon as practicable after material has been placed and work approved, the Contractor shall backfill and compact trenches as required by the contract. Meanwhile, all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause.

(d) Landing areas. The Contractor shall—

(1) Place nothing upon the landing areas without the authorization of the Contracting Officer;

(2) Outline those landing areas hazardous to aircraft, using (unless otherwise authorized by the Contracting Officer) red flags by day, and electric, battery-operated low-intensity red flasher lights by night;

(3) Obtain, at an airfield where flying is controlled, additional permission from the control tower operator every time before entering any landing area, unless the landing area is marked as hazardous in accordance with paragraph (d)(2) of this clause;

(4) Identify all vehicles it operates in landing areas by means of a flag on a staff attached to, and flying above, the vehicle. The flag shall be three feet square, and consist of a checkered pattern of international orange and white squares of 1 foot on each side (except that the flag may vary up to ten percent from each of these dimensions);

(5) Mark all other equipment and materials in the landing areas, using the same marking devices as in paragraph (d)(2) of this clause; and

(6) Perform work so as to leave that portion of the landing area which is available to aircraft free from hazards, holes, piles of material, and projecting shoulders that might damage an airplane tire.

(e) Safety precaution areas. The Contractor shall—

(1) Place nothing upon the safety precaution areas without authorization of the Contracting Officer;

(2) Mark all equipment and materials in safety precaution areas, using (unless otherwise authorized by the Contracting Officer) red flags by day, and electric, battery-operated, low-intensity red flasher lights by night; and

(3) Provide all objects placed in safety precaution areas with a red light or red lantern at night, if the objects project above the approach-departure clearance surface or above the transitional surface.

(End of clause)

252.236-7006 Cost limitation.

As prescribed in 236.570(b)(4), use the following provision:

COST LIMITATION (JAN 1997)

(a) Certain items in this solicitation are subject to statutory cost limitations. The limitations are stated in the Schedule.

(b) An offer which does not state separate prices for the items identified in the Schedule as subject to a cost limitation may be considered nonresponsive.

(c) Prices stated in offers for items subject to cost limitations shall include an appropriate apportionment of all costs, direct and indirect, overhead, and profit.
(d) Offers may be rejected which—
(1) Are materially unbalanced for the purpose of bringing items within cost limitations; or
(2) Exceed the cost limitations, unless the limitations have been waived by the Government prior to award.

(End of provision)

252.236–7007 Additive or deductive items.

As prescribed in 236.570(b)(5), use the following provision:

ADDITIVE OR DEDUCTIVE ITEMS (DEC 1991)

(a) The low offeror and the items to be awarded shall be determined as follows—
(1) Prior to the opening of bids, the Government will determine the amount of funds available for the project.
(2) The low offeror shall be the Offeror that
   (i) Is otherwise eligible for award; and
   (ii) Offers the lowest aggregate amount for the first or base bid item, plus or minus (in the order stated in the list of priorities in the bid schedule) those additive or deductive items that provide the most features within the funds determined available.
(3) The Contracting Officer shall evaluate all bids on the basis of the same additive or deductive items.
   (i) If adding another item from the bid schedule list of priorities would make the award exceed the available funds for all offerors, the Contracting Officer will skip that item and go to the next item from the bid schedule of priorities; and
   (ii) Add that next item if an award may be made that includes that item and is within the available funds.
(b) The Contracting Officer will use the list of priorities in the bid schedule only to determine the low offeror. After determining the low offeror, an award may be made on any combination of items if—
(1) It is in the best interest of the Government;
(2) Funds are available at the time of award; and
(3) The low offeror’s price for the combination to be awarded is less than the price offered by any other responsive, responsible offeror.
(c) Example. The amount available is $100,000. Offeror A’s base bid and four additives (in the order stated in the list of priorities in the bid Schedule) are $85,000, $10,000, $8,000, $6,000, and $4,000. Offeror B’s base bid and four additives are $80,000, $16,000, $9,000, $7,000, and $4,000. Offeror A is the low offeror. The aggregate amount of offeror A’s bid for purposes of award would be $99,000, which includes a base bid plus the first and fourth additives. The second and third additives were skipped because each of them would cause the aggregate bid to exceed $100,000.

(End of provision)

252.236–7008 Contract prices—bidding schedules.

As prescribed in 236.570(b)(6), use the following provision:

CONTRACT PRICES—BIDDING SCHEDULES (DEC 1991)

(a) The Government’s payment for the items listed in the Bidding Schedule shall constitute full compensation to the Contractor for—
(1) Furnishing all plant, labor, equipment, appliances, and materials; and
(2) Performing all operations required to complete the work in conformity with the drawings and specifications.
(b) The Contractor shall include in the prices for the items listed in the Bidding Schedule all costs for work in the specifications, whether or not specifically listed in the Bidding Schedule.

(End of provision)

252.236–7009 Option for supervision and inspection services.

As prescribed in 236.609–70, use the following clause:

OPTION FOR SUPERVISION AND INSPECTION SERVICES (DEC 1991)

(a) The Government may—
(1) At its option, direct the Contractor to perform any part or all of the supervision and inspection services for the construction contract as provided under appendix A of this contract; and
(2) Exercise its option, by written order, at any time prior to six months after satisfactory completion and acceptance of the work under this contract.
(b) Upon receipt of the Contracting Officer’s written order, the Contractor shall proceed with the supervision and inspection services.

(End of clause)


As prescribed in 236.570(c)(1), use the following provision:
OVERSEAS MILITARY CONSTRUCTION—PREFERENCE FOR UNITED STATES FIRMS (JAN 1997)

(a) Definition. 
"United States firm," as used in this provision, means a firm incorporated in the United States that complies with the following:

(1) The corporate headquarters are in the United States;
(2) The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and
(3) The firm employs United States citizens in key management positions.

(b) Evaluation. Offers from firms that do not qualify as United States firms will be evaluated by adding 20 percent to the offer.

(c) Status. The offeror is __________ is not a United States firm.

(End of provision)


252.236–7011 OVERSEAS ARCHITECT-ENGINEER SERVICES—RESTRICTION TO UNITED STATES FIRMS.

As prescribed in 236.609-70(b), use the following provision:

OVERSEAS ARCHITECT-ENGINEER SERVICES—RESTRICTION TO UNITED STATES FIRMS (JAN 1997)

(a) Definition.
"United States firm," as used in this provision, means a firm incorporated in the United States that complies with the following:

(1) The corporate headquarters are in the United States;
(2) The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and
(3) The firm employs United States citizens in key management positions.

(b) Restriction. Military construction appropriations acts restrict award of a contract, resulting from this solicitation, to a United States firm or a joint venture of United States and host nation firms.

(c) Status. The offeror confirms, by submission of its offer, that it is a United States firm or a joint venture of United States and host nation firms.

(End of provision)

[82 FR 2858, Jan. 17, 1997]
General Standards, of “Government Auditing Standards.”
(1) Qualifications;
(2) Independence; and
(3) Quality Control.
(c) The apparently successful Offeror, before award, shall give the Contracting Officer evidence that it is licensed by the cognizant licensing authority in the state or other political jurisdiction where the Offeror operates its professional practice.

(End of provision)


252.237–7001 Compliance with audit standards.
As prescribed in 237.270(d)(2), use the following clause:

COMPLIANCE WITH AUDIT STANDARDS (MAY 2000)

The Contractor, in performance of all audit services under this contract, shall comply with “Government Auditing Standards” issued by the Comptroller General of the United States.

(End of clause)

[65 FR 32041, May 22, 2000]

252.237–7002 Award to single offeror.
As prescribed in 237.7004(a), use the following provision:

AWARD TO SINGLE OFFEROR (DEC 1991)

(a) Award shall be made to a single offeror.
(b) Offerors shall include unit prices for each item. Failure to include unit prices for each item will be cause for rejection of the entire offer.
(c) The Government will evaluate offers on the basis of the estimated quantities shown.
(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is the lowest price to the Government.

(End of provision)

ALTERNATE I (DEC 1991)

As prescribed in 237.7004(a), substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is in the best interest of the Government.

252.237–7003 Requirements.
As prescribed in 237.7004(b), use the following clause:

REQUIREMENTS (DEC 1991)

(a) Except as provided in paragraphs (c) and (d) of this clause, the Government will order from the Contractor all of its requirements in the area of performance for the supplies and services listed in the schedule of this contract.
(b) Each order will be issued as a delivery order and will list—
(1) The supplies or services being ordered;
(2) The quantities to be furnished;
(3) Delivery or performance dates;
(4) Place of delivery or performance;
(5) Packing and shipping instructions;
(6) The address to send invoices; and
(7) The funds from which payment will be made.
(c) The Government may elect not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other reason.
(d) In an epidemic or other emergency, the contracting activity may obtain services beyond the capacity of the Contractor’s facilities from other sources.
(e) Contracting Officers of the following activities may order services and supplies under this contract—

(End of clause)

As prescribed in 237.7004(b), use the following clause:

AREA OF PERFORMANCE (DEC 1991)

(a) The area of performance is as specified in the contract.
(b) The Contractor shall take possession of the remains at the place where they are located, transport them to the Contractor’s place of preparation, and later transport them to a place designated by the Contracting Officer.
(c) The Contractor will not be reimbursed for transportation when both the place where the remains were located and the delivery point are within the area of performance.
(d) If remains are located outside the area of performance, the Contracting Officer may place an order with the Contractor under this contract or may obtain the services
elsewhere. If the Contracting Officer requires the Contractor to transport the remains into the area of performance, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance.

(e) The Contracting Officer may require the Contractor to deliver remains to any point within 100 miles of the area of performance. In this case, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

252.237-7005 Performance and delivery.

As prescribed in 237.7004(b), use the following clause:

PERFORMANCE AND DELIVERY (DEC 1991)

(a) The Contractor shall furnish the material ordered and perform the services specified as promptly as possible but not later than 36 hours after receiving notification to remove the remains, excluding the time necessary for the Government to inspect and check results of preparation.

(b) The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed 72 hours from the time the remains are casketed and final inspection completed.

(End of clause)

252.237-7006 Subcontracting.

As prescribed in 237.7004(b), use the following clause:

SUBCONTRACTING (DEC 1991)

The Contractor shall not subcontract any work under this contract without the Contracting Officer’s written approval. This clause does not apply to contracts of employment between the Contractor and its personnel.

(End of clause)

252.237-7007 Termination for default.

As prescribed in 237.7004(b), use the following clause:

TERMINATION FOR DEFAULT (DEC 1991)

(a) This clause supplements and is in addition to the Default clause of this contract.

(b) The Contracting Officer may terminate this contract for default by written notice without the ten day notice required by paragraph (a)(2) of the Default clause if—

(1) The Contractor, through circumstances reasonably within its control or that of its employees, performs any act under or in connection with this contract, or fails in the performance of any service under this contract and the act or failures may reasonably be considered to reflect discredit upon the Department of Defense in fulfilling its responsibility for proper care of remains;

(2) The Contractor, or its employees, solicits relatives or friends of the deceased to purchase supplies or services not under this contract. (The Contractor may furnish supplies or arrange for services not under this contract, only if representatives of the deceased voluntarily request, select, and pay for them.);

(3) The services or any part of the services are performed by anyone other than the Contractor or the Contractor’s employees without the written authorization of the Contracting Officer;

(4) The Contractor refuses to perform the services required for any particular remains; or

(5) The Contractor mentions or otherwise uses this contract in its advertising in any way.

(End of clause)

252.237-7008 Group interment.

As prescribed in 237.7004(b), use the following clause:

GROUP INTERMENT (DEC 1991)

The Government will pay the Contractor for supplies and services provided for remains interred as a group on the basis of the number of caskets furnished, rather than on the basis of the number of persons in the group.

(End of clause)

252.237-7009 Permits.

As prescribed in 237.7004(b), use the following clause:

PERMITS (DEC 1991)

The Contractor shall meet all State and local licensing requirements and obtain and furnish all necessary health department and shipping permits at no additional cost to the Government. The Contractor shall ensure that all necessary health department permits are in order for disposition of the remains.
252.237–7010  Facility requirements.

As prescribed in 237.7004(b), use the following clause:

**FACILITY REQUIREMENTS (DEC 1991)**

(a) The Contractor’s building shall have complete facilities for maintaining the highest standards of solemnity, reverence, assistance to the family, and prescribed ceremonial services.

(b) The Contractor’s preparation room shall be clean, sanitary, and adequately equipped.

(c) The Contractor shall have, or be able to get, catafalques, church trucks, and equipment for Protestant, Catholic, and Jewish services.

(d) The Contractor’s funeral home, furnishings, grounds, and surrounding area shall present a clean and well-kept appearance.

(End of clause)

252.237–7011  Preparation history.

As prescribed in 237.7004(b), use the following clause:

**PREPARATION HISTORY (DEC 1991)**

For each body prepared, or for each casket handled in a group interment, the Contractor shall state briefly the results of the embalming process on a certificate furnished by the Contracting Officer.

(End of clause)

252.237–7012  Instruction to offerors (count-of-articles).

As prescribed in 237.7102(a), use the following provision:

**INSTRUCTION TO OFFERORS (COUNT-OF-ARTICLES) (DEC 1991)**

(a) The Offeror shall include unit prices for each item in a lot. Unit prices shall include all costs to the Government of providing the services, including pickup and delivery charges.

(b) Failure to offer on any item in a lot shall be cause for rejection of the offer on that lot. The Contracting Officer will evaluate bids based on the estimated quantities in the solicitation.

(c) Award generally will be made to a single offeror for all lots. However, the Contracting Officer may award by individual lot when it is more advantageous to the Government.

(d) Prospective offerors may inspect the types of articles to be serviced. Contact the Contracting Officer to make inspection arrangements.

(End of provision)

252.237–7013  Instruction to offerors (bulk weight).

As prescribed in 237.7102(b), use the following provision:

**INSTRUCTION TO OFFERORS (BULK WEIGHT) (DEC 1991)**

(a) Offers shall be submitted on a unit price per pound of serviced laundry. Unit prices shall include all costs to the Government of providing the service, including pickup and delivery charges.

(b) The Contracting Officer will evaluate bids based on the estimated pounds of serviced laundry stated in the solicitation.

(c) Award generally will be made to a single offeror for all lots. However, the Contracting Officer may award by individual lot when it is more advantageous to the Government.

(d) Prospective offerors may inspect the types of articles to be serviced. Contact the Contracting Officer to make inspection arrangements.

(End of provision)

252.237–7014  Loss or damage (count-of-articles).

As prescribed in 237.7102(c), use the following clause:

**LOSS OR DAMAGE (COUNT-OF-ARTICLES) (DEC 1991)**

(a) The count-of-articles will be—

1. The count of the Contracting Officer; or

2. The count agreed upon as a result of a joint count by the Contractor and the Contracting Officer at the time of delivery to the Contractor.

(b) The Contractor shall—

1. Be liable for return of the number and kind of articles furnished for service under this contract; and

2. Shall indemnify the Government for any loss or damage to such articles.

(c) The Contractor shall pay to the Government the value of any lost or damaged property using Federal supply schedule price lists. If the property is not on these price lists, the Contracting Officer shall determine a fair and reasonable price.

(d) The Contracting Officer will allow credit for any depreciation in the value of the property at the time of loss or damage. The Contracting Officer and the Contractor shall mutually determine the amount of the allowable credit.

(e) Failure to agree upon the value of the property or on the amount of credit due will
be treated as a dispute under the Disputes clause of this contract.

(f) In case of damage to any property that the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor may repair the property at its expense in a manner satisfactory to the Contracting Officer, rather than make payment under paragraph (c) of this clause.

(End of clause)

252.237–7015 Loss or damage (weight of articles).

As prescribed in 237.7102(d), use the following clause:

LOSS OR DAMAGE (WEIGHT OF ARTICLES) (DEC 1991)

(a) The Contractor shall—
(1) Be liable for return of the articles furnished for service under this contract; and
(2) Indemnify the Government for any articles delivered to the Contractor for servicing under this contract that are lost or damaged, and in the opinion of the Contracting Officer, cannot be repaired satisfactorily.

(b) The Contractor shall pay to the Government — per pound for lost or damaged articles. The Contractor shall pay the Government only for losses which exceed the maximum weight loss in paragraph (e) of this clause.

(c) Failure to agree on the amount of credit due will be treated as a dispute under the Disputes clause of this contract.

(d) In the case of damage to any articles that the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor shall repair the articles at its expense in a manner satisfactory to the Contracting Officer.

(e) The maximum weight loss allowable in servicing the laundry is ______ percent of the weight recorded on delivery tickets when the laundry is picked up. Any weight loss in excess of this amount shall be subject to the loss provisions of this clause.

(End of clause)

252.237–7016 Delivery tickets.

As prescribed in 237.7102(e), use the following clause:

DELIVERY TICKETS (DEC 1991)

(a) The Contractor shall complete delivery tickets in the number of copies required and in the form approved by the Contracting Officer, when it receives the articles to be serviced.

(b) The Contractor shall include one copy of each delivery ticket with its invoice for payment.

Alternate I (DEC 1991). As prescribed in 237.7102(e)(1), add the following paragraphs (c), (d), and (e) to the basic clause:

(c) Before the Contractor picks up articles for service under this contract, the Contracting Officer will ensure that—
(1) Each bag contains only articles within a single bag type as specified in the schedule; and
(2) Each bag is weighed and the weight and bag type are identified on the bag.

(d) The Contractor shall, at time of pickup—
(1) Verify the weight and bag type and record them on the delivery ticket; and
(2) Provide the Contracting Officer, or representative, a copy of the delivery ticket.

(e) At the time of delivery, the Contractor shall record the weight and bag type of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight and bag type are verified at time of delivery.

Alternate II (Dec. 1991). As prescribed in 237.7102(e)(2), add the following paragraphs (c), (d), and (e) to the basic clause—

(c) Before the Contractor picks up articles for service under this contract, the Contracting Officer will ensure that each bag is weighed and that the weight is identified on the bag.

(d) The Contractor, at time of pickup, shall verify and record the weight on the delivery ticket and shall provide the Contracting Officer, or representative, a copy of the delivery ticket.

(e) At the time of delivery, the Contractor shall record the weight of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight is verified at time of delivery.


As prescribed in 237.7102(f), use the following clause:

INDIVIDUAL LAUNDRY (DEC 1991)

(a) The Contractor shall provide laundry service under this contract on both a unit bundle and on a piece-rate bundle basis for individual personnel.

(b) The total number of pieces listed in the “Estimated Quantity” column in the schedule is the estimated amount of individual laundry for this contract. The estimate is for information only and is not a representation of the amount of individual laundry to be ordered. Individuals may elect whether or not to use the laundry services.
Department of Defense

252.239–7002

(c) Charges for individual laundry will be on a per unit bundle or a piece-rate basis. The Contractor shall provide individual laundry bundle delivery tickets for use by the individuals in designating whether the laundry is a unit bundle or a piece-rate bundle. An individual laundry bundle will be accompanied by a delivery ticket listing the contents of the bundle.

(d) The maximum number of pieces to be allowed per bundle is as specified in the schedule and as follows—

1. Bundle consisting of 26 pieces, including laundry bag. This bundle will contain approximately ______ pieces of outer garments which shall be starched and pressed. Outer garments include, but are not limited to, shirts, trousers, jackets, dresses, and coats.

2. Bundle consisting of 13 pieces, including laundry bag. This bundle will contain approximately ______ pieces of outer garments which shall be starched and pressed. Outer garments include, but are not limited to, shirts, trousers, jackets, dresses, and coats.

(End of clause)


As prescribed in 237.7102(g), use the following clause:

SPECIAL DEFINITIONS OF GOVERNMENT PROPERTY (DEC 1991)

Articles delivered to the Contractor to be laundered or dry-cleaned, including any articles which are actually owned by individual Government personnel, are Government-owned property, not Government-furnished property. Government-owned property does not fall under the requirements of any Government-furnished property clause of this contract.

(End of clause)

252.237–7019—252.237–7021 [Reserved]

252.237–7022 Services at installations being closed.

As prescribed in 237.7402, use the following clause:

SERVICES AT INSTALLATIONS BEING CLOSED (MAY 1995)

Professional employees shall be used by the local government to provide services under this contract to the extent that professionals are available in the area under the jurisdiction of such government.

(End of clause)

252.239–7000 Protection against compromising emanations.

As prescribed in 239.7102-3, use the following clause:

PROTECTION AGAINST COMPROMISING EMANATIONS (DEC 1991)

(a) The Contractor shall provide or use only computer equipment, as specified by the Government, that has been accredited to meet the appropriate security requirements of—

1. The National Security Agency National TEMPEST Standards (NACSEM No. 5100 or NACSEM No. 5100A, Compromising Emanations Laboratory Test Standard, Electromagnetics (U)); or

2. Other standard specified by this contract.

(b) Upon request of the Contracting Officer, the Contractor shall provide documentation supporting the accreditation.

(c) The Government may, as part of its inspection and acceptance, conduct additional tests to ensure that equipment or systems delivered under this contract satisfy the security standards specified. The Government may conduct additional tests—

1. At the installation site or contractor’s facility.

2. Notwithstanding the existence of valid accreditations of equipment prior to the award of this contract.

(d) Unless otherwise provided in this contract under the Warranty of Supplies or Warranty of Systems and Equipment clauses, the Contractor shall correct or replace accepted equipment or systems found to be deficient within one year after proper installations.

1. The correction or replacement shall be at no cost to the Government.

2. Should a modification to the delivered equipment be made by the Contractor, the one year period applies to the modification upon its proper installation.

3. This paragraph (d) applies regardless of f.o.b. point or the point of acceptance of the deficient equipment/systems.

(End of clause)

252.239–7001 [Reserved]

252.239–7002 Access.

As prescribed in 239.7411(a), use the following clause:

(End of clause)
Access (DEC 1991)

(a) Subject to military security regulations, the Government shall permit the Contractor access at all reasonable times to Contractor furnished facilities. However, if the Government is unable to permit access, the Government at its own risk and expense shall maintain these facilities and the Contractor shall not be responsible for the service involving any of these facilities during the period of nonaccess, unless the service failure results from the Contractor’s fault or negligence.

(b) During periods when the Government does not permit Contractor access, the Government will reimburse the Contractor at mutually acceptable rates for the loss of or damage to the equipment due to the fault or negligence of the Government. Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(End of clause)

252.239-7003 Facilities and services to be furnished—common carriers.

As prescribed in 239.7411(a), use the following clause:

FACILITIES AND SERVICES TO BE FURNISHED—COMMON CARRIERS (DEC 1991)

(a) The Contractor shall furnish any classes of services or facilities that the Contractor offers or furnishes under published tariffs.

(b) When it is mutually agreed that the Contractor shall furnish nontariffed services, the Government shall order them under the Ordering of Facilities and Services clause of this agreement/contract. These nontariffed services may include the engineering, installation, alteration, or maintenance of facilities owned either by the Contractor or the Government, wherever located.

(c) Upon request of the Contracting Officer, the Contractor agrees to interconnect its facilities with any Government-owned or furnished telecommunications equipment, facilities, or transmission media. The Contractor shall use established technical criteria for ensuring continuity of service and traffic without damage to or degradation of commercial facilities.

(End of clause)

Orders for facilities and services—common carriers.

As prescribed in 239.7411(a), use the following clause:

ORDERS FOR FACILITIES AND SERVICES—COMMON CARRIERS (DEC 1991)

The Contractor shall acknowledge a communication service authorization or other type order for supplies and facilities by—

(a) Commencing performance; or

(b) Written acceptance by a duly authorized representative.

(End of clause)

252.239–7005 Rates, charges, and services—common carriers.

As prescribed in 239.7411(a), use the following clause:

RATES, CHARGES, AND SERVICES—COMMON CARRIERS (DEC 1991)

(a) Definition—Governmental regulatory body means the Federal Communications Commission, any statewide regulatory body, or any body with less than statewide jurisdiction when operating under the state authority. Regulatory bodies whose decisions are not subject to judicial appeal and regulatory bodies which regulate a company owned by the same entity which creates the regulatory body are not “governmental regulatory bodies.”

(b) The Contractor shall furnish the services and facilities under this agreement/contract in accordance with—

(1) All applicable tariffs, rates, charges, rules, regulations, or requirements;

(ii) Applicable to service and facilities furnished or offered by the Contractor to the general public or the Contractor’s subscribers;

(3) Rates, terms, and conditions of service and facilities furnished or offered by the Contractor to the general public or the Contractor’s subscribers; or

(c) The Government shall not prepay for services.

(d) For nontariffed services, the Contractor shall charge the Government at the lowest rate and under the most favorable terms and conditions for similar service and facilities offered to any other customer.

(e) Recurring charges for services and facilities shall, in each case, start with the satisfactory beginning of service or provision of facilities or equipment and are payable monthly in arrears.

(f) Subject to the Cancellation or Termination of Orders—Common Carriers clause, of this agreement/contract, the Government may stop the use of any service or facilities furnished under this agreement/contract at

512
any time. The Government shall pay the contractor all charges for services and facilities adjusted to the effective date of discontinuance.

(g) Expediting charges are costs necessary to get services earlier than normal. Examples are overtime pay or special shipment. When authorized, expediting charges shall be the additional costs incurred by the Contractor and the subcontractor. The Government shall pay expediting charges only when—

(1) They are provided for in the tariff established by a governmental regulatory body; or

(2) They are authorized in a communication service authorization or other contractual document.

(h) When services normally provided are technically unacceptable and the development, fabrication, or manufacture of special equipment is required, the Government may—

(1) Provide the equipment; or

(2) Direct the Contractor to acquire the equipment or facilities. If the Contractor acquires the equipment or facilities, the acquisition shall be competitive, if practicable.

(i) If at any time the Government defers or changes its orders for any of the services but does not cancel or terminate them, the amount paid or payable to the Contractor for the services deferred or modified shall be equitably adjusted under applicable tariffs governing cancellation and termination charges which—

(1) Are filed by the Contractor with a governmental regulatory body, as defined in the Rates, Charges, and Services—Common Carriers clause of this agreement/contract; and

(2) Are in effect on the date of termination; and

(3) Provide specific cancellation or termination charges for the facilities and equipment involved or show how to determine the charges.

(c) The amount of the Government’s liability upon cancellation or termination of any of the services ordered under this agreement/contract, which are not subject to a governmental regulatory body, will be determined under a mutually agreed schedule in the communication services authorization (CSA) or other contractual document.

(d) If no applicable tariffs are in effect on the date of cancellation or termination set forth in the applicable CSA or other contractual document, the Government’s liability will be determined under the following settlement procedures—
(1) The Contractor agrees to provide the Contracting Officer, in such reasonable detail as the Contracting Officer may require, inventory schedules covering all items of property, inventory, materials, equipment, and services, the cost of which is included in the Basic Cancellation or Termination Liability for which the Contractor has no foreseeable reuse value.

(2) The Contractor shall use its best efforts to sell property or facilities when the Contractor has no foreseeable reuse or when the Government has not exercised its option to take title under the title to Telecommunications Facilities and Equipment clause of this agreement/contract. The Contractor shall apply any proceeds of the sale to reduce any payments by the Government to the Contractor under a cancellation or termination settlement.

(3) The Contractor shall record actual nonrecoverable costs under established accounting procedures prescribed by the cognizant governmental regulatory authority or, if no such procedures have been prescribed, under generally accepted accounting procedures applicable to the provision of telecommunication services for public use.

(4) The actual nonrecoverable costs are the installed costs of the facilities and equipment less cost of reusable materials, and less net salvage value. Installed costs shall include the actual cost of equipment and materials specifically provided or used, plus the actual cost of installing (including engineering, labor, supervision, transportation, rights-of-way, and any other items which are chargeable to the capital accounts of the Contractor) less any costs the Government may have directly reimbursed the Contractor under the Special Construction and Equipment Charges clause of this agreement/contract. Deduct from the Contractor’s installed cost, the net salvage value (salvage value less cost of removal). In determining net salvage value, give consideration to foreseeable reuse of the facilities and equipment by the Contractor. Make allowance for the cost of dismantling, removal, reconditioning, and disposal of the facilities and equipment when necessary either to the sale of facilities or their reuse by the Contractor in another location.

(5) The Basic Cancellation Liability is defined as the actual nonrecoverable cost which the Government shall reimburse the Contractor at the time services are cancelled. The Basic Termination Liability is defined as the nonrecoverable cost amortized in equal monthly increments throughout the liability period. Upon termination of services, the Government shall reimburse the Contractor for the nonrecoverable cost less such costs amortized to the date services are terminated. Establish the liability period as mutually agreed to but not to exceed ten years.

(6) When the Basic Cancellation or Termination Liability established by the CSA or other contractual document is based on estimated costs, the Contractor agrees to settle on the basis of actual cost at the time of termination or cancellation.

(7) The Contractor agrees that, if after settlement but within the termination liability period of the services, should the Contractor make reuse of equipment or facilities which were treated as nonreusable or nonsalvageable in the settlement, the Contractor shall reimburse the Government for the value of the equipment or facilities.

(8) The Contractor agrees to exclude—

(i) Any costs which are not included in determining cancellation and termination charges under the Contractor’s standard practices or procedures; and

(ii) Charges not ordinarily made by the Contractor for similar facilities or equipment, furnished under similar circumstances.

(e) The Government may, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the canceled or terminated portion of this agreement/contract. The Government may make these payments if in the opinion of the Contracting Officer the total of the payments is in excess of the amount finally determined, or if the total of the payments is in excess of the amount finally agreed or determined to be due under this clause, the Contractor shall pay the excess to the Government upon demand.

(f) Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause.

(End of clause)


252.239–7008 Reuse arrangements.

As prescribed in 239.7411(a), use the following clause:

**Reuse Arrangements (DEC 1991)**

(a) When feasible, the Contractor shall reuse canceled or terminated facilities or equipment to minimize the charges to the Government.

(b) If at any time the Government requires that telecommunications facilities or equipment be relocated within the Contractor’s service area, the Government shall have the option of paying the costs of relocating the facilities or equipment in lieu of paying any termination or cancellation charge under the Cancellation or Termination of Orders–Common Carriers clause of this agreement/contract. The Basic Termination Liability applicable to the facilities or equipment in
their former location shall continue to apply to the facilities and equipment in their new location. Monthly rental charges shall continue to be paid during the period.

(c) When there is another requirement or foreseeable reuse in place of canceled or terminated facilities or equipment, no charge shall apply and the Basic Cancellation or Termination Liability shall be appropriately reduced. When feasible, the Contractor shall promptly reuse discontinued channels or facilities, including equipment for which the Government is obligated to pay a minimum service charge.

(End of clause)

252.239–7009—252.239–7010 [Reserved]

252.239–7011 Special construction and equipment charges.

As prescribed in 239.7411(b), use the following clause:

SPECIAL CONSTRUCTION AND EQUIPMENT CHARGES (DEC 1991)

(a) The Government will not directly reimburse the Contractor for the cost of constructing any facilities or providing any equipment, unless the Contracting Officer authorizes direct reimbursement.

(b) If the Contractor stops using facilities or equipment which the Government has, in whole or part, directly reimbursed, the Contractor shall allow the Government credit for the value of the facilities or equipment attributable to the Government’s contribution. Determine the value of the facilities and equipment on the basis of their foreseeable reuse by the Contractor at the time their use is discontinued or on the basis of the net salvage value, whichever is greater. The Contractor shall promptly pay the Government the amount of any credit.

(c) The amount of the direct special construction charge shall not exceed—

(1) The actual costs to the Contractor; and

(2) An amount properly allocable to the services to be provided to the Government.

(d) The amount of the direct special construction charge shall not include costs incurred by the Contractor which are covered by—

(1) A cancellation or termination liability; or

(2) The Contractor’s recurring or other nonrecurring charges.

(e) The Contractor represents that—

(1) Recurring charges for the services, facilities, and equipment do not include in the rate base any costs that have been reimbursed by the Government to the Contractor; and

(2) Depreciation charges are based only on the cost of facilities and equipment paid by the Contractor and not reimbursed by the Government.

(f) If it becomes necessary for the Contractor to incur costs to replace any facilities or equipment, the Government shall assume those costs or reimburse the Contractor for replacement costs at mutually acceptable rates under the following circumstances—

(1) The Government paid direct special construction charges; or

(2) The Government reimbursed the Contractor for those facilities or equipment as a part of the recurring charges; and

(3) The need for replacement was due to circumstances beyond the control and without the fault of the Contractor.

(g) Before incurring any costs under paragraph (f) of this clause, the Government shall have the right to terminate the service under the Cancellation or Termination of Orders clause of this contract.

(End of clause)

252.239–7012 Title to telecommunication facilities and equipment.

As prescribed in 239.7411(b), use the following clause:

TITLE TO TELECOMMUNICATION FACILITIES AND EQUIPMENT (DEC 1991)

(a) Title to all Contractor furnished facilities and equipment used under this agreement/contract shall remain with the Contractor even if the Government paid the costs of constructing the facilities or equipment. A mutually accepted communications service authorization may provide for exceptions.

(b) The Contractor shall operate and maintain all telecommunication facilities and equipment used under this agreement/contract whether the Government or the Contractor has title.

(End of clause)

252.239–7013 Obligation of the Government.

As prescribed in 239.7411(c), use the following clause:

OBLIGATION OF THE GOVERNMENT (DEC 1991)

(a) This basic agreement is not a contract. The Government incurs no monetary liability under this agreement.

(b) The Government incurs liability only upon issuance of a communications service authorization under the terms of this agreement.
252.239–7014

Term of agreement.

As prescribed in 239.7411(c), use the following clause:

TERM OF AGREEMENT (DEC 1991)

(a) This agreement shall continue in force from year to year, unless terminated by either party by 60 days written notice.

(b) Termination of this agreement does not cancel any communication service authorizations previously issued.

(End of clause)

252.239–7015 Continuation of communication service authorizations.

As prescribed in 239.7411(c), use the following clause:

CONTINUATION OF COMMUNICATION SERVICE AUTHORIZATIONS (DEC 1991)

(a) All communication service authorizations (CSAs) issued by ______ under Basic Agreement Number ______ dated ______, are transferred to this basic agreement. The CSAs shall continue in full force and effect as though placed under this agreement.

(b) Communication service authorizations currently in effect which were issued by the activity in paragraph (a) of this clause under other agreements with the Contractor may also be transferred to this agreement.

(End of clause)

252.239–7016 Telecommunications security equipment, devices, techniques, and services.

As prescribed in 239.7411(d), use the following clause:

TELECOMMUNICATIONS SECURITY EQUIPMENT, DEVICES, TECHNIQUES, AND SERVICES (DEC 1991)

(a) Definitions. As used in this clause—

(1) Securing means the application of Government-approved telecommunications security equipment, devices, techniques, or services to contractor telecommunications systems.

(2) Sensitive information means any information the loss, misuse, or modification of which, or unauthorized access to, could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. §52a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or Act of Congress to be kept secret in the interest of national defense or foreign policy.

(3) Telecommunications systems means voice, record, and data communications, including management information systems and local data networks that connect to external transmission media, when employed by Government agencies, contractors, and subcontractors to transmit—

(i) Classified or sensitive information;

(ii) Matters involving intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or

(iii) Matters critical to the direct fulfillment of military or intelligence missions.

(b) This solicitation/contract identifies classified or sensitive information that requires securing during telecommunications and requires the Contractor to secure telecommunications systems. The Contractor agrees to secure information and systems at the following location: (Identify the location.)

(c) To provide the security, the Contractor shall use Government-approved telecommunications equipment, devices, techniques, or services. A list of the approved equipment, etc. may be obtained from (identify where list can be obtained). Equipment, devices, techniques, or services used by the Contractor must be compatible or interoperable with (list and identify the location of any telecommunications security equipment, device, technique, or service currently being used by the technical or requirements organization or other offices with which the Contractor must communicate).

(d) Except as may be provided elsewhere in this contract, the Contractor shall furnish all telecommunications security equipment, devices, techniques, or services necessary to perform this contract. The Contractor must meet ownership eligibility conditions for communications security equipment designated as controlled cryptographic items.

(e) The Contractor agrees to include this clause, including this paragraph (e), in all subcontracts which require securing telecommunications.

(End of clause)

252.241–7000 Superseding contract.

As prescribed in 241.501–70(a), use the following clause:

SUPERSEDING CONTRACT (DEC 1991)

This contract supersedes contract No. ______, dated ______, which provided similar services. Any capital credits accrued to the Government, any remaining credits due to the Government under the connection charge, or any termination liability are transferred to this contract, as follows:
Department of Defense

252.242–7004

Capital Credits
(List years and accrued credits by year and separate delivery points.)

Outstanding Connection Charge Credits
(List by month and year the amount credited and show the remaining amount of outstanding credits due the Government.)

Termination Liability Charges
(List by month and year the amount of monthly facility cost recovered and show the remaining amount of facility cost to be recovered.)

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 63 FR 11549, Mar. 9, 1998]

252.241–7001 Government access.

As prescribed in 241.501–70(b), use the following clause:

Government Access (DEC 1991)

Authorized representatives of the Government may have access to the Contractor’s on-base facilities upon reasonable notice or in case of emergency.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 63 FR 11549, Mar. 9, 1998]

252.242–7000 Postaward conference.

As prescribed in 242.570, use the following clause:

Postaward Conference (DEC 1991)

The Contractor agrees to attend any postaward conference convened by the contracting activity or contract administration office in accordance with Federal Acquisition Regulation subpart 42.5.

(End of clause)


252.242–7001–252.242–7002 [Reserved]


As prescribed in 242.1404–2–70, use the following clause:

Application for U.S. Government Shipping Documentation/Instructions (DEC 1991)

The Contractor shall request Government bills of lading by submitting a DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions, to the—

(a) Transportation Officer, if named in the contract schedule; or

(b) Contract administration office.

(End of clause)


252.242–7004 Material management and accounting system.

As prescribed in 242.7204, use the following clause:

Material Management and Accounting System (DEC 2000)

(a) Definitions. As used in this clause—

(1) Material management and accounting system (MMAS) means the Contractor’s system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-alone systems or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

(2) Valid time-phased requirements means material that is—

(i) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc.; and

(ii) Charged/billed to contracts or other cost objectives in a manner consistent with the need to fulfill the production plan.

(3) “Contractor” means a business unit as defined in section 31.001 of the Federal Acquisition Regulation (FAR).

(b) General. The Contractor shall—

(1) Maintain an MMAS that—

(i) Reasonably forecasts material requirements;

(ii) Ensures that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(iii) Maintains a consistent, equitable, and unbiased logic for costing of material transactions; and

(2) Assess its MMAS and take reasonable action to comply with the MMAS standards in paragraph (e) of this clause.

(c) Disclosure and maintenance requirements. The Contractor shall—

(1) Have policies, procedures, and operating instructions that adequately described its MMAS;

(2) Provide to the Administrative Contracting Officer (ACO), upon request, the results of the internal reviews that it has conducted to ensure compliance with established MMAS policies, procedures, and operating instructions; and
(3) Disclose significant changes in its MMAS to the ACO at least 30 days prior to implementation.

(d) Deficiencies. (i) If the Contractor receives a report from the ACO that identifies any deficiencies in its MMAS, the Contractor shall respond as follows:

(A) Within 30 days (or such other date as may be mutually agreed to by the ACO and the Contractor), state its agreement in writing; and

(B) Within 60 days (or such other date as may be mutually agreed to by the ACO and the Contractor), correct the deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(ii) If the Contractor disagrees with the report findings and recommendations, the Contractor shall, within 30 days (or such other date as may be mutually agreed to by the ACO and the Contractor), state its agreement in writing of the—

(A) Determination concerning any remaining deficiencies;

(B) Adeficiency of any proposed or completed corrective action plan; and

(iii) Need for any new or revised corrective action plan.

(3) When the ACO determines the MMAS deficiencies have a material impact on Government contract costs, the ACO must reduce progress payments by an appropriate percentage based on affected costs (in accordance with FAR 32.503-6 and/or disallow costs on vouchers (in accordance with FAR 42.203)) until the ACO determines that—

(i) The deficiencies are corrected; or

(ii) The amount of the impact is immaterial.

(e) MMAS standards. The MMAS shall have adequate internal controls to ensure system and data integrity, and shall—

(1) Have an adequate system description including policies, procedures, and operating instructions that comply with the FAR and Defense FAR Supplement;

(2) Ensure that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements as impacted by minimum-economic order quantity restrictions.

(i) A 98 percent bill of material accuracy and a 95 percent master production schedule accuracy are desirable as a goal in order to ensure that requirements are both valid and appropriately time-phased.

(ii) If systems have accuracy levels below these, the Contractor shall provide adequate evidence that—

(A) There is no material harm to the Government due to lower accuracy levels; and

(B) The cost to meet the accuracy goals is excessive in relation to the impact on the Government;

(3) Provide a mechanism to identify, report, and resolve system control weaknesses and manual override. Systems should identify operational exceptions such as excess/residual inventory as soon as known;

(4) Provide audit trails and maintain records (manual and those in machine readable form) necessary to evaluate system logic and to verify through transaction testing that the system is operating as desired;

(5) Establish and maintain adequate levels of record accuracy, and include reconciliation of recorded inventory quantities to physical inventory by part number on a periodic basis. A 95 percent accuracy level is desirable. If systems have an accuracy level below 95 percent, the Contractor shall provide adequate evidence that—

(i) There is no material harm to the Government due to lower accuracy levels; and

(ii) The cost to meet the accuracy goal is excessive in relation to the impact on the Government;

(6) Provide detailed descriptions of circumstances that will result in manual or system generated transfers of parts;

(7) Maintain a consistent, equitable, and unbiased logic for costing of material transactions as follows:

(i) The Contractor shall maintain and disclose written policies describing the transfer methodology and the loan/pay-back technique.

(ii) The costing methodology may be standard or actual cost, or any of the inventory costing methods in 48 CFR 9904.411–50(b). The Contractor shall maintain consistency across all contract and customer types, and from accounting period to accounting period for initial charging and transfer charging.

(iii) The system should transfer parts and associated costs within the same billing period. In the few instances where this may not be appropriate, the Contractor may accomplish the material transaction using a loan/pay-back technique. The “loan/pay-back technique” means that the physical part is moved temporarily from the contract, but the cost of the part remains on the contract. The procedures for the loan/pay-back technique must be approved by the ACO. When the technique is used, the Contractor shall have controls to ensure—

(A) Parts are paid back expeditiously;

(B) Procedures and controls are in place to correct any overbilling that might occur;

(C) Monthly, at a minimum, identification of the borrowing contract and the date the part was borrowed; and

(D) The cost of the replacement part is charged to the borrowing contract;
Environmental Performance Standards

(8) Where allocations from common inventory accounts are used, have controls (in addition to those in paragraphs (e)(2) and (7) of this clause) to ensure that—

(i) Reallocations and any credit due are processed no less frequently than the routine billing cycle;

(ii) Inventories retained for requirements that are not under contract are not allocated to contracts; and

(iii) Algorithms are maintained based on valid and current data;

(9) Regardless of the provisions of FAR 45.505-3(f)(1)(ii), have adequate controls to ensure that physically commingled inventories that may include material for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts do not compromise requirements of any of the standards in paragraphs (e)(1) through (8) of this clause. Government-furnished material shall not be—

(i) Physically commingled with other material; or

(ii) Used on commercial work; and

(iii) Be subjected to periodic internal reviews to ensure compliance with established policies and procedures.

(End of clause)

[65 FR 77834, Dec. 13, 2000]


As prescribed in 242.1107–70(a), use the following clause:

COST/SCHEDULE STATUS REPORT (MAR 1998)

(a) The Contractor shall use management procedures in the performance of this contract that provide for—

(1) Planning and control of costs;

(2) Measurement of performance (value for completed tasks); and

(3) Generation of timely and reliable information for the cost/schedule status report (C/SSR).

(b) As a minimum, these procedures must provide for—

(1) Establishing the time-phased budgeted cost of work scheduled (including work authorization, budgeting, and scheduling), the budgeted cost for work performed, the actual cost of work performed, the budget at completion, the estimate at completion, and provisions for subcontractor performance measurement and reporting;

(2) Applying all direct and indirect costs and provisions for use and control of management reserve and undistributed budget;

(3) Incorporating changes to the contract budget base for both Government directed changes and internal replanning;

(4) Establishing constraints to preclude subjective adjustment of data to ensure that performance measurement remains realistic.

The total allocated budget may exceed the contract budget base only after consultation with the Contracting Officer. For cost-reimbursement contracts, the contract budget base shall exclude changes for cost growth increase, other than for authorized changes to the contract scope; and

(5) Establishing the capability to accurately identify and explain significant cost and schedule variances, both on a cumulative basis and projected at completion basis.

(c) The Contractor may use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting officer (ACO) as complying with the earned value management system criteria provided in DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs.

(d) The Government may require integrated baseline reviews. Such reviews shall be scheduled as early as practicable and should be conducted within 180 calendar days after (1) contract award, (2) the exercise of significant contract options, or (3) the incorporation of major modifications. The objective of the integrated baseline review is for the Government and the Contractor to jointly assess areas, such as the Contractor’s planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(e) The Contractor shall provide access to all pertinent records, company procedures, and data requested by the ACO, or authorized representative, to—

(1) Show proper implementation of the procedures generating the cost and schedule information being used to satisfy the C/SSR contractual data requirements to the Government; and

(2) Ensure continuing application of the accepted company procedures in satisfying the C/SSR data item.

(f) The Contractor shall submit any substantive changes to the procedures and their impact to the ACO for review.

(g) The Contractor shall require a subcontractor to furnish C/SSR in each case where the subcontract is other than firm-fixed-price, is 12 months or more in duration, and has critical or significant tasks related to the prime contract. Critical or significant tasks shall be defined by mutual agreement between the Government and Contractor. Each subcontractor’s reported cost and schedule information shall be incorporated into the Contractor’s C/SSR.

(End of clause)


As prescribed in 242.1107–70(b), use the following provision:

COST/SCHEDULE STATUS REPORT PLANS (MAR 1997)

(a) The offeror shall submit a written summary of the management procedures it will establish, maintain, and use in the performance of any resultant contract to comply with the requirements of the clause at 252.242–7005, Cost/Schedule Status Report.

(b) If the offeror proposes to use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer as complying with the earned value management system criteria of DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, the offeror may submit a copy of the documentation of such recognition instead of the written summary required by paragraph (a) of this provision.

(End of provision)


252.243–7000  [Reserved]

252.243–7001  Pricing of contract modifications.

As prescribed in 243.205–70, use the following clause:

PRICING OF CONTRACT MODIFICATIONS (DEC 1991)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR part 31 and DFARS part 231, in effect on the date of this contract, apply.

(End of clause)


252.243–7002  Requests for equitable adjustment.

As prescribed in 243.205–71, use the following clause:

REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

(Official’s Name)
(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including—

(1) Cost or pricing data if required in accordance with subsection 15.403–4 of the Federal Acquisition Regulation (FAR); and

(2) Information other than cost or pricing data, in accordance with subsection 15.403–3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to—

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustment under an incentive provision of the contract.

(End of clause)


252.244–7000  Subcontracts for commercial items and commercial components (DoD contracts).

As prescribed in 244.403, use the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS) (MAR 2000)

In addition to the clauses listed in paragraph (c) of the Subcontracts for Commercial Items and Commercial Components clause of this contract (Federal Acquisition Regulation 52.244–6), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial...
items or commercial components, awarded at any tier under this contract:


(End of clause)

[65 FR 14401, Mar. 16, 2000]

252.245–7000 Government-furnished mapping, charting, and geodesy property.

As prescribed in 245.310–70, use the following clause:

GOVERNMENT-FURNISHED MAPPING, CHARTING, AND GEODESY PROPERTY (DEC 1991)

(a) Definition—Mapping, charting, and geodesy (MC&G) property means geodetic, geomagnetic, gravimetric, aeronautical, topographic, hydrographic, cultural, and toponymic data presented in the form of topographic, planimetric, relief, or thematic maps and graphics; nautical and aeronautical charts and publications; and in simulated, photographic, digital, or computerized formats.

(b) The Contractor shall not duplicate, copy, or otherwise reproduce MC&G property for purposes other than those necessary for performance of the contract.

(c) At the completion of performance of the contract, the Contractor, as directed by the Contracting Officer, shall either destroy or return to the Government all Government-furnished MC&G property not consumed in the performance of this contract.

(End of clause)

[59 FR 27677, May 27, 1994]

252.246–7000 Material inspection and receiving report.

As prescribed in 246.370, use the following clause:

MATERIAL INSPECTION AND RECEIVING REPORT (DEC 1991)

At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a material inspection and receiving report in the manner and to the extent required by appendix F, Material Inspection and Receiving Report, of the Defense FAR Supplement.

(End of clause)

252.246–7001 Warranty of data.

As prescribed in 246.710 (1), use the following clause:

WARRANTY OF DATA (DEC 1991)

(a) Definition—Technical data has the same meaning as given in the clause in this contract entitled, Rights in Technical Data and Computer Software.

(b) Warranty. Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) Contractor notification. The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the warranty which the Contractor discovers within the warranty period.

(d) Remedies. The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Contracting Officer in accordance with paragraph (c) of this clause or if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after such notification, the Contracting Officer may—
(i) By written notice, direct the Contractor to correct or replace at the Contractor’s expense the nonconforming technical data promptly; or
(ii) If the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

(2) If the Contractor fails or fails to comply with a direction under paragraph (d)(1) of this clause, the Contracting Officer may, within a reasonable time of the refusal or failure—
(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or
(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) The remedies in this clause represent the only way to enforce the Government’s rights under this clause.

(e) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

Alternate I (DEC 1991). As prescribed in 246.710(2), substitute the following for paragraph (d)(3) of the basic clause:

(3) In addition to the remedies under paragraphs (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of the warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed ten percent of the total subcontract price.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor’s liability shall be—
(A) Ten percent of the total subcontract price in a firm fixed price subcontract;
(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or
(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price or cost-plus-incentive-type contract.

(iii) The additional liability specified in paragraph (d)(3) of this clause shall not apply—
(A) With respect to the requirements for product drawings and associated lists, special inspection equipment (SIE) drawings and associated lists, special tooling drawings and associated lists, SIE operating instructions, SIE descriptive documentation, and SIE calibration procedures under MIL–T–31000, General Specification for Technical Data Packages, Amendment 1, or MIL–T–47500, General Specification for Technical Data Packages, Supp 1, or drawings and associated lists under level 2 or level 3 of MIL–D–1000A, Engineering and Associated Data Drawings, or DoD–D–1000B, Engineering and Associated Lists Drawings (Inactive for New Design) Amendment 4, Notice 1; or drawings and associated lists under category E or I of MIL–D–1000, Engineering and Associated Lists Drawings, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data necessary to comply with the requirements; or
(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

Alternate II (DEC 1991). As prescribed at 246.710(3), substitute the following for paragraph (d)(3) of the basic clause:

(3) In addition to the remedies under paragraphs (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of the warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed ten percent of the total contract price.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor’s liability shall be—
(A) Ten percent of the total subcontract price in a firm fixed price subcontract;
(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or
(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price or cost-plus-incentive-type contract.

(iii) The additional liability specified in paragraph (d)(3) of this clause shall not apply—
(A) With respect to the requirements for product drawings and associated lists, special inspection equipment (SIE) drawings and associated lists, special tooling drawings and associated lists, SIE operating instructions, SIE descriptive documentation, and SIE calibration procedures under MIL–T–31000, General Specification for Technical Data Packages, Amendment 1, or MIL–T–47500, General Specification for Technical Data Packages, Supp 1, or drawings and associated lists under level 2 or level 3 of MIL–D–1000A, Engineering and Associated Data Drawings, or DoD–D–1000B, Engineering and Associated Lists Drawings (Inactive for New Design) Amendment 4, Notice 1; or drawings and associated lists under category E or I of
252.246–7002 Warranty of construction (Germany).

As prescribed in 246.710(4), use the following clause:

**WARRANTY OF CONSTRUCTION (GERMANY)**

(JUNE 1997)

(a) In addition to any other representations in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that the work performed under this contract conforms to the contract requirements and is free of any defect of equipment, material, or design furnished or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for the period(s) specified in Section 13, VOB, Part B, commencing from the date of final acceptance of the work under this contract. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for the period(s) specified in Section 13, VOB, Part B, from the date the Government takes possession.

(c) The Contractor shall remedy, at the Contractor’s expense, any failure to conform to contract requirements; or

(1) The Contractor’s failure to conform to contract requirements;

(2) Any defect of equipment, material, or design furnished or workmanship performed.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable period of time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable period of time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor’s expense.

(End of clause)


252.247–7000 Hardship conditions.

As prescribed in 247.270–6(a), use the following clause:

**HARDSHIP CONDITIONS (AUG 2000)**

(a) If the Contractor finds unusual ship, dock, or cargo conditions associated with loading or unloading a particular cargo, that will work a hardship on the Contractor if loaded or unloaded at the basic commodity rates, the Contractor shall—

(1) Notify the Contracting Officer before performing the work, if feasible, but no later than the vessel sailing time; and

(2) Submit any associated request for price adjustment to the Contracting Officer within 10 working days of the vessel sailing time.

(b) Unusual conditions include, but are not limited to, inaccessibility of place of stowage to the ship’s cargo gear, side port operations, and small quantities of cargo in any one hatch.

(End of clause)

[65 FR 50147, Aug. 17, 2000]
252.247-7001 Price adjustment.

As prescribed in 247.270-6(b), use the following clause:

PRICE ADJUSTMENT (JAN 1997)

(a) The Contractor warrants that the prices set forth in this contract—

(1) Are based upon the wage rates, allowances, and conditions set forth in the collective bargaining agreements between the Contractor and its employees, in effect as of [insert date], and which are generally applicable to the ports where work under this contract is performed;

(2) Apply to operations by the Contractor on non-Government work as well as under this contract; and

(3) Do not include any allowance for cost increases that may—

(i) Become effective under the terms of the collective bargaining agreements after the date in paragraph (a)(1) of this clause; or

(ii) Result from modification of the collective bargaining agreements after the date in paragraph (a)(1).

(b) The Contractor shall notify the Contracting Officer within 60 days of receipt of notice of any changes (increase or decrease) in the wage rates, allowances, fringe benefits, and conditions that apply to its direct labor employees, if the changes—

(1) Are pursuant to the provisions of the collective bargaining agreements; or

(2) Are a result of effective modifications to the agreements; and

(3) Would change the Contractor's costs to perform this contract.

(c) The Contractor shall include in its notification—

(1) A proposal for an adjustment in the contract commodity, activity, or work-hour prices; and

(2) Data, in such form as the Contracting Officer may require, explaining the—

(i) Causes;

(ii) Effective date; and

(iii) Amount of the increase or decrease in the Contractor's proposal for the adjustment.

(d) Promptly upon receipt of any notice and data described in paragraph (c), the Contractor and the Contracting Officer shall negotiate an adjustment in the existing contract commodity, activity, or man-hour prices. However, no upward adjustment of the existing commodity, activity, or work-hour prices will be allowed in excess of _percent per year, except as provided in the Changes clause of this contract.

(e) Changes in the contract prices shall reflect, in addition to the direct and variable indirect labor costs, the associated changes in the costs for social security, unemployment compensation, taxes, and workman's compensation insurance.

(2) There will be no adjustment to increase the dollar amount allowances of the Contractor's profit.

(3) The agreed upon adjustment, its effective date, and the revised commodity, activity, or work-hour prices for services set forth in the schedule of rates, shall be incorporated in the contract by supplemental agreement.

(e) There will be no adjustment for any changes in the quantities of labor that the Contractor contemplated for each specific commodity, except as may result from modifications of the collective bargaining agreements. For the purpose of administering this clause, the Contractor shall submit to the Contracting Officer, within five days after award, the accounting data and computations the Contractor used to determine its estimated efficiency rate in the performance of this contract, to include the Contractor's computation of the costs apportioned for each rate set forth in the schedule of rates.

(f) Failure of the parties to agree to an adjustment under this clause will be deemed to be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract. The Contractor shall continue performance pending agreement on, or determination of, any such adjustment and its effective date.

(g) The Contractor shall include with the final invoice submitted under this contract a statement that the Contractor has not experienced a decrease in rates of pay for labor, or that the Contractor has given notice of all such decreases in compliance with paragraph (b) of this clause.

(End of clause)

48 CFR Ch. 2 (10–1–02 Edition)

252.247-7002 Revision of prices.

As prescribed in 247.270–6(c), use the following clause:

REVISION OF PRICES (DEC 1991)

(a) Definition. Wage adjustment, as used in this clause, means a change in the wages, salaries, or other terms or conditions of employment which—

(1) Substantially affects the cost of performing this contract;

(2) Is generally applicable to the port where work under this contract is performed; and

(3) Applies to operations by the Contractor on non-Government work as well as to work under this contract.

(b) General. The prices fixed in this contract are based on wages and working conditions established by collective bargaining agreements, and on other conditions in effect.
on the date of this contract. The Contracting Officer and the Contractor may agree to increase or decrease such prices in accordance with this clause.

(c) Demand for negotiation. (1) At any time, subject to the limitations specified in this clause, either the Contracting Officer or the Contractor may deliver to the other a written demand that the parties negotiate to revise the prices under this contract.

(2) No such demand shall be made before 90 days after the date of this contract, and thereafter neither party shall make a demand having an effective date within 90 days of the effective date of any prior demand. However, this limitation does not apply to a wage adjustment during the 90 day period.

(3) Each demand shall specify a date (the same as or subsequent to the date of the delivery of the demand) as to when the revised prices shall be effective. This date is the effective date of the price revision.

(i) If the Contractor makes a demand under this clause, the demand shall briefly state the basis of the demand and include the statements and data referred to in paragraph (d) of this clause.

(ii) If the demand is made by the Contracting Officer, the Contractor shall furnish the statements and data within 30 days of the delivery of the demand.

(d) Submission of data. At the times specified in paragraphs (c)(3)(i) and (ii) of this clause, the Contractor shall submit—

(1) A new estimate and breakdown of the unit cost and the proposed prices for the services the Contractor will perform under this contract after the effective date of the price revision, itemized to be consistent with the original negotiations of the contract;

(2) An explanation of the difference between the original (or last preceding) estimate and the new estimate;

(3) Such relevant operating data, cost records, overhead absorption reports, and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate;

(4) A statement of the actual costs of performance under this contract to the extent that they are available at the time of the negotiation of the revision of prices under this clause; and

(5) Any other relevant data usually furnished in the case of negotiations of prices under a new contract. The Government may examine and audit the Contractor’s accounts, records, and books as the Contracting Officer considers necessary.

(e) Negotiations. (1) Upon the filing of the statements and data required by paragraph (d) of this clause, the Contractor and the Contracting Officer shall negotiate promptly in good faith to agree upon prices for services the Contractor will perform on and after the effective date of the price revision.

(2) If the prices in this contract were established by competitive negotiation, they shall not be revised upward unless justified by changes in conditions occurring after the contract was awarded.

(3) The agreement reached after each negotiation will be incorporated into the contract by supplemental agreement.

(f) Disagreements. If, within 30 days after the date on which statements and data are required pursuant to paragraph (c) of this clause, the Contracting Officer and the Contractor fail to agree to revised prices, the failure to agree shall be resolved in accordance with the Disputes clause of this contract. The prices fixed by the Contracting Officer will remain in effect for the balance of the contract, and the Contractor shall continue performance.

(g) Retroactive changes in wages or working conditions. (1) In the event of a retroactive wage adjustment, the Contractor or the Contracting Officer may request an equitable adjustment in the prices in this contract.

(2) The Contractor shall request a price adjustment within 30 days of any retroactive wage adjustment. The Contractor shall support its request with—

(i) An estimate of the changes in cost resulting from the retroactive wage adjustment;

(ii) Complete information upon which the estimate is based; and

(iii) A certified copy of the collective bargaining agreement, arbitration award, or other document evidencing the retroactive wage adjustment.

(3) Subject to the limitation in paragraph (g)(2) of this clause as to the time of making a request, completion or termination of this contract shall not affect the Contractor’s right under paragraph (g) of this clause.

(4) In case of disagreement concerning any question of fact, including whether any adjustment should be made, or the amount of such adjustment, the disagreement will be resolved in accordance with the Disputes clause of this contract.

(5) The Contractor shall notify the Contracting Officer in writing of any request by or on behalf of the employees of the Contractor which may result in a retroactive wage adjustment. The notice shall be given within 20 days after the request or, if the request occurs before contract execution, at the time of execution.

(End of clause)
252.247–7003

252.247–7003 [Reserved]

252.247–7004 Indefinite quantities—fixed charges.
As prescribed in 247.270–6(d), use the following clause:

INDEFINITE QUANTITIES—FIXED CHARGES (DEC 1991)

The amount of work and services the Contractor may be ordered to furnish shall be the amount the Contracting Officer may order from time to time. In any event, the Government is obligated to compensate the Contractor the monthly lump sum specified in the Schedule entitled Fixed Charges, for each month or portion of a month the contract remains in effect.

(End of clause)


252.247–7005 Indefinite quantities—no fixed charges.
As prescribed in 247.270–6(e), use the following clause:

INDEFINITE QUANTITIES—NO FIXED CHARGES (DEC 1991)

The amount of work and services the Contractor may be ordered to furnish shall be the amount the Contracting Officer may order from time to time. In any event, the Government shall order, during the term of this contract, work or services having an aggregate value of not less than $100.

(End of clause)


252.247–7006 Removal of contractor's employees.
As prescribed in 247.270–6(f), use the following clause:

REMOVAL OF CONTRACTOR'S EMPLOYEES (DEC 1991)

The Contractor agrees to use only experienced, responsible, and capable people to perform the work. The Contracting Officer may require that the Contractor remove from the job, employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interest of military security.

48 CFR Ch. 2 (10–1–02 Edition)

LIABILITY AND INSURANCE (DEC 1991)

(a) The Contractor shall be—
(1) Liable to the Government for loss or damage to property, real and personal, owned by the Government or for which the Government is liable;
(2) Responsible for, and hold the Government harmless from, loss of or damage to property not included in paragraph (a)(1); and
(3) Responsible for, and hold the Government harmless from, bodily injury and death of persons, resulting either in whole or in part from the negligence or fault of the Contractor, its officers, agents, or employees in the performance of work under this contract.
(b) For the purpose of this clause, all cargo loaded or unloaded under this contract is agreed to be property owned by the Government or property for which the Government is liable.

(1) The amount of the loss or damage as determined by the Contracting Officer will be withheld from payments otherwise due the Contractor.
(2) Determination of liability and responsibility by the Contracting Officer will constitute questions of fact within the meaning of the Disputes clause of this contract.
(c) The general liability and responsibility of the Contractor under this clause are subject only to the following specific limitations. The Contractor is not responsible to the Government for, and does not agree to hold the Government harmless from, loss or damage to property or bodily injury to or death of persons if—

(1) The unsawworthiness of the vessel, or failure or defect of the gear or equipment furnished by the Government, contributed jointly with the fault or negligence of the Contractor in causing such damage, injury, or death; and
(i) The Contractor, his officers, agents, and employees, by the exercise of due diligence, could not have discovered such unsawworthiness or defect of gear or equipment; or
(ii) Through the exercise of due diligence could not otherwise have avoided such damage, injury, or death.

(2) The damage, injury, or death resulted solely from an act or omission of the Government or its employees, or resulted solely from proper compliance by officers, agents, or employees of the Contractor with specific directions of the Contracting Officer.
(d) The Contractor shall at its own expense acquire and maintain insurance during the term of this contract, as follows—

(1) Standard workmen’s compensation and employer’s liability insurance and longshoremen’s and harbor workers’ compensation insurance, or such of these as may be proper under applicable state or Federal statutes.

(2) Bodily injury liability insurance in an amount of not less than $300,000 on account of any one occurrence.

(3) Property damage liability insurance (which shall include any and all property, whether or not in the care, custody, or control of the Contractor) in an amount of not less than $300,000 for any one occurrence.

(e) Each policy shall provide, by appropriate endorsement or otherwise, that cancellation or material change in the policy shall not be effective until after a 30 day written notice is furnished the Contracting Officer.

(f) The Contractor shall furnish the Contracting Officer with satisfactory evidence of the insurance required in paragraph (d) before performance of any work under this contract.

(g) The Contractor shall, at its own cost and expense, defend any suits, demands, claims, or actions, in which the United States might be named as a co-defendant of the Government, or relieved of any loss or damage to Government property, resulting from the Contractor’s performance of work under this contract.

(h) Each policy shall provide, by appropriate endorsement or otherwise, that cancellation or material change in the policy shall not be effective until after a 30 day written notice is furnished the Contracting Officer.

(i) The Contractor shall furnish the Contracting Officer with satisfactory evidence of the insurance required in paragraph (d) before performance of any work under this contract.

(End of clause)


## 252.247–7008 Evaluation of bids.

As prescribed in 247.271–4(a), use the following provision:

### Evaluation of Bids (DEC 1991)

(a) The Government will evaluate bids on the basis of total aggregate price of all items within an area of performance under a given schedule.

(1) An offeror must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that Schedule. If there is to be no charge for an item, an entry such as “No Charge,” or the letters “N/C” or “O,” must be made in the unit price column of the Schedule.

(2) Any bid which stipulates minimum charges or graduated prices for any or all items shall be rejected for that area of performance within the Schedule.

(b) In addition to other factors, the Contracting Officer will evaluate bids on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards).

(1) In making this evaluation, the Contracting Officer will evaluate bids on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards).

(2) Individual awards will be for the items and combinations of items which result in the lowest aggregate cost to the Government, including the administrative costs in paragraph (b)(1).

(c) When drayage is necessary for the accomplishment of any item in the bid schedule, the Offeror shall include in the unit price any costs for bridge or ferry tolls, road use charges or similar expenses.

(d) Unless otherwise provided in this solicitation, the Offeror shall state prices in the unit of measure specified in the Schedule. If there is to be no charge for an item, an entry such as “No Charge,” or the letters “N/C” or “O,” must be made in the unit price column of the Schedule. Failure to do so shall be cause for rejection of the bid for that area of performance for a given schedule.

(e) It is expressly agreed that the provisions in paragraphs (d) through (g) of this clause shall not in any manner limit the liability or extend the liability of the Contractor as provided in paragraphs (a) through (c) of this clause.

(f) The Contractor shall—

(1) Equitably reimburse the Government if the Contractor is indemnified, reimbursed, or relieved of any loss or damage to Government property;

(2) Do nothing to prevent the Government’s right to recover against third parties for any such loss or damage; and

(3) Furnish the Government, upon the request of the Contracting Officer, at the Government’s expense, all reasonable assistance and cooperation in obtaining recovery, including the prosecution of suit and the execution of instruments of assignment in favor of the Government.

[End of clause]
252.247–7009

**Alternate I (DEC 1991).** As prescribed in 247.271–4(a), add the following paragraph (e) to the basic clause:

(e) Notwithstanding paragraph (a), when “additional services” are added to any schedule, such “additional services” items will not be considered in the evaluation of bids.

252.247–7009 Award.

As prescribed in 247.271–4(b), use the following provision:

**AWARD (DEC 1991)**

(a) The Government shall make award by area to a qualified low bidder under each of the specified schedules to the extent of the bidder’s stated guaranteed daily capability as provided in this solicitation and the Estimated Quantities Schedule.

(b) The Government reserves the right to make an award of two or more areas to a single bidder if such award will result in an overall lower estimated cost to the Government.

(c) The Government also reserves the right to award additional contracts, as a result of this solicitation, to the extent necessary to meet its estimated maximum daily requirements.

(End of provision)

252.247–7010 Scope of contract.

As prescribed in 247.271–4(d), use the following clause:

**SCOPE OF CONTRACT (DEC 1991)**

(a) The Contractor shall furnish services and materials for the preparation of personal property (including servicing of appliances) for movement or storage, drayage and related services. Unless otherwise indicated in the Schedule, the Contractor shall—

(1) Furnish all materials except Government-owned containers (Federal Specification PPP–B–580), all equipment, plant and labor; and

(2) Perform all work in accomplishing containerization of personal property for overseas or domestic movement or storage, including—

(i) Stenciling;

(ii) Cooperage;

(iii) Drayage of personal property in connection with other services;

(iv) Decontainerization of inbound shipments of personal property; and

(v) The handling of shipments into and out of the Contractor’s facility.

(b) Excluded from the scope of this contract is the furnishing of like services or materials which are provided incident to complete movement of personal property when purchased by the Through Government Bill of Lading or other method/mode of shipment or property to be moved under the Do-It-Yourself moving program or otherwise moved by the owner.

(End of clause)
252.247-7013 Contract areas of performance.
As prescribed in 247.271-4(h), use the following clause and complete paragraph (b) by defining each area of performance as required (see 247.271-2(b)):

CONTRACT AREAS OF PERFORMANCE (DEC 1991)

(a) The Government will consider all areas of performance described in paragraph (b) as including the Contractor’s facility, regardless of geographical location.

(b) The Contractor shall perform services within the following defined areas of performance, which include terminals identified therein:

(End of clause)

252.247-7014 Demurrage.
As prescribed in 247.271-4(i), use the following clause:

DEMURRAGE (DEC 1991)

The Contractor shall be liable for all demurrage, detention, or other charges as a result of its failure to load or unload trucks, freight cars, freight terminals, vessel piers, or warehouses within the free time allowed under applicable rules and tariffs.

(End of clause)

252.247-7015 Requirements.
As prescribed in 216.506(d), substitute the following paragraph (f) for paragraph (f) of the basic clause at FAR 52.216-21.

ALTERNATE I (DEC 1991)

(f) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The rights and obligations of the Contractor and the Government for those orders shall be governed by the terms of this contract to the same extent as if completed during the effective period.


252.247-7016 Contractor liability for loss or damage.
As prescribed in 247.271-4(k), use the following clause:

CONTRACTOR LIABILITY FOR LOSS OR DAMAGE (DEC 1991)

(a) Definitions.

As used in this clause—
Article means any shipping piece or package and its contents.
Schedule means the level of service for which specific types of traffic apply as described in DoD 4500.34-R, Personal Property Traffic Management Regulation.

(b) For shipments picked up under Schedule I, Outbound Services, or delivered under Schedule II, Inbound Services—

(1) If notified within one year after delivery that the owner has discovered loss or damage to the owner’s property, the Contractor agrees to indemnify the Government for loss or damage to the property which arises from any cause while it is in the Contractor’s possession. The Contractor’s liability is—

(i) Non-negligent damage. For any cause, other than the Contractor’s negligence, indemnification shall be at a rate not to exceed sixty cents per pound per article.

(ii) Negligent damage. When loss or damage is caused by the negligence of the Contractor, the liability is for the full cost of satisfactory repair or for the current replacement value of the article.

(2) The Contractor shall make prompt payment to the owner of the property for any loss or damage for which the Contractor is liable.

(3) In the absence of evidence or supporting documentation which places liability on a carrier or another contractor, the destination contractor shall be presumed to be liable for the loss or damage, if timely notified.

(c) For shipments picked up or delivered under Schedule III, Intra-City and Intra-Area—

(1) If notified of loss or damage within 75 days following delivery, the Contractor agrees to indemnify the Government for loss or damage to the owner’s property.

(2) The Contractor’s liability shall be for the full cost of satisfactory repair; or for the current replacement value of the article less depreciation, up to a maximum liability of $1.25 per pound times the net weight of the shipment.

(3) The Contractor has full salvage rights to damaged items which are not repairable and for which the Government has received compensation at replacement value.

(End of clause)

252.247-7017 Erroneous shipments.
As prescribed in 247.271-4(l), use the following clause:

ERRONEOUS SHIPMENTS (DEC 1991)

(a) The Contractor shall—

(1) Forward to the rightful owner, articles of personal property inadvertently packed with goods of other than the rightful owner.
252.247–7018

(2) Ensure that all shipments are stenciled correctly. When a shipment is sent to an incorrect address due to incorrect stenciling by the Contractor, the Contractor shall forward it to its rightful owner.

(3) Deliver to the designated air or surface terminal all pieces of a shipment, in one lot, at the same time. The Contractor shall forward to the owner any pieces of one lot not included in delivery, and remaining at its facility after departure of the original shipment.

(b) Forwarding under paragraph (a) shall be—

(1) With the least possible delay;

(2) By a mode of transportation selected by the Contracting Officer; and

(3) At the Contractor’s expense.

(End of clause)

252.247–7018 Subcontracting.

As prescribed in 247.271–4(m), use the following clause:

SUBCONTRACTING (DEC 1991)

The Contractor shall not subcontract without the prior written approval of the Contracting Officer. The facilities of any approved subcontractor shall meet the minimum standards required by this contract.

(End of clause)

252.247–7019 Drayage.

As prescribed in 247.271–4(n), use the following clause:

DRAYAGE (DEC 1991)

(a) Drayage included for Schedule I, Outbound, applies in those instances when a shipment requires drayage to an air, water, or other terminal for onward movement after completion of shipment preparation by the Contractor. Drayage not included is when it is being moved from a residence or other pickup point to the Contractor’s warehouse for onward movement by another freight company, carrier, etc.

(b) Drayage included for Schedule II, Inbound, applies in those instances when shipment is delivered, as ordered, from a destination, Contractor’s facility or other destination point to the final delivery point. Drayage not included is when shipment or partial removal of items from shipment is performed and prepared for member’s pickup at destination delivery point.

(c) The Contractor will reposition empty Government containers—

(1) Within the area of performance;

(2) As directed by the Contracting Officer; and

(3) At no additional cost to the Government.

(End of clause)
(d) If any lost container is located within (insert number of days) calendar days after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government the replacement value, less rental computed in accordance with paragraph (b) of this clause, beginning at the expiration of the loan period specified in paragraph (b) of this clause, and continuing to the date on which the container was delivered to the Contractor.

(End of provision)

[60 FR 29503, June 5, 1995]

252.247-7022 Representation of extent of transportation by sea.

As prescribed in 247.573(a), use the following provision:

REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (AUG 1992)

(a) The Offeror shall indicate by checking the appropriate blank in paragraph (b) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term supplies is defined in the Transportation of Supplies by Sea clause of this solicitation.

(b) Representation. The Offeror represents that it—

____ Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

____ Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(c) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense FAR Supplement clause at 252.247–7024, Notification of Transportation of Supplies by Sea.

(End of provision)


252.247–7023 Transportation of supplies by sea.

As prescribed in 247.573(b)(1), use the following clause:

TRANSPORTATION OF SUPPLIES BY SEA (MAY 2002)

(a) Definitions. As used in this clause—

(1) Components means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) Department of Defense (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) Foreign flag vessel means any vessel that is not a U.S.-flag vessel.

(4) Ocean transportation means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) Subcontractor means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

(6) Supplies means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea. (i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) Supplies includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) U.S.-flag vessel means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if—

(i) This contract is a construction contract, or

(ii) The supplies being transported are—

(A) Noncommercial items; or

(B) Commercial items that—

(1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it contracts for f.o.b. destination shipment);

(2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2663.
(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

(1) U.S.-flag vessels are not available for timely shipment;
(2) The freight charges are inordinately excessive or unreasonable; or
(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer’s failure to grant approvals to meet the shipper’s sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

(1) Type, weight, and cube of cargo;
(2) Required shipping date;
(3) Special handling and discharge requirements;
(4) Loading and discharge points;
(5) Name of shipper and consignee;
(6) Prime contract number; and
(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, one copy of the rated on board vessel operating carrier’s ocean bill of lading, which shall contain the following information:

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Contract Line Items</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prime contract number</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name of vessel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vessel flag of registry</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date of loading</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Port of loading</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Port of final discharge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description of commodity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gross weight in pounds and cubic feet if available</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total ocean freight in U.S. dollars; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name of the steamship company</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(f) The Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief—

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

(g) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph, in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(End of clause)
Department of Defense 252.247–7025

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations (Note: This contract requires shipment of commercial items in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations); or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

Alternate II (MAR 2000). As prescribed in 247.573(b)(3), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(b)(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643 (Note: This contract requires transportation of commissary or exchange cargoes outside of the Defense Transportation System in accordance with 10 U.S.C. 2643).

Alternate III (MAY 2002)

As prescribed in 247.573(b)(4), substitute the following paragraph (f) for paragraphs (f), (g), and (h) of the basic clause:

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in subcontracts that are for a type of supplies described in paragraph (b)(2) of this clause.

(End of clause)


252.247–7025 Reflagging or repair work.

As prescribed in 247.573(d), use the following clause:

REFLAGGING OR REPAIR WORK (MAY 1995)

(a) Definition. Reflagging or repair work, as used in this clause, means work performed on a vessel—

(1) To enable the vessel to meet applicable standards to become a vessel of the United States; or

(2) To convert the vessel to a more useful military configuration.

(b) Requirement. Unless the Secretary of Defense waives this requirement, refflagging or repair work shall be performed in the United States or its territories, if the refflagging or repair work is performed—

(1) On a vessel for which the Contractor submitted an offer in response to the solicitation for this contract; and

Sea, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the Transportation of Supplies by Sea clause of this contract, will be transported by sea, the Contractor—

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of the Transportation of Supplies by Sea clause of this contract.

(b) The Contractor shall include this clause; including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties—

(1) In all subcontracts under this contract, if this contract is a construction contract; or

(2) If this contract is not a construction contract, in all subcontracts under this contract that are for—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(End of clause)
(2) Prior to acceptance of the vessel by the Government.

(End of clause)

[60 FR 28563, June 5, 1995]

252.249–7000 Special termination costs.

As prescribed in 249.501–70, use the following clause:

SPECIAL TERMINATION COSTS (DEC 1991)

(a) Definition.—Special termination costs, as used in this clause, means only costs in the following categories as defined in part 31 of the Federal Acquisition Regulation (FAR)—

(1) Severance pay, as provided in FAR 31.205-6(g);

(2) Reasonable costs continuing after termination, as provided in FAR 31.205–42(b);

(3) Settlement of expenses, as provided in FAR 31.205–42(g);

(4) Costs of return of field service personnel from sites, as provided in FAR 31.205–46 and FAR 31.205–46(c); and

(5) Costs in paragraphs (a) (1), (2), (3), and (4) of this clause to which subcontractors may be entitled in the event of termination.

(b) Notwithstanding the Limitation of Costs/Limitation of Funds clause of this contract, the Contractor shall not include in its estimate of costs incurred or to be incurred, any amount for special termination costs to which the Contractor may be entitled in the event this contract is terminated for the convenience of the Government.

(c) The Contractor agrees to perform this contract in such a manner that the Contractor’s claim for special termination costs will not exceed $ . The Government shall have no obligation to pay the Contractor any amount for the special termination costs in excess of this amount.

(d) In the event of termination for the convenience of the Government, this clause shall not be construed as affecting the allowance of special termination costs in any manner other than limiting the maximum amount of the costs payable by the Government.

(e) This clause shall remain in full force and effect until this contract is fully funded.

(End of clause)

252.249–7001 [Reserved]

252.249–7002 Notification of anticipated contract termination or reduction.

As prescribed in 249.7003(c), use the following clause:

NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION (DEC 1996)

(a) Definitions.

Major defense program means a program that is carried out to produce or acquire a major system (as defined in 10 U.S.C. 2302(5)) (see also DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs).

Substantial reduction means a reduction of 25 percent or more in the total dollar value of funds obligated by the contract.

(b) Section 1372 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160) and Section 629 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–201) are intended to help establish benefit eligibility under the Job Training Partnership Act (29 U.S.C. 1661 and 1662) for employees of DoD contractors and subcontractors adversely affected by contract terminations or substantial reductions under major defense programs.

(c) Notice to employees and state and local officials. Within 2 weeks after the Contracting Officer notifies the Contractor that contract funding will be terminated or substantially reduced, the Contractor shall provide notice of such anticipated termination or reduction to—

(1) Each employee representative of the Contractor’s employees whose work is directly related to the defense contract; or

(2) If there is no such representative, each such employee;

(3) The State dislocated worker unit or office described in section 311(b)(2) of the Job Training Partnership Act (29 U.S.C. 1661(b)(2)); and

(4) The chief elected official of the unit of general local government within which the adverse effect may occur.

(d) Notice to subcontractors. Not later than 60 days after the Contractor receives the Contracting Officer’s notice of the anticipated termination or reduction, the Contractor shall—

(1) Provide notice of the anticipated termination or reduction to each first-tier subcontractor with a subcontract of $500,000 or more; and

(2) Require that each such subcontractor—

(i) Provide notice to each of its subcontractors with a subcontract of $100,000 or more; and

(ii) Impose a similar notice and flowdown requirement to subcontractors with subcontracts of $100,000 or more.

(e) The notice provided an employee under paragraph (c) of this clause shall have the same effect as a notice of termination to the employee for the purposes of determining whether such employee is eligible for training, adjustment assistance, and employment
services under section 325 or 325A of the Job Training Partnership Act (29 U.S.C. 1662d, 1662d-1). If the Contractor has specified that the anticipated contract termination or reduction is not likely to result in plant closure or mass layoff, as defined in 29 U.S.C. 2101, the employee shall be eligible only for services under section 314(b) and paragraphs (1) through (14), (16), and (18) of section 314(c) of the Job Training Partnership Act (29 U.S.C. 1661(c)) and paragraphs (1) through (14), (16), and (18) of section 1661(c)).

(End of clause)

[61 FR 64637, Dec. 6, 1996]

252.251-7000 Ordering from Government supply sources.

As prescribed in 251.107, use the following clause:

ORDERING FROM GOVERNMENT SUPPLY SOURCES (MAY 1995)

(a) When placing orders under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules, the Contractor shall follow the terms of the applicable schedule and authorization. Include in each order:

(1) A copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contractor).

(2) The following statement: This order is placed under written authorization from dated .

In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract or Personal Property Rehabilitation Price Schedule contract, the latter will govern.

(3) The completed address(es) to which the Contractor’s mail, freight, and billing documents are to be directed.

(b) If a Federal Supply Schedule contractor refuses to honor an order placed by a Government contractor under an agency authorization, the Contractor shall report the circumstances to the General Services Administration, FPN, Washington, DC 20406, with a copy to the authorizing office.

(c) When placing orders under nonmandatory schedule contracts and requirements contracts, issued by the General Services Administration (GSA) Office of Information Resources Management, for automated data processing equipment, software and maintenance, communications equipment and supplies, and teleprocessing services, the Contractor shall follow the terms of the applicable contract and the procedures in paragraph (a) of this clause.

(d) When placing orders for Government stock, the Contractor shall—

(1) Comply with the requirements of the Contracting Officer’s authorization, using FEDSTRIP or MILSTRIP procedures, as appropriate;

(2) Use only the GSA Form 1948–A, Retail Services Shopping Plate, when ordering from GSA Self-Service Stores;

(3) Order only those items required in the performance of Government contracts; and

(4) Pay invoices from Government supply sources promptly. For purchases made from DoD supply sources, this means within 30 days of the date of a proper invoice (see also Defense Federal Acquisition Regulation Supplement (DFARS) 251.105). For purposes of computing interest for late Contractor payments, the Government’s invoice is deemed to be a demand for payment in accordance with the Interest clause of this contract. The Contractor’s failure to pay may also result in the DoD supply source refusing to honor the requisition (see DFARS 251.102(f)) or in the Contracting Officer terminating the Contractor’s authorization to use DoD supply sources. In the event the Contracting Officer decides to terminate the authorization due to the Contractor’s failure to pay in a timely manner, the Contracting Officer shall provide the Contractor with prompt written notice of the intent to terminate the authorization and the basis for such action. The Contractor shall have 10 days after receipt of the Government’s notice in which to provide additional information as to why the authorization should not be terminated. Such termination shall not provide the Contractor with an excusable delay for failure to perform or complete the contract in accordance with the terms of the contract, and the Contractor shall be solely responsible for any increased costs.

(e) Only the Contractor may request authorization for subcontractor use of Government supply sources. The Contracting Officer will not grant authorizations for subcontractor use without approval of the Contractor.

(f) Government invoices shall be submitted to the Contractor’s billing address, and Contractor payments shall be sent to the Government remittance address specified below:

Contractor’s Billing Address (include point of contact and telephone number):

Government Remittance Address (include point of contact and telephone number):

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 29953, June 5, 1995]
252.251–7001 Use of Interagency Fleet Management System (IFMS) vehicles and related services.

As prescribed in 251.205, use the following clause:

USE OF INTERAGENCY FLEET MANAGEMENT SYSTEM (IFMS) VEHICLES AND RELATED SERVICES (DEC 1991)

(a) The Contractor, if authorized use of IFMS vehicles, shall submit requests for five or fewer vehicles and related services in writing to the appropriate General Services Administration (GSA) Regional Customer Service Bureau, Attention: Motor Equipment Activity. Submit requests for more than five vehicles to GSA headquarters: General Services Administration, FTM, Washington, DC 20406. Include the following in each request:

(1) Two copies of the agency authorization to obtain vehicles and related services from GSA.

(2) The number of vehicles and related services required and the period of use.

(3) A list of the Contractor’s employees authorized to request vehicles and related services.

(4) A list of the makes, models, and serial numbers of Contractor-owned or leased equipment authorized to be serviced.

(b) The Contractor should make requests for any unusual quantities of vehicles as far in advance as possible.

(c) The Contractor shall establish and enforce suitable penalties for employees who use or authorize the use of Government vehicles for other than performance of Government contracts.

(d) The Contractor shall assume, without the right of reimbursement from the Government, the cost or expense of any use of IFMS vehicles and services not related to the performance of the contract.

(e) Only the Contractor may request authorization for subcontractor use of IFMS vehicles. The Contracting Officer will not grant authorization for subcontractor use without approval of the Contractor.

(End of clause)

PART 253—FORMS

Subpart 253.2—Prescription of Forms

Sec. 253.204 Administrative matters.
253.208–1 DD Form 448, Military Interdepartmental Purchase Request.
253.208–2 DD Form 448–2, Acceptance of MIPR.
253.209 Contractor qualifications.
253.209–1 Responsible prospective contractors.
253.213 Simplified acquisition procedures (SP’s 18, 30, 44, 1165, 1449, and OF’s 366, 347, and 348).
253.213–70 Instructions for completion of DD Form 155.
253.215 Contracting by negotiation.
253.215–70 DD Form 1547, Record of Weighted Guidelines Application.


SOURCE: 56 FR 36554, July 31, 1991, unless otherwise noted.

Subpart 253.2—Prescription of Forms

253.204 Administrative matters.


Policy on use of a DD Form 350 is in 204.670–2. This subsection contains instructions for completion of the DD Form 350.

(a) Part A of the DD Form 350. Part A identifies the report and the reporting activity. Complete all four lines.

(1) LINE A1, TYPE OF REPORT. Enter one of the following codes:

(i) Code 0—Original. Enter code 0 unless code 1 or code 2 applies.

(ii) Code 1—Canceling. A canceling action cancels an existing DD Form 350 in accordance with departmental data collection point instructions.

(iii) Code 2—Correcting. A correcting action corrects an existing DD Form 350 action in accordance with departmental data collection point instructions.

(2) LINE A2, REPORT NUMBER. Enter the six-position local control number (see 204.670–3(a)(5)). Do not leave blank or enter all zeros. If Line A1 is coded 1 or 2, use the prior report number rather than a new one.

(3) LINE A3, CONTRACTING OFFICE.

(i) LINE A3A, REPORTING AGENCY FIPS 95 CODE. Enter one of the following codes: 2100 (Army); 1700 (Navy); 5700 (Air Force); 96CE (Army Civil Works); 97AS (DLA); 9763 (DCMA);
97AB (NIMA) 9700 (all other defense agencies).

(ii) LINE A3B, CONTRACTING OFFICE CODE. Enter the code assigned by the departmental data collection point in 204.670–1(c).

(4) LINE A4, NAME OF CONTRACTING OFFICE. Enter sufficient detail to establish the identity of the contracting office.

(b) Part B of the DD Form 350. Part B describes the transaction.

(i) LINE B1, CONTRACT IDENTIFICATION INFORMATION.

(A) ENTER—

(1) The DoD contract number; or

(2) For orders under contracts awarded by other Federal agencies, the contract number of that Federal agency as it appears in the contractual instrument.

(B) Do not leave spaces between characters, and do not enter dashes, slants, or any other punctuation marks.

(C) The DoD contract number is the basic (13-position alphanumeric character) procurement instrument identification number (PIIN) that was assigned in accordance with 204.7003 or constructed under an exception permitted by 204.7000. Do not enter any supplementary procurement instrument identification numbers as part of the contract number (these go on Line B2).

(ii) LINE B1B, ORIGIN OF CONTRACT. Enter the code that indicates the agency that assigned the contract number.

(A) Code A—DoD.

(B) Code B—NASA.

(C) Code C—Other Non-DoD Agency.

(iii) LINE B1C, BUNDLED CONTRACT. Enter one of the following codes:

(A) Code Y—Yes. Enter code Y when at least 80 percent of the contract value is for work that is performance based.

(B) Code N—No. Enter code N when code Y does not apply.

(iv) LINE B1D, BUNDLED CONTRACT EXCEPTION. If Line BIC is coded Y, enter one of the following codes. Otherwise, leave Line B1D blank.

(A) Code A—Mission Critical. Enter code A if the agency has determined that the consolidation of requirements is critical to the agency’s mission, but the measurably substantial benefits do not meet the thresholds set forth in FAR 7.107 to determine that the consolidation is necessary and justified.

(B) Code B—OMB Circular A–76. Enter code B if the agency used the OMB Circular A–76 process to determine that the consolidation of requirements is necessary and justified rather than applying the substantial benefits analysis required by FAR 7.107.

(C) Code C—Other. Enter code C when codes A and B do not apply.

(v) LINE B1E, PERFORMANCE-BASED SERVICE CONTRACT (see FAR Subpart 37.6). Enter one of the following codes:

(A) Code Y—Yes. Enter code Y when at least 80 percent of the contract value is for work that is performance based.

(B) Code N—No. Enter code N when code Y does not apply.

(2) LINE B2, MODIFICATION, ORDER, OR OTHER ID NUMBER. Enter the supplementary procurement instrument identification number if one was assigned in accordance with 204.7004 or as permitted by 204.7000. It can be up to 19 characters. Orders under DoD contracts have a four-position number (see 204.7004(d)); orders under non-DoD contracts have a 13-position number with an F in the ninth position; modifications to contracts and agreements have a six-position modification number (see 204.7004(c)); modifications to orders under DoD contracts have a two-position modification number following the four-position order number (see 204.7004(e)); and modifications to orders under non-DoD contracts have a six-position modification number following the 13-position order number.

(3) LINE B3, ACTION DATE.

(i) Enter the year, month, and day of the effective date for fiscal obligation purposes.

(ii) Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

(4) LINE B4, COMPLETION DATE.

(i) Enter the year, month, and day of the last contract delivery date or the
end of the performance period. If the contract is incrementally funded, report the completion date for the entire contract. Report the completion date associated with an option quantity when the option is exercised.

(ii) Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

(5) LINE B5, CONTRACTOR IDENTIFICATION INFORMATION.

(i) Use data that relates to the contractor whose name and address appear in the contract document (Block 7 of the SF 26, Award/Contract; Block 8 of the SF 30, Amendment of Solicitation/Modification of Contract; Block 15A of the SF 33, Solicitation, Offer and Award; or Block 9 of the DD Form 1155, Order for Supplies or Services), except—

(A) For contracts placed with the Small Business Administration under Section 8(a) of the Small Business Act, use data that relates to the company that will be performing the work;

(B) For Federal schedule orders, use data that applies to the contractor whose name appears on the schedule (not the data for the agent to whom orders may be sent); and

(C) For contracts with the Canadian Commercial Corporation (CCC), use data for the appropriate CCC office.

(ii) Some of the parts of Line B5 may not apply to the action being reported. Follow the instructions for each part.

(A) LINE B5A, CONTRACTOR IDENTIFICATION NUMBER (DUNS).

(1) Enter the contractor’s 9-position Data Universal Numbering System (DUNS) number (see FAR 4.602(d) and 4.603 and DFARS Subpart 204.73).

(2) For U.S. Army Contracting Command, Europe, consolidated reporting of vouchers for utilities from municipalities, use DUNS number 15-390-6193 (see 204.670-6(b)(1)).

(B) LINE B5B, GOVERNMENT AGENCY. Enter one of the following codes:

(1) Code Y—Yes. Enter code Y when the contractor is a Federal, State, or local government agency of the United States and outlying areas (see 204.670-1(d)). Do not use code Y when the government agency is an educational institution or a JWOD Participating Nonprofit Agency.

(2) Code N—No. Enter code N when code Y does not apply.

(C) LINE B5C. Reserved.

(D) LINE B5D, CONTRACTOR NAME AND DIVISION NAME. Enter the contractor’s name as stated in the offer and resultant contract. Include its division name.

(E) LINE B5E, CONTRACTOR ADDRESS. Enter the contractor’s address as stated in the offer and resultant contract. Include street address or P.O. Box, city or town, state or country, and ZIP code, if applicable. Do not enter foreign postal codes.

(F) LINE B5F, TAXPAYER IDENTIFICATION NUMBER. Enter the contractor’s taxpayer identification number (TIN) (see FAR Subpart 4.9). Leave Line B5F blank if the contractor is—

(1) A nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the trade or business in the United States; and does not have an office or place of business or a fiscal paying agent in the United States;

(2) An agency or instrumentality of a foreign government; or

(3) An agency or instrumentality of the Federal Government.

(G) LINE B5G, PARENT TAXPAYER IDENTIFICATION NUMBER. Enter the contractor’s parent company (common parent) TIN (see FAR Subpart 4.9 and 52.204-3). If the contractor does not have a parent company or the parent company meets the exemption for Line B5F, leave Line B5G blank.

(H) LINE B5H, PARENT NAME. If a parent company TIN is entered on Line B5G, enter the name of the parent company (common parent) on Line B5H. Leave Line B5H blank if there is no parent company or the parent company is exempted from the requirement to have a TIN.

(6) LINE B6, PRINCIPAL PLACE OF PERFORMANCE.

(i) The place, or places, where the contract will be performed may be specified by the Government or listed by the contractor in response to the solicitation provision at FAR 52.214-14, Place of Performance—Sealed Bidding, or FAR 52.215-6, Place of Performance. Use data for the contractor’s principal
place of performance, which is generally the—
(A) Final assembly point for items manufactured under supply contracts;
(B) Location from where shipments from stock are made under supply contracts;
(C) Actual construction site for construction contracts;
(D) Planned construction site for architect-engineer contracts;
(E) Place of mining for mined supplies; or
(F) Place (including military installations) where a service is performed for service contracts.

(ii) When there is more than one location for any of paragraphs (b)(6)(i)(A) through (F) of this subsection (e.g., more than one construction site), use the location involving the largest dollar amount of the acquisition. Do not show more than one location on Line B6.

(iii) If places of performance are too varied or not known, enter the contractor’s home office location. However, if the contractor is a domestic concern and the entire contract will be performed outside the United States, enter the most frequent place of performance.

(iv) Follow the instructions for each part of Line B6 that applies to the action being reported.

(A) LINE B6A, CITY OR PLACE CODE.
   (1) For places in the United States and outlying areas, enter the numeric place code from FIPS PUB 55, Guideline: Codes for Named Populated Places, Primary Country Divisions, and Other Locational Entities of the United States and Outlying Areas. Leave Line B6A blank for places outside the United States and outlying areas.

   (2) Paragraph 5.2, Entry Selection With the Aid of the Class Code, of FIPS PUB 55 will help in selecting the correct code. Sometimes, a class code should be used in addition to a place code to accurately identify the place of performance. Do not use place codes when the first position of the class code is X or Z.

   (B) LINE B6B, STATE OR COUNTRY CODE.
   (1) For places in the United States and outlying areas, enter the numeric State code from FIPS PUB 55 or FIPS PUB 5. Codes for the Identification of the States, the District of Columbia and the Outlying Areas of the United States and Associated Areas.

   (C) LINE B6C, CITY OR PLACE AND STATE OR COUNTRY NAME. Enter the name of the principal place of performance. Do not leave Line B6C blank.

   (7) LINE B7, TYPE OBLIGATION. Enter one of the following codes:
   (i) Code 1—Obligation. Enter code 1 if the action obligates funds.
   (ii) Code 2—Deobligation. Enter code 2 if the action deobligates funds.
   (iii) Code 3—No Dollars Obligated or Deobligated. Enter code 3 if the action is the initial award of an indefinite-delivery contract that neither obligates nor deobligates funds.

   (8) LINE B8, OBLIGATED OR DEOBLIGATED DOLLARS. Enter the net amount of funds (whole dollars only) obligated or deobligated by the action. Enter zero if the action is the initial award of an indefinite-delivery contract that neither obligates nor deobligates funds, i.e., Line B7 is coded 3.

   (9) LINE B9, FOREIGN MILITARY SALE. Enter one of the following codes. If only part of the action is a foreign military sale, separately report the parts (see 253.204-70(c)).
   (i) Code Y—Yes. Enter code Y when the action is under a foreign military sales arrangement, or under any other arrangement when a foreign country or international organization is bearing the cost of the acquisition.
   (ii) Code N—No. Enter code N when code Y does not apply.

   (10) LINE B10, MULTIYEAR CONTRACT. Enter one of the following codes:
(i) Code Y—Yes. Enter code Y when the action is a multiyear contract as defined at FAR 17.103. Do not report contracts containing options as multiyear unless the definition at FAR 17.103 applies to the contract.
(ii) Code N—No. Enter code N when code Y does not apply.

11 LINE B11, TOTAL ESTIMATED CONTRACT VALUE. Enter the total estimated contract value (in whole dollars) only at the time of initial placement of the contract, including placement of an indefinite-delivery or multiyear contract. Include the total estimated value of orders and options anticipated to be placed over the life of the contract.

12 LINE B12, PRINCIPAL PRODUCT OR SERVICE. Line B12 has five parts. Do not leave any parts of Line B12 blank. Codes for Line B12 can be found in the DoD Procurement Coding Manual (MN02) under "PRODUCT AND SERVICE CODE ASCII FILE DOWNLOADS" at the bottom of the following web page: http://web1.whs.osd.mil/peidhome/guide/mn02/mn02.htm.

(i) LINE B12A, FEDERAL SUPPLY CLASS OR SERVICE CODE. Enter the 4-character Federal supply class (FSC) or service code that describes the contract effort. There are three categories of codes to choose from. If more than one category or code applies to the action, enter the one that best identifies the product or service representing the largest dollar value.

(A) Supplies. If the action is for the purchase (not lease or rental) of supplies, enter an FSC code on Line B12A. FSC codes are all numeric. The Department of Defense Federal Supply Classification Cataloging Handbook (H2) may also help with the correct 4-digit code. (B) Services. If the action is for services (except research, development, test, and evaluation), construction, equipment lease or rental, or facilities lease or rental, enter a service code on Line B12A.

(C) Research, Development, Test, and Evaluation (RDT&E). If the action is for RDT&E (as defined in FAR 35.001 and 235.001), enter an RDT&E code on Line B12A. All RDT&E codes should begin with the letter “A.” Do not use an RDT&E code for—

1) Purchase, lease, or rental of equipment, supplies, or services separately purchased in support of RDT&E work, even if RDT&E funds are cited. Instead, use an FSC or Service code under the instructions in paragraph (b)(12)(1)(A) or (B) of this subsection; or
2) Orders under Federal schedule contracts. Instead, use an FSC or Service code under the instructions in paragraph (b)(12)(1)(A) or (B) of this subsection.

(ii) LINE B12B, DOD CLAIMANT PROGRAM CODE. Enter a code that identifies the commodity described on Line B12E. If more than one code applies to the action, enter the one that best identifies the product or service representing the largest dollar value. If the description on Line B12E is for—

(A) Research and development (R&D), enter the code that best represents the objective of the R&D. For example, if the objective of the R&D is a guided missile, enter code A20. If the R&D cannot be identified to any particular objective, enter code S10;

(B) Ship repair, inspect and repair as necessary (IRAN), modification of aircraft, overhaul of engines, or similar maintenance, repair, or modification services, enter the code that best identifies the program;

(C) Equipment rental (including rental of automatic data processing equipment), enter code S10;

(D) Utility services, enter code S10;

(E) Services that cannot be identified to any listed program, enter code S10; or

(F) Supplies or equipment that cannot be identified to any listed program, enter code C9E.

(iii) LINE B12C, PROGRAM, SYSTEM, OR EQUIPMENT CODE.

(A) Enter a code that describes the program, weapons system, or equipment. If there is no code that applies to the action, enter three zeros. If more than one code applies to the action, enter the one that best identifies the product or service representing the largest dollar value. If the action is funded by the Ballistic Missile Defense Organization, enter code CAA.

(B) If the action supports environmental cleanup programs, enter one of the codes listed in Section II of the
(D) Defense Logistics Agency and Defense Contract Management Agency activities must use the code assigned by the sponsoring military department.

(iv) LINE B12D, NAICS CODE. Enter the North American Industry Classification System (NAICS) code for the acquisition. Use the NAICS code in effect at the time of award. These codes are in the 2002 U.S. NAICS Manual (http://www.census.gov/pub/epcd/www/naics.html). If more than one code applies to the action, enter the code that best identifies the product or service representing the largest dollar value.

(v) LINE B12E, NAME OR DESCRIPTION. Enter the name or a brief description of the commodity or service. If the description is classified, enter only the word “Classified.” Do not use “Classified” when a code name (e.g., Minuteman, Polaris, Trident, Pershing) or an identifying program number (e.g., WS–107A) can be used.

(vi) LINE B12F, EPA-DESIGNATED PRODUCT(S). Enter one of the following codes:

(A) Code A—EPA-Designated Product(s) with Minimum Recovered Material Content. Enter code A if Environmental Protection Agency (EPA)-designated product(s) were acquired and all contained the required minimum recovered material content. See the EPA Comprehensive Procurement Guidelines program list at http://www.epa.gov/cpg/.

(B) Code B—FAR 23.405(c)(1) Justification. Enter code B if EPA-designated product(s) were acquired without the required minimum recovered material content and a justification was completed based on inability to acquire the product(s) competitively within a reasonable period of time.

(C) Code C—FAR 23.405(c)(2) Justification. Enter code C if EPA-designated product(s) were acquired without the required minimum recovered material content and a justification was completed based on inability to acquire the product(s) at a reasonable price.

(D) Code D—FAR 23.405(c)(3) Justification. Enter code D if EPA-designated product(s) were acquired without the required minimum recovered material content and a justification was completed based on inability to acquire the product(s) to reasonable performance standards in the specifications.

(E) Code E—No EPA-Designated Products Acquired. Enter code E if no EPA-designated products were acquired.

(vii) LINE B12G, RECOVERED MATERIAL CLAUSES. If an EPA-designated product was acquired, i.e., Line B12F is coded A, B, C, or D, enter one of the following codes. Otherwise, leave Line B12G blank.

(A) Code A—FAR 52.223–4. Enter code A if the solicitation included the provision at FAR 52.223–4, Recovered Material Certification.

(B) Code B—FAR 52.223–4 and FAR 52.223–9. Enter code B if the solicitation included the provision at FAR 52.223–4, Recovered Material Certification, and the contract includes the clause at FAR 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products.

(13) LINE B13, KIND OF ACTION. Some of the parts of Line B13 may not apply to the action being reported. Follow instructions for each part. When the action is a modification, complete Lines B13A and B13D.

(i) LINE B13A, CONTRACT OR ORDER. Enter one of the following codes:

(A) Code 1—Letter Contract. Enter code 1 when the action is a letter contract or a modification to a letter contract that has not been definitized.

(B) Code 3—Definitive Contract.

(i) Enter code 3 when the action is the award or modification of a definitive contract or a modification that definitizes a contract. Code 3 includes the following:

(ii) Notices of award.

(iii) Lease agreements.

(iv) Indefinite-delivery-definite-quantity contracts (FAR 52.216–20).

(v) Indefinite-delivery-indefinite-quantity contracts (FAR 52.216–22) when funds are obligated by the contract itself.
(vi) Initial award of an indefinite-delivery contract when no funds are obligated.

(2) Code 3 excludes orders from the Procurement List (see codes 6 and 8).

(C) Code 4—Order under an Agreement.
Enter code 4 when the action is an order or definitization of an order under an agreement other than a blanket purchase agreement. Examples include an order exceeding $25,000 under a basic ordering agreement or a master ship repair agreement and a job order when the contract is created by issuing the order. An order under a blanket purchase agreement established under a Federal schedule (see FAR 8.404(b)(4)) is coded 7. An order under other blanket purchase agreements, pursuant to FAR 13.303, is coded 9. When the action is a modification to an order described in code 4 instructions, enter code 4 on Line B13A.

(D) Code 5—Order under Indefinite-Delivery Contract.
Enter code 5 when the action is an order, including a task or delivery order, under an indefinite-delivery contract awarded by a Federal agency. For example, enter code 5 for an order under a GSA indefinite-delivery contract, such as a GSA area-wide contract for utility services, that is not a Federal schedule. When the action is a modification to an order described in code 4 instructions, enter code 4 on Line B13A.

(G) Code 7—BPA Order under Federal Schedule. Enter code 7 if the action is an order placed with Federal Prison Industries (UNICOR) or JWOD Participating Nonprofit Agency in accordance with FAR Subpart 8.6 or 8.7. Use code 6 for orders from the Procurement List under Federal schedules. When the action is a modification to an order described in code 8 instructions, enter code 8 on Line B13A.

(H) Code 9—Award under FAR Part 13.
Enter code 9 if the action, including an action in a designated industry group under the Small Business Competitiveness Demonstration Program (see FAR Subpart 19.10), is an award pursuant to FAR Part 13, except when the action is a blanket purchase agreement order pursuant to FAR 8.404(b)(4) (see code 7). When the action is a modification to an award described in code 9 instructions, enter code 9 on Line B13A.

(ii) LINE B13B, TYPE OF INDEFINITE-DELIVERY CONTRACT. If the action is the award or modification of an indefinite-delivery contract, i.e., Line B13A is coded 3 and the ninth position of B1A is coded D, complete Line B13B. If the action is an order or modification of an order under an indefinite-delivery contract, i.e., Line B13A is coded 5, complete Line B13B. Otherwise, leave Line B13B blank.

(A) Code A—Requirements Contract (FAR 52.216–21).

(B) Code B—Indefinite-Quantity Contract (FAR 52.216–22).

(C) Code C—Definite-Quantity Contract (FAR 52.216–20).

(iii) LINE B13C, MULTIPLE OR SINGLE AWARD INDEFINITE-DELIVERY CONTRACT. If the action is the award or modification of an indefinite-delivery contract, or an order or modification of an order under an indefinite-delivery contract, i.e., Line B13A is coded 5, complete Line B13C. Otherwise, leave Line B13C blank.

(A) Code M—Multiple Award. Enter code M if the indefinite-delivery contract is a multiple award contract.

(B) Code S—Single Award. Enter code S if the indefinite-delivery contract is a single award contract.

(iv) LINE B13D, MODIFICATION. If the action is a modification, enter one of the following codes. Otherwise, leave Line B13D blank.
Department of Defense 253.204-70

(A) Code A—Additional Work (new agreement). Enter code A when the action is a bilateral supplemental agreement that obligates funds for additional work requiring a justification and approval (J&A).

(B) Code B—Additional Work (other). Enter code B when the action is a modification of an existing contract (including a letter contract) that is not covered by code A or by codes C through H (see code H for exercise of an option). Code B includes actions that—

(1) Initiate an incremental yearly buy under a multiyear contract;

(2) Amend a letter or other contract to add work that does not require a J&A; or

(3) Order under a priced exhibit or production list.

(C) Code C—Funding Action. Enter code C when the action is a modification (to a letter or other contract) for the sole purpose of obligating or deobligating funds. This includes—

(1) Incremental funding (other than incremental yearly buys under multiyear contracts, which are coded B);

(2) Changes to the estimated cost on cost-reimbursement contracts;

(3) Repricing actions covering incentive price revisions;

(4) Economic price adjustments; and

(5) Initial citation and obligation of funds for a contract awarded in one fiscal year but not effective until a subsequent fiscal year.

(D) Code D—Change Order. Enter code D if the action is a change order issued under the “Changes,” “Differing Site Conditions,” or similar clauses in existing contracts.

(E) Code E—Termination for Default. Enter code E if the action is a modification that terminates all or part of the contract for default.

(F) Code F—Termination for Convenience. Enter code F if the action is a modification that terminates all or part of the contract for convenience.

(G) Code G—Cancellation. Enter code G if the action is a modification that cancels the contract. Do not use code G to cancel a prior DD Form 350 (see Line A1).

(H) Code H—Exercise of an Option. Enter code H if the action is an exercise of an option.

(I) Code J—Definitization. Enter code J if the action is a definitization modification. For the definitization of a letter contract, enter code 3 on Line B13A.

(v) LINE B13E, MULTIPLE AWARD CONTRACT FAIR OPPORTUNITY. If the action is an order under a multiple award indefinite-delivery contract, i.e., Line B13C is coded M, enter one of the following codes. Otherwise, leave Line B13E blank.

(A) Code A—Fair Opportunity Process. Enter code A if the delivery or task order was issued pursuant to a process that permitted each contract awardee a fair opportunity to be considered (see FAR 16.505(b)(1)).

(B) Code B—Urgency. Enter code B if the agency need is so urgent that providing a fair opportunity would result in unacceptable delays (see FAR 16.505(b)(2)(i)).

(C) Code C—One/Unique Source. Enter code C if only one contract awardee is capable of providing the supplies or services at the level or quality required because the supplies or services are unique or highly specialized (see FAR 16.505(b)(2)(ii)).

(D) Code D—Follow-On Contract. Enter code D if the order was issued on a sole-source basis in the interest of economy and efficiency as a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order (see FAR 16.505(b)(2)(iii)).

(E) Code E—Minimum Guarantee. Enter code E if it was necessary to place an order to satisfy a minimum amount guaranteed to the contractor (see FAR 16.505(b)(2)(iv)).

(vi) LINE B13F, INDEFINITE-DELIVERY CONTRACT USE. If the action is the initial award of an indefinite-delivery contract, enter one of the following codes to indicate if the indefinite-delivery contract can be used Government-wide, within DoD only, within the department or agency only, or by the contracting office only. Otherwise, leave Line B13F blank.

(A) Code A—Government-Wide.

(B) Code B—DoD-Wide.

(C) Code C—DoD Department or Agency Only.

(D) Code D—Contracting Office Only.
(vii) LINE B13G—INDEFINITE-DELIVERY CONTRACT ORDERING PERIOD ENDING DATE. If the action is the initial award of an indefinite-delivery contract and Line B13F is coded A, B, C, or D, enter the date the ordering period ends. Otherwise, leave Line B13G blank. Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

(14) LINE B14, CICA APPLICABILITY. Enter one of the following codes:
   (i) Code A—Pre-CICA. Enter code A if the action resulted from a solicitation issued before April 1, 1985. Modifications within the original scope of work of such awards and orders under pre-CICA indefinite-delivery type contracts also are coded A.
   (ii) Code B—CICA Applicable. Enter code B if:
      (A) The action resulted from a solicitation issued on or after April 1, 1985, or is a modification coded A on Line B13D issued on or after April 1, 1985; and
      (B) Neither code C nor code D applies.
   (iii) Code C—Simplified Acquisition Procedures Other than FAR Subpart 13.5. Enter code C if the action is for an item of supply, other than a commercial item, that meets the definition of nondevelopmental item in FAR 2.101.
   (iv) Code D—Simplified Acquisition Procedures Pursuant to FAR Subpart 13.5. Enter code D if the action is for an item of supply that does not meet the definition of commercial item or nondevelopmental item in FAR 2.101.
   (v) Code E—Commercial Service. Enter code E if the action is for a service that meets the definition of commercial item in FAR 2.101.
   (vi) Code F—Noncommercial Service. Enter code F for all other services.

(15) LINE B15, INFORMATION TECHNOLOGY PRODUCTS OR SERVICES. If the action is for information technology products or services, enter one of the following codes. Otherwise, leave Line B15 blank:
   (i) Code Y—Yes. Enter code Y if the action is for information technology products or services acquired in compliance with the planning requirements of sections 5122 and 5123 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1422 and 1423).
   (ii) Code N—No. Enter code N if code Y does not apply.

(c) Part C of the DD Form 350.
   (1) Part C gathers data concerning contracting procedures, use of competition, financing, and statutory requirements other than socioeconomic (which are in Part D).
   (2) Do not complete Part C if the action is with a government agency, i.e., Line B5B (Government Agency) is coded Y (Yes). If the action is an order under a Federal schedule, i.e., Line B13A is coded 6, complete only the following lines in Part C: Line C3, and Lines C13A and C13B (when applicable).
   (3) In completing Part C, use codes that describe either the current action or the original contract as follows:
(i)(A) If the current action is a modification, other than a new work modification, or an order under an indefinite-delivery contract, code the lines in Part C to describe the original contract.

(B) If the current action is an order under a multiple award contract, i.e., Line B13A is coded 5 and Line B13C is coded M, code Lines C6 and C7 to describe the order and code the rest of Part C to describe the original contract.

(C) Otherwise, code the lines in Part C to describe the current action.

(ii) If there are no codes for the original contract because a DD Form 350 was not required at the time, the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, use codes that best describe the original action.

(4) Complete Part C as follows:

(i) LINE C1, SYNOPSIS. Enter one of the following codes:

(A) Code A — Synopsis Only. Enter code A only if a synopsis of the proposed action was prepared and transmitted in accordance with FAR Subpart 5.2.

(B) Code B — Combined Synopsis/Solicitation. Enter code B if a combined synopsis/solicitation of the proposed action was prepared and transmitted in accordance with FAR Subpart 5.2 and 12.603.

(C) Code N — Not Synopsized. Enter code N if a synopsis was not prepared.

(ii) LINE C2, REASON NOT SYNOPSIZED. Enter one of the following codes if a synopsis was not prepared, i.e., Line C1 is coded N. Otherwise, leave Line C2 blank.

(A) Code A — Urgency. Enter code A if the action was not synopsized due to urgency (see FAR 6.302-2).

(B) Code B — FAR 5.202(a)(13). Enter code B if the action was not synopsized because the acquisition did not exceed the simplified acquisition threshold and was made through FACNET or another means that provided access to the notice of proposed action through the single, Governmentwide point of entry (see FAR 5.202(a)(13)).

(C) Code C — SBA/OFPP Pilot Program. Enter Code C if the action was not synopsized because the acquisition was subject to the SBA/OFPP Pilot Program that allows for waiver of synopsis requirements for acquisitions of services between $25,000 and $100,000 from small businesses under set-asides (OFPP memorandum dated September 27, 2001, Subject: Extension of the Pilot Program on Acquisition of Services from Small Businesses). Do not use Code C if the acquisition is subject to the Small Business Competitiveness Demonstration Program.

(D) Code Z — Other Reason. Enter code Z if the action was not synopsized due to some other reason.

(iii) LINE C3, EXTENT COMPETED. Enter one of the following codes:

(A) Code A — Competed Action. Enter code A when—

(1) The action is an order under a Federal schedule, i.e., Line B13A is coded 6;

(2) Competitive procedures were used to fulfill the requirement for full and open competition (see FAR Subpart 6.1);

(3) Full and open competition procedures after exclusion of sources were used in order to establish or maintain alternative sources, to set aside an acquisition for small business or HUBZone small business, or to compete Section 8(a) awards (see FAR Subpart 6.2);

(4) Statutory authorities for other than full and open competition were used (see FAR Subpart 6.3) and more than one offer was received (if only one offer was received, use code D);

(5) The action resulted from a contract awarded prior to the Competition in Contracting Act that used two-step sealed bidding or other sealed bidding, or that was negotiated competitively; or

(6) Simplified acquisition procedures were used and competition was obtained.

(B) Code B — Not Available for Competition. Enter code B for—

(1) Awards for utilities or utility systems, excluding long distance telecommunications services, when only one supplier can furnish the service (see FAR 6.302-1(b)(3));

(2) Brand name commercial products for authorized resale;

(3) Acquisitions authorized or required by statute to be awarded to a
specific source pursuant to FAR 6.302-5(b)(2) or (4), e.g., qualified nonprofit agencies employing people who are blind or severely disabled (see FAR Subpart 8.7) or 8(a) program (see FAR Subpart 19.8); 

(4) International agreements and Foreign Military Sales when the acquisition is to be reimbursed by a foreign country that requires that the product or services be obtained from a particular firm as specified in official written direction such as a Letter of Offer and Acceptance; and

(5) Other contracting actions when the Director of Defense Procurement has determined that there is no opportunity for competition.

Note: Even though Part C is not completed for actions with a government agency, the database will automatically include these actions in the category of not available for competition.

(C) Code C—Follow-On to Competed Action. Enter code C when the action pertains to an acquisition placed with a particular contractor to continue or augment a specific competed program, if such placement was necessitated by prior acquisition decisions. Code C applies to contracts that meet the statutory criteria for Phase III follow-on under the Small Business Innovation Research Program.

(D) Code D—Not Competed. Enter code D when codes A, B, and C do not apply.

(v) LINE C4, SEA TRANSPORTATION. When the origin of the contract is DoD, i.e., Line B1B is coded A, enter one of the following codes. Otherwise, leave Line C4 blank.

(A) Code Y—Yes—Positive Response to DFARS 252.247-7022 or 252.212-7000(c)(2). Enter code Y when the contractor’s response to the provision at 252.247-7022, Representation of Extent of Transportation by Sea, or 252.212-7000(c)(2), Offeror Representations and Certifications—Commercial Items, indicates that the contractor anticipates that some of the supplies being provided may be transported by sea.

(B) Code N—No—Negative Response to DFARS 252.247-7022 or 252.212-7000(c)(2). Enter code N when the contractor’s response to the provision at 252.247-7022 or 252.212-7000(c)(2) indicates that the contractor anticipates that none of the supplies being provided will be transported by sea.

(C) Code U—Unknown—No Response or Provision Not Included in Solicitation. Enter code U when the contractor did not complete the representation at 252.247-7022 or 252.212-7000(c)(2) or the solicitation did not include either provision.

(vi) LINE C6, NUMBER OF OFFERORS SOLICITED.

(A) Leave Line C6 blank if—

(1) The original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act);

(2) The action is an order or modification of an order under a non-DoD indefinite-delivery contract, i.e., Line B1B is coded B or C and Line B13A is coded 5; or

(3) The action is an order or modification of an order under a Federal schedule, i.e., Line B13A is coded 6.

(B) Otherwise, enter—

(1) Code 1—One. Enter code 1 if only one offeror was solicited; or

(2) Code 2—More than One. Enter code 2 if more than one offeror was solicited.
(vii) LINE C7. NUMBER OF OFFERS RECEIVED.
(A) Leave Line C7 blank if—
(1) The original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act); or
(2) The action is an order under a Federal schedule, i.e., Line B13A is coded 6.
(B) Otherwise, enter the specific number of offers received (001–999).

(viii) LINE C8. SOLICITATION PROCEDURES.
(A) Leave Line C8 blank if—
(1) The original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act); or
(2) The action is pursuant to simplified acquisition procedures, i.e., Line B13A is coded 9; or
(3) The action is an order under a Federal schedule, i.e., Line B13A is coded 6.
(B) Otherwise, enter one of the following codes:
(1) Code A—Full and Open Competition—Sealed Bid. Enter code A if the action resulted from an award pursuant to FAR 6.102(a).
(2) Code B—Full and Open Competition—Competitive Proposal. Enter code B if the action resulted from an award pursuant to FAR 6.102(b).
(3) Code C—Full and Open Competition—Combination. Enter code C if the action resulted from an award using a combination of competitive procedures (e.g., two-step sealed bidding) pursuant to FAR 6.102(c).
(4) Code D—Architect-Engineer. Enter code D if the action resulted from selection of sources for architect-engineer contracts pursuant to FAR 6.102(d)(1).
(5) Code E—Basic Research. Enter code E if the action resulted from competitive selection of basic research proposals pursuant to FAR 6.102(d)(2).
(6) Code F—Multiple Award Schedule. Enter code F if the action is an award of a multiple award schedule pursuant to FAR 6.102(d)(3) or an order against such a schedule.
(7) Code G—Alternative Sources. Enter code G if the action resulted from use of competitive procedures but excluded a particular source pursuant to FAR 6.202(a).
(8) Code K—Set-Aside. Enter code K if the action resulted from any—
(i) Set-aside for small business concerns (see FAR Subpart 19.5), including small business innovation research (SBIR) actions;
(ii) Set-aside for small disadvantaged business concerns;
(iii) Set-aside for HUBZone small business concerns (see FAR 19.1305);
(iv) Set-aside for very small business concerns (see FAR 19.904);
(v) Set-aside (including portions of broad agency announcements) for historically black colleges and universities or minority institutions (see 226.7003 and 235.016);
(vi) Set-aside for emerging small business concerns (see FAR 19.1006(c)); or
(vii) Competition among Section 8(a) firms under FAR 19.805 (report non-competitive 8(a) awards as code N).
(9) Code N—Other than Full and Open Competition. Enter code N if the action resulted from use of other than full and open competition pursuant to FAR Subpart 6.3. This includes awards to qualified nonprofit agencies employing people who are blind or severely disabled (see FAR Subpart 8.7) or non-competitive awards to the Small Business Administration under Section 8(a) of the Small Business Act (see FAR 6.302–5(b)).

(ix) LINE C9. AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION.
(A) Leave Line C9 blank if the original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act).
(B) Enter one of the following codes if the action resulted from use of other than full and open competition pursuant to FAR Subpart 6.3. This includes awards to qualified nonprofit agencies employing people who are blind or severely disabled (see FAR Subpart 8.7) or non-competitive awards to the Small Business Administration under Section 8(a) of the Small Business Act (see FAR 6.302–5(b)).
(1) Code 1A—Unique Source. Enter code 1A if the action was justified pursuant to FAR 6.302–1(b)(1).
(2) Code 1B—Follow-On Contract. Enter code 1B if the action was justified pursuant to FAR 6.302–1(a)(2)(i) or (ii).
(3) Code 1C—Unsolicited Research Proposal. Enter code 1C if the action was
justified pursuant to FAR 6.302-1(a)(2)(1).

(4) Code 1D—Patent or Data Rights. Enter code 1D if the action was justified pursuant to FAR 6.302-1(b)(2).

(5) Code 1E—Utilities. Enter code 1E if the action was justified pursuant to FAR 6.302-1(b)(3).

(6) Code 1F—Standardization. Enter code 1F if the action was justified pursuant to FAR 6.302-1(b)(4).

(7) Code 1G—Only One Source—Other. Enter code 1G if the action was justified pursuant to FAR 6.302-1 in a situation other than the examples cited in codes 1A through 1F.

(8) Code 2A—Urgency. Enter code 2A if the action was justified pursuant to FAR 6.302-2.

(9) Code 3A—Particular Sources. Enter code 3A if the action was justified pursuant to FAR 6.302-3(a)(2).

(10) Code 4A—International Agreement. Enter code 4A if the action was justified pursuant to FAR 6.302-4.

(11) Code 5A—Authorized by Statute. Enter code 5A if the action was justified pursuant to FAR 6.302-5(a)(2)(1).

(12) Code 5B—Authorized Resale. Enter code 5B if the action was justified pursuant to FAR 6.302-5(a)(2)(ii).

(13) Code 6A—National Security. Enter code 6A if the action was justified pursuant to FAR 6.302-6.

(14) Code 7A—Public Interest. Enter code 7A if the action was taken pursuant to FAR 6.302-7.

(x) LINE C10, SUBJECT TO LABOR STANDARDS STATUTES. Enter one of the following codes. When the action is an order or modification of an order under a Federal schedule, i.e., Line B13A is coded 6, leave Line C10 blank.

(A) Code A—Walsh-Healey Act. Enter code A when the action is subject to the provisions of FAR Subpart 22.6.

(B) Code C—Service Contract Act. Enter code C when the action is subject to the provisions of the Service Contract Act (see FAR Part 37).

(C) Code D—Davis-Bacon Act. Enter code D when the action is subject to the Davis-Bacon Act (see FAR 22.403-1).

(D) Code Z—Not Applicable. Enter code Z when codes A, C, and D do not apply.

(xii) LINE C12, CONTRACT FINANCING. When the origin of the contract is DoD, i.e., Line B1B is coded A, enter one of the following codes identifying whether or not progress payments, advance payments, or other financing methods were used. When the origin of the contract is not DoD, leave Line C12 blank.

(A) Code A—FAR 52.232-16. Enter code A if the contract contains the clause at FAR 52.232-16, Progress Payments.

(B) Code C—Percentage of Completion Progress Payments. Enter code C if the contract provides for progress payments based on percentage or stage of completion, which is only permitted on contracts for construction, for shipbuilding, or for ship conversion, alteration, or repair (see 232.102(e)(2)).

(C) Code D—Unusual Progress Payments or Advance Payments. Enter code D if the contract provides unusual progress payments or advance payments (see FAR Subpart 32.4 and 32.501-2).

(D) Code E—Commercial Financing. Enter code E if the contract provides for commercial financing payments (see FAR Subpart 32.2).

(E) Code F—Performance-Based Financing. Enter code F if the contract provides for performance-based financing payments (see FAR Subpart 32.10).

(F) Code Z—Not Applicable. Enter code Z when codes A through F do not apply.

(xiii) LINE C13, FOREIGN TRADE DATA.

(A) The term “United States (U.S.),” as used on Line C13, excludes the Trust Territory of Palau (see 294.670-1 for definition of United States and outlying areas).
(B) LINE C13A, PLACE OF MANUFACTURE. Complete Line C13A only if the action is for a foreign end product or a service provided by a foreign concern under a DoD contract or a Federal schedule. Otherwise, leave Line C13A blank.

(1) Code A—U.S. Enter code A if the action is for—
   (i) A foreign end product that is manufactured in the United States but still determined to be foreign because 50 percent or more of the cost of its components is not mined, produced, or manufactured inside the United States or inside qualifying countries; or
   (ii) Services performed in the United States by a foreign concern.

(2) Code B—Foreign. Enter code B if the action is for—
   (i) Any other foreign end product; or
   (ii) Services performed outside the United States by a foreign concern.

(C) LINE C13B, COUNTRY OF ORIGIN CODE.

(1) Complete Line C13B only if Line C13A is coded A or B. Otherwise, leave Line C13B blank.

(2) Enter the code from FIPS PUB 10, Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions, that identifies the country where the foreign product is coming from or where the foreign company providing the services is located. If more than one foreign country is involved, enter the code of the foreign country with the largest dollar value of work under the contract.

(xiv) LINE C14, COMMERCIAL ITEM. Enter one of the following codes:
   (A) Code Y—Yes—FAR 52.212-4 Included. Enter code Y if the contract contains the clause at FAR 52.212-4, Contract Terms and Conditions—Commercial Items.
   (B) Code N—No—FAR 52.212-4 Not Included. Enter code N if code Y does not apply.

(d) Part D of the DD Form 350—(1) Do NOT complete Part D if the action is—
   (i) With a government agency, i.e., Line B5B is coded Y; or
   (ii) An order under a Federal schedule, i.e., Line B13A is coded 6.

(2) Use the codes on Lines B13A and B13D to determine whether the codes in Part D will describe the current action or the original contract.

(i) Code Part D to describe the current action when—
   (A) The action is a new requirement, i.e., Line B13A is coded 1, 3, 4, 7, or 9 and Line B13D is coded A or is blank; or
   (B) The action is an order from the Schedule or the Procurement List, i.e., Line B13A is coded 8 and Line B13D is coded A or is blank.

(ii) Otherwise, code Part D to describe the original contract. If there are no codes for the original contract because a DD Form 350 was not required at the time, the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, use codes that best describe the original action.

(3) Determine the status of the concern (e.g., size and ownership) in accordance with FAR Part 19 and DFARS Part 219.

(4) Complete Part D as follows:
   (i) LINE D1, TYPE OF CONTRACTOR.
      (A) LINE D1A, TYPE OF ENTITY.
         Enter one of the following codes:
         (1) Code A—Small Disadvantaged Business (SDB) Performing in U.S. Enter code A if the contractor is a small disadvantaged business concern as defined in 219.001 and the place of performance is within the United States and outlying areas.
         (2) Code B—Other Small Business (SB) Performing in U.S. Enter code B if the contractor is a small business concern as defined in FAR 19.001, other than a small disadvantaged business concern, and the place of performance is within the United States and outlying areas.
         (3) Code C—Large Business Performing in U.S. Enter code C if the contractor is a domestic large business concern and the place of performance is within the United States and outlying areas.
         (4) Code D—JWOD Participating Nonprofit Agency. Enter code D if the contractor is a qualified nonprofit agency employing people who are blind or severely disabled (see FAR 8.701) and the place of performance is within the United States and outlying areas.
(5) Code F—Hospital. Enter code F if the contractor is a hospital and the place of performance is within the United States and outlying areas.

(6) Code L—Foreign Concern or Entity. Enter code L if the contractor is a foreign concern, the Canadian Commercial Corporation, or a non-U.S.-chartered nonprofit institution.

(7) Code M—Domestic Firm Performing Outside U.S. Enter code M if the contractor is an HBCU or MI and the place of performance is outside the United States and outlying areas.

(8) Code T—Historically Black College or University (HBCU). Enter code T if the contractor is an HBCU as defined at 252.226-7000 and the place of performance is outside the United States and outlying areas.

(9) Code U—Minority Institution (MI). Enter code U if the contractor is an MI as defined at 252.226-7000 and the place of performance is within the United States and outlying areas.

(10) Code V—Other Educational. Enter code V if the contractor is an educational institution that does not qualify as an HBCU or MI and the place of performance is within the United States and outlying areas.

(11) Code Z—Other Nonprofit. Enter code Z if the contractor is a nonprofit organization (as defined in FAR 31.701) that does not meet any of the criteria in codes D, F, T, U, or V and the place of performance is within the United States and outlying areas.

(B) LINE DIB, WOMEN-OWNED BUSINESS. Enter one of the following codes:

(1) Code Y—Yes. Enter code Y if the contractor’s response to FAR 52.204-5, 52.212-3(c), or 52.219-1(b) indicates that it is a women-owned business.

(2) Code N—No. Enter code N if the contractor’s response to FAR 52.204-5, 52.212-3(c), or 52.219-1(b) indicates that it is not a women-owned business.

(3) Code U—Uncertified. Enter code U if the information is not available because the contractor did not complete the representation in FAR 52.204-5, 52.212-3(c), or 52.219-1(b).

(C) LINE DIC, HUBZONE REPRESENTATION. Enter one of the following codes when the contractor is a small business performing inside the United States, i.e., Line DIA is coded A or B. Otherwise, leave Line DIC blank.

(1) Code Y—Yes. Enter code Y if the contractor represented that it is a HUBZone small business concern at the time of contract award (see FAR 19.1303).

(2) Code N—No. Enter code N if code Y does not apply.

(D) LINE D1D, ETHNIC GROUP.

(1) Complete Line D1D if the action is with a small disadvantaged business and the origin of the contract is DoD, i.e., Line B1B is coded A. Otherwise, leave Line D1D blank.

(2) Enter the code from the following list that corresponds to the ethnic group that the contractor marked in the solicitation provision at FAR 52.219-1, Small Business Program Representations, or FAR 52.212-3(c).

(i) Code A—Asian-Indian American.


(iii) Code C—Black American.

(iv) Code D—Hispanic American.

(v) Code E—Native American.

(vi) Code F—Other SDB Certified or Determined by SBA.

(vii) Code Z—No Representation.

(E) LINE D1E, VETERAN-OWNED SMALL BUSINESS. Enter one of the following codes when the contractor is a veteran-owned small business:

(1) Code A—Service-Disabled Veteran. Enter code A if the contractor represented that it is a service-disabled veteran-owned small business.

(2) Code B—Other Veteran. Enter code B if the contractor represented that it is a veteran-owned small business, other than a service-disabled veteran-owned small business.

(3) Code C—Uncertified. Enter code C when an SDB source, but it was not solicited.

(B) Code B—SDB Not Solicited. Enter code B when there was a known SDB source, but it was not solicited.

(C) Code C—SDB Solicited and No Offer Received. Enter code C when an SDB was solicited but it did not submit an offer, or its offer was not sufficient to
cover the total quantity requirement so it received a separate award for the quantity offered.

(D) Code D—SDB Solicited and Offer Was Not Low. Enter code D when an SDB offer was not the low or most advantageous offer or an SDB was not willing to accept award of a partial small business set-aside portion of an action at the price offered by the Government.

(E) Code Z—Other Reason. Enter code Z when an SDB did not receive the award for any other reason or when the action is an order or modification of an order under a non-DoD contract, i.e., Line B1B is coded B or C and Line B13A is coded 5.

(iii) LINE D3, REASON NOT AWARDED TO SB. Enter one of the following codes when the contractor is following codes when the contractor is awarded to SB. Enter one of the following codes when the contractor is

(A) Code A—No Known SB Source.
(B) Code B—SB Not Solicited. Enter code B when there was a known small business source, but it was not solicited.
(C) Code C—SB Solicited and No Offer Received. Enter code C when a small business concern was solicited but it did not submit an offer, or its offer was not sufficient to cover the total quantity requirement so it received a separate award for the quantity offered.
(D) Code D—SB Solicited and Offer Was Not Low. Enter code D when a small business offer was not the low or most advantageous offer or a small business concern was not willing to accept award of a set-aside portion of an action at the price offered by the Government.
(E) Code Z—Other Reason. Enter code Z when a small business did not receive the award for any other reason or when the action is an order or modification of an order under a non-DoD contract, i.e., Line B1B is coded B or C and Line B13A is coded 5.
(iv) LINE D4, SET-ASIDE OR PREFERENCE PROGRAM.
(A) LINE D4A, TYPE OF SET-ASIDE. Enter one of the following codes:
(1) Code A—None. Enter code A if there was no set-aside (i.e., codes B through L do not apply).
(2) Code B—Total SB Set-Aside. Enter code B if the action was a total set-aside for small business (see FAR 19.502–2), including actions reserved exclusively for small business concerns pursuant to FAR 13.003(b)(1), or if the action resulted from the Small Business Innovation Research Program.
(3) Code C—Partial SB Set-Aside. Enter code C if the action was a partial set-aside for small business (see FAR 19.502–3).
(4) Code D—Section 8(a) Set-Aside or Sole Source. Enter code D if the contract was awarded to—
(i) The Small Business Administration under Section 8(a) of the Small Business Act (see FAR Subpart 19.8); or
(ii) An 8(a) contractor under the direct award procedures at 219.811.
(5) Code E—Total SDB Set-Aside. Enter code E if the action was a total set-aside for small disadvantaged businesses.
(6) Code F—HBCU or MI—Total Set-Aside. Enter code F if the action was a total set-aside for HBCU or MI (see 226.7003).
(7) Code G—HBCU or MI—Partial Set-Aside. Enter code G if the action was a partial set-aside for HBCU or MI under a broad agency announcement (see 235.016).
(8) Code H—Very Small Business Set-Aside. Enter code H if the action was a set-aside for very small businesses (see FAR Subpart 19.9).
(9) Code J—Emerging Small Business Set-Aside. Enter code J if the action was an emerging small business set-aside within a designated industry group under the Small Business Competitiveness Demonstration Program (see FAR Subpart 19.10).
(10) Code K—HUBZone Set-Aside or Sole Source. Enter code K if the action was—
(i) A set-aside for HUBZone small business concerns (see FAR 19.1305); or
(ii) A sole source award to a HUBZone small business concern (see FAR 19.1306).
(11) Code L—Combination HUBZone and 8(a). Enter code L if the action was a combination HUBZone set-aside and 8(a) award.
(B) LINE D4B, TYPE OF PREFERENCE. Enter one of the following codes, even if Line D4A is coded E:
   (1) Code A—None. Enter code A if no preference was given.
   (2) Code B—SBIR Program Phase I Action. Enter code B if the action is related to a Phase I contract in support of the SBIR Program.
   (C) Code C—SBIR Program Phase II Action. Enter code C if the action is related to a Phase II contract in support of the SBIR Program.
   (D) Code D—SBIR Program Phase III Action. Enter code D if the action is related to a Phase III contract in support of the SBIR Program.
   (vi) LINE D1, SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM. Enter one of the following codes:
      (A) Code Y—Yes. Enter code Y if this is an action with a U.S. business concern, in either the four designated industry groups or the ten targeted industry categories under the Small Business Competitiveness Demonstration Program (see FAR Subpart 19.10 and DFARS Subpart 219.10), where the principal place of performance is in the United States or outlying areas.
      (B) Code B—SBIR Program Phase I Action. Enter code B if the action is related to a Phase I contract in support of the SBIR Program.
      (C) Code C—SBIR Program Phase II Action. Enter code C if the action is related to a Phase II contract in support of the SBIR Program.
      (D) Code D—SBIR Program Phase III Action. Enter code D if the action is related to a Phase III contract in support of the SBIR Program.
      (vii) LINE D8, SUBCONTRACTING PLAN—SB, SDB, HBCU, OR MI. Enter one of the following codes:
         (A) Code A—Plan Not Included—No Subcontracting Possibilities. Enter code A if a subcontracting plan was not included in the contract because subcontracting possibilities do not exist (see FAR 19.705-2(a)).
         (B) Code B—Plan Not Required. Enter code B if no subcontracting plan was required (e.g., because the action did not meet the dollar thresholds in FAR 19.702(a)).
         (C) Code C—Plan Required—Incentive Not Included. Enter code C if the action includes a subcontracting plan, but does not include additional incentives (see FAR 19.708(c)).
         (D) Code D—Plan Required—Incentive Included. Enter code D if the action includes a subcontracting plan and also includes additional incentives (see FAR 19.708(c) and 219.708(c)).
      (viii) LINE D9, SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM. Enter one of the following codes:
         (A) Code A—Not a SBIR Program Phase I, II, or III. Enter code A if the action is not in support of a Phase I, II, or III SBIR Program.
(B) Code N—No. Enter code N if code Y does not apply.

(ix) LINE D10, SIZE OF SMALL BUSINESS.

(A) Complete Line D10 only when the contractor is a small business performing in the United States and the action is under the Small Business Competitiveness Demonstration Program, i.e., Line D1A is coded A or B and Line D9 is coded Y. Otherwise, leave Line D10 blank.

(B) Enter one of the following codes for the size of the business (number of employees or average annual gross revenue) as represented by the contractor in the solicitation provision at FAR 52.219-19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program:

(1) Code A—50 or fewer employees.
(2) Code B—51–100 employees.
(4) Code D—251–500 employees.
(6) Code F—751–1,000 employees.
(7) Code G—Over 1,000 employees.
(8) Code M—$1 million or less.
(9) Code N—Over $1 million—$2 million.
(10) Code P—Over $2 million—$3.5 million.
(11) Code R—Over $3.5 million—$5 million.
(13) Code T—Over $10 million—$17 million.
(14) Code U—Over $17 million.
(x) LINE D11, EMERGING SMALL BUSINESS.

(A) Complete this line only if the action is under the Small Business Competitiveness Demonstration Program, i.e., Line D9 is coded Y, and the action is in one of the four designated industry groups, not one of the targeted industry categories. Otherwise, leave Line D11 blank.

(B) Enter one of the following codes:

(1) Code Y—Yes. Enter code Y if the contractor represents in the provision at FAR 52.219-19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program, that it is an emerging small business concern.
(2) Code N—No. Enter code N if code Y does not apply.

(e) Part E of the DD Form 350, Part E gathers data on specialized items that may not become permanent reporting elements.

(1) LINE E1, CONTINGENCY, HUMANITARIAN, OR PEACEKEEPING OPERATION.

(i) Enter code Y on Line E1 if the action exceeds $200,000 and is in support of—

(A) A contingency operation as defined in 10 U.S.C. 101(a)(13); or
(B) A humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8).
(ii) Otherwise, leave Line E1 blank.

(2) LINE E2, COST ACCOUNTING STANDARDS CLAUSE. Enter code Y on Line E2 if the contract includes a Cost Accounting Standards clause (see FAR Part 30). Otherwise, leave Line E2 blank.

(3) LINE E3, REQUESTING AGENCY CODE (FIPS 95). If a purchase on behalf of a non-DoD agency, enter the four-position code from FIPS PUB 95 that identifies the non-DoD agency. If making a purchase for another DoD department or agency, enter 2100 for Army, 1700 for Navy, 5700 for Air Force, 97AS for DLA, 96CE for USACE, 9763 for DCMA, and 9700 for all other defense agencies. Otherwise, leave Line E3 blank.

(4) LINE E4, REQUESTING ACTIVITY CODE. If making a purchase on behalf of a non-DoD agency, enter the non-DoD agency’s office code, if provided. Otherwise, leave Line E4 blank.

(5) LINE E5, NUMBER OF ACTIONS. If submitting a consolidated DD Form 350, enter the number of actions included in the consolidated report (see 250.204-6(b)). Otherwise, enter 1 on Line E5.

(6) LINE E6, PAYMENT BY GOVERNMENTWIDE PURCHASE CARD. If payment is to be made through use of the Governmentwide purchase card, enter Y on Line E6. Otherwise, leave Line E6 blank.
253.204–71  DD Form 1057, Monthly Summary of Contracting Actions.

(a) Scope of subsection. Policy on use of a DD Form 1057 is in 253.204. This subsection contains instructions on completion of the DD Form 1057.

(1) Report actions in the month they are awarded, issued, executed, or placed, except:

(i) When the price of an order or call cannot be determined when it is placed, count the action and its dollars when it is paid.

(ii) Count the following actions when the voucher is paid (count each voucher as one action):

(A) Meals and lodging.
(B) Automatic deliveries, e.g., bread, milk, and ice cream.

(iii) The Navy Facilities Engineering Command will report vouchers it processes on Naval shore establishment contracts for electricity and gas in accordance with departmental procedures.

(2) Enter all dollar amounts in whole dollars only. Do not enter cents. If the net amount is a decrease, enter a minus sign (−) immediately preceding the amount to indicate a credit entry. Do not enter parentheses.

(3) Report actions of $25,000 or less in support of a contingency operation as defined in 10 U.S.C. 2302(b), in accordance with the instructions in paragraphs (c) through (j) of this subsection. Report actions exceeding $25,000 but not exceeding $200,000 that support a contingency, humanitarian, or peacekeeping operation, and actions exceeding $25,000 but not exceeding $200,000 that are placed by a contracting officer on a Navy vessel, on the monthly DD Form 1057 as follows:

(i) Section B; the applicable lines are 5 through 5e and 8 through 8e.

(ii) Section C; the applicable lines are 1 and 1c, 2 and 2c, and 3 and 3c.

(iii) Sections D, E, and F are not applicable.

(b) Definitions. For purposes of this subsection "All Other Orders" means orders, and modifications of such orders, under basic ordering agreements or indefinite-delivery contracts.

GSA Schedule Orders means only orders or calls, and modifications of such orders or calls, under Federal schedules awarded by GSA.

Other Contracting Actions means all actions that do not meet the definitions, in this paragraph (b), of an order. Other Federal Schedule Orders means only orders, and modifications of such orders, under Federal schedules awarded by an agency other than GSA, e.g., awarded by VA or OPM.

Simplified Acquisition Procedures means purchase orders, calls under blanket purchase agreements (BPAs) (except BPAs written under Federal schedules), and modifications to those actions.

(c) Section A. General Information.

(1) LINE A1, REPORT MONTH. Enter four digits for the year and two digits for the month. Use 01 through 12 for January through December. For example, enter January 2003 as 200301.

(2) LINE A2, NAME OF CONTRACTING OFFICER. Enter four digits for the year and two digits for the month. Use 01 through 12 for January through December. For example, enter January 2003 as 200301.

(3) LINE A3, CONTRACTING OFFICE CODES.

(1) Line A3a, Reporting Agency FIPS Code. Enter one of the following codes: 2100 (Army); 1700 (Navy); 5700 (Air Force); 96CE (Army Civil Works);
Section B. Contracting Actions.

(1) LINE B1, TARIFF OR REGULATED ACQUISITIONS. Enter the number and dollar value of contracting actions (including modifications that will also be reported on Line B9) with tariff or regulated industries (industries with sole source and service rates that are fixed or adjusted by a Federal, State, or other public regulatory body).

(2) LINE B2, FOREIGN OR INTER-AGENCY.

(i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported on Line B9)—

(A) For foreign military sales (FMS) or other arrangement where the foreign government or international organization is paying all or part of the cost of the action.

(B) Placed directly with foreign governments under the terms of an international agreement, e.g., base maintenance performed with the foreign government acting as the contractor (any other actions directly with foreign governments go on Line B5).

(C) With another Federal agency or Government corporation, e.g., Federal Prison Industries (UNICOR).

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported on Line B9)—

(A) Line B2a, FMS or International Agreements.

(B) Line B2b, Actions with UNICOR. Enter subtotal for contracting actions with UNICOR.

(C) Line B2c, Actions with Other Government Agencies. Enter subtotal for actions with government agencies other than UNICOR.

(3) LINE B3, SMALL BUSINESS.

(i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported on Line B9) where the—

(A) Contractor is a small business concern; and

(B) Place of performance is in the United States and outlying areas (see 204.670-1(c)).

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported on Line B9) for—

(A) Line B3a, Simplified Acquisition Procedures;

(B) Line B3b, GSA Schedule Orders;

(C) Line B3c, Other Federal Schedule Orders;

(D) Line B3d, All Other Orders; and

(E) Line B3e, Other Contracting Actions.

(4) LINE B4, LARGE BUSINESS.

(i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported on Line B9) where the—

(A) Contractor is a large business concern; and

(B) Place of performance is in the United States and outlying areas.

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported on Line B9) for—

(A) Line B4a, Simplified Acquisition Procedures;

(B) Line B4b, GSA Schedule Orders;

(C) Line B4c, Other Federal Schedule Orders;

(D) Line B4d, All Other Orders; and

(E) Line B4e, Other Contracting Actions.

(5) LINE B5, DOMESTIC OR FOREIGN ENTITIES PERFORMING OUTSIDE THE UNITED STATES.

(i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported on Line B9) where the place of performance is outside the United States and outlying areas (see 204.670-1(c)). This includes actions placed directly with a foreign government that are not under international agreements (see paragraph (d)(2)(i)(B) of this subsection). It does not matter whether the contractor is domestic or foreign.

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported on Line B9) for—

(A) Line B5a, Simplified Acquisition Procedures;

(B) Line B5b, GSA Schedule Orders;
(C) Line B5c, Other Federal Schedule Orders;
(D) Line B5d, All Other Orders; and
(E) Line B5e, Other Contracting Actions.

(6) LINE B6, EDUCATIONAL.
(i) Enter the total number and dollar value of contracting actions with educational institutions (including modifications that will also be reported on Line B9).
(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported on Line B9) for—
(A) Line B6a, Simplified Acquisition Procedures;
(B) Line B6b, GSA Schedule Orders;
(C) Line B6c, Other Federal Schedule Orders;
(D) Line B6d, All Other Orders; and
(E) Line B6e, Other Contracting Actions.

(7) LINE B7, NONPROFIT AND OTHER.
(i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported on Line B9) for—
(A) Nonprofit organizations as defined in FAR 31.701;
(B) Qualified nonprofit agencies employing people who are blind or severely disabled; and
(C) Any other entities not listed on Lines B1 through B6.
(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported on Line B9) for—
(A) Line B7a, Simplified Acquisition Procedures;
(B) Line B7b, GSA Schedule Orders;
(C) Line B7c, Other Federal Schedule Orders;
(D) Line B7d, All Other Orders; and
(E) Line B7e, Other Contracting Actions.

(8) LINE B8, TOTAL CONTRACTING ACTIONS.
(i) Add the amounts on Lines B1 through B7 and enter the totals on Line B8.
(ii) If directed by data collection point procedures, also enter the subtotals for the number and dollar value of contracting actions for—
(A) Line B8a, Simplified Acquisition Procedures, sum of Lines 3a + 4a + 5a + 6a + 7a.
(B) Line B8b, GSA Schedule Orders, sum of Lines 3b + 4b + 5b + 6b + 7b.
(C) Line B8c, Other Federal Schedule Orders, sum of Lines 3c + 4c + 5c + 6c + 7c.
(D) Line B8d, All Other Orders, sum of Lines 3d + 4d + 5d + 6d + 7d.
(E) Line B8e, Other Contracting Actions, sum of Lines 3e + 4e + 5e + 6e + 7e.

(9) LINE B9, TOTAL MODIFICATIONS EXCLUDING SIMPLIFIED ACQUISITION PROCEDURES. Enter the total number and dollar value of modifications, excluding simplified acquisition procedures.
(e) Section C, Extent Competed.
(1) LINE C1, COMPETED.
(i) Enter the total number and dollar value of contracting actions that were competed.
(A) Include on Line C1—
(1) Actions not subject to Competition in Contracting Act (CICA) (see FAR 6.001) when at least two quotations or offers were received;
(2) Actions when competitive procedures were used to fulfill the requirement for full and open competition (see FAR Subpart 6.1);
(3) Actions when full and open competition was provided for after exclusion of sources, to establish or maintain alternative sources or to set aside an acquisition exceeding the micro-purchase threshold for small business (see FAR subpart 6.2);
(4) Actions when statutory authorities for other than full and open competition (see FAR subpart 6.3) were used and more than one offer was received, except as provided in paragraphs (e)(1)(1)(B)(2) and (3) of this subsection;
(5) Actions resulting from a contract awarded competitively before CICA (including two-step formal advertising);
(6) Orders, calls, and modifications under a Federal schedule; and
(7) Section 8(a) awards competed under FAR 6.204.
(B) Do not include—
(1) Actions that meet the criteria for Section C, Line C2;
(2) Actions awarded under the authority of FAR 6.302-5(b)(2) or (4), authorized or required by statute (report these in Section C, Line C2); or

(3) Actions reported in Section B, Lines B1 and B2, including actions with the Federal Prison Industries (UNICOR), these are treated as not available for competition in published competition reports.

(ii) Enter the subtotals for the number and dollar value of contracting actions for—

(A) Line C1a, Small Business Concerns;
(B) Line C1b, Large Business Concerns;
(C) Line C1c, Domestic or Foreign Entities Performing Outside the United States;
(D) Line C1d, Educational; and
(E) Line C1e, Nonprofit and Other.

(2) LINE C2, NOT AVAILABLE FOR COMPETITION.

(i) Enter the total number and dollar value of contracting actions that were not available for competition, i.e., any actions not reported on Line B1 or B2. Do not include actions reported in Section B, Line B1 or B2. These actions are treated as not available for competition in published competition reports.

(ii) Enter the subtotals for the number and dollar value of contracting actions for—

(A) Line C2a, Small Business Concerns;
(B) Line C2b, Large Business Concerns;
(C) Line C2c, Domestic or Foreign Entities Performing Outside the United States;
(D) Line C2d, Educational; and
(E) Line C2e, Nonprofit and Other.

(3) LINE C3, NOT COMPETED.

(i) Enter the total number and dollar value of contracting actions that were not competed, i.e., any actions not reported on Line B1 or B2. Do not include actions reported in Section B, Line B1 or B2. These actions are treated as not available for competition in published competition reports.

(ii) Enter the subtotals for the number and dollar value of contracting actions for—

(A) Line C3a, Small Business Concerns;
(B) Line C3b, Large Business Concerns;
(C) Line C3c, Domestic or Foreign Entities Performing Outside the United States;
(D) Line C3d, Educational; and
(E) Line C3e, Nonprofit and Other.

(f) Section D, RDT&E Actions.

Do not include actions for supplies or services in support of research, development, test, and evaluation (RDT&E) work that do not require the contractor to perform RDT&E.

(1) LINE D1, SMALL BUSINESS. Enter the total number and dollar values of RDT&E actions with small business concerns.

(2) LINE D2, LARGE BUSINESS. Enter the total number and dollar value of RDT&E actions with large business concerns.

(3) LINE D3, DOMESTIC OR FOREIGN ENTITIES PERFORMING OUTSIDE THE UNITED STATES. Enter the total number and dollar value of RDT&E actions where the principal place of performance is outside the United States and outlying areas (see 204.700-1).

(4) LINE D4, HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU). Enter the total number and dollar value of RDT&E actions with HBCUs.

(5) LINE D5, MINORITY INSTITUTIONS (MI). Enter the total number
and dollar value of RDT&E actions with MIs.

(6) LINE D6, OTHER EDUCATIONAL. Enter the total number and dollar value of RDT&E actions with educational institutions other than HBCUs or MIs.

(7) LINE D7, OTHER ENTITIES. Enter the total number and dollar value of RDT&E actions that were not reported on Lines D1 through D6.

(g) Section E, Selected Socioeconomic Statistics.

(1) LINE E1, SMALL BUSINESS (SB) SET-ASIDE.

(i) Enter the total number and dollar value of contracting actions that were small business set-aside actions, including awards to SDBs reported on Lines E2c and E2d. Do not include orders under Federal schedules that are reported on Line E3 or E5.

(ii) If the action is an emerging small business set-aside (see FAR 19.1006(c)), use the most appropriate line.

(iii) Enter the subtotals for the number and dollar value of contracting actions for—

(A) Line E1a, SB Set-Aside Using Simplified Acquisition Procedures. Enter actions pursuant to FAR 13.003(b)(1).

(B) Line E1b, SB Set-Aside. Enter actions pursuant to FAR 19.502.

(C) Line E1c, Reserved.

(2) LINE E2, SMALL DISADVANTAGED BUSINESS (SDB) ACTIONS.

(i) Enter the total number and dollar value of contracting actions that were SDB actions. Do not include orders under Federal schedules that are reported on Line E3 or E5.

(ii) Enter the subtotals for the number and dollar value of contracting actions for—

(A) Line E2a, Through SBA—Section 8(a). Enter actions with the Small Business Administration pursuant to Section 8(a) of the Small Business Act (see FAR subpart 19.8) or under the 8(a) direct award procedures at 219.611.

(B) Line E2b, SDB Set-Aside, SDB Preference, or SDB Evaluation Adjustment. Enter actions resulting from—

(1) A set-aside for SDB concerns;

(2) Application of an SDB price preference or evaluation adjustment (see FAR subpart 19.11); or

(3) SDB preferential consideration.

(C) Line E2c, SB Set-Aside Using Simplified Acquisition Procedures. Enter actions pursuant to FAR 13.003(b)(1) when award is to an SDB, but a preference or evaluation adjustment was not applied.

(D) Line E2d, SB Set-Aside. Enter actions under FAR 19.502 when award is to an SDB, but a preference or evaluation adjustment was not applied nor was preferential consideration given.

(E) Line E2e, Other. Enter awards to SDB concerns that are not reported on Lines E2a through E2d.

(3) LINE E3, SDB FEDERAL SCHEDULE ORDERS. Enter the total number and dollar value of contracting actions that were orders under Federal schedules with SDBs.

(4) LINE E4, WOMEN-OWNED SMALL BUSINESS. Enter the total number and dollar value of contracting actions with women-owned small businesses (see FAR 19.001). Do not include orders under Federal schedules that are reported on Line E5.

(5) LINE E5, WOMEN-OWNED SMALL BUSINESS FEDERAL SCHEDULE ORDERS. Enter the total number and dollar value of contracting actions that were orders under Federal schedules with women-owned small businesses.

(6) LINE E6, HBCU. Enter the total number and dollar value of contracting actions with HBCUs pursuant to subpart 226.70.

(7) LINE E7, MI. Enter the total number and dollar value of contracting actions with MIs pursuant to subpart 226.70.

(8) LINE E8, JWOD PARTICIPATING NONPROFIT AGENCIES. Enter the total number and dollar value of contracting actions with qualified nonprofit agencies employing people who are blind or severely disabled for supplies or services from the Procurement List pursuant to FAR subpart 8.7.

(9) LINE E9, EXEMPT FROM SMALL BUSINESS ACT REQUIREMENTS. Enter the total number and dollar value of contracting actions exempt from the set-aside requirements of the Small Business Act (see FAR 19.502–1).

(10) LINE E10, HUBZONE.

(i) Enter the total number and dollar value of contracting actions that were
awarded to HUBZone small business concerns.

(ii) Enter the subtotals for the number and dollar value of contracting actions for—
(A) Line E10a, HUBZone Set-Aside;
(B) Line E10b, HUBZone Price Evaluation Preference;
(C) Line E10c, HUBZone Sole Source; and
(D) Line E10d, HUBZone Concern—Other. Use this category when the award is to a HUBZone small business concern and Lines E10a, E10b, and E10c do not apply.

(11) LINE E11, SERVICE-RELATED DISABLED VETERAN-OWNED SMALL BUSINESS. Enter the total number and dollar value of contracting actions that were awarded to service-disabled veteran-owned small business concerns.

(12) LINE E12, OTHER VETERAN-OWNED SMALL BUSINESS. Enter the total number and dollar value of contracting actions that were awarded to veteran-owned small business concerns, other than those reported on Line E11.

(h) Section F, Simplified Acquisition Procedures—Ranges. Enter in each of the dollar ranges the total number and dollar value of contracting actions that used simplified acquisition procedures (FAR part 13). The total of Section F is normally the sum of Lines B3a, B4a, B5a, B6a, and B7a.

(i) Section G, Contingency Actions. LINE G1, TOTAL ACTIONS.

(1) Enter the total number and dollar value of contracting actions that were awarded in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) or a humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(b). The numbers entered here are a breakout of the numbers already entered in Sections B and C.

(2) Enter the subtotals based on the instructions for completion of Section C for the number and dollar value of contracting actions for—
(i) Line G1a, Competed;
(ii) Line G1b, Not Available for Competition; and
(iii) Line G1c, Not Competed.

(j) Section H, Remarks and Authentication.

(1) LINE H1, REMARKS. Enter any remarks applicable to this report.

(2) LINE H2, CONTRACTING OFFICER.

(i) Line H2a, Name. Enter the name (last, first, middle initial) of the contracting officer or representative.

(ii) Line H2b, Signature. The person identified on Line H2a must sign.

(iii) Line H2c, Telephone Number. Enter the telephone number (with area code) of the person identified on Line H2a. Installations with Defense Switched Network (DSN) must enter their DSN number.

(3) LINE H3, DATE REPORT SUBMITTED. Enter the date that the DD Form 1057 is submitted. Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

[65 FR 39718, June 27, 2000, as amended at 66 FR 47107, Sept. 11, 2001]

253.208 Required sources of supplies and services.

253.208-1 DD Form 448, Military Interdepartmental Purchase Request.

(a) Use the DD Form 448 as prescribed in subpart 208.70.

(b) Prepare MIPR information in uniform contract format when possible. Overprint of fixed repetitive information is authorized.

(c) Instructions for completion of DD Form 448. (1) BLOCK 5—MIPR Number. Number the MIPR by using—

(i) The requiring department identification code as prescribed in DoD 4000.25–6–M, Department of Defense Activity Address Directory (DoDAAD);

(ii) The last digit of the fiscal year; and

(iii) The number of the particular MIPR (numbered consecutively by the requiring activity).

(2) Block 6—Amend No. Assign a suffix number. Assign amendments of the same MIPR consecutive suffix numbers.

(3) Block 9. (i) Conduct interdepartmental screening of items in accordance with FAR 8.001. Requisition items which are available from stocks of other departments as follows:

(A) Obtain items within the scope of MILSTRIP (see DoD 4000.25–1–M, Military Standard Requisitioning and Issue
Procedures (MILSTRIP) by use of DD Form 1348 (Single Line Item Requisition System Document (Manual), DoD)/1348M (Single Line Item Requisition System Document, DoD (Mechanical)).

(B) Obtain items not covered by MILSTRIP using DD Form 1149, Requisition and Invoice/Shipping Document.

(C) If, after receipt of a MIPR, it is determined the requested items are available from stock, the acquiring department shall use the MIPR to obtain the item.

(ii) Normally restrict a MIPR to one major end item, including its required spare parts, ground support equipment, and similar related items. For other than major end items, limit MIPRs to items within a single Federal supply class when possible.

(4) Block 10—Delivery Schedules. (A) The requiring department must clearly state the required time of delivery or performance in each MIPR, taking into consideration the normal administrative lead time of the particular commodity. Delivery and performance schedules on MIPRs must be realistic (see FAR 12.1). If the acquiring department cannot accept the delivery schedule in the MIPR, the acquiring department will note that on DD Form 448—Acceptance of MIPR. Changes in the requested delivery schedule must be made by MIPR amendment.

(B) When a short delivery schedule is mandatory, the requiring department shall mark the MIPR “URGENT” in bold letters and provide justification for the marking.

(ii) Requiring activities must provide MILSTRIP requisition data prescribed in appendix B of the MILSTRIP Manual for each line item which is to be delivered to each “ship to” address. Repetitive data applicable to all lines on the MIPR may be overprinted.

(iii) The requiring activity will furnish estimated weight, cube, and dimensions for each line item or a statement explaining why these data are not available.

(iv) The requiring activity shall include the name and telephone number of an individual who is thoroughly familiar with the MIPR, its attachments, and technical requirements.

(v) Prepare attachments to MIPRs in sufficient numbers so that each copy of a MIPR submitted to the acquiring department is complete with a copy of all attachments. “Ship To and Mark For” addresses in shipping instructions must include the clear text identification and DoDAAD code if assigned.

(5) Block 12—transportation allotment. Enter allotment data for transportation of supplies at Government expense if appropriate.

(6) Block 13—mail invoices to. Use this block to identify the name and address of the office to receive invoices and make payment.

(i) Complete the block only if—

(A) The resulting contract is not to be paid by the Defense Finance and Accounting Service; and

(B) The office to receive invoices and make payment is known at the time of preparation of the MIPR.

(ii) If payment is to be made by an office designated to receive invoices, also enter the DoDAAD code of that office.

(iii) If payment is to be made by an office other than the office to which the invoice is to be mailed, include the name, address, and DoDAAD code of the payment office as an attachment to the MIPR.

(iv) If multiple offices are to receive invoices and make payment, include the names and addresses of those offices as an attachment to the MIPR. Also include the DoDAAD code of each payment office.

(v) Whenever the payment office is included in an attachment, include a reference to the attachment in this block.

(vi) If the names and addresses of invoicing and payment offices are provided the acquiring department after submission of the MIPR, the requiring department also must provide the DoDAAD code for each payment office.

(7) Block 14. Enter allotment data for the acquisition of supplies. Enter each citation in Item 14 in the appropriate space as follows—

(i) Accounting classification reference number (ACRN). If the ACRN procedures of 204.7108 are used in the MIPR to relate allotment data to the MIPR item or delivery, enter the ACRN for
Department of Defense

253.208–2

Acceptance of MIPR.

(a) Use the DD Form 448–2 as prescribed in subpart 208.70.

(b) Instructions for completion of DD Form 448–2. (Complete only the applicable blocks.)

(1) Block 6. Check the specific terms under which the MIPR is being accepted.

(2) Block 7. If any one of the MIPR line items is not accepted, check Block 7 and record the affected MIPR line item number and reason in Block 13.

(3) Blocks 8 and 9. Use Blocks 8 and 9 only—

(i) When Block 6c acceptance is indicated (indicate the MIPR line item numbers that will be provided under each method of financing in Blocks 8a and 9a, respectively); or

(ii) If quantities or estimated costs cited in a MIPR require adjustment (list the affected MIPR line item numbers together with the adjusted quantities or estimated costs in the columns provided under Blocks 8 and 9, as appropriate).

(4) Block 10. Whenever a MIPR is accepted in part or in total under Category II funding, forecast the estimated date of contract award.

(5) Block 11. Enter the total amount of funds required to fund the MIPR items, as accepted.

(6) Block 12. (i) Complete this block only in those cases where the amount recorded in Block 11 is not in agreement with the amount recorded in Block 5. This will serve either—

(A) As a request to the requiring department to issue a MIPR amendment to provide the additional funds; or

(B) Authority for the requiring department to withdraw the available excess funds.

(e) Change of a disbursing office cited on a DoD funded MIPR does not require a MIPR amendment when the resultant contract is assigned for administration to the Defense Contract Management Agency. The administrative contracting office may issue an administrative change order, copies of which will be provided to the contracting officer for transmittal to the requiring activity.

253.209  Contractor qualifications.

253.209-1  Responsible prospective contractors.

(a) SF 1403, Preaward Survey of Prospective Contractor (General). (i) The factors in Section III, Block 19, generally mean—
   (A) Technical capability. An assessment of the prospective contractor’s key management personnel to determine if they have the basic technical knowledge, experience, and understanding of the requirements necessary to produce the required product or provide the required service.
   (B) Production capability. An evaluation of the prospective contractor’s ability to plan, control, and integrate manpower, facilities, and other resources necessary for successful contract completion. This includes—
      (1) An assessment of the prospective contractor’s possession of, or the ability to acquire, the necessary facilities, material, equipment, and labor; and
      (2) A determination that the prospective contractor’s system provides for timely placement of orders and for vendor follow-up and control.
   (C) Quality assurance capability. An assessment of the prospective contractor’s capability to meet the quality assurance requirements of the proposed contract. It may involve an evaluation of the prospective contractor’s quality assurance system, personnel, facilities, and equipment.

(b) Government property control. An assessment of the prospective contractor’s capability to manage and control Government property.

(c) Transportation. An assessment of the prospective contractor’s ability to meet all contractual packaging requirements including preservation, unit pack, packing, marking, and unitizing for shipment.

(d) Security clearance. A determination that the prospective contractor’s facility security clearance is adequate and current. (When checked, the surveying activity will refer this factor to the Defense Security Service (DSS)).

(e) Plant safety. An assessment of the prospective contractor’s ability to meet the safety requirements in the solicitation.

(f) Environmental/energy consideration. An evaluation of the prospective contractor’s ability to meet specific environmental and energy requirements in the solicitation.

(g) Flight operations and flight safety. An evaluation of the prospective contractor’s ability to meet flight operation and flight safety requirements on solicitations involving the overhaul and repair of aircraft.

(h) Other. If the contracting officer wants an assessment of other than
major factors A–E and other factors A–G, check this factor. Explain the desired information in the Remarks sections.

[56 FR 36554, July 31, 1991, as amended at 60 FR 28504, June 5, 1995; 64 FR 51077, Sept. 21, 1999]

253.213 Simplified acquisition procedures (SF’s 18, 30, 44, 1165, 1449, and OF’s 336, 347, and 348).

(f) DoD uses the DD Form 1155, Order for Supplies or Services, instead of OF 347; and OF 336, Continuation Sheet, instead of OF 348.

(i) Use the DD Form 1155 as prescribed in 213.307(b)(i) and in accordance with the instructions at 253.213–70.

(ii) Use the OF 336, or a sheet of paper, as a continuation sheet for the DD Form 1155. Continuation sheets may be printed on the reverse of the DD Form 1155.

(iii) DD Form 1155c–1, Order for Supplies or Services (Commissary Continuation Sheet) may be used for commissary acquisitions.


253.213–70 Instructions for completion of DD Form 1155.

(a) These instructions are mandatory if—

(1) Contract administration has been assigned outside the purchasing office; or

(2) The contractor is located in the continental United States or Canada.

(b) The entity codes (address codes) referenced in this subsection are codes published in—

(1) DoD Activity Address Directory (DODAAD), DoD 4000.25–6–M.

(2) Military Assistance Program Address Directory System (MAPAD), DoD 4000.25–8–M.


(c) For orders requiring payment in Canadian currency—

(1) State the contract price in terms of Canadian dollars, followed by the initials CN; e.g., $1,647.23CN.

(2) Indicate on the face of the order—

(i) The U.S./Canadian conversion rate in effect at the time of the award; and

(ii) The U.S. dollar equivalent of the Canadian dollar amount.

(d) When the DD Form 1155 includes FMS requirements, clearly mark FMS requirement on its face. Specify within the order each FMS case identifier code by line or subline item number.

(e) Instructions for DD Form 1155 entries. (Instructions apply to purchase orders, delivery orders, and calls, except Block 2, which applies only to delivery orders and calls, and Block 12, which applies only to purchase orders.)

<table>
<thead>
<tr>
<th>BLOCK</th>
<th>1 Contract/Purch Order/Agreement No.—</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Enter the Procurement Instrument Identification (PII) number and, when applicable, the supplementary identification number for contracts, purchase orders, and agreements as prescribed in Subpart 204.70.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2 Delivery Order/Call No.—</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enter the PII number for delivery orders/calls, when applicable, as prescribed in Subpart 204.70.</td>
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<tr>
<th>3 Date of Order/Call—</th>
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<tbody>
<tr>
<td>Enter the four position numeric year, three position alpha month, and two position numeric day.</td>
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<tr>
<th>4 Requisition/Purch Request No.—</th>
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<tbody>
<tr>
<td>Enter the number authorizing the purchase. When the number differs by line item, list it in the schedule and annotate this block, “see schedule.”</td>
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<tr>
<th>5 Priority—</th>
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<tbody>
<tr>
<td>Enter the appropriate Program Identification Code as identified in Schedule I to the Defense Priorities and Allocations System Regulation.</td>
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<tr>
<th>6 Issued by—</th>
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<tr>
<td>Enter the name and address of the issuing office. In the code block, enter the DODAAD code for the issuing office. Directly below the address, enter: Buyer Symbol: followed by the buyer’s name and routing symbol. Directly below the buyer/symbol, enter: Phone: followed by the buyer’s phone number and extension.</td>
</tr>
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<tr>
<th>7 Administered by—</th>
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<tbody>
<tr>
<td>Enter the name and address of the contract administration activity. On purchase orders retained by purchasing offices for administration, mark this block, “see block 6.” Enter in the code block the DODAAD code of the contract administration activity. In the lower right or left-hand corner, enter the criticality designator code from FAR 42.1105.</td>
</tr>
</tbody>
</table>
8 Delivery FOB—
Check the applicable box.

9 Contractor—
(i) Enter the full business name and address of the contractor. Enter in the first code block, the CAGE code of the contractor.
(ii) If it is known that all the work covered by the order is to be performed at an address different from the address represented by the contractor’s code, and any contract administration function will be required at that facility, enter in the facility code block the organizational entity code for that facility, i.e., H8-1/H8-2 code for a non-Government entity or DODAAD code for a Government entity. (Use DODAAD codes only to indicate “performed at” locations for order specifying services at a Government location.) If it is known that multiple facilities are involved, enter the codes for all facilities at which work is to be performed, including the contractor’s code if work is performed at that address, in the Optional Form 336 Continuation Sheet and mark the facility code block “see schedule.”

10 Deliver to FOB Point by (Date)—
If a single date of delivery applies to the entire order, enter date in this block. List multiple delivery dates in the schedule and mark this block “see schedule.”

11 Mark if Business—
Check all applicable blocks.

12 Discount Terms—
Enter the discount for prompt payment in terms of percentages and corresponding days. Express the percentages in whole numbers and decimals, e.g., 3.25%—10 days; 0.50%—20 days.

13 Mail Invoices to the Address in Block—
Enter a reference to the block number containing the address to which invoices are to be mailed. When not in Block 6, 7, 14, or 15, insert in Block 13, “see schedule.”

14 Ship to—
If a single ship-to point applies to the entire order, enter the name and address of that point in this block and a DODAAD code in the code block. For FMS shipments, enter the MAPAD code in the code block and an instruction for the contractor to contact the transportation office of the administering activity to obtain a name and shipping address. Enter multiple ship-to points in the schedule and mark this block, “See Schedule.”

15 Payment Will be Made by—
Enter the name and address of the activity making payment. Enter in the code block, the DODAAD code of the paying activity.

16 Type of Order—
Check the appropriate box. If a purchase order:
(i) Identify the type of quotation, i.e., oral, letter or TWX, on which the order is based. (ii) Check the box when acceptance of the purchase order is required and enter the number of copies of the order to be returned to the issuing office.

17 Accounting and Appropriation Data/Local Use—
Enter the accounting classification and the accounting classification reference number(s) in accordance with 204.7197.

18 Item No.—
Enter an item number for each item of supply or service in accordance with subpart 204.71.

19 Schedule of Supplies/Services—
The schedule contains several elements of data. The order and arrangement of data in the schedule is mandatory for purchase and delivery orders assigned to the Defense Contract Management Agency or the military departments for administration and is encouraged for all orders.
(1) National Stock Number (NSN)—
Total item quantity for the line or subline item number followed by the appropriate national stock number or the word “none” if an NSN has not been assigned. On the same line and adjacent to NSN, enter the words “Total Item Quantity.” This phrase is used in conjunction with the total quantity, unit of issue, unit price, and dollar amount of the stock number or item cited (see entries for Blocks 20, 21, 22, and 23).
(ii) Item Identification—
Enter first the most descriptive noun or verb of the supplies or services to be furnished, supplemented by additional description as prescribed in FAR part 10. If multiple accounting classifications apply to the contract, enter the accounting classification reference number.

(3) Quantity Variance—
Enter the quantity variance permitted for the line item in terms of percentages, indicating whether the percentage is plus or minus and if applicable to each destination.
(4) Inspection/Acceptance—
Enter the point at which inspection/acceptance will take place.
(5) Preservation and Packaging—
Enter the preservation requirements for the item described. These requirements may
Department of Defense

be expressed in terms of MIL-STD-2073-1, DoD Material Procedures for Development and Application of Packaging Requirements, and MIL-STD-2073-2, Packaging Requirements, codes. They may also be expressed by reference to applicable specifications.

(6) Packing—
When required, enter the packing level designator and specification, standard, or document in which the requirements are stated or state the specific requirements.

(7) Unitization—
When desired by the requiring activity, a requirement for cargo unitization for a particular destination should be specified for shipments involving two or more shipping containers having an aggregate total of not less than 20 cubic feet or 200 pounds.

(8) Ship To—
Enter the DODAAD or MILSCAP H8-1/H8-2 (cage) as appropriate for the entity code of the ship-to point on the first line and the corresponding name and address on succeeding lines. If multiple accounting classifications apply to the same line or subline item, enter the accounting classification reference number. When several items are to be shipped to the same point, the code will be listed; but it will not be necessary to repeat the address.

(9) Delivery Date—
When multiple delivery dates apply, enter the required date of delivery on the same line with ship-to code.

(10) Mark For—
Enter the DODAAD or MILSCAP H8-1/H8-2 (cage) as appropriate for the entity code on the first line and name and address of the ultimate recipient of the supplies and services on succeeding lines.

20 Quantity Ordered/Accepted—
Enter the total quantity ordered for the line item. If applicable, enter the breakdown on quantities for each ship-to point within the line item.

21 Unit—
Enter the unit of measure applicable to the line item.

22 Unit Price—
Enter the unit price applicable to the line item.

23 Amount—
Enter the extended dollar amount (quantity x unit price) for each line item.

24 Contracting/Ordering Officer—
Enter the contracting/ordering officer's signature.

25 Total Amount—
Enter the total dollar amount for all line items on the order.

26 thru 42 These blocks are used in the receiving and payment functions. Procedures for making entries are prescribed by the respective departments.


253.215 Contracting by negotiation.

253.215-70 DD Form 1547, Record of Weighted Guidelines Application.

(a) Use the DD Form 1547 as prescribed in 215.404-70.

(b) General instructions. (1) Report amounts as they relate to the price of the contract action without regard to funding status (e.g., amounts obligated).

(2) Express all dollar values to the nearest whole value (e.g., $200,008.55 = $200,009).

(3) Express all percentages to the nearest hundredth or thousandth as appropriate (e.g., interest rate—8.25% or 8.257%).

(4) If the contracting office is exempt from reporting to the DoD management information system on profit and fee statistics (see 215.404-76), do not complete Block 1, 4, 5, 6, 7, 8, 9, 10, 11, or 12.

(5) Report an option amount for additional quantities as a separate contract action when exercised.

(6) Even though fixed-price type contract actions are negotiated on the basis of total price, prepare the negotiation summary portion of the DD Form 1547 showing the contracting officer's best estimates of cost and profit.

(7) For indefinite-delivery type contracts, prepare a consolidated DD Form 1547 for annual requirements expected to exceed the cost or pricing data threshold.

(8) Prepare a consolidated DD Form 1547, if possible, when multiple profit rates apply to a single negotiation.

(c) Specific instructions for completion of DD Form 1547—(1) Block I—report no. Enter the four-digit local control number followed by a dash and the last two digits of the fiscal year (e.g., 0004-90 for 4th action in fiscal year 1990). Each
field contracting office participating in profit reporting shall establish a control system for consecutively numbering completed DD Forms 1547. Always start with 0001 at the beginning of each fiscal year and always use four digits. This number will identify the specific DD Form 1547 in DoD’s management information system and will be used for follow-up actions.

(2) Block 2—basic procurement instrument identification no. Enter the identifying contract number assigned per 204.70 (Block B1 of the DD 350).

(3) Block 3—SPIN. Enter the supplemental procurement instrument identification number for supplemental agreements or other modifications, assigned per 204.70, (Block B2 of the DD 350).

(4) Block 4—date of action—(i) Year. Enter the last two digits of the year the action was negotiated (e.g., 90 for 1990).

(ii) Month. Enter the two digit number for the month the action was negotiated (e.g., 09 for September).

(5) Block 5—contracting office code. Enter the code assigned the contracting office per DoD Procurement Coding Manual, Volume III, (Block A3 of the DD 350).

(6) Block 6—name of contractor. Enter the contractor’s name (including division name), (Block B3 of the DD 350).

(7) Block 7—DUNS number. Enter the contractor establishment code number, (Block B5A of the DD 350).

(8) Block 8—federal supply code. Enter the code used in Block B12A of the DD 350.

(9) Block 9—DOD claimant program. Enter the code used in Block B12B of the DD 350.

(10) Block 10—contract type code. Enter the appropriate code—

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>FFR (all types)</td>
<td>A</td>
</tr>
<tr>
<td>FPI (all types)</td>
<td>L</td>
</tr>
<tr>
<td>FFF</td>
<td>J</td>
</tr>
<tr>
<td>FPFF</td>
<td>K</td>
</tr>
<tr>
<td>CPFF</td>
<td>U</td>
</tr>
<tr>
<td>CPFF (all types)</td>
<td>V</td>
</tr>
</tbody>
</table>

(11) Block 11—type effort. Enter the appropriate code—

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manufacturing</td>
<td>1</td>
</tr>
<tr>
<td>Research and Development</td>
<td>2</td>
</tr>
</tbody>
</table>

(12) Block 12—use code. Enter the appropriate code for use of the weighted guidelines method—

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard weighted guidelines method (215.404–71–R(1))</td>
<td>2</td>
</tr>
<tr>
<td>Alternate structured approach (215.404–73)</td>
<td>4</td>
</tr>
<tr>
<td>Modified weighted guidelines approach (215.404–72)</td>
<td>5</td>
</tr>
</tbody>
</table>

(13) Blocks 13 through 20—cost category objective. Enter the prenegotiation objectives. Include contractor independent research and development/bid and proposal in the general and administrative expenses in Block 19.

(14) Blocks 21 through 29—weighted guidelines profit factors. Enter the amounts determined in 215.404–71 or 215.404–72. This section is not required to be completed when using an alternate structured approach (215.404–73).

(15) Block 30—total profit objective. Enter the total of Blocks 23, 24, 25, 27, 28, and 29. This section is not required to be completed when using an alternate structured approach (215.404–73).

(16) Blocks 31 through 35—negotiation summary. Complete as indicated on the form. For fixed-price type contracts negotiated on a total price basis, enter the contracting officer’s best estimates of cost and profit. When using an alternate structured approach, see 215.404–78(b)(v) for offsets.

(17) Blocks 36 through 39—contracting officer approval. The contracting officer shall sign the form. Include a complete (with area code) commercial telephone number to facilitate any follow-up actions.

(18) Blocks 96 through 99—optional use. Complete in accordance with department/agency procedures, if any.

Note: Department of Defense Acquisition Forms are not published in the Federal Register or the Code of Federal Regulations. For the convenience of the user, the list set forth below includes section numbers, form numbers, and titles.


Department of Defense

253.303–1635 Plant Clearance Case Register.
253.303–1637 Notice of Acceptance of Inventory Schedules.
253.303–1638 Report of Disposition of Contractor Inventory.
253.303–1639 Scrap Warranty.
253.303–1640 Request for Plant Clearance.
253.303–1641 Disposal Determination Approval.
253.303–1653 Transportation Data for Solicitations.
253.303–1654 Evaluation of Transportation Cost Factors.
253.303–1662 Property in the Custody of Contractors.
253.303–1664 Data Item Description.
253.303–1707 Information to Offerors or Quoters.
253.303–2025 Packaging Change Recommendation/Approval.
253.303–2579 Small Business Coordination Record.

[56 FR 36554, July 31, 1991]

EDITORIAL NOTE: For Federal Register citations affecting section 253.215–70, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.
APPENDIX A TO CHAPTER 2—ARMED SERVICES BOARD OF CONTRACT APPEALS

Pt. 1—Charter

PART 1—RULERS

ARMED SERVICES BOARD OF CONTRACT APPEALS

Approved 1 May 1962.
Revised 1 May 1969.
Revised 1 September 1973.
Revised 1 July 1979.

1. There is hereby created the Armed Services Board of Contract Appeals, which is hereby designated as the authorized representative of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy and the Secretary of the Air Force, in hearing, considering, and determining appeals by contractors from decisions of contracting officers or their duly authorized representatives or officers by agreement. The Board shall include the provisions of any directive whereby the Secretary of Defense or the Secretary of a Military Department has granted a right of appeal not contained in the contract on any matter consistent with the contract appeals procedure. The Board may determine contract disputes for other departments and agencies by agreement. The Board shall operate under general policies established or approved by the Under Secretary of Defense (Research and Engineering).

2. Membership of the Board shall consist of attorneys at law who have been qualified in the manner prescribed by the Contract Disputes Act of 1978. Members of the Board are hereby designated Administrative Judges. There shall be appointed from members of the Board a chairman and two or more vice-chairmen. Appointment of the chairman and vice-chairmen and other members of the Board shall be made by the Under Secretary of Defense (Research and Engineering) and the Assistant Secretaries of the Military Departments responsible for procurement. The chairman and vice-chairmen shall serve in that capacity for a two-year term unless sooner removed or reappointed for an additional term or terms. The Under Secretary will also designate the order in which the vice-chairmen will act for the chairman in his absence. In the absence of a vice-chairman, the chairman or acting chairman may designate a member of the Board to serve as a temporary vice-chairman.

3. It shall be the duty and obligation of the members of the Armed Services Board of Contract Appeals to decide appeals on the record of the appeal to the best of their knowledge and ability in accordance with applicable contract provisions and in accordance with law and regulation pertinent thereto.

4. The chairman of the Board shall be responsible for establishing appropriate divisions of the Board to provide for the most effective and expeditious handling of appeals. He shall be responsible for assigning appeals to the divisions for decision without regard to the military department or other procuring agency which entered into the contract. A division may consist of one or more members of the Board. The chairman shall designate one member of each division as the division head. The division heads and the chairman and vice-chairmen shall constitute the senior deciding group of the Board. A majority of the members of a division or of the senior deciding group shall constitute a quorum for the transaction of the business of each, respectively. Decisions of the Board shall be by majority vote of the members of a division participating and the chairman and a vice-chairman, unless the chairman refers the appeal for decision by the senior deciding group. The decision of the Board in cases so referred to the senior deciding group shall be by majority vote of the participating members of that group. The chairman may refer an appeal of unusual difficulty, significant precedential importance, or serious dispute within the normal decision process for decision by the senior deciding group. An appeal involving $50,000 or less may be decided by a single member or fewer members of the Board than hereinafter provided for cases of unlimited dollar amount, under accelerated or expedited procedures as provided in the Rules of the Board and the Contract Disputes Act of 1978.

5. The Board shall have all powers necessary and incident to the proper performance of its duties. Subject to the approval of the Under Secretary of Defense (Research and Engineering) and the Assistant Secretaries of the Military Departments responsible for procurement, the Board shall adopt its own methods of procedure, and rules and regulations for its conduct and for the preparation and presentation of appeals and issuance of opinions. The Military Departments and other procuring agencies shall provide legal personnel to prepare and
present the contentions of the departments or agencies in relation to appeals filed with the Board. It shall not be necessary for the Board, unless it otherwise desires, to commission one trial attorney in each of the departments or agencies concerning the preparation and presentation of appeals and the obtaining of all records desired by the Board to be pertinent thereto.

6. Any member of the Board or any examiner, designated by the chairman, shall be authorized to hold hearings, examine witnesses, and receive evidence and argument for consideration and determination of the appeal by the designated division. A member of the Board shall have authority to administer oaths and issue subpoenas as specified in section 11 of the Contract Disputes Act of 1978. The chairman may request orders of the court in cases of contumacy or refusal to obey a subpoena in the manner prescribed in that section.

7. The chairman shall be responsible for the internal organization of the Board and for its administration. He shall provide within approved ceilings for the staffing of the Board with non-member personnel, including hearing examiners, as may be required for the performance of the functions of the Board. The chairman shall appoint a recorder of the Board. Such personnel shall be responsible to and shall function under the direction, supervision and control of the chairman.

8. The Board will be serviced by the Department of the Army for administrative support for its operations as required. Administrative support will include budgeting, funding, fiscal control, manpower control and utilization, personnel administration, security administration, supplies, and other administrative services. The Departments of the Army, Navy, Air Force and the Office of the Secretary of Defense will participate in financing the Board’s operations on an equal basis and to the extent determined by the Assistant Secretary of Defense (Comptroller). The cost of processing appeals for departments and agencies other than those in the Department of Defense will be reimbursed.

9. The chairman of the Board will furnish the Secretary of Defense and to the Secretaries of the Military Departments by October 31 of each year a report containing an account of the Board’s transactions and proceedings for the preceding fiscal year. Within 30 days following the close of a calendar quarter, the chairman shall forward a report of the Board’s proceedings for the quarter to the Under Secretary of Defense (Research and Engineering), the Assistant Secretaries of the Military Departments responsible for procurement, and to the Director of the Defense Logistics Agency. Such reports shall disclose the number of appeals received, cases heard, opinions rendered, current reserve of pending matters, and such other information as may be required.

10. The Board shall have a seal bearing the following inscription: “Armed Services Board of Contract Appeals.” This seal shall be affixed to all authentications of copies of records and to such other instruments as the Board may determine.

11. This revised charter is effective April 21, 1980.

Approved:
W. Graham Claytor, Jr.
Deputy Secretary of Defense
Clifford L. Alexander, Jr.
Secretary of the Army
E. Hidalgo
Secretary of the Navy
Hans M. Mark
Secretary of the Air Force

Part 2—Rules

I. Jurisdiction for Considering Appeals

The Armed Services Board of Contract Appeals (referred to herein as the Board) shall consider and determine appeals from decisions of contracting officers pursuant to the Contract Disputes Act of 1978 Pub. L. 95–613 relating to contracts made by (i) the Departments of Defense, Army, Navy and Air Force or (ii) any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal.

II. Location and Organization of the Board

(a) The Board’s address is Skyline Six, 5109 Leesburg Pike, 7th Floor, Falls Church, VA 22041–3217, telephone (703) 681–8500 (receptionist), (703) 681–8502 (recorder).

(b) The Board consists of a chairman, two or more vice chairmen, and other members, all of whom are attorneys at law duly licensed by a state, commonwealth, territory, or the District of Columbia. Board members are designated Administrative Judges.

(c) There are a number of divisions of the Armed Services Board of Contract Appeals, established by the Chairman of the Board in such manner as to provide for the most effective and expeditious handling of appeals. The Chairman and a Vice Chairman of the Board act as members of each division. Appeals are assigned to the divisions for decision without regard to the military department or other procuring agency which entered into the contract involved. Hearing may be held by a designated member (Administrative Judge), or by a duly authorized examiner. Except for
appeals processed under the expedited or accelerated procedure, the decision of a majority of a division constitutes the decision of the Board, unless the chairman refers the appeal to the Board’s Senior Deciding Group (consisting of the chairman, vice chairman and all division heads), in which event a decision of a majority of that group constitutes the decision of the Board. Appeals referred to the Senior Deciding Group are those of unusual difficulty, significant precedential importance, or serious dispute within the normal division decision process. For decisions of appeals processed under the expedited or accelerated procedure, see rules 12.2(c) and 12.3(b).

Preliminary Procedures

1. Appeals, How Taken. (a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 60 days from the date of receipt of a contracting officer’s decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a properly certified claim over $50,000 to the contracting officer or has requested a decision by the contracting officer which presently involves no monetary amount pursuant to the Disputes clause, and the contracting officer has failed to issue a decision within a reasonable time, taking into account such factors as the size and complexity of the claim, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure of the contracting officer to issue a decision.

(d) Upon docketing of appeals filed pursuant to (b) or (c) hereof, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

(e) In lieu of filing a notice of appeal under (b) or (c) hereof, the contractor may request the Board to direct the contracting officer to issue a decision in a specified period of time, as determined by the Board, in the event of undue delay on the part of the contracting officer.

2. Notice of Appeal, Contents of. A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the department and/or agency involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed personally by the appellant (the contractor taking the appeal), or by the appellant’s duly authorized representative or attorney. The complaint referred to in rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

3. Docketing of Appeals. When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant with a copy of these rules, and to the contracting officer.

4. Preparation, Content, Organization, Forwarding, and Status of Appeal File—(a) Duties of Contracting Officer—Within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board an appeal file consisting of documents pertinent to the appeal, including:

   (1) The decision from which the appeal is taken;
   (2) The contract, including pertinent specifications, amendments, plans and drawings;
   (3) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;
   (4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and
   (5) Any additional information considered relevant to the appeal.

Within the same time above specified the contracting officer shall furnish the appellant a copy of each document he transmits to the Board, except those in subparagraph (a)(2) above. As to the latter, a list furnished appellant indicating specific contractual documents transmitted will suffice.

(b) Duties of the Appellant—Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which he considers relevant to the appeal, and furnish two copies of such documents to the government trial attorney.

(c) Organization of Appeal File—Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) Lengthy Documents—Upon request by either party, the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which
such a waiver has been granted he shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(b) The Board may entertain and rule upon motions addressed to the issues before the Board are sufficiently defined, be deemed to set forth its complaint and the Government shall be so notified.

(c) A party who intends to raise an issue concerning the law of a foreign country shall notify the Board or of the party filing same.

5. Motions. (a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(b) The Board may entertain and rule upon other appropriate motions.

6. Pleadings—(a) Appellant. Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Upon receipt of the complaint, the Board shall serve a copy of it upon the Government. Should the complaint not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

7. Amendments of Pleadings or Record. The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

8. Hearing Election. After filing of the Government’s answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

9. Prehearing Briefs. Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. If the Board does not require prehearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.
10. Prehearing or Presubmission Conference.
   (a) Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may, in its discretion, arrange for a prehearing or presubmission conference to consider:
   (1) Simplification, clarification, or sequestration of the issues;
   (2) The possibility of obtaining stipulations, admissions, agreements and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;
   (3) Agreements and rulings to facilitate discovery;
   (4) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;
   (5) The possibility of agreement disposing of any or all of the issues in dispute; and
   (6) Such other matters as may aid in the disposition of the appeal.

11. Submission Without a Hearing. Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submissions to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with Rule 23.

12. Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures. These procedures are available solely at the election of the appellant.

12.1 Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures. (a) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant’s election to utilize this procedure. The details of this procedure appear in section 12.3 of this Rule.

(c) The appellant’s election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made by written notice within 60 days after receipt of notice of docketing, unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.
Department of Defense

(c) Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain solely summary findings of fact and conclusions, will be rendered for the Board by a single administrative judge. If there has been a hearing, the administrative judge presiding at the hearing may, in the judge’s discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

(d) A decision against the Government or the contractor shall have no value as precedent, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

12.3 The Accelerated Procedure.

(a) In cases proceeding under the Accelerated procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed or allowed elsewhere in these rules, including rule 4, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant’s notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision.

(b) Written decision by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge with the concurrence of a vice chairman, or by a majority among these two and the chairman in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single administrative judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

12.4 Motions for Reconsideration in Rule 12 Cases. Motions for Reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

13. Settling the Record.

(a) The record upon which the Board’s decision will be rendered consists of the documents furnished under Rules 4 and 12, to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

14. Discovery—Depositions—(a) General Policy and Protective Orders—The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) When Depositions Permitted—After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) Orders on Depositions—The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) Use as Evidence—No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until
such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such a case, the Board may, in its discretion, receive depositions to supplement the record.

(e) Expenses—Each party shall bear its own expenses associated with the taking of any deposition.

(f) Subpoenas—Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 21.

15. Interrogatories to Parties, Admission of Facts, and Production and Inspection of Documents. After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (a) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 45 days after service; (b) a request for the admission of specified facts and/or the authenticity of any documents, to be answered or objected to within 45 days after service; the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (c) a request for the production, inspection and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence, to be answered or objected to within 45 days after service. The Board may allow a shorter or longer time. Any discovery engaged in under this Rule shall be subject to the provisions of Rule 14(a) with respect to general policy and protective orders, and of Rule 35 with respect to sanctions.

16. Service of Papers Other Than Subpoenas. Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of complaints, answers and briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in Rule 21.

Hearings

17. Where and When Held. Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, Rule 12 requirements, and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

18. Notice of Hearings. The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

19. Unexcused Absence of a Party. The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

20. Hearings: Nature, Examination of Witnesses—(a) Nature of Hearings—Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding administrative judge or examiner. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) Examination of Witnesses—Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding administrative judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his statements may be subject to the provisions of title 18, United States Code, sections 267 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

21. Subpoenas—(a) General—Upon written request of either party filed with the record, or on his own initiative, the administrative judge to whom a case is assigned or who is otherwise designated by the chairman may issue a subpoena requiring:

(i) Testimony at a deposition—the depositing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(ii) Testimony at a hearing—the attendance of a witness for the purpose of taking testimony at a hearing; and

(iii) Production of books and papers—in addition to (i) or (ii), the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) Voluntary Cooperation—Each party is expected (i) to cooperate and make available witnesses and evidence under its control as requested by the other party, without
issuance of a subpoena, and (ii) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whether pos- sessed by the person or not. The person so subpoenaed shall be served personally or by mail. Where service is made by mail, the copy of the subpoena shall be mailed by first class mail, postage prepaid, to the person at his last known address. Service of a subpoena upon a person named as a party and not less than 18 years of age. The service of a subpoena shall be made by personally delivering a copy thereof to the person, or his agent or attorney, or by leaving a copy thereof at the place of business of the person, or by any other manner of delivery which is not less than the cost of duplication. Waiver of transcript may be especially suitable for hearings under Rule 12.2. Transcripts of the proceedings shall be supplied to the parties at such rates as may be established by contract between the Board and the reporter, provided that ordinary copy of transcripts of exhibits or any part thereof may be supplied to the appellant at an amount no greater than the cost of duplication.

25. Withdrawal of Exhibits. After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

26. The Appellant. An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a

Representation
foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

27. The Government. Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant’s attorney in the form specified by the Board from time to time.

Decisions

28. Decisions. (a) Decisions of the Board will be made in writing and authenticated copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board. Decisions of the Board will be made solely upon the record, as described in Rule 13.

(b) Any monetary award to a contractor by the Board shall be promptly paid in accordance with the procedures provided by section 1302 of the Act of July 27, 1956 (70 Stat. 694, as amended; 31 U.S.C. 724a). To assure compliance with the procedures provided by section 1302, the Board shall be promptly paid in accordance with the court decision to the General Accounting Office for certification for payment.

Motion for Reconsideration

29. Motion for Reconsideration. A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

Suspensions, Dismissals and Defaults: Remands

30. Suspensions; Dismissal Without Prejudice. The Board may suspend the proceedings by agreement of counsel for settlement discussions, or for good cause shown. In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an indeterminate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

31. Dismissal or Default for Failure to Prosecute or Defend. Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 33. If good cause is not shown, the Board may take appropriate action.

32. Remand from Court. Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court’s order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court’s directive and time limitations permit, such orders shall conform to these rules.

Time, Computation and Extensions

33. Time, Computation and Extensions. (a) Where possible, procedural actions should be taken in less time than the maximum time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time shall be in writing.

(b) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

Ex Parte Communications

34. Ex parte Communications. No member of the Board or the Board’s staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the Board or the Board’s staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members or to ex parte communications concerning the Board’s administrative functions or procedures.

Sanctions

35. Sanctions. If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers
Department of Defense

necessary to the just and expeditious conduct of the appeal.

Effective Date and Applicability

36. Effective Date. These rules shall apply (i) mandatorily, to all appeals relating to contracts entered into on or after 1 March 1979, and (ii) at the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on 1 March 1979 or initiated thereafter.

Pursuant to the Charter of the Armed Services Board of Contract Appeals, the attached rules are hereby approved for use and application to appeals to the Armed Services Board of Contract Appeals under the Contract Disputes Act of 1978.


(signed) Percy A. Pierre, Assistant Secretary of the Army (Research, Development and Acquisition).

(signed) J.A. Doyle, Assistant Secretary of the Navy (Manpower, Reserve Affairs and Logistics).

(signed) Eugene H. Kopf, (Acting) Assistant Secretary of the Air Force (Research, Development and Logistics).


APPENDIX B TO CHAPTER 2—COORDINATED ACQUISITION ASSIGNMENTS

Pt. 1—Army Assignments
Pt. 2—Navy Assignments
Pt. 3—Air Force Assignments
Pt. 4—Defense Logistics Agency Assignments
Pt. 5—Defense Threat Reduction Agency Assignments
Pt. 6—General Services Administration Assignments


PART 1—ARMY ASSIGNMENTS

<table>
<thead>
<tr>
<th>Federal supply class code</th>
<th>Commodity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electronic Equipment.</td>
<td></td>
</tr>
<tr>
<td>Each department is assigned acquisition responsibility for those items which the department either designed or for which it sponsored development. See FSC 5821 under Navy listings for assignment of certain commercially developed radio sets (i.e., developed without the use of Government funds).</td>
<td></td>
</tr>
<tr>
<td>1005 P 1 ........</td>
<td>Guns, through 30mm.</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>Ch. 2, App B</th>
</tr>
</thead>
<tbody>
<tr>
<td>NOTE: ('P' after the FSC number indicates a partial FSC assignment.)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>National stock number nomenclature.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1090–563–7232 Staff Section, Class.</td>
</tr>
<tr>
<td>1090–699–0633 Staff Section.</td>
</tr>
<tr>
<td>1090–796–6760 Power Supply.</td>
</tr>
<tr>
<td>1090–885–8451 Wrench Corrector.</td>
</tr>
<tr>
<td>1090–986–9707 Reticle Assembly.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Miscellaneous Weapons.</th>
</tr>
</thead>
<tbody>
<tr>
<td>This partial assignment applies to miscellaneous weapons, and parts and equipment thereof, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type weapons or aircraft type weapons.</td>
</tr>
<tr>
<td>1095 P 1 ........</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fire Control Directors.</th>
</tr>
</thead>
<tbody>
<tr>
<td>This partial assignment applies to fire control directors.</td>
</tr>
<tr>
<td>1210 P 1 ........</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fire Control Computing Sights and Devices.</th>
</tr>
</thead>
<tbody>
<tr>
<td>This partial assignment applies to fire control computer sights and devices.</td>
</tr>
<tr>
<td>1220 P 1 ........</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Optical Sighting and Ranging Equipment.</th>
</tr>
</thead>
<tbody>
<tr>
<td>This partial assignment applies to optical sighting and ranging equipment.</td>
</tr>
<tr>
<td>1240 P 1 ........</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fire Control Stabilizing Mechanisms.</th>
</tr>
</thead>
<tbody>
<tr>
<td>This partial assignment applies to fire control stabilizing mechanisms.</td>
</tr>
<tr>
<td>1250 P 1 ........</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fire Control Designating and Indicating Equipment.</th>
</tr>
</thead>
<tbody>
<tr>
<td>This partial assignment applies to fire control designating and indicating equipment.</td>
</tr>
<tr>
<td>1260 P 1 ........</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fire Control Transmitting and Receiving Equipment, Except Airborne.</th>
</tr>
</thead>
<tbody>
<tr>
<td>This partial assignment applies to fire control transmitting and receiving equipment, except airborne.</td>
</tr>
<tr>
<td>1265 P 1 ........</td>
</tr>
</tbody>
</table>

577
Federal supply class code | Commodity
---|---
1285 P 1 | Fire Control Radar Equipment, Except Airborne.
1290 P 1 | Miscellaneous Fire Control Equipment.
1305 P 1 | Ammunition, through 30mm.
1310 P 1 | Ammunition, over 30mm up to 75mm.
1315 P 1 | Ammunition, 75mm through 125mm.
1320 P 1 | Ammunition, over 125mm.
1325 P | Ammunition, over 125mm.
1330 | Grenades.
1340 P | Rockets and Rocket Ammunition.

This partial assignment applies to:
- In Department of the Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type.
- In Army Supply Bulletins. It does not apply to Navy underwater demolition requirements.
- In DoD Coordinated Acquisition assignment to the Navy. The Army is responsible for the acquisition of fillers and for filling of all smoke and toxicological rockets.

Aircraft.

This partial assignment applies to ammunitions, over 125mm up to 75mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type and aircraft type.

The Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.

This partial assignment applies to bombs, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Navy assigned bombs as shown in list of assignments to the Navy.


It does not apply to production capacity for any of the above listed explosives at the U.S. Naval Propellant Plant, Indian Head, Maryland.

This partial assignment is reserved pending Services agreement as to items to be included in the assignment.

This partial assignment applies to rockets and rocket ammunition.

This partial assignment applies to rockets and rocket ammunition.

This partial assignment applies to grenades.

This partial assignment applies to land mines.

This partial assignment applies to aviation and ammunition.

This partial assignment applies to fire control equipment, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to fire control equipment, as listed in Department of the Army Supply Manuals/Catalogs.
<table>
<thead>
<tr>
<th>Federal supply class code</th>
<th>Commodity</th>
</tr>
</thead>
<tbody>
<tr>
<td>2210</td>
<td>Locomotives.</td>
</tr>
<tr>
<td>2220</td>
<td>Rail Cars.</td>
</tr>
<tr>
<td>2240</td>
<td>Locomotive and Rail Car Accessories and Components.</td>
</tr>
<tr>
<td>2250</td>
<td>Track Materials, Railroad.</td>
</tr>
<tr>
<td>2310 P</td>
<td>Passenger Motor Vehicles.</td>
</tr>
<tr>
<td>2320 P</td>
<td>Trucks and Truck Tractors.</td>
</tr>
<tr>
<td>2330 P</td>
<td>Trailers.</td>
</tr>
<tr>
<td>2340</td>
<td>Motorcycles, Motor Scooters, and Bicycles.</td>
</tr>
<tr>
<td>2350</td>
<td>Tanks and Self-propelled Weapons.</td>
</tr>
<tr>
<td>2430</td>
<td>Tractors, Track Laying, High-Speed.</td>
</tr>
<tr>
<td>2410 P 2</td>
<td>Vehicular Cab, Body, and Frame Structural Components.</td>
</tr>
<tr>
<td>2450 P 2</td>
<td>Vehicular Power Transmission Components.</td>
</tr>
<tr>
<td>2530 P 2</td>
<td>Vehicular Brake, Steering, Axle, Wheel, and Track Components.</td>
</tr>
<tr>
<td>2540 P 2</td>
<td>Vehicular Furniture and Accessories.</td>
</tr>
<tr>
<td>2550 P 2</td>
<td>Miscellaneous Vehicular Components.</td>
</tr>
<tr>
<td>2610</td>
<td>Tires and Tubes, Pneumatic, except Aircraft.</td>
</tr>
<tr>
<td>2620</td>
<td>Tires, solid and cushion.</td>
</tr>
<tr>
<td>2640</td>
<td>Tire Rebuilding and Tire and Tube Repair Materials.</td>
</tr>
<tr>
<td>2805 P 2</td>
<td>Gasoline Reciprocating Engines, except Aircraft and Components.</td>
</tr>
<tr>
<td>2910 P 2</td>
<td>Engine Fuel System Components, Nonaircraft.</td>
</tr>
<tr>
<td>2920 P 2</td>
<td>Engine Electrical System.</td>
</tr>
<tr>
<td>2930 P 2</td>
<td>Engine Cooling System Components, Nonaircraft.</td>
</tr>
<tr>
<td>2940 P 2</td>
<td>Engine Air and Oil Filters, Strainers and Cleaners, Nonaircraft.</td>
</tr>
<tr>
<td>2990 P 2</td>
<td>Miscellaneous Engine Accessories, Nonaircraft.</td>
</tr>
<tr>
<td>4210 P</td>
<td>Fire Fighting Equipment.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Federal supply class code</th>
<th>Commodity</th>
</tr>
</thead>
<tbody>
<tr>
<td>4230 P</td>
<td>Decontaminating and Impregnating Equipment.</td>
</tr>
<tr>
<td>4240 P</td>
<td>Safety and Rescue Equipment.</td>
</tr>
<tr>
<td>5805 P</td>
<td>Telephone and Telegraph Equipment.</td>
</tr>
<tr>
<td>5815 P</td>
<td>Teletype and Facsimile Equipment.</td>
</tr>
<tr>
<td>5830 P</td>
<td>Intercommunication and Public Address Systems; except Airborne.</td>
</tr>
<tr>
<td>6135 P</td>
<td>Batteries, Primary.</td>
</tr>
<tr>
<td>6645 P</td>
<td>Time Measuring Instruments.</td>
</tr>
</tbody>
</table>

This partial assignment applies only to military (wire) equipment, field type.

Meteorological Instruments and Apparatus.

Each department is assigned acquisition responsibility for those systems, instruments and end items in FSC 6660 which the department either designed or sponsored development. For purposes of this assignment, the developing department is the department which awarded the developmental contract, notwithstanding that other departments may have provided funds for the development. Hazard-Detecting Instruments and Apparatus.

This partial assignment applies to jewel bearings only.

Dyes.

This partial assignment applies only to items peculiar to chemical warfare. Training Aids.

This partial assignment applies only to items peculiar to Army assignments under weapons, fire control equipment, ammunition and explosives, and chemical and biological warfare. Armament Training Devices.
### Ch. 2, App. B

<table>
<thead>
<tr>
<th>Federal supply class code</th>
<th>Commodity</th>
</tr>
</thead>
<tbody>
<tr>
<td>6940 P ..................</td>
<td>Communication Training Devices.</td>
</tr>
<tr>
<td>8130 P ..................</td>
<td>Reels and Spools.</td>
</tr>
<tr>
<td>8140 P ..................</td>
<td>Ammunition Boxes, Packages, and Special Containers.</td>
</tr>
</tbody>
</table>

1 These partial FSC assignments apply only to code training sets, code practice equipment, and other telephone and telegraph training devices.  

2 These partial FSC assignments apply only to repair parts peculiar to combat and tactical vehicles. In addition, the assignment in FSC 2805 applies to military standard engines 1.5 HP through 20 HP and parts peculiar therefor. Balance of these FSCs are assigned to the Defense Logistics Agency (Defense Construction Supply Center).

#### PART 2—NAVY ASSIGNMENTS

<table>
<thead>
<tr>
<th>Federal supply class code</th>
<th>Commodity</th>
</tr>
</thead>
<tbody>
<tr>
<td>1905 P ..................</td>
<td>Combat Ships and Landing Vessels.</td>
</tr>
<tr>
<td>1910 P ..................</td>
<td>Transport Vessels, Passenger and Troop.</td>
</tr>
<tr>
<td>1920 ....................</td>
<td>Fishing Vessels.</td>
</tr>
<tr>
<td>1925 ....................</td>
<td>Special Service Vessels.</td>
</tr>
<tr>
<td>1930 ....................</td>
<td>Barges and Lighters, Cargo.</td>
</tr>
<tr>
<td>1935 P ..................</td>
<td>Barges and Lighters, Special Purpose.</td>
</tr>
<tr>
<td>1940 ....................</td>
<td>Small Craft.</td>
</tr>
<tr>
<td>1945 P ..................</td>
<td>Pontoon Boats and Floating Docks.</td>
</tr>
<tr>
<td>1950 ....................</td>
<td>Floating Drydocks.</td>
</tr>
</tbody>
</table>

NOTE: (‘P’ after the FSC number indicates a partial FSC assignment.)
Each department is assigned responsibility for those systems, instruments, and end items in FSC 6660 for coordinated acquisition.

This partial assignment applies only to systems, and end items in FSC 6660 for coordinated acquisition.

PART 3

AIR FORCE ASSIGNMENTS

Commodity

6640 P ........... Optical Instruments.

6650 P ........... Time Measuring Instruments.

6605 P ........... Navigational Instruments.

4925 P ........... Ammunition Maintenance and Repair Shop.

4420 P ........... Heat Exchangers and Steam Condensers.

Federal supply class code Commodity

6645 P ........... Code

6605 P ........... Code

6660 P ........... Code

6665 P ........... Code

6660 P ........... Meteorological Instruments and Apparatus.

6420 P ........... Ammunition Boxes, Packages, and Special and Hazmat Containers.

581 P ........... Cameras, Motion Picture.

6710 P ........... Trailers.

1550 P ........... Drones.

4410 P ........... Heat Exchangers and Steam Condensers.

2330 P ........... Hazmat Containers.

6660 P ........... Meteorological Instruments and Apparatus.

6660 P ........... Special and Hazmat Containers.

6660 P ........... Meteorological Instruments and Apparatus.

6660 P ........... Special and Hazmat Containers.

6660 P ........... Meteorological Instruments and Apparatus.

6660 P ........... Special and Hazmat Containers.

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6660 P ........... Special and Hazmat Containers.

6660 P ........... Meteorological Instruments and Apparatus.

6660 P ........... Special and Hazmat Containers.
### Ch. 2, App. B

#### PART 4—DEFENSE LOGISTICS AGENCY ASSIGNMENTS

<table>
<thead>
<tr>
<th>Federal supply class code</th>
<th>Commodity</th>
<th>DLA center</th>
</tr>
</thead>
<tbody>
<tr>
<td>2230</td>
<td>Right of Way Construction and Maintenance Equipment, Railroad.</td>
<td>DCSC</td>
</tr>
<tr>
<td>2410</td>
<td>Tractor, Full Track, Low-Speed.</td>
<td>DCSC</td>
</tr>
<tr>
<td>2420</td>
<td>Tractor, Wheeled</td>
<td>DCSC</td>
</tr>
<tr>
<td>2510</td>
<td>Vehicular Cab, Body, and Frame, Structural Components.</td>
<td>DCSC</td>
</tr>
<tr>
<td>2520</td>
<td>Vehicular Power Transmission Components.</td>
<td>DCSC</td>
</tr>
<tr>
<td>2530</td>
<td>Vehicular Brake, Steering, Axle, Wheel, and Track Components.</td>
<td>DCSC</td>
</tr>
<tr>
<td>2540</td>
<td>Vehicular Furniture and Accessories.</td>
<td>DCSC</td>
</tr>
<tr>
<td>2590</td>
<td>Miscellaneous Vehicular Components.</td>
<td>DCSC</td>
</tr>
<tr>
<td>2805</td>
<td>Gasoline Reciprocating Engines, Except Aircraft, and Components.</td>
<td>DCSC</td>
</tr>
<tr>
<td>2815</td>
<td>Diesel Engines and Components.</td>
<td>DCSC</td>
</tr>
<tr>
<td>2895</td>
<td>Miscellaneous Engines and Components.</td>
<td>DCSC</td>
</tr>
<tr>
<td>2910</td>
<td>Engine Fuel System Components, Nonaircraft.</td>
<td>DCSC</td>
</tr>
<tr>
<td>2920</td>
<td>Engine Electrical System Components.</td>
<td>DCSC</td>
</tr>
<tr>
<td>2930</td>
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**NOTE:** (P) after the FSC number indicates a partial FSC assignment.

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Department of Defense
Ch. 2, App. B

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<td>DPSC</td>
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<td>8450</td>
<td>Children’s and Infant’s Apparel and Accessories</td>
<td>DPSC</td>
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<tr>
<td>8455</td>
<td>Badges and Insignia</td>
<td>DPSC</td>
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<tr>
<td>8460</td>
<td>Luggage</td>
<td>DPSC</td>
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<td>Individual Equipment</td>
<td>DPSC</td>
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<td>8470</td>
<td>Armor, Personal</td>
<td>DPSC</td>
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<td>8475</td>
<td>Specialized Flight Clothing and Accessories</td>
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<td>8950</td>
<td>Meat, Poultry, and Fish</td>
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<td>8910</td>
<td>Dairy Foods and Eggs</td>
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</tr>
<tr>
<td>8915</td>
<td>Fruits and Vegetables</td>
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<tr>
<td>8920</td>
<td>Bakery and Cereal Products</td>
<td>DPSC</td>
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<tr>
<td>8925</td>
<td>Sugar, Confectionery, and Nuts</td>
<td>DPSC</td>
</tr>
<tr>
<td>8930</td>
<td>Jams, Jellies, and Preserves</td>
<td>DPSC</td>
</tr>
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<td>8935</td>
<td>Soups and Bouillons</td>
<td>DPSC</td>
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<td>8940</td>
<td>Special Dietary Foods and Food Specialty Preparations</td>
<td>DPSC</td>
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<tr>
<td>8945</td>
<td>Food Oils and Fats</td>
<td>DPSC</td>
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<td>8950</td>
<td>Condiments and Related Products</td>
<td>DPSC</td>
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<tr>
<td>8955</td>
<td>Coffee, Tea, and Cocoa</td>
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<td>8960</td>
<td>Beverages, Nonalcoholic</td>
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<td>8970</td>
<td>Tobacco Products</td>
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<tr>
<td>8975</td>
<td>Chewing Tobacco</td>
<td>DPSC</td>
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<tr>
<td>9110</td>
<td>Fuels, Solid</td>
<td>DPSC</td>
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<td>9130</td>
<td>Liquid Propellants and Fuels, Petroleum Base</td>
<td>DPSC</td>
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<td>9140</td>
<td>Fuel Oils</td>
<td>DPSC</td>
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<tr>
<td>9150</td>
<td>Oils and Greases, Cutting, Lubricating, and Hydraulic</td>
<td>DPSC</td>
</tr>
<tr>
<td>9160</td>
<td>Miscellaneous Chemicals, Oils, and Fats</td>
<td>DPSC</td>
</tr>
<tr>
<td>9230</td>
<td>Rubber Fabricated Materials</td>
<td>DGSC</td>
</tr>
<tr>
<td>9330</td>
<td>Plastic Fabricated Materials</td>
<td>DGSC</td>
</tr>
<tr>
<td>9340</td>
<td>Glass Fabricated Materials</td>
<td>DGSC</td>
</tr>
<tr>
<td>9350</td>
<td>Refractories and Fire Facing Materials</td>
<td>DGSC</td>
</tr>
<tr>
<td>9390</td>
<td>Miscellaneous Fabricated Nonmetallic Materials</td>
<td>DGSC</td>
</tr>
<tr>
<td>9420</td>
<td>Fibers, Vegetable, Animal, and Synthetic</td>
<td>DGSC</td>
</tr>
<tr>
<td>9430</td>
<td>Miscellaneous Animal Products, Edible</td>
<td>DGSC</td>
</tr>
<tr>
<td>9430</td>
<td>Miscellaneous Cruelty Animal Products, Inedible</td>
<td>DGSC</td>
</tr>
<tr>
<td>9505</td>
<td>Wire, Nonmetallic, Iron and Steel</td>
<td>DISC</td>
</tr>
</tbody>
</table>

Footnotes:
1 These assignments do not apply to items decentralized by the DLA Center Commander, i.e., designated for purchase by each military department, and to those items in DLA assigned federal supply classes, which may be assigned to QSA for supply management. In addition, see subpart 208.70 which describes conditions under which a military service may purchase (contract for) military service supply managed items in DLA assigned federal supply classes. See notes 2 and 3 for further exceptions pertaining to certain DLA assignments.
2 DLA assignments in FSC 2510, 2520, 2530, 2540, 2590, 2605, 2910, 2920, 2930, 2940, and 2990 do not apply to parts peculiar to combat and tactical vehicles, which are assigned for coordinated acquisition to the Department of the Army. In addition, the assignment in FSC 2805 does not apply to military standard engines 1.5 HP through 20 HP and parts peculiar therefor, which are assigned for coordinated acquisition to the Department of the Army.

This partial FSC assignment in FSC 4210 does not apply to Fire Fighting Equipment developed by or under the sponsorship of a military department. The contracting responsibility for such equipment is assigned to the department which developed or sponsored its development.

DLA has contracting responsibility for all the items in the classes of FS Group 65. In addition, DLA has contracting responsibility for all equipment and supplies related to the medical, dental, veterinary professions in Non-group 65 classes of FS Group 65. The specific item coverage of these Non-group 65 items is published in the DoD section of the Federal Supply Catalog for medical material C3-1 through C3-12, inclusive.

This assignment includes health and comfort items listed in AP 700-23. It also includes resale items for commissary stores (including brand name items).

DLA centers are identified as follows: OCS—Defense Construction Supply Center; DESC—Defense Electronics Supply Center; DFSC—Defense Fuel Supply Center; DGSC—Defense General Supply Center; DISC—Defense Industrial Supply Center; DPPC—Defense Personnel Support Center.

DLA also serves as the head of the contracting activity for the Television-Audio Support Activity (T-ASA).
This partial FSC assignment in FSC 6115 does not apply to Mobile Electric Power Generating Sources (MEPGS). The contracting direction responsibility for MEPGS is assigned to the DoD Project Manager, Mobile Electric Power, by DoDD 4120.11, DoD components desiring to use other than the DoD Standard Family of Generator Sets, contained in MIL-STD 633, shall process a Request for Deviation in accordance with Joint Operating Procedures, AR 700–101, AFR 400–50, NAVMATINST 4120.100A, MCO 11310.8c and DLAR 4120.7, Subject: Management and Standardization of Mobile Electric Power Generating Sources, prior to initiating an acquisition.

In addition to the above, assignments to the Defense Threat Reduction Agency (DTRA) include all items for which DTRA provides logistic management or has integrated management responsibilities in accordance with the DTRA Charter.

### PART 5—DEFENSE THREAT REDUCTION AGENCY ASSIGNMENTS

#### Federal Supply Class Code

<table>
<thead>
<tr>
<th>Federal supply class code</th>
<th>Commodity</th>
</tr>
</thead>
<tbody>
<tr>
<td>1105</td>
<td>Nuclear Bombs.</td>
</tr>
<tr>
<td>1110</td>
<td>Nuclear Projectiles.</td>
</tr>
<tr>
<td>1115</td>
<td>Nuclear Warfare and Warhead Sections.</td>
</tr>
<tr>
<td>1120</td>
<td>Nuclear Depth Charges.</td>
</tr>
<tr>
<td>1125</td>
<td>Nuclear Demolition Charges.</td>
</tr>
<tr>
<td>1127</td>
<td>Nuclear Rockets.</td>
</tr>
<tr>
<td>1130</td>
<td>Conversion Kits, Nuclear Ordinance.</td>
</tr>
<tr>
<td>1135</td>
<td>Fuzing and Firing Devices, Nuclear Ordinance.</td>
</tr>
<tr>
<td>1140</td>
<td>Nuclear Components.</td>
</tr>
<tr>
<td>1145</td>
<td>Explosive and Pyrotechnic Components, Nuclear Ordinance.</td>
</tr>
<tr>
<td>1190</td>
<td>Specialized Test and Handling Equipment, Nuclear Ordinance.</td>
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<tr>
<td>1195</td>
<td>Miscellaneous Nuclear Ordinance.</td>
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</table>

In addition to the two partial assignments to the Defense Threat Reduction Agency (DTRA), include all items for which DTRA provides logistic management or has integrated management responsibilities in accordance with the DTRA Charter.

### PART 6—GENERAL SERVICES ADMINISTRATION ASSIGNMENTS

#### Federal Supply Class Code

<table>
<thead>
<tr>
<th>Federal supply class code</th>
<th>Commodity</th>
</tr>
</thead>
<tbody>
<tr>
<td>2310 P</td>
<td>Passenger Motor Vehicles.</td>
</tr>
<tr>
<td>2320 P</td>
<td>Trucks and Truck Tractors.</td>
</tr>
</tbody>
</table>

These two partial assignments apply to all commercial, non-tactical, passenger carrying vehicles and trucks except for the following types which are assigned to DoD Coordinated Acquisition to the Department of the Army—Bus, convertible to ambulance. Truck, 4×4, convertible to ambulance. Truck, 4×4, dump, 9,000 pounds GVV, with cut-down cab.
Department of Defense

APPENDIX D TO CHAPTER 2—COMPONENT BREAKOUT

Sec.  
D–100 Scope.  
D–101 Definition.  
D–102 Policy.  
D–103 Responsibility.  
D–104 Procedures.  
D–105 Records.

APPENDIX C TO CHAPTER 2 [RESERVED]

FOOTNOTES: These GSA assignments do not apply to items as described under FSC 7430, 7490, 7510, 7520, and 7530, and those items in the GSA assigned federal supply classes which have been retained for DLA supply management as listed in the applicable Federal Supply Catalog Management Data lists. In addition, subpart 208.70 which describes conditions under which a military service may contract for military service managed items in GSA assigned federal supply classes. This partial FSC assignment does not include landing mats which are assigned to the Defense Logistics Agency.

AUTHORITY: 41 U.S.C. 423 and FAR Subpart 1.3.

D–100 Scope.

(a) This appendix provides policy and procedures for breaking out components of end items for future acquisitions so that the Government can purchase the components directly from the manufacturer or supplier and furnish them to the end item manufacturer as Government-furnished material.

(b) This appendix does not apply to—

(1) The initial decisions on Government-supplied equipment-contractor-furnished equipment that are made at the inception of an acquisition program; or

(2) Breakout of parts for replenishment (see Appendix E).

D–101 Definition.

Component, as used in this appendix, includes subsystems, assemblies, subassemblies, and other major elements of an end item; it does not include elements of relatively small annual acquisition value.

D–102 Policy.

DoD policy is to breakout components of weapons systems or other major end items under certain circumstances.

(a) When it is anticipated that a prime contract will be awarded without adequate price competition, and the prime contractor is expected to acquire any component without adequate price competition, breakout that component if—

(1) Substantial net cost savings probably will be achieved; and

(2) Breakout action will not jeopardize the quality, reliability, performance, or timely delivery of the end item.

(b) Even when either or both the prime contract and the component will be acquired with adequate price competition, consider breakout of the component if substantial net cost savings will result from—

(1) Greater quantity acquisitions; or

(2) Such factors as improved logistics support (through reduction in varieties of spare parts) and economies in operations and training (through standardization of design).

(c) Breakout normally is not justified for a component that is not expected to exceed $1 million for the current year’s requirement.

D–103 Responsibility.

(a) Agencies are responsible for ensuring that—

(1) Breakout reviews are performed on components meeting the criteria in D–102(a) and (b).

(2) Components susceptible to breakout are earmarked for consideration in future acquisitions;
(3) Components earmarked for breakout are considered during requirements determination and appropriate decisions are made; and
(4) Components are broken out when required.

(b) The program manager or other official responsible for the material program concerned is responsible for breakout selection, review, and decision.

(c) The contracting officer or buyer and other specialists (e.g., small business specialist, engineering, production, logistics, and maintenance) support the program manager in implementing the breakout program.

D-104 PROCEDURES.

(a) A breakout review and decision includes—

(1) An assessment of the potential risks to the end item from possibilities such as delayed delivery and reduced reliability of the component;

(2) A calculation of estimated net cost savings (i.e., estimated acquisition savings less any offsetting costs); and

(3) An analysis of the technical, operational, logistics, and administrative factors involved.

(b) The decision must be supported by adequate explanatory information, including an assessment by the end item contractor when feasible.

(c) The following questions should be used in the decision process—

(1) Is the end item contractor likely to do further design or engineering effort on the component?

(2) Is a suitable data package available with rights to use it for Government acquisition? (Note that breakout may be warranted even though competitive acquisition is not possible.)

(3) Can any quality control and reliability problems of the component be resolved without requiring effort by the end item contractor?

(4) Will the component require further technical support (e.g., development of specifications, testing requirements, or quality assurance requirements)? If so, does the Government have the resources (manpower, technical competence, facilities, etc.) to provide such support? Or, can the support be obtained from the end item contractor (even though the component is broken out) or other source?

(5) Will breakout impair logistics support (e.g., by jeopardizing standardization of components)?

(6) Will breakout unduly fragment administration, management, or performance of the end item contract (e.g., by complicating production scheduling or preventing identification of responsibility for end item failure caused by a defective component)?

(7) Can breakout be accomplished without jeopardizing delivery requirements of the end item?

(8) If a decision is made to breakout a component, can advance acquisition funds be made available to provide the new source any necessary additional lead time?

(9) Is there a source other than the present manufacturer capable of supplying the component?

(10) Has the component been (or is it going to be) acquired directly by the Government as a support item in the supply system or as Government-supplied equipment in other end items?

(11) Will the financial risks and other responsibilities assumed by the Government after breakout be acceptable?

(12) Will breakout result in substantial net cost savings? Develop estimates of probable savings in cost considering all offsetting costs such as increases in the cost of requirements determination and control, contracting, contract administration, data package purchase, material inspection, qualification or preproduction testing, ground support and test equipment, transportation, security, storage, distribution, and technical support.

(d) If answers to the questions reveal conditions unfavorable to breakout, the program manager should explore whether the unfavorable conditions can be eliminated. For example, where adequate technical support is not available from Government resources, consider contracting for the necessary services from the end item contractor or other qualified source.

D-105 RECORDS.

(a) The contracting activity shall maintain records on components reviewed for breakout. Records should evidence whether the components—

(1) Have no potential for breakout;

(2) Have been earmarked as potential breakout candidates;

(3) Have been, or will be, broken out.

(b) The program manager or other designated official must sign the records.

(c) Records must reflect the facts and conditions of the case, including any assessment by the contractor, and the basis for the decision. The records must contain the assessments, calculations, and analyses discussed in D-104, including the trade-off analysis between savings and increased risk to the Government because of responsibility for Government-furnished equipment.

APPENDIX E TO CHAPTER 2—DOD SPARE PARTS BREAKOUT PROGRAM

PART 1—GENERAL

Sec.
E–100 Scope.
E–101 Applicability.
E–102 General.
E–103 Definitions.
E–103.1 Acquisition Method Code (AMC).
E–103.2 Acquisition Method Code Conference.
E–103.3 Acquisition Method Suffix Code (AMSC).
E–103.4 Actual Manufacturer.
E–103.5 Altered Item Drawing.
E–103.6 Annual Buy Quantity.
E–103.7 Annual Buy Value (ABV).
E–103.8 Bailment.
E–103.9 Breakout.
E–103.10 Competition.
E–103.11 Contractor Technical Information Code (CTIC).
E–103.12 Design Control Activity.
E–103.13 Direct Purchase.
E–103.14 Engineering Drawings.
E–103.15 Extended Dollar Value.
E–103.16 Full and Open Competition.
E–103.17 Full Screening.
E–103.18 Immediate (Live) Buy.
E–103.19 Life Cycle Buy Value.
E–103.20 Limited Competition.
E–103.21 Limited Screening.
E–103.22 Manufacture.
E–103.23 Prime Contractor.
E–103.24 Provisioning.
E–103.25 Qualification.
E–103.26 Replenishment Part.
E–103.27 Reverse Engineering.
E–103.28 Selected Item Drawing.
E–103.29 Source.
E–103.30 Source Approval.
E–103.31 Source Control Drawing.
E–103.32 Technical Data.
E–104 General Policies.
E–105 Responsibilities.

PART 2—BREAKOUT CODING

E–200 Scope.
E–201 Coding.
E–201.1 Acquisition Method Codes.
E–201.2 Acquisition Method Suffix Codes.
E–201.3 Contractor Technical Information Codes.
E–202 Assignment of Codes.
E–203 Improving Part Status.
E–204 Communication of Codes.
E–205.1 Communication Media.
E–205.2 Responsibilities.

PART 3—IDENTIFICATION, SELECTION, AND SCREENING OF PARTS

E–300 General.
E–301 Identification and Selection Procedures.
E–301.1 Parts Entering the Inventory.

PART 4—CONTRACTOR’S ASSISTANCE

E–400 General.
E–401 Contractor’s Technical Evaluation Procedures.

PART 5—REPORTING SYSTEM

E–500 General.
E–501 Reports.
E–502 Reporting Procedures.
E–503 Reporting Instructions.

Exhibits

Exhibit I Valid AMC/AMSC Combinations
Exhibit II Full Screening Decision Process Summary Flow Chart
Exhibit III Limited Screening Decision Process Summary Flow Chart
Exhibit IV Spare Parts Breakout Screening Report
Exhibit V Spare Parts Acquisition Report


PART 1—GENERAL

E–100 Scope.

This appendix established the DoD Spare Parts Breakout Program and provides uniform policies and procedures for management and conduct of the program within and between the departments and agencies.

E–101 Applicability.

(a) This appendix applies to—
(1) Any centrally managed replenishment or provisioned part (hereinafter referred to as “part”) for military systems and equipment; and
(2) All DoD personnel involved with design control, acquisition, and management of such parts including, but not limited to, project/program/system managers, technical personnel, contracting officers, legal counsel, inventory managers, inspectors, and small business specialists and technical advisors.

(b) This appendix does not apply to—
(1) Component breakout (see Appendix D);
E-102 General.

(a) Significant resources are dedicated to the acquisition and management of parts for military systems and equipment. The ability to competitively buy spares must be considered early in a weapon system acquisition. Initially, repairable or consumable parts are identified and acquired through a provisioning process; repairable or consumable parts acquired thereafter are for replenishment.

(b) The objective of the DoD Spare Parts Breakout Program is to reduce costs through the use of competitive procurement methods, or the purchase of parts directly from the actual manufacturer rather than the prime contractor, while maintaining the integrity of the systems and equipment in which the parts are to be used. The program is based on the application of sound management and engineering judgment in—

(1) Determining the feasibility of acquiring parts by competitive procedures or direct purchase from actual manufacturers; and

(2) Overcoming or removing constraints to breakout identified through the screening process (technical review) described in E-302.

(c) This Appendix sets forth procedures to screen and code parts in order to provide contracting officers summary information regarding technical data and sources of supply to meet the Government’s minimum requirements. This information assists the contracting officer in selecting the method of contracting, identifying sources of supply, and making other decisions in the preaward and award phases, with consideration for established parameters of system and equipment integrity, readiness, and the opportunities to competitively acquire parts (see FAR/DFARS Part 6). The identification of sources for parts, for example, requires knowledge of manufacturing sources, additional operations performed after manufacture of parts possessing safety or other critical characteristics, and the availability of technical data.

(d) The result of the screening process (technical review is indicated by an acquisition method code (AMC) and an acquisition method suffix code (AMSC). This program provides procedures for both the initial assignment of an AMC and an AMSC to a part, and for the recurring review of these codes (see E-202 and E-203(b)(1)).

E-103 Definitions.

E-103.1 Acquisition method code (AMC).

A single digit numeric code, assigned by a DoD activity, to describe to the contracting officer and other Government personnel the results of a technical review of a part and its suitability for breakout.

E-103.2 Acquisition method code conference.

A conference which is generally held at the contractor’s facility for the purpose of reviewing contractor technical information codes (CTICs) and corresponding substantiating data for breakout.

E-103.3 Acquisition method suffix code (AMSC).

A single digit alpha code, assigned by a DoD activity, which provides the contracting officer and other Government personnel with engineering, manufacturing, and technical information.

E-103.4 Actual manufacturer.

An individual, activity, or organization that performs the physical fabrication processes that produce the deliverable part or other items of supply for the Government. The actual manufacturer must produce the part in-house. The actual manufacturer may or may not be the design control activity.

E-103.5 Altered item drawing.

See current version of DoD STD-100, paragraphs 201.4.4 and 703.

E-103.6 Annual buy quantity.

The forecast quantity of a part required for the next 12 months.

E-103.7 Annual buy value (ABV).

The annual buy quantity of a part multiplied by its unit price.

E-103.8 Bailment.

The process whereby a part is loaned to a recipient with the agreement that the part will be returned at an appointed time. The government retains legal title to such material even though the borrowing organization has possession during the stated period.

E-103.9 Breakout.

The improvement of the acquisition status of a part resulting from a technical review and a deliberate management decision. Examples are—

(a) The competitive acquisition of a part previously purchased noncompetitively; and

(b) The direct purchase of a part previously purchased from a prime contractor who is not the actual manufacturer of the part.

E-103.10 Competition.

A contract action where two or more responsible sources, acting independently, can
be solicited to satisfy the Government’s requirement.

E–103.11 Contractor technical information code (CTIC).
A two digit alpha code assigned to a part by a prime contractor to furnish specific information regarding the engineering, manufacturing, and technical aspects of that part.

E–103.12 Design control activity.
A contractor or Government activity having responsibility for the design of a given part, and for the preparation and currency of engineering drawings and other technical data for that part. The design control activity may or may not be the actual manufacturer. The design control activity is synonymous with design activity as used by DoD STD-100.

E–103.13 Direct purchase.
The acquisition of a part from the actual manufacturer, including a prime contractor who is an actual manufacturer of the part.

E–103.14 Engineering drawings.
See current versions of DoD STD-100 and DoDD 100.

E–103.15 Extended dollar value.
The contract unit price of a part multiplied by the quantity purchased.

E–103.16 Full and open competition.
A contract action where all responsible sources are permitted to compete.

E–103.17 Full screening.
A detailed parts breakout process, including data collection, data evaluation, data completion, technical evaluation, economic evaluation, and supply feedback, used to determine if parts can be purchased directly from the actual manufacturer(s) or can be competed.

E–103.18 Immediate (live) buy.
A buy which must be executed as soon as possible to prevent unacceptable equipment readiness reduction, unacceptable disruption in operational capability, and increased safety risks, or to avoid other costs.

E–103.19 Life cycle buy value.
The total dollar value of all acquisitions that are estimated to occur over a part’s remaining life cycle.

E–103.20 Limited competition.
A competitive contract action where the provisions of full and open competition do not exist.

E–103.21 Limited screening.
A parts breakout process covering only selected points of data and technical evaluations, and should only be used to support immediate buy requirements (see E–301.3).

E–103.22 Manufacture.
The physical fabrication process that produces a part, or other item of supply. The physical fabrication processes include, but are not limited to machining, welding, soldering, brazing, heat treating, braking, riveting, pressing, chemical treatment, etc.

E–103.23 Prime contractor.
A contractor having responsibility for design control and/or delivery of a system/equipment such as aircraft, engines, ships, tanks, vehicles, guns and missiles, ground communications and electronics systems, and test equipment.

E–103.24 Provisioning.
The process of determining and acquiring the range and quantity (depth) of spare and repair parts, and support and test equipment required to operate and maintain an end item of materiel for an initial period of service.

E–103.25 Qualification.
Any action (contractual or precontractual) that results in approval for a firm to supply items to the Government without further testing beyond quality assurance demonstrations incident to acceptance of an item. When prequalification is required, the Government must have a justification on file—
(a) Stating the need for qualification and why it must be done prior to award;
(b) Estimating likely cost of qualification; and
(c) Specifying all qualification requirements.

E–103.26 Replenishment part.
A part, repairable or consumable, purchased after provisioning of that part, for: replacement; replenishment of stock; or use in the maintenance, overhaul, and repair of equipment such as aircraft, engines, ships, tanks, vehicles, guns and missiles, ground communications and electronic systems, ground support, and test equipment. As used in this appendix, except when distinction is necessary, the term “part” includes subassemblies, components, and subsystems as defined by the current version of MIL-STD-280.

E–103.27 Reverse engineering.
A process by which parts are examined and analyzed to determine how they were manufactured, for the purpose of developing a complete technical data package. The normal, expected result of reverse engineering is the creation of a technical data package suitable for manufacture of an item by new sources.
E–105.28  Selected item drawing.
See current version of DoD–STD–100, paragraph 201.4.5.

E–105.29  Source.
Any commercial or noncommercial organization which can supply a specified part. For coding purposes, sources include actual manufacturers, prime contractors, vendors, dealers, surplus dealers, distributors, and other firms.

E–105.30  Source approval.
The Government review that must be completed before contract award.

E–105.31  Source control drawing.
See the current version of DoD–STD–100, paragraph 201.4.3.

E–105.32  Technical data.
Specifications, plans, drawings, standards, purchase descriptions, and such other data to describe the Government’s requirements for acquisition.

E–104  General policies.
(a) The identification, selection, and screening of parts for breakout shall be made as early as possible to determine the technical and economic considerations of the opportunities for breakout to competition or direct purchase. Full and open competition is the preferred result of breakout screening.
(b) A part shall be made a candidate for breakout screening based on its cost effectiveness for breakout. Resources should be assigned and priority given to those parts with the greatest expected return given their annual buy value, life cycle buy value, and likelihood of successful breakout, given technical characteristics such as design and performance stability. Consideration of all such factors is necessary to ensure the maximum return on investment in a given breakout program. Occasionally, an item will not meet strict economic considerations for breakout, but action may be required due to other considerations to avoid overpricing situations. Accordingly, there is no minimum DoD threshold for breakout screening actions. DoD components and field activities will develop annual buy thresholds for breakout screening which are consistent with economic considerations and resources. Every effort should be made to complete the full screening of parts that are expected to be subsequently replenished as they enter the inventory.
(c) Breakout improvement efforts shall continue through the life cycle of a part to improve its breakout status (see E–263) or until such time as the part is coded 1G, 2G, 1K, 2K, 1M, 2M, 1N, 2N, 1T, 2T, 1Z, or 2Z.
(d) No firm shall be denied the opportunity to demonstrate its ability to furnish a part which meets the Government’s needs, without regard to a part’s annual buy value, where a restrictive AMC/AMSC is assigned (see FAR 9.202). A firm must clearly demonstrate, normally at its own expense, that it can satisfy the Government’s requirements. The Government shall make a vigorous effort to expedite its evaluation of such demonstration and to furnish a decision to the demonstrating firm within a reasonable period of time. If a resolution cannot be made within 90 days, the offeror must be advised of the status of the request and be provided with a good faith estimate of the date the evaluation will be completed. Every reasonable effort shall be made to complete the review before a subsequent acquisition is made. Also, restrictive codes and low annual buy value do not preclude consideration of a surplus dealer or other nonmanufacturing source when the part offered was manufactured by an approved source (see FAR 10.010). A potential surplus dealer or other non-manufacturing source must provide the Government with all the necessary evidence which proves the proposed part meets the Government’s requirements.
(e) The experience and knowledge accrued by contractors in the development, design, manufacture and test of equipment may enhance the breakout decision making process. DoD activities may obtain technical information from contractors when it is considered requisite to an informed coding decision. The procedure for contracting for this information is provided in Part 4 of this appendix. Contractor’s technical information will be designated by CTICs. Only DoD activities shall assign AMCs and AMSCs.
(f) DoD activities with breakout screening responsibilities shall develop, document, and advertise programs which promote the development of qualified sources for parts that are currently being purchased sole source. These programs should provide fair and reasonable technical assistance (engineering or other technical data, parts on bailment, etc.) to contractors who prove they have potential for becoming a qualified second source for an item. These programs should also provide specially tailored incentives to successful firms so as to stimulate their investment in becoming qualified, e.g., Government furnished equipment (GFE) or Government furnished material (GFM) for reverse engineering and technical data package review and assistance.
(g) Departments and agencies shall identify the engineering support activity, design control activity, actual manufacturer, and prime contractor for each part such that the information is readily available to breakout and acquisition personnel.

E–105  Responsibilities.
(a) The Assistant Secretary of Defense (Production and Logistics) has authority for direction and management of the DoD Spare
Part 2—Breakout Coding

E–200 Scope.

This part provides parts breakout codes and prescribes responsibilities for their assignment and management.

E–201 Coding.

Three types of codes are used in the breakout program.

E–201.1 Acquisition method codes.

The following codes shall be assigned by DoD activities to describe the results of the spare parts breakout screening:

(a) AMC 0: The part was not assigned AMC 1 through 5 when it entered the inventory, nor has it ever completed screening. Use of this code is sometimes necessary but discouraged. Maximum effort to determine the applicability of an alternate AMC is the objective. This code will never be used to re-code a part that already has AMC 1 through 5 assigned, and shall never be assigned as a...
result of breakout screening. Maximum effort to determine the applicability of AMC 1 through 5 is the objective.

(b) AMC 1. Suitable for competitive acquisition for the first time.

(c) AMC 2. Suitable for competitive acquisition for the second or subsequent time, directly from the actual manufacturer.

(d) AMC 3. Acquire, for the second or subsequent time, directly from the actual manufacturer.

(e) AMC 4. Acquire, for the first time, directly from a sole source contractor which is not the actual manufacturer.

(f) AMC 5. Acquire directly from a sole source contractor which is not the actual manufacturer.

E-201.2 Acquisition method suffix codes.

The following codes shall be assigned by DoD activities to further describe the acquisition method code. Valid combinations of AMCs/AMSCs are indicated in paragraphs (a) through (z) of this subsection and summarized in Exhibit I.

(a) AMSC A. The Government’s right to use data in its possession is questionable. This code is only applicable to parts under immediate buy requirements and for as long thereafter as rights to data are still under review for resolution and appropriate coding. This code is assigned only at the conclusion of limited screening, and it remains assigned until the full screening process resolves the Government’s rights to use data and results in assignment of a different AMSC. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, or if the data is inadequate for an alternate source to qualify in accordance with the design control activity’s procedures, AMCs 1 or 2 are valid.

(b) AMSC B. This part must be acquired from a manufacturing source(s) specified on a source control or selected item drawing as defined by the current version of DoD-STD-100. Suitable technical data, Government data rights, or manufacturing knowledge are not available to permit acquisition from other sources, nor qualification testing of another part, nor use of a second source part in the intended application. Although, by DoD-STD-100 definition, altered and selected items shall have an adequate technical data package, data review discloses that required data or data rights are not in Government possession and cannot be economically obtained. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(c) AMSC C. This part requires engineering source approval by the design control activity in order to maintain the quality of the part. Existing unique design capability, engineering skills, and manufacturing knowledge by the qualified source(s) require acquisition of the part from the approved source(s). The approved source(s) retain data rights, manufacturing knowledge, or technical data that are not economically available to the Government, and the data or knowledge is essential to maintaining the quality of the part.

An alternate source must qualify in accordance with the design control activity’s procedures, as approved by the cognizant Government engineering activity. The qualification procedures must be approved by the Government engineering activity having jurisdiction over the part in the intended application. If one source is approved, AMCs 3, 4, or 5 are valid. If at least two sources are approved or if data is adequate for an alternate source to qualify in accordance with the design control activity’s procedures, AMCs 1 or 2 are valid.

(d) AMSC D. The data needed to acquire this part competitively is not physically available, it cannot be obtained economically, nor is it possible to obtain adequate data, specifications or any other adequate, economical description of the material for a competitive solicitation. AMSC 3, 4, or 5 are valid.

(e) AMSC E. (Reserved).

(f) AMSC F. (Reserved).

(g) AMSC G. The Government has rights to the technical data, the data package is complete, and there are no technical data, engineering, tooling or manufacturing restrictions. (This is the only AMSC that implies that parts are candidates for full and open competition. Other AMSCs such as K, M, N, Q, and S may imply limited competition when two or more independent sources exist yet the technical data package is inadequate for full and open competition.) AMCs 1 or 2 are valid.

(h) AMSC H. The Government physically does not have in its possession sufficient, accurate, or legible data to purchase this part from other than the current source(s). This code is only assigned at the conclusion of limited screening, and it remains assigned until the full screening process resolves physical data questions and results in assignment of a different AMSC. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(i) AMSC I. (Not authorized.)

(j) AMSC J. (Reserved.)

(k) AMSC K. This part must be produced from class 1 castings and similar type forgings as approved (controlled) by procedures contained in the current version of MIL-STD-2175. If one source has such castings and cannot provide them to other sources, AMCs 3, 4, or 5 are valid. If at least two sources have such castings or they can be provided to other sources AMCs 1 or 2 are valid.
(l) **AMSC L.** The annual buy value of this part falls below the screening threshold established by DoD components and field activities. However, this part has been screened for additional known sources, resulting in either confirmation that the initial source exists or that other sources may supply the part. Additional screening was performed to identify the competitive or noncompetitive conditions that would result in assignment of a different AMSC. This code shall not be used when screening parts entering the inventory. This code shall be used only to replace AMSC O for parts under the established screening threshold. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(m) **AMSC M.** Manufacture of this part requires use of master or coordinated tooling. If only one set of tooling exists and cannot be made available to another source for manufacture of this part, AMCs 3, 4, or 5 are valid. When the availability of existent or refurbishable tooling is available to two or more sources, then AMCs 1 or 2 are valid.

(n) **AMSC N.** Manufacture of this part requires special test and/or inspection facilities to determine and maintain ultra-precision quality for its function or system integrity. Substantiation and inspection of the precision or quality cannot be accomplished without such specialized test or inspection facilities. If the test cannot be made available for the competitive manufacture of the part, the required test or inspection knowledge cannot be documented for reliable replication, or the required physical test or inspection facilities and processes cannot be economically documented in a TDP, valid AMCs are 3, 4, or 5. If the facilities or tests can be made available to two or more competitive sources, AMCs 1 or 2 are valid.

(o) **AMSC O.** The part was not assigned an AMSC when it entered the inventory, nor has it ever completed screening. Use of this code in conjunction with AMC 0 is sometimes necessary but discouraged. Maximum effort to determine the applicability of an alternate AMSC is the objective. Only AMC O is valid.

(p) **AMSC P.** The rights to use the data needed to purchase this part from additional source(s) are not owned by the Government and cannot be purchased, developed, or otherwise obtained. It is uneconomical to reverse engineer this part. This code is used in situations where the Government has the data but does not own the rights to the data. If only one source has the rights or data to manufacture this item, AMCs 3, 4, or 5 are valid. If two or more sources have the rights or data to manufacture this item, AMCs 1 or 2 are valid.

(q) **AMSC Q.** The Government does not have adequate data, lacks rights to data, or both needed to purchase this part from additional sources. The Government has been unable to economically buy the data or rights to the data, although the part has been undergoing full screening for 12 or more months. Breakout to competition has not been achieved, but current, continuing actions to obtain necessary rights to data or adequate, reprocurement technical data indicate breakout to competition is expected to be achieved. This part may be a candidate for reverse engineering or other techniques to obtain technical data. All AMSC Q items are required to be reviewed within the timeframes cited in E-203(b). If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(r) **AMSC R.** The Government does not own the data or the rights to the data needed to purchase this part from additional sources. It has been determined to be uneconomical to buy the data or rights to the data. It is uneconomical to reverse engineer the part. This code is used when the Government did not initially purchase the data and/or rights. If only one source has the rights or data to manufacture this item, AMCs 3, 4, or 5 are valid. If two or more sources have the rights or data to manufacture this item, AMCs 1 or 2 are valid.

(s) **AMSC S.** Acquisition of this item is restricted to Government approved source(s) because the production of this item involves unclassified but militarily sensitive technology (see FAR 6.3). If one source is approved, AMCs 3, 4, or 5 are valid. If at least two sources are approved, AMCs 1 or 2 are valid.

(t) **AMSC T.** Acquisition of this part is controlled by qualified products list (QPL) procedures. Competition for this part is limited to sources which are listed on or are qualified for listing on the QPL at the time of award (see FAR Part 9 and DFARS Part 209). AMCs 1 or 2 are valid.

(u) **AMSC U.** The cost to the Government to break out this part and acquire it competitively has been determined to exceed the projected savings over the life span of the part. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(v) **AMSC V.** This part has been designated a high reliability part under a formal reliability program. Probability of failure would be unacceptable from the standpoint of safety of personnel and/or equipment. The cognizant engineering activity has determined that data to define and control reliability limits cannot be obtained nor is it possible to draft adequate specifications for this purpose. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources are available, AMCs 1 or 2 are valid.

(w) **AMSC W.** (Reserved.)

(x) **AMSC X.** (Not authorized.)
E-201.3 Contractor technical information codes.

The following two digit alpha codes shall be used by contractors, when contractor’s assistance is requested. These codes are assigned in accordance with the current version of MIL-STD-789 and shall be considered during the initial assignment of an AMC/AMSC. For spare parts breakout, requirements for contractor assistance through CTIC submission shall be accomplished as stated in Part 4 of this appendix. Each CTIC submitted by a contractor must be accompanied by supporting documentation, transmitted by DD Form 1418, Contractor Technical Information Record, and DD Form 1418-1, Technical Data Identification Checklist, are useful not only for code assignment during acquisition coding conferences, but also for personnel conducting both full and limited screening of breakout candidates. Personnel conducting full and limited screening of breakout candidates should use the supporting documentation provided with CTICs as a source of information. However, they should not allow this information to substitute for careful analysis and further investigation of the possibilities of acquiring a part through competition or by direct purchase. The definitions for CTICs are—

(a) CTIC CB. Source(s) are specified on source control, altered item, or selected item drawings/documents. (The contractor shall furnish a list of the sources with this code.)
(b) CTIC CC. Requires engineering source approval by the design control activity in order to maintain the quality of the part. An alternate source must qualify in accordance with the design control activity’s procedures, as approved by the cognizant Government engineering activity.
(c) CTIC CG. There are no technical restrictions to competition.
(d) CTIC CK. Produced from class 1 castings (see the current version of MIL-STD-2175) and similar type forgings. The process of developing and proving the acceptability of high-integrity castings and forgings requires repetitive performance by a controlled source. Each casting or forging must be produced along identical lines to those which resulted in initial acceptability of the part. (The contractor shall furnish a list of known sources for obtaining castings/forgings with this code.)
(e) CTIC CM. Master or coordinated tooling is required to produce this part. This tooling is not owned by the Government or, where owned, cannot be made available to other sources. (The contractor shall furnish a list of the firms possessing the master or coordinated tooling with this code.)
(f) CTIC CN. Requires special test and/or inspection facilities to determine and maintain ultra-precision quality for function or system integrity. Substantiation and inspection of the precision or quality cannot be accomplished without such specialized test or inspection facilities. Other sources in industry do not possess, nor would it be economically feasible for them to acquire facilities. (The contractor shall furnish a list of the required facilities and their locations with this code.)
(g) CTIC CP. The rights to use the data needed to purchase this part from additional sources are not owned by the Government and cannot be purchased.
(h) CTIC CY. A high reliability part under a formal reliability program. Probability of failure would be unacceptable from the standpoint of safety of personnel and/or equipment. The cognizant engineering activity has determined that data to define and control reliability limits cannot be obtained nor is it possible to draft adequate specifications for this purpose. Continued control by the existing source is necessary to ensure acceptable reliability. (The contractor shall identify the existing source with this code.)
(i) CTIC CZ. The design of this part is unstable. Engineering, manufacturing, or performance characteristics indicate that the required design objectives have not been achieved. Major changes are contemplated because the part has a low process yield or has demonstrated marginal performance during tests or service use. These changes will render the present part obsolete and unusable in its present configuration. Limited acquisition from the present source is anticipated pending configuration changes. (The contractor shall identify the existing source with this code.)
The purpose of AMC/AMSC assignments is to provide the best possible technical assessment of how a part can be acquired. The technical assessment should not be based on issues such as: the known sources actual manufacturers, or are there two actual manufacturers in existence; but rather on factors such as the availability of adequate technical data, the Government’s rights to use the data, technical restrictions placed on the hardware (criticality, reliability, special testing, master tooling, source approval, etc.) and the cost to breakout vice projected savings. In cases where there is additional technical information which affects the way a part can be acquired, it should be made available to the contracting officer, with the AMC. Concerning the assignment of AMC/AMSC. This assignment shall be based on the best technical judgment of breakout personnel and on information gathered during the screening process.

(a) The assignment of AMC/AMSCs to parts is the responsibility of the DoD component introducing the equipment or system for which the parts are needed in the inventory. Subsequent screening is the responsibility of the DoD component assigned technical responsibility.

(b) When two or more AMSCs apply, the most technically restrictive code will be assigned.

(c) Restricted combinations of AMC/AMSCs are reflected in the AMSC definition. The Defense Logistics Information Service will reject invalid code combinations, as shown in Exhibit I, submitted for entry into the Federal catalog program (see E–204.2). One-time acquisition of a part by a method other than indicated by the code does not require a change to the AMC (e.g., when only one of a number of sources can meet a short delivery date, or when only one manufacturing source is known but acceptable surplus parts are available from other sources).

(d) After the first acquisition under AMC 2 or 4, the AMC shall be recoded 1 or 3 respectively.

(e) Both full and limited screening will result in the assignment or reassignment of an AMC. This assignment shall be based on the best technical judgment of breakout personnel and on information gathered during the screening process.

(f) A part need not be coded as non-competitive based on an initial market survey which only uncovers one interested source. If the Government has sufficient technical data in its possession to enable other sources to manufacture an acceptable part, and there are no technical restrictions on the part which would preclude other sources from manufacturing it, the part should be coded competitive.

(a) General. An effective breakout program requires that all reasonable actions be taken to improve the acquisition status of parts. The potential for improvement of the acquisition status will vary with individual circumstances. On one end of the spectrum are those parts with acquisition method suffix codes of a temporary nature requiring vigorous follow-through improvement action (e.g., AMSCs A and H); on the other end are those parts with codes suggesting a relative degree of permanence (e.g., AMSCP). A code assigned to a part should never be considered fixed with respect to either technical circumstance or time; today’s technical constraint may be overcome by tomorrow’s technology and a contractor’s rights to data, so zealously protected today, often become less important with time. The application of breakout improvement effort must always consider individual circumstances and overall benefits expected to be obtained.

(b) Code suspense dates. Every part whose breakout status can be improved shall be suspended for rescreening as appropriate. In general, the following codes cannot be improved: 1G, 2G, 1K, 2K, 1M, 2M, 1N, 2N, 1T, 2T, 1Z, or 2Z. The period between suspenses of parts with “valid” codes is not required. Suspense dates may vary with the circumstance surrounding each part. A code reached as a result of limited screening (E–304) shall not be assigned a suspense date exceeding 12 months; a code reached as a result of full screening (E–303) shall not be assigned a suspense date exceeding three years. In exceptional cases, where circumstances indicate that no change can be expected in a code over an extended period, a suspense date not exceeding five years may be assigned in accordance with controls established by the breakout activity. Items with a 1G or 2G code do not require a suspense date.

Use the Federal catalog program formats, set forth in DoD Manual 4100.39-M, Defense Integrated Data System (DIDS) Procedural Manual, communication media and operating instructions as augmented by this appendix to disseminate AMCs and AMSCs.

(a) The Defense Logistics Information Service (DLIS) will—

(1) Receive and disseminate AMCs and AMSCs for each national stock number (NSN) to all appropriate Government activities in consonance with scheduled Federal catalog program computer cycles;

(2) Make the AMCs and AMSCs a part of the data bank of NSN item intelligence;
Ch. 2, App. E

301. Identification, selection, and screening of parts

E–300 General.

This part sets forth procedures for the identification, selection, and screening of parts.

E–301 Identification and selection procedures.

E–301.1 Parts entering the inventory.

The breakout process should begin at the earliest possible stage of weapon systems acquisition. Generally, a provisioned part will require subsequent replenishment. Provisioning or similar lists of new parts are, therefore, the appropriate bases for selecting parts for screening. This is not to imply that breakout must be done on all items as part of the provisioning process. Priorities shall be applied to those parts offering the greatest opportunity for breakout and potential savings. The major factors in making this determination are—

(a) The unit price;
(b) The projected quantity to be purchased over the part’s life cycle; and
(c) The potential for screening to result in a part being successfully broken out, e.g., item stability, cost, and completeness of technical data, etc.

E–301.2 Annual buy forecasts.

Annually, lists shall be prepared that identify all parts projected for purchase during the subsequent 12-month period. Priority should be given to those parts with the greatest expected return given their annual buy value, life cycle buy value, and likelihood of successful breakout, given technical characteristics such as design and performance stability and the availability of technical data. Parts with an expired suspense date or a suspense date which will expire during the forecast period (see E–301(b)), need only be subjected to the necessary steps of the full screening procedure (see E–303). Parts with a valid code that will not expire during the forecast period need not be screened. Parts coded 00 shall be selected for full screening.

E–301.3 Immediate buy requirements.

An immediate buy requirement will be identified by the user or the item manager in consonance with department/agency regulations. When an immediate buy requirement meeting the screening criteria (see E–303(b)) is generated for a part not assigned a current AMC/AMSC, the part shall be promptly screened in accordance with either the full or limited screening procedures (see E–303 and E–304).

E–301.4 Suspect AMC/AMSC.

Whenever an AMC/AMSC is suspected of being inaccurate by anyone, including the contracting officer, a rescreening shall be conducted for that part. Suspect codes include codes composed of invalid combinations of AMCs and AMSCs, those which do not truly reflect how a part is actually being acquired, and those suspected of being more restrictive than necessary for the next buy.

E–302 Screening.

(a) Screening procedures include consideration and recording of the relevant facts pertaining to breakout decisions. The objective of screening is to improve the acquisition status by determining the potential for competition, or purchase from an actual manufacturer. Consideration of any reasonable approach to establishing competition should be an integral part of the breakout process.

(b) Screening procedures may vary depending on circumstances related to the parts. No set rules will provide complete guidance for making acquisition method decisions under all conditions encountered in actual practice. An informed coding decision can be made without following the procedures step by step in every case.

(c) Activities involved in screening are encouraged to develop supplemental procedures which prove effective in meeting this regulation’s objectives. These procedures should be tailored to the particular activity’s operating environment and the characteristics of the parts for which it is responsible. Nevertheless, care should be taken in all cases to assure that—

(1) Responsible judgment is applied to all elements involved in the review of a part;
(2) The necessary supporting facts are produced, considered, and recorded in the breakout screening file. The breakout screening file contains technical data and other documents concerning screening of the part;
(3) All cost effective alternatives are considered for establishing competition, or purchase from an actual manufacturer (see E–105(d)(6)); and
(4) When possible, the sequence of the review allows for accomplishing several screening steps concurrently.
(d) Contractor participation in the decision making process extends only to providing technical information. This technical information is provided by supporting documentation (DD Forms 1418, Contractor Technical Information Record, and DD Form 1418–1, Technical Data Identification Checklist) which includes the CTIC assignment. Government personnel shall substantiate the breakout decision by reference to the CTIC and by careful review of the supporting documentation. However, the CTIC provides guidance only, and it should be used as one of the inputs to arrive at an acceptable AMC and AMSC coding.

(e) Contractor’s technical information furnished in accordance with MIL-STD-789 may indicate areas requiring additional research by the Government before screening can be completed. Seldom will industry’s contribution to the screening process enable the Government to assign an AMC or AMSC without additional review.

(f) During the screening process, it may be appropriate to communicate with industry, particularly potential manufacturers of a part, to determine the feasibility of establishing a competitive source and to estimate the costs and technical risks involved.

(g) Coding conferences with industry shall be documented.

(h) Screening may disclose a part is not suitable for competitive acquisition, but it may be possible to breakout the part for direct purchase from the actual manufacturer or to establish a second source. Parts particularly suited to direct purchase are those where neither the design control activity nor the prime contractor contribute additional value or whose data belong to the actual manufacturer and will not be acquired by the Government, and where that manufacturer exercises total responsibility for the part (design and quality control, testing, etc.), and where additional operations performed by the prime contractor can be performed by the actual manufacturer or by the Government.

(i) For each part that is screened, a file shall be established to document and justify the decisions and results of all screening effort (see E–165(d)(6)).

(j) Full and limited screening procedures are two elements of breakout programs. Other spare parts initiatives to enhance breakout are reverse engineering, bailment, data rights challenges, and publication of intended buy lists. Integration of other initiatives within the screening processes developed at each activity is encouraged.

E–303 Full screening procedures.

(a) Full screening procedures should be developed so that the potential is fully evaluated for establishing competition or purchase from an actual manufacturer. Also, full screening procedures should facilitate accurate and consistent acquisition method code assignment. It is expected that each activity will develop its own operational screening procedures. A general model, full screening decision process is provided below to support the development of activity level procedures and to provide guidance regarding the general scope of these procedures. The full screening procedures involve 65 steps in the decision process, and are divided into the following phases—

1. Data collection;
2. Data evaluation;
3. Data completion;
4. Technical evaluation;
5. Economic evaluation; and

(b) The six phases describe different functions that must be achieved during screening. The nature of the screening process does not permit clear distinction of one phase from another. Further, the order of performance of these phases may not correspond to the order listed here. In fact, the phases will often overlap and may be performed simultaneously. Their purpose is to identify the different functions comprising the screening process.

(c) A summary flow chart of the decision steps is provided as Exhibit II to assist in understanding the logical order of the full screening steps for various conditions. Use of the flow chart in connection with the text that follows is essential to fully understand the order of the steps in the process.

E–303.1 Data collection phase (step 1).

(a) Assemble all available data and establish a file for each part. Collect identification data, relevant data obtained from industry, contracting and technical history data, and current status of the part, including—

1. Normal identification required for cataloging and standardization review;
2. All known sources;
3. Historical contracting information, including the more recent awards, date of awards, and unit price(s) for the quantities prescribed;
4. Identification of the actual manufacturer(s), the latest unit price and the quantity on which the price is based. (When the actual manufacturer is not the design control activity, the design control activity may be consulted to ensure the latest version of the item is being procured from the actual manufacturer);
5. Identification of the activity, Government or industry, having design control over the part and, if industry, the cognizant Government engineering activity;
6. The expected life in the military supply system;
7. Record of any prior review for breakout, with results or findings; and
8. Annual demand.
(b) In the case of complex items requiring large numbers of drawings, collection of a reasonable technical data sample is sufficient for the initial technical data evaluation phase (steps 2–14).

E-303.2 Data evaluation phase (steps 2–14).

(a) Data evaluation is crucial to the whole review procedure. It involves determination of the adequacy of the technical data package and the Government’s rights to use the data for acquisition purposes.

(b) The data evaluation process may be divided into two stages—

(1) A brief but intensive analysis of available data and documents regarding both technical matters and data rights, leading to a decision whether to proceed with screening; and

(2) If the decision is to proceed with screening, further work is necessary to produce an adequate technical data package, such as research of contract provisions, engineering work on data and drawings, and requests to contractors for additional data.

(c) The steps in this phase are—

(1) Step 2. Are full Government rights established by the available data package? Evidence for an affirmative answer would include the identification of Government drawings, incorporation by reference of Government specifications or process descriptions in the public domain, or reference to contract provisions giving the Government rights to data. If the answer is negative, proceed to step 3; if positive, proceed to step 6.

(2) Step 3. Are the contractor’s limitations of the Government’s rights to data established by the available data package? (i) The questions in step 2 and 3 are not exclusive. The incorporation in a drawing of contract provisions reserving rights to the manufacturer, either in the whole design or in certain manufacturing processes, would establish a clear affirmative answer to step 3 where there is substantiating Government documentation. Parts not in this group shall be retained for further processing (see step 20). Data rights that cannot be substantiated shall be challenged (see DFARS Part 227, validation procedures).

(ii) In the case of clear contractor ownership of rights, proceed with steps 4 and 5.

(3) Step 4. Are there bases for competitive acquisition without using data subject to limitations on use? This question requires consideration, for example, of the possibility of using performance specifications or substitution of military or commercial specifications or bulletins for limited elements of the manufacturing process. The use of sample copies is another possibility.

(4) Step 5. Can the Government buy the necessary rights to data? This is a preliminary question to the full analysis (in steps 20 and 21 below) and is designed primarily to eliminate from further consideration those items which incorporate established data restrictions and for which there are no other bases for competitive acquisition nor is purchase of rights possible or feasible.

(5) Steps 6 and 7. Is the present technical data package adequate for competitive acquisition of a reliable part?

(6) Steps 8 and 9. Specify omissions. The question in steps 6 and 7 requires a critical engineering evaluation and should deal first with the physical completeness of the date—are any essential dimensions, tolerances, processes, finishes, material specifications, or other vital elements of data lacking from the package? If so, these omissions should be specified. A second element deals with adequacy of the existing package to produce a part of the required performance, capability, quality, and reliability. This will, of course, be related to the completeness of data. In some cases, qualified engineering judgment may decide that in spite of apparently complete data, the high performance or other critical characteristics of the item require retention of the present source. If such decision is made, the file shall include documentation in the form of specific information, such as difficulties experienced by the present manufacturer in producing a satisfactory item or the existence of unique production skills in the present source.

(7) Steps 10 and 11. Can the data be developed to make up a reliable technical data package? This implies a survey of the specified omissions with careful consideration to determine the resources available to supply each missing element. Such resources will vary from simple referencing of standard engineering publications to more complex development of drawings with the alternatives of either obtaining such drawings or developing performance specifications. In some cases, certain elements of data are missing because they have been properly restricted. If, however, there has been no advance substantiation of the right to restrict, the part should be further researched. If the answer to this question is negative, proceed to step 12; if positive, proceed to step 13 or 14.

(8) Step 12. If the answer to the question in steps 10 and 11 is no, which condition is the prime element in this decision, the lack of data or the unreliability of the data? Specific documentation is needed to support this decision.

(9) Steps 13 and 14. Estimate the time required to complete the data package. In those cases where the data package is found inadequate and specific additions need to be developed, an estimate of the time required for completion must be made in order to determine if breakout of the part is feasible during this review cycle and to estimate at what point in the remaining life of the part the data package could be available.
E–303.3 Data completion phase (steps 15–21).

(a) The data completion phase involves acquiring or developing the missing elements of information to reach a determination on both adequacy of the technical data package and the restriction of rights to data. It may involve various functional responsibilities, such as examination of past contracts, queries directed to industry or to other Government agencies, inspection of the part, reverse or other engineering work to develop drawings and write specifications, arrangements with the present source for licensing or technical assistance to new manufacturers, and negotiations for purchase of rights to data. Additional research and information requests should be expeditiously initiated on those parts where there is a reasonable expectation of breakout. Because this phase is time-consuming, it should take place concurrently with other phases of the review.

(b) At the beginning of the data completion phase, the part falls into one of the following four steps—

1. **Step 15.** The data package is complete and adequate and the Government has sufficient rights for acquisition purposes. Such parts require no further data analysis. Proceed to step 22.

2. **Step 16.** The Government has rights to existing data. The data package is incomplete but there is a reasonable expectation that the missing elements can be supplied. Proceed to step 19.

3. **Step 17.** The data package is complete, but suitable Government rights to the data have not been established. Proceed to step 20.

4. **Step 18.** Neither rights nor completeness of data is adequately established; therefore, the part requires further research. Proceed to step 20.

(c) **Step 19.** Obtain or develop the necessary data for a suitable data package. Reverse engineering to develop acquisition data may be used if there is a clear indication that the costs of reverse engineering will be less than the savings anticipated from competitive acquisition. If there is a choice between reverse engineering and the purchase of data (step 21), the decision shall be made on the basis of relative costs, quality, time, and other pertinent factors.

(d) **Step 20.** Establish the Government’s and contractor’s rights to the data. Where drawings and data cannot be identified to a contract, the following guidelines should be applied—

1. Where drawings and data bear legends which warn of copyright or patent rights, the effect of such legends shall be resolved according to law and policy; however, the existence of patent or copyright restrictions does not per se preclude securing competition with respect to the parts described (see FAR Subpart 27.3–DFARS Subpart 227.4).

2. If the technical data bears legends which limit the Government’s right to use the data for breakout and it is determined that reasonable grounds exist to question the current validity of the restrictive markings, the contracting officer will be notified to initiate the validation procedures at DFARS Subpart 227.4.

3. Where drawings and data are unmarked and, therefore, free of limitation on their use, they shall be considered available for use in acquisition, unless the acquiring office has clear evidence to the contrary (see DFARS Subpart 227.4).

4. The decision process in situations described in paragraphs (d) (1), (2), and (3) of this subsection requires the exercise of sound discretion and judgment and embraces legal considerations. In no case shall a decision be made without review and approval of that decision by legal counsel.

5. If the validation procedures in paragraph (d)(2) of this subsection establish the Government’s right to use the data for breakout, the Government shall attempt to obtain competition pursuant to the decisions resulting from concurrent technical and economic evaluation.

(e) **Step 21.** If restrictions on the use of data are established, determine whether the Government can buy rights to the required data. Use the procedure in DFARS Subpart 227.4.

E–303.4 Technical evaluation phase (steps 22–37).

(a) **Introduction.** (1) The purposes of technical evaluation are to determine the development status, design stability, high performance, and/or critical characteristics such as safety of personnel and equipment; the reliability and effective operation of the system and equipment in which the parts are to be used; and to exercise technical judgment as to the feasibility of breaking out the parts. No simple and universal rules apply to each determination. The application of experience and responsible judgment is required. Technical considerations arise in several elements of the decision process, e.g., in determining adequacy of the data package (steps 6–14).

(2) Certain manufacturing conditions may reduce the field of potential sources. However, these conditions do not justify the restriction of competition by the assignment of restrictive AMCs for the following reasons—

1. **Parts produced from class 1 castings and similar type forgings.** The process of developing and providing the acceptability of high-integrity castings and forgings requires repetitive performance by a controlled source for each casting or forging along identical lines to those which result in initial acceptability of the item. The particular manufacturer’s process becomes the controlling factor with regard to the acceptability of...
any such item. However, other firms can produce class 1 castings and similar type forgings and provide the necessary inspection, or the part may be acquired from other sources. Master tooling may be reproduced.

(ii) Parts produced from master or coordinated tooling, e.g., numerically controlled tapes. Such parts are not considered master tooling. However, master tooling may be reproduced.

(iii) Parts requiring special test and/or inspection facilities to determine and maintain ultra-precision quality for the function or system integrity. Substantiation and inspection of the precision or quality cannot be accomplished without special test or inspection facilities. Testing is often done by the actual manufacturer under actual operating use. However, such special test inspection facilities may be available at other firms.

(b) Design procedures (steps 22–31).

(1) Step 22. Will a design change occur during anticipated lead time? If affirmative, proceed to step 23; if negative, proceed to step 24.

(2) Step 23. Specify the design change and assign an appropriate code.

(3) Step 24. Is a satisfactory part now being produced? Concurrently with the research and completion of data, a technical determination is required as to the developmental status of the part. With the frequent telescoping of the development/production cycle as well as constant product improvement throughout the active life of equipment, parts are frequently subject to design changes. The present source, if a prime contractor, is usually committed to incorporate the latest changes in any deliveries under a production order. In considering the part for breakout, an assessment must be made of the stability of design, so that in buying from a new source the Government will not be purchasing an obsolete or incompatible part. The question of obsolescence or non-compatibility is to some extent under Government control. Screening for breakout on parts that are anticipated to undergo design change should be deferred until design stability is attained.

(4) Step 25. Can a satisfactory part be produced by a new source? Determine whether technical reasons prohibit seeking a new source. The fact that the present source has not yet been able to produce a satisfactory part (step 24) does not preclude another source from being successful. If the answer to step 24 or 25 is affirmative, proceed simultaneously to steps 27 and 38. If the answer to step 25 is negative, proceed to step 29.

(5) Step 26. If the present source is producing an unsatisfactory part, but technical reasons prohibit seeking a new source, specify the reasons.

(6) Step 27. Does the part require prior qualification or other approval testing? If the answer is positive, proceed to step 28; if negative, proceed to step 32.

(8) Step 28. Specify the requirement.

(9) Step 29. Estimate the time required to qualify a new source.

(10) Step 30. Is there currently a qualified source?

(11) Step 31. Who is responsible for qualifications of the subcontractor, present prime contractor, the Government, or an independent testing agency?

(i) If a qualified source is currently in existence, the review should consider who will be responsible for qualification in the event of competitive acquisition. If qualification testing is such that it can be performed by the selected source under a preproduction or first article clause in the contract, the costs of initial approval should be reflected in the offers received. If the part requires initial qualification tests by some other agency such as the present prime contractor, the Government, an independent testing agent outside the Government, or by technical facilities within the departments, out-of-pocket costs may be incurred if the part is competed. An estimate of qualification costs should then be made and recorded in such cases.

(ii) Where facilities within the Government are not adequate for testing or qualification, or outside agencies such as the equipment contractor cannot or will not do the job, the economics of qualification may be unreasonable, and a narrative statement of these facts should replace the cost estimate. Whenever possible, such as in the case of engine qualification tests, economy of combined qualification tests should be considered.

(c) Quality assurance procedures (steps 32–33). Quality control and inspection is a primary consideration when making a decision to breakout. Where the prime contractor performs quality assurance functions beyond those of the part manufacturer or other sources, the Government may—

(1) Develop the same quality control and inspection capability in the manufacturer’s plant;

(2) Assume the responsibility for quality;

or

(3) Undertake to obtain the quality assurance services from another source, possibly the prime contractor.

(4) Step 32. Who is now responsible for quality control and inspection of the part?
Department of Defense

Ch. 2, App. E

(5) Step 33. Can a new source be assigned responsibility for quality control? Is the level of the quality assurance requirements specified in the system contract necessary for the screened part? The minimum quality assurance procedures for each part shall be confirmed.

(i) A new source shall be considered if—
(A) Any essential responsibility (e.g., burn-in, reliability, maintainability) retained by the prime contractor for the part and its relationship to the end item can be eliminated, shifted to the new source, or assumed by the Government;
(B) The prime contractor will provide the needed quality assurance services;
(C) The Government can obtain competent, impartial services to perform quality assurance responsibility; or
(D) The new source can maintain an adequate quality assurance program, inspection system, or inspection appropriate for the part.

(ii) If the prime contractor has responsibility for quality that a new source cannot assume or obtain, or that the Government cannot undertake or eliminate, consideration of the new source is precluded.

(d) Tooling procedures (steps 34–37). (1) Step 34. Is tooling or other special equipment required?

(2) Step 35. Specify the type of tooling.

(3) Step 36. Estimate additional acquisition leadtime for setup and for tooling.

(4) Step 37. Does the Government possess this tooling? If tooling or special equipment is required for production of the part, the types and quantities should be specified. Investigation can then be made as to whether the Government possesses such tooling and can make it available to a new source. A requirement for special tooling is not necessarily a deterrent to competitive solicitation for parts. The Government may find it desirable to purchase the needed tooling and furnish it to the new source. In this case, the costs can be determined with reasonable accuracy. However, if new sources can provide the tooling or special equipment, this will be reflected in competitive prices and should not normally require further analysis.

E–305.5 Economic evaluation phase (steps 38–56).

(a) Economic evaluation concerns identification and estimation of breakout savings and direct cost offsets to breakout. The economic evaluation phase is composed of the three segments detailed in paragraphs (b) through (d) of this subsection.

(b) Development of savings data (steps 38–40).

(1) Step 38. Estimate remaining program life cycle buy value.

(2) Step 39. Apply either a savings factor of 25 percent or one determined under local conditions and experience.

(3) Step 40. Multiply the remaining program life cycle buy value by the savings factor to obtain the expected future savings, if the part is coded for breakout.

(c) Computation of breakout costs (steps 41–47). Several groups of costs must be collected, summarized and compared to estimated savings to properly determine the economics of breakout. These costs include—

(1) Direct costs (steps 41–45). Direct costs of breakout normally include all expenditures which are direct and wholly identifiable to a specific, successful breakout action, and which are not reflected in the part unit price. Examples of direct costs include Government tooling or special test equipment, qualification testing, quality control expenses, and industry participation costs (such as completion of the Contractor Technical Information Data Record) if borne by the Government.

(i) Step 41. Estimate the cost to the Government for tooling or special equipment.

(ii) Step 42. Estimate the cost, if any, to the Government for qualifying the new source.

(iii) Step 43. Estimate the cost, if any, to the Government for assuring quality control, or the cost of contracting for quality control.

(iv) Step 44. Estimate the cost to the Government for purchasing rights to data.

(v) Step 45. Add estimated total direct costs to the Government to breakout the item.

(2) Performance specification costs (steps 46–47). (i) Step 46. Is the breakout candidate constructed to a performance specification?

(ii) Step 47. If the answer is yes in step 46, add performance specification breakout cost estimate elements to the result of step 45. The addition of an unknown number of nonstocked parts which must be stocked by the supply system for repairs is a significant element of cost associated with the decision to compete a performance specification assembly. (The same situation does not arise with respect to a design specification assembly since virtually all spare parts used to repair such an assembly are essentially identical to parts already in the assembly.) The cost of introducing these nonstocked parts into the system includes—

(A) Additional catalog costs. The number of nonstocked parts forecasted to be in the competed assembly, multiplied by the variable cost of cataloging per line item.

(B) Additional bin opening costs. The number of nonstocked parts forecasted to be in the competed assembly, multiplied by the variable cost of a bin opening at each of the locations where the part is to be stocked.

(C) Additional management costs. The number of nonstocked parts forecasted to be in the competed assembly, multiplied by the variable cost of management per line item.
(D) Additional technical data costs. The cost of a new set of technical data for the competed assembly, including the variable expenses of its production, reproduction, and distribution.

(E) Additional repair tools and test equipment costs. The costs of additional special tools and test equipment not otherwise required by the existing assembly.

(F) Additional logistics support costs. The costs associated with the new item such as spare and repair parts, technical manuals, and training.

(d) Comparison of savings and costs (steps 48–56). Compare estimated breakout costs to forecasted breakout savings. If costs exceed estimated savings, it will be uneconomical to compete the part. Performance specification parts should be analyzed to ensure that pertinent breakout costs have been considered and, if it is not economical to breakout the part, whether an appropriate detailed design data package reduces costs sufficiently to make breakout economical.

(1) Step 48. Compare total costs of breakout (step 47) to estimated savings (step 49).

(2) Step 49. Are costs of breakout greater or less than estimated savings? If greater, proceed to step 50; if yes, proceed to step 51.

(3) Step 50. Is the breakout candidate constructed to a performance specification? If no, proceed to step 54; if yes, proceed to step 57.

(4) Step 51. Is it appropriate to obtain a detailed design data package? If yes, proceed to step 52; if no, proceed to step 54. The decision to change a performance specification part to a detailed design part obviously requires a critical engineering examination of the part itself, as well as a review of the impact such a change might have on the operational effectiveness of the system in which the equipment is to be employed. Acquisition of a performance specification part by a subsequently acquired design specification subjects the Government to the additional hazard of losing the money paid for the development of the design specification, should the design be altered during the contracting leadtime period. Accordingly, the engineer- ing evaluation should closely review design stability over the anticipated contracting leadtime in order to avoid acquiring an obsolete or nonstandard part if the decision is made to compete it.

(5) Step 52. Add the estimated cost of obtaining a detailed design data package to the results of step 45.

(6) Step 53. If the results of step 52 are less than the estimated savings, initiate action to obtain a detailed design data package. Proceed to step 54 to code the part for a period until it can be rescreeened using the design specification package. The code determined in this screening shall be assigned a suspense date commensurate with the leadtime required to obtain the detailed design data package (see E-203(b)).

(7) Step 54. Is the part manufactured by the prime contractor? If yes, code the part AMC 3; if no, proceed to step 55.

(8) Step 55. Can the part be acquired directly from the actual manufacturer? If no, proceed to step 56; if yes, code the part AMC 3 or 4, as applicable.

(9) Step 56. Specify the reasons for inability to obtain the part from the actual manufacturer. Code the part AMC 5.

E-303.6 Supply feedback phase (steps 57–65).

(a) The supply feedback phase of the analysis is the final screening phase for breakout parts. This phase in completed for all AMC 2 parts to determine if sufficient time is available to breakout on the immediate buy and to communicate this information to the inventory manager responsible for the requirement. First, all additional time factors required to breakout the part are added. Total time is subtracted from the immediate and future buy date and the result compared to the current date. (Note: Not all time factors listed apply to each part screened.) If the result is the same or earlier than the required contract date, the part is coded competitive and action is begun to qualify additional sources as necessary. If the result is later than the required contract date, action to compete the immediate buy quantity should be initiated if the inventory manager can find some means of accepting late delivery. If this is impossible, the appropriate records should be annotated for competitive acquisition of the next replenishment buy quantity. If late delivery is acceptable, the inventory manager should compute requirements for the part and initiate an appropriate purchase requisition.

(b) Procedures. (1) Step 57. Add all additional time factors required to breakout the part (steps 13, 14, 29, and 36).

(2) Step 58. Add the results of step 57 to the date of this review.

(3) Step 59. Compare the result of step 58 to the date that the contract or order must be placed.

(4) Step 60. Is the result of step 59 earlier than, later than, or the same as the contract or order date? (If earlier or the same, proceed to step 61; if later, proceed to step 63.)

(5) Step 61. Can supply accept late delivery? If yes, proceed to step 62; if no, proceed to step 63.

(6) Step 62. Notify the inventory manager to compute requirements and initiate a purchase requisition. Proceed to step 64.

(7) Step 63. Code the part AMC 2. Insufficient time to compete on this buy.

(8) Step 64. Code the part AMC 2.

(9) Step 65. Begin actions to qualify new sources, if required and possible.
E–304  Limited screening procedures.

(a) Limited screening procedures are only appropriate when the full screening process cannot be completed for a part in sufficient time to support an immediate buy requirement. If limited screening does not result in a competitive AMC and the part is characterized by a high buy value and high buy quantity in the annual buy forecast, full screening procedures shall be immediately initiated.

(b) Limited screening procedures cover only the essential points of data and technical evaluations more completely described in full screening procedures (see E–303). Extensive legal review of rights or technical review of data is not required; nor is backup information on type and extent of qualification testing, quality control procedures and master tooling required. A summary flow chart of the limited screening decision steps is provided at Exhibit III.

(c) The limited screening decision steps are followed sequentially if the answer to the question in each step is affirmative. If any step is answered in the negative, proceed directly to step 10.

(1) Step 1. Assemble all available data and establish a file for each part. Collect identification data, relevant data obtained from industry, contracting and technical history data and current status of the part (see E–303.1).

(2) Step 2. Do the available documents establish Government rights to use the data for acquisition purposes? If the Government’s rights to use data in its possession is questionable, resolution of the rights must continue beyond award of the immediate buy.

(3) Step 3. Is the data package sufficient, accurate, and legible? If the Government does not have in its possession sufficient, accurate, or legible data, action shall be promptly initiated to resolve the deficiency for the next buy.

(4) Step 4. Is the design of the part stable over the anticipated acquisition leadtime?

(5) Step 5. Is a satisfactory part now being produced?

(6) Step 6. Can the part be manufactured from a new source without prior qualification testing or other approval testing?

(7) Step 7. Can the Government or a new source be responsible for quality assurance?

(8) Step 8. Can the part be manufactured without master or coordinated tooling or other special equipment; if no, is there more than one source which has the tooling or special equipment?


(10) Step 10. Assign AMC 3, 4, or 5, as appropriate.

(11) Step 11. Establish the date of the next review (see E–104(c) and E–203(b)).

Part 4—Contractor’s Assistance

E–400  General.

(a) Contractor’s assistance in screening shall be requested on provisioned and replenishment parts after consideration of the benefit expected from the contractor’s technical information and the cost to the Government of obtaining such assistance.

(b) Contractor’s assistance shall not be requested for parts covered by Government/industry specifications, commercially available parts or parts for which data is already available.

(c) Arrangements entered into with contractor to obtain technical information shall provide that—

(1) Contractors will exert their best effort to make impartial technical evaluations using applicable technical data and the experience of competent personnel; and

(2) No costs to the Government will be incurred for duplicate screening of parts.

E–401  Contractor’s technical evaluation procedures.

(a) Contractor’s technical evaluation for the screening process shall be required contractually by incorporating MIL–STD–789, which delineates the contractor’s responsibilities and procedures and prescribes use of the contractor DD Form 1418, Technical Information Record, and the DD Form 1418–1, Technical Data Identification Checklist, a copy of each document listed on DD Form 1418–1, and other substantive data that was used in developing the contractor’s recommendations.

(b) When MIL–STD–789 is incorporated in a contract, the DD Form 1423, Contract Data Requirements List, shall specify the requirement for the submission of DD Form 1418, Technical Information Record, and DD Form 1418–1, Technical Data Identification Checklist, in accordance with MIL–STD–789.

Part 5—Reporting System

E–500  General.

This part prescribes reports regarding the breakout program which cannot be obtained from other sources. These reports are used to evaluate the effectiveness of breakout programs, establish a baseline for all spare part acquisitions, and identify trends in spare parts acquisition.

E–501  Reports.

(a) Spare Parts Breakout Screening Report (RCS DD P&L(Q&S)714A). This is a cumulative semi-annual report reflecting the accomplishments of the breakout program. The report describes the results of full and limited screening for provisioned and replenishment parts by number of different NSNs for each AMC. Departments and agencies
shall also maintain actual cost data attributable to the Spare Parts Breakout Program which shall be forwarded on this report semi-annually.

(b) Spare Parts Acquisition Report (RCS DD P&L(Q&SA) 714B). This is a cumulative semi-annual report for all purchases made of spare parts during the current fiscal year. This report describes the number and extended dollar value of different NSNs purchased for each AMC. Departments and agencies shall also maintain actual savings (or cost avoidance) data attributable to the Spare Parts Breakout Program which shall be forwarded on this report semi-annually. Because of extraneous factors such as contracting leadtimes and changes in spare parts requirements, this report will not always reflect the acquisition of the parts screened during a reporting period (contained on the Spare Parts Breakout Screening Report). Also, it will not show in all instances how the part was actually acquired. This report is intended to be an indication of the success of the breakout program, and designed to show trends in the coding and data available to buyers in the acquisition package.

E–502 Reporting procedures.

(a) Departments and agencies shall maintain and forward semi-annual reports. The second semi-annual report in a fiscal year shall reflect cumulative totals for the current fiscal year using the formats in Exhibits IV and V.

(b) The reports will be due no later than 45 days after the end of each period designated.

(c) Submissions will be made to the Assistant Secretary of Defense (Production and Logistics), ATTN: Deputy Assistant Secretary for Logistics.

E–503 Reporting instructions.

(a) Spare parts breakout screening report. Using the format in Exhibit IV, provide the following—

(1) Enter reporting activity name, fiscal year, and period ending.

(2) For each AMC/AMSC listed, enter the number of different NSNs for which screening was completed during the period. Show zeros where applicable. This should be done for both full and limited screening.

(3) Report the total costs of the breakout program incurred for the period. Although this will be primarily labor costs, it should also include appropriate prorated costs of ADP services, office overhead, data retrieval service costs, etc. (see E–303.5).

(b) Spare parts acquisition report. Using the format in Exhibit V, provide the following—

(1) Enter reporting activity name, fiscal year, and period ending.

(2) For each AMC/AMSC listed, enter the number of different NSNs purchased during the current fiscal year and their extended dollar value.

(3) Report the actual breakout program savings or cost avoidances as measured by completed acquisition (not anticipated acquisitions). Price differentials should be measured on each acquisition where a breakout action has taken place. They should equal the difference between the previous contract unit price and the current contract unit price, times the number of units purchased.

**EXHIBIT I—VALID AMC/AMSC COMBINATIONS**

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0 = Valid Combinations.
X = Invalid Combinations.

**EXHIBIT II—FULL SCREENING DECISION PROCESS SUMMARY FLOW CHART**

*Note: Copies of Exhibit II can be obtained from: Defense Acquisition Regulations System, OUSD (AT&L), 3062 Defense Pentagon, Washington, DC 20301–3062; datafax (703) 602–0350.*
EXHIBIT III--LIMITED SCREENING DECISION PROCESS SUMMARY FLOW CHART
# SPARE PARTS BREAKOUT SCREENING REPORT

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**TOTAL**

SPARE PARTS BREAKOUT PROGRAM COSTS $__

*Excluded from AMC 1 data

**Excluded from AMC 2 data*
Department of Defense  
Ch. 2, App. F

EXHIBIT V—SPARE PARTS ACQUISITION REPORT


APPENDIX F TO CHAPTER 2—MATERIAL INSPECTION AND RECEIVING REPORT  

F–102 Applicability.  
F–103 Use.  
F–104 Application.  

Part 2—Contract Quality Assurance (CQA) on Shipments Between Contractors  
F–201 Instructions.
**Part 3—Preparation of the DD Form 250 and DD Form 250c**

F-301 Preparation instructions.
F-302 Mode/method of shipment codes.
F-303 Contract number instructions.
F-304 Multiple consignee instructions.
F-305 Correction instructions.
F-306 Invoice instructions.
F-307 Packing list instructions.
F-308 Receiving instructions.

**Part 4—Distribution of DD Form 250 and DD Form 250c**

F-401 Distribution.

**Part 5—Preparation of the DD Form 250-1 (Loading Report)**

F-501 Instructions.

**Part 6—Preparation of the DD Form 250-1 (Discharge Report)**

F-601 Instructions.

**Part 7—Distribution of the DD Form 250-1**

F-701 Distribution.

F-702 Corrected DD Form 250-1.

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

**PART 1—INTRODUCTION**

**F-101 General.**

This appendix contains procedures and instructions for the use, preparation, and distribution of the material inspection and receiving report (MIRR) (DD Form 250 series) and commercial shipping/packing lists used to document Government contract quality assurance.

**F-102 Applicability.**

(a) The provisions of this appendix apply to supplies or services acquired by DoD when the clause at 252.246-7000, Material Inspection and Receiving Report, is included in the contract. If the contract contains the clause at FAR 52.213-1, Fast Payment Procedure, the contractor may elect not to prepare a DD Form 250.  
(b) When DoD provides quality assurance or acceptance services for non-DoD activities, prepare a MIRR using the instructions in this appendix, unless otherwise specified in the contract.

**F-103 Use.**

(a) The DD Form 250 is a multipurpose report used—(1) To provide evidence of Government contract quality assurance at origin or destination;  
(2) To provide evidence of acceptance at origin or destination;  
(3) For packing lists;  
(4) For receiving;  
(5) For shipping;  
(6) As a contractor invoice; and  
(7) As commercial invoice support.  
(b) Do not use the DD Form 250 for shipments—(1) By subcontractors, unless the subcontractor is shipping directly to the Government; or

(2) Of contract inventory.  
(c) The contractor prepares the MIRR, except for entries that an authorized Government representative is required to complete.  
(d) Use the DD Form 250—(1) For bulk movements of petroleum products by tanker or barge to cover—  
(1) Origin or destination acceptance of cargo; or  
(ii) Shipment or receipt of Government owned products.  
(2) To send quality data to the point of acceptance in the case of origin inspection on FOB destination deliveries or preinspection at product source. Annotate the forms with the words “INSPECTED FOR QUALITY ONLY.”

**F-104 Application.**

(a) **DD Form 250.** (1) Use the DD Form 250 for delivery of contract line, subline, exhibit line, or exhibit subline items. Do not use the DD Form 250 for those exhibit line or exhibit subline items on a DD Form 1423, Contract Data Requirements List, that indicate no DD Form 250 is required.  
(2) If the shipped to, marked for, shipped from, mode of shipment, contract quality assurance and acceptance data are the same for more than one shipment made on the same day under the same contract, contractors may prepare one MIRR to cover all such shipments.  
(3) If the volume of the shipment precludes the use of a single car, truck, or other vehicle, prepare a separate MIRR for the contents of each vehicle.  
(4) When a shipment is consigned to an Air Force activity and the shipment includes items of more than one federal supply class (FSC) or material management code (MMC), prepare a separate DD Form 250 for items of each of the FSCs or MMCS in the shipment. However, the cognizant Government representative may authorize a single DD Form 250, listing each of the FSCs or MMCS included in the shipment on a separate continuation sheet. The MMC appears as a suffix to the national stock number applicable to the item.

(5) **Consolidation of Petroleum Shipments on a Single MIRR.**—(1) **Continental United States.** Contractors may consolidate multiple car or truck load shipments of petroleum made on the same day, to the same destination, against the same contract line item, on one MIRR. To permit verification of motor deliveries, assign each load a load number which can be identified to the shipment number in Block 2 of the DD Form 250. Include a shipping document (commercial or government) with each individual load showing as a minimum—  
(A) The shipper;  
(B) Shipping point;  
(C) Consignee;  
(D) Contract and line item number;
(E) Product identification;
(F) Gross gallons (bulk only);
(G) Loading temperature (bulk only);
(H) American Petroleum Institute gravity (bulk only);
(I) Identification of carrier’s equipment;
(J) Serial number of all seals applied; and
(K) Signature of supplier’s representative.

When acceptance is at destination, the receiving activity retains the shipping document(s) to verify the entries on the consignee copy of the DD Form 250 forwarded by the contractor (reference F–401, Table 1) before signing Block 21b.

(ii) Overseas. The same criteria as for continental U.S. applies, except the consolidation period may be extended, if acceptable to the receiving activity, shipping activity, Government finance office, and the authorized Government representative having cognizance at the contractor’s facility. In addition, the contractor may include more than one contract line item in each DD Form 250 if the shipped to, marked for, shipped from, mode of shipment, contract quality assurance, and acceptance data are the same for all line items.

(b) Consolidation of Coal Shipments on a Single MIRR. Contractors may consolidate multiple railcar or truck shipments of coal made on the same day, to the same destination, against the same contract line items, on one MIRR. To permit verification of truck deliveries, assign each load a load number which can be identified to the shipment number in Block 2 of the DD Form 250 and the analytical test report. Include a commercial shipping document with each individual truck load showing as a minimum—

(i) The shipper;
(ii) The name or names;
(iii) Location and shipping point of the mine or mines from which the coal originates;
(iv) The contract number;
(v) The exact size of the coal shipped; and
(vi) A certified weighmaster’s certification of weight for the truckload.

Include a waybill with each rail shipment showing the identical information. To permit verification of rail deliveries, identify each railcar number comprising the shipment to the shipment number in Block 2 of the DD Form 250 and the analytical test report. When acceptance is at destination, the receiving activity must retain the shipping document(s) to verify the entries on the consignee copy of the DD Form 250.

(b) DD Form 250–1. (1) Use a separate form for each tanker or barge cargo loaded.

(2) The contractor may report more than one barge in the same tow on a single form if on the same contract and consigned to the same destination.

(3) When liftings involve more than one contract, prepare separate forms to cover the portion of cargo loaded on each contract.

(4) Prepare a separate form for each product or grade of product loaded.

(5) Use a separate document for each tanker or barge cargo and each grade of product discharged.

(6) For discharge, the contractor may report more than one barge in the same tow on a single form if from the same loading source.

PART 2—CONTRACT QUALITY ASSURANCE (CQA) ON SHIPMENTS BETWEEN CONTRACTORS

F–301 Instructions.

(a) Use the supplier’s commercial shipping document/packing list to enter performance of required CQA actions at subcontract level. Make the following entries on the supplier’s commercial shipping document/packing list:

Required CQA of listed items has been performed.

(Signature of Authorized Govt. Rep. or DoD Stamp)

(Date)

Typed Name and Office)

General.

1. Dates must use nine spaces consisting of the four digits of the year, three-position alphabetic month abbreviation, and two digits for the day. For example, 2000AUG07, 2000SEP24.

2. Addresses must consist of the name, street address/P.O. box, city, state, and ZIP code.

3. Enter to the right of and on the same line as the word “Code” in Blocks 9 through 12 and in Block 14—

(i) The Commercial and Government Entity Handbook (H4/HB) code;

(ii) The DoD activity address code (DoDAAC) as it appears in the DoD Activity Address Directory (DoDAAD), DoD 4000.25-6-M; or

(iii) The Military Assistance Program Address Directory (MAPAD) code.

4. Enter the DoDAAC, CAGE (H4/HB), or MAPAD code in Block 15.

5. The data entered in the blocks at the top of the DD Form 250c must be identical to the comparable entries in Blocks 1, 2, 3, and 6 of the DD Form 250.

6. Enter overflow data from the DD Form 250 in Block 18 or in the body of the DD Form
250c with an appropriate cross-reference. Do not number or distribute additional DD Form 250c sheets, solely for continuation of Block 23 data as part of the MIRR.

(7) Do not include classified information in the MIRR. MIRRs must not be classified.

(b) Completion instructions.

(i) Block 1—Procurement Instrument Identification (Contract) No.

(1) Enter the 13-position alpha-numeric basic Procurement Instrument Identification Number (PIIN) of the contract. When applicable, enter the four-position alpha-numeric call/order serial number that is supplementary to the 13-position basic PIIN. This number is also referred to as the Supplementary Procurement Instrument Identification Number (SPIIN). Use SPIINs for (also see Subpart 204.70)—

(A) Delivery orders under indefinite-delivery-type contracts;
(B) Orders under basic ordering agreements; and
(C) Calls under blanket purchase agreements.

(ii) Except as indicated in paragraph (b)(1)(ii) of this section, do not enter supplementary numbers used in conjunction with basic PIINs to identify—

(A) Modifications of contracts and agreements;
(B) Modifications to calls or orders; or
(C) Document numbers representing contracts written between contractors.

(iii) When shipping instructions are furnished and shipment is made before receipt of the confirming contract modification (SF 30, Amendment of Solicitation/Modification of Contract), enter the contract modification six-digit number or the two-digit call or order number immediately following the PIIN or call/order four-digit SPIIN.

(iv) For DoD delivery orders on non-DoD contracts, enter the non-DoD contract number immediately below the PIIN number.

(v) When a contract number other than PIIN number is used, enter that contract number.

(ii) Block 2—Shipment No.

(i) The shipment number has a three-position alpha character prefix and a four-position numeric or alpha-numeric serial number.

(A) The prime contractor shall control and assign the shipment number prefix. The shipment number shall consist of three alphabetic characters for each “Shipped From” address (Block 11). The shipment number prefix shall be different for each “Shipped From” address and shall remain constant throughout the life of the contract. The prime contractor may assign separate prefixes when shipments are made from different locations within a facility identified by one “Shipped From” address.

(B) Number the first shipment 0001 for shipments made under the contract or contract and order number shown in Block 1 from each “Shipped From” address, or shipping location within the “Shipped From” address. Consecutively number all subsequent shipments with the identical shipment number prefix.

(1) Use alpha-numeric serial numbers when more than 9,999 numbers are required. Serially assign alpha-numeric numbers with the alpha in the first position (the letters I and O shall not be used) followed by the three-position numeric serial number. Use the following alpha-numeric sequence:

A000 through A999 (10,000 through 10,999)

B000 through B999 (11,000 through 11,999)

Z000 through Z999 (34,000 through 34,999)

(2) When this series is completely used, start over with 0001.

(ii) Reassign the shipment number of the initial shipment where a “Replacement Shipment” is involved (see paragraph (b)(16)(iv)(F) of this section).

(iii) The prime contractor shall control deliveries and on the final shipment of the contract shall end the shipment number with a “Z.” Where the final shipment is from other than the prime contractor’s plant, the prime contractor may elect either to—

(A) Direct the subcontractor making the final shipment to end that shipment number with a “Z”; or

(B) Upon determination that all subcontractors have completed their shipments, to correct the DD Form 250 (see F-305) covering the final shipment made from the prime contractor’s plant by addition of a “Z” to that shipment number.

(iv) Contractors follow the procedures in F-306 to use commercial invoices.

(3) Block 3—Date Shipped. Enter the date the shipment is released to the carrier or the date the services are completed. If the shipment will be released after the date of CQA and/or acceptance, enter the estimated date of release. When the date is estimated, enter an “E” after the date. Do not delay distribution of the MIRR for entry of the actual shipping date. Reissuance of the MIRR is not
Blocks 11 and 12. Do not obliterate other outline-type letters across shipments involving discount terms, enter destination.

The initial (line haul) mode of shipment code in the lower right corner of the block (see F-382).

Blocks 10—Administered by/code. Enter the code and address of the contract administration office (CAO) cited in the contract.

(iii) Enter on the same line and to the right of “FOB” an “S” for Origin or “D” for Destination as specified in the contract. Enter an alphabetic “O” if the “FOB” point cited in the contract is other than origin or destination.

(iv) For destination or origin acceptance shipments involving discount terms, enter “DISCOUNT EXPEDITED” in at least one-half inch outline-type style letters across Blocks 11 and 12. Do not obliterate other information in these blocks.

Block 11—Shipped from/code/FOB.

(i) Enter the code and address of the “Shipped From” location. If identical to Block 9, enter “See Block 9.”

(ii) For performance of services line items which do not require delivery of items upon completion of services, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations, or if identical to Block 9, enter “See Block 9.”

(iii) Enter on the same line and to the right of “FOB” an “S” for Origin or “D” for Destination as specified in the contract. Enter an alphabetic “O” if the “FOB” point cited in the contract is other than origin or destination.

(i) The commercial or Government bill of lading number after “B/L.”

(ii) The transportation control number after “TCN” (when a TCN is assigned for each line item on the DD Form 250 under Block 16 instructions, insert “See Block 16”); and

(iii) The initial (line haul) mode of shipment code in the lower right corner of the block (see F-382).

(5) Block 5—Discount Terms. (i) The contractor may enter the discount in terms of percentages on all copies of the MIRR.

(ii) Use the procedures in F-306 when the MIRR is used as an invoice.

(6) Block 6—Invoice No./date. (i) The contractor may enter the invoice number and actual or estimated date of invoice submission on all copies of the MIRR. When the date is estimated, enter an “E” after the date. Do not correct MIRRs other than in-voice copies to reflect the actual date of invoice submission.

(ii) Use the procedures in F-306 when the MIRR is used as an invoice.

(7) Block 7—Page of. Consecutively number the pages of the MIRR. On each page enter the total number of pages of the MIRR.

(8) Block 8—Acceptance point.

Enter an “S” for Origin or “D” for destination.

(9) Block 9—Prime contractor/code.

Enter the code and address.

(10) Block 10—Administered by/code.

Enter the code and address of the contract administration office (CAO) cited in the contract.

(i) Use single or double spacing between line items when there are less than four line items. Use double spacing when there are more than four line items. Enter the following for each line item:

(A) The national stock number (NSN) or noncatalog number. Where applicable, include a prefix or suffix. If a number is not provided, or it is necessary to supplement the number, include other identification such as the manufacturer’s name or federal supply code (as published in Cataloging Handbook H4-1), and the part number. Show additional part numbers in parentheses or slashes. Show the descriptive noun of the item nomenclature and if provided, the Government assigned management/material control code. The contractor may use the following technique in the case of equal kind supply items. The first entry shall be the description without regard to kind. For example, “Shoe-Low Quarter-Black,” “Resistor,” “Vacuum Tube,” etc. Below this description, enter the contract line item number in Block 15 and Stock/Part number followed by the size or type in Block 16.

(B) On the next printing line, if required by the contract for control purposes, enter: the make, model, serial number, lot, batch, hazard indicator, or similar description.

(11) Block 11—Prime contractor/code.

Enter the code and address.

(12) Block 12—Payment will be made by/code. Enter the code and address of the payment office cited in the contract.

(13) Block 13—Shipped to/code. Enter the code and address from the contract or shipping instructions.

(14) Block 14—Marked for/code. Enter the code and address from the contract or shipping instructions. When three-character or project codes are provided in the contract or shipping instructions, enter the code in the body of the block, prefixed by “Proj”; do not enter in the code block.

(15) Block 15—Item No. Enter the item number used in the contract.

(i) Use item numbers under the Uniform Contract Line Item Numbering System (see 204.71).

(ii) Position the item numbers as follows—

(A) For item numbers with four or less digits, enter the number immediately to the left of the vertical dashed line and prefix them with zeros, to achieve four digits.

(B) For item numbers with six digits, with alpha digits in the final two positions, enter the last two digits to the right of the vertical dashed line.

(C) For item numbers with six digits, with numbers in the final two positions, enter the first four digits immediately to the left of the vertical dashed line. Do not use the last two digits.

(iii) Line item numbers not in accordance with the Uniform Contract Line Item Numbering System may be entered without regard to positioning.

(16) Block 16—Stock/part No./description.

(i) Enter the code and address of the “Shipped From” location. If identical to Block 9, enter “See Block 9.”

(ii) The transportation control number after “TCN” (when a TCN is assigned for each line item on the DD Form 250 under Block 16 instructions, insert “See Block 16”); and

(iii) The initial (line haul) mode of shipment code in the lower right corner of the block (see F-382).
(C) On the next printing lines enter—

(i) The MIPR number prefixed by “MIPR” or the MILSTRIP requisition number(s) when provided in the contract; or

(ii) For service line items, enter the word “SERVICE” followed by as short as a description as is possible in no more than 20 additional characters. Some examples of service line items are maintenance, repair, alteration, rehabilitation, engineering, research, development, training, and testing. Do not complete Blocks 4, 13, and 14 when there is no shipment of material.

(iii) For all contracts administered by the Defense Contract Management Agency, with the exception of fast pay procedures, enter and complete the following:

**Gross Shipping Wt.**

State weight in pounds only.

(iv) Starting with the next line, enter the following as appropriate (entries may be extended through Block 20). When entries apply to more than one line item in the MIRR, enter them only once after the last line item entry. Reference applicable line item numbers.

(A) Enter in capital letters any special handling instructions/limits for material environmental control, such as temperature, humidity, aging, freezing, shock, etc.

(B) When a shipment is chargeable to Navy appropriation 17X4911, enter the appropriation, bureau control number (BCN), and authorization accounting activity (AAA) number (e.g., 17X4911–14003–104).

(C) When the Navy transaction type code (TC), “2T” or “7T” is included in the appropriation data, enter “TC 2T” or “TC 7T”.

(D) When an NSN is required by but not cited in a contract and has not been furnished by the Government, the contractor may make shipment without the NSN at the direction of the contracting officer. Enter the authority for such shipment.

(E) When Government furnished property (GFP) is included with or incorporated into the line item, enter the letters “GFP.”

(F) When shipment consists of replacements for supplies previously furnished, enter in capital letters “REPLACEMENT SHIPMENT.” (See F-301, Block 17, for replacement indicators).

(G) On shipments of Government furnished aeronautical equipment (GFAE) under Air Force contracts, enter the assignment AERNO control number, e.g., “AERNO 60-6354.”

(H) For items shipped with missing components, enter and complete the following:

“Item(s) shipped short of the following component(s): NSN or comparable identification: ______. Estimated Value ______, Authority ______.”

(I) When shipment is made of components which were short on a prior shipment, enter and complete the following:

“These components were listed as shortages on shipment number ______, date shipped.”

(J) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following:

“Return to ______. Quantity ______. Item ______. Ownership (Government/contractor).”

(K) Enter the total number of shipping containers, the type of containers, and the container number(s) assigned for the shipment.

(L) On foreign military sales (FMS) shipments, enter the special markings, and FMS case identifier from the contract. Also enter the gross weight.

(M) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the contracting officer:

“NOTE: Acceptance and payment are contingent upon receipt of approved test/evaluation results.”

The contracting officer will advise—

(1) The consignee of the results (approval/disapproval); and

(2) The contractor to withhold invoicing pending attachment of the approved test/evaluation results.

(N) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of those with shipment) or ARF origin acceptance shall be identified as follows: enter “PAYMENT COPY” in approximately one-half inch outline type style letters with “FORWARD TO BLOCK 12 ADDRESS” in approximately one-quarter inch letters immediately below. Do not obliterate any other entries.

(O) On foreign military sales contracts containing a bailment clause, enter the words “GFP UNIT VALUE.”

(P) When the initial unit incorporating an approved value engineering change proposal (VECP) is shipped, enter the following statement:

This is the initial unit delivered which incorporates VECP No. _______, Contract Modification No. ______, dated
(17) Block 17—Quantity shipped/received. 
(i) Enter the quantity shipped, using the unit of measure in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses. 
(ii) On the final shipment of a line item of a contract containing a clause permitting a variation of quantity and an underrun condition exists, the prime contractor shall enter a “Z” below the last digit of the quantity. When the final shipment is from other than the prime contractor’s plant and an underrun condition exists, the prime contractor may elect either to—
(A) Direct the subcontractor making the final shipment to enter a “Z” below the quantity; or
(B) Upon determination that all subcontractors have completed their shipments, correct the DD Form 250 (see F–305) covering the final shipment of the line item from the prime contractor’s plant by addition of a “Z” below the quantity. Do not use the “Z” on deliveries which equal or exceed the contract line item quantity.
(iii) For replacement shipments, enter “A” below the last digit of the quantity, to designate first replacement, “B” for second replacement, etc. Do not use the final shipment indicator “Z” on underrun deliveries when a final line item shipment is replaced.

17. Quantity
Shipped’d
1000
(10)
Z

(iv) If the quantity received is the same quantity shipped and all items are in apparent good condition, enter by a check mark. If different, enter actual quantity received in apparent good condition below quantity shipped and circle. The receiving activity will annotate the DD Form 250 stating the reason for the difference.

(18) Block 18—Unit. Enter the abbreviation of the unit measure as indicated in the contract for payment. Where a second unit of measure is indicated in the contract for purposes other than payment or used for shipping purposes, enter the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL–STD–129, Marking for Shipping and Storage. For example, LB for pound, SH for sheet.

18. Unit
LB
(SH)

(19) Block 19—Unit price. The contractor may, at its option, enter unit prices on all MIRR copies, except as a minimum:
(i) The contractor shall enter unit prices on all MIRR copies for each item of property fabricated or acquired for the Government and delivered to a contractor as Government furnished property (GFP). Get the unit price from Section B of the contract. If the unit price is not available, use an estimate. The estimated price should be the contractor’s estimate of what the items will cost the Government. When the price is estimated, enter an “E” after the unit price.
(ii) Use the procedures in F–306 when the MIRR is used as an invoice.
(iii) For clothing and textile contracts containing a bailment clause, enter the cited Government furnished property unit value opposite “GFP UNIT VALUE” entry in Block 16.
(iv) Price all copies of DD Forms 250 for FMS shipments with actual prices, if available. If actual prices are not available, use estimated prices. When the price is estimated, enter an “E” after the price.

20. Block 20—Amount. Enter the extended amount when the unit price is entered in Block 19.

(21) Block 21—Contract quality assurance (CQA). (i) The words “conform to contract” contained in the printed statements in Blocks 21a and 21b relate to quality and to the quantity of the items on the report. Do not modify the statements. Enter notes taking exception in Block 16 or on attached supporting documents with an appropriate block cross-reference.

(ii) When a shipment is authorized under alternative release procedure, attach or include the appropriate contractor signed certificate on the top copy of the DD Form 250 copies distributed to the payment office or attach or include the appropriate contractor certificate on the contract administration office copy when contract administration (Block 10 of the DD Form 250) is performed by the Defense Contract Management Agency (DCMA). 

(iii) When contract terms provide for use of Certificate of Conformance and shipment is made under these terms, the contractor shall enter “Certificate of Conformance” in Block 21a on the next line following the CQA and acceptance statements. Attach or include the appropriate contractor signed certificate on the top copy of the DD Form 250 copies distributed to the payment office or attach or include the appropriate certificate on the contract administration office copy when contract administration (Block 10 of the DD Form 250) is performed by DCMA. In addition, attach a copy of the signed certificate to, or enter on, copies of the MIRR sent with shipment.

(iv) Origin. (A) The authorized Government representative must—
(i) Place an “X” in the appropriate CQA and/or acceptance box(es) to show origin CQA and/or acceptance. When the contract requires CQA at destination in addition to origin CQA, enter an asterisk at the end of
the statement and an explanatory note in Block 16:

(2) Sign and date;

(3) Enter the typed, stamped, or printed name, title, mailing address, and commercial telephone number.

(B) When alternative release procedures apply—

(1) The contractor or subcontractor shall complete the entries required under paragraph (A) and enter in capital letters “ALTERNATIVE RELEASE PROCEDURE” on the next line following the printed CQA/acceptance statement.

(2) When acceptance is at origin and contract administration is performed by an office other than DCMA, the contractor shall furnish the four payment office copies of the MIRR to the authorized Government representative for dating and signing of one copy and forwarding of all copies to the payment office.

(3) When acceptance is at origin and contract administration is performed by DCMA, furnish the contract administration office copy of the MIRR to the authorized Government representative for dating and signing and forwarding to the contract administration office (see F-401, Table 1).

(C) When fast pay procedures apply, the contractor shall make entries required by paragraph (iv)(A).

(D) When Certificate of Conformance procedures apply, inspection or inspection and acceptance are at source, and the contractor’s Certificate of Conformance is required, the contractor shall make entries required by paragraph (iv)(A).

(1) For contracts administered by an office other than DCMA, furnish the four payment office copies of the MIRR to the authorized Government representative for dating and signing of one copy, and forwarding of all copies to the payment office.

(2) For contracts administered by DCMA, furnish the contract administration office copy of the MIRR to the authorized Government representative for dating and signing and forwarding to the contract administration office (see F-401, Table 1).

(E) When Certificate of Conformance is required, the contractor shall complete the entries required by paragraph (iv)(A).

(v) Destination. (A) When acceptance at origin is indicated in Block 21a, make no entries in Block 21b.

(B) When CQA and acceptance or acceptance is at destination, the authorized Government representative must—

(I) Place an “X” in the appropriate box(es);

(2) Sign and date; and

(3) Enter typed, stamped, or printed name, title, mailing address, and commercial telephone number.

(C) When “ALTERNATIVE RELEASE PROCEDURE” is entered in Block 21a and acceptance is at destination, the authorized Government representative must complete the entries required by paragraph (iv)(B) of this section.

(D) Forward the executed payment copy or MILSCAP format identifier PKN or PKP to the payment office cited in Block 12 within 4 work days (5 days when MILSCAP Format is used) after delivery and acceptance of the shipment by the receiving activity. Forward one executed copy of the final DD Form 256 to the contract administration office cited in Block 10 for implementing contract closeout procedures.

(E) When “FAST PAY” is entered in Block 21a, make no entries in this block.

(22) Block 22—Receiver’s Use. The authorized representative of the receiving activity (Government or contractor) must use this block to show receipt, quantity, and condition. The authorized representative must—

(I) Enter the date the supplies arrived. For example, when off-loading or in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier’s arrival is the date received for purposes of this block;

(ii) Sign; and

(iii) Enter typed, stamped, or printed name, title, mailing address, and commercial telephone number.

(23) Block 23—Contractor use only. Self explanatory.

### F-302 Mode/method of shipment codes.

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Motor, truckload.</td>
</tr>
<tr>
<td>B</td>
<td>Motor, less than truckload.</td>
</tr>
<tr>
<td>C</td>
<td>Van (unpacked, uncrated personal or Government property).</td>
</tr>
<tr>
<td>D</td>
<td>Driveaway, truckaway, towaway.</td>
</tr>
<tr>
<td>E</td>
<td>Bus.</td>
</tr>
<tr>
<td>F</td>
<td>Air Mobility Command (Channel and Special Assignment Airlift Mission).</td>
</tr>
<tr>
<td>G</td>
<td>Surface parcel post.</td>
</tr>
<tr>
<td>H</td>
<td>Air parcel post.</td>
</tr>
<tr>
<td>I</td>
<td>Government trucks, for shipment outside local delivery area.</td>
</tr>
<tr>
<td>J</td>
<td>Air, small package carrier.</td>
</tr>
<tr>
<td>K</td>
<td>Rail, carload.</td>
</tr>
<tr>
<td>L</td>
<td>Rail, less than carload.</td>
</tr>
<tr>
<td>M</td>
<td>Surface, freight forwarder.</td>
</tr>
<tr>
<td>N</td>
<td>LOGAIR.</td>
</tr>
<tr>
<td>O</td>
<td>Organic military air (including aircraft of foreign governments).</td>
</tr>
<tr>
<td>P</td>
<td>Through Government Bill of Lading (TGBL).</td>
</tr>
<tr>
<td>Q</td>
<td>Commercial air freight (includes regular and expedited service provided by major airlines; charters and air taxis).</td>
</tr>
<tr>
<td>R</td>
<td>European Distribution System or Pacific Distribution System.</td>
</tr>
</tbody>
</table>
Department of Defense

**F-305 Correction instructions.**

Make a new revised MIRR or correct the original when, because of errors or omissions, it is necessary to correct the MIRR after distribution has been made. Use data identical to that of the original MIRR. Do not correct MIRRs for Blocks 19 and 20 entries. Make the corrections as follows—

(a) Circle the error and place the corrected information in the same block; if space is limited, enter the corrected information in Block 16 referencing the error page and block. Enter omissions in Block 16 referencing omission page and block. For example—

2. **SHIPMENT NO.**

   (AAA001)

   See Block 16

17. **QUANTITY**

   SHIP/REC'D

   19

   (17)

16. **STOCK/PART NO. DESCRIPTION**

   CORRECTIONS:

   Refer Block 2: Change shipment No. AAA001 to AAA0010 on all pages of the MIRR.

   Refer Blocks 15, 16, 17, and 18, page 2; Delete in entirety Line Item No. 0006. This item was not shipped.

   (b) When corrections have been made to entries for line items (Block 13) or quantity (Block 17) enter the words “CORRECTIONS HAVE BEEN VERIFIED” on page 1. The authorized Government representative will date and sign immediately below the statement. This verification statement and signature are not required for other corrections.

(c) Clearly mark the pages of the MIRR requiring correction with the words “CORRECTED COPY.” Avoid obliterating any other entries. Where corrections are made only on continuation sheets, also mark page number 1 with the words “CORRECTED COPY.”

(d) Page 1 and only those continuation pages marked “CORRECTED COPY” shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

**F-306 Invoice instructions.**

The Government encourages, but does not require, contractors to use copies of the MIRR as an invoice, in lieu of a commercial form. If commercial forms are used, identify the related MIRR shipment number(s) on the form. If using the MIRR as an invoice, prepare and forward four copies to the payment office as follows—

(a) Complete Blocks 5, 6, 19, and 20. Block 6 shall contain the invoice number and date. Column 20 shall be totaled.

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>S</td>
<td>Scheduled Truck Service (STS) (applies to contract carriage, guaranteed traffic routings and/or scheduled service).</td>
</tr>
<tr>
<td>T</td>
<td>Air freight forwarder.</td>
</tr>
<tr>
<td>U</td>
<td>QUICKTRANS.</td>
</tr>
<tr>
<td>V</td>
<td>SEAVAN.</td>
</tr>
<tr>
<td>W</td>
<td>Water, river, lake, coastal (commercial).</td>
</tr>
<tr>
<td>X</td>
<td>Bearer, walk-thru (customer pickup of material).</td>
</tr>
<tr>
<td>Y</td>
<td>Military Intragtheater Airlift Service.</td>
</tr>
<tr>
<td>Z</td>
<td>Military Sealift Command (MSC) (controlled contract or arranged space).</td>
</tr>
<tr>
<td>2</td>
<td>Government watercraft, barge, lighter.</td>
</tr>
<tr>
<td>3</td>
<td>Roll-on Roll-off (RO/RO) service.</td>
</tr>
<tr>
<td>4</td>
<td>Armed Forces Courier Service (ARFCOS).</td>
</tr>
<tr>
<td>5</td>
<td>Surface, small package carrier.</td>
</tr>
<tr>
<td>6</td>
<td>Military official mail (MOM).</td>
</tr>
<tr>
<td>7</td>
<td>Express mail.</td>
</tr>
<tr>
<td>8</td>
<td>Pipeline.</td>
</tr>
<tr>
<td>9</td>
<td>Local delivery by Government or commercial truck (includes on base transfers; deliveries between air, water, or motor terminals; and adjacent activities). Local delivery areas are identified in commercial carriers’ tariffs which are filed and approved by regulatory authorities.</td>
</tr>
</tbody>
</table>

1 Includes trailer/container-on-flat-car (excluding SEAVAN).
VerDate 0ct<09>2002 06:00 Oct 22, 2002 Jkt 197195 PO 00000 Frm 00618 Fmt 8010 Sfmt 8002 Y:\SGML\197195T.XXX 197195T

three copies for standard distribution (see F 307) addition to the copies of the MIRR required a packing list. The packing list copies are in the MIRR used as a receiving report.

Purchasing Office………………..1
Payment Office** ………………………..2

(b) Mark in letters approximately one inch high, first copy: “ORIGINAL INVOICE;” three copies “INVOICE COPY.”

c) Forward the four copies to the payment office (Block 12 address), except when acceptance is at destination and a Navy finance office will make payment, forward to destination.

(d) Be sure to separate the four copies of the MIRR used as an invoice from the copies the MIRR used as a receiving report.

F–307 Packing list instructions.

Contractors may use copies of the MIRR as a packing list. The packing list copies are in addition to the copies of the MIRR required for standard distribution (see F–301). Mark them “PACKING LIST.”

F–308 Receiving instructions.

When the MIRR is used for receiving purposes, local directives must prescribe procedures. If CQA and acceptance or acceptance of supplies is required upon arrival at destination, see F–301(b)(21)(v) for instructions.

PART 4—DISTRIBUTION OF DD FORM 250 AND DD FORM 250C

F–401 Distribution.

(a) The contractor is responsible for distributing the DD Form 250, including mailing and payment of postage.

(b) Contractors shall distribute MIRRs using the instructions in Tables 1 and 2.

(c) Contractors shall distribute MIRRs on non-DoD contracts using this appendix as amended by the contract.

(d) Contractors shall make distribution promptly, but no later than the close of business of the work day following—

(1) Signing of the DD Form 250 (Block 21a) by the authorized Government representative; or

(2) Shipment when authorized under terms of alternative release, certificate of conformance, or fast pay procedures; or

(e) Do not send the consignee copies (via mail) on overseas shipments to port of embarkation (POE). Send them to consignee at APO/FPO address.

(f) Copies of the MIRR forwarded to a location for more than one recipient shall clearly identify each recipient.

Material Inspection and Receiving Report

Table I—Standard Distribution

With Shipment* ……………………………2
Consignee (via mail)…………………….1
(P for Navy procurement, include unit price)
For foreign military sales, consignee copies are not required
Contract Administration Office ……………1

(Forward direct to address in Block 10 except when addressee is a Defense Contract Management Agency (DCMA) office and a certificate of conformance or the alternate release procedures (see F–301, Block 21) is involved, and acceptance is at origin; then, forward through the authorized Government representative.)

ADP Point for CAO (applicable to Air Force only)……………………………………1

When DFAS–CO/ALQ is the payment office in Block 12, send one copy to DFAS–CO/ALQ immediately after signature. If submission of delivery data is made electronically, distribution of this hard copy need not be made to DFAS–CO/ALQ.

CAO of Contractor Receiving GPP…………1

*Attached as follows:

<table>
<thead>
<tr>
<th>Type of shipment</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carload or truck-load.</td>
<td>Affix to the shipment where it will be ready visible and available upon receipt.</td>
</tr>
<tr>
<td>Less than carload or truckload.</td>
<td>Affix to container number one or container bearing lowest number.</td>
</tr>
<tr>
<td>Mail, including parcel post.</td>
<td>Attach to outside or include in the package. Include a copy in each additional package of multi-package shipments.</td>
</tr>
<tr>
<td>Pipeline, tank car, or railroad cars for coal movements.</td>
<td>Forward with consignee copies.</td>
</tr>
</tbody>
</table>

**Payment by Defense Finance and Accounting Service, Columbus Center will be based on the source acceptance copies of DD Forms 250 forwarded to the contract administration office.
**Department of Defense**

**Ch. 2, App. F**

**MATERIAL INSPECTION AND RECEIVING REPORT**

**Table 2—Special Distribution**

<table>
<thead>
<tr>
<th>As required</th>
<th>Address</th>
<th>Number of copies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Each: Navy Status Control Activity, Army, Air Force, DLA Inventory Control Manager.</td>
<td>Address specified in contract</td>
<td>1</td>
</tr>
<tr>
<td>Transportation Office issuing GBL (attach to GBL memorandum copy).</td>
<td>Address specified by the assigned quality assurance representative</td>
<td>1</td>
</tr>
<tr>
<td>Purchasing Office other than office issuing contract.</td>
<td>Address specified in the contract</td>
<td>1</td>
</tr>
<tr>
<td>Foreign Military Sales Representative (Grant Aid shipments).</td>
<td>Address specified in the contract</td>
<td>1</td>
</tr>
<tr>
<td>Army Foreign Military Sales</td>
<td>Address specified by the assigned quality assurance representative</td>
<td>1</td>
</tr>
<tr>
<td>Air Force: On shipments of new production of aircraft and missiles, class 1410 missiles, 1510 aircraft (fixed wing, all types), 1520 aircraft (rotary wing), 1540 gliders, 1550 target drones.</td>
<td>Naval Inventory Control Point (Code 0142) for Foreign Military Sales/Military Assistance Program (Grant Aid) shipments to Canada.</td>
<td>1</td>
</tr>
<tr>
<td>When above items are delivered to aircraft modification centers.</td>
<td>Address specified in the contract</td>
<td>1</td>
</tr>
<tr>
<td>Foreign Military Sales/Military Assistance Program (Grant Aid) shipments to Canada.</td>
<td>Commander, U.S. Army Security Assistance Command, ATTN: AMSAC–OL, 54 “M” Avenue, Suite 1, New Cumberland, PA 17070–5096.</td>
<td>1</td>
</tr>
<tr>
<td>Other than Canada</td>
<td>HQ Air Force Materiel Command, LGX–AVDO, Area A, Building 262, Room N142, 4375 Chidlaw Road, Wright-Patterson AFB, OH 45433–5006.</td>
<td>1</td>
</tr>
<tr>
<td>When consignee is an Air National Guard Activity.</td>
<td>DCMA</td>
<td>1</td>
</tr>
<tr>
<td>Navy: Navy Foreign Military Sales</td>
<td>National Defence Headquarters, Ottawa, Ontario, Canada, K1A 0K4, ATTN: DPSUPS3.</td>
<td>1</td>
</tr>
<tr>
<td>When typed code (TC) 2T or 7T is shown in Block 16, or when shipment is consigned to another contractor’s plant for a Government representative or when Block 16 indicates shipment includes GFP.</td>
<td>Naval Inventory Control Point, Deputy Commander for International Programs (NAVICP Code P761), 700 Robbins Avenue, Philadelphia, PA 19111–5095.</td>
<td>2</td>
</tr>
<tr>
<td>Bulk Petroleum Shipments</td>
<td>Naval Inventory Control Point (Code 0143)</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>for all other material, 5450 Carlisle Pike, PO Box 2020, Mechanicsburg, PA 17055–0788.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>cognizant defense fuel region (see Table 4)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Consignee address (Block 13), ATTN: Property Officer.</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Naval Inventory Control Point, Deputy Commander for International Programs (NAVICP Code P761), 700 Robbins Avenue, Philadelphia, PA 19111–5098, and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Naval Inventory Control Point (Code 0143) for aviation type material, 700 Robbins Avenue, Philadelphia, PA 19111–5095.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Naval Inventory Control Point (Code 0143) for all other material, 5450 Carlisle Pike, PO Box 2020, Mechanicsburg, PA 17055–0788.</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Cognizant Defense Fuel Region (see Table 4)</td>
<td></td>
</tr>
</tbody>
</table>

**PART 5—PREPARATION OF THE DD FORM 250-1 (LOADING REPORT)**

**F-501 Instructions.**

Prepare the DD Form 250-1 using the following instructions when applied to a tanker or barge cargo lifting. If space is limited, use abbreviations. The block numbers correspond to those on the form.

(a) Block 1—Tanker/Barge. Line out “TANKER” or “BARGE” as appropriate and place an “X” to indicate loading report.

(b) Block 2—Inspection Office. Enter the name and location of the Government office conducting the inspection.

(c) Block 3—Report No. Number each form consecutively, starting with number 1, to correspond to the number of shipments made against the contract. If shipment is made from more than one location against the same contract, use this numbering system at each location.

(d) Block 4—Agency Placing Order on shipper, city, State and/or local address (loading). Enter the applicable Government activity.

(e) Block 5—Department. Enter military department owning product being shipped.

(f) Block 6—Prime contract or P.O. No. Enter the contract or purchase order number.

(g) Block 7—Name of prime contractor, city, State and/or local address (loading). Enter the name and address of the contractor as shown in the contract.

(h) Block 8—Storage contract. Enter storage contract number if applicable.

(i) Block 9—Terminal or refinery shipped from, city and/or local address. Enter the name and location of the contractor facility from which shipment is made. Also enter delivery point in this space as either “FOB Origin” or “FOB Destination.”
(j) Block 10—Order No. on supplier. Enter number of the delivery order, purchase order, subcontract or suborder placed on the supplier.

(k) Block 11—Shipped to: (receiving activity, city, State and/or local address. Enter the name and geographical address of the consignee as shown on the shipping order.

(l) Block 12—Contract No. If applicable, enter the initials and number of the bill of lading. If a commercial bill of lading is later authorized to be converted to a Government bill of lading, show “Com. B1L to GB1L.”

(m) Block 13—Reqn. or request No. Enter number and date from the shipping instructions.

(n) Block 14—Cargo No. Enter the cargo number furnished by the ordering office.

(o) Block 15—Vessel. Enter the name of tanker or barge.

(p) Block 16—Draft arrival. Enter the vessel’s draft on arrival.

(q) Block 17—Draft sailing. Enter the vessel’s draft on completion of loading.

(r) Block 18—Previous two cargoes. Enter the type of product constituting previous two cargoes.

(s) Block 19—Prior inspection. Leave blank.

(t) Block 20—Condition of shore pipeline. Enter condition of line (full or empty) before and after loading.

(u) Block 21—Appropriation (loading). Enter the appropriation number shown on the contract, purchase order or distribution plan. If the shipment is made from departmentally owned stock, show “Army, Navy, or Air Force (as appropriate) owned stock.”

(v) Block 22—Contract item No. Enter the contract item number applicable to the shipment.

(w) Block 23—Product. Enter the product nomenclature and grade as shown in the contract or specification, the stock or class number, and the NATO symbol.

(x) Block 24—Specifications. Enter the specification and amendment number shown in the contract.

(y) Block 25—Statement of quantity. Enter in the “LOADED” column, the net barrels, net gallons, and long tons for the cargo loaded. NOTE: If more than ½ of 1 percent difference exists between the ship and shore quantity figures, the contractor shall immediately investigate to determine the cause of the difference. If necessary, prepare corrected documents; otherwise, put a statement in Block 28 as to the probable or actual cause of the difference.

(z) Block 26—Statement of quality. (1) Under the heading “TESTS” list all inspection acceptance tests of the specification and any other quality requirements of the contract.

(2) Under the heading “SPECIFICATION LIMITS” list the limits or requirements as stated in the specification or contract directly opposite each entry in the “TESTS” column. List waivers to technical requirements.

(3) Under the heading “TEST RESULTS” list the test results applicable to the storage tank or tanks from which the cargo was lifted. If more than one storage tank is involved, list the tests applicable to each tank in separate columns headed by the tank number, the date the product in the tank was approved, and the quantity loaded from the tank. Each column shall also list such product characteristics as amount and type of corrosion inhibitor, etc.

(aa) Block 27—Time statement. Line out “DISCHARGE” and “DISCHARGING.” Complete all applicable entries of the time statement using local time. Take these dates and times from either the vessel or shore facility log. The Government representative shall ensure that the logs are in agreement on those entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reasons in Block 28—REMARKS. Do not enter the date and time the vessel left berth on documents placed aboard the vessel. The date and time shall appear on all other copies. Express all dates in sequence of day, month, and year with the month spelled out or abbreviated (e.g., 10 Sept. 67). The term FINISHED BAL-LAST DISCHARGE is meant to include all times needed to complete deballasting and mopping/drying of ship’s tanks. The inspection of ship’s tanks for loading is normally performed immediately upon completion of drying tanks.

(bb) Block 28—Remarks. Use this space for reporting—(1) All delays, their cause and responsible party (vessel, shore facility, Government representative, or other),

(2) Details of loading abnormalities such as product losses due to overflow, leaks, delivery of product from low level in shore tanks, etc.

(3) In the case of multiple consignees, enter each consignee, the amount consigned to each, and if applicable, the storage contract numbers appearing on the delivery order.

(4) When product title is vested in the U.S. Government, insert in capital letters “U.S. GOVERNMENT OWNED CARGO.” If title to the product remains with the contractor and inspection is performed at source with acceptance at destination, insert in capital letters “CONTRACTOR OWNED CARGO.”

(5) Seal numbers and location of seals. If space is not adequate, place this information on the ullage report or an attached supplemental sheet.

(cc) Block 29—Company or receiving terminal. Line out “OR RECEIVING TERMINAL” and get the signature of the supplier’s representative.

(dd) Block 30—Certification by government representative. Line out “DISCHARGED.” The Government representative shall date...
and sign the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing this certification, as well as the names supplied in Blocks 29 and 31, shall be typed or hand lettered. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

(v) Block 31—Certification by master or agent. Obtain the signature of the master of the vessel or its agent.

PART 6—PREPARATION OF THE DD FORM 250-1 (DISCHARGE REPORT)

F-601 Instructions.

Prepare the DD Form 250-1 using the following instructions when applied to a tanker or barge discharge. If space is limited, use abbreviations. The block numbers correspond to those on the form.

(a) Block 1—Tanker/barge. Line out “TANKER” or “BARGE” as applicable and place an “X” to enter discharge report.

(b) Block 2—Inspection office. Enter Government activity performing inspection on the cargo received.

(c) Block 3—Report No. Leave blank.

(d) Block 4—Agency placing order on shipper, city, state and/or local address (loading). Enter Government agency shown on loading report.

(e) Block 5—Department. Enter Department owning product being received.

(f) Block 6—Prime contract or P.O. No. Enter the contract or purchase order number shown on the loading report.

(g) Block 7—Name of prime contractor, city, state and/or local address (loading). Enter the name and location of contractor who loaded the cargo.

(h) Block 8—Storage contract. Enter the number of the contract under which material is placed in commercial storage where applicable.

(i) Block 9—Terminal or refinery shipped from, city, state and/or local address. Enter source of cargo.

(j) Block 10—Order no. on supplier. Make same entry appearing on loading report.

(k) Block 11—Shipped to: (receiving activity, city, state and/or local address (loading). Enter receiving activity’s name and location.

(l) Block 12—B/L Number. Enter as appears on loading report.

(m) Block 13—Reqn. or Request No. Leave blank.

(n) Block 14—Cargo No. Enter cargo number shown on loading report.

(o) Block 15—Vessel. Enter name of tanker or barge discharging cargo.

(p) Block 16—Draft arrival. Enter draft of vessel upon arrival at dock.

(q) Block 17—Draft sailing. Enter draft of vessel after discharging.

(r) Block 18—Previous two cargoes. Leave blank.

(s) Block 19—Prior inspection. Enter the name and location of the Government office which inspected the cargo loading.

(t) Block 20—Condition of shore pipeline. Enter condition of line (full or empty) before and after discharging.

(u) Block 21—Appropriation (loading). Leave blank.

(v) Block 22—Contract item no. Enter the item number shown on the loading report.

(w) Block 23—Product. Enter information appearing in Block 23 of the loading report.

(x) Block 24—Specifications. Enter information appearing in Block 24 of the loading report.

(y) Block 25—Statement of quality. Enter applicable data in proper columns.

(1) Take “LOADED” figures from the loading report.

(2) Determine quantities discharged from shore tank gauges at destination.

(3) If a grade of product is discharged at more than one point, calculate the loss or gain for that product by the final discharge point. Report amounts previously discharged on discharge reports prepared by the previous discharge points. Transmit volume figures by routine message to the final discharge point in advance of mailed documents to expedite the loss or gain calculation and provide proration data when more than one department is involved.

(4) The loss or gain percentage shall be entered in the “PERCENT” column followed by “LOSS” or “GAIN,” as applicable.

(5) On destination acceptance shipments, accomplish the “DISCHARGED” column only, unless instructed to the contrary.

(a) Block 26—Statement of quality. Under the heading “TESTS” enter the verification tests performed on the cargo preparatory to discharge.

(b) Block 27—Time statement. Enter “LOAD” and “LOADING.” Complete all applicable entries of the time statement using local time. Take the dates and times from either the vessel or shore facility log. The Government representative shall ensure that these logs are in agreement with entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reason(s) in Block 28—REMARKS. Do not enter the date and time the vessel left berth on documents placed aboard the vessel. The date and time shall appear on all other copies. Express all dates in sequence of day, month, and year with the month spelled out or abbreviated (e.g., 10 Sept. 67).

(b) Block 28—Remarks. Use this space for reporting important facts such as—
(1) Delays, their cause, and responsible party (vessel, shore facility, Government representative, or others).

(2) Abnormal individual losses contributing to the total loss. Enter the cause of such losses as well as actual or estimated volumes involved. Such losses shall include, but not be restricted to, product remaining aboard (enter tanks in which contained), spillages, line breaks, etc. Note where gravity group change of receiving tank contents results in a fictitious loss or gain. Note irregularities observed on comparing vessel ullages obtained at loading point with those at the discharge point if they indicate an abnormal transportation loss or contamination.

(cc) Block 29—Company or receiving terminal. Line out “COMPANY OR.” Secure the signature of a representative of the receiving terminal.

(dd) Block 30—Certification by government representative. Line out “LOADED.” The Government representative shall date and sign the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing the certification as well as the names applied in Blocks 29 and 31, shall be typed or lettered on the master or all copies of the form. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

(ee) Block 31—Certification by master or agent. Obtain the signature of the master of the vessel or the vessel’s agent.

PART 7—DISTRIBUTION OF THE DD FORM 250-1

F-701 Distribution.

(a) The Government representative shall distribute the completed DD Form 250-1 using Table 3 of this appendix as amended by the provisions of the contract or shipping order.

(b) The contractor shall furnish the Government representative sufficient copies of the completed form to permit the required distribution.

(c) Distribution of the form shall be made as soon as possible, but not later than 24 hours following completion of the form. (See Table 3 on following pages)

F-702 Corrected DD Form 250-1.

When errors are made in entries on the form which would affect payment or accountability, make corrected copies. Circle the corrected entries on all copies and mark the form “CORRECTED COPY.” Enter the statement, “Corrections Have Been Verified,” in Block 26 with the authorized Government representative’s dated signature directly below. Make distribution of the certified corrected copy to all recipients of the original distribution.

<table>
<thead>
<tr>
<th>Type of shipment</th>
<th>Recipient of DD Form 250-1</th>
<th>Number of copies</th>
<th>Loading (Prepared by shipper or Government representative)</th>
<th>Discharge (Prepared by receiving activity)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Tanker</td>
<td>Barge</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1</td>
<td></td>
</tr>
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<td></td>
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<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>As Required</td>
<td></td>
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<td>As Required</td>
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<td>As Required</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>As Required</td>
<td></td>
</tr>
</tbody>
</table>

**Table 3**

On all USNS tankers and all MSC chartered tankers and MSC chartered barges.
<table>
<thead>
<tr>
<th>Type of shipment</th>
<th>Recipient of DD Form 250-1</th>
<th>Number of copies</th>
<th>Loading (Prepared by shipper or Government representative)</th>
<th>Discharge (Prepared by receiving activity)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Tanker</td>
<td>Barge</td>
<td>Tanker</td>
</tr>
<tr>
<td>For shipments and receipts of DESC-financed cargoes for which DFAS-CO is not the paying office.</td>
<td></td>
<td>1 ..........</td>
<td>1 ..........</td>
<td>1 ..........</td>
</tr>
<tr>
<td>For shipments on all USNS tankers, MSC chartered tankers and barges, and FOB destination tankers with copy of ullage report.</td>
<td></td>
<td>1 ..........</td>
<td>1 ..........</td>
<td>1** ..........</td>
</tr>
<tr>
<td>On all shipments to AF Bases ..........</td>
<td>Directorate of Energy Management, SA ALC(SFT), Kelly AFB, TX 78241-5000.</td>
<td>1 ..........</td>
<td>1 ..........</td>
<td>1 ..........</td>
</tr>
<tr>
<td>On all CONUS loadings .................</td>
<td>DESC Region(s) cognizant of shipping point.</td>
<td>1 ..........</td>
<td>1 ..........</td>
<td>1 ..........</td>
</tr>
<tr>
<td>On all shipments to CONUS Destinations.</td>
<td>DESC Region(s) cognizant of shipping and receiving point.</td>
<td>1 ..........</td>
<td>1 ..........</td>
<td>0 ..........</td>
</tr>
</tbody>
</table>

*With copy of ullage report.
Ch. 2, App. G

APPENDIX G TO CHAPTER 2—ACTIVITY ADDRESS NUMBERS

Table of Contents

Part 1—General.
G-100 Scope
G-101 Assignment and use of a number
G-102 Activity address number data base maintenance
Part 2—Army Activity Address Numbers.
Part 3—Navy Activity Address Numbers.
Part 4—Marine Corps Activity Address Numbers.
Part 5—Air Force Activity Address Numbers.
Part 6—Defense Logistics Agency Activity Address Numbers.
Part 7—Defense Information Systems Agency Activity Address Numbers.
Part 8—National Imagery and Mapping Agency Activity Address Numbers.
Part 9—Defense Threat Reduction Agency Activity Address Numbers.
Part 10—Miscellaneous Defense Activities Address Numbers.
Part 12—Missile Defense Agency Activity Address Numbers.

Part 13—Defense Commissary Agency Activity Address Numbers.
Part 14—United States Special Operations Command Activities Address Numbers.


PART 1—GENERAL

G-100 Scope.
This appendix identifies the activity address numbers to be used with the uniform procurement instrument identification number system prescribed in DFARS subpart 204.70.

G-101 Assignment and use of a number.
(a) Activities coding solicitations, contracts and related instruments shall use only those codes assigned by their respective department/agency activity address monitors.
(b) The six-character code is used in the first six positions of the procurement instrument identification number (PIN). When required, activities also will be assigned a two position code. The two position code is used in the first two positions of the call/order serial number.
(c) Activity address monitors are—
Department of Defense

**ARMY**
Department of the Army, Attn: OSA(RDA)-PA, 510 Leesburg Pike, Suite 916, Falls Church, VA 22041–3201

**NAVY**
Defense Finance and Accounting Service, Cleveland (Code AADB), 1246 East Ninth Street, Cleveland, OH 44198–4000

**MARINE CORPS**
Headquarters, U.S. Marine Corps, 2 Navy Annex, Room 2135, Washington, DC 20380–1775

**AIR FORCE**
SAF/AQCP, 1060 Air Force Pentagon, Washington, DC 20330–1060

**DEFENSE LOGISTICS AGENCY**

**OTHER DEFENSE AGENCIES**
All other Defense agencies will forward requests for Appendix G maintenance to the Department of the Army, OSA(RDA)-PA.

*The Navy and Marine Corps Activity Address Monitor for assignment of two-character call/order serial numbers is: Office of the Assistant Secretary of the Navy (RD&A), 2211 South Clark Place, Crystal Plaza 5, Room 506, Arlington, VA 22202–3738.

**G–102 Activity address number data base maintenance.**

(a) The Defense Logistics Agency, DLA–PS, Cameron Station, Alexandria, VA 22304–6100 is the executive agent for maintenance of six and two character code assignments. The executive agency distributes blocks of two character codes to department/agency activity address monitors for further assignment.

(b) Contracting activities submit requests for assignment of or changes in either the six character or two character codes to their activity address monitor in accordance with department/agency procedures. Activity address monitors—

(1) Approve request for additions, deletions, or changes;

(2) Notify the executive editor. Defense Acquisition Regulations System, OUSD(AT&L)/DP(DAR), 3062 Defense Pentagon, Washington, DC 20301–3002; and

(3) Provide a copy of the notification to the executive agent.

(c) A copy of the appendix G data base is available on tape or MS–DOS compatible floppy diskettes from the executive agent.

**PART 2—ARMY ACTIVITY ADDRESS NUMBERS**

<table>
<thead>
<tr>
<th>Activity Address Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>DAAA00, B1 Pine Bluff Arsenal, ATTN: SIOPB–PO, 10020 Kabrich Circle, Pine Bluff, AR 71602–9500</td>
<td></td>
</tr>
<tr>
<td>DAAA08, B7 Rock Island Arsenal, ATTN: SIOT–CT, Rock Island, IL 61299–5000</td>
<td></td>
</tr>
<tr>
<td>DAAA09, BA U.S. Army Industrial Operations Command, ATTN: AMSIO–ACS, Rock Island, IL 61299–6000</td>
<td></td>
</tr>
<tr>
<td>DAAA10, BX Blue Grass Army Depot Procurement Office, Building S–14, ATTN: SIOB–PO 2091 Kingston Highway, Richmond, KY 40475–5115</td>
<td></td>
</tr>
<tr>
<td>DAAA12, ZM Sierra Army Depot, Building 74, Herlong, CA 96113–5009</td>
<td></td>
</tr>
<tr>
<td>DAAA14, BK Tooele Army Depot, Contracting Office, ATTN: SIOTE–CD, Building S–9, Tooele, UT 84074–6839</td>
<td></td>
</tr>
<tr>
<td>DAAA22, BV Watervliet Arsenal, ATTN: SIOW–FQP, Building 10, Watervliet, NY 12189–6550</td>
<td></td>
</tr>
<tr>
<td>DAAA31, GJ McAlester Army Ammunition Plant, ATTN: SIOMC–PC 1 C Tree Road, McAlester, OK 74501–9002</td>
<td></td>
</tr>
<tr>
<td>DAAA32, 6P Crane Army Ammunition Activity ATTN: SIOC–CT 305 Highway 361, Crane, IN 47522–6099</td>
<td></td>
</tr>
<tr>
<td>DAAA33 U.S. Army Combat Equipment Group–Asia 103 Guidance Road, Goose Creek, SC 29445–6060</td>
<td></td>
</tr>
<tr>
<td>DAAA34 Seneca Army Depot Activity, ATTN: SIOSE–IR 5786 State Route 96, Building 115, Romulus, NY 14541–5001</td>
<td></td>
</tr>
<tr>
<td>DAAAB22, E7 U.S. Army Communications–Electronics Command, AP–M–European</td>
<td></td>
</tr>
</tbody>
</table>
Department of Defense

Building 606, PO Box 140, Fort Leonard Wood, MO 65473-0140
DABT73, 2H U.S. Army Field Artillery Center and Fort Sill, ATTN: ATZQR, Building 1903, PO Box 3501, Fort Sill, OK 73553-0501
DABT74, 2J Carlisle Barracks, ATTN: ATZEDOC-C, 314 Lovell Avenue, Suite 1, Carlisle Barracks, PA 17013-5072
DABT77, 2K U.S. Army Training Center and Fort Jackson, ATTN: ATZJDOC, Building 4349, Magruder Street, Fort Jackson, SC 29207-5491
DABT71, 2L U.S. Army Air Defense Artillery Center and Fort Bliss, ATTN: ATZDOCU, Building 2021, 1733 Pleasonton Road, Fort Bliss, TX 79916-5816
DABT75, 2N Directorate of Procurement Contracting, ATTN: ATZPDC, Building 3746, Harrison Loop, Fort Eustis, VA 23604-5293
DABT79, 2Q U.S. Army Combined Arms Support Command and Fort Lewis, ATTN: ATZMDOC, 1830 Quartermaster Road, Fort Lewis, WA 98404-1006
DABT80, 1L TRADOC Contracting Activity, ATTN: ATCACU, Building 2798, Fort Eustis, VA 23604-5388
DABT81, BF The Judge Advocate General’s School, U.S. Army, Virginia, ATTN: JAGSSL-B 600 Massie Road, Charlottesville, VA 22903-1781
DABT83, BL U.S. Army Intelligence Center and Fort Huachuca, ATTN: ATZSK-DK, PO Box 12748, Fort Huachuca, AZ 85610-2748
DABT85, B0 Mission Contracting Activity at Fort Leavenworth, ATTN: ATTRAL, Room 303, 600 Thomas Avenue, Fort Leavenworth, KS 66027-1389
DABT76, 0Q Commander DLIFLC & POM, ATTN: ATZPDOC, Building 768, Plummers Street, Presidio of Monterey, CA 93944-5006
DACA01, DACW01, CK U.S. Army Engineer District, Mobile, ATTN: CESAM-CT, PO Box 2238, Mobile, AL 36623-0001
DACA02, DACW02, US Army Corps of Engineers, ATTN: CEPRZA, 20 Massachusetts Avenue NW, Washington, DC 20314-1000
DACA03, DACW03, CL U.S. Army Engineer District, Little Rock, ATTN: CESWL-CT, PO Box 867, Little Rock, AR 72203-0867
DACA05, DACW05, CM U.S. Army Engineer District, Sacramento, ATTN: CESPK-CT, 1325 J Street, Sacramento, CA 95814-2922
DACA07, DACW07, CP U.S. Army Engineer District, San Francisco, ATTN: CESFP-CT, 333 Market Street, San Francisco, CA 94105-2195
DACA09, DACW09, CQ U.S. Army Engineer District, Los Angeles, ATTN: CESPL-CT, PO Box 32711, Los Angeles, CA 90053-3255
DACA17, DACW17, CS U.S. Army Engineer District, Jacksonville, ATTN: CESAJ-CT, PO Box 4970, Jacksonville, FL 32232-0019
DACA21, DACW21, CV U.S. Army Engineer District, Savannah, ATTN: CESSAS-CT, PO Box 889, Savannah, GA 31402-0889
DACA23, DACW23, CX U.S. Army Engineer District, Chicago, ATTN: CELRC-CT, 111 North Canal Street, Chicago, IL 60606-7206
DACA25, DACW25, CD U.S. Army Engineer District, Rock Island, Clock Tower Building, ATTN: CEMVR-CT, PO Box 2004, Rock Island, IL 61204-2004
DACA27, DACW27, CY U.S. Army Engineer District, Louisville, ATTN: CELRL-CT, PO Box 59, Louisville, KY 40201-0059
DACA29, DACW29, C2 U.S. Army Engineer District, New Orleans, ATTN: CEMVN-CT, PO Box 6287, New Orleans, LA 70160-0267
DACA31, DACW31, DA U.S. Army Engineer District, Baltimore, Contracting Division, ATTN: CENAB-CT, PO Box 1715, Baltimore, MD 21203-1715
DACA33, DACW33, DB U.S. Army Engineer District, New England, ATTN: CENAE-CT, 969 Virginia Road, Concord, MA 01742-2701
DACA35, DACW35, DC U.S. Army Engineer District, Detroit, ATTN: CELRE-CT, PO Box 1027, Detroit, MI 48211-1027
DACA37, DACW37, DD U.S. Army Engineer District, District, Pittsburgh, PA 15222-3453
DACA39, DACW39, DJ U.S. Army Engineer District, District, Vicksburg, MS 39183-3455
DACA41, DACW41, DH U.S. Army Engineer District, Kansas City, ATTN: CENWK-CT, 700 Federal Building 601 East 12th Street, Kansas City, MO 64106-2386
DACA42, DACW42, DF Vicksburg Consolidated Contracts Office, ATTN: ERDC, 415 Clay Street, Vicksburg, MS 38693-3453
DACA43, DACW43, DJ U.S. Army Engineer District, St. Louis, ATTN: CEMVS-CT, 1222 Spruce Street, St. Louis, MO 63103-2833
DACA45, DACW45, DK U.S. Army Engineer District, Omaha, ATTN: CENWO-CT, 215 North 17th Street, Omaha, NE 68102-4978
DACA47, DACW47, DM U.S. Army Engineer District, Albuquerque, ATTN: CESPA-CT, 4101 Jefferson Plaza NE, Albuquerque, NM 87109-3455
DACA49, DACW49, DN U.S. Army Engineer District, Buffalo, ATTN: CELRB-CT, 1776 Niagara Street, Buffalo, NY 14207-3199
DACA51, DACW51, CE U.S. Army Engineer District, New York, Contracting Division, ATTN: CENAN-CT, 26 Federal Plaza, New York, NY 10029-0690
DACA54, DACW54, DQ U.S. Army Engineer District, Wilmington, ATTN: CESAW-CT, PO Box 1900, Wilmington, NC 28402-1890
DACA56, DACW56, DS U.S. Army Engineer District, Tulsa, ATTN: CESWT-CT, 1645 South 101st East Avenue, Tulsa, OK 74106-4069
DACA57, DACW57, DT U.S. Army Engineer District, Portland, ATTN: CENWF-CT, PO Box 2848, Portland, OR 97281-2848
DACA59, DACW59, DV U.S. Army Engineer District, Pittsburgh, ATTN: CELRP-CT, 100 Liberty Avenue, Pittsburgh, PA 15222-4186

Ch. 2, App. G
DACA60, DACW60, DW  U.S. Army Engineer District, Charleston, ATTN: CESAC-CT, PO Box 919, Charleston, SC 29402-0919
DACA61, DACW61, CF  U.S. Army Engineer District, Philadelphia, Contracting Division, ATTN: CENAP-CT, 110 Penn Square East, Wannamaker Building, Philadelphia, PA 19140–3393
DACA62, DACW62, DX  U.S. Army Engineer District, Nashville ATTN: CELRN-CT, PO Box 1070, Nashville, TN 37202–1070
DACA63, DACW63, DY  U.S. Army Engineer District, Fort Worth, ATTN: CESWP-CT, PO Box 17300, Fort Worth, TX 76102–0300
DACA64, DACW64, DZ  U.S. Army Engineer District, Galveston, ATTN: CESWG-CT, PO Box 1229, Galveston, TX 77553–1229
DACA65, DACW65, EA  U.S. Army Engineer District, Norfolk, ATTN: CENAO-CT, 803 Front Street, Norfolk, VA 23510–1096
DACA66, DACW66, EB  U.S. Army Engineer District, Memphis, ATTN: CEMVM-CT, 167 North Main Street, Room B–202, Memphis, TN 38103–1894
DACA67, DACW67, EC  U.S. Army Engineer District, Seattle, ATTN: CENWS-CT, PO Box 3755, Seattle, WA 98124–3755
DACA68, DACW68, EW  U.S. Army Engineer District, Walla Walla, ATTN: CENWW-CT, 201 North 3rd Avenue, Walla Walla, WA 99362–1876
DACA69, DACW69, CG  U.S. Army Engineer District, Huntington, ATTN: CELRH-CT, 502 8th Street, Huntington, WV 25701–2070
DACA72, DACW72, ZA  U.S. Army Humphreys Engineer Center Support Activity, ATTN: CEHEC-CT, Kingman Building, Alexandria, VA 22315–3860
DACA75, DACW75, ZC  U.S. Army Engineer Ordinance Program Division, ATTN: CETAC-OP-CC, APO AE 09803–1300
DACA78, DACW78, 9V  Transatlantic Programs Center, ATTN: CETAC-CT, 201 Prince Frederick Drive, Winchester, VA 22602–5000
DACA79, DACW79, 2R  U.S. Army Engineer District, Japan, ATTN: CEPOJ-CT Unit 45010, APO AP 96338–5010
DACA81, DACW81, CN  U.S. Army Engineer District, Far East, ATTN: CEPOF-CT, Unit 15546, APO AP 96205–6100
DACA83, DACW83, ZH  U.S. Army Engineer District, Honolulu, ATTN: CEPOH-CT, Building 230, Fort Shafter, HI 96856–5540
DACA85, DACW85, ZJ  U.S. Army Engineer District, Alaska, ATTN: CEPOA-CT, PO Box 898, Anchorage, AK 99506–0898
DACA87, DACW87, ZW  U.S. Army Engineer and Support Center, Huntsville, ATTN: CEHNC-CT, PO Box 1600, Huntsville, AL 35807–4301
DACA90, DACW90, 2S  U.S. Army Engineer District, Europe, ATTN: CENAU-CT, CMR 410, Box 7, APO AE 09096–9401
DADA03, 8W  Fitzsimons U.S. Army Garrison, Directorate of Contracting, ATTN: MCHG–DC, 205 McCloskey Avenue, Aurora, CO 80015–5000
DADA08, BT  Dwight David Eisenhower Medical Center, Southwest Regional Contracting Office, ATTN: MCAC–SIE, 39706 40th Street, Fort Gordon, GA 30905–5650
DADA09, YY  William Beaumont Army Medical Center, Great Plains Regional Contracting Office, ATTN: MCAC–GP, Building 7777, 500 North Piedras Street, El Paso, TX 79920–5001
DADA10, 2Q  U.S. Army Medical Command, Medical Contracting Center, ATTN: MCAC–C, Building 4197, 2197 17th Street, Fort Sam Houston, TX 78234–5015
DADA13, 6W  Madigan Army Medical Center, Western Regional Contracting Office, ATTN: MCAC–P, Building 160, Krukowski Road, Honolulu, HI 96850–5000
DADW30, 0F  Fort Myer Military Community, Directorate of Contracting, ATTN: ANMY–GC, 204 Lee Avenue, Fort Myer, VA 22211–1199
DADW35, 2M  MDW Acquisition Center, 9410 Jackson Loop, Fort Belvoir, VA 22060–5134
DADW36, 1J  Fort Meade Directorate of Contracting, ATTN: ANME–GC, Building 2224, Fort George G. Meade, MD 20755–5081
DADW39, OS  Fort Hamilton Military Community, ATTN: ANFH–GC, Building 111, Brooklyn, NY 11223
DADW49, OM  National Defense University, Building 62, Room 203, 300 5th Avenue, Fort McNair, DC 20319–3006
DAHA01, 9B  USPPO for Alabama, PO Box 3715, Montgomery, AL 36109–9715
DAHA02, 0G  USPPO for Arizona, 5645 East McDowell Road, Phoenix, AZ 85008–3442
DAHA03, 9D  USPPO for Arkansas, Camp Robinson, North Little Rock, AR 72199–9600
DAHA04, 9N  USPPO for California, PO Box 8194, San Luis Obispo, CA 93403–8194
DAHA05, ZB  USPPO for Colorado, ATTN: Mail Stop 5J, 660 South Aspen Street, Building 1005, Aurora, CO 80011–9511
DAHA06, 1S  USPPO for Connecticut, State Armory, ATTN: Contracting Officer, 360 Broad Street, Hartford, CT 06105–3790
DAHA07, 9A  USPPO for Delaware, Grier Building, 1161 River Road, New Castle, DE 19720–5199
DAHA08, 2W  USPPO for Florida, PO Box 1008, St. Augustine, FL 32085–1008
DAHA09, C0  USPPO for Georgia, PO Box 17882, Atlanta, GA 30316–0882
DAHA10, C1  USPPO for Idaho, 3489 West Harvard Street, Boise, ID 83705–5004
DAHA12, 4K USPFO for Indiana, 2002 South Holt Road, Indianapolis, IN 46241–4839
DAHA13, 9L USPFO for Iowa, Camp Dodge, 7700 NW Beaver Drive, Johnston, IA 50131–1902
DAHA14, 4Z USPFO for Kansas, 2737 South Kansas Avenue, Topeka, KS 66611–1170
DAHA15, 6P USPFO for Kentucky, Boone National Guard Center, 120 Minuteman Parkway, Frankfort, KY 40601–6192
DAHA16, 0A USPFO for Louisiana, Building 39, New Orleans, LA 70146–6330
DAHA17, 0H USPFO for Maine, Camp Keys, Augusta, ME 04333–0602
DAHA18, 0C USPFO for Maryland, State Military Reservation, 301 Old Bay Lane, Harre de Grace, MD 21078–4904
DAHA19, 0D USPFO for Massachusetts, ATTN: Contracting Officer, 50 Maple Street, Milford, MA 01757–3604
DAHA20, 9P USPFO for Michigan, 3111 West Joseph Street, Lansing, MI 48913–5102
DAHA21, 9K USPFO for Minnesota, Camp Ripley, 15000 Highway 115, Little Falls, MN 56345–4173
DAHA22, CW USPFO for Mississippi, 144 Military Drive, Jackson, MS 39206–8889
DAHA23, 9H USPFO for Missouri, 7101 Military Circle, Jefferson City, MO 65101–1200
DAHA24, 9P USPFO for Montana, PO Box 1157, Helena, MT 59624–1157
DAHA25, 9S USPFO for Nebraska, 1234 Military Road, Lincoln, NE 68506–1092
DAHA26 USPFO for Nevada, 2601 South Carson Street, Carson City, NV 89701–5596
DAHA27, 9U USPFO for New Hampshire, PO Box 2003, Concord, NH 03302–2003
DAHA28, ZK USPFO for New Jersey, 131 Eggert Crossing Road, Lawrenceville, NJ 08648–2805
DAHA29 USPFO for New Mexico, ATTN: Contracting Officer, 97 Bataan Road, Santa Fe, NM 87502–4277
DAHA30, D2 USPFO for New York, 330 Old Niskayuna Road, Latham, NY 12110–2224
DAHA31, D3 USPFO for North Carolina, 4201 Reedy Creek Road, Raleigh, NC 27607–6412
DAHA32, D6 USPFO for North Dakota, PO Box 5511, Bismarck, ND 58506–5511
DAHA33, 9M USPFO for Ohio, 2811 West Dublin-Granville Road, Columbus, OH 43235–2788
DAHA34, 9J USPFO for Oklahoma, 3335 Military Circle NE, Oklahoma City, OK 73111–4369
DAHA35, 1X USPFO for Oregon, ATTN: USPFO–P, PO Box 14840, Salem, OR 97309–8408
DAHA36, DL USPFO for Pennsylvania, Department of Military Affairs, ATTN: Contracting Officer, Annville, PA 17003–5003
DAHA37, 9W USPFO for Rhode Island, 330 Camp Street, Providence, RI 02906–1864
DAHA38, DU USPFO for South Carolina, 9 National Guard Road, Columbia, SC 29201–4766
DAHA39, VQ USPFO for South Dakota, 2823 West Main Street, Rapid City, SD 57702–8186
DAHA40, YX USPFO for Tennessee, Powell Avenue, PO Box 40748, Nashville, TN 37204–0748
DAHA41, 9C USPFO for Texas, ATTN: Contracting Officer, PO Box 5218, Austin, TX 78753–5218
DAHA42, USPFO for Utah, PO Box 2000, Draper, UT 84020–2000
DAHA43 USPFO for Vermont, Camp Johnson, Building 3, PO Box 2000, Colchester, VT 05446–3004
DAHA44, ZR USPFO for Virginia, Building 316, Fort Pickett, Blackstone, VA 23824–6316
DAHA45, 2X USPFO for Washington, Building 32, Camp Murray, Tacoma, WA 98430–5000
DAHA46 USPFO for West Virginia, 50 Armor Road, Buckhannon, WV 26201–2396
DAHA47, 9G USPFO for Wisconsin, 8 Madison Boulevard, Camp Douglas, WI 54618–5002
DAHA48 USPFO for Wyoming, 5500 Bishop Boulevard, Cheyenne, WY 82009–3320
DAHA49 USPFO for the District of Columbia, Naval District of Washington, 189 Poremba Court SW, Washington, DC 20373
DAHA50 USPFO for Hawaii, 4208 Diamond Head Road, Honolulu, HI 96816–4495
DAHA51, Z2 USPFO for Alaska, P&G Division, PO Box B, Camp Denacl, Fort Richardson, AK 99505–2600
DAHA52 USPFO for Puerto Rico, PO Box 34968, Fort Buchanan, PR 00964–4683
DAHA57, 3N USPFO for Virgin Islands, RR #2, Box 9200, Kinghill, VI 00890–9200
DAHA74 USPFO for Guam, 622 East Harmon Industrial Park Road, Tamuning, GU 96911–4222
DAHA90, 2Y National Guard Bureau, Contracting Support, 1411 Jefferson Davis Highway, Arlington, VA 22202–3231
DAJA01, 9Q RCO Vizcaya, ATTN: AEUCC–I, Unit 31401, Box 33, APO AE 09630–4033
DAJA02, G5 RCO Seckenheim, ATTN: AEUCC–S, Unit 28331, APO AE 09296–0509
DAJA16, 6X RCO Grafenwoehr, ATTN: AEUCC–G, Unit 28130, APO AE 09114–8130
DAJA22, G6 Wiesbaden Regional Contracting Center, G6 ATTN: AEUCC–C, CMR 410, Box 741, APO AE 09096–0741
DAJA61, 9Z RCO Benelux, ATTN: AEUCC–B, PSC 79, Box 003, APO AE 09724–0003
DAJAH7 HQ, USAACE (Contracting Cell, Deployed), ATTN: AEUCC–O, Unit 20004, APO AE 09256–0509
DAJAH9, F0 RCO Wuerzburg, ATTN: AEUCC–W, Unit 26622, APO AE 09244–6622
DAJAH9, 9T RCO Bad Kreuznach, ATTN: AEUCC–B, Unit 24335, APO AE 09252–4355
PART 3—NAVY ACTIVITY ADDRESS NUMBERS

*An asterisk indicates a two-digit code of a major command that is shared with subordinate activities. Such subordinate activities will indicate the Unit Identification Code of
the major command in parentheses, e.g.,
(MAJ00011).
N00012, HX*, V8*, V8Y Assistant for Administration, Under Secretary of the Navy, 1000 Navy Pentagon, Washington, DC 20350–1000
N00013, MR Judge Advocate General, Hoffman Building 2, Room RN-45N, 200 Stovall Street, Alexandria, VA 22332–2400
N00014, EE*, EE0–9 Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5660
N00015, L0*, L0Z Director, Office of Naval Intelligence, 4251 Suttle Road, Washington, DC 20355–5720
N00019, EF*, GU*, EF0–9 Commander, Naval Air Systems Command (Code T), 47123 Buse Road, Unit IPT, Patuxent River, MD 20670–1547
N00022, 4J*, 4L*, 4J0–9 Commander, Naval Supply Systems Command, PO Box 3590, 5450 Carlisle Pike, Mechanicsburg, PA 17055–0791
N00024, EH*, UG*, EH0–9 Commander, Naval Sea Systems Command, 2231 Jefferson Davis Highway, Arlington, VA 22242–5160
N00030, EK*, EKO–9 Strategic Systems Programs, 3801 Nebraska Avenue, Washington, DC 20393–5440
N00038, (MAJ00011), LB–5 Commander-in-Chief, U.S. Pacific Command, Box 44017, Camp H. M. Smith, HI 96861–4017
N00039, NS*, NS0–9 Commander, Space and Naval Warfare Systems Command, 4301 Pacific Highway, San Diego, CA 92138–3127
N00062, RA*, LR*, R0*, RA0–9 Chief of Naval Education and Training, Code 013, NAS, Pensacola, FL 32508–5100
N00063, NT*, NTZ Naval Computer and Telecommunications Command, 4401 Massachusetts Avenue NW, Washington, DC 20394–5460
N00069, 8Q*, 8QZ Naval Security Group HQ, 9800 Savage Road, Suite 6365, Fort George Meade, MD 20773–6365
N00102, EN Commander, Portsmouth Naval Shipyard, Building 153, 6th Floor, Portsmouth, NH 03804–5000
N00104, EP, EQ Commander, Naval Inventory Control Point, 5450 Carlisle Pike, Box 2020, Mechanicsburg, PA 17055–0788
N00105, JT Commander, Naval Ambulatory Care Center, 1 Ayres Circle, Building H–1, Portsmouth, NH 03804–5000
N00123, ES Commanding Officer, Fleet and Industrial Supply Center, 8Q, 9 Commander, Naval Forces, Europe, (London, UK), FPO AE 09499–5160
N00140, EX, LA Officer-in-Charge, Fleet and Industrial Supply Center, Norfolk, VA 23514–5063
N00153, N0 Governor, Naval Home, 01800 East Beach Boulevard, Gulfport, MS 39501–3111
N00158, 3V Commanding Officer, Naval Air Station, Joint Reserve Base, PO Box 21, Willow Grove, PA 19090–5021
N00161, FA Superintendent, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000
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N00164, FC Commander, Crane Division, Naval Surface Warfare Center, 300 Highway 361, Building 64, Crane, IN 47522–5001
N00166, (MAJ00011), LCO–1 Commanding Officer, Naval Air Facility, 1 San Diego Loop, Building 3198, Andrews Air Force Base, Washington, DC 20762–5518
N00167, FD Commander, Carderock Division, Naval Surface Warfare Center, 9500 MacArthur Boulevard, West Bethesda, MD 20817–5700
N00168, FE Commanding Officer, National Naval Medical Center, 8901 Wisconsin Avenue, Building 54, Bethesda, MD 20889–5600
N00173, FF Naval Research Laboratory, 4555 Overlook Avenue SW, Washington, DC 20375–5320
N00174, FG Commander, Indian Head Division, Naval Surface Warfare Center, 101 Strauss Avenue, Building 1558, Indian Head, MD 20640–9035
N00178 Commander, Dahlgren Division, Naval Surface Warfare Center, 1732 Dahlgren Road, Dahlgren, VA 22448-5100
N00181, FJ Commander, Norfolk Naval Shipyard Facility Support, Public Works Center, PO Box 5000, Portsmouth, VA 23709-5000
N00183, JX Commanding Officer, Naval Medical Center, 54 Lewis Minor Street, Building 250, Portsmouth, VA 23708-2297
N00187, SJ Commanding Officer, Navy Public Works Center, Naval Station, 9742 Maryland Avenue, Norfolk, VA 23511-3095
N00188, H2 Commanding Officer, Naval Air Station, 9420 3rd Avenue, Norfolk, VA 23511-2197
N00190, PK, H3, J3 Commanding Officer, Fleet and Industrial Supply Center, 1008 Gilbert Street, Suite 600, Norfolk, VA 23511-5392
N00196, SK Commanding Officer, Naval Air Station, Atlanta, 1000 Halsey Avenue, Marietta, GA 30069-5099
N00200, (MAJ00018), MCL Commanding Officer, Naval Hospital Pensacola, 6000 West Highway 98, Building 2269, Pensacola, FL 32512-0003
N00204, PN Commanding Officer, Naval Air Station Pensacola, 385 Millington Avenue, Pensacola, FL 32508-5014
N00206, FP Commanding Officer, Naval Support Activity New Orleans, 2300 General Meyer Avenue, New Orleans, LA 70142-5000
N00209 Commanding Officer, Naval Air Station Joint Reserve Base, 400 Russel Avenue, Building 31, Belle Chase, LA 70143-5012
N00210, (MAJ00062) Commanding Officer, Naval Training Center Great Lakes, Building 3200, Code N23, 2601A Paul Jones Street, Great Lakes, IL 60088-5127
N00211, (MAJ00018), MCQ-S Commanding Officer, Naval Hospital, Hospital Supply Building 1H, Great Lakes, IL 60088-5230
N00213, H4 Commanding Officer, Naval Air Station Key West, PO Box 9030, Building A-314, Key West, FL 33040-9001
N00219, SW Commanding Officer, Naval Air Station, 8100 West Jefferson Boulevard, Dallas, TX 75211-9001
N00216, FR Commanding Officer, Naval Air Station, 1001 D Street, Corpus Christi, TX 78419-9221
N0022A Commander, Afloat Training Group Atlantic, 8922 First Street, Suite 150, Norfolk, VA 23511-3799
N00231, (MAJ00018), J54 Commanding Officer, Naval Medical Center, 2200 Lester Street, Quanlito, VA 22134-6650
N00232, (MAJ00018), MCB-F Commanding Officer, Naval Hospital Jacksonville, Building H-2091, Code 0603, Jacksonville, FL 32214-5000
N00241 NW—Fleet and Industrial Supply Center San Diego, 907 North Harbor Drive, San Diego, CA 92132-0060
N00245, (MAJ00070), LPN Commanding Officer, Naval Station, 3455 Senn Road, San Diego, CA 92136-5084
N00246, H5 Naval Air Station, North Island, San Diego, CA 92155-5112
N00250 FW Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452-3724
N00251 FX Commander, Puget Sound Naval Shipyard, 1400 Farragut Avenue, Bremerton, WA 98314-5000
N00253 FY Commanding Officer, Keyport Division, Naval Undersea Warfare Center, 614 Dowell Street, Keyport, WA 98335-7610
N00259, (MAJ00018), JE Commanding Officer, Naval Medical Center, 34800 Bob Wilson Drive, Suite 1800, San Diego, CA 92134-5001
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N00275, 3M Commanding Officer, Naval Air Reserve Activity Chicago, 615 Barry Road, Naval Training Center, Building 190, Great Lakes, IL 60088-5707
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N00285, (MAJ00018) MHR Commanding Officer, Naval Hospital, 10651 E Street, Corpus Christi, TX 78419-5200
N00311, GA Commander, Pearl Harbor Naval Shipyard, PO Box 400, 401 Avenue E, Suite 124, Pearl Harbor, HI 96866-5350
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N00367, (MAJ00025), LS5 Commanding Officer, Naval Fleet Support Office, 5450 Carlisle Pike, PO Box 2010, Building 409, Code 9243, Mechanicsburg, PA 17055-0707
N00383, GB, GC Commanding Officer, Naval Inventory Control Point, 700 Robbins Avenue, Philadelphia, PA 19111-5098
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N00406, GE Commanding Officer, Fleet and Industrial Supply Center, Puget Sound, 467 W Street, Bremerton, WA 98314-5100
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N39479, (MAJ00023) Commander, Naval Air Reserve Activity, Selfridge ANGB, 4130 Castle Avenue, Building 1422, Selfridge ANGB, MI 48065–5008
N39439 Officer-in-Charge, U.S. Naval Air Pacific Repair Activity, Detachment Okinawa, PSC 556, Box 222, FPO AP, NA 98636–0222
N39426, L5L Fleet and Industrial Supply Center, Norfolk Detachment Earle, 201 Highway 34 South, Building C–33, Colts Neck, NJ 07722–5019
N39489, (MAJ00030), EXE Directorate of Contracting (Code 52), Navy Security Station, Building 18–139, 3801 Nebraska Avenue NW, Washington, DC 20338–5440
N39405 Commanding Officer, Beachmaster Unit Two, 1745 10th Street, Norfolk, VA 23522–2942
N39437, 7A Commanding Officer, Naval Submarine Base Public Works Department, 1963 Tennessee Avenue, Kings Bay, GA 31547–2806
N39465, LB Chief, Naval Forces Division, U.S. Military Training Mission, Kingdom of Saudi Arabia, Unit 61300, Box S, APO AE, NA 09863–1300
N39429 Officer-in-Charge of Construction, Naval Facilities Engineering Command Contracts, 1005 Michael Road, Camp Lejeune, NC 28547–2521
N41250 Officer-in-Charge of Construction, Naval Facilities Engineering Command Contracts, Keflavik IC, PSC 1003, Box 28, FPO AE, NA 09728–0328
N41251 Officer-in-Charge of Construction, Naval Facilities Engineering Command Contracts (Guantanamo), Naval Base PSC 1005, Box 37, FPO AE, NA 0693–6137
N41250 Commanding Officer, Engineering Field Activity, Northwest, 11917 7th Avenue NE, Poulsbo, WA 98370–7570
N41416, (MAJ00023) Defense Printing Service Northeast Area, 700 Robbins Avenue, 4JL Philadelphia, PA 19111–5063
N41511, (MAJ00070) LPE Commanding Officer, saulte Craft #5 PO Box 555161, Camp Pendleton, CA 92055–5003
N41510 Commanding Officer, Navy Consolidated Brig, 1050 Remount Road, Building 3107, Charleston, SC 29406–3515
N41506 Officer-in-Charge of Construction, Naval Facilities Engineering Command Contracts, 9324 Virginia Avenue, Norfolk, VA 23511–3889
N41509 Officer-in-Charge of Construction, Naval Facilities Engineering Command, Building 820, Naval Air Station Oceana, Virginia Beach, VA 23460–5121
N41510 Officer-in-Charge of Construction, Naval Facilities Engineering Command Contracts, Little Creek, 1450 Seventh Street, Norfolk, VA 23521–2443
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N41656, NT Telecommunication Management Detachment West, 937 North Harbor Drive, San Diego, CA 92132–5104
N41748, (MAJ00025), EJP–W Commanding Officer, Naval Facilities Engineering Command Contracts Office, Seabee Logistics Center, Building 41, Code 27, 4111 San Pedro Street, Port Huene, CA 93045–4110
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N41776 (MAJ00023) Officer-in-Charge, Navy Reserve Recruiting Command (Det Two), Building 3400, Room 230, NTC, Great Lakes, IL 60038–5709
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N41807, (MAJ00023) Commanding Officer, Navy Recruiting District Chicago, 3400 Patton Road, Suite 300, Fort Sheridan, IL 60037–1268
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N4939, (MAJ00060), NMB-9 Commanding Officer, Naval Submarine Support Facility, Supply Operations, New London, Box 500, Groton, CT 06349–5500
N4940, 3G Officer-in-Charge, Naval Regional Contracting Center, Detachment Bahrain, PSC 451, Box NRCC, FPO AE 09834–2800
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N53505, (MAJ00060), NMC Commanding Officer, Amphibious Construction Battalion Two, 1815 Seabee Drive, Norfolk, VA 23521–2926
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N55161, Commanding Officer, U.S. Seventh Fleet Representative, Perth, Western Australia, American Consulate Unit 1021, APO AP, NA 96530–5000
N55271, (MAJ00070), LP8 Commander, Naval Surface Group Pacific Northwest, 2000 West Marine View Drive, Everett, WA 98203–2900
N55322, (MAJ00060), LHN Explosive Ordnance Disposal Group Two, 821 Blasters Cove, Port Story, VA 23459–5024
N55520, Officer-in-Charge, Commander-in-Chief Pacific Command Representative, Civil Action Detachment Guam, PSC 455, Box 181, FPO AP, GU 96940–2970
N55575, (MAJ00011), LPM Strategic Communications, Wing One, Tinker Air Force Base, Oklahoma, OK 73164–5701
N5702, (MAJ00060), J0N Commander, Naval Air Force, U.S. Atlantic Fleet, 1279 Franklin Street, Norfolk, VA 23511–2494
N57016, (MAJ00060), J0N Commander, Submarine Force, U.S. Atlantic Fleet, 7958 Blandy Road, Norfolk, VA 23511–2494
N57023, GT Commander, Operational Test and Evaluation Force, 7970 Diven Street, Norfolk, VA 23505–1498
N57023, (MAJ00061), NLF–H Commanding Officer, Naval Air Facility, Mildenhall, UK, RAF Mildenhall, Unit 5020, PSC 37, Box 485, FPO AE, WA 09659–0485
N57066, Commanding Officer, Naval Beach Group One, 3600 Tarawa Road, San Diego, CA 92155–5092
N57070, (MAJ00060), LH7 Commander, Undersea Surveillance, U.S. Atlantic Fleet, 373 Bullpup Street, Virginia Beach, VA 23461–2186
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N57100, (MAJ00070), LP0–1 Commander, Naval Special Warfare Group One, 3632 Guadacanal Road, San Diego, CA 92155–5883
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N60138, Officer-in-Charge of Construction, Fleet Industrial Supply Center, Cheatham Annex, 108 Sanda Avenue, Williamsburg, VA 23187–8792
N60241, 3X Commanding Officer, Naval Air Station Kingsville, 802 Dealey Avenue, Suite 209, Kingsville, TX 78363–5027
N60495, 3T Commanding Officer, Naval Air Station, 4755 Pasture Road, Fallon, NV 89406–5000
N65958, 4Q Commanding Officer, Naval Air Station Whiting Field, 7201 USN Wasp Street, Milton, FL 32570–6141
N65914, GL Commanding Officer, Naval Station (Guantanamo Bay, Cuba), PSC 105, PO Box 37, FPO AE, NA 09693–0137
N60701, 4M Commanding Officer, Naval Weapons Station, 2000 Fitch Avenue, Seal Beach, CA 90740–5000
N60951, (MAJ00060), LHU Fleet Accounting and Disbursing Center, Operating Forces, U.S. Atlantic Fleet, Norfolk, VA 23511–6096
N61331, HR Commanding Officer, Coastal Systems Station, Dahlgren Division, Naval Surface Warfare Center, 7603 West Highway 98, Panama City, FL 32407–7061
N61337, H9 Commanding Officer, Naval Hospital Beaufort, 1 Pinckney Boulevard, Beaufort, SC 29904–6148
N61339, HT Commanding Officer, Naval Air Warfare Center Training System Division, 12350 Research Parkway, Orlando, FL 32826–3275
N61414, 4B Officer-in-Charge of Construction, Public Works Division Little Creek, 1450 Gator Boulevard, Code 026, Norfolk, VA 23521–2626
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N62254, (MAJ00070), 4LX Commander Fleet Activities, Okinawa Naval Air Facility, Kadena, PSC 469, Box SU/CR, FPO AP, NA 96370-1150

N62271, QE Commanding Officer, Naval Support Activity-Monterey Bay, 1 University Circle, Monterey, CA 93943-5000

N62306, 7G Commanding Officer, Naval Oceanographic Office, 1052 Balch Boulevard, Stennis Space Center, MS 38652-5001

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Ch. 2, App. G

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N62583, J3 Commanding Officer, Naval Construction Battalion Center, 1000 23rd Avenue, Port Hueneme, CA 93043-4301

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N63212, (MAJ00062), L9G Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Texas at Austin, Russell A. Steindham Hall, Room 104, Austin, TX 78712-1184

N63213, (MAJ00062), L9J Commanding Officer, Naval Reserve Officers Training Corps
Department of Defense

Unit, University of California, 152 Hearst Gymnasium, Berkeley, CA 94720-3640
N63214, (MAJ00062), LJM Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Colorado, Box 374, Boulder, CO 80309-0374

N63216, (MAJ00062), LQW Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Missouri, 185 Crowder Hall, Columbia, MO 65211-0001

N63217, (MAJ00062), L9Z Commanding Officer, Naval Reserve Officers Training Corps Unit, Oregon State University, Naval Armory, Washington Way, Corvallis, OR 97331-5401

N63218, (MAJ00062), ROB Commanding Officer, Naval Reserve Officers Training Corps Unit, Chicago, Northwestern University, 617 Haven Street, Evanston, IL 60208-4140

N63219, (MAJ00062), ROE, L99 Commanding Officer, Naval Reserve Officers Training Corps Unit, Houston Consortium, Rice University, PO Box 1892, Houston, TX 77251-1892

N63220, (MAJ00062), ROL Commanding Officer, Naval Reserve Officers Training Corps Unit, UCLA, Mens Gym, Room 123, 405 Hilgard Avenue, Los Angeles, CA 90024-1399

N63221, (MAJ00062), RAB Commanding Officer, Naval Reserve Officers Training Corps Unit, Los Angeles Consortium, University Park, USC MC0564, Los Angeles, CA 90024-1399

N63222, (MAJ00062), ROH Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Kansas, Military Science Building, Room 115, Lawrence, KS 66045-2528

N63223, (MAJ00062), ROK Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Nebraska, 103 M & N Building, Lincoln, NE 68508-0139

N63224, (MAJ00062), RAD Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Wisconsin, 1610 University Avenue, Madison, WI 53705-4666

N63225, (MAJ00062), RAH Commanding Officer, Naval Reserve Officers Training Corps Unit, Marquette University, PO Box 1881, Gymnasium, Milwaukee, WI 53208-4986

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N63228, (MAJ00062), RAM Commanding Officer, Naval Reserve Officers Training Corps Unit, Tulane University, 6823 Saint Charles Avenue, New Orleans, LA 70118-5698

N63229, (MAJ00062), RAN Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Oklahoma, 290 West Brook Street, Norman, Oklahoma 73019-0220

N63230, (MAJ00062), RAR Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Notre Dame, 213 Pasquerilla Center, Notre Dame, IN 46556-5601

N63231, (MAJ00062), RAW Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Utah, 110 South, 1452 East Front, Salt Lake City, UT 84112-0430

N63232, (MAJ00062), Ray Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Washington, Box 353840, Seattle, WA 98195-3840

N63234, (MAJ00062), RQ Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Illinois, 505 East Armory Street, Room 236-B, Champaign, IL 61820-6286

N63235, (MAJ00062), R5 Commanding Officer, Naval Reserve Officers Training Corps Unit, Purdue University, 1503 Armory Building, West Lafayette, IN 47907-1513

N63273, (MAJ00062), RS Commanding Officer, Combat Direction Systems Activity, Dahlgren Division, Naval Surface Warfare Center, 1922 Regulus Avenue, Virginia Beach, VA 23461-2007

N63285, (MAJ00001), LB0 Naval Security and Investigative Command, 716 Sickett Street, Washington, DC 20338-5800

N63291, (MAJ00062), ROF Commanding Officer, Naval Reserve Officers Training Corps Unit, Cornell University, Barton Hall, Department of Science, Garden Avenue, Ithaca, NY 14853-1701

N63294, (MAJ00062), RAV Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Rochester, Morey Hall 108, RC Box 270436, Rochester, NY 14627-0436

N63295, (MAJ00062), ROM Commanding Officer, Naval Reserve Officers Training Corps Unit, Rensselaer Polytechnic Institute, 110 8th Street, Troy, NY 12180-3590

N63296, (MAJ00062), LF Commanding Officer, Naval Reserve Officers Training Corps Unit, Auburn University, William F. Nichols Center, Auburn, AL 36849-5512

N63299, (MAJ00062), ROA-9 Commanding Officer, Naval Reserve Officers Training Corps Unit, North Carolina Piedmont Region, Room 225, North Building, Durham, NC 27708-0456

N63301, (MAJ00062), LBD Commanding Officer, Naval Reserve Officers Training Corps Unit, 225 North Avenue NW., Atlanta, GA 30332-0125

N63303, (MAJ00062), RBU Commanding Officer, Naval Reserve Officers Training Corps Unit, College of the Holy Cross, PO Box E, Worcester, MA 01610-2389

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N65307, (MAJ00062), RGN Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Mississippi, PO Box 69, University, MS 38677-0069
N65309, (MAJ00062), L9Y Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Ohio State, 2121 Tuttle Park Place, Columbus, OH 43210-1169
N65310, (MAJ00062), ROP Commanding Officer, Naval Reserve Officers Training Corps Unit, The Pennsylvania State University, Wagner Building, University Park, PA 16802-3893
N65311, (MAJ00062), 8AT Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Pennsylvania, 300 South Street, Philadelphia, PA 19104-5539
N65313, (MAJ00062), L9X Commanding Officer, Naval Reserve Officers Training Corps Unit, University of South Carolina, Leconite College, Room 215, Columbia, SC 29208-0064
N65315, (MAJ00062), 8AL Commanding Officer, Naval Reserve Officers Training Corps Unit, Vanderbilt University, University Plaza, Suite 360, 112 21st Avenue South, Nashville, TN 37203-2327
N65317, (MAJ00062), L9T Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Virginia, Maury Hall, Charlottesville, VA 22903-3194
N65331, (MAJ00011), LBA Chief, Joint U.S. Military Advisory Group, Thailand, (Bangkok, Thailand), MAGTRMS-8, APO AP, NA 96346-5000
N65387, JD Commanding Officer, Navy Public Works Center, 2730 McKean Street, Suite 1, San Diego, CA 92136-5294
N65394, Commander, Naval Safety Center, 375 A Street, Norfolk, VA 23511-4399
N65394, L6 Commander Port Hueneme Division, Naval Surface Warfare Center, 4303 Missile Way, Port Hueneme, CA 93043-4307
N65396, (MAJ00070), V3C Commanding Officer, Naval Submarine Base, 140 Sylvester Road, San Diego, CA 92106-3521
N65410, KA Commanding Officer, Navy Manpower and Material Analysis Center, 9620 Navy Road, Building C-1, Millington, TN 38053-5011
N65429, MH Naval Computer and Telecommunications, Station London (UK), PSC 802, Box 44, FPO AE, NA 09499-1200
N65543, (MAJ00011), 9TC Naval Reserve Center, 3070 Ross Lane, Central Point, OR 97502-1309
N65821, (MAJ00039), NSA-B Officer-in-Charge, Naval Underwater Systems Center Detachment, AUTEC, Andros Island, Bahamas Islands, PSC 1012, FPO AA, NA 96585-9998
N65891, (MAJ00069), BQG Commanding Officer, Naval Security Group, Northwest, 1320 Northwest Boulevard, Suite 100, Champaign, VA 23222-4994
N65902, Commanding Officer, Naval Security Group Activity, 1247 West C Street, Norfolk, VA 23511-2322
N65181, (MAJ00062), R0W Officer-in-Charge, Department of Naval Science, Texas Maritime Academy, Box 1675, Galveston, TX 77553-1675
N65223, (MAJ00018), J58 Commanding Officer, Naval Medical Research Institute, 8901 Wisconsin Avenue, Building 17, Bethesda, MD 20889-5607
N65287, MJ Commanding Officer, Naval Warfare Assessment Center, Box 5000, Corona, CA 91718-5000
N65356, KF Commanding Officer, Naval Administrative Command, Armed Forces Staff College, 7800 Hampton Boulevard, Norfolk, VA 23511-1702
N65416, Commanding Officer, U.S. Naval Forces, Marianas, PSC 489, FPO AP, GU 96526-0051
N65113, EZ Commanding Officer, Navy Public Works Center, 210 Decatur Avenue, Building 1A, Great Lakes, IL 60088-5600
N65114, (MAJ00025), EJC Commanding Officer, Navy Public Works Center, Naval Air Station, 310 John Tower Road, Building 3560, Pensacola, FL 32508-5803
N65115, (MAJ00025), FZA Commanding Officer, Navy Public Works Center, Yokosuka, Japan, PSC 473, Box 13, FPO AP, NA 96549-1103
N65126, (MAJ00018), J52 Commanding Officer, Naval Medical Information Management Center, 8001 Wisconsin Avenue, Building 27, Bethesda, MD 20889-5605
N65236, V7 Commander Space and Naval Warfare Systems Center, PO Box 190022, North Charleston, SC 29419-9022
N65425, (MAJ00018), MDP Commanding Officer, Naval Hospital (Roosevelt Roads, PR), PSC 1008, Box 3007, FPO AA, PR 34051-8100
N65538, (MAJ00024), U0D Commanding Officer, Naval Sea Logistics Center, PO Box 2060, 5450 Carlisle Pike, Mechanicsburg, PA 17055-0795
N65886, (MAJ00019), GV Commanding Officer, Naval Air Depot, Naval Air Station, Contracts Management Office, Building 101, Wasp Street, Jacksonville, FL 32212-0016
N65888, ED Commanding Officer, Navy Aviation Depot, NAS North Island, PO Box 37058, San Diego, CA 92135-7058
N65912, GP Commanding Officer, Fleet Technical Support Center, 9727 Avionics Loop, Norfolk, VA 23511-2324
N65918, FT Commanding Officer, Shore Intermediate Maintenance Activity, 3755 Brinser Street, Suite 1, Box 98106, San Diego, CA 92136-9809
N66526, (MAJ00024), NSA-B Officer-in-Charge, Naval Undersea Systems Center Detachment, AUTEC West Palm Beach, PO Box 24619, West Palm Beach, FL 33416-4619
N66596, Commanding Officer, Fitting Out & Supply Support Assistance Center, PO Box 15129, Norfolk, VA 23511-0129
N66600, 17N Space and Naval Warfare Systems Center, 5360 Hall Street, San Diego, CA 92152-5001
N66621, 7G Commanding Officer, Naval Air Pacific Repair Activity, (Atsugi, Japan), PSC 477, Box 35, FPO AP, NA 96306-2735
N66622, (MAJ00018), MDW Commanding Officer, Naval Dental Center, 2310 Craven Street, PO Box 368147, San Diego, CA 92136-5596
N66623, (MAJ00018) Commanding Officer, Naval Dental Center, NE, 1173 Whipple Street, Newport, RI 02841-1642
N66694, (MAJ00018), QAA-B Commanding Officer, Naval Hospital, PSC Box 8023, Cherry Point, NC 28533-5008
N66695, (MAJ00018), JIE Commanding Officer, Naval Hospital, 929 Franklin Avenue, Lemoore, CA 93246-5004
N66696, (MAJ00018), QAJ Commanding Officer, Naval Hospital Naples, Italy, PSC 810, Box 19, FPO AE, NA 06619-0700
N66697, (MAJ00018), MDE Commanding Officer, Naval Hospital, 3475 North Saragota Street, Oak Harbor, WA 98278-4800
N66698 Commanding Officer, Naval Hospital Patuxent River, 47149 Base Road, Unit 1370, Patuxent River, MD 20670-1540
N66101, (MAJ00018), JSB-D Commanding Officer, U.S. Naval Hospital ROTA, PSC 819, Box 18, FPO AE, NA 06645-2500
N66219 Ship Support Office, PSC 464, Box 20, FPO AP, NA 96322-2200
N66398, (MAJ00022), ML6-7 Commanding Officer, Navy Motion Picture Service, 3720 Integrity Drive, Millington, TN 38053-6560
N66604, N4 Commander, Naval Undersea Warfare Center, Newport Division, 1 Simponiart Drive, Newport, RI 02841-1708
N66612, (MAJ00022), L65 Commanding Officer, Naval Reserve Officers Training Corps Unit, The Citadel, 171 Moultrie Street, Jenkins Hall, Charleston, SC 29409-0770
N66617, (MAJ00024), LE7 Navy Shipbuilding Liaison Office Spain, PSC 65, Box 50, APO AE, NA 06645-5385
N66630, (MAJ00011), LCS Commanding Officer, Naval Air Reserve, Naval Air Weapons Station, 355 Nar Road, Point Mugu, CA 93042-9018
N66692, AP Commanding Officer, Naval Support Activity, Souda Bay, Crete, Greece, PSC 814, Box 01, FPO AE, NA 06685-1002
N66715, VJ Commanding Officer, Navy Recruiting Command, 801 North Randolph Street, Arlington, VA 22204-1991
N66752, (MAJ00069) Commanding Officer, Naval Security Group Activity, Misawa, Japan, Unit 5003, Code N8, APO AP, NA 96319-5000
N66753, (MAJ00062), ROG Commanding Officer, Naval Reserve Officers Training Corps Unit, Jacksonville University, 2800 University Boulevard North, Jacksonville, FL 32211-3394
N66809, (MAJ00062), ROV Commanding Officer, Naval Reserve Officers Training Corps Unit, Savannah State College, PO Box 20299, Savannah, GA 31404-9701
N66810, (MAJ00062), L9H Commanding Officer, Naval Reserve Officers Training Corps Unit, Southern University and A&M College, PO Box 9214, Baton Rouge, LA 70813-9214
N66833, (MAJ00060), L9L Commanding Officer, U.S. Naval Station Panama (Rodman, Canal Zone), FPO AA, NA 06661-1000
N66872, (MAJ00022), MQ2 Commanding Officer, Navy Recruiting District, 8525 NW 53rd Terrace, Suite 201, Miami, FL 33166-4521
N67596, (MAJ00022), NVD Commanding Officer, Navy Recruiting District, 1900 North U.S. Highway 281, Suite 108, San Antonio, TX 78216-3630
N68047, (MAJ00070), 4L0 Commanding Officer, Naval Regional Contracting Center, Singapore, PSC 470, 2100, FPO AP, NA 96334-2100
N68057, VZ Commanding Officer, Naval Computer and Telecommunications Area Master Station Atlantic, 9629 Moffett Avenue, Norfolk, VA 23511-2784
N68064, (MAJ00062), R0D Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Florida, PO Box 11837, Gainesville, FL 32611-8537
N68072, (MAJ00062), L9V Commanding Officer, Naval Reserve Officers Training Corps Unit, Texas A&M University, PO Box 2920, College Station, TX 77843-2920
N68073, (MAJ00063), NTU Naval Computer and Telecommunications Station Diego Garcia, (British Indian Ocean Territory), FPO AP, NA 96494-0008
N68084, (MAJ00018), MDJ-M Commanding Officer, Naval Hospital, 3600 Rivers Avenue, North Charleston, SC 29405-7769
N68086, 7S Commanding Officer, Naval Ambulatory Care Center, 1 Riggs Road, Building 44, Newport, RI 02841-1002
N68088, (MAJ00061), NLL-N Officer-in-Charge, CINCUSAVER Detachment Iberville Support Component, Oeiras, Portugal, PSC 83, Box 82, APO AE, NA 09726
N68093, (MAJ00018), MCG-H Commanding Officer, Naval Hospital, Camp Lejeune, Brewster Boulevard, Building NH100, Camp Lejeune, NC 28547-0100
N68094, V9 Commanding Officer, Naval Hospital, Box 555191, Marine Corps Base, Camp Pendleton, CA 92055-3191
Ch. 2, App. G

Department of Defense

N68436, KC, J6 Commanding Officer, Naval Submarine Base, Bangor, 1100 Hunley Road, Silverdale, WA 98315–1199

N68443, TT Commanding Officer, Naval Dental Clinic, 2240 Decatur Avenue, Brentwood, WA 98314–5245

N68470, (MAJ00018), J5J-M Commanding Officer, U.S. Naval Hospital, (Okinawa, Japan). PSC 482, Box 248, FPO AP, NA 96362–1695

N68482, (MAJ00002), Officer-in-Charge, Bureau of Naval Personnel Detachment, Drug and Alcohol Program Management Activity, 977 North Harbor Drive, Suite 17, San Diego, CA 92132–0017

N68499, (MAJ00018), J5J Commanding Officer, Third Dental Battalion, U.S. Naval Dental Center, Unit, University of San Diego/San Diego State University, 5098 Alcala Park, San Diego, CA 92110–2496

N68565, (MAJ00002), L9L Commanding Officer, Naval Reserve Officers Training Corps Unit, Old Dominion University/Hampton Institute/Norfolk State University, 5215 Hampton Boulevard, Norfolk, VA 23529–0120

N68711, (MAJ00005), EFE-F Commander, Southwest Division, NAVFACENGCOM, 1220 Pacific Highway, Building 127, San Diego, CA 92132–5190

N68727, (MAJ00002), L9L Commanding Officer, Naval Reserve Officers Training Corps Unit, The George Washington University, 729 21st Street NW, Washington, DC 20052–0001

N68742, (MAJ00002), LPA Commanding Officer, Naval Reserve Officers Training Corps Unit, Mid South Region, Memphis State University, Campus Box 529260, Memphis, TN 38152–6250

N68750, (MAJ00002), LPA Commanding Officer, Naval Reserve Officers Training Corps Unit, West Region, California State University, 5998 Alcala Park, San Diego, CA 92110

N68779, (MAJ00002), J5J Commanding Officer, Naval Reserve Officers Training Corps Unit, Old Dominion University/Hampton Institute/Norfolk State University, 5215 Hampton Boulevard, Norfolk, VA 23529–0120

N68836, (MAJ00002), DFI Commanding Officer, Naval Reserve Officers Training Corps Unit, Virginia Polytechnic Institute and State University, 420 Fomer Hall, Blacksburg, VA 24061–0241

N68901, (MAJ00002), UOF Director, Human Resources Office Crystal City, Crystal Mall 2, Room 506, 1921 Jefferson Davis Highway, Arlington, VA 22241–5363

N68927, (MAJ00002), LHE Commanding Officer, Naval Reserve Officers Training Corps Unit, University of San Diego/San Diego State University, 5998 Alcala Park, San Diego, CA 92110–2496

N68956, (MAJ00002), L8G Shore Intermediate Maintenance Activity, Naval Reserve Officers Training Corps Unit, Old Dominion University/Hampton Institute/Norfolk State University, 5215 Hampton Boulevard, Norfolk, VA 23529–0120

N68969, (MAJ00002), L9Q Commanding Officer, Naval Reserve Officers Training Corps Unit, Old Dominion University/Hampton Institute/Norfolk State University, 5215 Hampton Boulevard, Norfolk, VA 23529–0120

N68984, (MAJ00002), UOF Director, Human Resources Office Crystal City, Crystal Mall 2, Room 506, 1921 Jefferson Davis Highway, Arlington, VA 22241–5363

N68992, (MAJ00002), 8AX Commanding Officer, Naval Reserve Officers Training Corps Unit, University of San Diego/San Diego State University, 5998 Alcala Park, San Diego, CA 92110–2496
Naval Air Station, Jacksonville, FL 32212-0113
N68857, (MAJ00062), 8AC Commanding Officer, Naval Reserve Officers Training Corps Unit, Texas Tech University, Lubbock, TX 79409-4559
N68875, (MAJ00018), QAP, S Naval Hospital (Keflavík, Iceland), PSC 1003, Box 8, FPO AE, NA 09726-0008
N68877, (MAJ00062), R0Y Commanding Officer, Naval Reserve Officers Training Corps Unit, Carnegie Mellon University, HBHA 200, 500 Forbes Avenue, Pittsburgh, PA 15213-3890
N68891, (MAJ00060), LH5 Commanding Officer, Naval Station Ingleside, 1455 Ticonderoga Road, Suite W210, Ingleside, TX 78362-5000
N68899, (MAJ00011), LCW Commander, Naval Reserve Intelligence Command, NAS Joint Reserve Base, Fort Worth, TX 76127-1550
N68911 Officer-in-Charge of Construction, Naval Facilities Engineering Command Contracts, Naval Hospital, Building 286, PO Box 5310, Portsmouth, VA 23708-5310
N68925, BJ Commanding Officer, Navy Public Works Center, Building 201, Washington Navy Yard, 901 M Street SE, Washington, DC 20374-5041
N68936, GM Naval Air Warfare Center, Weapons Division, 1 Administration Circle, China Lake, CA 93555-6100
N68950, (MAJ00025), F27 Engineering Field Activity Midwest, Naval Training Center, Building 1A, Suite 120, 2703 Sheridan Road, Great Lakes, IL 60088-5000
N68958, (MAJ00024), U10-9 Officer-in-Charge, SUPSHIP New Orleans Detachment, Ingleside, 125 Coral Sea Road, Trailer 13, Ingleside, TX 78362-5000
N68967, (MAJ00007), LPS-T, LPW-Y Commanding Officer, Naval Station Everett, 2000 West Marine View Drive, Everett, WA 98207-5001
N69197 Director, Human Resources Operations Center, 800 North Quincy Street, Ballston Tower 1, Arlington, VA 22203-1908
N69199 Director, Human Resources Service Center East Region, Norfolk Naval Shipyard, Building 17, Portsmouth, VA 23709-5000
N69212 Commanding Officer, Naval Weapons Station Yorktown, Box 160, Yorktown, VA 23691-0160
N69230, NSF Director, SPAWAR Information Technology Center, 2251 Lakeshore Drive, New Orleans, LA 70115-0001
N70092, (MAJ00069), 8Q-J-K, Q-R Commanding Officer, Naval Security Station, 3001 Nebraska Avenue NW, Building 18-139, Washington, DC 20390-5440
N70240, M6 Commanding Officer, Naval Computer and Telecommunications Station, Naval Air Station North Island, PO Box 397936, San Diego, CA 92138-3110
N70243 Commanding Officer, Naval Computer and Telecommunications Station, PSC 488, Box 122, FPO AP, GU 96537-1819
N70272, 8G, ND, LQ Officer-in-Charge of Construction, Naval Computer and Telecommunications Area Master Station, Facility Support Center, Public Works Division, 9624 Moffett Avenue, Norfolk, VA 23511-6898
N70283, (MAJ00069), 8QE Commanding Officer, Naval Security Group Activity, Code 30, Galeta Island, Canal Zone, FPO AA, NA 34960-9998
N70294, 8H Commanding Officer, Naval Computer and Telecommunications Area, Master Station MERDI, Naples, Italy, PSC 822, Box 1000, FPO AE, NA 09621-7000
N91732, (MAJ00011), H8 Commanding Officer, Naval Occupational Safety and Health and Environmental Training Center, 9080 Breezy Point Crescent, Norfolk, VA 23511-3998

PART 4—MARINE CORPS ACTIVITY ADDRESS NUMBERS

M00146, MT Marine Corps Regional Contracting Office (SUL), COMCABEAST, Marine Corps Air Station, Cherry Point, NC 28533–0018
M00233, NE Marine Corps Regional Contracting Office, 411 Belleau Avenue, Marine Corps Recruit Depot/WRR, San Diego, CA 92140–5380
M00262, (MAJ00027), MUG Marine Air Corps Facility, 2100 Rowell Road, Quantico, VA 22134–5063
M00263, MX Marine Corps Regional Contracting Office, PO Box 5069, Marine Corps Recruit Depot/EHR, Parris Island, SC 29905–5069
M00264, (MAJ00027), MUT Marine Corps Regional Contracting Office, Northeast Region, 2010 Henderson Road, Quantico, VA 22134–5045
M00318, (MAJ00027), MUK-M Contracting Office (Code LSCP), Marine Corps Base Hawaii, Supply Dept, Box 63063, MCBH, Kaneohe Bay, HI 96744–3063
M00681, NG Marine Corps Regional Contracting Office, PO Box 1669, Oceanside, CA 92054–1669
M20001, (MAJ00027) MUN Contracting Office, Headquarters and Service Company, Marine Forces Atlantic, Building CA 466, Room 203, 1485 Ingram Street, Norfolk, VA 23551–2596
M20002 Contracting Officer, HQ, U.S. Marine Forces South, 8420 NW 52nd Street, Miami, FL 33166
M29000, (MAJ00027) MSZ Contingency Contracting Office, 3D Force Service Support Group, Marine Forces Pacific, Unit 36404, FPO AP 96504-8404
M60169, WO Contracting Office, Marine Corps Air Station, PO Box 55010, Beaufort, SC 29904-5010
M62294, NC Marine Corps Regional Contracting Office, Marine Corps Logistics Base, PO Box 110340, Barstow, CA 92311-5039
M62613, MUE Contracting Office, Marine Corps Air Station, PSC 561, Box 1872, Iwakuni, Japan, FPO AP, NA 96310-1872
M62974, Marine Corps Air Station, PO Box 9913, Station S–43K, Yuma, AZ 85369-9133
M64495 Contracting Office, Marine Corps Mountain Warfare Training Center, Building 3000, Bridgeport, CA 93517-5009
M67001, NB Marine Corps Regional Contracting Office, PSC Box 20004, Marine Corps Base Camp Lejeune, NC 28542-0004
M67004, (MAJ00027), NC COMMARCORLOGBASES, Marine Corps Regional Contracting Office, Marine Corps Logistics Base (Code 89), PO Drawer 43019, Albany, CA 91704-0310
M67011, (MAJ00027), MSA Commanding Officer, 1st Marine Corps District, 605 Stewart Avenue, Garden City, NY 11530-4761
M67013, (MAJ00027), MSC Commanding Officer, 4th Marine Corps District, DDE, Building 54, Suite 3, Box 806, New Cumberland, PA 17070-0806
M67015, (MAJ00027), MSE Commanding Officer, 6th Marine Corps District, PO Box 19201, Marine Corps Recruit Depot, Eastern Recruiting Region, Parris Island, SC 29905-9201
M67016, (MAJ00027), MSG Commanding Officer, 8th Marine Corps District, Building 10, Room 121, NSA, New Orleans, LA 70142-5100
M67017, (MAJ00027), MSJ Commanding Officer, 9th Marine Corps District, 3805 155th Street, Building 710, Kansas City, MO 64147-1309
M67019, (MAJ00027), MSL Commanding Officer, 12th Marine Corps District, 3704 Hochmuthe Avenue, San Diego, CA 92140-5191
M67029, (MAJ00027), MSN Contracting Office, Marine Barracks, 8th and I Street, SE, Washington, DC 20390-5000
M67351 COMMARFOREUR, Marine Corps Regional Contracting Office, HQ PMF Europe (Designate), Panzer Kaserne, Building 2901, APO AE, NA 90046-0160
M67353, (MAJ00027), MSQ Contracting Office (HQBN-1), HQBN HQMC Henderson Hall, Building 28, Battalion Supply, Arlington, VA 22214-5000
M67385, (MAJ00027), MU9-1 COMMARFORPAC, Marine Corps Regional Contracting Office (LSCP), HQSVCNN, Building 600, Box 6131, Camp H. M. Smith, HI 96861-5010
M67386, LG Marine Corps Regional Contracting Office, (Midwest), Marine Corps Support Activity, 15430 Andrew Road, Kansas City, MO 64117-1206
M67399, NF Marine Corps Regional Contracting Office, Northwest Region, PO Box X24, Building 1320, Marine Corps Air-Ground Combat Center, Twentynine Palms, CA 92278-0124
M67400 QJ Marine Corps Regional Contracting Office (Far East), Marine Corps Base Camp Smedley D. Butler, PSC 577, Box 2000, FPO AP, NA 96379-2000
M67854, (MAJ00027), MU6-9 Commanding, Marine Corps Systems Command, 2033 Barnett Avenue, Suite 315, Quantico, VA 22134-5010
M67861, MUC, MSU Marine Corps Regional Contracting Office, Marine Forces Reserve, 4400 Dauphine Street, New Orleans, LA 70146-5400
M67865 MV Contracting Office, MCAS Miramar (Code 5KB), PO Box 452007, San Diego, CA 92143-2007
M68447 Contingency Contracting Office, 2nd Supply Battalion, 2nd FSSG, PSC Box 20120, Camp Lejuene, NC 28542-0128
M68450 Contingency Contracting Office, SMU, 1st Supply Battalion, 1st FSSG, PO Box 1699, Oceanside, CA 92501-1609
M68909, (MAJ00027), MU3 Commanding Officer, Marine Corps Tactical Systems Support Activity, PO Box 555171, Camp Pendleton, CA 92055-5171
M68001 (MAJ00027)—Contracting Office, Marine Aviation Training Support Group, 222 East Avenue, Pensacola, FL 52608-5213

PART 5—AIR FORCE ACTIVITY ADDRESS NUMBERS
F01600, 5A 42 CONS/CC, 50 Lemay Plaza South, Building 804, Maxwell AFB, AL 36112-6334
F01620, 6K SSG/PK, 375 Libby Street, MAFB-Gunter Annex, AL 36314-3207
F02601, 5C 355 CONS/CC, 3180 South Craeycroft Road, Davis Monthan AFB, AZ 85707-3522
F02604, 5D 56 CONS/CC, 14100 West Eagle Street, Luke AFB, AZ 85309-1217
F03602, 5F 314 CONS/CC, 642 Thomas Avenue, Little Rock AFB, AR 72209-5119
F04605, 5H 452 LSS/LGC, 1940 Graeber Street, Building 449, March ARB, CA 92518-1650
F04606 SM 5M 5MB/PK, 3279 Peacekeeper Way, Suite 17, McClellan AFB, CA 95652-1060
F04611, QQ AFTTC/PK, Building 2800, 5 South Wolfe Avenue, Edwards AFB, CA 93524-1185
F04626, 5M 60 CONS/LGC, 350 Hangar Avenue, Building 549, Travis AFB, CA 94535-2632
F04666, 5N 9 CONS/CC, 6500 B Street, Suite 101, Beale AFB, CA 95726-1712
F04684, 5W 30 CONS/LGC, Building 7015, Section 2c, Suite D, 806 13th Street, Vandenberg AFB, CA 9345—6023

Department of Defense

Ch. 2, App. G
FA6648, 5U 482 LSS/LGC, 29050 Coral Sea Boulevard, Box 50, Homestead ARS, FL 33039-1299
FA6675, DS 301 LSS/LGC, 1710 Burke Street, Service, NAS Fort Worth, TX 76127-6200
FA7046, Air Force Operational Test and Evaluation Center, 8500 Gibson Boulevard SE, Kirtland AFB, NM 87117-5558
FA6853 ASC/ENVK, Building 3, Room 201, 1801 10th Street, Wright Patterson AFB, OH 45433-7626
FA6770 MS5/FK, 4375 Childs Road, Room 022, Wright Patterson AFB, OH 45433-5006

PART 6—DEFENSE LOGISTICS AGENCY ACTIVITY ADDRESS NUMBERS

SA7003, 1P Defense Automated Printing Service, 700 Robbins Avenue, Building 4 D, Philadelphia, PA 19111-5093
SA7007, 1P Defense Automated Printing Service, 5450 Carlisle Pike, PO Box 2920, Mechanicsburg, PA 17055-9788
SA7008, 1P Defense Automated Printing Service, 2825 D Avenue, Charleston, SC 29407-1819
SA7012, 1P Defense Automated Printing Service, 80 Post Lane, Camp LeJeune, FL 32508
SA7014, 1P Defense Automated Printing Service, 47 Chandler Street, Newport, RI 02841-1707
SA7019, 1P Defense Automated Printing Service, Building 655, Fort Eustis, VA 23604-5093
SA7021, 1P Defense Automated Printing Service, 1401 South Fern Street, Arlington, VA 22201-1493
SA7023, 1P Defense Automated Printing Service, 2530 Paul Jones, Building 2A, Great Lakes, IL 60088-5700
SA7026, 1P Defense Automated Printing Service, 16C Communications Boulevard, Building 281, Suite 2, Dayton, OH 45433-5602
SA7031, 1P Defense Automated Printing Service, 1641 Morris Street, Naval Station Norfolk, VA 23511-2506
SA7033, 1P Defense Automated Printing Service, 4400 Dauphine Street, Unit 601 3-B, New Orleans, LA 70116-6000
SA7039, 1P Defense Automated Printing Service, 151 Ellyson Avenue, Naval Air Station Pensacola, FL 32508-5121
SA7042, 1P Defense Automated Printing Service, McFarland Street, Building 721, Jacksonville, FL 32212-0003
SA7049, 1P Defense Automated Printing Service, 568 Spacelift Avenue, Building 318, Patrick AFB, FL 33040-5000
SA7051, 1P Defense Automated Printing Service, PSC 1005, Box 26, Building 1842, Guantanamo Bay, Cuba, FPO AE 09089-0128
SA7053, 1P Defense Automated Printing Service, 901 South Drive, Building 700 East, Scott AFB, IL 62225-5106
SA7054, 1P Defense Automated Printing Service, PO Box 20015, Building 110, 4300 Goodfellow Boulevard, St. Louis, MO 63120-1798
SA7055, 1P Defense Automated Printing Service, 601 East 12th Street, Kansas City, MO 64106-2896
SA7057, 1P Defense Automated Printing Service, 4300 Hoover Street, San Diego, CA 92136-5595
SA7058, 1P Defense Automated Printing Service, 250 South Butler Avenue, Gunter Annex, Maxwell AFB, AL 36114-3104
SA7061, 1P Defense Automated Printing Service, Building 550 3998, Box 126, Pearl Harbor, HI 96860-3440
SA7065, 1P Defense Automated Printing Service, 1100 Hunley Road, Silverdale, WA 98383-5740
SA7069, 1P Defense Automated Printing Service, 255 Cochran Street, Robbins AFB, GA 31098-1623
SA7079, 1P Defense Automated Printing Service, PSC 450, Box 200, Naval Supply Station, Guam, FPO AP 96540-1200
SA7080, 1P Defense Automated Printing Service, PSC 557, Box 1475, Okinawa, Japan, FPO AP 96379-1475
SA7081, 1P Defense Automated Printing Service, PSC 473, Box 26, Yokosuka, Japan, FPO AP 96349-1198
SP0100, TW Defense Supply Center Philadelphia, Directorate of Clothing & Textiles, 700 Robbins Avenue, Philadelphia, PA 19111-5096
SP0105, W7 Defense Supply Center Philadelphia, Installation Support, 700 Robbins Avenue, Philadelphia, PA 19111-5096
SP0200, TX Defense Supply Center Philadelphia, Directorate of Medical Materiel, 700 Robbins Avenue, Philadelphia, PA 19111-5096
SP0300, UE Defense Supply Center Philadelphia, Directorate of Subsistence, 700 Robbins Avenue, Philadelphia, PA 19111-5096
SP0302, W6 Defense Supply Center Philadelphia, Pacific, ATTN: DSCP-Pacific, 2155 Mariner Square Loop, Alameda, CA 94501-1022
SP0303, U6 Defense Supply Center Philadelphia, Europe, ATTN: DSCP-Europe, APO AE 09052-5000
SP0400, TY, XK, Z1, Z3, Z6 Defense Supply Center Richmond, Business Operations, 8000 Jefferson Davis Highway, Richmond, VA 23297-5770
SP0410, XH Defense Supply Center Richmond, Base Spt Div, Directorate of Procurement, 8000 Jefferson Davis Highway, Richmond, VA 23297-5312
SP0411, TY Defense Supply Center Richmond, Proc Br (SSOC), Customer Asst Ctr, 8000 Jefferson Davis Highway, Richmond, VA 23297-5871
SP0413, TY Defense Supply Center Richmond, Spec Purchase Br, Prod Ctr Spt Div, 8000 Jefferson Davis Highway, Richmond, VA 23297-5864
Department of Defense

SP0414, TY Defense Supply Center Richmond, SASPS Phase I Br, Prod Ctr Spt Div, 8000 Jefferson Davis Highway, Richmond, VA 23297–5864
SP0430, TY Defense Supply Center Richmond, Procurement Branch, Product Center 5, 8000 Jefferson Davis Highway, Richmond, VA 23297–5813
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SP0599 Defense Supply Center Philadelphia–FCIM, 700 Robbins Avenue, Philadelphia, PA 19111–5096
SP0600, UA Defense Energy Support Center, 8725 John J. Kingman Road, Suite 2333, Fort Belvoir, VA 22042–6180
SP0700, UB, UZ, U3 Defense Supply Center Columbus, PO Box 3990, Columbus, OH 43216–3990
SP0701 Defense Supply Center Columbus, ATTN: DSNC–OP, Building 30, Fourth Floor, Columbus, OH 43216–5000
SP0710, YL Defense Supply Center Columbus, Base Contracting, PO Box 16704, Columbus, OH 43216–5010
SP0720, YM Defense Supply Center Columbus, Lumber Solicitations/Awards, PO Box 16704, Columbus, OH 43216–5010
SP0730, WZ Defense Supply Center Columbus, Military Interdepartmental PR MIPR Division, PO Box 3990, Columbus, OH 43216–5000
SP0740, XJ Defense Supply Center Columbus, Aerospace Solicitations/Awards, PO Box 3990, Columbus, OH 43216–5000
SP0749 Defense Supply Center Columbus, Aerospace/Public Manufacturing, PO Box 3990, Columbus, OH 43216–5000
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SP0770, UB Defense Supply Center Columbus, Commodities Solicitations/Awards, PO Box 16704, Columbus, OH 43216–5010
SP0779 Defense Supply Center Columbus, Commodities Public Manufacturing, PO Box 16704, Columbus, OH 43216–5010
SP0780 Defense Supply Center Columbus, Government Furnished Property Account, ATTN: DSNC–FAPR GPF, Building 20 A2N, 3990 East Broad Street, Columbus, OH 43216–5000
SP0789 Defense Supply Center Columbus–FCIM, PO Box 3990, Columbus, OH 43216–5000
SP0833, VS Defense National Stockpile Center, 8725 John J. Kingman Road, Suite 3339, Fort Belvoir, VA 22042–6233
SP0900, UD Defense Supply Center Columbus, Electronics, PO Box 16704, Columbus, OH 43216–5010
SP0905 Defense Supply Center Columbus, PO Box 16704, Columbus, OH 43216–5010

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SP0910, U7 Defense Supply Center Columbus, Base Contracting, PO Box 16704, Columbus, OH 43216-5010
SP0920, W4 Defense Supply Center Columbus, Electro Mechanical, PO Box 16704, Columbus, OH 43216-5010
SP0930 Defense Supply Center Columbus, Switches, PO Box 16704, Columbus, OH 43216-5000
SP0955 Defense Supply Center Columbus, Connectors, PO Box 16704, Columbus, OH 43216-5000
SP0960 Defense Supply Center Columbus, Active Devices, PO Box 16704, Columbus, OH 43216-5000
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48 CFR Ch. 2 (10–1–02 Edition)

Ch. 2, App. G

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SPM418, TY Defense Supply Center Richmond, Supplier Operations—Lockheed Martin, 8000 Jefferson Davis Highway, Richmond, VA 23297–5731

SPM419, TY Defense Supply Center Richmond, Supplier Operations—BAE, 8000 Jefferson Davis Highway, Richmond, VA 23297–5732

SPM420, TY Defense Supply Center Richmond, Supplier Operations—General Electric, 8000 Jefferson Davis Highway, Richmond, VA 23297–5733

SPM430, TY Defense Supply Center Richmond, Procurement Branch, Product Center 5, 8000 Jefferson Davis Highway, Richmond, VA 23297–5813

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SPM441, TY Defense Supply Center Richmond, Procurement Branch, Product Center 6, 8000 Jefferson Davis Highway, Richmond, VA 23297–5822

SPM450, TY Defense Supply Center Richmond, Procurement Branch, Product Center 4, 8000 Jefferson Davis Highway, Richmond, VA 23297–5800

SPM451, TY Defense Supply Center Richmond, Procurement Branch, Product Center 2, 8000 Jefferson Davis Highway, Richmond, VA 23297–5787

SPM460, TY Defense Supply Center Richmond, Procurement Branch, Product Center 1, 8000 Jefferson Davis Highway, Richmond, VA 23297–5772

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SPM470, TY Defense Supply Center Richmond, Procurement Branch, Product Center 10, 8000 Jefferson Davis Highway, Richmond, VA 23297–5352

SPM475, TY Defense Supply Center Richmond, Procurement Branch, Product Center 11, 8000 Jefferson Davis Highway, Richmond, VA 23297–5361

SPM480, TY Defense Supply Center Richmond, Procurement Branch, Product Center 3, 8000 Jefferson Davis Highway, Richmond, VA 23297–5877

SPM490, TY Defense Supply Center Richmond, Procurement Branch, Product Center 8, 8000 Jefferson Davis Highway, Richmond, VA 23297–5846

SPM499 Defense Supply Center Richmond, Special Purchase Branch, Project Orders, 8000 Jefferson Davis Highway, Richmond, VA 23297–5864

SPM500 TZ, WU Defense Supply Center Philadelphia, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SPM510 Defense Supply Center Philadelphia, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SPM520 Defense Supply Center Philadelphia, Product Verification Testing Acquisition, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SPM540 Defense Supply Center Philadelphia, 700 Robbins Avenue, Philadelphia, PA 19111–5096

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SPM560 Defense Supply Center Philadelphia, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SPM570 Defense Supply Center Philadelphia, Special Programs, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SPM580 Defense Supply Center Philadelphia, 700 Robbins Avenue, Philadelphia, PA 19111–5096

SPM599 Defense Supply Center Columbus, Attn: DSCC–OT, Building 20, Fourth Floor, Columbus, OH 43216–5090

SPM700 UB, UZ, U3 Defense Supply Center Columbus, PO Box 3990, Columbus, OH 43216–5090

SPM701 Defense Supply Center Columbus, Attn: DSCC–OT, Building 20, Fourth Floor, Columbus, OH 43216–5090

SPM702, YM Defense Supply Center Columbus, PO Box 16704, Columbus, OH 43216–5010

SPM730, WZ Defense Supply Center Columbus, PO Box 16704, Columbus, OH 43216–5010

SPM740, XJ Defense Supply Center Columbus, Aerospace Solicitations/Awards, PO Box 3990, Columbus, OH 43216–5000

SPM749 Defense Supply Center Columbus, Aerospace/Public Manufacturing, PO Box 3990, Columbus, OH 43216–5000

SPM750, UB Defense Supply Center Columbus, Land Solicitations/Awards, PO Box 16704, Columbus, OH 43216–5010

SPM759 Defense Supply Center Columbus, Land Public Manufacturing, PO Box 16704, Columbus, OH 43216–5010

SPM760, UB Defense Supply Center Columbus, Maritime Solicitations/Awards, PO Box 16704, Columbus, OH 43216–5010

SPM769 Defense Supply Center Columbus, Maritime Public Manufacturing, PO Box 16704, Columbus, OH 43216–5010

SPM779, UB Defense Supply Center Columbus, Public Manufacturing, PO Box 16704, Columbus, OH 43216–5010

SPM780 Defense Supply Center Columbus, Government Furnished Property Account, Attn: DSCC–PAPB GFP, Building 20 A2N, 3900 East Broad Street, Columbus, OH 43216–5000
SPM799 Defense Supply Center Columbus—FCIM, PO Box 3900, Columbus, OH 43216-5000
SPM900, UD Defense Supply Center Columbus, Electronic, PO Box 16794, Columbus, OH 43216-5010
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SPM910, U7 Defense Supply Center Columbus, PO Box 16704, Columbus, OH 43216-5010
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SPM930 Defense Supply Center Columbus, Switches, PO Box 16704, Columbus, OH 43216-5000
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SPM999 Defense Supply Center Columbus—FCIM, PO Box 16704, Columbus, OH 43216-5000
SP3100, WX Defense Distribution Center East, Directorate of Distribution Procurement, 2001 Mission Drive, New Cumberland, PA 17070-5001
SP3200, TV Defense Distribution Center West, Directorate of Distribution Procurement, Building S-4, Latthrop, CA 95330-5000
SP4400, X1 Defense Reutilization Marketing Service, 74 Washington Avenue North, Battle Creek, MI 49017-3092
SP4410, X1 Defense Reutilization Marketing Service, Special Contracts Division ATTN: DRMS-PO 74 Washington Avenue North, Battle Creek, MI 49017-3092
SP4420, X1 Defense Reutilization Marketing Service, ATTN: DRMS-PMG, APO AE 09096-5000
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SP4800 Defense Logistics Agency, Office of Small And Disadvantaged Business Utilization, 8725 John J. Kingman Road, Suite 1127, Fort Belvoir, VA 22060-6221
SP4900 Defense Logistics Support Command, Procurement Systems, Standard Procurement System Program, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6221
SP5200 Defense Logistics Support Command, Electronic Commerce Mall Operations, ATTN: DLSC-PRS, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6221
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SGH15A DCMC Southern Europe, Box 775, ATTN: DCMC-PP, APO AE 09096-5000
SJ100A Y9 DCMC Pacific-Japan, PSC 477, Box 39, FPO AP 96836-2739
SKH08R K1 DCMC Pacific-Korea (Kimhae), Unit 2000, APO AE 96214-5000
SML04A XC DCMC Pacific—Kuala Lumpur, American Embassy, APO AP 96355-5000
SPB01A QF DCMC Americas—Puerto Rico, Box DLA NSA 7, FPO AA 34055-0006
SSA20A DCMC Southern Europe—Spain, PSC 61, Box 3000, APO AE 09642-5000
SSN05A DCMC Pacific—Singapore, PSC 470, Box 2700, FPO AP 96534-2100
SSR01A YE DCMC Southern Europe—Israel, American Embassy Unit 7228, APO AE 09830-7228
SSU01A U4 DCMC Saudi Arabia—Air, DCMCI Unit 61305, APO AE 09803-1305
SSU03A US DCMC Saudi Arabia—Land, DCMCI Unit 61301, APO AE 09803-1301
STA21A DCMC Southern Europe—Italy (Brindisi), PSC 817, Box 61, FPO AE 09622-0061
STA23 DCMC Southern Europe—Italy, Unit 31401, Box 71, APO AE 09830-0071
STF02A, TQ DCMC Southern Europe—Turkey, Unit 9050, APO AE 09622-9050
SUK12A, VN DCMC Northern Europe, PSC 621, Box 55, APO AE 09421-0055
SUK14A DCMC Northern Europe—UK Bristol, Unit 4825, APO AE 09456-825
SUK15A DCMC Northern Europe—UK Roches-ter, PSC 30, Box 100, APO AE 09417-0100
SZH08A DCMC Pacific—New Zealand, PSC 467, Box 298, FPO AP 96531-2000
S1010A DCMC Birmingham, 1910 Third Avenue North, Room 201, Birmingham, AL 35203-2376
S1010A DCMC Birmingham, PO Box 12447, Birmingham, AL 35203-2447
S1020A, WA DCMC Pemco Aeroplex Bir-mingham, PO Box 12447, Birmingham, AL 35203-2447
S1020A, WA DCMC Pemco Aeroplex Bir-mingham, PO Box 12447, Birmingham, AL 35203-2447
S1040A, VY DCMC Phoenix, Two Renais-sance Square, 40 North Central Avenue, Suite 400, Phoenix, AZ 85004-4242
S1050A, SR DCMC Raytheon Tucson, PO Box 11357, Building 801, M/S D-4, Tucson, AZ 85741-1357
S1050A, WL DCMC West, 222 North Sepulveda Boulevard, El Segundo, CA 90245-4320
S1070A, XR DCMC San Francisco, 1265 Borregas Avenue, Sunnyvale, CA 94089
S1071A, YC DCMC San Francisco—UDLP San Jose, M/S SX65, PO Box 367, San Jose, CA 95103-0367
S1090A, X9 DCMC Boeing Huntington Beach, 5301 Boise Avenue, Huntington Beach, CA 92647-2096
PART 7—DEFENSE INFORMATION SYSTEMS AGENCY ACTIVITY ADDRESS NUMBERS

DCA100, VC DITCO-NCR, ATTN: DTN, 701 South Courthouse Road, Arlington, VA 22204-2199 (ZD10)

DCA200, VP Defense Information Technology Contracting Organization, Contracting Directorate, ATTN: AQS8, 2300 East Drive, Scott AFB, IL 62225-5406 (ZD11)

DCA300, IF DITCO-Pacific, ATTN: AQP, 1080 Vincennes Avenue, Suite 100, Pearl Harbor, HI 96860-4330 (ZD13)

DCA400, WK DITCO-Europe, ATTN: AQE, Unit 4285, Box 378, APO AE 09036-3575 (ZD14)

DCA500, KH DITCO-Alaska, ATTN: AQA, 1041 Kuter Avenue, Suite 209 Elmendorf AFB, AK 99506-2615 (ZD15)

PART 8—NATIONAL IMAGERY AND MAPPING AGENCY ACTIVITY ADDRESS NUMBERS

NMA100, BQ National Imagery and Mapping Agency, Contracting Support for Information Services, ATTN: ACID-38, 4600 Sangamore Road, Bethesda, MD 20816-5003 (ZM10)

NMA201, Y2 National Imagery and Mapping Agency, Contracting Support for Acquisition Directorate, ATTN: ACAN-45, 4600 Sangamore Road, Bethesda, MD 20816-5003 (ZM21)

NMA301, V2 National Imagery and Mapping Agency, Contracting Support for Directorate of Operations, ATTN: ACMW/13, 4600 Sangamore Road, Bethesda, MD 20816-5003 (ZM31)

NMA302, YQ National Imagery and Mapping Agency, Contracting Support for Directorate of Operations, ATTN: ACMW/13, 4600 Sangamore Road, Bethesda, MD 20816-5003 (ZM31)

NMA401, YL National Imagery and Mapping Agency, Contracting Support for Acquisition (ZM32)

NMA402, YZ National Imagery and Mapping Agency, Contracting Support for Acquisition (ZM32)
PART 9—DEFENSE THREAT REDUCTION AGENCY ACTIVITY ADDRESS NUMBERS

DTRA01, 8Z Defense Threat Reduction Agency (AL), DTRA Annex, 8725 John J. Kingman Road, MSC 6201, Fort Belvoir, VA 22060-6201 (ZT01)

DTRA02, ON Defense Threat Reduction Agency, Albuquerque Support Office (ALTK), 1680 Texas Street SE, Kirtland AFB, NM 87117-5669 (ZT02)

PART 10—MISCELLANEOUS DEFENSE ACTIVITIES ACTIVITY ADDRESS NUMBERS

MDA112, E0 T-ASA, Sacramento Contracting Office, 3230 Peacekeeper Way, Building 209, McClellan, CA 95652-2600 (ZP12)

MDA113, VE T-ASA, March Contracting Office, 1363 Z Street, Building 2730, March ARB, CA 92131-2017 (ZP13)

MDA220, BC Defense Finance and Accounting Service, Acquisition Services Directorate—Arlington, 1931 Jefferson Davis Highway, Room 905, Arlington, VA 22202-5291 (ZF22)

MDA230, SU Defense Finance and Accounting Service, Acquisition Services Directorate—Cleveland, 1240 East 9th Street, Cleveland, OH 44119-2055 (ZF23)

MDA240, 9R Defense Finance and Accounting Service, Acquisition Services Directorate—Columbus, 3990 East Broad Street, Building 21, Columbus, OH 43215-1152 (ZF24)

MDA250, SV Defense Finance and Accounting Service, Acquisition Services Directorate—Denver, 6760 East Irvington Place, Denver, CO 80229-8000 (ZF25)

MDA260, ST Defense Finance and Accounting Service, Acquisition Services Directorate—Indianapolis, 8699 East 56th Street, Building 1, Room 216, Indianapolis, IN 46249-0240 (ZF26)

MDA280, SY Defense Finance and Accounting Service, Acquisition Services Directorate—Kansas City, 1500 East 69th Street, Kansas City, MO 64197-0001 (ZF28)

MDA410, DR DoD Education Activity, ATTN: Procurement Division, 4040 North Fairfax Drive, 4th Floor, Arlington, VA 22203-1835 (ZK10)

MDA412, YR DoD Education Activity, European Procurement Office, CMR 443, Box 9000, APO AE 09096-9000 (ZK12)

MDA414, Y4 DoD Education Activity, Education Supplies Procurement Office, 101 Buford Road, Richmond, VA 32235-5292 (ZK14)

MDA416, YT DoD Education Activity, Pacific Procurement Division, Unit 35007, APO AP 96375 (ZK16)

MDA804, Maryland Procurement Office, ATTN: N363, 9800 Savage Road, Fort George G. Meade, MD 20755-6000 (ZD04)

MDA805, B4 Uniformed Services University of the Health Sciences, ATTN: Directorate of Contracting, 4301 Jones Bridge Road, Bethesda, MD 20814-4799 (ZD05)

MAD906, U5 TRICARE Management Activity, Contract Management Directorate, 16401 East Centretech Parkway, Aurora, CO 80011-9043 (ZD06)

MAD907 Purchasing and Contracting Office, Menwith Hill Station, APO AE 09210 (ZD07)

MAD908, ZK Virginia Contracting Activity, ATTN: DAP, PO Box 46683, Washington, DC 20050-6633 (ZD08)

MAD928 Armed Forces Radiobiology Research Institute, ATTN: Directorate of Contracting, USUHS, 4301 Jones Bridge Road, Bethesda, MD 20814-4799 (ZD28)


MAD947, DP Pentagon Renovation Office, 100 Boundary Channel Drive, Arlington, VA 22202-3712 (ZD47)

MAD972, WS DARPA, Contracts Management Office, 3701 North Fairfax Drive, Arlington, VA 22203-1714 (ZD72)

PART 11—DEFENSE MICROELECTRONICS ACTIVITY ADDRESS NUMBER

DMEA00, 2P Defense Microelectronics Activity, ATTN: Contracting Office, 4234-54th Street, McClellan, CA 95652-2100 (ZD90)

PART 12—MISSILE DEFENSE AGENCY ACTIVITY ADDRESS NUMBERS

HQ0006, SS Missile Defense Agency, Contract Directorate, ATTN: CT, 7100 Defense Pentagon, Washington, DC 20301-7100 (ZD60)

H95001, VV Joint National Integration Center, Contract Management, 730 Irwin Avenue, Schriever Air Force Base, CO 80132-7300 (ZD61)

PART 13—DEFENSE COMMISSARY AGENCY ACTIVITY ADDRESS NUMBERS

DECA01, ZG Defense Commissary Agency, Resale Contracting Division, ATTN: DeCA/PSMC, 1300 E Avenue, Fort Lee, VA 23801-1490 (ZD81)

DECA02, ZT Defense Commissary Agency, Resale Contracting Division, ATTN: DeCA/PSMC, 1300 E Avenue, Fort Lee, VA 23801-1900 (ZD82)

DECA03, OH Defense Commissary Agency, Eastern Region, CIBA Contracting Division, 5151 Bonney Road, Suite 201, Virginia Beach, VA 23462-4314 (ZD83)

DECA04, BE Defense Commissary Agency, Contracting Business Unit, Equip/Supply & Revenue, ATTN: DeCA/CICE, 1300 E Avenue, Fort Lee, VA 23801-1800 (ZD84)

DECA06, 0J Defense Commissary Agency, Midwest Region, ATTN: DeCA/MW/RDCC, 300 APCOMS Way, Building 3030, San Antonio, TX 78236-1330 (ZD86)
APPENDIX H TO CHAPTER 2—DEBARMENT AND SUSPENSION PROCEDURES

Sec. 100 Scope.
101 Notification.
102 Nature of proceeding.
103 Presentation of matters in opposition.
104 Fact-finding.
105 Timing requirements.
106 Subsequent to fact-finding.


H-100 Scope.

This appendix provides uniform debarment and suspension procedures to be followed by all debarring and suspending officials.

H-101 Notification.

Contractors will be notified of the proposed debarment or suspension in accordance with FAR 9.406-3 or 9.407-3. A copy of the record which formed the basis for the decision by the debarring and suspending official will be made available to the contractor. If there is a reason to withhold from the contractor any portion of the record, the contractor will be informed of what is withheld and the reasons for such withholding.

H-102 Nature of proceeding.

There are two distinct proceedings which may be involved in the suspension or debarment process. The first is the presentation of matters in opposition to the suspension or proposed debarment by the contractor. The second is fact-finding which occurs only in cases in which the contractor’s presentation of matters in opposition raises a genuine dispute over one or more material facts. In a suspension action based upon an indictment or in a proposed debarment action based upon a conviction or civil judgment, there will be no fact-filling proceeding concerning the matters alleged in the indictment, or the facts underlying the conviction or civil judgment. However, to the extent that the proposed action stems from the contractor’s affiliation with an individual or firm indicted or convicted, or the subject of a civil judgment, fact-finding is permitted if a genuine dispute of fact is raised as to the question of affiliation as defined in FAR 9.463.

H-103 Presentation of matters in opposition.

(a) In accordance with FAR 9.406-3(c) and 9.407-3(c), matters in opposition may be presented in person, through a representative. Matters in opposition may be presented through any combination of the foregoing methods, but if a contractor desires to present matters in person or through a representative, any written material

Department of Defense

DECA07, 02 Defense Commissary Agency, Western/Pacific Region, ATTN: DeCA/WP/RDC, 3401 Acacia Street, Suite 115, McLaughlin, 95652-1062 (ZD67)

DECA08, 0K Defense Commissary Agency, Contracting Business Unit, Services Division, ATTN: DeCA/CICS, 1300 E Avenue, Fort Lee, VA 23801-1800 (ZD88)

DECA09, 0U Defense Commissary Agency, European Region, ATTN: DeCA/EU/AM, Unit 3060, APO AE 09094-3060 (ZD89)

PART 14—UNITED STATES SPECIAL OPERATIONS COMMAND ACTIVITY ADDRESS NUMBERS

USZA20, 1R AFSC Specialized Contracting Office, 100 Bartley Street, Suite 208-W, Hurlburt Field, FL 32544-5273—(ZA20)

USZA21 SOPAC Contracting Office, Special Operations Command Pacific, Building 31-A, Box 64046, Thompson Road, Camp H.M. Smith, HI 96861-4046—(ZA21)

USZA22, 2U USSOCOM Headquarters, Directorate of Procurement, ATTN: SOAL-KB, 7701 Tampa Point Boulevard, MacDill AFB, FL 33621-5323—(ZA22)

USZA23 Integrated Aviation Systems 21 Workgroup, ATTN: AATDA, Building 401, Fort Eustis, VA 23604-5577—(ZA23)

USZA26, 1Z USSOCOM, Procurement Management Office, ATTN: SOAL-KMR, 7701 Tampa Point Boulevard, MacDill AFB, FL 33621-5323—(ZA26)

USZA92, 1F USSOCOM, USASOC, ATTN: AOCO, Building E-2929, Fort Bragg, NC 28307–5200—(ZA92)

USZA94, 2L Naval Special Warfare Group One, 3632 Guadalcacalcan Road, San Diego, CA 92155-5883—(ZA94)

USZA95, 1A USSOCOM, TAKO, Contracting Division, ATTN: AMSAT-D-TK, Building 401, Lee Boulevard, Office 209, Fort Eustis, VA 23604-5577—(ZA95)

USZA96, 1F Special Boat Squadron Two, ATTN: NAV Little Creek, 2220 Schofield Road, Suite 100, Norfolk, VA 23521–2845—(ZA96)

USZA97, 1B Naval Special Warfare Group Two, 3564 Helicopter Road, Norfolk, VA 23521–2845—(ZA97)

USZA99, 1B Naval Special Warfare Development Group, 1636 Regulus Avenue, Building 313, Virginia Beach, VA 23461-2299—(ZA39)

should be delivered at least 5 working days in advance of the presentation. Usually, all matters in opposition are presented in a single proceeding. A contractor who becomes aware of a pending indictment or allegations of wrongdoing that the contractor believes may lead to suspension or debarment action may contact the debarring and suspending official or their designee to provide information as to the contractor’s present responsibility.

(b) An in-person presentation is an informal meeting, nonadversarial in nature. The debarring and suspending official and/or other agency representatives may ask questions of the contractor or its representative making the presentation. The contractor may select the individuals who will attend the meeting on the contractor’s behalf; individual respondents or principals of a business firm respondent may attend and speak for themselves.

(c) In accordance with FAR 9.406-3(c) and 9.407-3(c), the contractor may submit matters in opposition within 30 days from receipt of the notice of suspension or proposed debarment.

(d) The opportunity to present matters in opposition to debarment includes the opportunity to present matters concerning the duration of the debarment.

H-104 Fact-finding.

(a) The debarring and suspending official will determine whether the contractor’s presentation has raised a genuine dispute of material fact(s). If the debarring and suspending official has decided against debarment or continued suspension, or the provisions of FAR 9.4 preclude fact-finding, no fact-finding will be conducted. If the debarring and suspending official has determined a genuine dispute of material fact(s) exists, a designated fact-finder will conduct the fact-finding proceeding. The proceeding before the fact-finder will be limited to a finding of the facts in dispute as determined by the debarring and suspending official.

(b) The designated fact-finder will establish the date for a fact-finding proceeding, normally to be held within 45 working days of the contractor’s presentation of matters in opposition. An official record will be made of the fact-finding proceeding.

(c) The Government’s representative and the contractor will have an opportunity to present evidence relevant to the facts at issue. The contractor may appear in person or through a representative in the fact-finding proceeding.

(d) Neither the Federal Rules of Evidence nor the Federal Rules of Civil Procedure govern fact-finding. Hearsay evidence may be presented and will be given appropriate weight by the fact-finder.

(e) Witnesses may testify in person. Witnesses will be reminded of the official nature of the proceeding and that any false testimony given is subject to criminal prosecution. Witnesses are subject to cross-examination.

H-105 Timing requirements.

All timing requirements set forth in these procedures may be extended by the debarring and suspending official for good cause.

H-106 Subsequent to fact-finding.

(a) Written findings of fact will be prepared by the fact-finder as mandated by FAR 9.406-3(d)(2)(1) and 9.407-3(d)(2)(1).

(b) The fact-finder will determine the disputed fact(s) by a preponderance of the evidence. A copy of the findings of fact will be provided to the debarring and suspending official, the Government’s representative, and the contractor.

(c) The debarring and suspending official will determine whether to continue the suspension or to debar the contractor based upon the entire administrative record, including the findings of fact.

(d) Prompt written notice of the debarring and suspending official’s decision will be sent to the contractor and any affiliates involved, in compliance with FAR 9.406-3(e) and 9.407-3(d)(4).

[59 FR 27700, May 27, 1994]

APPENDIX I TO CHAPTER 2—POLICY AND PROCEDURES FOR THE DOD PILOT MENTOR-PROTEGE PROGRAM

Sec.
100 Purpose.
101 Definitions.
101.1 Emerging SDB protege firm.
101.2 Historically Black college or university.
101.3 Minority institution of higher education.
102 General procedures.
103 Program duration.
104 Eligibility requirements for a protege firm.
105 Selection of protege firms.
106 Approval process for companies to participate in the Program as mentor firms.
107 Mentor-protege agreements.
108 Reimbursement procedures.
109 Credit for unreimbursed developmental assistance costs.
110 Advance agreements on the treatment of developmental assistance costs.
111 Reporting requirements.
112 Agreement reviews.

I-100 Purpose.

(a) This Appendix I to 48 CFR Chapter 2 implements the Pilot Mentor-Protege Program (hereinafter referred to as the “Program”) established under Section 831 of Public Law 101–510, the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2302 note). The purpose of the Program is to—

(1) Provide incentives to major DoD contractors, performing under at least one active approved subcontracting plan negotiated with DoD or another Federal agency, to assist protege firms in enhancing their capabilities to satisfy DoD and other contract and subcontract requirements;

(2) Increase the overall participation of protege firms as subcontractors and suppliers under DoD contracts, other Federal agency contracts, and commercial contracts; and

(3) Foster the establishment of long-term business relationships between protege firms and such contractors.

(b) Under the Program, eligible companies approved as mentor firms will enter into mentor-protege agreements with eligible protege firms to provide appropriate developmental assistance to enhance the capabilities of the protege firms to perform as subcontractors and suppliers. According to the law, DoD may provide the mentor firm with either cost reimbursement or credit against applicable subcontracting goals established under contracts with DoD or other Federal agencies.

(c) DoD will measure the overall success of the Program by the extent to which the Program results in—

(1) An increase in the dollar value of contract and subcontract awards to protege firms (under DoD contracts, contracts awarded by other Federal agencies, and commercial contracts) from the date of their entry into the Program until 2 years after the conclusion of the agreement;

(2) An increase in the number and dollar value of subcontracts awarded to a protege firm (or former protege firm) by its mentor firm (or former mentor firm);

(3) An increase in subcontracting with small disadvantaged business (SDB) and women-owned small business (WOSB) concerns in industry categories where SDBs and WOSBs traditionally have not participated within the mentor firm’s vendor base;

(4) The involvement of emerging SDB protege firms in the Program; and

(5) An increase in the employment level of protege firms from the date of entry into the Program until 2 years after the completion of the agreement.

(d) This policy sets forth the procedures for participation in the Program applicable to companies that are interested in receiving—

(1) Reimbursement through a separate contract line item in a DoD contract or a separate contract with DoD; or

(2) Credit toward applicable subcontracting goals for costs incurred under the Program.

I-101 Definitions.

I-101.1 Emerging SDB protege firm.

A small disadvantaged business whose size is no greater than 50 percent of the Small Business Administration (SBA) numerical size standard applicable to the North American Industry Classification System (NAICS) code for the supplies or services that the protege firm provides or would provide to the mentor firm.

I-101.2 Historically Black college or university.

An institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

I-101.3 Minority institution of higher education.

An institution meeting the definition of “Minority Institution” at FAR 26.301.

I-102 General procedures.

(a) At any time between October 1, 1991, and September 30, 2002, companies interested in becoming mentor firms that want to take credit toward applicable subcontracting goals for costs incurred for providing developmental assistance to one or more protege firms must apply to DoD for participation in the Program pursuant to the application process set forth at I-106(a).

(b) At any time between October 1, 1991, and September 30, 2002, companies interested in becoming mentor firms that are able to identify funding from a DoD program manager(s) to provide developmental assistance to one or more protege firms must apply to DoD for participation in the Program, pursuant to the application process set forth at I-106(d).

I-103 Program duration.

Activities under the Program may occur only during the following periods:

(a) From October 1, 1991, until September 30, 2002, companies that have been approved for participation in the Program as mentor firms pursuant to I-102, General Procedures, may enter into mentor-protege agreements, pursuant to I-107, Mentor Protege Agreements.

(b) From October 1, 1991, until September 30, 2005, DoD may reimburse a mentor firm’s costs of providing developmental assistance to its protege firm only if a DoD program manager has identified the funding for such costs and—
(1)(1) For mentor-protege agreements entered into prior to October 1, 1999, the mentor firm incurs such costs after DoD and the mentor firm enter into a separate contract, cooperative agreement, or other agreement; or

(ii) For mentor-protege agreements entered into on or after October 1, 1999, the mentor firm incurs such costs after DoD and the mentor firm enter into a separate contract based upon a determination by the Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (SADBU, OUSD (AT&L)), that unusual circumstances justify using a separate contract; or

(2) The mentor firm incurs such costs pursuant to the execution of a separately priced contract line item added to a DoD contract(s).

(c) From October 1, 1991, until September 30, 2006, a mentor firm may receive credit toward the attainment of its applicable subcontracting goals, for unreimbursed costs incurred in providing developmental assistance to its protege firms, only if such costs are incurred pursuant to an approved mentor-protege agreement.

I-104 Eligibility requirements for a protege firm.

(a) An entity may qualify as a protege firm if it is—

(i) An SDB concern as defined at 219.001, paragraph (1) of the definition of “small disadvantaged business concern”;

(ii) A business entity owned and controlled by an Indian tribe as defined in Section 637(a)(13) of the Small Business Act (15 U.S.C. 637(a)(13));

(iii) A business entity owned and controlled by a Native Hawaiian Organization as defined in Section 637(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15));

(iv) A qualified organization employing the severely disabled as defined in Section 5064A of Public Law 102-172; or

(v) A small business concern owned and controlled by women, as defined in Section 8(d)(3)(D) of the Small Business Act (15 U.S.C. 637(d)(3)(D));

(b) Eligible for the award of Federal contracts; and

(c) A small business according to the SBA size standard for the NAICS code that represents the contemplated supplies or services to be provided by the protege firm to the mentor firm, if the firm is representing itself as a qualifying entity under paragraph (a)(1)(i) or (v) of this section.

(d) A protege firm may self-certify to a mentor firm that it meets the eligibility requirements in paragraph (a) of this section. Mentor firms may rely in good faith on a written representation that the entity meets the requirements of paragraph (a) of this section, except for a protege’s status as a small disadvantaged business concern (see FAR 19.703(b)).

(e) A protege firm may have only one active DoD mentor-protege agreement.

I-105 Selection of protege firms.

(a) Mentor firms will be solely responsible for selecting protege firms. Mentor firms are encouraged to identify and select concerns that are defined as emerging SDB protege firms.

(b) The selection of protege firms by mentor firms may not be protested, except as in paragraph (c) of this section.

(c) In the event of a protest regarding the size or disadvantaged status of an entity selected to be a protege firm as defined in I-104(a), the mentor firm must refer the protest to the SBA to resolve in accordance with 13 CFR Part 121 (with respect to size) or 13 CFR 124 (with respect to disadvantaged status).

(d) For purposes of the Small Business Act, no determination of affiliation or control (either direct or indirect) may be found between a protege firm and its mentor firm on the basis that the mentor firm has agreed to furnish (or has furnished) to its protege firm, pursuant to a mentor-protege agreement, any form of developmental assistance described in I-107(f).

(e) If at any time pursuant to paragraph (c) of this section, the SBA determines that a protege firm is ineligible, assistance that the mentor firm furnishes to such a concern after the date of the determination may not be considered assistance furnished under the Program.

I-106 Approval process for companies to participate in the Program as mentor firms.

(a) On or after October 1, 1991, a company that is interested in becoming a mentor firm that is seeking credit toward applicable subcontracting goals for costs incurred under the Program must submit a request to the Director, SADBU, OUSD (AT&L), for approval as a mentor firm under the Program. The request must include the information required in paragraphs (b) and (c) of this section. To the maximum extent possible, a company should limit its request to not more than 10 pages, single-spaced. A company may identify more than one protege in its request for approval under the Program. The request must include the information required in paragraphs (b) and (c) of this section and may cover one or more proposed mentor-protege relationships.

(b) A company must indicate whether it is interested in participating in the Program pursuant to I-106(1)(1) or (2) and must submit the following information:
(1) A statement that the company is currently performing under at least one active approved subcontracting plan negotiated with DoD or another Federal agency pursuant to FAR 19.702, and that the company is currently eligible for the award of Federal contracts.

(2) The number of proposed mentor-protege relationships covered by the request for approval as a mentor firm.

(3) A summary of the company's historical and recent activities and accomplishments under its small and disadvantaged business utilization program.

(4) The total dollar amount of DoD contracts and subcontracts that the company received during the 2 preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(5) The total dollar amount of all other Federal agency contracts and subcontracts that the company received during the 2 preceding fiscal years. (Show prime contracts and subcontracts separately per year.)

(6) The total dollar amount of subcontracts that the company awarded under DoD contracts during the 2 preceding fiscal years.

(7) The total dollar amount of subcontracts that the company awarded under all other Federal agency contracts during the 2 preceding fiscal years.

(8) The total dollar amount of subcontracts that the company awarded to all SDB and WOSB firms under DoD contracts and other Federal agency contracts during the 2 preceding fiscal years. (Show DoD subcontract awards separately.) If the company presently is required to submit a Standard Form (SF) 206, Summary Subcontract Report, the request must include copies of the final reports for the 2 preceding fiscal years.

(9) The number and total dollar amount of subcontracts that the company awarded to the identified protege firm(s) during the 2 preceding fiscal years (if any). (Show DoD subcontract awards and other Federal agency subcontract awards separately.)

(c) In addition to the information required in paragraph (b) of this section, companies must submit the following information for each proposed mentor-protege relationship:

(1) Information on the company's ability to provide developmental assistance to the identified protege firm and how that assistance will potentially increase subcontracting opportunities in industry categories where SDBs and WOSBs are not dominant in the company's vendor base.

(2) A letter of intent indicating that both the mentor firm and the protege firm will negotiate a mentor-protege agreement. The letter of intent must be signed by both parties and must contain the following information:

(i) The name, address, and telephone number of both parties.

(ii) The protege firm's business classification, based upon the NAICS code(s) that represents the contemplated supplies or services to be provided by the protege firm to the mentor firm.

(iii) A statement that the protege firm meets the eligibility criteria in I-104(a).

(iv) A preliminary assessment of the developmental needs of the protege firm, and the proposed developmental assistance the mentor firm envisions providing the protege firm to address those needs and enhance the protege firm's ability to perform successfully under contracts or subcontracts with DoD and other Federal agencies and commercial contracts.

(v) An estimate of the dollar amount and type of subcontracts that the mentor firm will award to the protege firm, and the period of time over which the mentor firm will make those awards.

(vi) Information as to whether the protege firm's development will be concentrated on a single major system, a service or supply program, research and development programs, initial production, or mature systems, or in the mentor firm's overall contract base.

(3) An estimate of the cost of the developmental assistance program and the period of time over which the mentor firm will provide assistance.

(d) A company that has identified Program funds to be made available through a DoD program manager must provide the information in paragraphs (b) and (c) of this section through the appropriate program manager and the cognizant Director, SADBU, to the Director, SADBU, OUSD(AT&L), with a letter signed by the appropriate program manager indicating the amount of funding that has been identified for the developmental assistance program. The company must submit a justification and endorsement from the cognizant Director, SADBU, when requesting any of the following unusual actions:

(1) Reimbursement of developmental costs in excess of $1,000,000.

(2) Reimbursement through a separate contract.

(3) A Program participation term greater than 3, but not more than 5, years.

(e) Companies seeking credit toward applicable subcontracting goals for the cost of developmental assistance, or reimbursement with funds made available by a DoD program manager, must submit four copies of the information specified in paragraphs (b) and (c) of this section to the Director, SADBU, OUSD(AT&L), ATTN: Pilot Mentor-Protege Program Manager, 1777 North Kent Street, Suite 9100, Arlington, VA 22209. Upon receipt of this information, the Director, SADBU, OUSD(AT&L), will review and evaluate each request and, to the maximum extent possible, within 30 days advise each applicant of approval or rejection of its request to become a mentor firm.
I-107 Mentor-protege agreements.

(a) A signed mentor-protege agreement for each mentor-protege relationship identified under I-106(b)(2) must be submitted to the Director, SADBU, OUSD (AT&L), and approved before developmental assistance costs may be incurred. To the maximum extent possible, such mentor-protege agreements will be approved within 5 business days of receipt.

(b) Each signed mentor-protege agreement submitted for approval under the Program must include—

(1) The name, address, and telephone number of the mentor firm and the protege firm and a point of contact within the mentor firm who will administer the developmental assistance program;

(2) The NAICS code(s) that represent the contemplated supplies or services to be provided by the protege firm to the mentor firm and a statement that, at the time the agreement is submitted for approval, the protege firm, if an SDB or WOSB concern, does not exceed the size standard for the appropriate NAICS code;

(3) A developmental program for the protege firm specifying the type of assistance identified in paragraph (i) of this section that will be provided. The developmental program also must include—

(i) Factors to assess the protege firm’s developmental progress under the Program, including milestones for providing the identified assistance;

(ii) The anticipated number, dollar value, and type of subcontracts to be awarded the protege firm consistent with the extent and nature of the mentor firm’s business, and the period of time over which the subcontracts will be awarded; and

(iii) The dollar value of the technical assistance program, broken out per year;

(iii) A statement from the protege firm indicating its commitment to comply with the requirements for reporting and for review of the agreement during the duration of the agreement and for 2 years thereafter;

(4) A statement from the protege firm indicating its intent to voluntarily withdraw its participation in the Program. A mentor firm may voluntarily terminate its mentor-protege agreement(s) only if it no longer wants to be a participant in the Program as a mentor firm. Otherwise, a mentor firm must terminate a mentor-protege agreement for cause;

(7) Procedures for a protege firm to notify the mentor firm in writing at least 30 days in advance of the mentor firm’s intent to voluntarily withdraw its participation in the Program. A mentor firm may voluntarily terminate its mentor-protege agreement(s) only if it no longer wants to be a participant in the Program as a mentor firm. Otherwise, a mentor firm must terminate a mentor-protege agreement for cause that—

(i) May continue to provide assistance to its protege firms pursuant to approved mentor-protege agreements entered into prior to the imposition of such suspension or debarment;

(ii) May not be reimbursed or take credit for any costs of providing developmental assistance to its protege firm, incurred more than 30 days after the imposition of such suspension or debarment; and

(iii) Must promptly give notice of its suspension or debarment to its protege firm and the Director, SADBU, OUSD (AT&L).

(5) A program participation term for the agreement that does not exceed 3 years. Requests for an extension of the agreement for a period not to exceed an additional 2 years are subject to the approval of the Director, SADBU, OUSD (AT&L), and are contingent upon the endorsement and submission of justification for such an extension from the cognizant Director, SADBU. The justification must detail the unusual circumstances that warrant a term in excess of 3 years;

(6) Procedures for the mentor firm to notify the protege firm in writing at least 30 days in advance of the mentor firm’s intent to voluntarily withdraw its participation in the Program. A mentor firm may voluntarily terminate its mentor-protege agreement(s) only if it no longer wants to be a participant in the Program as a mentor firm. Otherwise, a mentor firm must terminate a mentor-protege agreement for cause;

(8) Procedures for the mentor firm to terminate the mentor-protege agreement for cause which provide that—

(i) The mentor firm must furnish the protege firm a written notice of the proposed termination, stating the specific reasons for such action, at least 30 days in advance of the effective date of such proposed termination;

(ii) The protege firm must have 30 days to respond to such notice of proposed termination, and may rebut any findings believed to be erroneous and offer a remedial program;

(iii) Upon prompt consideration of the protege firm’s response, the mentor firm must either withdraw the notice of proposed termination and continue the protege firm’s participation, or issue the notice of termination; and

(iv) The mentor firm must be erroneous and offer a remedial program;
with the requirements of this section, will be final and is not reviewable by DoD; and
(9) Additional terms and conditions as may be agreed upon by both parties.
(c) Mentor firms must send a copy of any termination notices to the Director, SADBu, OUSD (AT&L), the cognizant Director, SADBu, and the Defense Contract Management Agency administrative contracting officer responsible for conducting the annual performance review, and, where funding is made available through a DoD program manager, must provide a copy to the program manager and to the contracting officer.
(d) Termination of a mentor-protege agreement will not impair the obligations of the mentor firm to perform pursuant to its contractual obligations under Government contracts and subcontracts. Termination of all or part of the mentor-protege agreement will not impair the obligations of the protege firm to perform pursuant to its contractual obligations under any contract awarded to the protege firm by the mentor firm.
(e) Only developmental assistance provided after DoD approval of the mentor-protege agreement may be reimbursed.
(f) The mentor-protege agreement may provide for the mentor firm to furnish any or all of the following types of developmental assistance:
(1) Assistance by mentor firm personnel in—
(i) General business management, including organizational management, financial management, and personnel management, marketing, business development, and overall business planning;
(ii) Engineering and technical matters such as production inventory control and quality assurance; and
(iii) Any other assistance designed to develop the capabilities of the protege firm under the developmental program.
(2) Award of subcontracts under DoD contracts or other contracts on a noncompetitive basis.
(3) Payment of progress payments for the performance of subcontracts by a protege firm in amounts as provided for in the subcontract; but in no event may any such progress payment exceed 100 percent of the costs incurred by the protege firm for the performance of the subcontract. Provision of progress payments by a mentor firm to a protege firm at a rate other than the customary rate for the firm must be implemented in accordance with FAR 32.504(c).
(4) Advance payments under such subcontracts. The mentor firm must administer advance payments in accordance with FAR subpart 32.4.
(5) Loans.
(6) Investment(s) in the protege firm in exchange for an ownership interest in the protege firm, not to exceed 10 percent of the total ownership interest. Investments may include, but are not limited to, cash, stock, and contribution in kind.
(7) Assistance that the mentor firm obtains for the protege firm from one or more of the following:
(ii) Entities providing procurement technical assistance pursuant to 10 U.S.C. Chapter 142 (Procurement Technical Assistance Centers).
(iii) Historically Black colleges and universities.
(iv) Minority institutions of higher education.
(g) A mentor firm may not require a protege firm to enter into a mentor-protege agreement as a condition for award of a contract by the mentor firm, including a subcontract under a DoD contract awarded to the mentor firm.

I-108 Reimbursement procedures.
(a) DoD will reimburse a mentor firm only for the cost of developmental assistance incurred by the mentor firm and provided to a protege firm under I-107(f)(1) and (7), and pursuant to an approved mentor-protege agreement. For agreements entered into prior to October 1, 1999, DoD will provide reimbursement only through a separate contract, cooperative agreement, or other agreement entered into between DoD and the mentor firm, awarded for the purpose of providing developmental assistance to one or more protege firms; a separately priced contract line item in a DoD contract; or inclusion of program costs in indirect expense pools. For agreements entered into on or after October 1, 1999, DoD will provide reimbursement only through a separate contract line item in a DoD contract; or through a separate contract if the Director, SADBu, OUSD(AT&L), determines that unusual circumstances justify reimbursement using a separate contract. No other means for the reimbursement of the costs of developmental assistance provided under I-107(f)(1) and (7) are authorized under the Program.
(b) Costs included in indirect expense pools will be reimbursed only to the extent that the costs are otherwise reasonable, allocable, and allowable.
(c) Assistance provided in the form of advance payments to a protege firm in excess of the customary progress payment rate for the firm will be reimbursed only if implemented in accordance with FAR 32.504(c).
(d) Assistance provided in the form of advance payments will be reimbursed only if the payments have been provided to a protege firm under subcontract terms and conditions similar to those in the clause at FAR 52.232-12, Advance Payments. Reimbursement of any advance payments will be made
pursuant to the inclusion of the clause at DFARS 252.232-7006, Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protege Program, in appropriate contract and subcontracting documents. The mentor firm agrees that the risk of any financial loss due to the failure or inability of a protege firm to repay any unliquidated advance payments will be the sole responsibility of the mentor firm.

(c) Other costs that are not eligible for reimbursement pursuant to I-108(a) may be recognized for credit only if requested, identified, and incorporated in an approved mentor-protege agreement.

(d) The amount of credit a mentor firm may receive for any such unreimbursed developmental assistance costs must be equal to—

(1) Four times the total amount of such costs attributable to assistance provided by small business development centers, historically Black colleges and universities, minority institutions, and procurement technical assistance centers.

(2) Three times the total amount of such costs incurred by the mentor in carrying out the developmental assistance program.

(3) Two times the total amount of other such costs incurred by the mentor in carrying out the developmental assistance program.

(e) A mentor firm may receive credit toward the attainment of an SDB subcontracting goal for each subcontract awarded for a product or a service by the mentor firm to an entity that qualifies as an SDB protege firm pursuant to I-104(a)(1)(i) through (iv). With respect to former SDB protege firm(s), a mentor may take credit for awards to such concern(s) that, except for its size would be a small business concern owned and controlled by socially and economically disadvantaged individuals, but only if—

(1) The size of such business concern is not more than two times the appropriate size standard;

(2) The business concern formerly had a mentor-protege agreement with such mentor firm that was not terminated for cause; and

(3) The credit is taken not later than October 1, 2005.

(f) Amounts credited toward applicable subcontracting goal(s) for unreimbursed costs under the Program must be separately identified from the amounts credited toward the goal resulting from the award of actual subcontracts to protege firms. The combination of the two must equal the mentor firm’s overall accomplishment toward the applicable goal(s).

(g) Adjustments may be made to the amount of credit claimed under paragraphs (a) and (b) of this section if the Director, SADBU, OUSD(AT&L), determines that—

(1) A mentor firm’s performance in the attainment of its subcontracting goals through actual subcontract awards declined from the prior fiscal year without justifiable cause; and

(2) Imposition of such a limitation on credit appears to be warranted to prevent abuse of this incentive for the mentor firm’s participation in the Program.

(h) The mentor firm must be afforded the opportunity to explain the decline in small business subcontract awards before imposition of any such limitation on credit. In
making the final decision to impose a limitation on credit, the Director, SADBU, OUSD (AT&L), must consider—

1. The mentor firm’s overall small business participation rates (in terms of percentages of subcontract awards and dollars awarded) as compared to the participation rates existing during the 2 fiscal years prior to the firm’s admission to the Program;

2. The mentor firm’s aggregate prime contract awards during the prior 2 fiscal years and the total amount of subcontract awards under such contracts; and

3. Such other information the mentor firm may wish to submit.

(a) The decision of the Director, SADBU, OUSD (AT&L), regarding the imposition of a limitation on credit will be final.

(b) Any prospective limitation on credit imposed by the Director, SADBU, OUSD (AT&L), must be expressed as a percentage of otherwise eligible credit, will apply beginning on a specific date in the future, and will continue until a date certain during the current fiscal year.

(c) Any retroactive limitation on credit imposed by the Director, SADBU, OUSD (AT&L), must reflect the actual costs incurred for developmental assistance (not exceeding the maximum amount reimbursed).

1. For purposes of calculating any incentives to be paid to a mentor firm for exceeding an SDB subcontracting goal pursuant to the clause at FAR 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting, incentives will be paid only if an SDB subcontracting goal has been exceeded as a result of actual subcontract awards to SDBs (i.e., excluding credit under paragraphs (a), (b), and (c) of this section).

(m) Developmental assistance costs that are incurred pursuant to an approved mentor-protege agreement, and have been charged to, but not reimbursed through, a separate contract, cooperative agreement, or other agreement entered into between DoD and the mentor firm, or through a separately priced contract line item added to a DoD contract, will not be otherwise reimbursed, as either a direct or indirect cost, under any other DoD contract, irrespective of whether the costs have been recognized for credit against applicable subcontracting goals.

(n) Developmental assistance provided under an approved mentor-protege agreement is distinct from, and must 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 must be accumulated and charged in accordance with the contractor’s approved accounting practices; they are not considered developmental assistance costs eligible for either credit or reimbursement under the Program.

I–110 Advance agreements on the treatment of developmental assistance costs.

Pursuant to FAR 31.109, approved mentor firms seeking either reimbursement or credit are strongly encouraged to enter into an advance agreement with the contracting officer responsible for determining final indirect cost rates under FAR 42.705. The purpose of the advance agreement is to establish the accounting treatment of the costs of the developmental assistance pursuant to the mentor-protege agreement prior to the incurring of any costs by the mentor firm. An advance agreement is an attempt by both the Government and the mentor firm to avoid possible subsequent dispute based on questions related to reasonableness, allocability, or allowability of the costs of developmental assistance under the Program. Absent an advance agreement, mentor firms are advised to establish the accounting treatment of such costs and address the need for any changes to their cost accounting practices that may result from the implementation of mentor-protege agreement, prior to incurring any costs, and irrespective of whether costs will be reimbursed or credited.

I–111 Reporting requirements.

(a) Mentor firms must report on the progress made under active mentor-protege agreements semiannually for the periods ending March 31st and September 30th. The September 30th report must address the entire fiscal year. Reports are due 30 days after the close of each reporting period. The report must include—

1. Data on performance under the mentor-protege agreement, including dollars obligated, expenditures, credit taken under the Program, applicable subcontract awards under DoD contracts, developmental assistance provided, impact of the agreement, and progress of the agreement (A recommended format and guidance for this submission are available via the Internet at http://www.acq.osd.mil/sadbu/mentor_protege);

2. A copy of the SF 294, Subcontracting Report for Individual Contracts, for each contract where developmental assistance was credited, with a statement in Block 15 identifying—

(i) The amount of dollars credited to the applicable subcontracting goal as a result of developmental assistance provided to protege firms under the Program; and

(ii) The number and dollar value of subcontract awards to the protege firm(s), broken out per protege.

3. In addition to the reporting requirements of paragraph (a)(1) of this section, for commercial companies and companies participating in the DoD Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans, indicate in Block 15 of the SF 294—
(i) The total dollars credited to the applicable subcontracting goal as a result of developmental assistance provided to protege firm(s) under the Program; and

(ii) The total dollar amount of subcontracts awarded to the protege firm(s), broken out per protege.

(b) The mentor firm and the protege firm—

(1) Must provide data on the progress made by the protege firm in employment, revenues, and participation in DoD contracts during—

(i) Each fiscal year of the Program participation term; and

(ii) Each of the 2 fiscal years following the expiration of the Program participation term;

(2) Must provide the data by October 31st of each year to address the prior fiscal year; and

(3) During the Program participation term, may provide the data as part of the mentor report required by paragraph (a) of this section for the period ending September 30th.

(c) Progress reports must be submitted as follows:

(1) For agreements that provide credit toward applicable subcontracting goals for costs incurred under the Program, to the Director, SADB, OUSD (AT&L), the contracting officer, the DCMA administrative contracting officer, the program manager, and the cognizant Director, SADB.

I-112 Agreement reviews.

The Defense Contract Management Agency will conduct annual performance reviews of the progress and accomplishments realized under approved mentor-protege agreements. These reviews must verify data provided on the semiannual reports and must provide information as to—

(a) Whether all costs reimbursed to the mentor firm under the agreement were reasonably incurred to furnish assistance to the protege firm in accordance with the mentor-protege agreement and applicable regulations and procedures; and

(b) Whether the mentor firm and protege firm accurately reported progress made by the protege firm in employment, revenues, and participation in DoD contracts during the Program participation term and for 2 fiscal years following the expiration of the Program participation term; and

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected
**Table of CFR Titles and Chapters**

*(Revised as of October 1, 2002)*

**Title 1—General Provisions**

I  Administrative Committee of the Federal Register (Parts 1—49)
II  Office of the Federal Register (Parts 50—299)
IV  Miscellaneous Agencies (Parts 400—500)

**Title 2  [Reserved]**

**Title 3—The President**

I  Executive Office of the President (Parts 100—199)

**Title 4—Accounts**

I  General Accounting Office (Parts 1—99)

**Title 5—Administrative Personnel**

I  Office of Personnel Management (Parts 1—1199)
II  Merit Systems Protection Board (Parts 1200—1299)
III  Office of Management and Budget (Parts 1300—1399)
V  The International Organizations Employees Loyalty Board (Parts 1500—1599)
VI  Federal Retirement Thrift Investment Board (Parts 1600—1699)
VIII  Office of Special Counsel (Parts 1800—1899)
IX  Appalachian Regional Commission (Parts 1900—1999)
XI  Armed Forces Retirement Home (Part 2100)
XIV  Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)
XV  Office of Administration, Executive Office of the President (Parts 2500—2599)
XVI  Office of Government Ethics (Parts 2600—2699)
XXI  Department of the Treasury (Parts 3100—3199)
XXII  Federal Deposit Insurance Corporation (Part 3201)
XXIII  Department of Energy (Part 3301)
XXIV  Federal Energy Regulatory Commission (Part 3401)
XXV  Department of the Interior (Part 3501)
XXVI  Department of Defense (Part 3601)
Title 5—Administrative Personnel—Continued

XXVIII Department of Justice (Part 3801)
XXIX Federal Communications Commission (Parts 3900—3999)
XXX Farm Credit System Insurance Corporation (Parts 4000—4099)
XXXI Farm Credit Administration (Parts 4100—4199)
XXXIII Overseas Private Investment Corporation (Part 4301)
XXXV Office of Personnel Management (Part 4501)
XL Interstate Commerce Commission (Part 5001)
XLI Commodity Futures Trading Commission (Part 5101)
XLII Department of Labor (Part 5201)
XLIII National Science Foundation (Part 5301)
XLV Department of Health and Human Services (Part 5501)
XLVI Postal Rate Commission (Part 5601)
XLVII Federal Trade Commission (Part 5701)
XLVIII Nuclear Regulatory Commission (Part 5801)
L Department of Transportation (Part 6001)
LI Export-Import Bank of the United States (Part 6201)
LII Department of Education (Parts 6300—6399)
LIV Environmental Protection Agency (Part 6401)
LVII General Services Administration (Part 6701)
LVIII Board of Governors of the Federal Reserve System (Part 6801)
LIX National Aeronautics and Space Administration (Part 6901)
LX United States Postal Service (Part 7001)
LXI National Labor Relations Board (Part 7101)
LXII Equal Employment Opportunity Commission (Part 7201)
LXIII Inter-American Foundation (Part 7301)
LXV Department of Housing and Urban Development (Part 7501)
LXVI National Archives and Records Administration (Part 7601)
LXIX Tennessee Valley Authority (Part 7901)
LXXI Consumer Product Safety Commission (Part 8101)
LXXII Department of Agriculture (Part 8301)
LXXIV Federal Mine Safety and Health Review Commission (Part 8401)
LXXVI Federal Retirement Thrift Investment Board (Part 8601)
LXXVII Office of Management and Budget (Part 8701)

Title 6  [Reserved]

Title 7—Agriculture

SUBTITLE A—Office of the Secretary of Agriculture (Parts 0—26)
SUBTITLE B—Regulations of the Department of Agriculture
I Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)
**Title 7—Agriculture—Continued**

<table>
<thead>
<tr>
<th>Chap.</th>
<th>Title</th>
<th>Parts</th>
</tr>
</thead>
<tbody>
<tr>
<td>II</td>
<td>Food and Nutrition Service, Department of Agriculture</td>
<td>210—299</td>
</tr>
<tr>
<td>III</td>
<td>Animal and Plant Health Inspection Service, Department of Agriculture</td>
<td>300—399</td>
</tr>
<tr>
<td>IV</td>
<td>Federal Crop Insurance Corporation, Department of Agriculture</td>
<td>400—499</td>
</tr>
<tr>
<td>V</td>
<td>Agricultural Research Service, Department of Agriculture</td>
<td>500—599</td>
</tr>
<tr>
<td>VI</td>
<td>Natural Resources Conservation Service, Department of Agriculture</td>
<td>600—699</td>
</tr>
<tr>
<td>VII</td>
<td>Farm Service Agency, Department of Agriculture</td>
<td>700—799</td>
</tr>
<tr>
<td>VIII</td>
<td>Grain Inspection, Packers and Stockyards Administration (Federal Grain Inspection Service), Department of Agriculture</td>
<td>800—899</td>
</tr>
<tr>
<td>IX</td>
<td>Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture</td>
<td>900—999</td>
</tr>
<tr>
<td>X</td>
<td>Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture</td>
<td>1000—1199</td>
</tr>
<tr>
<td>XI</td>
<td>Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture</td>
<td>1200—1299</td>
</tr>
<tr>
<td>XIV</td>
<td>Commodity Credit Corporation, Department of Agriculture</td>
<td>1400—1499</td>
</tr>
<tr>
<td>XV</td>
<td>Foreign Agricultural Service, Department of Agriculture</td>
<td>1500—1599</td>
</tr>
<tr>
<td>XVI</td>
<td>Rural Telephone Bank, Department of Agriculture</td>
<td>1600—1699</td>
</tr>
<tr>
<td>XVII</td>
<td>Rural Utilities Service, Department of Agriculture</td>
<td>1700—1799</td>
</tr>
<tr>
<td>XVIII</td>
<td>Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture</td>
<td>1800—2099</td>
</tr>
<tr>
<td>XXVI</td>
<td>Office of Inspector General, Department of Agriculture</td>
<td>2600—2699</td>
</tr>
<tr>
<td>XXVII</td>
<td>Office of Information Resources Management, Department of Agriculture</td>
<td>2700—2799</td>
</tr>
<tr>
<td>XXVIII</td>
<td>Office of Operations, Department of Agriculture</td>
<td>2800—2899</td>
</tr>
<tr>
<td>XXIX</td>
<td>Office of Energy, Department of Agriculture</td>
<td>2900—2999</td>
</tr>
<tr>
<td>XXX</td>
<td>Office of the Chief Financial Officer, Department of Agriculture</td>
<td>3000—3099</td>
</tr>
<tr>
<td>XXXI</td>
<td>Office of Environmental Quality, Department of Agriculture</td>
<td>3100—3199</td>
</tr>
<tr>
<td>XXXII</td>
<td>Office of Procurement and Property Management, Department of Agriculture</td>
<td>3200—3299</td>
</tr>
<tr>
<td>XXXIII</td>
<td>Office of Transportation, Department of Agriculture</td>
<td>3300—3399</td>
</tr>
<tr>
<td>XXXIV</td>
<td>Cooperative State Research, Education, and Extension Service, Department of Agriculture</td>
<td>3400—3499</td>
</tr>
</tbody>
</table>
Title 7—Agriculture—Continued

XXXV Rural Housing Service, Department of Agriculture (Parts 3500—3599)
XXXVI National Agricultural Statistics Service, Department of Agriculture (Parts 3600—3699)
XXXVII Economic Research Service, Department of Agriculture (Parts 3700—3799)
XXXVIII World Agricultural Outlook Board, Department of Agriculture (Parts 3800—3899)
XLI [Reserved]
XLII Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture (Parts 4200—4299)

Title 8—Aliens and Nationality

I Immigration and Naturalization Service, Department of Justice (Parts 1—599)

Title 9—Animals and Animal Products

I Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)
II Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs), Department of Agriculture (Parts 200—299)
III Food Safety and Inspection Service, Department of Agriculture (Parts 300—599)

Title 10—Energy

I Nuclear Regulatory Commission (Parts 0—199)
II Department of Energy (Parts 200—699)
III Department of Energy (Parts 700—999)
X Department of Energy (General Provisions) (Parts 1000—1099)
XVII Defense Nuclear Facilities Safety Board (Parts 1700—1799)
XVIII Northeast Interstate Low-Level Radioactive Waste Commission (Part 1800)

Title 11—Federal Elections

I Federal Election Commission (Parts 1—9099)

Title 12—Banks and Banking

I Comptroller of the Currency, Department of the Treasury (Parts 1—199)
II Federal Reserve System (Parts 200—299)
III Federal Deposit Insurance Corporation (Parts 300—399)
IV Export-Import Bank of the United States (Parts 400—499)
Title 12—Banks and Banking—Continued

V Office of Thrift Supervision, Department of the Treasury (Parts 500—599)
VI Farm Credit Administration (Parts 600—699)
VII National Credit Union Administration (Parts 700—799)
VIII Federal Financing Bank (Parts 800—899)
IX Federal Housing Finance Board (Parts 900—999)
XI Federal Financial Institutions Examination Council (Parts 1100—1199)
XIV Farm Credit System Insurance Corporation (Parts 1400—1499)
XV Department of the Treasury (Parts 1500—1599)
XVII Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1700—1799)
XVIII Community Development Financial Institutions Fund, Department of the Treasury (Parts 1800—1899)

Title 13—Business Credit and Assistance

I Small Business Administration (Parts 1—199)
III Economic Development Administration, Department of Commerce (Parts 300—399)
IV Emergency Steel Guarantee Loan Board (Parts 400—499)
V Emergency Oil and Gas Guaranteed Loan Board (Parts 500—599)

Title 14—Aeronautics and Space

I Federal Aviation Administration, Department of Transportation (Parts 1—199)
II Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)
III Commercial Space Transportation, Federal Aviation Administration, Department of Transportation (Parts 400—499)
V National Aeronautics and Space Administration (Parts 1200—1299)
VI Air Transportation System Stabilization (Parts 1300—1399)

Title 15—Commerce and Foreign Trade

SUBTITLE A—OFFICE OF THE SECRETARY OF COMMERCE (PARTS 0—29)
SUBTITLE B—REGULATIONS RELATING TO COMMERCE AND FOREIGN TRADE
I Bureau of the Census, Department of Commerce (Parts 30—199)
II National Institute of Standards and Technology, Department of Commerce (Parts 200—299)
III International Trade Administration, Department of Commerce (Parts 300—399)
IV Foreign-Trade Zones Board, Department of Commerce (Parts 400—499)
Title 15—Commerce and Foreign Trade—Continued

VII Bureau of Industry and Security, Department of Commerce (Parts 700—799)
VIII Bureau of Economic Analysis, Department of Commerce (Parts 800—899)
IX National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)
XI Technology Administration, Department of Commerce (Parts 1100—1199)
XIII East-West Foreign Trade Board (Parts 1300—1399)
XIV Minority Business Development Agency (Parts 1400—1499)
  SUBTITLE C—REGULATIONS RELATING TO FOREIGN TRADE AGREEMENTS
XX Office of the United States Trade Representative (Parts 2000—2099)
  SUBTITLE D—REGULATIONS RELATING TO TELECOMMUNICATIONS AND INFORMATION
XXIII National Telecommunications and Information Administration, Department of Commerce (Parts 2300—2399)

Title 16—Commercial Practices

I Federal Trade Commission (Parts 0—999)
II Consumer Product Safety Commission (Parts 1000—1799)

Title 17—Commodity and Securities Exchanges

I Commodity Futures Trading Commission (Parts 1—199)
II Securities and Exchange Commission (Parts 200—399)
IV Department of the Treasury (Parts 400—499)

Title 18—Conservation of Power and Water Resources

I Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)
III Delaware River Basin Commission (Parts 400—499)
VI Water Resources Council (Parts 700—799)
VIII Susquehanna River Basin Commission (Parts 800—899)
XIII Tennessee Valley Authority (Parts 1300—1399)

Title 19—Customs Duties

I United States Customs Service, Department of the Treasury (Parts 1—199)
II United States International Trade Commission (Parts 200—299)
III International Trade Administration, Department of Commerce (Parts 300—399)
Title 20—Employees' Benefits

I Office of Workers’ Compensation Programs, Department of Labor (Parts 1—199)
II Railroad Retirement Board (Parts 200—399)
III Social Security Administration (Parts 400—499)
IV Employees’ Compensation Appeals Board, Department of Labor (Parts 500—599)
V Employment and Training Administration, Department of Labor (Parts 600—699)
VI Employment Standards Administration, Department of Labor (Parts 700—799)
VII Benefits Review Board, Department of Labor (Parts 800—899)
VIII Joint Board for the Enrollment of Actuaries (Parts 900—999)
IX Office of the Assistant Secretary for Veterans’ Employment and Training, Department of Labor (Parts 1000—1099)

Title 21—Food and Drugs

I Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)
II Drug Enforcement Administration, Department of Justice (Parts 1300—1399)
III Office of National Drug Control Policy (Parts 1400—1499)

Title 22—Foreign Relations

I Department of State (Parts 1—199)
II Agency for International Development (Parts 200—299)
III Peace Corps (Parts 300—399)
IV International Joint Commission, United States and Canada (Parts 400—499)
V Broadcasting Board of Governors (Parts 500—599)
VII Overseas Private Investment Corporation (Parts 700—799)
IX Foreign Service Grievance Board (Parts 900—999)
X Inter-American Foundation (Parts 1000—1099)
XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)
XII United States International Development Cooperation Agency (Parts 1200—1299)
XIV Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)
XV African Development Foundation (Parts 1500—1599)
XVI Japan-United States Friendship Commission (Parts 1600—1699)
XVII United States Institute of Peace (Parts 1700—1799)
# Title 23—Highways

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Federal Highway Administration, Department of Transportation (Parts 1—999)</td>
</tr>
<tr>
<td>II</td>
<td>National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)</td>
</tr>
<tr>
<td>III</td>
<td>National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)</td>
</tr>
</tbody>
</table>

# Title 24—Housing and Urban Development

**SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (PARTS 0—99)**

**SUBTITLE B—REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)</td>
</tr>
<tr>
<td>II</td>
<td>Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)</td>
</tr>
<tr>
<td>III</td>
<td>Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)</td>
</tr>
<tr>
<td>IV</td>
<td>Office of Housing and Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development (Parts 400—499)</td>
</tr>
<tr>
<td>V</td>
<td>Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)</td>
</tr>
<tr>
<td>VI</td>
<td>Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600—699) [Reserved]</td>
</tr>
<tr>
<td>VII</td>
<td>Office of the Secretary, Department of Housing and Urban Development (Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)</td>
</tr>
<tr>
<td>VIII</td>
<td>Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs, Section 202 Direct Loan Program, Section 202 Supportive Housing for the Elderly Program and Section 811 Supportive Housing for Persons With Disabilities Program) (Parts 800—899)</td>
</tr>
<tr>
<td>IX</td>
<td>Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—1699)</td>
</tr>
<tr>
<td>X</td>
<td>Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700—1799)</td>
</tr>
<tr>
<td>XII</td>
<td>Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)</td>
</tr>
<tr>
<td>XX</td>
<td>Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)</td>
</tr>
<tr>
<td>XXV</td>
<td>Neighborhood Reinvestment Corporation (Parts 4100—4199)</td>
</tr>
</tbody>
</table>
Title 25—Indians

I Bureau of Indian Affairs, Department of the Interior (Parts 1—299)
II Indian Arts and Crafts Board, Department of the Interior (Parts 300—399)
III National Indian Gaming Commission, Department of the Interior (Parts 500—599)
IV Office of Navajo and Hopi Indian Relocation (Parts 700—799)
V Bureau of Indian Affairs, Department of the Interior, and Indian Health Service, Department of Health and Human Services (Part 900)
VI Office of the Assistant Secretary-Indian Affairs, Department of the Interior (Parts 1000—1199)
VII Office of the Special Trustee for American Indians, Department of the Interior (Part 1200)

Title 26—Internal Revenue

I Internal Revenue Service, Department of the Treasury (Parts 1—899)

Title 27—Alcohol, Tobacco Products and Firearms

I Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

Title 28—Judicial Administration

I Department of Justice (Parts 0—199)
III Federal Prison Industries, Inc., Department of Justice (Parts 300—399)
V Bureau of Prisons, Department of Justice (Parts 500—599)
VI Offices of Independent Counsel, Department of Justice (Parts 600—699)
VII Office of Independent Counsel (Parts 700—799)
VIII Court Services and Offender Supervision Agency for the District of Columbia (Parts 800—899)
IX National Crime Prevention and Privacy Compact Council (Parts 900—999)
XI Department of Justice and Department of State (Parts 1100—1199)

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR (PARTS 0—99)
SUBTITLE B—REGULATIONS RELATING TO LABOR
I National Labor Relations Board (Parts 100—199)
II Office of Labor-Management Standards, Department of Labor (Parts 200—299)
III National Railroad Adjustment Board (Parts 300—399)
Chap.

Title 29—Labor—Continued

IV Office of Labor-Management Standards, Department of Labor (Parts 400—499)
V Wage and Hour Division, Department of Labor (Parts 500—899)
IX Construction Industry Collective Bargaining Commission (Parts 900—999)
X National Mediation Board (Parts 1200—1299)
XII Federal Mediation and Conciliation Service (Parts 1400—1499)
XIV Equal Employment Opportunity Commission (Parts 1600—1699)
XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)
XX Occupational Safety and Health Review Commission (Parts 2200—2499)
XXV Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)
XXVII Federal Mine Safety and Health Review Commission (Parts 2700—2799)
XL Pension Benefit Guaranty Corporation (Parts 4000—4999)

Title 30—Mineral Resources

I Mine Safety and Health Administration, Department of Labor (Parts 1—199)
II Minerals Management Service, Department of the Interior (Parts 200—299)
III Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300—399)
IV Geological Survey, Department of the Interior (Parts 400—499)
VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—799)

Title 31—Money and Finance: Treasury

Subtitle A—Office of the Secretary of the Treasury (Parts 0—50)
Subtitle B—Regulations Relating to Money and Finance
I Monetary Offices, Department of the Treasury (Parts 51—199)
II Fiscal Service, Department of the Treasury (Parts 200—399)
IV Secret Service, Department of the Treasury (Parts 400—499)
V Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)
VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)
VII Federal Law Enforcement Training Center, Department of the Treasury (Parts 700—799)
VIII Office of International Investment, Department of the Treasury (Parts 800—899)
IX Federal Claims Collection Standards (Department of the Treasury—Department of Justice) (Parts 900—999)
Title 32—National Defense

Subtitle A—Department of Defense
I Office of the Secretary of Defense (Parts 1—399)
V Department of the Army (Parts 400—699)
VI Department of the Navy (Parts 700—799)
VII Department of the Air Force (Parts 800—1099)

Subtitle B—Other Regulations Relating to National Defense
XII Defense Logistics Agency (Parts 1200—1299)
XVI Selective Service System (Parts 1600—1699)
XVIII National Counterintelligence Center (Parts 1800—1899)
XIX Central Intelligence Agency (Parts 1900—1999)
XX Information Security Oversight Office, National Archives and Records Administration (Parts 2000—2099)
XXI National Security Council (Parts 2100—2199)
XXIV Office of Science and Technology Policy (Parts 2400—2499)
XXVII Office for Micronesian Status Negotiations (Parts 2700—2799)
XXVIII Office of the Vice President of the United States (Parts 2800—2899)

Title 33—Navigation and Navigable Waters

I Coast Guard, Department of Transportation (Parts 1—199)
II Corps of Engineers, Department of the Army (Parts 200—399)
IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

Title 34—Education

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)
Subtitle B—Regulations of the Offices of the Department of Education
I Office for Civil Rights, Department of Education (Parts 100—199)
II Office of Elementary and Secondary Education, Department of Education (Parts 200—299)
III Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)
IV Office of Vocational and Adult Education, Department of Education (Parts 400—499)
V Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)
VI Office of Postsecondary Education, Department of Education (Parts 600—699)
VII Office of Educational Research and Improvement, Department of Education (Parts 700—799)
XI National Institute for Literacy (Parts 1100—1199)
Subtitle C—Regulations Relating to Education
XII National Council on Disability (Parts 1200—1299)
Title 35—Panama Canal

I Panama Canal Regulations (Parts 1—299)

Title 36—Parks, Forests, and Public Property

I National Park Service, Department of the Interior (Parts 1—199)
II Forest Service, Department of Agriculture (Parts 200—299)
III Corps of Engineers, Department of the Army (Parts 300—399)
IV American Battle Monuments Commission (Parts 400—499)
V Smithsonian Institution (Parts 500—599)
VII Library of Congress (Parts 700—799)
VIII Advisory Council on Historic Preservation (Parts 800—899)
IX Pennsylvania Avenue Development Corporation (Parts 900—999)
X Presidio Trust (Parts 1000—1099)
XI Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)
XII National Archives and Records Administration (Parts 1200—1299)
XV Oklahoma City National Memorial Trust (Part 1501)
XVI Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation (Parts 1600—1699)

Title 37—Patents, Trademarks, and Copyrights

I United States Patent and Trademark Office, Department of Commerce (Parts 1—199)
II Copyright Office, Library of Congress (Parts 200—299)
IV Assistant Secretary for Technology Policy, Department of Commerce (Parts 400—499)
V Under Secretary for Technology, Department of Commerce (Parts 500—599)

Title 38—Pensions, Bonuses, and Veterans’ Relief

I Department of Veterans Affairs (Parts 0—99)

Title 39—Postal Service

I United States Postal Service (Parts 1—999)
III Postal Rate Commission (Parts 3000—3099)

Title 40—Protection of Environment

I Environmental Protection Agency (Parts 1—799)
IV Environmental Protection Agency and Department of Justice (Parts 1400—1499)
V Council on Environmental Quality (Parts 1500—1599)
VI Chemical Safety and Hazard Investigation Board (Parts 1600—1699)
Title 40—Protection of Environment—Continued

VII Environmental Protection Agency and Department of Defense; Uniform National Discharge Standards for Vessels of the Armed Forces (Parts 1700—1799)

Title 41—Public Contracts and Property Management

Subtitle B—Other Provisions Relating to Public Contracts

50 Public Contracts, Department of Labor (Parts 50-1—50-999)
51 Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51-1—51-99)
60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-999)
61 Office of the Assistant Secretary for Veterans’ Employment and Training Service, Department of Labor (Parts 61-1—61-999)

Subtitle C—Federal Property Management Regulations System

101 Federal Property Management Regulations (Parts 101-1—101-99)
102 Federal Management Regulation (Parts 102-1—102-299)
105 General Services Administration (Parts 105-1—105-999)
109 Department of Energy Property Management Regulations (Parts 109-1—109-99)
114 Department of the Interior (Parts 114-1—114-99)
115 Environmental Protection Agency (Parts 115-1—115-99)
128 Department of Justice (Parts 128-1—128-99)

Subtitle D—Other Provisions Relating to Property Management [Reserved]

Subtitle E—Federal Information Resources Management Regulations System

201 Federal Information Resources Management Regulation (Parts 201-1—201-99) [Reserved]

Subtitle F—Federal Travel Regulation System

300 General (Parts 300-1—300-99)
301 Temporary Duty (TDY) Travel Allowances (Parts 301-1—301-99)
302 Relocation Allowances (Parts 302-1—302-99)
303 Payment of Expenses Connected with the Death of Certain Employees (Part 303-70)
304 Payment from a Non-Federal Source for Travel Expenses (Parts 304-1—304-99)

Title 42—Public Health

I Public Health Service, Department of Health and Human Services (Parts 1—199)

IV Centers for Medicare & Medicaid Services, Department of Health and Human Services (Parts 400—499)

V Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)
Title 43—Public Lands: Interior

SUBTITLE A—Office of the Secretary of the Interior (Parts 1—199)

SUBTITLE B—Regulations Relating to Public Lands
I Bureau of Reclamation, Department of the Interior (Parts 200—499)
II Bureau of Land Management, Department of the Interior (Parts 1000—9999)
III Utah Reclamation Mitigation and Conservation Commission (Parts 10000—10005)

Title 44—Emergency Management and Assistance

I Federal Emergency Management Agency (Parts 0—399)
IV Department of Commerce and Department of Transportation (Parts 400—499)

Title 45—Public Welfare

SUBTITLE A—Department of Health and Human Services (Parts 1—199)

SUBTITLE B—Regulations Relating to Public Welfare
II Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)
III Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Parts 300—399)
IV Office of Refugee Resettlement, Administration for Children and Families Department of Health and Human Services (Parts 400—499)
V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500—599)
VI National Science Foundation (Parts 600—699)
VII Commission on Civil Rights (Parts 700—799)
VIII Office of Personnel Management (Parts 800—899)
X Office of Community Services, Administration for Children and Families, Department of Health and Human Services (Parts 1000—1099)
XI National Foundation on the Arts and the Humanities (Parts 1100—1199)
XII Corporation for National and Community Service (Parts 1200—1299)
XIII Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)
XVI Legal Services Corporation (Parts 1600—1699)
XVII National Commission on Libraries and Information Science (Parts 1700—1799)
XVIII Harry S. Truman Scholarship Foundation (Parts 1800—1899)
XXI Commission on Fine Arts (Parts 2100—2199)
Title 45—Public Welfare—Continued

XXIII Arctic Research Commission (Part 2301)
XXIV James Madison Memorial Fellowship Foundation (Parts 2400—2499)
XXV Corporation for National and Community Service (Parts 2500—2599)

Title 46—Shipping

I Coast Guard, Department of Transportation (Parts 1—199)
II Maritime Administration, Department of Transportation (Parts 200—399)
III Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400—499)
IV Federal Maritime Commission (Parts 500—599)

Title 47—Telecommunication

I Federal Communications Commission (Parts 0—199)
II Office of Science and Technology Policy and National Security Council (Parts 200—299)
III National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)

Title 48—Federal Acquisition Regulations System

1 Federal Acquisition Regulation (Parts 1—99)
2 Department of Defense (Parts 200—299)
3 Department of Health and Human Services (Parts 300—399)
4 Department of Agriculture (Parts 400—499)
5 General Services Administration (Parts 500—599)
6 Department of State (Parts 600—699)
7 United States Agency for International Development (Parts 700—799)
8 Department of Veterans Affairs (Parts 800—899)
9 Department of Energy (Parts 900—999)
10 Department of the Treasury (Parts 1000—1099)
12 Department of Transportation (Parts 1200—1299)
13 Department of Commerce (Parts 1300—1399)
14 Department of the Interior (Parts 1400—1499)
15 Environmental Protection Agency (Parts 1500—1599)
16 Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)
17 Office of Personnel Management (Parts 1700—1799)
18 National Aeronautics and Space Administration (Parts 1800—1899)
19 Broadcasting Board of Governors (Parts 1900—1999)
20 Nuclear Regulatory Commission (Parts 2000—2099)
Title 48—Federal Acquisition Regulations System—Continued

21 Office of Personnel Management, Federal Employees Group Life Insurance Federal Acquisition Regulation (Parts 2100—2199)
23 Social Security Administration (Parts 2300—2399)
24 Department of Housing and Urban Development (Parts 2400—2499)
25 National Science Foundation (Parts 2500—2599)
28 Department of Justice (Parts 2800—2899)
29 Department of Labor (Parts 2900—2999)
34 Department of Education Acquisition Regulation (Parts 3400—3499)
35 Panama Canal Commission (Parts 3500—3599)
44 Federal Emergency Management Agency (Parts 4400—4499)
51 Department of the Army Acquisition Regulations (Parts 5100—5199)
52 Department of the Navy Acquisition Regulations (Parts 5200—5299)
53 Department of the Air Force Federal Acquisition Regulation Supplement (Parts 5300—5399)
54 Defense Logistics Agency, Department of Defense (Part 5452)
57 African Development Foundation (Parts 5700—5799)
61 General Services Administration Board of Contract Appeals (Parts 6100—6199)
63 Department of Transportation Board of Contract Appeals (Parts 6300—6399)
99 Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

Title 49—Transportation

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)
Subtitle B—Other Regulations Relating to Transportation
I Research and Special Programs Administration, Department of Transportation (Parts 100—199)
II Federal Railroad Administration, Department of Transportation (Parts 200—299)
III Federal Motor Carrier Safety Administration, Department of Transportation (Parts 300—399)
IV Coast Guard, Department of Transportation (Parts 400—499)
V National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)
VI Federal Transit Administration, Department of Transportation (Parts 600—699)
VII National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)
VIII National Transportation Safety Board (Parts 800—999)
X Surface Transportation Board, Department of Transportation (Parts 1000—1399)
Title 49—Transportation—Continued

XI Bureau of Transportation Statistics, Department of Transportation (Parts 1400—1499)

XII Transportation Security Administration, Department of Transportation (Parts 1500—1599)

Title 50—Wildlife and Fisheries

I United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

III International Fishing and Related Activities (Parts 300—399)

IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400—499)

V Marine Mammal Commission (Parts 500—599)

VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

CFR Index and Finding Aids

Subject/Agency Index
List of Agency Prepared Indexes
Parallel Tables of Statutory Authorities and Rules
List of CFR Titles, Chapters, Subchapters, and Parts
Alphabetical List of Agencies Appearing in the CFR
<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Committee of the Federal Register</td>
<td>1, I</td>
</tr>
<tr>
<td>Advanced Research Projects Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Advisory Council on Historic Preservation</td>
<td>36, VIII</td>
</tr>
<tr>
<td>African Development Foundation</td>
<td>22, XV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 57</td>
</tr>
<tr>
<td>Agency for International Development, United States</td>
<td>22, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 7</td>
</tr>
<tr>
<td>Agricultural Marketing Service</td>
<td>7, 1, IX, X, XI</td>
</tr>
<tr>
<td>Agricultural Research Service</td>
<td>7, V</td>
</tr>
<tr>
<td>Agriculture Department</td>
<td>7, LXIII</td>
</tr>
<tr>
<td>Agricultural Marketing Service</td>
<td>7, 1, IX, X, XI</td>
</tr>
<tr>
<td>Agricultural Research Service</td>
<td>7, V</td>
</tr>
<tr>
<td>Animal and Plant Health Inspection Service</td>
<td>7, III; 9, I</td>
</tr>
<tr>
<td>Chief Financial Officer, Office of</td>
<td>7, XXX</td>
</tr>
<tr>
<td>Commodity Credit Corporation</td>
<td>7, XIV</td>
</tr>
<tr>
<td>Cooperative State Research, Education, and Extension Service</td>
<td>7, XXXIV</td>
</tr>
<tr>
<td>Economic Research Service</td>
<td>7, XXXVII</td>
</tr>
<tr>
<td>Energy, Office of</td>
<td>7, XXIX</td>
</tr>
<tr>
<td>Environmental Quality, Office of</td>
<td>7, XXXI</td>
</tr>
<tr>
<td>Farm Service Agency</td>
<td>7, VII, XVIII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 4</td>
</tr>
<tr>
<td>Federal Crop Insurance Corporation</td>
<td>7, IV</td>
</tr>
<tr>
<td>Food and Nutrition Service</td>
<td>7, II</td>
</tr>
<tr>
<td>Food Safety and Inspection Service</td>
<td>9, III</td>
</tr>
<tr>
<td>Foreign Agricultural Service</td>
<td>7, XV</td>
</tr>
<tr>
<td>Forest Service</td>
<td>36, II</td>
</tr>
<tr>
<td>Grain Inspection, Packers and Stockyards Administration</td>
<td>7, VIII; 9, II</td>
</tr>
<tr>
<td>Information Resources Management, Office of</td>
<td>7, XXVII</td>
</tr>
<tr>
<td>Inspector General, Office of</td>
<td>7, XXVI</td>
</tr>
<tr>
<td>National Agricultural Library</td>
<td>7, XLI</td>
</tr>
<tr>
<td>National Agricultural Statistics Service</td>
<td>7, XXXVI</td>
</tr>
<tr>
<td>Natural Resources Conservation Service</td>
<td>7, VI</td>
</tr>
<tr>
<td>Operations, Office of</td>
<td>7, XXVIII</td>
</tr>
<tr>
<td>Procurement and Property Management, Office of</td>
<td>7, XXXII</td>
</tr>
<tr>
<td>Rural Business-Cooperative Service</td>
<td>7, XVIII, XLII</td>
</tr>
<tr>
<td>Rural Development Administration</td>
<td>7, XLII</td>
</tr>
<tr>
<td>Rural Housing Service</td>
<td>7, XVIII, XXXV</td>
</tr>
<tr>
<td>Rural Telephone Bank</td>
<td>7, XVI</td>
</tr>
<tr>
<td>Rural Utilities Service</td>
<td>7, XVII, XVIII, XLII</td>
</tr>
<tr>
<td>Secretary of Agriculture, Office of</td>
<td>7, Subtitle A</td>
</tr>
<tr>
<td>Transportation, Office of</td>
<td>7, XXXIII</td>
</tr>
<tr>
<td>World Agricultural Outlook Board</td>
<td>7, XXXVIII</td>
</tr>
<tr>
<td>Air Force Department</td>
<td>32, VII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation Supplement</td>
<td>48, 53</td>
</tr>
<tr>
<td>Alcohol, Tobacco and Firearms, Bureau of</td>
<td>27, I</td>
</tr>
<tr>
<td>AMTRAK</td>
<td>49, VII</td>
</tr>
<tr>
<td>American Battle Monuments Commission</td>
<td>36, IV</td>
</tr>
<tr>
<td>American Indians, Office of the Special Trustee</td>
<td>25, VII</td>
</tr>
<tr>
<td>Animal and Plant Health Inspection Service</td>
<td>7, III; 9, I</td>
</tr>
<tr>
<td>Appalachian Regional Commission</td>
<td>5, IX</td>
</tr>
<tr>
<td>Architectural and Transportation Barriers Compliance Board</td>
<td>36, XI</td>
</tr>
<tr>
<td>Arctic Research Commission</td>
<td>45, XXIII</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>--------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>Armed Forces Retirement Home</td>
<td>5, XI</td>
</tr>
<tr>
<td>Army Department</td>
<td>32, V</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>33, II, 36, III</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 51</td>
</tr>
<tr>
<td>Benefits Review Board</td>
<td>20, VII</td>
</tr>
<tr>
<td>Bilingual Education and Minority Languages Affairs, Office of</td>
<td>34, V</td>
</tr>
<tr>
<td>Blind or Severely Disabled, Committee for Purchase From People Who Are</td>
<td>41, 51</td>
</tr>
<tr>
<td>Broadcasting Board of Governors</td>
<td>22, V</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 19</td>
</tr>
<tr>
<td>Census Bureau</td>
<td>15, I</td>
</tr>
<tr>
<td>Centers for Medicare &amp; Medicaid Services</td>
<td>42, IV</td>
</tr>
<tr>
<td>Central Intelligence Agency</td>
<td>32, XIX</td>
</tr>
<tr>
<td>Chief Financial Officer, Office of</td>
<td>7, XXX</td>
</tr>
<tr>
<td>Child Support Enforcement, Office of</td>
<td>45, III</td>
</tr>
<tr>
<td>Children and Families, Administration for</td>
<td>45, II, III, IV, X</td>
</tr>
<tr>
<td>Civil Rights, Commission on</td>
<td>45, VII</td>
</tr>
<tr>
<td>Civil Rights, Office for</td>
<td>34, I</td>
</tr>
<tr>
<td>Coast Guard</td>
<td>33, I, 46, I; 49, IV</td>
</tr>
<tr>
<td>Coast Guard (Great Lakes Pilotage)</td>
<td>46, III</td>
</tr>
<tr>
<td>Commerce Department</td>
<td>44, IV</td>
</tr>
<tr>
<td>Census Bureau</td>
<td>15, I</td>
</tr>
<tr>
<td>Economic Affairs, Under Secretary</td>
<td>37, V</td>
</tr>
<tr>
<td>Economic Analysis, Bureau of</td>
<td>15, VIII</td>
</tr>
<tr>
<td>Economic Development Administration</td>
<td>13, III</td>
</tr>
<tr>
<td>Emergency Management and Assistance</td>
<td>44, IV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 13</td>
</tr>
<tr>
<td>Fishery Conservation and Management</td>
<td>50, VI</td>
</tr>
<tr>
<td>Foreign-Trade Zones Board</td>
<td>15, IV</td>
</tr>
<tr>
<td>Industry and Security, Bureau of</td>
<td>15, VII</td>
</tr>
<tr>
<td>International Trade Administration</td>
<td>15, III; 19, III</td>
</tr>
<tr>
<td>National Institute of Standards and Technology</td>
<td>15, II</td>
</tr>
<tr>
<td>National Marine Fisheries Service</td>
<td>50, II, IV, VI</td>
</tr>
<tr>
<td>National Oceanic and Atmospheric Administration</td>
<td>15, IX, 50, II, III, IV, VI</td>
</tr>
<tr>
<td>National Telecommunications and Information Administration</td>
<td>15, XXIII, 47, III</td>
</tr>
<tr>
<td>Patent and Trademark Office, United States</td>
<td>37, I</td>
</tr>
<tr>
<td>Productivity, Technology and Innovation, Assistant Secretary for</td>
<td>37, IV</td>
</tr>
<tr>
<td>Secretary for</td>
<td></td>
</tr>
<tr>
<td>Secretary of Commerce, Office of</td>
<td>15, Subtitle A</td>
</tr>
<tr>
<td>Technology, Under Secretary for Technology Administration</td>
<td>37, V</td>
</tr>
<tr>
<td>Technology Policy, Assistant Secretary for</td>
<td>15, XI</td>
</tr>
<tr>
<td>Commercial Space Transportation</td>
<td>37, IV</td>
</tr>
<tr>
<td>Commodity Credit Corporation</td>
<td>14, III</td>
</tr>
<tr>
<td>Commodity Futures Trading Commission</td>
<td>7, XIV</td>
</tr>
<tr>
<td>Community Planning and Development, Office of Assistant Secretary for</td>
<td>5, XLI, 17, I</td>
</tr>
<tr>
<td>Community Services, Office of</td>
<td>24, V, VI</td>
</tr>
<tr>
<td>Comptroller of the Currency</td>
<td>45, X</td>
</tr>
<tr>
<td>Construction Industry Collective Bargaining Commission</td>
<td>12, I</td>
</tr>
<tr>
<td>Consumer Product Safety Commission</td>
<td>29, IX</td>
</tr>
<tr>
<td>Cooperative State Research, Education, and Extension Service</td>
<td>5, LXXI, 16, II</td>
</tr>
<tr>
<td>Copyright Office</td>
<td>7, XXXIV</td>
</tr>
<tr>
<td>Corporation for National and Community Service</td>
<td>37, II</td>
</tr>
<tr>
<td>Cost Accounting Standards Board</td>
<td>48, 99</td>
</tr>
<tr>
<td>Council on Environmental Quality</td>
<td>40, V</td>
</tr>
<tr>
<td>Court Services and Offender Supervision Agency for the District of Columbia</td>
<td>28, VIII</td>
</tr>
<tr>
<td>Customs Service, United States</td>
<td>19, I</td>
</tr>
<tr>
<td>Defense Contract Audit Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Department</td>
<td>5, XXVI; 32, Subtitle A; 40, VII</td>
</tr>
<tr>
<td>Advanced Research Projects Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Air Force Department</td>
<td>32, VII</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>Army Department</td>
<td>32, V; 33, II; 36, III, 48, 51</td>
</tr>
<tr>
<td>Defense Intelligence Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Logistics Agency</td>
<td>32, I, XII; 48, 54</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>33, II; 36, III</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 2</td>
</tr>
<tr>
<td>National Imagery and Mapping Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Navy Department</td>
<td>32, VI; 48, 52</td>
</tr>
<tr>
<td>Secretary of Defense, Office of</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Contract Audit Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Intelligence Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Logistics Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Nuclear Facilities Safety Board</td>
<td>10, XVII</td>
</tr>
<tr>
<td>Delaware River Basin Commission</td>
<td>18, III</td>
</tr>
<tr>
<td>District of Columbia, Court Services and Offender Supervision Agency</td>
<td>28, VIII</td>
</tr>
<tr>
<td>Drug Enforcement Administration</td>
<td>21, II</td>
</tr>
<tr>
<td>East-West Foreign Trade Board</td>
<td>15, XIII</td>
</tr>
<tr>
<td>Economic Affairs, Under Secretary</td>
<td>37, V</td>
</tr>
<tr>
<td>Economic Analysis, Bureau of</td>
<td>15, VIII</td>
</tr>
<tr>
<td>Economic Development Administration</td>
<td>13, III</td>
</tr>
<tr>
<td>Economic Research Service</td>
<td>7, XXXVII</td>
</tr>
<tr>
<td>Education, Department of Bilingual Education and Minority Languages Affairs, Office of</td>
<td>34, V</td>
</tr>
<tr>
<td>Civil Rights, Office for</td>
<td>34, I</td>
</tr>
<tr>
<td>Educational Research and Improvement, Office of</td>
<td>34, VII</td>
</tr>
<tr>
<td>Elementary and Secondary Education, Office of</td>
<td>34, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 34</td>
</tr>
<tr>
<td>Postsecondary Education, Office of</td>
<td>34, VI</td>
</tr>
<tr>
<td>Secretary of Education, Office of</td>
<td>34, Subtitle A</td>
</tr>
<tr>
<td>Special Education and Rehabilitative Services, Office of</td>
<td>34, III</td>
</tr>
<tr>
<td>Vocational and Adult Education, Office of</td>
<td>34, IV</td>
</tr>
<tr>
<td>Educational Research and Improvement, Office of</td>
<td>34, VII</td>
</tr>
<tr>
<td>Elementary and Secondary Education, Office of</td>
<td>34, II</td>
</tr>
<tr>
<td>Emergency Oil and Gas Guaranteed Loan Board</td>
<td>13, V</td>
</tr>
<tr>
<td>Emergency Steel Guarantee Loan Board</td>
<td>13, IV</td>
</tr>
<tr>
<td>Employees’ Compensation Appeals Board</td>
<td>20, IV</td>
</tr>
<tr>
<td>Employees Loyalty Board</td>
<td>5, V</td>
</tr>
<tr>
<td>Employment and Training Administration</td>
<td>20, V</td>
</tr>
<tr>
<td>Employment Standards Administration</td>
<td>20, VI</td>
</tr>
<tr>
<td>Endangered Species Committee</td>
<td>50, IV</td>
</tr>
<tr>
<td>Energy, Department of</td>
<td>5, XXXIII; 10, II, III, X</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 9</td>
</tr>
<tr>
<td>Federal Energy Regulatory Commission</td>
<td>5, XXIV; 18, I</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 109</td>
</tr>
<tr>
<td>Energy, Office of</td>
<td>7, XXXIX</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>33, II; 36, III</td>
</tr>
<tr>
<td>Engraving and Printing, Bureau of</td>
<td>31, VI</td>
</tr>
<tr>
<td>Environmental Protection Agency</td>
<td>5, LIV; 40, I, IV, VII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 15</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 115</td>
</tr>
<tr>
<td>Environmental Quality, Office of</td>
<td>7, XXXI</td>
</tr>
<tr>
<td>Equal Employment Opportunity Commission</td>
<td>5, LXII; 29, XIV</td>
</tr>
<tr>
<td>Equal Opportunity, Office of Assistant Secretary for</td>
<td>24, 1</td>
</tr>
<tr>
<td>Executive Office of the President</td>
<td>3, 1</td>
</tr>
<tr>
<td>Administration, Office of</td>
<td>5, XV</td>
</tr>
<tr>
<td>Environmental Quality, Council on</td>
<td>40, V</td>
</tr>
<tr>
<td>Management and Budget, Office of</td>
<td>5, III, LXXXVII; 14, VI; 48, 99</td>
</tr>
<tr>
<td>National Drug Control Policy, Office of</td>
<td>21, III</td>
</tr>
<tr>
<td>National Security Council</td>
<td>32, XXI; 47, 2</td>
</tr>
<tr>
<td>Presidential Documents</td>
<td>3</td>
</tr>
<tr>
<td>Science and Technology Policy, Office of</td>
<td>32, XXIV; 47, II</td>
</tr>
<tr>
<td>Trade Representative, Office of the United States</td>
<td>15, XX</td>
</tr>
<tr>
<td>Export-Import Bank of the United States</td>
<td>5, LIII; 12, IV</td>
</tr>
<tr>
<td>Family Assistance, Office of</td>
<td>45, II</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Farm Credit Administration</td>
<td>5, XXXI; 12, VI</td>
</tr>
<tr>
<td>Farm Credit System Insurance Corporation</td>
<td>5, XXX; 12, XIV</td>
</tr>
<tr>
<td>Farm Service Agency</td>
<td>7, VII, XVIII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, I</td>
</tr>
<tr>
<td>Federal Aviation Administration</td>
<td>14, I</td>
</tr>
<tr>
<td>Commercial Space Transportation</td>
<td>14, III</td>
</tr>
<tr>
<td>Federal Claims Collection Standards</td>
<td>31, IX</td>
</tr>
<tr>
<td>Federal Communications Commission</td>
<td>5, XXIX; 47, I</td>
</tr>
<tr>
<td>Federal Contract Compliance Programs, Office of</td>
<td>41, 60</td>
</tr>
<tr>
<td>Federal Crop Insurance Corporation</td>
<td>7, IV</td>
</tr>
<tr>
<td>Federal Deposit Insurance Corporation</td>
<td>5, XXIII; 12, III</td>
</tr>
<tr>
<td>Federal Election Commission</td>
<td>11, I</td>
</tr>
<tr>
<td>Federal Emergency Management Agency</td>
<td>44, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 44</td>
</tr>
<tr>
<td>Federal Employees Group Life Insurance Federal Acquisition Regulation</td>
<td>48, 21</td>
</tr>
<tr>
<td>Federal Employees Health Benefits Acquisition Regulation</td>
<td>48, 16</td>
</tr>
<tr>
<td>Federal Energy Regulatory Commission</td>
<td>5, XXIV; 18, I</td>
</tr>
<tr>
<td>Federal Financial Institutions Examination Council</td>
<td>12, XI</td>
</tr>
<tr>
<td>Federal Financing Bank</td>
<td>12, VIII</td>
</tr>
<tr>
<td>Federal Highway Administration</td>
<td>23, I, II</td>
</tr>
<tr>
<td>Federal Home Loan Mortgage Corporation</td>
<td>1, IV</td>
</tr>
<tr>
<td>Federal Housing Enterprise Oversight Office</td>
<td>12, XVII</td>
</tr>
<tr>
<td>Federal Housing Finance Board</td>
<td>12, IX</td>
</tr>
<tr>
<td>Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority</td>
<td>5, XIV; 22, XIV</td>
</tr>
<tr>
<td>Federal Law Enforcement Training Center</td>
<td>31, VII</td>
</tr>
<tr>
<td>Federal Management Regulation</td>
<td>41, 102</td>
</tr>
<tr>
<td>Federal Maritime Commission</td>
<td>46, IV</td>
</tr>
<tr>
<td>Federal Mediation and Conciliation Service</td>
<td>29, XII</td>
</tr>
<tr>
<td>Federal Mine Safety and Health Review Commission</td>
<td>5, LXIV; 29, XXVII</td>
</tr>
<tr>
<td>Federal Motor Carrier Safety Administration</td>
<td>49, III</td>
</tr>
<tr>
<td>Federal Prison Industries, Inc.</td>
<td>28, III</td>
</tr>
<tr>
<td>Federal Procurement Policy Office</td>
<td>48, 99</td>
</tr>
<tr>
<td>Federal Property Management Regulations</td>
<td>41, 103</td>
</tr>
<tr>
<td>Federal Railroad Administration</td>
<td>49, II</td>
</tr>
<tr>
<td>Federal Register, Administrative Committee of</td>
<td>1, I</td>
</tr>
<tr>
<td>Federal Register, Office of</td>
<td>1, II</td>
</tr>
<tr>
<td>Federal Reserve System</td>
<td>12, I</td>
</tr>
<tr>
<td>Board of Governors</td>
<td>5, LVIII</td>
</tr>
<tr>
<td>Federal Retirement Thrift Investment Board</td>
<td>5, VI, LXXVI</td>
</tr>
<tr>
<td>Federal Service Impasses Panel</td>
<td>5, XIV</td>
</tr>
<tr>
<td>Federal Trade Commission</td>
<td>5, XLVII; 16, I</td>
</tr>
<tr>
<td>Federal Transit Administration</td>
<td>49, VI</td>
</tr>
<tr>
<td>Federal Travel Regulation System</td>
<td>41, Subtitle F</td>
</tr>
<tr>
<td>Fine Arts, Commission on</td>
<td>45, XXI</td>
</tr>
<tr>
<td>Fiscal Service</td>
<td>31, II</td>
</tr>
<tr>
<td>Fish and Wildlife Service, United States</td>
<td>50, I, IV</td>
</tr>
<tr>
<td>Fishery Conservation and Management</td>
<td>50, VI</td>
</tr>
<tr>
<td>Food and Drug Administration</td>
<td>21, I</td>
</tr>
<tr>
<td>Food and Nutrition Service</td>
<td>7, II</td>
</tr>
<tr>
<td>Food Safety and Inspection Service</td>
<td>9, III</td>
</tr>
<tr>
<td>Foreign Agricultural Service</td>
<td>7, XV</td>
</tr>
<tr>
<td>Foreign Assets Control, Office of</td>
<td>31, V</td>
</tr>
<tr>
<td>Foreign Claims Settlement Commission of the United States</td>
<td>45, V</td>
</tr>
<tr>
<td>Foreign Service Grievance Board</td>
<td>22, IX</td>
</tr>
<tr>
<td>Foreign Service Impasses Disputes Panel</td>
<td>22, XIV</td>
</tr>
<tr>
<td>Foreign Service Labor Relations Board</td>
<td>22, XIV</td>
</tr>
<tr>
<td>Foreign-Trade Zones Board</td>
<td>15, IV</td>
</tr>
<tr>
<td>Forest Service</td>
<td>36, II</td>
</tr>
<tr>
<td>General Accounting Office</td>
<td>4, I</td>
</tr>
<tr>
<td>General Services Administration</td>
<td>5, LVII; 41, 105</td>
</tr>
<tr>
<td>Contract Appeals, Board of</td>
<td>48, 61</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 5</td>
</tr>
<tr>
<td>Federal Management Regulation</td>
<td>41, 102</td>
</tr>
<tr>
<td>Federal Property Management Regulation</td>
<td>41, 103</td>
</tr>
<tr>
<td>Federal Travel Regulation System</td>
<td>41, Subtitle F</td>
</tr>
</tbody>
</table>
Agency

General Payment From a Non-Federal Source for Travel Expenses 41, 300
Payment of Expenses Connected With the Death of Certain Employees 41, 303
Relocation Allowances 41, 302
Temporary Duty (TDY) Travel Allowances 41, 301
Geological Survey 30, IV
Government Ethics, Office of 5, XVI
Government National Mortgage Association 24, III
Grain Inspection, Packers and Stockyards Administration 7, VIII; 9, II
Harry S. Truman Scholarship Foundation 45, XVIII
Health and Human Services, Department of 5, XLV; 45, Subtitle A
Centers for Medicare & Medicaid Services 42, IV
Child Support Enforcement, Office of 45, III
Children and Families, Administration for 45, II, III, IV, X
Community Services, Office of 45, X
Family Assistance, Office of 45, II
Federal Acquisition Regulation 48, 3
Food and Drug Administration 21, I
Human Development Services, Office of 45, XIII
Indian Health Service 25, V
Inspector General (Health Care), Office of 42, V
Public Health Service 42, I
Refugee Resettlement, Office of 45, IV

Housing and Urban Development, Department of
Community Planning and Development, Office of Assistant Secretary for
Equal Opportunity, Office of Assistant Secretary for 24, I
Federal Acquisition Regulation 48, 34
Federal Housing Enterprise Oversight, Office of 12, XVII
Housing—Federal Housing Commissioner, Office of
Assistant Secretary for 24, II, VIII, X, XX
Housing, Office of, and Multifamily Housing Assistance 24, IV
Restructuring, Office of
Inspector General, Office of 24, XII
Public and Indian Housing, Office of Assistant Secretary for 24, IX
Secretary, Office of 24, Subtitle A, VII
Housing—Federal Housing Commissioner, Office of Assistant Secretary for
Housing, Office of, and Multifamily Housing Assistance 24, IV
Restructuring, Office of
Human Development Services, Office of 45, XIII
Immigration and Naturalization Service 8, I
Independent Counsel, Office of 28, VII
Indian Affairs, Bureau of 25, I, V
Indian Affairs, Office of the Assistant Secretary 25, VI
Indian Arts and Crafts Board 25, II
Indian Health Service 25, V
Industry and Security, Bureau of 15, VII
Information Resources Management, Office of 7, XXVII
Information Security Oversight Office, National Archives and Records Administration 32, XX

Inspector General
Agriculture Department 7, XXVI
Health and Human Services Department 42, V
Housing and Urban Development Department 24, XII
Institute of Peace, United States 22, XVII
Inter-American Foundation 5, LXIII; 22, X
Interior Department 7, XXVI
American Indians, Office of the Special Trustee 25, VII
Endangered Species Committee 50, IV
Federal Acquisition Regulation 48, 14
Federal Property Management Regulations System 41, 114
Fish and Wildlife Service, United States 50, I, IV
Geological Survey 30, IV
Indian Affairs, Bureau of 25, I, V
<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indian Affairs, Office of the Assistant Secretary</td>
<td>25, VI</td>
</tr>
<tr>
<td>Indian Arts and Crafts Board</td>
<td>25, II</td>
</tr>
<tr>
<td>Land Management, Bureau of</td>
<td>43, II</td>
</tr>
<tr>
<td>Minerals Management Service</td>
<td>30, II</td>
</tr>
<tr>
<td>National Indian Gaming Commission</td>
<td>25, III</td>
</tr>
<tr>
<td>National Park Service</td>
<td>36, I</td>
</tr>
<tr>
<td>Reclamation, Bureau of</td>
<td>43, I</td>
</tr>
<tr>
<td>Secretary of the Interior, Office of</td>
<td>43, Subtitle A</td>
</tr>
<tr>
<td>Surface Mining and Reclamation Appeals, Board of</td>
<td>30, III</td>
</tr>
<tr>
<td>Surface Mining Reclamation and Enforcement, Office of</td>
<td>30, VII</td>
</tr>
<tr>
<td>Internal Revenue Service</td>
<td>26, I</td>
</tr>
<tr>
<td>International Boundary and Water Commission, United States and Mexico, United States Section</td>
<td>22, XI</td>
</tr>
<tr>
<td>International Development, United States Agency for</td>
<td>22, II</td>
</tr>
<tr>
<td>International Development Cooperation Agency, United States</td>
<td>22, XII</td>
</tr>
<tr>
<td>International Fishing and Related Activities</td>
<td>50, III</td>
</tr>
<tr>
<td>International Investment, Office of</td>
<td>31, VIII</td>
</tr>
<tr>
<td>International Joint Commission, United States and Canada</td>
<td>22, IV</td>
</tr>
<tr>
<td>International Organizations Employees Loyalty Board</td>
<td>5, V</td>
</tr>
<tr>
<td>International Trade Administration, United States</td>
<td>15, III; 19, III</td>
</tr>
<tr>
<td>International Trade Commission, United States</td>
<td>19, II</td>
</tr>
<tr>
<td>Interstate Commerce Commission</td>
<td>5, XL</td>
</tr>
<tr>
<td>James Madison Memorial Fellowship Foundation</td>
<td>45, XXIV</td>
</tr>
<tr>
<td>Japan–United States Friendship Commission</td>
<td>22, XVI</td>
</tr>
<tr>
<td>Joint Board for the Enrollment of Actuaries</td>
<td>20, VIII</td>
</tr>
<tr>
<td>Justice Department</td>
<td>5, XXVIII; 28, I, XI; 40, IV</td>
</tr>
<tr>
<td>Drug Enforcement Administration</td>
<td>21, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 7</td>
</tr>
<tr>
<td>Federal Claims Collection Standards</td>
<td>31, IX</td>
</tr>
<tr>
<td>Federal Prison Industries, Inc.</td>
<td>28, III</td>
</tr>
<tr>
<td>Foreign Claims Settlement Commission of the United States</td>
<td>45, V</td>
</tr>
<tr>
<td>Immigration and Naturalization Service</td>
<td>8, I</td>
</tr>
<tr>
<td>Offices of Independent Counsel</td>
<td>28, VI</td>
</tr>
<tr>
<td>Prisons, Bureau of</td>
<td>28, V</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 128</td>
</tr>
<tr>
<td>Labor Department</td>
<td>5, XLII</td>
</tr>
<tr>
<td>Benefits Review Board</td>
<td>20, VII</td>
</tr>
<tr>
<td>Employees’ Compensation Appeals Board</td>
<td>20, IV</td>
</tr>
<tr>
<td>Employment and Training Administration</td>
<td>20, V</td>
</tr>
<tr>
<td>Employment Standards Administration</td>
<td>20, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 29</td>
</tr>
<tr>
<td>Federal Contract Compliance Programs, Office of</td>
<td>41, 60</td>
</tr>
<tr>
<td>Federal Procurement Regulations System</td>
<td>41, 50</td>
</tr>
<tr>
<td>Labor-Management Standards, Office of</td>
<td>29, II, IV</td>
</tr>
<tr>
<td>Mine Safety and Health Administration</td>
<td>30, I</td>
</tr>
<tr>
<td>Occupational Safety and Health Administration</td>
<td>29, XVII</td>
</tr>
<tr>
<td>Pension and Welfare Benefits Administration</td>
<td>29, XXV</td>
</tr>
<tr>
<td>Public Contracts</td>
<td>41, 50</td>
</tr>
<tr>
<td>Secretary of Labor, Office of</td>
<td>29, Subtitle A</td>
</tr>
<tr>
<td>Veterans’ Employment and Training Service, Office of the Assistant Secretary for</td>
<td>41, 61; 20, IX</td>
</tr>
<tr>
<td>Wage and Hour Division</td>
<td>29, V</td>
</tr>
<tr>
<td>Workers’ Compensation Programs, Office of</td>
<td>20, I</td>
</tr>
<tr>
<td>Labor-Management Standards, Office of</td>
<td>29, II, IV</td>
</tr>
<tr>
<td>Land Management, Bureau of</td>
<td>43, II</td>
</tr>
<tr>
<td>Legal Services Corporation</td>
<td>45, XVI</td>
</tr>
<tr>
<td>Library of Congress</td>
<td>36, VII</td>
</tr>
<tr>
<td>Copyright Office</td>
<td>37, II</td>
</tr>
<tr>
<td>Management and Budget, Office of</td>
<td>5, III; LXXVII; 14, VI; 48, 99</td>
</tr>
<tr>
<td>Marine Mammal Commission</td>
<td>50, V</td>
</tr>
<tr>
<td>Maritime Administration</td>
<td>46, II</td>
</tr>
<tr>
<td>Merit Systems Protection Board</td>
<td>5, II</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>Micronesian Status Negotiations, Office for</td>
<td>32, XXVII</td>
</tr>
<tr>
<td>Mine Safety and Health Administration</td>
<td>30, I</td>
</tr>
<tr>
<td>Minerals Management Service</td>
<td>30, II</td>
</tr>
<tr>
<td>Minority Business Development Agency</td>
<td>15, XIV</td>
</tr>
<tr>
<td>Miscellaneous Agencies</td>
<td>1, IV</td>
</tr>
<tr>
<td>Monetary Offices</td>
<td>31, I</td>
</tr>
<tr>
<td>Morris K. Udall Scholarship and Excellence in National</td>
<td>36, XVI</td>
</tr>
<tr>
<td>National Aeronautics and Space Administration</td>
<td>5, LIX; 14, V</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 18</td>
</tr>
<tr>
<td>National Agricultural Library</td>
<td>7, XLI</td>
</tr>
<tr>
<td>National Agricultural Statistics Service</td>
<td>7, XXXVI</td>
</tr>
<tr>
<td>National and Community Service, Corporation for</td>
<td>45, XII, XXV</td>
</tr>
<tr>
<td>National Archives and Records Administration</td>
<td>5, LXVI; 36, XII</td>
</tr>
<tr>
<td>Information Security Oversight Office</td>
<td>32, XX</td>
</tr>
<tr>
<td>National Bureau of Standards</td>
<td>15, II</td>
</tr>
<tr>
<td>National Capital Planning Commission</td>
<td>1, IV</td>
</tr>
<tr>
<td>National Commission for Employment Policy</td>
<td>1, IV</td>
</tr>
<tr>
<td>National Commission on Libraries and Information Science</td>
<td>45, XVII</td>
</tr>
<tr>
<td>National Council on Disability</td>
<td>34, XII</td>
</tr>
<tr>
<td>National Counterintelligence Center</td>
<td>32, XVIII</td>
</tr>
<tr>
<td>National Credit Union Administration</td>
<td>12, VII</td>
</tr>
<tr>
<td>National Crime Prevention and Privacy Compact Council</td>
<td>29, IX</td>
</tr>
<tr>
<td>National Drug Control Policy, Office of</td>
<td>21, III</td>
</tr>
<tr>
<td>National Foundation on the Arts and the Humanities</td>
<td>45, XI</td>
</tr>
<tr>
<td>National Highway Traffic Safety Administration</td>
<td>23, II, III, 49, V</td>
</tr>
<tr>
<td>National Imagery and Mapping Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>National Indian Gaming Commission</td>
<td>25, III</td>
</tr>
<tr>
<td>National Institute for Literacy</td>
<td>34, XI</td>
</tr>
<tr>
<td>National Institute of Standards and Technology</td>
<td>15, II</td>
</tr>
<tr>
<td>National Labor Relations Board</td>
<td>5, LXII; 29, I</td>
</tr>
<tr>
<td>National Marine Fisheries Service</td>
<td>50, II, IV, VI</td>
</tr>
<tr>
<td>National Mediation Board</td>
<td>29, X</td>
</tr>
<tr>
<td>National Oceanic and Atmospheric Administration</td>
<td>15, IX; 50, II, III, IV, VI</td>
</tr>
<tr>
<td>National Park Service</td>
<td>36, I</td>
</tr>
<tr>
<td>National Railroad Adjustment Board</td>
<td>29, III</td>
</tr>
<tr>
<td>National Railroad Passenger Corporation (AMTRAK)</td>
<td>49, VII</td>
</tr>
<tr>
<td>National Science Foundation</td>
<td>5, XLIII; 45, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 25</td>
</tr>
<tr>
<td>National Security Council</td>
<td>32, XXI</td>
</tr>
<tr>
<td>National Security Council and Office of Science and Technology</td>
<td>47, II</td>
</tr>
<tr>
<td>Technology Policy</td>
<td></td>
</tr>
<tr>
<td>National Telecommunications and Information Administration</td>
<td>15, XXIII; 47, III</td>
</tr>
<tr>
<td>National Transportation Safety Board</td>
<td>49, VIII</td>
</tr>
<tr>
<td>National Weather Service</td>
<td>15, IX</td>
</tr>
<tr>
<td>Natural Resources Conservation Service</td>
<td>7, VI</td>
</tr>
<tr>
<td>Navajo and Hopi Indian Relocation, Office of</td>
<td>25, IV</td>
</tr>
<tr>
<td>Navy Department</td>
<td>32, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 52</td>
</tr>
<tr>
<td>Neighborhood Reinvestment Corporation</td>
<td>24, XXV</td>
</tr>
<tr>
<td>Northeast Interstate Low-Level Radioactive Waste Commission</td>
<td>10, XVIII</td>
</tr>
<tr>
<td>Nuclear Regulatory Commission</td>
<td>5, XLVIII; 10, I</td>
</tr>
<tr>
<td>Occupational Safety and Health Administration</td>
<td>29, XVII</td>
</tr>
<tr>
<td>Occupational Safety and Health Review Commission</td>
<td>29, XX</td>
</tr>
<tr>
<td>Offices of Independent Counsel</td>
<td>26, VI</td>
</tr>
<tr>
<td>Oklahoma City National Memorial Trust</td>
<td>36, XV</td>
</tr>
<tr>
<td>Operation Office</td>
<td>7, XXVIII</td>
</tr>
<tr>
<td>Overseas Private Investment Corporation</td>
<td>5, XXXIII; 22, VII</td>
</tr>
<tr>
<td>Panama Canal Commission</td>
<td>48, 30</td>
</tr>
<tr>
<td>Panama Canal Regulations</td>
<td>35, I</td>
</tr>
<tr>
<td>Patent and Trademark Office, United States</td>
<td>37, I</td>
</tr>
<tr>
<td>Payment From a Non-Federal Source for Travel Expenses</td>
<td>41, 304</td>
</tr>
<tr>
<td>Payment of Expenses Connected With the Death of Certain Employees</td>
<td>41, 303</td>
</tr>
</tbody>
</table>

693
<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peace Corps</td>
<td>22, III</td>
</tr>
<tr>
<td>Pennsylvania Avenue Development Corporation</td>
<td>36, IX</td>
</tr>
<tr>
<td>Pension and Welfare Benefits Administration</td>
<td>29, XXV</td>
</tr>
<tr>
<td>Pension Benefit Guaranty Corporation</td>
<td>29, XL</td>
</tr>
<tr>
<td>Personnel Management, Office of</td>
<td>5, I, XXXV; 45, VIII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 17</td>
</tr>
<tr>
<td>Federal Employees Group Life Insurance Federal Acquisition Regulation</td>
<td>48, 21</td>
</tr>
<tr>
<td>Federal Employees Health Benefits Acquisition Regulation</td>
<td>48, 16</td>
</tr>
<tr>
<td>Postal Rate Commission</td>
<td>5, XLVI; 39, III</td>
</tr>
<tr>
<td>Postal Service, United States</td>
<td>5, LX; 39, I</td>
</tr>
<tr>
<td>Postsecondary Education, Office of</td>
<td>34, VI</td>
</tr>
<tr>
<td>President’s Commission on White House Fellowships</td>
<td>1, IV</td>
</tr>
<tr>
<td>Presidential Documents</td>
<td>3</td>
</tr>
<tr>
<td>Presidio Trust</td>
<td>36, X</td>
</tr>
<tr>
<td>Prisons, Bureau of</td>
<td>28, V</td>
</tr>
<tr>
<td>Procurement and Property Management, Office of</td>
<td>7, XXXII</td>
</tr>
<tr>
<td>Productivity, Technology and Innovation, Assistant Secretary</td>
<td>37, IV</td>
</tr>
<tr>
<td>Secretary</td>
<td></td>
</tr>
<tr>
<td>Public Contracts, Department of Labor</td>
<td>41, 50</td>
</tr>
<tr>
<td>Public and Indian Housing, Office of Assistant Secretary for</td>
<td>24, IX</td>
</tr>
<tr>
<td>Public Health Service</td>
<td>42, I</td>
</tr>
<tr>
<td>Railroad Retirement Board</td>
<td>20, II</td>
</tr>
<tr>
<td>Reclamation, Bureau of</td>
<td>43, I</td>
</tr>
<tr>
<td>Refugee Resettlement, Office of</td>
<td>45, IV</td>
</tr>
<tr>
<td>Regional Action Planning Commissions</td>
<td>13, V</td>
</tr>
<tr>
<td>Relocation Allowances</td>
<td>41, 392</td>
</tr>
<tr>
<td>Research and Special Programs Administration</td>
<td>49, I</td>
</tr>
<tr>
<td>Rural Business-Cooperative Service</td>
<td>7, XVIII; XLII</td>
</tr>
<tr>
<td>Rural Development Administration</td>
<td>7, XLII</td>
</tr>
<tr>
<td>Rural Housing Service</td>
<td>7, XVIII, XXXV</td>
</tr>
<tr>
<td>Rural Telephone Bank</td>
<td>7, XVI</td>
</tr>
<tr>
<td>Rural Utilities Service</td>
<td>7, XVII, XVIII, XLII</td>
</tr>
<tr>
<td>Saint Lawrence Seaway Development Corporation</td>
<td>33, IV</td>
</tr>
<tr>
<td>Science and Technology Policy, Office of</td>
<td>32, XXIV</td>
</tr>
<tr>
<td>Science and Technology Policy, Office of, and National Security Council</td>
<td>47, II</td>
</tr>
<tr>
<td>Secret Service</td>
<td>31, IV</td>
</tr>
<tr>
<td>Securities and Exchange Commission</td>
<td>37, II</td>
</tr>
<tr>
<td>Selective Service System</td>
<td>32, XVI</td>
</tr>
<tr>
<td>Small Business Administration</td>
<td>13, I</td>
</tr>
<tr>
<td>Smithsonian Institution</td>
<td>36, V</td>
</tr>
<tr>
<td>Social Security Administration</td>
<td>20, III; 48, 23</td>
</tr>
<tr>
<td>Soldiers’ and Airmen’s Home, United States</td>
<td>5, XI</td>
</tr>
<tr>
<td>Special Counsel, Office of</td>
<td>5, VIII</td>
</tr>
<tr>
<td>Special Education and Rehabilitative Services, Office of</td>
<td>94, III</td>
</tr>
<tr>
<td>State Department</td>
<td>22, I; 28, XI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 6</td>
</tr>
<tr>
<td>Surface Mining and Reclamation Appeals, Board of</td>
<td>30, III</td>
</tr>
<tr>
<td>Surface Mining Reclamation and Enforcement, Office of</td>
<td>30, VII</td>
</tr>
<tr>
<td>Surface Transportation Board</td>
<td>49, X</td>
</tr>
<tr>
<td>Susquehanna River Basin Commission</td>
<td>18, VIII</td>
</tr>
<tr>
<td>Technology Administration</td>
<td>15, XI</td>
</tr>
<tr>
<td>Technology Policy, Assistant Secretary for</td>
<td>37, IV</td>
</tr>
<tr>
<td>Technology, Under Secretary for</td>
<td>37, V</td>
</tr>
<tr>
<td>Tennessee Valley Authority</td>
<td>5, LXIX; 18, XIII</td>
</tr>
<tr>
<td>Thrift Supervision Office, Department of the Treasury</td>
<td>12, V</td>
</tr>
<tr>
<td>Trade Representative, United States, Office of</td>
<td>15, XX</td>
</tr>
<tr>
<td>Transportation, Department of</td>
<td>5, I</td>
</tr>
<tr>
<td>Coast Guard</td>
<td>33, I; 46, I; 49, IV</td>
</tr>
<tr>
<td>Coast Guard (Great Lakes Pilotage)</td>
<td>46, III</td>
</tr>
<tr>
<td>Commercial Space Transportation</td>
<td>14, III</td>
</tr>
<tr>
<td>Contract Appeals, Board of</td>
<td>48, 63</td>
</tr>
<tr>
<td>Emergency Management and Assistance</td>
<td>44, IV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 12</td>
</tr>
<tr>
<td>Federal Aviation Administration</td>
<td>14, I</td>
</tr>
<tr>
<td>Federal Highway Administration</td>
<td>23, I, II</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>Federal Motor Carrier Safety Administration</td>
<td>49, III</td>
</tr>
<tr>
<td>Federal Railroad Administration</td>
<td>49, II</td>
</tr>
<tr>
<td>Federal Transit Administration</td>
<td>49, VI</td>
</tr>
<tr>
<td>Maritime Administration</td>
<td>46, II</td>
</tr>
<tr>
<td>National Highway Traffic Safety Administration</td>
<td>23, II, III; 49, V</td>
</tr>
<tr>
<td>Research and Special Programs Administration</td>
<td>49, I</td>
</tr>
<tr>
<td>Saint Lawrence Seaway Development Corporation</td>
<td>33, IV</td>
</tr>
<tr>
<td>Secretary of Transportation, Office of</td>
<td>14, II; 49, Subtitle A</td>
</tr>
<tr>
<td>Surface Transportation Board</td>
<td>49, X</td>
</tr>
<tr>
<td>Transportation Security Administration</td>
<td>49, XII</td>
</tr>
<tr>
<td>Transportation Statistics Bureau</td>
<td>49, XI</td>
</tr>
<tr>
<td>Transportation, Office of</td>
<td>7, XXXIII</td>
</tr>
<tr>
<td>Transportation Security Administration</td>
<td>49, XII</td>
</tr>
<tr>
<td>Transportation Statistics Bureau</td>
<td>49, XI</td>
</tr>
<tr>
<td>Travel Allowances, Temporary Duty (TDY)</td>
<td>41, 301</td>
</tr>
<tr>
<td>Treasury Department</td>
<td>5, XXXI; 12, XV; 17, IV; 31, IX</td>
</tr>
<tr>
<td>Alcohol, Tobacco and Firearms, Bureau of</td>
<td>27, I</td>
</tr>
<tr>
<td>Community Development Financial Institutions Fund</td>
<td>12, XVIII</td>
</tr>
<tr>
<td>Comptroller of the Currency</td>
<td>12, I</td>
</tr>
<tr>
<td>Customs Service, United States</td>
<td>19, I</td>
</tr>
<tr>
<td>Engraving and Printing, Bureau of</td>
<td>31, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>46, 10</td>
</tr>
<tr>
<td>Federal Law Enforcement Training Center</td>
<td>31, VII</td>
</tr>
<tr>
<td>Fiscal Service</td>
<td>31, II</td>
</tr>
<tr>
<td>Foreign Assets Control, Office of</td>
<td>31, V</td>
</tr>
<tr>
<td>Internal Revenue Service</td>
<td>26, I</td>
</tr>
<tr>
<td>International Investment, Office of</td>
<td>31, VIII</td>
</tr>
<tr>
<td>Monetary Offices</td>
<td>31, I</td>
</tr>
<tr>
<td>Secret Service</td>
<td>31, IV</td>
</tr>
<tr>
<td>Secretary of the Treasury, Office of</td>
<td>31, Subtitle A</td>
</tr>
<tr>
<td>Thrift Supervision, Office of</td>
<td>12, V</td>
</tr>
<tr>
<td>Truman, Harry S. Scholarship Foundation</td>
<td>45, XVIII</td>
</tr>
<tr>
<td>United States and Canada, International Joint Commission</td>
<td>22, IV</td>
</tr>
<tr>
<td>United States and Mexico, International Boundary and Water Commission</td>
<td>22, XI</td>
</tr>
<tr>
<td>Utah Reclamation Mitigation and Conservation Commission</td>
<td>43, III</td>
</tr>
<tr>
<td>Veterans Affairs Department</td>
<td>38, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>46, 8</td>
</tr>
<tr>
<td>Veterans' Employment and Training Service, Office of the Assistant Secretary for</td>
<td>41, 61; 20, IX</td>
</tr>
<tr>
<td>Vice President of the United States, Office of</td>
<td>32, XXVIII</td>
</tr>
<tr>
<td>Vocational and Adult Education, Office of</td>
<td>34, IV</td>
</tr>
<tr>
<td>Wage and Hour Division</td>
<td>29, V</td>
</tr>
<tr>
<td>Water Resources Council</td>
<td>18, VI</td>
</tr>
<tr>
<td>Workers' Compensation Programs, Office of</td>
<td>20, I</td>
</tr>
<tr>
<td>World Agricultural Outlook Board</td>
<td>7, XXXVIII</td>
</tr>
</tbody>
</table>
**List of CFR Sections Affected**

All changes in this volume of the Code of Federal Regulations which were made by documents published in the Federal Register since January 1, 2001, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.


### 2001

<table>
<thead>
<tr>
<th>CFR Volume</th>
<th>Page</th>
<th>Chapter</th>
<th>Section</th>
<th>Action</th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>48 CFR</td>
<td>66 FR</td>
<td>Chapter 2</td>
<td>202.101</td>
<td>Amended</td>
<td>49860, 63335</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>204.603</td>
<td>Revised</td>
<td>47096</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>204.670-1</td>
<td>(b) introductory text and (c)(3) amended</td>
<td>47096</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>204.670-2</td>
<td>(a)(1), (b)(1), (c)(3) and (7)(i) revised; (a)(3), (4) and (b)(3) added</td>
<td>47096</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>204.670-3</td>
<td>(a)(2) amended</td>
<td>47097</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>204.670-5</td>
<td>(a) amended</td>
<td>47097</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>204.670-6</td>
<td>(a), (b) introductory text, (1)(i), (c)(1), (2) and (3) amended</td>
<td>47097</td>
</tr>
<tr>
<td></td>
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**48 CFR—Continued**

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