

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

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**N**AVY

**M**ARINE **C**ORPS

**A**CQUISITION

**R**EGULATION

**S**UPPLEMENT

NOVEMBER 2003

## PART 5201

### FEDERAL ACQUISITION REGULATIONS SYSTEM

#### SUBPART 5201.1--PURPOSE, AUTHORITY, ISSUANCE

##### **5201.101 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).

##### **5201.103 Authority.**

(b) The NMCARS is prepared, issued, and maintained pursuant to the authority of 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 Issuance.**

###### **5201.105-2 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 DFARS cite in parentheses immediately after the NMCARS cite means related coverage is contained in the DFARS (e.g. 5201.104 (DFARS 201.104)).

##### **5201.108 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.

##### **5201.303 (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.

(A) Definitions.

(a) "Clause" as used in these procedures includes provisions and means a term or condition of

the solicitation/contract of the type set forth in FAR Part 52/DFARS Part 252/Part 5252. A clause includes everything in parts B through M of a solicitation/contract except:

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

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

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

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

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

(B) Standard Component Clauses.

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

(1) A deviation has been authorized in accordance with (c) below; or

(2) One of the exceptions listed in (C) below permitting use of non-standard clauses is applicable.

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

(2) New standard component clauses, or changes to existing component clauses, which do not have significant cost or administrative impact on offerors/contractors, do not require publication for public comment or approval of DASN(ACQ) or USD(AT&L). Copies of all new standard component clauses or changes, that do not require DASN(ACQ) or USD(AT&L) approval, shall be provided to DASN(ACQ) for inclusion in the Navy Clause Baseline.

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

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

(C) Non-standard Component Clauses. Non-standard clauses are not included in the Navy Clause Baseline and do not require approval of DASN(ACQ), unless usage constitutes a deviation from FAR/DFARS/NMCARS. Non-standard Component Clauses may be used only when they are:

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

(b) non-standard component clauses in dual source or limited competition procurements that

have advance agreement of the parties;

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

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

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

## **SUBPART 5201.4--DEVIATIONS FROM THE FAR**

### **5201.403 (DFARS 201.403) Individual deviations.**

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

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

### **5201.404 (DFARS 201.404) Class deviations.**

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

(b)(ii) DASN(ACQ) 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 General.**

#### **5201.601-90 Department of the Navy authorities and responsibilities.**

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

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

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

(b) *NAVSUPSYSCOM contracting responsibilities.* NAVSUPSYSCOM contracting responsibilities include:

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

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

(but not Marine Corps) activities for visual information (motion picture and videotape) productions under the technical cognizance of and via coordination with the Naval Media Center, unless an exception is granted by the Chief of Naval Operations (N09C4).

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

(d) *Chief of Naval Research (CNR) responsibility for the charter or sublet of government owned research ships.* The CNR is responsible for DoN charter party agreements wherein DoN owned oceanographic research ships are leased to research institutions for the performance of contract research.

## **5201.602 Contracting officers.**

### **5201.602-1 Authority.**

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

### **5201.602-2 (DFARS 5201.602-2) Responsibilities.**

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

## **5201.603 Selection, appointment, and termination of appointment.**

### **5201.603-1 General.**

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

## **5201.691 Procurement Management Oversight.**

### **5201.691-1 Responsibilities.**

(a) DASN(ACQ) is responsible for oversight and review of HCAs and other designated DoN contracting organizations, and will oversee and provide guidance on the Procurement Performance Management Assessment Program (PPMAP).

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

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

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

(e) Each contracting activity assigned procurement management oversight is responsible for preparing and maintaining a schedule of reviews, and conducting reviews of all subordinate organizations with delegated contracting authority.

(f) HCAs shall:

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

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

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

## **PART 5202**

### **DEFINITIONS OF WORDS AND TERMS**

#### **SUBPART 5202.1--DEFINITIONS**

##### **5202.101 (DFARS 202.101) Definitions.**

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

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

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

"DASN(ACQ)" means the Deputy Assistant Secretary of the Navy for Acquisition Management, Office of the Assistant Secretary of the Navy (Research, Development and Acquisition). It also includes the Chief of Staff, DASN(ACQ).

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

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

"DRPM" means Direct Reporting Program Manager.

"MSC" means the Military Sealift Command

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

"NAVAIRSYSCOM" means the Naval Air Systems Command.

"NAVFACENGCOM" means the Naval Facilities Engineering Command.

"NAVSEASYSYSCOM" means the Naval Sea Systems Command.

"NAVSUPSYSCOM" means the Naval Supply Systems Command.

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

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

"PEO" means Program Executive Officer.

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

"SSP" means Strategic Systems Programs.

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

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

## **PART 5203**

## **IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

### **SUBPART 5203.1--SAFEGUARDS**

#### **5203.101 Standards of conduct.**

##### **5203.101-1 General.**

(1) 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:

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

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

#### **5203.104 Procurement integrity.**

##### **5203.104-7 Violations or possible violations.**

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

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

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

#### **5203.602 Exceptions.**

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

## **PART 5204**

### **ADMINISTRATIVE MATTERS**

### **SUBPART 5204.2--CONTRACT DISTRIBUTION**

#### **5204.201 (DFARS 204.201) Procedures.**

DoN activities shall post an electronic copy of each newly executed procurement instrument (contracts, purchase orders, delivery orders, contract modifications, etc.) within two working days of execution, to the Navy Air Force Interface (NAFI) to DoD Electronic Document Access (EDA) ([www.nafi.navy.mil](http://www.nafi.navy.mil)). The preferable method of posting documents is via automated interface from the contract writing system. This posting constitutes the required distribution with respect to required copies for the Defense Finance and Accounting Service, the Defense Contract Management Agency, and the Defense Contract Audit Agency. All parts of an instrument that would have been provided to a recipient in paper should be made available electronically.

### **SUBPART 5204.6--CONTRACT REPORTING**

**5204.600 (DFARS 204.600) Scope of subpart.**

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

**SUBPART 5204.70--UNIFORM PROCUREMENT INSTRUMENT IDENTIFICATION NUMBERS**

**5204.7003 (DFARS 204.7003) Basic PII number.**

(a) *Elements of a number.*

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

**PART 5205**

**PUBLICIZING CONTRACT ACTIONS**

**SUBPART 5205.2--SYNOPSIS OF PROPOSED CONTRACT ACTIONS**

**5205.207 (DFARS 205.207) Preparation and transmittal of synopses.**

(d) *General format for Item 17, “Description”.*

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

**SUBPART 5205.3--SYNOPSIS OF CONTRACT AWARDS**

**5205.303 (DFARS 205.303) Announcement of contract awards.**

(a) *Public Announcements.*

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

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

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

**SUBPART 5205.4--RELEASE OF INFORMATION**

**5205.404 Release of long-range acquisition estimates.**

**5205.404-1 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 5206.202) Establishing or maintaining alternative sources.**

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

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

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

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

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

## **SUBPART 5206.3--OTHER THAN FULL AND OPEN COMPETITION**

### **5206.303 Justifications.**

#### **5206.303-1 (DFARS 206.303-1) Requirements.**

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

#### **5206.303-2 (DFARS 206.303-2) Content.**

(a) Each justification also should include:

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

(ii) The total estimated dollar value for the acquisition(s) covered by the justification. The estimated dollar value should be identified by fiscal year and appropriation. The planning documents in current use by the program manager (and Integrated Product Team, if applicable) should be reviewed concurrent with preparation of the justification and updated if required. Justifications and planning documentation should be consistent; unavoidable discrepancies should be highlighted and explained to the approving official.

(iii) 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. When a solicitation has been furnished to a prospective offeror(s) before the expiration date, the authority under the class justification will continue until award of the contract(s) resulting from the solicitation.

#### **5206.304 (DFARS 206.304) Approval of the justification.**

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

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

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

## **SUBPART 5206.5--COMPETITION ADVOCATES**

### **5206.501 Requirement.**

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

**5206.502 Duties and responsibilities.**

(a) Competition advocates will also:

(i) 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;

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

(iii) Have direct access throughout the Department of the Navy acquisition community as required to promote competition.

**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(h), HCAs may tailor the content requirements of FAR 7.105 and DFARS 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.

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

**SUBPART 5207.5--INHERENTLY GOVERNMENTAL FUNCTIONS**

**5207.503 Policy.**

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

**PART 5208**

**REQUIRED SOURCES OF SUPPLIES AND SERVICES**

## **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 will assign contracting responsibilities to a particular contracting activity.

## **SUBPART 5208.74--ENTERPRISE SOFTWARE AGREEMENTS**

### **5208.7403 Acquisition procedures.**

(e)(3) The HCA is the designated management official. The management official shall coordinate any request for waiver with the Department of the Navy Chief Information Officer (DoN CIO).

## **PART 5209**

### **CONTRACTOR QUALIFICATIONS**

## **SUBPART 5209.4--DEBARMENT, SUSPENSION AND INELIGIBILITY**

### **5209.405 (DFARS 209.405) Effect of listing.**

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

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

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

### **5209.406 Debarment.**

#### **5209.406-3 (DFARS 209.406-3) Procedures.**

(a) *Investigation and referral.*

(i) All matters shall be referred to Counsel (PIO). In cases involving indictments, forward reports within fifteen calendar days after the indictment is filed.

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

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

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

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

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

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

(S-93) If Government employees are involved in the wrongdoing, the names and current addresses of the employees, disciplinary action taken and the current employment status of each

individual. If no disciplinary action was taken against Government employees involved in the wrongdoing, and the contractor or contractor personnel are recommended for debarment or suspension, a statement explaining why no disciplinary action was taken, and why debarment or suspension is appropriate under the circumstances.

**5209.407 Suspension.**

**5209.407-3 (DFARS 209.407-3) Procedures.**

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

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

**5209.503 Waiver.**

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

**PART 5211**

**DESCRIBING AGENCY NEEDS**

**SUBPART 5211.1--SELECTING AND DEVELOPING REQUIREMENTS DOCUMENTS**

**5211.103 Market acceptance.**

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

**SUBPART 5211.2--USING AND MAINTAINING REQUIREMENTS DOCUMENTS**

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

(a) and (b)(3) Technical certification and approval requirements are set forth in paragraph 6-5.9.2 of OPNAVINST 5090.1B, "Environmental and Natural Resources Program Manual."

**PART 5212**

**ACQUISITION OF COMMERCIAL ITEMS**

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

**5212.204 Solicitation/contract form.**

(a) Every competitive written solicitation that is required by FAR Subpart 5.2 to be synopsized in the Governmentwide point of entry (GPE), and all amendments thereto, shall be available electronically and be linked to or posted on the Navy Electronic Commerce Online (NECO) world wide web site ([www.neco.navy.mil](http://www.neco.navy.mil)).

**PART 5213**

## **SIMPLIFIED ACQUISITION PROCEDURES**

### **5213.003 Policy.**

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

### **SUBPART 5213.1--PROCEDURES**

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

##### **5213.106-1 Soliciting competition.**

(d) Written solicitation. Every competitive written solicitation that is required by FAR Subpart 5.2 to be synopsisized in the Governmentwide point of entry (GPE), and all amendments thereto, shall be available electronically and be linked to or posted on the Navy Electronic Commerce Online (NECO) world wide web site ([www.neco.navy.mil](http://www.neco.navy.mil)).

## **PART 5214**

### **SEALED BIDDING**

#### **SUBPART 5214.2--SOLICITATION OF BIDS**

##### **5214.203 Methods of soliciting bids**

**5214.203-1 Transmittal to prospective bidders.** Every competitive written solicitation that is required by FAR Subpart 5.2 to be synopsisized in the Governmentwide point of entry (GPE), and all amendments thereto, shall be available electronically and be linked to or posted on the Navy Electronic Commerce Online (NECO) world wide web site ([www.neco.navy.mil](http://www.neco.navy.mil)).

#### **SUBPART 5214.4--OPENING OF BIDS AND AWARD OF CONTRACT**

##### **5214.407 Mistakes in bids.**

###### **5214.407-3 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**

##### **5215.203 Requests for proposals.**

(a) Every competitive written solicitation that is required by FAR Subpart 5.2 to be synopsisized in the Governmentwide point of entry (GPE), and all amendments thereto, shall be available electronically and be linked to or posted on the Navy Electronic Commerce Online (NECO) world wide web site ([www.neco.navy.mil](http://www.neco.navy.mil)).

## **SUBPART 5215.3--SOURCE SELECTION**

### **5215.303 (DFARS 215.303) Responsibilities.**

(a) When it is appropriate to have someone other than the contracting officer act as 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.

### **5215.305 (DFARS 215.305) Proposal evaluation.**

(a) (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.

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

## **SUBPART 5215.6 UNSOLICITED PROPOSALS**

### **5215.606 Agency procedures.**

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

## **PART 5216**

### **TYPES OF CONTRACTS**

## **SUBPART 5216.3 COST REIMBURSEMENT CONTRACTS**

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

(c) *Limitations.*

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

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

## **SUBPART 5216.5--INDEFINITE-DELIVERY CONTRACTS**

### **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

##### **5217.171 (DFARS 217.171) Multiyear contracts for services.**

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

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

#### SUBPART 5217.2--OPTIONS

##### **5217.204 Contracts.**

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

#### SUBPART 5217.5--INTERAGENCY ACQUISITIONS UNDER THE ECONOMY ACT

##### **5217.503 (DFARS 217.503) Determinations and findings requirements.**

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

DASN(ACQ)

Chief of Naval Research

Commander, Marine Corps Systems Command

Commander, Naval Air Systems Command

Commander, Naval Facilities Engineering Command

Commander, Naval Sea Systems Command

Commander, Naval Supply Systems Command

Commander, Space and Naval Warfare Systems Command

Director, Strategic Systems Programs

Deputy 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.

(ii) *Special circumstances.* Approval authority for Economy Act orders to be placed with the

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

(iii) *Limitations.*

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

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

(91) *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; and

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

## **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 SBA procurement center representative is located.

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

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

(ii) orders placed against Federal Supply Schedules since FAR 8.404(a) provides that Part 19 does not apply to such orders; or

(iii) awards under the Small Business Innovation Research (SBIR) Program since the SBIR is limited to qualified small business concerns.

#### **SUBPART 5219.5--SET-ASIDES FOR SMALL BUSINESS**

##### **5219.505 (DFARS 219.505) Rejecting Small Business Administration recommendations.**

(d) The justification shall be forwarded through the HCA to the Director, SADBU, and shall include copies of all correspondence between the activity and the SBA related to the appeal,

together with the rationale justifying the activity's non-set-aside determination.

## **SUBPART 5219.7--THE SMALL BUSINESS SUBCONTRACTING PROGRAM**

### **5219.704 (DFARS 219.704) Subcontracting plan requirements.**

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

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

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

(d) When evaluating proposed subcontracting plans, contracting officers 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 Awards involving subcontracting plans.**

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

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

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

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

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

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

### **5219.804-4 Repetitive acquisitions.**

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

### **5219.810 SBA appeals.**

(b) Upon notification that the SBA Administrator has filed an appeal, the contracting officer shall forward to the Director, SADBUD, 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 Labor relations.**

##### **5222.101-1 (DFARS 222.101-1) General.**

- (a)(i) Submit requests for departmental approval to DASN(ACQ).
- (ii) Immediately notify DASN(ACQ).
- (iii) Submit requests for agency head approval to DASN(ACQ).

##### **5222.103 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 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(ACQ).

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

## **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 Safety precautions for ammunitions and explosives.**

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

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

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

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

## **PART 5225**

### **FOREIGN ACQUISITION**

## **SUBPART 5225.2--BUY AMERICAN ACT--CONSTRUCTION MATERIALS**

### **5225.202 (DFARS 225.202) Exceptions.**

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

## **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.

## **PART 5227**

### **PATENTS, DATA AND COPYRIGHTS**

## **SUBPART 5227.2--PATENTS**

### **5227.208 Use of patented technology under the North American Free Trade Agreement.**

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

## **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 Policy.**

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

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

**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(ACQ) 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(ACQ) 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(ACQ) 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.

**5228.307 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.

## PART 5231

### CONTRACT COST PRINCIPLES AND PROCEDURES

#### SUBPART 5231.2--CONTRACTS WITH COMMERCIAL ORGANIZATIONS

##### **5231.205 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 National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85), such an agreement permits the contractor to claim certain indirect costs attributable to its private sector work as allowable costs on Navy shipbuilding contracts.

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

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

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

(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(RD&A), who has approval or disapproval authority. The contractor should also provide an informational copy of any such request to the cognizant administrative contracting officer.

## **PART 5232**

### **CONTRACT FINANCING**

#### **SUBPART 5232.6--CONTRACT DEBTS**

##### **5232.601 Definition**

The contracting officer is the responsible official for determining the amount of contract debt owed the Government and for demanding payment. The ASN(FM&C) is the responsible official for deciding whether to defer collecting contract debts.

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

(b)(3) All requests for deferment shall be submitted to the contracting officer for review in accordance with FAR 32.613. The contracting officer shall forward the request, with a recommendation, to the ASN(FM&C) via DASN(ACQ).

##### **5232.690 DoN claims against a contractor.**

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

## **PART 5233**

### **PROTESTS, DISPUTES, AND APPEALS**

## **SUBPART 5233.1--PROTESTS**

### **5233.103 Protests to the agency.**

(d)(4) HCAs are responsible for establishing procedures for handling requests made by interested parties for an independent review of their protest at a level above the contracting officer. In addition, for purposes of this paragraph, a “level above the contracting officer” 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 Protests to GAO.**

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

## **SUBPART 5233.2--DISPUTES AND APPEALS**

### **5233.203 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.

### **5233.209 Suspected fraudulent claims.**

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

### **5233.211 Contracting officer's decision.**

(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 to DASN(ACQ) for review and approval. Other proposed claim settlements and final decisions of the contracting officer, shall be reviewed and approved as specified by the HCA.

(b) The supporting documentation submitted to DASN(ACQ) 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 to DASN(ACQ) for approval.

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 therefor. The settlement agreement shall be drafted by the contracting activity and trial attorney. The trial attorney shall file any legal papers required to be filed with the ASBCA to effect disposition of the case by mutual agreement of the parties.

(d) *Review and approval.* Negotiated settlements of appeals pending before the ASBCA, as well as negotiated settlements of appeal issues 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 5235

### RESEARCH AND DEVELOPMENT CONTRACTING

#### **5235.015 Contracts for research with educational institutions and nonprofit organizations. 5235.015-70 (DFARS 235.015-70) Special use allowances for research facilities acquired by educational institutions.**

##### (b) *Policy.*

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

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

**5235.070 Indemnification against unusually hazardous risks.**

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

(a) The authority to approve the indemnification of the contractor or subcontractor; the definition of the specific unusually hazardous risks to be indemnified in a research or development contract; and the amount of any payment under 10 U.S.C. 2354(c) is delegated to DASN(ACQ). The authority to approve the source of the funds out of which any such payment is made is delegated to the Deputy Comptroller, Department of the Navy, and to one assistant designated by the Deputy Comptroller for such purpose.

**PART 5237**

**SERVICE CONTRACTING**

**SUBPART 5237.1—SERVICE CONTRACTS GENERAL**

**5237.170 Approval of contracts and task orders for services.**

**5237.170-3 (DFARS 237.170-3) Approval requirements.**

(b) *Acquisition of services through a DoD 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 \$50,000,000 that is not performance based. For acquisitions above \$5 million, HCA authority may be delegated 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, but not further.

(2) For acquisitions exceeding \$50,000,000, but below \$500,000,000, the approval authority is DASN(ACQ).

(b) *Acquisition of services through any contract or task order awarded by an agency other than DoD.* In addition to review and approval in accordance with the DoN Management Oversight Process for Acquisition of Services, approval must be obtained as described in 5237.170-3(a).

**SUBPART 5237.2--ADVISORY AND ASSISTANCE SERVICES**

**5237.204 Guidelines for determining availability of personnel.**

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

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

(ii) Qualified employees of another agency who could only be available at times other than when needed to conduct a planned evaluation of proposals may be considered "not readily

available” if it is not practical to adjust the evaluation schedule to accommodate using them.

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

(d) 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 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 (MOPAS)." 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 Applicability.**

HCAs shall ensure compliance with ASN(RD&A) memorandum dated October 18, 2002, subj: "Information Technology-Related Procurements."

## **PART 5241**

### **ACQUISITION OF UTILITY SERVICES**

## **SUBPART 5241.2--ACQUIRING UTILITY SERVICES**

### **5241.201 (DFARS 241.201) Policy.**

(90) The Commander, NAVFACENGCOM has cognizance over all matters pertaining to 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.

(91) 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**

##### **5242.191 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 this and to ensure that the semiannual contract audit follow-up status report required by DoD Directive 7640.2 is submitted to DASN(ACQ) within 15 calendar days after the end of the 31 March and 30 September reporting periods.

#### **SUBPART 5242.15--CONTRACTOR PERFORMANCE INFORMATION**

**5242.1503 (DFARS 242.1503) Procedures.** The DoN Contractor Performance Assessment Reporting System (CPARS) shall be used when preparing performance evaluations. The CPARS is accessed via the internet at <http://www.cpars.navy.mil>.

## **PART 5243**

### **CONTRACT MODIFICATIONS**

#### **SUBPART 5243.2--CHANGE ORDERS**

##### **5243.201 General.**

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

## **PART 5245**

### **GOVERNMENT PROPERTY**

#### **SUBPART 5245.3--PROVIDING GOVERNMENT PROPERTY TO CONTRACTORS**

##### **5245.302 Providing facilities.**

##### **5245.302-1 Policy.**

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

##### **5245.302-1 (DFARS 245.302-1) Policy.**

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

(a)(4)(A)(2) Submit requests via DASN(ACQ).

### **5245.303 Providing material.**

#### **5245.303-1 Policy.**

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

#### **5245.311 Providing Government property by transfer.**

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

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

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

### **5245.403 (DFARS 245.403) Rental--Use and Charges clause.**

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

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

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

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

### **5245.505 Records and reports of Government property.**

#### **5245.505-14 (DFARS 245.505-14) Reports of Government property.**

(90) Property Administrators shall forward all DD Forms 1662 reporting Government property to the Office of the Assistant Secretary of the Navy (Research, Development and Acquisition) DASN(ACQ), 1000 Navy Pentagon, Washington, DC 20350-1000, not later than 15 November each year for input into the DoD Contract Property Management System. Block 20 of the DD 1662 shall be fully and legibly completed.

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

### **5245.508 Physical inventories.**

### **5245.508-1 Inventories upon termination or completion.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **5245.608 Screening of contractor inventory.**

#### **5245.608-5 (DFARS 245.608-5) Special items screening.**

(a) *Special test equipment with standard components.* Notwithstanding the provision of FAR 45.608-5(a), the final approval for contractor retention of standard components of special test

equipment (STE) or for the transfer of industrial plant equipment items that are components of STE, shall be made by the contracting officer in lieu of the ACO.

**5245.612 Removal and storage.**

**5245.612-3 (DFARS 245.612-3) Special storage at the Government's expense.**

(a) Prior to authorizing retention of items in storage the contracting officer should ensure that a retention plan has been developed. Retention plans 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.

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

**PART 5248**

**VALUE ENGINEERING**

**SUBPART 5248.1--POLICIES AND PROCEDURES**

**5248.103 Processing value engineering change proposals.**

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

**PART 5250**

**EXTRAORDINARY CONTRACTUAL ACTIONS**

**SUBPART 5250.1--GENERAL**

**5250.105 (DFARS 250.105) Records.**

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

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

**5250.201 Delegation of authority.**

**5250.201-70 (DFARS 250.201-70) Delegations.**

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

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

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

**5250.202 (DFARS 250.202) Contract adjustment boards.**

Members and alternate members will be appointed by DASN(ACQ).

**SUBPART 5250.3--CONTRACT ADJUSTMENTS**

**5250.305 (DFARS 250.305) Processing cases.**

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

**5250.306 Disposition.**

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

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

**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(RD&A))
- 9100-9199 NAVSEA
- 9200-9299 SPAWAR
- 9300-9399 NAVFAC
- 9400-9499 NAVSUP
- 9500-9599 NAVAIR
- 9600-9649 SPAWAR
- 9650-9699 MC
- 9700-9749 ONR
- 9750-9799 SSP
- 9800-9899 MSC
- 9900-9999 RESERVED

**SUBPART 5252.2--TEXT OF PROVISIONS AND CLAUSES**

**5252.200 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)(b)(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.

(End of clause)