

| [1/10/97 1600hrs](#)

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)..

5201.102 Authority.

| The NAPS is issued pursuant to the authority of SECNAVINST 5400.15A.

5201.103 Applicability.

The NAPS applies to all DoN activities in the same manner and to the same extent as specified in FAR 1.103.

5201.104 Issuance.

5201.104-2 Arrangement of regulations.

(c) *References and citations.*

(2) Cross reference to the FAR in this supplement will cite "FAR" followed by the appropriate part, subpart, etc. Cross reference to the Defense FAR Supplement will cite "DFARS" followed by the appropriate part, subpart, etc. References 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, 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)).

| **5201.104-90 Distribution.** The distribution list for all FAR and DFARS materials is maintained by ABM. Forward requests for additions, deletions or changes (including quantity changes) to the distribution list to ABM, Washington, D.C. 20350-1000. Report discrepancies in distribution such as quantity errors, late or non-receipt of the above material(s) to the Defense Distribution Depot, Susquehanna, Pennsylvania, Bldg. #5, 5450 Carlisle Pike, Mechanicsburg, PA 17055-0789.

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. 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.

To the extent possible, all NAPS text (whether implementing or supplemental) is numbered as if it were implementing the FAR or DFARS. The coverage uses the same numbers as its FAR or DFARS counterpart, preceded by the prefix "52". For supplemental numbering, the NAPS adds 90 (and up if necessary) for subparts, sections, or subsections, and adds S-90 and up to lower divisions.

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).

(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/NAPS 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) The statement of work and specifications 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) Each contracting activity shall publish new component clauses or changes to existing component clauses that require USD(A&T) 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. Copies of all other standard component clauses or changes shall be provided to ABM for inclusion in the Navy clause baseline.

(c) Deviations from 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(A&T) DDP. The HCA may approve other deviations from standard component clauses.

(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.

(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 ASN(RDA)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.

- (1) Submit requests for deviations which require USD(A&T) DDP approval to ABM.
 - (ii) Deviations involving basic agreements, basic ordering agreements, or master agreements are considered class deviations.
- (2) ABM is the approval authority for:
 - (i) individual deviations from the FAR or DFARS other than those specified in DFARS 201.402(1)(i), except that
 - (A) An individual deviation from the maximum fee limitations set forth in FAR 15.903(d)(2) may be granted by the HCA or designee not below the level of the Deputy/Assistant Commander for Contracts;.
 - (B) In the case of a purchase or contract of 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) individual or class deviations from NAPS.
 - (iii) deviations from certain component clauses (see 5201.304(4)).

SUBPART 5201.6--CONTRACTING AUTHORITY AND RESPONSIBILITIES

5201.601-90 Department of the Navy authorities and responsibilities.

(a) **Assistant Secretary of the Navy (Research, Development and Acquisition) (ASN(RD&A))**. SECNAVINST 5400.15A 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 architect-engineer, construction and facilities support contracts.

(2) Administration of construction portions of contracts.

(i) 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;

(2) contracting for supplies and services throughout the DoN for which no other contracting activity, office or command is delegated contracting authority; and

(3) managing the Navy Field Contracting System (NFCS), which includes all contracting offices that receive procurement authority from COMNAVSYSOCOM.

5201.602 Contracting officers.

5201.602-1 Responsibilities.

Contract documents should be forwarded to the appropriate attorney or attorneys in the OGC for review as to form and legality and any additional pertinent comment or advice.

5201.602-2 (DFARS 5201.602-2) Responsibilities.

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

5201.602-3 Ratification of unauthorized commitments. HCAs may ratify unauthorized commitments, and may delegate this authority to a level no lower than the CCO.

5201.692 Procurement Management Review.

5201.692-1 Purpose. The primary objective of procurement management review (PMR) is to improve management of the procurement function by recommending process improvements. PMR also provides training and expedites the adoption of

"best practices" throughout the Navy.

5201.692-2 Responsibilities

(a) ABM shall:

(1) Oversee the procurement management review program.

(2) (2) Conduct PMRs of HCAs and other designated Navy contracting activities.

(b) HCAs are responsible for PMRs of their field contracting activities.

(c) The Commander, Naval Supply Systems Command (COMNAVSUPSYSCOM) is responsible for PMRs of Navy Field Contracting System activities, and other activities as directed by ABM or higher level authority.

(d) Fleet and Type Commanders are responsible for PMRs of afloat units. Such reviews may be a part of regularly scheduled Supply Management Inspections (SMIs).

5201.692-4 PMR requirements.

Each contracting activity assigned PMR responsibility should prepare and maintain a schedule of reviews, and conduct PMRs of all contracting activities under its cognizance. Typically, reviews should be held every three to five years, depending on performance indicators and the results of prior reviews.

Timely implementation of PMR recommendations, with follow-up reviews as necessary, are critical to maintaining an effective program. In particular, if a procurement operation is found unsatisfactory, the HCA should be informed promptly so that appropriate action (generally reduction or removal of the activity's contracting authority) can be taken. ABM must be provided copies of PMR reports resulting in an unsatisfactory rating, and with correspondence and follow-up reports documenting corrective action.

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).

"ASN(FM)" means Assistant Secretary of the Navy (Financial Management).

"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 at a Systems Command or the equivalent at the Headquarters, Naval Facilities Engineering Command; Marine Corps Systems Command; Marine Corps Installation and Logistics; Office of Naval Research; Military Sealift Command; Strategic Systems Programs; and the Naval Information Systems

Management Center. It also includes the principal deputy for these officials.

"Director, SADBU" 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" mean the Department of Navy including the Marine Corps, unless otherwise specified.

"NISMC" means the Naval Information Systems Management Center.

"NFCS" means the Navy Field Contracting System.

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

"PEO" means Program Executive Officer.

"SPAWARSYSCOM" means Space and Naval Warfare Systems Commands.

"USD(A&T)" means Under Secretary of Defense (Acquisition).

"USD(A&T) DDP" means Under Secretary of Defense (Acquisition), Director, Defense Procurement.

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.

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.

PART 5204

ADMINISTRATIVE MATTERS

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--CONTRACT FILES

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.

SUBPART 5204.70(DFARS 204-70) UNIFORM PROCUREMENT INSTRUMENT IDENTIFICATION NUMBERS

5204.7003 Basic PII number.

5204.7003-1 Elements of number.

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

5204.7004 Orders placed against another activity's contract or agreement. (DFARS 294.7004)

- (d)(2) 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.

PART 5205

PUBLICIZING CONTRACT ACTIONS

SUBPART 5205.3--SYNOPSES 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.
 - A) Letter contracts and advance acquisition contracts with a ceiling amount

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exceeding the threshold are to be announced at the ceiling amount at the time of issuance of the contract.

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

(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) Five copies of the announcement.

(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.

(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 a "contract option" or negotiated a "change" to a contract). Sample formats of announcements are illustrated below. Formats may be altered to suit the circumstances of the contracting action.

(i) Contract change

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

(A) This change 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 change 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 change 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 change provides for the purchase of an additional (quantity and item purchased). The contractor indicates that the work (is being) (will be) performed at (city and state).

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 procurement estimates should be considered for all contract actions expected to exceed \$1 million in a fiscal year.

PART 5206

COMPETITION REQUIREMENTS

5206.003 Definitions.

"Procuring activity". Navy activities with contracting authority in excess of \$100,000 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) For a proposed contract not exceeding \$50,000,000, the approval level is the HCA, or a designee who

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

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

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 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.

—(iii) The planning documents in current use by the program manager (and Integrated Product Team, if applicable) should be reviewed concurrent 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.

(S)(90) J&As requiring NSPE approval should be accompanied by current, consistent planning documentation. This should be the Acquisition Strategy Report, if one exists for the program. Otherwise, it may be the acquisition plan, the Integrated Product Team's agreement, or whatever document is 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.

5206.303-92 Review.

(a) 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.

5206.304 Approval of the justification.

(c)(1) Class justifications shall be approved in the same manner as individual justifications with the same approval threshold. The cumulative dollar value of all actions contemplated under the class justification will be used to determine the approval authority for the class justification.

(2) If the dollar value of the contract exceeds the dollar threshold of the original approval authority, new justification approval must be obtained from the appropriate approval authority.

PART 5207

ACQUISITION PLANNING

SUBPART 5207.1--ACQUISITION PLANS

5207.102 Policy.

(b) The acquisition plan should be the document actually used to coordinate and integrate the acquisition effort. Provided that the requirements of FAR 7.104 and 7.105 are generally met, officials authorized to approve APs may designate a planning document, such as the plan agreed to by a formally chartered Integrated Product Team, as the written acquisition plan, and HCAs with detailed acquisition planning systems in place may designate the written product of these systems as the acquisition plan. Single Acquisition Master Plans meet the requirement for acquisition plans.

5207.103 (DFARS 207-103) Agency-head responsibilities.

(a) 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.

(f) 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 or designee and the contracting officer.

PART 5208

REQUIRED SOURCES OF SUPPLIES AND SERVICES

SUBPART 5208.8--ACQUISITION OF PRINTING AND RELATED SUPPLIES

5208.802 Policy.

(a) Publications and printing may not be procured as an integral part of a DoN contract or grant unless authorized by the Congressional Joint Committee on Printing or unless a waiver has been obtained from the Public Printer (Government Printing Office).

5208.7002 (DFARS 208.7002) Assignment authority.

(a) Responsibilities under coordinated acquisition.

When the DoN has received a contracting assignment under the DOD Commodity Assignment Program, the Commander, NAVSUPSYSCOM will assign contracting responsibilities to a particular contracting activity.

SUBPART 5208.90--SERVICES OF SHIPS AND CRAFT

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.

PART 5209

CONTRACTOR QUALIFICATIONS

SUBPART 5209.1--RESPONSIBLE PROSPECTIVE CONTRACTORS

5209.103 (DFARS 209.103) Policy.

(a)(i)(C) Submit requests for USD(A&T) 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 Policy.

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

5209.404 Parties Excluded from Procurement Programs.

(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.

(c)(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.

5209.405 Effect of listing.

(a) ASN(RD&A) will provide the written statement of the compelling reasons. Submit requests for approval to ABM with justification for the proposed consent action.

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) 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:

(G) The summary shall 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.

(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.

5209.407 Suspension.

5209.407-3 Procedures.

(a) *Investigation and referral.*

Prepare and process reports in accordance with 5209.406-3.

**SUBPART 5209.5--ORGANIZATIONAL AND CONSULTANT CONFLICT
OF INTEREST**

5209.503 Waiver.

The HCA may make the determinations required by FAR 9.503.

PART 5210

SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

5210.002 Policy

**5210.002-71 (DFARS 210.002-71)--Elimination of Use of Class I Ozone Depleting
Substances (ODS)**

5210.002-71-90 Definitions.

For purposes of implementing Pub. L.102-484, Section 326:

"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.

"Requiring activity" means the activity originating the procurement request(PR).

"Senior acquisition official (SAO)" means an official at a level 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.

5210.002-71-91 Technical reviews and Approvals.

(a) The requiring activity shall review the requirements and applicable specifications and standards for class I ODS. If 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" distributed by NAVSEA 03V.

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

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

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

(d) When review of an existing contract reveals a substitute substance or alternate technology is suitable and economically feasible, the SAO or designee may execute the determinations (see TABLE 5210-91)

(e) Sample formats for technical certifications and SAO approval/determination for new and existing contracts are shown in TABLEs 5210-90 through 5210-93.

5210.002-71-92 Reporting Requirements.

(a) Responsibility.

(i) Each SAO granting an approval or making determination authorizing the use of an ODS shall report each approval or SAO/designee determination (see 5210.002-71-91(d) to OASN(RD&A)ABM, or to such other office as may be otherwise designated for purposes of submission of consolidated reports to OASN(RD&A)ABM.

(ii) The report of SAO approvals/ determination shall include the estimated quantity of ODS through contract completion for the period otherwise covered by the approval/determination.

(iii) For new contracts, the SAO approval shall be reported for the year-quarter in which the SAO approval is signed, not when contract is awarded.

(b) *Frequency.* The SAO report shall be submitted annually to OASN(RD&A)ABM no later than January 15 for of approvals or determinations executed during the preceding calendar year.

(c) *SAO Class Approvals.* Any activity using an SAO class approval for procurement action 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 OASN(RD&A)ABM.

(d) *Format.* Navy activities shall structure reports submitted to ASN(RD&A)ABM as indicated in the sample formats in TABLE 5210-94. These simplified report formats replace all earlier versions.

5210.011-90(DFARS 210.011) Solicitation provisions and contract clauses.

Offerors should be encouraged to share with the Navy any knowledge they might have regarding Class I ozone-depleting substances required by specifications or standards in a solicitation. The contracting officer may include a provision substantially similar to the provision at 5210.210-9000, Notice to Offerors - Use of Class I Ozone Depleting Substances, in solicitations, if considered appropriate.

PART 5211

ACQUISITION AND DISTRIBUTION COMMERCIAL PRODUCTS

SUBPART 5211.70 (DFARS 211.70)– CONTRACTING FOR COMMERCIAL ITEMS

5211.7003 Applicability.

5211.7003-2

(a) HCAs may make the determination.

PART 5213

SIMPLIFIED ACQUISITION PROCEDURES

SUBPART 5213.1--GENERAL

5213.103 Policy.

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

PART 5214

SEALED BIDDING

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.

5214.4076 Mistakes in bids.

5214.4076-3 (DFARS 214.406-3) Other mistakes disclosed before award.

(e)(1) The HCA may make the determination required by FAR 14.407-3(a), (b) and (d).

PART 5215

CONTRACTING BY NEGOTIATION

SUBPART 5215.1 GENERAL REQUIREMENTS FOR NEGOTIATION

5215.104(90) Business clearance.

(a) Business clearance is the process of obtaining approval of the business aspects of a negotiated contract from a higher level contracting officer or supervisor. Generally, “pre-“ and “post” clearance is required for each contract. Business clearance memoranda (BCM) document the basis for approval. ~~tract.~~ Activity procedures may provide for oral business clearance, or waiver of either pre- or post-clearance, but BCMs should still be prepared for the file.

(b) For competitive acquisitions, the pre-BCM provides the basis for the competitive range decision, and presents a chronology of the acquisition up to the determination of competitive range.

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, only a post-BCM is required.

(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 sets forth the Government’s negotiation objectives. It generally includes a discussion, by cost element, of the bases for the contractor’s proposal and the Government objective, DCAA and other Government pricing recommendations and the analysis done by the negotiating team are fully discussed.

The post-BCM describes the results of negotiations. 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 price negotiation memorandum described by FAR 15.808, 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 and pricing data in sufficient detail to provide a basis for Government recovery in the event any of the data proves inaccurate.

**SUBPART 5215.4--SOLICITATION AND RECEIPT OF PROPOSALS
AND QUOTATIONS**

5215.407 Solicitation provisions.

~~(S-90) If it is anticipated that an award will be based on adequate price competition, the solicitation shall include the provision at 5252.215-9000. If the procurement schedule is critical, this provision with its Alternate I shall be used so that there will be a minimum delay in the event that adequate price competition does not materialize and it is necessary to obtain cost or pricing data. Contracting officers must be judicious in the use of the Alternate I provision, as it may cause offerors to incur certain costs in preparing standby cost or pricing data in anticipation that it may be subsequently requested.~~

5215.411 Receipt of proposals and quotations.

(b) Each contracting office shall establish procedures to ensure compliance with

(c) FAR 15.411(b) and 15.413. Where facilities permit, competitive proposals and quotations should be held in a central locked storage for the purpose of

identification until after the established date for their receipt.

SUBPART 5215.6--SOURCE SELECTION

5215.601 Definitions.

~~"Best Value", as used in this subpart, means the evaluation of proposals and selection of a source based on cost/price, and other evaluation factors such as technical competence, proven past performance, management capability, life cycle costs, and quality.~~

5215.604 Responsibilities.

~~(c) The USD(A&T) intends to review selected major defense acquisition programs prior to their release or execution. In order to facilitate this USD(A&T) review, the contracting officer shall notify APIA at least 35 days in advance of his or her intention to issue a solicitation, announce the offeror selected, or award a contract for the demonstration/validation, engineering and manufacturing development, or initial production phases of a major defense acquisition program (Acquisition Category (ACAT) ID or IC). Contracting officers shall not release the solicitation, announce the winner of a contract, or make an award until the completion of the USD(A&T) review.~~

5215.605 Evaluation factors.

~~(c) Best value evaluations should be employed whenever possible and especially in weapons system, federal information processing (FIP), and professional and technical services support acquisitions. Requirements which dictate complex integration of people, equipment, hardware, innovation and software should also be evaluated on a best value basis. However, when noncomplex, routine requirements are being procured and the product to be delivered is clearly defined at the outset of the procurement, it may be appropriate to award to the lowest priced, technically acceptable offeror.~~

(e) 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.

5215.608 Proposal evaluation.

(a)(1) *Cost or price evaluation.* ~~When a numerical scoring scheme is used, cost or price shall not be scored unless such scoring is approved in advance by either the SSA in a formal source selection or the CCO in other evaluations.~~ Methods of evaluation which assign a point score to cost 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 and tend to obscure the tradeoff between cost and other factors, rather than clarifying it. If point scoring of cost is utilized, an analysis should be performed which demonstrates that points assigned to the different evaluation factors are comparable in value to the Government. ~~When a cost realism analysis will be performed, the resulting realistic cost estimate shall be used in the evaluation of cost.~~

5215.610 Written or oral discussions.

~~-(a)(4) Acceptance of the most favorable initial proposal without discussions is encouraged.~~

5215.611 (DFARS 215.611) Best and final offers.

~~(c)(iii)(C) The HCA shall provide the required summary reports to the NSPE annually on a semi-annual basis. The reports shall cover the six month period ending 31 March, and 30 September and Reports shall be submitted to the NSPE via ABM within 30 15-calendar days after the end of each fiscal year the reporting period.~~

5215.612 Formal source selection.

~~-(a) General. A source selection process within the DoN is considered formal when it follows the policy and procedures of SECNAVINST 4200.33 dated 14 July 1986.~~

SUBPART 5215.8--PRICE NEGOTIATION

5215.805 Proposal analysis.

5215.805-1 General.

(a) Approval for use of contractor personnel as evaluators is addressed in FAR Part 37. Such contractor personnel shall not rank or recommend one proposal over another, assign any 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.

5215.805-70 (DFARS 215.805-70) Cost realism analysis.

(S-90) Cost realism analysis involves a summary level review of the cost portion (excluding profit/fee) of the offerors' proposals to determine if the overall costs proposed are realistic for the work to be performed. ~~Cost realism analysis differs from the detailed cost analysis usually undertaken in a noncompetitive procurement to determine the reasonableness of the various cost elements and profit/fee to arrive at a fair and reasonable price.~~

The purpose of cost realism analysis is to:

- (1) Verify the offeror's understanding of the requirements;
 - (2) Assess the degree to which the cost/price proposal reflects the approaches and/or risk assessments made in the technical proposal as well as the risk that the offeror will provide the supplies or services for the offered prices/costs; and
 - (3) Assess the degree to which the cost included in the cost/price proposal accurately represents the work effort included in the technical proposal.
- Some examples of data and information that may be obtained to perform cost realism evaluation are manloading (quantity and mix of labor hours); engineering, labor and overhead rates; and make or buy plans.

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

obtained by the contracting officer (e.g. information on recent Forward Price Rate Agreements (FPRAs)).

5215.1004 Debriefing of unsuccessful offerors.

(d) (2). Include information about the Government's cost realism analysis and its effect on the offeror's evaluated cost.

PART 5219

SMALL BUSINESS PROGRAMS

SUBPART 5219.201 (DFARS 219.201) General policy.

(a) DoN policy is to utilize small, small, small disadvantaged, 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.

© (7) A small business technical advisor shall be assigned to each office where a resident SBA procurement center representative is located.

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

(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.

(S-90) Reviews of SADBU program implementation at DoN contracting activities} will normally be conducted as a segment of the Procurement Management Review (PMR) program (see 5201.692). The Director, SADBU, will establish guidelines for the PMR (SADBU) segment. PMR SADBU segments shall be coordinated with the PMR team leader. For reviews under 5201.692-2(a)(2), the Director, SADBU, will coordinate designation of PMR SADBU team members. Associate Directors of Small Business shall be responsible for implementation of the PMR SADBU segment of their field contracting activities including designating PMR SADBU team members and monitoring 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 PMR SADBU segment report(s) to the Director, SADBU.

5219.202-1 Encouraging small business participation in acquisitions.

Contracting activities should, when practicable, conduct briefings on planned acquisitions for small, small disadvantaged, and women-owned small business

concerns, and Historically Black Colleges and Universities (HCBUs) and Minority Institutions (MIs).

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, SADBU, 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**

5219.704 Subcontracting plan requirements.

(a)(1) It is the policy of the DoN that the 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 Reviewing the subcontracting plan.

When evaluating proposed subcontracting plansC contracting officers, in that contain positive goals, should normally may obtain advice and recommendations from the cognizant contract administration office (CAO), and should do so for any In evaluating the appropriateness of a subcontracting plan that does not contain positive goals, the contracting officer shall request the cognizant CAO to specifically review the factors used by the prime contractor to develop the zero goal, the past performance of the prime contractor on similar requirements, and the current procedures used by the prime contractor to maximize the opportunities for small and small disadvantaged businesses to participate in its subcontracting program. The contracting officer shall evaluate the findings of the CAO's review and consider any resultant 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. See DFARS 219.705-4 for establishment of small disadvantaged business subcontracting plan goals.

5219.705-6 Postaward responsibilities of the contracting office.

(S-90)(a) When the prime contractor has submitted an individual subcontracting plan, which has been is approved and incorporated into the contract, and where the DoN retains administration of the contract, the contracting officer shall transmit notification to the contractor of the subcontracting plan approval with copies of Standard Form 294, Subcontracting Report for Individual Contracts, and Standard Form 295, Summary Subcontract Report, and the name of the SADBUs specialist to whom questions regarding Standard Forms 294 and 295 may be referred. to the contractor at the time of contract award. A letter which reads substantially as follows should be used for this purpose:

Name

Address

City, State, Zip Code

Re: Subcontracting Plan Reports

Contract No. _____

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Dear _____:

~~Your individual subcontracting plan, submitted pursuant to the Small Business and Small Disadvantaged Business Subcontracting Plan clause of your contract, has been approved. The clause requires you to submit periodic subcontracting reports on Standard Form 294, Subcontracting Report for Individual Contracts, and Standard Form 295, Summary Subcontract Report.~~

~~Enclosed for your information and review are copies of the reporting forms. The reverse side of each form contains definitions, general and specific instructions for completing the forms, and submittal instructions. Any additional questions concerning report preparation requirements may be addressed to (name of SADBUs specialist), telephone _____.~~

Sincerely,

Contracting Officer

Enclosures:

(b) When the prime contractor has submitted a company-wide plan for commercial products, the contracting officer shall transmit copies of the Standard Form 295, Summary Subcontract Report, and the name of the SADBUs specialist to whom questions regarding Standard Form 295 may be referred, to the contractor at the time of award. ~~A letter which reads substantially as follows should be used for this purpose:~~

Name

Address

City, State, Zip Code

Re: Subcontracting Plan Reports

Contract No. _____

Dear _____:

~~Your company-wide plan for commercial products, submitted pursuant to the Small Business and Small Disadvantaged Business Subcontracting Plan clause of your contract, has been approved by (name, address, and telephone number of approving official). The clause also requires you to submit periodic subcontracting reports on Standard Form 295, Summary Subcontract Report.~~

~~Enclosed for your information and review is a copy of the Standard Form 295. The reverse side of the form contains definitions, general and specific instructions for completing the form, and submittal instructions. Any additional questions concerning report preparation requirements may be addressed to (name of SADBUs specialist), telephone _____.~~

Sincerely,

NAVY ACQUISITION PROCEDURES SUPPLEMENT

Contracting Officer

Enclosure:

5219.706 Responsibilities of the cognizant administrative contracting officer.

DoN CAOs shall submit SF295 "Summary Subcontract Report" data to Washington Headquarters service, Directorate for Information, Operations and Reports.

Where the DoN has retained contract administration responsibility for major prime contractors, the cognizant SADBUs specialist shall periodically visit such contractors to review implementation of the small and small disadvantaged business subcontracting programs. For contractors where the DoN does not maintain contract administration responsibility for a majority of the prime contractor's contracts, such visits should be coordinated with the SADBUs specialist at other cognizant CAOs.

~~A draft letter of notification which reads substantially as follows should be used for this purpose:~~

DRAFT "LETTER OF NOTIFICATION"

TO

DEPARTMENT OF THE NAVY MAJOR PRIME CONTRACTORS

~~[Insert name and address of department of the Navy Major Prime contractor]~~

Dear _____:

~~As a major Department of the Navy (DoN) prime contractor participating in the Department of Defense (DoD) Small Business, Small Disadvantaged Business, and Women-owned Small Business Subcontracting Program, we wish to bring certain Federal Acquisition Regulation (FAR) changes to your attention.~~

~~The Federal Acquisition Regulatory Council published Federal Acquisition Circular (FAC) 90-32 as a final rule (effective October 01, 1995) in the Federal Register (Vol. 60, No. 180) on Monday, September 18, 1995. FAC 90-32, Item V (Small Business), in part, simplified and streamlined FAR Subpart 19.7 subcontract reporting requirements. Copy(s) of the Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and SF 295, Summary Subcontract Report, are enclosed for your reference and use. Some significant changes to the SF 295 reporting requirements address frequency (i.e., semi-annually in lieu of quarterly), as well as submittal instructions for the reporting prime contractors. Reporting DoD contractors shall now submit an original SF 295 report solely to the cognizant administration office as stated in the contract.~~

The compilation of data from the SF 295 reports is the sole method of crediting DoN major prime contractors for their participation in the subcontracting program. DoD representatives collect and report individual contractor SF 295 "Summary

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Subcontract Report" data to the Federal Procurement Data Center. The data are included in procurement information that the Federal Procurement Data center provides to Congress. Timely and accurate report submittals are an important element of our subcontracting program implementation efforts. Please note that the initial reports using the revised SF294/SF295 forms are due not later than April 30, 1996. A copy of SF 294 and SF 295 shall be submitted for the contractor's reference and use.

~~—— Thank you for your attention to this matter, and we look forward to your continued participation in the DoD Small Business, Small Disadvantaged Business, and Women-owned Small Business Subcontracting Program.~~

Sincerely,

Contracting Officer

Enclosures :

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

5219.803 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 SADBU 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 Agency evaluation.

~~—(f) Contracting officers, when determining the extent to which a requirement should be offered in support of the 8(a) Program, shall independently review the 8(a) firm's capabilities to ensure satisfactory performance of the requirement. Such reviews, in addition to the factors in FAR 19.803(a), may take the form of a technical presentation (see DFARS 219.804-l(f)), 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. For competitive 8(a) procedures, see FAR 19.805-2.~~

5219.804-1-90 Agency declination.

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

5219.804-2 Agency offering.

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

5219.804-4 Repetitive acquisitions.

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

5219.810 SBA appeals.

Upon notification that the SBA Administrator has filed an appeal, the contracting officer shall immediately 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.

**~~SUBPART 5219.70--EVALUATION PREFERENCE FOR SMALL
DISADVANTAGED BUSINESS (SDB) CONCERNS~~**

~~5219.7001 Applicability.~~

~~(a) Use of the evaluation preference is mandatory for sealed bid procurements, and for those FAR Part 15 competitive procurements where award is to be made to the lowest priced, or lowest priced, technically acceptable offeror. In either case, "lowest total cost to the Government" may be substituted for "lowest priced" when applicable. For FAR Part 15 "Best Value" competitive procurements, use of the evaluation preference is discretionary.~~

PART 5222

APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

SUBPART 5222.1--BASIC LABOR POLICIES

5222.101 (DFARS 222.101) Labor relations.

5222.101-1 General.

(a)(i) Submit requests for departmental approval to ABM.
(a)(ii) Immediately notify ABM.
(a)(iii) Submit requests for agency head approval to ABM.
(a)(iv) Submit questions for the labor advisor to ABM, except that questions involving construction or services under NAVFACENGCOM contracts should be submitted to the contract labor relations specialist in the appropriate NAVFACENGCOM divisional office. Questions involving construction or services under NAVFACENGCOM contracts may also be referred to the headquarters contract labor relations advisor, NAVFACENGCOM (Code 023A), Alexandria, VA 22332-2300.

5222.103 Overtime.

5222.103-4 Approvals.

(a) The CCO is the designated agency approving official.

~~(S-90) If overtime premiums at Government expense have been approved or are contemplated in a particular procurement for which a business clearance is required in accordance with 5201.690, such clearance shall contain a statement of justification indicating that the necessary approval for such premiums has been obtained. If appropriate, a copy of such approval or determination obtained may be appended to the business clearance.~~

(S-91) Construction contracts. When expediting a construction contract involving additional costs, NAVFACENGCOM shall be responsible for obtaining the approval required by DFARS 236.270.

5222.103-90 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 The HCA is the agency head's designee, with power of redesignation.~~

SUBPART 5222.4--LABOR STANDARDS FOR CONTRACT INVOLVING CONSTRUCTION

5222.406 Administration and enforcement.

5222.406-8 (DFARS 222.406-8) Investigations.

(d) For NAVFACENGCOM contracts, the contracting officer's report shall be forwarded to the headquarters contract labor relations advisor, NAVFACENGCOM (Code 023A), Alexandria, VA 22332-2300. For all other contracts, forward the report to ABM.

PART 5223

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

AND

SUBPART 5223.1--POLLUTION CONTROL AND CLEAN AIR AND WATER

5223.104 (DFARS 223.104) Exemptions.

(c) Submit requests for exemption to ABM via the HCA.

SUBPART 5223.4 USE OF RECOVERED MATERIAL

5223.404(FAR 223.404(b)(4)) Annual Contractor's Reports of Minimum Recovered Material Content for EPA Designated Items

~~FAR Clause 52.223-9 requires contractors to certify and report annually the minimum recovered material content for EPA designated items used in the performance of the contract. ASN(RD&A) has established procedures to consolidate and report annual contractor certifications. DON contracting officers, when including FAR 52.223-9 in a contract, shall insert the following address in paragraph (b) of the clause.:~~

~~_____ Commanding Officer
_____ Naval Facilities Engineering Service Center
_____ Code 423WE
_____ 560 Center Drive
_____ Port Hueneme, CA 93043-4328~~

5223.405 Solicitation provisions and contract clause

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

Commanding Officer
Naval Facilities Engineering Service Center
Code 423WE
560 Center Drive
Port Hueneme, CA 93043-4328

SUBPART 5223.5--DRUG-FREE WORKPLACE

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

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

PART 5225

FOREIGN ACQUISITION

SUBPART 5225.1--BUY AMERICAN ACT--SUPPLIES

5225.102 (DFARS 225.102) Policy.

~~-(a)(3)(C)(2) Each request for a Secretarial determination shall be submitted to ABM in the form of a determination and findings.~~

(b)(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.

5225.108 (DFARS 225.108) Excepted articles, materials, and supplies.

(b) Submit copies of determinations made under FAR 25.102(b) ~~of non-availability for unlisted articles, materials, or supplies via ABM to the DAR Council.~~

SUBPART 5225.2--BUY AMERICAN ACT--CONSTRUCTION MATERIAL

5225.202 (DFARS 225.202) Policy.

~~(b) Each request for a Secretarial determination shall be submitted to ABM in the form of a determination and findings.~~

SUBPART 5225.3--BALANCE OF PAYMENTS PROGRAM

5225.304 Excess and near-excess foreign currencies.

(c) The agency head's designee for making the required determination is the Comptroller of the Navy (NCB-133).

SUBPART 5225.4--PURCHASES UNDER THE TRADE AGREEMENTS ACT OF 1979

5225.402 (DFARS 225.402) Policy.

(c)(iii) National interest waivers which require approval of the USD(A&T) DDP shall be submitted through ABM in the form of a determination and findings.

5225.403 (DFARS 225.403) Exceptions.

(d)(1)(A) Requests made under DFARS 225.403(d)(1)(A) ~~to for national security/national defense exception to the provisions of FAR Subpart 25.4 which require approval of the Director of Defense Procurement shall be submitted through ABM in the form of a determination and findings.~~

SUBPART 5225.8--INTERNATIONAL AGREEMENTS AND COORDINATION

5225.802 (DFARS 225.802) Procedures.

~~—(S-90) NRCC, Naples.~~

~~—(1) The Naval Regional Contracting Center (NRCC), Naples, with its London Detachment (NRCC Detachment London), serves as an area and centralized buying activity for Naval activities in Europe, Africa, Iceland, and Middle East, operating forces in European waters, for all activities when purchase is effected in Europe; and such other area activities and operating forces as may be required. For practical purposes the buying responsibilities of NRCC Naples are split between NRCC Naples and its London Detachment as follows: procurements in Southern Europe, the Mediterranean, Africa and the Middle East are handled by NRCC Naples, and procurement in Northern Europe, including the United Kingdom and Iceland are handled by NRCC Detachment London.~~

~~—(2) Audit support is provided by the Defense Contract Audit Agency, European Branch Office Wiesbaden, West Germany, except that audit services for United Kingdom procurements are provided by the U.K. Ministry of Defence under the US/UK~~

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~~reciprocal audit agreement, and audit services in the Federal Republic of Germany, France and the Netherlands are provided by the Governments of those countries under reciprocal audit arrangements. NRCC Detachment London is the focal point within Europe for liaison relative to the furnishing of audit services by the European governments.~~

(13) Naval activities having requirements that can be satisfied only by European sources will normally forward their requisitions to 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, ~~in responsibility set forth above.~~ This does not relieve such 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.

(4) Exceptions. The following are exceptions to paragraphs (1), ~~(2) and (3)~~ 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) Contracts for aviation support items (Naval Inventory Control Point (NAVICP) only).~~

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

(5) Contracting Officers utilizing any of the above exceptions, prior to commencement of negotiations with a United Kingdom supplier, may contact the NRCC Detachment, London England, for assistance and support.

~~—(A) a determination of whether the proposed supplier holds any U.K. furnished tooling,~~

~~—(B) for advice as to the procedures to assure that no rental charges payable to Her Majesty's Government will be included in prices charged, and~~

~~—(C) for information relating to the elimination of research and development charges on certain British manufactured products.~~

5225.802-71 (DFAR 225.802-71) End User Certificates (EUC)

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

5225.871 (DFARS 225.871) North Atlantic Treaty Organization (NATO) cooperative projects.

5225.871-4 Statutory waivers.

(c) Request for waiver with draft determination and findings for signature by the Deputy Secretary of Defense, shall be submitted through ABM.

5225.890 International Logistics Program (ILP).

~~—(a) Contracts and purchase orders awarded in support of requisitions for the ILP~~

shall:

~~— (1) Identify the requirement as a separate contract line item or subline item in accordance with DFARS 204.7103 or 204.7104, respectively. The applicable requisition number plus:~~

~~— (i) The country and case identifier (MILSTRIP CC 31-32 and 48-50) for FMS (Foreign Military Sales);~~

~~— (ii) The Record Control/Program/ Directive number identifier (MILSTRIP CC 46-50) shall be entered immediately under the line or subline item for GA (Grant Aid). (Navy/Marine Corps ILP requisitions are identified by the letter P or K preceding the requisition number, Army is B, Air Force is D, Defense is T MILSTRIP CC 30).~~

~~— (2) Provide for the cognizant CAO to distribute to the Navy International Logistics Control Office, Philadelphia, Pennsylvania 19111-5095, a copy of any report or document which indicates any anticipated or actual delay in delivery of line or subline items for the ILP. Copies of such reports distributed to Navy International Logistics Control Officer shall include the requisition number applicable to the line or subline item involved and shall be in addition to any other distribution required by the contract or directives applicable to the CAO.~~

**SUBPART 5225.70 (DFARS 225.70)--AUTHORIZATION ACTS,
APPROPRIATIONS ACTS, AND OTHER STATUTORY
RESTRICTIONS ON FOREIGN PURCHASES**

5225.7002 (DFARS 225.7002) Restrictions on food, clothing, fabrics, and specialty metals, and hand or measuring tools.

5225.7002-2 (DFARS 225.7002-2) Exceptions.~~with~~

~~(a) The HCA is the Secretary's agency head's designee., power of redesignation, to make the required determinations.~~

5225.7004 (DFARS 225.7004) Restriction on machine tools and powered and non-powered valves.

5225.7004-2 (DFARS 225.7004-2) Restrictions.

~~— (b) Exceptions.~~

~~— (2) Waiver requests are to be submitted to ABM, except as delegated under subparagraph (iii) below.~~

~~— (iii) Waiver authority is delegated to the chief of the contracting office for acquisitions of less than \$25,000 where small purchase procedures are not used.~~

.7016-3 (DFARS 225.7014-3) Waiver.

~~Submit waiver requests to ABM.~~

~~— (b)(i) The requirement of 10 USC 2507 result in a major component of certain switchboards (i.e. air circuit breakers) being available from a single domestic source which is also a competitor in the manufacture of such switchboards.~~

~~— (ii) In order to minimize adverse impact on the switchboard manufacturers which are not the manufacturer of the air circuit breaker, consider breaking out the procurement of the air circuit breaker from the procurement of the switchboard.~~

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~~Separate line items may be established for the air circuit breakers and the switchgear, or alternate bids may be requested, inclusive and exclusive of the air circuit breakers, to assist in the determination as to breakout is appropriate.~~

~~—(iii) If breakout is not feasible and a waiver is considered appropriate, provide as backup to the waiver request detailed rationale for the decision not to break out the air circuit breakers.~~

~~**5225.7017 (DFARS 225.7017) Restriction on carbon, alloy, and armor steel plate.**~~

~~**5225.7017-3 (DFARS 225.7017-3) Waiver.**~~

~~Submit waiver requests to ABM.~~

SUBPART 5225.73 (DFAR 225.73)–ACQUISITIONS FOR FOREIGN MILITARY SALES

5225.7307 (DFARS 225.7307) Implementation of offset arrangements negotiated pursuant to foreign military sales agreements.

(f) Submit inquiries via ABM.

PART 5227

PATENTS, DATA AND COPYRIGHTS

**SUBPART 5227.70 (DFARS 227.70)-- INFRINGEMENT CLAIMS,
LICENSES, AND ASSIGNMENTS**

5227.7013 (DFARS 227.7013) Recordation.

~~The requirement of DFARS 227.7013 is performed in the DoN by the Chief of Naval Research. Contracting activities shall forward Ooriginals of licenses, assignments or other documents evidencing an interest of the 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.~~

PART 5228

BONDS AND INSURANCE

SUBPART 5228.1--BONDS

5228.106 Administration.

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

SUBPART 5228.3--INSURANCE

5228.301 Policy.

(a)(1) DoN policy is to rely upon the commercial insurance industry to the maximum extent practicable to protect contractors against risks arising under contracts. ~~2) In some situations, h~~However, it may be preferable or necessary to provide Government indemnification--

(i) 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) ~~A war risk in areas w~~ Where hostilities are war risk is involved;

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

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

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

(viii) 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.

5228.301-90 Authority.

~~—(a) 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.~~

~~(b) ABM shall determine, under the Marine Builder's Risk Policy of shipbuilding contracts, whether the Government has assumed the risk of loss, and the extent of any Government responsibility, regarding contractor claims for loss or damage over \$250,000. NAVSEASYSCOM's authority is increased, without limitation, to make all subject claim determinations. This authority may be redelegated as deemed appropriate.~~

5228.301-91 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:

- (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.

5228.304 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.

5228.305 Overseas Workers' compensation and war-hazard insurance.

5228.305 Request for waiver.

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, 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.

5228.308 Self-insurance.

Refer all matters concerning self-insurance covering any kind of risk 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.

5228.9002 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.

5228.9003 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.

5228.9004 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."

(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.

5228.9005 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.

PART 5229

TAXES

SUBPART 5229.2--FEDERAL EXCISE TAXES

5229.201 General.

~~(b)(i) Tax exemption certificates will be issued as authorized by FAR Subparts 29.2 and 29.3. Tax exemption certificates will not be issued for small purchases requiring payment in cash through the use of the imprest fund procedures. Ordering officers and disbursing officers may issue the certificates, as may other officials designated by the contracting officer.~~

~~—(ii) Tax exemption certificates will be issued to contractors by:~~

~~—(A) Contracting officers~~

~~—(B) Ordering officers in the case of indefinite delivery type contracts;~~

~~—(C) Disbursing officers under Defense Fuel Supply Center contracts, when applicable;~~

~~—(D) Other procurement personnel as authorized by contracting officers.~~

PART 5230

COST ACCOUNTING STANDARDS

SUBPART 5230.2--CAS PROGRAM REQUIREMENTS

5230.201 Contract requirements.

5230.201-5 Waiver.

(a) Submit the information to ABM at least 60 days prior to anticipated contract award. ~~Include it as an enclosure to the initiating communication and number the paragraphs sequentially in the same order as FAR 30.201-5.~~

~~(71) Include the estimated date of contract award and justification, if any, for the urgency of award if the estimated date of award is less than sixty (60) days from date of submission. In the case of contracts to be placed with foreign concerns, contracting activities should request DCAA assistance. to provide, where applicable:~~

- ~~— (A) Any accounting requirements imposed on the foreign concern by the foreign government which are incompatible with the cost accounting standards;~~
- ~~— (B) Any accounting requirements imposed on the foreign concern by the foreign government which are sufficiently unique that compliance by the concern with the cost accounting standards would not be feasible; and~~

~~(Cb) The cost impact on U.S. Government contracts with the foreign concern if the cost accounting standards were required to be followed by the concern. 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. If, on the basis of information developed by DCAA, it appears that the foreign concern could reasonably comply with modified coverage, renew efforts to obtain its acceptance of the modified coverage. If, despite renewed efforts, the foreign concern still refuses to comply, obtain a further written statement of its position which discusses in detail each of the DCAA findings and the rationale for the continued refusal.~~

5230.202 Disclosure requirements.

5230.202-2 Impracticability of submission.

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

5230.202-8 Subcontractor disclosure statements.

~~(f) Requests for an ASN(RD&A) impracticability determination shall be submitted in the same form, contain the same information, and be processed in the same~~

PART 5231

CONTRACT COST PRINCIPLES AND PROCEDURES

SUBPART 5231.1--APPLICABILITY

5231.109 Advance agreements.

~~—(a) All advance agreements, including those negotiated pursuant to the Cost Accounting Standards Board's promulgated rules and regulations (e.g., advance agreements with contractors on shorter depreciation periods for certain assets as provided in CAS 409.50(e)(5)) are subject to the approval requirements in (f) and (g) below.~~

~~—(f) and (g) Pursuant to 5201.690-6, business clearance approval shall be obtained from ABM for all advance agreements on the treatment of special or unusual costs.~~

5231.205-26 Material costs. (DAR COUNCIL DEVIATION #90-940 - 29 AUGUST 1990)

~~NAVSEASYS COM, in their Naval Nuclear Propulsion Program prime contracts with Westinghouse and General Electric, is authorized to deviate from (i) FAR 31.205-26 to allow for reimbursement of interorganizational transfers at price when the criteria in FAR 31.205-26 are not met; and (ii) FAR 52.246-24 to allow use of a modified clause.~~

PART 5232

CONTRACT FINANCING

SUBPART 5232.4--ADVANCE PAYMENTS

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). This authority has been redelegated to the Director, Office of Financial Management Systems (NCF), Office of Navy Comptroller, 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 232.5501-2) Unusual progress payments.

(a) Forward Rrequests for unusual progress payments pursuant to FAR 32.501-2 shall be forwarded via ABM.

5232.502 Preaward matters.

5232.502-91 Disbursing.

~~—(a) Disbursing by Defense Contract Management Area Operation (DCMAO). Contracts which designate a DCMAO as the paying office shall provide for the~~

~~contractor's invoices to be submitted directly to the DCMAO.~~

~~—(b) Disbursing by DoN offices.~~

~~—(1) Acceptance at Contractor's Plant. Where acceptance is at origin, contracts which designate a Navy Regional Finance Center or other DoN activity as the paying office shall provide for the contractor's invoices, accompanied by the paying office copies of the related Material Inspection and Receiving Reports (DD Forms 250), to be submitted directly to the paying office.~~

~~—(2) Acceptance at Destination. Where acceptance is at destination, contracts which designate a Navy Regional Finance Center or other DoN activity as the paying office shall provide for the contractor's invoice to be submitted to the consignee.~~

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.

5232.6025 General.

~~NAVCOMPT Manual, par. 040703 covers ascertainment and collection of debts owed by a contractor, including deferred collection.~~

5232.610 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.

5232.613 Deferment of collection.

© Information should be submitted with all requests, whether or not an appeal is pending or a Dispute action filed. In addition, the following is required:

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

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

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

(9) Any small business concern representation.

5232.690 DoN claims against a contractor.

~~—(a) General. It is essential that DoN personnel take prompt action to document the basis and reasons for the claim and, when possible, to settle the claim by negotiation with the contractor.~~

~~—(b) Claim reporting. For all Government claims which exceed \$500,000, HCAs shall provide quarterly and summary reports to ABM in accordance with the procedures of 5233.9001(a) and (b).~~

~~—(c) Claim documentation. The same standards of claim documentation required for contractor claims (see 5233.9000) shall also be applicable to Government claims.~~

(d) *Claims review and approval.* The review and approval requirements of 5233.9001(c) apply to the settlement of DoN claims against contractors.

~~(e) *Contractor appeals.* In the event settlement by negotiation cannot be achieved, a Contracting Officer's decision shall be promptly issued in accordance with the "Disputes" procedure of the pertinent contract. This decision shall set forth the basic facts of the dispute and the details of the DoN's claim against the contractor. In preparing the decision and processing the dispute, when an appeal is taken by the contractor, the appeal procedures outlined in 5233.9002 shall be followed.~~

SUBPART 5232.7--CONTRACT FUNDING

5232.790 Establishment of obligations.

~~(a) NAVCOMPT Manual, Volumes 2, 3, and 6 implement section 1311 of the Supplemental Appropriation Act, 1955 (31 U.S.C. 200), which established the prerequisites to the recording and reporting of an obligation. Particular attention is invited should be given to the special provisions in the NAVCOMPT Manual relating to spare parts, special tools, or other equipment included in a contract in an estimated lump-sum amount.~~

~~(b) An obligation will be recorded against applicable appropriations or funds only when supported by documentary evidence properly signed before expiration of the period during which the appropriation or fund is available for obligation. Contracts, agreements, orders requiring acceptance, amendments for new requirements, and similar **For** documents requiring two signatures to be valid, obligations must have both signatures affixed prior to expiration for obligation of the appropriation or fund involved. Signatures to such obligating documents will be dated the day that they are affixed to the document. Such signatures will not be given as "as of" date. The date of the last required signature determines the date of the obligation for recording purposes. If such obligating document requires the signature of the contractor and the contracting officer and is signed by the contracting officer subsequent to signing by the contractor, the signature of the contractor need not be dated, provided the following statement is affixed on each original signature page directly below or adjacent to the signature of the contracting officer: "Signed by Contracting Officer on _____ subsequent to signing by the contractor."~~

~~(c) **Conformed copies of all obligating documents shall be furnished for the recording of obligations.** These copies need not be signed by either party, nor need they set forth in full the names of the individuals signing, their official titles, or the names of the contractors and the contracting activities concerned. In lieu thereof, notations or stamps may be applied, such as "Signed on behalf of Contractor" and "Signed on behalf of Government." However, all such conformed copies shall either set forth fully the dates of the signatures on behalf of both parties or will clearly identify the party last signing and set forth fully the date of that signature.~~

5232.791 Obligation of transportation cost in purchase documents.

~~(a) Pursuant to the authority of NAVCOMPT Manual 032100 and consistent with FAR 31.205-45, the cost of transportation of material to first destination is usually charged to the Navy Management Fund with subsequent reimbursement by the appropriation involved. However, if the contract provides that the cost of transportation either is to be~~

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~~included in the purchase price or is to be paid by the supplier subject to reimbursement by the Navy (i.e., the amount of the obligation established by the contract includes the cost of transportation), the transportation cost will be charged to the same accounting data which is charged for the cost of the material. When the contract includes the cost of transportation the estimated transportation cost must be considered together with the cost of the material or the contracting office may be guilty of over obligating the amount of funds cited in the requisition, or other purchase authorization, in violation of Section 1517, Revised Statutes (31 U.S.C. 665).~~

~~—(b) Contracting officers are responsible and will~~shall ~~ascertain that the actual or estimated transportation costs chargeable to the purchase funds of the Navy will not, in conjunction with the purchase price, result in an over obligation.~~ When the supplier is to be reimbursed for transportation costs, the contracting officer ~~shall~~ould 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 \$ _____. " 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.

~~—(c) No purchase document shall provide for reimbursable transportation costs where initial destination is unknown.~~

5232.792 Accounting and appropriation data.

(a) Every ~~C~~contract~~s,~~ or order ~~s,~~ and change orders or amendments that revise the accounting data for any item or change the total amount of a contract ~~shall~~should indicate the accounting code numbers ~~(appearing in the purchase request)~~ under which payments on the contract or order are to be made. ~~Applicable accounting data shall also be shown on any change order or contract amendment that revises the accounting data for any item or increases or decreases the total amount of a contract.~~ ~~Such~~ Accounting data shall be shown either in the proper spaces in the preprinted format on the purchase document or in the exact same format. When an element is not present, insert a zero in the appropriate spot column or opposite the applicable abbreviations used to correspond to the headings listed under "accounting and appropriation data" on DD Form 1155 (as overprinted for Navy Accounting data). The accounting and appropriation data represents the accounting classification reference number (ACRN).: Appropriation and subhead, object class, bureau control number, sub-allotment number, authorization accounting activity, type code, property accounting activity and cost code.

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 classifications cited in the contract or modification. ~~Purchase Requisitions and other procurement request type documents received from requiring activities should be written in a similar manner or returned to such activities with a request for clarification.~~

~~—~~ (1) Further, A~~all s~~Shipping instructions issued under the ~~a~~ contract or ~~by~~ modification mustshould identify the Contract Line Item

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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, Ccontracts shallould require that the contractor cite the CLIN, SLIN, and ACRN, reflected in the shipping instructions, on applicable invoices. This will permit proper payment by the applicable disbursing office and will ensure reporting of the disbursement to the appropriate Authorization Accounting Activity. When requested, the "Paying Office(s)" designated in the contract to make payments under the various appropriations, will promptly provide the contract administration office with information as to the amounts paid under the contract by each ACRN.

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 request for progress payments.

5232.903 Policy.

For Prompt Payment Act purposes, every contract, including an actionss accomplished by small purchase simplified acquisition procedures, shallould 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.

5232.905 Invoice payments

5232.905-90 Submission of Invoices.

-(a) Applicable to solicitations/ contracts which include the clause at 5252.232-9000, SUBMISSION OF INVOICES (FIXED PRICE)Submission of Invoices (Fixed Price).

—(1) Acceptance at origin.

When acceptance is at origin, the contractor shall submit invoices directly to the designated payment office, accompanied by the payment office copies of the receiving report; i.e., a DD Form 250 (Material Inspection Receiving Report), or other acknowledgement of receipt of supplies or services which meets the requirements of FAR 32.905(f).

—(2) Acceptance at destination.

When acceptance is at destination, the contracting officer, based on the requirements of the designated payment office, shall instruct the contractor to submit invoices--

- (i) directly to the designated payment office, while the consignee separately provides proof of acceptance to the payment office; or
- (ii) to the consignee for certification as to receipt and acceptance of supplies or services. The consignee(s) will then forward the invoices to the paying office with

proof of acceptance, i.e., a signed DD Form 250 or other documentation which meets the requirements of FAR 32.905(f).

~~(b) Applicable to solicitations/ contracts which include the clause at 5252.232-9001, SUBMISSION OF INVOICES (COST-REIMBURSEMENT, TIME-AND-MATERIALS, LABOR-HOUR, OR FIXED PRICE INCENTIVE). Submission of Invoices (Cost-Reimbursement, Time-and-Materials, Labor-Hour, or Fixed Price Incentive).~~

~~Upon receipt of the contractor's final invoice, the designated billing office (see 5232.906-90(a)) shall prepare a final report which will be submitted via the cognizant Administrative Contracting Officer to the designated payment office~~

~~5232.906 Contract financing payments.~~

~~5232.906-90 Submission of Invoices (Vouchers) for Interim payments under Cost Reimbursement, Time-and-Materials, or Labor-Hour contracts.~~

~~(a) Designated billing office.~~

~~The contract auditor shall be designated as the billing office and the authorized representative of the contracting officer for receipt and verification of contractor invoices (including vouchers) (see FAR 32.902 and DFARS 242.803(b)), except for contracts with the Canadian Commercial Corporation (see DFARS 225.870-5(b)). Annotate the appropriate block of the solicitation /contract award form (SF 26-Block 10; SF33-Block 23; SF 1447-Block 14) with a reference to NAPS clause 5252.232-9001, except in delivery orders. For delivery orders, place "*" see below" in Block 13 of the DD 115, or Block 10 of the SF 26, and include the address of the contract auditor at the bottom of the form.~~

~~(b) Technical Representative.~~

~~—(i) If a Technical Representative (e.g., COTR, Technical Coordinator, or Contracting Officer's Representative) has been assigned in the contract, the contracting officer shall ould designate that individual to receive an information copy of the invoice.~~

~~—(ii) The Technical Representative shall review a copy of each invoice for correctness of labor categories used, services performed, support costs, etc. The Technical Representative shall sign the invoice copy (and Certificate of Performance, if required) and submit the signed invoice copy (and Certificate of Performance, if required) to the designated billing office (see paragraph (a) above).~~

~~—(iii) If the Technical Representative disagrees with the costs on the invoice, the Technical Representative shall immediately notify the billing office and contact the contractor to resolve the discrepancy, secure a corrected invoice, and forward to the billing office. If only a portion of the costs are in dispute, the Technical Representative shall certify only the undisputed costs and submit the partially certified invoice to the billing office to be forwarded to the payment office. The Technical Representative shall resolve the remaining disputed costs with the contractor.~~

~~—(iv) If the Technical Representative cannot resolve the discrepancy with the contractor, or if a problem has been noted with the contractor's performance, the Technical Representative shall notify the Contracting Officer in writing, with details of the problem.~~

~~—(v) The Technical Representative shall maintain a copy of all invoices and supporting documentation by contract, in chronological order.~~

5232.908 Contract Clauses.

(a) Use the contract clause at 5252.232-9000, ~~SUBMISSION OF INVOICES (FIXED PRICED)~~ Submission of Invoices (Fixed Priced), in fixed price (except fixed price incentive) type solicitation~~s~~/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 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)~~ 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 solicitation~~s~~/contracts for supplies/services.

(d) Use the clause at 5252.232-9003, ~~SUBMISSION OF INVOICES IN CONTRACT FOR LEASE, MAINTENANCE, RENTAL AND/OR SUPPORT SERVICES~~ Submission of Invoices in Contract for Lease, Maintenance, Rental and/or Support Services, when applicable in contracts for lease, maintenance, rental, and/or support services of Federal Information Processing (FIP) Information Technology (IT) resources 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 the following:

(i) Military Sealift Command acquisitions which require unique invoicing/payment arrangements such as container leasing, rental; operation or charter of vessels; carriage of goods; or

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

PART 5233

PROTESTS, DISPUTES, AND APPEALS

SUBPART 5233.1 (DFARS 233.1)--PROTESTS

5233.103 ~~Protests to the Agency.~~

~~—(a)(2) Determination to proceed with award prior to resolving the protest shall be made at a higher level higher within the contracting activity than the contracting officer.~~
~~—(b)(1) The contracting officer is designated to receive protests submitted by interested parties.~~

5233.104 (DFARS 233.104) Protests to GAO.

(g) The responsibility to report to the Comptroller General is delegated to the CCOHCAs without power of redelegation. HCA sCCOs 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) 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. ~~This authority cannot be redelegated.~~

5233.204 (DFARS 233.204) Policy.

5233.204-90 General.

~~Acquisition programs must be conducted in a manner calculated to minimize the occurrence of claims by the contractor. Further, those claims which arise despite appropriate precautions must be resolved as promptly as prudence permits by those most directly involved. The causes of claims must be minimized through realistic planning and contracting, careful attention to the action required to meet the DoN's obligations and tight control over the changes process. Occurrences which may lead to claims must be recognized as they happen and appropriate action initiated~~

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promptly. Elements of Naval activities at all levels are expected to face claim situations squarely, report them to the appropriate levels of management, take prompt action to get the facts, make an objective analysis, and seek prompt resolution. Dealings will be fair and open with the expectation of equal consideration from contractors. Delay in resolution of claims by and against contractors can produce a serious impact upon the business relationship between the DoN and its contractors. Thus, resolution of claims must receive a high priority and degree of attention at all levels.

(a) *Multi-discipline approach.* ~~Since c~~ 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. In many situations, a multi-discipline team approach involving technical, engineering, procurement, audit and legal personnel may be the most efficient and expeditious means of evaluation to assure both protection of the Government's interest and a fair and objective resolution. Thus, when such a claim is submitted by a contractor, or even prior to its receipt, or when it is known that such a claim will be filed, Navy activities should consider the establishment of a multi-discipline Claims Team and the appointment of a Claims Team Manager who will be responsible for identifying the kinds and number of resources which may be required for timely analysis of the claim. The Claims Team Manager will coordinate with the Defense Contract Audit Agency and the Office of General Counsel to ensure that auditors and attorneys are assigned to the team.

(b) *Formal and constructive changes.*

(1) When In those cases where DoN actions (or inactions) 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. Negotiation and settlement of such changes should be handled in accordance with FAR 42.302(b)(1). The procedures in (3) below may be used on an exception basis where the contractor has not presented a full disclosure of pertinent facts or a timely determination of DoN responsibility is not feasible.

—(2) With respect to those formal written changes as to which the contractor alleges a factual or other interrelationship with a claim, activities should exert every effort to equitably adjust such changes coupled with allowance for any disruption or delay impact determined to be appropriate by the contracting activity.

—(3)(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 demonstrate support for a separate equitable adjustment therefore under the contract.

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

—(1) Contractors have occasionally submitted claims based on "total cost" or "total time" approaches, i.e., they have asserted that the government was wholly responsible for all costs /incurred in excess of the contract price, or for all delay,

without proof that such excess costs or delays were caused by government conduct; not by contractor conduct or by concurrent causes. Yet in changes claims there is a well-established requirement to demonstrate causality between the change and resulting quantum. This derives from the terms of the Changes clause itself: "...if any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work..." The total cost approach is suspect because it assumes that the contractor's initial contract price was reasonable; that the government alone caused the contractor's increased costs; and that the contractor's performance costs were reasonable. Only in few rare cases has the total cost approach been accepted, and then only as a "last resort"; when the contracting officer did not make the sort of equitable adjustment required by the Changes clause and the circumstances allowed the contracting officer, board or court to accept the three foregoing assumptions.

(2) 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: has the burden of _____

(i) establishing that there is no other feasible, acceptable basis for computing the claimant's increased costs or delays, and

(ii) prove that there is no way of correlating government actions and omissions to historical cost elements or even to reasonable substantiated cost estimates.

—(2) If the contractor (claimant) fails to sustain this burden, then as a policy matter the DoN should reject any contractor claim premised on a "total cost" or "total time" approach.

5233.206 Initiation of a claim.

(a) Criteria for submitting, documenting and processing contractor claims.

(1) Claimants should be advised that all claim assertions must be supported by: Some contractors have submitted claims, portions of which, upon review are found to be exaggerated, inflated, or insupportable. Grossly overstated claims suggest the potential for false claims, false statements, or fraud. Claims sometimes fail to differentiate between factual and judgmental assertions and to support all assertions with specifically identified evidence. Such submission can delay and frustrate the DoN's claim review analysis and evaluation. Thus, as soon as a claim is received preliminary review should be conducted to determine whether or not adequate documentation exists to commence a full and comprehensive analysis. Accordingly, it is necessary to take steps to promote more readily reviewable claim submissions by establishing requirements for the evidentiary documentation of claims and by requiring responsible contractor officials to certify the claims submitted (see FAR 33.207).

—(2) The general criteria for information required to support claim settlement include

—(i) the existence of a legal basis for entitlement,

—(ii) facts meeting the elements of proof required to support the basis of entitlement, and

—(iii) adequate factual support for the amounts claimed. _____ (2)

For shipbuilding contracts, see DFARS 243.105 and NAPS 52.243.105 for claims, requests for equitable adjustment, or demands for payment under the contract. The DoN should require a proper claim submission on the basis provided in the changes

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clause, namely, a basis factually demonstrating documented scopes of work correlated to provable instances or categories of government liability. The DoN should, in all cases, require demonstration of causal support and documentation of quantum in as much specificity as the facts will permit.

— (3) Claimants should be advised that all claim assertions must be supported by specifically identified evidence (including applicable historical and planned cost and production data from the contractor's books and records), and that opinions, conclusions or judgmental assertions not supported by such evidence, or by a sound and reasonable rationale, which is fully discussed, are without probative value and unacceptable.

— (4) An individual SF 1411, Contract Pricing Proposal Cover Sheet, shall be submitted for each element of a contractor's claim at the time of the initial claim submission, for any material revision of the claim and prior to the execution of a settlement agreement on the claim. (See FAR 15.804-6(b) and Table FAR 15-2, Instructions for Submission of a Contract Pricing Proposal.)

— (5) Since the burden of proof of a claim rests with the claimant, the DoN should reject any claims which fail to meet any of the requirements set forth in 5233.9000, and consider returning claims which suffer from the defects noted in subparagraph (3) above. Any rejection should be accompanied by an indication to the claimant of the areas or types of deficiencies which form the basis for the rejection. Claimants may be given an opportunity to resubmit such claims in the proper manner, unless it is apparent from the contractor's submission that the claim is without foundation.

— (6) If, after resubmission of an initially rejected claim, and through review and evaluation thereof by the DoN, the parties are unable to agree upon a settlement of the claim, the DoN should not normally entertain another claim resubmission. Instead the contracting officer should issue a final decision pursuant to FAR 33.211 determining to what extent, if any, the claim is acceptable and to what extent it should be denied.

— (7) Where contractor actions or inactions are likely to result in a claim or to delay timely and equitable resolution of claim issues, or contract performances may be impaired, higher level assistance will be promptly sought.

(8) FAR—

33.208 5233.208 Interest on claims.

requires the Government to pay interest on certain claims. (d) For claims which require approval by ABM, wWhen 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 by message. The message should be sent priority precedence, with copy to the appropriate SYSCOM and Project Office. Send a follow-up message every 30 days until funding is provided. The SSIC for these messages is N07130 and the following subject should be used: Contract Settlement with Interest for Unfunded Claim Provision. The message should provide the following data:

- (A) Contract deliverable,
- (B) Contractor,
- (C) Contract number,
- (D) Date of contract settlement,
- (E) Total amount of settlement (Show the appropriation. If more than one

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appropriation, then apportion the settlement by appropriation.);

— (F) Date of start of interest penalty,

— (G) Amount of daily interest (Show the appropriation. If more than one appropriation, then apportion the interest penalty by appropriation.);

— (H) Additional funds required,

— (I) Any amplifying information, and

— (J) Name of contracting officer/phone number.

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) the existence of a legal basis for entitlement,

(ii) facts meeting the elements of proof required to support the basis of entitlement, and

(iii) adequate factual support for the amounts claimed.

(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 5233.70 (DFARS 5233.70) CERTIFICATION OF CLAIMS AND REQUESTS FOR ADJUSTMENT OR RELIEF

5233.7000 (DFARS 233.7000) Policy.

Examples of requests subject to the certification requirements would be those made under the "Changes," "Government Property," "Termination for Convenience of the Government," "Government Delay of Work," "Stop Work Order," and "Insurance-Liability to Third Persons" clauses. Excluded from the certification requirement are new procurement modifications, changes or modifications of the contract of a prospective nature that are fully priced, and routine contract payments (e.g., requests for payment for delivered and accepted supplies and services, vouchers under cost reimbursement contracts, and progress payment invoices).

SUBPART 5233.90--PROCEDURES

5233.9000 Documentation of significant contract events.

~~(a) General.~~ Proper resolution of contractor claims is dependent upon the adequacy of both the available contractor and Government information concerning the relevant facts. Effective presentation and analysis of a claim requires the contractor to reconstruct events, actions, circumstances and conditions that may have taken place long since. This reconstruction process is complicated by the impact of other past transactions and events that are not germane to the issues involved and must be

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separated therefrom. Adequate documentation is the key to the Government's ability to verify, qualify or refute matters which a contractor presents in support of, or as the basis of, the contractor's claim.

~~(b) Applicability.~~ For Navy activities where contract administration functions are performed, a A record of significant events, in accordance with paragraphs (c), (d) and (e) below, shall be maintained by the contract administration office with respect to:

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

(2) 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.

~~(c) Record of significant events.~~ Field contract administration offices shall be instructed to maintain, on a continuing basis (daily when necessary), a record narrative summarizing significant events as they occur during the performance of each contract specified in paragraph (b) above. The record shall document events as prescribed in paragraph (d) below with the type of information described in paragraph (e) below. The record shall be supplemented by photographs, references to key documents, or other information as necessary and appropriate, to assure a complete and independent record of contractor performance in the event of subsequent claims.

~~(d) Events to be documented.~~ The significant events documented shall include, but shall not be limited to, those matters which have a bearing upon the following areas:

—(1) Delivery schedule changes or problems;

—(2) Drawings, designs and specification which are ambiguous, defective or impossible of performance;

—(3) Differences in interpretation of contract provisions;

—(4) Delay and disruption of contractor effort;

—(5) Changes in method or sequence of work;

—(6) Late or defective Government furnished property or information;

—(7) Rejections, rework, waivers and deviations;

—(8) Planned vs. actual performance milestones;

—(9) Delays in Government actions such as processing engineering change proposals, consent to subcontracts and review of technical data;

—(10) Contractor error and non-compliance with contract terms; and

—(11) Any other Government actions or inactions (excluding formal written change orders) which have the effect or requiring the contractor to perform work different from that prescribed by the original terms of the contract.

~~(e) Type of information.~~ To the extent applicable, the following information concerning each event recorded shall be provided:

—(1) The nature and pertinent circumstances of the event;

—(2) The date of the event and the identification of Government and contractor personnel involved, including name and function of the respective individuals;

—(3) Identification of any relevant document involved;

—(4) The substance of any oral communications; and

—(5) A statement concerning the possible consequences or effects of the event described upon the contract cost, schedule, or technical performance, including manner or sequence of performance.

~~(f) File maintenance.~~ The records concerning significant events shall be kept in a separate folder or folders for each contract and identified as the "significant events"

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file. Those records which are already maintained separately as part of the contract file in accordance with FAR Subpart 4.8 need not be included in the Significant Events file. Where pertinent documents needed to complete the record are located elsewhere than in the contract file, copies of such documents or cross-references thereto, shall be included in the significant events file. All non-factual information (i.e., opinions and conclusions expressed by any representative of the contract administration office, and privilege, legal advice of counsel) contained in the significant events file shall be marked "FOR OFFICIAL USE ONLY."

5233.9001 Claims reporting, review, and approval requirements.

~~(a) Quarterly claim reports. No later than 15 days after the end of each fiscal quarter, HCAs shall submit to ABM, quarterly claim reports covering all contractor's claims in excess of \$1 million that have been certified under the Contracts Dispute Act. This report is to include claims received by both the headquarters and all field activities under the cognizance of the HCA. Negative reports are required. The report is to include the ten elements of information identified below for each new claim included in the report. For previously reported claims, information element number (10) shall be updated to discuss progress made. In addition, all changes of dollar amounts of claims under review, or before the ASBCA and Court of Claims, shall be explained. Final disposition of the claim shall also be discussed in the report when such action occurs. The quarterly reports shall include the following information:~~

- ~~—(1) Contractor's name;~~
- ~~—(2) Contract number; description of supplies or services; contract price or estimated total cost;~~
- ~~—(3) Date written claim received;—~~
- ~~—(4) Amount of claim (e.g., breakdown of quantum for claimed hardcore, delay, disruption, etc.);~~
- ~~—(5) Alleged basis of claim (e.g., various constructive changes, suspensions, late and defective GFI/GFE, etc.);~~
- ~~—(6) Participating activities or agencies (e.g., SUPSHIP, DCMAO, USAF, etc.);~~
- ~~—(7) Assessment of validity of claim where possible;~~
- ~~—(8) Current status;~~
- ~~—(9) Provisional payment; and~~
- ~~—(10) Planned handling and disposition of claim, including a milestone plan of action for disposition of the claim.~~

~~(b) Summary of quarterly claim reports. The quarterly report required under (a) above shall be accompanied by a summary report in the format shown in Table 5233-90. Claims returned to the contractor for insufficient documentation should not be included in the summary report.~~

**TABLE 5233-90 FORMAT FOR QUARTERLY CLAIM REPORTS
(COMMAND OR CONTRACTING ACTIVITY)
SUMMARY OF CLAIMS INVENTORY - \$1 MILLION AND OVER**

QUARTER ENDING _____

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(in millions)

Contractor,					
Contract No. Under	Court of	Provisional			
& Program Review	ASBCA	Claims	Total	Payment	
No. Amt.	No. Amt.	No. Amt.	No. Amt.	Amt.	

~~—(c) Claims review and approval. All proposed claim settlements will be reviewed and approved in accordance with the criteria as shown in Table 5233-91.~~

~~—(1) Review and approval of claims settlement and contracting officer's final decisions.~~

~~(i) ABM is the senior advisor to ASN(RD&A) on all matters relating to claims.~~

~~For a(a) All proposed claim settlements in excess of \$10 million, and final decisions of the contracting officer involving payments in an amount greater than \$10 million, shall be submitted to ABM for review and approval. ABM, and will provide for the review of all proposed claim settlements in excess of \$10 million; and final decisions of the contracting officer involving payments in an amount greater than \$10 million (see Table 5233-91). At the discretion of ABM, this review will be conducted by either an individual not below the Flag/SES level or an ad hoc claims board. When an ad hoc claims board is used, the chair and membership will be appointed by ABM. A legal advisor will be used on all reviews. ABM will be the final approval authority and will obtain the concurrence of ASN(RD&A).~~

~~(iii) For all all eOther proposed claim settlements and final decisions of the contracting officer, review shall be conducted by shall be reviewed by the Deputy/Assistant Commander for Contracts and approved by the HCA. At the option of the HCA, such any proposed claim settlements or final decisions of the contracting officer within the HCA's approval level shown in Table 5233-91, may be submitted to ABM for review or advice. If a proposed claim settlement or final decision of the contracting officer is within the HCA's approval level, tThe HCA is authorized to approve such settlement.~~

~~(b) Requirements for legal memorandum.~~ 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) Analyze the applicability and adequacy of the contractor's legal theory or theories of Government liability;~~

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

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

~~(3c) Commitment and clearance.~~ No settlement commitment or final decision shall be made prior to obtaining the required approval.

~~(4d) Provisional increases in contract prices.~~ Primary emphasis should continue to be given to achieving prompt settlement of claims, thereby obviating need for provisional price increases or payments. Provisional price increases or provisional

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payments against contractor claims may be made when the following documents have been obtained:

- (i) A legal determination that the contractor is entitled to compensation.
- (ii) Sufficient technical, administrative, and audit analyses to permit such legal determination; and
- (iii) A determination by the contracting officer with respect to the amount 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.

(5e) Written justification.

~~Unless otherwise authorized by ABM, w~~When a provisional payment, either individually or cumulatively against a single claim exceeds \$10 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.

(d) Implementation.

~~—(1) HCAs shall give wide dissemination to and implement these policies and procedures, including establishment of the appropriate delineation of authorities within each activity.~~

~~—(2) These policies shall apply to all pending and future contractor claims.~~

~~—(3) Persons and boards required to review the proposed dispositions of contractor claims shall assure that these policies were followed in the processing and evaluation of the claim under review.~~

TABLE 5233-91

REVIEW AND APPROVAL CRITERIA

<u>Amount of Claim Settlement</u>	<u>Review</u>	<u>Approval</u>
\$10 million or less	Deputy/Assistant	HCA or
Commander for	designee	
	Contracts	

<u>Amount of Claim Settlement</u>	<u>Review</u>	<u>Approval</u>
More than \$10 million	ABM designee or	ABM
review board		

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) *Contracting officer decisions.* Copies of all executed contracting officer decisions shall be forwarded, at time of issuance for appropriate action to the Litigation Division of the OGC.~~

~~—(c) *Contractor notices of appeal.* When a notice of appeal in any form is received by the contracting activity, the contracting officer is required by Rule 3 of ASBCA Rules (DFARS, Appendix A) to forward it to the ASBCA. This should be done by contracting activity counsel on behalf of the contracting officer, with a copy to the Litigation Division.~~

~~—(d) *Documentation requirements.* The Litigation Division shall be furnished four (4) sets of the documents pertinent to the appeal required by Rule 4 of the ASBCA Rules. The contracting officer shall compile these documents promptly with the advice and assistance of contracting activity counsel. These Rule 4 documents, which at a minimum should include all of the documents relied upon by the contracting officer in reaching a final decision, should be arranged in an orderly fashion (preferably in chronological order), indexed, numbered and tabbed. All pages should be clear and legible. If additional documentation is deemed to be necessary, the Litigation Division shall make the request for such documentation, and if it is available, the contracting officer shall furnish said documentation with the assistance of contracting activity counsel. Rule 4 requires that the documents be filed within 30 days after receipt of the notice of appeal. If more time is needed the Litigation Division shall be advised so that it may request an extension of time from the ASBCA. Such extensions shall be requested only when necessary and not as a matter of course. In field contracting offices not having assigned counsel, the Litigation Division will work directly with the contracting officer in obtaining the Rule 4 documents. Upon receipt of the Rule 4 documents, the Litigation Division will assume the responsibility for transmitting a copy to the Board and for meeting the additional requirements of Rule 4 with reference to the appellant.~~

~~(b) *Litigation report requirement.* With the compilation of Rule 4 documents, a comprehensive litigation report shall be forwarded to the Litigation Division. At a minimum, 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 pursuant to paragraph (d) above, 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.~~

~~—(f) *Team cooperation.* Contracting activities shall cooperate with the Litigation~~

Division in connection with the conduct of an appeal. Arrangements for staff assistance and support in the development of the appeals case shall be effected by agreement among trial attorney, contracting activity counsel and the contracting officer.

~~-(g) *Matters for clearance with the contracting officer.* The Litigation Division is charged with the responsibility for defending the DoN's case before the ASBCA as contained in the contracting officer's final decision. If, during the processing of an appeal, the Litigation Division Trial Attorney considers that any aspect of the DoN's case, as set forth in the final decision, should be abandoned or substantially modified, the Litigation Division Trial Attorney shall obtain the concurrence of the contracting officer before entering into any stipulation, consent, or other action or disposition with respect to such issue in the appeals deliberations.~~

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

~~-(i) *Appeals case remanded to DoN.* In some instances, the ASBCA will determine that the contractor is entitled to compensation with respect to one or more issues addressed in the contracting officer's decision. The ASBCA may then direct that the DoN re-assume responsibility of the claims case for purposes of quantum determination. In all such cases, the contracting officer shall arrange for a negotiating team to be established to reach mutual agreement with the contractor with respect to such issue(s). Since the case no longer is considered a pending appeal, the attorney for the negotiating team shall be appointed by the appropriate contracting activity counsel. No final settlement agreement shall be made without the approval of the contracting officer.~~

~~(d)j) *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 in accordance with the claims dollar threshold criteria shown in Table 5233-94 at levels established for claims of the same dollar amount.~~

~~(e)k) *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 5234

MAJOR SYSTEM ACQUISITION

5234.004 Acquisition strategy.

—If the acquisition strategy contemplates the use of an option for initial production requirements in a competitively or noncompetitively awarded Engineering and Manufacturing Development (EMD) contract, address the use of the Phased Pricing technique described in 5216.403-2.

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(A&T) approval are to be submitted to ABM for processing and signature by ASN(RD&A).

5235.015 (DFARS 235.015) 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.

~~—(c) Authorization of special use allowance.~~ In addition, the HCA should also consider if more than the amount of percentage of cost needed to satisfy the Government's functional requirements is recommended for special use allowance, the special circumstances justifying such action. Requests for HCA approval shall be forwarded via Commander, Naval Facilities Engineering Command for review and comment in regard to design, type of construction, adequacy to meet Government requirements and the reasonableness of the estimated total cost and the amount thereof allocable to Government requirements.

~~(d) Application of the special use allowance.~~ *Policy.*

~~(3)~~(S-90) Contracts providing for a special use allowance for acquisitions or construction of research facilities shall specify:

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

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

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

~~(S-91)~~(4) 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 ~~or designee~~ is required.

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 (252.235-7000 for fixed price and 252.235-7001 for cost reimbursement) and definition in a research or development contract, together with the authority to approve 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

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delegated to the Deputy Comptroller, Department of the Navy, and to one assistant designated by the Deputy Comptroller for such purpose.

PART 5236 (DFARS 236)

CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

SUBPART 5236.2 (DFARS 236.2)--SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION

5236.270 (DFARS 236.270) Expediting construction contracts.

Where additional costs are incurred, NAVFACENGCOM is responsible for obtaining required agency head approval and certification.

5236.271 (DFARS 236.271) Cost-Plus-Fixed Fee Contracts.

Submit requests for use of cost-plus-fixed-fee construction contracts which require ASD(P&L) approval to ABM via the HCA.

SUBPART 5236.6 (DFARS 236.6-- ARCHITECT-ENGINEER SERVICES

5236.601 (DFARS 236.601) Policy.

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

PART 5237

SERVICE CONTRACTING

SUBPART 5237.1--SERVICE CONTRACTS--GENERAL

~~5237.102 (DFARS 237.102) Policy.~~

~~The use of uncompensated overtime is not encouraged. Similarly, the acquisition of services on the basis of the number of hours to be provided is not encouraged since it promotes uncompensated overtime and often results in unsatisfactory contract performance and/or contract administration problems. Accordingly, solicitations for services expected to exceed \$100,000 which are based on the number of hours to be provided shall not be issued unless approved in advance by the CCO or designee.~~

~~5237.103 Contracting officer responsibility.~~

~~5237.103-90 Marking of contractor reports.~~

~~All reports required under contracts for individual experts and consultants; studies, analyses, and evaluations; and management and professional support services shall 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; and~~
- ~~—(e) Sponsor;~~

Name of Individual Sponsor_____

Name of Requiring Activity_____

City and State_____

~~The sponsor's name shall be provided by the contracting activity and shall be an individual from the requiring activity at the Program Manager or comparable level.~~

SUBPART 5237.2--ADVISORY AND ASSISTANCE SERVICES

~~5237.202 Policy.~~

~~—(a) Additional policies and procedures for acquiring advisory and assistance services by contract are prescribed in DoD Directive 4205.2 dated 27 January 1986 and SECNAVINST 4200.31B dated 8 September 1987.~~

5237.203 (DFARS 237.203) Types of advisory and assistance services.

~~—(a) Individual experts and consultants. Procedures governing the procurement of individual experts and consultants are set forth in the Federal Personnel Manual (CMMI), (Chapter 304 and Appendix C of the chapter) and FAR Subpart 37.2. In the case of contracts where personal services are not involved there is no requirement to invoke the exceptional authority of 5 U.S.C. 3109 even though consulting services are utilized. Accordingly, 5 U.S.C. 3109 should not be used as authority for such contracts.~~

5237.203-90 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; and
- (e) Name of individual sponsor:
 - (1) The sponsor should be an individual from the requiring activity at the Program Manager or comparable level.
- (f) Name of requiring activity
- (g) City and State

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 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 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.

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

5237.270 (DFARS 237.270) Master agreements.

5237.270-3 Limitations.

(a) ~~The determination and finding shall be completed as prescribed in FAR 1.704 and DFARS 201.704. Upon signature, provide a copy to ABM.~~

(b) HCAs are responsible for publication of the notice of waiver in the Federal Register. All notices shall be forwarded to the Office of the Federal Register via the Navy Judge Advocate General (Code 133) (see 5201-90).

5237.270-4 (DFARS 237.270-4) Reporting requirements.

~~(a) Submit the annual report to ABM not later than 29 October.~~

~~(a)(3) Reports shall cover the preceding fiscal year.~~

~~(b) ABM will centrally maintain the information required by (1) through (5) which shall be provided with the annual report required under (a) above.~~

SUBPART 5237.90--CONTRACTOR GUARD SERVICES

5237.9000 Contracting for contractor guard services.

~~(a) Policy:~~

~~(1) 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.~~

~~(2) As a minimum, the joint Navy Security and Investigative Command/Facilities Engineering Command 1986 Guard Services Contract Performance Work Statement will be utilized as the applicable statement of requirements.~~

PART 5239 (DFARS 239)

ACQUISITION OF INFORMATION RESOURCES

5239.001 Policy.

~~5239.001-70 (DFARS 239.001-70) Warner Amendment exemptions for Federal information processing (FIP) resources.~~

~~—(c) Determinations of applicability of the Warner Amendment shall be processed and made in accordance with SECNAVINST 5231.1.~~

~~5239.002 (DFARS 239.002) Delegations of procurement authority.~~

~~—(1) Requests for delegation of procurement authority shall be processed in accordance with SECNAVINST 5231.1.~~

PART 5241

ACQUISITION OF UTILITY SERVICES

5241.004 (DFARS 241.004) Acquiring utility services.

~~—(a) The Commander, Naval Facilities Engineering Command 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. Acquisition of telecommunication services is under the cognizance of the Commanding Officer NISMC, Information Technology Acquisition Center (ITAC).~~

~~—(b) Authority to contract for public utility services shall be obtained by Business Clearance Memorandum from NAVFACENGCOM in such form as they may prescribe. Business Clearance Memorandum shall set forth the following information:~~

~~—(1) Name and location of activity;~~

~~—(2) Type of public utility service required;~~

~~—(3) Estimated annual cost and, if available, a billing analysis for the preceding twelve (12) months showing usage and cost factors;~~

~~—(4) Name and address of contractor;~~

~~—(5) Copy of contractor's rates, rules, and regulations applicable to the service in question;~~

~~—(6) A statement concerning the availability of competition;~~

~~—(7) The chargeable appropriation; and~~

~~—(8) Such other data pertaining to each type of public utility service as may be prescribed, from time to time, by NAVFACENGCOM.~~

~~—(c) All contracts shall be approved as to legality and form by NAVFACENGCOM Counsel.~~

~~—(c)d) 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 the NAVFACENGCOM for comment or approval prior to execution of the contract.~~

~~—(de) NAVFACENGCOM is authorized to procure unregulated public utility services without written contract where the anticipated annual charges will not exceed \$2,500 and regulated public utility services without written contract where the anticipated annual charge will not exceed \$10,000 and where a connection or termination charge does not exceed \$1,000 or \$2,500, respectively. In all instances where utility services are procured without the use of a written contract, payment therefore will be made on the basis of monthly statements submitted in conformity with applicable regulations.~~

PART 5242

CONTRACT ADMINISTRATION

SUBPART 5242.1-INTERAGENCY CONTRACT ADMINISTRATION
AND AUDIT SERVICES

5242.101 Policy.

~~—(d) DoN Field Contract Administration Offices will invoice for contract administration services completed in accordance with instructions provided by their parent command. Billing rates will be provided by the Comptroller of the Navy in accordance with NAVCOMPTINST 7030.17.~~

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, and, as such, will be responsive to the needs of contracting and contract administration offices and will be consistent with specific contract provisions and applicable regulations.

~~(b)~~ Areas of interest to the auditor often meet and overlap those of interest to contracting and contract administration offices. A clear understanding of the responsibilities of DCAA auditors is essential to ensure continuous close cooperation and team work.

~~(c)~~ Contracting and contract administration offices are have responsibility 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, in connection with a request for audit, copies of any contracts (including change orders, supplements, amendments, and termination notices), cost statements, proposals, and other financial data submitted by contractors with all relevant documents or, as appropriate, documentation requested by the auditor;

(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.

(d) Contract audit services shall/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.

(e) 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.

~~—(f) The independent professional advice of DCAA auditors is essential to good contracting. The contracting and contract administration offices must consider such advice. However, decisions of the contracting officer on contracting and contract administration matters often have to take into account many factors in addition to those presented by the auditors and will therefore represent the considered judgment of the contracting officer. (see FAR 15.805-1(a)).~~

~~—(fg) The auditor is required to discuss all significant and potentially controversial problems, particularly those having a continuing impact on the reasonableness of pricing or on administration of the acquisition program with the ACO prior to finalization of audit action. Where agreement on such problems cannot be arrived at locally, the matter should be elevated through the respective audit and contract administration chain of command for final resolution. Any other unresolvable disagreements concerning services provided by DCAA shall be referred to higher contracting authority for discussion and resolution with counterpart DCAA echelons.~~

5242.191 Audit resolution and disposition.

~~—(a) DoN Policy. DoN contracting activities shall use contract audit advice provided by the DCAA. This entails: (1) full consideration of the findings and recommendations made by auditors;~~

~~—(2) prompt, proper resolution of differences between contracting officers and contract auditors on the proposed disposition of audit findings and recommendations;~~

~~—(3) expeditious disposition, including fund recovery actions;~~

~~—(4) documentation of any differences between the audit recommendation and the actual dispositions thereof; and~~

~~—(5) continuous dialogue between contracting, auditing and audit follow-up personnel to achieve the most effective system possible.~~

~~—(b) System structure. The contract audit follow-up system shall be structured in consonance with the independent decision making role of the contracting officer and the financial advisory role of the contract auditor. Resolution of contract audit reports other than preawards, is required by law within six months of report issuance. Disposition shall take place as soon as possible after resolution.~~

~~(bc) Responsibilities:~~

~~—(1) ABM is the contract audit follow-up official responsible for managing the DoN's contract audit follow-up program.~~

~~—(2) HCAs shall:~~

~~—(i) establish procedures as prescribed by FAR 15.807, whereby contracting officers shall fully consider contract audit advice in the course of determining prenegotiation positions that are subject to DoD Component review and clearance processes.~~

~~—(ii) establish internal controls to ensure that the Command contract audit follow-up system is fully implemented in accordance with the requirements of DoD Directive 7640.2 dated 12 February 1988, and that system operation results in timely and appropriate resolution and disposition of audit reports.~~

~~—(iii) ensure that performance appraisals of appropriate acquisition officials reflect their effectiveness in resolving and disposing of audit findings and recommendations in a timely manner, while fully protecting the Government's interest.~~

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—(iv) establish procedures for maintenance of up-to-date records on all applicable contract audit reports from receipt through disposition. For open reports, this includes written milestone plans comprised of target dates for resolution and disposition, and planned actions to accomplish those dates. When an audit is resolved, it must be supported by specific written documentation in the file.

~~—(iv) establish procedures to monitor and ensure the proper, timely resolution and disposition of contract audit reports.~~

(A) Resolution of contract audit reports other than pre-awards, 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.

HCAAs are responsible for establishing procedures to accomplish this and ~~—(vii) establish procedures~~ to ensure that the semiannual contract audit follow-up status report required by DoD Directive 7640.2 is ~~submission is:~~

~~—(A) prepared in accordance with DoD Directive 7640.2 dated 12 February 1988, paragraph F.3., and enclosure 3.~~

~~—(B) verified against prior status report submission and the applicable DCAA control logs; and~~

~~—(C) submitted to ABM within 15 calendar days after the end of the 31 March and 30 September reporting periods. ABM will accumulate the reports and submit the consolidated DoN report to the DODIG within 30 calendar days after the end of the reporting period.~~

~~(viii) ensure that acquisition personnel are adequately trained in the utilization of contract audit reports and the requirements of the contract audit follow-up program.~~

~~—(iviii) establish procedures for documenting and reviewing:~~

~~—(A) proposed prenegotiation objectives which provide the independent review for internal control purposes. This will be accomplished as part of the business clearance review and approval process. In documenting the prenegotiation position, tThe contracting officer should indicate:~~

~~—(A) whether the audit recommendations were accepted,~~

~~—(B) any revisions to the auditor's report as a result of (a) above, and~~

~~—(C) the rationale for the unacceptance of, or any pertinent variances from, the audit recommendations.~~

~~—(D)~~

~~or, if not, whether the auditor has revised them. When the contracting officer disagrees with the audit position, the contracting officer's prenegotiation documentation should include the rationale for not accepting the audit advice. The postnegotiation documentation should include a summary of the field pricing report recommendations and reasons for any pertinent variances from these recommendations.~~

~~—(B) objections from the contractor to the administrative contracting officer (ACO) for auditor-determined indirect cost rates. This will be accomplished as part of the business clearance review and approval process.~~

~~—(a) If the contractor submits a written objection to the ACO, the ACO may communicate further with the contractor in order to reach an agreement. If the ACO disagrees with the audit recommendations, he or she shall comply with the business clearance procedures for documentation and review prior to disposition. If the ACO~~

~~agrees with the audit recommendations, he or she shall issue a final decision, after complying with the clearance review and approval procedures.~~

5242.192 Commercial advertising by DoN contractors.

(a) ~~Contractors frequently include in some of their commercial advertisements reference to their participation in DoN programs. Prior to placement of these advertisements, the contractor may seek approval thereof from some DoN office. The general DoN~~ policy is to does ~~not object to~~ commercial advertisements by contractors which reference their participation in DoN programs, provided such advertisements provided they do not:

(1) Directly or indirectly constitute an endorsement of the contractor's product or service by the Department or any member thereof ~~of the contractor's product or service;~~

(2) Indicate or imply in any manner Departmental preference of the contractor;

(3) Contain reference to contract number or other contractual detail; or

(4) Disclose classified military information.

(b) Contractors are not required to obtain prior clearance for advertisements. However, any Departmental office that becomes aware of any advertisement which appears to conflict with the conditions of (a) above ~~shall~~ ould immediately notify ~~bring it to the attention of the cognizant field contract administration office. The field office~~ CAO shall take necessary action with the contractor to resolve the matter in consonance with the aforesaid policy. In the event this matter cannot be resolved to the satisfaction of the field office, the matter shall be referred to ABM.

SUBPART 5242.2--ASSIGNMENT OF CONTRACT ADMINISTRATION

5242.205 Designation of the paying office.

~~—All contracts, agreements and orders citing DoN appropriations and funds paid by DoN disbursing offices will show the appropriate Financial Information Processing Centers (FIPCs)/Financial Processing Centers (FPCs).~~

SUBPART 5242.3--CONTRACT ADMINISTRATION OFFICE FUNCTIONS

5242.302 (DFARS 242.302) Contract administration functions.

(b)(4) Subject to the limitations prescribed in (iB) below, the CAO is hereby delegated authority to execute bilateral contract modifications providing for the deobligation of unexpended dollar balances (thereby reducing the dollar balance of the contract) considered excess to known contract requirements without specific authorization by the contracting office. ~~in those applicable DoN contracts assigned for administration. The ACO shall execute a bilateral contract modification reducing the dollar balance of the contract when it is determined that excess funds are available for deobligation. If more than one appropriation is involved, the excess amount for each appropriation shall be identified. The ACO is authorized to include statements of funding contingencies reserved by either party for further Government obligation and to affect a net reduction of the dollar balance of obligated DoN funds.~~

(iB) Limitations: Limitations. This delegation does not apply to that portion of:

(A4) DoN cost reimbursement contracts where DoN funds are

involved; and

(B2) DoN fixed-price contracts where DoN funds are obligated or committed pursuant to provisioning procedures, or where DoN funds for engineering services and related support are involved.

5242.302-90 Responsibilities of Supervisors of Shipbuilding, Conversion, and Repair (SUPSHIPS).

~~—(a) Policy.~~ The following policy, applicable to DoN field contract administration of major defense system acquisitions, is based upon the premise that the contractor is primarily responsible for the contractor's cost, schedule, and technical performance;

~~—(1) A capability shall be established and maintained in the SUPSHIPS to provide the required support to the contracting officer, program manager and contracting activity.~~

~~—(2) Maximum responsibility, within existing capability, shall be assigned to the SUPSHIP by the contracting officer, program manager, and/or contracting office.~~

~~Appropriate agreements shall be formalized which clearly define for each program assigned to a SUPSHIP the detailed responsibility of the SUPSHIP.~~

~~—(3) The basic method of operation of the SUPSHIP shall be the monitoring of the contractor's performance, including management and operations. Emphasis shall be placed on ensuring that contractors incorporate controls to ensure that the contract requirements are met.~~

~~—(4) SUPSHIPS shall coordinate their contract administration efforts with those of the DCAA (Defense Contract Audit Agency) auditor and other government activities.~~

~~Functional area reviews conducted by the DCAA auditor and those conducted by the SUPSHIP shall be coordinated in order to optimize use of audit and Government contract administration manpower with minimum disruptive effect upon the contractor. For purposes of final indirect cost rates, (see DFARS 242.705).~~

~~—(5) The goal of SUPSHIPS shall be, through involvement with the contractor, earliest detection and correction of contractor inefficiencies; cost avoidance rather than disallowance; and compliance with contractual schedule and technical performance requirements.~~

~~—(6) Contract administration personnel shall be fully cognizant of contract terms and conditions in order to avoid actions which exceed contract requirements and to assure that any directions, suggestions or requests to the contractor are consistent with the contract provisions.~~

~~—(7) Contract administration procedures shall be tailored to the contract and contractor situations. The degree of monitoring exercised by the SUPSHIP shall be consistent with the benefits to be derived. The art of the field contract administrator is the ability to determine and to use the minimum amount of monitoring required to protect the Government's interests.~~

~~—(b) Primary Responsibilities.~~ SUPSHIPS have the primary responsibilities listed below which require the integrated performance of the functions listed in FAR 42.302(a), and the assistance of the DCAA auditor:

~~—(1) Determine on a continuing basis contractor compliance with the terms of the contract including schedule, cost and technical performance requirements;~~

~~—(i) Advise the contractor of the need for corrective action and follow-up to obtain correction;~~

~~—(ii) Advise, as appropriate, the contracting officer, project manager, ordering activity,~~

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and/or other responsible official or activity of any contractor deficiencies which the SUPSHIP cannot resolve within the limits of delegated authority; and

—(iii) Consult with the contracting officer in the event of conflict or disagreement;

—(2) Advise, as appropriate, the contracting officer, project manager, ordering activity, and/or other responsible official or activity of any problem not covered by contract terms affecting the adequacy of the end item or the contractor's cost, schedule or technical performance which the SUPSHIP cannot resolve within the limits of delegated authority.

—(3) Advise the contracting officer of any inadequacies in contract terms, including schedule, cost and technical performance requirements, revealed during the performance of contract administration functions; and

—(4) Determine whether the contractor's direct and indirect costs are reasonable, allocable and otherwise allowable, that costs represent what performance of the contractor should cost, assuming reasonable economy and efficiency; and take appropriate corrective action when necessary.

—(c) *Additional functions.* The functions listed below are in addition to those listed in FAR 42.302(a) and shall be performed when requested by the contracting officer, project manager or ordering activity.

—(1) Conduct pre-solicitation review and evaluation of the schedule, general provisions, specifications and other provisions of proposed contracts to determine the adequacy of contractual requirements for contract administration purposes.

—(2) Participate in negotiations and in source selections.

—(3) Issue orders under contracts for provisioned and other items, and orders under basic ordering agreements.

—(4) Participate in cost and other studies conducted by higher authority.

—(5) Perform warranty administration. Include, as a minimum, collection of the following data for each contract:

—(i) Item description;

—(ii) Applicable contract number;

—(iii) Contractor name and location;

—(iv) Dollar value of item under warranty;

—(v) Scope of the warranty (i.e., what is warranted, what is not) and identification of the warranty provisions (clause numbers) in the contract;

—(vi) Warranty item repair history, including nature of repairs, cost and frequency; and

—(vii) Government costs chargeable to the contractor, e.g., repair, rework, modification, procurement and transportation costs.

—(d) *Contractor employee compensation and insurance/pension reviews (see DFARS 242.73).*

—(1) SUPSHIPS are responsible for determining the final allowability of contractor costs, including costs for contractor employee compensation, insurance and pensions. As part of the effort necessary to make determinations applicable to employee compensation, insurance and pension costs, SUPSHIPS may use the services of the DCAA to conduct employee compensation reviews and the cognizant DCMAO (Defense Contract Management Area Operation) to conduct insurance/pension reviews required by FAR 42.302(a)(1) and (2).

—(2) A copy of each review shall be provided the cognizant Systems Command and

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ABM by the SUPSHIP.

~~—(3) Requests for DCMAO services should be confirmed in writing to Defense Logistics Agency (DLA-AF). A copy should be sent to ABM and the systems Command manager of the SUPSHIP.~~

~~—(e) *Deobligation of unexpended excess dollar balances.*~~

~~—(1) *Responsibility.* SUPSHIPS shall monitor contract funding in order to determine when excess funds are available for deobligation.~~

~~—(2) *Procedures.* (i) Contractually required reports, including Contract Funds Status Report (DD Form 1586) and the report required by the Limitation of Cost clauses, shall be examined to determine if there are excess contract funds. Also, when work under a contract or contract line item is physically completed, or has lapsed, a review shall be made to determine if there are any excess funds.~~

~~—(ii) When the determination has been made that unexpended dollar balances are excess to known contract requirements, the SUPSHIP shall obtain a statement from the contractor as to the exact amount available for deobligation.~~

~~—(iii) When authorized under 5242.302(b)(4), the SUPSHIP will execute a bilateral contract modification releasing excess funds. Otherwise, the SUPSHIP shall provide a report of excess funds to the contracting office, which may either modify the contract or authorize the SUPSHIP to do so.~~

~~—(iv) In preparing modifications deobligating funds under contracts involving multiple accounting classifications, SUPSHIPS may find it necessary to obtain a record of DoN payments by accounting classifications in order to determine which accounting classifications to credit. Upon specific request, contract payment status may be secured from the paying office(s) designated in the contract to make payments under the various appropriations. The payment office will provide payment status by Accounting Classification Reference Number (ACRN) as identified in the contract. Extreme caution must be exercised to avoid deobligating expired funds which may not be truly excess funds.~~

~~—(v) Should a deobligation by a SUPSHIP be later determined to have been excessive, the SUPSHIP shall obtain the required funds from or through the contracting office and modify the contract accordingly.~~

~~—(f) *Review of contractor's automatic data processing (ADP) operations.*~~

~~—(1) SUPSHIP Responsibility. Each SUPSHIP shall review the contractors' ADP operations periodically to ensure that they are effective and economical. This review should be combined with any review required by the Federal Information Management Resources Regulation (FIRMR) or DFARS 239.7303 and shall include a review of the end products of contractors' ADP equipment, and the data that might be produced by such equipment. The plan and schedule for the review must be tailored to the contractor concerned, the extent of competition in contracts being performed, the contractor's operating methods, the nature of the work being done, contracting cycle status, types of contracts involved, degree of technical and financial risk, ratio of Government/commercial work, and extent that performance efficiencies have been previously demonstrated. The plan should stress the importance of anticipating potential problems and provide a means of calling them to the attention of the contractor at a stage early enough to enable preventive action to be taken. Review teams shall be headed by a representative of the SUPSHIP and shall include as~~

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necessary one or more ADPE specialists, one or more DCAA auditors, and appropriate SUPSHIP personnel.

~~—(2) The Defense Logistics Agency has been designated lead agency responsibility by the Under Secretary of Defense to conduct ADP technical reviews for the Departments of the Army and Navy. Defense Contract Management District (DCMD) Northeast and DCMD West will perform ADP technical reviews in accordance with FAR 31.205-2 and DFARS 239.73. DCMD West is responsible for performing ADP technical reviews for contractors located west of the Mississippi River, plus southern Illinois. DCMD Northeast is responsible for reviews at all other locations. Any assistance will be requested in writing directly from DCMD Northeast, Attn: DCMD BOS-AFE, 495 Summer Street, Boston, MA 02210-2184; or DCMD West, Attn: DCMD LA-AFE, 222 N. Sepulveda Blvd., El Segundo, CA 90245-4320. The request shall state whether the contractor is expected to exceed the FAR 31.205-2 threshold.~~

~~—(g) Administration of payment provisions.~~

~~—(1) Submission of quarterly statements. The SUPSHIP is responsible for maintaining controls for the purpose of ensuring that contractors submit the quarterly statements required by paragraph (h) of the clause at FAR 52.216-5, Price Redetermination-Prospective; paragraph (g) of the clause at FAR 52.216-6, Price Redetermination-Retroactive; paragraph (g) of the clause at FAR 52.216-16, Incentive Price Revision-Firm Target; and paragraph (i) of the clause at FAR 52.216-17, Incentive Price Revision--Successive Targets, to the contracting officer with a copy to the designated paying activity/activities. If the contractor fails to submit the statement, the SUPSHIP shall notify the contracting officer, the designated paying activity/activities and the cognizant DCAA contract auditor of the delay and the reasons therefor. Payments shall be suspended by the paying activity/activities if the statement is not submitted when due.~~

~~—(2) Review of quarterly statements. (i) Unless the SUPSHIP or auditor has cause to doubt or question the accuracy of statements furnished in accordance with the limitation on payments provisions, such statements shall ordinarily be relied upon, and prompt payments under the contract shall be made pending review. Arrangements shall be made by the SUPSHIP for periodic joint reviews with the auditor of the quarterly statements. The frequency and scope of such reviews shall be dependent on the dollar amounts involved and the extent of any indicated divergence between interim billing prices and the actual cost of delivered items. At least one comprehensive review shall be made annually. Among other things, review procedures shall establish that costs attributed to delivered items have been excluded from the costs set forth as the basis for unliquidated progress payments on Contractor's Request for Progress Payment (SF Form 1443).~~

~~—(ii) In certain cases, the SUPSHIP may have reason to question the accuracy of statements furnished in accordance with the limitation on payment provisions and the amounts involved may be significant. Unless the contractor provides a satisfactory explanation of correction, together with any indicated refund, the SUPSHIP should notify the paying activity/activities to withhold payments under the contract in an amount deemed sufficient to cover additional refunds that would have resulted from correct quarterly statements.~~

~~—(3) Refunds and adjustments.~~

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~~—(i) *Ascertainment and collections.* The amount of any monies due from contractors to the Government shall be ascertained promptly and collected expeditiously. The SUPSHIP shall establish appropriate controls to expedite prompt collection. Any necessary supplemental agreements to provide for refunds or adjustments shall be prepared expeditiously and executed without delay.~~

~~—(ii) *Voluntary refunds or payment adjustments.* The making of voluntary refunds by the contractor in anticipation of retroactive price reductions shall be encouraged. No proposed voluntary refund shall be refused or delayed, and all such refunds shall be accepted without prejudice to final pricing.~~

~~—(iii) *Billing or interim price adjustments.* Where it is apparent that the interim contract prices are and will continue to be excessive, the SUPSHIP shall recommend to the contracting officer that billing prices covering future deliveries be modified. However, if reductions in billing prices are proposed by the contractor, they shall be made effective immediately without prejudice to further adjustments. Similarly, mutually agreed billing prices shall be made effective immediately. Billings voluntarily reduced by contractors shall, if otherwise proper, be paid at the reduced amounts without awaiting contract modification.~~

~~—(iv) *Refunds or payment adjustments - final pricing proposal.* Where the contractor's price proposal under price redetermination or incentive contracts indicates that a significant refund will be due, the SUPSHIP shall promptly secure an appropriate voluntary or mutually acceptable refund from the contractor.~~

~~—(v) *Supporting documentation for refunds and adjustments.* In connection with voluntary refunds; minimum refunds proposed by contractors in connection with final pricing proposals; and refunds incident to quarterly statements; contractors shall not be required to furnish concurrent itemization of adjustments to be made on past billings, nor to furnish adjusted bills concurrently. The making, acceptance, and deposit of refunds will not be delayed pending any necessary accounting adjustments.~~

~~—(h) *Allowability of costs under cost-reimbursement type contracts.*~~

~~—(1) The cognizant SUPSHIPS has final responsibility for determining whether costs incurred under cost-reimbursement type contracts are reasonable, allocable, and otherwise allowable.~~

~~—(2) DFARS 242.803(b) designates the auditor as the authorized representative of the contracting officer for examining contract costs for the purpose of determining allowable direct and indirect costs under certain circumstances. During performance of the contract, the auditor processes vouchers for provisional payment subject to final audit. At completion of the contract, the auditor forwards the completion voucher to the SUPSHIP accompanied by the final audit report and determination of all costs incurred and considered allowable from the inception to the completion of the contract. The SUPSHIP shall approve the final payment after ensuring that the contractor has fully complied with all provisions of the contract.~~

~~—(3) The auditor issues DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved, with a copy to the SUPSHIP, with respect to cost claimed but not considered allowable. The auditor is required to discuss controversial disallowances with the SUPSHIP, prior to issuing the DCAA Form 1.~~

~~—(4) During the period of contract performance, the SUPSHIP is responsible for the performance of contract administration functions listed in FAR 42.302. In the~~

day-to-day performance of these functions, SUPSHIP personnel should be alert to inefficient and uneconomical policies and practices being followed by the contractor that can result in the incurrence of unnecessary costs. If sufficient information is available to indicate that a contractor's practice is causing unnecessary contract costs, the SUPSHIP shall direct the issuance of the DCAA Form 1 by the auditor for the suspension or disapproval of costs incurred. Where the SUPSHIP believes that unnecessary costs are being incurred by a contractor, and requires audit assistance, available information should be coordinated with the auditor, and the SUPSHIP should request specific audit coverage of the functional area involved.

~~—(i) *Responsibility of a CAO to its parent agency.* (1) The Contract Administration Office (CAO) shall perform all assigned contract administration functions listed in FAR 42.302(a) to the fullest extent of its capabilities and refer functions beyond its capability to its parent headquarters for performance.~~

~~—(2) When feasible, the CAO shall perform such other contract administration functions listed in FAR 42.302(b) as may be requested by the contracting office. If resources are not available to perform such functions, the CAO shall so advise its parent headquarters and the contracting office making the request.~~

~~—(j) *Responsibility of SUPSHIPS to project manager or contracting activity.*~~

~~—(1) Appropriate agreements shall be reached among the project manager or contracting activity and the applicable SUPSHIP with respect to the functions of each relative to major defense system contract where the SUPSHIP is to perform functions not listed in FAR 42.302(a). Those functions normally performed by SUPSHIPS, as listed in FAR 42.302(a), shall not be included in the agreement unless withheld, supplemented, modified or clarified.~~

~~—(2) The objective of the agreement is to establish a clear understanding as to which Government element is responsible for administering specific aspects of the contract. The existence of a clear understanding will minimize the possibility that duplication may occur or that a responsible element may be circumvented in providing Government direction to the contractor. Within the capability of SUPSHIPS, program managers or contracting activities shall delegate maximum authority to them to perform such functions as participation in preliminary design reviews and critical design reviews, surveillance and monitoring of development risk, standardization control, interface control, approving contract changes, trade-off studies, approval of certain Class I engineering changes, approval of specifications, etc. These functions should be included in the agreements.~~

~~—(3) The guidance in (1) and (2) above is also applicable for use, as appropriate, with non-DoN CAOs.~~

~~—(k) *Headquarters Management of DoN Field Contract Administration Offices.* It is DoN policy to locate management of its SUPSHIPS in physical as well as organizational proximity to the project managers, Systems Commanders and functional specialists being serviced. This policy enables all responsible acquisition officials to more quickly and effectively coordinate and focus their efforts on problems encountered throughout the acquisition cycle from program initiation to production. Further, the physical and organizational co-location of these officials enhances the opportunity for the direct communications and rapid responses necessary to the daily management of major weapons systems acquisitions. The concerted team effort encouraged by this policy is considered to be a major factor in ensuring that all activity~~

in the entire acquisition arena is oriented toward program success.

~~—(l) *Advance agreements on treatment of special or unusual costs.* The SUPSHIPs are responsible for negotiating certain advance agreements as anticipated by 5231.109 and FAR 31.109 except that the Tri-Service Contracting Officer has full authority to negotiate advance agreements for IR&D/B&P costs pursuant to FAR 31.205-18 and FAR Subpart 42.10. In exercising this responsibility, contracting officers shall comply with the requirements set forth in 5201.690-6.~~

~~—(m) *Final indirect cost rates.* The SUPSHIPs are responsible for establishing final indirect cost rates for contractor locations for which such rates are established in accordance with the provisions of FAR 42.705.~~

~~—(n) *Cost Accounting Standards reviews.* The SUPSHIPs are responsible for determining contractor compliance with cost accounting standards (CAS) and disclosure statements, as applicable, and for negotiating equitable adjustments and executing supplemental agreements pursuant to cost accounting standard clauses in FAR 52.230-3, 52.230-4 and 52.230-5 except that the Tri-Service Contracting Officer shall have full authority for determinations related to CAS 420 for those contractors with which Tri-Service Contracting Officer negotiates advance agreements pursuant to FAR 31.205-18 and FAR Subpart 42.10.~~

~~5242.302-91 Contract actions based on direct communications between the CAO and the requiring activity.~~

~~—(a) In the interest of expediting contractual decisions, contracting officers of the Navy Field Contracting System may delegate to DoN and DCMAO contract administration offices (CAOs) authority to communicate directly with the requiring activity on problems related to a contract. The name and address of the requiring activity and the name and telephone number of the person to be contacted shall be included in the delegation of authority. When so delegated, the CAO will take any required action to solve the problem, except those actions which, by regulation, must be taken by a contracting officer of the contracting activity.~~

~~—(b) Normally when direct communication with the requiring activity is authorized in accordance with (a) above, the DoN or DCMAO CAO shall also be delegated authority to perform, as appropriate, the functions under FAR 42.302(b).~~

~~—(c) Copies of communications among requiring activities and CAOs shall be furnished the contracting officer of the contracting activity, as appropriate.~~

SUBPART 5242.6—CORPORATE ADMINISTRATIVE CONTRACTING OFFICER

5242.602 Assignment and location.

(c) ~~Recommendations for~~Submit recommendations for assignment ~~of a corporate administrative contracting officer (CACO) shall be submitted to ABM via appropriate channels.~~

SUBPART 5242.10—NEGOTIATING ADVANCE AGREEMENTS FOR INDEPENDENT RESEARCH AND DEVELOPMENT/BID AND PROPOSAL COSTS

5242.1003 Designation of lead negotiation agency. The Chief of Naval Research (CNR) is responsible for performing the functions set forth at FAR 42.1005, 42.1006

NAVY ACQUISITION PROCEDURES SUPPLEMENT

and 42.1007.

5242.1008 (DFARS 242.1008) Administrative appeals.

(a) The Navy IR&D/B&P Appeals Hearing Group is the designated Navy's administrative appeals hearing group. ~~The Hearing Group may establish such additional procedures for processing appeals as are consistent with FAR 42.1008.~~

(b) Contracting Officer decisions made to reduce independent research and development (IR&D) and bid and proposal (B&P) payments shall include notification to the contractor of the right to appeal to the Hearing Group. Notices of intent to appeal shall be addressed to the Hearing Group, and shall be submitted to the **Chairperson of the Hearing Group via the** CNR by the contractor within 30 days after receipt of the contracting officer's decision. ~~The CNR shall forward the contractor's appeal and such additional documents and information as the contractor may submit, together with the contractor's position thereon and such other information as the contractor deems pertinent, to the Chairperson of the Hearing Group.~~

SUBPART 5242.14--TRAFFIC AND TRANSPORTATION MANAGEMENT

5242.1403 Shipping documents covering f.o.b. origin shipments.

5242.1403-2-90 Contractor-prepaid commercial bills of lading.

~~—(a) When supplies to be delivered FOB origin are authorized to be shipped on prepaid commercial bills of lading, reimbursement of contractors' prepay and add (PP&A) transportation costs shall not be charged to DoN procurement appropriations. Contracts and purchase orders shall specify that the cognizant paying office will charge the prepaid transportation costs to the following accounting data:~~

~~17X3980.2379 022 74001 0 063408 2D 000 **** 98003~~

~~****Insert appropriate four-digit Transportation Account Code (TAC)
—based upon procuring appropriation financing purchase, i.e.,~~

<u>Procurement Account</u>	<u>TAC</u>
17-1506 Aircraft Procurement Navy	N837
17-1507 Weapons Procurement Navy	N839
17-1611 Shipbuilding and Conversion Navy	N844
17-1810 Other Procurement Navy	N846
17-1804 Operations and Maintenance Navy	N867
17-1806 Operations and Maintenance Naval Reserve	N888

SUBPART 5242.71 (DFARS 242.71) VOLUNTARY REFUNDS

5242.7101 (DFARS 242.7101) Solicited refunds.

The HCA is authorized to **solicit voluntary refunds**. ~~This authority may be redelegated delegate the authority to solicit voluntary refunds to a level no lower than the CCO.~~

PART 5243

CONTRACT MODIFICATIONS

SUBPART 5243.1--GENERAL

5243.102 Policy.

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 Requests or claims for equitable adjustments

~~—(a) *Complex requests or claims for equitable adjustments pursuant to contract clauses.* Circumstances may arise where a contractor's assertions involve difficult or complex legal, factual, and fiscal issues requiring extensive fact-finding and analysis of government liability. Examples include late or defective government-furnished property or information, complex delay and disruption issues under formal change orders, and formal suspensions of work or stop work orders. In such circumstances, the request or claim for equitable adjustment shall be subject to the requirements of FAR Part 33 applicable to claims. In exceptional cases separate equitable adjustments of contracts may be made for clearly identified items of costs applicable to change orders.~~

~~—(b) *Equitable price reduction for failure to meet contract requirements.* Action shall be taken to negotiate an equitable price reduction pursuant to a guarantee clause, warranty provision, or failure to meet contract specifications, as soon as possible after the nature and extent of the deficiency has been determined, and any partially corrective action authorized by the contracting office has been completed. Delay in negotiation of such reductions to permit concurrent final pricing of the particular contract or other related contracts generally shall not be allowed.~~

~~(ac) *Substantiation of obsolete or residual inventory charges.* Whenever a contractor submits cost data on SF 1411, Contract Pricing Proposal cover sheet, or by any alternate method, in connection with pricing of change orders or repricing of contracts, charges included therein for obsolete or excess residual inventory shall~~ould~~ be substantiated by the submission of appropriate schedules listing the inventory involved. If title to such inventory vests in the Government, the inventory shall be treated in accordance with regulations established for contractor inventory.~~

5243.105 (DFARS 243.105) Availability of funds.

5243.105-90 Adjustments to prices under shipbuilding contracts.

~~—(a) Pursuant to 10 U.S.C. Section 2405, prohibits the Secretary of a military department may notfrom adjusting any price under a shipbuilding contract, entered into after December 7, 1983, for an amount set forth in a claim, request for equitable adjustment, or demand for payment under the contract (or incurred due to the preparation, submission, or adjudication of any such claim, request, or demand) arising out of events that occurring more than 18 months before the submission of~~

the claim, request, or demand.

~~— (1) in the case of a contract entered into after December 7, 1983, and before the date of the enactment of the Federal Acquisition Streamlining Act (FASA) of 1994 (Oct. 13, 1994), occurred more than 18 months before the submission of the claim, request, or demand; and~~

~~— (2) in the case of a contract entered into on or after the date of the of the enactment of the FASA (Oct. 13, 1994), occurred more than 6 years before the submission of the claim, request, or demand.~~

~~— (b) 10 U.S.C. Section 2405 provides that a claim, request, or demand shall be considered to have been is submitted only when the contractor has provided to the contracting officer the certification required by Section 6(c)(1) of the Contract Disputes Act of 1978, if the matter is over \$50,000\$100,000, and the supporting data for the claim, request, or demand.~~

~~— (c) This subpart implements 10 U.S.C. Section 2405.~~

5243.105-91 Adjustments to prices under shipbuilding contracts - Definitions.

~~— As used in this subpart, the following terms have the meanings set forth below.~~

~~"Claim" means a written demand or written assertion by the contractor seeking, as a matter of right, a price adjustment under the contract. The theory upon which the contractor seeks the price adjustment does not determine whether a particular matter is a claim. The term includes a submission asserting any theory supporting a price adjustment, including but not limited to constructive change, breach of contract or mistake, which, if valid, would result in contractor entitlement to a price adjustment. A voucher, invoice or other routine request for payment that is not in dispute when submitted is not a claim. A claim does not include a request for equitable adjustment or demand for payment, as defined below.~~

~~"Demand for payment" means a written demand for payment, the granting of which results in a price adjustment under the contract. A demand for payment does not include a routine request for payment in accordance with the payment terms of the contract.~~

~~"Events" means the Government action(s), Government inaction(s), Government conduct, or occurrence(s) which give rise to the contractor's claim, request for equitable adjustment, or demand for payment. The term events does not require the incurrence of costs and/or performance of additional work resulting from the action(s), inaction(s), conduct or occurrence(s) except where a contractor's commencement of the correction of defective GFI (including Government-furnished drawings and specifications)/GFP constitutes the final occurrence. For the purpose of this subpart, the date of the final Government action, Government inaction, Government conduct or occurrence is the date on which the 18 month period commences. The final Government action, Government inaction, Government conduct or occurrence and the date thereof for specific categories of liability are as follows:~~

~~— (1) *Formal changes (including changes based on engineering change proposals (ECPs) and non-engineering change proposals (NECPs)).* The final Government action for a formal written change is the contracting officer's authorization or direction to proceed. The date the final Government action occurs is the date of receipt by the contractor of the contracting officer's authorization or direction to proceed. If the contracting officer unilaterally establishes the price of a previously issued~~

maximum-priced modification, the unilateral pricing action is the final Government action. In this latter case, the date the final Government action occurs is the date of receipt by the contractor of the contracting officer's unilateral price determination.

—(2) *Defective Government-furnished property.* The final Government action is the direction from the contracting officer regarding correction, replacement or repair of the property or notification that the property is not defective. The date the final Government action occurs is the date of receipt by the contractor of the contracting officer's direction or notification. If a contractor proceeds to correct a deficiency in Government furnished property without direction from the contracting officer regarding the correction, replacement or repair of the property, the final occurrence is the contractor's commencement of the correction, replacement or repair of the property. (Neither an attempt to perform in accordance with defective Government furnished property nor an attempt to determine whether there is a defect in the property and development of one or more potential solutions to correct such defect constitutes the commencement of correction. Commencement of correction is performance of work which is inconsistent with or not required by the contract other than the identification of the defect and possible solutions.) In this latter case, the date of the final occurrence is the date the contractor commences the correction, replacement or repair of the property.

—(3) *Defective Government-furnished specifications.*

The final Government action is the contracting officer's direction regarding corrective action or notification that the specifications are not defective. The date the final action occurs is the date of receipt by the contractor of the contracting officer's direction or notification. If a contractor proceeds to correct a deficiency in a specification without direction from the contracting officer regarding the correction, the final occurrence is the contractor's commencement of the correction. (Neither an attempt to perform in accordance with a defective specification nor an attempt to determine whether there is a defect in the specification and development of one or more potential solutions to correct such defect constitutes the commencement of correction. Commencement of correction is performance of work which is inconsistent with or not required by the specification other than the identification of the defect and possible solutions.) In this latter case, the date of the final occurrence is the date the contractor commences the correction.

—(4) *Defective Government-furnished drawings.* The final Government action is the contractor's receipt of a revised corrective drawing, if receipt constitutes authorization or direction to proceed; otherwise, it is the contracting officer's direction regarding corrective action or notification that the drawing is not defective. The date the final Government action occurs is the date of receipt by the contractor of the revised drawing, if receipt constitutes authorization or direction to proceed; otherwise it is the date of receipt by the contractor of the contracting officer's direction regarding corrective action or notification that the drawing is not defective. If a contractor proceeds to correct a deficiency in a drawing before receipt of a revised drawing, or without direction regarding corrective action from the contracting officer, the final occurrence is the contractor's commencement of the correction. (Neither an attempt to perform in accordance with a defective drawing nor an attempt to determine whether there is a defect in the drawing and development of one or more potential solutions to correct such defect constitutes the commencement of correction. Commencement of

correction is the performance of work which is inconsistent with the drawing or not required by the drawing other than the identification of the defect and possible solutions.) In this latter case, the date of the final occurrence is the date the contractor commences the correction.

~~—(5) Late Government-furnished property and information (including Government furnished equipment, material, specifications, drawings and other information). The final Government action is the actual delivery of the Government furnished property or information to the contractor, unless the contractor has previously received a notification from the contracting officer establishing a revised delivery date for the property or information, in which case such notification is the final Government action. The date the final Government action occurs is the date the property or information is delivered to the contractor or the date of receipt by the contractor of the aforementioned contracting officer's notification of a revised delivery date for the property or information.~~

~~—(6) Constructive changes (other than those specifically addressed in other sections of this subpart). The final Government action, Government inaction, Government conduct or occurrence is the constructive authorization or direction to perform other than in accordance with the requirements of the contract. The date of the final Government action, Government inaction, Government conduct or occurrence is the date the contractor receives such constructive authorization or direction from an authorized Government representative.~~

~~—(7) Breach of contract, impossibility, impracticability, unconscionability, mistake, misrepresentation and superior knowledge. These theories do not always allow an objective definition of the final Government action, Government inaction, Government conduct or occurrence. For assertions of breach of contract, impossibility, impracticability or unconscionability, the date of the final occurrence is the date on which the contractor knew or should have known of the breach of contract, impossibility, impracticability or unconscionability. For assertions of mistake or misrepresentation, the date of the final occurrence is the date on which the contractor knew or should have known of the mistake or misrepresentation. For assertions of superior knowledge, the date of the final occurrence is the earlier of the date on which the contractor knew or should have known of the superior knowledge or the date on which the contractor knew or should have known of the information that was not disclosed.~~

~~—"Knew or should have known" includes the totality of the combined actual and constructive knowledge of all agents or employees (including a subcontractor, its agents and employees, where and to the extent a subcontractor is involved).~~

~~—"Price adjustment" means an increase in the fixed price, target price, ceiling price, or final price of a fixed price type contract, or an increase in the fee structure of a cost reimbursement type contract, or monetary damages or other payment resulting from a contractor claim, request for equitable adjustment, or demand for payment. An adjustment to the sharing ratio or to any other pricing formula, procedure or provision, which has the effect of increasing the fixed price, target price, ceiling price, final price, or fee of the contract, is a price adjustment. A schedule adjustment, whether requested as part of a submission seeking a price adjustment or as the sole relief, or an adjustment for any matter which, pursuant to the terms of the contract is separate from or not included in the fixed price, target price, ceiling price or final price of a fixed~~

~~price contract or the fee structure of a cost reimbursement contract, is not a price adjustment. The bilateral definitization of a maximum-price modification within the maximum price is not a price adjustment. A routine invoice or other request for payment or reimbursement in accordance with the terms of the contract, even if in dispute, which, if paid, would not result in an increase in the price of the contract is not a price adjustment. For the purpose of this subpart, relief granted pursuant to a request for extraordinary contractual relief under Public Law 85-804 does not constitute a price adjustment.~~

~~"Request for equitable adjustment" means a written request for a price adjustment under the contract.~~

~~"Shipbuilding contract" means a contract which provides for the construction of a ship which is of a type that is designated as a ship. (If the Navy is entering into a contract on behalf of another department, agency or activity of the federal Government, and such department, agency or activity involved designates the item being constructed as a ship, the contract is a shipbuilding contract.) A contract which includes items in addition to the construction of a ship is a shipbuilding contract. A contract for the conversion, reactivation, overhaul, or repair of a ship is not a shipbuilding contract. A contract for the acquisition of any type of vessel which type is not designated as a ship is not a shipbuilding contract.~~

~~5243.105-92 Prohibited actions and procedures.~~

~~—(a) This subpart does not preclude:~~

~~—(1) bilateral modifications which are fully priced or maximum-priced prior to the contractor being authorized or directed to proceed by the contracting officer;~~

~~—(2) any pricing action which is either fully priced or maximum-priced, based on events which occurred less than 18 months prior to the execution of the bilateral modification incorporating the pricing action; or~~

~~—(3) the bilateral definitization of a maximum price within the maximum price established through an action identified in (1) or (2) above.~~

~~—(b) Contracting officers may not adjust any price under a shipbuilding contract entered into after December 7, 1983, for an amount set forth in a claim, request for equitable adjustment, or demand for payment arising out of events occurring more than 18 months before the submission of a claim, request, or demand accompanied by adequate supporting data and, if the matter is over \$50,000 **\$100,000**, the certification required by Section 6(c)(1) of the Contract Disputes Act.~~

~~—(c) In reviewing a claim, request for equitable adjustment, or demand for payment to determine whether the claim, request or demand, or any part thereof, is subject to the prohibition set forth in paragraph (b) of this section, contracting officers shall consider the theory upon which the contractor relies, the terms of the contract, and all pertinent Government action(s), Government inaction(s), Government conduct and occurrence(s). Claims, requests or demands arising out of different events included in a single claim, request, or demand shall be reviewed based on the events appropriate to each individual claim, request or demand and a determination of the application of the prohibition set forth in paragraph (b) of this **section shall be made for each such claim, request or demand.**~~

~~5243.105-932 Documentation and certification requirements.~~

NAVY ACQUISITION PROCEDURES SUPPLEMENT

~~—(a) For shipbuilding contracts, claims, requests for equitable adjustment, or demands for payment submitted pursuant to DFARS 243.105, shall be submitted in accordance with the policies and procedures of FAR 33.2, DFARS 233.2, DFARS 233.7000 and NAPS 5233.2, 5233.70 and 5233.90. For the purpose of this subpart, a claim, request for equitable adjustment, or demand for payment is not submitted until the contractor has furnished to the contracting officer adequate supporting data and, if the matter is over \$50,000 **\$100,000**, the certification required by Section 6(c)(1) of the Contract Disputes Act. If either the supporting data or the certification, if required, is deficient, the claim, request, or demand shall not be considered to be submitted until any such deficiency is corrected.~~

~~—(b) Adequate supporting data.~~

~~—(1) The contractor has the burden and obligation to provide adequate supporting data to the contracting officer. Supporting data for a claim, request for equitable adjustment, or demand for payment is necessary not only to satisfy the statutory requirement but also to apprise the contracting officer of the underlying facts and the theory upon which the contractor relies in support of its entitlement to a price adjustment. To be considered adequate, a claim, request or demand must be accompanied by supporting data which fulfills these purposes in accordance with the requirements of the Contract Disputes Act. A submission containing the following information will be deemed to have been submitted with adequate supporting data:~~

~~—(i) A narrative statement of the nature of the event(s), the time when the event(s) occurred (including the factual basis supporting the contractor's designation of the time the event(s) occurred), and the causal relationship between the event(s) and the impact on the cost of performance of the contract, including a description of how the event(s) affected scheduled performance;~~

~~—(ii) A description of the relevant effort the contractor was required to perform in the absence of the event(s);~~

~~—(iii) A description of the relevant effort the contractor was actually required or will be required to perform;~~

~~—(iv) A description of components, equipment, and other property involved;~~

~~—(v) A cost breakdown of the additional effort by element in accordance with the contractor's normal procedures for pricing of changes;~~

~~—(vi) A description of all property which will no longer be needed by the contractor;~~

~~—(vii) A description of any delay caused by the event(s);~~

~~—(viii) A description of any disruption caused by the event(s).~~

~~—(2) If any submission does not contain the data listed above, the submission shall be reviewed to determine if the data submitted is adequate to meet the requirements of the Contract Disputes Act. The contractor shall be notified of the nature of any deficiency in the supporting data which results in a determination that the submission is not adequate.~~

~~—(c) Certification. (1) A claim, request for equitable adjustment, or demand for payment in excess of \$50,000 must be certified in accordance with the requirements of Section 6(c)(1) of the Contract Disputes Act. (See FAR 33.207.) If any submission does not contain a proper certification, the contractor shall be informed of any deficiency in the certification.~~

~~—(2) A claim, request for equitable adjustment, or demand for payment certified in accordance with DFARS 233.7000(a) shall be considered to meet the **certification**~~

requirements set forth in (1) above.

~~—(db) Once a claim, request for equitable adjustment, or demand for payment has been properly certified and accompanied by adequate supporting data, the date of proper certification and submission of adequate supporting data shall be operative for purposes of this subpart, even if additional certification(s) or data submission(s) is required of, or provided by, the contractor supplementing the original submission or revising the amount requested or theory of recovery, unless the additional certification or data submission is required or provided because the contractor has submitted a new or essentially new claim, request, or demand based on different events.~~

~~5243.105-94 Solicitation provision and contract clause.~~

~~—(a) The contracting officer shall insert the provision at 5252.243-9000, Notification of Applicability of 10 U.S.C. 2405, in all solicitations for shipbuilding contracts.~~

~~—(b) The contracting officer shall insert the clause at 5252.243-9001, Requirements for Adequate Supporting Data and Certification of Any Claim, Request for Equitable Adjustment, or Demand for Payment in all shipbuilding solicitations and shipbuilding contracts.~~

SUBPART 5243.2—CHANGE ORDERS

5243.201 General.

The policies and procedures of DFARS 217.74 and NAPS 5217.74 should be applied to change orders (except VECP's) to the maximum extent practicable. ~~However, e~~Each undefinitized change order shall include a not-to-exceed price unless the CCO, without power of delegation, waives this requirement. In addition, the contract file should provide an explanation where the policies and procedures of DFARS 217.74 and 5217.74 are not allowed.

5243.204 Administration.

~~—HCAs shall consider the backlog and age of undefinitized change orders as a command key indicator, placing routine management emphasis on undefinitized change orders.~~

5243.205-70 (DFARS 243.205-70)

The use of value engineering change proposals (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) VECP's are exempt from the undefinitized contract action restrictions established in NAPS 5243.2

(c) 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 5244

SUBCONTRACTING POLICIES AND PROCEDURES

SUBPART 5244.3-CONTRACTORS' PURCHASING SYSTEMS REVIEWS

5244.302-Requirements.

—(b) NAVSEASYSCOM is responsible for establishing procedures and conducting contractor's purchasing system reviews at the SUPSHIPS.

PART 5245

GOVERNMENT PROPERTY

SUBPART 5245.1--GENERAL

5245.102 Policy.

5245.102-90 Diversion of material.

~~—When material urgently needed for DoN equipment positioned for combat or direct combat support is not available from the supply system stock, repair programs, or on a timely basis from contracts, contracting officers may direct diversion of Government furnished material (GFM) Property or Contractor furnished material acquired property held by contractors for the performance of ongoing contracts.~~

5245.102-91 Repair or modification of GFP.

~~—(a) When Government property is received by a contractor in a condition not suited for the intended use, the Contracting Officer may, under the terms of the Government Property clause or other contract provisions, direct the contractor to effect the necessary repair or modifications. The following procedures should be considered to more effectively and economically order and price the repair or modification of Government-furnished property:~~

~~—(1) Contractor requests for equitable adjustment may be accumulated over short periods of time (avoiding retroactive pricing) so that price negotiations for several repair or modification orders can be accomplished at one time.~~

~~—(2) Repair or modification orders may be accumulated and incorporated into one contract modification.~~

~~—(3) Where adequate historical cost data is available and the volume of repairs or modifications to Government-furnished property is significant, consideration should be given to pricing by formula, or to the establishment of standard prices or hours for specified repairs or modifications to Government-furnished property.~~

~~—(4) In some contracts (such as construction of several ships of the same class), it may be possible to forecast the anticipated number and extent of repairs or modifications to Government-furnished property, and to negotiate an amount for such into the contract price.~~

~~—(b) In major acquisition programs where a large number of contract modifications for repair or modification of Government-furnished property can reasonably be anticipated, it is desirable for the contracting officer to meet with the cognizant contract administration office prior to award of contracts to determine the most effective and economical means of ordering. Consideration should be given to the procedures suggested under (a) above or to other procedures as mutually agreed upon among the contracting officer, the ACO, and the contractor.~~

~~—(c) NAVSEA shall ensure that the SUPSHIPs utilize procedures for pricing of repair or modification of Government-furnished property which are suitable to the contract/contractor situation and are generally consistent with practices used in similar situations by other SUPSHIPs.~~

~~5245.104 Review and correction of contractor's property control systems.~~

~~—(a) The property administrator shall verify that the contractor has an adequate series of checks and balances in its property control system. Reviews of the contractor's acquisition, receiving and disposition procedures, and all procedures regarding Government-furnished material, shall be reviewed annually.~~

5245.104-90 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 purpose of these procedures in (e) of this section is to:

—(1) Establish Property administration procedures to 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);

~~—(2) Strengthen the relationship between the survey of Government property and the certification of DD Forms 1662;~~

~~—(3) Integrate and consolidate the various policies, instructions, and guidance to Property Administrators concerning their responsibility for oversight of GP; and~~

~~—(4) Provide a bridge between physical and financial accountability.~~

~~—(b) Policy.~~

~~—(1) The procedures in (e) below will be used to provide the basis for certification by Navy Property Administrators of the reasonableness and accuracy of contractor data reported on line 17 of DD Form 1662.~~

~~—(2) Property administration includes the evaluation of the contractors' management and control of GP. The evaluation will incorporate methods and procedures that provide independence from the exclusive use of contractor records.~~

~~—(3) Verification will be conducted throughout the course of a year and provides the basis upon which the Property Administrator certifies the reasonableness and accuracy of the contractor data on DD Form 1662.~~

~~—(4) Contractor property control and accounting systems shall reflect unit prices for each item of GP from date of receipt until date of delivery and acceptance by the Government of the contracted end item, return of GP to Government control, or other relief of accountability by the Government.~~

~~—(c) Responsibilities.~~

~~—(1) For all contracts where government property administration is retained within the Department of the Navy, HCAs shall:~~

~~—(i) Notify ASN(RD&A) by 5 December of each year that applicable DD Forms 1662 have been certified and forwarded to the Naval Industrial Resources Support Activity.~~

~~—(ii) Include in the above notification a report, sorted by CAO, contractor, and contract number, containing the following information:~~

~~—(A) DD Form 1662 received - yes or no.~~

~~—(B) Certified - with qualification or without qualification.~~

NAVY ACQUISITION PROCEDURES SUPPLEMENT

- ~~— (C) If certified with qualification - brief explanation with corrective action taken.~~
- ~~— (iii) Provide unit price information for GP to CAOs.~~
- ~~— (2) Contracting Officers will include in the contract, special distribution of shipping document(s) (DD 250, etc), and the names and address of the CAO(s) for the contractor(s) to which the materials are to be shipped.~~
- ~~— (3) Contract Administration Office (CAO) activities will:~~
 - ~~— (i) provide the Property Administrator copies of all contracts, modifications for contracts and shipping documents which include Government property.~~
 - ~~— (ii) notify the contractor in writing that under the provisions of FAR 45.503, the contractor will be required to have a Property Control system that will account for GP from date of receipt of the material until acceptance of the contracted end item by the DoD.~~
 - ~~— (iii) notify the contractor in writing of these procedures and that supporting documentation should be available to the Property Administrator to enable verification of the DD Form 1662 data.~~
 - ~~— (iv) inform the contractor that failure to submit correct, verifiable DD Forms 1662 will be noted as a serious deficiency during the survey, will be a major consideration in the final system rating, and may result in withdrawal of system approval.~~
 - ~~— (v) ensure adequate resources are assigned to the Property Administrator to complete the survey.~~
 - ~~— (vi) not later than 15 November of each year, provide to the cognizant HCAs a report of the DD Forms 1662 that have been submitted to NAVIRSA.~~
- ~~— (4) Property Administrators will:~~
 - ~~— (i) obtain reports or records of GP issued to the contractor from the Federal Supply System, from other contractors, or from any other source.~~
 - ~~— (ii) perform the verification of contractor control and accounting for GP in accordance with DOD 4161.2M, Manual for the Performance of Contract Property Administration and the procedures in (e) below.~~
 - ~~— (iii) return incomplete or incorrect DD 1662 reports to the contractor for appropriate action.~~
 - ~~— (iv) forward certified DD 1662 reports not later than 15 November to NAVIRSA. Reports may be submitted individually or as a batch. NAVIRSA will provide the SYSCOMs with a summary command report.~~
 - ~~— (v) provide the SYSCOMs a summary report, by contractor, of the results of DD 1662 certifications completed in accordance with the procedures in (e) below.~~
- ~~— (5) NAVSUPSYSCOM will require the Ships Parts Control Center and the Aviation Supply Office to provide Navy CAOs with quarterly status reports of GP issued to contractors not later than 30 days after the end of each quarter. Instructions and format for the Government Property (GP) Status Report are in enclosure (2) to SECNAVINST 4440.32A of 27 September 1991.~~
- ~~— (d) Oversight reviews.~~
 - ~~— (1) The provisions of this NAPS will be a subject for all future Contract Management and Procurement Management Reviews (CMRs) and (PMRs).~~
 - ~~— (2) CMRs and PMRs will focus on timeliness and adequacy of the verification procedures as well as CAO management attention and control in assuring their accomplishment.~~
- ~~— (e) Procedures.~~

NAVY ACQUISITION PROCEDURES SUPPLEMENT

~~—(1) Property Administrators will annually survey the contractor's GP Property Control System. The SPCC and ASO prepared quarterly reports of issues will be aggregated with other shipping documents forwarded by other Government activities and GP contractors. The accumulation of independently received documents represents the preferred lot from which the survey sample will be taken. The survey consists of the following verifications:~~

~~—(i) material is authorized and is ordered in the required quantities.~~

~~—(ii) contractor receiving reports are accurately prepared and proper action is taken on shortages, damages, or other discrepancies.~~

~~—(iii) received material placed in storage is properly accounted for; issues and movement of GP are controlled, accountable, and auditable to a specific contract; contractor's inventory performance indicates physical counts of selected items; and reports of GP on line 17 of the "DoD Property in the Custody of Contractors" (DD Form 1662) are accurate and complete.~~

~~—(iv) excess material is accurately declared; records of scrap and salvage are accurate; records of end items accurately reflect incorporation of GP; and transfers between contracts are based on proper authorities from gaining and losing contracting officers.~~

~~—(2) DD Form 1662s are statistically sampled and compared to contractor records. The lot will be the number of contracts containing GP held by the contractor. The sample selection technique and size will be in accordance with the DOD Property Manual DOD 4161.2M. The statistical sampling of the contractor prepared DD Forms 1662 and verification of those reports will be accomplished upon receipt of the reports and before certification by the Property Administrator.~~

~~—(3) Property administrators shall verify that the contractors have accurately reported the value of GP in their possession based on the approved contractor GP control and record keeping systems and that the value of GP reported on Line 17, column e, "Balance End of Period" reflects the acquisition cost of all GP in the warehouse and in production on 30 September of the reporting year.~~

~~—(4) The Property Administrator certifies on the DD Form 1662 that the data reported on line 17 (GP) accurately reflects the value of GP under the contractor's control in accordance with the FAR/DFARS. This allows the DD Form 1662 to be a valid source document for the Navy's accounting system. If the Government's System Survey, as augmented by these procedures disclose significant deficiencies in the contractor's GP control system or the Property Administrator is aware of inaccuracies on line 17 resulting from other than GP control system deficiencies, the Property Administrator will footnote his/her signature and append or include a brief statement as to why an unqualified certification cannot be rendered.~~

~~—(5) NAVIRSA edits and enters DD Forms 1662 received from Navy Property Administrators into the Defense Contract Property Management System.~~

~~—(6) The consolidated DD Form 1662 is received by NAVIRSA and forwarded to Navy Accounting and Finance Center for input into the Navy accounting system.~~

~~—(7) The total value of GP in the custody of Navy contractors is submitted to the Department of the Treasury on the Navy's Report on Financial Position (TFS 220).~~

~~—(8) Unit pricing.~~

~~—(i) When the shipping documents identify unit prices, the contractor should record those prices as follows:~~

NAVY ACQUISITION PROCEDURES SUPPLEMENT

- ~~— (A) Actual dollar value included on the shipping document;~~
- ~~— (B) Dollar value followed by an "E" if shipment indicates that the unit price has been estimated;~~
- ~~— (C) For Schedule A, or Government Property List line items, the total dollar value of the line item upon receipt of the total item in a single shipment. If the line item is shipped in multiple shipments, the contractor may total the price of each component received or record the total dollar value of the item when the major item is received;~~
- ~~— (D) "PP" if shipping document indicates item was previously priced on an earlier partial shipment of the item.~~
- ~~— (ii) When the shipping documents do not contain unit price information, it is the contractor's responsibility to take action to obtain the missing prices. Some contractors request assistance from the CAO. When this occurs, the following actions should be taken by the CAO in order of preference:~~
 - ~~— (A) For shipments from the DoD supply system:~~
 - ~~— (a) Use one of the several automated data files which contain price information. Some of these contain both part number and NSN cross referencing and prices.~~
 - ~~— (b) Use records of prior shipments if received within the last 18 months.~~
 - ~~— (c) Use the Quarterly GP Status Report from ASO or SPCC.~~
 - ~~— (d) Call the CAO of the contract shipper or the Material Office of the Government activity for items shipped under DD Form 1149 documentation.~~
 - ~~— (e) Contact the manufacturer of the item.~~
 - ~~— (B) For shipments from other contractors:~~
 - ~~— (a) Shipments under DD Form 250 are required to contain unit prices in accordance with DFARS Appendix I. Request compliance with this requirement.~~
 - ~~— (b) Use records of prior shipments if received within the last 18 months.~~
 - ~~— (c) Request the HCA to provide unit prices.~~
 - ~~— (d) Call the CAO of the contractor from which the material was shipped.~~

5245.106 Government property clauses.

- ~~— (b)(2) NAVSEA is authorized a deviation from the requirements of FAR 45.106(b)(2) for shipbuilding contracts.~~

SUBPART 5245.3--PROVIDING GOVERNMENT PROPERTY TO CONTRACTORS

5245.302-1 Policy.

- ~~— (a)(4)(A) 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 (see DoD Instruction 4100.33). 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.~~
- ~~— (a)(4)(iv) The D&F will be included in the business clearance prior to contract award or in the contract file when government facilities are authorized during contract performance. The original of the D&F shall be included in the contract file and a copy shall be retained in a central office at the systems command level for oversight review.~~

5245.302-70 Securing approval for facilities projects.

5245.302-1 (DFARS 245.302-1) Policy

~~(a)(1)~~(a)(4)(A) (S-90) APIA-PP~~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.

5245.303 Providing material.

5245.303-1 Policy.

(S-90) *DoN implementation.* Any ~~d~~Decision~~s~~ to provide GP ~~shall~~ should be based on sound rationale and 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.

~~(S-91) Providing material to shipwork or ship equipment contractors.~~ (1) The interest of the Government may require furnishing material to shipwork or ship equipment contractors, the relatively low value of which renders impracticable the administrative burden of modifying the contract to provide for the additional Government-furnished material (GFM). Accordingly, where supply support of operating forces will not be endangered, DoN supply activities will furnish such material, if available, from Government supply sources, to shipwork or ship equipment contractors, subject to the following conditions:

- ~~— (i) Title to all material furnished shall remain in the Government;~~
- ~~— (ii) The total dollar value of all the line items, including any government accessorial and administrative charges, on one "Prime Contractor Request for Government-Furnished Material", NAVSUP Form 1366, shall not exceed \$5,000; requirements shall not be split for the purpose of circumventing this dollar limitation;~~
- ~~— (iii) The material furnished shall be incorporated into the end product acquired under the contract, or consumed in the performance of the contract. Any material furnished and not so incorporated or consumed will be returned to the Government (at the contractor's expense) in the same condition as received, reasonable wear and tear excepted. An appropriate refund or adjustment will be made for any material so returned;~~
- ~~— (iv) The contractor warrants that the material cannot be obtained from commercial sources in time to meet the delivery requirement, of the contract, or the CAO deems furnishing the material from Government supply sources to be in the best interest of the Government; documentation and approval shall be in accordance with 5245.303-1 (S-90);~~
- ~~— (v) The contractor agrees that the responsibility for delay remains with the contractor when the Government cannot supply acceptable material, supply the material on time, and/or if the material is found to be unacceptable after receipt;~~
- ~~— (vi) The contractor agrees to pay to the Government either the standard price of the material as published in the Management List Navy (MLN), plus accessorial and administrative charges (shipment to be made on Commercial~~

Collect Bill of Lading); or the price at which the material would be available to the contractor, f.o.b. destination, if obtained from commercial sources, whichever is the greater; and

—(vii) Material will be furnished to the contractor subject to the Uniform Materiel Movement and Issue Priority System (UMMIPS) controls for issue of material as though it were furnished under a Government requisition to a DoN supply activity. The UMMIPS priority designator will be assigned to each request.

—(2) This supplement and NAVSUP Manual, Volume II, paragraph 25495.2, govern the contractors' requests for material.

—(3) requests shall be submitted to the Naval supply activity via the CAO or management control activity.

—(4) Material shall not be requisitioned for a contractor by the CAO if the contractor has been turned down on a request made in accordance with the above procedures for identical material. In such cases, the matter shall be referred to the project or acquisition manager for resolution.

5245.303-2 Procedures.

~~—(S-90) Implementation of the DoD management control activity system requires requisitions to the DoD Supply System for GFM to conform with the Approved MILSTRIP Change Letter 1 A (AMCL 1 A). All GFM requisitions originated by a contractor, or to be shipped to a contractor's address code must be validated by a management control activity (MCA) before being forwarded to the source of supply. Contracts awarded on or after 1 October 1990 will:~~

~~—(1) identify the management control activity;~~

~~—(2) stipulate that all requisitions for GFM from the supply system which are requisitioned by a contractor, or are to be shipped to a contractor must be submitted to the MCA rather than to the source of supply; and~~

~~—(3) identify authorized GFM by quantity and National Stock Number (NSN) where the contractor has authority to requisition GFM through the MCA.~~

~~—(S-91) All requisitions, regardless of contract date, will identify the contract number as required in existing MILSTRIP procedures.~~

~~—(S-92) Additional guidance for management control activities is in SECNAVINST 4440.32A dated 27 Sep 1991.~~

5245.306 Providing special tooling.

5245.306-90 Acquiring special tooling.

~~(a) Determination of appropriate classification.~~

~~—(1) When the contractor provides the initial or final listing of property fabricated or acquired as special tooling (ST), the contracting officers should will, before agreeing to the classification and approving for payment, the property as ST, obtain a written determination from averification from an appropriatequalified technical representative (ATR) technical evaluator that the property is contractor-proposed special tooling is properly classified as ST before approving payment for the property as such. The technical evaluator ATR will normally be from the requiring activity, and must be a~~

person technically qualified to understand the criteria for classification of the property and its composition and use. This determination will be coordinated with the property administrator.

—(2) During the technical review of cost proposals, the ATR technical evaluator will also determine whether any general purpose plant equipment is being proposed for acquisition as ST. If general purpose plant equipment is improperly fabricated or acquired as St special tooling, such equipment should be reclassified as facilities, direct cost should be disallowed, and any inappropriate profit should be recouped. The written determination by the Government ATR technical evaluator will be included in the contract file.

~~5245.307~~ Providing special test equipment.

~~5245.307-2~~ Acquiring special test equipment.

—(b) *Notice and approval.* When the contracting officer receives notice of the contractor's intent to acquire or fabricate special test equipment (STE), the contracting officer will, before approving contractor acquisition or fabrication of the equipment as STE, obtain a written determination that the property is properly classified in accordance with paragraph 5245.306-90(a)(1) above.

—(c) *(S-90)* When reviews of cost proposals determine improper classification of STE, action shall be taken in accordance with paragraph 5245.306-90(a)(2) above.

~~5245.310~~ Providing agency-peculiar property.

—(c) See NAVCOMPT Manual (Volume 3) and NAVSUP Manual (Volume 2) for procedures for providing accounting data in contracts involving DoN stores account material in contractors' plant.

5245.390¹¹ Providing Government Property by transfer.

(a) Transfer of Government Property between Contracts.

(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.

—(3) ~~Copies of the contract modification will be distributed in accordance with FAR Subpart 4.2.~~

—(4) ~~Appropriate contract type.~~ In conjunction with the review of government property to be transferred between contracts, the property administrator and the ACO should assure all such property has been provided by the government or acquired by the contractor under an appropriate contract type, i.e., facilities normally should be provided or acquired under a facilities contract (see FAR 45.302-2 and 45.302-3). If it is determined that facilities were provided to or acquired by the contractor improperly under other than a facilities contract, the ACO shall notify the cognizant contracting officer and request a facilities contract, or a contract modification incorporating the property into an existing facilities contract. When warranted, the ACO shall initiate action to recoup any inappropriate fees or profits which were paid as a result of the

~~improper acquisition or provision of facilities under a service or supply contract.~~

SUBPART 5245.4--CONTRACTOR USE AND RENTAL OF GOVERNMENT GOVERNMENT PROPERTY

5245.403 ~~(DFARS 245.403)~~ Rental--Use and Charge~~s~~ 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.

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

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.

~~(c)~~ (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 22244-5104, Naval Industrial Resources Support Activity (NAVIRSA), Bldg. 75-2, Rm. 209, Naval Base, Philadelphia, PA 19112-5078, 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.

~~(d)~~ (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~~ (S-90) (1) *Physical Inventories.*

—(i) (1) 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 (2ii) 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 shallshould 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.

(2ii) 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:

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

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

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

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

(3) Final decisions. Final decisions with respect to transfer of government property to follow-on or other contracts shallould 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 shouldwill 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."

(2) Inventory List.

~~—(i) 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.~~

~~—(ii) At least 60 days prior to contract completion (i.e., the date when all items are scheduled for delivery to the government), the contractor shall submit the following to the property administrator:~~

~~—(A) 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.~~

~~—(B) 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.

— (3) *Final decisions.* Final decisions with respect to transfer of government property to follow-on or other contracts shall 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 will 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."

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, ~~shall~~ould be used to initiate referral actions, applicable to subcontractors outside the assigned area of the CAO cognizant of the prime contractor. ~~The following information shall be included in the remarks section of the form:~~

— (1) When a Military Department, other than the acquiring Department which funded the contract, generated the inventory, provide the following type information:

— (i) Available information on non-standard clauses or other unusual contract features concerning contractor/or subcontractor disposal obligations; and

— (ii) Desired disposition to be made of proceeds of sale if nontermination inventory is involved.

— (b) The plant clearance officer initiating the referral action shall insure that inventory schedules are complete and accurate. ~~All available information pertinent to the inventory shall be forwarded to the plant clearance officer receiving the referral action.~~

5245.608 Screening of contractor inventory.

5245.608-1 General.

(b)(S-90) To accomplish the screening requirements within the prescribed time periods, the following procedures ~~shall~~ould be employed:

(1) Upon receipt of inventory schedules in acceptable form, the plant clearance office ~~shall effect the following distribution:~~should provide an o

- ~~—(i) Original to the requiring activity, and copies to~~
 - ~~—(ii) To each DoN inventory managers who may have an interest in the property either in whole or for any of its major subassemblies. (DoN inventory managers are listed in NAVSUP Manual, Volume 2, Chapter 1.)~~
 - ~~—(iii) To the contracting activity, if different than (i) or (ii) above.~~
 - ~~—(iv) To technical Commands, Offices, Bureaus and, and Naval activities, other than inventory managers, considered to who have potential requirements for the property.~~
- (2) ~~Provide R~~etention and redistribution requirements of the owning Commands, Offices and Bureaus (requiring activities), inventory managers, contracting activities and other Naval activities shall be furnished directly to the reporting office during this period. ~~In the event of dual DoN requirements for any inventory items, the order of preference shall be in the sequence indicated above. Shipments shall be held in abeyance during the 30-day DoN-wide screening period to the extent necessary to ensure compliance with the foregoing priority sequence.~~
- ~~—(S-91) Army, DoN, Defense Logistics Agency, National Aeronautics and Space Administration, and General Services Administration inventory control points, contracting offices or regions are listed in the Defense Contract Management Command, Contract Property Disposition Manual (DCMC) 8130.1.~~

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.
- ~~(f)(S-90) Special tooling.~~ Special tooling, to which the Government has the right to acquire title (FAR 52.245-17), shall be screened with the contracting activity by letter, rather than Standard Form 120, Report of Excess Personal Property. Within 90 days after receipt of a listing of special tooling acquired or manufactured by the contractor, unless a later date is agreed to by the parties, the PCO shall provide a decision to the contractor commensurate with the choices enumerated in paragraph (ij), Disposition instructions, of the clause at FAR 52.245-17, Special Tooling.

5245.608-7 Reimbursement of costs for transfer of contractor inventory.

- ~~—(S-90) Where a contract does not require the contractor to provide packing, crating and handling (PC&H) services for excess Government property, or where such PC&H services will result in any cost for which the contractor will not otherwise be compensated, the CAO shall obtain PC&H services from the contractor in possession by contract modification if the contract provides for such a modification. Otherwise, such PC&H services shall be acquired from the contractor in possession or other contractor as follows:~~
 - ~~—(1) If the estimated price is \$25,000 or less, the ACO shall contract for services in accordance with FAR Part 13; or~~
 - ~~—(2) If the estimated price of such services is in excess of \$25,000, the ACO shall request the nearest DoN field contracting office to execute the contract. For Marine Corps contracts, the cognizant contracting officer shall be required to execute the contract.~~

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 ~~shall~~ould 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) The use of "no-costs" or no direct cost storage agreements is prohibited.

SUBPART 5245.70 (DFARS 245.70) APPOINTMENT OF PROPERTY ADMINISTRATORS AND PLANT CLEARANCE OFFICERS

~~5245.7001 (DFARS 245.7001) Selection, appointment and termination.~~

5245.700~~21~~-4 (DFARS 245.700~~21~~-4) Duties and responsibilities of plant clearance officers~~s~~.

~~Each DoN CAO, as defined in the DoD Directory of Contract Administration Services Components (DoD 4105.59-H), shall appoint a plant clearance officer in writing. A copy of the written appointment shall be furnished to the Headquarters Command of the CAO.~~

SUBPART 5245.73 (DFARS 245.73) SALE OF SURPLUS CONTRACTOR INVENTORY

5245.7302 (DFARS 245.7302) Competitive Sales.

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

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

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

PART 5246

QUALITY ASSURANCE

SUBPART 5246.7--WARRANTIES

5246.702 (DFARS 246.702) General.

~~—(f) Program managers and project officers shall use the data collected under 5242.302-90(c)(5) to accumulate and track data pertaining to systems/equipments/supplies/services under their cognizance which are subject to warranty.~~

5246.703 Criteria for use of warranties.

~~—(c) *Administration and enforcement.* The types and contents of reports to be provided by the contractor regarding administration of DoN warranties, including Security Assistance Programs, shall be specified in the contract in sufficient detail to enable assessment of the effectiveness of the warranty for the specific item or system and the effectiveness of the DoN's overall warranty program. As a minimum, the data contained in 5242.302-90(c)(5) shall be specified in the contract.~~

5246.706 Warranty terms and conditions.

~~—(b)(3) *Duration of the warranty.* Consideration must be given to the operational characteristics of the item or system and the time likely to elapse between Government acceptance and actual use. The duration must be sufficient to cover the defects and failure that are likely to occur in service use.~~

(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.~~

5246.710 Contract clauses.

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

5246.770 (DFARS 246.770) Warranties in weapon system acquisitions.

5246.770-2 Policy.

~~—(S-90) Any items excluded from warranty coverage shall be specified.~~

~~5246.770-7 Cost-benefit analysis.~~

~~Cost benefit analyses shall be included in Section VIII of the business clearance memorandum in accordance with 5201.690-9.~~

~~5246.770-8 Waiver and notification procedures.~~

~~(c) Requests for waiver shall be submitted to ABM.~~

~~5246.790 Delegation of warranty administration.~~

~~Contracting officers shall delegate to SUPSHIP activities the function of warranty administration in accordance with 5242.302-90(c)(5). Contracting officers shall include in letters of delegation to non-DoN contract administration activities warranty administration functions similar to those delegated to DoN activities.~~

**~~SUBPART 5246.8-CONTRACTOR LIABILITY FOR LOSS OF
OR DAMAGE TO PROPERTY OF THE GOVERNMENT~~**

~~5246.805 Contract clauses.~~

~~(S-90) Within the limits set forth at 5231.205-26, NAVSEASYS COM has an approved deviation to use a modified version of FAR 52.246-24, Limitation of Liabilities - High Value Items.~~

PART 5247

TRANSPORTATION

SUBPART 5247.1--GENERAL

5247.105 (DFARS 247.105) Transportation Assistance.

~~—(a)(ii) Transportation management specialists will address~~ requests for freight rates, port handling charges and related costs to the sources indicated in subparagraphs (A), (B) and (C) below. The term "port handling charges" includes accessorial service charges such as wharfage, heavy lift, handling and unloading.

~~—(A) For all modes of transportation within CONUS and for ships from CONUS to overseas address the cognizant Military Traffic Management Command (MTMC) Area Commander in Chapter 2 of the Defense Traffic Management Regulation (NAVSUPINST 4600.70, MCO P4600.14B).~~

~~—(B) For air transportation from CONUS to overseas address the Air Mobility Command~~

~~—(C) For all modes of transportation originating overseas address the overseas Theater Commander exercising assigned common user military operated land transportation responsibility. This service is provided by the Army except as may be otherwise directed by the Theater Commander (Joint Service Instruction OPNAVINST 4640.3.~~

~~(b)(1) These are the only sources permitted to authorize commercial transportation within the DoN, except with respect to shipments via those media which shipping officers (as defined in NAVSUP Manual Par. 51056) have been delegated authority to route.~~

~~—(c)(S-90) Consignment data in contracts shall be in accordance with the consignment instructions in the Terminal Facilities Guide, United States Navy, Marine Corps, and Coast Guard (NAVSUP Pub. 445, MCO P4600.9A).~~

5247.190 Transportation for classified contracts.

~~—(a) Contracts classified as confidential or higher shall be purchased on an f.o.b. origin basis, when the size, bulk or quantity to be transported will require the employment of commercial transportation services. Under such circumstances these contracts and shall provide for transportation at Government expense (normally on U.S. Government bills of lading). Routing instructions, when required, will be obtained from the appropriate military sources (see FAR 47.105(b)). These are the only sources permitted to authorize commercial transportation within the DoN. Exception is made with respect to shipments via those media which shipping officers (as defined in NAVSUP Manual Par. 51056) have been delegated authority to route. Representatives may obtain assistance and advice relative to the particular mode of transportation to be employed from the appropriate military traffic management sources. See also DoD Information Security Program Regulation (DoD 5200.1-R) and Department of the Navy Supplement (OPNAVINST 5510.1H dated 29 April 1988).~~

5247.191 Transportation mode.

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(a) *The Contract as awarded.* ~~Contracts and purchase orders normally shall not specify a particular method of transportation or a particular carrier for the delivery of contract items. 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 shall~~ould generally be made on the basis of delivery f.o.b. origin, ~~and t~~his is a valid reason for departing from the policy of FAR 47.101(b)(1). However, when special types of transportation equipment or limited facilities for the delivery and receipt of material at destination permit the use of only one mode of transportation, such special delivery requirements may be included in f.o.b. destination purchase documents without prior referral to appropriate MTMC Area Command.

~~—(b) *Contract modification.* When necessary, contracting officers may issue a modification to change the delivery terms of a contract from f.o.b. destination to f.o.b. origin, to change the destination, or to change the delivery date. An appropriate adjustment in contract price should be made. If a particular mode of transportation must be specified, then the contracting officer shall consult the appropriate MTMC office and NAVSUP Manual, Vol. V, of f.o.b. destination to f.o.b. origin. Where it becomes necessary to control the method of transportation under an f.o.b. destination contract, and numerous changes are likely to be made, time permitting, the contracting officer shall issue a contract modification changing the place of delivery to f.o.b. origin and shall make an appropriate downward adjustment in the contract price.~~

~~—(c) *Modification of f.o.b. destination contracts to specify transportation method.* Ordinarily changes in destination or advancement of delivery date under f.o.b. destination contracts shall be made by contract modifications which set forth the new destination or delivery date and adjust the contract price as necessary. If it is also necessary to specify a particular method of transportation, it is imperative that contracting officers consult the appropriate MTMC office and NAVSUP Manual, Vol. V. The method of delivery should be stated in the modification.~~

~~(db) *Dispatch and oral instructions to contractors.* If a shipment is extremely urgent and time does not permit prior modification of the contract to include the new destination or delivery date and method of delivery, 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 to effect timely delivery of contract items. If time does not permit dispatch instructions, or oral instructions may be given, but they~~which ~~shall~~ould be immediately confirmed in writing ~~and~~ and. As soon as possible, dispatch and oral instructions shall be incorporated in a contract modification, prepared in accordance with paragraph (c) above. Obtain advice of military traffic management officers before issuing dispatch or oral shipping instructions to ensure the most expeditious and economical method of transportation. Contracting officers should not specify methods of shipment without such prior consultants with MTMC office. The basic policy and the authority in the election of the method of transportation are stated in NAVSUP Manual, Vol. V.

~~(ec) *Late deliveries.* All actions taken under this section shall be consistent with FAR Subpart 49.4, Termination for Default and FAR Subpart 42.11, Production Surveillance and Reporting. Where it is evident that the contractor will be delinquent in making delivery, t~~he Government ~~does~~shouldn't not pay for a premium ~~for 42.11, Production Surveillance and Reporting.~~ transportation used to meet required delivery dates.

PART 5248

VALUE ENGINEERING

SUBPART 5248.1--POLICIES AND PROCEDURES

5248.102 Policies.

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

PART 5249

TERMINATION OF CONTRACTS

SUBPART 5249.5—CONTRACT TERMINATION CLAUSES

5249.501—General.

~~Forward requests for authority to use special purpose termination clauses to ABM. Requests shall include:~~

- ~~—(a) justification of the need for a special purpose clauses; and~~
- ~~—(b) a copy of the proposed clause and written approval by the Office of the General Counsel as to its form and legality.~~

5249.504 Termination of fixed-price contracts for default. (DAR COUNCIL DEVIATION #90-949-02 - 4 DECEMBER 1991)

~~—(a)(1) MSC, in its solicitations and contracts affecting the operation and mission of MSC-controlled vessels, is authorized to deviate from FAR 49.504(a)(1) to use a modified version of FAR 52.249-8 and its Alternate I.~~

PART 5250

EXTRAORDINARY CONTRACTUAL ACTIONS

SUBPART 5250.1--GENERAL

5250.104 (DFARS 250.104) Reports.

HCA's shall submit an annual report covering extraordinary contractual actions to ABM by 15 January, in accordance with DoD Instruction 4105.69. The annual report shall be submitted to ABM.

5250.105 (DFARS 250.105) Records.

(1)(iii) *General.* HCA's are the officials responsible for preparation and submission of the required records. The records shall be forwarded records to ABM who will be responsible for maintaining the records.

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

5250.201 (DFARS 250.201) Delegation of authority.

5250.201-70 Delegations.

(a) Authority to approve actions under FAR subparts 50.3 and 50.4, which obligate \$50,000 or less, and to deny any request, is delegated to the HCA subject to the limitations in FAR 50.201 and 50.203. This authority may be further delegated to the Deputy/Assistant Commander for Contracts subject to the same limitations, except approval of actions under FAR 50.4, obligating \$50,000 or less may not be delegated. Each exercise of this delegated authority shall have the prior approval of counsel.

5250.202 Contract adjustment boards.

Members The Chairperson, other members and alternate s members shall be appointed by the ASN(RD&A). Each case shall be considered by a Chair and not less than two or more than six other members or alternate members, at least one of whom shall be an attorney employed in the Office of the General Counsel.

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 shall be 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 except that the Navy Contract Adjustment Board for disposition. shall have such responsibility after any such case is submitted to it. The cognizant contracting activity shall be responsible for all other interdepartmental coordination except that a finding that a contractor is essential to the national defense for performance of DoN contracts or as a source of

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supply to the DoN may be made only by the Navy Contract Adjustment Board. Where a contracting activity desires to recommend such a finding, its recommendation shall be submitted to the Board but containing only such of the listed data as may be sufficient for this purpose.

5250.305-71 (DFARS 250.305-71) Processing cases to contract adjustment boards.

~~—(a) and (b) Five (5) copies of all required information shall be furnished to the Navy Contract Adjustment Board.~~

5250.306 (DFARS 250.306) Disposition.

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

When a contractor's request is denied, the contracting officer of the activity which forwarded the case to the board contractor shall be furnished a letter to the contractor explaining the denial.

SUBPART 5250.4--RESIDUAL POWERS

5250.403 Special procedures for unusually hazardous or nuclear risks.

5250.403-2 Action on indemnification requests.

(a) 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. made to ABM, with sufficient narrative justification for submission to the Secretary of the Navy.

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 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 SEA
 9200-9299 SPA
 9300-9399 FAC
 9400-9499 SUP
 9500-9599 AIR
 9600-9649 ITAC
 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 5201.690-1(b)(6) 601-90(b)(5), insert the following clause:

**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)

5252.210-9000 NOTICE TO OFFERORS - USE OF OZONE DEPLETING SUBSTANCES

As described in 5210.011-90, provision substantially similar to the following notice may ay be included in RFP's solicitations:

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

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(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 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:

<u>Class I ODS Identified</u>	<u>Specification/Standard</u>
-------------------------------	-------------------------------

(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)

~~5252.215-9000 SUBMISSION OF COST OR PRICING DATA~~

~~As prescribed at 5215.407(S-90), insert the following provision:~~

~~SUBMISSION OF COST OR PRICING DATA (Nov 1987)~~

~~(a) It is expected that this contract will be awarded based upon a determination that there is adequate price competition; therefore, the offeror is not required to submit or certify cost or pricing data (SF 1411) with its proposal.~~

~~(b) If, after receipt of the proposals, the contracting officer determines that adequate price competition does not exist in accordance with FAR 15.804-3, the offeror shall provide certified cost or pricing data as requested by the contracting officer.~~

~~_____ (End of Clause)~~

~~Alternate I (Nov 1987). As prescribed at 5215.407(S-90), substitute the following paragraph (b):~~

~~(b) If, after receipt of the proposals, the contracting officer determines that adequate price competition does not exist, the offeror shall provide certified cost or pricing data as requested by the contracting officer. The offeror shall provide the requested data within ____*____ calendar days from the date of the contracting officer's request.~~

~~____ Insert number of days.~~

~~_____ (End of Clause)~~

5252.232-9000 SUBMISSION OF INVOICES (FIXED PRICE)

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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's requests for progress payments.

(b) The contractor shall submit original invoices with copies to the address identified in the solicitation/-contract award form (SF 26-810-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.

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

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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

(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

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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)©, 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:

A copy of every invoice shall also be provided to the individual listed below, alt 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 deliver 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)

NAPS 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 (JUL 1992)

(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.

(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 or the basic monthly charges for each calendar day.

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

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_____ 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)

~~52.216-16 Incentive Price Revision-Firm Target As prescribed in 5216.405(a), insert the following clause in shipbuilding solicitations and contracts when a fixed-price incentive (firm target) contract is contemplated.~~

~~INCENTIVE PRICE REVISION-FIRM TARGET (APR 1984) (DEVIATION)~~

~~— (a) General. The supplies or services identified in Sections B and C are subject to price revision in accordance with the provisions of this clause; provided, that in no event shall the total final price of such items exceed the total ceiling price as set forth in Section B of the contract.~~

~~— Any supplies or services which are to be ordered separately under, or otherwise added to this contract, and which are to be subject to price revision in accordance with the provisions of this clause, shall be identified as such in a modification to this contract.~~

~~— (b) Definition of Cost. For the purposes of this contract, "cost" or "costs," means allowable costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) and of the Defense FAR Supplement in effect on the date of this contract.~~

~~— (c) Submission of Data. (1) Within _ days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services called for by those items referred to in paragraph (a) above, the Contractor shall submit, on Standard Form (SF) 1411 or other form as the Contracting Officer may require--~~

~~— (i) A detailed statement of all costs incurred up to the end of that month in performing all work under such items;~~

~~— (ii) An estimate of costs of such further performance, if any, as may be necessary to complete performance of all work with respect to such items; and~~

~~— (iii) A list identifying to the extent practicable residual inventory and the estimated value thereof.~~

~~— (2) The detailed statement of all costs incurred shall be decreased by the net~~

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increase in compensation adjustments established in accordance with the "Compensation Adjustments (Labor and Material)" clause or shall be increased by the net decrease in such compensation adjustments, as the case may be.

— (d) Price revision. Upon submission of the data required by paragraph (c) above, the Contracting Officer and the Contractor shall promptly establish the total final price in accordance with the following:

(1) On the basis of the information required by paragraph (c) above, together with any other pertinent information, there shall be established by negotiation the total final cost incurred or to be incurred for the supplies delivered (or services performed) and accepted by the Government, which are subject to price revision under this clause. The final negotiated cost so established shall include costs incurred or to be incurred for all supplies delivered (or services performed) and accepted by the Government which are subject to the price revision. The contract may have provisions contained in the specifications, or other documents incorporated in this contract by reference, or in the Schedule or Contract clauses hereof, designating services to be performed or materials to be furnished by the Contractor at his expense, or without cost to the Government, or with cost to be borne by the Contractor. Such costs may be included in the final negotiated cost of this contract, provided, however, that after the total final price has been established in accordance with this clause, such services shall be performed and such materials shall be furnished at no increase in said total final price. The amounts determined in accordance with the following contract provisions shall not be considered costs incurred or to be incurred for the purpose of negotiating the total final cost or establishing the total final price in accordance with this clause.

— (i) The "Compensation Adjustments (Labor and Material)"

— (ii) Any other provision of this contract which provides for an amount to be reimbursed or paid to the Contractor by the Government or to be refunded or paid by the Contractor to the Government, other than through an adjustment of the contract price, including the following--

(A) Paragraphs (b), (c), and (e) of the clause of this contract entitled "Insurance-Property Loss or Damage-Liability to Third Persons."

(B) The clause of this contract entitled "Additional Insurance Provisions."

(C) The clause of this contract entitled "Indemnification Under Public Law 85-804, FAR 52.250-1 (APR 1984)."

(2) The total final price shall be established by adjusting the total final negotiated cost by an amount for profit or loss, determined as follows:

WHEN THE TOTAL FINAL _____ THE AMOUNT FOR PROFIT NEGOTIATED
COST IS: _____ OR LOSS IS:

equal to the total target cost..... Total target profit

greater than the total target cost..... Total target profit less... [Contracting Officer
_____ insert percent] percent of the amount by
_____ which the total final negotiated cost exceeds
_____ the total target cost.

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ss than the total target cost..... Total target profit less... [Contracting Officer
insert percent] percent of the amount by
which the total final negotiated cost
exceeds the total target cost.

— (3) The total final price of the items referred to in paragraph (a) above shall be evidenced a modification to this contract signed by the Contractor and the Contracting Officer. Each price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, with the following exceptions:

— (i) Insofar as the parties may agree in writing, prior to the determination of the total final price,

— (A) To exclude any specific elements of cost from the total final price; and

— (B) To a procedure to provide subsequent disposition of such elements; and

— (ii) To the extent any adjustment or credit is explicitly permitted or required by this or any other clause of this contract.

— (e) Subcontracts. No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

— (f) Disagreements. If the Contractor and the Contracting Officer fail to agree upon the total contract price within sixty (60) days after the date on which the data required by (c) above are to be submitted, or within such further time as may be specified by the Contracting Officer, such failure to agree shall be deemed to be a dispute within the meaning of the "Disputes" clause of this contract and the Contracting Officer shall promptly issue a decision thereunder.

— (g) Termination. If this contract is terminated prior to establishment of the total final price, the cost of supplies or services subject to price revision under this clause shall be established pursuant to this clause for--

— (i) Completed supplies accepted by the Government and services performed and accepted by the Government; and

— (ii) In the event of a partial termination, supplies and services which are not terminated. The termination shall be otherwise accomplished pursuant to other applicable clauses of this contract.

— (h) Equitable Adjustment under Other Clauses. If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the ceiling price, the total target profit, or both. If such an adjustment is made after the total final price is established, adjustment shall be made only in the total final price.

— (i) Exclusion from Target Price and Total Final Price. Whenever any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, such provision shall mean that neither any target price nor the total final price includes or shall include any amount for such purpose.

— (j) Separate reimbursement. The cost of performance of an obligation that any clause of this contract expressly provides is at Government expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

— (k) Taxes. As used in the Federal, State, and Local Taxes clause of this contract or any other clause of this contract that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term "contract price" includes the total target price or, if it has been established, the total final price. When a provision in such clause or clauses requires that the contract price be increased or decreased as a result of changes in the obligation

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the Contractor to pay or bear the burden of certain taxes or duties, such increase or decrease all be made in the total target price and, in the same amount, the ceiling price or, if it has been established, in the total final price, so as not to affect the Contractor's profit or loss on this contract.

(End of clause)

~~52.243-9000 Notification of Applicability of 10 U.S.C. 2405.~~

~~prescribed at 5243.105-94(a), insert the following provision:~~

~~NOTIFICATION OF APPLICABILITY OF 10 U.S.C. 2405 (NOV 1991)~~

~~the contract which will result from an award made pursuant to this solicitation is a shipbuilding contract, and, therefore, any claim, request for equitable adjustment, or demand for payment submitted by the contractor seeking a price adjustment under this contract is subject to 10 U.S.C. 2405.~~

(End of Clause)

~~52.243-9001 Requirements for Adequate Supporting Data and Certification of Any Claim, Request for Equitable Adjustment, or Demand for Payment.~~

~~as prescribed at 5243.105-94(b), insert the following clause in full text:~~

~~REQUIREMENTS FOR ADEQUATE SUPPORTING DATA AND CERTIFICATION OF ANY CLAIM, REQUEST FOR EQUITABLE ADJUSTMENT, OR DEMAND FOR PAYMENT (NOV 1991)~~

~~a) This contract is subject to 10 U.S.C. 2405; therefore, no price adjustment will be made under this contract for an amount set forth in a claim, request for equitable adjustment, or demand for payment (or incurred due to the preparation, submission, or adjudication of any such claim, request, or demand) arising out of events occurring more than 18 months before the submission of the claim, request, or demand.~~

~~b) A claim, request for equitable adjustment, or demand for payment is considered to be submitted on a date the contractor's submission is received by the contracting officer accompanied by adequate supporting data for the claim, request or demand, and the certification required by Section 6(c)(1) of the Contract Disputes Act, if the claim, request or demand is over \$1050,000.~~

~~c) Adequate supporting data includes data which is adequate to apprise the contracting officer of the underlying facts and the theory upon which the contractor relies in support of its entitlement to a price adjustment. Adequate supporting data is that data which fulfills these purposes in accordance with the requirements of the Contract Disputes Act. A submission containing the following information will be deemed to have been submitted with adequate supporting data:~~

~~(1) A narrative statement of the nature of the event(s), the time when the event(s) occurred (including a factual basis supporting the contractor's designation of the time the event(s) occurred), and the causal relationship between the event(s) and the impact on the cost of performance of the contract, including a description of how the event(s) affected scheduled performance;~~

~~(2) A description of the relevant effort the contractor was required to perform in the absence of the event(s);~~

~~(3) A description of the relevant effort the contractor was actually required or will be required to~~

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form;

(4) A description of components, equipment, and other property involved;

(5) A cost breakdown of the additional effort by element in accordance with the contractor's normal procedures for pricing of changes;

(6) A description of all property which will no longer be needed by the contractor;

(7) A description of any delay caused by the event(s);

(8) A description of any disruption caused by the event(s).

f) Certification of the claim, request for equitable adjustment, or demand for payment is required if the requested price adjustment is over \$50,000. The certification requirements are those set forth in the DCA and implementing regulations.

g) For the purpose of this clause, the following terms have the meanings set forth below.

(1) "Claim" means a written demand or written assertion by the contractor seeking, as a matter of right, a price adjustment under the contract. The theory upon which the contractor seeks the price adjustment does not determine whether a particular matter is a claim. The term includes a submission asserting any theory supporting a price adjustment, including but not limited to constructive change, breach of contract or mistake, which, if valid, would result in contractor entitlement to a price adjustment. Voucher, invoice or other routine request for payment that is not in dispute when submitted is not a claim. A claim does not include a request for equitable adjustment or demand for payment, as defined below.

(2) "Demand for payment" means a written demand for payment, the granting of which results in a price adjustment under the contract. A demand for payment does not include a routine request for payment in accordance with the payment terms of the contract.

(3) "Events" means the Government action(s), Government inaction(s), Government conduct, or occurrence(s) which give rise to the contractor's claim, request for equitable adjustment, or demand for payment. The term events does not require the incurrence of costs and/or performance of additional work resulting from the action(s), inaction(s), conduct or occurrence(s) except where a contractor's commencement of the correction of defective GFI/GFP constitutes the final occurrence. For the purpose of this subpart, the date of the final Government action, Government inaction, Government conduct or occurrence is the date on which the 18 month period commences.

(4) "Knew or should have known" includes the totality of the combined actual and constructive knowledge of all agents or employees (including a subcontractor, its agents and employees, where and the extent a subcontractor is involved).

(5) "Price adjustment" means an increase in the fixed price, target price, ceiling price, or final price of a fixed price type contract, or an increase in the fee structure of a cost reimbursement type contract, or monetary damages or other payment resulting from a contractor claim, request for equitable adjustment, or demand for payment. An adjustment to the sharing ratio or to any other pricing formula, procedure or provision, which has the effect of increasing the fixed price, target price, ceiling price, final price, or fee of the contract, is a price adjustment. A schedule adjustment, whether requested as part of a submission seeking a price adjustment or as the sole relief, or an adjustment for any matter which, pursuant to the terms of the contract is separate from or not included in the fixed price, target price, ceiling price or final price of a fixed price contract or the fee structure of a cost reimbursement contract, is not a price adjustment. The bilateral definitization of a maximum-price modification within the maximum ceiling is not a price adjustment. A routine invoice or other request for payment or reimbursement in accordance with the terms of the contract, even if in dispute, which, if paid, would not result in an increase in the price of the contract is not a price adjustment. For the purpose of this subpart, relief granted pursuant to a request for extraordinary contractual relief under Public Law 85-804 does not constitute a price adjustment.

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~~(6) "Request for equitable adjustment" means a written request for a price adjustment under the contract.~~

~~_____ (End of Clause)~~

APPENDIX A (TO FAR)

**ACQUISITION OF FEDERAL INFORMATION PROCESSING (FIP) RESOURCES BY
CONTRACTING**

SUBPART 201-39.15—CONTRACTING BY NEGOTIATION

~~201-39.1502 Solicitation.~~

~~SECNAVINST 5231.1 establishes DoN requirements for selecting the solicitation approach for Federal Information Processing (FIP) resources. Solicitations should not be worded so as to preclude contractor submission of alternative methods of acquisition since such an alternative method may be in the best interests of the DoN.~~

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