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NAVY MARINE CORPS ACQUISITION REGULATION SUPPLEMENT

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NAVY MARINE CORPS ACQUISITION REGULATIONS SYSTEM**

TITLE#-NAVY MARINE CORPS ACQUISITION REGULATIONS SYSTEM

Chapter#

Navy Marine Corps Acquisition Regulation System

Volume #

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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 Secretary of the Navy (SECNAV) Instruction (SECNAVINST) 5400.15.

(S-90) All DON activity acquisition regulation supplements and changes thereto are required to be approved by DASN(P). Requests for review and DASN(P) approval shall be submitted annually via email to Policy@navy.mil with the subject “NMCARS 5201.103 Acquisition Regulation Supplement – Request for Approval”, by August 31.

5201.104 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.

5201.107 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. Submit those requests for certifications to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 201.107 – Request for Certification.”

5201.108 FAR conventions.

- (b) *Delegation of authority.* The authorities assigned or delegated within NMCARS may be delegated or redelegated, unless otherwise restricted.
- (S-90) When the FAR or DFARS requires submission of a document to an organization outside of the Department of the Navy and the NMCARS directs the submission of that document to DASN(P), DASN(P) assumes the responsibility for complying with the requirement in the FAR or DFARS.

5201.170 Peer reviews.

- (a)(1) When Peer Reviews are required to be conducted by the Office of the Principal Director, Defense Pricing and Contracting (DPC), the Head of the Contracting Activity (HCA) shall request the review from DPC with a courtesy copy to DASN(P) by email at RDAJ&As.fct@navy.mil, at least 10 business days prior to the anticipated review.

- (2) HCAs shall submit the quarterly rolling forecast of acquisitions requiring peer reviews by

DASN(P) or DPC, in the format prescribed by Annex 8, Peer Review Rolling Forecast.

Submit the required information to DASN(P) via email to RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 201.170 - Peer Review Rolling Forecast” by March 10, June 10, September 10, and December 10. Negative reports are required.

- (b) The HCA shall be responsible for conducting and approving peer reviews unless the approval authority is DASN(P) or DPC. Peer reviews shall be performed on solicitations and contracts with estimated values at \$50,000,000 or more (including options). For peer reviews with estimated values greater than \$250,000,000, including options, the HCA shall establish a Peer Review Board. The Board shall include contracting personnel at the grade of GS-14 (or equivalent) or higher, from another HCA at the equivalent or higher echelon level. Performance Based Logistics (PBL) acquisitions with an estimated value greater than the approval authority defined in FAR 6.304(a)(4), whether sole source or competitive, shall have a DASN(P) Peer Review. Submit the PBL peer review package to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 201.170 –DASN(P) PBL Peer Review”. See Annex 4 for Science Technology Reinvention Laboratory (STRL) deviations applicable hereto.

- (1) Except for procurements for major defense acquisition programs (MDAPs) valued at or above \$1,000,000,000 for which the Under Secretary of Defense for Acquisition and Sustainment

(USD(A&S)) is the milestone decision authority or procurements designated by USD(A&S) as requiring a DPC conducted peer review, preaward peer reviews of solicitations for competitive procurements valued at \$250,000,000 or greater are required as follows:

- (i) Services. The HCA shall establish a Peer Review Board and conduct peer reviews for competitive procurements and/or contract actions valued at \$250,000,000 or greater.
 - (ii) Supplies. The HCA shall establish procedures to conduct peer reviews.
- (2) Except for contract actions designated by USD(A&S) as requiring a DPC conducted peer review, preaward peer reviews for noncompetitive procurements valued at less than \$1,000,000,000 are required as follows:
- (i) Services. The HCA shall establish a Peer Review Board and conduct peer reviews for non-competitive procurements and/or contract actions valued at \$250,000,000.
 - (ii) Supplies. The HCA shall establish procedures to conduct peer reviews.
- (3) The HCA shall establish postaward peer reviews of all contracts for services. Peer reviews shall be conducted at the midpoint to allow sufficient time to finalize the disposition of the peer review recommendations prior to exercise of an option.

(S-90) The HCA shall provide a copy of the peer review reports valued at \$250,000,000 or greater within 15 days of completion of the peer review to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] NMCARS 5201.170(b) - Peer Review Report.”

(S-91) If a waiver from the peer review process is desired, submit the procurement history, rationale and specific circumstances surrounding the request, including impact to the program if a waiver from the peer review process is not granted, approved by the Deputy/Assistant Commander for Contracts of the cognizant HCA, without power of redelegation, to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] NMCARS 5201.170(b)(S-91) - Peer Review Waiver Request.”

5201.170-4 Administration of peer reviews.

(f) Contracting Officers shall submit copies of required memoranda documenting the disposition of peer review results and recommendations to DASN(P)/Director, Program Analysis and Business Transformation (PA&BT) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] 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 Maintenance of the FAR.

5201.201-1 The two councils.

(d)(i) Submit proposed revisions to the FAR, DFARS or NMCARS to DASN(P) via the Deputy/Assistant Commander for Contracts of the cognizant HCA by email at Policy@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 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 Agency control and compliance procedures.

(2)(ii) Submit those requests for certifications requiring approval by the Secretary of Defense to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 201.304 – Request for Certification Requirement.”

(4) “*Component*” is defined as a DON HCA exercising assigned or delegated contracting authority. Component clauses or changes to existing component clauses that meet the conditions at DFARS 201.301 shall be published for public comment in the *Federal Register*.

(A) Component clauses, except as provided DFARS PGI 201.301(b)(iii)(A), require Under Secretary of Defense (Acquisition & Sustainment (USD(A&S))/DPC approval.

(B) *Clause numbering*. Clause numbers will be assigned by DASN(P).

(5) Proposed clause packages shall be submitted via DASN(P) to DPC by email at Policy@navy.mil with the subject “NMCARS 5201.304- Proposed Component Clause/Clause Update Package.”

SUBPART 5201.4 —DEVIATIONS FROM THE FAR

5201.402 Policy.

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

5201.403 Individual deviations.

(1) DASN(P) 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 DFARS 201.403(1)).

(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 Class deviations.

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

(b)(ii) DASN(P) 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) *General.* DON 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 DON HCA as described in paragraph (c) below, unless authority is delegated in writing to another DON HCA and accepted by the receiving DON HCA to execute those procurements. Delegation of DON contracting authority applies only within the DON. Requirements executed outside of the DON shall follow the appropriate governing rules/regulations/policies (e.g., The Economy Act, Assisted Acquisition, FAR Part 17). At a minimum, DON HCAs shall address the following requirements and how they will be met in the contracting activity's procedures for delegation of contracting authority:

- (1) Tracking of all contracting authority that has been delegated and any limitations on the contracting authority.
- (2) Tracking of delegations received from HCAs.
- (3) Ensuring contracting authority delegations are made, in writing from DON HCA to DON HCA, without power of redelegation, to include:

- (A) Documenting the rationale supporting the delegation and address why the delegation is necessary for the efficient and proper administration of the receiving DON HCA's contracting operations.
- (B) The requirement that the DON HCA receiving the delegated authority affirmatively acknowledge and accept the conditions of the delegation in writing prior to exercising the delegated authority.
- (C) The extent to which the HCA delegated authority may be redelegated to contracting offices not under the cognizance of the receiving HCA unless specifically requested.
- (D) Ensuring 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. See Annex 4 for STRL deviations applicable hereto.

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

- (1) Deputy Assistant Secretary of the Navy (Procurement) (DASN(P)) has the following overarching responsibilities:

- (A) Serves as the principal advisor and executive agent to ASN(RDA), who serves as the Navy Acquisition Executive and Senior Procurement Executive.
- (B) Exercises plenary contracting authority on behalf of the Department, including approving, revising or denying DON Activity contracting responsibilities.
- (C) Reviews and processes Justification and Approvals (J&As) requiring ASN(RDA) approval.
- (D) Reviews and processes acquisition documents (e.g. acquisition plans, acquisition strategies for services, Determination and Findings (D&Fs)) requiring DASN(P) or higher-level approval.
- (E) Approves individual and class deviations and waivers from the FAR and DFARS.

- (F) Serves as the DON's representative on the Defense Acquisition Regulations (DAR) Council and provides DON policy, guidance, oversight, and coordination for DAR Council committees and FAR teams.
- (G) Serves as the DON focal point for coordination, interpretation and implementation of DOD acquisition policy, including all DOD 5000-series instructions, manuals and directives.
- (H) Implements and maintains the NMCARS.
- (I) Oversees, provides guidance, and conducts Procurement Performance Management Assessment Program (PPMAP) reviews and DON Peer Reviews.
- (J) Executes the ASN(RDA) duties as the senior official responsible for the management of acquisition of contract services.
- (K) Serves as the DON focal point for the compilation and review of the Inventory of Contracted Services.
- (L) Serves as the DON lead for proposed mergers and acquisitions as well as the Committee on Foreign Investment in the United States reviews.
- (M) Serves as the Competition Advocate General (CAG) of the Navy and as principal advisor to the Secretary of the Navy and to ASN(RDA) for competition policy issues. The CAG is responsible for challenging barriers to competition and promoting full and open competition in the acquisition process pursuant to the Competition in Contracting Act (CICA); developing and assigning annual competition goals for the Activities; preparing an annual report addressing DON competition results; sponsoring DON acquisition achievement awards programs; and publishing long-range acquisition estimates.
- (N) Serves as the DON Acquisition Ombudsman.
- (O) Chairs the Navy Contract Adjustment Board in accordance with Public Law 85-804.
- (P) Represents ASN(RDA) on committees and workgroups relating to acquisition, program management, contractual services and audits conducted by the Government Accountability Office, DOD Inspector General (DODIG), Naval Inspector General, and Naval Audit Service.
- (Q) Advises ASN(RDA) on matters related to contractor labor relations. Develops, implements, and oversees the execution of policies and procedures on contractor labor relations.
- (R) Serves as the DON focal point for industrial base policy, to include the exercise of responsibilities related to the Defense Production Act, the Defense Priorities and Allocation System, requests for special priorities assistance, and assessments of the industrial base.

- (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;
- (M) Lease (over 120 days) of automotive vehicles used by DON;
- (N) Construction, lease, purchase and/or installation of relocatable buildings; and
- (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 (NAVSEASYS COM)* is responsible for awarding and administering contracts for ships and submarines, assigned weapon systems and platforms, and relevant professional, research and engineering services. NAVSEASYS COM unique contracting responsibilities include awarding and administering contracts for construction, maintenance and modernization of ships and submarines, nuclear propulsion, water craft, submersibles, equipage 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.

(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) *Naval Information Warfare Systems Command (NAVWARSYSCOM)* 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 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.

5201.602-2 Responsibilities.

(d)(v)(A) Notwithstanding FAR 1.602-2(d) and DFARS PGI 201.602-2(d)(v)(A), designation of a Contracting Officer's Representative (COR) for services contracts is not required when surveillance functions are delegated to and performed by a Contract Administration Office (CAO) or the contracting officer retains surveillance functions and executes CORs duties.

5201.602-3 Ratification of unauthorized commitments.

(b)(1) Within 10 calendar days of determining the need for a ratification of an unauthorized commitment (UAC), the activity where the ratifiable action occurred shall report the UAC to its respective HCA in accordance with the Activity's procedures.

(b)(3)(i) The HCA (or designee) may delegate ratification authority as follows:

(A) Actions valued at \$50,000 or less - Not lower than the Activity CCO

(B) Actions valued at \$100,000 or less - Not lower than the Deputy/Assistant Commander for Contracts

(C) Actions valued greater than \$100,000 – HCA without power of delegation

(ii) The authority to ratify, at any level, reverts to the HCA without power of delegation if--

(A) For HCAs except NAVSUP: The HCA has 15 or more UACs exceeding the micro-purchase threshold for that FY.

(B) NAVSUP: A Budget Submitting Office (BSO) supported by NAVSUP has more than four (4) UACs exceeding the micro-purchase threshold in a FY. Authority for delegation of ratification authority is by BSO.

(C) When the person committing the UAC has made, or the contractor performing the UAC has submitted, a UAC at any point in the past.

(iii) For counting purposes, use the date that the ratifiable action occurred not the date of reporting.

(iv) The ability to delegate in accordance with (i) resets at the beginning of each FY.

(v) The HCA shall maintain records of all ratifications regardless of dollar value and review as part of its Procurement Performance Management Assessment Program (PPMAP) (see NMCARS 5201.691).

(S-90) DONPolicy.

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

(b) When an activity receives a UAC that falls within another activity's unique contracting authority (as defined in 5201.601-90), one of two actions is required to address the UAC:

(1) Authority may be requested from the HCA with the unique contracting authority to address the UAC and complete the ratification (if necessary); or,

(2) The HCA with unique contracting authority ratifies the UAC or determines it is not a ratifiable action. If ratification is necessary, a Military Interdepartmental Purchase Request (MIPR) shall be executed and funded by the activity to which the employee who committed the UAC belongs. This MIPR shall be provided to the activity with the unique contracting authority to complete the ratification.

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

(d) DASN(P) reserves the right to request copies of any documentation at any point in the process.

(e) Reporting.

- (1) The activity executing the ratification is responsible for reporting.
- (2) Submit a quarterly report of all UACs/ratifications exceeding the micro-purchase threshold, approved at a level no lower than the Deputy/Assistant Commander for Contracts, in the format prescribed in Annex 15 to DASN(P) by e-mail at Policy@navy.mil with the subject “NMCARS 5201.602-3(S-90)(e)(2) – Quarterly Ratification Report”, by January 31, April 30, July 31 and October 31. Negative reports are required.

5201.603 Selection, appointment, and termination of appointment for contracting officers.

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. 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(P) at Policy@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–DON 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(P) by email at Policy@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 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. HCAs shall keep a copy of each terminated warrant for the period identified in 5204.805(c) beyond the date of termination.

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(P) 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(P) 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(P) 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 contracting personnel, at a grade of GS-14 (or equivalent) or higher, to serve on DASN(P) PPMAP teams.

(d) Reporting requirements. HCAs shall provide DASN(P) 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 noteworthy accomplishments as well as conditions that warrant management attention or corrective action noted for the contracting activity;
- (ii) identify best practices and/or process improvements which could be useful to other DON contracting activities;
- (iii) describe any statutory and/or regulatory deficiencies identified;
- (iv) explain associated corrective actions taken either at the contracting activity-level or specific subordinate field activity-level;
- (v) include other relevant information, i.e., the results of the HCA's annual warrant file audits, acquisition staffing analysis and validation, external audits or reviews to include the status of relevant recommendations; and, if applicable
- (vi) address the actions taken in response to a DASN(P) PPMAP performed during the reporting period.

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

(e) DASN(P) 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. Submit notifications to DASN(P) by e-mail at RDAJ&As.fct@navy.mil with the subject "[Activity Name] NMCARS 5201.691-2 – Revocation of [Contracting or Purchase Card] Authority."

SUBPART 5201.90 — BUSINESS CLEARANCE

5201.9000 Scope.

This subpart describes requirements to be met before entering into contract actions.

5201.9001 Policy.

(a) Contract actions, as delineated in 5201.9003(a), are subject to a formal review process prior to award through the use of a business clearance. The objective of the business clearance process is to:

- (1) Ensure that the proposed decision on a contract action is consistent with laws, regulations, and DOD/DON acquisition policies.
- (2) Document the basis for approval of the contract action, the basis for determination that the prices are fair and reasonable, and the application of good business practices.

(b) For contract actions requiring a business clearance, documentation generally includes the use of a pre-negotiation and post-negotiation business clearance memorandum (BCM).

- (1) For acquisitions requiring competitive range determinations, the pre-negotiation BCM presents a chronology of the acquisition up to the determination to enter into discussions and provides the basis for the competitive range decision. The post-negotiation BCM continues the chronology to contract award and provides the basis for the award decision.
- (2) For acquisitions requiring price negotiations, the pre-negotiation BCM presents the chronology of the acquisition prior to the start of formal negotiations and demonstrates to the approving official that the Government is ready to enter into negotiations. The post-negotiation BCM continues the chronology to contract award and describes the results of negotiations.
- (3) When intending to use a combined BCM, the contracting officer must still comply with the pre-negotiation objectives documentation requirements of FAR 15.406-1 and DFARS PGI 215.406-1 or the proposal evaluation documentation requirements of FAR 15.305 and DFARS 215.305.

5201.9002 Procedures.

(a) HCAs shall establish written procedures defining the types of contract actions requiring a business clearance, the applicable dollar thresholds, and the review and approval process. 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, the individual responsible for preparing the proposed contract action. HCAs may choose to create BCM templates based on applicable regulatory and policy requirements. The degree and complexity of documentation required for various actions should be governed by the magnitude and complexity of the action being reviewed.

(b) For contract actions subject to business clearance requirements, HCAs shall ensure that business clearances include all required content and compliances outlined in Annex 2, Business Clearance Required Content. If documentation of compliance with these requirements exists elsewhere in the contract file, the business clearance may reference the existing documentation rather than restate it. If an activity plans to delete any content otherwise required by Annex 2, the activity shall notify DASN(P) by submitting its HCA approved alternate content by email at Policy@navy.mil with the subject “[Activity Name] NMCARS 5201.90 – Business Clearance Content Deviation.” HCAs may add documentation requirements to the business clearance.

5201.9003 Applicability

(a) Business clearance requirements apply to the contract actions identified below. HCAs may expand this list, as appropriate.

- (1) Contracts (including task and delivery orders issued against indefinite-delivery contracts and basic ordering agreements; however, see the exceptions at (b)(3) and (b)(4) for task and delivery orders).
- (2) Contract modifications not within the scope or under the terms of an existing contract with the exception of modifications to actions listed in paragraph (b).
- (3) Undefined contract actions (see DFARS Subpart 217.74).
- (4) Modifications that set or change a contract price, including definitization of any undefined or unpriced contract actions, change orders, engineering change proposals, value engineering change proposals, over and above work, settlement of claims, or requests for equitable adjustment.
- (5) Retroactive pricing after completion, including final price determination.
- (6) Advance agreements on special or unusual cost items (see 5231.109.)
- (7) Actions that result in the establishment, modification, or rescission of a guarantee of performance on a government contract by a third party.

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

- (1) Contract actions awarded under FAR Part 13, Simplified Acquisition Procedures;
- (2) Contract actions awarded under FAR Part 14, Sealed Bidding;
- (3) Task orders or delivery orders issued under FAR Subpart 8.4, Federal Supply Schedules; or
- (4) 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/performance work statement is not required.

PART 5202 DEFINITIONS OF WORDS AND TERMS

SUBPART 5202.1 —DEFINITIONS

Definitions.

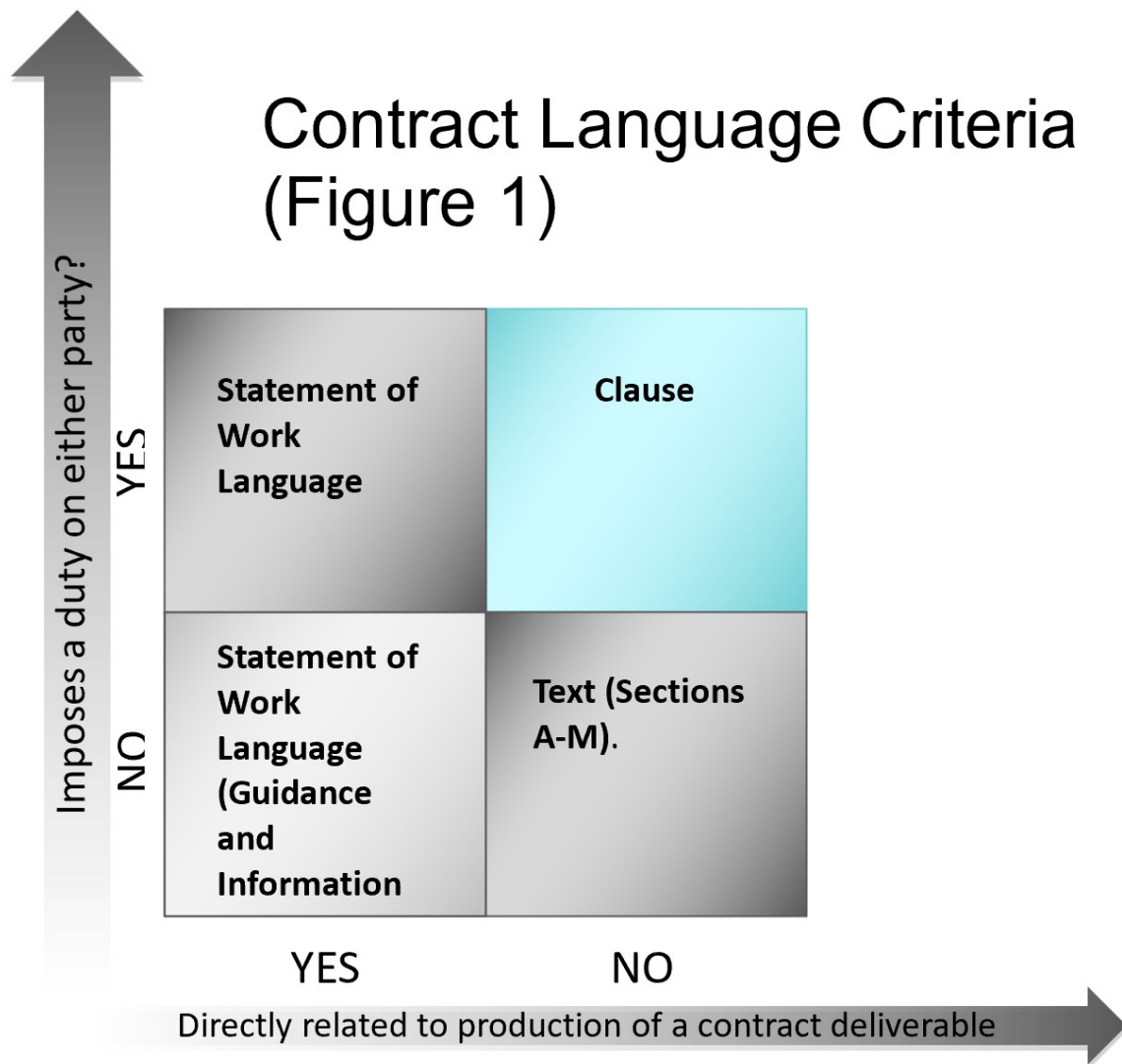
SUBPART 5202.1 —DEFINITIONS

Definitions.

“Acquisition Category” or ACAT is a defense acquisition program designation. For the purposes of NMCARS, this designation also includes “Business System Category” (BCAT) as defined in DoD Instruction 5000.75.

“ASN(RDA) Website” is defined as <https://www.secnv.navy.mil/rda/DASN-P> and all accompanying pages within the site where DON contracting policy is posted.

“Clause” is defined as language which imposes a duty on the Government or contractor and is not directly related to the production or performance of a contract deliverable as depicted in Figure 1, Contract Language Criteria.



“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(P)” is the Deputy Assistant Secretary of the Navy for Procurement, Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition). It also includes the Executive Director, DASN(P), and the Navy Senior Services Manager (SSM).

“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.

“Provision” is defined as language necessary for a potential offeror to produce a conforming proposal in response to a solicitation.

PART 5203 IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

[SUBPART 5203.1 — SAFEGUARDS](#)

[5203.101 Standards of conduct.](#)

[5203.101-1 General.](#)

[5203.104 Procurement integrity.](#)

[5203.104-7 Violations or possible violations.](#)

[SUBPART 5203.2 — CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL](#)

[5203.203 Reporting suspected violations of the Gratuities clause.](#)

[5203.204 Treatment of violations.](#)

[SUBPART 5203.6 — CONTRACTS WITH GOVERNMENT EMPLOYEES OR ORGANIZATIONS OWNED OR CONTROLLED BY THEM](#)

[5203.602 Exceptions.](#)

[SUBPART 5203.8 — LIMITATIONS ON THE PAYMENT OF FUNDS TO INFLUENCE FEDERAL TRANSACTIONS](#)

[5203.806 Processing suspected violations.](#)

[SUBPART 5203.9 — WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES](#)

[5203.903 Policy.](#)

[SUBPART 5203.10 — CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT](#)

[5203.1003 Requirements.](#)

SUBPART 5203.1 — SAFEGUARDS

5203.101 Standards of conduct.

5203.101-1 General.

(a) DON contracting activities, purchasing offices and 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 Procurement integrity.

5203.104-7 Violations or possible violations.

(a)(1) The CCO is designated, without power of redelegation, 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(P) by email at RDAJ&As.fct@navy.mil with the subject "[Activity Name] FAR 3.104-7 - Contract Award – Possible Procurement Integrity Act Violation." Verify receipt by the agency head before authorizing award of the contract or execution of the contract modification.

SUBPART 5203.2 — CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL

5203.203 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 Treatment of violations.

(a)(i) 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.

(ii) Notification.

(A) 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.

(B) 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. The contractor has 30 calendar days from receipt of notice to request a hearing.

(b) Hearing. 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 30 calendar days after the AGC (AI)'s receipt of the hearing request.

(c) 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(P). The AGC (AI) shall make

recommendations to DASN(P) with respect to terminating the contractor's right to proceed under the contract and assessing exemplary damages.

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

5203.602 Exceptions.

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

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

5203.806 Processing suspected violations.

Submit Lobbying Disclosure Act Violation reports to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject "[Activity Name] DFARS PGI 203.8—Lobbying Disclosure Act Violation Report."

SUBPART 5203.9 — WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES

5203.903 Policy.

(5) When notified of a complaint of reprisal described in DFARS 203.903(1), the contracting officer shall notify the Office of General Counsel by email at aio@navy.mil with a courtesy copy to DASN(P) by email at Policy@navy.mil with the subject "DFARS 203.903 – Notification of a Complaint of Reprisal."

SUBPART 5203.10 — CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT

5203.1003 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 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

5204.270 Electronic Data Access.

5204.270-1 Policy.

SUBPART 5204.6 — CONTRACT REPORTING

5204.604 Responsibilities.

SUBPART 5204.8 — GOVERNMENT CONTRACT FILES

5204.804 Closeout of contract files.

5204.804-1 Closeout by the office administering the contract.

5204.805 Storage, handling, and contract files.

SUBPART 5204.21 – PROHIBITION ON CONTRACTING FOR CERTAIN

TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

5204.2103 Procedures.

5204.2104 Waivers.

SUBPART 5204.73 - SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING

5204.7303 Procedures.

5204.7303-1 General.

SUBPART 5204.2 — CONTRACT DISTRIBUTION

5204.270 Electronic Data Access.

5204.270-1 Policy.

(b)(1) DON activities shall upload a copy of each manually executed procurement instrument (contract, purchase order, delivery order, modification, etc.), within six working days of execution, to the DoD Electronic Data Access (EDA).

SUBPART 5204.6 — CONTRACT REPORTING

5204.604 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(P) eBusiness Policy and Oversight Division by email at Policy@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(P) e-Business Policy and Oversight Division by email at Policy@navy.mil with the subject “DFARS 204.604 – Annual Data Verification and Validation.”

SUBPART 5204.8 —GOVERNMENT CONTRACT FILES

5204.804 Closeout of contract files.

5204.804-1 Closeout by the office administering the contract.

(a)(1) After receiving evidence of receipt of supplies/services for firm-fixed price contracts or task or delivery orders valued at less than the simplified acquisition threshold, the contracting officer may close the contract, citing NMCARS 5204.804-1(a)(1), as long as there is evidence of final payment or 180 days have elapsed after the final scheduled delivery date.

(S-90) Submit a monthly report in accordance with the ASN(RDA) memorandum entitled “Department of the Navy Contract Closeout Policy” dated April 12, 2019 in the format prescribed in Annex 24 to DASN(P) by email RDAJ&As.fct@navy.mil with the subject “[Activity Name] NMCARS 5204.804-1(S-90) – Monthly Contract Closeout Metric Report” by the 15th of each month.

5204.805 Storage, handling, and contract files.

(c) Contracts, task and delivery orders and any modifications thereto (and related records or documents, including successful and unsuccessful proposals) shall be retained for 10 years after final payment.

SUBPART 5204.21 – PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

5204.2103 Procedures.

(a)(2)(iii) The contracting officer (in consultation with the program office or requiring activity, after review of the required disclosures per DoD guidance), may determine that an entity is not using the covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or an exception at FAR 4.2102(b) applies. The Deputy/Assistant Commander for Contracts, without power of redelegation, is the approval authority for the contracting officer's determination. The approved determination shall be included in the contract file with a copy of the approved determination provided to DASN(P) within seven (7) days of approval by email to RDAJ&As.fct@navy.mil with the subject "[Activity Name] NMCARS 5204.2103 – Determination (Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment).

5204.2104 Waivers.

(a) ASN(RDA), without power of redelegation, is the approval authority for waivers. Requests shall be endorsed by the HCA. Endorsement authority may be delegated no lower than the Deputy/Assistant Commander for Contracts, without power of redelegation. Submit waiver requests for approval via DASN(P) by email to RDAJ&As.fct@navy.mil with the subject "[Activity Name] NMCARS 5204.2104(a) – Executive Agency Waiver Request (Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment)". Waivers shall include:

- (1) A compelling justification for the additional time to implement the requirements;
- (2) A full and complete laydown or description of the presences of covered telecommunications or video surveillance equipment or services in the relevant supply chain; and
- (3) A phase-out plan to eliminate such covered telecommunications equipment or services from the relevant systems.

(b) Waiver requests shall be endorsed by the HCA. This authority may be delegated no lower than the Deputy/Assistant Commander for Contracts, without power of redelegation. Submit waiver requests for approval via DASN(P) by email to RDAJ&As.fct@navy.mil with the subject "[Activity Name] NMCARS 5204.2104(b) – DNI Waiver Request (Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment)."

SUBPART 5204.73 - SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING

5204.7303 Procedures.

5204.7303-1 General.

(b)(S-90) As provided in the memorandum titled, “Updated Implementation of the DIB Memo” dated 06 September 2019, the DON recognizes the ongoing efforts within the DOD to protect controlled unclassified information and unclassified networks. In the interim, the contracting officer shall -

(a) Include the contents of Annex 16 in the statements of work of solicitations, contracts and task or delivery orders when notified by the DON Program Manager, Program Executive Officer, or Chief of Naval Research, in coordination with the Resource Sponsor, that the risk to a critical program and/or technology warrants its inclusion.

(b) Consider the DFARS Clause at 252.204-7012, and to the extent its contents are included in statements of work of solicitations, contracts and task or delivery orders, the DIB memo, and Annex 16, to be material requirements.

(c) Consider the right to reduce or suspend progress payments for contractor noncompliance (see Federal Acquisition Regulation (FAR) 32.503-6) or for nonconforming supplies or services (see FAR 46.407).

i. When the contracting officer decides to accept supplies or services with critical or major non-conformances (e.g., failure to comply with a material requirement), the contracting officer shall modify the contract to provide for an equitable price reduction or other consideration.

1. An amount approximating 5% of the contract’s value could be considered reasonable based on the risk to the Government for this noncompliance.

2. In situations where an increased risk is identified by the requirements office, the contracting officer should consider an amount equal to this increased risk.

ii. When the contracting officer decides to require correction of nonconformance rather than acceptance, withholding/reduction or suspension of progress payments should be considered if correction is not effected in a timely manner.

PART 5205 PUBLICIZING CONTRACT ACTIONS

[SUBPART 5205.3 — SYNOPSES OF CONTRACT AWARDS](#)

[5205.303 Announcement of contract awards.](#)

[SUBPART 5205.4 — RELEASE OF INFORMATION](#)

[5205.404 Release of long-range acquisition forecasts.](#)

[5205.404-1 Release procedures.](#)

SUBPART 5205.3 — SYNOPSES OF CONTRACT AWARDS

5205.303 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) *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 ensure 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 Release of long-range acquisition forecasts.

Submit an annual long-range acquisition forecast, using the format provided in Annex 25, to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] FAR 5.404 Long Range Acquisition Forecast” by June 20.

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 Establishing or maintaining alternative sources.](#)

[SUBPART 5206.3 — OTHER THAN FULL AND OPEN COMPETITION](#)

[5206.302 Circumstances permitting other than full and open competition.](#)

[5206.302-5 Authorized or required by statute.](#)

[5206.303 Justifications.](#)

[5206.303-1 Requirements.](#)

[5206.303-2 Content.](#)

[5206.303-90 Legal reviews.](#)

[5206.303-91 Bridge Contract Status Update.](#)

[5206.303-92 Bridge Contract Reporting.](#)

[5206.304 Approval of the justification.](#)

[5206.305 Availability of the justification.](#)

[SUBPART 5206.5 — COMPETITION ADVOCATES](#)

[5206.501 Requirement.](#)

[5206.502 Duties and responsibilities.](#)

SUBPART 5206.2 – FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES

5206.202 Establishing or maintaining alternative sources.

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

(i) For a proposed contract not exceeding the approval threshold at FAR 6.304(a)(3), 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 the Senior Executive Service (SES).

(ii) For a proposed contract exceeding the approval threshold at FAR 6.304(a)(4), the approval level is the NSPE. D&Fs for NSPE approval shall be submitted with a copy of the approved AS, Streamlined Acquisition Plan (STRAP) or Management and Oversight Process for the Acquisition of Services – Streamlined (MOPAS-S) via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] FAR 6.202 - Establishing or Maintaining Alternative Sources.”

SUBPART 5206.3 — OTHER THAN FULL AND OPEN COMPETITION

As used in this subpart --

“Contract” refers to both contracts and orders issued under a Basic Ordering Agreement (BOA).

“New procurement work” means a requirement that is not authorized by the terms and conditions of an existing contract (e.g., a Congressional plus-up or Foreign Military Sale (FMS) provided by another country).

5206.302 Circumstances permitting other than full and open competition.

5206.302-5 Authorized or required by statute.

(b) *Application.* Prior to awarding a SBIR/STTR Phase III contract, the Contracting Officer must affirm in the BCM that the SBIR/STTR Phase III award is derived from, extends, or completes efforts made under prior SBIR/STTR Phase I or II awards and is authorized pursuant to 15 U.S.C. 638(r)(4).

5206.303 Justifications.

5206.303-1 Requirements.

(a)(i) *Prior to contract award.* After a justification has been approved but prior to contract award, an amended justification may be submitted when new procurement work is identified and the authority remains unchanged from the original justification.

- (1) Clearly identify the dollar increase and all new procurement work.
- (2) If the revised total value of the amended justification exceeds the original justification’s approving authority, the contracting officer shall submit the amended justification to the appropriate approving authority based on the revised total value.

(ii) *After contract award.* A new justification is required. New procurement work shall not commence until a new justification is approved unless authorized under FAR 6.302-2, Unusual and Compelling Urgency.

(d)(1) A justification shall only be approved on a class basis when it is authorizing new procurement work on two or more procurements which cite the same authority for other than full and open competition. Multiyear contracts and contracts with priced options are considered individual contract actions. A justification made on a class basis--

(A) May cover one or more contractors;

(B) May cover requirements solicited in successive fiscal years, provided the requirements and quantities are included in the justification, and their costs have been specifically identified.

(C) Shall include only those requirements that are, and will remain, sole or limited source for the period covered by the justification.

(D) May include, but is not limited to:

(i) A BOA and orders to be issued under it,

(ii) Consecutive years of production buys that may be solicited separately.

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

(E) Shall address in every section, each contract included in the class justification with supporting detail (e.g., specific quantity and dollar amounts for each contract; detailed documentation of the circumstances supporting the use of the other than full and open competitive procedures for each contracting action).

(2) Issuance of a contract under FAR 16.5 does not require a class J&A.

(S-90) Approval and Authorization for Bridge Contracts.

(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. See Annex 4 for STRL deviations applicable hereto. 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) \$700,000 or less - The Activity CCO

(2) Greater than or equal to \$700,000 but less than \$5,500,000 - Echelon I/II CCO

(3) Greater than or equal to \$5,500,000 - 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.

(d) Once approval to award a bridge contract is obtained, a J&A for other than full and open competition shall also be approved in accordance with FAR 6.303/6.304 and DFARS 206.303/206.304. If approval of the J&A negates consideration under SeaPort, see 5206.304 and 5206.305. This applies if the contract for which a bridge is being sought would have been considered for transition to SeaPort but for the bridge.

5206.303-2 Content.

(b)(3) The total estimated dollar value for each acquisition covered by the justification, identified by fiscal year and appropriation.

(9)(ii) Address the requirements at both FAR 6.302-1(a)(2)(ii) and (a)(2)(iii) as shown in Annex 1.

(iv) The period of performance for each proposed acquisition.

(v) If the justification is a class justification, an expiration date expressed as a calendar date.

(11) If this is a follow-on to a previously approved J&A, include how the previously stated actions to remove barriers to competition have been accomplished. If not accomplished, explain why and the new plan to accomplish those actions. If the justification is for a bridge contract, include an approved copy of Annex 5.

(S-90) Format.

(a) The required format for a justification is at Annex 1.

5206.303-90 Legal reviews.

(a) Prior to its submission for approval, each justification shall have a legal sufficiency review by counsel for the activity preparing the justification. HCAs are responsible for establishing review procedures for field purchasing activities without assigned counsel.

(b) A legal sufficiency review shall be obtained on the appropriateness of the addition of any new procurement work to a contract prior to its addition.

5206.303-91 Bridge Contract Status Update.

(a) In the case of bridge contracts to provide for continuation of a service to be performed through a services contract awarded due to inadequate planning, as defined in paragraph (b) of this subsection, with a total estimated valued at or above \$10 million, HCAs shall provide a status update (including rationale for using the bridge contract) to the SSM via email at seniorservicesmanage.fct@navy.mil, with the subject “[Activity Name] NMCARS 5206.303-91 Bridge Contract Status Update”, at the midpoint of the current bridge contract period of performance to allow sufficient time to finalize disposition prior to the end of the bridge contract period of performance.

(b) All bridge contracts are considered awarded due to inadequate planning except in the case of protest, urgent requirements, or evaluation delays during the source selection process.

(c) This subsection does not apply to:

- (1) Services contracts in support of contingency operations, humanitarian assistance, or disaster relief;
- (2) Services contracts in support of a national security emergency declared with respect to a named operation; or
- (3) Services contracts entered into pursuant to an international agreement.

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(c) This subsection does not apply to:

- (1) Services contracts in support of contingency operations, humanitarian assistance, or disaster relief;
- (2) Services contracts in support of a national security emergency declared with respect to a named operation; or
- (3) Services contracts entered into pursuant to an international agreement.

5206.303-92 Bridge Contract Reporting.

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

5206.304 Approval of the justification.

(a)(S-90) Notwithstanding FAR 6.304, DFARS 206.304, the HCA is designated as the approval authority for justifications of 8(a) sole source awards exceeding \$100 million. HCA authority may be delegated to the Deputy/Assistant Commander for Contracts, without power of redelegation. See Annex 4 for STRL deviations applicable hereto.

(a)(1) For contract actions that would negate the use of SeaPort, the justification shall be approved by the advocate for competition for the procuring activity.

(2) DON activities with contracting authority in excess of \$700,000 may be considered “procuring activities” solely for the purpose of enabling their competition advocate to exercise this approval authority.

(4) Justifications for ASN(RDA) approval must be submitted via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 206.304(a)(4) – J&A Approval – Other Than Full and Open Competition”. The signature page shall be submitted electronically as a .pdf file. The body of the justification shall be submitted electronically as both Word and .pdf files.

(i) The applicable Acquisition Strategy (or STRAP or MOPAS-S 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 and any unavoidable discrepancies highlighted and explained within the document.

(ii) Historic justification information shall be submitted with the proposed justification.

5206.305 Availability of the justification.

(S-90) In addition to the requirements at FAR 6.305 and DFARS 206.305, no solicitation shall be issued earlier than three (3) business days after the HCA forwards a copy of any approved justification which negates the use of SeaPort. The approved justification shall be submitted to DASN(P) by email at SeniorServicesManage.fct@navy.mil with the subject “NMCARS 5206.304(a) – Justification Negating the Use of SeaPort.” The only exception to this is if the circumstances at FAR 6.302-2, apply. That justification shall be submitted not later than two (2) business days after its approval.

SUBPART 5206.5 — COMPETITION ADVOCATES

5206.501 Requirement.

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

5206.502 Duties and responsibilities.

(b)(2) The annual competition report shall be submitted via DASN(P) by January 31st of each year by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] FAR 6.502(b) Annual Competition Report.”

(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 Agency–head responsibilities.

5207.105 Contents of written acquisition plans.

5207.106 Additional requirements for major systems.

5207.107 Additional requirements for acquisitions involving consolidation, bundling, or substantial bundling.

5207.107-2 Consolidation.

5207.107-3 Bundling.

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

5207.204 Responsibilities of contracting officers.

SUBPART 5207.5 — INHERENTLY GOVERNMENTAL FUNCTIONS

5207.503 Policy.

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

5207.7002 Authority to acquire additional quantities of end items.

SUBPART 5207.1 — ACQUISITION PLANS

5207.103 Agency–head responsibilities.

(d)(i) An acquisition program is a directed, funded effort that provides a new, improved, or continuing materiel, weapon or information system, or service capability in response to an approved need.

(ii) Notwithstanding the DFARS exemption for one-time buys, streamlined acquisition plans (STRAPs) are required for the following categories of acquisitions meeting the thresholds in DFARS 207.103(d)

(i):

- (A) Military construction;
- (B) Commercial items;
- (C) Spare and repair parts;
- (D) Items of supply that are managed on a national basis where requirements are computed in accordance with established DOD/DON inventory management policy/regulation;
- (E) Overhaul and/or modification of naval vessels, small vessels and crafts (including MSC vessels/crafts);
- (F) Overhaul and/or modification of engines;
- (G) Operation and maintenance of weapon test/training ranges;
- (H) Ocean towage;
- (I) Commercial activities;
- (J) Architect-engineer;
- (K) Major station maintenance and repair; and
- (L) Component overhaul/maintenance/repair at the depot, intermediate or organizational levels.

(e) Notwithstanding the DFARS requirement to write some acquisition plans on a program basis, STRAPs may be written on either an individual or program basis. STRAPs are required for task and delivery orders where the value for the order requires an AP (see Table 5207-1 below). The level of detail expected for each document shall be commensurate with the complexity, total planned value, and performance risk of the procurement.

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

(j)(i) DASN(P) is the approval authority for APs that include individual contract actions with an estimated value of \$250,000,000 or more, including options, except if the contract action is included in a current acquisition strategy for an ACAT program approved by the milestone decision authority.

(ii) Table 5207-1, STRAP/Management and Oversight Process for the Acquisition of Services – Streamlined (MOPAS-S) Requirements and Approvals, provides the approval requirements. The values depicted are the estimated contract value inclusive of options. See Annex 4 for STRL deviations applicable hereto.

(iii) When DASN(P) or the Navy Senior Services Manager (SSM) is the approving official, a HCA, Program Executive Officer (PEO), or Direct Reporting Program Manager's (DRPM) signature recommending approval is also required.

(iv) Submit STRAPs, including revisions to the plans, requiring DASN(P) or the Navy SSM review and approval by email at RDAJ&As.fct@navy.mil with the subject "[Activity Name] NMCARS 5207.103 – STRAP Review and Approval."

(l)(i) The required formats for the STRAPs are as follows (see Table 5207-1, STRAP/MOPAS-S Requirements and Approvals, for their required use)--

- (A) Annex 17 - Program STRAP (PSTRAP) for supplies;
- (B) Annex 18 - Individual STRAP (ISTRAP) for supplies;
- (C) Annex 19 - Program STRAP that includes services valued over the simplified acquisition threshold (SAT) (PSTRAP-M);
- (D) Annex 20 – Individual STRAP that includes services valued over the SAT (ISTRAP-M).

(ii) The required format for use for services can be found in Annex 21 – MOPAS-S for services. See 5237.170-2 and 5237.503 for further details.

(iii) No changes are authorized to Annexes 17-21 for actions requiring DASN(P) or the Navy SSM review and approval. HCAs, without power of delegation, shall approve any modifications to Annexes 17 - 21 that are approved at the Activity level. Copies of the approval to modify any STRAP or MOPAS-S formats and the modified document shall be provided by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] NMCARS 5207.105 – Modification to the STRAP/MOPAS-S” within 10 days of approval.

(iv) Any revisions to previously approved acquisition plans shall be submitted in the streamlined format. STRAPs shall be updated when changes occur. Revisions and updates shall be sent to the original approver for signature unless changes in the funding amounts correspond to a new dollar threshold level that changes the approving authority.

Table 5207-1 - STRAP/MOPAS-S Requirements and Approvals.

| Acquisition Type | >SAT<\$10M | \$10M<\$25M | \$25M<\$50M | \$50M<\$250M | ≥\$250M | Reference |
|--|-------------------------|-----------------------|-----------------------|------------------------|-----------------------|------------------------|
| Development | Not Applicable | *ISTRAP-M or PSTRAP-M | *ISTRAP-M or PSTRAP-M | *ISTRAP-M or PSTRAP-M | #ISTRAP-M or PSTRAP-M | DFARS 207.103(d)(i)(A) |
| Production ≥\$50M/program or ≥\$25M/FY | Not Applicable | Not Applicable | *ISTRAP or PSTRAP | *ISTRAP or PSTRAP | #ISTRAP or PSTRAP | DFARS 207.103(d)(i)(B) |
| Production ≥\$50M/program or ≥\$25M/FY with Services over the SAT | Not Applicable | Not Applicable | *ISTRAP-M or PSTRAP-M | *ISTRAP-M or PSTRAP-M | #ISTRAP-M or PSTRAP-M | DFARS 207.103(d)(i)(B) |
| Services ≥\$50M/program or ≥\$25M/FY (Not subject to DoDI 5000.74) | Not Applicable | Not Applicable | *ISTRAP-M or PSTRAP-M | *ISTRAP-M or PSTRAP-M | ^ISTRAP-M or PSTRAP-M | DFARS 207.103(d)(i)(B) |

| | | | | | | |
|-----------------------------------|----------|----------|----------|-----------------------|-----------------------|-----------------|
| Services | *MOPAS-S | *MOPAS-S | *MOPAS-S | *ISTRAP-M or PSTRAP-M | ^ISTRAP-M or PSTRAP-M | NMCARS 5237.503 |
| Assisted Acquisition for Services | *MOPAS-S | *MOPAS-S | *MOPAS-S | ^ISTRAP-M or PSTRAP-M | ^ISTRAP-M or PSTRAP-M | NMCARS 5237.503 |

Approving Authority Legend:

* = HCA/PEO/DRPM ^ = Navy Senior Services Manager # = DASN(P)

5207.105 Contents of written acquisition plans.

Notwithstanding the requirements in FAR 7.105 and DFARS 207.105, the Navy acquisition planning process is streamlined to describe the irreducible minimum content allowed for a STRAP. The specific content of STRAPs shall conform to the templates found in Annexes 17 through 20 (see 5207.103 for additional details, including approvals). For revisions to an individual contract within a previously approved PSTRAP or PSTRAP-M (as appropriate), use of an ISTRAP or ISTRAP-M for the individual contract is acceptable.

(S-90) (a) The planner shall submit a PSTRAP, using Annex 17 or Annex 19, when the requirements office chooses to write a single plan for all known program actions.

(b) The planner shall submit an ISTRAP, Annex 18 or Annex 20, when there is only one contract, task or delivery order to be covered by the plan.

5207.106 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(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] 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 Additional requirements for acquisitions involving consolidation, bundling, or substantial bundling.

5207.107-2 Consolidation.

(e)(2)(i) Approval authority for the determination that use of a consolidated contract is necessary and justified is delegated to—

(A) DASN(P) when the approval authority for the associated STRAP is DASN(P) or the Navy Senior Services Manager. Submit requests for approval to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] FAR 7.107-2— Consolidation Determination Approval.” See Annex 4 for STRL deviations applicable hereto.

(B) The HCA for all other actions. The HCA approval 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. See Annex 4 for STRL deviations applicable hereto.

5207.107-3 Bundling.

(f)(2)(i) Submit requests for approval with a copy of the approved AS, STRAP, or MOPAS-S via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] FAR 7.107-3— Bundling Determination Approval.”

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

5207.204 Responsibilities of contracting officers.

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

SUBPART 5207.5 — INHERENTLY GOVERNMENTAL FUNCTIONS

5207.503 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 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(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] 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

[5208.001 General](#)

[SUBPART 5208.4 — FEDERAL SUPPLY SCHEDULES](#)

[5208.405 Ordering procedures for Federal Supply Schedules.](#)

[5208.405-6 Limiting Sources.](#)

[SUBPART 5208.7 — ACQUISITION FROM NONPROFIT AGENCIES EMPLOYING PEOPLE WHO ARE BLIND OR SEVERELY DISABLED](#)

[5208.790 Policy.](#)

[SUBPART 5208.70 — COORDINATED ACQUISITION](#)

[5208.7002 Assignment authority.](#)

[SUBPART 5208.74 — ENTERPRISE SOFTWARE AGREEMENTS](#)

[5208.7403 Acquisition procedures.](#)

5208.001 General

Regardless of the source of supplies or services to be acquired, competitively procured services defined in Annex 22, Seaport Engineering and Program Management Categories, shall comply with requirements in 5237.102 and Annex 23.

SUBPART 5208.4 — FEDERAL SUPPLY SCHEDULES

5208.405 Ordering procedures for Federal Supply Schedules.

5208.405-6 Limiting Sources.

No solicitation shall be issued earlier than three (3) business days after the HCA forwards a copy of any approved limited sources justification which negates the use of SeaPort. The approved limited sources justification shall be submitted to DASN(P) by email at SeniorServicesManage.fct@navy.mil with the subject “NMCARS 5206.304(a) – Limited Sources Justification Negating the Consideration of SeaPort.” The only exception to this is if the circumstances at FAR 8.405-6(a)(1)(i)(A) apply. That justification shall be submitted not later than two (2) business days after its approval.

(d)(1) At a minimum, the advocate for competition of the activity placing the order shall approve the justification.

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 acquisitions.

SUBPART 5208.70 — COORDINATED ACQUISITION

5208.7002 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 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 Standards.](#)

[5209.104-1 General standards.](#)

[5209.104-5 Representation and certifications regarding responsibility matters.](#)

[5209.104-6 Federal Awardee Performance and Integrity Information System.](#)

[SUBPART 5209.4 — DEBARMENT, SUSPENSION AND INELIGIBILITY](#)

[5209.402 Policy.](#)

[5209.404 System for Award Management Exclusions \(SAM\).](#)

[5209.405 Effect of listing.](#)

[5209.405-2 Restrictions on subcontracting.](#)

[5209.406 Debarment.](#)

[5209.406-3 Procedures.](#)

[5209.407 Suspension.](#)

[5209.407-3 Procedures.](#)

[SUBPART 5209.5 — ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST](#)

[5209.503 Waiver.](#)

[5209.570 Limitations on contractors acting as lead system integrators.](#)

[5209.570-2 Policy.](#)

SUBPART 5209.1 — RESPONSIBLE PROSPECTIVE CONTRACTORS

5209.104 Standards.

5209.104-1 General standards.

(g)(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(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 209.104-1(g)(ii) - Waiver Request/National Security Interest Determination.”

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

5209.104-5 Representation and certifications regarding responsibility matters.

(a)(1) When provided an affirmative response from The Boeing Company (TBC) in paragraph (a)(1) of the provision at 52.209-5, Certification Regarding Responsibility Matters, or paragraph (h) of the provision at 52.212-3 Offeror Representations and Certification—Commercial Items, the contracting officer shall request such additional information from TBC to determine if their affirmative response is solely related to the Deferred Prosecution Agreement between TBC and the United States District Court for the Northern District of Texas, Fort Worth Division, dated January 7, 2021.

(2) If it is determined that the affirmative response from TBC in (a)(1) is solely related to the Deferred Prosecution Agreement between TBC and the United States District Court for the Northern District of Texas, Fort Worth Division, dated January 7, 2021, notwithstanding FAR 9.104-5(a)(2), contracting officers are not required to provide the notification to the Department of the Navy’s Acquisition Integrity Office.

5209.104-6 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 Policy.

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

5209.404 System for Award Management Exclusions (SAM).

(b)(8) 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 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(P) with justification for the proposed consent action by email at RDAJ&As.fct@navy.mil with the subject "[Activity Name] DFARS 209.405 – Compelling Reason Review and Approval." DASN(P) shall provide written notification of the determination to the General Services Administration.

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

(e)(2) ASN(RDA) shall make the required determination that there is a compelling reason. Submit requests for an ASN(RDA) determination to DASN(P) with justification for the proposed consideration of the bid by email at RDAJ&As.fct@navy.mil with subject "[Activity Name] FAR 9.405(e)(2) – Compelling Reason Review and Approval." DASN(P) shall provide written notification of the determination to the General Services Administration.

(3) ASN(RDA) shall make the required determination that there is a compelling reason. Submit requests for an ASN(RDA) determination to DASN(P) with justification for the proposed consideration of the bid by email at RDAJ&As.fct@navy.mil with subject "[Activity Name] FAR

9.405(e)(3) – Compelling Reason Review and Approval.” DASN(P) shall provide written notification of the determination to the General Services Administration.

5209.405-2 Restrictions on subcontracting.

(a) ASN(RDA) shall make the required determination that there is a compelling reason. Submit requests for an ASN(RDA) determination to DASN(P) with justification for the proposed consent action by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 209.405-2(a) – Compelling Reason Review and Approval.” DASN(P) shall provide written notification of the determination to the General Services Administration.

5209.406 Debarment.

5209.406-3 Procedures.

- (i) Refer all matters to AGC(AI).
- (ii)(D) Entity Identifier 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 when the contractor receives a rating of “Unsatisfactory” in any evaluation area of Past Performance 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 Suspension.

5209.407-3 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 Waiver.

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

5209.570 Limitations on contractors acting as lead system integrators.

5209.570-2 Policy.

(c)(2) Submit the required written determination for approval with a copy of the approved AS, STRAP, or MOPAS-S by the SECDEF/USD(AT&L) via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject "[Activity Name] 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 Market acceptance.](#)

[SUBPART 5211.2 — USING AND MAINTAINING REQUIREMENTS DOCUMENTS](#)

[5211.274 Item identification and valuation requirements.](#)

[5211.274-2 Policy for item unique identification.](#)

[SUBPART 5211.6 — PRIORITIES AND ALLOCATIONS](#)

[5211.603 Procedures.](#)

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

5211.274 Item identification and valuation requirements.

5211.274-2 Policy for item unique identification.

(a) See Annex 4 for STRL deviations applicable hereto.

(b)(2)(i)(A) Submit the determination and findings under DFARS 211.274-2(b)(2)(i)(A) via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 211.274-2(b)(2)(i)(A) – D&F – Exception to Item Unique Identification Marking.”

SUBPART 5211.6 — PRIORITIES AND ALLOCATIONS

5211.603 Procedures.

(b) In accordance with DOD Manual 4400.1-M, DON activities shall, under the Defense Priorities and Allocations System (DPAS):

(1) Use the DX rating for:

(A) Program 390;

(B) Integrated Ballistic Missile Defense System;

(C) Presidential Helicopter Programs (VH-92-A, VH-3D and VH-60N);

(D) Fleet Ballistic Missile Weapon Systems, Trident System including the Cruise Missile Submarines/SSGN, and submarines with the Trident II SWS Missile - Ohio Class Submarines/SSBN, Columbia Class Submarines (formerly Ohio Replacement Class)/SSBN (X), and all future submarines that carry the Trident Missile;

(E) Program 341;

(F) E-6B Command, Control and Communications Aircraft Program;

(G) Space-Based Infrared System High; Intercontinental Ballistic Missile;

(H) Minuteman II;

(I) B-2 Stealth Bomber;

(J) Presidential Aircraft (VC-25A and VC-25B Presidential Aircraft Recapitalization).

(f) HCAs are responsible for establishing procedures for rated orders.

(g) Each Contracting Activity has an assigned DPAS Officer to provide guidance and resolve questions associated with DPAS. Contact the Contracting Activity's Policy office for DPAS point of contact information.

PART 5212 ACQUISITION OF COMMERCIAL ITEMS

SUBPART 5212.1 — ACQUISITION OF COMMERCIAL ITEMS – GENERAL

5212.102 Applicability.

SUBPART 5212.2 — SPECIAL REQUIREMENTS FOR THE ACQUISITION OF COMMERCIAL ITEMS

5212.207 Contract type.

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

5212.302 Tailoring of provisions and clauses for the acquisition of commercial items.

SUBPART 5212.4 — CONTRACT ADMINISTRATION AND AUDIT SERVICES

5212.403 Termination

SUBPART 5212.70 — LIMITATION ON CONVERSION OF PROCUREMENT FROM COMMERCIAL ACQUISITION PROCEDURES

5212.7001 Procedures

SUBPART 5212.1 — ACQUISITION OF COMMERCIAL ITEMS – GENERAL

5212.102 Applicability.

(a)(i)(C) If market research and analysis yields that expert and consultant services are commercial items (as defined in FAR 2.101), the concurrence of DASN(P) shall be obtained on the required determination. Determinations shall be submitted by email with a copy of the approved AS, STRAP, or MOPAS-S using RDAJ&As.fct@navy.mil with the subject “[Activity Name] NMCARS 5212.102 – D&F for Expert and Consultant Commercial Services.”

(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 Contract type.

(b)(iii) Submit the required contracting officer determination for agency head approval to DASN(P) with a copy of the approved AS, STRAP, or MOPAS-S by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] 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

5212.302 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(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] 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 5212.4 — CONTRACT ADMINISTRATION AND AUDIT SERVICES

5212.403 Termination

(c)(4) *Termination for cause.* 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(h)(1)(iii), including changes in status of terminations, to the AGC (AI) by email at aio@navy.mil with the subject “FAR 12.403(c)(4) – Termination for Cause” followed by the contract number”.

SUBPART 5212.70 — LIMITATION ON CONVERSION OF PROCUREMENT FROM COMMERCIAL ACQUISITION PROCEDURES

5212.7001 Procedures

(a)(2) Copies of HCA determinations submitted to Defense Pricing and Contracting (DPC) shall be submitted to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 212.7001(a)(2) HCA Determination for Conversion of a Procurement from Commercial Acquisition Procedures.”

PART 5213 SIMPLIFIED ACQUISITION PROCEDURES

[5213.000 Scope of part.](#)

[SUBPART 5213.2 ACTIONS AT OR BELOW THE SIMPLIFIED MICRO-PURCHASE THRESHOLD](#)

[5213.270 Use of the Governmentwide commercial purchase card.](#)

[SUBPART 5213.3 — SIMPLIFIED ACQUISITION METHODS](#)

[5213.303 Blanket purchase agreements \(BPAs\).](#)

[5213.303-2 Establishment of BPAs.](#)

[5213.305 Imprest funds and third party drafts.](#)

[5213.305-3 Conditions for use.](#)

5213.000 Scope of part.

NAVSUP created the DON Simplified Acquisition Procedures Guide containing procedures that supplement existing policy for simplified acquisitions. The procedures apply to all HCAs that award and administer contracts (including task and delivery orders). The Guide is available on the ASN(RDA) website.

SUBPART 5213.2 ACTIONS AT OR BELOW THE SIMPLIFIED MICRO-PURCHASE THRESHOLD

5213.270 Use of the Governmentwide commercial purchase card.

See Annex 4 for STRL deviations applicable hereto.

SUBPART 5213.3 — SIMPLIFIED ACQUISITION METHODS

5213.303 Blanket purchase agreements (BPAs).

5213.303-2 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(P) by email at RDAJ&As.fct@navy.mil with the subject "[Activity Name] DFARS 213.303-2 - 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(P).

5213.305 Imprest funds and third party drafts.

5213.305-3 Conditions for use.

(d)(ii) Requests for approval to use imprest funds shall be submitted to Director for Financial Commerce, Office of the Deputy Chief Financial Officer, Office of the Under Secretary of Defense (Comptroller) via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject "[Activity Name] DFARS 213.305-3 – Imprest Fund Approval Request."

PART 5214 SEALED BIDDING

SUBPART 5214.4 — OPENING OF BIDS AND AWARD OF CONTRACT

5214.401 Receipt and safeguarding of bids.

5214.407 Mistakes in bids.

5214.407-3 Other mistakes disclosed before award.

SUBPART 5214.4 — OPENING OF BIDS AND AWARD OF CONTRACT

5214.401 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 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

5215.204 Contract format.

5215.204-5 Part IV—Representations and Instructions.

SUBPART 5215.3 — SOURCE SELECTION

5215.300 Scope of subpart.

5215.303 Responsibilities.

5215.304 Evaluation factors and significant subfactors.

5215.305 Proposal evaluation.

5215.308 Source selection decision.

SUBPART 5215.4 — CONTRACT PRICING

5215.402 Pricing policy.

5215.403 Obtaining certified cost or pricing data.

5215.403-1 Prohibition on obtaining certified cost or pricing data (10 U.S.C 2306a and 41 U.S.C. Chapter 35).

5215.403-3 Requiring data other than certified cost or pricing data.

5215.4-4 Profit.

5215.406 Documentation.

5215.406-1 Prenegotiation objectives.

5215.406-3 Documenting the negotiation.

SUBPART 5215.6 — UNSOLICITED PROPOSALS

5215.606 Agency procedures.

SUBPART 5215.2 — SOLICITATION AND RECEIPT OF PROPOSALS AND INFORMATION

5215.204 Contract format.

5215.204-5 Part IV—Representations and Instructions.

(c) When a cost realism analysis is to be performed, Section M, Evaluation Factors for Award, should include a notice that the proposed costs may be adjusted, for purposes of proposal evaluation, based upon the results of the cost realism analysis.

SUBPART 5215.3 — SOURCE SELECTION

5215.300 Scope of subpart.

Submit request for waivers of DPC mandated source selection requirements in paragraph 1.2 of the DOD Source Selection Procedures Guide (DFARS PGI Subpart 215.3) to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS PGI 215.3 “Source Selection Procedures Waiver.” DPC is the approval authority for acquisitions \$1B or greater. DASN(P) is the approval authority for acquisitions below \$1B. See Annex 4 for STRL deviations applicable hereto.

5215.303 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 Evaluation factors and significant subfactors.

(c) In accordance with SECNAVINST 4101.3A, all acquisition programs with an energy-consuming end item shall 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 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.

(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 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

5215.402 Pricing policy.

(a)(S-90)(1) When requesting DPC approval for participation in the Section 890 Pilot Program to Accelerate Contracts and Pricing Processes pursuant to DPC Class Deviation 2020-O0020, provide notification to DASN(P) by emailing a copy of the application, upon submittal to DPC, to RDAJ&As.fct@navy.mil with the subject “[Activity Name] NMCARS 5215.402(a)(S-90)(1) – Section 890 Pilot Program to Accelerate Contracting and Pricing Processes.”

(2) After the contractor submits the required information in accordance with DFARS clause 252.215.7998, Pilot Program to Accelerate Contracting Pricing Processes (Class Deviation 2020-00020), the contracting officer shall submit the information to DPC and provide a copy to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] NMCARS 5215.402(a)(S-90)(2) – Section 890 Pilot Program to Accelerate Contracting and Pricing Processes Measurements.”

5215.403 Obtaining certified cost or pricing data.

5215.403-1 Prohibition on obtaining certified cost or pricing data (10 U.S.C 2306a and 41 U.S.C. Chapter 35).

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

(c)(4)(B) An annual report of TINA waivers shall be submitted to DASN(P) by October 31st of each year by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 215.403-1(c)(4)(B) - Exceptional Case TINA Waivers Annual Report. Reports shall include contract award date, contracting officer’s name, and contracting officer’s telephone number.

5215.403-3 Requiring data other than certified cost or pricing data.

(6) Submit a courtesy copy of the quarterly report to DASN(P) by email RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 215.403-3 HCA Determination to Award to Offeror Failing to Comply with Requests for Data Other Than Certified Cost or Pricing Data.” Negative reports are required.

5215.4-4 Profit.

(b)(1) See Annex 4 for STRL deviations applicable hereto.

5215.406 Documentation.

5215.406-1 Prenegotiation objectives.

(a) The following tenets are central to development of the pre-negotiation objectives and shall be addressed for each cost element and for each position (e.g., Contractor’s proposed position, DCAA or other Government pricing or technical recommendations, independent Government objective or position) presented in the pre-negotiation BCM narrative:

- (i) What is the estimate;
- (ii) What is the estimate based on;
- (iii) How was the estimate derived; and
- (iv) Why is the estimate reasonable?

(b)(ii) *Adjudication Procedures.* When the Director, Defense Contract Audit Agency (DCAA) elevates an audit disagreement to DPC pertaining to a Navy contract(s), the CCO shall provide notification to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] 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.

5215.406-3 Documenting the negotiation.

- (a) The pre-negotiation and post-negotiation BCM together constitute the documentation required by FAR 15.406 and DFARS 215.406 and should provide all the information required therein.

SUBPART 5215.6 — UNSOLICITED PROPOSALS

5215.606 Agency procedures.

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

PART 5216 TYPES OF CONTRACTS

[SUBPART 5216.2 — FIXED-PRICE CONTRACTS](#)

[5216.202-90 Firm-fixed-price contracts.](#)

[SUBPART 5216.3 — COST-REIMBURSEMENT CONTRACTS](#)

[5216.306 Cost-plus-fixed-fee contracts.](#)

[SUBPART 5216.4 — INCENTIVE CONTRACTS](#)

[5216.401 General.](#)

[SUBPART 5216.5 — INDEFINITE-DELIVERY CONTRACTS](#)

[5216.504 Indefinite-quantity contracts.](#)

[5216.505 Ordering.](#)

[5216.506 Solicitation provisions and contract clauses.](#)

SUBPART 5216.2 — FIXED-PRICE CONTRACTS

5216.202-90 Firm-fixed-price contracts.

Consultation with DPC is required prior to the use of a firm-fixed-price (FFP) contract for a sole source acquisition with a value greater than \$500 million for U.S. or combined U.S./FMS requirements for a

major system as defined in FAR 2.101. This consultation should use the Peer Review process provided at NMCARS 5201.170. The HCA shall notify DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] Consultation with DPC for a FFP Contract over \$500M” seven days prior to requesting the review from DPC.

SUBPART 5216.3 — COST–REIMBURSEMENT CONTRACTS

5216.306 Cost–plus–fixed–fee contracts.

(c) *Limitations.*

(ii)(A) 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.

(B) Requests for approval of CPFF contracts requiring SECDEF approval shall be routed through NAVFACENGCOM and then via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 216.306 – CPFF Contract Approval.”

SUBPART 5216.4 — INCENTIVE CONTRACTS

5216.401 General.

(d)(i)(A) HCAs shall submit copies of approved D&Fs to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] FAR 16.401 – HCA CPAF D&F [ACAT Program Designation Number and Description]”

(d)(ii) This D&F signature authority is delegable to no lower than the Deputy/Assistant Commander for Contracts.

SUBPART 5216.5 — INDEFINITE–DELIVERY CONTRACTS

5216.504 Indefinite–quantity contracts.

(c)(1) Planning the acquisition.

(ii)(D)(1) Except for the determination under FAR 16.504(c)(1)(ii)(D)(1)(iv), the Deputy/Assistant Commander for Contracts, without power of redelegation, is the approval authority. See Annex 4 for STRL deviations applicable hereto.

(iv) DASN(P), without power of redelegation, is the approval authority.

HCA's shall submit the body of the D&F, in the format required by Annex 7, Section 843 D&F, electronically as both Word and .pdf files with a copy of the approved AS, STRAP, or MOPAS-S by email at RDAJ&As.fct@navy.mil with the subject "[Activity Name] DFARS 216.504 – D&F for Single Award [contract/task/delivery order number]".

5216.505 Ordering.

(b)(8) DASN(P) as the Navy Competition Advocate General, is the task-order and delivery-order ombudsman. Contact information is provided at 5216.506(j).

(c) See Annex 4 for STRL deviations applicable hereto.

5216.506 Solicitation provisions and contract clauses.

(j) The Navy task and delivery order ombudsman is Ms. Cindy Shaver, Deputy Assistant Secretary of the Navy (Procurement), 1000 Navy Pentagon, Washington, DC 20350, phone (703) 614-9600, fax (703) 614-9394, and email NCAG@navy.mil.

PART 5217 SPECIAL CONTRACTING METHODS

SUBPART 5217.1 — MULTI-YEAR CONTRACTING

5217.105 Policy.

5217.105-1 Uses.

5217.170 General.

5217.171 Multiyear contracts for services.

5217.172 Multiyear contracts for supplies.

5217.172-90 Multiyear contracts for supplies.

5217.174 Multiyear contracts for electricity from renewable energy sources.

SUBPART 5217.2 — OPTIONS

5217.200 Scope of Subpart.

5217.204 Contracts.

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SUBPART 5217.5 — INTERAGENCY ACQUISITIONS

5217.502 Procedures.

5217.502-1 General.

5217.502-2 The Economy Act.

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

5217.703 Policy.

5217.770 Procedures.

SUBPART 5217.74 — UNDEFINITIZED CONTRACT ACTIONS

5217.7402 Exceptions.

5217.7404 Limitations.

5217.7404-3 Definitization Schedule.

5217.7404-5 Exceptions.

SUBPART 5217.1 — MULTI-YEAR CONTRACTING

5217.105 Policy.

5217.105-1 Uses.

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

5217.170 General.

(b) HCAs shall submit to DASN(P) the required congressional notification for termination of any multi-year contract by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 217.170 – Multiyear Contract Termination - Congressional Notification” following the format prescribed in 5205.303. Email notifications are required to be submitted at least 45 days before termination.

(d)(4) At least 45 days before contract award, HCAs shall submit to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 217.170 - Multiyear Contract – Congressional Notification” all required congressional notifications set forth in DFARS 217.170(d)(1) following the format prescribed in 5205.303.

5217.171 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 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).

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

(2)(viii) At least 45 days prior to contract award, notifications will be submitted to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] 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 Multiyear contracts for supplies.

(f)(2) HCAs shall submit a copy of the determinations and findings to RDAJ&As.fct@navy.mil with the subject “[Activity Name] Multiyear Contract for Supplies >\$678.5M Review and Approval” prior to entering into a contract.

5217.174 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

5217.200 Scope of Subpart.

Notwithstanding FAR 17.200, to the extent options are included, FAR 17.2 and DFARS 217.2 apply.

5217.204 Contracts.

(e)(i) Approval for use of contract terms in excess of the limitations specified in FAR 17.204(e) shall be supported by a written determination and obtained prior to solicitation. Approval shall be at a level not lower than the CCO or to a Flag/General Officer/SES, who is a member of the Contracting Community, without power of redelegation. This requirement is waived if due to the use of FAR Clause 52.217-8, “Option to Extend Services” and pricing was included in the contract. To establish an ordering period in excess of 10 years, in accordance with DFARS 217.204(e)(i)(C), a determination shall be executed by ASN(RDA). Submit such requests with a copy of the approved AS, STRAP, or MOPAS-S via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 217.204 – Contract Term > 10 Years D&F Review and Approval.”

(iii) The senior procurement executive has provided this approval, via ASN(RDA) memorandum dated January 11, 2016 entitled, “Approval to Extend the Performance Period of SeaPort and SeaPort-e Task and Delivery Orders Issued Under SeaPort and SeaPort-e Indefinite Delivery, Indefinite Quantity Contracts,” for task or delivery orders issued on or before December 31, 2019 under the Naval Sea Systems Command’s SeaPort IDIQ contracts.

5217.207 Exercise of Options.

(c)(3) SeaPort shall be included in the consideration.

SUBPART 5217.5 — INTERAGENCY ACQUISITIONS

5217.502 Procedures.

5217.502-1 General.

(b) Prior to release of the solicitation and following coordination with the Director OSBP, HCAs shall submit Part 1 of the BCA to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] FAR 17.502-1 - 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(P).

5217.502-2 The Economy Act.

(a) See Annex 4 for STRL deviations applicable hereto.

(b) The following are examples of acquisitions that do not require Economy Act D&Fs:

- (1) Interagency acquisitions from the General Services Administration conducted under the authority of 40 U.S.C. Section 321, Acquisition Services Fund;
- (2) Acquisitions conducted pursuant to DFARS Subpart 208.70, “Coordinated Acquisition”;
- (3) Acquisitions conducted under the authority of the Project Order Act, 41 U.S.C. Section 23;
- (4) Support agreements with another DOD component that comply with DODINST 4000.19, “Interservice and Intragovernmental Support”; and
- (5) 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.

(c)(2) Except for the special circumstances and limitations specified below, the agency head’s designees for approving D&Fs for interagency acquisitions are:

DASN(P)

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, Naval Information Warfare Systems Command

Director, Strategic Systems Programs

Deputy Commandant for Installations and Logistics, Headquarters, Marine Corps

(i) For assisted acquisitions to non-DOD activities that require contracting action on the part of the servicing agency, comply with approval requirements in 5217.770.

(ii) 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(P). Submit D&Fs for approval with a copy of the approved AS, STRAP, or MOPAS-S to

DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] NMCARS 5217.502(c)(2)(ii)(A)(1) – DOT Volpe Lab Determination.”

(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 DPC guidance allows for amendment.

(3) HCAs shall conduct an annual compliance assessment of DOE WFO orders.

Submit the assessment results by December 15 to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] FAR 17.502-2 – Annual DOE WFO Order Compliance Assessment”.

(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. Submit D&Fs for approval with a copy of the approved AS, STRAP, or MOPAS-S to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] Interagency Economy Act orders by Agency not Subject to FAR.”

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

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

5217.703 Policy.

(c) Submit nondefense agency certifications of compliance to DPC within 40 days of the beginning of the fiscal year via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] FAR 17.703 - Annual Nondefense Agency Certifications Report.”

(e) The HCA is the approval authority, without power of redelegation, for written determinations. Submit a copy of the signed written determination to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] FAR 17.703 – Section 801 Subsection(b)(2) FY 2008 NDAA Waiver Determination.”

5217.770 Procedures.

HCAs shall establish and maintain procedures, for assisted and direct acquisitions, consistent with approval authorities in this section, for reviewing and approving orders placed for supplies and services under non-DoD contracts when the amount of the order exceeds the simplified acquisition threshold.

Approval authorities for assisted and direct acquisitions are:

(1) Assisted acquisitions.

- (i) ASN(RDA) is the decision authority for assisted acquisitions exceeding \$550,000,000.
- (ii) DASN(P) 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.

SUBPART 5217.74 — UNDEFINITIZED CONTRACT ACTIONS

5217.7402 Exceptions.

- (b) Submit the required advance notification to the Director, DPC via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 217.7402(b) - Advance Notice of Impracticable UCA Policy Adherence.”

5217.7404 Limitations.

5217.7404-3 Definitization Schedule.

- (b) For any reportable Undefinitized Contract Action (UCA) that falls 30 days behind its definitization schedule, the contracting officer shall notify the approval authority of the delay and identify actions taken to get back on schedule.

5217.7404-5 Exceptions.

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

5217.7405 Plans and Reports.

- (a)(2) HCAs shall submit by April 15 and October 15 a Consolidated Undefinitized Contract Action (UCA) Management 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(P) by email at Policy@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).

PART 5219 SMALL BUSINESS PROGRAMS

SUBPART 5219.2 — POLICIES

5219.201 General policy.

5219.202 Specific policies.

5219.202-1 Encouraging small business participation in acquisitions.

SUBPART 5219.4 — COOPERATION WITH THE SMALL BUSINESS ADMINISTRATION

5219.402 Small Business Administration procurement center representatives.

SUBPART 5219.5 — SET-ASIDES FOR SMALL BUSINESS

5219.502-8 Rejecting Small Business Administration recommendations.

SUBPART 5219.7 — THE SMALL BUSINESS SUBCONTRACTING PROGRAM

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

5219.705-4 Reviewing the subcontracting plan.

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

5219.803 Selecting acquisitions for the 8(a) Program.

5219.804 Evaluation, offering, and acceptance.

5219.804-1 Agency evaluation.

SUBPART 5219.2 — POLICIES

5219.201 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.

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

(10)(B) In accordance with ASN(RDA) memorandum entitled “Small Business Coordination Review Application” dated February 2, 2016, with the exception of SeaPort, contracting officers shall prepare the DD 2579 using the online Small Business Coordination Review (SBCR) Application (App) and submit the form to the Small Business Professional via [https://my.navsup.navy.mil/apps/ops\\$sbcr.home](https://my.navsup.navy.mil/apps/ops$sbcr.home).

(e) Small business specialists are appointed in accordance with SECNAVINST 4380.9. 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 OSBP segment. PPMAP review OSBP segments should be coordinated with the PPMAP review team leader. For reviews under 5201.691-2, the Director, OSBP, will designate OSBP review team members. Associate Directors of Small Business are responsible for implementation of the PPMAP review OSBP segment of their field contracting activities including designating PPMAP review OSBP 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 OSBP segment report(s) to the Director, OSBP.

5219.202 Specific policies.

5219.202-1 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 5219.4 — COOPERATION WITH THE SMALL BUSINESS ADMINISTRATION

5219.402 Small Business Administration procurement center representatives.

(c)(1) In accordance with the Procurement Center Business Operations Plan between the DON and SBA, dated September 20, 2021, the SBA PCR shall review proposed acquisitions within five (5) business days unless additional time is requested and agreed upon by the contracting officer. If SBA PCR does not review the small business coordination record within five (5) business days, then the Contracting Officer may proceed based upon their determination and the concurrence of the assigned SBP.

(c)(2) Notwithstanding FAR 19.402(c)(2), the review shall be completed within 15 business days unless additional time is requested by the PCR and agreed upon by the contracting officer in accordance with the Procurement Center Business Operations Plan between the DON and SBA, dated September 20, 2021.

SUBPART 5219.5 — SET-ASIDES FOR SMALL BUSINESS

5219.502-8 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

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

5219.705-4 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.

(d)(7) Notwithstanding FAR 19.705-4(d)(7), submit pre-award subcontracting plans over \$20M to the SBA PCR for review and advisory comments prior to award, in accordance with the Procurement Center Business Operations Plan between the DON and SBA, dated September 20, 2021. The SBA PCR has five (5) business days to complete the review, unless additional time is requested and agreed upon by the contracting officer.

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

5219.803 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 Evaluation, offering, and acceptance.

5219.804-1 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.

PART 5222 APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

SUBPART 5222.1 — BASIC LABOR POLICIES

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 [5222.101-1 General.](#)
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[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.](#)

SUBPART 5222.1 — BASIC LABOR POLICIES

5222.101 Labor relations.

5222.101-1 General.

(a) Contracting officer shall notify the Navy Labor Advisor of all major issues regarding contract labor standards application, administration, or enforcement. Contracting Officers shall coordinate with the Navy Labor Advisor responses to inquiries from, and other contacts with, national or international offices of contractor or industrial associations, labor unions, or Federal agencies (other than routine contacts with the DOL). Contracting Officers, who receive a non-routine inquiry involving DON contractor industrial labor relations policies or procedures, or who is confronted with an industrial labor relations matter not covered by SECNAVINST 4200.36B, shall coordinate with the Navy Labor Advisor before responding or taking independent action. Submit questions to the Navy Labor Advisor in DASN(P) by email at NavyLaborAdvisor@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 labor advisor in the appropriate

NAVFACENGCOM division, or to the NAVFACENGCOMHQ Labor Advisor by email at NAVFAC_Labor_Advisor@navy.mil.

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

(ii) Immediately notify DASN(P) by email at NavyLaborAdvisor@navy.mil with the subject “PGI 222.101-1 – [Labor Relations Contact/Seizure/Injunctive Action].”

5222.101-3 Labor Disputes.

(1) Immediately upon receipt of notice of an actual or potential labor dispute involving or impacting a contractor or subcontractor, including an actual or potential strike, other work stoppage, or picketing, the contracting officer shall provide notification to the Navy Labor Advisor. When the labor dispute is on a government installation, the contracting officer shall also immediately notify the base commander. Notification procedures are as follows:

(i) Notification to the Navy Labor Advisor shall be made by email at NavyLaborAdvisor@navy.mil with the subject line “NMCARS 5222.101-3: Labor Dispute Notification.”

(ii) The notification shall include:

- (A) Name of the contractor or subcontractor and the collective bargaining representative (union);
- (B) Contract number;
- (C) Location of dispute and, if on a government installation, the name of installation;
- (D) Brief statement on the reason(s) for dispute;
- (E) Actual or potential impact on contract performance, base operations, support services, and any active or projected construction projects;
- (F) Need to remove government property or material from a strike-bound plant or facility;
- (G) Any actions the contractor has taken and plans to take to settle the dispute;
- (H) Contractor’s contingency plan to continue contract performance in the event of a strike or work stoppage, such as through the use of non-striking personnel and/or new hires;
- (I) Contracting Officer’s assessment of the contractor’s contingency plan; and
- (J) Any other information related to the labor dispute requested by the Navy Labor Advisor.

(iii) Follow-up Notifications. Until the parties resolve the labor dispute, the contracting officer shall provide frequent follow-up notifications to the Navy Labor Advisor, and immediate notification to the Navy Labor Advisor if significant changes occur. The follow-up notifications shall provide updates to all topics required in the original notification and any topics added in later communications.

(iv) The contracting officer shall request the advice and assistance of the Navy Labor Advisor on appropriate courses of action for the Department during an actual or potential labor dispute, including:

- (A) Measures to mitigate the impact of the dispute on contract performance, base operations, support services, and any active or projected construction projects;
- (B) Options to proceed when the dispute results or may result in the contractor being unable to continue to perform contract requirements; and

(C) Options to proceed when it becomes necessary to remove government-owned material from a strike-bound plant or facility because the contractor is unable to deliver due to the strike.

5222.102 Federal and State labor requirements.

5222.102-2 Administration.

(c)(1) The Contracting Officer shall refer questions from DOL or other interested parties regarding the application of labor laws to government acquisitions under FAR Part 22 and its corresponding contract clauses, to the Navy Labor Advisor in DASN(P) by email at NavyLaborAdvisor@navy.mil, or for NAVFAC contracts, to the NAVFACENGCOM Labor Advisor by email at NAVFAC_Labor_Advisor@navy.mil.

(2) When a contracting officer receives a complaint or other indication of violation of the labor standards in a service or supply contract, the complaint shall be referred promptly to the nearest office of DOL, making every effort to maintain the confidentiality of the complainant except to DOL and directing any related questions to the Navy Labor Advisor in DASN(P) by email at NavyLaborAdvisor@navy.mil.

5222.103 Overtime.

5222.103-4 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 Liquidated damages and overtime pay.

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

NAVFACENGCOM contracts. The contracting officer's recommendation regarding liquidated damages under the Contract Work Hours and Safety Standards statute shall be forwarded directly to the Navy Labor Advisor in DASN(P) by email at NavyLaborAdvisor@navy.mil (or via the NAVFACENGCOM Labor Advisor by email at NAVFAC_Labor_Advisor@navy.mil if the matter involves a NAVFACENGCOM contract).

SUBPART 5222.4 —LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

5222.406 Administration and enforcement.

5222.406-1 Policy.

(a) The contracting officer shall respond promptly to any complaint received alleging labor standards violations on construction contracts. Allegations of Wage Rate Requirements (Construction) or Contract Work Hours and Safety Standards statute violations shall be investigated and resolved in accordance with established procedures. Allegations of other labor violations (e.g., safety and health, undocumented workers, discrimination) shall be referred to the appropriate enforcement agency (e.g., Occupational Safety and Health Administration, Office of Immigration and Customs Enforcement, Equal Employment Opportunity Commission). The NAVFACENGCOM Labor Advisor shall be notified via email at NAVFAC_Labor_Advisor@navy.mil of investigations that disclose particularly egregious violations (e.g., significant underpayment of wages or benefits due workers, extensive falsification of records, findings of willful violation, and recommendations for debarment).

5222.406-8 Investigations.

(d) *Contracting officer's report.* (1) For NAVFACENGCOM contracts, the contracting officer's report shall be forwarded to NAVFACENGCOMHQ via email at NAVFAC_Labor_Advisor@navy.mil. For all other contracts, forward the report to DASN(P) by email at NavyLaborAdvisor@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 via DASN(P) by email at NavyLaborAdvisor@navy.mil with the subject "DFARS 222.406-8 – Labor Standards Compliance: Contracting Officer's Report – Attorney General Notification." DASN(P) will notify the Administrator, Wage and Hour Division.

SUBPART 5222.10 —SERVICE CONTRACT LABOR STANDARDS

5222.1006 Solicitation provisions and contract clauses.

(c)(1) The [Desk Guide for Service Contract Price Adjustments](#) contains DON guidance on processing price adjustments under FAR 52.222-43 and FAR 52.222-44 that result from:

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

(S-90) The DON's Price Adjustment Calculation Tool (PACT) is available to automate the calculation of Service Contract Labor Standards price adjustments and streamline the process for contractors and contracting officers. PACT is available at

<https://www.secnave.navy.mil/rda/OneSource/Pages/PACT/PACT.aspx>.

SUBPART 5222.11 — PROFESSIONAL EMPLOYEE COMPENSATION

5222.1103 Policy, procedures, and solicitation provision.

(S-90) Incorporate provision 52.222-46, Evaluation of Compensation for Professional Employees, in full text, in applicable solicitations. Contracting officers shall ensure that Source Selection Plans, along with Sections L and M of competitive solicitations, accurately reflect consideration of the total compensation plan when required by this provision.

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

5222.7003 Waivers.

Submit waiver requests to DASN(P) by email at NavyLaborAdvisor@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 Waiver.

Submit waiver requests for the Secretary of Defense via DASN(P) by email at NavyLaborAdvisor@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 on the ASN(RDA) website.

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.

5223.370-3 Policy.

5223.370-5 Contract clauses.

SUBPART 5223.4 — USE OF RECOVERED MATERIALS AND BIOBASED PRODUCTS

5223.406 Solicitation provision and contract clauses.

SUBPART 5223.5 — DRUG-FREE WORKPLACE

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

SUBPART 5223.8 — OZONE DEPLETING SUBSTANCES

5223.803 Policy.

SUBPART 5223.3 — HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

5223.370 Safety precautions for ammunitions and explosives.

5223.370-3 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 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 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 Suspension of payments, termination of contract, and debarment and suspension actions.

(e) Submit requests for waiver to SECNAV via the HCA and DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] FAR 23.506 – Contractor Drug-Free Workplace Violation Contract Award Waiver Request.”.

SUBPART 5223.8 — OZONE DEPLETING SUBSTANCES

5223.803 Policy.

Technical certification and approval requirements are set forth in Chapter 22 Section 3.6 of OPNAV-M 5090.1 in accordance with OPNAV Instruction 5090.1E.

PART 5225 FOREIGN ACQUISITION

[SUBPART 5225.1 — BUY AMERICAN ACT—SUPPLIES](#)

[5225.103 Exceptions.](#)

[SUBPART 5225.2 —BUY AMERICAN ACT—CONSTRUCTION MATERIALS](#)

[5225.202 Exceptions.](#)

[SUBPART 5225.3 – Contracts Performed Outside the United States](#)

[5225.370 Contracts requiring performance or delivery in a foreign country.](#)

[SUBPART 5225.4 —TRADE AGREEMENTS](#)

[5225.401 Exceptions.](#)

[5225.403 World Trade Organization Government Procurement Agreement and Free Trade Agreements.](#)

[SUBPART 5225.7 —PROHIBITED SOURCES](#)

[5225.702 Prohibition on contracting with entities that conduct restricted business operations in Sudan.](#)

[5225.702-4 Waiver.](#)

[5225.703-4 Waiver.](#)

[5225.770 Prohibition on acquisition of certain items from Communist Chinese military companies.](#)

[5225.770-5 Waiver of prohibition.](#)

[5225.771 Prohibition on contracting or subcontracting with a firm that is owned or controlled by the government of a country that is a state sponsor of terrorism.](#)

[5225.771-3 Notification.](#)

[5225.771-4 Waiver of prohibition.](#)

[5225.772-3 Procedures.](#)

[5225.772-4 Exception.](#)

[SUBPART 5225.8 —OTHER INTERNATIONAL AGREEMENTS AND COORDINATION](#)

[5225.802 Procedures.](#)

[5225.802-71 End Use Certificates.](#)

[5225.802-90 Procedures for acquisitions that can be satisfied only by sources outside the United States.](#)

[5225.871 North Atlantic Treaty Organization \(NATO\) cooperative projects.](#)

[5225.871-4 Statutory waivers.](#)

[5225.871-7 Congressional notification.](#)

[5225.872 Contracting with qualifying country sources.](#)

[5225.872-3 Solicitation procedures.](#)

[SUBPART 5225.70 —AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION](#)

[5225.7002 Restrictions on food, clothing, fabrics, and hand or measuring tools.](#)

[5225.7002-2 Exceptions.](#)

[5225.7003 Restrictions on acquisitions of specialty metals.](#)

[5225.7003-3 Exceptions.](#)

[5225.7007 Restrictions on anchor and mooring chain.](#)

[5225.7007-2 Waiver.](#)

[5225.7009 Restriction on ball and roller bearings.](#)

[5225.7009-4 Waiver.](#)

[5225.7011 Restriction on carbon, alloy, and armor steel plate.](#)

[5225.7011-2 Waiver.](#)

[5225.7012 \(DFARS 225.7012\) Restriction on supercomputers.](#)

[5225.7012-2 \(DFARS 225.7012–2\) Waiver.](#)

[5225.7018 Restriction on acquisition of certain magnets and tungsten.](#)

[5225.7018-4 Nonavailability determination.](#)

[SUBPART 5225.73 —ACQUISITIONS FOR FOREIGN MILITARY SALES](#)

[5225.7301 General.](#)

[5225.7301-2 Solicitation approval for sole source contracts.](#)

[SUBPART 5225.76 —SECONDARY ARAB BOYCOTT OF ISRAEL](#)

[5225.7604 Waivers.](#)

[SUBPART 5225.77 — ACQUISITIONS IN SUPPORT OF OPERATIONS IN AFGHANISTAN](#)

[5225.7799 Authority to acquire products and services \(including construction\) from Afghanistan or from countries along a major route of supply to Afghanistan.](#)

SUBPART 5225.1 — BUY AMERICAN ACT–SUPPLIES

5225.103 Exceptions.

(a) Public interest.

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

(b) Nonavailability.

(2)(ii) If the contracting officer considers that the nonavailability of an article is likely to affect future acquisitions, the contracting officer shall submit the determinations made under FAR 25.103(b)(2) to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 225.103 - Buy American Act--Supplies Determination.”

SUBPART 5225.2 —BUY AMERICAN ACT— CONSTRUCTION MATERIALS

5225.202 Exceptions.

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

SUBPART 5225.3 – Contracts Performed Outside the United States

5225.370 Contracts requiring performance or delivery in a foreign country.

(d) Contracting Officers shall address Theater Business Clearance (TBC) requirements when soliciting or awarding contracts or performing contract administration. Solicitations and contracts subject to TBC are those valued in excess of \$150K and with performance greater than 30 days that require performance or delivery, including construction contracts, with the place of performance in Afghanistan.

SUBPART 5225.4 —TRADE AGREEMENTS

5225.401 Exceptions.

(a)(2)(A) Submit requests in the form of a determination and findings to USD(A&S)/DPC with a copy of the approved AS, STRAP, or MOPAS-S via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 225.401 -Trade Agreement Exceptions.”

5225.403 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 with a copy of the approved AS, STRAP, or MOPAS-S to the USD(A&S)/DPC via DASN(P) by email at

RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 225.403 - National Interest Waivers.”

SUBPART 5225.7 —PROHIBITED SOURCES

5225.702 Prohibition on contracting with entities that conduct restricted business operations in Sudan.

5225.702-4 Waiver.

(b) Waivers pursuant to FAR 25.702-4(a) shall be submitted via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] FAR 25.702-4(b) Waiver—Sudan.”
5225.703 Prohibition on contracting with entities that engage in certain activities or transactions relating to Iran.

5225.703-4 Waiver.

(b) Waivers pursuant to FAR 25.703-4 shall be submitted via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] FAR 25.703-4 Waiver – Iran.”

5225.770 Prohibition on acquisition of certain items from Communist Chinese military companies.

5225.770-5 Waiver of prohibition.

(a) Waivers shall be submitted via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 225.770-5 Waiver - Certain Items from Communist Chinese Military Companies.”

5225.771 Prohibition on contracting or subcontracting with a firm that is owned or controlled by the government of a country that is a state sponsor of terrorism.

5225.771-3 Notification.

Submit notifications via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 225.771-3 – “State Sponsor of Terrorism Notification.”

5225.771-4 Waiver of prohibition.

Submit waivers via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 225.771-4 – “State Sponsor of Terrorism Waiver Request.”

5225.772 Prohibition on acquisition of certain foreign commercial satellite services.

5225.772-3 Procedures.

(b)(1) Submit disclosures via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 225.772-3 – “Certain Foreign Commercial Satellite Services Disclosure.”

5225.772-4 Exception.

(b) Submit exception requests via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 225.772-4 – “Certain Commercial Satellite Services Exception Request.”

SUBPART 5225.8 —OTHER INTERNATIONAL AGREEMENTS AND COORDINATION

5225.802 Procedures.

5225.802-71 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 the contiguous United States).
- (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 North Atlantic Treaty Organization (NATO) cooperative projects.

5225.871-4 Statutory waivers.

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

5225.871-7 Congressional notification.

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

5225.872 Contracting with qualifying country sources.

5225.872-3 Solicitation procedures.

(e)(4) Submit requests for concurrence via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] 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 Restrictions on food, clothing, fabrics, and hand or measuring tools.

5225.7002-2 Exceptions.

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

(2) When submitting DNADs for approval, include analysis of market research and analysis of alternatives memorandum as supporting documentation using the format in Annex 3.

5225.7003 Restrictions on acquisitions of specialty metals.

5225.7003-3 Exceptions.

(b)(2)(ii) Report on all contracts (including task orders/delivery orders) for the acquisition of 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(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 225-7003-3 - Annual COTS End Items Report (Fiscal year).”

(b)(5) Using the format in Annex 3, submit required DNADs for approval by:

(i) SECNAV via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 225.7003-3 – DNAD Approval by SECNAV.” When submitting DNADs for approval, include analysis of market research and analysis of alternatives memorandum as supporting documentation.

(ii) USD(A&S) with a courtesy copy to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 225.7003-3 - DNAD Approval by USD(A&S).”

(c)(2) Submit required commercial derivative military article determinations for approval by SECNAV via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 225.7003-3 – Determination Approval by SECNAV.”

(d) When submitting the request for national security interest determination to USD(A&S) for approval, provide a courtesy copy to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 225.7003-3 – CC: Determination Approval by USD(A&S).”

5225.7007 Restrictions on anchor and mooring chain.

5225.7007-2 Waiver.

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

5225.7009 Restriction on ball and roller bearings.

5225.7009-4 Waiver.

Submit the proposed waiver via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 225.7009-4 - Ball and Roller Bearings Restriction Waiver.”

5225.7011 Restriction on carbon, alloy, and armor steel plate.

5225.7011-2 Waiver.

Submit the waiver to SECNAV via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] 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(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] 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.

5225.7018 Restriction on acquisition of certain magnets and tungsten.

5225.7018-4 Nonavailability determination.

(a)(3) When submitting the signed individual nonavailability determination or denial to USD(A&S), provide a courtesy copy to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 225.7018-4 – CC: Individual Nonavailability Determination.”

(b)(i) When submitting the request for class nonavailability determination to DPC, provide a courtesy copy to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 225.7018-4 – CC: Class Nonavailability Determination Request.”

SUBPART 5225.73 —ACQUISITIONS FOR FOREIGN MILITARY SALES

5225.7301 General.

5225.7301-2 Solicitation approval for sole source contracts.

Submit requests for coordination with the Principal Director, DPC via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 225.7301-2 Coordination of Solicitation for Combined US/FMS FFP Sole Source Contracts for a Major System >\$500M.”

SUBPART 5225.76 —SECONDARY ARAB BOYCOTT OF ISRAEL

5225.7604 Waivers.

Submit waiver requests to USD(A&S)/DPC via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] PGI 225.7604 - Secondary Arab Boycott of Israel Restriction Waiver.”

SUBPART 5225.77 — ACQUISITIONS IN SUPPORT OF OPERATIONS IN AFGHANISTAN

5225.7799 Authority to acquire products and services (including construction) from Afghanistan or from countries along a major route of supply to Afghanistan.

When submitting the written determination to DPC, provide a courtesy copy to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 225.7799 (Class Deviation 2020-00002) – CC: “Determination to acquire [products or services] from a [Central Asian state, Pakistan, or the South Caucasus].”

PART 5227 PATENTS, DATA AND COPYRIGHTS

SUBPART 5227.70 —INFRINGEMENT CLAIMS, LICENSES, AND ASSIGNMENTS

5227.7013 Recordation.

SUBPART 5227.90 —TRADEMARK RIGHTS UNDER GOVERNMENT CONTRACTS

5227.9001 Trademarks.

SUBPART 5227.70 —INFRINGEMENT CLAIMS, LICENSES, AND ASSIGNMENTS

5227.7013 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.

SUBPART 5227.90 —TRADEMARK RIGHTS UNDER GOVERNMENT CONTRACTS

5227.9001 Trademarks.

- (a) This language is intended to specifically address claims for trademark infringement and the specified, related legal causes of action arising from use of the specific terms identified as “Designations”, as well as related matters concerning assertion of rights in those Designations.
- (b) Contracting officers shall insert the applicable language in the statements of work of new solicitations and contracts that are part of acquisition programs (as defined in NMCARS 5207.103(d) (i)) that meet the criteria in paragraph (1) or (2).

(1) Include the following statement of work language for “new” acquisition programs, i.e. acquisition programs for which: (a) Government assigned or approved nomenclature (i.e., type designator assigned via the Joint Electronic Type Designation Automated System (JETDAS), or

Mission Design Series (MDS) designator, or approved popular name in accordance with Department of the Air Force Instruction 16-401 (also referred to as NAVAIR Instruction 13100.16)) has been, or is expected to be, assigned; and, (b) the Government has not yet awarded a contract for full-rate production or equivalent:

“The contractor shall not assert any claim, in any jurisdiction, based on trademark or other name or design-based causes of action that are based on rights the contractor believes it has in the term(s) [contracting officers shall list terms(s) (Government assigned or approved nomenclature)] (the “Designation(s)”), against the Government or others authorized by the Government to use the Designation(s) (including the word(s), name, symbol, or design) acting within the scope of such authorization (i.e., claims for trademark infringement, dilution, trade dress infringement, unfair competition, false advertising, palming off, passing off, or counterfeiting). Such authorization shall be implied by the award of a Government contract to any party for the manufacture, production, distribution, use, modification, maintenance, sustainment, or packaging of the products and services identified under this contract, and the scope of such implied authorization is defined as the use of the Designation(s) in performance under such contract by the prime contractor and its subcontractors and suppliers at any tier. In all other cases, the scope of the authorization will be defined by the Government in writing. The contractor shall notify the contracting officer at least 30 days before asserting rights in, or filing an application to register, any one of the Designation(s) in any jurisdiction within the United States. Any such notification shall be in writing and shall identify the Designation(s) (including the word(s), name, symbol, or design), provide a statement as to its intended use(s) in commerce, and list the particular classes of goods or services in which registration will be sought.”

(2) Include the following statement of work language for “old” acquisition programs, i.e. acquisition programs for which Government assigned or approved nomenclature (i.e., type designator assigned via the Joint Electronic Type Designation Automated System (JETDAS), MDS designator or approved popular name in accordance with Department of the Air Force Instruction 16-401 (also referred to as NAVAIR Instruction 13100.16)) has been assigned and that do not otherwise meet the criteria for “new” acquisition programs above:

“The contractor shall not assert any claim, in any jurisdiction, based on trademark or other name or design-based causes of action that are based on rights the contractor believes it has in the term(s) [contracting officers shall list term(s) (Government assigned or approved nomenclature)] (the “Designation(s)”), against the Government or others authorized by the Government to use the Designation(s) (including the word(s), name, symbol, or design) acting within the scope of such authorization (i.e., claims for trademark infringement, dilution, trade dress infringement, unfair competition, false advertising, palming off, passing off, or counterfeiting). Such authorization shall be implied by the award of a Government contract to any party for the manufacture, production, distribution, use, modification, maintenance, sustainment, or packaging of the products and services identified under this contract, and the scope of such implied authorization is defined as the use of the Designation(s) in performance under such contract by the prime contractor and its subcontractors and suppliers at any tier. In all other cases, the scope of the authorization will be defined by the Government in writing.”

(c) Contracting officers shall submit notifications received from contractors, resulting from the requirements of 5227.9001(a), to the DON Trademark and Licensing Program Office via email at Navylicensing.fct@navy.mil.

PART 5228 BONDS AND INSURANCE

SUBPART 5228.3 —INSURANCE

5228.301 Policy.

5228.301-90 Authority to act.

5228.301-91 Payment of claims to third parties.

5228.305 Overseas workers' compensation and war-hazard insurance.

5228.307 Insurance under cost-reimbursement contracts.

5228.307-1 Group insurance plans.

5228.307-90 Liability of subcontractors to third parties.

SUBPART 5228.90 —INSURANCE UNDER LEASES

5228.9000 General.

5228.9001 Waiver.

5228.9002 Lease provisions.

5228.9003 Insurance policies.

SUBPART 5228.3 —INSURANCE

5228.301 Policy.

(a)(1) DON policy is to rely upon the commercial insurance industry to the maximum extent practicable to protect contractors against risks arising under contracts. 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(P) for decision or recommendation sufficiently in advance of contract award.

5228.301-90 Authority to act.

DASN(P) 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(P) 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(P) 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(P) 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 Overseas workers' compensation and war-hazard insurance.

(d) Submit requests for waiver through DASN(P) by email at RDAJ&As.fct@navy.mil with the subject "[Activity Name] PGI 288.305- Overseas Workers' Compensation and War-Hazard Insurance Waiver."

5228.307 Insurance under cost-reimbursement contracts.

5228.307-1 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(P) 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(P) in the event of cancellation of the policy.

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

PART 5229 TAXES

SUBPART 5229.3 —STATE AND LOCAL TAXES

5229.302 Application of State and local taxes to the Government.

SUBPART 5229.3 —STATE AND LOCAL TAXES

5229.302 Application of State and local taxes to the Government.

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

PART 5230 COST ACCOUNTING STANDARDS ADMINISTRATION

SUBPART 5230.2 —CAS PROGRAM REQUIREMENTS

5230.201 Contract requirements.

5230.201-5 Waiver.

5230.202 Disclosure requirements.

5230.202-2 Impracticability of submission.

SUBPART 5230.2 —CAS PROGRAM REQUIREMENTS

5230.201 Contract requirements.

5230.201-5 Waiver.

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

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

5230.202 Disclosure requirements.

5230.202-2 Impracticability of submission.

Submit requests for impracticability determinations to DASN(P) at least 60 days prior to anticipated contract award by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] 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 Advance agreements.

SUBPART 5231.2 — CONTRACTS WITH COMMERCIAL ORGANIZATIONS

5231.205 Selected costs.

5231.205-90 Shipbuilding capability preservation agreements.

5231.205-91 Compensation for services.

SUBPART 5231.1 — APPLICABILITY

5231.109 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(P) before entering into any negotiations.

(g) Copies of all negotiated advance agreements shall be forwarded to DASN(P) within 15 days of their execution, together with appropriate supporting documents by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] FAR 31.109 – Negotiated Advance Agreement.”

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 (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.

5231.205-91 Compensation for services.

Submit annual reports for DoD Waivers of the Contractor Employee Compensation Cap to DASN(P) no later than October 31 by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] NMCARS 5231.205-91 DoD Waivers of the Contractor Employee Compensation Cap” using the reporting guidance provided in Annex 23.

PART 5232 CONTRACT FINANCING

SUBPART 5232.2 — COMMERCIAL ITEM PURCHASE FINANCING

5232.202 General.

5232.202-1 Policy.

SUBPART 5232.4 — ADVANCE PAYMENTS FOR NON-COMMERCIAL ITEMS

5232.402 General.

SUBPART 5232.5 — PROGRESS PAYMENTS BASED ON COSTS

5232.501 General.

5232.501-2 Unusual progress payments.

SUBPART 5232.6 — CONTRACT DEBTS

5232.607 Installment payments and deferment of collection.

5232.607-2 Deferment of collection.

5232.690 DON claims against a contractor.

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

5232.7003 Policy.

SUBPART 5232.2 — COMMERCIAL ITEM PURCHASE FINANCING

5232.202 General.

5232.202-1 Policy.

(d) *Unusual contract financing.* HCAs are not authorized to approve unusual contract financing. In accordance with DFARS 232.070(a), DPC is the approval authority. Submit requests for approval via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 232.202-1(d) – Unusual Contract Financing.”

SUBPART 5232.4 — ADVANCE PAYMENTS FOR NON-COMMERCIAL ITEMS

5232.402 General.

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

SUBPART 5232.5 — PROGRESS PAYMENTS BASED ON COSTS

5232.501 General.

5232.501-2 Unusual progress payments.

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

SUBPART 5232.6 — CONTRACT DEBTS

5232.607 Installment payments and deferment of collection.

5232.607-2 Deferment of collection.

(c)(2) 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.

5232.690 DON claims against a contractor.

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

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

5232.7003 Policy.

(b) Contracting officers shall obtain DASN(P) approval prior to providing temporary alternative methods of submission of payment requests and receiving reports. Submit the request for approval to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 232.7002(a) (4) – Contractor Request for Submission of Payment Requests and Receiving Reports in Non-electronic Form.”

PART 5233 PROTESTS, DISPUTES, AND APPEALS

[SUBPART 5233.1 — PROTESTS](#)

[5233.103 Protests to the agency.](#)

[5233.104 Protests to GAO.](#)

[5233.170 Briefing requirement for protested acquisitions valued at \\$1 billion or more.](#)

[SUBPART 5233.2 — DISPUTES AND APPEALS](#)

[5233.201 Definitions.](#)

[5233.203 Applicability.](#)

[5233.204 Policy.](#)

[5233.204-90 General.](#)

[5233.209 Suspected fraudulent claims.](#)

[5233.211 Contracting officer's decision.](#)

[SUBPART 5233.90 — PROCEDURES](#)

[5233.9001 Claims approval requirements.](#)

[5233.9002 Contractor appeals to the Armed Services Board of Contract Appeals \(ASBCA\).](#)

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(P) 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(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] FAR 33.104 – GAO Protest Recommendation Decision.”

5233.170 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(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] PGI 233.170 - Protest [solicitation or contract number, as appropriate].”

SUBPART 5233.2 — DISPUTES AND APPEALS

5233.201 Definitions.

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

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

5233.203 Applicability.

(b)(2) The HCA is 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 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 Suspected fraudulent claims.

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

5233.211 Contracting officer's decision.

(a)(1) When reviewing the facts pertinent to a claim, the contracting officer 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.

SUBPART 5233.90 — PROCEDURES

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(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] NMCARS 5233.9001 – 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(P) 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(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] NMCARS 5233.9001 – 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 DON 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 DON 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 DON OGC Trial Attorney assigned to handle the appeal.

(b) *Litigation report requirement.* With the compilation of ASBCA Rule 4 documents (available at <https://www.asbca.mil/Rules/rules.html>), 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 5234.2 EARNED VALUE MANAGEMENT SYSTEM

5234.203 Solicitation provisions and contract clause.

SUBPART 5234.70 — ACQUISITION OF MAJOR WEAPON SYSTEMS AS COMMERCIAL ITEMS

5234.7002 Policy.

SUBPART 5234.2 EARNED VALUE MANAGEMENT SYSTEM

5234.203 Solicitation provisions and contract clause.

Notwithstanding DFARS 234.203 and in accordance with DASN(AP&B) memo entitled, “Earned Value Management Applicability Determination Delegation and Policy”, dated 8 January 2021, contracting officers shall not apply Earned Value Management (EVM) to Level of Effort (LOE) CLINs or solicitations or contracts that have an approved EVM Applicability Determination (AD) for non-applicability. A copy of the approved EVM AD shall be included in the contract file.

SUBPART 5234.70 — ACQUISITION OF MAJOR WEAPON SYSTEMS AS COMMERCIAL ITEMS

5234.7002 Policy.

(a)(1)(i) Submit the required written determination for approval by the Secretary of Defense/Deputy Secretary of Defense accompanied by a proposed Congressional notification letter satisfying the requirements at DFARS 234.7002(a)(1)(ii) and a copy of the approved AS, STRAP, or MOPAS-S to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 234.7002(a)(i) - D&F: Approval to Acquire a Major Weapon System as a Commercial Item.”

PART 5235 RESEARCH AND DEVELOPMENT CONTRACTING

[5235.006 Contracting methods and contract type.](#)

[5235.015 Contracts for research with educational institutions and nonprofit organizations.](#)

[5235.015-70 Special use allowances for research facilities acquired by educational institutions.](#)

[5235.070 Indemnification against unusually hazardous risks.](#)

[5235.070-1 Indemnification under research and development contracts.](#)

5235.006 Contracting methods and contract type.

(b)(ii)(B) When the milestone decision authority is USD(A&S), submit notifications via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 235.006 – Major Defense Program – Intent NOT to Exercise a Fixed Price Production Option on a Development Contract.”

(b)(iii)(B) Requests for USD(A&S) prenegotiation position or negotiated agreements approval are to be submitted via DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 235.006 – [Prenegotiation Position/Negotiated Agreement] Approval Request.”

5235.015 Contracts for research with educational institutions and nonprofit organizations.

5235.015-70 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 NAVFACENGCOM 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 Indemnification against unusually hazardous risks.

5235.070-1 Indemnification under research and development contracts.

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

(b) Submit requests for indemnification approval to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] 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 Expediting construction contracts.](#)

[SUBPART 5236.6 — ARCHITECT–ENGINEER SERVICES](#)

[5236.601 Policy.](#)

SUBPART 5236.2 — SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION

5236.270 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 Policy.

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

PART 5237 SERVICE CONTRACTING

[SUBPART 5237.1 — SERVICE CONTRACTS GENERAL](#)

[5237.102 Policy.](#)

[5237.102-71 Limitations on service contracts for military flight simulators.](#)

[5237.103 Contracting officer responsibility.](#)

[5237.104 Personal services contracts.](#)

[5237.170 Approval of contracts and task orders for services.](#)

[5237.170-2 Approval requirements.](#)

[5237.192 Services Acquisition Workshops \(SAWs\).](#)

[SUBPART 5237.2 — ADVISORY AND ASSISTANCE SERVICES](#)

[5237.204 Guidelines for determining availability of personnel.](#)

[SUBPART 5237.5 — MANAGEMENT OVERSIGHT OF SERVICE CONTRACTS](#)

[5237.502 Exclusions.](#)

[5237.503 Agency-head responsibilities.](#)

[5237.504 Contracting official's responsibilities.](#)

[SUBPART 5237.76 — CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES](#)

[5237.7602 Policy.](#)

[SUBPART 5237.90 — CONTRACTOR GUARD SERVICES](#)

[5237.9000 Contracting for contractor guard services.](#)

SUBPART 5237.1 — SERVICE CONTRACTS GENERAL

5237.102 Policy.

The consideration of using SeaPort to satisfy the requirements for the functional areas shown in Annex 22 is mandatory with the following exceptions:

- 1) Actions approved pursuant to authorities at FAR 6.302-1 through -7.
- 2) Actions with values below the Simplified Acquisition Threshold.
- 3) Actions set aside for 8(a) participants.
- 4) Actions for Commercial Items under Part 12.
- 5) Actions using Simplified Acquisition Procedures under Part 13.

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

5237.102-71 Limitations on service contracts for military flight simulators.

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

5237.103 Contracting officer responsibility.

(a)(3)(iii) Consider the use of SeaPort to satisfy competition requirements for services as specified at 5237.102. If SeaPort is not used to satisfy competitive requirements, and a J&A has not been approved, a Determination and Findings (D&Fs) shall be submitted for approval to DASN(P) with an endorsement by the HCA. D&Fs shall address commerciality, contract type, competitiveness, and contract vehicle. Describe how the previous effort to achieve these services was met. Include contract and task order number(s), information on the use of options and surge CLINs, and previously approved SeaPort waivers. D&Fs for approval shall be submitted to DASN(P) by email at SeniorServicesManage.fct@navy.mil with the subject “NMCARS 5237.103(a)(3)(iii) – D&F Negating the Requirement to Consider SeaPort”. Activities can expect disposition of the D&F within 10 business days.

5237.104 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 Approval of contracts and task orders for services.

5237.170-2 Approval requirements.

(a) *Acquisition of services through a contract or task order that is not performance based.* When acquisition of services through a contract or task order that is not performance based will be used, the rationale shall be documented in the contract file.

(b) *Acquisition of services through use of a contract or task order issued by a non-DOD agency.* In addition to the requirements in 5237.5, comply with the review and approval requirements in 5217.770 when acquiring services through use of a contract or task order issued by a non-DoD agency.

5237.192 Services Acquisition Workshops (SAWs).

(a) Except for acquisitions identified as a Special Interest, multi-functional teams that support services acquisition requirements with a total acquisition value of \$500 million or more or an annual value of \$250,000,000 or more, shall participate in a SAW, or an equivalent program. For multiple award, indefinite delivery, indefinite quantity contracts, a SAW is not required for the base contract, but is required for any task order valued at \$100 million or more. However, per ASN(RDA) memorandum “Waiver of Certain Services Acquisition Workshops (SAWs) for the Remainder of Fiscal Year 2021,” dated 12 November 2020, except for Special Interest acquisitions, the mandatory requirement to conduct a SAW is waived through 30 September 2021. Multi-functional teams are highly encouraged to apply SAW-like steps to all services acquisitions valued at \$10 million or more but less than the values above. If the HCA determines that a waiver is necessary, the waiver request shall be submitted by email to SeniorServicesManage.fct@navy.mil with the subject “NMCARS 5237.192 - Services Acquisition Workshop (SAW) Waiver Request” for approval by:

- (i) USD(A&S) or ASD(A) for Special Interest acquisitions;
- (ii) The DON Senior Services Manager DASN(P) for all other waiver requests.

(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 and whether the acquisition has been designated as a special interest acquisition by USD(A&S) or ASD(A).

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

(d) Multi-functional teams are permitted to use abbreviated SAW options offered by Defense Acquisition University (DAU) when a SAW has already been completed on a recurring services acquisition requirement in the past five years and there is no change in scope. Abbreviated SAW options are considered equivalent programs to a SAW and are encouraged to be used in lieu of requesting a SAW waiver. Other types of mission assistance workshops that are considered equivalent include, Acquisition and Management (DAU iCatalog “WSM”) and DAU’s Source Selection Simulation (“Triple-S”) workshop.

SUBPART 5237.2 — ADVISORY AND ASSISTANCE SERVICES

5237.204 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

5237.502 Exclusions.

(b) When services incidental to supply contracts are valued at greater than the SAT, even when the item of supply does not require a STRAP, a MOPAS-S is required.

5237.503 Agency-head responsibilities.

(S-90)(a) All acquisition of services valued in excess of the SAT shall comply with the policy and procedures set forth in the in 5207.103(j) and (l) unless the services are not applicable in accordance with DODI 5000.74, paragraph 1.1.b.

(b) Use Annex 21, MOPAS-S, for services when the total cost of all contracts is less than \$50 million for all years or less than \$25 million for any fiscal year. See Annex 4 for STRL deviations applicable hereto.

(c) For all other services acquisitions, when the total cost of all contracts is estimated at \$50 million or more for all years or \$25 million or more for any fiscal year, use a PSTRAP-M or an ISTRAP-M. See 5207.103 (j) and (l) and Table 5207-1.

- (d) The level of detail expected for each MOPAS-S shall be commensurate with the complexity, total planned value, and performance risk of the procurement.
- (e) See FAR 7.104(a) for the requirements for updates and revisions.

5237.504 Contracting official's responsibilities.

SeaPort is the Navy's best practice for acquisition of the types of services shown in Annex 22 (see 5237.102 for exceptions).

SUBPART 5237.76 — CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES

5237.7602 Policy.

- (c) When requirements are designated as essential contractor services, ensure a separate section, paragraph, line, or other designation in the contract, task or delivery order for these essential services is created so it can be tracked to an option or separate contract line item (see DFARS PGI 207.105(b)(20) (C)).

SUBPART 5237.90 — CONTRACTOR GUARD SERVICES

5237.9000 Contracting for contractor guard services.

All requirements for contractor guard services for facilities, 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.](#)

[SUBPART 5239.73 REQUIREMENTS FOR INFORMATION RELATING TO SUPPLY CHAIN RISK](#)

[5239.7304 Determination and notification.](#)

5239.001 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(P) by email at

RDAJ&As.fct@navy.mil with the subject “[Activity Name] FAR 39.001 - Data Farm/Center IT Approval.”

SUBPART 5239.73 REQUIREMENTS FOR INFORMATION RELATING TO SUPPLY CHAIN RISK

5239.7304 Determination and notification.

(c)(2) When the contracting activity participates in preparing the required notification, the notice shall be submitted to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 239.7304(c)(2)- Notice for SAE Approval for Exclusion and Limitation on Disclosure of IT Assessed for Supply Chain Risk.”

PART 5241 ACQUISITION OF UTILITY SERVICES

[SUBPART 5241.2 — ACQUIRING UTILITY SERVICES](#)
[5241.201 Policy.](#)

SUBPART 5241.2 — ACQUIRING UTILITY SERVICES

5241.201 Policy.

(c) 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.](#)
[SUBPART 5242.6 — CORPORATE ADMINISTRATIVE CONTRACTING OFFICER](#)
[5242.602 Assignment and location.](#)

SUBPART 5242.1 — CONTRACT AUDIT SERVICES

5242.191 Audit resolution and disposition.

(a) Resolution of findings/recommendations in reportable contract audit reports, as defined in DOD Instruction 7640.02, other than pre-award audits, is required within six months of report issuance. When an audit's findings/recommendations are resolved, they shall be supported, in the official contract file, by a negotiation memorandum, if applicable; a memorandum for the record; or other appropriate 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 audit resolution and disposition within the required times and to comply with the DOD Instruction 7640.02, Policy for Follow-Up on Contract Audit Reports. Semiannual (March 31 and September 30 of each year) reporting requirements shall be conducted through routine and timely entry of resolved, unresolved, dispositioned, or in litigation or investigation and document forward date within the CAFU DCMA eTools system at www.dcms.mil. If the resolution and disposition of reportable contract audit reports become over-age, documentation of actions taken to achieve resolution and disposition shall be recorded within the CAFU DCMA eTools system monthly. DASN(P) PA&BT is the DON liaison.

SUBPART 5242.6 — CORPORATE ADMINISTRATIVE CONTRACTING OFFICER

5242.602 Assignment and location.

(a) Submit recommendations for assignment of a corporate administrative contracting officer (CACO) to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 242.602 - CACO Assignment Recommendation.”

PART 5243 CONTRACT MODIFICATIONS

SUBPART 5243.2 — CHANGE ORDERS

5243.201 General.

5243.204 Administration.

5243.204-70 Definitization of change orders.

5243.204-70-1 Scope.

5243.204-70-7 Plans and Reports.

SUBPART 5243.2 — CHANGE ORDERS

5243.201 General.

(S-90) (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 Administration.

5243.204-70 Definitization of change orders.

5243.204-70-1 Scope.

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

5243.204-70-7 Plans and Reports.

See 5217.7405 for reporting requirements.

PART 5245 GOVERNMENT PROPERTY

SUBPART 5245.1 — GENERAL

5245.102 Policy.

5245.103-71 Transferring Government property accountability.

5245.103-74 Contracting office responsibilities.

SUBPART 5245.6 — REPORTING, REUTILIZATION AND DISPOSAL

5245.602 Reutilization of Government property.

5245.602-3 Screening.

SUBPART 5245.1 — GENERAL

5245.102 Policy.

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

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

5245.103-71 Transferring Government property accountability.

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

5245.103-74 Contracting office responsibilities.

(S-90) When the use of FAR clause 52.245-1, Government Property, is required, the contracting officer shall complete Annex 9, Government-Furnished Property Preaward Compliance Checklist with the business clearance.

SUBPART 5245.6 — REPORTING, REUTILIZATION AND DISPOSAL

5245.602 Reutilization of Government property.

5245.602-3 Screening.

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

(S-90)(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

[5246.703 Criteria for use of warranties.](#)

[5246.704 Authority for use of warranties.](#)

[5246.706 Warranty terms and conditions.](#)

SUBPART 5246.7 – WARRANTIES

5246.703 Criteria for use of warranties.

Notwithstanding FAR 46.703 and in accordance with 10 U.S.C. 7318, effective the date of enactment of the National Defense Authorization for FY2018, contracts for new construction shipbuilding, for which funds are expended from the Shipbuilding and Conversion, Navy account, shall require, as a condition of the contract, that the work performed under the contract is covered by a warranty for a period of at least one year.

(S-90) Waiver. If the contracting officer for a contract covered by the requirement for a new shipbuilding contract warranty determines that a limited liability of warranted work is in the best interest of the Government, the contracting officer may agree to limit the liability of the work performed under the contract to a level that the contracting officer determines is sufficient to protect the interests of the Government and is in keeping with historical levels of warranted work on similar vessels.

5246.704 Authority for use of warranties.

(S-90) Notwithstanding DFARS 246.704 (1) and (2) and in accordance with 10 U.S.C. 7318, chief of the contracting office approval is not required for the use of a warranty for new construction shipbuilding for which funds are expended from the Shipbuilding and Conversion, Navy account and the contract is effective on or after the date of enactment of the National Defense Authorization for FY2018.

5246.706 Warranty terms and conditions.

(b)(2) *Remedies.*

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

(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 5248 VALUE ENGINEERING

SUBPART 5248.1 —POLICIES AND PROCEDURES

5248.103 Processing value engineering change proposals.

SUBPART 5248.1 —POLICIES AND PROCEDURES

5248.103 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 Termination of fixed-price contracts for default.

5249.402-8 Reporting Information.

5249.403 Termination of cost-reimbursement contracts for default.

SUBPART 5249.70 —SPECIAL TERMINATION REQUIREMENTS

5249.7001 Congressional notification on significant contract terminations.

SUBPART 5249.4 —TERMINATION FOR DEFAULT

5249.402 Termination of fixed-price contracts for default.

5249.402-8 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(h)(1)(iii), including changes in status of terminations, to the AGC(AI) by email at aio@navy.mil with the subject "FAR 49.402-8 - T4D" followed by the contract number.

5249.403 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(h)(1)(iii), including changes in status of terminations, to the AGC(AI) by email at aio@navy.mil with the subject "FAR 49.402-8 - T4D" followed by the contract number.

SUBPART 5249.70 —SPECIAL TERMINATION REQUIREMENTS

5249.7001 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(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] PGI 249.7001, Contract Termination – Congressional Notification on Significant Contract Terminations.” Upon receipt and review of the submitted information, DASN(P) 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 General.

5250.101-3 Records.

5250.102 Delegation of and limitations on exercise of authority.

5250.102-1-70 Delegations.

5250.102-2 Contract adjustment boards.

5250.103 Contract adjustments.

5250.103-5 Processing cases.

5250.103-6 Disposition.

5250.104 Residual powers.

5250.104-3 Special procedures for unusually hazardous or nuclear risks.

SUBPART 5250.1 — EXTRAORDINARY CONTRACTUAL ACTIONS

5250.101 General.

5250.101-3 Records.

(1)(iii) HCAs are the officials responsible for preparation and submission of the required records. Forward records to DASN(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] FAR 50.101-3, Request for Relief.”

5250.102 Delegation of and limitations on exercise of authority.

5250.102-1-70 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 the threshold at FAR 50.102-1(b).

(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 the threshold at FAR 50.102-1(b). Submit requests for adjudication by the Navy Contract

Adjustment Board by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] DFARS 250.102-1-70 - Extraordinary Contractual Relief pursuant to [insert “Public Law 85-804” or “Executive Order 10789”].

5250.102-2 Contract adjustment boards.

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

5250.103 Contract adjustments.

5250.103-5 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 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 Residual powers.

5250.104-3 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(P) by email at RDAJ&As.fct@navy.mil with the subject “[Activity Name] FAR 50.104-3 – Indemnification Request.”

PART 5252 SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 5252.2 — TEXT OF PROVISIONS AND CLAUSES

5252.200 Scope of subpart.

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

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.

5252.223-9000 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.

ANNEX 1 – JUSTIFICATION AND APPROVAL

ANNEX 2 – BUSINESS CLEARANCE REQUIRED CONTENT

**ANNEX 3 – DOMESTIC NONAVAILABILITY
DETERMINATION AND SUPPORTING DOCUMENTATION**

**ANNEX 4 – SUMMARY OF IMPLEMENTATION OF FISCAL
YEAR 2017 NATIONAL DEFENSE AUTHORIZATION ACT
SECTION 233 PILOT PROGRAM FOR THE ENHANCEMENT
OF THE RESEARCH, DEVELOPMENT, TEST, AND
EVALUATION CENTERS**

**ANNEX 5 – BRIDGE CONTRACT APPROVAL AND
REPORTING**

**ANNEX 6 – CONSOLIDATED UNDEFINITIZED CONTRACT
ACTION (UCA) MANAGEMENT REPORT**

**ANNEX 7 – SECTION 843 DETERMINATION & FINDING
TEMPLATE**

ANNEX 8 – PEER REVIEW ROLLING FORECAST

**ANNEX 9 – GOVERNMENT–FURNISHED PROPERTY
PREAWARD COMPLIANCE CHECKLIST**

**ANNEX 10 – NOTICE OF SUSPECTED VIOLATIONS OF THE
GRATUITIES CLAUSE**

ANNEX 11 – [RESERVED]

**ANNEX 12 – Waiver Request for
Appointing a Non–DON Employee as a
Contracting Officer**

ANNEX 13 – [RESERVED]

ANNEX 14 – REPORTS

ANNEX 15 – UAC/RATIFICATION REPORT

**ANNEX 16 – STATEMENT OF WORK LANGUAGE
IMPLEMENTING “THE DIB” MEMO**

**ANNEX 17 – PROGRAM STREAMLINED ACQUISITION PLAN
(PSTRAP)**

**ANNEX 18 – INDIVIDUAL STREAMLINED ACQUISITION
PLAN (ISTRAP)**

**ANNEX 19 – PROGRAM STREAMLINED ACQUISITION PLAN
WITH SERVICES (PSTRAP-M)**

**ANNEX 20 – INDIVIDUAL STREAMLINED ACQUISITION
PLAN WITH SERVICES (ISTRAP-M)**

**ANNEX 21 – MANAGEMENT AND OVERSIGHT PROCESS
FOR THE ACQUISITION OF SERVICES – STREAMLINED
(MOPAS-S)**

**ANNEX 22 – SEAPORT ENGINEERING AND PROGRAM
MANAGEMENT CATEGORIES**

**ANNEX 23 – DOD WAIVERS OF THE CONTRACTOR
EMPLOYEE COMPENSATION CAP**

ANNEX 24 – CONTRACT CLOSEOUT METRIC REPORT

ANNEX 25 – LONG RANGE ACQUISITION FORECAST