



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH, DEVELOPMENT AND ACQUISITION
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

SEP 29 2000


MEMORANDUM FOR DISTRIBUTION

Subj: NAVY ACQUISITION PROCEDURES SUPPLEMENT (NAPS) -
DRAFT FALL 2000 VERSION

Encl: (1) Highlights of proposed NAPS changes

It has been just over three years since the last time the NAPS was re-issued in its entirety. We are planning on a Fall 2000 re-issue, and have placed the current draft version on our home page at <http://www.abm.rda.hq.navy.mil>. Some of the highlights of the changes are listed in enclosure (1). Please ask your acquisition/contracting staffs to review the draft and submit any comments or recommendations by October 25, 2000. We are particularly interested in identifying areas where either existing coverage is considered unnecessary, or additional coverage would be beneficial.

Anyone with problems accessing the document there may obtain it via return e-mail by contacting Mr. Pete Chase - by e-mail at Chase.Peter@hq.navy.mil, by phone at (703)602-2501 or by fax at (703)602-2117.


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Subj: NAVY ACQUISITION PROCEDURES SUPPLEMENT (NAPS) -
DRAFT VERSION FOR FALL 2000

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SUMMARY OF SIGNIFICANT CHANGES

Item 1 – PROCUREMENT INTEGRITY

Section 5203.104-10 is revised to implement the requirement at FAR 3.104-10(f) that the head of the agency be notified in accordance with agency procedures before authorizing contract award or execution of a contract modification based on urgent and compelling circumstances. The revised coverage requires the agency head notification to be submitted to ABM. In addition, the HCA or designee must verify the agency head's receipt of the notification. (5203.104-10(f))

Item 2 – ACQUISITION PLANNING

Section 5207.103 is amended to designate HCAs as being responsible for prescribing procedures for the review and approval of acquisitions plans and revisions to those plans. (5207.103(h))

Item 3 – INHERENTLY GOVERNMENTAL FUNCTIONS

A new Section 5207.503 is added to designate the Chief of the Contracting Office (CCO) as the individual responsible for resolving disagreements regarding a requiring official's written determination that none of the functions to be performed under a proposed contract are inherently governmental. (5207.503(e))

Item 4 – DEBARMENT AND SUSPENSION

Section 5209.406-3 is amended to eliminate the reference to contracting officer's reports based on DFARS Change Notice 19991118. This Change Notice revised DFARS 5209.406-3 to provide that any person (not just a contracting officer) may refer a matter to the debarring and suspending official. (5209.406-3(a)(i))

Item 5 – UNSOLICITED PROPOSALS

A new Subpart 5215.6 and Section 5215.606 are added to designate HCAs as being responsible for establishing contact points and procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals. (5215.606(a) and (b))

Item 6 – ECONOMY ACT

A new Subpart 5217.5 and Section 5217.503 are added to establish Navy-wide policy and procedures for the processing of interagency acquisitions under the Economy Act. This coverage supersedes all previous ABM correspondence concerning the Economy Act.

Item 7 – FOREIGN ACQUISITION

Several new sections are added under Subpart 5225.70 to implement various DFARS sections pertaining to the processing of waivers and certifications for statutory restrictions on foreign acquisition.

Item 8 - BONDS AND INSURANCE

Sections 5228.106 and 5228.308 are removed since the submission of questions and requests for guidance to ABM regarding bonds, and the referral of matters to ABM concerning self-insurance should be limited to those circumstances where no other assistance is available.

In addition, the current Subsection 5228.301(91), "Payment of claims to third parties." is removed. This subsection provides for the submission of information to ABM for a determination as to whether the Government has assumed liability for a claim and if so, the amount to be paid. Although an ABM determination is no longer required, a new Subsection 5228.301-90 is added to provide that ABM be informed of any suit or action filed or any claim made against the contractor in excess of \$100,000.

Item 9 - PROTESTS

A new Section 5233.103 is added to designate HCAs as being responsible for establishing procedures for handling requests made by interested parties for an independent review of their protest at a level above the contracting officer. This new coverage also incorporates current policy and procedures set forth in ABM memorandum dated August 13, 1996, subject: "FAR 33.103; Protests to the Agency." (5233.103(d)(4) and (f))

Item 10 - INDEMNIFICATION AGAINST UNUSUALLY HAZARDOUS RISKS

A new Subsection 5235.070-90 is added to require that the contracting officer immediately inform ABM upon receipt of notification from the contractor of any occurrence, action, or claim in excess of \$100,000 that might trigger the Government's liability under the DFARS clause 252.235-7000, "Indemnification Under 10 U.S.C. 2354--Fixed Price" or 252.235-7001, "Indemnification Under 10 U.S.C. 2354--Cost Reimbursement."

Item 11 - RESEARCH AND DEVELOPMENT STREAMLINED CONTRACTING PROCEDURES

A new Subpart 5235.70 and Section 5235.7003 are added to designate the Chief of the Contracting Officer (CCO) as the individual responsible for establishing procedures for authorizing the use of FAR and DFARS provisions and clauses, and nonstandard provisions and clauses that are not in the research and development streamlined

solicitation/contract (RDSS/C) standard format published at the RDSS/C website.
(5235.7003-4)

Item 12 - VALUE ENGINEERING

A new Section 5248.103 is added to designate the HCA as the individual responsible for establishing procedures for processing and evaluating Value Engineering Change Proposals (VECPs). (5248.103(a))

Item 13 - INDEMNIFICATION UNDER PUBLIC LAW 85-804

A new Subsection 5250.403-2 is added to require that the contracting officer immediately inform ABM upon receipt of notification from the contractor of any claim or action against, or any loss by, the contractor or any subcontractors in excess of \$100,000 that may reasonably be expected to involve indemnification under the FAR clause 52.250-1, "Indemnification Under Public Law 85-804." (5250.403-90)

Department of the Navy
Office of the Assistant Secretary
(Research, Development and Acquisition)
Washington, DC 20350-1000

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AUGUST 1997
2000 EDITION

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NAVY ACQUISITION PROCEDURES SUPPLEMENT

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NAVY ACQUISITION PROCEDURES SUPPLEMENT

PART 5201

FEDERAL ACQUISITION REGULATIONS SYSTEM

SUBPART 5201.1--PURPOSE, AUTHORITY, ISSUANCE

5201.101 Purpose.

The Navy Acquisition Procedures Supplement (NAPS) establishes uniform Department of the Navy (DoN) policies and procedures implementing and supplementing the Federal Acquisition Regulation (FAR) and the Defense FAR Supplement (DFARS).

5201.103 Authority.

(b) The NAPS is prepared, issued, and maintained pursuant to the authority of SECNAVINST 5400.15 (current version).

Rationale: This more accurately implements FAR 52.103(b).

5201.104 (DFARS 201.104) Applicability.

The NAPS applies to all DoN activities in the same manner and to the same extent as specified in FAR 1.104 and DFARS 201.104.

5201.105 Issuance.

5201.105-2 Arrangement of regulations.

(c) *References and citations.*

~~(2_1) Cross reference to the FAR in this supplement will cite "FAR" followed by the appropriate part, subpart, etc. Cross reference to the DFARS will cite "DFARS" followed by the appropriate part, subpart, etc.~~ References to this supplement within this supplement will be without a name or acronym prefix. References to FAR citations in this supplement should be read to include any corresponding paragraphs of the DFARS and this supplement and any additional authorizations, restrictions, policies and procedures they may contain. For example, the words "...when authorized under FAR Part 25..." include authorities granted under FAR Part 25, DFARS Part 225 and Part 5225 of this supplement. A DFARS cite in parentheses immediately after the NAPS cite means related coverage is contained in the DFARS (e.g. 5201.371 (DFARS 201.371)).

Rationale: This coverage more accurately implements FAR 1.105-2(c)(1). In addition, the first two sentences are considered unnecessary.

NAVY ACQUISITION PROCEDURES SUPPLEMENT

SUBPART 5201.2--ADMINISTRATION

5201.201 Maintenance of the FAR.

5201.201-1 (DFARS 201.201-1) The two councils.

(d)(i) Submit proposed revisions to the FAR, DFARS or NAPS to ABM via the Deputy/Assistant Commander for Contracts of the cognizant HCA. Each proposed revision shall include a legal position and shall identify the name, code, and telephone number of the activity point of contact.

SUBPART 5201.3--AGENCY ACQUISITION REGULATIONS

5201.301 Policy.

(a)(2) HCAs and CCOs are authorized to issue internal activity guidance.

5201.303 (DFARS 201.303) Publication and codification.

(a)(i) The NAPS is codified under Chapter 52, "Department of the Navy Acquisition Regulations" in Title 48, "Federal Acquisition Regulations System" of the Code of Federal Regulations (CFR). FAR 1.105-1(c) requires each numbered unit or segment (e.g., part, subpart, section, etc.) to begin with the assigned Chapter number.

(ii) To the extent possible, all NAPS text (whether implementing or supplemental) is numbered as if it were implementing the FAR or DFARS.

(A) The coverage uses the same numbers. Implementing numbering is the same as its FAR or DFARS counterpart, preceded by the prefix "52".

(B) Supplemental numbering is the same as its FAR or DFARS counterpart, preceded by the prefix "52" with the addition of a number 90 and up. For supplemental numbering, the NAPS adds 90 (and up if necessary) for parts, subparts, sections, or subsections or, and adds S-90 and up to for lower divisions.

Rationale: To more accurately implement FAR/DFARS 1.303/201.303 and provide an explanation for the numbering of the NAPS.

5201.304 (DFARS 201.304) Agency control and compliance procedures.

(4) DoN Procedures for Control of Component Clause Use.

(A) Statement of Purpose. These procedures establish a system of controls for use of clauses other than those prescribed in FAR, DFARS, or NAPS, as required by DFARS 201.304(4).

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(B) Definitions.

(a) "Clause" as used in these procedures includes provisions and means a term or condition of the solicitation/contract of the type set forth in FAR Part 52/DFARS Part 252/Part 5252. A clause includes everything in parts B through M of a solicitation/contract except:

- (1) The list of supplies or services and prices/costs in Section B;
- (2) Specifications and statements of work in Section C;
- (3) Packaging and marking requirements in Section D;
- (4) Requirements for place of inspection/acceptance in Section E;
- (5) Requirements for time, place, and method of delivery or performance in Section F;
- (6) The list of attachments in Section J; and
- (7) Brief statements of strictly administrative, informational nature, without significant cost or administrative impact on offerors or contractors, which the originating activity has determined do not fit the above definition of "clause".

(b) "Navy Clause Baseline" means all approved Navy standard component clauses.

(c) "Non-standard Component Clause" means a component clause not prescribed for use in a component regulation.

(d) "Regulation" means any contracting supplement, policy letter, clause book, automated system, or similar regulatory instrument.

(e) "Standard Component Clause" means a component clause prescribed for use in a component regulation.

(C) Standard Component Clauses.

(a) Usage. All component clauses used in solicitations and/or contracts must be standard clauses, unless:

- (1) A deviation has been authorized in accordance with (c) below; or
- (2) One of the exceptions listed in (D) below permitting use of non-standard clauses is applicable.

(b)(1) Each contracting activity shall publish new component clauses or changes to existing component clauses that require USD(AT&L) approval as a proposed rule in the Federal Register for public comment. After receipt and analysis of public comments, the contracting activity shall submit the proposed rule, in accordance with DFARS 201.201-1(d)/NAPS 5201.201-1(d) and DFARS 201.301, through the HCA and ABM to the DAR Council Director, prior to publication as a final rule.

(2) New standard component clauses, or changes to existing component clauses, which do not have significant cost or administrative impact on offerors/contractors, do not require publication for public comment or approval of ABM or USD(AT&L). Copies of all new standard component clauses or changes, that do not

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require ABM or USD(AT&L) approval, shall be provided to ABM for inclusion in the Navy clause baseline.

(c) In competitive procurements, modifications of standard component clauses which may significantly increase cost or administrative impact on offerors/contractors shall be submitted by the Deputy/Assistant Commander for Contracts to the DAR Council Director, via ABM, for approval by USD(AT&L)DP. The HCA may approve other changes to standard component clauses that do not constitute deviations to the FAR/DFARS/NAPS.

(d) All standard component clauses shall be numbered in accordance with 5252.101.

(D) Non-standard Component Clauses. Non-standard clauses are not included in the Navy clause baseline and do not require approval of ABM, unless usage constitutes a deviation from FAR/DFARS/NAPS. Non-standard Component Clauses may be used only when they are:

(a) non-standard negotiated component clauses used by mutual agreement of both parties in non-competitive procurements;

(b) non-standard component clauses in dual source or limited competition procurements that have advance agreement of the parties;

(c) clauses required by FAR or DFARS to be tailored to the individual situation (such as Organizational Conflict of Interest);

(d) provisions providing proposal preparation requirements or evaluation/award criteria; or

(e) clauses which have no significant cost or administrative impact on offerors/contractors, and the contracting activity chooses not to designate or control them as standard component clauses.

(E) "Substantially the Same As" Clauses. Component clauses may be used to implement FAR/DFARS/NAPS clauses which permit usage of clauses "substantially the same as" the prescribed clause or other variation. These clauses do not require ABM approval. "Substantially the same as" clauses should cite the FAR/DFARS/NAPS clause number, title, and date followed by (VARIATION).

SUBPART 5201.4--DEVIATIONS FROM THE FAR

5201.402 (DFARS 201.402) Policy.

(4 2) Submit requests for individual or class deviations approval which that require USD(AT&L)DP higher level approval to ABM.

(ii) Deviations involving basic agreements, basic ordering agreements, or master agreements are considered class deviations.

5201.403 (DFARS 201.403) Individual deviations.

(2 1) ABM is the approval authority for:

NAVY ACQUISITION PROCEDURES SUPPLEMENT

~~(i)~~ (a) individual deviations from the FAR or DFARS other than those specified in DFARS 201.402(1)~~(i)~~ and DFARS 201.403(2), except that in the case of a purchase or contract by an offshore contracting activity with a foreign contractor made outside the United States, its possessions, or Puerto Rico, deviations from contract clauses may be granted by the HCA provided that no change in intent, principle, or substance is made.

~~(ii)~~ (b) individual or class deviations from NAPS.

~~(iii)~~ (c) deviations from certain component clauses (see 5201.304(4)).

5201.404 (DFARS 201.404) Class deviations.

Deviations involving basic agreements, basic ordering agreements, or master agreements are considered class deviations.

Rationale: To more accurately implement DFARS coverage and conform to the numbering prescribed by FAR/DFARS 1.303/201.303, "Publication and codification."

SUBPART 5201.6--CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES

5201.601 General.

(a) Within this supplement, any authorities assigned or delegated to a specific level may be delegated or redelegated, unless otherwise restricted.

Rationale: This more accurately implements FAR 1.601(a).

5201.601 ~~(99)~~ -90 Department of the Navy authorities and responsibilities.

(a) **Assistant Secretary of the Navy (Research, Development and Acquisition) (ASN(RD&A))**. SECNAVINST 5400.15 (current version) establishes the duties and responsibilities of the ASN(RD&A), including serving as the NAE and NSPE.

(b) **NAVFACENGCOM cognizance of public works and civil works.**

(1) Responsibility. Commander, NAVFACENGCOM is responsible for awarding and administering all architect-engineer, construction and facilities support contracts.

(2) Administration of construction portions of contracts. When a contract for construction of civil works is made directly between the DoN and a builder (as distinguished from the contractor who is to operate the facilities) NAVFACENGCOM will be the contracting agency with the work to be financed by transfer of funds from the sponsoring contracting activity to NAVFACENGCOM. All other contracts potentially requiring construction of civil works shall include the clause at 5252.201-9000, Civil Works - Delegation to Naval Facilities Engineering Command.

(c) **NAVSUPSYSCOM.**

NAVSUPSYSCOM contracting responsibilities include:

(1) providing DoN-wide policy and procedures for simplified acquisition as defined in FAR Part 13, except that NAVFAC may utilize other procedures for construction, A/E services, and base support; and

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(2) contracting for supplies and services throughout the DoN for which no other contracting activity, office or command is delegated contracting authority. This includes contracting for Naval (but not Marine Corps) activities for visual information (motion picture and videotape) productions through the Naval Media Center, unless an exception is granted by the Chief of Naval Operations (N09C4).

5201.602 Contracting officers.

5201.602-1 Authority.

(b) Contract documents shall be forwarded to the appropriate attorney or attorneys in the Office of General Counsel for review as to form and legality and any additional pertinent comment or advice.

Rationale: To more accurately conform to the numbering prescribed by FAR/DFARS 1.303/201.303, "Publication and codification."

5201.602-2 (DFARS 5201.602-2) Responsibilities.

(1) Employees of foreign governments assigned to multi-national Joint Project Offices are authorized to serve as CORs.

Rationale: To more accurately conform to the numbering prescribed by FAR/DFARS 1.303/201.303, "Publication and codification."

~~**5201.602-3 Ratification of unauthorized commitments.**~~

~~HCA's may ratify unauthorized commitments, and may delegate this authority to a level no lower than the CCO.~~

Rationale: This coverage is unnecessary since FAR 1.602-3(b)(2) and (3) already provide for ratification by the HCA with delegation authority to a level no lower than the CCO.

5201.603 Selection, appointment, and termination of appointment.

5201.603-1 General.

Heads of Contracting Activities (HCAs) are the agency head's designees for the selection and appointment of contracting officers, and for the termination of their appointments.

NAVY ACQUISITION PROCEDURES SUPPLEMENT

5201.690 Requirements to be met before entering into contracts.

(a) Generally, all significant contracting actions should be subject to some form of review prior to award. The formal review process is conducted and documented through the use of the business clearance. The purpose of the business clearance is to demonstrate that the proposed action conforms to law, regulation, good business practices and Navy acquisition policies.

(b) HCAs should establish written procedures for the review and approval of business clearances for:

(1) Contracts (including indefinite-delivery contracts) and contract modifications for the acquisition of supplies or services not within the scope or under the terms of an existing contract.

(2) Undefinitized contract actions (see DFARS Subpart 217.74.)

(3) Basic ordering agreements.

(4) Modifications and changes issued pursuant to contract clauses such as the "Changes" or "Government Property" clauses.

(5) Retroactive pricing after completion.

(6) Definitization of any undefinitized/unpriced action under (2) or (4) above.

(7) Advance agreements on special or unusual cost items (see 5231.109.)

(8) Actions that result in the establishment, modification or rescission of a guarantee of performance on a government contract by a third party.

(c) The degree and complexity of documentation required, and approval levels/thresholds, for various actions should be governed by the magnitude and complexity of the action being reviewed.

5201.691 Procurement Management Oversight.

5201.691-1 Purpose.

The primary objective of procurement management oversight is to encourage and assist activities in making continuous improvements in their acquisition processes. It also provides a mechanism for sharing "best practices" throughout the Navy. Procurement management oversight in the Department of the Navy will be conducted through the Procurement Performance Measurement Assessment Program (PPMAP). The PPMAP is a flexible, performance-based, process-oriented program which includes self-assessment of:

(a) control of and continuous improvement in critical procurement processes;

(b) performance-based metrics; and

(c) the results of employee and customer surveys.

5201.691-2 Responsibilities.

(a) ABM is responsible for oversight and review of HCAs and other designated Navy contracting organizations, and shall oversee and provide guidance on the PPMAP.

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(b) HCAs are responsible for oversight and review of their subordinate contracting organizations.

(c) The Commander, Naval Supply Systems Command (COMNAVSUPSYSCOM) is also responsible for oversight and review of all activities with NAVSUPSYSCOM-delegated contracting authority, and other activities as directed by ABM or higher level authority.

(d) Fleet and Type Commanders are responsible for oversight and review of afloat units. Reviews may be a part of regularly scheduled Logistics Management Assessments (LMAs).

(e) Each contracting activity assigned procurement management oversight responsibility should prepare and maintain a schedule of reviews, and conduct reviews of all subordinate organizations with delegated contracting authority.

(f) HCAs shall:

(1) When requested, nominate senior contracting personnel to serve on ABM PPMAP teams; and

(2) By 30 December of each year, provide ABM a summary of relevant findings (best practices, deficiencies, recommendations, etc.) from the results of the previous fiscal year's PPMAP activities.

(g) ABM shall be advised immediately any time an organization's contracting authority is revoked, suspended or reduced.

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PART 5202

DEFINITIONS OF WORDS AND TERMS

SUBPART 5202.1--DEFINITIONS

5202.101 Definitions.

"ABM" means the Deputy for Acquisition and Business Management, Office of the Assistant Secretary of the Navy (Research, Development and Acquisition). [It also includes the Executive Director, ABM.](#)

"ASN(FM&C)" means Assistant Secretary of the Navy (Financial Management and Comptroller).

"ASN(RD&A)" means Assistant Secretary of the Navy (Research, Development and Acquisition).

"CCO" means the "Chief of the Contracting Office". The CCO is the official who has overall responsibility for managing the entire contracting office and includes the principal deputy to such official.

"Deputy/Assistant Commander for Contracts" means the Deputy or Assistant Commander for Contracts or the equivalent at a Systems Command, the Headquarters, Naval Facilities Engineering Command; Marine Corps Systems Command; Deputy Chief of Staff (Installation and Logistics) Headquarters Marine Corps; Office of Naval Research; Military Sealift Command; and Strategic Systems Programs. It also includes the principal deputy for these officials.

"Director, SADBUC" means the Director, Small and Disadvantaged Business Utilization, Office of the Under Secretary of the Navy.

"DRPM" means Direct Reporting Program Manager.

"MSC" means the Military Sealift Command

"NAE" means the Navy Acquisition Executive. ASN(RD&A) is the NAE.

"NAVAIRSYSCOM" means the Naval Air Systems Command.

"NAVFACENGCOM" means the Naval Facilities Engineering Command.

"NAVSEASYSYSCOM" means the Naval Sea Systems Command.

"NAVSUPSYSCOM" means the Naval Supply Systems Command.

"Navy" or "DoN" means the Department of Navy including the Marine Corps, unless otherwise specified.

"NSPE" means Navy Senior Procurement Executive. ASN(RD&A) is the NSPE.

"PEO" means Program Executive Officer.

"SPAWARSYSCOM" means the Space and Naval Warfare Systems Command.

"SSP" means Strategic Systems Programs.

"USD(AT&L)" means Under Secretary of Defense (Acquisition, ~~and~~ Technology [and Logistics](#)).

"USD(AT&L)DP" means the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition and Technology).

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PART 5203

IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

SUBPART 5203.1--SAFEGUARDS

5203.101 Standards of conduct.

5203.101-1 General.

(1) Navy contracting activities, purchasing offices and contract administration offices are responsible for ensuring that a single individual performs only one of the following functions:

- (i) initiation of the requirement;
- (ii) award of contract or placement of order; and
- (iii) receipt, inspection, and acceptance of supplies or services.

(2) If circumstances preclude an individual from performing a single function, as a minimum, the individual responsible for the award of a contract or placement of an order should not perform the receipt, inspection and acceptance function.

5203.104 Procurement integrity.

5203.104-10 Violations or possible violations.

(a)(1) The Chief of the Contracting Office is designated, without power of redesignation, as the individual to receive the contracting officer's report and documentation concluding that there is no impact on the procurement.

(f) Submit agency head notifications to ABM. Verify receipt by the agency head before authorizing award of the contract or execution of the contract modification.

Rationale: To implement the FAR requirement that the head of the agency be notified in accordance with agency procedures before authorizing contract award or execution of a contract modification based on urgent and compelling circumstances.

SUBPART 5203.6--CONTRACTS WITH GOVERNMENT EMPLOYEES OR ORGANIZATIONS OWNED OR CONTROLLED BY THEM

5203.602 Exceptions.

The HCA is the agency head's designee, without power of redesignation, to authorize exceptions.

NAVY ACQUISITION PROCEDURES SUPPLEMENT

PART 5204

ADMINISTRATIVE MATTERS

SUBPART 5204.2--CONTRACT DISTRIBUTION

5204.201 (DFARS 204.201) Procedures.

All DoN activities shall post an electronic copy of each newly executed procurement instrument (contracts, purchase orders, delivery orders, contract modifications, etc.) within two working days of its execution, to the DoN Electronic Document Access (EDA) website (<http://www.eda.navy.mil>), unless payment under the instrument will be made with the Government Commercial Purchase Card. Documents shall be posted in portable document format (.pdf). No other format is acceptable. Files should be in a reasonable size - less than 1Mb, if practical. If necessary, contract documents may be broken into sections. Attachments may be separate files. This posting constitutes the required distribution with respect to required copies for the Defense Finance and Accounting Service, the Defense Contract Management Command, and the Defense Contract Audit Agency. Historical (existing) procurement documents should be captured and posted electronically to the above EDA website in accordance with local procedures. Priority consideration should be given to those instruments with significant payment activity remaining. All parts of an instrument that would have been provided to a recipient in paper should be made available electronically.

SUBPART 5204.6--CONTRACT REPORTING

5204.600 (DFARS 204.600) Scope of subpart.

Contract reporting on the DD Form 350 and DD Form 1057 will be in accordance with policies and procedures promulgated by the Deputy Commander for Contracting Management, NAVSUPSYSCOM.

SUBPART 5204.8--GOVERNMENT CONTRACT FILES

Rationale: To conform to FAR Title (DFARS Incorrect)

5204.802 (DFARS 204.802) Contract files.

(2) Official record copies may include computer generated documents prepared within the contracting activity to request and support individual contracting actions.

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SUBPART 5204.70--UNIFORM PROCUREMENT INSTRUMENT IDENTIFICATION NUMBERS

5204.7003 (DFARS 204.7003) Basic PII number.

(a) *Elements of a number.*

(3) *Position 9.* Assign the capital letter "G" to the ninth position of the basic PII Number for Educational Service Agreements.

5204.7004 (DFARS 204.7004) Supplementary PII numbers.

(d) *Delivery orders under indefinite delivery contracts, orders under basic ordering agreements, and calls under blanket purchase agreements.* [Requests for assignment of two-character call/order serial numbers are to be submitted in writing to ABM at the OASN\(RD&A\) address identified in paragraph G-101\(c\) of Appendix G to the DFARS. The request must include activity name, complete address, Unit Identification Code \(UIC\), dollar limit of purchasing authority, and estimated number of orders per contract.](#)

[Rationale: To identify information that must be included in any request for assignment of two-character call/order serial numbers.](#)

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

(i) If the office placing the order or call is the only activity placing orders under the contract or agreement, use of serial numbers 0001 through 9999 is authorized.

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PART 5205

PUBLICIZING CONTRACT ACTIONS

SUBPART 5205.2--SYNOPSIS OF PROPOSED CONTRACT ACTIONS

5205.207 Preparation and transmittal of synopses.

(c) *General format for Item 17, "Description".*

(2)(xvii) If the solicitation will be available on or through the Navy Electronic Commerce Online (NECO) world wide web site, include the complete URL to provide potential offerors direct access.

SUBPART 5205.3--SYNOPSIS OF CONTRACT AWARDS

5205.303 (DFARS 205.303) Announcement of contract awards.

(a) *Public Announcements.*

(i) Report orders or modifications issued by CAOs which exceed the threshold.

(ii) Submit announcement information to the Navy Chief of Information (CHINFO).

(A) (S-90) Security review. Routine contract announcements are exempt from the security review process. However, full security review is required for contract announcements which are accompanied by amplifying press releases.

(S-91) Format. To provide for a better understanding by the public, contracting activities should explain in public announcements the specific type of contracting action being awarded (i.e., state that the Navy has "awarded a contract", "exercised an option" or "negotiated a modification" to a contract). Sample formats of announcements for contract modifications are illustrated below. Formats may be altered to suit the circumstances of the contracting action.

(a) Contract award. (Name of contractor, city, state)
_____ was awarded Contract No.
issued by the (activity) _____. The contract was awarded in the amount of \$

(b) Contract modification. (Name of contractor, city, state)
_____ is receiving modification number
_____ to previously awarded Contract No. _____ issued
by the (activity) _____. This modification increases the value of the basic
contract by \$ _____, the new total value is \$ _____. Insert an explanatory statement
similar to one of the following as appropriate:

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(i) This modification adds the (# of increment, i.e., second, third, etc.) increment of the (length of multi-year contract, i.e., three, four, etc.) year multi-year basic contract.

(ii) This modification provides for the purchase of an additional quantity of (quantity and item, e.g., 500 widgets) being produced under the basic contract. (If appropriate, indicate that the contracting action is the result of a competitive negotiated procurement).

(iii) This modification provides for the exercise of an option for an additional quantity of (quantity and item, e.g., 200 gadgets) being produced under the basic contract.

(iv) This modification changes the specifications for the (indicate item(s)) being produced under the basic contract. The contractor indicates that the work (is being) (will be) performed at (city and state).

(D)(5) (S-90) *Miscellaneous data*. Include:

(a) a statement that the information contained in the announcement is unclassified;
(b) any areas of sensitivity or high level interest;
(c) indication of appropriate coordination to insure the accuracy of the wording and data to be released.

(d) the estimated period of performance or delivery schedule.

(e) the amount of any of the obligated funds that would have expired at the end of the current fiscal year.

~~_____ (6) (S-91) *Security review*. Routine contract announcements are exempt from the security review process. However, full security review is required for contract announcements which are accompanied by amplifying press releases.~~

~~Note: This coverage was moved to 5205.303(a)(ii)(A)(S-90) above.~~

~~(7) (S-92) *Format*. To provide for a better understanding by the public, contracting activities should explain in public announcements the specific type of contracting action being awarded (i.e., state that the Navy has "awarded a contract", "exercised an option" or "negotiated a modification" to a contract). Sample formats of announcements for contract modifications are illustrated below. Formats may be altered to suit the circumstances of the contracting action.~~

~~_____ (i) Contract award. (Name of contractor, city, state)
_____ was awarded Contract No.
issued by the (activity) _____. The contract was awarded in the amount of \$~~

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_____ (ii) Contract modification. (Name of contractor, city, state)
_____ is receiving modification number
_____ to previously awarded Contract No. _____ issued
by the (activity) _____. This modification increases the value of the basic
contract by \$ _____, the new total value is \$ _____. Insert an explanatory statement
similar to one of the following as appropriate:

_____ (A) This modification adds the (# of increment, *i.e.*, second, third, etc.)
increment of the (length of multi-year contract, *i.e.*, three, four, etc.) year multi-year basic
contract.

_____ (B) This modification provides for the purchase of an additional quantity of
(quantity and item, *e.g.*, 500 widgets) being produced under the basic contract. (If
appropriate, indicate that the contracting action is the result of a competitive negotiated
procurement).

_____ (C) This modification provides for the exercise of an option for an additional
quantity of (quantity and item, *e.g.*, 200 gadgets) being produced under the basic contract.

_____ (D) This modification changes the specifications for the (indicate item(s)) being
produced under the basic contract. The contractor indicates that the work (is being) (will
be) performed at (city and state).

Note: [This coverage was moved to 5205.303\(a\)\(ii\)\(A\)\(S-91\) above.](#)

SUBPART 5205.4--RELEASE OF INFORMATION

5205.404 Release of long-range acquisition estimates.

5205.404-1 Release Procedures.

(a) *Application.* The HCA is the agency head's designee for release of long-range acquisition estimates. Public release of long-range acquisition estimates should be considered for all contract actions expected to exceed \$1 million in a fiscal year.

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PART 5206

COMPETITION REQUIREMENTS

5206.003 Definitions.

"Procuring activity". Navy activities with contracting authority in excess of \$500,000 may be considered "procuring activities" solely for the purpose of enabling their competition advocate to exercise the approval authority provided by FAR 6.304(a)(2).

SUBPART 5206.2--FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES

5206.202 (DFARS 5206.202) Establishing or maintaining alternative sources.

(b)(1) D&Fs shall be signed as follows:

(i.A) For a proposed contract not exceeding \$50,000,000, the approval level is the HCA, or a designee who

(A.a) If a member of the armed forces, is a general or flag officer; or

(B.b) If a civilian, is serving in a position in grade GS 16 or above under the General Schedule (or in a comparable or higher position under another schedule).

(ii.B) For a proposed contract over \$50,000,000, the approval level is the NSPE.

Rationale: To more accurately conform to the numbering prescribed by FAR/DFARS 1.303/201.303, "Publication and codification."

SUBPART 5206.3--OTHER THAN FULL AND OPEN COMPETITION

5206.303 Justifications.

5206.303-1 (DFARS 206.303-1) Requirements.

(b) HCAs are responsible for specifying these levels of review and approval.

5206.303-2 (DFARS 206.303-2) Content.

(a) Each justification also should include:

(i) A statement of delivery requirements (e.g. include a list of ships and/or shore activities and required delivery dates for each).

(ii) The total estimated dollar value for the acquisition(s) covered by the justification. The estimated dollar value should be identified by fiscal year and appropriation. The planning documents in current use by the program manager (and Integrated Product Team, if applicable) should be reviewed concurrent

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with J&A preparation and updated if required. J&As and planning documentation should be consistent; unavoidable discrepancies should be highlighted and explained to the approving official.

(iii) J&As requiring NSPE approval should be accompanied by current, consistent planning documentation. This should be the Acquisition Strategy, Acquisition Plan, the Integrated Product Team's agreement, or whatever documents were actually used for acquisition planning. Prior to submittal, the J&A should be carefully reviewed for consistency with both the planning documentation and with prior J&As or other documents submitted by the program for NSPE approval. Any discrepancies should be identified and explained in the forwarding memorandum.

5206.303(90)-90 Review.

Each justification should be reviewed by counsel for legal sufficiency prior to its submission for approval. The counsel for the contracting activity preparing the justification is responsible for the review. HCAs are responsible for establishing review procedures for field purchasing activities without assigned counsel.

5206.303(94)-90 Submission.

J&As requiring the approval of the Navy Senior Procurement Executive or the Secretary of the Navy shall be submitted through ABM. If there has been a prior J&A on the program, attach a copy of the most recent J&A (if approved locally) or provide the control number (if approved by the NSPE).

5206.304 Approval of the justification.

(a) If the dollar value of the contract is negotiated at a level which exceeds the dollar threshold of the original justification approval authority, new justification approval must be obtained from the appropriate approval authority prior to award.

(c) Class justifications shall be approved in the same manner as individual justifications with the same approval thresholds. The cumulative dollar value of all actions contemplated under the class justification will be used to determine the approval authority for the class justification.

SUBPART 5206.5--COMPETITION ADVOCATES

5206.501 Requirement.

ABM is designated the Competition Advocate General of the Navy. HCAs shall appoint competition advocates for their respective contracting activities.

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5206.502 Duties and responsibilities.

(a) Competition advocates will also:

- ~~(a)~~ (j) Act as the primary focal point ~~in the Department of the Navy~~ to assist members of the private sector regarding their expressed concerns or complaints in reference to the manner of application or lack of application of competition in the acquisition process;
- ~~(b)~~ (ii) Take appropriate action to ensure that valid complaints from the private sector are resolved in a fair and timely manner; and
- ~~(c)~~ (iii) Have direct access throughout the Department of the Navy acquisition community as required to promote competition.

Rationale: To conform to the numbering prescribed by FAR/DFARS 1.303/201.303, "Publication and codification." Also, the phrase "in the Department of the Navy" is being removed since its meaning is unclear within this context and it is considered unnecessary.

NAVY ACQUISITION PROCEDURES SUPPLEMENT

PART 5207

ACQUISITION PLANNING

SUBPART 5207.1--ACQUISITION PLANS

5207.103 (DFARS 207.103) Agency-head responsibilities.

(c)(ii) Written acquisition plans (APs) are not required for military construction; commercial items; spare and repair parts; items of supply which are managed on a national basis where requirements are computed in accordance with established DoD/DoN inventory management policy/regulation; overhaul and/or modification of naval vessels, small vessels and crafts (including MSC vessels/crafts); overhaul and/or modification of engines; operation and maintenance of weapon test/training ranges; ocean towage; Commercial Activities; architect-engineer; major station maintenance and repair; and component overhaul/maintenance/repair at the depot, intermediate or organizational levels.

(h) HCA's are responsible for prescribing procedures for the review and approval of acquisition plans and revisions to those plans. Cognizant Program Executive Officers (PEOs), Direct Reporting Program Managers (DRPMs) or HCAs, and their designees are authorized to approve APs. APs should be signed by the approving official, the program manager, the CCO and the contracting officer.

Rationale: In lieu of establishing agency-wide procedures (see FAR 7.103(h)), this NAPS coverage assigns HCAs the responsibility for establishing procedures for reviewing and approving acquisition plans. This will enable the procedures to be tailored to the needs of each HCA.

5207.107 Additional requirements for acquisitions involving bundling of contract requirements.

(c) Requests for NAE determinations must be submitted through ABM.

SUBPART 5207.2 - PLANNING FOR THE PURCHASE OF SUPPLIES IN ECONOMIC QUANTITIES

5207.204 Responsibilities of contracting officers.

(a) Information provided by offerors in response to this solicitation provision should be forwarded to the requiring activity for consideration.

Rationale: To implement the FAR requirement that offeror's responses to the

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solicitation provision at FAR 52.207-4 are to be transmitted to the appropriate inventory management/requirements development activity in accordance with agency procedures.

SUBPART 5207.5 - INHERENTLY GOVERNMENTAL FUNCTIONS

5207.503 Policy.

(e) Disagreements regarding the requiring official's determination are to be resolved by the CCO before issuance of a solicitation.

Rationale: To implement the FAR requirement that disagreements regarding the determination by the requiring official that none of the functions to be performed are inherently governmental be resolved in accordance with agency procedures.

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PART 5208

REQUIRED SOURCES OF SUPPLIES AND SERVICES

SUBPART 5208.4--FEDERAL SUPPLY SCHEDULES

5208.404 (DFARS 208.404) Using schedules.

(b) *Ordering procedures for optional use schedules*

(4) *Blanket Purchase Agreements (BPAs)*. ~~(i)-(A)~~ BPAs for information technology (IT) products or services shall not be established with FSS contractors unless the activity's requirements cannot be met through the available DoN/DoD BPAs or IDIQ contracts included on "ITEC Direct." Activities can access this on-line catalog by connecting to the Internet and using a web browser to connect to ITEC Direct

(<http://www.doncio.navy.mil/initiatives/initiatives.html>).

~~(ii)-(B)~~ Activities considering the development of additional BPAs should coordinate with the ITEC Direct Project Manager (e-mail: itec.direct@HQ.NAVY.MIL) to ensure that duplicative efforts are avoided and to receive assistance/guidance related to the issue of compatibility with and registration on ITEC Direct. Activities shall structure their BPAs for IT to allow for DoN-wide use and inclusion in ITEC Direct, if practicable, and shall comply with DoD and DoN IT standards and architectures.

Rationale: To more accurately conform to the numbering prescribed by FAR/DFARS 1.303/201.303, "Publication and codification."

SUBPART 5208.70--COORDINATED ACQUISITION

5208.7002 (DFARS 208.7002) Assignment authority.

(a) ~~Responsibilities under coordinated acquisition.~~

When ~~the DoN has received a~~ contracting assignment responsibility has been assigned to the DoN under the DOD Commodity Assignment Coordinated Acquisition Program, the Commander, NAVSUPSYSCOM will assign contracting responsibilities to a particular contracting activity.

Rationale: Consistency with DFARS language.

SUBPART 5208.90--SERVICES OF SHIPS AND CRAFT

5208.9000 Services of ships and craft for other than transportation.

MSC shall purchase or otherwise provide for DoN activities, as requested, the services of ocean-going ships and craft (excluding harbor craft) for purposes other than transportation such as oceanographic research and survey including underwater research; cable laying; repair facilities; and range instrumentation. Requirements for such services or ships, except those met by ships and craft organic to the Military Services and those required in the installation phase of a system by the systems contractor, shall be placed upon MSC in a timely manner to permit maximum competition.

5208.9001 Charter or sublet of government owned research ships.

The Chief of Naval Research is responsible for DoN charter party agreements wherein DoN owned oceanographic research ships are leased to research institutions for the performance of contract research.

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PART 5209

CONTRACTOR QUALIFICATIONS

SUBPART 5209.1--RESPONSIBLE PROSPECTIVE CONTRACTORS

5209.103 (DFARS 209.103) Policy.

(a)(i)(C) Submit requests for USD(AT&L) approval via ABM.

SUBPART 5209.2--QUALIFICATIONS REQUIREMENTS

5209.202 Policy.

(a)(1) The HCA is the agency head's designee to prepare the written justification.

SUBPART 5209.4--DEBARMENT, SUSPENSION AND INELIGIBILITY

5209.402 [\(DFARS 209.402\)](#) Policy.

(d) Counsel, Procurement Integrity Office (Counsel (PIO)) has the responsibility for processing and recommending debarment or suspension action to the debarring and suspending official.

Rationale: This coverage more accurately implements paragraph (d) of the FAR which is also implemented in the DFARS.

5209.404 [List of Parties Excluded from Federal Procurement and Nonprocurement Programs.](#)

Rationale: To conform to FAR title.

(c)~~(1),(2),(3),(4) and (5)~~ Counsel (PIO) will provide the required notification, maintain the records, and distribute the list to all DoN activities.

~~(e)(6)~~ Inquiries and requests for additions, deletions or changes (including quantity changes) for distribution addressees should be forwarded to the Counsel (PIO), Office of the General Counsel, Legal Services Support Group, Department of the Navy, Washington, D.C. 20360-5110.

Rationale: This coverage supplements paragraph (c) without the need to further cite paragraphs (1) through (6).

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5209.405 (DFARS 209.405) Effect of listing.

(a) ASN(RD&A) will ~~provide the written statement of the~~ make the required determination that there is a compelling reasons. Submit requests for ~~approval an ASN (RD&A) determination~~ to ABM with justification for the proposed consent action. ABM will provide written notification of the determination to the General Services Administration.

Rationale: To more closely conform to the FAR language requiring an agency head determination, and to establish responsibility for the DFARS requirement to provide written notification to GSA.

(b)(ii) Submit requests for an agency head exception to ABM with justification that award to a Code "H" ineligible contractor is in the paramount interest of the United States.

Rationale: To implement new coverage at DFARS 209.405(b) that was added by DFARS Change Notice 20000831 pertaining to Pollution Control and Clean Air and Water.

5209.405-2 Restrictions on subcontracting.

(b) Immediately upon receipt, the contracting officer shall provide ABM with an informational copy of the written notification received from the contractor.

5209.406 Debarment.

5209.406-3 (DFARS 209.406-3) Procedures.

(a) *Investigation and referral.*

(i) ~~All matters shall be referred to Counsel (PIO). Contracting officer reports shall be promptly initiated, coordinated with counsel, and submitted for signature by the HCA or designee. Forward reports to Counsel (PIO). In cases involving convictions, forward reports within fifteen calendar days after the judgment order is filed.~~ In cases involving indictments, forward reports within fifteen calendar days after the indictment is filed.

(ii) Reports shall include the following information to the extent practicable:

(G) The summary shall also include comments regarding the U.S. Attorney's position on release of any investigative reports included in the report.

(J)(4) Signed and dated copies of indictments, judgments, plea agreements, or search warrants, in advance of certified copies of such documents, if certified copies are not readily available.

(6) (S-90) Copies of DD350 reports for the previous two fiscal years.

~~(7)~~ (S-91) A copy of a current Dun and Bradstreet report on the contractor and any subsidiaries or divisions, along with a recommendation for debarment or suspension action in the case of each subsidiary division and the officers thereof.

~~(8)~~ (S-92) Current mailing addresses of individuals involved in the case, along with a recommendation for debarment or suspension action for each individual.

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~~(9)~~ (S-93) If Government employees are involved in the wrongdoing, the names and current addresses of the employees, disciplinary action taken and the current employment status of each individual. If no disciplinary action was taken against Government employees involved in the wrongdoing, and the contractor or contractor personnel are recommended for debarment or suspension, a statement explaining why no disciplinary action was taken, and why debarment or suspension is appropriate under the circumstances.

Rationale: To conform to the coverage at DFARS 209.406-3 as revised by DFARS Change Notice 19991118.

5209.407 Suspension.

5209.407-3 (DFARS 209.407-3) Procedures.

(a) *Investigation and referral.* Prepare and process reports in accordance with 5209.406-3.

SUBPART 5209.5--ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

5209.503 Waiver.

The HCA is the agency head's designee, without power of redesignation, for making the determinations required by FAR 9.503.

PART 5211

DESCRIBING AGENCY NEEDS

SUBPART 5211.1 - SELECTING AND DEVELOPING REQUIREMENTS DOCUMENTS

5211.103 Market acceptance.

(a) The contracting officer is authorized to require offerors to demonstrate that an item meets the market acceptance criteria.

Rationale: To implement the FAR by authorizing the contracting officer, as the agency head's representative, to require offerors to demonstrate that an item meets the market acceptance criteria of FAR 11.103(A)(1) or (2)

SUBPART 5211.2--USING AND MAINTAINING REQUIREMENTS DOCUMENTS

5211.271 (DFARS 211.271) Elimination of Use of Class I Ozone Depleting Substances

5211.271(90) -90 Definitions.

"Appropriate technical representative (ATR)" (also referred to as approved technical representative) means an individual who has the sufficient technical experience and knowledge to provide a competent certification.

"Senior acquisition official (SAO)" means an official at a level no lower than a general or flag officer or member of the Senior Executive Service within the requiring activity or the requiring activity chain of command.

5211.271(94) -91 Technical reviews and Approvals.

(a) The requiring activity shall review the requirements and applicable specifications and standards for Class I ozone-depleting substances (ODS.) If adequate technical capability is not available, the configuration control manager (CCM) or other ATR shall conduct the review. Reviewers should use the current version of "DOD Specifications Referencing the Use of ODS" maintained by NAVSEA 03L, Environmental Engineering Group, on the world wide web at <http://assets-www.idss.ida.org/>.

(b) The ATR shall execute a technical certification and submit the certification to the appropriate SAO for determination/approval. The technical certification is a good faith statement of the signer's knowledge of the requirements of the specifications and standards in the context of the requirements package. The technical certification is not intended to be a guarantee.

(c) The requiring activity shall include SAO approvals in the PR package submitted to the contracting office. Upon receipt of a PR package which does not

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include an SAO approval, the contracting officer may conclude, absent knowledge to the contrary, that the procurement uses no Class I ODS.

(d) A sample format for technical certification and SAO approval/determination for new and existing contracts is shown in TABLE 5211-90.

5211.271(92)-92 Reporting Requirements.

(a) *Responsibility.*

(#1) Each SAO granting an approval or making a determination authorizing the use of a Class I ODS shall report each determination/approval to ABM, or to such other office as may be otherwise designated for purposes of submission of consolidated reports to ABM.

(#2) The report of SAO determinations/approvals shall include the estimated quantity of each Class I ODS through contract completion or for the period otherwise covered by the approval.

(#3) SAO determinations and approvals shall be reported for the year in which the determination/approval is signed, not when the contract or modification is awarded.

(b) *Frequency.* SAO reports shall be submitted annually to ABM no later than January 15 for determinations/approvals executed during the preceding calendar year.

(c) *SAO Class Approvals.* Any activity using an SAO class approval for procurement actions shall record and report such usage as set forth in the approval or as otherwise directed by the SAO. The SAO shall include this information in the annual report to ABM.

Rationale: To more accurately conform to the numbering prescribed by FAR/DFARS 1.303/201.303, "Publication and codification."

5211.271(93)-93 Solicitation provisions and contract clauses.

Offerors should be encouraged to share with the Navy any knowledge they might have regarding Class I ODS required by specifications or standards in a solicitation. The contracting officer may include a provision substantially similar to the provision at 5252.211-9000, Notice to Offerors - Use of Class I Ozone Depleting Substances, in solicitations, if considered appropriate.

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TABLE 5211-90

[For use in evaluating new and existing contracts with no suitable substitute for Class I ODS]

CLASS I OZONE DEPLETING SUBSTANCE REVIEW

Program: _____

Contract/Procurement/Purchase Request #: _____

TECHNICAL CERTIFICATION

I have reviewed this procurement package and it includes specifications or standards which require the use of Class I ODS. To the best of my knowledge, there are no currently available suitable substitutes for the Class I ODS identified.

CLASS I ODS
APPLICATION

APPROPRIATE TECHNICAL REPRESENTATIVE

CODE

DATE

SENIOR ACQUISITION OFFICIAL DETERMINATION/APPROVAL

A. Based on the above technical certification, I have determined that a suitable substitute for the Class I ODS is not currently available. I approve the requirement in the proposed contract for use of Class 1 ODS for the application identified (For new contracts - Pub. L. 102-484, Sec 326(a)(1)).

B. Based on the above technical certification, I have determined that a suitable substitute for the Class I ODS is not currently available for use in the contract under evaluation (**For existing contracts - Pub. L. 102-484, Sec 326(a)(2)(C)**).

SENIOR ACQUISITION OFFICIAL

TITLE

Or Designee, if B.

DATE

PART 5212

ACQUISITION OF COMMERCIAL ITEMS

SUBPART 5212.2--SPECIAL REQUIREMENTS FOR THE ACQUISITION OF
COMMERCIAL ITEMS

5212.204 Solicitation/contract form.

(a) Every competitive written solicitation which is required by FAR Subpart 5.2 to be synopsisized in the Commerce Business Daily , and all amendments thereto, must be available electronically and be linked to or posted on the Navy Electronic Commerce Online (NECO) world wide web site (www.neco.navy.mil).

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PART 5213

SIMPLIFIED ACQUISITION PROCEDURES

5213.003 Policy.

Pursuant to 5201.601(90)(c), NAVSUPSYSCOM has responsibility for providing DoN-wide policy for simplified acquisition [procedures as defined in FAR Part 13](#). Specific policy, procedures and guidance ~~concerning simplified acquisition~~ will be promulgated by the Deputy Commander for Contract Management, NAVSUPSYSCOM.

Rationale: To clarify and eliminate unnecessary veribage.

SUBPART 5213.1--PROCEDURES

5213.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

5213.106-1 Soliciting competition.

~~(a)~~ (d) Written solicitation. Every competitive written solicitation which is required by FAR Subpart 5.2 to be synopsisized in the Commerce Business Daily, and all amendments thereto, must be available electronically and be linked to or posted on the Navy Electronic Commerce Online (NECO) world wide web site (www.neco.navy.mil).

Rationale: Paragraph (d) vice paragraph (a) is more appropriate for this NAPS implementation.

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PART 5214

SEALED BIDDING

SUBPART 5214.2--SOLICITATION OF BIDS

5214.203 Methods of soliciting bids

5214.203-1 Transmittal to prospective bidders. Every competitive written solicitation which is required by FAR Subpart 5.2 to be synopsisized in the Commerce Business Daily, and all amendments thereto, must be available electronically and be linked to or posted on the Navy Electronic Commerce Online (NECO) world wide web site (www.neco.navy.mil).

SUBPART 5214.4--OPENING OF BIDS AND AWARD OF CONTRACT

5214.401 Receipt and safeguarding of bids.

(a) Contracting offices shall ensure that bids are promptly identified and forwarded, unopened, for deposit in the bid box. Bid envelopes received by mail shall be time-stamped immediately upon receipt. Hand-carried bids shall not be accepted by government employees, but must be deposited in the bid box by the bidder or his representative. Insofar as possible, bid samples will receive the same degree of security as is afforded bids, and will be accounted for by the maintenance of local records. Under no circumstances will bid samples be given away, loaned, diverted, or used for any purpose other than that intended.

5214.407 Mistakes in bids.

5214.407-3 (~~DFARS 214.407-3~~) Other mistakes disclosed before award.

(e)(1) HCAs, without power of redelegation, may make the determinations required by FAR 14.407-3(a), (b) and (d).

Rationale: The DFARS implementation is limited to the Defense Agencies and has no application to the Military Departments. Also, there is no paragraph "(e)(1)" in the FAR or the DFARS; only paragraph (e).

PART 5215

CONTRACTING BY NEGOTIATION

SUBPART 5215.2--SOLICITATION AND RECEIPT OF PROPOSALS AND INFORMATION

5215.203 Requests for proposals. (a) Every competitive written solicitation which is required by FAR Subpart 5.2 to be synopsisized in the Commerce Business Daily, and all amendments thereto, must be available electronically and be linked to or posted on the Navy Electronic Commerce Online (NECO) world wide web site (www.neco.navy.mil).

Rationale: This is an implementation of 15.203(a).

5215.204 Contract format.

5215.204-5 Part IV--Representations and instructions.

(c) When a cost realism evaluation will be performed, Section M, Evaluation Factors for Award, shall include a notice that the proposed costs may be adjusted, for purposes of evaluation, based upon the results of the cost realism evaluation. If the contract will be firm fixed price, or fixed price with economic price adjustment, the notice is not required, and proposed prices will not be adjusted.

SUBPART 5215.3--SOURCE SELECTION

5215.303 Responsibilities.

(a) In acquisitions which, for reasons of high dollar value, mission importance or political visibility, it is appropriate to have someone other than the contracting officer act as SSA, the HCA, (or PEO, for PEO-assigned efforts), may designate an alternate individual to be the SSA.

5215.305 (DFARS 215.305) Proposal evaluation.

(a)(1) *Cost or price evaluation.* Methods of evaluation which assign a point score to cost or price and combine it with point scores for other evaluation factors generally should not be used. Point scores can be helpful in summarizing subjective evaluation of technical and other factors, but are not needed in evaluating cost or price and tend to obscure the tradeoff between cost/price and other factors, rather than clarifying it. If point scoring of cost/price is utilized, it should be demonstrated that the value of a cost/price point is comparable, in value to the Government, to the value of a non-cost/price point. When a cost

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realism analysis is performed, the resulting realistic cost estimate shall be used in the evaluation of cost, except when using a firm-fixed-price or fixed-price with economic price adjustment type of contract.

(4) *Cost information.* The sharing of cost information with the technical evaluation team, and any limitations on the timing and extent of such sharing, should be addressed during the planning for the source selection. HCAs may establish specific procedural requirements for approving, documenting and/or varying from plans related to such sharing.

(90) Approval for use of contractor personnel as evaluators is addressed in FAR Subpart 37.2 and 5237.204. Such contractor personnel shall not rank or recommend one proposal over another, assign any ratings or numerical scores, or otherwise act in a decision making capacity. Whenever advisory contractor personnel are to be used, a written release shall be obtained from each offeror.

SUBPART 5215.4--CONTRACT PRICING

5215.404 Proposal analysis.

5215.404-1 (DFARS 215.404-1) Proposal analysis techniques.

(d) *Cost realism analysis.* A price analysis approach where there is adequate price history may also be a suitable and efficient means to evaluate cost realism. The amount of data required will be dependent upon the complexity of the procurement and the data already available to the contracting officer (e.g. information on recent Forward Pricing Rate Agreements (FPRAs)).

5215.406 (DFARS 215.406) Documentation.

5215.406(90) -90 Business clearance.

(a) Generally, “pre-negotiation” and “post-negotiation” business clearances are required for each negotiated contract action. Business clearance memoranda (BCM) document the basis for approval of the action, and the basis for determination that the negotiated prices are fair and reasonable.

(b) For competitive acquisitions, the pre-BCM presents a chronology of the acquisition up to the determination of competitive range, and provides the basis for the competitive range decision. The post-BCM continues the chronology to contract award, and provides the basis for the award decision. If award is made without discussions, on the basis of original offers, the pre- and post-BCM may be combined.

(c) For contracts and modifications requiring price negotiations, the pre-BCM demonstrates to the approving official that the Government is ready to enter into negotiations. It addresses salient legal and regulatory requirements, and

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sets forth the Government's negotiation objectives. It generally includes a discussion of the bases for the contractor's proposal and the Government objective, DCAA and other Government pricing recommendations and the analysis done and conclusions reached by the negotiating team. The post-BCM describes the results of negotiations, and documents the basis for determining the negotiated price is fair and reasonable. Using the objective in the pre-BCM as a base, it addresses the reasons for any difference between the initial objective and the final negotiated amount. The pre- and -post BCM together constitute the documentation required by FAR 15.406-3 and DFARS 215.406-3, and must provide all the information required therein. In particular, the BCMs must document the use made of field pricing assistance, and must describe the extent of Government reliance on the contractor's cost or pricing data, if obtained, in sufficient detail to provide a basis for Government recovery in the event any of the data proves inaccurate, incomplete or not current.

SUBPART 5215.5--PREAWARD, AWARD, AND POSTAWARD NOTIFICATIONS, PROTESTS, AND MISTAKES

Rationale: To conform to punctuation in FAR title.

5215.505 Preaward debriefing of offerors.

(e)(1) If the evaluation included a cost realism analysis, include information about the results of the analysis as it relates to the offeror being debriefed and its effect on the offeror's evaluated cost.

5215.506 Postaward debriefing of offerors.

(d)(2) If the evaluation included a cost realism analysis, include information about the results of the analysis as it relates to the offeror being debriefed and its effect on the offeror's evaluated cost.

SUBPART 5215.6 UNSOLICITED PROPOSALS

5215.606 Agency procedures.

(a) and (b) HCAs are responsible for establishing contact points and procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals, consistent with the requirements of subpart 15.6.

Rationale: In lieu of establishing agency-wide procedures (see 15.606(a)), this coverage assigns HCAs the responsibility for establishing procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals, consistent with the requirements of subpart 15.6. This will enable the procedures to be tailored to the needs of each HCA.

PART 5216

TYPES OF CONTRACTS

SUBPART 5216.3 COST REIMBURSEMENT CONTRACTS

5216.306 (DFARS 216.306) Cost-plus-fixed-fee contracts.

(c) *Limitations.*

(ii)(B)(1) COMNAVFAC is delegated authority to approve cost-plus-fixed-fee contracts for environmental work only, provided the environmental work is not classified as construction, as defined by 10 U.S.C. 2801.

(2) Requests for approval of cost-plus-fixed-fee contracts requiring Secretary of Defense approval must be routed through COMNAVFAC and ABM.

SUBPART 5216.5--INDEFINITE-DELIVERY CONTRACTS

5216.505 Ordering.

(b)(5) The task order contract and delivery order contract ombudsman responsible for reviewing complaints from contractors on task order contracts and delivery order contracts is the Navy Competition Advocate General. Contractors should be encouraged to settle their complaints through the Competition Advocate chain of command, seeking review by the Command Competition Advocate at the cognizant HCA before taking their complaints to the Navy Competition Advocate General.

PART 5217

SPECIAL CONTRACTING METHODS

SUBPART 5217.1--MULTI-YEAR CONTRACTING

5217.105 Policy.

5217.105-1 Uses.

(b) HCAs have authority to award multi-year contracts, subject to restrictions contained in the FAR and DFARS.

5217.171 (DFARS 217.171) Multiyear contracts for services.

(a) 10 U.S.C. 2306(g).

(3) HCAs are delegated the authority to make the determinations described in DFARS 217.171(a)(3).

SUBPART 5217.2--OPTIONS

5217.204 Contracts.

(e) The CCO may approve contracts in excess of the limits specified in FAR 17.204(e), when not otherwise restricted.

SUBPART 5217.5--INTERAGENCY ACQUISITIONS UNDER THE ECONOMY ACT

5217.503 Determinations and findings requirements.

(c)(i) Agency head designations. Except for the special circumstances listed in (ii) below, and the limitations specified in (iii) below, the agency head's designees for approving D&Fs interagency acquisitions are:

ABM

Chief of Naval Research

Commander, Marine Corps Systems Command

Commander, Naval Air Systems Command

Commander, Naval Facilities Engineering Command

Commander, Naval Sea Systems Command

Commander, Naval Supply Systems Command

Commander, Space and Naval Warfare Systems Command

Director, Strategic Systems Programs

Deputy Chief of Staff for Installation and Logistics, (Marine Corps)

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(A) For Economy Act orders which require no contracting action on the part of the servicing agency, delegation of this authority to the appropriate level within the organization/claimancy is encouraged.

(B) For Economy Act orders to non-DoD activities which require contracting action on the part of the servicing agency, this authority may not be further delegated except to:

(1) Affiliated PEOs;

(2) Affiliated DRPMs;

(3) Any other SES/Flag/General Officer within the HCA's Command structure; and/or

(4) Commanding Officers of subordinate activities.

(ii) *Special circumstances.* Approval authority for Economy Act orders to be placed with the Department of Transportation's Volpe Laboratories is not delegated. The agency's head designee to approve D&Fs for these Economy Act orders is ABM. Additionally, copies of all orders with the Department of Energy and its federally funded Research and Development Centers shall be provided to ABM within two weeks after issuance.

(iii) *Limitations.*

(A) Approval authority for D&Fs for interagency Economy Act orders to agencies not subject to the FAR, such as the Central Intelligence Agency, Tennessee Valley Authority, United States Postal Service, Federal Aviation Administration and the Library of Congress, is limited to the NSPE.

(90) *Documentation.* Files of approved orders, including supporting documentation, must be maintained at a single location within each activity delegated approval authority.

(91) *Exceptions.* The following are examples of interagency acquisitions that do not require Economy Act D&Fs:

(a) Interagency acquisitions from the General Services Administration conducted under the authority of 40 U.S.C. 757, Information Technology Fund.

(b) Acquisitions conducted through the Coordinated Acquisition Program described in DFARS 208.7000; and

(c) Acquisitions conducted under the authority of the Project Order Act, 41 U.S.C. Section 23.

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PART 5219

SMALL BUSINESS PROGRAMS

SUBPART 5219.2--POLICIES

5219.201 (DFARS 219.201) General policy.

(a) DoN policy is to utilize small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns to obtain its requirements. Such concerns shall have the maximum practicable opportunity to participate both as prime contractors and as subcontractors.

Rationale: To conform to FAR policy statement.

(d)(7) The HCA shall assign a A-small business technical advisor ~~shall be assigned~~ to each office where a resident SBA procurement center representative is located.

Rationale: To reflect the DFARS coverage that delegates this responsibility to the HCA.

(9) Exceptions to the review requirements are contracts resulting from acceptance of unsolicited proposals; orders against indefinite delivery type contracts; and orders issued under GSA schedule contracts.

(e) Small business specialists shall be appointed in accordance with SECNAVINST 4380.8(current version). Small business specialists, in addition to performing the duties outlined in DFARS 219.201(~~d~~)(e), shall -

Rationale: To conform to DFARS.

(i) brief the appointing authority quarterly on implementation of the activity's Small and Disadvantaged Business Utilization (SADBU) program; and

(ii) conduct SADBU program training sessions to ensure that contracting and technical personnel maintain knowledge of program requirements.

(90) Reviews of SADBU program implementation at DoN contracting activities will normally be conducted as a segment of the Procurement Performance Measurement Assessment Program (PPMAP) reviews (see 5201.691). The Director, SADBU, will establish guidelines for the PPMAP review SADBU segment. PPMAP review SADBU segments shall be coordinated with the PPMAP review team leader. For reviews under 5201.691-2(a), the Director, SADBU, will coordinate designation of PPMAP review SADBU team members. Associate Directors of Small Business shall be responsible for implementation of the PPMAP review SADBU segment of their field contracting activities including designating PPMAP review SADBU team members and monitoring

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compliance with their recommendations. Team members should generally be Deputies for Small Business from other than the activity under review. Associate Directors of Small Business shall be responsible for providing a copy of the PPMAP review SADBUs segment report(s) to the Director, SADBUs.

5219.202 Specific policies.

5219.202-1 (DFARS 219.202-1) Encouraging small business participation in acquisitions.

Contracting activities should, when practicable, conduct briefings on planned acquisitions for small [business](#), [HUBZone small business](#), small disadvantaged [business](#), and women-owned small business concerns, and Historically Black Colleges and Universities (HCBUs) and Minority Institutions (MIs).

Rationale: To conform to FAR/DFARS 19.201/219.201 policy statement.

SUBPART 5219.5--SET-ASIDES FOR SMALL BUSINESS

5219.505 Rejecting Small Business Administration recommendations.

(d) The justification shall be forwarded through the HCA to the Director, SADBUs, and shall include copies of all correspondence between the activity and the SBA related to the appeal, together with the rationale justifying the activity's non-set-aside determination.

SUBPART 5219.7--~~SUBCONTRACTING WITH SMALL BUSINESS, SMALL DISADVANTAGED BUSINESS AND WOMEN-OWNED SMALL BUSINESS CONCERNS~~ THE SMALL BUSINESS SUBCONTRACTING PROGRAM

Rationale: To conform to FAR title (DFARS title is incorrect).

5219.704 (DFARS 219.704) Subcontracting plan requirements.

(a)(1) Each separate percentage goal should be realistic, justifiable and positive (*i.e.* greater than zero.)

5219.705 Responsibilities of the contracting officer under the subcontracting assistance program.

5219.705-4 (DFARS 219.705-4) Reviewing the subcontracting plan.

(d) When evaluating proposed subcontracting plans, contracting officers may

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obtain advice and recommendations from the cognizant contract administration office (CAO), and shall do so for any-subcontracting plan that does not contain positive goals. The CAO should be specifically requested to review the factors used by the prime contractor to develop the zero goal, the past performance of the offeror on similar requirements, and the current procedures used by the offeror to maximize opportunities for small [business](#), [HUBZone small business](#), small disadvantaged [business](#) and women-owned small businesses [concerns](#) to participate in its subcontracting program. The contracting officer shall consider the CAO's findings, including any recommendations, prior to approval of the subcontracting plan. The contract file will be documented to reflect the review and the contracting officer's final decision relative to an acceptable goal. If the contracting officer determines that a subcontracting plan which contains a zero goal is appropriate, the determination must be approved at a level above the contracting officer and placed in the contract file.

[Rationale: To conform to FAR/DFARS 19.705-4\(d\)/DFARS 219.705-4\(d\)](#)

5219.705-5 Awards involving subcontracting plans.

(a)(5) Contracting officers shall incorporate the approved subcontracting plan into the contract by specific identification by reference in the Schedule, and may also include it as an Attachment to the contract. When the subcontracting plan is incorporated into the contract by reference, ensure the CAO is provided a copy.

5219.706 (DFARS 219.706) Responsibilities of the cognizant administrative contracting officer.

(90) DoN CAOs shall submit SF 295, "Summary Subcontract Report," data to Washington Headquarters Service, Directorate for Information, Operations and Reports.

SUBPART 5219.8--CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION (THE 8(a) PROGRAM)

5219.803 (DFARS 219.803) Selecting acquisitions for the 8(a) Program.

(b)(i) Contracting officers, in evaluating SBA requests for 8(a) Program support, or independently considering other acquisition requirements that may be accomplished by 8(a) firms, should coordinate such efforts with the activity small business specialist and cognizant technical personnel.

(ii) Where possible, procurement activity should be suspended pending final disposition of SBA requests. If the contracting officer determines that urgent mission requirements preclude further consideration, declination responses to SBA should factually explain such determinations.

5219.804 Evaluation, offering, and acceptance.

5219.804-1 (DFARS 219.804-1) Agency evaluation.

(f) Agency reviews, in addition to the factors in FAR 19.803(a), may take the form of a technical presentation or should be structured in a manner that affords an exchange of information between the 8(a) firm and the contracting activity that will enable the 8(a) firm an adequate opportunity to demonstrate its capability and capacity to perform the requirement. For sole source 8(a) contracts, SBA regulations preclude the use of formal technical evaluations. Contracting officers, however, may conduct informal assessments of several 8(a) firms' capabilities to perform a specific requirement.

(S-90) When a lack of capability or capacity forms the basis for declination responses to SBA, such responses should discuss factors such as the 8(a) contractor candidate's:

- (1) lack of knowledge and understanding of the work to be performed;
- (2) lack of experience in performing requirements of similar size and scope;
- (3) lack of resources that are available (including contingent hires) or that must be acquired for contract performance;
- (4) lack of ability to comply with subcontracting limitation provisions (see FAR clause 52-219-14);
- (5) lack of ability to meet delivery schedules; and/or
- (6) deficiencies in record of performance.

Contracting activities shall provide a copy of all 8(a) program declination letters to the Director, SADBU. Such copies shall be provided concurrent with submissions to SBA. Declination letters are subject to direct appeal by the SBA Administrator to the Secretary of the Navy (see FAR 19.810). Contracting officers should coordinate such declinations with the activity small business specialist or the CCO.

5219.804-2 (DFARS 219.804-2) Agency offering.

(b) and (c) Contracting activities shall provide a copy of 8(a) Program offering letters to the Director, SADBU concurrent with submission to the cognizant SBA district office.

Rationale: DFARS also has applicable coverage at 5219.804-2 reflecting the MOU between DoD and the SBA. In addition, both paragraphs (b) and (c) address agency offerings. Also, submissions are to be sent to the cognizant SBA district office depending on the nature of the particular procurement.

5219.804-4 Repetitive acquisitions.

(90) Requirements currently in the 8(a) Program are to remain in the 8(a) Program if a responsible 8(a) firm is available to perform the requirement (but see FAR 19.804-4).

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5219.810 SBA appeals.

(b) Upon notification that the SBA Administrator has filed an appeal, the contracting officer shall forward to the Director, SADBU, copies of all correspondence between the activity and the SBA related to the appeal, together with the rationale justifying the activity's determination.

Rationale: This is an implementation of paragraph (b) of FAR 19.810.

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PART 5222

APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Rationale: To conform to FAR title.

SUBPART 5222.1--BASIC LABOR POLICIES

5222.101 (DFARS 222.101) Labor relations.

5222.101-1 (DFARS 222.101-1) General.

- (a) (i) Submit requests for departmental approval to ABM.
- (ii) Immediately notify ABM.
- (iii) Submit requests for agency head approval to ABM.
- (iv) Submit questions for the labor advisor to ABM, except for questions involving the application of contract labor standards to NAVFACENGCOCOM contracts. Questions concerning labor issues on NAVFACENGCOCOM contracts should be submitted to the contract labor relations specialist in the appropriate NAVFACENGCOCOM division, or to the NAVFACENGCOCOMHQ labor advisor, NAVFACENGCOCOM (Code 112C), Alexandria, VA 22332-2300.

5222.103 Overtime.

5222.103-4 Approvals.

- (a) The CCO is the designated agency approving official.
- (90) *Construction contracts.* When expediting a construction contract involving additional costs, NAVFACENGCOCOM shall be responsible for obtaining the approval required by DFARS 236.270.

5222.103(90) -90 *Exceptions.* The provisions of FAR 22.103, DFARS 222.103 and 5222.103 of this supplement are not applicable to ballistic missile programs.

SUBPART 5222.3--CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

5222.302 Liquidated damages and overtime pay.

- (c) ABM is authorized to act on behalf of the head of the agency/agency head the agency head's designee.

Rationale: To conform to changes to FAR 22.302 promulgated by Item III of FAC 97-19.

SUBPART 5222.4--LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

5222.406 Administration and enforcement.

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5222.406-8 (DFARS 222.406-8) Investigations.

(d) Contracting officer's report. (1) For NAVFACENGCOM contracts, the contracting officer's report shall be forwarded to NAVFACENGCOMHQ (Code 112C), Alexandria, VA 22332-2300, in accordance with Command procedures. For all other contracts, forward the report to ABM.

(2)(iv) Forward the report to the Attorney General of the United States via ABM. ABM will notify the Administrator, Wage and Hour Division.

Rationale: To include the introductory title at FAR 22.406-8(d) and to provide implementation for changes to FAR 22.406-8 promulgated by Item III of FAC 97-19.

SUBPART 5222.70--RESTRICTIONS ON THE EMPLOYMENT OF PERSONNEL FOR WORK ON CONSTRUCTION AND SERVICE CONTRACTS IN NONCONTIGUOUS STATES

5222.7003 (DFARS 222.7003) Waivers.

Submit waiver requests to ABM.

Rationale: To implement DFARS 222.7003 by providing guidance for submitting waiver requests to the head of the agency.

NAVY ACQUISITION PROCEDURES SUPPLEMENT

PART 5223

ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

SUBPART 5223.3--HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

5223.370 Safety precautions for ammunitions and explosives.

5223.370-3 (DFARS 223.370-3) Policy.

(90) DoN policy is to ensure the safe handling of all ammunition and explosives (A&E). To that end, particular care must be paid to A&E provided to contractors as Government Furnished Material (GFM) when the A&E contain nitrocellulose-based propellants and/or nitrate ester-based materials (such as nitroglycerin,) or any other materials which have a tendency to become chemically unstable over time.

5223.370-5 (DFARS 223.370-5) Contract clauses.

(a 1) Use the clause at 5252.223-9000, DoN ADDITIONAL SAFETY REQUIREMENTS APPLICABLE TO SPECIFIED GOVERNMENT FURNISHED AMMUNITION AND EXPLOSIVES, in solicitations and contracts which:

(1 i) contain the clause at DFARS 252.223-7002, and

(2 ii) provide as GFM any A&E containing nitrocellulose-based propellants and/or nitrate ester-based materials (such as nitroglycerin,) or other similar A&E with a tendency to become chemically unstable over time.

(b 2) The head of the activity may make administrative adjustments to the additional requirements (e.g. specify activity points of contact, adjust specified lead times) or add further measures which increase safety requirements as appropriate.

Rationale: To more accurately conform to the numbering prescribed by FAR/DFARS 1.303/201.303,"Publication and codification."

SUBPART 5223.4 USE OF RECOVERED MATERIALS

Rationale: To conform to FAR title.

5223.406 Solicitation provisions and contract clause.

(b) When using the clause at FAR 52.223-9, contracting officers shall insert the following address into paragraph (b) (or paragraph (c) if using ALT I) of the clause:

Commanding Officer
Naval Facilities Engineering Service Center
Code 424 CA, 1100 23rd Avenue
Port Hueneme, CA 93043-4370

NAVY ACQUISITION PROCEDURES SUPPLEMENT

SUBPART 5223.5--DRUG-FREE WORKPLACE

5223.506 Suspension of payments, termination of contracts, and debarment and suspension actions.

Rationale: To conform to FAR title.

(e) Submit requests for waiver to ABM via the HCA.

PART 5225

FOREIGN ACQUISITION

SUBPART 5225.1--BUY AMERICAN ACT--SUPPLIES

5225.103 Exceptions.

(b) *Nonavailability.*

(2)(ii) Copies of determinations made under FAR 25.103(b)(2) that are submitted to the DAR Council must be submitted via ABM.

5225.103 (DFARS 225.103) Exceptions.

___ (ii)(D) The HCA is the agency head's designee, without power of redesignation, to make and approve determinations for acquisitions estimated to exceed \$2 million.

5225.104 (DFARS 225.104) Nonavailable articles.

(b) Submit supporting documentation to the DAR Council via ABM.

SUBPART 5225.2--BUY AMERICAN ACT--CONSTRUCTION MATERIALS

5225.202 (DFARS 225.202) Exceptions.

(a)(1) *Impracticable or inconsistent with the public interest.* The Commander, NAVFACENGCOM is delegated authority to make this determination.

(2) *Nonavailability.* Authority to make nonavailability determinations which would otherwise require approval of the head of the agency is delegated to the Commander, NAVFACENGCOM.

SUBPART 5225.4--TRADE AGREEMENTS

5225.401 (DFARS 225.401) Exceptions.

(b)(i) Submit requests to USD(AT&L)DP through ABM in the form of a determination and findings.

(ii)(B) Submit a copy of the justification to USD(AT&L)DP through ABM.

5225.403 (DFARS 225.403) Trade Agreements Act.

(c)(iii) Submit requests for national interest waivers to the USD(AT&L)DP through ABM in the form of a determination and findings.

SUBPART 225.7--PROHIBITED SOURCES

5225.770 Secondary Arab boycott of Israel.

NAVY ACQUISITION PROCEDURES SUPPLEMENT

5225.770-4 Waivers.

Submit waiver requests to the USD(AT&L)DP through ABM.

Rationale: To establish the requirement that waiver requests submitted to USD(AT&L)DP pursuant to this DFARS coverage must be submitted through ABM.

SUBPART 5225.8--OTHER INTERNATIONAL AGREEMENTS AND COORDINATION

Rationale: To conform to the FAR title.

5225.802 (DFARS 225.802) Procedures.

5225.802-71 End User Certificates (EUC).

Rationale: To conform to the FAR title.

ASN(RDA) may authorize the execution of Category I and II EUCs. Category III EUCs require a waiver by the USD(AT&L). All requests for EUCs shall be forwarded via the Navy International Programs office for review to determine the proper category and to recommend approval.

5225.802(90) Procedures for acquisitions that can be satisfied only by European sources.

(a) Naval activities having requirements that can be satisfied only by European sources will normally forward their requisitions to Naval Regional Contracting Center (NRCC), Naples for procurements in Southern Europe, the Mediterranean, Africa and the Middle East or NRCC Detachment, London for procurements in Northern Europe, including the United Kingdom and Iceland. This does not relieve activities from complying with current Balance of Payments directives. NRCC Detachment London is the focal point within Europe for liaison relative to the furnishing of audit services by the European governments.

(b) *Exceptions.* The following are exceptions to paragraph (1) above:

(i) Contracts for complete vessels or aircraft.

(ii) Contracts for equipment requiring servicing by representatives of foreign companies.

(iii) Contracts within an activity's authorized purchase authority when material is readily available overseas (outside CONUS).

(iv) Other specific exceptions as may be granted by NAVSUPSYSCOM.

(3) Contracting Officers utilizing any of the above exceptions, prior to negotiating with a United Kingdom supplier, should contact the NRCC Detachment, London for assistance and support.

NAVY ACQUISITION PROCEDURES SUPPLEMENT

5225.871 North Atlantic Treaty Organization (NATO) cooperative projects.

5225.871-4 (~~DFARS 225.871-4~~) Statutory waivers.

(c) Submit waiver Requests for waivers shall be submitted through ABM.

Rationale: Parenthetical DFARS reference is not required, as 225.871-4 is unique to DFARS.

SUBPART 5225.70--AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION

5225.7002 Restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools.

5225.7002-2 (DFARS 225.7002-2) Exceptions.

(#)(a) The HCA is the Secretary's designee.

5225.7012 (DFARS 225.7012) Restrictions on anchor and mooring chain.

7012-2 (DFARS 225.7012-2) Waiver.

(a) Submit the proposed written D&F containing the certification to ABM for Secretarial approval.

(b) ABM is responsible for providing a copy of the D&F to the House and Senate Committees on Appropriations.

Rationale: To provide for submission of the Secretarial D&F to ABM for processing and establish responsibility for providing a copy of the D&F to the House and Senate.

5225.7015 (DFARS 225.7015) Restrictions on night vision image intensifier tubes and devices.

5225.7015-2 (DFARS 225.7015-2) Exception.

(b) Submit the proposed Secretarial certification to ABM in the form of a written D&F that contains.

(i) the factors supporting a findings that adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(ii) a certification 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.

NAVY ACQUISITION PROCEDURES SUPPLEMENT

ABM is responsible for providing a copy of the D&F to the House and Senate Committees on Appropriations.

Rationale: To establish procedures for making the Secretarial certification and establish responsibility for providing the certification to the House and Senate.

5225.7017 (DFARS 225.7017) Restrictions on carbon, alloy, and armor steel plate.

5225.7017-3 (DFARS 225.7017-3) Waiver.

Submit the proposed Secretarial waiver to ABM in the form of a written D&F that contains a certification that:

- (1) Adequate U.S. or Canadian 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.

ABM is responsible for providing a copy of the D&F to the House and Senate Committees on Appropriations.

Rationale: To establish procedures for granting the Secretarial waiver and establish responsibility for providing the certification to the House and Senate.

5225.7018 (DFARS 225.7018) Restriction on four ton jolly jacks.

5225.7018-2 (DFARS 225.7018-2) Waiver.

Submit the proposed Secretarial waiver to ABM in the form of a written D&F that contains a certification that

- (1) Adequate domestic supplies are not available to meet requirements on a timely basis; and
- (2) The acquisition must be made in order to acquire capability for national security purposes.

ABM is responsible for providing a copy of the D&F to the Committees on Appropriations of the house and Senate.

Rationale: To establish procedures for granting the Secretarial waiver and establish responsibility for providing the certification to the House and Senate.

NAVY ACQUISITION PROCEDURES SUPPLEMENT

5225.7019 (DFARS 225.7019) Restrictions on ball and roller bearings.

5225.7019-3 (DFARS 225.7019-3) Waiver.

(c) Submit the proposed Secretarial waiver to ABM in the form of a written D&F that contains a certification that:

(i) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(ii) The acquisition must be made in order to acquire capability for national security purposes.

ABM is responsible for providing a copy of the D&F to the House and Senate Committees on Appropriations.

Rationale: To establish procedures for granting the Secretarial waiver and establish responsibility for providing the certification to the House and Senate.

5225.7021 (DFARS 225.7021) Restriction on aircraft fuel cells.

5225.7021-2 (DFARS 225.7021-2) Waiver.

Submit the proposed Secretarial waiver to ABM in the form of a written D&F that contains a certification that:

(1) Adequate U.S. supplies are not available to meet requirements on a timely basis; and

(2) The acquisition must be made in order to acquire capability for national security purpose.

ABM is responsible for providing a copy of the D&F to the House and Senate Committees on Appropriations.

Rationale: To establish procedures for granting the Secretarial waiver and establish responsibility for providing the certification to the House and Senate.

5225.7023 (DFARS 225.8023) Restriction on supercomputers.

5225.7023-2 (DFARS 225.7023-2) Waiver.

Submit the proposed Secretary of Defense waiver to ABM in the form of a written D&F that contains a certification that:

(1) Adequate U.S. supplies are not available to meet requirements on a timely basis; and

(2) The acquisition must be made in order to acquire capability for national security purposes.

Rationale: To establish DoN procedures for obtaining the Secretary of Defense waiver.

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PART 5227

PATENTS, DATA AND COPYRIGHTS

SUBPART 5227.2--PATENTS

5227.208 Use of patented technology under the North American Free Trade agreement.

(f) The technical/requiring activity is responsible for complying with the notice requirements of NAFTA Article 1709(10).

Rationale: FAR 27.208 provides that either the technical/requiring activity or the contracting officer is responsible for complying with the notice requirements, depending upon agency procedures. The purpose of this change is to assign responsibility to the technical/requiring activity.

SUBPART 5227.70--INFRINGEMENT CLAIMS, LICENSES, AND ASSIGNMENTS

5227.7013 (DFARS 227.7013) Recordation.

Originals of licenses, assignments or other documents evidencing a Government interest in patents or applications for patents shall be forwarded to the Chief of Naval Research for transmittal to the Commissioner of Patents and Trademarks.

NAVY ACQUISITION PROCEDURES SUPPLEMENT

PART 5228

BONDS AND INSURANCE

SUBPART 5228.1—BONDS

~~5228.106 Administration.~~

~~—Questions or requests for guidance regarding bonds may be submitted to ABM.~~

~~*Rationale: There is no longer a need for this coverage since questions or requests for guidance concerning bonds should only be submitted to ABM where no other assistance is available.*~~

SUBPART 5228.3—INSURANCE

5228.301 Policy.

(a)(1)(i) DoN policy is to rely upon the commercial insurance industry to the maximum extent practicable to protect contractors against risks arising under contracts. However, it may be preferable or necessary to provide Government indemnification--

~~(i)(a)~~ Where there is a continuing program, such as for nuclear vessels, and insurance premium costs over a period of time could equal the amount of coverage;

~~(ii)(b)~~ Where war risk is involved;

~~(iii)(c)~~ Where the cost of insurance is so excessive it is unreasonable and constitutes a "turndown quotation";

~~(iv)(d)~~ Where the Government risk is rated only on its isolated experience and not shared with the risks of others, whether or not the risk is unusually hazardous;

~~(v)(e)~~ Where an urgent requirement allows insufficient time to receive a competitive insurance quotation;

~~(vi)(f)~~ Where the degree of risk is either very small or catastrophic; or

~~(vii)(g)~~ Where indemnification of the deductible portion of insurance coverage will substantially reduce insurance costs.

~~(b)~~ All matters concerning indemnification shall be referred to ABM for decision or recommendation sufficiently in advance of contract award.

~~*Rationale: To more accurately conform to the numbering prescribed by FAR/DFARS 1.303/201.303, "Publication and codification."*~~

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5228.301-90 Notification of suit or action filed or claim made.

The Contracting Officer shall immediately inform ABM, in writing, upon receipt of notification from the Contractor, pursuant to paragraph (g) of the FAR clause 52.228-7, of any suit or action filed or any claim made against the Contractor in excess of \$100,000. The information to be provided to ABM should include the contractor's name; contract number; a brief description of the supplies or services being acquired; the estimated cost of the contract; a brief description of the basis for the suit/action or claim; the estimated dollar value of the suit/action or claim; and the name and phone number of the action officer.

Rationale: The proposed deletion of NAPS 5228.301(91) will remove the procedures to be followed in making all payments under contracts in which the Government assumed the risk of liability to third parties and such liability is not compensated for by insurance or otherwise. These procedures required the submission of pertinent information to ABM for a determination as to whether the Government has assumed liability for the claim and so, the amount to be paid. Since ABM will no longer be making such determinations, a notification requirement is being established whereby ABM will be informed of any suit or action filed or any claim made against the Contractor in excess of \$100,000.

~~(90)~~ 5228.301-91 Authority to act. ABM is authorized to act by direction of the Secretary of the Navy, or as the duly authorized representative of the HCA, the contracting officer, or any other Naval official designated in the contract to:

- (1) Require or approve contract insurance; and
- (2) Execute, sign or endorse all lost policy releases; proofs of loss; subrogation agreements; endorsements of policies for claims and/or return premiums; payment orders; and insurance drafts made payable to the Secretary of the Navy and not affecting the obligation of appropriations.

Rationale: To more accurately conform to the numbering prescribed by FAR/DFARS 1.303/201.303, "Publication and codification."

~~(91) Payment of claims to third parties.~~ ~~The following procedure shall be used in making all payments under contracts in which the Government assumes the risk of liability to third parties and such liability is not compensated for by insurance or otherwise:~~

~~(a) When a claim is made for loss of or damage to property, death or bodily injury arising out of performance of a contract, the officer in charge (OIC) shall submit to the cognizant contracting activity:~~

NAVY ACQUISITION PROCEDURES SUPPLEMENT

- ~~–(1) statements of all pertinent facts;~~
- ~~–(2) the OIC recommendation and the contractor recommendation as to the action to be taken with respect to the claim; and~~
- ~~(3) the amount, if any, to be paid.~~

~~(b) The contracting activity shall promptly forward the information via the HCA to ABM for determination of whether the Government has assumed liability for the claim and if so, the amount to be paid.~~

~~(c) If ABM determines that the Government has assumed liability for the claim, the third party shall be paid the amount fixed by ABM unless pursuant to appeal by the contractor under the Disputes clause, a different amount is allowed.~~

~~(d) If ABM determines that the Government did not assume liability, no payment shall be made, unless pursuant to appeal by the contractor under the Disputes clause, a different decision is made.~~

Rationale: To remove requirement for an ABM determination as to whether the Government has assumed liability for a claim and if so, the amount to be paid.

5228.304 (DFARS 228.304) Risk-pooling arrangements.

ABM will confirm to the cognizant contracting activity the amount of premium due and, if the funds allocated to the contract are not sufficient, the amount due shall be paid as an item of cost under the contract out of other appropriated funds.

Rationale: DFARS also includes applicable coverage.

5228.305 (DFARS 5228.305) Overseas workers' compensation and war-hazard insurance.

Rationale: To correct error in DFARS cite.

- (d) Submit requests for waiver through ABM.

5228.307 Insurance under cost-reimbursement contracts.

5228.307(90) Liability of subcontractors to third parties.

(a) In general, DoN will not assume liability of subcontractors to third parties.

(b) ~~However, u~~Under cost-plus-fixed-fee contracts, contracting officers may, when in the best interest of Government, provide for flow down of the clause at FAR 52.228-7, Insurance--Liability to Third Persons, to cost-plus-fixed-fee subcontracts.

Rationale: Clarity.

NAVY ACQUISITION PROCEDURES SUPPLEMENT

5228.308 Self-insurance.

~~—Refer all matters concerning self-insurance covering any kind of risk to ABM.~~

Rationale: Matters concerning self insurance no longer need to be referred to ABM.

SUBPART 5228.90--INSURANCE UNDER LEASES

5228.9000 General.

When Government property is leased under the authority of 10 U.S.C. 2667, the lessee, at its own expense, shall insure the property and the liabilities of itself and the Government to third parties, including employees.

5228.9001 Waiver.

The requirement to insure the property may be waived by ABM when more than 75% of its use is for Government work. In such case the Government will assume the risk of loss or damage to the property and the lease will be modified accordingly.

5228.9002 Lessee Requirements.

Where insurance is required:

(1) The lessee, for the period of the lease, shall purchase and maintain Fire and Extended Coverage insurance or its equivalent and, if applicable, Boiler and Machinery insurance, in an amount equal to replacement value less depreciation or in any lesser amount determined by the contracting officer.

(2) Lessee will provide insurance on special types of property (e. g., floating drydocks, mobile power plants, etc.) as designated by ABM.

(3) When a co-insurance clause is used, failure of the lessee to maintain adequate insurance will not relieve the lessee of its responsibilities under any other terms of the lease.

5228.9003 Insurance Policies.

(a) Insurance policies for leased property shall be issued in the names of the lessee and of the Department of the Navy and shall contain a loss payable provision as follows: "Loss, if any, under this policy shall be adjusted with (Lessee) and the proceeds, at the election of the Government, shall be payable to the (Lessee); any proceeds not paid to the (Lessee) shall be payable to the Treasurer of the United States."

NAVY ACQUISITION PROCEDURES SUPPLEMENT

(b) Each insurance policy shall contain a provision for thirty days prior notice to ABM in the event of cancellation of the policy.

(c) A certificate of insurance or copy of each insurance policy shall be deposited with ABM.

5228.9004 Contracting officer requirements.

(a) Leases involving significant insurance costs shall conform to the requirements of the FAR. If required, modify existing leases.

(b) Refer all questions in connection with this subpart to ABM or, with respect to form and legality, to the Office of General Counsel.

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PART 5229

TAXES

SUBPART 5229.3--STATE AND LOCAL TAXES

5229.302 Application of State and local taxes to the Government.

(b) Ordering officers and disbursing officers may issue the Forms, as may other officials designated by the contracting officer.

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PART 5230

COST ACCOUNTING STANDARDS ADMINISTRATION

Rationale: To conform to FAR title.

SUBPART 5230.2--CAS PROGRAM REQUIREMENTS

5230.201 Contract requirements.

5230.201-5 Waiver.

~~(b) and (d) Submit waiver requests to ABM. For waiver requests that must be submitted to the CAS Board, §submit the information to ABM at least 60 days prior to anticipated contract award. Include the estimated date of contract award. In the case of contracts to be placed with foreign concerns, contracting activities should request DCAA assistance. Contracting activities should continue efforts to obtain a contractor's compliance and ascertain the reasons for refusal to comply. The reason(s) should be transmitted to ABM as part of the request for waiver.~~

Rationale: To conform to revised coverage at FAR 30.201-5 that was promulgated by Item VIII of FAC 97-18. Also, the information required to be included in the waiver request is addressed at FAR 30.201-5(c) for head of the agency waivers and 48 CFR 9903.201-5(e) for CAS Board waivers.

5230.202 Disclosure requirements.

5230.202-2 Impracticability of submission.

Submit requests for impracticability determinations in accordance with the requirements of 5230.201-5.

PART 5231

CONTRACT COST PRINCIPLES AND PROCEDURES

SUBPART 5231.1--APPLICABILITY

5231.109 Advance agreements.

(e a) Since advance agreements often deal with issues that are complex and/or unprecedented and may require FAR/DFARS deviations, activities contemplating negotiation of advance agreements on the treatment of special or unusual costs should consult with ABM before entering into any negotiations.

(g) Copies of all negotiated advance agreements should be forwarded to ABM within 30 days of their execution, together with appropriate supporting documents.

Rationale: The first paragraph more accurately implements FAR 31.109(a) vice (c).

SUBPART 5231.2--CONTRACTS WITH COMMERCIAL ORGANIZATIONS

5231.205 Selected costs.

5231.205~~(90)~~-90 Shipbuilding Capability Preservation Agreements.

(a) *Scope and authority.* Where it would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b), the Navy may enter into a shipbuilding capability preservation agreement with a contractor. As authorized by Section 1027 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85), such an agreement permits the contractor to claim certain indirect costs attributable to its private sector work as allowable costs on Navy shipbuilding contracts.

(b) *Definition.* "Incremental indirect cost," as used in this subsection, means an additional indirect cost that results from performing private sector work described in a shipbuilding capability preservation agreement.

(c) *Purpose and guidelines.* The purpose of a shipbuilding capability preservation agreement is to broaden and strengthen the shipbuilding industrial base by providing an incentive for a shipbuilder to obtain new private sector work, thereby reducing the Navy's cost of doing business. The Navy will use the following guidelines to evaluate requests for shipbuilding capability preservation agreements:

(1) ASN(RD&A) must make a determination that an agreement would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b). The primary consideration in making this determination is whether an agreement would promote future growth in the amount of private sector work that a shipbuilder is able to obtain.

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(2) An agreement generally will be considered only for a shipbuilder with little or no private sector work.

(3) The agreement shall apply to prospective private sector work only, and shall not extend beyond 5 years.

(4) The agreement must project an overall benefit to the Navy, including net savings. This would be achieved by demonstrating that private sector work will absorb costs that otherwise would be absorbed by the Navy.

(d) *Cost-reimbursement rules.* If the Navy enters into a shipbuilding capability preservation agreement with a contractor, the following cost-reimbursement rules apply:

(1) The agreement shall require the contractor to allocate the following costs to private sector work:

(i) The direct costs attributable to the private sector work;

(ii) The incremental indirect costs attributable to the private sector work; a

(iii) The non-incremental indirect costs to the extent that the revenue attributable to the private sector work exceeds the sum of the costs specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this subsection.

(2) The agreement shall require that the sum of the costs specified in paragraphs (d)(1)(ii) and (d)(1)(iii) of this subsection not exceed the amount of indirect costs that would have been allocated to the private sector work in accordance with the contractor's established accounting practices.

(3) The Navy may agree to modify the amount calculated in accordance with paragraph (d)(1) of this subsection if it determines that a modification is appropriate to the particular situation. In so doing, the Navy may agree to the allocation of a smaller or larger portion of the amount calculated in accordance with paragraph (d)(1) of this subsection, to private sector work.

(i) Any smaller amount shall not be less than the sum of the costs specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this subsection.

(ii) Any larger amount shall not exceed the sum of the costs specified in paragraph (d)(1)(i) of this subsection and the amount of indirect costs that would have been allocated to the private sector work in accordance with the contractor's established accounting practices.

(iii) In determining whether such a modification is appropriate, the Navy will consider factors such as the impact of pre-existing firm-fixed-price Navy contracts on the amount of costs that would be reimbursed by the Navy, the impact of pre-existing private sector work on the cost benefit that would be received by the contractor, and the extent to which allocating a smaller or larger portion of costs to private sector work would provide a sufficient incentive for the contractor to obtain additional private sector work.

(e) *Procedure.* A contractor may submit a request for a shipbuilding capability preservation agreement, together with appropriate justification, through the Deputy Assistant Secretary of the Navy for Ships, to ASN(RD&A), who has approval or disapproval authority. The contractor should also provide an informational copy of any such request to the cognizant administrative contracting officer.

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PART 5232

CONTRACT FINANCING

SUBPART 5232.2--COMMERCIAL ITEM PURCHASE FINANCING

5232.202 General.

5232.202-1 Policy

(d) *Unusual contract financing.* Notwithstanding the HCA approval authority, DFARS 232.070 provides that agency discretion under Part 32 is at the DoD level and is not delegated to the departments and agencies.

Rationale: To emphasize that HCAs are not authorized to approve unusual contract financing because of the limitations imposed by DFARS 232.070.

SUBPART 5232.4--ADVANCE PAYMENTS FOR NON-COMMERCIAL ITEMS

Rationale: To conform to FAR title.

5232.402 General.

(e) All delegations of authority with respect to advance payments under 10 U.S.C. 2307 conferred upon the Secretary of the Navy have been delegated to the ASN(FM&C). This authority has been redelegated to the Director, Office of Financial Operations, OASN(FM&C), who will make the necessary determinations and findings and approve contract terms concerning advance payments. Requests for advance payments shall be submitted via ABM.

SUBPART 5232.5--PROGRESS PAYMENTS BASED ON COSTS

5232.501 General.

5232.501-2 (DFARS 232.501-2) Unusual progress payments.

(a) Forward requests for unusual progress payments via ABM.

SUBPART 5232.6--CONTRACT DEBTS

5232.601 Definition

The contracting officer is the responsible official for determining the amount of contract debt owed the Government and for demanding payment. The Assistant Secretary of the Navy (Financial Management & Comptroller) is the responsible official for deciding whether to defer collecting contract debts.

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5232.610 (DFARS 232.610) Demand for payment of contract debt

(b)(3) All requests for deferment shall be submitted to the contracting officer for review in accordance with FAR 32.613. The contracting officer shall forward the request, with a recommendation, to the Assistant Secretary of the Navy (Financial Management & Comptroller) via ABM.

Rationale: DFARS 232.610(b)(3) is also applicable.

5232.613 Deferment of collection.

(c) Information should be submitted with all requests, whether or not an appeal is pending or a Dispute action filed. In addition, include the following information:

~~(6)~~ (i) If applicable, the final decision, the appeal, the status of the appeal, and the name of the Navy lead trial attorney.

~~(7)~~ (ii) The appropriation account(s) that will be credited with the repayment or debited with the liability if the appeal is successful.

~~(8)~~ (iii) Points of contact at the cognizant paying and contract administration offices.

~~(9)~~ (iv) Any small business concern representation.

Rationale: To more accurately conform to the numbering prescribed by FAR/DFARS 1.303/201.303, "Publication and codification."

5232.690 DoN claims against a contractor.

The review and approval requirements of 5233.9001 apply to the settlement of DoN claims against contractors.

SUBPART 5232.7--CONTRACT FUNDING

5232.790 Establishment of obligations.

For documents requiring two signatures to be valid obligations, both signatures must be affixed prior to expiration of the appropriation or fund involved. Signatures to such obligating documents will be dated the day that they are affixed to the document. The date of the last required signature determines the date of the obligation for recording purposes.

5232.791 Obligation of transportation cost in purchase documents.

When the supplier is to be reimbursed for transportation costs, the contracting officer should include an estimate of such costs in the contract under the appropriation data, as follows: "For obligation purposes only, the transportation costs chargeable to the funds indicated above are estimated to be \$_____."

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These estimated transportation costs will not be included in the total posted in the "Amount" blank on the face of the purchase document; however, the words "PLUS TRANS" will be inserted within the "Amount" blank to alert interested personnel to this additional obligation.

5232.792 Accounting and appropriation data.

~~(a)~~ Contracts, orders, and change orders or amendments that revise the accounting data for any item or change the total amount of a contract should indicate the accounting code numbers under which payments on the contract or order are to be made. The accounting and appropriation data represents the accounting classification reference number (ACRN).

Rationale: Paragraph numbering is unnecessary.

5232.793 Responsibility for accounting classification and payments data.

(a) The contracting office is responsible for ensuring that all contracts and modifications are written in such a manner that all quantities, items, tasks, services, etc., required by the contract or modification can be related to specific accounting data cited in the contract or modification.

(b) Shipping instructions issued under a contract or modification should identify the Contract Line Item Number (CLIN), Subline Item Number (SLIN) and Accounting Classification Reference Number (ACRN), which will permit identification of the accounting classification to which each quantity of each item, service, or task, is properly chargeable. To facilitate proper payment, contracts should require that the contractor cite the CLIN, SLIN, and ACRN, reflected in the shipping instructions, on applicable invoices.

SUBPART 5232.9--PROMPT PAYMENT

5232.902 Definitions.

"Invoice" as used in this subpart, includes vouchers and means a contractor request for payment including partial payments and final payments under fixed price contracts; or interim and final payments on cost type contracts. The term does not include requests for progress payments.

5232.903 Policy.

For Prompt Payment Act purposes, every contract, including actions accomplished by simplified acquisition procedures, should indicate on its face whether the payments under it are:

- (a) Subject to the 7 calendar day constructive acceptance period;
- (b) Subject to acceptance terms other than (a) above; or
- (c) Not subject to the Prompt Payment Act.

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5232.905 Invoice payments.

If a Technical Representative or Contracting Officer's Representative has been assigned in the contract, the contracting officer should designate that individual to receive an information copy of the invoice.

5232.908 Contract clauses.

(a) Use the clause at 5252.232-9000, SUBMISSION OF INVOICES (FIXED PRICED), in fixed price (except fixed price incentive) type solicitations/contracts, or basic ordering agreements requiring fixed price orders, except in construction or architect-engineer contracts as provided in paragraphs (d) and (e) below. Use Alternate I for fixed price level of effort contracts to designate the Government representative with authority to approve hours actually expended. The HCA or designee not lower than one level above the contracting officer is authorized to approve deletion of the requirements in clause paragraph (d) for subline item (SLIN) and accounting classification reference number (ACRN) data on each invoice.

(b) Use the clause at 5252.232-9001, SUBMISSION OF INVOICES (COST-REIMBURSEMENT, TIME-AND-MATERIALS, LABOR-HOUR, OR FIXED PRICE INCENTIVE), for cost reimbursement, time-and-materials, labor-hour, or fixed price incentive solicitations/contracts, except as provided in paragraphs (d) and (e) below. When use of foreign vendors/contractors is anticipated, use this clause with its Alternate I. The HCA or designee not lower than one level above the contracting officer is authorized to approve deletion of the invoice requirements in clause paragraphs (d) and (h) relating to subline (SLIN) and accounting classification reference number (ACRN) data. Use the clause with its Alternate II when the contract auditor has authorized the contractor to submit interim vouchers directly to paying offices.

(c) Use the clause at 5252.232-9002, INVOICES FOR CLASSIFIED CONTRACTS, in classified solicitations/contracts for supplies/services.

(d) Use the clause at 5252.232-9003, SUBMISSION OF INVOICES IN CONTRACTS FOR LEASE, MAINTENANCE, RENTAL AND/OR SUPPORT SERVICES, when applicable in contracts for lease, maintenance, rental, and/or support services of Information Technology (IT) or other type of equipment. Variation of this clause is authorized to accommodate the unique needs of the individual acquisition, provided such variation does not impose significant additional cost or administrative burdens on the offeror/contractor.

(e) The Contracting Officer may use approved component clauses, when applicable, for:
(1) Military Sealift Command acquisitions which require unique invoicing/payment arrangements such as container leasing, rental, operation or charter of vessels; carriage of goods; or

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(# 2) Naval Sea Systems Command acquisitions of craft and/or shipbuilding.

Rationale: To more accurately conform to the numbering prescribed by FAR/DFARS 1.303/201.303, "Publication and codification."

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PART 5233

PROTESTS, DISPUTES, AND APPEALS

SUBPART 5233.1--PROTESTS

5233.103 Protests to the agency.

(d)(4) HCAs are responsible for establishing procedures for handling requests made by interested parties for an independent review of their protest at a level above the contracting officer. In addition, for purposes of this paragraph, a “level above the contracting officer” shall mean the CCO or, if the CCO is less than two levels higher than the contracting officer, the Chief of the next higher contracting office. An individual so designated who has been personally and substantially involved with the procurement must recuse himself or herself and, instead, refer the matter to another appropriate official at a comparable or higher level.

Rationale: In lieu of establishing agency-wide procedures (see FAR 33.103(d)(4)), this coverage assigns HCAs the responsibility for establishing procedures for handling such requests. This will enable the procedures to be tailored to the needs of each HCA. This new coverage also incorporates current policy and procedures as set forth in ABM memorandum dated August 13, 1996, subject: “FAR 33.103; Protests to the Agency.”

(f) For purposes of this paragraph, a “level above the contracting officer” shall mean the CCO or, if the CCO is less than two levels higher than the contracting officer, the Chief of the next higher contracting office. An individual so designated who has been personally and substantially involved with the procurement must recuse himself or herself and, instead, refer the matter to another appropriate official at a comparable or higher level.

Rationale: To reflect current policy and procedures as set forth in ABM memorandum dated August 13, 1996, subject: “FAR 33.103; Protests to the Agency.”

5233.104 Protests to GAO.

(g) HCAs shall consult with ABM before any final decision is reached not to implement GAO's recommendations. A copy of each report shall be provided to ABM concurrent with the submission to the Comptroller General.

SUBPART 5233.2--DISPUTES AND APPEALS

5233.201 Definitions.

"Disruption", as used in this part, means the cost effect upon, or the increased cost of performing, the unchanged work due to a change to the contract.

"Delay", as used in this part with respect to contractors, claims or requests for equitable adjustments, means the time-oriented cost effects or length of a suspension in scheduled contract work or a period of time-oriented cost effects or length of a suspension in scheduled contract work or a period of time a contractor is required to perform beyond the contract delivery or completion date, allegedly due to contractually remediable Government actions or inactions. Delay can be expressed in terms of time or cost or some combination of time and cost.

5233.203 Applicability.

(b)(2) The HCA is the designated official for making a determination that the application of the Act to the contract would not be in the public interest.

Rationale: To more accurately reflect the FAR citation being implemented.

5233.204 (DFARS 233.204) Policy.

5233.204(90) -90 General.

(a) *Multi-discipline approach.* Since claims by contractors often involve difficult and complex legal, factual and financial issues requiring extensive fact-finding or analysis to determine whether or not the Government is liable, a multi-disciplined team should generally be established to analyze the claim.

(b) *Formal and constructive changes.*

(1) When DoN actions alleged by the contractor, after appropriate evaluation, constitute a change, the contracting officer should promptly formalize such constructive change(s) in writing as soon as the parties have negotiated an acceptable adjustment to the contract price and delivery clauses, irrespective of whether the contract contains the clause at FAR 52.243-7, Notification of Changes.

(2) In exceptional cases where disruption, delay or other claimed impacts are known to exist and cannot be currently resolved, the contracting activity may proceed with equitable adjustments covering the interrelated formal changes coupled with usage or qualified release. The qualified release should specifically identify the inter-relationship with the contractor's claim such as delay or disruption impacts reserving to the contractor the right to pursue and

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demonstrate support for a separate equitable adjustment therefore under the contract.

(c) *Rejection of "total cost" and "total time" based claims.*

Claims based on "total cost" or "total time" approaches are considered only as a last resort. A contractor (claimant) filing a total cost or total time based claim must establish that there is no other feasible, acceptable basis for computing the claimant's increased costs or delays, and prove that there is no way of correlating government actions and omissions to historical cost elements or even to reasonable substantiated cost estimates.

5233.208 Interest on claims.

~~—(d) For claims which require approval by ABM, when it is necessary for the Contracting Officer to obtain additional contract funding in order to honor the Government's obligations in an interest bearing situation, the contracting activity shall notify ABM immediately.~~

Rationale: ABM notification under these circumstances is no longer required.

5233.209 Suspected fraudulent claims.

The Navy Inspector General is the agency official responsible for investigating fraud.

5233.211 Contracting officer's decision.

(a)(1) When reviewing the facts pertinent to a claim, the contracting officer should determine if the claimant established:

- ~~(i) (A)~~ the existence of a legal basis for entitlement,
- ~~(ii) (B)~~ facts meeting the elements of proof required to support the basis of entitlement, and
- ~~(iii) (C)~~ adequate factual support for the amounts claimed.

Rationale: to more accurately conform to the numbering prescribed by FAR/DFARS 1.303/201.303, "Publication and codification."

(b) Copies of the contracting officer's decision will receive the same distribution as the related contract and also will be furnished to any assignee, guarantor, or surety of the contractor. In addition, a legible copy of the decision shall be forwarded to the Office of the General Counsel, Legal Services Support Group, Navy Litigation Office, Department of the Navy, Washington, DC. 20360 at the time of transmittal to the contractor.

SUBPART 5233.90--PROCEDURES

5233.9000 Documentation of significant contract events.

For Navy activities where contract administration functions are performed, a record of significant events shall be maintained with respect to:

(4 a) All contracts in excess of \$5,000,000; and

(2 b) All contracts, regardless of dollar amount, wherein the officer in charge of the contract administration office has determined a reasonable possibility exists that a claim may be asserted thereunder.

Rationale: To more accurately conform to the numbering prescribed by FAR/DFARS 1.303/201.303, "Publication and codification."

5233.9001 Claims approval requirements.

(a) All proposed claim settlements in excess of \$25 million, and final decisions of the contracting officer involving payments in an amount greater than \$25 million, shall be submitted to ABM for review and approval. Other proposed claim settlements and final decisions of the contracting officer, shall be reviewed and approved as specified by the HCA.

(b) The supporting documentation submitted to ABM with respect to claim settlements or final decisions of a contracting officer will include a legal memorandum. As a minimum the required legal memorandum should:

(i 1) Analyze the applicability and adequacy of the contractor's legal theory or theories of Government liability;

(ii 2) Analyze and evaluate the presence and adequacy of evidentiary facts satisfying the elements of proof required by such legal theory or theories;

(iii 3) Analyze the applicability and adequacy of any affirmative defense the Government may have to the contractor's claim, e.g., accord and satisfaction, failure of consideration, fraud, release, laches, statute of limitations; and

(iv 4) Analyze and evaluate the presence of any counterclaims the Government may have against the contractor.

(c) No settlement commitment or final decision shall be made prior to obtaining the required approval.

(d) Primary emphasis should be given to achieving prompt settlement of claims, thereby obviating need for provisional price increases or payments. Provisional price increases or provisional payments against contractor claims may be made when the following documents have been obtained:

(i 1) A legal determination that the contractor is entitled to compensation.

(ii 2) Sufficient technical, administrative, and audit analyses to permit such legal determination; and

(iii 3) A determination by the contracting officer with respect to the amount

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of compensation for which there is entitlement and that the amount of ultimate entitlement to compensation will equal or exceed the amount of the provisional price increase or provisional payment.

(e) When a provisional payment, either individually or cumulatively against a single claim exceeds \$25 million, a written justification shall be submitted to ABM for approval. The justification shall cover--

- (i) the requirements of the claim;
- (ii) the projected date of settlement of the claim; and
- (iii) other pertinent information, including comments as to whether the contractor has reasonably satisfied all requests for documentary and analytical support of the claimed amount.

Rationale: *To more accurately conform to the numbering prescribed by FAR/DFARS 1.303/201.303, "Publication and codification."*

5233.9002 Contractor appeals to the Armed Services Board of Contract Appeals (ASBCA).

(a) *General.* The Office of the General Counsel (OGC) has sole litigation authority for all appeals under DoN contracts to the ASBCA. Because of the frequent complexity of these cases, the OGC and the contracting activity involved should maintain the continuity of any DoN claim team which might have investigated and evaluated the contractor's claim submission. Such teams should continue to function in an assisting capacity under the leadership of the OGC Trial Attorney assigned to handle the appeal.

(b) *Litigation report requirement.* With the compilation of Rule 4 documents, a comprehensive litigation report shall be forwarded to the Litigation Division. The report should include:

(1) A detailed narrative statement of facts, preferably in chronological sequence, and with a topical segregation when appropriate, with references to attached supporting documents of expected testimony. If such a statement was previously submitted, it need not be submitted a second time, but should be supplemented or revised if additional information becomes available in the interim.

(2) An analysis and evaluation (classified as attorney-client privileged information) of the factual and legal positions of both sides (including affirmative defenses and counterclaims available to the Government), the available evidence, and the expertise and effectiveness of prospective witnesses.

(3) The advisory report, if any, of the reviewing official or board.

(c) *Settlement negotiations pending appeal.* The conduct of settlement negotiations in connection with any pending appeal should generally be

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accomplished by a selected team consisting of the trial attorney and representatives of the contracting officer (including contracting activity technical personnel, counsel, negotiator, and auditor if necessary). Other arrangements may be made in specific cases as appropriate. However, no final settlement agreement will be made without the written approval of the contracting officer. When a settlement is made, a memorandum shall be prepared by the negotiating team (and signed by all team members) stating the basis and reasons therefor. The settlement agreement shall be drafted by the contracting activity and trial attorney. The trial attorney shall file any legal papers required to be filed with the ASBCA to effect disposition of the case by mutual agreement of the parties.

(d) *Review and approval.* Negotiated settlements of appeals pending before the ASBCA, as well as negotiated settlements of appeal issues which have been remanded to the DoN for quantum determination, will be subject to review and approval at levels established for claims of the same dollar amount.

(e) *Contract modification.* Whenever contract modification and other contract documents are required to implement a settlement of ASBCA or appellate court decision, they should reference the ASBCA proceedings by title and docket number.

PART 5235

RESEARCH AND DEVELOPMENT CONTRACTING

5235.006 (DFARS 235.006) Contracting methods and contract type.

(b)(i), (ii) and (iii). Notifications and requests for USD(AT&L) approval are to be submitted to ABM for processing and signature by ASN(RD&A).

5235.015 Contracts for research with educational institutions and nonprofit organizations.

5235.015-70 (DFARS 235.015-70) Special use allowances for research facilities acquired by educational institutions.

(b) *Policy.*

~~(3)~~ (i) Contracts providing for a special use allowance for acquisitions or construction of research facilities shall specify:

(i) (A) that plans, specifications and major changes thereto shall be subject to approval by the Government;

(ii) (B) that the work shall be subject to approval by the Government for conformity to approved plans and specifications; and

(iii) (C) that the NAVFACENGCOCM shall be the authorized representative of the sponsoring contracting activity for such purposes.

~~(4)~~ (ii) Except as otherwise directed or authorized in the approval, the contract may also provide for up to a 15% increase in the amount subject to the special use allowance to cover changes in the work or any difference between estimated and actual cost of the work. Any such increase may be made subject to the approval of the sponsoring contracting activity. If more than a 15% increase is required, the further approval of the HCA is required.

Rationale: To conform to the numbering prescribed by FAR/DFARS 1.303/201.303, "Publication and codification."

5235.070 (DFARS 235.070) Indemnification against unusually hazardous risks.

5235.070-1 (DFARS 235.070-1) Indemnification under research and development contracts.

(a) The authority to approve the ~~inclusion of the appropriate DFARS contract clause (DFARS 252.235-7000 for fixed price and DFARS 252.235-7001 for cost reimbursement) indemnification of the contractor or subcontractor; and the definition of the specific unusually hazardous risks to be indemnified~~ in a research or development contract; ~~and together with the authority to approve~~

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the amount of any payment under 10 U.S.C. 2354(c) is delegated to ABM. The authority to approve the source of the funds out of which any such payment is made is delegated to the Deputy Comptroller, Department of the Navy, and to one assistant designated by the Deputy Comptroller for such purpose.

Rationale: *To more accurately conform to the requirements of DFARS 235.070-1.*

5235.070-90 Notification of occurrence, action or claim.

The Contracting Officer shall immediately inform ABM, in writing, upon receipt of notification from the Contractor, pursuant to paragraph (f) of the DFARS clause 252.235-7000 or paragraph (e) of the DFARS clause 252.235-7001, of any occurrence, action or claim in excess of \$100,000 that might trigger the Government's liability under the clause. The information to be provided to ABM should include the contractor's name; contract number; brief description of the supplies or services being acquired; contract price or estimated cost; a brief description of occurrence, action or claim; the estimated dollar value of the Government's potential liability; and the name and phone number of the action officer.

Rationale: The proposed deletion of NAPS 5228.301(91) will remove the procedures to be followed in making all payments under contracts in which the Government assumed the risk of liability to third parties and such liability is not compensated for by insurance or otherwise. These procedures required the submission of pertinent information to ABM for a determination as to whether the Government has assumed liability for the claim and so, the amount to be paid. Since ABM will no longer be making such determinations, a notification requirement is being established whereby ABM will be informed of any suit or action filed or any claim made against the Contractor in excess of \$100,000.

SUBPART 5235.70--RESEARCH AND DEVELOPMENT STREAMLINED CONTRACTING PROCEDURES

5235.7003 Research and development streamlined solicitation and contract.

5235.7003-4 Additional provisions and clauses.

The CCO is responsible for establishing procedures for authorizing the use of FAR and DFARS provisions and clauses, and nonstandard provisions and clauses approved for agency use, that are not in the RDSS/C standard format published at the RDSS/C website.

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Rationale: In lieu of establishing agency-wide procedures (see DFARS 235.7003-4), this NAPS coverage assigns CCOs the responsibility for establishing such procedures. This will enable the procedures to be tailored to the needs of each individual contracting office using RDSS/C.

PART 5236

CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

SUBPART 5236.2--SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION

5236.270 (DFARS 236.270) Expediting construction contracts.

(a) Where additional costs are to be incurred, NAVFACENGCOM is responsible for obtaining required agency head approval and certification.

Rationale: To more accurately reflect the FAR citation being implemented.

SUBPART 5236.6--ARCHITECT-ENGINEER SERVICES

5236.601 (DFARS 236.601) Policy.

(1) NAVFACENGCOM is responsible for any required Congressional notification.

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PART 5237 SERVICE CONTRACTING

SUBPART 5237.2--ADVISORY AND ASSISTANCE SERVICES

5237.203 Policy.

(90) *Marking of contractor reports.* All reports required under contracts for individual experts and consultants; studies, analyses, and evaluations; and management and professional support services should prominently show on the cover of the report:

- (a) Name and business address of the contractor.
- (b) Contract number.
- (c) Contract dollar amount.
- (d) Whether the contract was competitively or non-competitively awarded.
- (e) Name of individual sponsor. The sponsor should be an individual from the requiring activity at the Program Manager or comparable level.
- (f) Name and address of requiring activity.

5237.204 Guidelines for determining availability of personnel.

(a) Approval by the Source Selection Authority of a source selection plan identifying only agency/FFRDC personnel as evaluators may constitute the determination that sufficient personnel are available within the agency to evaluate or analyze proposals.

Determinations that sufficient personnel are not readily available within the agency nor within another Federal agency shall be made in accordance with (d) below.

(b) (i) Activities should use common sense and reasonably available information in determining which other Federal agencies or Navy/Marine Corps activities may have personnel with the training and capabilities required to support evaluation of proposals. The nature and extent of efforts an activity should pursue in obtaining information depend on the circumstances of the procurement, taking into consideration such factors as those listed in FAR 37.204(b), the specialized nature of the qualifications and expertise required, and the activity's previous experience in attempting to identify similarly qualified personnel.

(ii) Qualified employees of another agency who could only be available at times other than when needed to conduct a planned evaluation of proposals may be considered "not readily available" if it is not practical to adjust the evaluation schedule to accommodate using them.

(c) If another agency will make personnel available on a reimbursable basis, Subpart 17.5 will generally apply.

(d) ~~(i)~~ HCAs are delegated authority to determine that personnel with the required training and capabilities needed to conduct evaluations or analyses of

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any aspect of proposals for an initial contract award are not readily available within the agency or other Federal agencies. The procedures in FAR Subpart 1.7 apply to HCA determinations made under this section.

Rationale: Unnecessary. This is a direct implementation of paragraph (d).

~~(ii) Forward one copy of each determination under (d)(1) made prior to 1 October 1997 to ABM within five days of approval.~~

Rationale: No longer required.

SUBPART 5237.90--CONTRACTOR GUARD SERVICES

5237.9000 Contracting for contractor guard services.

All requirements for contractor guard services, with the exception of those required to be obtained through the General Services Administration (GSA), will be obtained through NAVFACENGCOM, unless specific authority is otherwise granted.

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PART 5241

ACQUISITION OF UTILITY SERVICES

SUBPART 5241.2--ACQUIRING UTILITY SERVICES

5241.201 (DFARS ~~241.004-1~~ [241.201](#)) Policy.

(90) The Commander, NAVFACENGCOM has cognizance over all matters pertaining to Navy acquisition of public utility services including, but not limited to, electricity, gas, water, sewerage, drainage, fire and police protection, street lighting and cleaning, and trash and garbage disposal.

(91) Contracts for the operation of Government-owned facilities by a DON contractor which call for reimbursement of the contractor's utility expense shall specifically provide for the submission of utility subcontracts to NAVFACENGCOM for comment or approval prior to execution of the contract.

PART 5242

CONTRACT ADMINISTRATION AND AUDIT SERVICES

Rationale: To conform to FAR title.

SUBPART 5242.1--~~INTERAGENCY CONTRACT ADMINISTRATION~~
~~AND AUDIT SERVICES~~

Rationale: To conform to FAR title.

5242.190 Relationships--DCAA and contracting/contract administration offices.

(a) Organizationally, the DCAA is separate from, and independent of, contracting and contract administration offices. Audit reports and other services provided by DCAA are advisory in nature. A clear understanding of the responsibilities of DCAA auditors is essential to ensure continuous close cooperation and team work. Contracting and contract administration offices are responsible for:

- (1) Requesting contract audit service deemed essential for the procurement;
- (2) Providing maximum allowable time for the conduct of audits;
- (3) Furnishing the auditor with all relevant documents;
- (4) Establishing access to contractor records required by auditors; and
- (5) Furnishing such other information, data, or technical service as may be required

(such as the advice of industrial engineers on cost matters, copies of pricing memoranda, etc.) or otherwise may be useful in performing the audit.

(b) Contract audit services should be requested by contracting and contract administration offices when necessary in connection with:

- (1) Development of procurement packages prior to solicitation;
- (2) Pre-award surveys;
- (3) Pricing contracting actions;
- (4) Functional reviews of contractor performance;
- (5) Progress payments, and;
- (6) Contract terminations.

(c) Contract audit services are performed automatically in connection with:

- (1) Reimbursement of costs, and;
- (2) Problems and unsatisfactory conditions encountered by the auditor and within

his purview.

5242.191 Audit resolution and disposition.

(a) Resolution of contract audit reports other than pre-award advisory audits, is required by law within six months of report issuance. When an audit is resolved, it must be supported by specific written documentation in the file. Disposition, including fund recovery actions, shall take place as soon as possible after resolution.

NAVY ACQUISITION PROCEDURES SUPPLEMENT

(b) HCAs are responsible for establishing procedures to accomplish this and to ensure that the semiannual contract audit follow-up status report required by DoD Directive 7640.2 is submitted to ABM within 15 calendar days after the end of the 31 March and 30 September reporting periods.

SUBPART 5242.6--CORPORATE ADMINISTRATIVE CONTRACTING OFFICER

5242.602 Assignment and location.

(c) Submit recommendations for assignment of a corporate administrative contracting officer (CACO) to ABM.

PART 5243

CONTRACT MODIFICATIONS

SUBPART 5243.1--GENERAL

5243.102 Policy.

(90) DoN policy is to avoid the use of contract modifications for additional quantities as a means of purchasing new requirements of supplies, when such a procedure would result in prolonging the life of the contract beyond the time when final settlement would normally be made.

5243.102(90) -90 Requests or claims for equitable adjustments

Whenever a contractor submits cost data in connection with pricing of change orders or repricing of contracts, charges included therein for obsolete or excess residual inventory should be substantiated by the submission of appropriate schedules listing the inventory involved.

SUBPART 5243.2--CHANGE ORDERS

5243.201 General.

(90) The policies and procedures of DFARS 217.74 should be applied to change orders (except value engineering change proposals (VECP's)) to the maximum extent practicable. Each undefinitized change order shall include a not-to-exceed price unless the CCO waives this requirement.

(91) The use of VECP's is encouraged due to the potential savings and system improvements that may be realized.

(a) Prompt action should be taken to implement those VECP's deemed to be technically sound.

(b) When considering VECP's, contracting officers should consider the impact on the projected savings that the normal negotiation and definitization process would have versus use of an unpriced change order. Unpriced contract modifications which implement VECP's should:

- (1) Define minimum unit cost savings, and
- (2) Define maximum development/implementation costs

NAVY ACQUISITION PROCEDURES SUPPLEMENT

PART 5245

GOVERNMENT PROPERTY

SUBPART 5245.1--GENERAL

5245.104 Review and correction of contractors' property control systems.

5245.104(90) -90 Management Control and Accounting for Government Property (GP) in the Custody of Contractors.

(a) *Purpose.* The physical and financial accounting requirements placed on the contractor do not relieve the Government from accounting for and reporting the value of GP. Until such time as the DoD accounting system for GP is developed and operational, the DoN will account for GP in the custody of contractors by using DD Forms 1662 as the source documents for input to the DoN accounting systems. The property administration procedures should enable Navy Property Administrators to independently certify the accuracy and reliability of the value of GP reported by contractors on their annual reports of "DoD Property in the Custody of Contractors" (DD Form 1662).

SUBPART 5245.3--PROVIDING GOVERNMENT PROPERTY TO CONTRACTORS

5245.302 Providing facilities.

5245.302-1 Policy.

(a)(4) The requirement for a determination and findings (D&F) applies to new facilities or existing facilities, and to extending the authorized period of use. The D&F requirement does not apply to contracts awarded under the A-76 Commercial Activities Program. The D&F must be made by both a contracting official at least one level above the contracting officer and the program manager. These two officials are the agency head's designees for issuing the D&F.

5245.302-1 (DFARS 245.302-1) Policy

(a)(4)(A)(S-90) ABM and the Commandant of the Marine Corps may approve facility projects not exceeding \$3 million at any one location during one fiscal year. The Chief of Naval Research, the Commanders, Naval Systems Commands, and Director, Strategic Systems Program may approve facility projects (including research and development) that do not exceed \$2 million at any one location during one fiscal year.

[\(a\)\(4\)\(A\)\(2\) Submit requests via ABM.](#)

Rationale: To require requests being submitted to the Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations) to be submitted via ABM.

NAVY ACQUISITION PROCEDURES SUPPLEMENT

5245.303 Providing material.

5245.303-1 Policy.

(S-90) *DoN implementation.* Decisions to provide GP shall be fully documented in the contract file. Any decision to provide readily available commercial items as GP requires detailed analysis and written justification supporting the decision and approved by the commander of the requiring activity, or a designated representative as being in the best interest of the Government.

5245.306 Providing special tooling.

(90) *Acquiring special tooling.* Contracting officers should obtain written verification from a qualified technical evaluator that contractor-proposed special tooling is properly classified. If general purpose plant equipment is improperly fabricated or acquired as special tooling, such equipment should be reclassified as facilities, direct cost should be disallowed, and any inappropriate profit should be recouped.

5245.311 Providing Government property by transfer.

(1) *Policy.* Government property shall not be transferred between contracts unless approval for retention is obtained, adequate consideration is received and proper identification is maintained.

(2) Contracts may not authorize the transfer of property from one contract to another without specific identification of the type, quantity and acquisition cost of the property which is authorized for transfer to the current contract.

SUBPART 5245.4--CONTRACTOR USE AND RENTAL OF GOVERNMENT PROPERTY

5245.403 Rental--Use and Charges clause.

(a) The CCO is the agency head's designee for making the required determination.

5245.405 (DFARS 245.405) Contracts with foreign governments or international organizations.

(3)(ii) Submit requests to the Director, Defense Security Assistance Agency (DSAA) via ABM.

5245.407 (DFARS 245.407) Non-Government use of plant equipment.

(a)(ii) HCAs are delegated approval authority. As noted at DFARS 245.407(a)(ii), any redelegation requires the approval of the Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

NAVY ACQUISITION PROCEDURES SUPPLEMENT

SUBPART 5245.5--MANAGEMENT OF GOVERNMENT PROPERTY IN THE POSSESSION OF CONTRACTORS

5245.505 Records and reports of Government property.

5245.505-14 Reports of Government property.

(e)(S-90) Property Administrators will forward all DD Forms 1662 reporting Government property to the Office of the Assistant Secretary of the Navy (Research, Development and Acquisition) Acquisition and Business Management - Policy & Resources (GP) [abbr. OASN(RDA)ABM - PR (GP)], 2211 South Clark Place, Arlington, VA 22202-3738, not later than 15 November each year for input into the DoD Contract Property Management System. Block 20 of the DD 1662 must be fully and legibly completed.

(e)(S-91) The DD Forms 1662, Line 17, column e, "Balance End of Period" should reflect the acquisition cost of all GFM in the warehouse and in production on 30 September of the reporting year.

5245.508 Physical inventories.

5245.508-1 Inventories upon termination or completion.

(a) *General.* Under DoN contracts, the property administrator may not waive the requirement for a physical inventory upon contract completion except to the extent provided in subparagraph (b) below. At least 60 days prior to contract completion (*i.e.*, the date when all items are scheduled for delivery to the government), the contractor should submit the following to the property administrator:

(i) A listing of all government property required to support contractual follow-on requirements or other known requirements, including spares and mobilization readiness requirements. This listing shall identify the category, quantity, and acquisition cost of such property, *i.e.*, IPE, OPE, ST, STE, military property, and material.

(ii) Justification for retention of any Government property not currently in use (see FAR 45.102).

(iii) Upon receipt of the required contract submission, the property administrator shall:

(A) Review and verify the contractor's stated government property requirements with the assistance, as required, from other technical specialists.

(B) Forward a copy of the contractor's follow-on or other related contract requirements list and retention justification statement, together with appropriate findings and recommendation, to the cognizant contracting officer.

(b) *Exception.* When it is anticipated that government property will be required for use on follow-on or other related contracts under major ongoing DoN programs, the property administrator may authorize the contractor to use a recent physical inventory, *i.e.*, one conducted within the previous 12 months, or a sampling-type inventory to meet the physical inventory requirement provided that:

NAVY ACQUISITION PROCEDURES SUPPLEMENT

(i) The contractor has conducted previous physical inventories in accordance with the type and frequency approved by the property administrator;

(ii) The contractor's inventory plan provides for use of valid sampling techniques;

(iii) Experience has established the adequacy of the contractor's property inventory and accounting controls; and

(iv) The degree of discrepancies disclosed during previous physical inventories does not exceed the risk the government is willing to accept, e.g., 10 percent (or a 90 percent confidence level).

(90) Final decisions with respect to transfer of government property to follow-on or other contracts should be made by the cognizant contracting officer within 90 days after the receipt of the contractor's list and justification statement. If transfer approval or other disposition instructions are not received by the property administrator at the end of 90 days, the property administrator should issue follow-up correspondence which states, "Your failure to respond within 30 days of the date of this follow-on inquiry will be interpreted to mean the government property in question should be disposed of in accordance with FAR/DFARS/NAPS 45.603/245.603."

(91) The automatic transfer by the contractor of record balances of government property to follow-on or other related contracts in lieu of preparing an inventory list upon contract completion is prohibited.

SUBPART 5245.6--REPORTING, REDISTRIBUTION, AND DISPOSAL OF CONTRACTOR INVENTORY

5245.603 Disposal methods.

The priorities identified at FAR 45.603 are applicable only to contractor-acquired material. These priorities have no applicability to special tooling, special test equipment, facilities, or military property.

5245.606 Inventory schedules.

5245.606-3 Acceptance.

(a) DD Form 1640, Request for Plant Clearance, should be used to initiate referral actions, applicable to subcontractors outside the assigned area of the CAO cognizant of the prime contractor.

5245.608 Screening of contractor inventory.

5245.608-1 General.

(b) To accomplish the screening requirements within the prescribed time periods, the following procedures should be employed:

(4.i) Upon receipt of inventory schedules in acceptable form, the plant clearance office should provide an original to the requiring activity and copies to DoN inventory managers, the contracting activity, and Naval activities other than inventory managers who have potential requirements for the property.

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(2 ii) Provide retention and redistribution requirements of the owning Commands, Offices and Bureaus (requiring activities), inventory managers, contracting activities and other Naval activities directly to the reporting office during this period.

Rationale: To more accurately conform to the numbering prescribed by FAR/DFARS 1.303/201.303, "Publication and codification."

5245.608-5 Special items screening.

(a) *Special test equipment with standard components.* Notwithstanding the provision of FAR 45.608-5(a), the final approval for contractor retention of standard components of special test equipment (STE) or for the transfer of industrial plant equipment items, which are components of STE, shall be made by the contracting officer in lieu of the ACO.

5245.612 Removal and storage.

5245.612-3 Special storage at the Government's expense.

(a) Prior to authorizing retention of items in storage the contracting officer should ensure that a retention plan has been developed. Retention plans will include the justification for storage, a detailed description of the property to be stored, storage costs, location, planned period of storage, and source of funds for storage.

~~(d)(S-90)~~ (b) The use of "no-costs" or no direct cost storage agreements is prohibited.

Rationale: This more accurately implements FAR 45.612-3(b) and there is no paragraph (d) at this FAR cite.

SUBPART 5245.70--APPOINTMENT OF PROPERTY ADMINISTRATORS AND PLANT CLEARANCE OFFICERS

5245.700~~21~~21 (DFARS 245.700~~21~~21) ~~Duties and responsibilities of plant clearance officers~~ Selection, appointment, and termination.

Rationale: Appointments are made pursuant to DFARS 245.7001.

(a) A copy of the written appointment shall be furnished to the Headquarters Command of the CAO.

Rationale: This more accurately implements DFARS 5245.7001(a).

SUBPART 5245.73--SALE OF SURPLUS CONTRACTOR INVENTORY

5245.7302 (DFARS 245.7302) Competitive ~~S~~sales.

NAVY ACQUISITION PROCEDURES SUPPLEMENT

5245.7302-5 (DFARS 245.7302-5) Mailing lists.

~~(e)~~(S-90) Sales invitations should be furnished to the supplier, the producer of each item being sold, and the:

- ~~(1)~~ (a) Contractor or subcontractor;
- ~~(2)~~ (b) Accountable contractor, if other than (2) above;
- ~~(3)~~ (c) Reporting activity; and
- ~~(4)~~ (d) Headquarters Command of the CAO.

Rationale: *To more accurately conform to the numbering prescribed by FAR/DFARS 1.303/201.303, "Publication and codification."*

PART 5246

QUALITY ASSURANCE

SUBPART 5246.7--WARRANTIES

5246.706 Warranty terms and conditions.

(b)(2) *Remedies.*

(iv) Acceptable turnaround time(s) for warranty corrective actions taken by the contractor should be specified, and consideration should be given to using liquidated damages or charging the contractor for product replacement costs when specified turnaround times are not met.

(b)(5) *Markings.* Warranted items shall be marked with the National Stock Number (NSN) or manufacturer's part number, a serial number or other item identifier (if the warranty applies to uniquely identified items), the contract number, an indication that a warranty applies, the manufacturer or entity (if other than the contractor) providing the warranty, the date or time the warranty expires, and an indication of whether or not attempted on-site repair by DoN personnel will void the warranty.

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PART 5247

TRANSPORTATION

SUBPART 5247.1--GENERAL

5247.191-190 Transportation mode.

(a) *The Contract as awarded.* If the contracting officer considers it necessary for the DoN to control the method of transportation (e.g., so as to expedite the movement of contract items or otherwise to fulfill special DoN requirements), the contract should generally be made on the basis of delivery f.o.b. origin. This is a valid reason for departing from the policy of FAR 47.101(b)(1).

(b) *Dispatch and oral instructions to contractors.* If a shipment is urgent, the contracting officer (or the cognizant field contract administrator, as directed or authorized by the contracting officer) may issue dispatch shipping instructions to the contractor or oral instructions may be given which should be immediately confirmed in writing and incorporated in a contract modification. Obtain advice of military traffic management officers before issuing dispatch or oral shipping instructions to ensure the most expeditious and economical method of transportation.

(c) *Late deliveries.* The Government shouldn't pay a premium for transportation used to meet required delivery dates.

SUBPART 5247.5--OCEAN TRANSPORTATION BY U.S.-FLAG VESSELS

5247.572 Procedures.

5247.572-1 (DFARS 247.572-1) Ocean transportation incidental to a contract for supplies, services, or construction.

(d)(3)(iii) Forward the report to the Secretary of the Navy via ABM, for a determination as to whether the proposed freight charges are excessive or otherwise unreasonable.

5247.572-2 (DFARS 247.572-2) Direct purchase of ocean transportation services.

(d)(3)(iii) Forward the report to the Secretary of the Navy via ABM, for a determination as to whether the proposed freight charges are excessive or otherwise unreasonable.

Rationale: To implement changes to these subsections made by DFARS Change Notice 20000817.

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PART 5248

VALUE ENGINEERING

SUBPART 5248.1--POLICIES AND PROCEDURES

~~5248.102 Policies.~~

~~—Contracting officers are authorized to modify the "Value Engineering" clause in accordance with the prescriptive language at FAR 52.248-1.~~

~~*Rationale: The prescription language at FAR 52.248-1 no longer addresses modifying the clause.*~~

5248.103 Processing value engineering change proposals.

(a) HCAs are responsible for establishing procedures for processing and evaluating VECPs, consistent with the requirements of FAR Part 48.

Rationale: In lieu of establishing agency-wide procedures (see FAR 48.103(a)), this NAPS coverage assigns HCAs the responsibility for establishing such procedures. This will enable the procedures to be tailored to the needs of each HCA.

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PART 5250

EXTRAORDINARY CONTRACTUAL ACTIONS

SUBPART 5250.1--GENERAL

5250.105 (DFARS 250.105) Records.

(1)(iii) HCAs are the officials responsible for preparation and submission of the required records. Forward records to ABM.

SUBPART 5250.2--DELEGATION OF AND LIMITATIONS OF EXERCISE OF AUTHORITY

5250.201 Delegation of authority.

5250.201-70 (DFARS 250.201-70) Delegations.

(a) *Military Departments*. Subject to the restrictions on delegations of authority in DFARS 250.201(b) and FAR 50.201 and 50.203, HCAs may exercise and redelegate the authority contained in the Act and Executive Order.

(4 i) HCAs may deny any request, regardless of dollar value.

(2 ii) Requests to obligate the Government in excess of \$50,000 must be submitted to ASN(RD&A) for approval.

Rationale: To include the introductory title at DFARS 250.201-70(a) and to more accurately conform to the numbering prescribed by FAR/DFARS 1.303/201.303 "Publication and codification."

5250.202 (DFARS 250.202) Contract adjustment boards.

Members and alternate members shall be appointed by the ASN(RD&A).

SUBPART 5250.3--CONTRACT ADJUSTMENTS

5250.305 Processing cases.

(b) The contracting activity responsible for processing a contractor's request for contractual adjustment under a DoN contract is responsible for establishing liaison and joint action with other Military Departments and other departments and agencies of the Government, until the case is submitted to the Navy Contract Adjustment Board for disposition.

5250.306 Disposition.

5250.306-70 (DFARS 250.306-70) Record of disposition.

(a) When a contractor's request is denied below the Secretarial level, the contracting officer of the activity which forwarded the case to the board shall furnish a letter to the contractor explaining the denial.

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SUBPART 5250.4--RESIDUAL POWERS

5250.403 Special procedures for unusually hazardous or nuclear risks.

5250.403-2 Action on indemnification requests.

~~(a)~~ (b) Requests for authorization to use the clause prescribed at FAR 50.403-3 shall be submitted with sufficient justification to the Secretary of the Navy via ABM.

Rationale: *This is an implementation of paragraph (b) of the FAR vice (a).*

5250.403-2 Action on Indemnification requests.

5250.403-90 Notification of any claim or action against, or any loss by, a contractor or subcontractor.

The Contracting Officer shall immediately inform ABM, in writing, upon receipt of notification from the Contractor, pursuant to paragraph (g) of the FAR clause 52.250-1, of any claim or action against, or any loss by, the Contractor or any subcontractors in excess of \$100,000 that may reasonably be expected to involve indemnification under the clause. The information to be provided to ABM should include the contractor's name; contract number; brief description of the supplies or services being acquired; contract price or estimated cost; a brief description of the claim or action against, or loss; the estimated dollar amount of the Government's potential liability; and the name and phone number of the action officer.

Rationale: The proposed deletion of NAPS 5228.301(91) will remove the procedures to be followed in making all payments under contracts in which the Government assumed the risk of liability to third parties and such liability is not compensated for by insurance or otherwise. These procedures required the submission of pertinent information to ABM for a determination as to whether the Government has assumed liability for the claim and so, the amount to be paid. Since ABM will no longer be making such determinations, a notification requirement is being established whereby ABM will be informed of any suit or action filed or any claim made against the Contractor in excess of \$100,000.

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PART 5252

SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 5252.1--INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES

5252.101 Using part 52.

(b) *Numbering.*

(2)(ii) Clause numbers for provisions and clauses in this supplement, as well as standard component clauses, consist of 11 digits assigned as follows:

<u>POSITION</u>	<u>NUMBER</u>	<u>EXPLANATION</u>
1-2	52	Indicates Chapter 52 in Title 48 of the CFR
3-5	52.2	Indicates correspondence with FAR Subpart 52.2, "Texts of Provisions and Clauses".
6-7	XX-	Indicates part number in FAR or DFARS which clause implements or supplements.
8-11	9XXX	Sequences clauses within part number and indicates originating activity:

9000-9099 NAPS (OASN(RD&A))

9100-9199 NAVSEA

9200-9299 SPAWAR

9300-9399 NAVFAC

9400-9499 NAVSUP

9500-9599 NAVAIR

9600-9649 SPAWAR

9650-9699 MC

9700-9749 ONR

9750-9799 SSP

9800-9899 MSC

9900-9999 RESERVED

SUBPART 5252.2--TEXTS OF PROVISIONS AND CLAUSES

5252.200 Scope of subpart.

This subpart sets forth the texts of all NAPS provisions and clauses and for each, gives a cross-reference to the location in the NAPS that prescribes its use.

5252.201-9000 CIVIL WORKS--DELEGATION TO NAVAL FACILITIES ENGINEERING COMMAND

As prescribed in 5201.601(90)(b)(2), insert the following clause:

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CIVIL WORKS--DELEGATION TO NAVAL FACILITIES ENGINEERING COMMAND (APR 84)

(a) The Commander, Naval Facilities Engineering Command, having cognizance of the construction of all items at privately operated establishments which would constitute Public Utilities if constructed at a Shore Establishment of the Navy (such items being hereinafter referred to as Civil Works), is hereby designated as the authorized representative of * _____ with respect to any such Civil Works called for by this contract, said delegation including but not being limited to the performance of the following functions:

- (1) Approving selection and compensation of an architect or engineer;
- (2) Approving the selection and fee of a general building contractor;
- (3) Consent to the placement of any subcontract for Civil Works;
- (4) Approving any plans or specifications;
- (5) Approving of major alterations or increased cost within the estimated cost set forth in this contract for Civil Works;
- (6) Inspection, supervision, administration of the terms of the subcontract and acceptance of performance;
- (7) Monitoring compliance with labor standards requirements; and
- (8) Ordering or approving changes relating to the Civil Works.

(b) The _____ **, acting for the Commander, Naval Facilities Engineering Command, will have jurisdiction only over the Civil Works design, construction and installation, unless otherwise specifically provided in this contract or unless otherwise determined by mutual agreement between the contracting office and the Naval Facilities Engineering Command.

* identify activity

** insert name and address of cognizant NAVFACENGCOM Division

(End of Clause)

5252.211-9000 NOTICE TO OFFERORS - USE OF OZONE DEPLETING SUBSTANCES

As described in 5211.271(90), a provision substantially the same as the following may be included in solicitations:

NOTICE TO OFFERORS--USE OF OZONE DEPLETING SUBSTANCES (AUG 93)

(a) In accordance with section 326 of Pub L.102-484, the Department of Defense is prohibited from awarding any contract which includes a DoD-directed specification or standard that requires the use of a Class I ozone depleting substance (ODS) or that can be met only through the use of such a substance unless such use has been

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approved by a senior acquisition official (SAO). The SAO approval is based on a technical certification that no suitable substitute for the ODS is currently available.

(b) To comply with this statute, the Navy has screened the specifications and standards associated with this solicitation. To the extent that ODS requirements were revealed by this review they are identified below:

Class I ODS Identified

Specification/Standard

(c) If offerors possess knowledge about any other Class I ODS required directly or indirectly by the specification or standards, the Navy would appreciate such information in your response to this solicitation. Offerors are under no obligation to comply with this request and no compensation can be provided for doing so.

(End of Notice)

5252.223-9000 DoN ADDITIONAL SAFETY REQUIREMENTS APPLICABLE TO SPECIFIED GOVERNMENT FURNISHED AMMUNITION AND EXPLOSIVES

As prescribed at 5223.370-5, insert the following clause in the schedule of the contract:

DoN ADDITIONAL SAFETY REQUIREMENTS APPLICABLE TO SPECIFIED GOVERNMENT FURNISHED AMMUNITION AND EXPLOSIVES (OCT 1997)

The following additional safety requirements apply to Government Furnished Material (GFM) Ammunition and Explosives (A&E) containing nitrocellulose-based propellants and/or nitrate ester-based materials (such as nitroglycerin,) or such other similar A&E provided as GFM and designated by the Contracting Officer which have a tendency to become chemically unstable over time:

(a) The Contractor shall maintain inventory control records of potentially unstable GFM A&E by National Stock Number (NSN) or part number, lot number, nomenclature, storage location, quantity and date of receipt.

(b) The Contractor shall comply with any Government notice concerning any restrictions, suspensions and limitations imposed by the cognizant Government component on GFM A&E to ensure that the materials are safe for continued storage.

(c) Upon receipt of a notice from the Government of reclassification actions taken by the Government that render GFM A&E unserviceable, suspended or restricted, the Contractor shall immediately follow the instructions contained within the notice.

(d) When directed by the Government, the Contractor shall ship samples of GFM A&E in its possession to the Government testing facilities. GFM A&E samples will be shipped with the Contract Number, NSN or part number, lot number, nomenclature and quantity clearly marked on the Bill of Lading. Failure to comply may result in rejection

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and/or disposal of the material at the destination at the expense of the Contractor. Any costs associated with the rejection and/or disposal of non-compliant or unauthorized shipments shall be borne by the Contractor.

(e) Within 30 days of completion or termination of the contract, the Contractor shall request disposition instructions from the Contracting Officer for any residual, unserviceable, suspended or restricted GFM A&E. The Contracting Officer shall provide disposition instructions to the Contractor not later than 90 days after they are requested.

(f) If disposition instructions direct shipment to a Government disposal or storage activity, the Contractor shall obtain verification of the contents and marking by the contract administration office Quality Assurance Representative prior to shipment. Additionally, the Contractor shall notify the receiving activity 30 days prior to shipment and provide a detailed list of GFM A&E being returned. Returned materials will be shipped with the Contract Number, NSN or part number, lot number, nomenclature and quantity clearly marked. Failure to comply may result in rejection and/or disposal of the material at the destination at the expense of the Contractor. Any costs associated with the rejection and/or disposal of non-compliant or unauthorized shipments shall be borne by the Contractor.

(g) If the Contractor has the capability to dispose of these materials at its facility and has been instructed to do so through disposition instructions, the Contractor shall provide written notice to the Contracting Officer identifying the materials it is disposing of by the Contract Number, NSN or part number, lot number, nomenclature and quantity, and the date the disposition of the materials was accomplished.

(h) If direction issued under the clause causes an increase in the cost of performance under this contract, the Contracting Officer shall make an equitable adjustment in the contract price.

(End of clause)

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5252.232-9000 SUBMISSION OF INVOICES (FIXED PRICE)

As prescribed at 5232.908(a), insert the following clause:

SUBMISSION OF INVOICES (FIXED PRICE) (JUL 1992)

(a) "Invoice" as used in this clause does not include contractor requests for progress payments.

(b) The contractor shall submit original invoices with copies to the address identified in the solicitation/contract award form (SF 26-Block 10; SF 33-Block 23; SF 1447-Block 14), unless delivery orders are applicable, in which case invoices will be segregated by individual order and submitted to the address specified in the order (DD 1155-Block 13 or SF 26-Block 10).

(c) The use of copies of the Material Inspection and Receiving Report (MIRR), DD Form 250, as an invoice is encouraged. DFARS Appendix F-306 provides instructions for such use. Copies of the MIRR used as an invoice are in addition to the standard distribution stated in DFARS F-401.

(d) In addition to the requirements of the Prompt Payment clause of this contract, the contractor shall cite on each invoice the contract line item number (CLIN); the contract subline item number (SLIN), if applicable; the accounting classification reference number (ACRN) as identified on the financial accounting data sheets, and the payment terms.

(e) The contractor shall prepare:

 * a separate invoice for each activity designated to receive the supplies or services.

 * a consolidated invoice covering all shipments delivered under an individual order.

 * either of the above.

(f) If acceptance is at origin, the contractor shall submit the MIRR or other acceptance verification directly to the designated payment office. If acceptance is at destination, the consignee will forward acceptance verification to the designated payment office.

* Check applicable procedure.

(End of clause)

Alternate I (JUL 1992). As prescribed at 5232.908(a), add the following paragraph (g) to the basic clause:

(g) Submit invoices monthly to the Government representative named in the contract for approval of hours actually expended.

NAVY ACQUISITION PROCEDURES SUPPLEMENT

5252.232-9001 SUBMISSION OF INVOICES (COST-REIMBURSEMENT, TIME-AND-MATERIALS, LABOR-HOUR, OR FIXED PRICE INCENTIVE)

As prescribed at 5232.908(b), insert the following clause:

SUBMISSION OF INVOICES (COST-REIMBURSEMENT, TIME-AND-MATERIALS, LABOR-HOUR, OR FIXED PRICE INCENTIVE) (JUL 1992)

(a) "Invoice" as used in this clause includes contractor requests for interim payments using public vouchers (SF 1034) but does not include contractor requests for progress payments under fixed price incentive contracts.

(b) The Contractor shall submit invoices and any necessary supporting documentation, in an original and _____ copies, to the contract auditor* at the following address:

unless delivery orders are applicable, in which case invoices will be segregated by individual order and submitted to the address specified in the order. In addition, an information copy shall be submitted to _____.

Following verification, the contract auditor* will forward the invoice to the designated payment office for payment in the amount determined to be owing, in accordance with the applicable payment (and fee) clause(s) of this contract.

(c) Invoices requesting interim payments shall be submitted no more than once every two weeks, unless another time period is specified in the Payments clause of this contract. For indefinite delivery type contracts, interim payment invoices shall be submitted no more than once every two weeks for each delivery order. There shall be a lapse of no more than _____ calendar days between performance and submission of an interim payment invoice.

(d) In addition to the information identified in the Prompt Payment clause herein, each invoice shall contain the following information, as applicable:

- (1) Contract line item number (CLIN)
- (2) Subline item number (SLIN)
- (3) Accounting Classification Reference Number (ACRN)
- (4) Payment terms
- (5) Procuring activity
- (6) Date supplies provided or services performed
- (7) Costs incurred and allowable under the contract
- (8) Vessel (e.g., ship, submarine or other craft) or system for which supply/service is provided.

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(e) A DD Form 250, "Material Inspection and Receiving Report",
_____ is required with each invoice submittal.
_____ is required only with the final invoice.
_____ is not required.

(f) A Certificate of Performance
** _____ shall be provided with each invoice submittal.
** _____ is not required.

(g) The Contractor's final invoice shall be identified as such, and shall list all other invoices (if any) previously tendered under this contract.

(h) Costs of performance shall be segregated, accumulated and invoiced to the appropriate ACRN categories to the extent possible. When such segregation of costs by ACRN is not possible for invoices submitted with CLINS/SLINS with more than one ACRN, an allocation ratio shall be established in the same ratio as the obligations cited in the accounting data so that costs are allocated on a proportional basis.

* In contracts with the Canadian Commercial Corporation, substitute "Administrative Contracting Officer" for "contract auditor".

** Check appropriate requirements.

(End of clause)

Alternate I (JUL 1992). As prescribed at 5232.908(b), add the following paragraph (i) to the basic clause:

(i) When a vendor invoice for a foreign currency is provided as supporting documentation, the Contractor shall identify the foreign currency and indicate on the vendor invoice the rate of exchange on the date of payment by the Contractor. The Contractor shall also attach a copy of the bank draft or other suitable documents showing the rate of exchange. The contractor shall provide an English translation if the vendor invoice is written in a foreign language.

(End of Clause)

Alternate II (DEC 1996). As prescribed at 5232.908(b), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b)(i) In accordance with DFARS 242.803(b)(i)(C), the cognizant Defense Contract Audit Agency (DCAA) auditor has authorized the contractor to submit interim invoices directly to paying offices. This authorization does not extend to the first and final invoices, which shall be submitted to the contract auditor at the following address:

NAVY ACQUISITION PROCEDURES SUPPLEMENT

A copy of every invoice shall also be provided to the individual listed below, at the address shown (if completed by the contracting officer):

In addition, a copy of the final invoice shall be provided to the Administrative Contracting Officer (ACO).

(ii) Upon written notification to the contractor, DCAA may rescind its authorization for the contractor to submit interim invoices directly to the paying offices. Upon receipt of such written notice the contractor shall immediately begin to submit all invoices to the contract auditor at the above address.

(iii) Notwithstanding (i) and (ii), when delivery orders are applicable, invoices shall be segregated by individual order and submitted to the address(es) specified in the order.

5252.232-9002 INVOICES FOR CLASSIFIED CONTRACTS

As prescribed at 5232.908(c), insert the following clause:

INVOICES FOR CLASSIFIED CONTRACTS (JUL 1992)

To prevent disclosure of classified information, invoices submitted under this contract shall be so prepared that the supplies or services covered thereby can be identified only by reference to the contract. For example, the invoices may state "Contract N Item 0001, 100 EA @\$1.00 = \$100.00" The security classification shown on the contract shall not appear on the invoice.

(End of clause)

5252.232-9003 SUBMISSION OF INVOICES IN CONTRACTS FOR LEASE, RENTAL AND/OR MAINTENANCE SERVICES

As prescribed at 5232.908(d), insert the following clause:

SUBMISSION OF INVOICES IN CONTRACTS FOR LEASE, RENTAL AND/OR MAINTENANCE SERVICES (JUN 1993)

(a) The Contractor shall submit original invoices with three (3) copies to the address identified on the solicitation/contract award form (SF 26 - Block 10; SF 33 - Block 23; SF 1447 - Block 14) unless delivery orders are applicable, in which case invoices will be segregated by individual order and submitted to the address specified in the delivery order, including a named individual if applicable, for certification prior to payment.

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(b) In addition to the information identified in the clause entitled "Prompt Payment" herein, invoices shall include the following information:

- (1) Contract line item number (CLIN).
- (2) Contract subline item number (SLIN), if applicable
- (3) Accounting classification reference number (ACRN)
- (4) Payment terms.
- (5) Name and serial number of equipment provided or serviced.
- (6) Total charges and, if applicable, the prompt payment discount.

(c) The Contractor shall submit invoices for basic monthly charges in the month following the month for which the charges accrue and not more than on a monthly basis. Payment for rental or services of less than one month's duration shall be pro-rated at 1/30th of the basic monthly charges for each calendar day.

(d) If maintenance credits apply, the procedures indicated below are applicable:

_____ The Government will request in writing that the applicable credits for the month be applied against other charges. The request will list the following information: Type and model number(s) of machine(s), date of occurrence, period of downtime, and credit due. Invoices for remedial (on-call) maintenance will be accompanied by copies of the applicable malfunction reports regarding the on-call maintenance furnished.

_____ The Government will deduct the credits from the monthly invoice and inform the Contractor in writing the reason for the credit and include the date of the occurrence, period of downtime and/or response time, credit due and the type and model number of the equipment.

(End of clause)