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PART 5201 FEDERAL ACQUISITION REGULATIONS SYSTEM

SUBPART 5201.1—PURPOSE, AUTHORITY, ISSUANCE

5201.101 (FAR 1.101) Purpose.

The Navy Marine Corps Acquisition Regulation Supplement (NMCARS) 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 (FAR 1.102) Statement of guiding principles for the Federal Acquisition System.

(d)(S-90) By October 15th of each even numbered year, and to support the biennial certification required by the Senior Procurement Executive (SPE), the Heads of the Contracting Activity (HCAs) shall submit written certifications that the contracting activity is in compliance with Department of Defense (DoD) Instruction (DoDI) 5000.66 and Deputy Secretary of Defense memorandum, Reinforcing the Evaluation Requirements Of Contracting Officers Under DoDI 5000.66, dated August 27, 2008. Activities shall submit certifications to Deputy Assistant Secretary of the Navy (Acquisition and Procurement) (DASN(AP)) by email at RDAJ&As@navy.mil with the subject "FAR 1.102 - Biennial Certification of Evaluation Requirements of Contracting Officers."

5201.103 (FAR 1.103) Authority.

(b) The NMCARS is prepared, issued, and maintained pursuant to the authority of Secretary of the Navy (SECNAV) Instruction (SECNAVINST) 5400.15.

5201.104 (DFARS 201.104) Applicability.

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

5201.105 (FAR 1.105) Issuance.

5201.105-2 (FAR 1.105-2) Arrangement of regulations.

(c) References and citations.

(1) References to this supplement within this supplement will be without a name or acronym prefix. References to FAR citations in this supplement should be read to include any corresponding paragraphs of the DFARS and this supplement and any additional authorizations, restrictions, policies and procedures they may contain. For example, the words "...when authorized under FAR Part 25..." include authorities granted under FAR Part 25, DFARS Part 225 and Part 5225 of this supplement. A FAR cite in parentheses immediately after the NMCARS cite means related coverage is contained in the FAR (e.g. 5201.104 (FAR 1.104)). A DFARS cite in parentheses immediately after the NMCARS cite means related coverage is contained in the DFARS (e.g. 5201.104 (DFARS 201.104)). A Procedures, Guidance and Information (PGI) cite in parenthesis immediately after the NMCARS cite means related coverage is contained in PGI (e.g. 5201.104 (PGI 201.104)). The cite denoted in parentheses represents the lowest level of guidance contained in FAR, DFARS and the PGI. Additional relevant guidance associated with the NMCARS content may also be contained in the higher level documents.

5201.107 (DFARS 201.107) Certifications.

In accordance with 41 United States Code (U.S.C.) 1304, a new requirement for a certification by a contractor or offeror may not be included in any activity supplement, clause book, contract clause, solicitation provision, policy letter, policy memorandum or any other similar document unless-

- (1) The certification requirement is specifically imposed by statute; or
- (2) Written justification for such certification is provided to the Secretary of Defense (SECDEF) by Assistant Secretary of the Navy (Research Development & Acquisition) (ASN(RDA)), and the SECDEF approves in writing the inclusion of such certification requirement.

5201.108 (FAR 1.108) FAR conventions.

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

5201.170 (DFARS 201.170) Peer reviews.

(a)(1)*DoN Peer Reviews.* The DoN procedures for peer reviews are described in Annex 8, DoN Peer Review Program. Peer reviews shall be performed on solicitations and contracts with estimated values at \$50,000,000 or more (including options).

(2) *Peer Review Rolling Forecast Report.* By the 25th day of each month, HCAs shall submit a rolling forecast of acquisitions valued at \$250,000,000 or more requiring peer reviews by ASN(RDA) or Director of Defense Procurement and Acquisition Policy (DPAP), in the format prescribed by Annex 8, Peer Review Program. Submit the required information to DASN(AP) by email at RDAJ&As@navy.mil with the subject "DFARS 201.170 - Peer Review Rolling Forecast."

5201.170-4 (PGI 201.170-4), Administration of peer reviews.

(f) Contracting Officers shall submit copies of required memoranda documenting the disposition of peer review results and recommendations to DASN(AP)/ Director, Program Analysis and Business Transformation (PA&BT) by email at RDAJ&As@navy.mil with the subject "PGI 201.170-4 - Disposition Of Peer Review Recommendations" followed by the applicable solicitation/contract number and peer review date.

5201.190 Reports.

Annex 14 contains a consolidated listing of reporting requirements for DoN components and field contracting activities. Where there is a difference between the annex and a specific reporting requirement not found in the annex, the specific requirement shall take precedence.

SUBPART 5201.2—ADMINISTRATION

5201.201 (DFARS 201.201) Maintenance of the FAR.

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

(d)(i) Submit proposed revisions to the FAR, DFARS or NMCARS to DASN(AP) via the Deputy/Assistant Commander for Contracts of the cognizant HCA by email at RDAPolicy@navy.mil with the subject "DFARS 201.201-1 – Proposed [FAR/DFARS/NMCARS] Revision." Each proposed revision should include a legal review and identify the name, code, and telephone number of the activity point of contact.

SUBPART 5201.3—AGENCY ACQUISITION REGULATIONS

5201.303 (DFARS 201.303) Publication and codification.

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

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

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

5201.304 (DFARS 201.304) Agency control and compliance procedures.

(4) DoN Procedures for Control of Component Clause Use. Navy/Marine Corps contracting activities shall follow the DoN Control Plan for Component Clauses available at Annex 7. This Plan sets forth specific requirements that must be met before use of Component clauses in DoN solicitations and contracts. All Component clauses used in DoN solicitations and contracts shall be properly approved before use.

(i) Definitions.

(A) "*Component*" means a DoN HCA exercising contracting authority.

(B) "*Navy Clause Baseline*" means all properly approved DoN component clauses.

(ii) Requirements.

(A) *Publication in the Federal Register*. Component clauses or changes to existing component clauses that meet the conditions of DFARS 201.304(1)(i) (*i.e.* have a significant effect beyond the internal operating procedures of the agency, or a significant cost or administrative impact on offerors/contractors), shall be published for public comment in the *Federal Register*.

(B) *Approvals*. The required approval authorities for use of Component clauses are established in Annex 7 and DFARS 201.304(1)(i). Component clauses which do not meet the conditions for Under Secretary of Defense (Acquisition, Technology and Logistics (USD(AT&L))/DPAP approval require HCA approval, which is delegable only as set forth in the Plan. However, ASN(RDA)/DASN(AP) approval is required for any Component clause which results in a FAR, DFARS, NMCARS deviation. Approvals of deviations are set forth in paragraph 5 of the Plan. Copies of all approved Component clauses shall be submitted to DASN(AP) by email at RDAPolicy@navy.mil with the subject "DFARS 201.304 – "Component Clause – Copy of Approved Clause(s)" for inclusion in the Navy clause baseline within 30 days of approval. A copy of approved supporting documentation shall be included in the submission.

(C) *Documentation*. All Component clauses must be properly supported in writing and reviewed by Counsel before approval. The clause approval documents shall be in the format and include the content similar to that prescribed for proposed revisions to FAR or DFARS at DFARS 201.201-1(d) and, when applicable, DFARS 201.301(b).

(D) *Clause numbering*. All component clauses shall be numbered in accordance with 5252.101.

(E) *Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items*.

(1) The following approvals are required for use of agency or component-unique provisions or clauses in solicitations and contracts for commercial items that will supplement FAR Part 12 and DFARS Part 212 provisions or clauses:

(i) DASN(AP) is the approval authority for inclusion of a component-unique provision or clause that is necessary to reflect an agency-unique statute applicable to the acquisition of commercial items.

(ii) The Navy Senior Procurement Executive (NSPE) is the approval authority for inclusion of any agency or component-unique provision or clause that is otherwise not necessary to reflect an agency-unique statute applicable to the acquisition of commercial items.

(2) Annex 7 outlines current sources of approval authority governing inclusion of provisions and clauses in solicitations and contracts for commercial item acquisitions, as well as implementing general procedures to facilitate consistency in management, control and use of properly approved provisions or clauses. See 5212.301 for additional guidance.

SUBPART 5201.4—DEVIATIONS FROM THE FAR

5201.402 (DFARS 201.402) Policy.

(2) Submit those requests for individual or class deviation that require approval at a level higher than the HCA to DASN(AP) by email at RDAPolicy@navy.mil with the subject “DFARS 201.402 - Deviation Request.”

5201.403 (DFARS 201.403) Individual deviations.

(1) DASN(AP) is the approval authority for:

(i) individual deviations from the FAR or DFARS other than those specified in DFARS 201.402(1) and DFARS 201.403(2) and 5201.403(2).

(ii) individual or class deviations from NMCARS.

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

(2) In the case of a purchase or contract by an offshore contracting activity with a foreign contractor made outside the United States, its possessions, or Puerto Rico, deviations from contract clauses may be granted by the HCA provided that no change in intent, principle, or substance is made. The HCA may delegate this authority no lower than one level above the contracting officer.

5201.404 (DFARS 201.404) Class deviations.

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

(b)(ii) DASN(AP) is the approval authority for class deviations described at DFARS 201.404(b)(ii).

SUBPART 5201.6—CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES

5201.601 (FAR 1.601) General.

5201.601-90 Department of the Navy authorities and responsibilities.

(a) *General.* HCAs are responsible for establishing adequate and effective internal controls to carefully manage and closely oversee the execution of delegated contracting authority for assigned contracting mission functions. This includes proactively working with requirements and program personnel during acquisition planning to facilitate the timely submission of requirements to the appropriate contracting activity for contract action in a manner which promotes and permits

maximum competition. In conjunction with executing assigned contracting missions, there are certain types of procurements for which authority resides solely with the HCA as described in paragraph (c) below, unless authority is delegated in writing to another HCA and accepted by the receiving HCA to execute those procurements. Delegation of DoN contracting authority applies only within DOD. If the contracting activity is outside DoD, contracting officers shall follow interagency acquisitions procedures in FAR 17.5, DFARS 217.5, and NMCARS 5217.5. At a minimum, HCAs shall address the following requirements in the contracting activity's procedures for delegation of contracting authority:

(1) Identify all HCAs to which contracting authority has been delegated and specify any limitations on their contracting authority.

(2) Track delegations received from HCAs.

(3) Obtain DASN(AP) approval when the request for delegation of contracting authority is intended ultimately to lead to a procurement for or by a DoD activity. Activities shall notify DASN(AP), no less than 30 days prior to an anticipated delegation or as early as practicable, by email at RDAPolicy@navy.mil with the subject "NMCARS 5201.601-90 – Contracting Authority Delegation Approval" to allow time for approval before granting a delegation of contracting authority leading to a procurement contracted for or by a DoD organization. Activities shall use the template in Annex 11, Delegation of Contracting Authority, as applicable.

(4) Ensure contracting authority delegations are made, in writing from HCA to HCA. This authority may not be redelegated. Delegations to DoD organizations must also consider the anticipated workload and available resources to ensure effective execution and management of the delegated authority. Upon signature, submit a copy of contracting authority delegations to DASN(AP) by email at RDAPolicy@navy.mil with the subject "NMCARS 5201.601-90 – Copy of Contracting Authority Delegation.

(5) Manage and oversee contracting authority delegations to ensure the delegated contracting authority is being executed and administered in accordance with the delegation of authority and contracting regulations, rules, and procedures.

(b) HCA responsibilities and limitations. Each HCA is solely responsible for executing its delegated contracting authority for assigned acquisition programs and cognizant areas of responsibilities subject to any established limitation. An HCA has authority to procure supplies and services to support all organic requirements, such as those set forth in SECNAVINST 5400.15, unless such procurements fall within the scope of unique contracting responsibilities assigned to another HCA.

(1) When a DoN contracting office contemplates a buy for supplies or services outside its' HCA's unique contracting authority, whether procuring the supply or services through its' Navy HCA warrant or through a contracting activity within DoD (e.g., U.S. Army), the contract action may not be awarded or administered unless the cognizant HCA grants a delegation of authority in accordance with subparagraph (a) of this section.

(i) The request to delegate contracting authority shall document the rationale supporting the delegation and address why the delegation is necessary for the efficient and proper administration of the receiving HCA's contracting operations.

(ii) The DoN Navy HCA receiving the delegated authority shall affirmatively acknowledge and accept the conditions of the delegation in writing prior to exercising the delegated authority.

(iii) HCA delegated authority may not be redelegated to contracting offices not under the cognizance of the receiving HCA unless specifically defined in the delegation of contracting authority request.

(2) DoN Navy HCAs receiving DoN Navy delegated contracting authority shall obtain both delegating HCA and DASN(AP) approval prior to using the delegated contracting authority to execute a procurement through a non-DoN DoD cognizant contracting activity (e.g., NAVFAC delegates authority to contract for construction to NAVSUP, and NAVSUP uses the Army Corps of Engineers to procure the construction). The procurement, proposed contracting activity, and limitations should be included in the initial request for delegation authority. In all cases, the specific written delegation by the HCA holding the unique contracting authority shall occur prior to the receiving HCA requesting that another DoD activity conduct a procurement on its behalf.

(c) *HCA unique contracting authorities.* The assigned responsibilities of the DoN contracting activities are as follows:

(1) *Deputy Assistant Secretary of the Navy (Acquisition and Procurement)(DASN(AP))* is responsible for providing advice and staff support to ASN(RDA), who serves as the Navy Acquisition Executive and Senior Procurement Executive. DASN(AP) exercises plenary contracting authority on behalf of the Department. DASN(AP) has the following overarching responsibilities:

(i) Develop overarching policies and procedures for the acquisition of Navy and Marine Corps weapon systems, supplies, services, construction, research and development, and other mission requirements in accordance with law and regulation.

(ii) Manage and oversee the performance of the DoN contracting/procurement system.

(iii) Facilitate and improve the DoN acquisition system through innovative processes, tools and best practices.

(iv) Serve as the DoN Competition Advocate General.

(v) Appoint Navy Contract Adjustment Board members and conduct Contract Adjustment Board proceedings under Public Law 85-804.

(2) *Installations and Logistics, Headquarters, U.S. Marine Corps (HQMC, I&L)* is responsible for the award and administration of contracts for supplies and services to support installation and logistics requirements of the Marine Corps Operating Forces and supporting establishments.

(3) *Marine Corps Systems Command (MARCORSYSCOM)* is responsible for awarding and administering contracts for assigned Marine Corps programs, assigned IT systems programs or components, and relevant professional, research and engineering services, except for naval aviation programs.

(4) *Military Sealift Command (MSC)* is responsible for awarding and administering contracts for services of ocean-going ships, craft, floating dry docks, and other repair facilities, for purposes such as oceanographic research and survey, underwater research, cable laying, and range instrumentation; and contracts for the maintenance, conversion, and modernization of assigned vessels. MSC's unique contracting responsibilities include contracts for services of ferries and tugs, but exclude contracts for (i) pilot services and (ii) ferries and tugs used for husbanding services, including water taxi contracts awarded outside the continental United States under husbanding services contracts. MSC transportation responsibilities are identified in the Defense Transportation Regulation.

(5) *Naval Air Systems Command (NAVAIRSYSCOM)* is responsible for awarding and administering contracts for naval aviation programs and efforts supported by the Naval Air Warfare Centers, to include relevant logistics, training and professional, research and engineering services. In addition, NAVAIRSYSCOM unique contracting responsibilities include designing, developing, procuring, and supporting naval aviation systems used by the Navy and Marine Corps.

(6) *Naval Facilities Engineering Command (NAVFACENGCOM)* is responsible for awarding and administering contracts for all architect-engineer, construction, utilities, energy, facilities

support, and assigned weapon and IT system programs or components associated with Navy expeditionary forces.

(i) NAVFACENGCOM's unique contracting responsibilities include:

(A) Facility engineering and construction, including capital improvements;

(B) Utilities, including sales and privatization;

(C) Shore Energy, including renewable, conservation, Energy Savings Performance Contracts (ESPCs) and Utility Energy Service Contracts (UESCs), and sales;

(D) Environmental remediation, cultural resources (on DoD installations only), historical research, natural resources conservation studies (on and off DoD installations), execution of the Defense Environmental Restoration Program (DERP), delegated caretaker functions at military installations to be closed under the Defense Base Closure and Realignment Act of 1990, and any amendments thereto;

(E) Public works, including maintenance of buildings, grounds, roads and other infrastructure;

(F) Guard services related to the protection and security of U.S. military installations and facilities;

(G) Anti-Terrorism Force Protection (ATFP) infrastructure (ashore);

(H) Contingency engineering, expeditionary and construction training systems and equipment;

(I) Logistics-over-the-shore, near shore, and ocean facilities infrastructure systems;

(J) Navy expeditionary equipment, infrastructure, and Information Technology (IT) related systems;

(K) Procurement and lease (over 120 days) of Navy (excludes United States Marine Corps (USMC)) civil engineer support equipment, including railway, construction and weight-handling equipment;

(L) Procurement and maintenance of automotive vehicles used by DoN; and

(M) Lease (over 120 days) of automotive vehicles used by DoN.

(N) Construction, lease, purchase and/or installation of relocatable buildings, including trailers.

(O) DoN 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.

In addition, NAVFACENGCOM is responsible for contract administration functions associated with construction work under contracts awarded by other DoN contracting activities that contain any construction work.

(ii) Procedures.

(A) If an HCA other than NAVFACENGCOM intends to award a contract, and the contract scope contains any element of construction work, contracting officers shall consult with NAVFACENGCOM, as early as practicable in the acquisition planning process, to ensure HCA solicitations and contracts containing any element of construction work are properly structured, and the construction work under the contract is administered, in accordance with DoN policy.

(B) NAVFACENGCOM will, upon request, assist contracting officers in determining whether the extent of construction activities to be performed under an HCA contract for supplies, equipment, services, or research and development, etc. requires a delegation of construction contracting authority from the Commander, NAVFACENGCOM (COMNAVFACENGCOM) and/or triggers the application of FAR Subpart 22.4, Labor Standards for Contracts Involving Construction. The delegation of authority is contingent on the HCA demonstrating, in a written

request for authority, that contracting and technical/program personnel properly trained in construction contract administration and the labor standards applicable to construction work are available in the activity/organization.

(7) *Naval Sea Systems Command (NAVSEASYSKOM)* is responsible for awarding and administering contracts for ships and submarines, assigned weapon systems and platforms, and relevant professional, research and engineering services. NAVSEASYSKOM unique contracting responsibilities include awarding and administering contracts for construction, maintenance and modernization of ships and submarines, nuclear propulsion, water craft, submersibles, equipment for towing, diving and salvage, and University Affiliated Research Centers.

(8) *Naval Supply Systems Command (NAVSUPSYSCOM)* is responsible for awarding and administering contracts in support of assigned logistics support functions. NAVSUPSYSCOM's unique contracting responsibilities include procuring supplies and services for all non-contracting Navy activities, offices or commands for which no other HCA is delegated authority. NAVSUPSYSCOM is the DoN Executive Agent for the policy areas identified in paragraphs (i) through (iv) below. NAVSUPSYSCOM shall coordinate with DASN(AP) before issuing overarching policy in any of these areas:

- (i) AbilityOne (Javits-Wagner-O'Day Act) acquisitions as defined in FAR Part 8.
- (ii) Contract Reporting.
- (iii) Government purchase card program.

(iv) Simplified acquisition procedures as defined in FAR Part 13, except that NAVFACENGCOM may promulgate other procedures for construction, architect-engineer services, and facilities support service contracts.

(9) *Office of Naval Research (ONR)* is responsible for awarding and administering contracts and other instruments for assigned DoN Science and Technology (S&T) research. ONR unique contracting responsibilities include the award and administration of contracts to the Navy's Federally Funded Research Development Center (FFRDC).

(10) *Space and Naval Warfare Systems Command (SPAWARSYSCOM)* is responsible for awarding and administering contracts in the information dominance domain, including assigned programs in the areas of research and development, systems engineering and development, and other relevant professional services associated with production, installation and sustainment for Command, Control, Communications, Computers, Intelligence Surveillance, and Reconnaissance Systems (C4ISR); Joint Tactical Radios Systems (JTRS), Space Systems; Enterprise Information Systems (EIS); and Navy Chief Information Officer (CIO) supported information technology initiatives.

(11) *Strategic Systems Programs (SSP)* is responsible for awarding and administering contracts in support of the development, production, and life-cycle support of the TRIDENT Strategic Weapon System, and other assigned programs under the cognizance of the Director, SSP (DIRSSP).

5201.602 (FAR 1.602) Contracting officers.

5201.602-1 (FAR 1.602-1) Authority.

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

5201.602-3 (FAR 1.602-3) Ratification of unauthorized commitments.

(b)(3) HCAs may delegate authority to ratify unauthorized commitments (UACs) of \$100,000 or less to no lower than the Deputy/Assistant Commander for Contracts and may delegate authority to

ratify unauthorized commitments of \$50,000 or less to a level no lower than the Chief of the Contracting Office (CCO).

(S-90) *DoN Guidance*.

(a) The ratifying official and the contracting officer on the ratified action shall not be the same individual.

(b) HCAs shall establish procedures for ratification of UACs.

(c) HCAs shall maintain a record of all UACs and ratification actions. At a minimum, the record shall include:

(1) A signed statement describing the circumstances surrounding the UAC;

(2) Acknowledgement that procedures existed for the person/organization to follow to avoid a UAC or a verification statement that such procedures did not exist;

(3) Why normal procurement procedures were not followed; and,

(4) Any other documentation relied upon to make the ratification decision.

(d) Notification(s).

(1) HCAs shall notify DASN(AP) upon receipt of a contractor request for payment which is not covered by a current contract, task or delivery order. These events shall be reported within 10 days following the event identification. HCAs shall notify DASN(AP) by e-mail RDAPolicy@navy.mil with the subject "Contractor Request for Payment - ##". This initial notification shall include a decision that event reported is or is not a UAC.

(2) HCAs shall notify DASN(AP) when a ratification action is completed. A copy of all ratifications of UAC documentation shall be submitted to the Senior Contracting Leader within the HCA. A copy of the complete ratification package shall be submitted to RDAPolicy@navy.mil with "Ratification Action - ##" in the subject line.

(3) Notification Numbering (##)

(i) The numbering format shall consist of (e.g. First reported FY13 NAVSEA action: N00024-13-UAC-001):

(A) Organization UIC-;

(B) Current FY-;

(C) The acronym "UAC"-;

(D) A consecutive 3-digit numeric identifier.

(ii) This number shall be carried forward for the life of the action until final disposition (i.e. denial or ratification).

5201.603 (FAR 1.603) Selection, appointment, and termination of appointment.

5201.603-1 (FAR 1.603-1) General.

HCAs are the agency head's designees for the selection and appointment of contracting officers, and for the termination of their appointments. HCAs will maintain records specifying who (by position/title/office) in the contracting chain of command may select, appoint and terminate appointment of qualified individuals within the contracting activity's cognizance and specify authority limits.

5201.603-2-90 Contracting officer warrants.

Notification requirements. Submit copies of documentation supporting any warrants authorized pursuant to DFARS 201.603-2(3) and warrants issued pursuant to the exception at DFARS 201.603-2(2)(ii) to DASN(AP) at RDAPolicy@navy.mil with the subject "DFARS 201.603-2(2)(ii) – Waiver of Contracting Officer Qualification" within five days of issuance.

5201.603-2-91 Contracting officer warrant issuance to non-DoD employee.

Except where a DoN activity is designated HCA for a joint-contracting operation, if there is a need to issue a warrant to a non-DoN employee, an HCA must submit a waiver request to DASN(AP) by email at RDAPolicy@navy.mil with the subject “DFARS 201.603-2 – Contracting Officer Warrant Issuance to a non-DoN Employee” for approval, using the template in Annex 12, provided the individual is a civilian or military member of the DoD and meets applicable requirements commensurate to the proposed warrant level per 10 U.S.C.§1724.

5201.603-4 (FAR 1.603-4) Termination.

A Contracting Officer appointment shall be terminated in writing when the individual is transferred from the position due to reassignment or permanent change of station/duty; the need for a contracting officer function no longer exists; the individual retires, resigns or the Agency terminates his/her employment; or the individual fails to comply with laws and regulations governing the procurement process, including the delegated warrant authority and responsibilities. Warrants issued specifically for a contingency operation are only valid for the period during which the individual is assigned to support the contingency office and shall be terminated in writing upon detachment from that office.

5201.690 Requirements to be met before entering into contracts.

(a) Contract actions must be subject to review prior to award. The formal review process is conducted and documented through the use of the business clearance. The purpose of the business clearance is to demonstrate that the proposed decision on a contract action conforms to law, regulation, good business practices and DoD/DoN acquisition policy.

(b) HCAs shall establish written procedures defining the types of contract actions that will require a business clearance, the applicable dollar thresholds, and the review and approval process. At a minimum, HCA procedures shall address business clearance requirements for the actions listed below. HCAs should expand this list, as appropriate.

(1) Contracts (including task and delivery orders against indefinite-delivery contracts, basic ordering agreements, blanket purchase agreements, and other contract tools).

(2) Contract modifications not within the scope or under the terms of an existing contract.

(3) Undefined contract actions (see DFARS Subpart 217.74.)

(4) Modifications and changes issued pursuant to the *Changes, Disputes, Economic Price Adjustment, Fair Labor Standards Act and Service Contract Act—Price Adjustment, Government Delay of Work, Government Property, Incentive Price Revision, Over and Above Work, Stop-Work Order, Termination, and Value Engineering* contract clauses.

(5) Settlement of claims or requests for equitable adjustment not addressed under paragraph (4) above.

(6) Retroactive pricing after completion, including final price determination.

(7) Definitization of any undefinitized or unpriced contract action, including change orders, Engineering Change Proposals, Value Engineering Change proposals, and Over and Above Work.

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

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

(c) The following contract actions do not require a business clearance, but the file must include the rationale for award sufficiently documented in a format prescribed by HCA procedures:

(1) Contract actions awarded using simplified acquisition procedures.

(2) Task orders or delivery orders issued under FAR Subpart 8.4, Federal Supply Schedules.

(3) Task orders or delivery orders issued on a firm-fixed price basis against indefinite-delivery type contracts for:

(i) supplies for which unit prices are established in the contract; or

(ii) services for which unit prices are established in the contract for specific tasks to be performed and where a statement of work/statement of objectives is not required.

(d) HCAs must establish business clearance approval levels at least one level above the individual responsible for conducting the negotiations; or, if negotiations are not required, for handling the proposed contract action. The degree and complexity of documentation required, and approval levels/thresholds, for various actions should be governed by the magnitude and complexity of the action being reviewed.

(e) The format at Annex 2, Business Clearance Memorandum, shall be used to document decisions on contract actions that are subject to business clearance requirements, unless an alternative format has been approved by DASN(AP).

(f) Contracting Officers shall address Theater Business Clearance (TBC) requirements when soliciting or awarding contracts or performing contract administration. Contracts subject to TBC are those:

- (1) valued at >\$30K for Afghanistan and Iraq or valued at >\$1M awarded to non-Host Nation firms for Kuwait or Pakistan that require delivery of supplies in Afghanistan, Iraq, Kuwait or Pakistan, under Freight on Board (FOB) Destination terms using commercial transportation outside the Defense Transportation System;
- (2) with performance > 30 days in Afghanistan;
- (3) service or construction contracts with place of performance; in Afghanistan, Iraq, Kuwait or Pakistan; or
- (4) that authorize contractor personnel, including subcontractors at all tiers, to carry weapons in Afghanistan, Iraq, Kuwait or Pakistan, either currently performing or newly awarded, regardless of contract end date.

5201.691 Procurement management oversight.

5201.691-1 Purpose.

(a) The primary objective of procurement management oversight is to validate sound contracting practices throughout the DoN. This oversight encourages and assists HCAs in making continuous improvements in their acquisition and procurement processes. It also provides a mechanism for sharing "best practices" throughout the DoN. Procurement management oversight in the DoN is conducted through the Procurement Performance Management Assessment Program (PPMAP). The PPMAP is a flexible, performance-based, process-oriented program that requires contracting activities to perform periodic self-assessments of:

(1) critical procurement processes used to manage and execute procurement operations within the HCA, including their associated outcomes;

(2) performance-based metrics; and,

(3) the results of employee and customer surveys.

(b) The HCA will use the results of these self-assessments to:

(1) evaluate the quality of its procurement processes and management systems;

(2) validate execution of delegated authority is occurring according to law and regulation;

(3) mitigate risk of vulnerabilities for fraud, waste or abuse to occur; and,

(4) take appropriate corrective actions, as needed, to improve or maintain the quality of procurement operations within the contracting activity.

5201.691-2 Responsibilities.

(a) DASN(AP) is responsible for managing and overseeing the performance of the DoN contracting/procurement system by reviewing HCAs and other designated DoN contracting organizations using the PPMAP as one of its primary methods to execute this responsibility. DASN(AP) is also responsible for providing PPMAP guidance, as appropriate.

(b) Each HCA is responsible for performing management and oversight reviews of all procurement operations performed within the HCA, *i.e.* within Headquarters and at any subordinate contracting organization or field activity with delegated procurement authority, for procurement operations associated with any delegated authority, and at any other activities as directed by DASN(AP) or higher level authority. HCAs shall:

(1) establish written procedures implementing the DoN PPMAP review process for the contracting activity;

(2) perform and document periodic self-assessments (and other internal reviews) to evaluate and improve the quality of the procurement organization's operations and processes within the contracting activity; and,

(3) conduct and document timely reviews of all subordinate organizations and field activities with delegated contracting/procurement authority to ensure execution of authority is performed according to law and regulation.

(c) HCAs will, upon request, provide qualified senior contracting personnel to serve on DASN(AP) PPMAP teams.

(d) Reporting requirements. HCAs shall provide DASN(AP) the following information:

(1) By October 1st of each year, submit a PPMAP assessment plan for the new fiscal year identifying the self-assessments and activity reviews scheduled for the contracting activity, including the specific resources (by activity) that will be assigned to conduct that oversight.

(2) By January 30th of each year, submit a report summarizing for the contracting activity the outcome of the previous fiscal year's periodic self-assessments/internal compliance reviews performed on the contracting/procurement function at Headquarters and of on-site reviews/assessments conducted on subordinate contracting organizations and field activities with delegated procurement authority. The annual report should clearly convey the actions the HCA has taken to improve the quality of contracting/procurement operations within the contracting activity. At a minimum, the HCA's report must:

(i) include a summary of the findings noted for the contracting activity;

(ii) describe any statutory and/or regulatory deficiencies identified;

(iii) explain associated corrective actions taken either at the contracting activity-level or specific subordinate field activity-level;

(iv) identify best practices which could be useful to other DoN contracting activities;

(v) include other relevant information, *i.e.* the results of the HCA's annual warrant file audits, acquisition staffing and workload analysis, external audits or reviews to include the status of relevant recommendations; and, if applicable,

(vi) address the actions taken in response to a DASN(AP) PPMAP performed during the reporting period.

(3) Submit the required information in paragraphs (d)(1) and (2) above to DASN(AP) by e-mail at RDAJ&As@navy.mil with the subject "NMCARS 5201.691-2 – PPMAP Reporting." Reports must be signed by the HCA's senior contracting official.

(e) DASN(AP) shall be advised in writing, within five calendar days, any time an HCA revokes, suspends or reduces contracting or purchase card authority delegated to a cognizant field contracting activity or subordinate organization.

PART 5202 DEFINITIONS OF WORDS AND TERMS

SUBPART 5202.1—DEFINITIONS

5202.101 (DFARS 202.101) Definitions.

“ASN RDA Website” is defined as <https://acquisition.navy.mil/rda> and all accompanying pages within the site.

"CCO" is the “Chief of the Contracting Office”. The CCO is the official who has overall responsibility for managing the day-to-day contracting office operations and includes the principal deputy to such official.

“DASN(AP)” is the Deputy Assistant Secretary of the Navy for Acquisition and Procurement, Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition). It also includes the Executive Director, DASN(AP), the Director, Program Analysis and Business Transformation (PA&BT), DASN(AP), and Director, Services Acquisition, DASN(AP).

"Deputy/Assistant Commander for Contracts" is the Deputy or Assistant Commander for Contracts or the equivalent at a Systems Command, the Headquarters, NAVFACENGCOM; Deputy Commandant for HQMC, I&L; ONR; MSC; and SSP. It also includes the principal deputy for these officials.

"NAE" is the Navy Acquisition Executive. ASN(RDA) is the NAE.

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

"NSPE" is Navy Senior Procurement Executive. ASN(RDA) is the NSPE.

PART 5203 IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

SUBPART 5203.1—SAFEGUARDS

5203.101 (FAR 3.101) Standards of conduct.

5203.101-1 (FAR 3.101-1) General.

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

- (1) initiation of the requirement;
- (2) award of contract or placement of order; and
- (3) receipt, inspection, and acceptance of supplies or services.

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

5203.104 (FAR 3.104) Procurement integrity.

5203.104-7 (FAR 3.104-7) Violations or possible violations.

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

(f) Submit agency head notifications to DASN(AP) by email at RDAJ&As@navy.mil with the subject "DFARS 203.104-7 - Contract Award – Urgent and Compelling – Possible Procurement Integrity Act Violation." Verify receipt by the agency head before authorizing award of the contract or execution of the contract modification.

5203.170 (DFARS 203.170) Business practices.

(a) To support the certification required, the HCA shall confirm compliance with DFARS 203.170(a). Submit confirmation no later than November 30th of each even numbered year to DASN(AP) by email at RDAPolicy@navy.mil with the subject "DFARS 203.170 - Senior Leader Compliance Notice."

SUBPART 5203.2--CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL

5203.201 (FAR 3.201) Applicability.

This section establishes procedures pursuant to 10 U.S.C. § 2207, FAR Subpart 3.2, and the Gratuities clause in FAR subsection 52.203-3. These procedures are not intended to be an exclusive remedy that would preclude or limit otherwise appropriate criminal or civil action under the United States Code, administrative action, disciplinary action under the Uniform Code of Military Justice, or contractual action, including termination, for any other appropriate reason.

5203.203 (FAR 3.203) Reporting suspected violations of the Gratuities clause.

(a) Within two working days after receiving information indicating that a gratuity (including, but not limited to, entertainment or a gift) may have been offered or given by a contractor or a contractor's agent or representative to any officer, official, or employee of the Government to obtain a DoN contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance of a DoN contract, a DoN officer, official, or employee must inform the Assistant General Counsel (Acquisition Integrity) (AGC (AI)) and the contracting officer having cognizance over the contract of the potential infraction, unless the contracting officer is suspected to be a party to the gifted or offered gratuity. In that case, the HCA should be informed instead of the contracting officer. Information provided to the AGC (AI) and the cognizant contracting officer or HCA is exempt from Management Information Collection (MIC) reporting requirements as per SECNAV M-5214.1 (Dec. 2005), Part IV, § 7.n. & Part V, § 5.p. Submit the information in the format prescribed at Annex 10.

(b) The contracting officer having cognizance over the contract implicated in the alleged Gratuities clause violation (or the HCA, if the contracting officer is alleged to be a party to the gifted or offered gratuity) shall:

(i) Within five working days after receiving information regarding an alleged violation of the Gratuities clause, provide a written report to the AGC (AI) (exempt from (MIC) reporting requirements as per SECNAV M-5214.1 (Dec. 2005), Part IV, § 7.n. & Part V, § 5.p), including:

(A) The name and address of the contractor;

(B) A summary of any information concerning the suspected violation known to the person making the report, such as the nature and amount of the alleged gratuity and the person to whom it was allegedly offered or given;

(C) The contract number, date, estimated day of completion of performance, a general description of supplies or services procured, dollar amount, status of performance and payment, urgency of requirements, availability of the supplies or services from other sources, and the name of the contracting officer; and,

(D) Copies of any documents available concerning the suspected violation.

(ii) Cooperate and coordinate with the AGC (AI) and the DoN's Acquisition Integrity Office (AIO) in the investigation and treatment of an alleged violation, including, but not limited to, responding promptly to requests for information.

(iii) Advise AIO of the existence and status of any administrative investigation concerning the alleged violation of which the contracting officer is aware, with an estimated date upon which the report of investigation will be completed, if known. If requested, a copy of the Report of Investigation must be provided to AIO as soon as practicable.

(iv) Comply fully with DFARS Subpart 203.070 "Reporting of violations and suspected violations."

(c) AIO shall refer the alleged violation to the Naval Criminal Investigative Service for investigation and other appropriate action pursuant to SECNAVINST 5430.107, dated 28 Dec 2005, and 5430.92B, dated 30 Dec 2005, or successor instructions or regulations. AIO may also refer the alleged violation to the Naval Audit Service pursuant to SECNAVINST 5430.92B, dated 30 Dec 2005, or successor instruction or regulation.

(d) The reporting procedure set forth in this Subpart 5203.203 is not exclusive. The AGC (AI) may commence a proceeding pursuant to Subpart 5203.204 concerning a suspected violation of the Gratuities clause involving any DoN contract regardless of the source of the information.

5203.204 (FAR 3.204) Treatment of violations.

(a) General.

(1) Authority to provide notices, conduct hearings, and make findings of fact and conclusions of law concerning alleged violations of the Gratuities clause, including whether a violation of the Gratuities clause has occurred, has been delegated to the AGC(AI), without power of redelegation.

(2) The AGC (AI) shall make recommendations to the Deputy Assistant Secretary of the Navy (Acquisition and Procurement) (DASN(AP)) with respect to terminating the contractor's right to proceed under the contract and assessing exemplary damages.

(b) If the AGC (AI) has determined that a violation has occurred, authority to determine whether to terminate the contractor's right to proceed under the contract, and, if so, whether to assess exemplary damages and in what amount, has been delegated to DASN(AP).

(c) To the extent practicable, the AGC (AI) will make findings of fact, conclusions of law, and recommendations to DASN(AP) before the initiation of any debarment proceeding against the contractor concerning the same conduct. See FAR Subpart 9.4.

(d) Notification.

(1) If the AGC (AI) determines that there is credible evidence that a violation of the Gratuities clause has occurred, he or she may commence a proceeding pursuant to this Subpart by providing written notice to the contractor alleged to be liable for the purported violation.

(2) The notification advising the contractor of the alleged Gratuities clause violation shall:

(i) Describe the suspected violation in sufficient detail to reasonably apprise the contractor of the alleged violation;

(ii) State the potential penalties for a violation of the Gratuities clause;

(iii) State that the contractor may obtain a copy of the entire evidentiary record (with the exception of redactions made to protect personally identifiable information, such as social security numbers, dates of birth, and financial account numbers), subject to the payment of the reasonable cost of any transcript, by written request made to the AGC (AI). Upon the contractor's written request, the AGC (AI) shall advise the contractor of the general nature of any redacted information;

(iv) Inform the contractor that it may refute the allegations set forth in the notice. The contractor may refute the allegations and provide in person, in writing, or through one or more representatives any information the contractor wishes to have considered concerning penalties for a violation of the Gratuities clause. The contractor may submit documentary evidence and arguments. If the contractor requests a hearing, at that hearing, the contractor may confront any person the DoN presents on the matter and present witnesses at the contractor's own expense;

(v) State that the contractor has 30 calendar days from receipt of notice to submit written matters refuting the allegations and to request a hearing. Any timely submissions by the contractor will become part of the evidentiary record; and,

(vi) Advise the contractor that if a hearing is requested, a list of any witnesses the contractor wishes to present and a concise statement of each witness's relevance to the hearing shall be delivered to the AGC (AI) or other person designated by the AGC (AI) no later than five calendar days after the AGC (AI) grants the hearing request.

(3) The AGC (AI) shall ensure that the notice to the contractor is delivered by hand or sent by registered or certified mail, or another, similar commercial means.

(e) Hearing.

(1) The AGC (AI) shall schedule any hearing for a date not later than 15 calendar days after the AGC (AI)'s receipt of the contractor's request, unless the contractor requests a later date not to be more than thirty days after the AGC (AI)'s receipt of the hearing request. The AGC (AI) may

grant the request for a later date if the AGC (AI) determines that the request is reasonable. The AGC (AI) shall inform the contractor by email of the hearing date, if the contractor so requests and provides an email address for that purpose when requesting a hearing.

(2) Hearings shall be conducted at the offices of the AGC (AI) or other location designated by the AGC (AI) as follows:

(i) Hearings shall be as informal as practicable, consistent with principles of fundamental fairness, and non-adversarial in nature.

(ii) The DoN will be represented by one or more attorneys from the Office of the General Counsel.

(iii) The AGC (AI) and the DoN representative(s) may ask questions of the contractor or its representatives making the presentation.

(vi) The contractor or its representatives and the DoN's representatives shall have an opportunity to present information relevant to the facts at issue, including witness testimony. If jointly requested by the contractor and the DoN, the AGC (AI) may permit a witness to appear by videoconference or other electronic means rather than in person. Witnesses will be sworn in and reminded of the official nature of the proceeding and that they are subject to criminal prosecution for any false testimony. Witnesses are subject to cross-examination. The AGC (AI) may ask questions of any witness.

(v) Documents and testimony not ordinarily admissible under legal rules of evidence may be received subject to the discretion of the AGC (AI) and will be given appropriate weight. The AGC (AI) may exclude from the evidentiary record irrelevant, immaterial, or unduly repetitive information presented by the contractor or the DoN.

(3) A verbatim transcript of the hearing shall be made and shall become part of the evidentiary record. Additional documentary materials or comments the AGC (AI) permits the contractor or the DoN to submit at or following the hearing must become part of the evidentiary record. Any materials permitted to be submitted after the hearing by the contractor or the DoN representative(s) must be provided on the same day to the AGC (AI) and the DoN representative (s) or the contractor, as applicable. The contractor or the DoN, as applicable, shall have five business days from receipt to submit comments to the AGC (AI) on any permitted post-hearing submissions made by the other party.

(f) Findings, conclusions, and recommendations.

(1) The AGC (AI) shall make all findings of fact and conclusions of law relevant to whether a violation of the Gratuities clause occurred, including the dollar value of any gratuity, and all findings of fact, conclusions of law, and recommendations relevant to whether the contractor's right to proceed under the contract should be terminated, and, if so, whether an assessment of exemplary damages is appropriate and in what amount. These findings, conclusions, and recommendations shall be based on the preponderance of the evidence found in the evidentiary record. The decision of the AGC (AI) as to whether a violation of the Gratuities clause has occurred will be the DoN's final decision.

(2) If the contractor does not timely request a hearing, the AGC (AI) shall make the findings of fact, conclusions of law, and recommendations on the basis of the written record.

(3) The AGC (AI) may permit the contractor and the DoN to submit proposed findings of fact, conclusions of law, and recommendations by the date specified by the AGC (AI). The AGC (AI) also may require the contractor and the DoN to submit stipulated findings of fact and conclusions of law.

(4) The AGC (AI) shall issue a written decision no more than 60 days after the later of the completion of the hearing or the AGC (AI)'s receipt of all documentary submissions. If the AGC

(AI) concludes that the Gratuities clause was violated, the decision shall include the findings of fact and conclusions of law that the AGC (AI) relied upon and the findings, conclusions, and recommendations relevant to whether the contractor's right to proceed under the contract should be terminated, and, if so, whether an assessment of exemplary damages is appropriate and in what amount.

(5) If the AGC (AI) determines that a violation of the Gratuities clause occurred, he or she shall submit the evidentiary record and his or her written decision to DASN(AP).

(g) Contract Actions.

(1) DASN(AP) shall determine whether to terminate the contractor's right to proceed under the contract, and, if so, whether to assess exemplary damages and in what amount. The decision of DASN(AP) shall be the final decision of the DoN with respect to whether to terminate the contractor's right to proceed under the contract, and, if so, whether to assess exemplary damages and in what amount. DASN(AP) shall reach a decision within 45 calendar days after receipt of the evidentiary record and written decision of the AGC (AI).

(2) Written notice of the decision of DASN(AP), together with the written decision of the AGC (AI), shall be provided to the contractor promptly by hand delivery, registered or certified mail, or other similar commercial means.

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

5203.602 (FAR 3.602) Exceptions.

The HCA, without power of redesignation, may authorize exceptions.

SUBPART 5203.8—LIMITATIONS ON THE PAYMENT OF FUNDS TO INFLUENCE FEDERAL TRANSACTIONS

5203.806 (DFARS PGI 203.8) Processing suspected violations.

Submit Lobbying Disclosure Act violation reports to DASN(AP) by email at RDAPolicy@navy.mil with the subject "DFARS PGI 203.8—Lobbying Disclosure Act Violation Report."

SUBPART 5203.10—CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT

5203.1003 (FAR 3.1003) Requirements.

(b) *Notification of possible contractor violation.* In addition to the actions required by FAR 3.1003(b), the contracting officer shall provide a copy of the notification, within 10 days of receipt, to the Acquisition Integrity Office, Office of the General Counsel, Department of the Navy, 720 Kennon Street, RM 214, Washington DC 20374-5012 or by email at aio@navy.mil with the subject "FAR 3.1003 – Possible Contractor Ethics Violation."

PART 5204 ADMINISTRATIVE MATTERS

SUBPART 5204.2—CONTRACT DISTRIBUTION

5204.201 (DFARS 204.201) Procedures.

(3)(i) DoN activities shall post an electronic copy of each newly executed procurement instrument (contracts, purchase orders, delivery orders, modifications, etc.) within two working days of execution, to the DoD Electronic Document Access (EDA) (<http://eda.ogden.disa.mil>), regardless of dollar value or method of payment. All parts of an instrument that would have been provided to a recipient in paper shall be made available electronically.

5204.404 (FAR 4.404) Contract Clause.

(a) Contracting officers shall include the FAR clause 52.204-2, “Security Requirements” and any appropriate Alternate, in all contracts, including those awarded pursuant to FAR Part 12, “Acquisition of Commercial Items.”

(S-90)(1) If the clause is not used when applicable—

(i) Approval shall be obtained from the HCA. Approval is delegable to no lower than the Deputy/Assistant Commander for Contracts.

(ii) Submit a copy of the approval document to DASN(AP) by email at RDAJ&As@navy.mil with the subject “FAR4.404 – Contract Action Without Clause 52.204-2, Security Requirements.”

SUBPART 5204.6—CONTRACT REPORTING

5204.604 (DFARS 204.604) Responsibilities.

(3)(i) No later than 30 days from the end of the quarter, HCAs shall complete quarterly data verification and validation (V&V) in accordance with the data V&V process described in section 4.0 available at <http://www.acq.osd.mil/dpap/pdi/eb/dataimp.html#> and submit quarterly results and certifications to DASN(AP) eBusiness Policy and Oversight Division by email at RDAJ&As@navy.mil with the subject “DFARS 204.604 – Quarterly Data Verification and Validation.”

(ii) By December 1st of each year, HCAs shall submit the required annual certification and data validation results for the preceding fiscal year reported data on contract actions following the instructions and format at <http://www.acq.osd.mil/dpap/pdi/eb/dataimp.html#> to DASN(AP) E-business Policy and Oversight Division by email at RDAJ&As@navy.mil with the subject “DFARS 204.604 – Annual Data Verification and Validation.”

SUBPART 5204.8—GOVERNMENT 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—UNIFORM PROCUREMENT INSTRUMENT
IDENTIFICATION NUMBERS**

5204.7003 (DFARS 204.7003) Basic PII number.

(a) *Elements of a number.*

(3) *Position 9.* Assign the capital letter “G” to the ninth position of the basic Procurement Instrument Identification (PII) Number for Educational Service Agreements.

5204.7004 (DFARS 204.7004) Supplementary PII numbers.

(d) *Delivery orders under indefinite delivery contracts, orders under basic ordering agreements, and calls under blanket purchase agreements.* Requests for assignment of two-character call/order serial numbers are to be submitted in writing to DASN(AP) by email at RDAPolicy@navy.mil with the subject “DFARS 204.7004 - Call/Order Serial Number Request.” The request shall include activity name, complete address, Unit Identification Code (UIC), dollar limit of purchasing authority, and estimated number of orders per contract.

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

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

PART 5205 PUBLICIZING CONTRACT ACTIONS

SUBPART 5205.3—SYNOPSIS OF CONTRACT AWARDS

5205.303 (DFARS 205.303) Announcement of contract awards.

(a) *Public Announcement.*

- (i) Report orders or modifications issued by CAOs that exceed the threshold.
- (ii) Submit announcement information to the Navy Chief of Information (CHINFO).

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

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

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

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

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

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

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

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

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

- (a) a statement that the information contained in the announcement is unclassified;
- (b) any areas of sensitivity or high level interest;
- (c) indication of appropriate coordination to insure the accuracy of the wording and data to be released.
- (d) the estimated period of performance or delivery schedule.
- (e) the amount of any of the obligated funds that would have expired at the end of the current fiscal year.

SUBPART 5205.4—RELEASE OF INFORMATION

5205.404 (FAR 5.404) Release of long-range acquisition estimates.

5205.404-1 (FAR 5.404-1) Release procedures.

(a) *Application.* The agency head designates the HCA as the official who may, in addition to the agency head, release long-range acquisition estimates.

PART 5206 COMPETITION REQUIREMENTS

SUBPART 5206.2 - FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES

5206.202 (DFARS 206.202) Establishing or maintaining alternative sources.

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

(i) For a proposed contract not exceeding \$85,500,000, 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 \$85,500,000, the approval level is the NSPE.

SUBPART 5206.3—OTHER THAN FULL AND OPEN COMPETITION

5206.302 (DFARS 206.302) Circumstances permitting other than full and open competition.

5206.302-5 (DFARS 206.302-5) Authorized or required by statute.

(b) *Application.* Contracting activities may use this authority to award contracts under Phase III of the Small Business Innovation Research (SBIR) Program, pursuant to 15 U.S.C. 638(r). A written justification is required pursuant to FAR 6.302-5(c)(2). Contracting Officers may use the SBIR Phase III J&A streamlined template in Annex 13.

5206.303 (FAR 6.303) Justifications.

5206.303-1 (FAR 6.303-1) Requirements.

(d) A class J&A is required when a class of contract actions will be executed for the same or related supplies or services that require essentially identical justification. Multiyear contracts and contracts with priced options are considered individual contract actions. A class of contracts includes but is not limited to:

(i) a Blanket Ordering Agreement (BOA) and orders to be issued under it,

(ii) consecutive years of production buys to be solicited as separate contract actions,

(iii) multiple contracts to provide Government Furnished Equipment (GFE) for assembly into an end item.

(S-90) Approval and Authorization.

(a) Approval and authorization to award a bridge contract, a non-competitive contract awarded to “bridge” the time between the end of one contract and the beginning of another related contract, shall be obtained prior to requesting a J&A. Annex 5, Bridge Contract Approval and Reporting, contains the prescribed format for the request for approval. The approval authorities for bridge contract actions are:

(1) \$650,000 or less - The Activity CCO

(2) Greater than \$650,000 but less than \$5,000,000 - Echelon I/II CCO

(3) Greater than \$5,000,000 - HCA

(b) For the purposes of approving bridge contracts, HCAs designated as an Echelon III command shall have the same approval authority as those designated as an Echelon II command.

(c) This approval authority is only delegable one level.

5206.303-2 (FAR 6.303-2) Content.

(a) Each justification must include:

- (1) The period of performance for the proposed acquisition.
- (2) The total estimated dollar value for the acquisition(s) covered by the justification, identified by fiscal year and appropriation.
- (3) An expiration date if the justification is a class justification. Authority to act under a class justification expires on the expiration date specified in the document, which must be written as a calendar date and not a period of time.
- (4) An explanation of all actions attempted to make the immediate acquisition competitive and the cost/benefit analysis reflecting costs associated with obtaining competition and anticipated benefits. If the justification is for a bridge contract, an approved copy of Annex 5.

(S-90) Format.

The requested format for a justification for NSPE approval is at Annex 1—Justification & Approval. If activities use their own format, they must ensure that the arrangement and content of the paragraphs follow the structure and content used in the Annex 1 template. The signature page should be submitted electronically as a .pdf file. The body of the justification should be submitted electronically as a Word file in the event that any minor revisions, agreed to by the contracting officer, may be made by DASN(AP). As an alternative, the complete justification including signature page may be submitted as both Word and .pdf files.

(S-91) The requested format for a SBIR Phase III justification and approval is at Annex 13.

5206.303-90 Legal reviews.

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

5206.303-91 Submission.

When submitting a justification for Navy Senior Procurement Executive approval, use of the Annex 1 standard Navy Secretariat format for the forwarding memo is encouraged; however, it is not mandatory and activities may use their own standard formats. If activities use their own format, they must ensure that the arrangement and content of the paragraphs follow the structure and content used in the Annex 1 template. Memoranda should be brief and concise. Attached charts or graphs may also be used to convey required information. The forwarding memo should be submitted electronically as a Word file in the event that any minor revisions, agreed to by the contracting officer, may be made by DASN(AP). Any signed or initialed page of the forwarding memo should also be submitted as a .pdf file.

5206.303-92 Reporting.

Data on bridge contract use shall be reported by HCAs to DASN(AP). Reports shall be submitted within 30 days of the end of each quarter in the format prescribed by Annex 5. The required Excel file for reporting can be found at the ASN(RDA) website. Negative reports are required. Reports shall be submitted by email at seniorservicesmanage.fct@navy.mil with the subject “NMCARS 5206.303-92 - Bridge Contract Report by [Command Name]”.

5206.304 (DFARS 206.304) Approval of the justification.

(a)(4) If the dollar value of the contract is negotiated at a level that exceeds the authority of the official who approved the original justification, a new approval shall be obtained from the appropriate official prior to award. DoN activities with contracting authority in excess of \$650,000

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

(14) Justifications for ASN(RDA) approval must be submitted via DASN(AP) by email at RDAJ&As@navy.mil with the subject with the subject "DFARS 206.304(a)(4) – J&A Approval – Other Than Full and Open Competition" accompanied by an Action memo. Both documents should be in the format provided at Annex 1.

(i) The applicable Acquisition Strategy (or Acquisition Plan if no Acquisition Strategy exists) shall be submitted with the justification. The documents should be reviewed concurrent with preparation of the justification and updated if required. Justifications and planning documentation should be consistent; unavoidable discrepancies shall be highlighted and explained within the document to the approving official. The technical/requirements certification in the justification includes affirmation of the currency of the planning documents.

(ii) Historic justification information must be submitted with the proposed justification. If the prior justification was approved locally within the DoN activity, provide the entire prior justification and approval. If the prior justification was approved by ASN(RDA), provide the identifying number of the prior justification.

SUBPART 5206.5—COMPETITION ADVOCATES

5206.501 (FAR 6.501) Requirement.

DASN(AP) is designated the Competition Advocate General of the Navy. HCAs shall appoint competition advocates for their respective contracting activities.

5206.502 (FAR 6.502) Duties and responsibilities.

(b)(S-90) Competition advocates shall also:

(1) Act as the primary focal points to assist members of the private sector regarding their expressed concerns or complaints in reference to the manner of application or lack of application of competition in the acquisition process; and

(2) Take appropriate action to ensure that valid complaints from the private sector are resolved in a fair and timely manner.

PART 5207 ACQUISITION PLANNING

SUBPART 5207.1—ACQUISITION PLANS

5207.103 (DFARS 207.103) Agency-head responsibilities.

(d)(i) In prescribing procedures for the review and approval of acquisition plans and revisions to those plans pursuant to 5207.103(j), HCAs may tailor the content requirements of FAR 7.105 and DFARS PGI 207.105 for written acquisition plans for the following categories of acquisitions: military construction; commercial items; spare and repair parts; items of supply that 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.

(g) Acquisition planners shall ensure that the assigned small business specialist is afforded the opportunity to participate actively in the acquisition planning process.

(j) DASN(AP) is the approval authority for acquisition plans (APs) that include individual contract actions with an estimated value of \$100,000,000 or more (including options), except if the contract action is included in a current acquisition strategy for an ACAT program for which ASN(RDA) or USD(AT&L) is the milestone decision authority. Submit APs requiring DASN(AP) review and approval by email at RDAJ&As@navy.mil with the subject “DFARS 207.103 - AP Review and Approval.” For contracts valued less than \$100,000,000 (including options), HCAs are responsible for prescribing procedures for the review and approval of APs (including revisions to the plans) by cognizant PEOs, DRPMs or HCAs and their designees. All APs must be signed by the approving official, the program manager, the CCO, and the contracting officer.

5207.105 (FAR 7.105) Contents of written acquisition plans.

(b)(5) Acquisition considerations. When performing acquisition planning for programs in acquisition categories I and IA and II through IV with associated milestone reviews, contracting officers shall incorporate the requirements to obtain DoDI 5000.02 program review approvals in conjunction with programmatic milestones prior to RFP release. Principal Deputy Undersecretary for Defense, Acquisition, Technology, and Logistics (AT&L) (PDUSD (AT&L)) memorandum, Improving Milestone Process Effectiveness, dated June 23, 2011 contains the specific review and approval requirements required prior to RFP release.

5207.106 (DFARS 207.106) Additional requirements for major systems

(S-73) If a waiver request for major system special preservation and tooling is pursued, submit the request for USD(AT&L) approval via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 207.106--USD(AT&L) Waiver Request.” All waiver requests shall be signed by the HCA, program manager, CCO, and contracting officer.

5207.107 (FAR 7.107) Additional requirements for acquisitions involving bundling.

(c) Submit requests for NAE determinations via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 207.107—Bundling Determination Approval.”

5207.170 (DFARS 207.170) Consolidation of contract requirements.

5207.170-3 (DFARS 207.170-3) Policy and procedures.

(a)(3) Approval authority for the determination that use of a consolidated contract is necessary and justified is delegated to—

- (i) DASN(AP) for actions at or above \$50,000,000,
- (ii) the HCA for actions below \$50,000,000. HCA authority may be delegated, without power of redelegation, only to the Deputy/Assistant Commander for Contracts, a Flag or General Officer or SES who is a member of the Acquisition Professional Community, or, for commands/locations without a local SES/Flag/General Officer, to the Commanding Officer.

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

5207.204 (FAR 7.204) Responsibilities of contracting officers.

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

SUBPART 5207.5—INHERENTLY GOVERNMENTAL FUNCTIONS

5207.503 (FAR 7.503) Policy.

(e) Disagreements regarding the requiring official's determination shall be resolved by the CCO before issuance of a solicitation. Advice of counsel shall be obtained.

SUBPART 5207.70—BUY-TO-BUDGET – ADDITIONAL QUANTITIES OF END ITEMS

5207.7002 (DFARS 207.7002) Authority to acquire additional quantities of end items.

Determinations for use of this authority shall be prepared as Determinations and Findings (D&Fs) (see FAR Subpart 1.7) for approval by ASN(RDA). Submit determinations via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 207.7002 - Acquisition of Additional Quantities of End Items D&F Review and Approval.” Proposed determinations shall include a review by the activity comptroller.

PART 5208 REQUIRED SOURCES OF SUPPLIES AND SERVICES

SUBPART 5208.7—ACQUISITION FROM NONPROFIT AGENCIES EMPLOYING PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

5208.790 Policy.

Pursuant to 5201.601-90(b)(3), NAVSUPSYSCOM has responsibility for providing DoN-wide policies, procedures, and guidance for AbilityOne (Javits-Wagner-O'Day Act) acquisitions.

SUBPART 5208.70—COORDINATED ACQUISITION

5208.7002 (DFARS 208.7002) Assignment authority.

(a) When contracting responsibility has been assigned to the DoN under the DoD Coordinated Acquisition Program, the Commander, NAVSUPSYSCOM shall assign contracting responsibilities to a particular contracting activity.

SUBPART 5208.74—ENTERPRISE SOFTWARE AGREEMENTS

5208.7403 (DFARS 208.7403) Acquisition procedures.

(5)(iii) The HCA is the designated management official. The management official shall coordinate any request for waiver with the DoN CIO.

PART 5209 CONTRACTOR QUALIFICATIONS

SUBPART 5209.1—RESPONSIBLE PROSPECTIVE CONTRACTORS

5209.104 (DFARS 209.104) Standards.

5209.104-1 (DFARS 209.104-1) General standards.

(g)(i) *Ownership or control by the government of a terrorist country.*

(B) Submit waiver requests for Secretary of Defense (SECDEF) approval via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 209.104-1(g)(i)(A) - SECDEF Waiver Request.”

(C) Submit the information via DASN(AP) by email at RDAPolicy@navy.mil with the subject “DFARS 209.104-1(g)(i)(A) - Ownership/Control Notice.”

(ii) *Ownership or control by a foreign government when access to proscribed information is required.*

(C) Submit waiver requests for Undersecretary of Defense for Intelligence approval via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 209.104-1(g)(ii) - Waiver Request/National Security Interest Determination.”

(D) Submit waiver requests for Secretary of Defense approval via DASN(AP) by email at address RDAJ&As@navy.mil with the subject “DFARS 209.104-1(g)(ii)(A) - SECDEF Waiver Request.”

5209.104-6 (FAR 9.104-6) Federal Awardee Performance and Integrity Information System.

(c)(2) After completing the Federal Awardee Performance and Integrity Information System (FAPIIS) review required in FAR 9.104-6 prior to contract award and determining the potential awardee was removed from the debarred or suspended list within the last two years, the contracting officer, if choosing to continue with contract award, shall notify the HCA and the AGC(AI). The AGC (AI) may provide additional available relevant information regarding the prospective awardee to assist the HCA in making and supporting the decision to award. The HCA shall approve the contract award.

SUBPART 5209.4—DEBARMENT, SUSPENSION AND INELIGIBILITY

5209.402 (DFARS 209.402) Policy.

(d) The AGC(AI) is the Department of the Navy’s Suspending and Debarment Official (SDO). Attorneys in the Acquisition Integrity Office have the responsibility for processing and recommending suspension or debarment action to the SDO.

5209.404 (FAR 9.404) System for Award Management Exclusions (SAM).

(c) The Acquisition Integrity Office has the responsibility for entering data, updating, and performing all other administrative functions regarding the SAM exclusions for the DoN.

5209.405 (DFARS 209.405) Effect of listing.

(a) ASN(RDA) shall make the required determination that there is a compelling reason. Submit requests for an ASN(RDA) determination to DASN(AP) with justification for the proposed consent action by email at RDAJ&As@navy.mil with the subject “DFARS 209.405 – Compelling Reason Review and Approval.” DASN(AP) shall provide written notification of the determination to the

General Services Administration.

(b)(ii) Submit requests for an agency head exception via DASN(AP) with justification that award to Code “H” ineligible contractor is in the paramount interest of the United States by email at RDAJ&As@navy.mil with the subject “DFARS 209.405 – Code H Ineligible Facility Review and Approval.”

5209.405-2 (DFARS 209.405-2) Restrictions on subcontracting.

(b) Immediately upon receipt, the contracting officer shall provide DASN(AP) with an informational copy of the written notification received from the contractor by email at RDAJ&As@navy.mil with the subject “DFARS 209.405-2 – Copy of Agency Head Statement.”

5209.406 (DFARS 209.406) Debarment.

5209.406-3 (PGI 209.406-3) Procedures.

(i) Refer all matters to AGC(AI).

(ii)(D) DUNS reports should also be included for all known affiliates, subsidiaries, or parent firms.

(ii)(E)(2) Whether to apply limitations to the suspension or debarment, and provide a recommendation for debarment or suspension action in the case of any subsidiaries and the officers thereof.

(iii)(A) In cases involving indictments, forward reports within 15 calendar days after the indictment is filed.

(iv)(S-90) Contracting officers shall report contractors who have poorly performed under a DoN contract to the DoN, AIO. When the contracting officer issues a show cause or cure notice, the cognizant contracting officer shall submit a copy of the issuance to the DoN Acquisition Integrity Office AIO within five days by email at aio@navy.mil with the subject “PGI 209.406-3 - Poor Performance Referral.”

(iv)(E) The summary shall also include comments regarding the U.S. Attorney’s positions on release of any investigative reports included in the report.

(S-90)(i) If Government employees are implicated in the underlying conduct that led to the referral, the names and current addresses of the employees, disciplinary action taken and the current employment status of each individual.

(ii) 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 against the Government employee (s), and why debarment or suspension is appropriate under the circumstances.

5209.407 (DFARS 209.407) Suspension.

5209.407-3 (DFARS 209.407-3) Procedures.

Refer all matters to AGC(AI). Prepare and process reports in accordance with 5209.406-3.

SUBPART 5209.5—ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

5209.503 (FAR 9.503) Waiver.

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

5209.570 (DFARS 209.570) Limitations on contractors acting as lead system integrators.

5209.570-2 (DFARS 209.570-2) Policy.

(c)(2) Submit the required written determination for approval by the SECDEF/USD(AT&L) via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 209.570-2 - D&F to Use a Contractor to Perform Lead System Integrator Functions.”

PART 5211 DESCRIBING AGENCY NEEDS.

SUBPART 5211.1—SELECTING AND DEVELOPING REQUIREMENTS DOCUMENTS

5211.103 (FAR 11.103) Market acceptance.

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

SUBPART 5211.2—USING AND MAINTAINING REQUIREMENTS DOCUMENTS

5211.274 (DFARS 211.274) Item identification and valuation requirements.

5211.274-2 (DFARS 211.274-2) Policy for unique item identification.

(b) A copy of a determination executed under DFARS 211.274-2(b)(1) or a determination and findings executed under DFARS 211.274-2(b)(2)(i)(B) must be provided via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 211.274-2(b) – Determination – Exception to Unique Item Identification Marking.”

(1) HCAs are delegated authority to make the determinations described in DFARS 211.274-2(b)(1).

PART 5212 ACQUISITION OF COMMERCIAL ITEMS

SUBPART 5212.1—ACQUISITION OF COMMERCIAL ITEMS - GENERAL

5212.102 (FAR 12.102) Applicability.

(f)(1) HCAs are delegated the authority to make the determinations described in FAR 12.102 (f)(1).

SUBPART 5212.2—SPECIAL REQUIREMENTS FOR THE ACQUISITION OF COMMERCIAL ITEMS

5212.207 (DFARS 212.207) Contract type.

(b)(iii) Submit the required contracting officer determination for agency head approval to DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 212.207(b)(iii) - D&F to Use T&M/LH Contract Type for Commercial Services.”

SUBPART 5212.3—SOLICITATION PROVISIONS AND CLAUSES FOR THE ACQUISITION OF COMMERCIAL ITEMS

5212.301 (FAR 12.301) Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) Annex 7, DON Control Plan for Component Clauses and Commercial Item Acquisitions Provision/Clause Use, includes a table in section A outlining the current sources of approval authority governing the use of provisions and clauses in solicitations and contracts for the acquisition of commercial items beyond those specifically prescribed for use in such actions by FAR Subpart 12.3 (DFARS Subpart 212.3). Section B of the Annex describes the implementing procedures on provision and clause use in solicitations and contracts for commercial items. Contracting Officers will use these procedures, in conjunction with prescribed policies and guidance set forth in FAR Part 12, DFARS Part 212 and NMCARS Part 5212, to determine the appropriate provisions/clauses to be used for a specific commercial item acquisition. Solicitations and contracts for commercial items that are issued pursuant to FAR Part 12 procedures shall contain properly approved provisions and clauses. Only USD(AT&L) DPAP may approve the use of any component-unique provision or clause that meets the conditions of DFARS 201.304(1)(i). The following approvals are required for use of agency or component-unique provisions or clauses in solicitations and contracts for commercial items that will supplement FAR Subpart 12.3/DFARS Subpart 212.3 provisions or clauses:

(1) DASN(AP) is the approval authority for inclusion of a component-unique provision or clause that is necessary to reflect an agency-unique statute applicable to the acquisition of commercial items.

(2) The NSPE is the approval authority for inclusion of any agency or component-unique provision or clause that is otherwise not necessary to reflect an agency-unique statute applicable to the acquisition of commercial items.

(3) Submit all requests for approvals to DASN(AP) by email at RDAPolicy@navy.mil with the subject “FAR 12.301 - Approval of Unique Provision/Clause for Commercial Item Contracts.” All requests shall contain the necessary documentation justifying the proposed action.

5212.302 (DFARS 212.302) Tailoring of provisions and clauses for the acquisition of commercial items.

(c) *Tailoring inconsistent with customary commercial practice.* HCAs may delegate the authority to approve waivers under FAR 12.302(c) to no lower than the CCOs at their subordinate contracting offices, except ASN(RDA) approval of the waiver is required if any additional terms or conditions are to be included. Submit waivers requiring ASN(RDA) approval via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 212.302 - Waiver—Authority to Add Terms and Conditions Inconsistent with Commercial Practice. All waiver requests shall contain the necessary documentation justifying the proposed action.

SUBPART 5212.71— PILOT PROGRAM FOR ACQUISITION OF MILITARY-PURPOSE NONDEVELOPMENTAL ITEMS**5212.7102 (DFARS 212.7102) Pilot program.****5212.7102-2 (PGI 212.7102-2) Reporting requirements.**

(a) The annual report identifying all contracts awarded under the Pilot Program on Acquisition of Military Purpose Nondevelopmental Items during the preceding fiscal year shall be submitted to DASN(AP) by October 15 of each year by email at RDAJ&As@navy.mil with the subject “DFARS 212.7102-3(a) - Pilot Program For Acquisition Of Military-Purpose Nondevelopmental Items.”

SUBPART 5212.90—INNOVATIVE COMMERCIAL CONTRACTING TECHNIQUES**5212.9000 Model Commercial Contracting Strategy.**

DoN contracting activities may use the strategy outlined here when they are seeking breakthrough commercial solutions for meeting DoN requirements. The strategy generally consists of two phases, as follows:

(a)(1) *Phase I: Commercial Area Announcement (CAA).* During Phase I the contracting officer issues a Commercial Area Announcement (CAA). The CAA includes a statement that explains what the DoN wants to accomplish or what problem the DoN is trying to solve. The statement may be specific or broad, in nature. A relatively specific objective, for example, might be to provide a secure means of controlling vehicle access to a military installation while minimizing traffic backup.

A broader objective might be to reduce operating cost associated with legacy ships. As necessary, the statement should include background information that is helpful to a clear understanding of the objectives, and any additional information that may affect potential solutions.

(2) The CAA requests interested firms to respond by outlining, in broad terms, innovative and imaginative ways by which they believe they could meet the DoN objectives. Information concerning the significant business practices that affect their performance and their relationships with customers, as well as a rough estimate of the price associated with each innovative approach, is also requested. The overarching objective of this phase is to provide the DoN with a clear picture of “*the state of what is possible*” in the commercial marketplace, but not to receive traditional full-blown proposals. The DoN uses the responses to the CAA to make an informed decision

concerning the strategy it will pursue to meet its objectives and, if the DoN elects to proceed with a procurement, to structure the solicitation to maximize commercial sector interest and encourage truly innovative and imaginative proposals.

(3) The CAA should state clearly that:

(i) It is for informational purposes only.

(ii) Responses in any form are not offers.

(iii) Issuance of the CAA does not impose any obligation on the DoN or signify a firm commitment to issue a solicitation or a contract.

(iv) There are no funds available to pay for the cost of preparing the responses.

(4) The CAA should encourage responses from all segments of the industry sector, which may include small, HUBZone small, small disadvantaged and woman-owned small businesses, and should encourage responses from firms that may not regularly do business with the Government. In order to attract such firms, the CAA should be published in appropriate trade journals or newspapers, as well as through the Government-wide point of entry (GPE). Contracting officers using this strategy are delegated authority to approve the publication of paid advertisements in newspapers (see FAR 5.502). For purposes of the GPE synopsis, enter "R," in Block 1, Action Code, to designate that the type of action addressed by the CAA is "Sources Sought" and enter "COMMERCIAL AREA ANNOUNCEMENT" followed by a brief description of the CAA's subject matter in Block 8, Subject. The following is an example Block 8: "COMMERCIAL AREA ANNOUNCEMENT/ INNOVATIVE IDEAS SOUGHT FOR REDUCING OPERATING COSTS OF NAVY LEGACY SHIPS".

(5) The CAA should be published as early as feasible after a need has been identified and should give interested commercial firms a reasonable period of time to submit responses. In assessing responses to the CAA, DoN activities should consider, to the extent feasible, any responses received after the requested submission date.

(6) DoN activities should consider holding a "Business Opportunity Day," after publication of the CAA and before responses are received, to review the DoN's objectives and to clarify industry questions.

(b)(1) *Phase II: Request for Commercial Offerings*. Using information provided by industry in response to the CAA, the contracting officer and technical personnel develop a solicitation package. To encourage responses from firms that may not regularly do business with the Government, the solicitation is identified as a Request for Commercial Offerings (RCO). The RCO, consistent with applicable law and regulation, should be provided to all commercial entities that responded to the CAA, as well as to any other commercial concerns that request a copy. Electronic distribution of the RCO is encouraged. The RCO is intended to be built around a FAR Part 12 solicitation and a performance-based statement of objectives. Although the statement of objectives should provide maximum flexibility for contractor creativity in tailoring proposals to satisfy the DoN requirements, it should be written to reflect "what is possible" within the commercial sector, as determined from the responses to the CAA. The RCO should also be written to reflect any customary business practices that the DoN activity became aware of as a result of the CAA. The performance-based statement of objectives should be broadly written to encourage maximum participation and may not disclose any unique approaches that were submitted in response to the CAA or reveal any proprietary aspects of the ideas submitted.

(2) To the extent required by FAR Part 5, publish a synopsis of the RCO through the GPE. Contracting officers may also publish notice of the RCO in appropriate newspapers and trade journals. Contracting officers using this strategy are delegated authority to approve the publication of paid advertisements in newspapers (see FAR 5.502). In addition, notice of the RCO may also be

published on appropriate web sites. DoN contracting activities should make the RCO available to all parties that responded to the CAA, as well as to any additional potential offerors who respond to the synopsis or other published notice. Electronic distribution of the RCO is encouraged.

(3) The RCO should seek firm-fixed-price proposals that address the offerors' breakthrough strategies and detailed approaches for accomplishing the DoN's objectives, including identification of proprietary aspects of the proposal and small business alliances/partnering arrangements. Consistent with law and regulation, solicitations/contracts may include provisions that permit payment of additional predetermined amounts for performance or delivery that is better than that required by the contract if the payments are based on factors other than the contractor's incurred costs.

(4) The contracting officer may use, as appropriate, the streamlined procedure for soliciting offers for commercial items prescribed in FAR 12.603.

(5) Depending on the nature of the requirement or problem that the RCO is intended to address, RCOs may provide for multiple evaluations of proposals over an extended period. This approach is appropriate when the contracting activity anticipates awarding multiple contracts and when there is a reasonable expectation that a passage of time may lead to the identification by commercial entities of additional innovative ways to meet the DoN's requirement. When this multiple evaluation approach is used, the RCO should indicate the date by which proposals should be received in order to be considered during the initial evaluation. Proposals received by that date should be evaluated and initial contract(s) awarded, as appropriate. Also, the RCO should either indicate the date(s) by which subsequent proposals are to be submitted or state that such date(s) are to be established by means of an amendment to the RCO. Offerors who did not submit an offer prior to the initial due date may submit an offer for a subsequent evaluation. Additionally, proposals previously evaluated and not selected should not be reevaluated during a subsequent evaluation, but any offeror who previously submitted a proposal may submit a new proposal, including a proposal that is based on, or similar to, its previously submitted proposal. Proposals received after the exact due date and time for any specified evaluation period should be handled in accordance with paragraph (f) of the "Instructions to Offerors--Commercial Items" provision at FAR 52.212-1.

(6) The DoN evaluates proposals in accordance with the evaluation scheme set forth in the RCO. Generally, these should provide for a "best value" selection that balances technical and cost aspects of the proposals. Evaluation factors may include such items as: (i) the extent to which the proposed technical approach is likely to achieve or exceed the DoN's objectives, (ii) the extent of small business participation, (iii) the offeror's experience and past performance and (iv) the price.

PART 5213 SIMPLIFIED ACQUISITION PROCEDURES

5213.003 (FAR 13.003) Policy.

Pursuant to 5201.601-90(b), NAVSUPSYSCOM has responsibility for providing DoN-wide policy for simplified acquisition procedures. Specific policy, procedures, and guidance will be promulgated by the Deputy Commander for Contracting Management, NAVSUPSYSCOM.

SUBPART 5213.3—SIMPLIFIED ACQUISITION METHODS

5213.303 (FAR 13.303) Blanket purchase agreements (BPAs).

5213.303-2 (FAR 13.303-2) Establishment of BPAs.

(b) A business case analysis (BCA) is required supporting the establishment or renewal of a BPA where the scope would create significant overlap between the proposed acquisition and existing contracts or agreements under the Federal Strategic Sourcing Initiative, GSA's SmartBuy or an existing GWAC. Prior to release of the solicitation and following coordination with the Director, Office of Small Business Programs (OSBP), Part 1 of the BCA shall be submitted to DASN(AP) by email at RDAJ&As@navy.mil with the subject "5213.303-2 - BCA for BPAs". If the acquisition involves Information Technology, coordination is also required with DoN Chief Information Officer (DoN CIO) as well as OSBP prior to submission to DASN(AP).

5213.305 (DFARS 213.305) Imprest funds and third party drafts.

5213.305-3 (DFARS 213.305-3) Conditions for use.

(d)(ii) Requests for approval to use imprest funds shall be submitted to OASN(FM&C) via DASN(AP) by email at RDAJ&As@navy.mil with the subject "DFARS 213.305-3 – Imprest Fund Approval Request."

PART 5214 SEALED BIDDING

SUBPART 5214.4—OPENING OF BIDS AND AWARD OF CONTRACT

5214.401 (FAR 14.401) Receipt and safeguarding of bids.

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

5214.407 (FAR 14.407) Mistakes in bids.

5214.407-3 (FAR 14.407-3) Other mistakes disclosed before award.

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

PART 5215 CONTRACTING BY NEGOTIATION

SUBPART 5215.2—SOLICITATION AND RECEIPT OF PROPOSALS AND INFORMATION

5215.204 (FAR 15.204) Contract format.

5215.204-5 (FAR 15.204-5) Part IV--Representations and Instructions.

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

SUBPART 5215.3—SOURCE SELECTION

5215.303 (FAR 15.303) Responsibilities.

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

(S-90) The SSA policies below apply only to competitively negotiated acquisitions covering the selection of one or more prime development and or production contractors (including materiel solution analysis or the initiation of preliminary, contract, or detailed design for ship development and acquisition programs) as described in SECNAVINST 5000.2 series; and, to other competitively negotiated acquisitions approved in advance by the assigned PEO, SYSCOM commander, or DRPM; or the head of the contracting activity.

(a) ASN(RDA) for assigned ACAT IA programs, and PEOs, SYSCOM commanders, and DRPMs for their assigned ACAT I, IA, and II programs, shall be the SSA, unless otherwise specified by the USD(AT&L), DoN CIO for ACAT IA programs, SECNAV, or ASN(RDA). The ACAT I SSA responsibility may not be further delegated. The ACAT IA SSA responsibility may be delegated. The ACAT II SSA responsibility may be delegated to an individual who:

- (1) If a member of the armed forces, is a flag or general officer; or
- (2) If a civilian, is a member of the SES (or in a comparable or higher position under another schedule).

(b) PEOs, SYSCOM commanders, and DRPMs for their assigned ACAT III, IV, and AAPs, and ASN(RDA) or designee for IT ACAT III, IVT, and AAPs not assigned to PEOs, SYSCOM commanders, and DRPMs, shall designate the SSA at the time approval is granted to use formal source selection procedures.

(c) The SSA for other competitively negotiated acquisitions shall be as prescribed by the FAR, DFARS, or NMCARS, unless otherwise directed by ASN(RDA).

5215.304 (FAR 15.304) Evaluation factors and significant subfactors.

(c) All acquisition programs with an energy-consuming end item that require a written acquisition plan, in accordance with DFARS 207.103, will ensure that the acquisition team considers energy in making tradeoff decisions and develops an evaluation factor (not sub-factor) for use in source selection.

5215.305 (FAR 15.305) Proposal evaluation.

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

(2) *Past performance evaluation.* When evaluating past performance, the automated Past Performance Information Retrieval System (PPIRS) shall be used as a source of past performance information. The PPIRS automated information system is accessed via the internet at <http://www.ppirs.gov>. Other sources may also be used, as appropriate.

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

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

5215.308 (FAR 15.308) Source selection decision.

Advisory bodies, such as Source Selection Advisory Councils, must make a recommendation to the SSA and the recommendation shall be in writing.

SUBPART 5215.4—CONTRACT PRICING**5215.403 (DFARS 215.403) Obtaining certified cost or pricing data.****5215.403-1 (PGI 215.403-1) Prohibition on obtaining certified cost or pricing data (10 U.S.C 2306a and 41 U.S.C. Chapter 35).**

(c)(3)(B) The annual contracting officer determinations for Commercial Item Exceptions Report under FAR 15.403-1(b)(3) shall be submitted via DASN(AP) by October 31st of each year by email at RDAJ&As@navy.mil with the subject “DFARS 215.403-1(c)(3)(B) - Commercial Item Exceptions Report.” In addition to the information required by PGI 215.403-1(c)(3)(B), reports shall include award date, contracting officer’s name, and contracting officer’s telephone number.

(c)(4)(A)(2) *Senior procurement executive coordination.* Submit exceptional case Truth in Negotiations (TINA) waivers that exceed \$100 million via DASN(AP) for coordination prior to approval by email at RDAJ&As@navy.mil with the subject “DFARS 215.403-1(c)(4)(A), - Exceptional TINA Case Waivers.”

(c)(4)(B) An annual report of Truth in Negotiations Act waivers shall be submitted to DASN(AP) by October 31st of each year by email at RDAJ&As@navy.mil with the subject “DFARS 215.403-1(c)(4)(B)- Truth In Negotiations Act Waivers Annual Report.” In addition to the information

required by PGI 215.403-1(c)(4)(B), reports to DoN are to include award date, contracting officer's name, and contracting officer's telephone number.

5215.404 (FAR 15.404) Proposal analysis.

5215.404-1 (FAR 15.404-1) Proposal analysis techniques.

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

5215.406 (DFARS 215.406) Documentation.

5215.406-1 (PGI 215.406-1) Prenegotiation objectives.

(b) When the Director, Defense Contract Audit Agency (DCAA) elevates an audit disagreement to DPAP pertaining to a Navy contract(s), the CCO shall provide notification to DASN(AP) by email at RDAJ&As@navy.mil with the subject "PGI 215.406-1 - DCAA Audit Disagreement." The email should provide relevant details of the disagreement and the contracting officer's position in the body of the email or attachments.

5215.406-90 Business clearance.

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

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

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

(d) Use the format for business clearance memoranda located at Annex 2, unless an alternative format has been approved by DASN(AP).

**SUBPART 5215.5—PREAWARD, AWARD, AND POSTAWARD
NOTIFICATIONS, PROTESTS, AND MISTAKES**

5215.505 (FAR 15.505) Preaward debriefing of offerors.

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

5215.506 (FAR 15.506) Postaward debriefing of offerors.

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

SUBPART 5215.6—UNSOLICITED PROPOSALS

5215.606 (FAR 15.606) Agency procedures.

- (a) HCAs are responsible for establishing procedures.
- (b) HCAs are responsible for establishing contact points.

PART 5216 TYPES OF CONTRACTS

SUBPART 5216.1 – SELECTING CONTRACT TYPES

5216.102 (FAR 16.102) Policies.

5216.102-90 General. (effective through 30 September 2013)

As provided for under Section 808 (c)(2) of the National Defense Authorization Act for Fiscal Year (FY) 2012 (Public Law 112-81), if it has been determined that it is necessary for a contract or task or delivery order to be awarded in an amount exceeding \$10M to a contractor in FY12 or FY13 for continuing services, at an annual cost to the Government that exceeds the annual cost paid by the requiring activity for the same or similar services in FY10, a Determination and Findings shall be submitted to DASN(AP) to obtain written approval prior to contract award or order issuance by email at RDAJ&As@navy.mil with the subject “NMCARS 5216.102-90 – NDAA Section 808 Approval Request.”

SUBPART 5216.2—FIXED-PRICE CONTRACTS

5216.203 (DFARS 216.203) Fixed-price contracts with economic price adjustment.

5216.203-4 (DFARS 216.203-4) Contract clauses.

(S-90) Submit an annual report for multi-year (MY) contracts with EPA clauses pursuant to DPAP memorandum “Follow-on Actions in Response to OIG Report Notification: “Effect of Payments into Boeing Pension Funds on Economic Price Adjustment Clauses in DoD Contract” (Project No. D2006-D000CH-0226.000)” no later than October 26 each year via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 216.203-4 – Multi-year (MY) Contracts with EPA Clauses.”

SUBPART 5216.3—COST-REIMBURSEMENT CONTRACTS

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

(c) *Limitations.*

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

(2) Requests for approval of cost-plus-fixed-fee contracts requiring SECDEF approval shall be routed through NAVFACENCOM and then via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 216.306 – CPFF Contract Approval.”

SUBPART 5216.4—INCENTIVE CONTRACTS

5216.401 (FAR 16.401) General.

(d) HCAs may delegate signature authority for approval of required D&Fs as follows:

(1) Award-fee contract types. D&F signature authority is delegable to no lower than the Deputy/Assistant Commander for Contracts. D&F submittal requirements for cost-plus-award-fee (CPAF) contracts. HCAs shall submit copies of approved D&Fs to DASN(AP) by email at RDAJ&As@navy.mil with the subject “FAR 16.401 – HCA CPAF D&F [ACAT Program Designation Number, Description, and Activity Name]” as follows:

- (i) All D&Fs for contracts of ACAT I Programs: Within 15 days after approval.
- (ii) D&Fs for contracts of non-ACAT I programs valued \$50,000,000 or more (including options): Within 30 days after approval.

(2) Other incentive contracts. D&F signature authority is delegable no lower than one level above the Contracting Officer.

(f) *Incentive- and Award-Fee Data Collection and Analysis.* HCAs shall collect, evaluate and report on award and incentive fees earned on contracts with an estimated value greater than \$50,000,000 (including options). In the format prescribed under Annex 9, submit a semiannual report on award and incentive fees earned to DASN(AP) by email at RDAJ&As@navy.mil with the subject “FAR 16.401 – Award And Incentive Fees Earned Report [applicable month/reporting period (e.g. September 1, 2010/1 January – 30 June).” The reporting schedule is as follows:

<u>Fees earned during reporting period:</u>	<u>Report due by:</u>
1 January – 30 June	1 September
1 July – 31 December	1 March

SUBPART 5216.5—INDEFINITE-DELIVERY CONTRACTS

5216.504 (DFARS 216.504) Indefinite-quantity contracts.

(c)(1)(ii)(D) *Limitation on single award contracts.*

(i) ASN(RDA) is the approval authority for all determinations over \$103M. Submit all determinations over \$103M to DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 216.504 - Single Award [contract/task/delivery order number]” .

5216.504-90 Limitation on single award task or delivery order contracts valued at or below \$103M.

(a) *Policy.* Unless exempted by (b) below, single awards of task or delivery order contracts valued at or below \$103M require HCA approval.

(b) *Exemptions.* The following categories of contracts are exempt from the requirement for HCA approval for single awards of task or delivery order contracts:

- (1) Competitively awarded contracts which provide only for firm fixed unit price task or delivery order contracts for products or services where unit prices are established in the contract;
- (2) Only one qualified offer received under a competitive solicitation (the circumstances for award must be addressed in the business clearance);
- (3) Contracts for Foreign Military Sales (FMS) awarded to a directed source;
- (4) Requirements contracts supported by approved acquisition plans/strategies;
- (5) Contracts supported by a sole source Justification and Approval under FAR Part 6;
- (6) Sole source contracts awarded under Section 8(a) of the Small Business Act;
- (7) Contracts with a total estimated value less than \$6.5 million; and
- (8) Architect-Engineer contracts awarded under FAR Subpart 36.6.

(c) *Combination contracts.* For contracts where the only products or services to be acquired by issuance of task or delivery orders are incidental to the overall effort under the contract, and the overwhelming preponderance of the work is defined and priced at the outset, the threshold for approval is based on the estimated value of the incidental services.

5216.505 (DFARS 216.505) Ordering.

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

PART 5217 SPECIAL CONTRACTING METHODS

SUBPART 5217.1—MULTI-YEAR CONTRACTING

5217.105 (FAR 17.105) Policy.

5217.105-1 (FAR 17.105-1) Uses.

(b) HCAs have authority to award multi-year contracts, subject to restrictions contained in the FAR and DFARS. For multi-year procurements authorized by law, HCAs shall make the required determinations.

5217.170 (DFARS 217.170) General.

(c) HCAs shall submit to DASN(AP) the required congressional notification for termination of any multi-year contract by email at RDAJ&As@navy.mil with the subject “DFARS 217.170 – Multiyear Contract Termination - Congressional Notification” following the format prescribed in 5205.303. Email notifications are required to be submitted at least 20 days before termination.

(e)(4) At least 45 days before contract award, HCAs shall submit to DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 217.170 - Multiyear Contract - Congressional Notification” all required congressional notifications set forth in DFARS 217.170(e)(1) following the format prescribed in 5205.303 for any of the following notifications:

- An unfunded contingent liability in excess of \$20M;
- Any economic order quantity procurement in excess of \$20M in any one year of the contract; or,
- A contract for advance procurement leading to a multi-year contract that employs economic order quantity procurement in excess of \$20 million in any one year of the contract.

To meet the congressional reporting requirements of 217.170(e)(1)(iv) for contracts with a cancellation ceiling in excess of \$100M, submit the notification following the format prescribed in 5205.303 and include the additional requirements delineated in 217.170(e)(5)(i).

5217.171 (DFARS 217.171) Multiyear contracts for services.

(c) HCAs are delegated the authority, without power of redelegation, to make the written determination required by DFARS 217.171(c).

5217.172 (DFARS 217.172) Multiyear contracts for supplies.

(b) HCAs are delegated the authority, without power of redelegation, to make the determinations required by FAR 17.105-1 and DFARS 217.172(b).

(g) HCAs shall ensure the conditions required in DFARS 217.172(g) are satisfied prior to entering into a contract.

(2)(viii) When conditions required are satisfied, HCAs shall submit a copy of the required written Congressional notification prescribed in 5205.303 and include the additional notification requirements in 217.172(g)(2)(viii)(A) (1) to (3). At least 45 days prior to contract award, notifications will be submitted to DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 217.170 -Multiyear Contract for Supplies - Congressional Notification.” Contracting officers shall verify that the required Congressional notification has been made and the time limit for award has been satisfied before executing contract award.

5217.172-90 (DFARS 217.172) Multiyear contracts for supplies.

HCA's shall submit a copy of the determinations and findings required by 217.172(e)(2) to RDAJ&A@navy.mil with the subject "Multiyear Contract for Supplies >\$500M Review and Approval" prior to entering into a contract.

5217.174 (DFARS 217.174) Multiyear contracts for electricity from renewable energy sources.

(a) Only COMNAVFACENGCOM has the authority to award contracts pursuant to this section.

SUBPART 5217.2—OPTIONS

5217.204 (DFARS 217.204) Contracts.

(e) Approval for use of contract terms in excess of the limitations specified in FAR 17.204(e) shall be supported by valid justifications, documented in writing, and obtained prior to solicitation. Approval shall be at a level not lower than the CCO. A determination to establish an ordering period in excess of 10 years, in accordance with DFARS 217.204(e)(i)(C), shall be executed by ASN(RDA). Submit such requests via DASN(AP) by email at RDAJ&As@navy.mil with the subject "DFARS 217.204 – Contract Term > 10 Years D&F Review and Approval."

5217.204-90 Reporting [DELETED].

SUBPART 5217.5—INTERAGENCY ACQUISITIONS

5217.502 (FAR 17.502) Procedures.

5217.502-1 (FAR 17.502-1) General.

(c) Prior to release of the solicitation and following coordination with the Director OSBP, HCA's shall submit Part 1 of the BCA to DASN(AP) by email at RDAJ&As@navy.mil with the subject "FAR17.502-1 - BCA for [Insert the name of the corresponding situation above]. If the acquisition involves Information Technology, coordination is also required with DoN Chief Information Officer (DoN CIO) as well as OSBP prior to submission to DASN(AP).

5217.502-2 (FAR 17.502-2) The Economy Act.

(c)(3) *Agency head designations.* Except for the special circumstances listed in (S-90(i)) below, and the limitations specified in (S-90(ii)) below, the agency head's designees for approving D&Fs for interagency acquisitions are:

- DASN(AP)
- Chief of Naval Research
- Commander, Marine Corps Systems Command
- Commander, Military Sealift Command
- Commander, Naval Air Systems Command
- Commander, Naval Facilities Engineering Command
- Commander, Naval Sea Systems Command
- Commander, Naval Supply Systems Command
- Commander, Space and Naval Warfare Systems Command
- Director, Strategic Systems Programs
- Deputy Commandant for Installations and Logistics, Headquarters, Marine Corps

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

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

- (1) Affiliated PEOs;
- (2) Affiliated DRPMs;
- (3) Any other SES/Flag/General Officer within the HCA's Command structure; and/or
- (4) Commanding Officers of subordinate activities provided the approval authority does not exceed the activity's level of contracting authority.

(S-90) Special Circumstances and Limitations

(a) Special Circumstances.

(1) Approval authority for Economy Act orders that require a contracting action on the part of the Department of Transportation's Volpe Laboratories is not delegated. The Agency head's designee to approve D&Fs for these Economy Act orders is DASN(AP). For Economy Act orders that require no contracting action on the part of the Department of Transportation's Volpe's Laboratories, delegation of this authority to the appropriate level within the organization/claimancy is encouraged.

(2) HCAs will enter into and administer all DoD Work For Others (WFO) projects performed at the Department of Energy (DoE) facilities in accordance with the DoE/DoD MOA except as the DPAP guidance allows for amendment. Copies of all orders with the DoE and its federally funded Research and Development Centers shall be provided to DASN(AP) via email at RDAPolicy@navy.mil with the subject "FAR 17.502-1 - Department of Energy Order" within two weeks after issuance.

(b) Limitations. Approval authority of D&Fs for Interagency Economy Act orders that will result in a contracting action executed by an agency not subject to the FAR (e.g. the Central Intelligence Agency, Tennessee Valley Authority, United States Postal Service, Federal Aviation Administration, and Library of Congress), is limited to the NSPE, without power of redelegation.

(S-91) *Documentation*. Files of approved orders, including supporting documentation, shall be maintained at a single location within each activity delegated approval authority.

(S-92) *Exceptions*. The following are examples of acquisitions that do not require Economy Act D&Fs:

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

(b) Acquisitions conducted pursuant to DFARS Subpart 208.70, "Coordinated Acquisition";

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

(d) Interservice support agreements between DoD activities that comply with DODINST 4000.19, "Interservice and Intragovernmental Support"; and

(e) Interagency acquisitions from the Library of Congress conducted under the authority of Section 103 of P.L. 106-481 (2 U.S.C. 182c), FEDLINK Revolving Fund.

SUBPART 5217.7— INTERAGENCY ACQUISITIONS: ACQUISITIONS BY NONDEFENSE AGENCIES ON BEHALF OF THE DEPARTMENT OF DEFENSE

5217.703 (FAR 17.703) Policy.

(c) Submit nondefense agency certifications of compliance to DPAP within 20 days of the beginning of the fiscal year via DASN(AP) by email at RDAJ&As@navy.mil with the subject “FAR 17.703 - Annual Nondefense Agency Certifications Report.”

SUBPART 5217.74—UNDEFINITIZED CONTRACT ACTIONS

5217.7402 (DFARS 217.7402) Exceptions.

(b) Submit the required advance notification to the Director, Defense Procurement and Acquisition Policy via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 217.7402(b) - Advance Notice of Impracticable UCA Policy Adherence.”

5217.7404 Limitations

5217.7404-5 (DFARS 217.7404-5) Exceptions.

(b) Submit requests for waivers of limitations on Undefinitized Contract Actions (UCAs) to DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 217.7404-5 - Waiver of Limitations on UCAs—[insert applicable DFARS cite].”

5217.7405 (DFARS 217.7405) Plans and Reports.

(a)(2) HCAs shall submit by April 15 and October 15 a Consolidated Undefinitized Contract Action (UCA) Report, identifying each UCA and unpriced change order with an estimated value of more than \$5 million.

(b) In the format prescribed at Annex 6, submit the required UCA report to DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 217.7405 - UCA Management Report” followed by the applicable reporting period/year (*e.g.* UCA Management Report: April 15, 2014).

5217.7405 (PGI 217.7405) Plans and reports.

(1) Submit a copy of the weighted guidelines for each definitized UCA during the reporting period with a value of \$100 million or more to DASN(AP) by email at RDAJ&As@navy.mil with the subject “PGI 217,7405 – Definitized UCA Weighted Guidelines .“ If there is no record of weighted guidelines (*e.g.*, not required for a cost-plus-award-fee contract per DFARS 215.404-74), then submit alternative documentation that addresses appropriate recognition of the contractor’s reduced cost risk during the undefinitized performance period. Submit the required information in accordance with 5217.7405(b).

SUBPART 5217.78—CONTRACTS OR DELIVERY ORDERS ISSUED BY A NON-DoD AGENCY

5217.7802 (DFARS 217.7802) Policy.

(b)(S-90) *DoN review/approval requirements.*

(1) Assisted acquisitions.

(i) ASN(RDA) is the decision authority for assisted acquisitions exceeding \$500,000,000.

(ii) DASN(AP) is the decision authority for assisted acquisitions exceeding \$50,000,000.

(iii) The HCA is the decision authority for assisted acquisitions at or below \$50,000,000.

This authority may be delegated; but, for requirements over \$5,000,000, decision authority may only be delegated to an official in the Requiring Organization who is a Flag or General Officer; a member of the SES; or, for a requirement arising from a claimant activity without Flag/General Officer/SES, the commanding officer of that activity.

(2) Direct acquisitions. The business clearance approval official is the decision authority for direct acquisitions.

PART 5219 SMALL BUSINESS PROGRAMS

SUBPART 5219.2—POLICIES

5219.201 (DFARS 219.201) General policy.

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

(d)(8) The HCA shall assign a small business technical advisor to each office where a resident Small Business Administration (SBA) procurement center representative is located.

(10)(A) The review requirements are not applicable to:

(i) orders placed against single award indefinite delivery type contracts since the review is performed prior to award of the basic contract; or

(ii) awards to small business concerns under the SBIR Program.

(e) Small business specialists are appointed in accordance with SECNAVINST 4380.8. Small business specialists:

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

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

(S-90) Reviews of SBP program implementation at DoN contracting activities are normally conducted as a segment of the PPMAP reviews (see 5201.691). The Director, OSBP, will establish guidelines for the PPMAP review SBP segment. PPMAP review SBP segments should be coordinated with the PPMAP review team leader. For reviews under 5201.691-2, the Director, OSBP, will designate SBP review team members. Associate Directors of Small Business are responsible for implementation of the PPMAP review SBP segment of their field contracting activities including designating PPMAP review SBP 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 are responsible for providing a copy of the PPMAP review SBP segment report(s) to the Director, OSBP.

5219.202 ((DFARS 219.202) Specific policies.

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

Contracting activities should, when practicable, conduct briefings on planned acquisitions for small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, and Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

SUBPART 5219.5—SET-ASIDES FOR SMALL BUSINESS

5219.505 (FAR 19.505) Rejecting Small Business Administration recommendations.

(d) The justification shall be forwarded through the HCA to the Director, OSBP, 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—THE SMALL BUSINESS SUBCONTRACTING PROGRAM

5219.704 (DFARS 219.704) Subcontracting plan requirements.

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

5219.705 (DFARS 219.705) Responsibilities of the contracting officer under the subcontracting assistance program.

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

(d) When evaluating proposed subcontracting plans, contracting officers should obtain advice and recommendations from the cognizant CAO, and shall do so for any-subcontracting plan that does not contain positive goals. The CAO should be specifically requested to review the factors used by the prime contractor to develop the zero goal, the past performance of the offeror on similar requirements, and the current procedures used by the offeror to maximize opportunities for small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business and women-owned small business concerns to participate in its subcontracting program. The contracting officer shall consider the CAO's findings, including any recommendations, prior to approval of the subcontracting plan. The contract file shall 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 containing a zero goal is appropriate, the determination shall be approved at a level above the contracting officer and placed in the contract file.

5219.705-5 (FAR 19.705-5) Awards involving subcontracting plans.

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

5219.706-90 (DFARS 219.706) Responsibilities of the cognizant administrative contracting officer.

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

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

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

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

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

5219.804 (DFARS 219.804) Evaluation, offering, and acceptance.

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

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

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

- (1) lack of knowledge and understanding of the work to be performed;
- (2) lack of experience in performing requirements of similar size and scope;
- (3) lack of resources that are available (including contingent hires) or that must be acquired for contract performance;
- (4) lack of ability to comply with subcontracting limitation provisions (see FAR clause 52.219-14);
- (5) lack of ability to meet delivery schedules; and/or
- (6) deficiencies in record of performance.

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

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

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

5219.804-4 (FAR 19.80404) Repetitive acquisitions.

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

5219.810 (FAR 19.81) SBA appeals.

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

PART 5222 APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

SUBPART 5222.1—BASIC LABOR POLICIES

5222.101 (DFARS 222.101) Labor relations.

5222.101-1 (PGI 222.101-1) General.

(1) Submit requests for approval to DASN(AP) by email at RDAJ&As@navy.mil with the subject “PGI 222.101-1 – [Labor Relations Contact Approval Request/Plant Seizure/Injunctive Action].”

(2) Immediately notify DASN(AP) by email at RDAJ&As@navy.mil with the subject “PGI 222.101-1 – [Labor Relations Contact/Seizure/Injunctive Action].”

(3) Submit questions for the labor advisor to the Navy Labor Advisor in DASN(AP) by email at patricia.myers@navy.mil, except for questions involving the application of contract labor standards to NAVFACENGCOM contracts. Questions concerning labor issues on NAVFACENGCOM contracts should be submitted to the contract labor relations specialist in the appropriate NAVFACENGCOM division, or to the NAVFACENGCOMHQ labor advisor, NAVFACENGCOM (Code ACI), Washington Navy Yard, Building 33, 1322 Patterson Avenue SE, Suite 1000, Washington, DC 20374-5065.

5222.103 (DFARS 222.103) Overtime.

5222.103-4 (DFARS 222.103-4) Approvals.

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

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 (DFARS 222.302) Liquidated damages and overtime pay.

(c) The Navy Labor Advisor is delegated authority to act for the agency head.

SUBPART 5222.4—LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

5222.406 (DFARS 222.406) Administration and enforcement.

5222.406-8 (DFARS 222.406-8) Investigations.

(d) *Contracting officer's report.* (1) For NAVFACENGCOM contracts, the contracting officer's report shall be forwarded to NAVFACENGCOMHQ (Code ACI), Washington Navy Yard, Building 33, 1322 Patterson Avenue SE, Suite 1000, Washington, DC 20374-5065, in accordance with Command procedures. For all other contracts, forward the report to DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 222.406-8 – Labor Standards Compliance: Contracting Officer's Report.”

(2)(iv) Forward the report to the Attorney General of the United States DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 222.406-8 – Labor Standards Compliance: Contracting Officer’s Report – Attorney General Notification.” DASN(AP) will notify the Administrator, Wage and Hour Division.

SUBPART 5222.10—SERVICE CONTRACT LABOR STANDARDS

5222.1006 (FAR 22.1006) Solicitation provisions and contract clauses.

(c)(1) The [Desk Guide for Service Contract Price Adjustments](#) contains DoN guidance on processing price adjustments that result from:

- (i) Changes in wage determinations issued under the Service Contract Act, or
- (ii) Amendments changing the minimum wage required by the Fair Labor Standards Act.

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

5222.7003 (DFARS 222.7003) Waivers.

Submit waiver requests to DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 222.7002 - Waiver of Requirements—National Security Interest.”

SUBPART 5222.74—RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS

5222.7404 (DFARS 222.7404) Waiver.

Submit waiver requests for the Secretary of Defense via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 222.7404 -Waiver-Mandatory Arbitrations.”

SUBPART 5222.90— DEPARTMENT OF THE NAVY NON-CONSTRUCTION CONTRACTS CONTAINING CONSTRUCTION WORK

5222.9000 Department of the Navy non-construction contracts containing construction work.

The DoN created the DoN Non-Construction Contract with Construction Work Guide containing procedures that supplement existing policy for non-construction contracts (*e.g.* for supplies, services, research and development) that contain elements of construction valued in excess of the micro-purchase threshold. The procedures apply to all HCAs that award and administer contracts (including task and delivery orders) for assigned program requirements. The Guide is available at the ASN(RDA) website under Policy and Guidance.

PART 5223 ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

SUBPART 5223.3—HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

5223.370 (DFARS 223.370) Safety precautions for ammunitions and explosives.

5223.370-3 (DFARS 223.370-3) Policy.

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

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

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

- (1) contain the clause at DFARS 252.223-7002; and
- (2) provide as GFM any A&E containing nitrocellulose-based propellants and/or nitrate ester-based materials (such as nitroglycerin,) or other similar A&E with a tendency to become chemically unstable over time;

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

SUBPART 5223.4—USE OF RECOVERED MATERIALS AND BIOBASED PRODUCTS

5223.406 (FAR 23.406) Solicitation provision and contract clauses.

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

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

SUBPART 5223.5—DRUG-FREE WORKPLACE

5223.506 (FAR 23.506) Suspension of payments, termination of contract, and debarment and suspension actions.

(e) Submit requests for waiver to SECNAV via the HCA and DASN(AP) by email at RDAJ&As@navy.mil with the subject "FAR 23.506 – Contractor Drug-Free Workplace Violation Contract Award Waiver Request."

SUBPART 5223.8—OZONE DEPLETING SUBSTANCES

5223.803 (DFARS 223.803) Policy.

Technical certification and approval requirements are set forth in paragraph 8-5.9.b of OPNAVINST 5090.1C.

5223.803-91 Solicitation provision.

Offerors should be encouraged to share with the DoN any knowledge they might have regarding Class I ODS required by specifications or standards in a solicitation. The contracting officer may include a provision substantially similar to the provision at 5252.223-9001, Notice to Offerors - Use of Class I Ozone Depleting Substances, in solicitations, if considered appropriate.

PART 5225 FOREIGN ACQUISITION

SUBPART 5225.1—BUY AMERICAN ACT--SUPPLIES

5225.103 (DFARS 225.103) Exceptions.

(a) *Public interest.*

(ii)(B)(3) Submit requests for an agency head determination for a public interest exception to DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 225.103 - Buy American Act --Supplies.”

(b) *Nonavailability.*

(2)(ii) Submit copies of determinations made under FAR 25.103(b)(2) to the Defense Acquisition Regulations (DAR) Council via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 225.103 - Buy American Act--Supplies Determination.”

5225.104 (DFARS 225.104) Nonavailable articles.

(b)(1)(iii)(C) Submit supporting documentation to the DAR Council via DASN(AP) by email at RDAPolicy@navy.mil with the subject “DFARS 225.104 – Nonavailable Articles.”

SUBPART 5225.2—BUY AMERICAN ACT--CONSTRUCTION MATERIALS

5225.202 (DFARS 225.202) Exceptions.

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

SUBPART 5225.4—TRADE AGREEMENTS

5225.401 (DFARS 225.401) Exceptions.

(a)(2)(A) Submit requests in the form of a determination and findings to USD(AT&L)DPAP via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 225.401 -Trade Agreement Exceptions.”

5225.403 (DFARS 225.403) World Trade Organization Government Procurement Agreement and Free Trade Agreements.

(c)(ii) Submit requests for national interest waivers in the form of a determination and findings to the USD(AT&L)DPAP via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 225.403 - National Interest Waivers.”

SUBPART 5225.7—PROHIBITED SOURCES

5225.702 (FAR 25.702) Prohibition on contracting with entities that conduct restricted business operations in Sudan.

5225.702-4 (FAR 25.702-4) Waiver.

(b) Waivers pursuant to FAR 25.702-4(a) shall be submitted via DASN(AP) by email at RDAJ&As@navy.mil with the subject “FAR 25.702-2(a) Waiver—Sudan.”

5225.703 (FAR 25.703) Prohibition on contracting with entities that engage in certain activities relating to Iran.

5225.703-4 (FAR 25.703-4) Waiver.

(b) Waivers pursuant to FAR 25.703-4 shall be submitted via DASN(AP) by email at RDAJ&As@navy.mil with the subject "FAR 25.703-4 Waiver—Iran."

5225.770 (DFARS 225.770) Prohibition on acquisition of United States Munitions List items from Communist Chinese military companies.

5225.770-5 (DFARS 225.770-5) Waiver of prohibition.

(a) Waivers pursuant to DFARS 225.770-5 shall be submitted via DASN(AP) by email at RDAJ&As@navy.mil with the subject "DFARS 225.770-5 Waiver - United States Munitions List Items from Communist Chinese Military Companies."

(c)(1) A copy of waivers submitted to DPAP pursuant to DFARS 225.770-5(a) shall be submitted to DASN(AP) by email at RDAJ&As@navy.mil with the subject "DFARS 225.770-5(a) Waiver—Communist Chinese Military Companies United States Munitions List."

SUBPART 5225.8—OTHER INTERNATIONAL AGREEMENTS AND COORDINATION

5225.802 Procedures.

5225.802-71 (DFARS 225.802-71) End Use Certificates.

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

5225.802-90 Procedures for acquisitions that can be satisfied only by sources outside the United States.

(a) Naval activities having requirements that can be satisfied only by European sources should forward their requisitions to Fleet Logistics Center (FLC) Sigonella for procurements in Southern Europe, the Mediterranean, and Africa; to FLC Sigonella Detachment Bahrain for procurements in the Middle East; or FLC Sigonella Detachment London for procurements in Northern Europe, including the United Kingdom and Iceland. Naval activities having requirements that can be satisfied only by Asian sources should forward their requirements to FLC Yokosuka for procurements in Japan or Korea; or FLC Yokosuka Detachment Singapore for procurements in Asia/Pacific other than Japan or Korea. This does not relieve activities from complying with current Balance of Payments directives.

(b) Exceptions.

(1) The following are exceptions to paragraph (a) above:

- (i) Contracts for complete vessels or aircraft.
- (ii) Contracts for equipment requiring servicing by representatives of foreign companies.
- (iii) Contracts within an activity's authorized purchase authority when material is readily available overseas (outside CONUS).
- (iv) Other specific exceptions as may be granted by NAVSUPSYSCOM.

(2) Contracting Officers utilizing any of the above exceptions, prior to negotiating with an overseas supplier, should contact the applicable FLC for assistance and support.

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

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

(c) Submit waiver requests via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 225.871-4 - NATO Cooperative Projects Statutory Waiver.”

5225.871-7 (DFARS 225.871-7) Congressional notification.

(a)(1) Submit proposed Congressional notices via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 225.871-7 - NATO Cooperative Projects Statutory Waiver.”

5225.872 (DFARS 225.872) Contracting with qualifying country sources.

5225.872-3 (DFARS 225.872-3) Solicitation procedures.

(e)(4) Submit requests for concurrence via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 225.872-3 - Qualifying Country Sources Concurrence Request.”

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

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

5225.7002-2 (DFARS 225.7002-2) Exceptions.

(b)(1)(iii) Using the format in Annex 3, submit domestic non-availability determinations (DNADs) for approval by SECNAV via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 225.7002-2 - DNAD.”

5225.7003 (DFARS 225.7003) Restrictions on acquisitions of specialty metals.

5225.7003-3 (DFARS 225-7003-3) Exceptions.

(b)(2)(ii) Report on all contracts (including task orders/delivery orders) for the acquisition of commercial off the shelf (COTS) end items valued at \$5 million or more per item purchased during the preceding fiscal year. In addition to the requirements at PGI 225.7003-3(b)(2)(B), include the contract line item number (CLIN), quantity, and unit price for each excepted COTS end item reported. Submit the required annual report not later than October 15th to DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 225-7003-3 - Annual COTS End Items Report (Activity name/fiscal year).”

(b)(5) Using the format in Annex 3, Domestic Nonavailability Determination, submit required DNADs for approval by USD(AT&L) or SECNAV via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 225.7003-3 - DNAD Approval by [USD(AT&L) or SECNAV].”

(c)(2) and (d) Using the format in Annex 3, Domestic Non-Availability Determination, submit required determinations for approval by USD(AT&L) or SECNAV via DASN(AP) by email at address RDAJ&As@navy.mil with the subject “DFARS 225.7003-3 - DNAD Approval by [USD(AT&L) or SECNAV].”

5225.7007 (DFARS 225.7007) Restrictions on anchor and mooring chain.

5225.7007-2 (DFARS 225.7007-2) Waiver.

(a) Submit the proposed written D&F containing the certification for Secretarial approval via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 225-7007-2 - Anchor and Mooring Chain Restriction Waiver.”

5225.7009 (DFARS 225.7009) Restriction on ball and roller bearings.

5225.7009-4 (PGI 225.7009-4) Waiver.

Submit the proposed waiver via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 225.7009-4 - Ball and Roller Bearings Restriction Waiver.” The waiver will be in the form of a written D&F containing a certification that:

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

5225.7011 (DFARS 225.7011) Restriction on carbon, alloy, and armor steel plate.

5225.7011-2 (DFARS 225.7011-2) Waiver.

Submit the waiver to SECNAV via ASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 225.2011-2 - Carbon, Alloy, And Armor Steel Plate Restriction Waiver.” The waiver shall be in the form of a written D&F containing a certification that:

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

5225.7012 (DFARS 225.7012) Restriction on supercomputers.

5225.7012-2 (DFARS 225.7012-2) Waiver.

Submit the proposed waiver via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 225.7012-2 - Supercomputer Restriction Waiver”. The waiver shall be in the form of a written D&F containing a certification that:

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

5225.9000 Restriction on certain components for naval vessels.

(a) Restriction. In accordance with 10 U.S.C. 2534(a), do not purchase the following components of naval vessels, to the extent that they are unique to marine applications, unless manufactured in the U.S. or Canada:

- (1) air circuit breakers
- (2) gyrocompasses,
- (3) electronic navigation chart systems,
- (4) steering controls,
- (5) pumps,
- (6) propulsion and machinery control systems, and
- (7) totally enclosed lifeboats.

(b) Exceptions. This restriction does not apply to –

- (1) contracts or subcontracts that do not exceed the simplified acquisition threshold, or
- (2) acquisition of spare or repair parts needed to support components for naval vessels produced or manufactured outside the United States.

(c) Implementation.

(1) 10 U.S.C. 2534(h) prohibits the use of a contract clause or certification to implement this restriction.

(2) Implementation of this restriction shall be accomplished through management and oversight techniques that achieve the objective of this restriction without imposing a significant management burden on the Government or Contractor.

(d) Waiver. In accordance with the provisions of DFARS 225.7008(b), USD(AT&L) has executed an annual waiver of the restrictions of 10 U.S.C. 2534 for certain items manufactured in the United Kingdom, including the items listed in paragraph (a) above. This waiver applies to –

(1) Procurements under solicitations issued on or after August 4, 1998; and under the conditions described in DFARS 225.7008(a)(1)(iv).

(2) Subcontracts and options under contracts entered into prior to August 4, 1998, under the conditions described in DFARS 225.7008(a)(1)(iv).

SUBPART 5225.76—SECONDARY ARAB BOYCOTT OF ISRAEL

5225.7604 (DFARS 225.7604) Waivers.

Submit waiver requests to USD(AT&L)DPAP via DASN(AP) by email at RDAJ&As@navy.mil with the subject “PGI 225.7604 - Secondary Arab Boycott Of Israel Restriction Waiver.”

PART 5227 PATENTS, DATA AND COPYRIGHTS

SUBPART 5227.70—INFRINGEMENT CLAIMS, LICENSES, AND ASSIGNMENTS

5227.7013 (DFARS 227.7013) Recordation.

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

PART 5228 BONDS AND INSURANCE

SUBPART 5228.3—INSURANCE

5228.301 (FAR 28.301) 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. However, it may be preferable or necessary to provide Government indemnification--

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

(B) Where war risk is involved;

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

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

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

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

(G) Where indemnification of the deductible portion of insurance coverage will substantially reduce insurance costs.

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

5228.301-90 Authority to act.

DASN(AP) 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:

(a) Require or approve contract insurance; and

(b) 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 SECNAV and not affecting the obligation of appropriations.

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) If any suit or action is filed or any claim is made against the contractor pursuant to the clause at FAR 52.228-7, Insurance--Liability to Third Persons, for loss of or damage to property, death or bodily injury arising out of performance of a contract, the contracting officer, in consultation with legal counsel, shall submit the following information via the HCA to DASN(AP) for a determination as to whether the Government has assumed liability for the claim and if so, the amount to be paid:

(1) statements of all pertinent facts;

(2) the contracting officer's recommendation as to the action to be taken with respect to the claim; and

(3) the proposed payment amount.

(b) Unless DASN(AP) advises otherwise within 30 calendar days after receipt of the information from the contracting officer, the third party may be paid the proposed payment amount unless pursuant to appeal by the contractor under the Disputes clause, a different amount is allowed.

(c) If DASN(AP) determines that the Government did not assume liability, the contracting officer will be notified and no payment shall be made, unless pursuant to appeal by the contractor under the Disputes clause, a different decision is made.

5228.305 (PGI 228.305) Overseas workers' compensation and war-hazard insurance.

(d) Submit requests for waiver through DASN(AP) by email at RDAJ&As@navy.mil with the subject "PGI 288.305- Overseas Workers' Compensation And War-Hazard Insurance Waiver."

5228.307 (DFARS 228.307) Insurance under cost-reimbursement contracts.

5228.307-1 (DFARS 228.307-1) Group insurance plans.

(a) *Prior approval requirement.* Group insurance plans under cost-reimbursement contracts for which contract administration is retained by the DoN shall be submitted for approval to the DoN contracting officer responsible for contract administration.

5228.307-90 Liability of subcontractors to third parties.

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

(b) Under cost-reimbursement 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-reimbursement subcontracts.

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, should insure the property and the liabilities of itself and the Government to third parties, including employees.

5228.9001 Waiver.

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

5228.9002 Lease provisions.

(a) Where insurance is required, the lease shall require the lessee to:

(1) 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) provide insurance on special types of property (e. g., floating drydocks, mobile power plants, etc.) as designated by lessor.

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

5228.9003 Insurance policies.

(a) Insurance policies for leased property shall be issued in the names of the lessee and of the Department of the Navy and 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 DASN(AP) in the event of cancellation of the policy.

(c) A certificate of insurance or copy of each insurance policy shall be deposited with DASN(AP) via hardcopy or by email at RDAJ&As@navy.mil with the subject "FAR 28.9003 – Insurance Policy Deposit."

PART 5229 TAXES

SUBPART 5229.3—STATE AND LOCAL TAXES

5229.302 (FAR 29.302) Application of State and local taxes to the Government.

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

PART 5230 COST ACCOUNTING STANDARDS ADMINISTRATION

SUBPART 5230.2—CAS PROGRAM REQUIREMENTS

5230.201 (DFARS 230.201) Contract requirements.

5230.201-5 (DFARS 230.201-5) Waiver.

(b) and (d) Submit waiver requests to DASN(AP) at least 60 days prior to anticipated contract award by email at RDAJ&As@navy.mil with the subject “DFARS 230.201-5 – CAS Waiver Request.” Include the estimated date of contract award.

(e) Submit reports via DASN(AP) no later than November 15 by email at RDAJ&As@navy.mil with the subject “DFARS 230.201-5(e) – Granted CAS Waivers Report.”

5230.202 (FAR 30.202) Disclosure requirements.

5230.202-2 (FAR 30.202-2) Impracticability of submission.

Submit requests for impracticability determinations to DASN(AP) at least 60 days prior to anticipated contract award by email at RDAJ&As@navy.mil with the subject “DFARS 230.202-2 – Impracticability Determination.” Include the estimated date of contract award.

PART 5231 CONTRACT COST PRINCIPLES AND PROCEDURES

SUBPART 5231.1—APPLICABILITY

5231.109 (FAR 31.109) Advance agreements.

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

(g) Copies of all negotiated advance agreements shall be forwarded to DASN(AP) within 30 days of their execution, together with appropriate supporting documents by email at RDAJ&As@navy.mil with the subject “FAR 31.109 – Negotiated Advance Agreement.”

SUBPART 5231.2—CONTRACTS WITH COMMERCIAL ORGANIZATIONS

5231.205 (FAR 31.205) Selected costs.

5231.205-90 Shipbuilding capability preservation agreements.

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

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

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

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

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

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

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

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

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

- (i) The direct costs attributable to the private sector work;
- (ii) The incremental indirect costs attributable to the private sector work; and

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

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

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

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

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

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

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

PART 5232 CONTRACT FINANCING

SUBPART 5232.2—COMMERCIAL ITEM PURCHASE FINANCING

5232.202 (FAR 32.202) General.

5232.202-1 (FAR 32.202-1) Policy.

(d) *Unusual contract financing.* HCAs are not authorized to approve unusual contract financing. In accordance with DFARS 232.070(a) is the approval authority.

SUBPART 5232.4—ADVANCE PAYMENTS FOR NON-COMMERCIAL ITEMS

5232.402 (FAR 32.402) General.

(e) Submit requests for advance payments to ASN(FM&C) via DASN(AP) by email at RDAJ&As@navy.mil with the subject “FAR 32.402 – Advance Payments Request.”

SUBPART 5232.5--PROGRESS PAYMENTS BASED ON COSTS

5232.501 (DFARS 232.501) General.

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

Forward requests to DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 232.501 – Unusual Progress Payment Request.”

SUBPART 5232.6—CONTRACT DEBTS

5232.607 (FAR 32.607) Installment payments and deferment of collection.

5232.607-2 (FAR 32.607-2) Deferment of collection.

(c)(2)(S-90) Information should be submitted with all requests, whether or not an appeal is pending or a Dispute action filed. In addition, include the following information:

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

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

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

(d) Any small business concern representation.

5232.610 (DFARS 232.610) Demand for payment of contract debt.

(3) Submit requests for DPAP approval of deferment of contract debt collections via DASN(AP) by email at RDAJ&As@navy.mil with the subject “PGI 232.601 - Deferment of Contract Debt Collection.” Requests for deferment authority shall be signed by the HCA, CCO, and contracting officer. In cases where the contracting organization, at their level, determines a deferment request is not required or is denied, no further action is needed.

5232.690 DoN claims against a contractor.

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

SUBPART 5232.7—CONTRACT FUNDING

5232.790 Establishment of obligations.

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

5232.791 Obligation of transportation cost in purchase documents.

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

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

5232.792 Accounting and appropriation data.

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

5232.793 Responsibility for accounting classification and payments data.

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

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

SUBPART 5232.9—PROMPT PAYMENT

5232.903 (DFARS 232.903) Responsibilities.

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

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

5232.905 (FAR 32.905) Payment documentation and process.

If a Technical Representative or Contracting Officer's Representative has been assigned in the

contract, the contracting officer should designate that individual to receive an information copy of the invoice.

**SUBPART 5232.70—ELECTRONIC SUBMISSION AND PROCESSING OF
PAYMENT REQUESTS AND RECEIVING REPORTS**

5232.7002 (DFARS 232.7002) Policy.

(a)(1)(v) Furnish a copy of the determination provided to the SPE to DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 232.7002(a)(1)(v) - Release From Submission of Payment Requests and Receiving Reports in Electronic Form.”

PART 5233 PROTESTS, DISPUTES, AND APPEALS

SUBPART 5233.1—PROTESTS

5233.103 (FAR 33.103) Protests to the agency.

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

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

5233.104 (FAR 33.104) Protests to GAO.

(g) HCAs shall consult with DASN(AP) before any final decision is reached not to implement GAO's recommendations. Concurrent with the submission to the Comptroller General, a copy of the report shall be provided to DASN(AP) by email at RDAJ&As@navy.mil with the subject “FAR 33.104 – GAO Protest Recommendation Decision.”

5233.170 (DFARS 233.170) Briefing requirement for protested acquisitions valued at \$1 billion or more.

Within 5 days of receipt of the protest, submit the required protest notice to DASN(AP) by email at RDAJ&As@navy.mil with the subject "PGI 233.170 - Protest [solicitation or contract number, as appropriate].”

SUBPART 5233.2—DISPUTES AND APPEALS

5233.201 (FAR 33.201) 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 (FAR 33.203) Applicability.

(b)(2) The HCA is delegated the authority to make the determination that the application of the Act to the contract would not be in the public interest.

5233.204 (FAR 33.204) Policy.

5233.204-90 General.

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

(b) *Formal and constructive changes.*

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

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

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

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

5233.209 (FAR 33.209) Suspected fraudulent claims.

The Naval Criminal Investigative Service is the agency official responsible for investigating fraud.

5233.211 (FAR 33.211) Contracting officer's decision.

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

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

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

SUBPART 5233.90—PROCEDURES**5233.9000 Documentation of significant contract events.**

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

- (a) All contracts in excess of \$5,000,000; and
- (b) All contracts, regardless of dollar amount, wherein the officer in charge of the CAO has determined a reasonable possibility exists that a claim may be asserted thereunder.

5233.9001 Claims approval requirements.

(a) All proposed claim settlements in excess of \$25 million, and final decisions of the contracting officer involving payments in an amount greater than \$25 million, shall be submitted for review and approval to DASN(AP) by email at RDAJ&As@navy.mil with the subject "FAR 33.9001 – Proposed Claim Settlement >\$25M." Other proposed claim settlements and final decisions of the contracting officer, shall be reviewed and approved as specified by the HCA.

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

- (1) Analyze the applicability and adequacy of the contractor's legal theory or theories of Government liability;
- (2) Analyze and evaluate the presence and adequacy of evidentiary facts satisfying the elements of proof required by such legal theory or theories;
- (3) Analyze the applicability and adequacy of any affirmative defense the Government may have to the contractor's claim, e.g., accord and satisfaction, failure of consideration, fraud, release, laches, statute of limitations; and
- (4) Analyze and evaluate the presence of any counterclaims the Government may have against the contractor.

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

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

- (1) A legal determination that the contractor is entitled to compensation.
- (2) Sufficient technical, administrative, and audit analyses to permit such legal determination; and
- (3) 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.

(e) When a provisional payment, either individually or cumulatively against a single claim exceeds \$25 million, a written justification shall be submitted for approval to DASN(AP) by email at RDAJ&As@navy.mil with the subject "FAR 33.9001 – Proposed Claim Provisional Payment >\$25M."

The justification shall cover--

- (1) the requirements of the claim;
- (2) the projected date of settlement of the claim; and
- (3) other pertinent information, including comments as to whether the contractor has reasonably

satisfied all requests for documentary and analytical support of the claimed amount.

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 that might have investigated and evaluated the contractor's claim submission. Such teams should continue to function in an assisting capacity under the leadership of the OGC Trial Attorney assigned to handle the appeal.

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

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

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

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

(c) *Settlement negotiations pending appeal.* The conduct of settlement negotiations in connection with any pending appeal should generally be 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. The settlement agreement shall be drafted by the contracting activity and trial attorney. The trial attorney shall file any legal papers required to be filed with the ASBCA to effect disposition of the case by mutual agreement of the parties.

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

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

PART 5234 MAJOR SYSTEM ACQUISITION

SUBPART 5234.70—ACQUISITION OF MAJOR WEAPON SYSTEMS AS COMMERCIAL ITEMS

5234.7002 (DFARS 234.7002) Policy.

(a)(1)(i) Submit the required written determination for approval by the Secretary of Defense/Deputy Secretary of Defense to DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 234.7002(a)(i) - D&F: Approval to Acquire a Major Weapon System as a Commercial Item.” The determination shall be accompanied by a proposed Congressional notification letter satisfying the requirements at DFARS 234.7002(a)(1)iii).

PART 5235 RESEARCH AND DEVELOPMENT CONTRACTING

5235.006 (DFARS 235.006) Contracting methods and contract type.

(b)(i) and (ii). Notifications and requests for USD(AT&L) approval are to be submitted via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 235.006 – Major Defense Program – Intent NOT to Exercise a Fixed Price Production Option on a Development Contract Notification.”

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.

(b) *Policy.*

(S-90)(1) Contracts providing for a special use allowance for acquisitions or construction of research facilities shall specify:

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

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

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

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

5235.070 (DFARS 235.070) Indemnification against unusually hazardous risks.

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

(a) DASN(AP) is the approval authority.

(b) Submit requests for indemnification approval to DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 235.070-1 – Indemnification Request under R&D Contracts.”

PART 5236 CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

SUBPART 5236.2—SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION

5236.270 (DFARS 236.270) Expediting construction contracts.

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

SUBPART 5236.6—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 (FAR 37.102) Policy.

(a)(1)(S-90) Personal Medical services contracts are included as an exemption from performance-based acquisition methods.

5237.102-71 (DFARS 237.102-71) Limitations on service contracts for military flight simulators.

Submit requests for waivers and required economic analysis for the congressional defense committees via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 237.102-71 – Military Flight Simulator Service Contract Waiver Request.”

5237.102-90 Enterprise-wide Contractor Manpower Reporting Application (ECMRA)

(a) DoD contracting activities awarding or administering contracts shall incorporate the following Enterprise-wide Contractor Manpower Reporting Application (ECMRA) standard language into all contracts which include services, provided the organization that is receiving or benefiting from the contracted service is a Department of Defense organization, including reimbursable appropriated funding sources from non-DoD executive agencies where the Defense Component requiring activity is the executive agent for the function performed. The reporting requirement does not apply to situations where a Defense Component is merely a contracting agent for another executive agency. Contracted services excluded from reporting are based on Product Service Codes (PSCs). The excluded PSCs are:

- (1) W, Lease/Rental of Equipment;
- (2) X, Lease/Rental of Facilities;
- (3) Y, Construction of Structures and Facilities;
- (4) S, Utilities ONLY;
- (5) V, Freight and Shipping ONLY.

(b)The standard language to be inserted is:

“The contractor shall report contractor labor hours (including subcontractor labor hours) required for performance of services provided under this contract **for the [NAMED COMPONENT]** via a secure data collection site. Contracted services excluded from reporting are based on Product Service Codes (PSCs). The excluded PSCs are:

- (1) W, Lease/Rental of Equipment;
- (2) X, Lease/Rental of Facilities;
- (3) Y, Construction of Structures and Facilities;
- (4) S, Utilities ONLY;
- (5) V, Freight and Shipping ONLY.

The contractor is required to completely fill in all required data fields using the following web address <https://doncmra.nmci.navy.mil>.

Reporting inputs will be for the labor executed during the period of performance during each Government fiscal year (FY), which runs October 1 through September 30. While inputs may be reported any time during the FY, all data shall be reported no later than October 31 of each calendar year. Contractors may direct questions to the help desk, linked at <https://doncmra.nmci.navy.mil>.

5237.104 (DFARS 237.104) Personal services contracts.

(b)(ii)(C)(2) Commands outside the Bureau of Medicine and Surgery (BUMED) claimancy shall obtain review and approval of Statements of Work for clinical counselors, family advocacy program staff, and victim's services representatives as described in DFARS 237.104(b)(ii)(A)(3) from the Naval Medical Logistics Command (NAVMEDLOGCOM). See BUMEDINST 4200.2C, or version currently in effect, for information on appropriate contract procedures.

5237.170 (DFARS 237.170-2) Approval of contracts and task orders for services.**5237.170-2 (DFARS 237.170-2) Approval requirements.**

(a) *Acquisition of services through a contract or task order that is not performance based.*

(1) The HCA is the agency's designee for approval of acquisition of services at or below \$85,500,000 that is not performance based. For acquisitions above \$5 million, HCA authority may be delegated, without power of redelegation, only to the Deputy/Assistant Commander for Contracts, a Flag or General Officer or SES who is a member of the Acquisition Professional Community, or, for commands/locations without a local SES/Flag/General Officer, to the Commanding Officer.

(2) For acquisitions exceeding \$85,500,000, but below \$500,000,000, the approval authority is DASN(AP).

(S-90) This section does not apply to A&E Services or Personal Medical Services.

(b) *Acquisition of services through use of a contract or task order issued by a non-DoD agency.* In addition to review and approval in accordance with the DoN Management Oversight Process for Acquisition of Services, approval must be obtained from:

(1) The HCA for actions at or below \$50,000,000. For acquisitions above \$5 million, HCA authority may be delegated, without power of redelegation, only to the Deputy/Assistant Commander for Contracts, a Flag or General Officer or SES who is a member of the Acquisition Professional Community, or, for commands/locations without a local SES/Flag/General Officer, to the Commanding Officer.

(2) DASN(AP) for actions exceeding \$50,000,000.

(S-90) All services acquisitions between \$100 million and \$250 million are designated as ASN(RDA) special interest items and are subject to ASN(RDA) review.

5237.191 Service Requirements Review Board reporting.

(a) Conduct a Service Requirements Review Board (SRRB) not less than annually in accordance with DASN(AP) memorandum "Service Requirements Review Board Guidance" dated April 13, 2012.

(b) Action items from the SRRB not corrected within 120 days shall be reported to DASN(AP) with a Plan of Action and Milestones (POAM) to complete corrections. Submit reports to DASN(AP) via email RDAJ&As@navy.mil with the subject line "NMCARS 5237.191 – Service Requirements Review Board Action Item Correction POAM."

(c) As prescribed in the DASN(AP) SRRB guidance memorandum, forward the SRRB Final Analysis file within 30 days of the completed SRRB to DASN(AP) by email at RDAJ&As@navy.mil with the subject line "NMCARS 5237.191 – Service Requirements Review Board Final Analysis."

5237.192 Service Acquisition Workshops (SAWs)

(a) Multi-functional teams that support service acquisition requirements valued at \$1 billion or more shall participate in a SAW, or an equivalent program. If the HCA determines that a waiver is necessary, a waiver request signed by the HCA, without power of redelegation, shall be submitted for approval by the HCA to OSD via DASN(AP) by email at RDAJ&As@navy.mil with the subject “NMCARS 5237.192 - Service Acquisition Workshop (SAW) Waiver Request”.

(b) The waiver request shall include: the rationale for not participating in a SAW; an assessment of the quality of the requirements documents; and, steps taken to reduce costs, improve competition, and shorten acquisition lead times.

(c) Participation in a SAW or approved waiver is required before a service strategy will be approved by OSD.

SUBPART 5237.2—ADVISORY AND ASSISTANCE SERVICES**5237.203-90 (FAR 37.203) Policy.**

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

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

5237.204 (FAR 37.204) Guidelines for determining availability of personnel.

(a) Approval by the SSA of a source selection plan identifying only agency/FFRDC personnel as evaluators may constitute the determination that sufficient personnel are available within the agency to evaluate or analyze proposals. Determinations that sufficient personnel are not readily available within the agency nor within another Federal agency shall be made in accordance with (d) below.

(b)(1)(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) 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.

SUBPART 5237.5—MANAGEMENT OVERSIGHT OF SERVICE CONTRACTS

5237.503 (FAR 37.503) Agency-head responsibilities.

All acquisition of services in excess of the simplified acquisition threshold shall comply with the policy and procedures set forth in the "Department of the Navy (DoN) Management and Oversight Process for the Acquisition of Services (Revised) ([MOPAS 2](#)) dated December 1, 2006." HCAs/PEOs/DRPMs shall issue implementing procedures to ensure compliance.

SUBPART 5237.90—CONTRACTOR GUARD SERVICES

5237.9000 Contracting for contractor guard services.

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

PART 5239 ACQUISITION OF INFORMATION TECHNOLOGY

5239.001 (FAR 39.001) Applicability.

(a) All requests for DoD CIO approval of acquisition of a data server farm, data center or information systems technology used in a data center shall be submitted to DASN(AP) by email at RDAJ&As@navy.mil with the subject "FAR 39.001 - Data Farm/Center IT Approval."

PART 5241 ACQUISITION OF UTILITY SERVICES

SUBPART 5241.2—ACQUIRING UTILITY SERVICES

5241.201-90 (DFARS 241.201) Policy.

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

PART 5242 CONTRACT ADMINISTRATION AND AUDIT SERVICES

SUBPART 5242.1—CONTRACT AUDIT SERVICES

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

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

- (1) Requesting contract audit service deemed essential for the procurement;
- (2) Providing maximum allowable time for the conduct of audits;
- (3) Furnishing the auditor with all relevant documents;
- (4) Establishing access to contractor records required by auditors; and
- (5) Furnishing such other information, data, or technical service as may be required (such as the advice of industrial engineers on cost matters, copies of pricing memoranda, etc.) or otherwise may be useful in performing the audit.

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

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

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

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

5242.191 Audit resolution and disposition.

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

(b) HCAs are responsible for establishing procedures to accomplish resolution and disposition within the required times and to comply with the DoD Directive 7640.2 semiannual contract audit follow-up (CAFU) status reporting requirement through timely entry of data into the CAFU system in eTools at www.dcmsa.mil. DASN(AP) PA&BT is the DoN liaison.

SUBPART 5242.6—CORPORATE ADMINISTRATIVE CONTRACTING OFFICER

5242.602 (DFARS 242.602) Assignment and location.

(c) Submit recommendations for assignment of a corporate administrative contracting officer (CACO) to DASN(AP) by email at RDAJ&As@navy.mil with the subject "DFARS 242.602 -

CACO Assignment Recommendation.”

SUBPART 5242.15—CONTRACTOR PERFORMANCE INFORMATION

5242.1502 (FAR 42.1502) Policy.

(a) The Contractor Performance Assessment Reporting System (CPARS) shall be used when preparing performance evaluations. CPARS is accessed via the internet at <http://www.cpars.gov>.

SUBPART 5242.17 FORWARD PRICING RATE AGREEMENTS

5242.1790 Business base forecasting and evaluation.

HCAs shall submit the business base forecast and evaluations semiannually, in the first weeks of February and August, to improve DCMA’s ability to negotiate forward pricing in compliance with the Director, Defense Pricing memorandum “Improved Business Base Forecasting and Evaluation” dated September 14, 2012, via DASN(AP) by email at RDAJ&As@navy.mil with the subject “NMCARS 5242.1790 – DCMA Business Base Forecasting and Evaluation.”

PART 5243 CONTRACT MODIFICATIONS

SUBPART 5243.1—GENERAL

5243.102 (FAR 43.102) Policy.

5243.102-90 Use of modifications for additional quantities.

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.

SUBPART 5243.2—CHANGE ORDERS

5243.201-90 (FAR 43.201) General.

(a) Each undefinitized change order shall include a not-to-exceed price unless the CCO waives this requirement.

(b) The policies and procedures of DFARS 217.74 shall be applied to change orders (except value engineering change proposals (VECPs)) to the maximum extent practicable.

(c) The use of VECPs are encouraged due to the potential savings and system improvements that may be realized.

(1) Prompt action shall be taken to implement those VECPs deemed to be technically sound.

(2) When considering VECPs, contracting officers shall 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 that implement VECPs shall:

(i) Define minimum unit cost savings, and

(ii) Define maximum development/implementation costs

5243.204 (DFARS 243.204) Administration.

5243.204-70 (DFARS 243.204-70) Definitization of change orders.

5243.204-70-1 (DFARS 243.204-70-1) Scope.

(b) Submit the required contracting officer notice to DASN(AP) by email at RDAJ&As@navy.mil with the subject “Contracting Officer Notice pursuant to DFARS 243.204-70-1—FMS/SAP Unpriced Change Orders.”

5243.204-70-7 (DFARS 243.204-70-7) Plans and Reports.

(b) Report unpriced change orders in accordance with the schedule and in the format prescribed at 5217.7405 to DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 243.204-70-7 – Unpriced Change Order Report.

PART 5245 GOVERNMENT PROPERTY

SUBPART 5245.1—GENERAL

5245.102 (DFARS 245.102) Policy.

(4)(ii)(C)(1)(i) Submit the required D&Fs for approval to DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 245.102(4)(ii)(C)(1)(i) - Government-Furnished Property Identification Exception D&F/Activity Name.”

(2) Submit copies of D&Fs executed pursuant to DFARS 245.102(4)(ii)(C)(1) to DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 245.102- Government-Furnished Property Identification Exception D&F/Activity Name.”

5245.103 (DFARS 245.103) General.

5245.103-70 (PGI 245.103-70) Furnishing Government property to contractors.

The requiring activity decision to provide Government property shall address the elements contained in PGI 245.103-70(2) in the documentation provided to the contracting officer.

5245.103-71 (PGI 245.103-71) Transferring Government property accountability

The contracting officer shall obtain approval of an authorized representative of the requiring activity before transferring property between contracts.

SUBPART 5245.3—AUTHORIZING THE USE AND RENTAL OF GOVERNMENT PROPERTY

5245.302 (DFARS 245.302) Contracts with foreign governments or international organizations.

(3)(ii) Submit requests for waivers or reduction of charges for the use of Government property on work for foreign governments or international organizations to the Director, Defense Security Cooperation Agency (DSCA) via DASN(AP) by email at RDAJ&As@navy.mil with the subject “DFARS 245.302 – Requests for Waivers or Reduction of Charges for the Use of Government Property on Work for Foreign Governments or International Organizations.”

SUBPART 5245.6—REPORTING, REUTILIZATION AND DISPOSAL

5245.602 (DFARS 245.602) Reutilization of Government property.

5245.602-390 (DFARS 245.602-3) Screening.

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

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

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

(b) The final approval for contractor retention of standard components of special test equipment (STE) or for the transfer of industrial plant equipment items that are components of STE, shall be made by the contracting officer in lieu of the ACO.

(c) Prior to authorizing retention of items in storage the contracting officer shall ensure that a retention plan has been developed. Retention plans shall 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. The use of "no-costs" or no direct cost storage agreements is prohibited.

PART 5246 QUALITY ASSURANCE

SUBPART 5246.7 - WARRANTIES

5246.706 (DFARS 246.706) Warranty terms and conditions.

(b)(2) *Remedies.*

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

(5) *Markings.* Warranted items should 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.

PART 5247 TRANSPORTATION

SUBPART 5247.3 – TRANSPORTATION IN SUPPLY CONTRACTS

5247.305 (FAR 47.305) Solicitation provisions, contract clauses, and transportation factors.

5247.305-14 (FAR 47.305-14) Mode of transportation.

(S-90)(a) *The Contract as awarded.* If the contracting officer considers it necessary for the DoN to control the method of transportation (e.g., so as to expedite the movement of contract items or otherwise to fulfill special DoN requirements), the contract should generally be made on the basis of delivery f.o.b. origin. This is a valid reason for departing from the policy of FAR 47.305-14.

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

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

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

5247.573 (DFARS 247.573) Procedures.

5247.573-1 (DFARS 247.573-1) Ocean transportation incidental to a contract for supplies, services, or construction.

(c)(3)(iii) Forward the report for a determination as to whether the proposed freight charges are excessive or otherwise unreasonable to SECNAV via DASN(AP) by email at RDAJ&As@navy.mil with the subject "DFARS 247.573-1 – Excessive/Unreasonable Freight Charges for U.S.-Flag Carrier D&F."

5247.573-2 (DFARS 247.573-2) Direct purchase of ocean transportation services.

(d)(3)(iii) Forward the report for a determination as to whether the proposed freight charges are excessive or otherwise unreasonable to SECNAV via DASN(AP) by email at RDAJ&As@navy.mil with the subject "DFARS 247.573-2 – Excessive/Unreasonable Freight Charges for U.S.-Flag Carrier D&F."

5247.573-3 (DFARS 247.573-3) Annual reporting requirements.

(a)(2) A copy of the report on information received from offerors in response to the provision at 252.247-7026 must be provided by January 31 to DASN(AP)PA&BT by email at RDAJ&As@navy.mil with the subject "DFARS 247.573-3 – Annual Report of Information Provided By Offerors in Response to 52.247-7026."

PART 5248 VALUE ENGINEERING

SUBPART 5248.1—POLICIES AND PROCEDURES

5248.103 (FAR 48.103) Processing value engineering change proposals.

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

PART 5249 TERMINATION OF CONTRACTS

SUBPART 5249.4—TERMINATION FOR DEFAULT

5249.402 (FAR 49.402) Termination of fixed-price contracts for default.

5249.402-8 (FAR 49.402-8) Reporting Information.

Within five (5) calendar days after issuing the notice of the termination for default (T4D) or a change in termination status, submit a copy of the FAPIIS entry required by FAR 42.1503(f)(1)(iii), including changes in status of terminations, to the AGC (AI) by email at aio@navy.mil with the subject "FAR 9.402-8 - T4D" followed by the contract number.

5249.403 (FAR 49.403) Termination of cost-reimbursement contracts for default.

(a) Within five (5) calendar days after issuing the notice of the termination or a change in termination status, submit a copy of the FAPIIS entry required by FAR 42.1503(f)(1)(iii), including changes in status of terminations, to the AGC (AI) by email at aio@navy.mil with the subject "FAR 9.402-8 - T4D" followed by the contract number.

SUBPART 5249.70—SPECIAL TERMINATION REQUIREMENTS

5249.7001 (DFARS 249.7001) Congressional notification on significant contract terminations.

(2) When a decision to terminate is contemplated, the activity shall provide the information required in 5249.7001(3) in addition to the request for clearance to release the contract termination notification to DASN(AP) via email at RDAJ&As@navy.mil with the subject "PGI 249.7001, Contract Termination – Congressional Notification on Significant Contract Terminations." Upon receipt and review of the submitted information, DASN(AP) will advise the activity that it may begin its coordination with the Navy Chief of Legislative Affairs (OLA-N) and other offices as appropriate for the required Congressional notification.

(3) In addition to the PGI 249.7001(3) requirements:

(xi) Provide a chronological listing of significant actions taken prior to making the termination decision.

(xii) Identify any significant date(s) and event (s) that may impact termination costs if the termination does not occur by the stated date(s).

PART 5250 EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

SUBPART 5250.1—EXTRAORDINARY CONTRACTUAL ACTIONS

5250.101 (FAR 50.101) General.

5250.101-3 (FAR 50.101-3) Records.

HCAs are the officials responsible for preparation and submission of the required records. Forward records to DASN(AP).

5250.102 (DFARS 250.102) Delegation of and limitations on exercise of authority.

5250.102-1-70 (DFARS 250.102-1-70) Delegations.

(a) *Military Departments.* Subject to the restrictions on delegations of authority in DFARS Part 250 and FAR 50.102-1 and 50.102-3, HCAs may exercise without power of redelegation, the authority contained in the Act and Executive Order for amounts not exceeding \$65,000.

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

(ii) ASN(RDA) is the approval authority for requests to obligate the Government in excess of \$65,000. Submit requests for adjudication by the Navy Contract Adjustment Board by email at RDAJ&As@navy.mil with the subject “DFARS 250-102-1-70 - Extraordinary Contractual Relief pursuant to [insert “Public Law 85-804” or “Executive Order 10789”].

5250.102-2 (DFARS 250.102-2) Contract adjustment boards.

Members and alternate members will be appointed by DASN(AP).

5250.103 (FAR 50.103) Contract adjustments.

5250.103-5 (FAR 50.103-5) Processing cases.

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

5250.103-6 (DFARS 250.103-6) Disposition.

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

5250.104 (FAR 50.104) Residual powers.

5250.104-3 (FAR 50.104-3) Special procedures for unusually hazardous or nuclear risks.

(b) Submit requests for authorization to use the clause prescribed at FAR 50.104-4 with sufficient justification to SECNAV via DASN(AP) by email at RDAJ&As@navy.mil with the subject “FAR 50.104-3 – Indemnification Request.”

PART 5252 SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 5252.1—INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES

5252.101 (DFARS 252.101) Using part 52.

(b) *Numbering.*

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

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

9000-9099 NMCARS (OASN(RDA))
9100-9199 NAVSEA
9200-9299 SPAWAR
9300-9399 NAVFAC
9400-9499 NAVSUP
9500-9599 NAVAIR
9600-9649 SPAWAR
9650-9699 MC
9700-9749 ONR
9750-9799 SSP
9800-9899 MSC
9900-9999 RESERVED

SUBPART 5252.2—TEXT OF PROVISIONS AND CLAUSES

5252.200 (FAR 52.200) Scope of subpart.

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

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

As prescribed in 5201.601(90)(a)(2), 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)

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

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

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

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

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

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

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

(d) When directed by the Government, the Contractor shall ship samples of GFM A&E in its possession to the Government testing facilities. GFM A&E samples will be shipped with the

Contract Number, NSN or part number, lot number, nomenclature and quantity clearly marked on the Bill of Lading. Failure to comply may result in rejection and/or disposal of the material at the destination at the expense of the Contractor. Any costs associated with the rejection and/or disposal of non-compliant or unauthorized shipments shall be borne by the Contractor.

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

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

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

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

5252.223-9001 NOTICE TO OFFERORS - USE OF OZONE DEPLETING SUBSTANCES

As described in 5223.803-91, a provision substantially the same as the following may be included in solicitations:

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

(a) In accordance with section 326 of Pub L.102-484, the Department of Defense is prohibited from awarding any contract which includes a DoD-directed specification or standard that requires the use of a Class I ozone depleting substance (ODS) or that can be met only through the use of such a substance unless such use has been approved by a senior acquisition official (SAO). The SAO approval is based on a technical certification that no suitable substitute for the ODS is currently available.

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

Class I ODS Identified

Specification/Standard

(c) If offerors possess knowledge about any other Class I ODS required directly or indirectly by the specification or standards, the Navy would appreciate such information in your response to this

solicitation. Offerors are under no obligation to comply with this request and no compensation can be provided for doing so.

(End of Notice)

SUBPART 5252.3—PROVISION AND CLAUSE MATRIX

5252.300 (FAR 52.300) Scope of subpart.

(S-90) The DoN matrix of FAR/DFARS and Other Government-Unique Provisions/Clauses of this Subpart only applies to solicitations and contracts for commercial item acquisitions issued pursuant to FAR Part 12 procedures. Use this matrix, in conjunction with the relevant FAR, DFARS and NMCARS prescriptions on provision and clause use for commercial item acquisitions, when determining the applicability of a provision or clause for use in solicitations and contracts for commercial item acquisitions. See Annex 7, DON Control Plan for Component Clauses and Commercial Item Acquisitions Provision/Clause Use.

5252.301 (FAR 52.301) Solicitation provisions and contract clauses (Matrix)

(S-90) The DoN Matrix of FAR/DFARS and Other Government-Unique Provisions/Clauses for Commercial Item Acquisitions, available at https://acquisition.navy.mil/media/files/nmcars/commercial_item_clause_matrix includes web-enabled links to the most current text of the provisions and clauses approved for use in solicitations and contracts for commercial item acquisitions.

ANNEX 1 - JUSTIFICATION AND APPROVAL

[Letter Head]

J&A No. xxxxxxxx

(CLASS) JUSTIFICATION AND APPROVAL
FOR USE OF OTHER THAN FULL AND OPEN COMPETITION

1. Contracting Activity.

[Provide the minimum information needed to identify the contracting activity. The contracting activity generally should be the lowest-level organization with a Commanding Officer of which the contracting office is a part. In some cases, where the contracting office is physically located at a different facility/base, it may be appropriate to identify the activity more specifically.]

Examples: (i) Naval Surface Warfare Center, Crane Division

(ii) Naval Air Warfare Center Training Systems Division

(iii) Naval Inventory Control Point, Philadelphia

(iv) Space & Naval Warfare Systems Command

2. Description of the Action Being Approved.

[Describe the authority being sought in general terms. For a Class J&A identify the date on which authority to act under the J&A ends (i.e., the last day an award is authorized, not the period of performance; the J&A "expiration date").]

Example: Award of a contract on a sole source basis for logistics services in support of EA-XX aircraft from DEF Corporation, Integrated Solutions Division. Authority to act under this class justification expires on January 31, 2010.

3. Description of Supplies/Services.

[Identify the supplies and services to be acquired, the estimated value, and the funding planned for the acquisition. Major items and associated quantities should be identified. Summarize long lists of items. Other items may be identified generically by logical groupings, such as "ancillary repair services" or "intermediate-level test equipment." Option quantities should be separately identified. Briefly address the period of performance or completion date.]

[Funding amounts should represent the estimated dollar value of the procurement and should be identified by fiscal year and appropriation. If several different types or years of funds are planned, consider providing the information in a chart format, such as the one below.]

Estimated Dollar Value

	FY06	FY07	FY08	FY09	FY10	Total
RDT&E						
OPN						
O&MN						
Total						

4. Statutory Authority Permitting Other Than Full and Open Competition.

[Use one of the following:

10 U.S.C. 2304(c)(1), One source or limited sources.

10 U.S.C. 2304(c)(2), Unusual and compelling urgency.

10 U.S.C. 2304(c)(3), Industrial mobilization; engineering, developmental, or research capability; or expert services.

10 U.S.C. 2304(c)(5), Authorized or required by statute.

10 U.S.C. 2304(c)(6), National Security.]

5. Rationale Justifying Use of Cited Statutory Authority.

[**Explain in detail** why the statutory authority permitting other than full and open competition applies to the proposed procurement. Provide your strongest argument. Avoid duplicative information. Be short, precise, and to the point.]

[If the explanation is based (whether fully or partially) on the lack of a performance specification, technical data package, specifications, engineering descriptions, a statement of work, or a purchase description suitable for full and open competition, explain why such a document has not been developed or is not available.]

[When the basis of the sole source justification is due to being a follow-on acquisition as implemented in FAR 6.302-1(a)(2)(ii)(supplies) or (iii)(services), provide:

- A statement as to whether or not the original contract award was competed.

- **An estimate of the cost to the Government that would be duplicated and an explanation of how the estimate was derived. The estimated cost can be based on the initial set-up costs, past actuals or estimates. The intent is not a detailed analysis but a trackable basis for drawing the conclusion that the estimated cost is so high that it will not be recouped through competition.**
- **An estimate of the length of the delay and an explanation of how the estimate was derived and why a delay of this length is unacceptable. The intent is to indicate if the time frame is prohibitive and would not support the program requirements. As indicated in FAR 6.301(c), this rationale does not apply when there is a lack of advance planning by the requiring activity.]**

[When the use of other than full and open competition is necessitated by an unusual or compelling urgency under the authority of 10 U.S.C. 2304(c)(2) as implemented in FAR 6.302-2, provide the estimated cost, data or other rationale to demonstrate the extent and nature of the harm the Government will suffer, or would have suffered, if the contracting activity could not limit competition.]

[Address any other facts supporting the use of other than full and open competition.]

6. Description of Efforts Made to Solicit Offers from as Many Offerors as Practicable.

[At a minimum, address:

- **Any other sources that have expressed interest. If these included any respondent that is not identified in the J&A as a potential source, explain on what basis the activity concluded that the respondent would be unable to satisfy the requirements of the proposed contract.**
- **If a synopsis of the proposed procurement was not published in FEDBIZOPS, explain why not, including the applicable FAR 5.202 regulatory exception.**
- **If Note 22 was not included in the synopsis, explain why not.**
- **If market research was conducted in accordance with FAR Part 10, describe how the market research was conducted and what the results were. If no market research was conducted, explain why not.]**

Examples: (i) The proposed contract was synopsised on the FEDBIZOPS website on July 6, 2005 and only EFG Corporation expressed an interest in this requirement. No additional market research was conducted because it is not practicable, for the reasons discussed in paragraph 5 above, for any company other than EFG to provide the required supplies and services.

(ii) *The proposed contract was synopsisized on the FEDBIZOPS website on July 6, 2005. In addition to EFG Corporation, responses were received from BBCC Company and from AGW Ltd. Representatives of the Program Office and the contracting officer held discussions with BBCC and AGW. Subsequently, both companies, based on a better understanding of the Navy's requirements, indicated in writing they were no longer interested in pursuing a prime contract. No additional market research was conducted because it is not practicable, for the reasons discussed in paragraph 5 above, for any company other than EFG to provide the required supplies and services.*

(iii) *The proposed contract was synopsisized on the FEDBIZOPS website on July 6, 2005 and no other potential sources expressed an interest in this requirement. In an effort to identify competitive interest, the Naval ABC Command, Industrial Sources Division, as part of their market research, provides more than 850 commercial entities, on an annual basis, a listing of items for which it is seeking competitive sources, as well as instructions for obtaining source approval information. Additionally, the availability of the listing is periodically publicized in FEDBIZOPS and feedback is requested regarding market capabilities. To date, no other companies have expressed interest in becoming qualified to compete for the items to be acquired under the proposed contract.*

(iv) *NAVCOM's ABC Division, the Navy's Center of Excellence for XYZ systems, maintains in-depth knowledge of XYZ technology developments and the XYZ industrial base. This includes insight into technologies that individual companies are focused on and their technical and production capabilities. ABC Division representatives maintain this knowledge through routine review of industry journals and attendance at industry symposia and conferences. They also periodically visit industry facilities for briefings on companies' IR&D efforts. Based on its knowledge and expertise, ABC Division has determined that no companies other than RST Corporation have the knowledge and technical capability required to provide the XYZ-24 systems. The lack of any responses to a synopsis of the planned contract published on the FEDBIZOPS website on June 5, 2005 validates ABC Division's determination.*

(v) *Members of OCONUS activity's technical, logistics and contracting community conduct market research on a continual basis. Annually they visit each site where system maintenance and component repairs are performed. During these visits, they meet with local contractors and on-site government representatives to review current capabilities and potential changes in system maintenance/repair requirements. Based on information gathered during their most recent visits, OCONUS activity has determined that only the current contractors are capable of meeting the Navy's requirements. A synopsis of these planned contracts has not been published. In accordance with FAR 5.202(a)(12), a synopsis is not required when the contract action is by a Defense agency and the proposed contract action will be made and performed outside the United States and its outlying areas, and only local sources will be solicited.*

7. Determination of Fair and Reasonable Cost. The Contracting Officer has determined the anticipated cost to the Government of the supplies/services covered by this J&A will be fair and reasonable.

[Once this determination is made, paragraph 7 need only contain the above statement. No additional information is required.]

8. Actions to Remove Barriers to Future Competition.

[If there is currently no reasonable likelihood of future competition, use the following or similar language:

For the reasons set forth in Paragraph 5, NAVSYSCOM has no plans at this time to compete future contracts for the types of supplies/services covered by this document. If another potential source emerges, NAVSYSCOM will assess whether competition for future requirements is feasible.]

[Discuss any actions the activity plans to take to change conditions that would preclude the use of full and open competition for acquiring the same or similar supplies or services in the future. In addition to acquiring a validated technical data package, such actions might include, for example, development of a performance specification, use of reverse engineering to develop a second source or, after justifying noncompetitive procurement of emergency supplies/services on the basis of unusual and compelling urgency, using competition to award contract vehicles for requirements at quantities greater than the emergent need, or for similar items if needed to meet future emergency situations.]

[If future competition is planned, provide the estimated date of the first competitive acquisition. If this is a one-time buy or a final buyout, so state.]

[If the Government anticipates acquiring a technical data package or developing a performance specification that will support competition, use the following or similar language:

The Government (or Program Office) expects to obtain a technical data package or develop a performance specification that will support competition for future acquisitions of the same or similar items.]

[New page]

J&A No. xxxxxxxx

CERTIFICATIONS AND APPROVAL

TECHNICAL/REQUIREMENTS CERTIFICATION

I certify that the facts and representations under my cognizance which are included in this Justification and its supporting acquisition planning documents, except as noted herein are complete and accurate to the best of my knowledge and belief.

Technical Cognizance:

Signature	Name (Printed)	Phone No.	Date
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Requirements Cognizance:

Signature	Name (Printed)	Phone No.	Date
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[Note that this page includes certification that the acquisition planning documents are complete and accurate. If a single individual has cognizance over both technical and requirements information included in the J&A, use of only one signature line is encouraged and "Technical Cognizance:" and Requirements Cognizance:" above the signature lines may also be deleted.]

LEGAL SUFFICIENCY REVIEW

I have determined this Justification is legally sufficient.

Signature	Name (Printed)	Phone No.	Date
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CONTRACTING OFFICER CERTIFICATION

I certify that this Justification is accurate and complete to the best of my knowledge and belief.

Signature	Name (Printed)	Phone No.	Date
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SENIOR PROCUREMENT EXECUTIVE APPROVAL

Upon the basis of the above justification, I hereby approve, as Senior Procurement Executive of the Navy, the solicitation of the proposed procurement(s) described herein using other than full and open competition, pursuant to the authority of 10 U.S.C. 2304(c)(x)(provide appropriate citation).

[Print Name of ASN(RDA)]	Date
--------------------------	------

[LETTER HEAD]
ACTION MEMO

[Date]

FOR: ASSISTANT SECRETARY OF THE NAVY (RDA)

VIA: DEPUTY ASSISTANT SECRETARY OF THE NAVY (AP)

FROM: (Name, Title, Activity -- Named individual signs above typed info)

**SUBJECT: [ACTIVITY NAME] JUSTIFICATION AND APPROVAL [NUMBER]
FOR [TOP-LEVEL DESCRIPTION OF SUPPLIES/SERVICES
COVERED BY THE J&A]**

**Example: NAVAL SEA SYSTEMS COMMAND JUSTIFICATION AND
APPROVAL
(J&A) 22567 FOR LEAD YARD SERVICES FOR VIRGINIA CLASS
SUBMARINES**

- ASN(RDA) approval is required for the J&A [or state CJ&A, if applicable] at Tab A.
- [Briefly describe what the J&A covers, in terms of
 - the type of contract action(s) involved,
 - the identity of the planned contractor[s],
 - the supplies or services to be acquired including quantities by fiscal year for major items,
 - the total estimated value of the contract, with funding summary, and
 - identification of the planning document (e.g., the Acquisition Plan/Strategy) that supports the procurement. If none, explain why not.]

Example: This J&A covers award of a contract to ABC Aircraft Company, a fully owned subsidiary of DEF Company, for the SDD phase of the XYZ Program. This effort will include the design and development of an air vehicle, including two Ground Test Vehicles and five Engineering Development models, testing, engineering studies and related supplies and services. The estimated total value of the contract is \$X.XB and will be funded with FY06 through FY11 RDT&E funds. The planned contract is supported by NAVAIR Acquisition Strategy 050-03-01, approved by USD(AT&L) on SEP 5, 2005.

Example: This J&A covers award of a contract to LGI Corporation for performance-based logistics support of the EFG system. The contract will include a three-year base period and four one-year options. Total estimated value of the contract is \$123M and will be funded with Navy Working Capital Funds (NWCF). The J&A is consistent with NAVICP Acquisition Plan No. 12345, approved July 8, 2005 by PEO(ABC).

- **[In a few sentences, summarize the rationale set forth in Paragraph 5 of the J&A for using other than full and open competition. Address other information necessary to provide a context for the procurement and facilitate understanding of the proposed business approach. Additional information might explain, for example, that:**
 - **the planned contract is a final buyout of the requirement,**
 - **the sole source was determined through a prior competitive down-selection,**
 - **under a prior contract the program experienced significant cost savings when it broke out the requirements covered by the planned contract from a larger system integration contract,**
 - **the contractor plans to integrate work under the contract with a commercial production line, or**
 - **the contractor plans to enter into a partnering arrangement with another firm or Government entity for highly specialized requirements.]**

Example: PRP is the sole designer, developer and manufacturer of the XX-46 series radar system and is the only contractor with the requisite knowledge, experience and technical data that can meet the Government's requirements on a timely basis.

Example: MN Corporation is the sole designer, developer and manufacturer of the F-XX-416 series engines and is the only contractor with the requisite knowledge, experience and technical data that can provide the required performance based logistics support for these engines. Until 2001, MN supported these engines as a subcontractor to the prime contractor for the entire F-112 aircraft support contract. Breaking out this portion of the total system effort resulted in a 22% reduction in F-XX-416 engine support costs.

Example: The J&A cites 10 U.S.C. 2304(c)(3) as the statutory exception justifying use of other than full and open competition. This exception applies when it is necessary to award the contract to a particular source in order to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center (FFRDC). As a FFRDC, CNA is uniquely qualified to provide these services because of its unquestioned objectivity and lack of potential conflicts of interest, its confidentiality in protecting very sensitive military and intelligence information, its familiarity with the needs of the Navy and Marine Corps, and its establishment of a continuing research agenda for the Navy and Marine Corps.

- **[Briefly explain any differences between information included in the J&A and information in the supporting Acquisition Strategy/Plan, and explain the rationale for these differences. Pay particular attention to differences in quantities and funding levels. Also, note any significant congressional or other programmatic issues. These may include, for example:**
 - *pending legislation that could impact the procurement,*
 - *known congressional concerns with the acquisition strategy, or*

- *recent test results that might delay the program.*]

Example: Last month, the PEO/PM met with Senator Smith's staff to discuss the feasibility of using the XYZ system to meet our requirements in lieu of the ABC system. Although the PM provided a detailed explanation of why this would not be feasible, it's possible that Senator Smith will contact you directly to discuss this subject further. The PM is prepared to provide you with a briefing, as necessary.

- [Identify point of contact information for the PEO, PM, and PCO including name, phone number and email address.]

RECOMMENDATION: Approve J&A [or CJ&A, if applicable] at Tab A.

COORDINATION: At Tab B. [This is a placeholder for DASN(AP) staff use.]

ANNEX 2 - BUSINESS CLEARANCE MEMORANDUM

BUSINESS CLEARANCE MEMORANDUM

Number _____

SECTION I – COVER AND SIGNATURE PAGES

Type of Procurement Action: <input type="checkbox"/> Sealed Bidding <input type="checkbox"/> Full and Open Competition <input type="checkbox"/> Negotiated Under 10 U.S.C. 2304(b)() <input type="checkbox"/> Negotiated Under 10 U.S.C. 2304(c)() <input type="checkbox"/> Negotiated Under 40 U.S.C. 541 Brooks Act <input type="checkbox"/> Negotiated Pursuant to Changes Clause <input type="checkbox"/> Claim Settlement <input type="checkbox"/> Definitization of Letter Contract <input type="checkbox"/> Final Price (Incentive, Redeterminable, or EPA)	Type of Clearance: <input type="checkbox"/> Pre-Negotiation <input type="checkbox"/> Post Negotiation <input type="checkbox"/> Letter Contract																																												
Solicitation/Contract Number:																																													
Activity:																																													
Contractor(s): Name: City/State:																																													
Program:																																													
Description of Supplies/Services:																																													
<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: none;">Pricing Structure:</th> <th style="text-align: center; border-bottom: none;">Proposal</th> <th style="text-align: center; border-bottom: none;">Pre-Negotiation</th> <th style="text-align: center; border-bottom: none;">Post-Negotiation</th> </tr> </thead> <tbody> <tr> <td style="border-top: none;">Cost (Excluding COM)</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="border-top: none;">Cost of Money</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="border-top: none;">Total Cost</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="border-top: none;">Fee/Profit (%)</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="border-top: none;"> Base Fee (%)</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="border-top: none;"> Award Fee (%)</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="border-top: none;">Total</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="border-top: none;">Ceiling Price</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="border-top: none;">Sharing Arrangement:</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="border-top: none;">Clearance Total:</td> <td></td> <td></td> <td></td> </tr> </tbody> </table>		Pricing Structure:	Proposal	Pre-Negotiation	Post-Negotiation	Cost (Excluding COM)				Cost of Money				Total Cost				Fee/Profit (%)				Base Fee (%)				Award Fee (%)				Total				Ceiling Price				Sharing Arrangement:				Clearance Total:			
Pricing Structure:	Proposal	Pre-Negotiation	Post-Negotiation																																										
Cost (Excluding COM)																																													
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Clearance Total:																																													
Performance Period:																																													
Start	Finish																																												
Or Deliveries:																																													
First	Final																																												
Prepared By:																																													
Name: Title: Phone: Date:																																													

Recommendation:

(Note: Per FAR 15.404-4(c)(4)(ii), the Contracting Officer's signature on the price negotiation memorandum documents that the statutory price or fee limitations have not been exceeded.)

<p>Contracting Officer: Signature: _____ Printed Name: Phone: Date</p> <p>Legal Counsel (If applicable): Signature: _____ Printed Name: Phone: Date:</p> <p>Reviewer (If applicable): Signature: _____ Printed Name/Title: Phone: Date:</p> <p>Approval (If other than Contracting Officer): Signature: _____ Printed Name/Title: Phone: Date:</p> <p>Unconditional Approval _____ Not Approved _____ Conditional Approval _____</p> <p>Conditions (If applicable):</p>

SECTION II. KEY DOCUMENTS/EXHIBITS/ATTACHMENTS.

A. Summary of Key Documents. Identify and date each key document.

1. Acquisition Strategy/Plan
2. Procurement Request:
3. Solicitation:
4. Contractor(s) Proposal(s):
5. Proposal Evaluation Reports (as applicable)
 - DCAA Report(s):
 - ACO Report(s):
 - Technical Advisory Report:
 - Cost Advisory Report:
 - Past Performance Report
 - Management Evaluation Report
6. Other documents as appropriate:

B. Attachments. List in the order they appear in the body of the clearance. Attachments may include the following:

1. Source selection criteria with adjectival ratings or weights (RFP Section L)
2. Evaluation Factors for Award (RFP Section M)
3. Special Provisions
4. Summary matrix of competitive proposals
5. Non-price evaluation summaries with scoring
6. Contract Facilities Capital Cost of Money DD Form 1861
7. Weighted Guidelines DD Form 1547 (DFARS PGI 215.404-70)
8. Other documents as appropriate

Section III: PRE-SOLICITATION INFORMATION.

[Note: A business clearance documents compliance with law, executive orders, regulations, and policy (FAR 1.602-2). It will become the record showing good business judgment was exercised throughout the procurement process. The business clearance should document the principal elements of a negotiated agreement for the contract file (FAR 15.406-3).]

State the purpose of the business clearance memorandum, such as a request to enter negotiations, a request for Letter Contract approval, or a request for approval to award.

A. Description of Supplies/Services. Include quantities, delivery schedules, options, and any other information to clearly explain what is included in the procurement. If appropriate, a chart format or attachment could be used to provide detail.

B. Background.

1. Procurement history.

- a. For weapons systems, describe previous development phases.
- b. Describe previous procurements for the same supplies or services.
- c. Describe any consolidation or bundling.
- d. For a modification to an existing contract, provide information on the existing contract's procurement history.
- e. For service contracts, state whether previous contracts were subject to Labor Standards Statute and/or Construction Wage Rate Requirements Statute labor requirements.
- f. Provide other relevant historical information, as needed.

2. Acquisition environment.

- a. Explain whether this procurement is sealed bid, negotiated, two step formal advertising, two-phase design/build (FAR Subpart 36.3), or other.
- b. Specify whether it is a sole source, competitive, set-aside, definitization of a Letter Contract, change order, etc.
- c. Discuss any limitations set on which business concerns can propose or factors that might otherwise affect the Government's options to compete or negotiate the procurement. Such limitations would include Brand Name or Equal procurements (FAR 11.104), required sources of supplies/services (FAR Part 8), or unsolicited proposals (FAR 15.6).
- d. Describe any Requests for Information issued or Industry Days held as part of market research (FAR 10.002(b)(2)) and the industry response in terms of potential for competition.
- e. Determine if Theater Business Clearance (TBC) requirements apply to the procurement as defined in 5201.690(f).

C. Independent Government Estimate (IGE) (FAR 36.203 for construction, FAR 36.605 for architect-engineer). Address the matters specified in USD(AT&L) DPAP's September 17, 2007

memo titled “Contracting Practices – Independent Government Estimates, Government Surveillance, and Contract Quality Assurance” as follows:

1. Method used for IGE development.
2. Assumptions made.
3. Information estimating tools used.
4. Source of information.
5. Compare estimates for previous procurements with the prices paid.

D. Type of Contract.

1. Identify contract type and, for other than firm fixed price contracts, summarize rationale for selection (FAR 16.104) including consideration of technical, schedule, and cost risks.

2. For development contracts, address compliance with approval requirements of DFARS 235.006.

3. For incentive (FAR 16.4) or redeterminable (FAR 16.205/206) contracts, discuss provisions of the pricing structure. Describe Government defined share ratios, ceilings, economic price adjustments (DFARS 216.203), and any other aspects of the pricing structure.

4. For award fee contracts (FAR 16.404, 16.405-2), summarize the award fee plan (or use attachments):

a. Number and length of award fee periods projected or milestones to be used, estimated percentage of costs to be incurred during each period, and the projected percentage of award fee available during each period;

b. Contractor performance evaluation categories and evaluation criteria (All CPAF contracts or contracts incorporating award fee provisions should include a category on cost and criterion for cost control.); and

c. Ratings for performance evaluation criteria including definitions of ratings, scoring range, available award fee pool for each rating and any weighting factors.

5. Cite justification for use of options in accordance with FAR 17.205.

E. Source Selection Planning.

1. For competitive acquisitions using the source selection process:

a. Describe the source selection process, such as a Best Value Continuum (FAR 15.101) or Lowest Price Technically Acceptable (FAR 15.102).

b. Describe the source selection organization, evaluation criteria, and basis for award as contained in the solicitation (Attachments may be used).

c. If an evaluation of the extent of participation by small business and Historically Black Colleges and Universities and minority institutions is required by DFARS 215.304(c)(i), explain where it is covered in the evaluation criteria.

2. For construction procurements using prequalification procedures, the clearance should address the factors at DFARS 236.272 and the results of the pre-qualification process.

3. For two-phase design-build solicitations, the evaluation factors at FAR 36.303 should be addressed. For architect-engineer solicitations, the requirements of FAR 36.602 should be addressed.

F. Special Provisions. Discuss any special provision not included in discussion under Type of Contract above, such as the following:

1. Deviations from FAR, DFARS, NMCARS, or other DoD or Departmental regulations (DFARS Subpart 1.4/NMCARS 5201.403).

2. Unusual controverted (disputed) cost clauses/re-opener clauses.

3. Design to Cost (FAR 7.105(a)(3)(i)).

4. Organizational Conflicts of Interest (FAR 9.504).

5. Small business incentive (FAR 19.705-5(a)(4) and DFARS 19.203).

6. Wage determinations required by the Labor Standards Statute (FAR 22.1003-1) or the Construction Wage Rate Requirements Statute (FAR 22.402 and 22.403-1).

7. Source Restrictions, such as Buy American or 10 U.S.C 2533a or b (FAR Part 25/DFARS Part 225).

8. Rights in technical data (FAR Part 27/DFARS Part 227).

9. Unusual contract financing clauses, i.e., milestone billings, advance payments etc. (FAR Part 32/DFARS Part 232).

10. Government Furnished Equipment/Material/Property (FAR Part 45/DFARS Part 245).

11. Special Tooling and Test Equipment (FAR 45.306 & 307)

12. Warranty provisions to include cost benefit analysis (DFARS 246.704) and approval.

13. Security Classification (DD Form 254)

G. Solicitation Review and Compliance.

1. Discuss whether the solicitation is in agreement with the Acquisition Strategy and Acquisition Plan. If not, discuss the differences and the circumstances which necessitated the changes from the planning documents.

2. Discuss whether a legal review of the solicitation was obtained prior to issuance.

H. Synopsis. Give date of synopsis in Governmentwide Point of Entry (GPE). If procurement was synopsisized in a location other than GPE, provide information.

SECTION IV – PRE-SOLICITATION COMPLIANCES (If approval/determination was included in another document, please note):

Check if N/A	DOCUMENT/APPROVAL CHECKLIST	Document Number, Approving Official & Date
	Acquisition Strategy (FAR 34.004) or Management Oversight Process for Acquisition of Services (NMCARS 5237.503)	
	Acquisition Plan (DFARS 207.103)	
	Waiver of Synopsis (FAR 5.202)	
	Determinations and Findings (D&F) to exclude a source (FAR 6.202)	
	Determination and Findings (D&F) for the Public Interest circumstances permitting Other Than Full and Open Competition (FAR 6.302-7)	
	Justification for Other Than Full and Open Competition (FAR 6.303)	
	Bundling contract requirements (FAR 7.107(c))	
	Determination to consolidate contract requirements (DFARS 207.170-3)	
	Determination of Commercial Item for FAR Part 12 Over \$1M (DFARS 212.102(a)(i))	
	Determination to Use Commercial T&M or LH contract (FAR 12.207)	
	Source Selection Plan (DFARS 215.303)	
	Contract type determination (FAR 16.102(d)) (See FAR 16.601(d)(1) for Time & Materials or Labor Hours)	
	Award Fee Plan (FAR 16.405-2(b), PGI 216.405-2, PGI 216.470)	
	HCA Determination to Use CPAF (DPAP memo April 24, 2007)	
	Use of contract terms in excess of five years (FAR 17.204(e))	
	Use of non-DoD contract vehicle (NMCARS 5217.7802)	
	DD Form 2579 Small Business Coordination Record (DFARS 219.201)	
	Approval for expedited completion date for MILCON (DFARS 236.270)	
	Authority to Contract out for Personal Services (NMCARS 5237.104(b)(i))	
	Determination of Personal/Non-Personal Services (FAR	

	37.103)	
	Non-performance based acquisition (DFARS 237.170-2)	
	Approval to use warranty (DFARS 246.704)	

SECTION V – SOLICITATION.

Discuss events during the solicitation process.

A. Pre-bid conferences (FAR 14.207), pre-solicitation conferences (other than Industry Days described in Section III above), pre-construction orientations, or other exchanges with industry before receipt of proposal (FAR 15.201).

B. How the solicitation was made available.

C. Questions received and answered.

D. Amendments issued and resultant changes to acquisition planning.

E. Protests before closing of the solicitation.

F. Extent competition solicited and secured. Include information on contractors expressing interest during the solicitation period and offers received in response to the solicitation. If any offerors not submitting a proposal gave an explanation for their decision not to submit a proposal, summarize the explanation. If only one offer was received, explain why the proposal will or will not be considered competitive.

G. Oral presentations (FAR 15.102). If oral presentations were used, summarize the process including which parts of the proposal were presented orally and participants. Content of oral proposals should be included in sections on evaluation below.

H. Summary table of proposals. Show a summary table of offerors' prices and ratings/evaluation for each factor required by the solicitation such as technical, past performance, other non-cost factors, and cost. Attachment may be used.

SECTION VI – PRE-NEGOTIATION ANALYSIS.

[The business clearance should be a stand-alone document which explains the offer(s) and the Government’s evaluation of the offer(s). An understanding of the development of each position is important to be adequately prepared for negotiations, to determine a competitive range, or to decide to award without negotiations. This section should be tailored to the specific solicitation’s procedures for evaluation of cost/price and other non-cost factors included in the solicitation.]

Document the methodology used by the offeror(s) in developing the proposal(s) both from cost and non-cost stand-points and the methodology used by the Government in developing its negotiation position(s). Include discussion of recommendations from field pricing/technical/audit reviews, which recommendations were or were not used and why the recommendations used were

considered appropriate for use in developing the Government's independent pre-negotiation position(s).

Address each factor used for evaluation as follows:

A. Technical Evaluation (FAR 15.305(a)(3)). For each subfactor under the technical factor, give the adjectival ratings or raw scores for each offeror. Show the weighting or other means of determining the overall score for the factor (15.305). Discuss any clarifications obtained in the process of the evaluation or other communications with offerors before establishment of the competitive range (FAR 15.306). Summarize the technical weaknesses and deficiencies of each offeror.

B. Past Performance Evaluation (FAR 15.305(a)(2)). For each subfactor under the past performance factor, give the adjectival ratings or raw score for each offeror. Show the weighting or other means of determining the overall score for the factor. Discuss any clarifications obtained in the process of the evaluation or instances where an offeror was given access to adverse past performance information to which the offeror had not previously had an opportunity to respond (FAR 15.306). Summarize weaknesses or deficiencies of each offeror. This factor should include evaluation of past performance under subcontracting plans if required by DFARS 215.305(a)(2).

C. Other Non-Cost Factor Evaluation. For each subfactor under any non-cost evaluation factor, give the adjectival or raw score for each offeror. Show the weighting or other means of determining an overall score for the factor. Discuss any clarifications obtained in the process of the evaluation or other communications with offerors before establishment of the competitive range (FAR 15.306). Summarize the weaknesses and deficiencies of each offeror.

D. Cost/Price and Profit/Fee Analysis (FAR 15.305(a)(1)). [Evaluation of proposals may be done through cost analysis, price analysis, or a combination of the two techniques. The necessity for a separate profit/fee analysis is dependent on the extent of price analysis (FAR 15.404(c)(1) and DFARS 215.404(c)(1)).]

1. Price analysis (FAR 15.404-1(b)).

a. Provide a summary comparison by line item or cost element, as appropriate to the solicitation, for all offerors and the Government's position or IGE.

b. Document how the price was determined to be fair and reasonable. If determining price reasonableness based on adequate price competition, the clearance should address the criteria of FAR 15.403-1(c)(1). If prices are set by law or regulation, specify the basis for the price cited (FAR 15.403-1(c)(2)). Price reasonableness determinations based on comparison to historical prices, catalogue prices, market prices, or other such benchmarks should establish comparability of the supplies/services. The prices being compared should be specified in the clearance or an attachment. If catalogue prices are used for comparison, availability of such prices to the public should be addressed.

2. Cost evaluation (FAR 15.404-1(c)).

a. Provide a summary comparison for each offeror in columnar format of (i) the offeror's proposal, (ii) the audit recommendations (FAR 15.404-2(c)), if requested, (iii) the field pricing

recommendations (FAR 15.404-2(a)), if requested, and, (iv) the pre-negotiation position by elements of cost. [Elements of cost may vary. The following is a notional format.]

ELEMENT	PROPOSED	AUDIT	FIELD	PRE-NEG
Material				
Material O/H				
Labor				
Labor O/H				
Subcontracts				
ODCs				
G&A				
Subtotal				
COM				
Fee/Profit				
TOTAL				

b. Provide a narrative addressing the individual elements of cost . Identify factors under major cost elements to show how the pre-negotiation position was developed. Identify and detail areas of nonconcurrency with audit or field recommendations and provide justification for the nonconcurrency. Detail can be included as an attachment where necessary. If the clearance is for definitization of a Letter Contract or existing commitment, specifics on actual costs incurred should be included

(i). Material.

(a). Summary of source and contractor's estimates – firm purchase orders, quotes, competition, catalog items, estimates, prior history.

(b). Attrition/Scrap/Variance factors applied to the net bill of material.

(c). Make/Buy plans.

(d). Summary of field sampling technique. Dollar percentage of items reviewed to total dollar value of bill of material.

(e). Historical negotiation reduction factor prime contractor experiences when converting vendor quotes to firm purchase orders.

(f). For high dollar value items, review prime contractor negotiator's analysis. Discuss use of actual cost data to develop negotiation positions. Utilize most recent historical actual cost for analysis. Compare unit prices with historical prices.

(g). Discuss findings of assist audits and explain if any audit recommendations were not incorporated into the Government position.

(h). Identify the quantity and value of recurring and nonrecurring material.

(i). Discuss offeror's efforts to combine common parts for this effort and other programs in-house. Identify the percent of material under subject acquisition which is being bought under corporate pricing agreements.

(ii). Material Overhead.

(a). Summary of proposed rates and basis for rates per year. If negotiated forward pricing rate agreement (FPRA) exists, identify period covered by the agreement.

(b). If no negotiated agreement exists, state field recommended rates by year and reasons for variances from proposed rates.

(c). Discuss historical rate actuals. Discuss whether actuals are tracking to the negotiated FPRAs. If actuals are not tracking, discuss coordinated action with ACO.

(d). Identify material base to which the rate applies.

(e). Summarize negotiator's analysis in determining rates for the development of the pre-position.

(iii). Direct Labor. [If appropriate, use separate sections for types of labor such as engineering and manufacturing.]

(a). Summary of offeror's approach and basis for estimate by individual labor category.

(b). Discuss whether the offeror's proposal will comply with any wage determinations required.

(c). Provide historical actual hours per each labor category.

(d). Identify recurring and non-recurring hours.

(e). Identify hours which are quantity related and which are time related.

(f). Provide manloading charts, if applicable.

(g). Summarize negotiator's approach to developing pre-position.

- Learning curve with provide actual points, midpoints, slope of regression and coefficient of determination (R^2) of regression.
- Level of effort over period of performance (constant or variable).
- Recurring and nonrecurring hours.
- Time/quantity related nature of work for manufacturing support.
- Conversion factors for staffing level (head count) to hours.

(iv). Labor Rates.

(a). Summarize offeror's proposed rates per year and basis for development. Compare to any applicable wage determination if required by the Labor Standards Statute or Construction Wage Rate Requirements Statute. If negotiated forward pricing agreement (FAR 15.407-3) exists, identify period covered by the agreement. Discuss effect of union agreement(s) or wage determination(s), if applicable, on forward pricing rate established. Identify when Cost of Living Adjustments (COLAS) or wage determination updates are scheduled.

(b). Address rates of increase for executive compensation, salaries, wages and employee benefits as it applies to the planned aggregate of all types of labor (both direct and indirect) increases (e.g., Cost of Living Allowances, in-grade increases, merit increases and performance bonuses) as well as to employee fringe benefits (e.g., lower deductible for employee's share of medical and dental insurance premiums, changes in

employer's share of salaried savings plans, increased vacation/sick leave/holiday).

Excluded are new hires, promotions and normal attrition.

(c). If no negotiated forward pricing agreement exists, discuss field recommended rates by year and reasons for any variance from proposed rates.

(d). Discuss historical actuals. If a negotiated forward pricing agreement is in effect, discuss whether the actuals are tracking to the negotiated rates. If actuals are not tracking to the negotiated rates, input on use of negotiated rates should be obtained from the ACO.

(e). Summarize the negotiator's analysis for determining rates used to develop the pre-negotiation position.

(v). Overhead Rates.

(a). Summarize offeror's proposed rates per year and basis for estimate. If negotiated forward pricing agreement exists, identify period covered by the agreement.

(b). If no negotiated agreement exists, discuss field recommended rates by year and reasons for variances from contractor proposed rates.

(c). Discuss historical actuals using correlative analysis of the base to experience rate. If a negotiated forward pricing agreement is in effect, discuss whether the actuals are tracking to the negotiated rates. If actuals are not tracking to the negotiated rates, input on use of negotiated rates should be obtained from the ACO.

(d). Summarize the negotiator's analysis for determining composite rates used to develop the pre-negotiation position.

(e). Discuss any ceilings on rates.

(f). Identify and discuss wage escalation included in rates.

(g). If the Labor Standards Statute and/or Construction Wage Rate Requirements Statute is applicable, discuss whether any portion of forward pricing rate agreement amounts or other wage escalation included in overhead rates duplicates the "accompanying costs" adjustment under the Acts.

(vi). Subcontracts.

(a) Summarize subcontracts included in the proposal [unless included under earlier sections on material or labor].

(b) Provide negotiator's analysis of subcontracts including information obtained from audit or field pricing.

(vii) Other Direct Charges.

(a). Summarize offeror's proposed expenses and basis for estimate.

(b). Summarize field recommendations.

(c). Negotiator's analysis supported by actuals and historical data.

(vii). G&A.

(a). Summarize offeror's proposed rates per year and basis for estimate. If negotiated forward pricing agreement exists, identify period covered by the agreement.

- (b). If no negotiated agreement exists, discuss field recommended rates by year and reasons for variances from contractor proposed rates.
- (c). Discuss historical actuals using correlative analysis of the base to experience rate. If a negotiated forward pricing agreement is in effect, discuss whether the actuals are tracking to the negotiated rates. If actuals are not tracking to the negotiated rates, input on use of negotiated rates should be obtained from the ACO.
- (d). Summarize the negotiator's analysis for determining composite rates used to develop the pre-negotiation position.
- (e). Discuss any ceilings on rates.
- (f). Identify and discuss wage escalation included in rates.
- (g). If the Labor Standards Statute and/or Construction Wage Rate Requirements Statute is applicable, discuss whether any portion of forward pricing rate agreement amounts or other wage escalation included in G&A rates duplicates the “accompanying costs” adjustment under the Acts.

(ix). Cost of Money.

- (a). Summarize offeror's proposed facts and basis for estimate. If negotiated forward pricing agreement exists, identify period covered by the agreement.
- (b). If no negotiated agreement exists, discuss field recommendation and reasons for any variances from contractor proposed rates.
- (c). Discuss historical actuals. If a negotiated forward pricing agreement is in effect, discuss whether the actuals are tracking to the negotiated factors. If actuals are not tracking to the negotiated rates, input on use of negotiated rates should be obtained from the ACO.
- (d). Summarize the negotiator's analysis for determining composite rates used to develop the pre-negotiation position.
- (e). Discuss any ceilings on rates.
- (f). Attach DD Form 1861 for each offeror in the competitive range.

3. Pre-Negotiation Profit/Fee Analysis.

- a. Discuss each contractor's proposed profit/fee rate.
- b. Support pre-negotiation profit/fee rate with completed DD Form 1547 (DFARS 215.404-4(b)(1)) and discuss use of each assigned weight, or discuss applicable exemption.
- c. Incentive/Award Fee Structure.
 - (i). Share ratio under/over target and rationale.
 - (ii). Min/max fee structure and rationale.
 - (iii). Point of Total Assumption (PTA) analysis.
 - (iv). Ceiling.
 - (v). Range of cost incentive effectiveness (RIE) for CPIF.

SECTION VII – OTHER PRE-NEGOTIATION INFORMATION.

- A. Comparison of pre-position to historical prices in constant and then year dollars, if not done as part of cost or price analysis.
- B. If applicable, discuss exemptions requested to Buy American, Berry Amendment, specialty metals restrictions, or other requirements of the solicitation.
- C. If data for competitive reprourement is being purchased, discuss cost, delivery and whether the Government will get unlimited rights.
- D. If applicable, discuss the requirement of FAR 45.306 and 45.307 with regard to the acquisition of Special Test Equipment and/or Special Tooling.
- E. If applicable, identify offerors and attendees at pre-negotiation and fact finding sessions. Document when sessions were held and what was included in discussions. Identify any other exchanges with offerors after receipt of proposals. (FAR 15.306)
- F. Not-to-exceed prices
 - 1. For undefinitized contract actions (UCAs), address compliance with the limitations set forth in DFARS 217.7404) and provide support for the not-to-exceed price.
 - 2. For BOA orders with a not-to-exceed price, address compliance with the limitations set forth in DFARS 216.703 and provide support for the not-to-exceed price.
 - 3. For change orders with a not-to-exceed price, address compliance with the limitations set forth in NMCARS 5243.201(91) and provide support for the not-to-exceed price.

SECTION VII - DECISION TO PROCEED.

Summarize the course of action decided based on the information set forth in the business clearance to this point.

- A. Competitive range (FAR 15.306(c)). Include a determination and supporting discussion of offerors determined to be within and outside the competitive range.
- B. Indicate whether discussions/negotiations are necessary or why they will generate a better value to the Government.
- C. If award is to be made without discussions, briefly discuss why (FAR 15.306(a)).

SECTION IX – PRE-AWARD COMPLIANCES (If competitive, document specific information for each offeror):

Check if N/A	DOCUMENT/APPROVAL CHECKLIST	DATE
	Review of Online Representations & Certifications Application (FAR 4.1201(c))	
	Determination of Responsibility (FAR 9.103) and financial stability (FAR 9.104-1(a)).	
	HCA Waiver of Cost or Pricing Data (FAR 15.403-1)	
	Certificate of Current Cost or Pricing Data (FAR 15.406-2)	
	Approved Make or Buy Plan (FAR 15.407-2)	
	Contractor’s Estimating System determined acceptable by ACO (DFARS 215.407-5)	
	Pre-Award Disclosure Statement - Cost Accounting Practices and Certification (FAR 15.408)	
	Contractor’s Accounting System determined adequate by CAO/DCAA (FAR 16.301-3)	
	Determination to make single award for IDIQ Advisory and Assistance Services over 3 years and \$11.5M (FAR 16.504(c)(2)(A) or (B))	
	Subcontracting Plan determined adequate (FAR 19.705-4)	
	Approval of SDB subcontracting goal less than 5% (DFARS 219.705-4)	
	EEO compliance requested/obtained (FAR 22.805).	
	Disclosure Statement determined current, accurate and complete by ACO (FAR 42.302(a)(11)).	
	Contractor EVMS verified compliant with DoD criteria by DCMA (DFARS 242.302(S-71)).	
	Contractor Purchasing System determined to be approved by the ACO (FAR 44.304)	
	Property System reviewed for acceptability by ACO (FAR 45.105).	
	Compliance with DoD Instruction 7640.2 as supplemented by SECNAV Instruction 4330.16.	

SECTION X – POST-NEGOTIATION

A. Update events since pre-negotiation clearance approved. Discuss when pre-negotiation clearance was approved, conditions of the approval, how these conditions were resolved and where in the clearance these conditions are discussed.

B. Negotiations. Discuss when negotiations were conducted, with which contractor(s), and the participants. Discuss requests for final proposal revisions (FAR 15.307).

C. Elimination from Competitive Range. Discuss Contracting Officer decision to no longer include contractor(s) in the competitive range and issuance of written notices (FAR 15.306(c)(3)).

D. Results of Negotiation

1. Provide a summary comparison in columnar format of the respective positions of contractor(s) proposal(s), pre-negotiation objective(s), and post-negotiation position(s), by element of cost.

ELEMENT	PROPOSED	PRE-NEG	POST-NEG
Material			
Material O/H			
Labor			
Labor O/H			
Subcontracts			
ODCs			
G&A			
Subtotal			
COM			
Fee/Profit			
TOTAL			

2. Discuss rationale for differences in pre-negotiation and post-negotiation positions.

3. Include any supplemental cost data obtained, such as written documents or oral presentations of actual cost data (material prices, labor hours, labor rates, overhead rates, etc.).

4. Include an evaluation of the supplemental data and the degree to which it supports or justifies the prices negotiated with the contractor.

5. Include a discussion on the extent to which the contracting officer relied on cost or pricing data submitted and certified by the contractor. There must be sufficient details included in the clearance to avoid difficulties in determining what cost and pricing data were relied on should defective pricing data be subsequently alleged (FAR 15.407-1).

6. Address rationale for changes in special provisions or new special provisions added during negotiations. Attach clauses if different from those in the pre-negotiation clearance.

7. If the Service Contract Act and/or Davis-Bacon Act is applicable, discuss whether any wage determination required updating prior to award. (FAR 22.1012 or FAR 22.404-6) If so, discuss the impact.

E. Competitive acquisitions.

1. Discuss source selection evaluation factors and other considerations which support the award recommendation. Discuss rationale for selection of source(s) including trade-offs between price and non-price factors. If circumstances warrant, discuss financial stability of contractor.

2. Discuss source selection decision (FAR 15.308). If the Business Clearance Memorandum will serve as the sole record of the source selection decision, include language specifying such a determination, such as "I, [Name], the Source Selection Authority for this procurement, have independently reviewed all evaluations and recommendations provided herein. As a result of such review, I have determined [Contractor Name] to be the awardee."

F. If pre-contract costs (FAR 31.205-32) or any other form of advance agreement (FAR 31.109) has been or will be authorized, discuss the justification for use, limitations included, and approvals obtained.

G. Other Information pertinent to the clearance not previously addressed.

H. Attachments, as needed or if updated from Pre-Negotiation Clearance.

1. Certificate of Current Cost or Pricing Data
2. DD Form 1547 and DD Form 1861.
3. Incentive share arrangements.
4. Special clauses.
5. Source Selection Decision Memorandum.

ANNEX 3 - DOMESTIC NON-AVAILABILITY DETERMINATION

Note: This annex contains templates for required documentation on Domestic Non-availability Determinations (DNADs) executed pursuant to the following statutes:

10 U.S.C. 2533a (“Berry Amendment”); and

10 U.S.C. 2533b (“Specialty Metals”).



DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

DETERMINATION OF DOMESTIC NON-AVAILABILITY

In accordance with 10 U.S.C. 2533a [Berry Amendment] and Defense Federal Acquisition Regulation (DFARS) 225.7002-2(b), I hereby make the following determination concerning acquisition of the _____[identify the end item or program affected] _____.

FINDINGS

1. Title 10 U.S.C. 2533a requires that, unless meeting an exception in the law, the Department of Defense is prohibited from acquiring ___ [Identify applicable class of end item, component thereof. Classes of end items are: food; clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof (clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, hand wear, belts, badges, and insignia (See PGI 225.7002-1 for additional guidance and examples); tents, tarpaulins, or covers; cotton and other natural fiber products; woven silk or woven silk blends; spun silk yarn for cartridge cloth; synthetic fabric or coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics; canvas products; wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); any item of individual equipment (Federal Supply Class 8465) manufactured from or containing any of the fibers, yarns, fabrics, or materials listed herein; hand or measuring tools] unless produced in the United States.
2. The ___ [insert name of contracting activity] ___ has an acquisition for ___[identify specific item at prime contract level] ___ under Solicitation/Contract ____ [insert number] ____. It was determined that this acquisition is subject to the 10 U.S.C. 2533a requirement to buy certain articles from United States sources and did not fall under any of the statutory exceptions. Therefore, the implementing clause at [Delete one] 252.225-7012, Preference for Certain Domestic Commodities / 252.225-7015, Restriction on Acquisition of Hand or Measuring Tools, was included in the solicitation. ___ [Identify prime contractor] ___ has asserted that ___ [identify non-compliant end item, component, part, or material] ___ cannot be obtained containing items grown, reprocessed, reused, or produced in the U.S. and has requested approval of a determination that this ___ [specify item/material] ___ is not available from domestic sources.
3. ___ [Provide detail to explain what portion of the specific item being procured at the prime contract level is compliant and what is not compliant. Specify whether the DNAD is for an entire contract or certain deliveries.] ___.
4. ___ [Summarize the Contractor's market research and the Government's analysis supporting the assertion of non-availability. Such research and analysis should address the aspects of satisfactory quality, sufficient quantity, required form, and time requirements including dates needed for incorporation into the prime contract level end items. The market research and Government analysis must accompany the request for a DNAD.]

5. ___ [Summarize the analysis of alternatives that would not require a domestic nonavailability determination. The requiring activity's complete analysis must accompany the request for a DNAD. If the acquisition was competitive, address whether any other responding contractor(s) asserted compliant items would be delivered and, if so, explain why the contract will be awarded to a contractor proposing a non-compliant item.] ___.

6. ___ [Address and summarize the requiring activity's written certification with specificity stating why such alternatives are unacceptable. The certification must accompany the request for a DNAD and may be in the form of a PM/PEO signature on the analysis of alternatives approving the conclusion or may be included as part of a cover memo forwarding the request for a DNAD provided that it includes wording to the effect that no alternatives are acceptable.] ___.

DETERMINATION

Based on the findings above, I have determined that items grown, reprocessed, reused, or produced in the United States of satisfactory quality and sufficient quantity, and in the required form, cannot be procured as and when needed for the ___ [specify end item/component] ___ in accordance with 10 U.S.C. 2533a(b) as implemented by DFARS 225.7002-2(b).

[Name]
Secretary of the Navy

Date

MEMORANDUM FOR THE SECRETARY OF THE NAVY

Subject: Analysis of Market Research and Analysis of Alternatives for _____

1. Purpose

The purpose of this analysis is to evaluate whether _____ of satisfactory quality and sufficient quantity, and in the required form, can be procured as and when needed for Contract _____ in support of the _____ program or if any other alternatives are acceptable. [If the Government performed the market research itself, only the analysis of alternatives is necessary for this memo. Additionally, the information contained herein may be contained in separate memos, if desired.]

2. Methodology Used in Market Research

[Explain how the restricted items to be acquired or any item of individual equipment containing the restricted item(s) were identified and what the individual equipment items are. Specify the restricted items involved to the degree possible.

If this request covers a group of equipment items and a representative sample was selected, explain the total number of items involved and the procedures for selecting the sample. An example would be that a list of all equipment was assembled and a random number generator was used to select a specific percentage of the items. Note whether the items were identified by the contractor or the Government.

Identify whether information about the restricted items/material was provided by a prime contractor or subcontractor for the end item or component involved.]

3. Issues

[Summarize issues investigated relative to contractor's assertion of non-availability. Examples are: predominant industry location, status of industry in qualifying countries, alternative materials/parts, US Government market share, cost of changes, Original Equipment Manufacturer, Qualified Parts List, or any other qualification required.]

4. Findings of Market Research

a. Materials/Suppliers – [Discuss manufacturers contacted, location of manufacturer and sources of supply, whether the manufacturer can track the material or items to source, degree of compliance/non-compliance asserted, willingness to analyze items for compliance if not already known, any conclusions as to veracity of compliance statements. If the manufacturer states its parts are compliant but the sources of supply (vendors) contradict or undermine this statement, this should be noted. If a manufacturer or supplier's interpretation of the material or item requirements is incorrect, this should be noted. Examples of this would be an assumption that reprocessing or dying of fibers, yarns, fabrics, or materials qualified or that the small purchase exception is applicable at lower tiers of subcontracting. If more than one type of restricted material or item is involved in the DNAD, each should be treated in a separate section.]

b. State of Industry – [Discuss research done on the industry overall. This would include studies done by other organizations, annual industry sales and the US Government market share, information obtained from sources such as the Defense Logistics Agency, Department of Commerce or National Association of Manufacturers, internet surveys conducted, information obtained from other DNADs, commercial aspects of the industry. Discuss what portion of manufacturers and/or suppliers are represented in this document and efforts to identify additional sources through means such as notices in the Commerce Business Daily or Urgent Data Requests through the Government Industry Data Exchange Program.]

c. Other Issues – [Discuss any other issues relevant to this DNAD such as logistics considerations or whether an item is a critical capability for DoD].

5. Alternatives Considered and Effects of Compliance

a. Material/part alternatives considered and effects of compliance – [Explain the economic and schedule consequences if compliance were mandated for the specific material/part. This would include costs and time to build facilities, costs of insuring compliant materials were segregated in the supply system, redesign costs, or costs of any other alternatives considered.]

b. Alternative Acquisition Strategies Considered – [Explain any alternatives considered to buying the noncompliant material/part. These alternatives may include considering different end items to fulfill the requirement or using a different component/part in the end item. Effects of alternatives in terms of reengineering, delayed deliveries, mission impacts, etcetera, should be explained. Address the price reasonableness of buying compliant alternatives; can the price of the alternative be determined to be fair and reasonable?].

6. Recommendation/Signatures

[Briefly, summarize conclusions and give a recommendation. If analysis was performed by a support contractor or an organization other than the requiring activity, signatures should be identified to that organization/contractor and certification of why alternatives are not acceptable should be provided as an additional section or separate document].

[If this analysis was performed by the requiring activity, the certification as to why alternatives are not acceptable should be included in this section along with the requiring activity signatures.]



DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

DETERMINATION OF DOMESTIC NON-AVAILABILITY

In accordance with 10 U.S.C. 2533b and Defense Federal Acquisition Regulation (DFARS) 225.7003-3(b)(5), I hereby make the following determination concerning acquisition of the _____ [identify the end item or program affected] _____.

FINDINGS

1. Title 10 U.S.C. 2533b requires that, unless meeting an exception in the law, the Department of Defense is prohibited from acquiring ___ [Identify applicable end item, component thereof, unless any specialty metals contained in the items or components are melted or produced in the United States. Restricted end items are: aircraft; missile or space systems; ships; tank or automotive items; weapon systems; ammunition; directly purchased specialty metal (e.g., raw stock, including bar, billet, slab, wire, plate, and sheet; castings; and forgings) as an end item; commercially available high performance magnets that contain specialty metal, unless such high performance magnets are incorporated into COTS end items or subsystems; COTS fasteners, unless the fasteners are incorporated into COTS end items, subsystems, or assemblies, or the fasteners qualify for the commercial item exception.] This requirement does not apply to the extent that the Secretary of the Navy determines that end items containing compliant specialty metal of satisfactory quality and sufficient quantity, and in the required form, cannot be procured as and when needed.

2. The ___ [name of contracting activity] ___ has an acquisition for ___ [identify specific item at prime contract level] ___ under Solicitation/Contract ___ [insert number] ___. It was determined that this acquisition is subject to the 10 U.S.C. 2533b requirements to buy strategic materials critical to national security from U.S. sources and did not fall under any of the statutory exceptions. Therefore, the implementing clause DFARS 252.225-7008, Restriction on Acquisition of Specialty Metals /252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, [Delete one] was included in the solicitation. ___ [Identify prime contractor] ___ has asserted that ___ [identify non-compliant end item, component, part, or material] ___ cannot be obtained containing specialty metals melted or produced in the U.S. and has requested approval of a determination that this ___ [item/material] ___ is not available from domestic sources.

3. ___ [Provide detail to explain what portion of the specific item being procured at the prime contract level is compliant and what is not compliant. Specify whether the DNAD is for an entire contract or certain deliveries.] ___.

4. ___ [Summarize the Contractor's market research and the Government's analysis supporting the assertion of non-availability. Such research and analysis should address the aspects of satisfactory quality, sufficient quantity, required form, and time requirements including dates needed for incorporation into the prime contract level end items. (This summary should also address the determination that the price of the item to be acquired is fair and reasonable.

If the contracting officer determines that the price would not be fair and reasonable, the Secretary of the military department concerned may use that information in determining whether the unreasonable price causes the compliant metal to be effectively “nonavailable.” See DFARS PGI 225.7003-3 (b)(5)(A)) The market research and Government analysis must accompany the request for a DNAD.]

5. ___ [Summarize the analysis of alternatives to a DNAD. The complete analysis should accompany the request for a DNAD. If the acquisition was competitive, address whether any other responding contractor(s) asserted compliant items would be delivered and, if so, explain why the contract will be awarded to a contractor proposing a non-compliant item.] ___.

6. ___ [Address and summarize the requiring activity’s written certification that such alternatives are unacceptable. The certification must accompany the request for a DNAD and may be in the form of a PM/PEO signature on the analysis of alternatives approving the conclusion or may be included as part of a cover memo forwarding the request for a DNAD provided that it includes wording to the effect that no alternatives are acceptable.] ___.

DETERMINATION

Based on the findings above, I have determined that specialty metal melted or produced in the United States of satisfactory quality and sufficient quantity, and in the required form, cannot be procured as and when needed for the ___ [specify end item/component] ___ in accordance with 10 U.S.C. 2533b(b) as implemented by DFARS 225.7003-3(b).

[Name]
Secretary of the Navy

Date

MEMORANDUM FOR THE SECRETARY OF THE NAVY

Subject: Analysis of Market Research and Analysis of Alternatives for _____

1. Purpose

The purpose of this analysis is to evaluate whether _____ of satisfactory quality and sufficient quantity, and in the required form, can be procured as and when needed for Contract _____ in support of the _____ program or if any other alternatives are acceptable. [If the Government performed the market research itself, only the analysis of alternatives is necessary for this memo. Additionally, the information contained herein may be contained in separate memos, if desired.]

2. Methodology Used in Market Research

[Explain how directly purchased specialty metal or end items or components/parts thereof, containing the specialty metal were identified and what the parts are. Specify the specialty metals involved to the degree possible.]

[If this request covers a group of parts and a representative sample was selected, explain the total number of parts involved and the procedures for selecting the sample. An example would be that a list of all parts was assembled and a random number generator was used to select a specific percentage of the items. Note whether such selection was made by the contractor or the Government.]

[Identify whether information about the parts/material was provided by a prime contractor or subcontractor for the end item or component involved.]

3. Issues

[Summarize issues investigated relative to contractor's assertion of non-availability. Examples are: predominant industry location, status of industry in qualifying countries, alternative materials/parts, US Government market share, cost of changes, Original Equipment Manufacturer, Qualified Parts List, or any other qualification (such as FAA approval) required.]

4. Findings of Market Research

a. Materials/Suppliers – [Discuss manufacturers contacted, location of manufacturer and sources of supply, whether the manufacturer can track specialty metals to source, degree of compliance/non-compliance asserted, willingness to analyze parts for compliance if not already known, any conclusions as to veracity of compliance statements. If the manufacturer states its parts are compliant but the sources of supply (vendors) contradict or undermine this statement, this should be noted. If a manufacturer or supplier's interpretation of the specialty metal requirements is incorrect, this should be noted. Examples of this would be an assumption that remelting of a specialty metal qualified or that the small purchase exception is applicable at lower tiers of subcontracting. If more than one part or type of specialty metal is involved in the DNAD, each should be treated in a separate section.]

b. State of Industry – [Discuss research done on the industry overall. This would include studies done by other organizations, annual industry sales and the US Government market share, information obtained from sources such as the Department of Commerce or National Association of Manufacturers, internet surveys conducted, information obtained from other DNADs, commercial aspects of the industry. Discuss what portion of manufacturers and/or suppliers are represented in this document and efforts to identify additional sources through means such as notices in the Commerce Business Daily or Urgent Data Requests through the Government Industry Data Exchange Program.]

c. Other Issues – [Discuss any other issues relevant to this DNAD such as logistics considerations or whether an item is a critical capability for DoD.]

5. Alternatives Considered and Effects of Compliance

a. Material/part alternatives considered and effects of compliance - [Explain the economic and schedule consequences if compliance were mandated for the specific material/part. This would include costs and time to build facilities, costs of insuring compliant metals were segregated in the supply system, redesign costs, or costs of any other alternative considered.]

b. Alternative acquisition Strategies considered –[Explain any alternatives considered to buying the noncompliant material/part. These alternatives may include considering different end items to fulfill the requirement or using a different component/part in the end item. Effects of alternatives in terms of reengineering, delayed deliveries, mission impacts, etcetera, should be explained. Address the price reasonableness of buying compliant alternatives; can the price of the alternative be determined to be fair and reasonable?]

6. Recommendation/Signatures

[Briefly, summarize conclusions and give a recommendation. If analysis was performed by a support contractor or an organization other than the requiring activity, signatures should be identified to that organization/contractor and certification of why alternatives are not acceptable should be provided as an additional section or separate document.]

[If this analysis was performed by the requiring activity, the certification as to why alternatives are not acceptable should be included in this section along with the requiring activity signatures.]

ANNEX 4 – [Reserved]

ANNEX 5 - BRIDGE CONTRACT APPROVAL AND REPORTING

1. Approval.

Pursuant to 5206.303-1(90), the template below shall be used in requesting approval to award a bridge contract.

REQUEST FOR AUTHORIZATION OF BRIDGE CONTRACT

- 1) Contract #:

- 2) Incumbent Name:

- 3) Date Current Contract Period of Performance Expires:

- 4) Period of Performance and Value of Last Order/Contract Action:

- 5) Date Requirement for Bridge Contract Identified:

- 6) Estimated Period of Performance and Value of Bridge Contract:

- 7) Anticipated Award Date for Follow-on Contract (after bridge contract):

- 8) Reason for Bridge Contract:

- 9) Describe the Urgency and Impact of Lack of Contractual Coverage Without Bridge Contract:

- 10) Actions Taken to Eliminate Future Need for Bridge Contract: (address whether the acquisition strategy is full and open, limited competition, or sole source)

CERTIFICATIONS AND APPROVAL

TECHNICAL/REQUIREMENTS CERTIFICATION

I certify that the facts and representations under my cognizance which are included in this request for authorization of a bridge contract are complete and accurate to the best of my knowledge and belief.

Technical Cognizance:

Signature Name (Printed) Phone No. Date

Requirements Cognizance:

Signature Name (Printed) Phone No. Date

CONTRACTING OFFICER CERTIFICATION

I certify that the facts and representations for this request for authorization of a bridge contract are accurate and complete to the best of my knowledge and belief.

Signature Name (Printed) Phone No. Date

**ACQUISITION VALUED \$650,000 OR LESS
ACTIVITY CHIEF OF THE CONTRACTING OFFICE APPROVAL**

Upon the basis of the information contained in this request, I hereby approve, as the Activity Chief of the Contracting Office, the negotiation of a bridge contract valued at \$650,000 or less as described herein.

Signature Name (Printed) Date

**ACQUISITION VALUED BETWEEN \$650,000 AND \$5,000,000
ECHELON II CHIEF OF THE CONTRACTING OFFICE APPROVAL**

Upon the basis of the information contained in this request, I hereby approve, as the Echelon II/III Chief of the Contracting Office, the negotiation of a bridge contract valued between \$650,000 and \$5,000,000 as described herein.

Signature Name (Printed) Date

3. After completion, save Excel spreadsheet as "(Your HCA name)-Bridge Contracts-FY(2-digit year)Q(1-digit quarter #)". E.g. NAVSEA-Bridge Contracts-FY11Q1
4. Email spreadsheet as attachment to suzanne.levalley@navy.mil
5. POC is Sue LeValley, ASN(RDA), phone 703-693-2631, email, suzanne.levalley@navy.mil

The data dictionary defining the Bridge Contract Report fields is below.

Field	Page Location	Description
Reporting Period	Row 2	Insert reporting period.
Reporting Office	Row 3	Name of reporting organization (SYSCOM / HCA/ etc.)
POC	Row 3	First point of contact, including Name, phone and e-mail
Contract Number	Column A	Contract/task order/modification number for each contracting action that resulted in a bridge contract. (e.g. N00189-08-D-XXXX, etc.)
Portfolio	Column B	Select portfolio from drop down. Refer to DOD Taxonomy for definitions. DFARS PGI 237.102-74
Hidden Column	Column C	Used to create drop down for Portfolio
Program	Column D	Short description of program
Requirement	Column E	Short description of requirement
Original Contract POP Start Date	Column F	Period of Performance (POP) start date for original contract. Use date format yyymmdd for beginning date.
Original Contract POP End Date	Column G	Period of Performance end date for original contract (end date of last order. Use date format yyymmdd for end date.
Incumbent	Column H	Name of vendor awarded the original contract
Value of Last Planned order (\$)	Column I	Awarded cost of the last planned POP
Bridge POP Start Date (Actual for past awards, projected for future awards)	Column J	Period of Performance start date for the individual bridge contract. Use date format yyymmdd for beginning dates.
Bridge POP End Date (Actual for past awards, projected for future awards)	Column K	Period of Performance end date for the individual bridge contract. Use date format yyymmdd for end date.
Bridge Contract Value (\$) (Actual for past awards, projected for future awards)	Column L	Award value of the Bridge Contract/Modification/Task Order
Date of Bridge Award (Actual for past awards, projected for future awards)	Column M	Date bridge award was signed
Cause of Bridge Contract	Column N	Explain the reason a bridge contract was required. Free form description. Significant detail is not required, a short explanation is acceptable. Possible reasons may include (but not be limited to, Delayed submission of requirements, Late change to requirements, PCO/CS issues, Protest, Delayed DCAA audits, etc..
Identify Multiple Bridge	Column O	If the bridge contract being reported, regardless of the

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Contract		value or period of performance, is a 2nd, 3rd, or 4th bridge contract in support of the requirement, select the appropriate response (i.e. 2, 3, 4)
Bridge authorization	Column P	Name, title and organization of approval authority

ANNEX 6 - CONSOLIDATED UNDEFINITIZED CONTRACT ACTION (UCA) MANAGEMENT REPORT

In accordance with 5217.7405, Plans and reports, each contracting activity shall submit a Consolidated UCA Management Report which provides the following information:

Contract Number
Task Order/Delivery Order Number (if applicable)
Program Description/Reason for Award
Date UCA Awarded
Original Due Date for Definitization
Date Qualifying Proposal Received
Extended Date for Definitization
Date of Definitization Modification (if Definitized)
Reporting Date
Subject to Definitization Rules? (Yes/No)
Not to Exceed Amount (\$)
Amount Obligated (\$)
Comments

To standardize report submissions, use the UCA reporting template of DFARS PGI 217.7405(4) available at the following website:

http://www.acq.osd.mil/dpap/dars/pgi/pgi_hm/PGI217_74.htm.

Note: There are five automatic-calculated fields in this new template.

ANNEX 7 - DoN CONTROL PLAN FOR COMPONENT CLAUSES AND COMMERCIAL ITEM ACQUISITIONS PROVISION/CLAUSE USE

1. Statement of Purpose. The purpose of this plan is to establish for Navy/Marine Corps Contracting Activities a system of controls for the use of clauses other than those prescribed in FAR or DFARS. To the extent practicable, the plan addresses the unique approval requirements for clause use in solicitations and contracts for FAR Part 12 commercial item acquisitions.

2. Definitions.

a. Clause - means a term, condition or provision used in solicitations and contracts that is of the type set forth in FAR Part 52 and DFARS Part 252.

b. Regulation - means any contracting supplement, policy letter, clause book, procedure, automated system, or similar regulatory instrument.

3. Director, Defense Procurement and Acquisition Policy (DPAP) Approval Requirements.

Before including in a regulatory document, obtain DPAP approval of the following:

a. All policies, procedures, clauses, or forms that

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

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

b. Certain categories of individual deviations and class deviations from FAR/DFARS (see DFARS 201.402(1) and DFARS 201.404);

c. Deviations from Component clauses which substantially increase cost or administrative impact on offerors/contractors in competitive procurements;

d. Any deviation required to comply with a treaty or an executive agreement, which is not authorized by FAR 1.405(b) or (c);

e. Department/agency clause control plans covering review and approval of Component clauses and deviations.

4. Review and Approval of Component Clauses.

a. Clause use in contracts for non-commercial items. Approval requirements for use of Component clauses in solicitations or contracts for non-commercial items are as follows:

(1) DPAP approval is required for Component clauses meeting the requirements of DFARS 201.304(1)(i) (see paragraph 3a above). Such clauses must be numbered in accordance with Paragraph 6 of this Plan, published in the Federal Register for public comment, and submitted to DPAP for approval, through ASN(RDA)/DASN(AP) Policy and the DAR Council Director. Upon approval, these Component clauses will be included in the Navy's electronic repository of clauses.

(2) The Head of the Contracting Activity (HCA), or a designee no lower than the Chief of the Contracting Office (CCO), may approve Component clauses that have no significant effect beyond the internal operating procedures of the agency and no significant cost or administrative impact on contractors or offerors. These clauses must be numbered in accordance with Paragraph 6 of this Plan, be supported by a written analysis justifying clause use, and reviewed by Counsel

for legal sufficiency before approval. A copy of these approved clauses shall be provided to ASN(RDA)/DASN(AP) Policy and will be added to the Navy's electronic repository of clauses.

(3) The HCA, or a designee not lower than one level above the contracting officer, shall approve Component clauses that implement a FAR/DFARS/NMCARS clause that permits "substantially the same as" or other variations. Such clauses must be supported by a written analysis justifying clause use, reviewed by Counsel for legal sufficiency before approval, and numbered following Paragraph 6 of this Plan. Once approved all "substantially the same as" Component clauses that will be used on a repetitive basis for multiple contracts must be provided to ASN(RDA)/DASN(AP) Policy for inclusion in the Navy's electronic repository of clauses.

(4) The HCA, or a designee not lower than one level above the contracting officer, may approve Component clauses developed to deal with a unique situation with one contractor for any Component clause which does not result in a FAR/DFARS/NMCARS deviation. ASN(RDA)/DASN(AP) is the approving authority for any Component clause which results in a FAR/DFARS/NMCARS deviation.

b. Clause use in contracts for commercial items. Paragraph 8, Commercial Items Clause Use Approval Matrix, outlines the current sources of approval authority governing inclusion of clauses in solicitations or contracts for commercial item acquisitions. Note: DPAP is the approval authority for any Component-unique clause in solicitations or contracts for commercial items that meets the conditions of DFARS 201.304(1)(i). Such clauses must be numbered in accordance with Paragraph 6 of this Plan, published in the Federal Register for public comment, and submitted to DPAP for approval through ASN(RDA)/DASN(AP) Policy and the DAR Council Director.

5. Review and Approval of Deviations.

a. DPAP is the approval authority of requests for deviations identified in DFARS 201.402 and 201.404. Such requests shall be processed through ASN(RDA)/DASN(AP) Policy and the DAR Council Director.

b. ASN(RDA)/DASN(AP) is the approval authority for other individual or class deviations from the FAR/DFARS and NMCARS, except:

(1) In the case of a purchase or contract by an offshore contracting activity with a foreign contractor made outside the United States, its possessions, or Puerto Rico, the HCA, or a designee not lower than one level above the contracting officer, may grant deviations from contract clauses, provided that no change in intent, principle, or substance is made (Note: Contracts with foreign governments frequently require revision of terminology to clarify such terms as "Government," "contractor" or "contracting officer" since both parties to the proposed contract are government entities. Such modifications do not change the substance of the clause and should not require high-level approval); and,

(2) The HCA, or a designee not lower than one level above the contracting officer, is authorized to approve individual and class deviations from Component clauses for use in competitive procurements which do not constitute a deviation from FAR/DFARS/NMCARS and do not have a significant cost or administrative impact on offerors/contractors. All deviations must be reviewed by Counsel before approval.

c. ASN(RDA)/DASN(AP) Policy shall be provided a copy of all deviations approved at the Component level.

6. Clause Numbering: All clauses in the Navy's electronic repository of clauses shall adhere to the numbering and identification requirements of FAR 52.1, as supplemented by DFARS Subpart 252.1 and NMCARS Subpart 5252.1.

7. Centralized clause repository. Approved agency/Component clauses will be maintained in electronic format at a web-based central repository.

8. Commercial Item Acquisitions Provision/Clause Use Approval Matrix. The following table summarizes the approval requirements for provision or clause use in FAR Part 12 acquisitions:

Action	Approval Authority	FAR/DFARS citation
Include a provision similar to FAR 52.212-2 containing all evaluation factors required by FAR 13.106, 14.2 or 15.3	Contracting Officer	FAR 12.301(c)(2)
Include in solicitations & contracts other FAR provisions & clauses when their use is consistent with the limitations in FAR 12.302 (<u>Discretionary use only due to nature of procurement action</u> , e.g. FAR 16.506 clauses for IDIQ contracts; FAR 17.208 when Options included; etc.)	Contracting Officer	FAR 12.301(e)
Tailor FAR provision 52.212-1 or FAR clause 52.212-4 identified in FAR 12.301, <u>after</u> conducting appropriate market research, to adapt to the market conditions for each acquisition (<i>i.e.</i> tailor only <u>consistent</u> with commercial practices).	Contracting Officer	FAR 12.302(a) FAR 12.301(b)(1) FAR 12.301(b)(3)
Tailor FAR clause 52.212-4 (except as noted in FAR 12.302(b)) in a manner that is <u>inconsistent</u> with customary commercial practice for the item being acquired, if waiver is approved.	HCA; except ASN(RDA) approval is required if tailoring results in adding of any new terms or conditions	FAR 12.302(c) DFARS 212.302(c)
Deviate from FAR provision 52.212-3 <u>only</u> in accordance with FAR Subpart 1.4.	ASN(RDA)/DASN(AP)	FAR 12.301(b)(2) DFARS 201.4
Supplement provisions & clauses in FAR/DFARS Parts 12/212 with use of additional clauses & provisions <u>only</u> as necessary to reflect agency-unique statutes applicable to acquisition of commercial items.	OASN(RDA)/DASN(AP)	FAR 12.301(f)
Approve inclusion of a component-unique provision or clause necessary to reflect an agency-unique statute applicable to the acquisition of commercial items.	DASN(AP)	NMCARS 5212.301(f)
Supplement provisions & clauses in FAR/DFARS Parts 12/212 with use of additional clauses & provisions other than those necessary to reflect agency-unique statutes applicable to acquisition of commercial items.	Navy Senior Procurement Executive (ASN RDA) or (DPAP)* w/o power of delegation	FAR 12.301(f)

**Note: Only OUSD(AT&L)DPAP may approve the use of any Component-unique clause or provision that meets the conditions of DFARS 201.304(1)(i).*

B. Commercial Item Acquisitions Provision/Clause Use Procedures.

1. **Purpose.** To establish the implementing procedures and a common framework to facilitate management, control and use of properly approved Government-unique provisions/clauses in Department of the Navy (DoN) solicitations/contracts for commercial items and achieve consistency in DoN commercial item provision/clause use and approval authority.

2. **Applicability/Scope.** The procedures set forth in this document apply to solicitations/contracts for commercial items as defined by FAR 2.101 and reflect the policies and guidance on provision/clause use as prescribed in FAR Part 12, DFARS Part 212, and NMCARS Part 5212. Personnel performing preaward/award functions within Navy/Marine Corps contracting activities and their subordinate organizations will use these procedures, in conjunction with the above prescribed regulations, to determine provision/clause use in solicitations/contracts for commercial items.

3. Background.

a. FAR 12.301(a) implements Section 8002 of Public Law 103-355 (41U.S.C. 264, note), which mandates that contracts for commercial items include, to the maximum extent practicable, only those clauses that are required to implement provisions of law or Executive Orders applicable to the acquisition of commercial items, or that are determined to be consistent with customary commercial practice. FAR 12.301(d) clearly states that despite prescriptions contained elsewhere in the FAR, when acquiring commercial items, Contracting Officers shall be required to use only those provisions/clauses as prescribed in FAR Part 12. It also states that revisions to such provisions/clauses may be made to reflect the applicability of statutes and Executive Orders to the acquisition of commercial items.

b. FAR Subpart 12.3 prescribes a streamlined set of five provisions/clauses that are broad-based and, for the most part, address commercial market practices for a wide range of potential Government acquisitions of commercial items (FAR12.301 (b) and (c)). A few of these clauses may be tailored (*i.e.*, revised) to reflect current commercial practices prevailing at the time the contract requirement is to be publicized/issued. However, any tailoring of a provision or clause to adapt to the current market conditions may only occur after having performed market research (FAR 12.302(a)). Market research is a critical element in the commercial item acquisition process. It not only helps determine an effective acquisition strategy for the commercial item acquisition, but also establishes the basic foundation for the agency description of need, the solicitation, and the contract (FAR 12.202).

c. These procedures implement the Navy/Marine Corps Plan for Restricting Government-Unique Contract Provisions/ Clauses on Commercial Contracts dated July 11, 2008, developed in response to Section 821 of the National Defense Authorization Act (NDAA) for FY 2008 (Pub.L.110-181), and the policy promulgated in NMCARS Change 08-5 on provision/clause use for DoN commercial item acquisitions. Section 821 directed the Under Secretary of Defense for Acquisition, Technology, and Logistics to develop/implement a plan to minimize the number of Government-unique contract clauses used in commercial contracts to (1) those government-unique clauses authorized by law or regulation, or (2) any additional clauses that are relevant and

necessary to a specific contract. Table 7-1 provides a summary of the unique approval requirements on provision/clause use as prescribed by FAR Subpart 12.3.

4. **References/Resources.** Table 7-2 lists and describes the documents that serve as references or resource tools in support of these procedures.

5. **Definitions.** Table 7-3 lists and defines terms used in these procedures.

6. **Roles and Responsibilities of Key Stakeholders.** Table 7-4 lists key stakeholders and their roles/responsibilities as these relate to the use of properly approved provisions/clauses in solicitations/contracts for commercial items.

7. **Procedures.** This paragraph outlines the process Contracting Officers will follow to ensure that only properly authorized provisions/clauses are used in commercial item acquisitions. The Provision/Clause Use Decision Tree for Commercial Item Acquisitions (hereinafter referred to as “decision tree”), available at the end of this section, illustrates the critical steps involved determining the appropriate provisions/clauses to be used for a specific commercial item acquisition. The Contracting Officer should use the decision tree, in conjunction with these procedures, to fully understand all required decisions. Contracting Officers perform the following actions:

a. Determine whether the acquisition is excluded from use of commercial item procedures per FAR 12.102; if it is not excluded, continue as outlined below.

b. Determine whether the acquisition meets the definition of a commercial item per FAR 2.101. For acquisitions exceeding \$1M, as required by DFARS 212.102 and as outlined in PGI 212.102(a), this determination is documented in writing and supported by market research demonstrating the rationale supporting a conclusion that the commercial item definition has been satisfied. If an acquisition plan/strategy is developed, it should include the information addressed in the commercial item determination. Market research must be performed in accordance with FAR 10.002. FAR 10.002(e) requires the results of market research to be documented in a manner appropriate to the size and complexity of the acquisition. The DoD Commercial Item Handbook of November 2001 available at <http://www.acq.osd.mil/dpap/Docs/cihandbook.pdf> provides guidance on how to perform and document market research efforts.

c. Develop the solicitation/contract identifying the appropriate provisions/clauses to be used for the specific commercial item acquisition.

(1) Use the DoN Matrix of FAR/DFARS and Other Government-Unique Provisions/Clauses for Commercial Item Acquisitions (hereinafter referred to as “the DoN matrix”) available at NMCARS Subpart 5252.3. The DoN matrix, developed to assist the Contracting Officer in determining the appropriate FAR/DFARS and other government-unique provisions/clauses to be used in commercial item acquisitions, is only a reference tool; and, by itself, does not provide sufficient information to determine the applicability of a provision or clause. The Contracting Officer shall refer to the appropriate prescriptions in FAR/DFARS/NMCARS on provision/clause use in solicitations/contracts for commercial item

acquisitions to ensure that only properly authorized provisions/clauses are included in solicitations/contracts for commercial items.

(a) The DoN matrix consists of two lists of provisions/clauses: One for solicitations/contracts issued in the Standard Procurement System (SPS) using two DPAP deviations; the other when the two DPAP deviations will not be used or if the solicitations/contracts will not be issued in SPS. Each list contains:

(i) FAR and DFARS provisions/clauses authorized by FAR Part 12 and DFARS Part 212 for use in commercial item acquisitions;

(ii) Other FAR provisions/clauses identified for use under the authority of FAR 12.301(e), Discretionary Use of FAR Clauses, that may be used when applicable to the specific commercial item acquisition;

(iii) Additional provisions/clauses authorized by ASN(RDA) or DPAP for use when applicable to the specific commercial item acquisition; and

(iv) A link to the Central Command (CENTCOM) Contracting Webpage containing additional provisions/clauses and terms/conditions applicable to DoD Theater Business Clearance (TBC) covered actions awarded in support of the Joint Contracting Command Iraq/Afghanistan (JCC I/A).

(b) The main difference between the two lists concerns current DPAP deviations to omnibus clause FAR 52.212-5. The “deviation” list should only be referred to when issuing the solicitation/contract in SPS and using the DPAP class deviations to omnibus clause FAR 52.212-5. Each of these omnibus clauses contains a number of clauses the Contracting Officer may select as appropriate for the specific commercial item acquisition. These class deviations authorize the clauses included in FAR 52.212-5 to be listed individually, rather than to be manually marked as applicable within each omnibus clause. Therefore, the “deviation” list individually depicts all clauses that would otherwise be included in each omnibus FAR/DFARS clause.

(2) All provisions/clauses listed in the DoN matrix are identified by an “R” or “A”. “R” means "required" and the provision/clause must be used in all commercial item acquisitions. “A” means "as applicable" and the Contracting Officer must determine applicability of the provision/clause to the specific commercial item acquisition.

(3) The link to the CENTCOM Contracting Webpage contains additional provisions/clauses and terms/conditions applicable to solicitations/contracts for commercial items in which performance or delivery is in the CENTCOM area of responsibility. Contracting Officers must ensure that solicitations/contracts for commercial item acquisitions supporting the Commander, JCC I/A also include the appropriate provisions/clauses and/or terms/conditions identified in the CENTCOM Contracting Webpage, which is available at <https://www2.centcom.mil/sites/contracts/Lists/Theater%20Contracting/Attachments/13/CommercialMatrixPD21JUL12.pdf> or through DPAP’s Contingency Contracting webpage under

“Special Instructions for Iraq and Afghanistan” at <http://www.acq.osd.mil/dpap/pacc/cc/index.html>. Contracts covered by the TBC are defined in NMCARS 5201.690(S-90).

(4) Other Government-Unique Provisions/Clauses. Component-unique provisions/clauses (*i.e.* which are developed by DoN contracting activities) must be approved by the NSPE before use in solicitations/contracts for commercial item acquisitions. All approved component-unique provisions/clauses will be listed in the DoN matrix located in NMCARS Subpart 5252.3.

d. Review the additional actions authorized by FAR Part 12 that impact the use of commercial item provisions/clauses, after selecting the necessary provisions/clauses. These additional actions are outlined in paragraph 7.e. below and illustrated in the decision tree at the end of this section. The decision tree:

(1) Addresses the actions of “tailoring” or “adding new” instructions, terms and conditions, or provisions/clauses. For these actions, the Contracting Officer must determine whether that action is consistent with commercial practices. This determination may be based on the results of initial market research conducted when developing the solicitation/contract; or, if not addressed at that time, from additional market research performed to support the determination.

(2) Identifies all supporting actions necessary for each decision listed. Supporting actions include documenting decisions made, obtaining legal sufficiency reviews, and obtaining approvals. It is not the intent for the Contracting Officer to prepare individual documents supporting each decision, but to combine actions with the same approval authorities into a single document, when appropriate.

e. Consider the following additional actions authorized by FAR Part 12, when appropriate. Note: The approval authorities for these actions are summarized in Table 7-1 and illustrated in the decision tree.

(1) Tailoring of FAR 52.212-1. This provision includes instructions to potential offerors submitting proposals on the specific commercial item acquisition. FAR 12.301(b)(1) allows tailoring of these instructions or the addition of new instructions, if necessary. However, as required by FAR 12.302(a), changes to these instructions can only be made to reflect market conditions (*i.e.*, consistent with commercial practices).

(2) Use of FAR 52.212-2 or Similar Provision. This provision allows the Contracting Officer to fill in the evaluation factors specific to the commercial item acquisition. The provision also includes language identifying the basis under which contract award will be made. The Contracting Officer must determine whether the basis of award language is applicable to the specific commercial item acquisition. If not, as authorized by FAR 12.301(c)(2), a provision similar to FAR 52.212-2 may be drafted containing all evaluation factors required by FAR 13.106, Subpart 14.2, or Subpart 15.3.

(3) Deviation to FAR 52.212-3. This provision provides a single, consolidated list of representations and certifications for the acquisition of commercial items and is required to be attached to any commercial item solicitation for offerors to complete. This provision and its alternates cannot be modified in any manner, except in accordance with FAR deviation procedures outlined in FAR Subpart 1.4. Adjust acquisition execution milestones to reflect the timeframe necessary to process the deviation.

(4) Discretionary use authority of FAR 12.301(e). Use of other FAR provisions/clauses beyond the ones already included in the DoN Matrix available at NMCARS 5252.3 shall be limited to the following:

(a) Discretionary use of additional FAR provisions/clauses is limited to only those FAR provisions/clauses necessary for the performance of the contract due to the nature of the specific commercial item acquisition (*e.g.*, using required option provisions/clauses when the acquisition has options, using required leasing provisions/clauses when the acquisition is for leasing, etc.).

(b) If an acquisition requires use of an additional FAR provision/clause that is not listed on the DoN matrix, and is only for one-time use, then the DoN matrix does not require updating to reflect this additional clause. However, if the particular acquisition will be recurring in nature prompting the need for this additional FAR provision/clause, the DoN matrix must be updated. Submit the FAR provision/clause to DASN (in accordance with contracting activity procedures) for inclusion in the DoN matrix.

(c) Component provisions/clauses may not be added to a solicitation/contract for commercial items using this authority.

(5) Tailoring of FAR 52.212-4. FAR 12.301(b)(3) allows the tailoring of this clause; however, certain limitations apply.

(a) As outlined in FAR 12.302(b), the following six terms/conditions of FAR 52.212-4 cannot be tailored:

Paragraph (b) - Assignments;

Paragraph (d) - Disputes;

Paragraph (g) - Payment; (except as provided in Subpart 32.11)

Paragraph (i) - Invoice;

Paragraph (q) - Other compliances; and

Paragraph (r) - Compliance with laws unique to Government contracts.

(b) Tailoring of the other fourteen existing terms/conditions consistent with commercial practices may be approved by the Contracting Officer. However, tailoring of these existing terms/conditions inconsistent with commercial practices requires a waiver and a different level of approval, as outlined in the approval matrix of Table 7-1 and illustrated by the decision tree.

(c) The procedures for adding new terms and conditions to FAR 52.212-4 are outlined in the decision tree. Documentation must be submitted to ASN(RDA) for approval via the contracting activity chain of command. Approved additional terms and conditions that are to be used on a recurring basis will be included in the DASN commercial item provision/clause repository.

(6) Development/use of component-unique provisions/clauses required to reflect agency statutes pursuant to FAR 12.301(f) authority.

(a) FAR 12.301(f) authorizes the use of additional provisions/clauses necessary to reflect agency unique statutes applicable to commercial item acquisitions. If a new provision/clause is required under this authority, the contracting activity/DASN will jointly develop one. DASN (A&LM) approved component-unique provisions/clauses meeting this criterion will be included in the DoN Matrix at NMCARS Subpart 5252.3, PROVISION AND CLAUSE MATRIX.

(b) The contracting activity/DASN shall assess/determine if the provision/clause meets the conditions at DFARS 201.304(1)(i) requiring DPAP approval (*i.e.*, has a significant effect beyond the internal operating procedures of DoN, or has a significant cost or administrative impact on contractors or offerors) and document the results.

(c) The provision/clause package (*i.e.*, the draft provision/clause, written results of the assessment, and justification for use) shall be submitted to Counsel for legal sufficiency review.

(d) The provision/clause package shall be sent for approval as outlined in Table 7-1 of this Annex. Without approval, a new provision or clause is not authorized for use.

(7) Development/use of additional component provisions/clauses other than those necessary to reflect agency statutes pursuant to FAR 12.301(f) authority.

(a) FAR 12.301(f) states that agencies may supplement FAR Part 12 provisions/clauses with the use of additional provisions/clauses other than those necessary to reflect agency unique statutes applicable to commercial item acquisitions. Only the NSPE may approve the use of any component-unique provision or clause pursuant to this authority, unless the proposed provision or clause meets the conditions at DFARS 201.304(1)(i) for DPAP approval.

(b) If a supplemental provision/clause is deemed necessary, the contracting activity shall assess/determine if it meets the conditions at DFARS 201.304(1)(i) (*i.e.*, has a significant effect beyond the internal operating procedures of an agency, or has a significant cost or administrative impact on contractors or offerors) and document the results.

(c) The provision/clause package (*i.e.*, the draft provision/clause, written results of the assessment, and justification for use) shall be submitted to Counsel for legal sufficiency review.

(d) The provision/clause package shall be sent for approval as outlined this Annex and in accordance with Table 7-1. Without approval, a new component provision/clause is not authorized for use.

8. Management/Oversight of Clause/Provision Use in Commercial Item Contracts.

a. The overarching responsibility of managing/controlling the use of component solicitation/contract provisions and clauses within DoN resides with DASN(AP). DFARS 201.304(4) requires that agencies develop, and upon approval by DPAP, implement, maintain and comply with a plan for controlling clauses used in its contracts beyond than those prescribed by FAR/DFARS. The updated DoN Control Plan for Component Clauses identifies a system of controls for the use of component-unique provisions/clauses in solicitations/contracts for commercial items (and non-commercial items) and conforms to prescribed FAR, DFARS, and NMCARS regulations. Each HCA serves a vital role in implementing/facilitating compliance with this Plan.

b. To ensure compliance with prescribed policies/procedures in the area of clause control, each HCA will include provision/clause use in solicitations/contracts for commercial item acquisitions as an element for review during its internal procurement management reviews/procurement performance management assessment program (PPMAP) assessments. DASN(AP) PPMAP will assess/validate compliance with this requirement during its PPMAP of HCAs.

TABLE 7-2
REFERENCES/RESOURCES

Reference/Resource	Description
NMCARS Subparts 5201.3, 5212.3 and Annex 7 (Commercial Items Acquisitions Clause Use)	Depict DoN's current policy on provision/clause use in solicitations/contracts for commercial items. Annex 7 includes a summary of the unique approval requirements on provision/clause use for commercial item acquisitions as prescribed by FAR Subpart 12.3. It also identifies the sources of approval (<i>i.e.</i> from the Contracting Officer to the Navy Senior Procurement Executive to the Director, DPAP) for including other than the specified FAR Part 12.3 provisions/clauses; for tailoring of existing FAR 12.3 provisions/clauses; and for adding of other Government-unique provisions/clauses in solicitations/contracts for commercial items.
Navy/Marine Corps Contracting Activities Plan for Restricting, Limiting, Controlling Use of Government-Unique Clauses of July 11, 2008	Establishes the objectives that will help DoN restrict, manage and control the use of Government-unique clauses in commercial item contracts.
DoN Control Plan for Component Clauses of August 19, 2009	Establishes the overarching process that will govern development and approval of all component-unique provisions or clauses as required by DFARS 201.304(1)(4). The objective of this plan is to ensure that DoN solicitations/contracts include only properly approved component-unique provisions/clauses. It depicts the unique approval requirements governing provision or clause use in solicitations/contracts for commercial items.
DoN Matrix of FAR/DFARS and Other Government-Unique Provisions/Clauses for Commercial Item Acquisitions (NMCARS Subpart 5252.3)	Serves as a reference tool listing the FAR Part 12, DFARS Part 212 and other government-unique provisions and clauses (including component-unique provisions/clauses) that are authorized for use in commercial item acquisitions within DoN given the current authorities in the higher regulations. To the extent practicable, the matrix facilitates the selection of provisions/clauses for commercial item solicitations/contracts using the Standard Procurement System (SPS) or another procurement writing system. Contracting Officers bear the responsibility of ensuring that only appropriately authorized or approved provisions/clauses are used in each solicitation/contract for commercial items. Maintenance of this reference tool is the responsibility of DASN(AP)/Policy.
Provision/Clause Use Decision Tree for Commercial Item Acquisitions	Illustrates the decision-making process affecting provision/clause use in solicitations/contracts for commercial items. The Contracting Officer should use the decision tree in conjunction with the general procedures on provision/clause use outlined in paragraph 7, Procedures, of NMCARS Annex 7, section B, in order to fully understand all the required decisions in determining the appropriate provisions/clauses to be used for a specific commercial item acquisition.
DoD Commercial Item Handbook (Nov 2001)	Provides guidance on the contracting process for commercial item acquisitions, including tools for conducting and documenting market research.

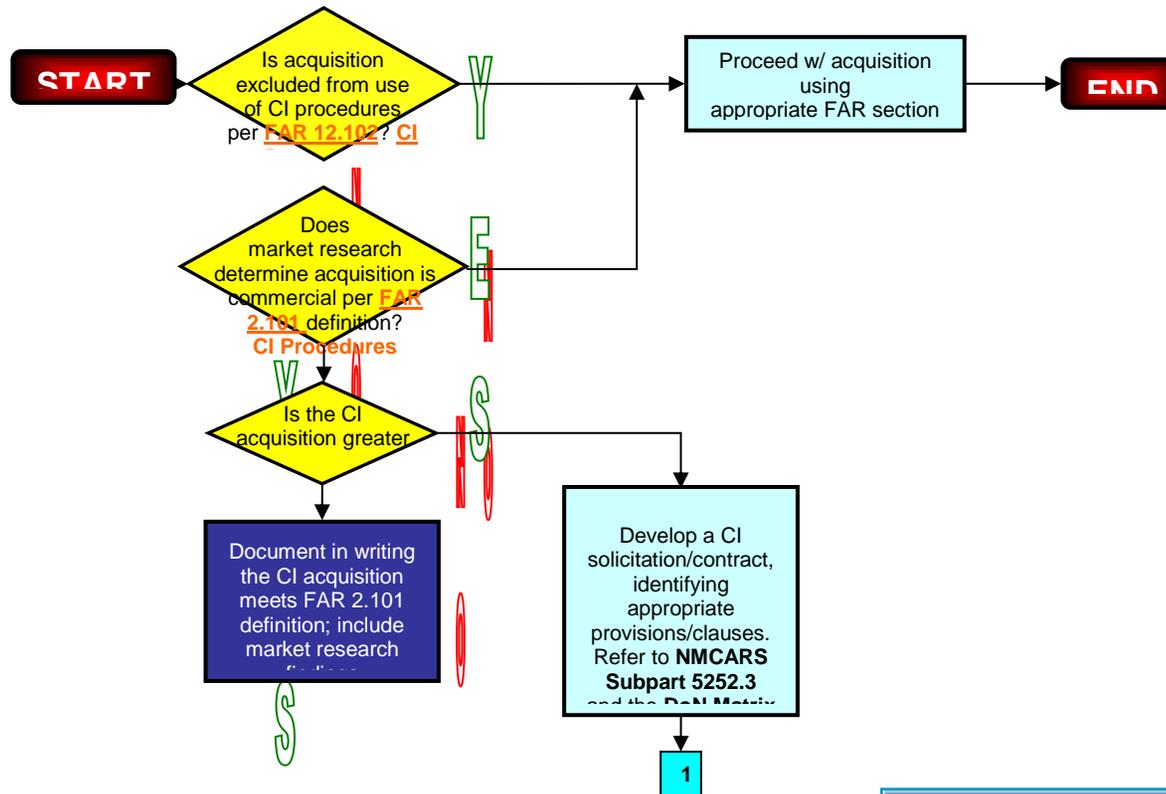
TABLE 7-3
DEFINITIONS OF KEY TERMS

Terms	Definitions
Clause	A part of the contract containing one or more requirements or obligations of one of the parties to a contract (<i>i.e.</i> terms or conditions) and that follows the unique format set forth in FAR Part 52, DFARS Part 252 and NMCARS Part 5252. Commercial item acquisitions generally include clauses (1) FAR 52.212-4 , (2) FAR 52.212-5 , and (3) when properly authorized, other clauses set forth in FAR Part 52, DFARS Part 252, NMCARS Part 5252, including DoN Government-unique provisions or clauses developed in accordance with the DoN Control Plan for Component Clauses.
Commercial Item (CI) Acquisition	A contract requirement that meets the definition of “commercial items” at FAR 2.101 and is executed (<i>i.e.</i> , procured/awarded) following the procedures set forth in FAR Part 12. (Note: The policies in FAR Part 12 are to be used in conjunction with policies and procedures for solicitation, evaluation, and award set forth in FAR Parts 13, 14, and 15, as appropriate.) When the head of the agency determines that the supplies and services are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, such actions may be treated as an acquisition for commercial items as permitted by FAR 18.202.
Discretionary Use	Inclusion of additional FAR provisions/clauses that are not required by FAR 12.301(b) in solicitations/contracts for the acquisition of commercial items but which may be used when their use is consistent with customary commercial practices for the specific commercial item acquisition or as deemed necessary for contract performance due to the nature of the work (<i>e.g.</i> , FAR 16.506 clauses for IDIQ contracts, FAR 17.208 when Options are included, etc.).
Government-Unique Clause	A provision or clause developed by an organizational entity exercising contracting authority within DoN (or DoD) and that is approved by the appropriate authority for use in commercial item acquisitions in addition to prescribed FAR Part 12 or DFARS Part 212 provisions/clauses
Provision	A specific set of instructions that are to be used or followed when soliciting offers for commercial items. Provisions typically consist of representations and certifications to be completed by the offeror, instructions to offerors, and evaluation criteria/information regarding the basis of award of the specific acquisition. For commercial item acquisitions, provisions are of the type set forth in (1) FAR 52.212-1 ; (2) FAR 52.212-2 ; and (3) FAR 52.212-3 . Since provisions provide information necessary during the solicitation phase of an acquisition, these provisions are generally not incorporated in the contract award document.
Tailoring	Revising, editing or modifying the pre-existing instructions and/or terms and conditions contained in FAR Subpart 12.3 provisions/clauses to adapt these provisions/clauses to reflect current customary commercial practices as may be necessary to meet or protect the Governments interests. For example FAR 52.212-4 has twenty subsections addressing specific areas ranging from (a) inspection/acceptance to (t) Central Contractor Registration. Tailoring would involve adding, deleting or revising language concerning one of those specific areas, but not adding terms concerning new areas
Term and Condition	A requirement or obligation of one of the parties to a contract. For example, in commercial item acquisitions, terms and conditions are of the type set forth in FAR 52.212-4 .
Supplementing	Adding newly developed provisions/clauses in commercial item acquisitions necessary to (1) reflect Navy-unique statutes applicable to the acquisition of commercial items (<i>e.g.</i> a new statute imposes a specific requirement on shipbuilding or facilities maintenance and is deemed to apply to commercial item acquisitions), or (2) as may be approved by the Navy Senior Procurement Executive (<i>e.g.</i> establishment of a WAWF or ERP clause for use within Navy), or (3) by the Director, Defense Procurement and Acquisition Policy, without power of delegation (<i>e.g.</i> using special clauses for Acquisitions in Support of Operations in Iraq or Afghanistan). This also includes use of DFARS 252 and NMCARS 5252 provisions/clauses that are not specifically identified in the DoN Matrix of FAR/DFARS and Other Government-Unique Provisions/Clauses for Commercial Item Acquisitions.

TABLE 7-4
ROLES & RESPONSIBILITIES OF KEY STAKEHOLDERS

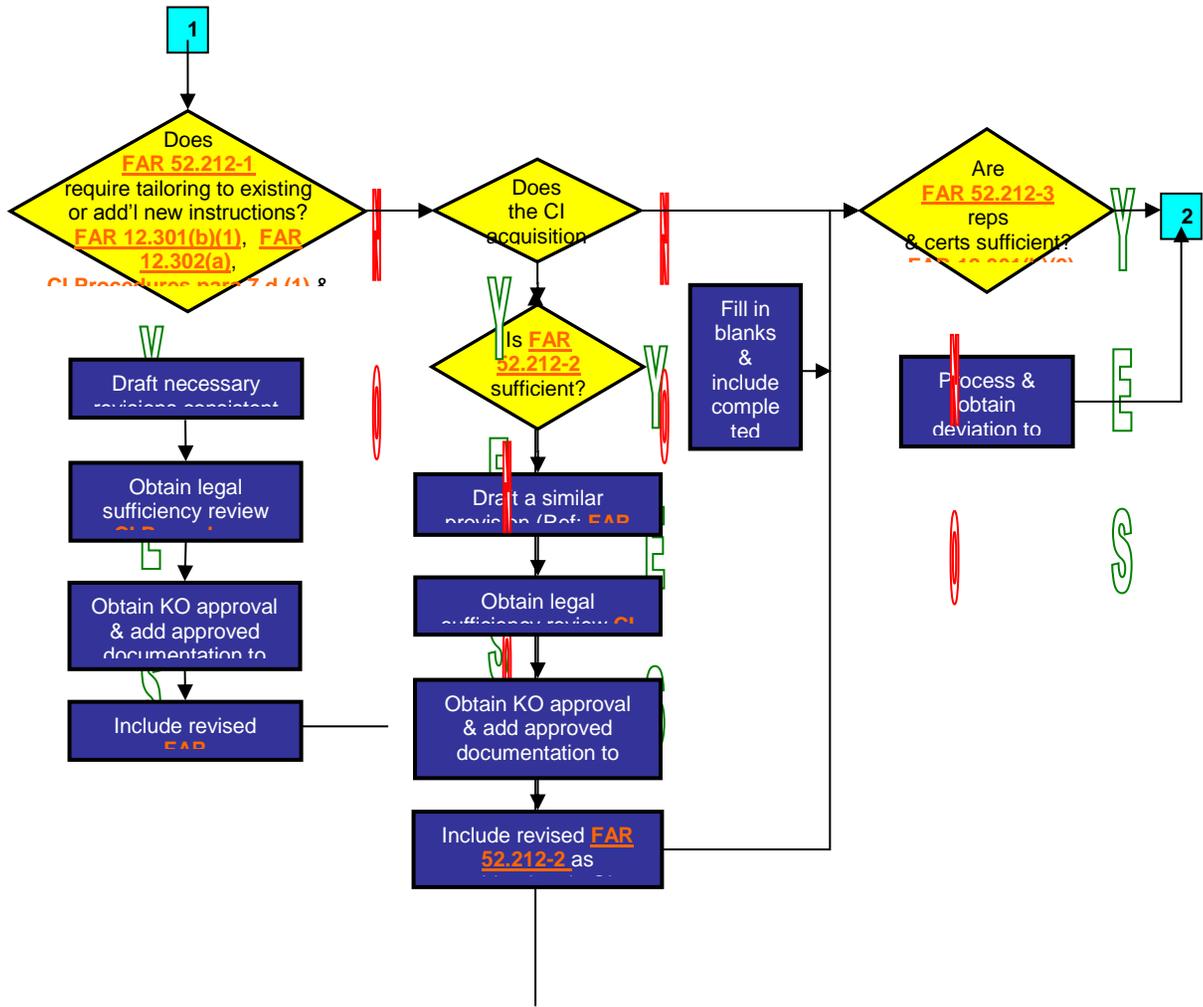
Key Stakeholder	Roles & Responsibilities
Contracting Officer	Responsible for ensuring that only properly authorized provisions/clauses are used in solicitations/contracts for commercial items. As a result, the Contracting Officer, supported by Contract Specialists, must work closely with the requirements and program offices in performing the necessary market research to (1) determine if the instant requirement meets the definition of a commercial item at FAR 2.101 and should be procured using FAR Part 12 procedures; (2) identify the current customary commercial practices that may affect the instant contract requirement in terms of provision/clause use; (3) determine the need for revisions to FAR Subpart 12.3 provisions/clauses or the development of any additional/supplemental component-unique provisions/clauses; and (4) obtain the appropriate approvals of such actions before release of the commercial item solicitation. The Contracting Officer obtains Counsel support, as necessary, during this entire process.
Chief of the Contracting Office (CCO)	Responsible for ensuring that the Contracting Officer and others within the contracting organization understand the current policy and procedures affecting Government-unique provision/clause use in commercial solicitations/contracts. The CCO facilitates this process by communicating policy and procedures in a timely manner throughout the contracting organization and establishing the necessary management/oversight controls to promote compliance with prescribed policy/procedures.
Head of the Contracting Activity (HCA)	Responsible for ensuring that appropriate management controls are in place to effectively manage and control provision/clause use in the activity's contracts for commercial items.
Counsel	Responsible for performing legal sufficiency reviews of provisions/clauses used in solicitations/contracts for commercial items, as required or as requested by the Contracting Officer.
Office of the Assistant Secretary of the Navy (Research, Development & Acquisition) (OASN(RDA) and Deputy Assistant Secretary of the Navy(Acquisition and Procurement)	Responsible for overall management/oversight of component contract provisions/clauses within DoN. This includes maintaining the electronic repository of all approved component provisions/clauses for use in solicitations/contracts for commercial or non-commercial items within the Agency; maintaining the DoN Matrix of FAR/DFARS and Other Government-Unique Provisions/Clauses for Commercial Item Acquisitions; promulgating policy affecting clause use in contracts for commercial items; reviewing/approving requests for component provisions or clauses necessary to implement agency-unique statutes as required by FAR 12.301(f); and, maintaining an updated component clause control plan for DoN. This office receives/processes HCA requests for authority to include supplemental provisions/clauses (<i>i.e.</i> use additional clauses/provisions) other than those necessary to reflect agency-unique statutes applicable to acquisition of commercial items as required by FAR 12.301(f).
Navy Senior Procurement Executive (NSPE)	As stipulated by FAR 12.301(f), serves as the final approval authority within DoN for inclusion, in a solicitation/contract for commercial items, of any agency/component-unique provision/clause necessary to supplement FAR Subpart 12.3/DFARS 212.3 provisions/clauses with use of additional provisions/clauses, other than those necessary to reflect agency-unique statutes applicable to acquisition of commercial items. ASN(RDA) is the NSPE.

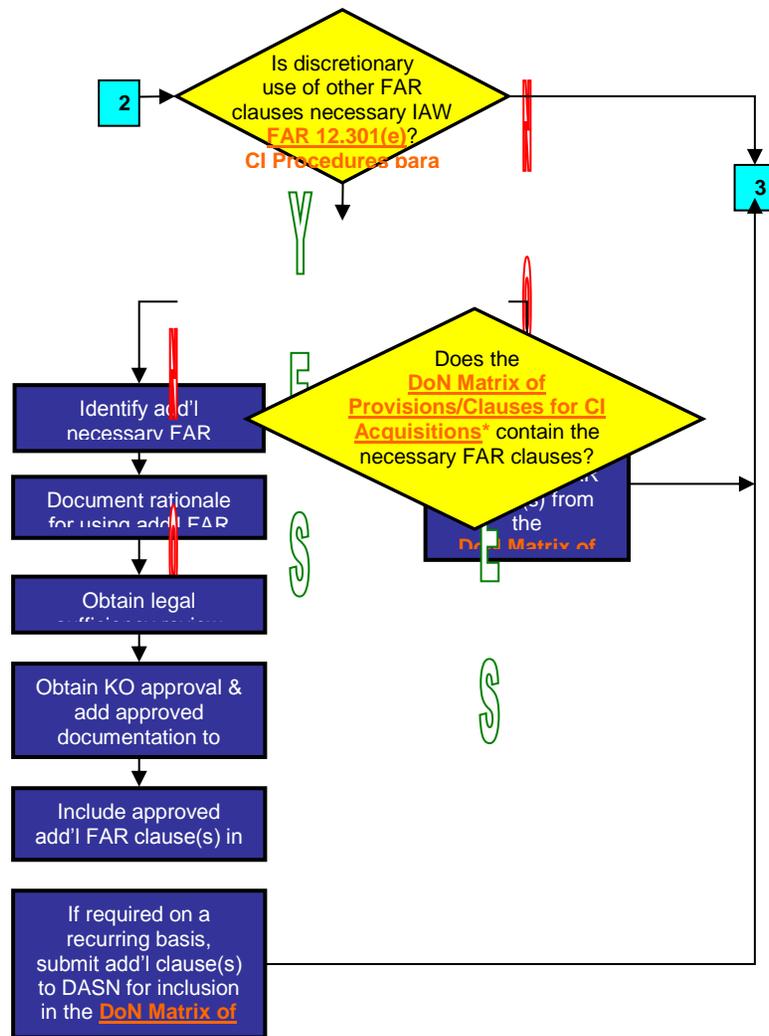
Provision/Clause Use Decision Tree for Commercial Item (CI) Acquisitions

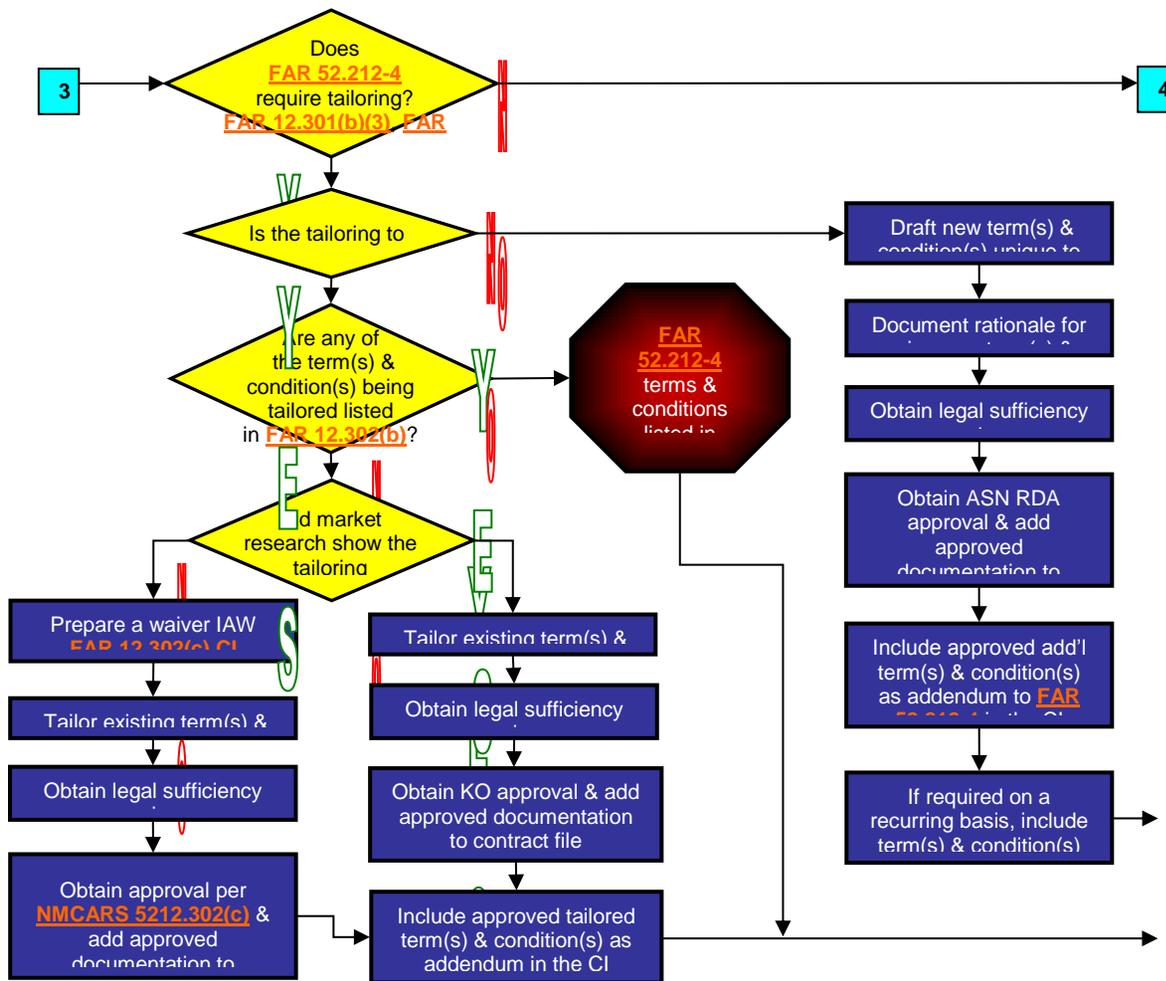


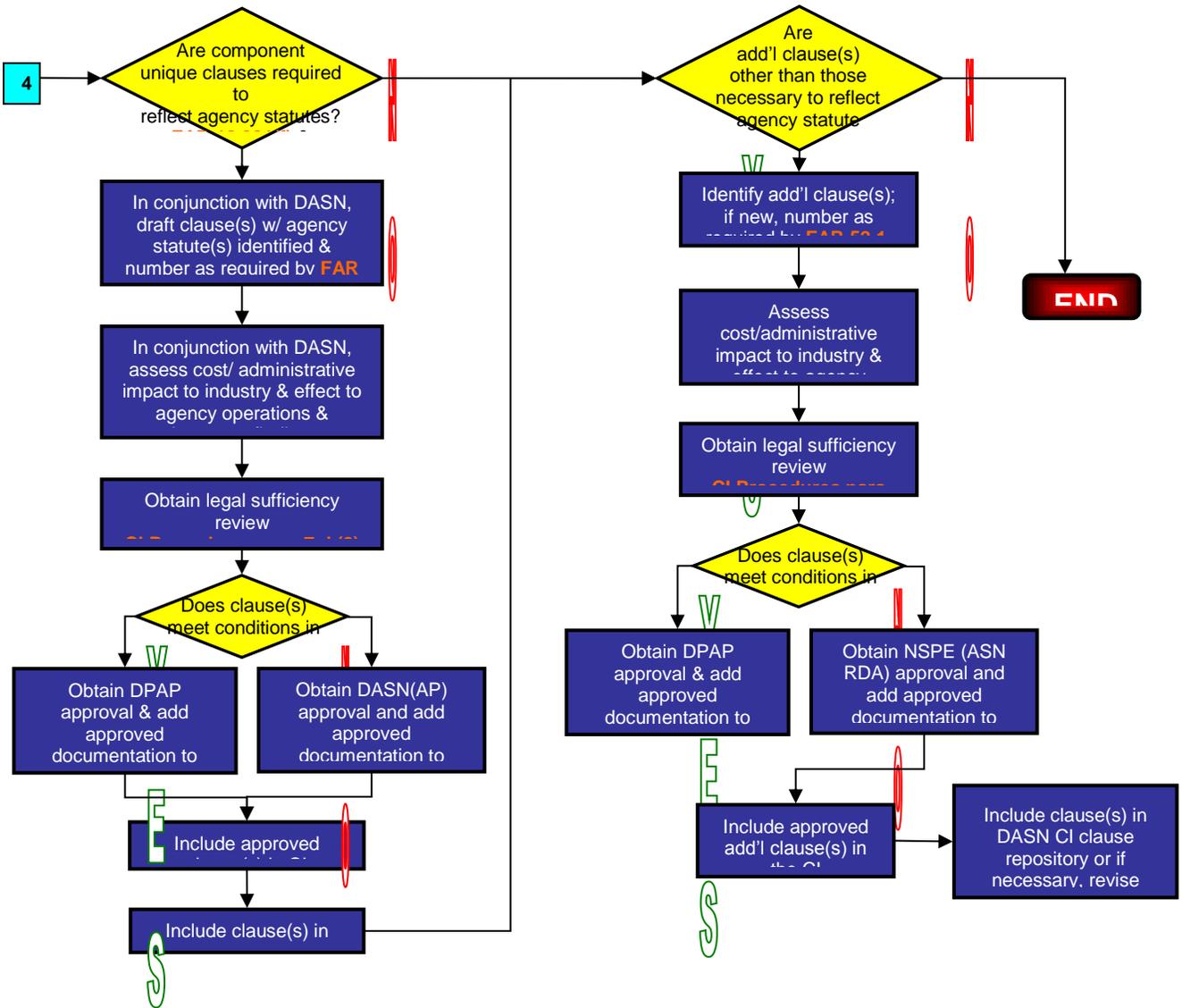
Kav
KO = Contracting

***Note**
 As used in this Decision Tree, the term “DoN Matrix of Provisions/Clauses for CI Acquisitions” means the same as the “DoN Matrix of FAR/DFARS and Other Government-Unique Provisions/Clauses for Commercial Item Acquisitions” used within Annex 7, Section B.









ANNEX 8 - PEER REVIEW PROGRAM

- A. **Policy.** In accordance with 5201.170 (DFARS 201.170) Peer Reviews, and Deputy Assistant Secretary of the Navy, Acquisition and Logistics Management DASN(A&LM) memorandum of March 26, 2009, DoN peer reviews shall be performed on solicitations and contracts with estimated acquisition values of \$50,000,000 or more (inclusive of options).
- B. **Process.** Enclosure (1) of DASN(AP) memorandum dated March 26, 2009 describes the DoN peer review process which applies to all Navy/Marine Corps Contracting Activities.
- C. **Reporting requirements.** In accordance with 5201.170, Peer Reviews, DoN contracting activities shall submit by the 25th day of every month, a rolling forecast of acquisitions valued \$250,000,000 or more (options inclusive) requiring peer reviews which provides the following information:
- Command/Buying Activity (include Location)
 - Peer Review Authority (DPAP, DASN(AP))
 - Program or contract action (Description)
 - Estimated value (Inclusive of options)
 - Competitive (Yes or No)
 - Anticipated Milestones (Dates) for the following:
 - Pre-Solicitation Review
 - Pre-BCM/PNM or Pre-BAFO Review
 - Post-BCM/PNM or Pre-Award Review
 - Post-Award Review (Services)
 - Required Award Date or Option Exercise Date
 - Buying Activity POC (Name/telephone number/email address)
Comments (e.g. Identify ACAT or MAIS level, if applicable)

To standardize report submission, use the DoN Peer Review Projections spreadsheet format available at the following DoN website:

https://acquisition.navy.mil/rda/home/policy_and_guidance/nmcars.

D. **Resources.** The following reference documents or resource tools support these procedures:

- Director, DPAP memorandum *Peer Reviews of Contracts for Supplies and Services* dated September 29, 2008.
<http://www.acq.osd.mil/dpap/policy/policyvault/USA000820-08-DPAP.pdf>
- Department of Defense (DoD) Instruction 5000.02 *Operation of the Defense Acquisition System* dated December 8, 2008.
<http://www.dtic.mil/whs/directives/corres/pdf/500002p.pdf>
- Director, DPAP memorandum *Review Criteria for the Acquisition of Services* dated February 18, 2009. <http://www.acq.osd.mil/dpap/policy/policyvault/USA002735-08-DPAP.pdf>
- DPAP Peer Review Resources Webpage, available at
http://www.acq.osd.mil/dpap/cpic/cp/peer_reviews.html
- Defense Federal Acquisition Regulation Supplement (DFARS) 201.170, Peer Reviews. http://www.acq.osd.mil/dpap/dars/dfars/html/current/201_1.htm
- DFARS PGI 201.170 Peer Reviews.
http://www.acq.osd.mil/dpap/dars/pgi/frame.htm?dfarsno=201_1&pgino=PGI201_1&dfarsanchor=201.170&pgianchor=201.170.
- DASN(A&LM) memorandum *Department of the Navy Peer Review Program* dated March 26, 2009. <https://acquisition.navy.mil/rda/content/view/full/6526>
- NMCARS Subparts 5201.170, Peer Reviews

ANNEX 9 - AWARD FEE AND INCENTIVE FEE REPORTING

- A. **Policy:** In accordance with 5216.401(f), *Incentive Fee and Award Fee Data Collection and Analysis*, each contracting activity shall follow the process described in [ASN\(RDA\) policy memorandum of March 1, 2010](#) and submit a report on award and incentive fees earned on contracts with an estimated value greater than \$50,000,000. At a minimum, the report shall provide the following information:

Contracting Agency Name

Contract Number

Delivery/Task Order Number

Is this contract for services, supplies, or a mix of the two?

Program Name

Contracting Office Name

Base and all Options Value

Solicitation Date

If solicitation date is prior to 1 August 2007, has award fee criteria been reviewed for opportunities to bring it into compliance with current policy?

Date of Award

Contractor

Potential Award or Incentive Fee for Life of Contract

Award or Incentive Fee Available in Current Period

Actual Award or Incentive Fee Earned During Reporting Period

Percentage (%) Award or Incentive Fee Earned

Date Fee Determined

Does Earned Value Management Apply to this Contract?

CPI

SPI

Fee Type

Have provisional award fee payments ever been made on the contract?

Date of last provisional award fee payment.

Is a cost overrun projected on this contract?

Is a schedule slip projected on this contact?

Is a Nunn-McCurdy breach projected?

Was there any CPARS ratings during the reporting period that were inconsistent with the fee earned?

Has roll-over ever been approved on this contract?

Total Fee Rolled Over

Date most recent roll-over approved.

Has program been identified by OMB, DoDIG, or other entity as experiencing a cost, schedule, performance or other management issue (List report number in Notes column).

Point of contact

POC Phone Number

POC email

Notes

- B. **Report Format:** Use the electronic spreadsheet template available at <https://acquisition.navy.mil/rda/content/view/full/6992> for the semi-annual report. Follow the instructions set forth in the reporting template.
- C. **Resources:** The following resource documents support this requirement:
- ASN RDA memorandum of March 1, 2010, Subj: Department of the Navy (DoN) Process for Collecting, Evaluating, and Reporting Award and Incentive Fees Earned, available at <https://acquisition.navy.mil/rda/content/view/full/6992>.
 - DASN(A&LM) memorandum of January 22, 2008, Subj: Proper use of Award Fee Contracts and Award Fee Provisions, available at <https://acquisition.navy.mil/rda/content/view/full/5618>.
 - DASN(A&LM) memorandum of May 8, 2007, Subj Award and Incentive Fees—Data Collection, available at <https://acquisition.navy.mil/rda/content/view/full/5061>.
 - DPAP memorandum of April 24, 2007, Subj: Proper Use of Award-Fee Contracts and Award-Fee Provisions, available at <http://www.acq.osd.mil/dpap/policy/policyvault/2007-0197-DPAP.pdf>.
 - DPAP memorandum of April 24, 2007, Subj: Award and Incentive Fees – Data Collection, available at <http://www.acq.osd.mil/dpap/policy/policyvault/2007-0712-DPAP.pdf>.
 - DPAP memorandum of September 22, 2009, Subj: Award and Incentive Fees—New GAO Report and Evaluation of Data, available at <http://www.acq.osd.mil/dpap/policy/policyvault/USA002083-09-DPAP.pdf> .
 - DFARS PGI 216.405-2 Cost-plus-award-fee contracts, available at http://www.acq.osd.mil/dpap/dars/pgi/pgi_hm/PGI216_4.htm
 - FAR SUBPART 16.4—Incentive Contracts available at https://www.acquisition.gov/far/current/html/Subpart%2016_4.html

ANNEX 10 - NOTICE OF SUSPECTED VIOLATIONS OF THE GRATUITIES CLAUSE

As required by 5203.203(a), provide a written notice of suspected violations to the Assistant General Counsel (Acquisition Integrity) at:

Assistant General Counsel (Acquisition Integrity)
Department of the Navy
720 Kennon Street SE
Bldg 36, Rm 214
Washington Navy Yard, DC 20374

Include the following information in the notice:

1. Name and contact information of the person reporting
2. Name of Contractor(s)
3. Contract Number (if known) or other information known about the contract, including subject matter and place of performance
4. Name and location of Government employee(s) involved with the suspected gratuity offered or provided
5. Brief summary of information or events known regarding the suspected gratuity offered or provided (including nature, amount, and/or fair market value of the suspected gratuity, if known)
6. How the information was obtained, if relevant

ANNEX 11 - Delegation of Contracting Authority

In accordance with 5201.601-90(a)(3), HCAs or their authorized designees shall notify DASN(AP) of a planned delegation of contracting authority to a HCA where the delegation ultimately leads to a procurement by a non-Navy activity. The notification must address the following information:

I. Identify Proposed DoN Organization to be Delegated Contracting Authority

- a. Organization Name
- b. DODAAC
- c. Mission
- d. Identify Senior DoN Employee in Charge of the Organization
- e. Name
- f. Position

II. Describe Extent of Contracting Authority to be Delegated

- a. Dollar Threshold
- b. Type of work/products/services authorized for procurement
- c. Limitations

III. Provide Rationale to Support Delegation of Contracting Authority

- a. Explain why this delegation is necessary, to include why the delegating office cannot support the activity, and how it results in a more efficient execution and administration of the HCAs contracting operations.
- b. Identify the anticipated workload and available resources at the Organization.
- c. Describe the internal controls at the Organization to ensure efficient and effective execution and management of delegated authority.
- d. Describe the oversight and management that will be performed by the delegating office to ensure compliance with all statutes, regulations, and policies.

IV. Describe Qualifications of Personnel Exercising Contracting Authority (Contracting Officer(s))

- a. Grade/Rank
- b. Education
- c. Specialized Experience
- d. Relevant Training
- e. Certifications

Note: Requests for delegation of contracting authority and approval of delegation requests are accomplished at an HCA to HCA level to facilitate awareness of workload implications associated with the delegations.

ANNEX 12 - Waiver Request for Appointing a Non-DoN Employee as a Contracting Officer

In accordance with 5201.603, HCAs or their authorized designees shall notify DASN(AP) of a planned issuance of a contracting officer appointment and warrant to a non-DoN employee, except when a DoN activity is designated HCA for a joint-contracting operation. The notification and/or waiver request must address the following information:

I. Identify DoN/DoD Employee to be Delegated Contracting Authority

- a. Name of Nominee (as it will appear on the SF 1402, Certificate of Contracting Officer Appointment)
- b. Grade/Series or Military Rank
- c. Position/Title
- d. Description of Duties
- e. Activity Name/DODAAC

II. Describe How the Qualifications of the Nominee Meet the Requirements for the Recommended Level of Delegation

- a. Education*
- b. Specialized Experience
- c. Relevant Training*
- d. Other Qualifications (*e.g.* DAWIA Career Field Certifications, Defense Acquisition Corps Membership)*

*Note: Submit documentation to substantiate credentials/education completed.

III. Describe Extent of Contracting Authority to be Delegated

- a. Type of Appointment (*e.g.* PCO, ACO, Ordering Officer)
- b. Dollar Threshold (*e.g.* Unlimited, Limited to Specific Dollar Value)
- c. Type of work/products/services nominee will be authorized to procure or administer
- d. Limitations (*e.g.* Contract Type; Competitive or Non-Competitive Actions, etc.)
- e. Appointment Term

IV. Provide Rationale to Support Delegation of Contracting Authority

- a. Explain why this delegation is necessary and how it results in a more efficient execution and administration of the HCAs contracting operations.
- b. Identify the anticipated workload to support the type of appointment, including the available resources at the Nominee's Organization.
- c. Describe the internal controls that are or will be in place at the Nominee's Organization and at the HCA/delegating office to ensure efficient and effective execution and management oversight of delegated authority.

ANNEX 13 – SMALL BUSINESS INNOVATION RESEARCH (SBIR) PHASE III JUSTIFICATION & APPROVAL FOR USE OF OTHER THAN FULL AND OPEN COMPETITION

1. Agency and Contracting Activity.

Department of the Navy, ___[insert name of Contracting Activity]___

2. Nature/Description of Action(s) Being Approved.

This is a justification to award a Small Business Innovation Research (SBIR) (or Small Business Technology Transfer (STTR)) Phase III contract to ___[insert name of contractor]___.

NOTE (delete after reading): The statement below may need to be tailored to accurately communicate the sequence of events. If the recipient of Phase I and Phase III are not the same, then please explain.

___[insert name of contractor]___ was awarded SBIR (or STTR) Phase I [contract number] on ___[insert effective date of award]___, resulting from Solicitation ___[insert solicitation number]___, [Topic/Topic number]. ___[insert name of contractor]___ was subsequently awarded SBIR (or STTR) Phase II [contract number] on ___[insert effective date of award]___.

3. Description of Supplies/Services.

[Briefly describe the supplies/services required to meet the agency's needs. State the estimated value, inclusive of all options.]

NOTE (delete after reading): This action must clearly demonstrate that the Phase III work derives from, extends, or completes efforts performed under Phase I and Phase II.

4. Identification of Statutory Authority.

10 U.S.C. 2304(c)(5), as implemented by FAR 6.302-5: Authorized or Required by Statute.

15 U.S.C. 638(r)(1) states:

“In the case of a small business concern that is awarded a funding agreement for Phase II of an SBIR or STTR program, a Federal agency may enter into a Phase III agreement with that business concern for additional work to be performed during or after the Phase II period. “

Furthermore, 15 U.S.C. 638(r)(4) states:

“To the greatest extent practicable, Federal agencies and Federal prime contractors shall issue Phase III awards relating to technology, including sole source awards, to the SBIR and STTR award recipients that developed the technology.”

5. Demonstration that Proposed Contractor's Unique Qualifications or Nature of Acquisition Requires Use of Authority Cited.

The nature of the acquisition requires the use of the authority cited. The SBIR/STTR Programs are structured in three phases. Phase I (project feasibility) determines the scientific, technical and commercial merit and feasibility of

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the ideas submitted. Phase II (project development to prototype) is the major research and development effort, funding the prototyping and demonstration of the most promising Phase I projects. Phase III (commercialization) is the ultimate goal of the SBIR/STTR Programs. Because the Phase III work derives from, extends, or completes efforts performed under Phase I and Phase II, use of the authority cited is required.

6. Description of Efforts Made to Ensure Offerors Were Solicited From as Many Potential Sources as Practicable/ Public Notification through Government Point of Entry (GPE).

As described above, only ___[insert name of contractor]___ is being considered for Phase III award due to the nature of the acquisition. In accordance with FAR 5.202(a)(7), this proposed contract action does not require public notification to the GPE.

7. Determination of Fair and Reasonable Cost.

The Contracting Officer will determine prior to award that the negotiated price of the contract executed under this justification is fair and reasonable pursuant to FAR Subpart 15.4. This determination will be documented in ___[list applicable location of the determination, e.g. Business Clearance Memorandum]___, which will be included in the contract file.

8. Description of Market Research or Statement of the Reason Market Research was not Conducted.

FAR 10.001(a)(2) indicates that market research appropriate to the circumstances must be conducted. SBIR Phase III procurements are such that traditional market research to identify alternative sources is generally unnecessary. As described above, the Phase III work derives from, extends, or completes efforts performed under Phase I and Phase II.

NOTE (delete after reading): Notwithstanding the statement above, market research may be performed if appropriate. If any market research was performed, describe in this section.

9. Any Other Supporting Facts.

Not applicable.

10. Listing of Interested Sources.

Not applicable.

11. Actions Taken to Remove Barriers to Future Competition.

The Contracting Officer anticipates that competitors will enter the market once the product is commercialized. It is likely that future acquisitions will be competed using full and open competition and commercial item acquisition procedures. The Contracting Officer is not aware of any specific actions that would further remove barriers to competition.

12. Period of Performance.

Base: ___[insert length of base period of performance]___

Option(s): ___[insert the length of any option periods of performance (if any)]___.

13. Total Estimated Dollar Value of the Acquisition Covered by this J&A, with Funding Specified by Year and Appropriation.

The total estimated value of this acquisition is ___[insert total estimated value]___. ___[insert type of funding, e.g. "RDT&E"]___ funding is anticipated to be allocated as follows:

___[insert anticipated allocation of funding by year and appropriation]___.

14. Actions Attempted to Make Immediate Acquisition Competitive and Cost/Benefit Analysis

No actions were attempted to make the immediate acquisition competitive; no cost/benefit analysis was performed. As described above, only ___[insert name of contractor]___ is being considered for Phase III award due to the nature of the acquisition.

NOTE (delete after reading): The following section may need to be revised. This template assumes that the total anticipated value of the action (base plus all options) is within the thresholds described in FAR 6.304(a)(2). The appropriate approval authorities for your action may be different than this template. See FAR 6.304, DFARS 206.304, NMCARS 5206.304, and local procedures for further guidance.

TECHNICAL AND REQUIREMENTS CERTIFICATION REQUIRED BY FAR 6.303-2(c):

I certify that the facts and representations under my cognizance which are included in this Justification and its supporting acquisition planning documents, except as noted herein are complete and accurate to the best of my knowledge and belief.

TECHNICAL COGNIZANCE:

NAME	Code	Phone	Date
TITLE			

REQUIREMENTS COGNIZANCE:

NAME	Code	Phone	Date
TITLE			

LEGAL SUFFICIENCY REVIEW:

I certify that this Justification is accurate and complete to the best of my knowledge and belief.

NAME	Code	Phone	Date
TITLE			

CONTRACTING OFFICER'S CERTIFICATION REQUIRED BY FAR 6.303-2(b)(12):

I certify that this Justification is accurate and complete to the best of my knowledge and belief.

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NAME	Code	Phone	Date
TITLE			

COMPETITION ADVOCATE APPROVAL REQUIRED BY FAR 6.304(a)(2):

Upon the basis of the following justification, I hereby approve, as Procuring Activity Competition Advocate for ___[insert name of Contracting Activity]___, the use of other than full and open competition for the proposed procurement described herein, pursuant to the authority of 10 U.S.C. 2304(c)(5).

NAME	Code	Phone	Date
TITLE			

All questions regarding this justification are to be referred to ___[insert name of Contracts Specialist]___, ___[insert Command and Code]___, ___[insert telephone number]___, _____[insert email address].

ANNEX 14 – REPORTS

#	PERIOD-ICITY	REPORT/NOTES	REFERENCE	EXTERNAL DUE DATE	EXTERNAL DUE ORGANIZATION	DASN(AP) DUE DATE	SUBMISSION TO
1	Bi-Annual	Evaluation Requirements of Contracting Officers under DoDI 5000.66; (i.e., Functional Independence of Contracting Officers) Note: Reported in even numbered years	NMCARS 5201.102(d)(S-90)	31-Oct	DPAP	15-Oct	DASN(AP) via email to RDAJ&As@navy.mil
2	Bi-Annual	Compliance report that no senior leader performed multiple roles in major weapon system or major service acquisitions Note: Reported in even numbered years	NMCARS 5203.170(a)	30-Dec	DPAP	30-Nov	DASN(AP) via email to RDAPolicy@navy.mil
3	Annual	Procurement Performance Management Assessment Program (PPMAP) Summary of Relevant Findings from Prior FY PPMAP.	NMCARS 5201.691-1	Not applicable	Not applicable	31-Jan	DASN(AP) via email to RDAJ&As@navy.mil
4	Annual	Contract Action Report, Data Verification and Validation (V&V) Certification	NMCARS 5204.604(3)	15-Dec	DPAP	1-Dec	DASN(AP) via email to RDAJ&As@navy.mil
5	Annual	Competition Report, including projected competition goal for current year	FAR 6.502(b)(2)	31-Jan	DPAP	15-Jan	DASN(AP) via email to RDAPolicy@navy.mil
6	Annual	Report on Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items	NMCARS 5212.7102-2	31-Oct	DPAP	15-Oct	DASN(AP) via email to RDAJ&As@navy.mil
7	Annual	Commercial Item Exceptions to Cost/Pricing Data valued \$15M or more.	NMCARS 5215.403-1(c)(3)(B)	30-Nov	DPAP	31-Oct	DASN(AP) via email to RDAJ&As@navy.mil
8	Annual	Truth In Negotiation Act (TINA) Waivers valued \$15M or more.	NMCARS 5215.403-1(c)(4)(B)	30-Nov	DPAP	31-Oct	DASN(AP) via email to RDAJ&As@navy.mil

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#	PERIOD-ICITY	REPORT/NOTES	REFERENCE	EXTERNAL DUE DATE	EXTERNAL DUE ORGANIZATION	DASN(AP) DUE DATE	SUBMISSION TO
9	Annual	Report of Contract Data for Multi-Year contracts with Economic Price Adjustment clauses.	NMCARS 5216.203-4	30-Oct	DPAP	26-Oct	ASN(AP) via email to RDAJ&As@navy.mil
10	Annual	Nondefense Agency Certifications Report	NMCARS 5217.703(c)	Within 30 days of the beginning of the fiscal year	DPAP	Within 20 days of the beginning of the fiscal year	DASN(AP) via email to RDAJ&As@navy.mil
11	Annual	COTS End Items Report for contracts valued at \$5M or more (including task orders/ delivery orders) PER ITEM	NMCARS 5225.7003	31-Oct	DPAP	15-Oct	DASN(AP) via email to RDAJ&As@navy.mil
12	Annual	Cost Accounting Standards Waivers over \$15M	NMCARS 5230.201-5	30-Nov	DPAP	31-Oct	DASN(AP) via email to RDAPolicy@navy.mil
13	Annual	Service Requirements Review Board Action Item Correction POAM	NMCARS 5237.191(b)	Not applicable	Not applicable	120 days after completion of SRRB	DASN(AP) via email RDAJ&As@navy.mil
14	Annual	Service Requirements Review Board Final Analysis	NMCARS 5237.191(c)	Not applicable	Not applicable	30 days after completion of SRRB	DASN(AP) via email RDAJ&As@navy.mil
15	Annual	Offerors responses to provision 252.247-7026 related to Ocean Transportation	NMCARS 5247.573-3	15-Feb	Directorate of Acquisition, TRANSCOM	31-Jan	DASN(AP) via email to RDAJ&As@navy.mil
16	Annual	Foreign Military Sales over \$2M	Sec 1231 FY2007 NDAA	31-Mar	DPAP	15-Mar	DASN(AP) via email to RDAJ&As@navy.mil
17	Annual	Review of Contracts Involving Combat and Security Force Training	ASN RD&A memo "Acquisition of Contractor-Provided Combat and Security Related Training" dated 25 Nov 2009	Not applicable	Not applicable	By Request annually	DASN(AP) via email to RDAJ&As@navy.mil

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18	Annual	FY12 NDAA Sections 841 and 842 Report Note: Requirement legislated to report on Calendar Years 2012-2014	DPAP Memo "Reporting Requirements in Sections 841 and 842 of the NDAA for FY12 (Public Law 112-81)" dated May 14, 2012	1 Feb	DPAP	15 Jan	DASN(AP) via email to RDAJ&As@navy.mil
19	Annual	FY12 NDAA Section 846 - Indemnification Agreements - Contingency Contracting	FY2012 NDAA §846 DPAP Memo "Reporting Requirements in section 846 of the NDAA for FY12 (Public Law 112-81)" dated Dec 13, 2012	1-Nov	DPAP	20-Oct	DASN(AP) via email to RDAJ&As@navy.mil
20	Semi-Annual	Award Fee and Incentive Fee Report	NMCARS 5216.401(f)	30 Mar 30 Sep	DPAP	1 Mar/1 Sep	DASN(AP) via email to RDAJ&As@navy.mil
21	Semi-Annual	Consolidated Undefined Contract Actions (UCA) Management Plan Note: DASN(AP) generates (Belton)	DFARS 217.7405(a)(1)	30 Apr/31 Oct	DPAP		
22	Semi-Annual	Consolidated Undefined Contract Actions (UCA) Management Report	NMCARS 5217.7405(a)(2)	30 Apr/31 Oct	DPAP	15 Apr/15 Oct	DASN(AP) via email to RDAJ&As@navy.mil
23	Semi-Annual	DCMA Business Base Input	NMCARS 5242.1790	First week of March/First week of September	DCMA	First week of February/First week of August	DASN(AP) via email to RDAJ&As@navy.mil

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24	Semi-Annual	Contract Audit Follow Up (automated system)	DoD Instruction 7640.02	31 Mar/30 Sep	DCMA	Due to DCMA not DASN(AP). DASN(AP) is DON liaison to DCMA if questions arise.	CAFU system in eTools at www.dcma.mil.
25	Semi-Annual	IUID Report	DPAP Memo Dec 4, 2007	30 Jun/31 Dec	DPAP	1 Jun/1 Dec	DASN(AP) via email to RDAJ&As@navy.mil
26	Semi-Annual	RFID Compliance Report	ASN(RD&A) Memo Jun 5, 2009	Not applicable	Not applicable	1 Jun/1 Dec	DASN(AP) via email to RDAJ&As@navy.mil
27	Semi-Annual	eSRS Status Report Note: DASN(AP) will run eSRS Status Report. Field updates/inputs are required to DASN(AP) by Due Date	DPAP Memo Apr 16, 2009	30 Jun/30 Dec	DPAP	15 Jun/15 Dec	DASN(AP) via email to RDAJ&As@navy.mil
28	Quarterly	Peer Review Forecast	NMCARS 5201.170	31 Mar 30 Jun 30 Sep 31 Dec	DPAP	25 th of each month NMCARS is monthly. DFARS is quarterly	DASN(AP) via email to RDAJ&As@navy.mil
29	Quarterly	Bridge Contract Awards	NMCARS 5206.303-92	Not applicable	Not applicable	30 Jan, 30 Apr, 30 Jul, 30 Oct	DASN(AP) via email to seniorservicesmanage.fct@navy.mil

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30	Quarterly	V&V Data Verification	DOD FY 2012 Procurement Data Improvement & Compliance Plan (By DPAP)	FY12 Schedule: 15 Feb: Q1, 16 May: Q2, 15 Aug: Q3, 3 Dec: Q4	DPAP	30 days from the end of the quarter	DASN(AP) via email to RDAPolicy@navy.mil
31	Quarterly	Synchronized Predeployment & Operational Tracker (SPOT) Plus CENTCOM Census Note: SPOT generates an automated report for submission.	USD(AT&L) Memo Policy on the Transition to and Use of an Automated Census for Contractors Supporting Operations in the USCENTCOM AOR dtd Jan 19 2010	1 Jan, 1 Apr, 1 Jul, 1 Oct	USD(AT&L)		
32	Monthly	Department of Energy Order Amounts	NMCARS 5217.502-2(S-90)(i)	Monthly - no specified date within the month.	Deputy Director, DPAP, Contract Policy and International Contracting	Within two weeks of order issuance	DASN(AP) via email to RDAJ&As@navy.mil
33	Monthly	CENTCOM 715-1 Report	CENTCOM Regulation Number 715-1 of 25 Jan 2013	Monthly - no specified date within the month.	CENTCOM		
34	As needed	Suspected Violations of the Gratuities Clause	NMCARS 5203.203	Notification - Within 2 days, Report - Within 5 working days	AGC(AI) and Contracting Officer		
35	As needed	Lobbying Disclosure Act Violations	NMCARS 5203.806	As occurring	DPAP	As occurring	DASN(AP) via email to RDAJ&As@navy.mil

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36	As needed	Contractor Poor Performance	NMCARS 5209.406-3(d)(S-90)	Within 5 days after issuance of cure or show cause notice	Department of the Navy (DON) Acquisition Integrity Office (AIO)		
37	As needed	Debarment Reports/Suspension Reports	NMCARS 5209.406-3(4)	As occurring	Assistant General Counsel (Acquisition Integrity)	As occurring	DASN(AP) via email to RDAJ&As@navy.mil a copy of documentation submitted to AGC(AI)
38	As needed	Determination for exception to the requirement for Item Unique Identification. Note: D&F executed by: CAE for ACAT I, HCA for all others	NMCARS 5211.274-2	Prior to contract award	DPAP	Prior to contract award.	DASN(AP) via email to RDAJ&As@navy.mil
39	As needed	Business Case Analysis Part 1 for GWACs, interagency agreements.	NMCARS 5213.303-2 NMCARS 5217.502-1(c)	Not applicable	Not applicable	Not applicable	DASN(AP) via email to RDAJ&As@navy.mil
40	As needed	Truth in Negotiations Act (TINA) waivers >\$15M	NMCARS 5215.403-1(c)(4)(A)(2)	Not applicable.	Not applicable	Prior to waiver approval	DASN(AP) via email to RDAJ&As@navy.mil
41	As needed	TINA Waiver Requests in excess of \$100M	NMCARS 5215.403-1(c)(4)(A)(2)	Not applicable	Not applicable	Prior to contract award.	DASN(AP) via email to RDAPolicy@navy.mil
42	As needed	NDAA Section 808 Exception Approval Note: Report expires at the end of FY13.	NMCARS 5216.102	Not applicable	Not applicable	Prior to contract award or order issuance	DASN(AP) via email to RDAJ&As@navy.mil
43	As needed	HCA approved D&F for ACAT I programs using CPAF incentive contract type	NMCARS 5216.401(d)	Not applicable	Not applicable	Within 15 days of approval by HCA	DASN(AP) via email to RDAJ&As@navy.mil

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44	As needed	HCA approved D&F for non-ACAT I programs valued at \$50M or greater using CPAF incentive contract type	NMCARS 5216.401(d)	Not applicable	Not applicable	Within 30 days of approval by HCA	DASN(AP) via email to RDAJ&As@navy.mil
45	As needed	Award Fee D&F (CPAF for an ACAT I program)	NMCARS 5216.401(d)(3)(i)	Within 30 days of the end of the quarter	DPAP	Within 15 days of approval by HCA	DASN(AP) via email to RDAJ&As@navy.mil
46	As needed	Award Fee D&F for any contract \$50M or more, including options	NMCARS 5216.401(d)(3)(ii)	Not applicable	Not applicable	Within 30 days of approval by HCA	DASN(AP) via email to RDAJ&As@navy.mil
47	As needed	Submission of Determination and Finding on Single Award IDIQ contracts over \$103M. Note: Include the congressional notification document in the DFARS PGI 216.504 prescribed format.	NMCARS 5216.504(c)(1)(ii)(D)(1)	Prior to award	DPAP	Prior to single solicitation	DASN(AP) via email to RDAJ&As@navy.mil.
48	As needed	Determination Approvals >\$103M (less stated exceptions)	NMCARS 5216.504	Not applicable	Not applicable	Prior to contract award or order issuance	DASN(AP) via email to RDAJ&As@navy.mil
49	As needed	Congressional notification for Multi-year contracts	NMCARS 5217.170	Not applicable	Not applicable	45 days prior to contract award or order issuance	DASN(AP) via email to RDAJ&As@navy.mil
50	As needed	Determination Approval for Multi-year contract for supplies >\$500M	NMCARS 5217.172-90	Not applicable	Not applicable	Prior to contract award or order issuance	DASN(AP) via email to RDAJ&As@navy.mil

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51	As needed	Investigation reports of labor standard violations for contracts involving construction. Note: DASN(AP) will notify the Administrator, Wage and Hour Division.	NMCARS 5222.406-8(d)	As required	Attorney General of the United States via DASN(AP).	As identified	For NAVFAC, submit to NAVFACENGCOMHQ. For all others, submit to DASN(AP) via email to RDAJ&As@navy.mil
52	As needed	Waiver of Mandatory Arbitrations	NMCARS 5222.7404	As required	DPAP	Prior to waiver approval	DASN(AP) via email to RDAJ&As@navy.mil
53	As needed	Sudan Waivers	NMCARS 5225.702-4	Allowing sufficient time for review and approval	OFPP	Prior to submission to OFPP	DASN(AP) via email to RDAJ&As@navy.mil
54	As needed	Iran Waivers	NMCARS 5225.703-4	Allowing sufficient time for review and approval	OFPP	Prior to submission to OFPP	DASN(AP) via email to RDAJ&As@navy.mil
55	As needed	Waiver of buys from Munitions from Communist Chinese military companies	NMCARS 5225.770-5	15 days prior to award/DPAP	DPAP	20 days prior to award	DASN(AP) via email to RDAJ&As@navy.mil
56	As needed	Nonimplementation of GAO protest recommendations. Note: SECNAV is authorized to make the waiver determination without power of delegation.	NMCARS 5233.104(g)	Prior to final decision not to implement	Comptroller General	Prior to final decision not to implement	DASN(AP) via email to RDAJ&As@navy.mil
57	As needed	Protests of Acquisitions valued at \$1B or more	NMCARS 5233.170	Within 10 days of receipt of the protest	DPAP	Within 5 days of receipt of the protest	DASN(AP) via email to RDAJ&As@navy.mil

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58	As needed	Contractor Appeal to ASBCA Litigation Requirements Report	NMCARS 5233.9002	In conjunction with an appeal	Litigation Division of the Office of General Counsel	With compilation of Rule 4 documents	DASN(AP) via email to RDAJ&As@navy.mil
59	As needed	Direct Purchase of Ocean Transportation Services Note: DFARS reference requires Contracting Officer to forward a report to Commander, MSC for review and forwarding if approved.	NMCARS 5247.573-1	When proposed freight charges are excessive or otherwise unreasonable	SECNAV	Not applicable	DASN(AP) via email to RDAJ&As@navy.mil
60	As needed	Ocean Transportation Incidental to contract for supplies, services or construction/ direct purchase. Note: DFARS reference requires Contracting Officer to forward a report to Commander, MSC for review and forwarding if approved.	NMCARS 5247.573-2	When proposed freight charges are excessive or otherwise unreasonable	SECNAV	Not applicable	DASN(AP) via email to RDAJ&As@navy.mil
61	As needed	Termination For Default	NMCARS 5249.470	Within 5 days after issuance of termination or change in termination status	Department of the Navy (DON) Acquisition Integrity Office (AIO)		
62	As needed	Contract Termination – Congressional Notification on Significant Contract Terminations	NMCARS 5249.7001	As soon as possible after the decision to terminate is made	Navy – Chief of Legislative Affairs	As soon as possible after the decision to terminate is made	DASN(AP) via email to RDAJ&As@navy.mil . Confirm receipt via phone call.

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63	Per contract containing services labor hours	ECMRA Contractor Service Hour Labor Reporting Note: Contractors perform reporting.	NMCARS 5237.102-90	Not applicable	Not applicable	No later than October 31 for the preceding fiscal year.	DON ECMRA Application