

Part 5101 - Federal Acquisition Regulation System

(Revised 30 September 2022)

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Subpart 5101.1 - Purpose, Authority, Issuance

5101.101 Purpose.

The Army Federal Acquisition Regulation Supplement (AFARS) implements and supplements the Federal Acquisition Regulation (FAR), the Defense FAR Supplement (DFARS) and the DFARS Procedures, Guidance

and Information (PGI) to establish uniform policies for Army acquisition. It does not restrict the exercise of good business judgment or stifle innovation.

5101.105 Reserved.

5101.105-3 Copies.

The AFARS is available electronically on Procurement.Army.mil (<https://procurement.army.mil>) at <https://spcs3.kc.army.mil/asaalt/procurement/AFARS/Home.aspx>. The Office of the Deputy Assistant Secretary of the Army (Procurement) (ODASA(P)), Procurement Policy Directorate, SAAL-PP will issue notices of AFARS revisions to all senior contracting officials (SCOs).

5101.108 FAR conventions.

(b) *Delegation of authority.* Each authority is delegable within the contracting chain of authority unless otherwise indicated by law, statute, or regulation. All delegations must reference the applicable AFARS citation. Delegations that do not include expiration dates remain effective until a higher authority supersedes or cancels them.

5101.108-1 Introduction of delegations matrix at Appendix GG and instructions for use.

(b)(S-90) Delegations of certain procurement authorities are identified throughout the AFARS with a pointer to a matrix, labeled Appendix GG. Appendix GG outlines all delegations of authority within the FAR, DFARS and AFARS, and specifies whether the authority prohibits or allows for further delegation. The Army level of authority identified in the matrix is the lowest level of delegation.

5101.170 Peer reviews.

(a) DoD peer reviews.

(1) The SCO will concur, in writing, on all solicitation and contract packages submitted for each phase of any DoD peer review. For the first phase only, the SCO will send a copy of the written concurrence to the DASA(P) (see 5101.290) and provide a copy to the head of the contracting activity (HCA). See AFARS PGI 5101.170-2.

(i) In accordance with Defense Pricing and Contracting (DPC) Class Deviation 2019-O0010, Peer Reviews of Contracts for Supplies and Services, except for procurements of major defense acquisition programs above \$1 billion for which the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) is the milestone decision authority and USD(A&S) special interest programs, the DASA(P) is responsible for conducting preaward peer reviews for competitive procurements above \$1 billion. See Appendix GG for further delegation.

(2) Contracting activities shall provide their rolling annual forecast of acquisitions that will be subject to DoD peer reviews to the address at 5101.290(b)(2)(ii)(A) at the end of each quarter. See 5104.802(f)(4) for peer review forecast requirements. See AFARS PGI 5101.170-3.

(b) Component peer reviews.

(i) *Army peer reviews.* With the exception of acquisitions using sealed bidding procedures (see FAR Part 14), a Solicitation Review Board (SRB) and a Contract Review Board (CRB) will approve all procurements with an estimated value of \$50 million or more including the award of task and delivery orders. A CRB is required for contract modifications that increase total evaluated price or otherwise increase scope. A CRB is not required for modifications that exercise an option, add incremental funding, or make administrative changes. The SRB and CRB will be independent, multi-functional teams comprised of senior level experts, which will, at a minimum, include representatives from the contracting activity, small business office, office of counsel, requirements

community, and in the case of noncompetitive actions, the advocate for competition. The same members should participate in both the SRB and the CRB in order to ensure consistency.

(ii) *Objective of Army peer reviews.* The SRB/CRB will review and assess the presolicitation, solicitation and contract award documents for consistency, sufficiency, compliance and application of sound business practices. The SRB/CRB will verify that the procurement represents an overall good value to the Government and appropriate obligation of taxpayer funds.

(iii) *Resolution of comments.* The SCO will establish procedures for resolving all SRB and CRB comments.

(iv) *Peer review statistics.* Contracting activities will collect peer review statistics, to include annual data on the number of SRB/CRB reviews conducted and waived, identification of any systemic issues or trends, best practices, lessons learned, overall effectiveness of the process, and other data as determined necessary.

(c) *Peer Review Thresholds.*

Table 1-1 designates the Army peer reviews, thresholds and approval authorities.

TABLE 1-1, Peer Reviews, Thresholds and Approval Authorities

Level	Threshold	Parameters	Approval Authority
DPC	\$1 Billion or More	Pre-award Non-Competitive	Director, Price, Cost and Finance, DPC (Note 1)
DPC	Actions designated by USD(A&S) as requiring peer review, regardless of value	Pre-award Non-Competitive	Director, Price, Cost and Finance, DPC (Note 1)
DPC	\$1 Billion or More MDAPs for which USD(A&S) is the MDA	Pre-award, Competitive	Director, Contract Policy, DPC (Note 1)
DPC	Actions designated by USD(A&S) as requiring peer review, regardless of value	All Pre-award, Competitive	Director, Contract Policy, DPC (Note 1)

Army	\$1 Billion or More	Pre-award, Competitive	HCA Non-delegable, Except DASA(P) for Special Interest Acquisitions
Army	\$250 Million or More but Less than \$1 Billion	Pre-award, Competitive and Non-Competitive	HCA, with authority to delegate No Lower than the SCO
Army	\$50 Million or More but Less than \$250 Million	Pre-award, Competitive and Non-Competitive	SCO, with authority to delegate to No Lower than the CoCO
Army	Below \$50 Million	Pre-award, Competitive and Non-Competitive	SCO or Designee (Note 2)
Army	\$1 Billion or More	Independent Management Review Contracts for Services	DASA (P) or SSM; without authority to further delegate.
Army	\$100 Million or More but Less than \$1 Billion	Independent Management Review Contracts for Services	HCA, with authority to delegate to No Lower than the SCO
Army	Procurements identified as Special Interest by the DASA(P).	All Peer Reviews, Special Interest	DASA(P), without power to further delegate. (Note 3)

Notes:

See DFARS 201.170. The contracting activity's business clearance process (see 5115.406) normally satisfies the oversight function of peer reviews for acquisitions below \$50 million. If the SCO determines, in accordance with a risk-based analysis, that a separate peer review is necessary for an acquisition valued below \$50 million, the SCO or designee shall conduct the peer review consistent with the procedures set forth for Army peer reviews in this section. Other Army peer reviews identified in 5101.170(b) are not required when the ODASA(P) conducts a special interest peer review for a procurement.

(v) *Independent Management Reviews (IMRs) (Postaward peer reviews) of contracts for services.* Independent Management Reviews shall be conducted if the base period is greater than one year, the IMR takes place prior to the end of the second year of the base period of performance. If the base period of performance is one year or less, the IMR occurs prior to the exercise of the second option period.

(a) The ODASA(P) will conduct an Independent Management Review (IMR) for contracts for services valued at \$1 billion or more. The reviews will be conducted in accordance with AFARS PGI 5101.170-4(a).

(b) The HCA will conduct an IMR for contracts for services valued at \$100 million or more but less than \$1 billion. See Appendix GG for further delegation. For HCA reviews, the HCA will provide the Senior Services Manager a summary report. The summary report will address the independent management review required elements in DoDI 5000.74 Defense Acquisition of Services and shall be filed within PCF in accordance with AFARS PGI 5101.170-4(b); no later than 45 days after completion of the review.

Subpart 5101.2 - Administration

5101.290 Routing documents and mailing addresses.

(a)(1) Contracting activities will obtain either head of the contracting activity (HCA) or, if delegated, SCO concurrence on all procurement document packages submitted for Headquarters, Department of the Army (HQDA) review, coordination, and/or approval. The SCO may not delegate this authority. Procurement document packages will include all reviews and coordination completed prior to submission to HQDA, including legal reviews. Unless otherwise specified in this regulation, individual and class deviations to this AFARS provision are prohibited. Send document packages via the HQDA Task Management Tool (TMT) to the ODASA(P) directorate groups associated with the email addresses listed in 5101.290(b)(2)(ii)(C) (except as provided elsewhere in this regulation).

(2) The contracting officer shall include the contract type determination required by FAR 16.103(d)(1) and 5116.103(d)(1) in HQDA-level approval packages that reference contract type, including the approvals required by FAR 6.304 and FAR 16.504(c)(1)(D)(I). If a written acquisition plan is required for the associated contract action, include the acquisition plan in the submission package and provide the acquisition plan citation in the applicable paragraph of the document submitted for review. If a written acquisition plan is not required, include the contract type determination from the contract file in the submission package.

(b) Frequently used addresses:

(1) For the Deputy Assistant Secretary of the Army (Procurement), use the following:

Deputy Assistant Secretary of the Army (Procurement)

Attn: SAAL-ZP

103 Army Pentagon

Room 2D528

Washington, DC 20310-0103.

(2)(i) For the Office of the Deputy Assistant Secretary of the Army (Procurement), use the following:

Office of the Deputy Assistant Secretary of the Army (Procurement)

usarmy.pentagon.hqda-asa-alt.list.zp-current-operations@mail.mil)

Zachary Taylor Building – 5th Floor

2530 Crystal Drive

Arlington, VA 22202.

The email addresses for the directorates appear in paragraph (2)(ii). Submit document packages requiring HQDA review, coordination, and/or approval via the TMT.

(ii) Specify the directorate and email address within paragraph (2)(i) as follows:

- (A) SAAL-ZP-PP Procurement Policy, usarmy.pentagon.hqda-asa-alt.list.saal-zp-pp@army.mil.
- (B) SAAL-ZP-PS Procurement Support, usarmy.pentagon.hqda-asa-alt.list.saal-ps-staff@army.mil.
- (C) SAAL-ZP-PS Procurement Support, usarmy.pentagon.hqda-asa-alt.list.saal-ps-staff@army.mil.
- (D) SAAL-ZP-PE Procurement Systems, usarmy.pentagon.hqda-asa-alt.list.saal-zp-pe@armymil.
- (E) SAAL-ZP-SSM Senior Services Manager, usarmy.pentagon.hqda-asa-alt.list.saal-zp-ssm@army.mil.

(3) For the Office of the Assistant Secretary of the Army (Financial Management and Comptroller), use the following:

Office of the Assistant Secretary of the Army (Financial Management and Comptroller)

109 Army Pentagon

Washington, DC 20310-0109.

(4) For the Office, Chief of Legislative Liaison, use the following:

The Office, Chief of Legislative Liaison (OCLL)

Attn: SALL-SPA

1600 Army Pentagon

Washington, DC 20310-1600.

(5) For the Chief, Procurement Fraud Branch, U.S. Army Legal Services Agency, use the following:

Chief, Procurement Fraud Branch

Contract and Fiscal Law Division

U.S. Army Legal Services Agency

9275 Gunston Road, BLDG 1450

Ft Belvoir, VA 22060-5546.

(6) For the Office of the Command Counsel, Headquarters, U.S. Army Materiel Command, use the following:

Office of the Command Counsel

Headquarters U.S. Army Materiel Command

Attn: AMCCC

4400 Martin Road

Redstone Arsenal, AL 35898-5340.

(7) For the U.S. Army Contracting Command, use the following:

U.S. Army Contracting Command

ATTN: AMSCC

3334A Wells Road

Redstone Arsenal, AL 35898-5000.

(8) For the Directorate of Contracting, U.S. Army Corps of Engineers, use the following:

U.S. Army Corps of Engineers

Direktorate of Contracting

CECT-ZA

441 G Street, N.W.

Washington, DC 20314-1000.

(9) For the Chief, Army Power Procurement Office, U.S. Army Center for Public Works, use the following:

Chief, Army Power Procurement Office

U.S. Army Center for Public Works (CECPW-C)

7701 Telegraph Road

Alexandria, VA 22315-3862.

Subpart 5101.3 - Agency Acquisition Regulations

5101.301 Policy.

(a) The Deputy Assistant Secretary of the Army (Procurement) (DASA(P)) acts for the Assistant Secretary of the Army (Acquisition, Logistics and Technology) in developing, coordinating, issuing and maintaining the AFARS.

(b) SCOs will coordinate with the Office of the Deputy Assistant Secretary of the Army (Procurement) (ODASA(P)) Procurement Policy Directorate, SAAL-PP, to publish proposed internal acquisition regulations or instructions, policy letters, clause books, policies, procedures, clauses, or forms in the *Federal Register* for public comment when required. (See FAR 1.301(b) and DFARS 201.301(b).) Contracting activities will format coordination packages in accordance with FAR 1.304, DFARS 201.304, and 5101.304 and route them in accordance with 5101.290. SAAL-PP will assist the contracting activity with preparing the proposed notice, forward it to the *Federal Register*, and receive public comments. At the close of the public comment period, SAAL-PP will send all public comments to the contracting activity for analysis. When the contracting activity completes its analysis, it will –

(1) Send an updated request for deviation in accordance with 5101.402; or

(2) Send an updated request for approval, which does not involve a deviation, in accordance with 5101.304(1)(i); and

(3) Include the results of the publication and analysis under the heading “IV Collaterals.”

5101.303 Publication and codification.

(a)(i) The Code of Federal Regulations codifies the AFARS under chapter 51, in Title 48.

(ii) To the extent possible, number all AFARS text, whether implemental or supplemental, as if it were implemental. Use supplemental numbering only when the text cannot be integrated intelligibly with its FAR or DFARS counterpart.

(A) The AFARS implemental numbering sequence is the same as the FAR except—

(1) Insert the number “51” before the primary citation;

(2) Insert “0” if the primary citation is to a single digit part number; and

(3) When the text exceeds one paragraph, number subdivisions by skipping a unit in the FAR 1.105-2(b)(2) prescribed numbering sequence.

(B) The AFARS supplemental numbering sequence is the same as the FAR except –

(1) Insert the number “51” before the primary citation;

(2) Insert “0” if the primary citation is to a single digit part number;

(3) Add “90” to parts, subparts, sections, or subsections;

(4) Add “S-90” to subdivisions; and

(5) When the text exceeds one paragraph, number subdivisions without skipping a unit in the FAR 1.105-2(b)(2) prescribed numbering sequence.

(D) Examples of AFARS implemental and supplemental numbering are in Tables 1-1 and 1-2 respectively:

TABLE 1-1, AFARS IMPLEMENTAL NUMBERING

	FAR	AFARS
1 paragraph implementing FAR 19.501	19.501	5119.501
3 paragraphs implementing FAR 19.501	19.501	5119.501

		(1)
		(2)
		(3)
1 paragraph implementing FAR 19.501(a)	19.501(a)	5119.501(a)
3 paragraphs implementing FAR 19.501(a)	19.501(a)	5119.501 (a)(i) (ii) (iii)
3 paragraphs implementing FAR 19.501(a)(1)	19.501(a)(1)	5119.501 (a) (1)(A) (B) (C)
Further subdivisions follow the prescribed sequence	19.501(a)(1)(i)(A) (1)(i)	5119.501(1)(i)(A) (1)(i)

TABLE 1-2, AFARS IMPLEMENTAL AND SUPPLEMENTAL NUMBERING

FAR	Is Implemented As*	Is Supplemented As
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19.5	5119.5	5119.590
19.501	5119.501	5119.501-90
19.501-1	5119.501-1	5119.501-1-90
19.501-1(a)	5119.501-1(a)	5119.501-1(a)(S-90)
19.501-1(a) (1)	5119.501-1(a) (1)	5119.501-1(a)(1)(S- 90)

*Assumes one AFARS paragraph implementing one FAR or DFARS paragraph.

(iii) Contracting activities will contact SAAL-PP to obtain numbers for acquisition instruction or guidebook text and clauses.

(A) Chapter 51 reserves subsection numbers 90-99 for AFARS supplementary material with no FAR or DFARS counterpart.

(1) Headquarters, Department of the Army (HQDA) reserves numbers 100-199 for the Army Commands, the Army Service Component Commands, and the Direct Reporting Units with a head of the contracting activity for unique implementing material with no counterpart in higher-level regulations.

(2) HQDA reserves numbers 200 and above for Army Materiel Command and major subordinate command unique implementing material with no counterpart in higher-level regulations.

(B) Chapter 51 reserves numbers 9000 and above for supplementary clauses approved for use Army-wide, in specific commands, subordinate commands or contracting offices. (See 5152.101.)

5101.304 Agency control and compliance procedures.

5101.304-90 Army control and compliance.

(a) *Definitions.* As used in this section—

(1) “Acquisition instruction” means the set of governing local processes and procedures developed and maintained by the head of each contracting activity.

(2) "Policy" means direction to contracting organizations implementing statute, executive order, regulation, or other governing directives.

(3) "Procedure" means an outline of how to perform a process – who performs what action, what sequence they perform the steps in the task, and the criteria (i.e., standard) they must meet to accomplish the goal/end-state.

(4) "Process" means a high-level view or map of the tasks required by the policy described in sufficient detail to direct the user to a desired outcome.

(b) All Army procurement policy is centralized under the ODASA(P), and ODASA(P) is the only Army organization authorized to issue procurement policy.

(c) HQDA and Army contracting activities will not supplement the FAR, DFARS, or AFARS or issue internal acquisition regulations or instructions except as provided in this section. HCAs, on a non-delegable basis, are responsible for procurement processes and procedures, to include processes and procedures intended for issuance below the HCA level, within their contracting activity. These shall be codified in an acquisition instruction. HCAs shall obtain DASA(P) approval for their baseline acquisition instruction. HCAs are to maintain, review, and update their acquisition instruction as necessary.

(1) Acquisition instructions require recurring certification by the Procurement Policy Directorate. The Procurement Policy Directorate shall evaluate the integrity of the acquisition instruction to ensure compliance with established procurement policies, procedures, and regulations. All substantive issues shall be resolved prior to recertification of the acquisition instruction.

(2) The first recertification evaluation shall be conducted in fiscal year 2022 between the months of January and March and every three years thereafter. HCAs shall submit their acquisition instruction for review to the DASA(P) in accordance with 5101.290(b)(2)(ii)(A).

(3) Acquisition instructions will be submitted electronically for evaluation as follows:

ACC AI 1 January 2022 and every three years thereafter

MEDCOM AI 1 February 2022 and every three years thereafter

NGB AI 1 February 2022 and every three years thereafter

USACE AI 1 March 2022 and every three years thereafter

(d) HCAs must obtain prior DASA(P) approval for actions that require Under Secretary of Defense (Acquisition and Sustainment) approval. (See DFARS 201.304(1)(i) and AFARS Appendix FF, Department of the Army Plan for Control of Nonstandard Clauses, for approval of nonstandard clauses or provisions.)

(e) HCAs shall submit requests for new Army policy to the DASA(P) in accordance with 5101.290(b)(2)(ii)(A). The DASA(P) will coordinate with the HCAs to validate the need for new policy and determine how the policy will be issued to the contracting enterprise.

Subpart 5101.4 - Deviations From the FAR

5101.402 Policy.

(2) The contracting officer will prepare all deviation requests in accordance with DFARS 201.402(2) and follow the procedures at 5101.301(b) to publish the deviation in the Federal Register.

5101.403 Individual deviations.

(1) SCOs, after obtaining a legal review, approve individual deviations from the FAR, DFARS, DFARS PGI, and AFARS other than those specified in DFARS 201.402(1) and DFARS 201.403(2).

5101.403-90 Deviation copy and control number.

The contracting activity will –

- (a) Send one copy of each deviation to the address at 5101.290(b)(2)(ii)(A) at the time the approval authority grants the deviation; and
- (b) Assign a control number to each deviation.

5101.404 Class deviations.

(b)(ii) The senior procurement executive approves class deviations from the FAR, DFARS, DFARS PGI, and AFARS. This authority does not extend to deviations specified in DFARS 201.402(1) and DFARS 201.403(2). See Appendix GG for further delegation.

Subpart 5101.5 - Agency and Public Participation

5101.501-2 Opportunity for public comments.

(b) Army contracting personnel may submit agency, organizational, or individual comments on FAR and DFARS cases published in the Federal Register (see FAR 1.501-2(b)) in one of two ways:

(i) Official Army comments. Army contracting personnel may submit comments through their chain of command to the Army Policy Member to the Defense Acquisition Regulations (DAR) Council in the Office of the Deputy Assistant Secretary of the Army (Procurement) Procurement Policy Directorate, SAAL-PP. The DAR Council member will determine if the comments are consistent with the Deputy Assistant Secretary of the Army (Procurement)'s official Army position and if they are, forward them to the Director of the DAR Council for adjudication with public comments. If the comments are inconsistent with the Deputy Assistant Secretary of the Army (Procurement)'s official Army position, the DAR Council member will contact the commenter to address his or her comment within the Army.

(ii) Comments as a private citizen. Army contracting personnel may submit comments as a private citizen by following the instructions in the Federal Register notice. Private citizens must clearly state that their comments represent a personal opinion rather than an official position. They may refer to the extent of their relevant experience within the body of the comments. Private citizens will not submit comments using Army letterhead or reference the Army in a signature block; however, they may use Army email and fax, in accordance with Section 2-301(a)(2) of the Department of Defense Joint Ethics Regulation, DoD 5500.7-R.

Subpart 5101.6 - Career Development, Contracting Authority and Responsibilities

5101.601 General.

(1) Army contracting activities are listed in DFARS PGI 202.101.

5101.601-90 Department of the Army contracting authorities and responsibilities.

(a) General. Heads of the Contracting Activity (HCAs) have the authority to procure supplies and services to support all customer requirements, unless such procurements fall within the scope of unique contracting authorities assigned to another HCA as described in paragraph (b) below. This framework supports Category Management (CM) reforms, and promotes habitual customer relationships that leverage subject matter expertise to achieve greater contracting outcomes. The list of unique contracting authorities set forth in paragraph (b) is not all-inclusive and will continue to update as CM initiatives evolve. See [AFARS PGI 5101.601-90-1](#) for Guidance for Alignment of Contracting Activities to Categories. Additionally, the authorities described in paragraph (b), sub-paragraphs (2-4), do not apply to contingency requirement, and contracting operations outside the continental United States and overseas.

(1) Delegation of any Army HCA contracting authority is limited to officials within the Department of Army at the levels prescribed in Appendix GG.

(2) If a requiring activity presents a requirement in one of the designated commodity areas, to a contracting office not listed in paragraph (b) of this section, that contracting office shall refer the requiring activity to the designated HCA and coordinate with the designated HCA to determine which organization will provide support. If an HCA other than the designated HCA retains that requirement and executes a contract action for the designated commodity:

(A) The supporting HCA shall coordinate with the designated HCA as early as practicable in the procurement planning process, to leverage the subject matter expertise of the designated HCA and ensure the solicitations and contracts are properly structured.

(B) The supporting HCA should ensure the requisite contracting and technical/program personnel are properly trained in the contract award and administration of the designated commodity.

(C) The supporting HCA and designated HCA shall maintain a record of the coordination for contract award. The ODASA(P) will review the records during the Procurement Management Reviews.

(b) Assignment of Unique Contracting Authorities to Army HCAs. The assigned responsibilities are as follows:

(1) The Deputy Assistant Secretary of the Army (Procurement) has the following overarching authorities and responsibilities:

(A) Serves as the Enterprise HCA for the Department of the Army.

(B) Serves as the principal advisor to the Army Senior Procurement Executive (SPE).

(C) Subject to the authority, direction, and control of the SPE, directs other Army HCAs in connection with any procurement or procurement-related matter.

(D) Reviews all Senior Contracting Official (SCO) selections prior to SCO appointment by an Army contracting activity's HCA.

(E) Acts in the absence of another Army contracting activity's specifically-designated HCA.

(F) Chairs the Army Contracting Enterprise Executive Committee.

(G) Appoints Program or Project-specific SCOs on a temporary basis within the responsible Army contracting activity. The Program or Project-specific SCO focuses solely on the management of that program's contract action(s).

(2) The HCA for the U.S Army Materiel Command is responsible for awarding and administering the following contract actions:

(A) Ammunition.

(B) Aviation and Missiles. [Army Contracting Command-Redstone Arsenal is the exclusive contracting center for Army Fixed Wing and non-tethered lighter than air platform aircraft and supporting services; and non-standard rotary wing aircraft].

(C) Combat and Tactical Vehicles.

(D) Construction related materials and services [Mission and Installation Contracting Command (MICC) is the secondary contracting center; the U.S. Army Corps of Engineers (USACE) is the primary contracting activity].

(E) Environmental services.

(F) Facility related materials and services [MICC is the primary contracting center; USACE is the secondary contracting activity].

(G) Information Technology, to include: software, hardware, consulting, security, outsourcing, and telecommunications.

(H) Transportation and Logistics Services, to include: logistics support services, transportation of things, motor vehicles (non-combat), and transportation equipment. .

(3) The HCA for USACE is responsible for awarding and administering the following contract actions:

(A) Architect-Engineer services. (See also 5136.601-90 for other Army contracting offices with architect-engineer contracting authority).

(B) Civil works.

(C) Construction related materials and services [USACE is the primary contracting activity; MICC is the secondary contracting center].

(D) Environmental services.

(E) Facility related materials and services [USACE is the secondary contracting activity; MICC is the primary contracting center].

(F) Facilities purchase and lease.

(4) The HCA for the U.S Army Medical Command is responsible for awarding and administering the following contract actions:

(A) Medical equipment accessories and supplies.

(B) Healthcare services.

5101.602-1 Authority.

5101.602-1-90 Departmental review and approval.

(a) At any time during the procurement process, the Deputy Assistant Secretary of the Army for Procurement (DASA(P)) may designate a proposed contractual action as Special Interest, and direct the responsible SCO or source selection authority to submit the proposed contractual action to the Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA(ALT)) for review, notation, and/or approval.

(1) The SCO or source selection authority will provide any information, documents, and briefings requested, and will not take, or permit anyone else to take, final action on the proposed contractual action during the period of

the DASA(P) review. The SCO shall coordinate all proposed major decision points (e.g. Source Selection Authority appointments), with the DASA(P).

(2) The DASA(P) will customize the departmental review requirements on a case-by-case basis..

(3) In accordance with FAR 3.104-4(a), the ASA(ALT) has authorized personnel within the Office of the DASA(P), the Office of the Army General Counsel, and other personnel designated by the DASA(P) to receive full access to contractor bid or proposal information and source selection information in connection with such review. The contracting officer, under SCO direction, shall ensure the Virtual Contracting Enterprise Paperless Contract File contains all documents related to the proposed contractual action. (See 5104.802 Contract files).

(b) The DASA(P), as Enterprise HCA, or other Army HCAs may appoint Program or Project-specific SCOs in conjunction with this subpart. (See 5101.693-90)

5101.602-2 Responsibilities.

(a) Refer to 5132.7 for instructions with regard to ensuring funds are available.

5101.602-2-90 Legal coordination.

Contracting officers will obtain a legal review and consider counsel's advice as follows:

(a) Include legal counsel as a member of the acquisition team (see FAR 1.102-3) throughout the acquisition process;

(b) Obtain a legal review for proposed contracting actions in accordance with locally established procedures and as otherwise required by law, regulation, or policy. It is not practicable to specify, in the AFARS, an inclusive list of actions requiring legal review at each contracting activity. Instead, counsel will routinely review a full range of acquisition-related actions that have potential legal significance. SCOs will work with local chief counsels, or equivalent official, to develop specific legal review protocols that are consistent with this provision.

(c) Obtain legal reviews on proposed actions to determine if the action is legally sufficient based on statute, regulation, and policy, and request details and a recommended course of action to resolve any insufficiency. Contracting officers will address and resolve counsel's objections at the lowest possible level. Contracting officers and counsel will elevate unresolved objections within the acquisition and legal channels, as appropriate, and in exceptional cases, to the head of the contracting activity (HCA).

(d) The contracting officer, under SCO direction, retains sole authority to determine matters that relate to the exercise of business judgment.

5101.602-2-91 Contracting officers representative appointments.

(a) Contracting officers will appoint a properly trained contracting officer's representative (COR) upon contract award, consistent with DFARS 201.602-2. SCOs may specify additional training at their discretion within their contracting activity. Contracting officers shall execute the COR appointment in the DoD Procurement Integrated Enterprise Environment (PIEE) Joint Appointment Module (JAM) no later than one business day after receipt of the contract in the Electronic Data Access (EDA) system has been confirmed.

(b) Contracting officers will allow 45 calendar days after receipt of the procurement request (PR) package for the requiring activity (RA) to satisfy all COR requirements. If, after the 45 days, a COR has not been properly trained and nominated in PIEE JAM, contracting officers will cease further action on the PR package and return it to the supported RA.

(c) Contracting officers will validate COR and ordering officer records every 12 months in accordance with DFARS PGI 201.602-2(d)(vii) to ensure contractor compliance with the terms of the contract. Contracting officers will document the review in the contract file.

5101.602-2-92 Ordering officer appointments.

(a) *Policy.* The official (see 5101.603-1) appointing an ordering officer will state in the appointment letter that the ordering officer's authority may not be delegated further (see 5153.303-2 for a sample appointment letter).

(b) *Appointment and termination authority.* An appointing official may appoint an ordering officer, pursuant to 5101.603-3-90(a) through (f), when the official determines that the appointment is essential for the operation of the contracting mission. The purposes for which an appointing official may appoint an ordering officer and references to limitations of their authority are –

(1) To make purchases using imprest funds (FAR 13.305);

(2) To make purchases using Standard Form 44 (FAR 13.306, DFARS 213.306);

(3) To place orders against indefinite delivery contracts awarded by contracting officers of the Military Departments for the preparation for shipment, Government storage, and intra-city or intra-area movement of personal property, provided contract terms permit (see FAR subpart 47.2);

(4) To place Service Orders for Personal Property (DD Form 1164) against Commercial Warehousing and Related Services for Household Goods contracts for military and civilian personnel subject to the criteria and procedures prescribed in Chapter 2, DoD 4500.34-R, provided that no service order will be in excess of \$10,000; and

(5) To place orders against indefinite delivery contracts, in addition to those in (4), that contracting officers award, as long as the contract terms permit and provided all orders placed are within monetary limitations specified in the contract.

(c) Responsibilities of appointing authority.

(1) *Training and orientation.* The appointing authority will orient and instruct ordering officers either personally or in writing about –

(i) The proper procedure(s) the appointing authority will authorize the ordering officer to use;

(ii) The standards of conduct for Army personnel prescribed in the Joint Ethics Regulation (DoD 5500.7-R) and the procurement integrity provisions at FAR 3.104; and

(iii) The preparation and submission of information for contract action reporting purposes.

(2) *Surveillance.* The appointing authority will provide technical supervision of ordering officers. At least once each year, the appointing authority will examine ordering officer purchase documents and records. Any individual designated to perform this review must be well qualified in the contracting procedures that ordering officers use.

(i) Write inspection or review findings and include specific comments as to whether the ordering officer is –

(A) Operating within the scope and limitations of authority delegated and FAR subpart 3.1;

(B) Maintaining the standards of conduct prescribed in DoD 5500.7-R;

- (C) Engaging in improper practices, including but not limited to splitting purchase transactions to avoid monetary limitations or delegating authority to others; and
 - (D) Submitting correct and timely information for reporting purposes.
- (ii) Retain copies of inspection and review findings for one year in the ordering officer's files and the inspector's or reviewer's files.
 - (iii) If an appointing authority finds that an ordering officer is not properly performing assigned duties or promptly correcting the deficiencies noted in inspections or reviews, the appointing authority will terminate the ordering officer's appointment.
- (3) *Termination.*
- (i) An ordering officer's appointment will remain in effect until the ordering officer leaves his position via reassignment or termination or the appointing authority revokes the appointment. Appointing officials will not revoke an appointment retroactively.
 - (ii) Appointing officials will terminate appointments in writing except terminations that result when a contract expires.
- (d) *Procedures.* Appointing officials will –
- (1) Appoint ordering officers by a letter of appointment substantially in the format at 5153.303-2, but tailored to fit the circumstances of the appointment;
 - (2) Maintain the file of appointments and justification for the appointments;
 - (3) Require individuals appointed as ordering officers to acknowledge receipt of their letters of appointment and termination in writing;
 - (4) Distribute appointment letters to ordering officers, imprest fund cashiers, disbursing officers and other interested personnel as necessary;
 - (5) List the names of ordering officers appointed to place orders against the contracts in the contract, or furnish copies of ordering officer appointment letters to contractors, imprest fund cashiers, disbursing officers and other interested personnel; and
 - (6) Furnish copies of termination letters to imprest fund cashiers, disbursing officers and other interested personnel.

5101.602-3 Ratification of unauthorized commitments.

- (b) *Policy.*
- (3) HCAs may ratify unauthorized commitments and may delegate this authority as specified in Appendix GG.
- 5101.602-3-90 Ratification procedures.**
- (a) HCAs may ratify an unauthorized commitment. See Appendix GG for further delegation.
 - (b) The individual making the unauthorized commitment must send the following documentation, at a minimum, to the cognizant ratifying authority:

- (1) A signed statement describing the circumstances, the reason normal contracting procedures were not followed, what bona fide Government requirement necessitated the unauthorized commitment, the benefit received and its value, and any other pertinent facts.
 - (2) All other relevant documents, including orders, invoices or other evidence of the transaction.
- (c) If the commander concurs that the unauthorized commitment should be ratified, the documentation must be sent to the chief of the contracting office with an endorsement that –
- (1) Verifies the accuracy and completeness of the documentation;
 - (2) Describes the measures taken to prevent a recurrence of unauthorized commitments, including a description of any disciplinary action to be taken; and
 - (3) Provides a complete purchase description and funding for the ratifying contract.
- (d) The chief of the contracting office will assign the action to an individual contracting officer who will be responsible for –
- (1) Reviewing the case and determining the adequacy of all facts, records, and documents and obtaining any additional material required; and
 - (2) Preparing a summary of facts to include a recommendation as to whether the individual responsible for approving the ratification (see 5101.602-3(b)) should ratify the transaction and reasons for the recommendation. In a recommendation not to ratify, include an explanation as to whether the contracting activity should process the transaction under FAR part 50 and DFARS part 250, Extraordinary Contractual Actions and the Safety Act or by means of the claims or disputes process set forth in FAR subpart 33.2.
- (e) Upon receipt and review of the complete file, the individual responsible for approving the ratification may approve the ratification if he or she considers it to be in the best interest of the Government, or may direct other disposition.
- (f) HCAs must monitor compliance with this subsection, 5101.602-3-90, and take all necessary corrective action.

5101.603 Selection, appointment, and termination of appointment for contracting officers.

5101.603-1 General.

The Secretary of the Army or one of the following individuals may select, appoint, and terminate contracting officers:

- (1) The ASA(ALT).
- (2) The DASA(P).
- (3) The HCA. See Appendix GG for further delegation.

5101.603-2 Selection.

The HCA will establish criteria and procedures to ensure that prospective contracting officers with authority to award or administer contracts for amounts above the simplified acquisition threshold, have the knowledge and experience to effectively and efficiently support their customers and successfully fulfill their fiduciary responsibilities as required by DFARS 201.603-2 and 10 U.S.C. 1724. The HCA shall follow the policy set forth

in the Army Warranting Guide. The policy is available on the [Army Warranting Program](#) tile on <https://procurement.army.mil> (PAM).

5101.603-3 Appointment.

(a) Appointing officials will utilize the Virtual Contracting Enterprise (VCE) Warrant Tool to appoint, suspend, terminate and otherwise document and maintain a complete file for each contracting officer. The file will include documentation of qualifications and the continuation of professional proficiency. The appointing official will update the files in the VCE Warrant Tool upon any change in the contracting officer's authority, and will review the files no less than biennially to ensure compliance with statutes and regulations.

5101.603-3-90 Other individuals authorized to procure supplies and services on behalf of the Army.

In addition to the ordering officers identified in AFARS 5101.602-2-92, a contracting officer or one of the appointing officials identified in AFARS 5101.603-1 may designate individuals to procure supplies or services on behalf of the Army as specified in paragraphs (a) through (f) in this subsection. Individuals in paragraphs (a) through (c) will prepare and submit information for reporting purposes to the supporting contracting office as specified by that office policy. Individuals in (d) will report to the contracting office supporting the mobilization base.

(a) Contracting officers may authorize individuals to place calls under blanket purchase agreements. (See FAR subpart 13.3, DFARS subpart 213.3, and subpart 5113.3.)

(b) Appointing officials may authorize Army aviators and masters of Army-owned or operated vessels to use Standard Form 44 (see FAR 13.306 or provisions of Army Regulation 710-2 and Department of the Army Pamphlet 710-2-2) for emergency purchases of supplies (e.g., fuels, oils, parts) and services (e.g., mechanical services, hangar services, landing and docking fees and employment of civilian guards or watchmen to safeguard Government property) under any of the following conditions:

(1) Authorized flights or voyages during which mechanical or meteorological conditions prevent obtaining required supplies and services from Government facilities.

(2) Conditions under which continuation of flight, voyage or mission would constitute a hazard to safety or endanger public property.

(3) Conditions under which procurement of supplies and services from Government facilities would interfere with approved flight plans or voyages.

(c) Appointing officials may issue the Governmentwide commercial purchase card to individuals to use in accordance with FAR 13.301.

(d) Appointing officials may authorize individuals in Reserve Components to procure supplies or services on behalf of the Army in the event of mobilization using Standard Form 44 and U.S. Army Forces Command Mobilization and Deployment System, Volume III. Reserve Component unit commanders may purchase over-the-counter type items not exceeding the micro-purchase threshold per transaction. The commander will use Standard Form 44 when a Federal Mobilization Order, requiring unit movement to a mobilization station or site, or where procurement support is not readily available from a supporting installation. This temporary authority will expire upon resumption of procurement support by the contracting office at the mobilization station or supporting installation.

(e) Appointing officials may issue U.S. Government Travel Charge Cards to individuals for use on official travel.

(f) Appointing officials may authorize individuals identified in Army Regulation 725-50 to order supplies from General Services Administration Stores Depots using the Governmentwide commercial purchase card

procedures.

5101.603-3-91 Restrictions.

- (a) Personnel in the 1101 job classification series will not be appointed or serve as contracting officers. This requirement is not subject to an individual or class waiver.
- (b) Commanders and others having administrative supervision over contracting officers must bear in mind that actions exceeding the authority of a contracting officer are not binding on the Government. Therefore, they will not direct, or otherwise exert influence, upon contracting officers to take such actions.

5101.690 Procurement management review assistance.

- (a) Office of the Deputy Assistant Secretary of the Army (Procurement), Procurement Insight/Oversight Directorate , manages the Procurement Management Review (PMR) Program to perform oversight of Army contracting activities in accordance with Appendix CC.
- (b) Once every 36 months, all HCAs will conduct PMRs for each of their contracting offices to ensure compliance with, at a minimum, laws, policies, regulations, directives, FAR, DFARS, AFARS and AFARS Appendix CC. HCAs will furnish copies of review reports to the HQDA PMR Team Leader at the address at 5101.290(b)(2)(ii)(B) within 60 days of completing a review.

5101.691 Management controls.

See [AFARS PGI 5101.691-1](#) for guidance on the Army Enterprise Audit Tracker.

Management controls within each contracting organization are an element of day-to-day operations. Managers at all levels should refer to Appendix BB, Management Control Evaluation Checklist, to evaluate their organization's compliance with key management controls and to identify and correct weaknesses. The list of questions in Appendix BB is not all-inclusive nor are managers required to respond to all of them. Managers should tailor the list to include areas specific to each contracting office, and should include the Areas of Special Interest, which the DASA(P) issues each fiscal year.

5101.692 Head of the contracting activity.

- (a) HCAs will ensure that only contracting officers selected and appointed in accordance with 5101.603 enter into contracts on behalf of the Army.
- (b) HCAs will appoint a SCO. When selecting the SCO, the HCA must comply with the requirements of Department of Defense Instruction (DoDI) 5000.66 governing the selection of senior contracting officials. Prior to appointing the SCO, the HCA shall coordinate the proposed SCO selection directly with the Enterprise HCA.
 - (1) The HCA must assign to the SCO, or give him/her direct access to, the personnel and other essential resources necessary to perform all the functions that the HCA delegates to him/her.
 - (2) The HCA may appoint Program or Project-specific SCOs on a temporary basis within the responsible Army contracting activity. The Program or Project-specific SCO focuses solely on the management of that program's contract action(s). (See 5101.693-90)
 - (3) The HCA must notify in writing the addressee in 5101.290(b)(2)(i) when there is a newly appointed SCO.

5101.693 Senior contracting official.

(1) A SCO, defined as a critical acquisition position in 10 U.S.C. 1735 and a key leadership position in the DoDI 5000.66, must meet the additional position requirements listed in DoDI 5000.66, Table 1.

(2) SCOs will exercise procurement authority in accordance with the FAR and its supplements and perform delegated HCA contracting authorities. Procurement authority is delegated by the HCA and is not position dependent.

(3) The SCO, by virtue of the organizational position occupied, may execute command functions for the contracting activity, but these functions are separate and distinct from procurement authority.

(4) SCOs will –

(i) Report directly to the HCA on all matters regarding procurement.

(ii) Be evaluated by the HCA for performance appraisals, as required by the DoDI 5000.66.

(iii) Minimize the potential for undue influence and protects contracting professionals from internal or external pressure to perform improper actions.

5101.694-90 Program or Project-specific Senior contracting official.

(1) A Program or Project-specific SCO focuses solely on the management of that program's or project's contract action(s). The appointment may be tailored to align with the risk or complexity, and dollar value of the pertinent program or project. The Program or Project-specific SCO will exercise procurement authority in accordance with the FAR and its supplements and perform delegated HCA contracting authorities. Procurement authority is delegated by the HCA and is not position dependent.

(2) Program or Project-specific SCOs may be appointed on a temporary basis, typically for the duration of that contract action(s), within an Army contracting activity. The individual must meet the position requirements listed in DoDI 5000.66.

(3) Program or Project-specific SCOs will –

(i) Report directly to the HCA on all matters regarding the pertinent contract action(s).

(ii) Have direct access to the personnel and other essential resources necessary to perform all assigned functions.

Subpart 5101.7 - Determinations and Findings

5101.707 Signatory authority.

The head of the contracting activity or the SCO and the contracting officer will sign each Secretarial determination request.

Subpart 5101.90 - Nonappropriated Funds

5101.9001 Policy.

DoD policy for contract actions using nonappropriated funds is in DoD Directive 4105.67. See Army Regulation (AR) 215-1 and AR 215-4 for implementing policies and procedures for Army nonappropriated fund acquisitions.

5101.9002 Contracting authority.

SCOs may designate appropriated fund contracting officers as nonappropriated fund contracting officers. (See AR 215-4.)

Subpart 5101.91 - Authority to Award and Administer Grants, Cooperative Agreements, Technology Investment Agreements, and Other Transactions

5101.9101 Authority and responsibilities.

(a) Procedures governing grants, cooperative agreements, and technology investment agreements are set forth in the DoD Grant and Agreement Regulations (DoDGAR), currently codified at Chapter I, Subchapter C of Title 32, Code of Federal Regulations (CFR) and Chapter XI of Title 2, CFR (see Department of Defense Directive Number 3210.06). In the absence of an Army supplement to the DoDGAR this AFARS subpart provides a record of the Army's implementation of 32 CFR 21.425 – 21.435.

(b) Procedures governing Other Transaction Authority are set forth at 10 U.S.C. section 2371b and in the Other Transactions Guide for Prototype Projects, issued January 2017 by the Director for Defense Procurement and Acquisition Policy (DPAP). In the absence of an Army supplement this subpart provides a record of the Army's implementation of 10 U.S.C section 2371b and the DPAP guide.

(b)(1) Heads of contracting activities (HCAs) with grant and cooperative agreement responsibilities are authorized to make and administer grant and cooperative agreement awards in accordance with specific delegations of authority from the Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA(ALT)) and as otherwise authorized in 32 CFR 21.420(c).

(2) HCAs with other transaction responsibilities are authorized to make and administer other transaction agreement awards in accordance with specific delegations of authority from the ASA(ALT) and as otherwise authorized in 10 U.S.C. section 2371b.

(c) HCAs also are authorized to appoint grants officers and agreements officers and to broadly manage their contracting activity's functions related to assistance instruments.

(d) HCAs are responsible for grant and cooperative agreement awards made by their contracting activity and shall supervise and establish and maintain internal policies and procedures for that activity's awards.

(e) HCAs shall utilize the Virtual Contracting Enterprise (VCE) Warrant Tool to appoint, suspend, terminate and otherwise document and maintain a complete file for each grants and agreements officer. The file will include documentation of qualifications and the continuation of professional proficiency. The appointing official will update the files in the VCE Warrant Tool upon any change in the grants and agreements officer's authority, and will review the files no less than biennially to ensure compliance with statutes and regulations.

The HCA shall follow the policy set forth in the Contracting Officer Warranting Program Guide. The policy is available in the Warranting tile on <https://procurement.army.mil> (PAM) at <https://spcs3.kc.army.mil/asaalt/procurement/warrant/Home.aspx>.

Part 5102 - Definitions of Words and Terms

Subpart 5102.1 - Definitions

5102.101 Definitions.

Subpart 5102.1 - Definitions

5102.101 Definitions.

“Army Acquisition Executive (AAE)” means the Assistant Secretary of the Army (Acquisition, Logistics and Technology), as designated by the Secretary of the Army.

“Chief of the contracting office” means the person having direct responsibility for the operation of a contracting office as defined in FAR 2.1. This person also has procurement authorities assigned by the Federal Acquisition Regulation and its supplements and performs contracting authorities as delegated by the head of the contracting activity or senior contracting official.

“Head of the agency” means the Assistant Secretary of the Army (Acquisition, Logistics and Technology) when executing authorities of the head of the agency for contracting procurement matters pursuant to laws and regulations, as designated by the Secretary of the Army.

“Head of the contracting activity” means the Deputy Assistant Secretary of the Army (Procurement) for a contracting activity that does not have a head of the contracting activity specifically designated. This authority shall not be further delegated. See delegations in Appendix GG.

“Senior contracting official (SCO)” means the senior official for or within a contracting activity responsible for the performance of contracting authorities delegated by the head of the contracting activity. (See 5101.693.)

“Senior Procurement Executive (SPE)” means the Assistant Secretary of the Army (Acquisition, Logistics and Technology), as designated by the Secretary of the Army.

Part 5103 - Improper Business Practices and Personal Conflicts of Interest

Subpart 5103.1 - Safeguards

5103.104 Procurement integrity.

5103.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

5103.104-5 Disqualification.

5103.104-6 Ethics advisory opinions regarding prohibitions on a former officials acceptance of compensation from a contractor.

5103.104-7 Violations or possible violations.

5103.171 Senior DoD officials seeking employment with defense contractors.

5103.171-3 Policy.

Subpart 5103.2 - Contractor Gratuities to Government Personnel

5103.201 Applicability.

5103.203 Reporting suspected violations of the Gratuities clause.

5103.204 Treatment of violations.

Subpart 5103.6 - Contracts with Government Employees or Organizations Owned or Controlled by Them

5103.602 Exceptions.

Subpart 5103.7 - Voiding and Rescinding Contracts

5103.703 Authority.

5103.704 Policy.

Subpart 5103.9 - Whistleblower Protections for Contractor Employees

5103.905 Procedures for investigating complaints.

5103.906 Remedies.

Subpart 5103.10 - Contractor Code of Business Ethics and Conduct

5103.1004 Contract clauses.

Subpart 5103.1 - Safeguards

5103.104 Procurement integrity.

The Army General Counsel is the Designated Agency Ethics Official (DAEO). The General Counsel has designated deputy DAEOs (DDAEOS) and has delegated to them the authority to act on his behalf concerning

procurement integrity matters. The General Counsel has authorized DDAEOs to further delegate that authority to subordinate ethics counselors under their area of responsibility.

5103.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) or contracting officer may disclose contractor bid or proposal information or source selection information to facilitate timely access to information by higher Headquarters personnel and external stakeholders who require such access in the performance of their official duties. See Appendix GG. Personnel serving in the following positions are authorized access to contractor bid or proposal information and source selection information to the extent necessary to perform their official duties:

- (i) Personnel assigned to the Office of the Assistant Secretary of the Army for Acquisition, Logistics and Technology (ASA(ALT)), Office of the Assistant Secretary of the Army for Financial Management & Comptroller (ASA(FMC)) and the Office of the Army General Counsel, who are performing Headquarters, Department of the Army level reviews or oversight.
- (ii) Personnel participating in the evaluation of an offeror's or bidder's proposal or in the review and defense of protests.
- (iii) Personnel in the responsible contracting office, along with supporting legal and small business office personnel.
- (iv) Personnel in the requiring activity having principal technical cognizance over the requirement, to include those with technical oversight responsibilities.
- (v) Personnel assigned to the Defense Contract Audit Agency and contract administration offices of the DoD, who are supporting the procurement.
- (vi) Personnel assigned to the DoD Office of Cost Assessment and Program Evaluation (CAPE) performing reviews or oversight.
- (vii) Other personnel whom the Deputy Assistant Secretary of the Army (Procurement), the head of the contracting activity (HCA), contracting officer, or the source selection authority designates on an individual basis.

(b) Follow the procedures at [AFARS PGI 5103.104-4-1 Access to Contract Procurement Data and Documentation](#) to provide access.

5103.104-5 Disqualification.

(c)(2) The head of contracting activity shall make the determination as described in FAR 3.104-5(c)(2). See Appendix GG for further delegation.

5103.104-6 Ethics advisory opinions regarding prohibitions on a former officials acceptance of compensation from a contractor.

(c) The appropriate agency ethics official to provide an ethics advisory opinion is any properly appointed ethics official or ethics counselor within the servicing legal office for the last unit or organization to which the former official was assigned.

5103.104-7 Violations or possible violations.

- (a) If a contracting officer receives information of a violation or possible violation of the Restrictions on Obtaining and Disclosing Certain Information statute and –
- (1) Concludes that there is no impact on the procurement, the contracting officer must forward the information to the chief of the contracting office who will follow the procedures set forth in FAR 3.104-7(a)(1); or
- (2) Concludes that the violation or possible violation impacts the procurement, the contracting officer must promptly forward the information through the chief of the contracting office to the HCA.
- (b) Upon receipt of information, the HCA, on a non-delegable basis, must take appropriate action after consulting with the contracting officer and legal counsel.
- (f) The HCA must:
- (i) Notify the ASA(ALT) (see 5101.290) when the HCA has determined that urgent and compelling circumstances justify an award, or award is otherwise in the interests of the Government; and
- (ii) Obtain written verification that the ASA(ALT) has received the notification before authorizing award of the contract or execution of the contract modification.

5103.171 Senior DoD officials seeking employment with defense contractors.

5103.171-3 Policy.

- (a) The appropriate agency ethics official to provide a written opinion regarding the applicability of post-employment restrictions to a covered DoD official is any properly appointed ethics official or ethics counselor within the servicing legal office for the last unit or organization to which the covered DoD official was assigned.

Subpart 5103.2 - Contractor Gratuities to Government Personnel

5103.201 Applicability.

This subpart establishes Army procedures for addressing suspected violations of the Gratuities clause. These procedures are not intended to be an exclusive remedy that would preclude or limit otherwise appropriate criminal, civil, or administrative action.

5103.203 Reporting suspected violations of the Gratuities clause.

- (a)(i) Violations of the Gratuities clause include, but are not limited to, entertainment or gift(s) offered or given by a contractor or a contractor's agent or representative to any officer, official, or employee of the Government to obtain an Army contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance of an Army contract.
- (ii) Provide reports of suspected violations of the Gratuities clause to the following Army officials (see FAR 3.203 and 52.203-3):
- (A) The chief of the contracting office responsible for the contract with the potential infraction, unless the chief of the contracting office is suspected to be a party to the proffered gratuity, in which case refer to paragraph (B) of this section.
- (B) The senior contracting official (SCO) having responsibility for the contract with the potential infraction.

(b) As soon as practicable, the chief of the contracting office, or SCO if necessary under paragraph (a)(ii)(B) of this section, shall:

- (i) Report the suspected violation to the Army Criminal Investigation Division (CID) for appropriate action.
- (ii) In coordination with the local procurement fraud advisor (PFA), report the suspected violation to the HCA, with a complete copy to the Chief of the Army Procurement Fraud Branch (see 5101.290(b)(5)). Include the following information:
 - (A) The name and address of the contractor, a statement as to the form of the organization, including names and addresses of principals;
 - (B) Complete contract data, including number, date, estimated day of completion of performance, general description of supplies or services procured, dollar amount, status of performance and payment, urgency of requirements and availability of the supplies or services from other sources;
 - (C) A summary of the reported information concerning the suspected violation, with names and addresses, dates and references to documentary evidence available.
- (iii) Contracting personnel will cooperate fully with Army CID personnel, the organization's PFA and the Chief of the Army Procurement Fraud Branch and preserve any documentary evidence and exhibits.
- (iv) If Army CID declines to initiate a criminal investigation, the HCA will coordinate with the organization's PFA and the Chief of the Army Procurement Fraud Branch to decide whether the circumstances warrant the initiation of an administrative investigation of the suspected violation under Army Regulation 15-6. If the HCA decides not to initiate an investigation, the HCA will prepare a memorandum to document the basis for the decision.
- (v) If a CID or administrative investigation is conducted, at its conclusion the HCA will coordinate with the organization's PFA and the Chief of the Army Procurement Fraud Branch to determine whether further action is necessary.
 - (A) If the HCA decides that no further action is necessary, the HCA will prepare a memorandum to document the basis for the decision.
 - (B) If the HCA decides that further action is necessary, the HCA shall refer the matter, along with all supporting documentation, to the Army suspension and debarment official (SDO) through the Chief of the Army Procurement Fraud Branch. The Army SDO, or other senior official designated by The Judge Advocate General, shall proceed in accordance with FAR 3.204 and 5103.204.

5103.204 Treatment of violations.

- (a) Pre-hearing procedures.
 - (i) The Army SDO, or other senior official designated by The Judge Advocate General, is the hearing officer for hearings under FAR 3.204 and is responsible for determining whether a violation of the Gratuities clause occurred. The Chief of the Army Procurement Fraud Branch will generally provide administrative support to the Army SDO to include providing counsel to act as the Government's representative in any proceeding pursuant to this subpart. See Appendix GG.
 - (ii) The hearing officer is responsible for notifying the contractor of any suspected violation of the Gratuities clause. The notice to the contractor is sent by registered or certified mail, or another, similar commercial means that provides a signed delivery receipt. The notice will accomplish the following:

- (A) Describe the suspected violation(s) in sufficient detail to reasonably apprise the contractor of the alleged violation(s).
 - (B) State the potential penalties for a violation of the Gratuities clause.
 - (C) Include a copy of the supporting record, with a general description of any redacted material, such as social security numbers, dates of birth, and financial account numbers, and the reasons for withholding.
 - (D) Inform the contractor that it may refute the allegations set forth in the notice. The contractor may refute the allegations and provide in person, through a representative at its own expense, or in writing any information the contractor wishes to have considered. The contractor may submit documentary evidence and arguments. If the contractor requests a hearing, at that hearing the contractor may confront any person the Government representative presents as a witness and may present witnesses at the contractor's own expense. Inform the contractor that any hearings will be conducted in accordance with paragraph (b) of this section.
 - (E) State that the contractor has 30 working days from receipt of the notice to submit written matters concerning the allegations and to request a hearing. Any timely submissions by the contractor will become part of the evidentiary record.
 - (F) Advise the contractor that if a hearing is requested, a list of any witnesses the contractor wishes to present and a concise statement of each witness's relevance to the hearing will be delivered to the Chief of the Army Procurement Fraud Branch no later than five working days in advance of the hearing date.
- (b) *Hearing and post-hearing procedures.*
- (i) The hearing officer will schedule the hearing as soon as practicable after receipt of the contractor's request. The hearing officer may inform the contractor of the hearing date by email if the contractor so requests and provides an email address for that purpose when requesting a hearing.
 - (ii) Hearings shall be conducted at the hearing officer's office.
 - (iii) Hearings shall be consistent with FAR 3.204(b), and they shall be non-adversarial in nature.
 - (iv) The hearing officer and the Government representative may ask questions of the contractor or its representatives making the presentation.
 - (v) The contractor or its representatives and the Government representatives shall have an opportunity to present information, including witness testimony, relevant to the facts at issue. The hearing officer may permit witnesses to appear by videoconference or other electronic means rather than in person. Witnesses will be sworn in and reminded of the official nature of the proceedings and that they are subject to criminal prosecution for any false testimony. Witnesses are subject to cross-examination. The hearing officer may ask questions of any witness.
 - (vi) Documents and testimony not ordinarily admissible under legal rules of evidence may be received at the discretion of the hearing officer and will be given appropriate weight. The hearing officer may exclude from the evidentiary record irrelevant or unduly repetitive information presented by the contractor or the Government representative.
 - (vii) A verbatim transcript of the hearing will be made and will become part of the evidentiary record. Additional documentary materials or comments the hearing officer permits the contractor or the Government representative to submit to the hearing officer at or following the hearing become part of the evidentiary record. The party submitting such additional materials or comments to the hearing officer shall simultaneously provide the same materials to the other party, and the other party shall have five working days from receipt to submit comments to the hearing officer on the post-hearing submission.
 - (viii)(A) The hearing officer shall make all findings of fact and conclusions of law relevant to whether a violation of the Gratuities clause occurred, including the dollar value of any gratuity. The hearing officer also

makes all findings of fact, conclusions of law, and recommendations relevant to whether the contractor's right to proceed under the contract should be terminated, and, if so, whether an assessment of exemplary damages is appropriate and in what amount. These findings will be based on a preponderance of the evidence contained in the evidentiary record. The decision of the hearing officer as to whether a violation of the Gratuities clause has occurred will be the Department of the Army's final decision.

(B) If the contractor does not request a hearing in a timely manner or abandons its request, the hearing officer will make the findings of fact, conclusions of law, and recommendations on the basis of the written record.

(C) The hearing officer may permit the contractor and the Government representative to submit proposed findings of fact, conclusions of law, and recommendations by the date specified by the hearing officer. The hearing officer also may require the contractor and the Government representative to submit stipulated findings of fact and conclusions of law.

(ix) The hearing officer shall issue a written decision as soon as practicable after the conclusion of the hearing or the hearing officer's receipt of all documentary submissions. If the hearing officer concludes that a violation of the Gratuities clause occurred, the decision shall include:

(A) The findings of fact and conclusions of law that the hearing officer relied upon and

(B) The findings of fact, conclusions of law, and recommendations relevant to whether the contractor's right to proceed under the contract should be terminated, and, if so, whether an assessment of exemplary damages is appropriate and in what amount.

(x) If the hearing officer determines that a violation of the Gratuities clause occurred, the hearing officer will submit the written decision and evidentiary record to the responsible HCA.

(c)(i) As soon as practicable upon receipt of the written decision and evidentiary record the Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall determine whether to terminate the contractor's right to proceed under the contract, and, if so, whether to assess exemplary damages and in what amount. The decision will be the final decision of the Department of the Army with respect to those determinations. See Appendix GG for further delegation.

(ii) Officials of the responsible contracting activity will promptly provide written notice of the decision, together with the written decision of the hearing officer, to the contractor by registered or certified mail, or another, similar commercial means that provides a signed delivery receipt.

Subpart 5103.6 - Contracts with Government Employees or Organizations Owned or Controlled by Them

5103.602 Exceptions.

Only HCAs may authorize exceptions to the policy in FAR 3.601.

Subpart 5103.7 - Voiding and Rescinding Contracts

5103.703 Authority.

The authority to act for the agency head under this subpart is limited to a level no lower than an official who is appointed by and with the advice of the Senate, without power of redelegation. For the Department of the Army, the Assistant Secretary of the Army (Acquisition, Logistics and Technology), without power of further delegation, performs the functions under this subpart.

5103.704 Policy.

(c) The head of contracting activity, on a non-delegable basis, shall perform the penalty-related duties as described in FAR 3.704(c)(1) and (2).

Subpart 5103.9 - Whistleblower Protections for Contractor Employees

5103.905 Procedures for investigating complaints.

(2) The Office of the Deputy Assistant Secretary of the Army (Procurement) will forward the DoD Inspector General's initial notification and subsequent written report of findings to the cognizant head of the contracting activity.

5103.906 Remedies.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) performs the functions specified in DFARS 203.906. See Appendix GG for further delegations.

Subpart 5103.10 - Contractor Code of Business Ethics and Conduct

5103.1004 Contract clauses.

(a) Insert the clause at FAR 52.203-13, Contractor Code of Business Ethics and Conduct, in full text.

Part 5104 - Administrative Matters

Revised 18 May 2022

Subpart 5104.1 - Contract Execution

5104.103 Contract clause.

Subpart 5104.2 - Contract Distribution

5104.201 Procedures.

5104.202 Agency distribution requirements.

Subpart 5104.4 - Safeguarding Classified Information Within Industry

5104.402 General.

5104.403 Responsibilities of contracting officers.

Subpart 5104.5 - Electronic Commerce in Contracting

5104.502 Policy.

5104.502-90 Army supplemental policy.

Subpart 5104.6 - Contract Reporting

5104.604 Responsibilities.

Subpart 5104.8 - Government Contract Files

5104.802 Contract files.

5104.803 Contents of contract files.

5104.804 Closeout of contract files.

5104.804-5 Procedures for closing out contract files.

Subpart 5104.9 - Taxpayer Identification Number Information

5104.903 Reporting contract information to the IRS.

Subpart 5104.71 - Uniform Contract Line Item Numbering System

5104.7103-90 Contract line items for internal use software (IUS).

Subpart 5104.73 - Safeguarding Covered Defense Information and Cyber Incident Reporting

5104.7304 Solicitation provisions and contract clauses.

Subpart 5104.1 - Contract Execution

5104.103 Contract clause.

Contracting officers will insert FAR clause 52.204-1, Approval of Contract, in solicitations and contracts when an agency official other than the contracting officer is the approval authority.

Subpart 5104.2 - Contract Distribution

5104.201 Procedures.

In addition to DFARS 204.201 requirements for bilateral contracts, contracting officers shall distribute a copy or reproduction of the contract form showing the contractor's signature. The copy or reproduction shall be in the "portable document format" (.pdf) for distribution via electronic mail (email) or other electronic means.

5104.202 Agency distribution requirements.

Distribute a copy of contracts for utility services and communications to:

General Services Administration/Public Buildings Service

Office of Procurement, Public Utilities Service Division (PPU)

Room 7322, GSA Building

18th & F Streets NW

Washington DC 20405.

Subpart 5104.4 - Safeguarding Classified Information Within Industry

5104.402 General.

(d)(1) The National Industrial Security Program (NISP) Contract Classification System (NCCS) module Version 2.0 re-deployed effective 1 May October 20221. Contracting officers shall follow the procedures at FAR 4.402(d)(1) to transmit DD Form 254s to the Defense Counterintelligence Security Agency (DCSA).

5104.403 Responsibilities of contracting officers.

(1) In accordance with DFARS PGI 204.403(1), the contracting officer will include a DoD Form DD 254, DoD Contract Security Classification Specification in solicitations as appropriate and obtain the security manager's signature (see Army Regulation 380-49, 4-4a, Department of the Army Industrial Security Program) as the certifying official on the form.

(2) See [AFARS PGI 5104.403\(2\)-1](#).

Subpart 5104.5 - Electronic Commerce in Contracting

5104.502 Policy.

(b)(4) Electronic commerce in contracting is satisfied if the reverse auction application posts the synopsis (or combined synopsis-solicitation) to SAM.gov.

5104.502-90 Army supplemental policy.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) on a non-delegable basis, shall ensure that systems, technologies, procedures, and processes used by the agency to conduct electronic commerce follow the guidelines set forth in FAR 4.502 (b) and (c).

Subpart 5104.6 - Contract Reporting

5104.604 Responsibilities.

(a) The Senior Procurement Executive in coordination with the head of the contracting activity is responsible for developing and monitoring a process to ensure timely and accurate reporting of contractual actions to FPDS. See Appendix GG for further delegation.

Subpart 5104.8 - Government Contract Files

5104.802 Contract files.

(f) Contracting officers shall utilize the Virtual Contracting Enterprise (VCE) tools throughout the acquisition process to maximize visibility and management of contract specific information and documents. VCE shall not be used for classified documents or contracts.

(i) The Paperless Contract File (PCF) module shall be used to store, access, and route documents necessary to manage the acquisition process for review and approval. Contracting officers shall ensure that the PCF contains all appropriate contract documents. If the contract document is maintained within the Procurement Integrated Enterprise Environment (PIEE, <https://wawf.eb.mil/>) or the Federal Procurement Data System-Next Generation (FPDS-NG), then that system is the official system of record; contracting officers should not duplicate the document and file it in the PCF.

Follow procedures at [AFARS PGI 5104.802\(f\)\(i\)-2](#).

Follow procedures at [AFARS PGI 5104.802\(f\)\(i\)-1](#).

(1) The Army Cabinet Index folder structure shall be used when filing documents in PCF to ensure standardization throughout Army contract files. See AFARS PGI 5104.802(f)(i)(1) for instructions to access the cabinet index structure.

(2) The Protest and Claims Tracking tool shall be used when the contracting officer receives knowledge of a preaward or postaward protest submitted to any venue.

(3) Milestone Tracking shall be used to forecast and document dates for initiation and completion of key documents and milestones. The VCE tool identifies the mandatory data fields based on specific criteria for the acquisition.

See [AFARS PGI 5104.802\(f\)\(i\)\(3\)-1](#).

See [AFARS PGI 5104.802\(f\)\(i\)\(3\)-2](#).

(4) Mission Partner/Requirement Owner Functionality shall be used by requirements owners to create cabinets and submit documents to contracting organizations. Contracting officers shall assist requirements owners as necessary to ensure utilization of the tool.

(ii) VCE Warrants Module shall be used to issue and track contracting officer and grant officer warrants; see 5101.603-3.

(iii) VCE shall be used for the Announcement of Awards and Small Business Coordination Record (DD Form 2579); see 5105.303 and 5119.201(d)(10)(B)(i) respectively.

5104.803 Contents of contract files.

(a)(24) Legal reviews in accordance with 5101.602-2-90(c) shall be done in writing and documented in the contract file.

5104.804 Closeout of contract files.

(2) The head of contracting activity shall perform the duties as described in DFARS 204.804(2). See Appendix GG for further delegation.

5104.804-5 Procedures for closing out contract files.

(a)(12) When the contractor submits an adequate final indirect cost rate proposal in accordance with FAR 42.705-1(b)(1)(iii), the contracting officer must obtain a Defense Contract Audit Agency audit report or document the file with a memorandum that deems the proposal to be low-risk and not subject to further audit before closing out the contract file.

Subpart 5104.9 - Taxpayer Identification Number Information

5104.903 Reporting contract information to the IRS.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall report the information set forth in FAR 4.903 to the IRS. See Appendix GG for further delegation.

Subpart 5104.71 - Uniform Contract Line Item Numbering System

5104.7103-90 Contract line items for internal use software (IUS).

(a) *Definition.* As used in this section, the following terms have the same meaning as given in the Implementation Guide for Internal Use Software located on the Procurement.Army.Mil Knowledge Management Portal at <https://spcs3.kc.army.mil/asaalt/zp/doccenter/Documents/PARC%20Policy%20Alert%2018-17%20AFARS%205104%20Revision%20Contract%20Line%20Items%20for%20Internal%20Use%20Software%20RMoye.msg>.

(1) internal use software

(2) valuation

(3) capitalized

(4) expensed

(b) *Procedures.* When procuring internal use software, Army contracting activities shall—

(1) Confirm that the requiring activity has established separately identifiable line items for all capitalized and expensed requirements in the purchase request;

(2) Ensure the line item structure aligns with the lines of accounting related to the capitalized and expensed classifications assigned by the requiring activity; and

(3) Include appropriate invoicing instructions and acceptance criteria in the solicitation and contract or order.

Subpart 5104.73 - Safeguarding Covered Defense Information and Cyber Incident Reporting

5104.7304 Solicitation provisions and contract clauses.

See [AFARS PGI 5104.7304-1](#) for implementation guidance of Enhanced Security Protections for Contractor Information Systems.

Part 5105 - Publicizing Contract Actions

Subpart 5105.1 - Dissemination of Information

5105.101 Methods of disseminating information.

5105.102 Availability of solicitations.

Subpart 5105.3 - Synopses of Contract Awards

5105.303 Announcement of contract awards.

Subpart 5105.4 - Release of Information

5105.402 General public.

5105.403 Requests from members of congress.

5105.404 Release of long-range acquisition estimates.

5105.404-1 Release procedures.

Subpart 5105.5 - Paid Advertisements

5105.502 Authority.

Subpart 5105.1 - Dissemination of Information

5105.101 Methods of disseminating information.

(a)(1) Prior to synopsizing in Federal Business Opportunities (FedBizOpps), contracting officers shall obtain concurrence on the notice for all Program Executive Office (PEO) managed programs requiring a written acquisition plan in accordance with DFARS 207.103.

(i) When the estimated dollar value of the acquisition is at least \$50 million but less than \$250 million, obtain the concurrence of the cognizant Program Manager.

(ii) When the estimated dollar value of the acquisition is \$250 million or greater, obtain the concurrence of the cognizant PEO.

5105.102 Availability of solicitations.

(a)(5)(iii) The senior procurement executive shall make the determination that access through government point of entry (GPE) is not in the Government's interest. See Appendix GG for further delegation.

Subpart 5105.3 - Synopses of Contract Awards

5105.303 Announcement of contract awards.

(a) *Public announcement.*

(i) In addition to the contractual actions identified in DFARS 205.303, report all contractual actions of significance or interest to the United States Congress, the Army, and the local community.

(ii)(1) The contracting officer shall submit an announcement of contract award to the Office of the Deputy Assistant Secretary of the Army (Procurement) (ODASA(P)) no later than noon (12:00 p.m., Washington, DC, time) three business days (including the date of submission) prior to the date of the proposed award. For example: when an award is anticipated on Thursday, the ODASA(P) must receive the announcement no later than noon, Washington DC time, on the preceding Tuesday. Contracting officers will submit the request along with required supporting information via the Virtual Contracting Enterprise (VCE) portal page at <https://vceportal.army.mil>. A contracting officer will not award a contract that meets the reporting threshold at DFARS 205.303(a)(i) without formal ODASA(P) approval. If the contracting officer has not received approval of the request by 2:30 p.m., Washington, DC time, on the day before the desired date of contract award, the contracting officer will contact the ODASA(P) at usarmy.pentagon.hqda-asa-alt.list.congressional-notification@army.mil to inquire into the status of the approval.

(2) Contracting officers shall confirm the award schedule with ODASA(P) by noon of the proposed award date using the email address in paragraph (a)(ii)(1). If the schedule is anticipated to slip, a new award date must be established.

(3) When a contract action is to be awarded under the authority of FAR 6.302-2 and the senior contracting official (SCO) determines that it may be impracticable to comply with the requirements of DFARS 205.303(a)(ii)(A) and (B), the SCO, without power to delegate further, shall:

(i) Immediately notify the DASA(P) by email, with a copy furnished to the head of the contracting activity, that explains the circumstances and requests authority to make the award in advance of compliance with DFARS 205.303(a)(ii)(A) and (B); and

(ii) Authorize the contracting officer to award the contract only upon written approval by the DASA(P) or, in the DASA(P)'s absence, the senior official within the ODASA(P).

(4) The contracting officer will submit the standard announcement under paragraph (a)(ii)(1) of this section to the ODASA(P) no later than one business day after the award. In addition to the information specified in the automated tool, the contracting officer will add a one-line comment in the "Description" field that describes the nature of the urgency that precluded advance notification to the Office of the Assistant Secretary of Defense (Public Affairs) (OASD(PA)).

(5) In accordance with 10 U.S.C. 2316, do not release the identity or location of the awardee to any individual, including a Member of Congress, until OASD(PA) makes the public announcement.

(6) Paragraph (a)(ii)(3) of this section is the only authorized Army-level exception to DFARS 205.303(a)(ii)(A) and (B). No contracting activity-level deviation from this provision may be authorized.

(iii) The ODASA(P) informs the Office of the Chief Legislative Liaison who in turn informs the members of Congress in whose state or district the contractor is located and performing the contractual requirements, and the Office of the Chief of Public Affairs who in turn notifies OASD(PA).

Subpart 5105.4 - Release of Information

5105.402 General public.

The contracting officer must obtain concurrence from Office of the Chief Legislative Liaison, Department of the Army, prior to releasing information regarding a congressional inquiry response to the general public, including information proposed to be released to the news media.

5105.403 Requests from members of congress.

(a) Contracting officers shall not provide information regarding a congressional inquiry to any public or private, individual or organization, prior to responding to the appropriate Member of Congress (see 5105.402).

(b) When responsiveness would result in disclosure of a classified matter, business confidential information, or information prejudicial to a competitive acquisition, the contracting officer shall refer the proposed reply, with full documentation, through the senior contracting official to the ODASA(P) as provided in 5101.290.

ODASA(P) will seek agency head approval as defined in 5102.101. The contracting officer shall inform the Office of the Chief Legislative Liaison of the action and submit an interim response to the appropriate Member of Congress, indicating the action being taken.

5105.404 Release of long-range acquisition estimates.

5105.404-1 Release procedures.

(a) *Application.* The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may release long-range acquisition estimates. See Appendix GG for further delegation.

Subpart 5105.5 - Paid Advertisements

5105.502 Authority.

(a) The head of the contracting activity shall approve the publication of paid advertisements in newspapers. See Appendix GG for further delegation.

Part 5106 - Competition Requirements

(Revised 1 March 2023)

Subpart 5106.2 - Full and Open Competition After Exclusion of Sources

5106.202 Establishing or maintaining alternative sources.

Subpart 5106.3 - Other Than Full and Open Competition

5106.302 Circumstances permitting other than full and open competition.

5106.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

5106.302-2 Unusual and compelling urgency.

5106.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services.

5106.302-4 International agreement.

5106.302-5 Authorized or required by statute.

5106.302-7 Public Interest.

5106.303 Justifications.

5106.303-1 Requirements.

5106.303-1-90 Requirements for amended justifications.

5106.303-2 Content.

5106.303-2-90 Format and submission of the justification review and justification and approval documents.

5106.304 Approval of the justification.

Subpart 5106.5 - Advocates for Competition

5106.501 Requirement.

5106.502 Duties and responsibilities.

5106.502-90 Supplementary information.

Subpart 5106.2 - Full and Open Competition After Exclusion of Sources

5106.202 Establishing or maintaining alternative sources.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may make the determination as stated in FAR 6.202(a). See Appendix GG for further delegation, based on the dollar value of the contract action.

Subpart 5106.3 - Other Than Full and Open Competition

5106.302 Circumstances permitting other than full and open competition.

5106.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a)(2)(i)(1) The head of the contracting activity shall make the determination at DFARS 206.302-1(a)(2)(i)(1). See Appendix GG for further delegation.

(d) The head of the contracting activity may waive the requirements as stated in DFARS and DFARS PGI 206.302-1(d). See Appendix GG for further delegation.

5106.302-2 Unusual and compelling urgency.

(d)(1)(ii) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination that exceptional circumstances apply as described in FAR 6.302-2(d)(1)(ii). See Appendix GG for further delegation.

(2)(ii) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination for any subsequent modification as set forth in FAR 6.302-2(d)(2)(ii). See Appendix GG for further delegation.

5106.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services.

(c) *Limitations.* When citing the authority at 10 U.S.C. 2304(c)(3) as implemented in FAR 6.302-3(a)(2)(ii), the contracting officer must ensure the certifications required by FAR 6.303-1(c) and FAR 6.303-2(c) contain a statement that the technical and requirements personnel reviewed the proposed effort to ensure that it falls within the charter or special capabilities of the proposed institution. In addition, the statement will explain how the proposed effort establishes or maintains (as appropriate) an essential engineering, research, or development capability to be provided by an educational or other non-profit institution or a federally funded research and development center (FFRDC). When proposing to contract directly with an FFRDC not sponsored by the contracting activity, the contracting officer must ensure that the procurement request includes a written confirmation from the sponsoring agency that the proposed effort falls within the mission and general scope of effort or special competency of the FFRDC.

5106.302-4 International agreement.

(c) *Limitations.* When citing the authority at 10 U.S.C. 3204(e)(4)(E) as implemented in FAR 6.302-4 and DFARS 206.302-4(c), the contracting officer must ensure the document referred to in DFARS 206.302-4(c) is titled "International Agreement Competitive Restrictions" (IACR). The IACR describes the terms of an international agreement or treaty, or the written directions of a foreign government reimbursing the cost of the procurement, that have the effect of requiring other than competitive procedures for the procurement. The IACR may be used even when the terms of the agreement or treaty, or the written directions, do not specifically name a required source, provided the agreement or treaty, or the written directions, contain sufficient information to explain why the use of other than competitive procedures is required. The HCA may delegate authority to prepare an IACR to a level no lower than the chief of the contracting office. The contracting officer must include in the contract file the IACR and a copy of the associated Letter of Offer and Acceptance, or other international agreement, treaty, or written directions of the reimbursing foreign government.

5106.302-5 Authorized or required by statute.

(b) Application. Agencies may use this authority to—

(4) See 5106.303-1(b) for requirements for justification and approval of sole source 8(a) awards exceeding \$100 million.

5106.302-7 Public Interest.

(b) Application. This authority may be used when —

(1) See Section B of Defense Pricing and Contracting Class Deviation 2023-O0003 for instructions on use of other than competitive procedures under FAR 6.302-7 for “covered contracts” defined as those awarded to

(A) build the stocks of critical munitions and other defense articles of the Department;

(B) provide materiel and related services to foreign allies and partners that have provided support to the Government of Ukraine; and

(C) provide materiel and related services to the Government of Ukraine.

(2) Authority to make the head of the agency determination specified at FAR 6.302-7(a)(2) is delegated to the Head of the Contracting Activity, who meets the eligibility criteria stated in the class deviation, regardless of the dollar value of the procurement action. See Appendix GG for further delegations.

(3) In lieu of the requirement at FAR 6.302-7(c)(2), not later than 7 days before awarding a covered contract using the authority in paragraph (b)(1), the Army must submit written notification of use of this authority to the congressional defense committees. Contracting Officers shall submit congressional notification for HQDA review, coordination, and/or approval via the HQDA Task Management Tool (TMT) to the ODASA(P) directorate listed at AFARS 5101.290(b)(1)(ii)(B).

(See AFARS 5153.206-92 and AFARS 5153.303-11 for determination and findings for other than full and open competition for covered contracts applicable under this subpart.)

5106.303 Justifications.

5106.303-1 Requirements.

(a) Contracting officers shall not release any solicitation for other than full and open competition prior to approval of the justification, except when citing the authority at 10 U.S.C. 2304(c)(2) as implemented at FAR 6.302-2.

(b) Contracting officers shall not release any solicitation for a sole-source contract prior to approval of the justification, except when citing the 8(a) authority (15 U.S.C. 637(a)) for an amount exceeding \$100 million unless—

(2) The head of the procuring activity has approved the justification. See Appendix GG for further delegation,

(c) Only United States Government employees formally representing the appropriate functional activity may sign technical and requirements certifications under this provision.

(d) A justification approved on a class basis authorizes the award of two or more contract actions using other than full and open competition. Provided that it complies with the requirements below, the justification may

encompass identified contract actions for the same or integrally related supplies or services or other contract actions that require essentially identical justification. A justification made on a class basis—

- (i) Is not limited to a single contractor;
 - (ii) May cover contracts for non-permanent requirements to be awarded in successive fiscal years, provided that the requirements and quantities are included in the Future Years Defense Plan, and their costs have been specifically identified;
 - (iii) Must address every contract included in the scope of the class justification in each paragraph, in detail (e.g., specific quantity and dollar amounts for each contract; detailed documentation of the circumstances supporting the use of other than full and open competitive procedures for each contracting action); and
 - (iv) Must include only those supply or service components that are, and will clearly remain, sole or limited source for the period covered by the justification.
- (e) If a contracting officer awards a contract exceeding the dollar threshold identified at FAR 6.304(a)(4) prior to approval of the required justification using the authority cited in FAR 6.302-2, the contracting activity must submit the justification for approval to the address in 5101.290(b)(2)(ii)(C) no later than seven calendar days after contract award.

5106.303-1-90 Requirements for amended justifications.

- (a) The contracting officer shall amend a justification and obtain the required approvals when any of the following occur prior to award of the contract action:
 - (1) The dollar value of the prospective contract action increases beyond the authority of the previous approving official.
 - (2) A change in the competitive strategy further reduces competition.
 - (3) A change in requirements affects the basis for the justification.
- (b) The Senior Procurement Executive (SPE) approves all amendments to justifications previously approved at the SPE level, except when the basis for the amended justification supports a lower approval level per FAR 6.304.
- (c) Prepare all amended justifications as required in 5106.303-2-90(c)(3).

5106.303-2 Content.

- (d)(5) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall specify other matters as described in FAR 6.303-2(d)(5). See Appendix GG for further delegation.

5106.303-2-90 Format and submission of the justification review and justification and approval documents.

- (a) *General.* The justification and approval (J&A) format at 5153.303-5 is mandatory for all justifications in support of other than full and open competition. Contracting officers will tailor the J&A's format to accommodate other type justifications in accordance with the FAR approval thresholds and required content.
- (b) Reserved.
- (c) *Instructions.*

(1) *Justification review document (JRD)* . The JRD serves as the cover page(s) to the J&A document and may be tailored to reflect the approval thresholds and relevant functions for the instant contract action.

(2) *Justification and approval document*.

- (i) Begin page numbering on the first page of the JRD, and number each subsequent page of the document sequentially.
- (ii) Enter the control number in the upper right corner of each page, including the JRD and approval pages.
- (iii) If a paragraph prescribed in the format does not apply to the contract action, indicate “Not applicable” and explain why.
- (iv) Certifying officials must approve any material changes to the original J&A contents.
- (v) Paragraph 7, “Actions to Increase Competition,” must be specific and comprehensive.
- (vi) Only United States Government employees formally representing the appropriate functional activity may validate and certify the JRD and J&A (see 5153.303-4 and 5153.303-5). Other government officials shall not perform this certification.

(3) *Amended justifications*.

- (i) When 5106.303-1-90 requires an amended justification, the contracting officer must prepare a document entitled “Amendment to Justification for Other Than Full and Open Competition,” using the same paragraph designations used in the original justification. Attach a copy of the original JRD and J&A documents. In addition

 - (A) Number amendments sequentially;
 - (B) Include J&A paragraphs 1, 2 and 3 in full, revised if required;
 - (C) Include new certifications by the contracting officer (paragraphs 13 and 14). Include new technical and requirements certifications (paragraphs 11 and 12) only when changes in those areas of responsibility prompted the amendment;
 - (D) Use paragraph 10 to explain the reason for the amendment and to give any additional information that would help the reader understand the changes; and
 - (E) Address all remaining paragraphs of the J&A by stating “No change” following the paragraph number or by inserting an entirely revised paragraph. When there are minor changes, mark through deleted items and underline additions to the original paragraph to indicate changes to the original document. For major revisions, including the addition of paragraphs that previously did not apply, instead of marking through and underlining, use paragraph 10 to identify the paragraph number and summarize the changes. Include this information following the entry required by (D).
- (ii) Determine the approval level for an amended J&A by using the cumulative dollar value of the amended justification, e.g., original J&A value plus the amount of the change.

(d) *Submission*.

- (1) For contracting actions exceeding the dollar threshold identified at FAR 6.304(a)(4), the contracting activity must submit the justification in sufficient time for approval, approximately 40 working days, to the address at 5101.290(b)(2)(ii)(C). Electronic transmission is preferred. For electronic submission, indicate the lead point of contact and the alternate (name, phone number, email address).

(2) Include with the justification the transmittal memorandum signed by the appropriate official, the current acquisition plan, and any other key documents related to the instant action. The approval authority or his/her office may request a copy of the acquisition strategy, usually for large services or major weapons system contracts; business case analysis for performance based logistics and select Acquisition Category programs; or requirements validation separately.

(e) *Revisions*. The Office of the Deputy Assistant Secretary of the Army (Procurement) (ODASA (P)) action officer will return J&As submitted for SPE approval when directed revisions cannot be accomplished within five business days. The contracting activity may re-submit the J&A after making the requested revisions. Once received, the ODASA(P) action officer will start anew processing the action for approval.

5106.304 Approval of the justification.

(a)(3) The head of the contracting activity shall approve justifications as described at FAR 6.304(a)(3). See Appendix GG for further delegation.

(i) See 5106.303-1-90 for approval of amended justifications.

(ii) Requirements shall not be split in order to avoid submission of a justification to a higher-level approval authority.

(c) Approval procedures and thresholds for justifications based on a class of contracts are the same as for individual justifications; see FAR 6.304.

Subpart 5106.5 - Advocates for Competition

5106.501 Requirement.

(1) The Deputy Assistant Secretary of the Army for Procurement serves as the Army Advocate for Competition (AAFC). Heads of contracting activities (HCAs), delegable only to their senior contracting official, may appoint a command advocate for competition (CAFC) and alternates within their contracting activities. HCAs shall appoint at least one CAFC for each contracting activity. In addition, the HCA shall appoint a local advocate for competition wherever there is a small business specialist appointed for that organization. See Appendix GG.

(2) Designation of advocates for competition at contracting offices subordinate to contracting activities depends on the nature of the contracting mission of the office, the volume of significant contracting actions, the complexity of acquisition planning, and other responsibilities of such local advocates. Advocates for competition may be appointed on a part-time basis or as an additional duty when there are no conflicts of interest.

5106.502 Duties and responsibilities.

(a) Local advocates for competition are an extension of the CAFC office and assist the CAFC in the accomplishment of their responsibilities.

(b)(2) Command advocates for competition must report the following information to the AAFC (see address at 5101.290(b)(2)(ii)(C)) no later than November 15 of each year, or as the AAFC specifies—

(A) The level of competition achieved against their goal for the fiscal year and, if applicable, reasons for not attaining the goal.

(B) Significant actions taken to increase competition or overcome barriers to competition, number of new sources identified as a result of market research, notable savings or performance or quality enhancements resulting from competition, and employees recognized for initiatives to enhance competition.

- (C) Mitigating factors affecting goal achievement.
- (D) A plan for competition in the coming fiscal year.
- (E) Any other activities and accomplishments.
- (F) Their competition goal for the coming fiscal year.

(3) Before seeking approval, CAFCs will coordinate their activity's annual competition goals with the local small business specialist to balance socio-economic and competition goals with organizational interests.

5106.502-90 Supplementary information.

Command advocates for competition should provide supplementary information on items considered significant to the AAFC at any time during the fiscal year.

Part 5107 - Acquisition Planning

(Revised 24 January 2023)

Subpart 5107.1 - Acquisition Plans

5107.103 Agency-head responsibilities.

5107.103-90 Acquisition plan approvals.

5107.104 General procedures.

5107.105 Contents of written acquisition plans.

5107.107 Additional requirements for acquisitions involving consolidation, bundling, or substantial bundling.

5107.107-2 Consolidation.

5107.107-5 Notifications.

Subpart 5107.2 - Planning for the Purchase of Supplies in Economic Quantities

5107.204 Responsibilities of contracting officers.

Subpart 5107.3 - Contractor Versus Government Performance

5107.302 Policy.

Subpart 5107.4 - Equipment Lease or Purchase

5107.470 Statutory requirements.

Subpart 5107.5 - Inherently Governmental Functions

5107.503 Policy.

Subpart 5107.90 - Independent Government Estimates

5107.9000 Scope.

5107.9001 Definitions.

5107.9002 Policy.

Subpart 5107.91 - Integrating Antiterrorism and Operations Security

5107.9100 Scope.

5107.9101 Policy.

Subpart 5107.1 - Acquisition Plans

5107.103 Agency-head responsibilities.

(d)(i) Except as provided in (d)(i)(B), prepare written acquisition plans, for up to a five-year period, in accordance with dollar thresholds identified at the DFARS 207.103(d)(i).

(B) Procurements for foreign military sales (see DFARS 225.73), other than procurements funded with U.S. appropriated funds, are exempt from the requirements at DFARS 207.103(d)(i) to prepare a written acquisition plan, when—

- (1) An International Agreement Competitive Restrictions (ICAR) has been approved IAW 5106.302-4(c); or
 - (2) The procurement is for an item of standard Army material (i.e., supplies that, as confirmed by the requiring activity, have been type classified “standard” under Army Regulation 700-142, Type Classification, Material Release, Fielding, and Transfer) for which other acquisition planning documentation exists and can be documented in the contract file.
- (ii) When there is not a requirement for a written acquisition plan, or the approval authority has waived the requirements of formality and detail in exceptional cases, use an alternate format or contract documentation such as memoranda for record, price negotiation memoranda, simplified acquisition management plan, and acquisition strategies (for service requirements) to record acquisition pre-award decisions and risk assessment information. Contracting officers shall maintain such decision support information in the contract file and to the extent practicable avoid duplication of information between the services acquisition strategy (see 5137.590-6) and the acquisition plan (e.g., by referencing content).
- (m) Only the acquisition plan approval authority may waive requirements of detail and formality.

5107.103-90 Acquisition plan approvals.

- (a) For acquisition plan approval, the dollar thresholds identified at DFARS 207.103(d)(i) apply to the following:
 - (1) For programs assigned to program executive officers (PEOs) or program managers reporting directly to the Army Acquisition Executive (DRPM), the designated milestone decision authority (MDA), on a nondelegable basis, is the acquisition plan approval authority. In the case of PEO-DRPM-managed efforts for which no MDA has been designated, the PEO/DRPM, on a nondelegable basis, is the acquisition plan approval authority.
 - (2) For all non-PEO/direct-reporting program manager acquisitions, the Assistant Secretary of the Army (Acquisition, Logistics and Technology) is the acquisition plan approval authority. See Appendix GG for further delegation.
- (b) Approval of acquisition plans for procurements below the thresholds identified at DFARS 207.103(d)(i) shall be in accordance with contracting activity procedures.
- (c) For Army Acquisition Executive-designated special interest acquisitions, the Assistant Secretary of the Army (Acquisition, Logistics and Technology) or the Deputy Assistant Secretary of the Army (Procurement) must approve the acquisition plans. Process acquisition plans for special interest acquisitions in the same manner as other acquisition plans and include all the concurrences listed in paragraph (c).
- (d) The requests for approval of acquisition plans in accordance with the thresholds identified at DFARS 207.103(d)(i) must include the concurrence of the –
 - (1) Contracting officer;
 - (2) Local advocate for competition;
 - (3) Local office of small business programs or small business specialist;
 - (4) Legal office; and
 - (5) Appropriate elements from the supporting contracting activity chain of command.

5107.104 General procedures.

- (a)(i) Each head of the contracting activity (HCA) must establish procedures for forecasting all significant, as defined by a specified monetary threshold, or sensitive contracting requirements anticipated for the upcoming fiscal year.
- (ii) These procedures will include procurement milestones and other management parameters for all proposed contract actions that the acquisition planning system will cover, including those proposed requirements for which DFARS 207.103(d)(ii) does not require written acquisition plans.
- (iii) These procedures should allow sufficient time for development of an acquisition plan; preparation of solicitations, including any necessary coordination with requiring and technical elements; receipt and evaluation of bids or proposals;

audits; negotiation; boards or business clearance reviews; source selection and preparation of contractual documents in an orderly and timely manner.

(iv) HCAs should establish due dates for submission of procurement requests requiring action by the end of the fiscal year to the contracting office. Exceptions to established due dates must be minimized and require authorization at a level not lower than the chief of the contracting office.

(v) In acquisitions where sole source approvals are necessary, acquisition planning must provide appropriate opportunities for the following:

(A) Involving Defense Contract Management Agency and Defense Contract Audit Agency early in the acquisition process.

(B) Obtaining appropriate contractor input for use in the development of the acquisition strategy.

(C) Establishing a Government and contractor team, including individuals with execution responsibility as well as reviewers, committed on a real-time basis to streamline the acquisition process and maintain open communications.

(D) Teaming of Government and contractor personnel in development of the proposal and model contract, leading to agreement on contractor effort and costs associated with the task(s).

(E) Teaming of the Government and contractor personnel during post-award contract performance to improve communications and develop efficient contract administration.

5107.105 Contents of written acquisition plans.

(b)(20)(C)(8)(iv) The head of contracting activity is responsible to perform the duties at DFARS 207.105. See Appendix GG for further delegation.

5107.107 Additional requirements for acquisitions involving consolidation, bundling, or substantial bundling.

5107.107-2 Consolidation.

(b) The Senior Procurement Executive has delegated authority to make the consolidation determination prescribed at FAR 7.107-2 as follows:

(i) Where the total value of the consolidated requirements is \$500 million or more, the Deputy Assistant Secretary of the Army (Procurement) will make the determination.

(ii) Where the total value of the consolidated requirements is above \$2 million but less than \$500 million, the HCA will make the determination. See Appendix GG for further delegation.

5107.107-5 Notifications.

The contracting officer is responsible for publishing the notices required by FAR 7.107-5(c) and (d).

Subpart 5107.2 - Planning for the Purchase of Supplies in Economic Quantities

5107.204 Responsibilities of contracting officers.

(a) Send offerors' responses to the solicitation provision in FAR 52.207-4 to the requiring activity.

Subpart 5107.3 - Contractor Versus Government Performance

5107.302 Policy.

To achieve fair and even-handed competition between in-house entities and industry, the senior contracting official will ensure that contracting officers provide industry with pertinent, accurate, and available data necessary to engender as full and complete an understanding as possible of the operation(s) covered by the A-76 competition. Historical data provided must be relevant and well organized (see Department of Army Pamphlet 5-20). To maximize use of Army resources, contracting officers must make every effort to utilize A-76 contracting best practices and good ideas that have worked for others and avoid repetition of unsuccessful strategies and procedures.

Subpart 5107.4 - Equipment Lease or Purchase

5107.470 Statutory requirements.

(b) The head of the contracting activity shall make the determination as described in DFARS 207.470(b). See Appendix GG for further delegation.

Subpart 5107.5 - Inherently Governmental Functions

5107.503 Policy.

(e)(i) Contracting officers must ensure that requiring officials provide a written determination as required by FAR 7.503(e) and DFARS 207.503(e) prior to issuance of a solicitation for award of a service contract, including those contract types described in FAR 16.5, a services task order awarded under FAR 16.5, or modification of an awarded service contract's or task order's statement of work. Contracting officers shall document the official contract file with the determination.

(ii) The Request for Services Contract Approval (RSCA) form (see Army Regulation (AR) 70-13), or the acquisition plan, acquisition strategy, or memorandum for file satisfies the requirement in 5107.503(e)(i).

(iii) RSCA policy for requiring activities is available at AR 70-13, sections 2-2 and 2-9, and at the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs) website: <http://www.asamra.army.mil/scra/>.

Subpart 5107.90 - Independent Government Estimates

5107.9000 Scope.

This subpart prescribes policy for the preparation of independent government estimates.

5107.9001 Definitions.

“Independent government estimate (IGE),” as used in this subpart, means the Government’s estimate of the projected price or cost that a contractor would incur in the successful performance of a contract.

5107.9002 Policy.

(a) Contracting officers shall require the preparation of an IGE in every procurement action in excess of the simplified acquisition threshold (SAT). The contracting officer, at his or her discretion, may require an IGE for actions less than the SAT.

(b) The contracting officer shall ensure, prior to accepting an IGE, that—

(1) The IGE contains enough detail to verify the validity of the offerors’ proposals;

(2) The IGE provides sufficient narrative and analytical detail, to include reference material, to support its preparation;

(3) The IGE contains a certification that the Government independently developed the IGE prior to seeking formal proposals from contractors, or for construction, within a timeframe consistent with FAR 36.203; and:

(i) Be signed and dated, by hand or by Common-Access-Card (CAC), by the preparer, and includes the preparer's organization, position, title, and telephone number;

(ii) Be signed and dated, by hand or by CAC, by the preparer's immediate supervisor, and includes the reviewer's organization, position, title, rank or grade, and telephone number.

Subpart 5107.91 - Integrating Antiterrorism and Operations Security

5107.9100 Scope.

This subpart prescribes policy for integrating antiterrorism (AT) and operations security (OPSEC) considerations into Army contracts.

5107.9101 Policy.

Implementation of AT and OPSEC considerations in the requirements package is the responsibility of the requiring activity and a signed AT/OPSEC cover sheet is required to be included in all requirements packages except for supply contracts under the simplified acquisition level threshold, field ordering officer actions and Government purchase card purchases. The cover sheet, at a minimum, must include all the information and reviews listed in the Army standard cover sheet at Appendix A of the AT/OPSEC Desk Reference, available via the Internet at

https://army.deps.mil/army/sites/PMG/prog/ATEP/AT%20in%20Contracting/AT%20OPSEC%20Guidance%20v6_webQ.pdf

(Army Knowledge Online login required). This requirement also applies to orders under indefinite delivery contracts, unless each task or delivery order under the contract is for substantially the same product or service, in which case the cover sheet at the contract level is sufficient.

Part 5108 - Required Sources of Supplies and Services

(Revised 17 February 2023)

Subpart 5108.4 - Federal Supply Schedules

5108.404 Use of federal supply schedules.

5108.405 Ordering procedures for federal supply schedules.

5108.405-3 Blanket purchase agreements (BPAs).

5108.405-6 Limited sources.

Subpart 5108.8 - Acquisition of Printing and Related Supplies

5108.802 Policy.

Subpart 5108.11 - Leasing of Motor Vehicles

5108.1102 Presolicitation requirements.

Subpart 5108.70 - Coordinated Acquisition

5108.7002 Assignment authority.

5108.7002-90 Non-standard ammunition.

Subpart 5108.74 - Enterprise Software Agreements

5108.7401-90 Software product manager.

5108.7403 Acquisition procedures.

Subpart 5108.90 - Civil Confinement of Military Absentees and Deserters

5108.9000 Scope of subpart.

5108.9001 Use of civil detention facilities.

Subpart 5108.91 - Video Productions

5108.9100 Scope of subpart.

5108.9101 Contracting for Video Productions.

Subpart 5108.92 - Army Continuing Education System Contracts

5108.9200 Scope of subpart.

5108.9201 References.

5108.9202 Educational services contracts.

5108.9203 Procedures.

Subpart 5108.93 - Training With Commercial Firms

5108.9300 Scope of subpart.

5108.9301 General.

Subpart 5108.94 - Foreign Language Support

5108.9400 Scope of subpart.

5108.9401 Definitions.

5108.9402 Policy.

Subpart 5108.4 - Federal Supply Schedules

5108.404 Use of federal supply schedules.

(h)(3)(ii)(C) The head of the contracting activity without the power to further delegate is the approval authority for actions stated in FAR 8.404(h)(3)(ii)(C).

5108.405 Ordering procedures for federal supply schedules.

5108.405-3 Blanket purchase agreements (BPAs).

(a)(3)(ii). The Assistant Secretary of the Army (Acquisition, Logistics and Technology) makes the determination described in FAR 8.405-3(3)(ii). See Appendix GG for further delegation.

5108.405-6 Limited sources.

(b)(3)(ii)(C) The senior procurement executive makes the determination described in FAR 8.405-6(b)(3)(ii)(C). See Appendix GG for further delegation.

(d)(3) The head of the contracting activity is the approval authority for actions stated in FAR 8.405-6(d)(3). See Appendix GG for further delegation.

Subpart 5108.8 - Acquisition of Printing and Related Supplies

5108.802 Policy.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, shall designate a central printing authority as set forth in FAR 8.802(b).

Subpart 5108.11 - Leasing of Motor Vehicles

5108.1102 Presolicitation requirements.

(c) The head of the contracting office is the approval authority for actions stated in FAR 8.1102(c). See Appendix GG for further delegation.

Subpart 5108.70 - Coordinated Acquisition

5108.7002 Assignment authority.

(a)(1) Contracting activities shall procure commodities assigned to the Army under DFARS 208.7000 according to the assignment of responsibilities issued by the Commanding General, U.S. Army Materiel Command. DFARS PGI 208.7006 lists the commodity assignments.

5108.7002-90 Non-standard ammunition.

Contracting officers shall forward all U.S. Army non-standard ammunition procurements to Joint Program Executive Office, Armaments & Ammunition for execution.

Subpart 5108.74 - Enterprise Software Agreements

5108.7401-90 Software product manager.

The Army's software product manager is the Computer Hardware, Enterprise Software and Solutions (CHESS) Office. Information on CHESS is available via the Internet at <https://chess.army.mil>.

5108.7403 Acquisition procedures.

(5)(iii) Before procuring commercial software outside of the CHESS contracts, the contracting officer must ensure that the requiring activity obtains a waiver (see 5139.101-90(a)).

Subpart 5108.90 - Civil Confinement of Military Absentees and Deserters

5108.9000 Scope of subpart.

This subpart prescribes policy for the acquisition of civil detention facility services, when installation commanders or provost marshals deem the use of such facilities appropriate.

5108.9001 Use of civil detention facilities.

See Army Regulations 190-9 and 190-47.

Subpart 5108.91 - Video Productions

5108.9100 Scope of subpart.

This subpart prescribes policy for the acquisition of video productions.

5108.9101 Contracting for Video Productions.

(a) The Production Acquisition Division (PAD) J/G42 at United States Army Military District of Washington (USAMDW), formerly AMVID PAD, is the only multimedia and visual information acquisition activity

authorized to contract for total video productions. (See DoDI 5040.02, Army Regulation 25-1, and Department of the Army Pamphlet 25-91).

(b) Direct requests for contracted video productions shall be submitted to the USAMDW, PAD via email to: usarmy.mcnair.mdw.mbx.jfnr-production-acquisition-div-pad@army.mil.

(c) The contracting officer must forward procurement requests for contracting video productions to the USAMDW, Production Acquisition Division at the address in paragraph (b) in this section.

(d) For advisory and assistance services for audiovisual productions, please contact USAMDW via the above email.

Subpart 5108.92 - Army Continuing Education System Contracts

5108.9200 Scope of subpart.

This subpart prescribes policy for the acquisition of Army Continuing Education System (ACES) programs and services.

5108.9201 References.

Army Regulation (AR) 621-5 establishes the ACES and prescribes policies and responsibilities for its administration.

(a) AR 350-20 provides for mission-required language training procured through ACES.

(b) AR 380-67 outlines security requirements for ACES personnel.

5108.9202 Educational services contracts.

(a) The contracting officer may execute educational services contracts to support ACES for Active Component, Reserve Component and Army National Guard soldiers and to provide Headstart language and host nation acculturation programs for Active Component adult family members.

(b) In the continental United States, the tuition assistance procedures described in AR 621-5 are the appropriate method to obtain postsecondary and off-duty high school instruction.

(c) Use contracts for the following:

(1) Conducting Army education center instruction for programs listed in AR 621-5 and AR 350-20.

(2) Testing individuals or groups of individuals who desire to participate in ACES.

(3) Army learning center services such as the use of professional, paraprofessional or technical personnel to operate computer laboratories, information centers, language laboratories, military publications reference libraries and provide adjunct instruction for ACES participants.

(4) Education transition management services for Active Component only.

(5) Education program development, such as curriculum development, software and courseware development.

(6) Training for professional development of ACES full-time, permanent, professional staff.

5108.9203 Procedures.

See Army Regulations cited at 5108.9202(c)(1).

Subpart 5108.93 - Training With Commercial Firms

5108.9300 Scope of subpart.

This subpart prescribes policy for obtaining commercial training for Army Medical Department and other Army personnel.

5108.9301 General.

(a) Contracting officers shall refer questions about obtaining commercial training for Army Medical Department personnel to:

Commander, AMEDDC&S

Department of Health Education and Training

Attn: MCCS-HE

2377 Greeley Road, Suite B

Fort Sam Houston, TX 78234-5075

or by telephone to (210) 295-9528, or fax to (210) 221-2832.

(b) Contracting officers shall refer questions about obtaining commercial training for other Army personnel to the:

Office of The Deputy Chief Of Staff, G1

Director of Military Personnel Management

Attn: DAPE-MP

300 Army Pentagon

Washington DC 20310-0300

or by telephone to DSN 225-5881 or (703) 695-5881.

Subpart 5108.94 - Foreign Language Support

5108.9400 Scope of subpart.

This subpart prescribes policy for foreign language support contracts.

5108.9401 Definitions.

“Foreign language support,” as used in this subpart, means services which require the ability to listen, read, speak and/or write in a foreign language, and translate the foreign language into spoken or written English. It excludes those services that specifically support the conduct of foreign language instruction, services provided

under personal services contracts, or contracted services that use Special Operations Major Force Program-11 funds.

5108.9402 Policy.

(a) Except as provided in (b), contracting officers shall use contracts administered by the U.S. Army Intelligence and Security Command (INSCOM) to procure foreign language support.

(b)(1) If the contracting officer contemplates using a non-INSCOM-administered contract to procure foreign language support, the contracting officer shall send an exception request to the following address no later than 90 days prior to the proposed contract award:

USARMY Pentagon HQDA DCS G-2 List Foreign Language Office

usarmy.pentagon.hqda-dcs-g-2.list.foreign-language-office@mail.mil.

(2) At a minimum, the request for exception shall include –

(i) The scope of the contract to include the mission, the number of linguists required, and the job description of the linguists;

(ii) A justification statement;

(iii) The type of funds to be used to pay for the contract;

(iv) Copies of the proposed contract and statement of work;

(v) Any special Government-provided benefits; and

(vi) The point-of-contact information for the proposed contract.

(3) HQDA Office of the Deputy Chief of Staff for Intelligence (G-2) will review the exception request and notify the requestor whether the proposed award can proceed.

(c) Army organizations with existing contracts for foreign language support outside the INSCOM-administered contracts shall contact the G-2 at the address provided in paragraph (b)(1) of this section to determine if movement of the requirements to the INSCOM-administered contracts is appropriate.

Part 5109 - Contractor Qualifications

(Revised 30 March 2022)

Subpart 5109.1 - Responsible Prospective Contractors

5109.103 Policy.

5109.104 Standards.

5109.104-5 Representation and certifications regarding responsibility matters.

5109.105 Procedures.

5109.105-2 Determinations and documentation.

5109.108 Prohibition on contracting with inverted domestic corporations.

5109.108-4 Waiver.

Subpart 5109.2 - Qualifications Requirements

5109.202 Policy.

5109.206 Acquisitions subject to qualification requirements.

5109.206-1 General.

5109.270 Aviation and ship critical safety items.

5109.270-3 Policy.

Subpart 5109.4 - Debarment, Suspension, and Ineligibility

5109.402 Policy.

5109.403 Definitions.

5109.404 System for award management exclusions.

5109.405 Effect of listing.

5109.405-1 Continuation of current contracts.

5109.405-2 Restrictions on subcontracting.

5109.406 Debarment.

5109.406-1 General.

5109.406-3 Procedures.

5109.407 Suspension.

5109.407-1 General.

5109.407-3 Procedures.

Subpart 5109.5 - Organizational and Consultant Conflicts of Interests

5109.503 Waiver.

5109.504 Contracting officers responsibilities.

5109.506 Procedures.

Subpart 5109.1 - Responsible Prospective Contractors

5109.103 Policy.

(b) Army contracting officials shall use the Determination of Responsibility Assistant (DORA) Contractor Responsibility bot to assist them to determine prospective contractor responsibility or non-responsibility. Instructions on how to use the bot can be found on the Acquisition Innovation through Technology page located at: <https://procurement.army.mil/bot> and at AFARS PGI 5109.103(b)-1.

5109.104 Standards.

5109.104-5 Representation and certifications regarding responsibility matters.

(a)(2) See 5109.406-3 and 5109.407-3 for Army notification procedures.

(b)(2) See 5109.406-3 and 5109.407-3 for Army notification procedures.

5109.105 Procedures.

5109.105-2 Determinations and documentation.

(a) *Determinations.* The contracting officer shall submit a copy of the determination of non-responsibility to the cognizant suspension and debarment official listed at 5109.403.

5109.108 Prohibition on contracting with inverted domestic corporations.

5109.108-4 Waiver.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may approve the waiver set forth in FAR 9.108-4. See Appendix GG for further delegation.

Subpart 5109.2 - Qualifications Requirements

5109.202 Policy.

(a)(1) The authority of DFARS PGI 209.202(a)(1) is not delegable below the level of the chief of the contracting office.

(b) The head of the contracting activity may waive the requirements as described in FAR 9.202(b). See Appendix GG for further delegation.

(e) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has authorization to grant the approval described in FAR 9.202(e). See Appendix GG for further delegation.

5109.206 Acquisitions subject to qualification requirements.

5109.206-1 General.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has the authority to make the determination at FAR 9.206-1(b). See Appendix GG for further delegation.

5109.270 Aviation and ship critical safety items.

5109.270-3 Policy.

(a) The head of the contracting activity shall perform the duties stated in DFARS 209.270-3. See Appendix GG for further delegation.

Subpart 5109.4 - Debarment, Suspension, and Ineligibility

5109.402 Policy.

(d) The Chief, Procurement Fraud Branch, U.S. Army Contract and Fiscal Law Division, U.S. Army Legal Services Agency, Office the Judge Advocate General processes and recommends debarment or suspension action to the suspension and debarment official (SDO).

5109.403 Definitions.

“The Army suspension and debarment official,” as used in this subpart, means –

(1) Director, Soldier & Family Legal Services, or other official designated by The Judge Advocate General of the Army, pursuant to Army Regulation 27-1, to impose suspension and debarment. Use the following address:

Army Suspension and Debarment Official

ATTN: Procurement Fraud Branch

U.S. Army Legal Services Agency (USALSA)

Contract and Fiscal Law Division

9275 Gunston Road, Building 1450, Suite 2100

Fort Belvoir, VA 22060-5546;

send electronic submissions to usarmy.pentagon.hqda-otjag.list.usalsa-kfld-pfb@mail.mil; or

(2) For specific issues outside the contiguous United States –

(i) In the United States Army Europe and Seventh Army area of responsibility, the Deputy Judge Advocate, at the following address:

U.S. Army Europe

Office of the Judge Advocate

Unit 29355, Box 0032

APO AE 09005-9355;

send electronic submissions to usarmy.wiesbaden.usareur.mbx.oja-procurement-fraud@mail.mil; or

(ii) In the United States Eighth Army, Korea, area of responsibility, the Staff Judge Advocate, U.S. Eighth Army, at the following address:

U.S. Eighth Army

PSC 303, Box 47

APO AP 96205;

send electronic submissions to usarmy.youngsan.8-army.mbx.administrative-law@mail.mil; or

(iii) For all other locations, see paragraph (1) of this definition.

5109.404 System for award management exclusions.

(c)(5) The heads of the contracting activities (HCAs) must establish required procedures within their contracting activities.

5109.405 Effect of listing.

(a) The Army suspension and debarment official makes the “compelling reason” determination discussed at FAR 9.405(a), 9.405-1(b), 9.405-2, 9.406-1(c), and 9.407-1(d). Contracting officers shall submit requests for an Army SDO determination to their senior contracting official (SCO) for review and endorsement. If the SCO concurs, submit the request to the Army SDO, through the Chief, Procurement Fraud Branch (see 5101.290(b)(5)). The Army SDO shall provide GSA with written notice of each approved determination.

(d)(1) Contracting officers shall review the System for Award Management Exclusions prior to the solicitation of offers (except when performing this review for those solicitations posted to the Governmentwide point of entry where it will not be practicable), immediately prior to award of a new contract, prior to placement of a new purchase or task or delivery order, and prior to consent to subcontract. Army contracting officers shall also review the System for Award Management Exclusions prior to exercise of an option or award of any modification that adds new work or extends the duration of the contract or the period of performance. Contracting officers shall maintain a copy of the results of the reviews in the contract file.

(3) See paragraph (a) in this section for procedures on obtaining the agency head determination.

5109.405-1 Continuation of current contracts.

(a) Orders placed under a requirements contract may create a situation in which a contract continues notwithstanding the debarment, suspension, or proposed debarment of a contractor. Army contracting officers shall make decisions regarding whether to terminate a contract and the type of contract termination action, if any, only after review by command contracting and technical personnel, and by legal counsel to ensure the propriety of the proposed action in compliance with federal law and regulation.

(b) See 5109.405(a) for procedures on obtaining the agency head determination.

5109.405-2 Restrictions on subcontracting.

(a) See 5109.405(a) for procedures on obtaining the agency head determination.

5109.406 Debarment.

5109.406-1 General.

(c) See 5109.405(a) for procedures on obtaining the agency head determination.

5109.406-3 Procedures.

(a) *Investigation and referral.* When there is a reasonable suspicion of procurement fraud or irregularity or the contracting activity refers the matter for investigation, the contracting officer shall contact the local procurement fraud advisor (PFA), who will send a Procurement Flash Report in accordance with paragraph 8-5 of Army Regulation 27-40. The contracting officer must provide information to the PFA for the Procurement Flash Report as required.

(i) The contracting officer must submit all necessary information through the HCA to the PFA for review. Prompt reporting is essential in all cases that could lead to the suspension or debarment of a contractor or to judicial or administrative action against military personnel or civilian employees of the Army.

(ii) The report must include contractor credit and financial information, such as Dun and Bradstreet or Experian reports. When the Procurement Flash Report recommends suspension or debarment because of contractor fraud or criminal conduct involving a current contract, withhold all funds, which become due the contractor on that contract, unless the HCA or the suspension and debarment official directs otherwise. When fraud is the basis for a contractor's request for advance, partial, or progress payments, contracting officers shall follow the procedures at FAR 32.006-4.

(iii) Distribute reports to the suspension and debarment official through the Procurement Fraud Branch (PFB) as follows: Forward the original and one copy through contracting channels to the PFB, and send the second copy directly to the PFB.

5109.407 Suspension.

5109.407-1 General.

(d) See 5109.405(a) for procedures on obtaining the agency head determination.

5109.407-3 Procedures.

(a) *Investigation and referral.* Prepare and process reports in accordance with 5109.406-3.

Subpart 5109.5 - Organizational and Consultant Conflicts of Interests

5109.503 Waiver.

The head of the contracting activity, without power to further delegate, may waive any general rule or procedure required in FAR subpart 9.5.

5109.504 Contracting officers responsibilities.

(c) The head of the contracting activity is the approval authority as stated in FAR 9.504(c). See Appendix GG for further delegation.

5109.506 Procedures.

(d)(3) The head of the contracting activity gives the approval or other direction as described in FAR 9.506(d)(3). See Appendix GG for further delegation.

Part 5110 - Market Research

(Revised 27 January 2023)

5110.002 Procedures.

5110.002 Procedures.

(b) All members of the acquisition team will participate in market research and apply their functional tools and expertise. Program managers or representatives of the requiring activity will typically lead the market research effort. A statement that the solicitation will be synopsized and that all proposals received will be evaluated is not a substitute for performing adequate market research and in itself does not support and justify procurement under other than full and open conditions. Specific requirements pertaining to market research in support of other than full and open competition are included in 5153.303-5, paragraph 8.

See [AFARS PGI 5110.002\(b\)-1](#) for information and instructions on using ProcurementIQ, a market intelligence tool specifically designed for procurement, strategic sourcing and indirect procurement.

Additional market research and planning guidance is available at [AFARS PGI 5110.002\(b\)-2](#).

(e) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall document the results of market research in a manner appropriate to the size and complexity of the acquisition as stated at FAR 10.002(e). See Appendix GG for further delegation.

(i) In addition to using the “Market Research Report Guide for Improving the Tradecraft in Services Acquisition”, for service acquisitions, the format and processes should also be adapted for use in documenting market research for supplies. The Office of Small Business Programs tool at: <https://www.dau.edu/tools/t/Services-Acquisition-Market-Research-Report> should be used to develop the Market Research report.

Part 5111 - Describing Agency Needs

Subpart 5111.1 - Selecting and Developing Requirements Documents

5111.103 Market acceptance.

5111.106 Cloud Requirements.

5111.106 (S-90)

5111.106 (S-91)

5111.106 (S-92)

5111.106 (S-93)

5111.106 (S-94)

5111.106 (S-95)

Subpart 5111.2 - Using and Maintaining Requirements Documents

5111.274 Item identification and valuation requirements.

5111.274-2 Policy for item unique identification.

5111.274-2 (S-90)

5111.274-2 (S-91)

5111.274-6 Contract clauses.

Subpart 5111.5 - Liquidated Damages

5111.501 Policy.

Subpart 5111.6 - Priorities and Allocations

5111.602 General.

5111.602-90 Responsibilities.

5111.603 Procedures.

Subpart 5111.7 - Variation in Quantity

5111.703 Contract Clauses

Subpart 5111.1 - Selecting and Developing Requirements Documents

5111.103 Market acceptance.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has the authority to require offerors to demonstrate that items offered meet the standards as set forth in FAR 11.103(a). See Appendix GG

for further delegation.

5111.106 Cloud Requirements.

5111.106 (S-90)

The Army Enterprise Cloud Management Office (ECMO) is the central point for all efforts and processes related to cloud adoption across the Army. The ECMO will establish a standardized cloud architecture intended for use by all Army mission areas.

5111.106 (S-91)

ECMO will provide enterprise-level contracts for commercial CSP offerings, common services, and application migration support. Where feasible and cost effective, the ECMO will leverage DoD Enterprise contracts such as the Joint Enterprise Defense Infrastructure (JEDI) contract; while establishing Army Enterprise Cloud Contracts based on mission requirements.

5111.106 (S-92)

Purchase Request Packages for NEW contracts for CLOUD Computing Services shall include the approved standard language in the Performance Work Statement unless a waiver approved by ECMO is included. This includes Follow-On Contracts. The approved PWS language applies to contract actions for Migrating to the Cloud, New SW development in the Cloud, Follow-On Contracts related to Common Services and Management, and Cloud Hosting, Use of Enterprise solutions. PWS subject areas include Use of Enterprise Services, Modernization/Migration, Software Development, Security, Data, Cloud Service Providers, Common Services, Security Incident Planning, Security, and Cost/price management & Reporting. The standard PWS language is provided in Appendix HH.

5111.106 (S-93)

Purchase Request Packages for Exercising an Option on an Existing Contracts are coordinated with ECMO IAW 5111.70. The coordination document shall be filed in the contract file.

5111.106 (S-94)

New contracts for Cloud Migration, Hosting, and Managed Services Contracting Officers and requiring activities will maximize use of the CLIN/SLIN descriptions in accordance with Appendix HH.

5111.106 (S-95)

Prior to Issuing a NEW order against an existing contract that does not accommodate the standard PWS/requirement (See Appendix HH), then during the engagement with ECMO, the requiring activity should consider alternate contracting methods that may include issuing a new contract.

Subpart 5111.2 - Using and Maintaining Requirements Documents

5111.274 Item identification and valuation requirements.

5111.274-2 Policy for item unique identification.

(b)(1) The head of the contracting activity, on a non-delegable basis, has the authority to determine use of the items as described in DFARS 211.274-2.

(b)(2)(i)(B) The head of the contracting activity shall execute the determination and findings. See Appendix GG for further delegation.

5111.274-2 (S-90)

The contracting officer shall include separately identifiable contract line items as described at DFARS 204.7103 for items, including items of contractor acquired property, that require item unique identification as identified in DFARS 211.274-2.

5111.274-2 (S-91)

See AFARS 5142.1503(b)(2)(vi) for requirements to document contractor compliance with item unique identification in the Contractor Performance Assessment Reports System.

5111.274-6 Contract clauses.

(a)(1) Use the clause at 252.211-7003, Item Identification and Valuation, in all solicitations and contracts for supplies.

(2) The contracting officer must obtain from the requiring activity a list of items with a unit value less than \$5,000 that require unique identification. The contracting officer must enter those items into paragraph (c)(1)(ii) of the clause.

(3) As required in DFARS 252.211-7003(c)(1)(iii), include an attachment in the contract which lists embedded DoD serially managed subassemblies, components and parts that are uniquely identified.

Subpart 5111.5 - Liquidated Damages

5111.501 Policy.

(d) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may reduce or waive the amount of liquidated damages under a contract, as described at FAR 11.501(d). See Appendix GG for further delegation.

Subpart 5111.6 - Priorities and Allocations

5111.602 General.

5111.602-90 Responsibilities.

The G-4 Business Transformation, Headquarters, U.S. Army Materiel Command is responsible for administering the Priorities and Allocations System within the Army.

5111.603 Procedures.

(e) See DoD 4400.1-M, Department of Defense Priorities and Allocations Manual. Direct questions about areas not covered in DoD 4400.1-M to:

Headquarters, U.S. Army Materiel Command

4400 Martin Road

Redstone Arsenal, AL 35898.

Subpart 5111.7 - Variation in Quantity

5111.703 Contract Clauses

(c)(i) Insert the provision at AFARS 5152.211-9000, Evaluation of Subline Items, in solicitations when a fixed-price construction contract is contemplated and the clause at AFARS 5152.211-9001 is included in the solicitation.

(ii) In addition to the clause at FAR 52.211-18, insert the clause at AFARS 5152.211-9001, Variations in Estimated Quantities—Subline Items, in solicitations and contracts when—

(A) A fixed-price construction contract is contemplated that authorizes a variation in the estimated quantity of unit-priced items; and

(B) Those unit priced items will be subdivided into subline items and separately priced for payment purposes.

Part 5112 - Acquisition of Commercial Items

(Revised 13 January 2023)

Subpart 5112.1 - Acquisition of Commercial Items - General

5112.102 Applicability.

Subpart 5112.2 - Special Requirements for the Acquisition of Commercial Items

5112.207 Contract type.

5112.272 Preference for certain commercial products and services.

Subpart 5112.3 - Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

5112.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

5112.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Subpart 5112.70 - Limitation on Conversion of Procurement from Commercial Acquisition Procedures

5112.7001 Procedures.

Subpart 5112.1 - Acquisition of Commercial Items - General

5112.102 Applicability.

(a)(i)(B)(3) Section 1244 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023.

In accordance with section (C)(4) of Defense Pricing and Contracting Class Deviation 2023-O0003—Temporary Authorizations for Covered Contracts Related to Ukraine . contracting officers carrying out a procurement of a product or service for a covered contract may treat the product or service as a commercial product or a commercial service for the purpose of carrying out the procurement. See AFARS 5153.206-93 and AFARS 5153.303-12 for instructions and sample format for reporting covered contracts applicable under this subpart to congressional defense committees.

(a)(ii)(B) The head of the contracting activity shall perform the duties under DFARS 212.102(a)(ii)(B). See Appendix GG for further delegation.

(f) The head of the contracting activity has the authority to make the determination as described in FAR 12.102(f). See Appendix GG for further delegation.

Subpart 5112.2 - Special Requirements for the Acquisition of Commercial Items

5112.207 Contract type.

(b)(iii) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has the authority to make the determination as described in DFARS 212.207(b)(iii). See Appendix GG for further delegation.

5112.272 Preference for certain commercial products and services.

(b)(2)(i) The head of the contracting activity has the authority to make the determination as described in DFARS 212.272(b)(2)(i). See Appendix GG for further delegation.

Subpart 5112.3 - Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

5112.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(b)(4)(i) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, shall perform the function as described in FAR 12.301(b)(4)(i). See Appendix GG for further delegation.

5112.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(c) The head of the contracting activity is the approval authority. See Appendix GG for further delegation.

Subpart 5112.70 - Limitation on Conversion of Procurement from Commercial Acquisition Procedures

5112.7001 Procedures.

(a)(1) The head of the contracting activity has the authority to make the determination under DFARS 212.7001(a)(1). See Appendix GG for further delegation.

Part 5113 - Simplified Acquisition Procedures

Subpart 5113.2 - Actions At or Below the Micro-Purchase Threshold

5113.201 General.

5113.202-90 Purchase guidelines.

5113.270-90 Use of the Government commercial purchase card.

Subpart 5113.3 - Simplified Acquisition Methods

5113.302 Purchase orders.

5113.302-3 Obtaining contractor acceptance and modifying purchase orders.

5113.303 Blanket purchase agreements (BPAs).

5113.303-1-90 General.

5113.303-2-90 Establishment of BPAs.

5113.303-5 Purchases under BPAs.

5113.303-6 Review procedures.

5113.305 Imprest funds and third party drafts.

5113.305-3 Conditions for use.

5113.306-90 Standard form 44, purchase order - invoice - voucher.

Subpart 5113.5 - Simplified Procedures for Certain Commercial Items

5113.500 General.

Subpart 5113.2 - Actions At or Below the Micro-Purchase Threshold

5113.201 General.

(a) *Delegation of micro-purchase authority.*

(i) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has management responsibility of the purchase card program. See Appendix GG for further delegation. The senior contracting official designates the Level 3 agency/organization program coordinator (A/OPC) (see Appendix EE), with final approval and endorsement of the Level 3 A/OPC by the Level 2 A/OPC in writing.

(ii) Installation commanders or activity directors shall appoint the purchase card approving official as the certifying officer for purposes of certifying payments to the paying office (disbursing officer) for purchase card issuer invoices. Certifying officers are financially liable for erroneous payments resulting from the performance of their duties in accordance with Title 31, United States Code, section 3328.

(iii) CCOs shall do the following:

(A) Develop internal operating procedures and incorporate appropriate controls in the command or installation Internal Control Program; however, the Level 3 A/OPC will develop written Government purchase card (GPC) program internal control requirements, reporting mechanisms and surveillance plans for all activities under their purview. Procedures and controls shall place minimum burdens on cardholders while still maintaining the integrity of the program.

(B) Designate the Level 4 A/OPC.

(C) Issue delegations of authority to cardholders. The CCO may further delegate this authority in writing to the A/OPC.

(D) Approve training course content and instructor qualifications.

(E) Ensure prescribed training of cardholders and approving officials.

(F) Ensure appropriate functional participation in the development and administration of the program (e.g., finance and accounting, director of logistics, director of public works, legal counsel, etc.).

(G) Perform oversight reviews on approving officials to ensure cardholder adherence to policy and procedures.

(1) Conduct reviews not less frequently than annually.

(2) Review accounts with significant dollar or transaction volume on a more frequent basis.

(H) Ensure the safeguarding of convenience checks to ensure good stewardship and discourage and detect fraudulent actions with the checking accounts. Ensure the proper auditing of checking accounts on a quarterly basis. A duly appointed, disinterested third party will conduct audits. The management control checklist of the GPC must include the quarterly audit requirement.

(iv) A/OPCs shall –

(A) Serve as the purchase card focal point at each activity;

(B) Establish, and maintain current cardholder and approving official accounts;

(C) Coordinate with resource managers, spending limits and finance and accounting data used in establishing cardholder and approving official accounts;

(D) Not establish accounts or allow the certification of invoices by billing officials until the CCO or A/OPC issues required letters of delegations and appointment letters to cardholders and approving officials/certifying officials; and

(E) Perform oversight and surveillance of all accounts under the purview of that A/OPC.

(v) Approving officials shall –

(A) Ensure that the transactions are legal, proper, necessary and correct in accordance with Government rules and regulations;

(B) Ensure that adequate documentation is available for individual transactions;

(C) Ensure the facts presented in documents for payment are complete and accurate;

(D) Take appropriate action to prevent two or more payments for the same transaction;

(E) Ensure proper implementation of dispute procedures when questions arise on transactions;

- (F) Provide copy of certifying officer appointment letter with signature card to the A/OPC; and
- (G) Certify and forward the official invoice to the paying office within five days of receipt. Consider electronic invoice received on the first day following the end of the billing cycle.
- (vi) Cardholders shall do the following:
- (A) Reconcile purchases actually made within three working days of receipt of their monthly statement of account. Consider electronic statement of account received on the first day following the end of the billing cycle.
- (B) Maintain a log of purchases. The log shall be the cardholder log within the bank's electronic access system.
- (c) *Training requirements.*
- (i) The CCO or A/OPC shall not delegate authority to cardholders and billing/certifying officials until these individuals receive training and orientation covering the use of the card. The Defense Acquisition University purchase card course is mandatory for all cardholders and billing officials. Locally developed training is permissible, but it must specifically cover federal, defense, and departmental regulations, policies and procedures pertaining to micro-purchases and simplified acquisition procedures, as applicable. Orientation shall address GSA, card-issuing bank and installation-unique policies.
- (ii) Cardholders and certifying officials shall receive procurement ethics training. Training shall advise cardholders and certifying officials of financial liability under the program for certifying and accountable officials.
- (iii) The CCO may require additional training depending on the thresholds and circumstances established for the card's use.
- (g) The head of the contracting activity shall make the determination as described in FAR 13.201(g). See Appendix GG for further delegation.
- 5113.202-90 Purchase guidelines.**
- (a) CCOs or A/OPCs should delegate micro-purchase authority to the lowest possible level. A/OPCs shall issue purchase cards only to individuals who have received the orientation/training on the purchase card program as required in these procedures.
- (b) CCOs and A/OPCs shall not issue cards to contractors. If contractors working on cost type contracts request cards, the contractor will forward their request to the contracting officer for the cost-reimbursable contract. If that office preliminarily determines that they are eligible, the contractor will then file a request for eligibility determination with the GSA SmartPay contracting officer.
- (c) CCOs or A/OPCs may authorize cardholders to utilize the GPC as a payment instrument for orders exceeding \$3,000 made against Federal Supply Schedule contracts, calls written against a blanket purchase agreement or orders placed against indefinite delivery/indefinite quantity contracts that contain a provision authorizing payment by purchase card.
- (d) The purchase card may also provide a streamlined way of paying for contracts other than those listed in paragraph (c). Prior to using the card this way, the contracting office shall determine that use of the card for payment is in the best interest of the Government. The determination shall address any increase in price and/or administrative costs to use the card versus the costs of processing the payment without the card.
- (e) The purchase card may also be used to pay for Government-owned materiel or Government-performed services received from other Government sources (i.e., Document Automated Printing Service (DAPS), GSA, Defense Logistics Agency).

5113.270-90 Use of the Government commercial purchase card.

Appendix EE contains the Army's GPC operating procedures. Use of the purchase card must meet the following conditions in addition to conditions imposed by the GSA's SmartPay Master Contract:

- (a) Each transaction should involve a single delivery and payment. Receipt of the item should be within the billing cycle or by the time of receipt of the monthly report to simplify monthly reconciliation.
- (b) Cardholders shall not break down (split) requirements into several purchases merely to avoid any requirement that applies to purchases exceeding the micro-purchase threshold.
- (c) Cardholders shall advise merchants or vendors at the time of the transaction that items purchased with the card are "for Official United States Government use." Most states will exempt purchases made by the Government from state and local taxes.
- (d) Cardholders shall initially attempt to settle disputes with the merchant. If the merchant refuses to work with the cardholder, or if 45 days have passed without resolution since receipt of the statement containing the questionable transaction, the cardholders shall formally dispute the transaction with the card-issuing bank.
- (e) When using the purchase card to pay for services and/or supplies received from other Government sources (i.e., DAPS, GSA) stores or depots, Defense Logistics Agency, procurement thresholds do not apply. Payment with the card is mandatory for services obtained from the DAPS.
- (f) Army organizations have the authority to use the GPC up to micro-purchase thresholds at DoD nonappropriated fund instrumentalities (NAFIs), including Army and Air Force Exchange Service facilities, provided the resale activities are within scope of the particular NAFI's charter. Overseas organizations may make purchases up to \$50,000 from exchanges only (vice NAFIs) and may use the purchase card as a method of payment.
- (g) Use the purchase card as a method of payment for all commercial training \$25,000 and below for the following:
 - (1) Standard Form 182, Authorization, Agreement and Certification of Training, in accordance with United States Code 41 for civilians.
 - (2) Department of the Army Form 2171, Request for Tuition Assistance Army Continuing Education System, provides financial assistance for voluntary off-duty education Programs in support of soldiers' professional and personal self development. The Department of the Army Form 2171 is the obligation document for education programs and services authorized under 10 U.S.C. 2007 and Army Regulation 621-5 Army Continuing Education System. The Tuition Assistance Program authorizes advance payments in accordance with Army Regulation 621-5. Training and education office personnel must approve all course enrollments prior to start of class.
 - (3) Use of the GPC is mandatory as the method of payment for soldiers' tuition when the Centralized Tuition Assistance Management in GoArmyEd processes the request, funding, approval and enrollment verification of the specific course. Single purchase limits will be set commensurate to the level of the consolidated GPC invoice submitted by each university or college.
- (h) The following dollar limits apply:
 - (1) For standalone purchases, the single purchase limit is the micro-purchase threshold except for the following:
 - (i) \$2,000 for purchases covered by the Wage Rate Requirements (Construction) statute.
 - (ii) \$2,500 for purchases covered by the Service Contract Labor Standards statute.

(2) For payment against existing contracts, the limit is as identified in the contract.

(3) For convenience checks and drafts, the threshold is \$3,000 except as noted in paragraphs (h)(1) and (2) in this subsection.

(4) For contingency or humanitarian operations as authorized in a specific appropriations act or an Executive Order, the applicable act or order may adjust the micro-purchase threshold.

Subpart 5113.3 - Simplified Acquisition Methods

5113.302 Purchase orders.

5113.302-3 Obtaining contractor acceptance and modifying purchase orders.

(b) It is not necessary to modify a purchase order to document a shortage in the final shipment, provided the shortage is within the permissible variation in quantity, if any, established in the purchase order.

5113.303 Blanket purchase agreements (BPAs).

5113.303-1-90 General.

(a) It is preferable to have multiple BPAs for similar items and to establish prices using reverse auctions among BPA holders. If quantities are too small and not conducive to using a reverse auction, then when practicable, contracting officers should establish pre-priced BPAs by negotiating firm unit prices for specific periods of time or by incorporating suppliers' price lists or catalogs in BPAs.

(b) Contracting officers should not establish blanket purchase agreements for supplies or services when the use of unpriced purchase orders is appropriate (see FAR 13.302-2).

5113.303-2-90 Establishment of BPAs.

(a) The contracting officer shall do the following:

(1) Ensure that those individuals authorized to place calls under BPAs have received training and orientation in accordance with paragraph (b).

(2) Provide a copy of the BPA to individuals authorized to place BPA calls.

(3) Ensure that individuals have ready access to price lists or catalogs incorporated in BPAs. The use of reverse auctions to determine pricing among BPAs is the preferred method.

(4) Provide suppliers the names of individuals authorized to place calls.

(5) Inform individuals authorized to place calls that they may not further delegate the authority to others.

(b) Training for use of BPAs is the same as that required for the use of purchase cards. Orientation must focus on the BPA process, except that if the same individual will also be a purchase cardholder, BPA orientation must be in addition to the purchase card program orientation. The chief of the contracting office is responsible for approving training course content and instructor qualifications when someone outside the contracting office provides the training.

5113.303-5 Purchases under BPAs.

(b)(1) Individual purchases under BPAs established in accordance with FAR 13.303-2(c)(3) may exceed the simplified acquisition threshold.

(2) Individual purchases of commercial items under BPAs, other than BPAs established in accordance with FAR 13.303-2(c)(3), may exceed the simplified acquisition threshold up to the dollar limitation specified in FAR 13.500.

(c) Sole source individual commercial item purchases exceeding the simplified acquisition threshold shall comply with the documentation requirements of FAR 13.501(a).

5113.303-6 Review procedures.

(b) In addition to the review procedures in FAR 13.303-6, contracting officers who authorize individuals to place calls under BPAs shall –

(i) Ensure that individuals equitably distribute calls among suppliers with BPAs;

(ii) Ensure that individuals do not split requirements to evade monetary limitations;

(iii) Require that individuals refer to the contracting officer for consideration all cases where the individuals do not consider prices to be reasonable; and

(iv) Maintain continuing surveillance over individuals to ensure compliance with acquisition regulations.

5113.305 Imprest funds and third party drafts.

5113.305-3 Conditions for use.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the approval as described in FAR 13.305(a). See Appendix GG for further delegation.

5113.306-90 Standard form 44, purchase order - invoice - voucher.

(a) The contracting officer signature constitutes certification of fund availability under the appropriation cited on the order. The contracting officer is responsible for ensuring that funds are available and for entering the proper accounting classification on the order.

(b) When the bulk funding concept defined at FAR 13.101 is used, the contracting officer must inform the finance and accounting officer at the close of each accounting month of the amount of all purchases made from the bulk funding accounting by use of the Standard Form 44.

(c) If the supplier agrees, the contracting officer may hold completed Standard Forms 44 until the end of a month and prepare Standard Form 1034 as the payment voucher with the Standard Forms 44 attached as sub-vouchers. In such cases, the contracting officer signature on Standard Form 1034 will be sufficient in place of a signature on each Standard Form 44 attached. If the supplier does not agree to use this procedure, or if a time payment discount offered is not possible because of this procedure, the contracting officer must process the individual Standard Form 44 without delay to take the time payment discount.

Subpart 5113.5 - Simplified Procedures for Certain Commercial Items

5113.500 General.

(c)(1) The head of the contracting activity, on a non-delegable basis, has the authority to make the determination as described in FAR 13.500(c)(1).

Part 5114 - Sealed Bidding

Subpart 5114.2 - Solicitation of Bids

5114.201 Preparation of invitations for bids.

5114.201-7 Contract clauses.

Subpart 5114.4 - Opening of Bids and Award of Contract

5114.407 Mistakes in bids.

5114.407-3 Other mistakes disclosed before award.

5114.407-4 Mistakes after award.

5114.409 Information to bidders.

5114.409-2 Award of classified contracts.

Subpart 5114.2 - Solicitation of Bids

5114.201 Preparation of invitations for bids.

5114.201-7 Contract clauses.

(b)(2) The head of contracting activity may waive the requirement at FAR 14.201-7(b)(2). See Appendix GG for further delegation.

(c)(2) The head of contracting activity may waive the requirement at FAR 14.201-7(c)(2). See Appendix GG for further delegation.

Subpart 5114.4 - Opening of Bids and Award of Contract

5114.407 Mistakes in bids.

5114.407-3 Other mistakes disclosed before award.

(c) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has the authority to make the determination described at FAR 14.407-3(c). See Appendix GG for further delegation.

(e) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has the authority to make the determinations under FAR 14.407-3(a), (b), and (d). See Appendix GG for further delegation.

(g)(3) The determination authority (see FAR 14.407-3(e)) will return all documents to the contracting officer with the determination.

(i) When sending a doubtful case to the Comptroller General of the United States for an advance decision, contracting officers will indicate the status of the award in their transmittal document and the senior contracting official will recommend disposition.

5114.407-4 Mistakes after award.

(b) The HCA may make FAR 14.407-4(b) determinations. See Appendix GG for further delegation.

5114.409 Information to bidders.

5114.409-2 Award of classified contracts.

The contracting officer shall advise unsuccessful bidders to dispose of classified information in accordance with Army Regulation 380-5.

Part 5115 - Contracting by Negotiation

(Revised 13 January 2023)

5115.000 Scope of part.

5115.001 Definitions.

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5115.306 Exchanges with offerors after receipt of proposals.

5115.308 Source selection decision.

5115.371 Only one offer.

5115.371-5 Waiver.

Subpart 5115.4 - Contract Pricing

5115.403 Obtaining certified cost or pricing data.

5115.403-1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 35).

5115.403-3 Requiring data other than certified cost or pricing data.

5115.403-3-90 Process and Reporting Requirements Pertaining to Contractor Denials of Contracting Officer Requests for Data Other Than Certified Cost or Pricing Data.

5115.404 Proposal analysis.

5115.404-1 Proposal analysis techniques.

5115.404-4 Profit.

5115.406 Documentation.

5115.406-1 Prenegotiation objectives.

5115.406-3 Documenting the negotiation.

5115.407-3 Forward pricing rate agreements.

5115.407-4 Should-cost review.

Subpart 5115.6 - Unsolicited Proposals

5115.606 Agency procedures.

5115.608 Prohibitions.

5115.000 Scope of part.

(1) The Army Source Selection Supplement (AS3) at Appendix AA contains detailed guidance pertaining to the source selection process. The AS3 is used in conjunction with this part and supplements the mandatory DoD Source Selection Procedures. It contains information on source selection processes and techniques that the Army uses for competitive, negotiated acquisitions using either formal or informal source selection procedures. See DoD Source Selection Procedures at 1.3, page 2 for exceptions.

(2) The AS3 is a comprehensive source selection resource which recites best practices that promote source selection flexibility and consistency within a given framework in Army source selections. Army personnel shall use the AS3 resource when conducting competitive source selections. The extent to which personnel will use the processes and techniques described in this supplement will depend upon the complexity and dollar value of each acquisition and the available resources. When using the AS3, apply prudent business sense to tailor the processes to fit the circumstances.

5115.001 Definitions.

“Formal source selection,” as used in this part, means the source selection process in which someone other than the contracting officer is the source selection authority, normally for high dollar value or complex acquisitions.

Subpart 5115.2 - Solicitation and Receipt of Proposals and Information

5115.201 Exchanges with industry before receipt of proposals.

(c) Early involvement is essential for maximizing industry’s contribution to the planning, requirements definition, and acquisition processes. Communications with industry should start prior to drafting any solicitation. Measures will be taken to protect any intellectual property (IP) discussed during the planning/pre-solicitation phase, to include non-disclosure agreements as applicable (see Appendix D of the Implementation Guidance for Army Directive 2018-26)

(6) When a written acquisition plan is required per DFARS 207.103(d) and a draft request for proposal is not used, contracting officers must include the rationale for not using a draft request for proposal in the plan.

(f) All non-public contractor-owned IP discussed will be considered proprietary information and will not be disclosed publicly. This includes IP the Government is privy to as a result of discussions, documentation, or demonstrations.

5115.204 Contract format.

(e) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may exempt individual contracts from the use of the uniform contract format. See [Appendix GG](#) for further delegation. The Deputy Assistant Secretary of the Army (Procurement), without power to further delegate, may exempt classes of contracts. The exempting authority will consult with affected contract administration and payment offices prior to granting the exemption.

Subpart 5115.3 - Source Selection

5115.300 Scope of subpart.

Contracting officers will conduct source selections for architect-engineering services in accordance with FAR part 36.601.

5115.300-90 Waiver approvals.

The senior procurement executive may approve, in accordance with Paragraph 1.2.4 of the Department of Defense Source Selection Procedures, waivers for solicitations valued below \$1 billion. See [Appendix GG](#) for further delegation.

5115.303 Responsibilities.

(a)(i) Table 15-1 designates the Army source selection authority appointments for FAR-based acquisitions.

TABLE 15-1, Source Selection Authority (SSA) Appointments for FAR-Based Acquisitions

SSA Designations	Appoint ing Authority
Acquisitions for systems and services, acquired through the Defense Acquisition System, for which milestone decision authority (or other decision authority) is at the Army Acquisition Executive (AAE) or Office of the Secretary of Defense level IAW the applicable Adaptive Acquisition Framework DoDI.	AAE, or as delegated
Other service acquisitions with a total planned dollar value of \$500 million or more, or service acquisitions identified by the ASA(ALT) as a special interest. See DoDI 5000.74 and AR 70-13.	DASA(P) or Senior Services Manager

All other acquisitions for which formal source selection procedures are used.

HCA delegable to the SCO

(Note 1)

Notes:

1. The HCA or SCO must coordinate with the responsible Program Executive Officer prior to nominating or, as applicable, appointing an SSA for a source selection in support of an Army acquisition program.
2. Appointment of selection officials for Other Transactions Agreements shall follow the Army's Other Transaction policy.

(ii) Contracting activities shall submit nominations for SSA appointment to the AAE, DASA(P) or Senior Services Manager as indicated in (a)(i) of this section. Each nomination must include the following:

- (A) A memorandum from the HCA or SCO to the DASA(P) requesting the appointment of the nominee as SSA.
 - (B) A biography of the SSA nominee detailing the training, knowledge, and experience that qualifies them for this appointment.
 - (C) A memorandum for the record signed by the supporting legal office, ethics counselor, detailing the ethics briefing conducted with the nominee for this source selection, and verification the nominee's final disclosure report has been reviewed and no potential conflicts of interest were identified.
 - (D) Request for Source Selection Appointment documents for DASA(P) or AAE signature should be sent encrypted email to: usarmy.pentagon.hqda-asa-alt.list.saal-ps-staff@army.mil.
- (b)(2) Army SSAs shall utilize Appendix AA, Army Source Selection Supplement (AS3), when conducting competitive, negotiated source selections. A source selection plan is required for all competitive, negotiated acquisitions where the basis of award includes factors in addition to cost or price. Army SSAs must use the standard rating tables as detailed in the DoD Source Selection Procedures, to include the colors and adjectives.
- (S-90) The appointment of an individual to serve as the SSA shall be commensurate with the complexity and dollar value of the acquisition. For acquisitions with a total estimated value of \$100 million or more, the SSA shall be an individual other than the contracting officer. For all other acquisitions, the contracting officer may serve as the SSA in accordance with FAR 15.303 unless the agency head appoints another individual.

(S-91) The Source Selection Evaluation Board chairperson is responsible for tailoring the reporting and documentary requirements in accordance with the AS3, and overseeing the source selection training for their source selection team.

- (S-92) Contracting officers will assist program executive officers (PEOs), program managers (PMs), or other program or functional proponents to –
- (1) Develop and implement the acquisition strategy;
 - (2) Prepare and obtain approval of the source selection plan before issuing the solicitation; and
 - (3) Recommend an official as the SSA, when the AAE has delegated authority to appoint the SSA.

(S-93) PEOs, PMs, or other program or functional proponents provide the necessary funds for salaries, overtime, temporary duty travel, and other expenses for the source selection. In addition, PEOs, PMs, or other proponents may also provide office space, administrative equipment, clerical support, and other necessary administrative support to personnel involved in the source selection.

5115.304 Evaluation factors and significant subfactors.

(b)(2)(A) Only the absolute minimum number of factors necessary for evaluation of proposals shall be established. When appropriate, the SSA may subdivide source selection factors into subfactors. On rare occasions, the SSA may further subdivide a subfactor into elements, if needed.

(B) As stated in the AS3, evaluation factors and subfactors must be definable in readily understood qualitative terms (i.e., adjectival, colors, or other indicators, but not numbers) and represent the key areas of importance for consideration. Numerical weighting (i.e., assigning points or percentages to evaluation factors and subfactors) is not an authorized method of expressing the relative importance of the factors and subfactors.

(d) When the Government intends to evaluate the cost of future production or performance beyond the instant contract, and to include these costs as part of the basis of selection and award, clearly specify the evaluation procedures for such costs in the solicitation. Additionally, contracting officers must specify in the solicitation the Government's procedures and methodologies for developing any estimates before using any of the associated cost estimates for evaluating future or life cycle costs.

5115.305 Proposal evaluation.

(a) If the request for proposal identifies a threshold and objective performance for any of the requirements, the contracting officer must inform the offerors how the source selection team will evaluate the objective performance requirements and credit the performance above the threshold requirement.

(1) *Cost or price evaluation.* Do not score price or cost or combine it with other non-price or cost related aspects of the proposal evaluation.

(2) *Past performance evaluation.* The Contractor Performance Assessment Rating System is available via the Internet at <https://www.cpars.gov>.

(3) *Technical evaluation.* When divergent evaluations exist, and none of the evaluators have misinterpreted or misunderstood any aspects of the proposals, consider providing the SSA with written majority and minority opinions.

5115.306 Exchanges with offerors after receipt of proposals.

All exchanges with offerors after receipt of proposals must clearly identify the types of exchanges, i.e., clarifications, communications or discussions.

(c) *Competitive Range.* The SSA must approve the competitive range determination.

5115.308 Source selection decision.

The SSA shall prepare a source selection decision document for all source selections conducted using this part. The source selection decision document must reflect the SSA's integrated assessment and decision. The document must be the single summary document supporting selection of the best value proposal consistent with the stated evaluation criteria. It must clearly explain the decision and document the reasoning the SSA used to reach a decision. The document should be releasable to the Government Accountability Office and others authorized to receive proprietary and source selection information.

5115.371 Only one offer.

5115.371-5 Waiver.

(a) The head of the contracting activity is authorized to perform the functions at DFARS 215.371-5. See Appendix GG for further delegation.

Subpart 5115.4 - Contract Pricing

5115.403 Obtaining certified cost or pricing data.

5115.403-1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 35).

(c)(4) Waivers. Follow the procedures at DFARS PGI 215.403-1(c)(4), Waivers, to determine when an exceptional case waiver of the requirement to submit certified cost or pricing data is appropriate.

Army Contracting Officers shall follow the procedures IAW AFARS PGI 5115.403-1-1, for tracking and reporting the required information when submitting exceptional case waivers.

(A)(2) Coordinate proposed exceptional case waivers that exceed \$100 million in writing with the Deputy Assistant Secretary of the Army (Procurement) (DASA(P)) prior to submission to the head of contracting activity (HCA) for approval. Submit the proposed waiver to the addressee listed at 5101.290 Routing documents and mailing addresses.(b)(2)(ii)(A).

(5) The head of contracting activity is the approval authority for waivers Section (E) of Defense Pricing and Contracting Class Deviation 2023-O0003—Temporary Authorizations for Covered Contracts Related to Ukraine. See AFARS 5153.206-93 and AFARS 5153.303-12 for instructions and sample format for reporting covered contracts applicable under this subpart to congressional defense committees.

5115.403-3 Requiring data other than certified cost or pricing data.

(a)(4) The head of contracting activity makes the determination as specified in FAR 15.403-3(a)(4). See Appendix GG for further delegation.

5115.403-3-90 Process and Reporting Requirements Pertaining to Contractor Denials of Contracting Officer Requests for Data Other Than Certified Cost or Pricing Data.

In accordance with Defense Pricing and Contracting (DPC) memorandum, dated 22 March 2019, subject: Process and Reporting Requirements Pertaining to Contractor Denials of Contracting Officer Requests for Data Other Than Certified Cost or Pricing Data, in the event of an exigent situation when the HCA approves award without obtaining requested cost data from exclusive distributors and/or dealers, Army contracting activities shall notify the Office of the DASA(P) at the address listed at 5101.290(b)(2)(ii)(A).

The Office of the DASA(P) will then notify the Office of the Under Secretary of Defense (Acquisition and Sustainment). Each notification will include the following information:

- (a) Contractor name and DUNS number (Exclusive Distributor/Dealer).
- (b) Subcontractor name and DUNS number (e.g., OEM/actual manufacturer).
- (c) Contract number, modification or order number, if applicable.

- (d) Date and amount of the contract action.
- (e) Steps taken to attempt price analysis without requiring cost data.
- (f) Contractor's rationale for refusing to provide the data.
- (g) Actions taken by the contracting activity to obtain the data.
- (h) Data used to determine price reasonableness and resulting determination.
- (i) Actions planned to avoid this situation in the future.

5115.404 Proposal analysis.

5115.404-1 Proposal analysis techniques.

- (a) General.

(i)(A)(iv) The head of the contracting activity shall make the decision as stated in DFARS PGI 215.404-1(a)(i) (A)(iv) and in accordance with AFARS 5115.403-3-90 Process and Reporting Requirements Pertaining to Contractor Denials of Contracting Officer Requests for Data Other Than Certified Cost or Pricing Data. See Appendix GG for further delegation.

5115.404-4 Profit.

(c) Contracting officer responsibilities.

(2)(C)(2) The head of the contracting activity approves use of the alternate approach discussed in DFARS 215.404-4(c)(2)(C)(2). See Appendix GG for further delegation.

5115.406 Documentation.

5115.406-1 Prenegotiation objectives.

(1) The contracting officers will prepare, review, and obtain approval of prenegotiation memoranda in accordance with the activity's business clearance procedures. In accordance with 5115.406-3, the contracting officer may consolidate the prenegotiation memorandum and price negotiation memorandum (POM/PNM) for competitive or non-competitive acquisitions. When intending to use a consolidated POM/PNM, the contracting officer must still comply with FAR 15.406-1 and DFARS PGI 215.406-1 and obtain written approval of the prenegotiation objectives before negotiation of any pricing action.

(i) *Sole source acquisitions.* For sole source actions, the prenegotiation memoranda document compliance with law, regulations, and policy and become the official record demonstrating the exercise of good business judgment. The prenegotiation memoranda describe the contractor's methodology and how it developed its proposal position to the extent it can be determined from the contractor's proposal and fact finding efforts, how the price and technical auditors and reviewers developed their recommendations, and what the negotiator did in developing an independent prenegotiation position considering the pricing, audit, and technical analyses and recommendations. An understanding of the development of each of these positions is important when preparing for negotiations. The Defense Acquisition University's Acquisition Community Connection, available via the Internet at <https://acc.dau.mil/pricing>, contains the DoD Contract Pricing Reference Guides, which discuss in depth the pricing techniques and factors contracting officers should consider when developing negotiation positions.

(ii) *Competitive negotiated acquisitions.* For competitive negotiated acquisitions using formal source selection procedures, the contracting officer should ensure the source selection plan, as well as section M of the solicitation is documented and readily available. This should include the evaluation criteria and the basis for award contained in the solicitation, a summary schedule of offerors' prices, and the technical and cost evaluations. Also, the determination and supporting discussion of offerors determined to be within and outside the competitive range and a summary of the technical and cost evaluation notices the contracting officer intends to discuss with offerors selected to participate in the discussions should be documented and readily available to the contracting officer.

(2) When a significant disagreement as defined in DFARS PGI 215.406-1(b)(i) exists between the contracting officer and the Defense Contract Audit Agency (DCAA) auditor, and the auditor requests a higher-level review of the contracting officer's decision, the contracting officer will advise his/her management and provide the name, title and telephone number of the higher-level review authority to the DCAA auditor. The initial higher-level review authority is the chief of the contracting office or district/center contracting chief in the United States Army Corps of Engineers. If the significant disagreement still exists after discussions with the chief of the contracting office, the matter is elevated to the SCO for resolution. If s/he is unable to resolve the disagreement, the HCA will attempt to resolve the disagreement. The HCA will notify the DASA(P) if DCAA elevates the significant disagreement to the Director, DPC. The contracting officer shall document the disposition of the higher-level review(s) in a memorandum for the contract file.

5115.406-3 Documenting the negotiation.

(a) Contracting officers must document within the price negotiation memorandum the results of the negotiation in sufficient detail to clearly establish all significant aspects of the contract action. When utilizing a consolidated POM/PNM, the contracting officer must ensure the POM/PNM contains all required content for both documents, in accordance with FAR 15.406 and DFARS PGI 205.406, and is stated in sufficient detail to reconstruct actions and decisions and to support the reasonableness of the final price.

(b) If the final negotiated price is within a range specifically approved as the prenegotiation objective, and if negotiations did not present information that calls into question the reasonableness of the previously-approved price range, the written approval obtained under 5115.406-1(1) may also serve as the approval for the consolidated POM/PNM. The approved POM/PNM may be used in determining the negotiated price to be fair and reasonable. Notwithstanding this subsection, the contracting officer still must obtain all other required pre-award approvals.

For guidance on make-or-buy analysis for Army programs of record see [AFARS PGI 5115.407-2](#).

5115.407-3 Forward pricing rate agreements.

(b)(i) The head of the contracting activity may waive rates as described in DFARS 215.407-3(b)(i). See [Appendix GG](#) for further delegation.

5115.407-4 Should-cost review.

(b) *Program should-cost review.*

(4) In coordination with the program manager or other customer, the SCO must establish the requirements and format for the program should-cost team report.

(c) *Overhead should-cost review.*

(2)(B) The head of the contracting activity may request an overhead should-cost review as described in DFARS PGI 215.407-4(c)(2)(B). See [Appendix GG](#) for further delegation.

Subpart 5115.6 - Unsolicited Proposals

5115.606 Agency procedures.

See Department of the Army Pamphlet 70-3, paragraphs 10-19 and 20, for Army procedures pertaining to unsolicited proposals. Department of the Army Pamphlet 70-3 is located on the Army Publishing Directorate's website at <http://www.apd.army.mil/>.

5115.608 Prohibitions.

Government personnel shall not disclose proprietary data included in an unsolicited proposal for any purpose or use except for evaluation purposes (see FAR 15.608). In the event a contract award is made as a result of an unsolicited proposal, the Government shall have the right to duplicate, use, or disclose proprietary data to the extent provided in the contract.

Part 5116 - Types of Contracts

(Revised 14 July 2022)

Subpart 5116.1 - Selecting Contract Types

5116.102-90 Policies.

5116.103 Negotiating contract type.

Subpart 5116.2 - Fixed-Price Contracts

5116.203 Fixed-price contracts with economic price adjustment.

5116.203-4 Contract clauses.

Subpart 5116.3 - Cost-Reimbursement Contracts

5116.301 General.

5116.301-3 Limitations.

5116.306 Cost-plus-fixed-fee contracts.

Subpart 5116.4 - Incentive Contracts

5116.401 General.

5116.405 Cost-reimbursement incentive contracts.

5116.405-1 Cost-plus-incentive-fee contracts.

5116.405-2 Cost-plus-award-fee contracts.

Subpart 5116.5 - Indefinite-Delivery Contracts

5116.504 - Indefinite Quantity Contracts.

5116.505 Ordering.

5116.505-91 Multiple award task order contracts.

Subpart 5116.6 - Time-and-Materials, Labor-Hour, and Letter Contracts

5116.603 Letter contracts.

5116.603-2 Application.

5116.603-3 Limitations.

Subpart 5116.1 - Selecting Contract Types

5116.102-90 Policies.

Contracting officers must document the rationale for selection of the contract type, to include consideration of the associated risks, in the contract file. The supporting documentation may be located in the contract type justification, a separate determination and findings, memorandum for record, or other appropriate document.

Follow the procedures at [AFARS PGI 5116.102-90-1](#) for selecting contract type.

See [AFARS PGI 5116.102-90-2](#) for guidance on using the Virtual Pricing website.

5116.103 Negotiating contract type.

(c) Contracting officers should actively communicate and coordinate with their requiring activities to identify opportunities to transition away from cost-reimbursement contracts, when possible and in the best interest of the Government.

(d)(1) In addition to the items at FAR 16.103(d)(1), discuss how the profit arrangement motivates the contractor to control costs and meet performance requirements.

Subpart 5116.2 - Fixed-Price Contracts

5116.203 Fixed-price contracts with economic price adjustment.

5116.203-4 Contract clauses.

(d)(2) See 5101.304-90 and APPendix FF for clause approval procedures.

Subpart 5116.3 - Cost-Reimbursement Contracts

5116.301 General.

5116.301-3 Limitations.

(2) The head of the contracting activity shall approve actions as described in DFARS 216.301-3(2). See Appendix GG for further delegation.

5116.306 Cost-plus-fixed-fee contracts.

(c)(ii) Contracting officers requesting approval to award a contract for non-construction, environmental work (see DFARS 236.271) must submit their requests to the address at 5101.290(b)(2)(i).

Subpart 5116.4 - Incentive Contracts

5116.401 General.

(d)(i) The head of the contracting activity or designee shall sign the determination and finding. See Appendix GG for further delegation.

(e)(3)(i) The head of contracting activity shall approve actions as described in FAR 16.401(e)(3)(i). See Appendix GG for further delegation.

(g) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall provide mechanisms for sharing proven incentive strategies as described in FAR 16.401(g). See Appendix GG for further delegation.

5116.405 Cost-reimbursement incentive contracts.

5116.405-1 Cost-plus-incentive-fee contracts.

(b)(3) For cost-plus-incentive-fee type contracts, contracting officers shall consider use of a 70/30 share line and a zero minimum fee as the point of departure for establishing the incentive arrangement during negotiations.

5116.405-2 Cost-plus-award-fee contracts.

(2)(A) In accordance with DFARS PGI 216.405-2(2), a contractor begins each evaluation period with zero percent of the available award fee due and works to earn the evaluated fee for each evaluation period. Contractors do not begin with 100% of the available award-fee and have deductions withdrawn to arrive at the evaluated fee for each evaluation period. In addition, contractors should not receive award fee above the base fee for simply meeting contract requirements. Earning an award fee is in accordance with the award fee plan, and should be directly commensurate with the level of performance under the contract. A contractor should not receive the maximum amount of award fee under a contract without a demonstrated superior level of performance, as provided for in the award-fee plan. Maximum contract fee is the sum of all fees (i.e., not just the award fee) and incentives payable under the contract, including performance and subcontracting incentives.

(B) When an Award-Fee Evaluation Board (AFEB) is used, the senior contracting official (SCO) or authorized contracting officer will appoint an award-fee determining official (AFDO) in writing, unless the SCO is the AFDO. The AFDO will then appoint the AFEB and its chairperson in writing. Such appointment letters will clearly outline the responsibilities and limitations of the AFEB and its chairperson. AFEB membership should consist of those contracting and acquisition management personnel, including contract administration personnel, most knowledgeable of the requirements and contractor performance in the areas evaluated. For contracts in support of major systems, the AFDO will coordinate the selection of technical AFEB members with the program executive officer or other management official responsible for technical requirements prior to their appointment. The AFEB chairperson is responsible for ensuring sufficient training of all AFEB evaluators. AFDOs and AFEBs will document the rationale for their decision(s) in sufficient detail to demonstrate the integrity of the award-fee determination process in the contract file. The AFDO may alter the AFEB's recommended award fee.

Subpart 5116.5 - Indefinite-Delivery Contracts

5116.504 - Indefinite Quantity Contracts.

(a)(1) The contracting officer shall ensure an order that fulfills the minimum quantity of supplies or services is issued at the time of contract award.

(c)(1)(ii)(D)(1) The senior procurement executive shall approve actions as stated in DFARS 216.504(c)(1)(ii)(D)(1). See Appendix GG for further delegation.

5116.505 Ordering.

(b)(2)(ii)(C)(3) The head of the contracting activity shall approve actions as stated in FAR 16.505(b)(2)(ii)(C)(3). See Appendix GG for further delegation.

(b)(8) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall designate a task and delivery order ombudsman for the contracting activity. The ombudsman shall be a senior official, who is independent of the contracting officer and may be the command advocate for competition. The ombudsman shall

be responsible for reviewing complaints from the contractors under multiple award task or delivery order contracts and ensuring they receive a fair opportunity for consideration, consistent with the procedures in the contract. See Appendix GG for further delegation.

5116.505-91 Multiple award task order contracts.

Contracting officers will document all critical task order decisions, such as exceptions to the fair opportunity process described at FAR 16.505(b)(2) or the selection of a higher priced proposal because of its greater technical merit, in sufficient detail to justify the decision.

Subpart 5116.6 - Time-and-Materials, Labor-Hour, and Letter Contracts

5116.603 Letter contracts.

5116.603-2 Application.

(c)(3) The head of the contracting activity shall perform the duties as described in FAR 16.603-2(c)(3). See Appendix GG for further delegation.

5116.603-3 Limitations.

The head of the contracting activity shall make the determination stated in FAR 16.603-3. See Appendix GG for further delegation.

Part 5117 - Special Contracting Methods

(Revised 13 January 2023)

Subpart 5117.1 - Multi-Year Contracting

5117.104 General.

5117.105 Policy.

5117.105-1 Uses.

5117.106 Procedures.

5117.106-3 Special procedures applicable to DoD, NASA, and the Coast Guard.

5117.108 Congressional notification.

5117.171 Multi-year contracts for services.

5117.172 Multi-year contracts for supplies.

5117.174 Multi-year contracts for electricity from renewable energy sources.

Subpart 5117.2 - Options

5117.204 Contracts.

5117.206 Evaluation.

5117.207 Exercise of options.

5117.290 Addition of option clause or quantities to contracts after award.

Subpart 5117.5 - Interagency Acquisitions

5117.502 Procedures.

5117.502-1 General.

5117.502-2 The Economy Act.

Subpart 5117.7 - Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense

5117.703 Policy.

5117.770 Procedures.

Subpart 5117.74 - Undefinitized Contract Actions

5117.7404 Limitations.

5117.7404-1 Authorization.

5117.7404-4 Limitations on obligations.

5117.7404-5 Exceptions.

5117.7404-6 Allowable profit.

Subpart 5117.75 - Acquisition of Replenishment Parts

5117.7504 Acquisition of parts when data is not available.

Subpart 5117.90 - Job Order Contracts

5117.9000 Scope of subpart.

5117.9001 Definitions.

5117.9002 Applicability.

5117.9003 Use of job order contracts.

5117.9003-1 Planning and coordination.

5117.9004 Procedures.

5117.9004-1 Presolicitation.

5117.9004-2 Solicitation.

5117.9004-3 Ordering.

5117.9005 JOC ordering officers.

5117.9006 Contracting officer responsibilities.

Subpart 5117.1 - Multi-Year Contracting

5117.104 General.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may authorize modifications of the requirements as set forth in FAR 17.1. See Appendix GG for further delegation.

5117.105 Policy.

5117.105-1 Uses.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may enter into a multi-year contract for supplies as described in FAR 17.105-1(b). See Appendix GG for further delegation.

5117.106 Procedures.

5117.106-3 Special procedures applicable to DoD, NASA, and the Coast Guard.

(e) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) makes the approval as described in FAR 17.106-3(e). See Appendix GG for further delegation.

(f) The head of a contracting activity may authorize the use of a solicitation requesting only multi-year prices as described in FAR 17.106-3(f). See Appendix GG for further delegation.

(g) The head of the contracting activity may approve the use of variable unit prices as described in FAR 17.106-3(f). See Appendix GG for further delegation.

5117.108 Congressional notification.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) gives the written notification as set forth in FAR 17.108(b). See Appendix GG for further delegation.

5117.171 Multi-year contracts for services.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may perform the duties as described in DFARS 217.171(a). See Appendix GG for further delegation.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) must be guided by the principles as described in DFARS 217.171(b). See Appendix GG for further delegation.

(c) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) must make a written determination as stated in DFARS 217.171(c). See Appendix GG for further delegation.

5117.172 Multi-year contracts for supplies.

(f)(2) The head of the contracting activity makes the determination as stated in DFARS 217.172(f)(2). See Appendix GG for further delegation.

5117.174 Multi-year contracts for electricity from renewable energy sources.

(a) The head of the contracting activity shall perform the functions as described in DFARS 217.174(a). See Appendix GG for further delegation.

(b) *Limitations.* The head of the contracting activity may exercise the authority as stated in DFARS 217.174(b). See Appendix GG for further delegation.

Subpart 5117.2 - Options

5117.204 Contracts.

(e) The head of the contracting activity approves the use of contract terms in excess of the limitations specified in FAR 17.204(e). See Appendix GG for delegation.

(i)(C) DFARS 217.204(e)(i)(C) requires an “exceptional circumstances” determination to authorize task and delivery order contracts (including contracts for information technology) with ordering periods that would exceed 10 years. The Assistant Secretary of the Army (Acquisition, Logistics and Technology) approves the “exceptional circumstances” determination. See Appendix GG for further delegation.

(iii) The senior procurement executive shall approve use of options that extend performance under the order that extend more than 1 year beyond the 10-year limit or extended limit as stated in DFARS 217.204(e)(iii). See Appendix GG for further delegation.

5117.206 Evaluation.

In awarding the basic contract, if a contracting officer determines that the Government is reasonably likely to exercise the option at FAR 52.217-8, Option to Extend Services, the contracting officer shall evaluate the price of the option as part of the source selection. The solicitation shall include the basis for evaluating the option price (see FAR 17.203(b)). If the contracting officer does not evaluate the option at FAR 52.217-8 at the time of award, but later decides to exercise the option, the contracting officer shall prepare a justification and approval (J&A) in accordance with FAR 6.303 prior to exercising the option (see FAR 17.207(f)).

5117.207 Exercise of options.

- (c) In addition to the requirements at FAR 17.207(c) and DFARS 217.207(c), the contracting officer may exercise options only after determining, when applicable, that –
- (i) Government performance monitors have used a written quality assurance surveillance plan to ensure that services and supplies conform to contractual requirements (see FAR 37.603, 37.604, 46.102 and 46.401);
 - (ii) The contracting officer has appointed a properly trained contracting officer's representative for the contract or task order, or has documented the file to support retention of surveillance duties by the contracting officer (see DFARS PGI 201.602-2);
 - (iii) The contracting officer has verified registration in the Contractor Performance Assessment Reporting System of the contract or task order for the current period (see FAR 42.1502, DFARS 242.1502, and 5142.1502), and that the assessing official will complete the final report within 120 days following the end of the current performance period; and
 - (iv) There are monthly surveillance reports in the Virtual Contracting Enterprise PCF, along with necessary corrective actions.

5117.290 Addition of option clause or quantities to contracts after award.

Contracting officers shall obtain prior approval in accordance with FAR 6.304 before modifying a contract to incorporate option clauses or additional option quantities after award. Justifications shall include the reason for the proposed modification and the potential impact of disapproval.

Subpart 5117.5 - Interagency Acquisitions

5117.502 Procedures.

5117.502-1 General.

(a) Written agreement on responsibility for management and administration.

(1) Use the DD Form 448, Military Interdepartmental Purchase Request (MIPR) as Part B of the Office of Federal Procurement Policy (OFPP) model interagency agreement. If a non-DoD agency is unable to accept a MIPR for Part B, use the Part B provided in the OFPP model interagency agreement.

(b) Business-case analysis requirements for multi-agency contracts and governmentwide acquisition contracts. For guidance on business-case analysis, see FAR 17.502-1(b). Submit the business case to the Office of the Deputy Assistant Secretary of the Army (Procurement) at the email address listed in 5101.290(b)(2)(ii)(A).

(i) Cover letter: The SCO shall sign the cover letter, recommending the business case for approval. The letter must indicate whether there is any Congressional interest in the procurement.

(ii) *Business case review document.* The business case review document shall include the signatures of the preparer, contracting officer, technical representative, requirements representative, program manager, program executive officer, legal counsel, and SCO.

(iii) *Business case.* Use the format provided at FAR 17.502-1(b). Include the command control number on the upper right hand corner of every page of the business case, including the review document and approval page, to enable the reassembling of the business case analysis if the documents become separated.

(iv) *Approval page.* Submit the approval language as the last page of the business case on a plain page, not letterhead.

5117.502-2 The Economy Act.

(a) Assisted acquisitions that are subject to the Economy Act shall comply with DoD Financial Management Regulation DoD 7000.14-R, Vol 11A Chapter 3 and

(c) The requiring activity is responsible for preparing the Economy Act determination and findings (D&F). Approval of the D&F is in accordance with FAR 17.502-2(c)(2). See Appendix GG for further delegation. The Economy Act D&F is required for both direct and assisted acquisitions, in addition to the approval to use a non-DoD contract, when applicable (see 5117.770).

Subpart 5117.7 - Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense

5117.703 Policy.

(e) The Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) shall make the determination as described in FAR 17.703(e). See Appendix GG for further delegation.

5117.770 Procedures.

(1) The requiring activity is responsible for making the approval required by DFARS 217.770. A Government official who is of a grade not lower than O-6 or GS-15 and is assigned to the requiring activity makes the approval. The approval document shall address the elements listed in DFARS 217.770(a)-(c). The requiring activity obtains prior concurrence of the determination in accordance with paragraph (2) of this section.

(2) The following officials from the requiring activity's responsible contracting office shall concur with the use of a non-DoD contract prior to public announcement of the requirement:

(i) For acquisitions valued at or above the simplified acquisition threshold, but less than \$50 million, the head of the contracting activity (HCA). See Appendix GG for further delegation.

(ii) For acquisitions valued at or above \$50 million but less than \$250 million, the HCA. See Appendix GG for further delegation.

(iii) For acquisitions valued at or above \$250 million, the HCA. See Appendix GG for further delegation.

(3) If the proposed acquisition meets the requirements for a written acquisition plan, the contracting officer should attach the approval to use a non-DoD contract to the acquisition plan for concurrent approval when routing the acquisition plan for coordination and approval.

(4) If the approving official approves the use of a non-DoD contract at the blanket purchase agreement level, the individual calls against the agreement do not require separate determinations.

(5) Contracting officers shall follow the reporting requirements in DFARS 204.6 to support the Army's data collection and reporting requirements at DFARS 217.770(d).

Subpart 5117.74 - Undefined Contract Actions

5117.7404 Limitations.

(a) Foreign military sales contracts.

(1)(ii) The head of the contracting activity shall approve actions as stated in DFARS 217.7404(a)(1)(ii). See Appendix GG for further delegation.

5117.7404-1 Authorization.

The head of the contracting activity shall approve actions as stated in DFARS 217.7404-1. See Appendix GG for further delegation.

5117.7404-4 Limitations on obligations.

(c) If a waiver under Section D of DPC 2023-O0003 - Class Deviation—Temporary Authorizations for Covered Contracts Related to Ukraine is utilized, the Contracting Officer shall obligate funds only in an amount consistent with the contractor's requirements for the definitization period, up to 100% of the total amount of the contract.

5117.7404-5 Exceptions.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may waive the limitations as described in DFARS 217.7404-5. See Appendix GG for further delegation.

In accordance with subsection (D) of DPC 2023-O0003 - Class Deviation—Temporary Authorizations for Covered Contracts Related to Ukraine, the Assistant Secretary of the Army (Acquisition, Logistics and Technology) may waive the limitations DFARS 217.7404(a) Foreign military sales contracts; 217.7404-3 Definitization schedule; and 217.7404-4, Limitations on obligations. See Appendix GG for further delegation. See AFARS 5153.206-93 and AFARS 5153.303-12 for instructions and sample format for reporting covered contracts applicable under this subpart to congressional defense committees.

5117.7404-6 Allowable profit.

The head of the contracting activity shall perform the duties as stated in DFARS 217.7404-6. See Appendix GG for further delegation.

Subpart 5117.75 - Acquisition of Replenishment Parts

5117.7504 Acquisition of parts when data is not available.

(4)(ii) The head of the contracting activity authorizes the action described in DFARS PGI 217.7504(4)(ii). See Appendix GG for further delegation.

Subpart 5117.90 - Job Order Contracts

5117.9000 Scope of subpart.

A Job Order Contract (JOC) is an indefinite-delivery, indefinite-quantity contract and an alternative contracting method to fulfill repair, maintenance, and minor construction requirements on a variety of projects ranging from sustainment, restoration, and modernization, simplified acquisition of base repair requirements, civil works operations and maintenance, small renovations, real property repair and maintenance with an estimated value more than the micro-purchase threshold for acquisitions of construction. A JOC includes a comprehensive collection of detailed repair, maintenance, and minor construction task descriptions or specifications, units of measure, and pre-established unit prices for discrete tasks. Each JOC order is comprised of several pre-described and pre-priced tasks. In general, proposed projects valued at or below the micro-purchase threshold for acquisitions of construction are considered inappropriate for ordering under a JOC because of the administrative costs associated with processing JOC orders and the simplified purchase methods available for these actions.

5117.9001 Definitions.

As used in this subpart –

“JOC Price Book” (JOCPB) means the compilation of repair, maintenance, and minor construction tasks, associated units of measure and unit prices that are used in job order solicitations and a JOC. JOC unit prices include direct material, labor and equipment costs, but not indirect costs or profits which are addressed in the coefficient(s). The use of labor-only line items is appropriate for use when proper internal controls are in place and incidental to construction. Labor line items are not to provide services, typically performed under a separate service or requirements contract. The JOCPB reflects the current local costs in detail for construction tasks expected to be performed in the geographical area of the base contract with the primary use of developing a detailed line item price. For CONUS, the JOCPB shall be developed using commercially available pricing tools to ensure consistent and comprehensive pricing of tasks unless the contracting officer determines the use of a commercially available pricing tool is not in the best interest of the government.

“Coefficient” means a numerical factor that represents costs (generally indirect costs) not included in JOCPB unit prices (e.g., general and administrative and other overhead costs, insurance costs, bonding and alternative payment protection costs, protective clothing,

5117.9002 Applicability.

(a) A JOC may be used to execute repair, maintenance, and minor construction requirements for the requiring activity and are subject to the requirements in other parts of the FAR, DFARS, and this regulation.

(b) A JOC must only be used for the projects covered at 5117.9000. The requiring activity’s reoccurring facilities engineering support services, such as utility plant operation, custodial, grounds maintenance, refuse collection and disposal, and similar work shall not be acquired using a JOC. Architect-engineer services as defined in FAR 36.102 and Design-Build requirements as defined in FAR 36.3 shall not be acquired under a JOC. However, informal (shop) and as-built drawings, incidental to the job, reflecting the plan of action and the completed project, are anticipated under a JOC.

5117.9003 Use of job order contracts.

5117.9003-1 Planning and coordination.

(a) A JOC should be considered when the workload is anticipated to be of such a yearly volume that benefits derived from a JOC utilization are greater than the costs of the Government resources and contractor overhead associated with establishing and using a JOC. These costs include the total Government resources required to award, use, monitor, and administer the JOC and JOC orders, and management oversight and functional support of the entire JOC process. The calculated workload for a potential JOC should exclude –

- (1) Work normally reserved for 8(a) or set aside for small businesses; and
- (2) Work that can be effectively and economically accomplished by in-house resources.

5117.9004 Procedures.

5117.9004-1 Presolicitation.

(a) To solicit for a JOC, the Government must develop task specifications and a JOCPB tailored to the needs of the requiring activity to be supported. Any special range pricing (to get quantity discounts) of units associated with the requirements of known JOC projects to be ordered must be specified.

5117.9004-2 Solicitation.

(a) The contracting officer must ensure that the specifications and the JOCPB have undergone technical review and validation and are tailored to meet the projected requirements of the requiring activity and local economic conditions.

(b) The JOC solicitation must include realistic and reasonable annual minimum and maximum dollar amounts for projected requirements to encourage competition and lower coefficients. Generally, the higher the minimum is, the lower the coefficient proposed will be.

(c) The solicitation must explain the make-up of the Government unit prices and specify what types of costs, as a minimum, must be covered by the coefficient. Offerors may have multiple coefficients and must specify what additional types of costs are included in their coefficients in their proposal. These additional costs may be incorporated in the contract, if appropriate, and may preclude later disagreements over non-pre-priced tasks. Multiple coefficients may be used for normal working hours and other than normal working hours.

(d) The solicitation must explain that there will be no separate repayment(s) for bond premiums because the bond premium is repaid through the coefficient, and the coefficient is paid as an indirect cost under progress payment or other standard payment provisions.

(e) JOC solicitation and contracts must use either annual coefficient adjustments or an annually updated JOCPB, but not both. Clause 5152.237-9000, Adjustments to Contractor's Coefficient for Option Years, can be used in JOC contracts in accordance with this paragraph when annual coefficient adjustments are used.

5117.9004-3 Ordering.

(a) Except as otherwise specified in this subpart, orders must be executed in accordance with FAR 16.505(a).

(b) *Statement of work.*

(1) The SOW for the proposed order must contain sufficient detail to enable the Government to develop an independent government estimate (IGE), in accordance with FAR 36.203 and to ensure that the contractor can properly prepare a responsive and cost-effective proposal with a minimum of non-pre-priced tasks.

(2) The SOW must be updated before issuing the order to reflect the negotiated agreement's details and to include significant quantities, methods of construction, quality levels, and the number of days to complete the work.

(c) *Limitations.*

(1) Except as provided in paragraph (2), the value of non-pre-priced work under an order must not exceed 10 percent of the value of the pre-priced work.

- (i) The value of the pre-priced work must be computed by multiplying the coefficient(s) times the appropriate unit price(s) in the JOCPB.
 - (ii) When the contract allows, indirect costs and profit for non-pre-priced work may be attributed by the application of a solicited and pre-agreed rate to be applied to the unburdened labor, equipment, and material costs of the non-pre-priced work.
 - (iii) Description of non-pre-priced work must not be manipulated or forced to fit under a pre-priced line item, either to avoid including non-pre-priced line items in the order or to reduce the value of non-pre-priced line items in an attempt to circumvent the limitation in (c)(2).
- (2) Normally, if the value of the non-pre-priced work exceeds 10 percent, then the non-pre-priced work should be reduced, eliminated, performed in-house, or the job must be acquired using other contracting methods. However, contracting officers may exceed the 10 percent if justified and approved in accordance with FAR 6.302. The contracting officer shall negotiate the modification and make a determination that the price is fair and reasonable.
- (d) *Distribution.* A copy of all JOC orders must be sent to the contracting office appointing ordering officers, the Finance and Accounting Office, the office or individual assigned responsibility for inspection and technical administration of the contract, and any appointed COR. The contracting officer must maintain the permanent record of each transaction, and administration shall be done in accordance with the contracting activity procedures.
- ## **5117.9005 JOC ordering officers.**
- (a) *Appointment.* A “JOC ordering officer” appointment is authorized, but is only required when the contracting officer will not be executing all task orders. Appointments of ordering officers under each JOC must be minimized. The JOC ordering officer shall be obtained in accordance with AFARS 5101.603-1, The contracting officer is the appointing authority for each individual job order that is within the JOC ordering officer authorities. The requiring activity may recommend JOC ordering officers. The JOC ordering officer shall be appointed by letter similar to that in 5153.303-2 Sample ordering officer appointment. (see 5101.602-2-92 Ordering officer appointments), tailored for JOC.
- (b) *Training.* All JOC ordering officers must receive specific training and orientation from the responsible contracting office at least annually. This training must cover policy and procedures for the operation of a JOC and shall specifically address the ordering officer’s authority, limitations, and responsibilities, including ethics, conflict of interest, and potential pecuniary liabilities. JOC ordering officers shall, at a minimum, meet contracting activity COR training requirements.
- (c) *Authorization and limitations.*
- (1) JOC ordering officers are authorized to sign task orders on behalf of the Government between the micro-purchase threshold for acquisitions of construction and the Simplified Acquisition Threshold (SAT) as long as the value of the non-pre-priced item(s) does not exceed five percent of the total order to include contract modifications.
 - (2) The HCA may authorize JOC ordering officers to sign task orders of greater value than SAT. However, the delegated authority may not exceed the thresholds specified in 10 U.S.C. 2805(c) and may only be authorized when the HCA determines it is necessary to realize the benefits of a JOC, and provided that –
 - (i) adequate management controls are in place (e.g., contracting officer oversight);
 - (ii) adequate training is provided;
 - (iii) the contracting officer approves; and

(iv) the value of any non-pre-priced item(s) does not exceed five percent.

(3) JOC ordering officers may execute modifications to existing task orders provided that -

- (i) the contracting officer delegates explicitly this authority in the JOC ordering officer appointment letter;
- (ii) the absolute value of the order as modified does not exceed the ordering officer's authority; and
- (iii) pricing is accomplished by using the JOCPB.

(iv) Modifications shall be limited to changing quantities of JOCPB items in the existing order unless the contracting officer signs an in-scope determination.

(4) JOC Ordering Officers must notify the contracting officer immediately of any modifications. The contracting officer shall execute any modification outside of paragraph 3 above.

(d) *Responsibilities.* JOC ordering officers--

(1) Are responsible for ensuring that all proposed JOC project descriptions and task orders express the Government's actual requirements, validated in accordance with the requiring activity's procedures;

(2) Must obtain concurrence from the Contracting Officer that sufficient capacity exists on the JOC before issuing of a task order;

(3) Must obtain a valid Purchase Request and Commitment (PR&C) from resource management to ensure that adequate and proper funds are available for the project before issuing an order and/or modification;

(4) Must notify the contracting officer of any additional bonding requirements associated with new orders or changes in the value of existing orders;

(5) As the principal point of contact for technical and engineering issues, must respond to requests for technical clarification from the JOC contractor, documenting both the request and the response, and conduct the joint pre-proposal site survey, assuring that the contractor is provided access to all required facilities, plans, and other documents required for full knowledge of the scope and conditions of the required job;

(6) For orders estimated to exceed the JOC ordering officer's signature authority, the JOC ordering officer shall conduct an initial evaluation of contractor proposals; may be authorized to solicit such proposals and clarify and negotiate units and quantities of pre-priced tasks; and shall assist the contracting officer, as requested, in negotiations, and resolution of variances between the IGE and the contractor's proposal;

(7) Must maintain an electroniccontract file and complete contract documentation for each order and modification executed, including a record of all related correspondence and actions taken before award of the order and in the order administration phase; and

(8) Is responsible, along with a COR, if appointed, for assisting the contracting officer in technical monitoring of the contractor's performance of orders issued under a JOC to include --

(i) Monitoring compliance with the SOW and schedule;

(ii) Ensuring contractor or supplier compliance with the clause at FAR 52.225-5, Trade Agreements (Oct 2019);

(iii) Ensuring compliance with the Wage Rate Requirements (Construction) statute (40 U.S.C. Chapter 31, Subchapter IV, formerly known as the Davis Bacon Act, subpart 22.4);

(iv) Assessment and validation of percentage of completion for progress payment purposes;

- (v) Recommending to the contracting officer changes to existing orders, beyond the ordering officer's authority;
- (vi) Documenting and quickly reporting to the contracting officer systemic or recurring problems in contractor performance;
- (vii) Prioritization of orders when required (in coordination with the requiring activities), provided no increase in cost is involved;
- (viii) Submitting performance evaluation reports (see 5136.201), as applicable; and
- (ix) Providing to the requiring activity documents required for continuing customer responsibilities (e.g., as-built drawings and warranties).

5117.9006 Contracting officer responsibilities.

- (a) At least once a year, the contracting officer must ensure that ordering officer files and procedures are reviewed and that a representative sampling of orders is selected for tracking from initiation of the requirement to final payment and close-out of the order.

Part 5118 - Emergency Acquisitions

(Revised 13 January 2023)

Subpart 5118.1 - Available Acquisition Flexibilities

5118.170 Additional acquisition flexibilities.

Subpart 5118.2 - Emergency Acquisition Flexibilities

5118.201 Contingency operation.

5118.202 Defense or Recovery from Certain Events.

5118.271 Head of contracting activity determinations.

Subpart 5118.1 - Available Acquisition Flexibilities

5118.170 Additional acquisition flexibilities.

(h) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, shall make the notification as described in DFARS 218.170(h).

(i) See AFARS 5106.302-7 Public Interest.(b)(2) for Defense Contracting and Pricing Class Deviation 2023-00003 instructions on use of other than competitive procedures under FAR 6.302-7 for “covered contracts”.

Subpart 5118.2 - Emergency Acquisition Flexibilities

5118.201 Contingency operation.

(7) See APPENDIX - GG Table Of Contents.

5118.202 Defense or Recovery from Certain Events.

(c) In accordance with section (C)(4) of Defense Pricing and Contracting Class Deviation 2023-00003—Temporary Authorizations for Covered Contracts Related to Ukraine contracting officers carrying out a procurement of a product or service for a covered contract may treat the product or service as a commercial product or a commercial service for the purpose of carrying out the procurement. See 5112.102 Applicability.(a)(i)(B)(3). See AFARS 5153.206-93 and AFARS 5153.303-12 for instructions and sample format for reporting covered contracts applicable under this subpart to congressional defense committees.

5118.271 Head of contracting activity determinations.

(e) See APPENDIX - GG Table Of Contents.

See AFARS PGI 5118.2-1 for additional information on acquisition flexibilities.

See AFARS PGI 5118.204-1 for additional information on Humanitarian or peacekeeping operation.

Part 5119 - Small Business Programs

Subpart 5119.2 - Policies

5119.201 General policy.

5119.202-1 Encouraging small business participation in acquisitions.

5119.203 Relationship among small business programs.

Subpart 5119.5 - Set-Asides for Small Business

5119.502 Setting aside acquisitions.

5119.502-3 Partial set-asides.

5119.502-8 Rejecting Small Business Administration recommendations.

5119.502-9 Withdrawing or modifying small business set-asides.

Subpart 5119.6 - Certificates of Competency and Determinations of Responsibility

5119.602 Procedures.

5119.602-3 Resolving differences between the agency and the Small Business Administration.

Subpart 5119.7 - The Small Business Subcontracting Program

5119.705 Responsibilities of the contracting officer under the subcontracting assistance program.

5119.705-2 Determining the need for a subcontracting plan.

5119.705-4 Reviewing the subcontracting plan.

5119.705-6 Postaward responsibilities of the contracting officer.

5119.705-6-90 Transferring postaward responsibilities of the contracting officer to another contracting officer.

Subpart 5119.8 - Contracting with the Small Business Administration (The 8(a) Program)

5119.803 Selecting acquisitions for the 8(a) program.

5119.804 Evaluation, offering, and acceptance.

5119.804-2 Agency offering.

5119.808 Contract negotiation.

5119.808-1 Sole source.

5119.810 SBA appeals.

5119.812 Contract administration.

5119.815 Release for non-8(a) procurement.

5119.816 Exiting the 8(a) program.

5119.890 Notification of award.

Subpart 5119.13 - Historically Underutilized Business Zone (HUBZone) Program

5119.1305 HUBZone set-aside procedures.

Subpart 5119.14 - Service-Disabled Veteran-Owned Small Business Procurement Program

5119.1405 Service-disabled veteran-owned small business set-aside procedures.

Subpart 5119.2 - Policies

5119.201 General policy.

(c)(8) At those contracting activities where the Small Business Administration (SBA) has assigned a procurement center representative (PCR), a small business professional serves as the designated small business technical advisor. The Contracting Officer's Representative (COR), or primary technical point of contact for the requirement when a COR is not required, shall assist the PCR and address technical aspects of the acquisition when requested by the small business professional.

(10)(B)(i) The contracting officer shall prepare and submit the DD Form 2579 and supporting documentation to the assigned small business specialist for all acquisitions above the micro-purchase threshold. The DD Form 2579 shall include the small business specialist's recommendation for actions including, but not limited to: all Federal Acquisition Regulation (FAR) part 13, 14, and 15 actions, all orders placed against FAR 8.405-3 blanket purchase agreements, General Services Administration Federal Supply Schedule orders, and all delivery and task orders under multiple award, indefinite delivery indefinite quantity contracts. Neither small business coordination nor a DD Form 2579 is required when the contracting office complies with the small business reservation under the simplified acquisition threshold at FAR 19.502-2(a). The Virtual Contracting Enterprise (VCE) shall be used for DD Form 2579 submissions. The original DD Form 2579 shall remain in the contract file with a copy furnished to the SBA PCR and the activity small business professional. The DD Form 2579 shall be approved by all parties including the SBA PCR when required, prior to issuing a notice of proposed contract action or solicitation.

(ii) VCE automatically assigns the Control Number for each DD Form 2579. The small business professional must review and sign to their concurrence/non-concurrence on the DD Form 2579. If the SBA PCR lacks the necessary security clearance to review the DD Form 2579, the contracting officer shall contact the SBA office serving the area where the contracting office is located for assistance.

(iii) The DD Form 2579 must be made available only to personnel who have a "need to know" until the contract is awarded. Copies distributed outside the Army, including SBA PCR coordination, must be marked "Controlled Unclassified Information."

5119.202-1 Encouraging small business participation in acquisitions.

(1) If circumstances dictate consolidation, the contracting officer must obtain from the program manager or requiring activity written justification supporting the consolidated action. The head of the contracting activity must determine that a consolidated requirement cannot be placed under one of the preference programs prior to release of the solicitation. See Appendix GG for further delegation.

(2) When the acquisition strategy contemplates full and open, multiple award, indefinite delivery indefinite quantity (IDIQ) contracts, the contracting officer shall insert language in the solicitation that allows for requirements to be set aside (totally or partially) for small businesses. Additionally, where two or more small businesses hold IDIQ contracts, the contracting officer shall reserve the right to set aside any and all contract task

order requirements for small business firms. Contracting officers shall document why the rule of two cannot be applied to the available small business awardees prior to soliciting to the entire awardee pool, seek approval one level above the contracting officer, and submit supporting documentation to the small business specialist and PCR during small business coordination.

5119.203 Relationship among small business programs.

(c) The contract file must document the release of an 8(a) commitment in accordance with FAR 19.203(c). The contracting officer shall provide a copy of all documentation releasing the 8(a) commitment to the small business professional.

Subpart 5119.5 - Set-Asides for Small Business

5119.502 Setting aside acquisitions.

5119.502-3 Partial set-asides.

(a)(5) The head of the contracting activity shall authorize actions as described in FAR 19.502-3. See Appendix GG for further delegation.

5119.502-8 Rejecting Small Business Administration recommendations.

(b) The head of the contracting activity shall make the decision as described in FAR 19.505(b). See Appendix GG for further delegation.

(d)(i) Process appeals, on a case-by-case basis, in accordance with the appropriate FAR section (19.502-8, 19.810, 19.1305, 19.1405, 19.1505, or 19.506) and in accordance with instructions from the Director, HQDA OSBP. The contracting officer will prepare and submit the case file documents by email to the HQDA, OSBP Program Manager through contracting and small business channels. The files shall be coordinated with the Associate Director (AD), prior to contracting officer release to HQDA.

(ii) The small business specialist at each level must review the case. The case file must include –

- (A) A statement of attempts to resolve the matter;
 - (B) A response to each issue raised by SBA in its appeal;
 - (C) Supporting documents related to controversial aspects; and
- (iii) Suspension of all actions on the requirement pending outcome of the appeal.

5119.502-9 Withdrawing or modifying small business set-asides.

(b) If a SBA representative is not assigned or available, the AD shall refer disagreements to the small business professional's appointing authority for resolution. (See AFARS PGI 5119.201).

Subpart 5119.6 - Certificates of Competency and Determinations of Responsibility

5119.602 Procedures.

5119.602-3 Resolving differences between the agency and the Small Business Administration.

(c)(1)(i) The contracting officer must prepare the case and send through contracting channels to the addressee in 5119.505. The small business specialist at each level will review the case.

Subpart 5119.7 - The Small Business Subcontracting Program

5119.705 Responsibilities of the contracting officer under the subcontracting assistance program.

5119.705-2 Determining the need for a subcontracting plan.

(d) When FAR 19.705-2(d) applies, contracting officers shall include a notice in Section L or the Instruction to Offerors section of the solicitation to instruct offerors classified as an other than small business when to submit subcontracting plans, whether with their initial proposals or at another time prior to award as determined by the contracting officer. For information on small business participation proposals, see 5115.304, Evaluation factors and significant subfactors.

5119.705-4 Reviewing the subcontracting plan.

(d)(i) Contracting officers shall, with the participation of the small business specialist –

(A) Adhere to the requirements in FAR 19.705-4 and DFARS 219.705-4 and use the guidance prescribed in Appendix DD, Subcontracting Plan Evaluation Guide, Appendix AA, Army Source Selection Supplement, and the DoD Subcontracting Program – Business Rules and Processes (located at <https://business.defense.gov/Portals/57/Documents/Busi%20Rules%20Processes%20eSRS%20Subk%20Plans.pdf?ver=2018-02-26-143608-743> and referenced at DFARS PGI 219.705-6(f)) to review all subcontracting plans, except for commercial plans that have been approved by the Government;

(B) Ensure separate statements and goals are provided for the basic contract and, if applicable, each option;

(C) Identify those areas where the plan is deficient and clarify with the offeror in an attempt to correct omissions; and

(D) Ensure that, if there is a commercial plan, it has been approved in accordance with FAR 19.704(d). If it is not been previously approved, follow the DoD Subcontracting Program – Business Rules and Processes to review the commercial plan.

(ii) Plans are not acceptable if they do not adequately address the subcontracting plan requirements at FAR 19.704, DFARS 219.704, and Appendix DD. If the plan is still rated unacceptable after clarifications or discussions, the offeror shall be ineligible for contract award.

5119.705-6 Postaward responsibilities of the contracting officer.

Subject to the concurrence of the chief of the contracting office and the agreement of the receiving individual's chain of command, the contracting officer may delegate the duties in FAR 19.705-6 and supplements to another individual. The delegation must be in writing, include the scope of duties delegated, and signed by management officials from the contracting activity and authorized management officials from the supporting organization.

(f)(2) In addition to following the FAR subpart 19.7 and DFARS subpart 219.7 requirements, contracting officers shall use the DoD Subcontracting Program – Business Rules and Processes and its appendices to review the appropriate subcontracting report submitted by the contractor in the Electronic Subcontracting Reporting System (eSRS). The DoD Subcontracting Program – Business Rules and Processes serves as guidance on the business

rules and processes for the eSRS, including the various roles and responsibilities of DoD and industry personnel; it provides checklists and detailed explanation on subcontracting plans; and it provides information on reviewing the related subcontract reports submitted under various types of subcontract plans. Contracting officers should pay particular attention to the guidance contained in Appendix D, Guide to Preparing and Reviewing an Individual Subcontract Report (ISR) for an Individual Subcontracting Plan; Appendix E, Guide to Preparing and Reviewing a Summary Subcontract Report (SSR) for an Individual Subcontracting Plan; and Appendix F, Guide for Preparing and Reviewing a Summary Subcontract Report (SSR) for a Commercial Subcontracting Plan.

(g)(1) The contractor's explanation and mitigation plan should demonstrate its good faith effort in meeting the subcontracting goals, and the contractor's effort or lack of effort should be assessed annually in the Contract Performance Assessment Reporting System (CPARS).

5119.705-6-90 Transferring postaward responsibilities of the contracting officer to another contracting officer.

(a) Prior to release from their contracting officer responsibilities, the outgoing contracting officer shall ensure required reviews of subcontracting reports under their purview have been conducted. If a report is rejected, provide an explanation to the contractor and document the explanation in eSRS prior to transfer of responsibility.

(b) If a new contracting officer has been identified, the outgoing contracting officer shall advise the new contracting officer of

(1) any eSRS reports that are required to be resubmitted by the contractor; and

(2) any issues or concerns with the contractor's good faith effort to meet the goals provided in the approved subcontracting plan.

(c) If a new contracting officer has not been identified prior to their release, the outgoing contracting officer shall notify their supervisor or document the file with information pertinent to the subcontracting report reviews for the new contracting officer.

(d) Prior to accepting responsibility for administering subcontracting reports, the new contracting officer shall –

(1) ensure they are registered as a contracting official in the eSRS;

(2) review their responsibilities as a reviewer in the FAR subpart 19.7, DFARS subpart 219.7, and the DoD Subcontracting Program – Business Rules and Processes, Appendices D, E, and F; and

(3) inform the prime contractor to update the contract profile in eSRS with the name and email address of the new contracting officer.

Subpart 5119.8 - Contracting with the Small Business Administration (The 8(a) Program)

5119.803 Selecting acquisitions for the 8(a) program.

(a) The Associate Director, U.S Army Office of Small Business Programs, shall respond directly to general search letters from SBA. The Associate Director, U.S. Army Office of Small Business Program may further delegate this function to the small business specialists at contracting activities.

(b) The contracting officer, in coordination with the small business specialist, shall respond to SBA requests for a specific requirement either by offering the requirement to the 8(a) program or by explaining to the SBA the rationale for not offering the requirement to the 8(a) program (see 5119.804-2).

(c) Where a number of requirements are being offered to SBA for planning purposes, associate directors, Army Small Business Programs or their designated small business specialist must identify the requirements to SBA. Specific individual requirements shall be offered in accordance with 5119.804-2(a).

5119.804 Evaluation, offering, and acceptance.

5119.804-2 Agency offering.

(a) The contracting office must notify the SBA and contracting activity small business specialist of agency offering. The notification commits the Army to negotiating with the SBA.

(14) The contracting officer must coordinate noncompetitive 8(a) offerings with a total estimated contract value above the thresholds in FAR 19.805-1(a)(2) with the local competition advocate, who will review the technical requirements to ensure that they are not overly restrictive.

5119.808 Contract negotiation.

5119.808-1 Sole source.

(a) The contracting activity must notify the contracting activity small business specialist of the intent to proceed with the acquisition if it exceeds \$100 million and the requesting agency has completed a justification in accordance with the requirements of FAR 6.303-1(b).

(b) When direct negotiation with an 8(a) subcontractor does not proceed satisfactorily, the contracting officer must ask the SBA to enter negotiations promptly to expedite the award.

5119.810 SBA appeals.

(b) Process appeals in accordance with 5119.505.

5119.812 Contract administration.

(c)(i) The contracting officer must promptly notify the SBA of subcontractor performance deficiencies. The contracting officer must promptly report to the SBA any indication that the subcontractor requires technical or management assistance and document the file accordingly.

(ii) If the SBA fails to act in a timely manner to help the subcontractor take corrective action, the contracting officer must report this failure to the Associate Director, U.S. Army Office of Small Business Programs with a recommendation for action. If the associate director cannot resolve the matter, he or she will refer the matter to the Director, U.S. Army Office of Small Business Programs.

5119.815 Release for non-8(a) procurement.

(a) Where a procurement is awarded as an 8(a) contract, its follow-on or renewable acquisition must remain in the 8(a) program unless SBA agrees to release it, in accordance with 13 CFR § 124.504(d), FAR 19.815, and the DoD and SBA Partnership Agreement.

(3) Follow-on or renewable acquisitions can transition from a stand-alone 8(a) acquisition to an award under a multiple award contract and still be considered to remain in the 8(a) program. The original multiple award contract must have been offered to and accepted by the SBA.

5119.816 Exiting the 8(a) program.

(b) The head of the contracting agency shall make the determination as set forth in FAR 19.816(b). See Appendix GG for further delegation.

5119.890 Notification of award.

Immediately after award of any 8(a) contract, the contracting officer must notify the contracting activity small business specialist and the cognizant SBA office. Notification will include the 8(a) firm's name, address, CAGE code, a description of the supplies or services, the quantity, dollar value, date of award and contract number.

Subpart 5119.13 – Historically Underutilized Business Zone (HUBZone) Program

5119.1305 HUBZone set-aside procedures.

(d)(2) The head of the contracting activity shall make the determination as described in FAR 19.1305(d)(2). See Appendix GG for further delegation.

Subpart 5119.14 – Service-Disabled Veteran-Owned Small Business Procurement Program

5119.1405 Service-disabled veteran-owned small business set-aside procedures.

(d) The head of the contracting activity shall make the decision as stated in FAR 19.1405(d). See Appendix GG for further delegation.

Part 5122 - Application of Labor Laws to Government Acquisitions

5122.001 Definitions.

Subpart 5122.1 - Basic Labor Policies

5122.101 Labor relations.

5122.101-1 General.

5122.101-3 Reporting labor disputes.

5122.101-3-70 Impact of labor disputes on defense programs.

5122.103 Overtime.

5122.103-4 Approvals.

Subpart 5122.3 - Contract Work Hours and Safety Standards Act

5122.302 Liquidated damages and overtime pay.

Subpart 5122.4 - Labor Standards for Contracts Involving Construction

5122.404 Construction wage requirements statute wage determinations.

5122.404-6 Modification of wage determinations.

5122.406 Administration and enforcement.

5122.406-8 Investigations.

5122.406-9 Withholding from or suspension of contract payments.

Subpart 5122.8 - Equal Employment Opportunity

5122.805 Procedures.

5122.807 Exemptions.

Subpart 5122.13 - Equal Opportunity for Veterans

5122.1305 Waivers.

Subpart 5122.14 - Employment of Workers With Disabilities

5122.1403 Waivers.

Subpart 5122.15 - Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

5122.1503 Procedures for acquiring end products on the list of products requiring contractor certification as to forced or indentured child labor.

Subpart 5122.16 - Notification of Employee Rights Under the National Labor Relations Act

5122.1604 Compliance evaluation and complaint investigations and sanctions for violations.

Subpart 5122.17 - Combating Trafficking in Persons

5122.1703 Policy.

5122.1704 Violations and remedies.

5122.001 Definitions.

“Labor advisor,” as used in this part, means the labor advisor, Contract and Fiscal Law Division, Office of the Judge Advocate General.

Subpart 5122.1 - Basic Labor Policies

5122.101 Labor relations.

5122.101-1 General.

The labor advisor grants departmental approval for the actions listed in DFARS PGI 222.101-1. The head of the contracting activity (HCA) may contact a national office of a labor organization, a regional office of the Federal Mediation and Conciliation Service, National Mediation Board, or National Labor Relations Board for information. However, when a contract has been transferred to the Defense Contract Management Agency for administration, request the information from the Defense Contract Management Agency. See Appendix GG for further delegation.

5122.101-3 Reporting labor disputes.

(2) Contact the labor advisor before disseminating any information on labor disputes. Army personnel cannot give information about work stoppages or labor disputes to representatives of labor or management without authorization from the labor advisor.

5122.101-3-70 Impact of labor disputes on defense programs.

(b) The head of the contracting activity shall submit a report of findings and recommendations as described in DFARS PGI 222.101-3-70(b). See Appendix GG for further delegation.

5122.103 Overtime.

5122.103-4 Approvals.

(a) The following individuals may approve overtime:

(i) Contracting officer.

(ii) Chief of contracting office.

(iii) HCAs.

(iv) Senior contracting official.

(v) Other individuals whom the Deputy Assistant Secretary of the Army (Procurement), Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology), specifically designates as needed.

Subpart 5122.3 - Contract Work Hours and Safety Standards Act

5122.302 Liquidated damages and overtime pay.

(c) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may perform the duties as stated in FAR 22.302(c). See Appendix GG for further delegation.

Subpart 5122.4 - Labor Standards for Contracts Involving Construction

5122.404 Construction wage requirements statute wage determinations.

5122.404-6 Modification of wage determinations.

(b)(6) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may request an extension as stated in FAR 22.404-6(b)(6). See Appendix GG for further delegation.

5122.406 Administration and enforcement.

5122.406-8 Investigations.

(d) Send the contracting officer's report to the following mail or email address:

Attn.: Labor Advisor, Contract and Fiscal Actions Division

Office of The Judge Advocate General

2200 Army Pentagon, 3B548

Washington, DC 20310.

usarmy.pentagon.hqda-otjag.mbx.usalsa-kfld-rbg-support@mail.mil.

The labor advisor forwards the report to the Department of Labor on behalf of the agency head (see FAR 22.406-8(d)(2)).

5122.406-9 Withholding from or suspension of contract payments.

(c) *Disposition of contract payments withheld or suspended.*

(4) *Liquidated damages.* See 5122.302(c) for officials authorized to adjust or waive assessments of liquidated damages in accordance with DFARS 222.406-9(c)(4).

Subpart 5122.8 - Equal Employment Opportunity

5122.805 Procedures.

(a)(8) The head of the contracting activity may approve the award as described in FAR 22.805(a)(8). See Appendix GG for further delegation.

5122.807 Exemptions.

(a)(1) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described in FAR 22.807(a). See Appendix GG for further delegation.

Subpart 5122.13 - Equal Opportunity for Veterans

5122.1305 Waivers.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may waive any requirement in this subpart when it is determined that the contract is essential to the national security. See Appendix GG for further delegation.

Subpart 5122.14 - Employment of Workers With Disabilities

5122.1403 Waivers.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may waive any requirement in this subpart when it is determined that the contract is essential to the national security. See Appendix GG for further delegation.

Subpart 5122.15 - Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

5122.1503 Procedures for acquiring end products on the list of products requiring contractor certification as to forced or indentured child labor.

(f) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may impose remedies as described in FAR 22.1503(f). See Appendix GG for further delegation.

Subpart 5122.16 - Notification of Employee Rights Under the National Labor Relations Act

5122.1604 Compliance evaluation and complaint investigations and sanctions for violations.

(d) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may provide the written objections as stated in FAR 22.1604(d). See Appendix GG for further delegation.

Subpart 5122.17 - Combating Trafficking in Persons

5122.1703 Policy.

(a)(7) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall designate the authorized official of the contracting agency as described in FAR 22.1703(a)(7). See Appendix GG for further delegation.

5122.1704 Violations and remedies.

(c) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall ensure that the contracting officer is provided with the report as described in FAR 22.1704(c). See Appendix GG for further delegation.

Part 5123 - Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace

Subpart 5123.1 - Sustainable Acquisition Policy.

5123.104 Exceptions.

5123.105 Exemption authority.

Subpart 5123.2 - Energy and Water Efficiency and Renewable Energy.

5123.204 Procurement exemptions.

5123.205 Energy-savings performance contracts.

Subpart 5123.3 - Hazardous Material Identification and Material Safety Data

5123.302 Policy.

5123.370 Safety precautions for ammunition and explosives.

5123.370-4 Procedures.

Subpart 5123.8 - Ozone-Depleting Substances

5123.803 Policy.

Subpart 5123.9 - Contractor Compliance With Environmental Management Systems

5123.903 Contract clause.

Subpart 5123.1 - Sustainable Acquisition Policy

5123.104 Exceptions.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination at FAR 23.104(a). See Appendix GG for further delegation.

5123.105 Exemption authority.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, makes exemptions as set forth in FAR 23.105.

Subpart 5123.2 - Energy and Water Efficiency and Renewable Energy

5123.204 Procurement exemptions.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has the authority to make the determination at FAR 23.204. See Appendix GG for further delegation.

5123.205 Energy-savings performance contracts.

Energy-savings performance contracts are service contracts and require inclusion of a quality assurance surveillance plan in the contract file.

Subpart 5123.3 - Hazardous Material Identification and Material Safety Data

5123.302 Policy.

- (d) See Army Regulation 700-141 for instructions for obtaining and processing Material Safety Data Sheets.
- (e) The contracting officer shall provide hazard warning labels and Material Safety Data Sheets to the safety office in accordance with Army Regulation 700-141.

5123.370 Safety precautions for ammunition and explosives.

5123.370-4 Procedures.

- (1)(i) The head of the contracting activity shall approve the waiver of the mandatory requirements at DFARS PGI 222.370-4(1)(i). See Appendix GG for further delegation.

Subpart 5123.8 - Ozone-Depleting Substances

5123.803 Policy.

(1) Contracts.

- (i) The organization with primary responsibility for determining the principal specifications and standards cited in the solicitation or contract is responsible for obtaining authorization to include the specification or standard in the contract.
- (ii) The approving official must be from the technical or program organization with primary responsibility for determining the equipment or systems specifications and standards.

(2) Modifications.

- (i) For contracts administered by the Army, the contracting officer must obtain an evaluation and written determination of the suitability of proposed substitutes for ozone-depleting substances from the organization in (1)(i).

(ii) The written determination must be based on a certification by a technical representative of the

Environmental Support Office

Headquarters, Department of the Army

2800 Crystal Drive, 5th Floor

Arlington, VA 22202-3911,

in coordination with the requiring activity. Elevate any dispute concerning what constitutes a suitable substitute through the requiring activity's leadership to the Army Acquisition Executive for a final decision.

Subpart 5123.9 - Contractor Compliance With Environmental Management Systems

5123.903 Contract clause.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described in FAR 23.903. See Appendix GG for further delegation.

Part 5124 - Protection of Privacy and Freedom of Information

Subpart 5124.1 - Protection of Individual Privacy

5124.103 Procedures.

Subpart 5124.2 - Freedom of Information Act

5124.203 Policy.

Subpart 5124.1 - Protection of Individual Privacy

5124.103 Procedures.

(b)(i) The contracting officer shall reference the following documents in solicitations and contracts that require the design, development, or operation of a system of records:

(A) DoD Directive 5400.11.

(B) DoD Regulation 5400.11-R.

(C) Regulations for community-specific protected information, as applicable, e.g. DoD Regulation 6025.18-R (DoD Health Information Privacy Regulation).

(ii) The contracting officer will ensure that work statements that require the design, development, or operation of a system of records include procedures to follow in the event of a PII breach.

(iii) The contracting officer should ensure that Government surveillance plans for contracts that require the design, development, or operation of a system of records include monitoring of the contractor's adherence to Privacy Act/PII regulations. The assessing official should document contractor-caused breaches or other incidents related to PII in past performance reports. (See 5142.1503-90(b).) Such incidents include instances in which the contractor did not adhere to Privacy Act/PII contractual requirements.

Subpart 5124.2 - Freedom of Information Act

5124.203 Policy.

(a) Contracting officers must follow instructions in Army Regulation (AR) 25-55 for the denial of, or release of, acquisition information.

(b)(i) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has delegated the initial denial authority to act on requests for procurement records under the Freedom of Information Act, except those procurement records under the purview of the Chief of Engineers and the Commander, Army Materiel Command, to the heads of the contracting activities (HCAs). The HCAs may further delegate this authority only to the senior contracting official (SCO).

(ii) If the contracting officer concludes that he/she should deny some or all information requested, he/she must prepare the proposed response for the HCA in accordance with AR 25-55. The response must include appeal language substantially the same as the following:

“You may appeal, in whole or in part, this denial to the Secretary of the Army (attn: General Counsel). In the event you decide to appeal, your letter of appeal must be postmarked no later than 60 calendar days after the date

of this denial letter. Please address your appeal to (*HCA address*). This denial is made on behalf of the Initial Denial Authority, (*name and title*), by (*name and rank*), Head of the Contracting Activity (*office*).” (*Substitute SCO for HCA if the SCO is the HCA’s designee*.)

(iii) Contracting officers in contracting activities other than the Army Materiel Command and the United States Army Corps of Engineers must send the proposed denial response to the HCA or, if delegated, to the SCO. Include copies of the records recommended for denial with a justification for the denial. Contracting officers in the Army Materiel Command and the United States Army Corps of Engineers must follow the procedures specified by their headquarters.

(iv) After coordination with counsel, the HCA will provide the denial response, modified if necessary, to the requestor.

(v) Within three working days of receipt of appeals, HCAs must send notice, the appeal and the documents required by AR 25-55 to the Office of the General Counsel at the following address:

ATTN: SAGC

General Counsel

104 Army Pentagon

Washington, DC 20310-0104.

Part 5125 - Foreign Acquisition

Subpart 5125.1 - Buy American - Supplies

5125.103 Exceptions.

5125.105 Determining reasonableness of cost.

Subpart 5125.2 - Buy American - Construction Materials

5125.202 Exceptions.

5125.204 Evaluating offers of foreign construction material.

Subpart 5125.4- - Trade Agreements

5125.403 World Trade Organization government procurement agreement and free trade agreements.

Subpart 5125.6 - American Recovery and Reinvestment Act--Buy American Statute--Construction Materials

5125.603 Exceptions.

Subpart 5125.8 - Other International Agreements and Coordination

5125.802 Procedures.

5125.802-71 End use certificates.

5125.870 Contracting with Canadian contractors.

5125.870-4 Contracting procedures.

5125.871 North Atlantic Treaty Organization (NATO) cooperative projects.

5125.871-7 Congressional notification.

Subpart 5125.9 - Customs and Duties

5125.903 Exempted supplies.

Subpart 5125.10 - Additional Foreign Acquisition Regulations

5125.1001 Waiver of right to examination of records.

Subpart 5125.70 - Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Acquisitions

5125.7000 Scope of subpart.

5125.7000-90 Applicability to utilize a non-Army contracting activity.

5125.7002 Restrictions on food, clothing, fabrics, and hand or measuring tools.

5125.7002-2 Exceptions.

5125.7003 Restrictions on acquisition of specialty metals.

5125.7003-3 Exceptions.

5125.7008 Waiver of restrictions of 10 U.S.C. 2534.

Subpart 5125.73 - Acquisitions for Foreign Military Sales

5125.7301 General.

5125.7301-1 Requirement to use firm-fixed-price contracts.

Subpart 5125.77 - Acquisitions in Support of Operations in Afghanistan

5125.7703 Enhanced authority to acquire products or services from Afghanistan.

5125.7703-2 Determination requirements.

Subpart 5125.1 - Buy American - Supplies

5125.103 Exceptions.

(a)(ii)(B)(1) The position one level above the contracting officer, without further delegation, shall make the determination at DFARS 225.103(a)(ii)(B)(1).

(2) The head of the contracting activity shall make the determination at DFARS 225.103(a)(ii)(B)(2). See Appendix GG for further delegation.

(3) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination at DFARS 225.103(a)(ii)(B)(3). See Appendix GG for further delegation.

(b)(ii)(A) The position one level above the contracting officer, without further delegation, may make the determination at DFARS 225.103(b)(ii)(A).

(B) The chief of the contracting office, without further delegation, may make the determination at DFARS 225.103(b)(ii)(B).

(C) The head of the contracting activity may make the determination at DFARS 225.103(b)(ii)(C). See Appendix GG for further delegation.

5125.105 Determining reasonableness of cost.

(a)(1) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described at FAR 25.105(a)(1). See Appendix GG for further delegation.

Subpart 5125.2 - Buy American - Construction Materials

5125.202 Exceptions.

(a)(1) *Impracticable or inconsistent with public interest.* The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has delegated to the Deputy Assistant Secretary of the Army (Procurement) and the Head of the Contracting Activity (HCA), United States Army Corps of Engineers (USACE), without power to delegate further, authority to determine that the use of a particular domestic construction material is

impracticable. Determinations that application of the act would be inconsistent with the public interest are reserved for the Assistant Secretary of the Army (Acquisition, Logistics and Technology). See Appendix GG.

(2) *Nonavailability*. For other materials, a nonavailability determination shall be approved at the levels specified in AFARS 5125.103(b)(ii).

5125.204 Evaluating offers of foreign construction material.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has the authority to specify a higher percentage to the offered price as described in FAR 25.204(b). See Appendix GG for further delegation.

Subpart 5125.4- - Trade Agreements

5125.403 World Trade Organization government procurement agreement and free trade agreements.

(c)(ii)(A) The head of the contracting activity may approve the waiver as stated in DFARS 225.403(c)(ii)(A). See Appendix GG for further delegation.

Subpart 5125.6 - American Recovery and Reinvestment Act--Buy American Statute--Construction Materials

5125.603 Exceptions.

(a)(1)(i) The head of the contracting activity may make the determination as described in FAR 25.603(a)(1)(i). See Appendix GG for further delegation.

(iii) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described in FAR 25.603(a)(1)(iii). See Appendix GG for further delegation.

(a)(2) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described in FAR 25.603(a)(2). See Appendix GG for further delegation.

Subpart 5125.8 - Other International Agreements and Coordination

5125.802 Procedures.

5125.802-71 End use certificates.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall sign end user certificates (EUCs). See Appendix GG for further delegation.

5125.870 Contracting with Canadian contractors.

5125.870-4 Contracting procedures.

(c)(2)(ii) The head of the contracting activity shall make the determination at DFARS 225.870-4(c)(2)(ii). See Appendix GG for further delegation.

(5) The head of the contracting activity shall make the determination at DFARS 225.870-4(c)(5). See Appendix GG for further delegation.

5125.871 North Atlantic Treaty Organization (NATO) cooperative projects.

5125.871-7 Congressional notification.

(a) Send the notification at least 30 days prior to award directly to the following address:

Deputy Assistant Secretary of the Army for Defense Exports and Cooperation

Attn: SAAL-ZN

2530 Crystal Drive, Suite 11104

Arlington, VA 22202.

(b) See paragraph (a) in this section.

Subpart 5125.9 - Customs and Duties

5125.903 Exempted supplies.

(b)(ii) The procuring contracting officer must execute duty-free entry certificates when no administrative contracting officer is assigned.

Subpart 5125.10 - Additional Foreign Acquisition Regulations

5125.1001 Waiver of right to examination of records.

(a)(2)(iii) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a nondelegable basis, shall execute the determination and findings as set forth in FAR 25.1001(a)(2)(iii).

Subpart 5125.70 - Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Acquisitions

5125.7000 Scope of subpart.

5125.7000-90 Applicability to utilize a non-Army contracting activity.

Army program executive offices, program management offices and other requiring activities that utilize a non-Army contracting activity to fulfill a requirement for a covered item are responsible for ensuring compliance with DFARS PGI 225.70.

5125.7002 Restrictions on food, clothing, fabrics, and hand or measuring tools.

5125.7002-2 Exceptions.

(b)(1)(ii)(I) The Secretary of the Army, on a nondelegable basis, is responsible for approving all domestic nonavailability determinations under 10 U.S.C. 2533a (Berry Amendment). (See DFARS 225.7002-2(b)(1)). The

contracting officer shall not release the solicitation until the Secretary approves the determination.

(2) Submit all requests for an exception under this provision through procurement channels to the Deputy Assistant Secretary of the Army (Procurement) at the address located in 5101.290(b)(2)(ii)(C). Submit requests no later than 60 business days prior to the planned release of the solicitation. All requests shall fully explain why the item(s) in question cannot be procured as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices. The request shall include information on whether item(s) in question are managed by the Defense Logistics Agency (DLA) and written confirmation from the DLA that said item(s) are not available from the DLA in the time needed to meet Army requirements. In addition, all requests shall include a written certification signed by the General Officer/Senior Executive Service-level head of the requiring activity that addresses, with specificity, why alternatives that would not require an exception from the Berry Amendment are unacceptable.

5125.7003 Restrictions on acquisition of specialty metals.

5125.7003-3 Exceptions.

(b)(5)(i)(I) The Secretary of the Army, on a nondelegable basis, is responsible for approving all domestic nonavailability determinations under 10 U.S.C. 2533b that apply to only one contract. (See DFARS 225.7003-3(b)(5)(i).) The Under Secretary of Defense (Acquisition, Technology and Logistics) (USD(AT&L)), on a nondelegable basis, is responsible for approving determinations that apply to more than one contract, see DFARS 225.7003-3(b)(5)(ii). The USD(AT&L), on a nondelegable basis, is responsible for approving national security waivers under DFARS 225.7003-3(d). In all cases, the contracting officer shall not release the solicitation until the Secretary approves the determination.

(2) Follow the procedures at 5125.7002-2 when submitting a request for an exception to restrictions on acquisition of specialty metals.

5125.7008 Waiver of restrictions of 10 U.S.C. 2534.

(a)(2) The head of the contracting activity may waive a restriction as stated in DFARS 225.7008(a)(2). See Appendix GG for further delegation.

Subpart 5125.73 - Acquisitions for Foreign Military Sales

5125.7301 General.

5125.7301-1 Requirement to use firm-fixed-price contracts.

D efense P ricing and C ontracting Class Deviation 2020-O0003— Use of Fixed-Price Contracts for Foreign Military Sales valid through December 31, 2020.

(b) The chief of the contracting office shall waive the requirement as described in DFARS 225.7301-1(a). See Appendix GG.

Subpart 5125.77 - Acquisitions in Support of Operations in Afghanistan

5125.7703 Enhanced authority to acquire products or services from Afghanistan.

5125.7703-2 Determination requirements.

(b)(2)(i) The head of the contracting activity is authorized to make the determination at DFARS 225.7703-2(b)(2)(i). See Appendix GG for further delegation.

Part 5127 - Patents, Data, and Copyrights

Subpart 5127.2 - Patents and Copyrights

5127.201 Patent and copyright infringement liability.

5127.201-2 Contract clauses.

5127.202 Royalties.

5127.202-3 Adjustment of royalties.

Subpart 5127.3 - Patent Rights Under Government Contracts

5127.303 Contract clauses.

5127.304 Procedures.

Subpart 5127.6 - Foreign License and Technical Assistance Agreements

5127.675 Foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.

5127.675-2 Review of agreements.

Subpart 5127.70 - Infringement Claims, Licenses, and Assignments

5127.7004 Requirements for filing an administrative claim for patent infringement.

5127.7006-90 Investigation and administrative disposition of claims.

5127.7011 Procurement of rights in inventions, patents, and copyrights.

Subpart 5127.71 - Rights in Technical Data

5127.7103 Noncommerical items or processes.

5127.7103-13 Government right to review, verify, challenge, and validate asserted restrictions.

5127.7103-14 Conformity, acceptance, and warranty of technical data.

Subpart 5127.72 - Rights In Computer Software and Computer Software Documentation

5127.7203 Noncommercial computer software and noncommercial computer software documentation.

5127.7203-13 Government right to review, verify, challenge, and validate asserted restrictions.

Subpart 5127.2 - Patents and Copyrights

5127.201 Patent and copyright infringement liability.

5127.201-2 Contract clauses.

(e) Obtain approval to exempt specific United States patents from the patent indemnity clause from:

Commander, US Army Legal Services Agency

Attn: JALS-RL/IP

Regulatory Law and Intellectual Property Division

9275 Gunston Road, Suite 1300

Fort Belvoir, VA 22060-5546.

However, the Commander, U.S. Army Materiel Command and designees that have patent counsel may give approval.

5127.202 Royalties.

5127.202-3 Adjustment of royalties.

(a) The office having cognizance of patent matters must report the results of any action taken in compliance with FAR 27.202-3 to the Chief, Regulatory Law and Intellectual Property Law Division, U.S. Army Legal Services Agency.

Subpart 5127.3 - Patent Rights Under Government Contracts

5127.303 Contract clauses.

(b)(3) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, may make the determination as described in FAR 27.303(b)(3) and DFARS 227.303(2)(ii)(B).

(e)(1)(ii) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may make the determination as described in FAR 27.303(e)(1)(ii). See Appendix GG for further delegation.

(e)(4)(ii) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, may make the determination as described in FAR 27.303(e)(4)(ii).

5127.304 Procedures.

Refer questions about Army procedures to the Chief, Regulatory Law and Intellectual Property Law Division at the address in 5127.201-2.

Subpart 5127.6 - Foreign License and Technical Assistance Agreements

5127.675 Foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.

5127.675-2 Review of agreements.

(a) Send proposed agreements through the head of the contracting activity to appropriate patent and technical personnel for review. Send the comments and recommendations of the head of the contracting activity to:

Deputy Assistant Secretary of the Army for Defense Exports and Cooperation (DASA(DE&C))

ATTN: SAAL-ZN

103 Army Pentagon

Washington, DC 20310.

Subpart 5127.70 - Infringement Claims, Licenses, and Assignments

5127.7004 Requirements for filing an administrative claim for patent infringement.

(c) Forward all communications which –

(1) Claim that the manufacture, use, or disposition of any article, material or process by or for any agency or component of the Army involves the use of any invention, whether patented or un-patented, and

(2) Make a claim for compensation, to the head of the contracting activity (HCA) which ordered the manufacture, use or disposition of the article, material or process, except in Army Materiel Command (AMC), forward them to the Commander, AMC. The HCA and Commander, AMC, shall process the matter in accordance with DFARS subpart 227.70, subpart 5127.70 and Army Regulation (AR) 27-60.

5127.7006-90 Investigation and administrative disposition of claims.

(a) *Settlement.* The office granted clearance to investigate a claim may settle that claim in accordance with DFARS 227.7006, 5127.7006 and AR 27-60 by executing a patent release and settlement agreement, license agreement or assignment.

(b) *Fiscal procedures.*

(1) An agreement to pay a fixed amount for any release and settlement agreement, license agreement or assignment, by either a lump-sum payment or an amount determinable at the time of contract execution, is subject to the provision that the fixed amount to be paid may not exceed the funds available for the purpose. Prior to incurring any obligation, officials charged with making such agreements shall submit the proposed agreements to the cognizant finance and accounting officer for verification of the availability of funds. The following statement shall be included on the face of the agreement:

“The supplies and services obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to the following allotments; and available balances are sufficient to cover the cost of the supplies and services.”

(2) An agreement to pay running royalties on future acquisitions is not subject to the requirement for the statement contained in (1).

(3) Contact the Regulatory Law and Intellectual Property Law Division, Office of the Judge Advocate General (see 5127.201-2 for address) for questions on fiscal procedures related to patent matters.

(c) *Delegations of authority and approval requirements.*

(1) Under Section 606(b) of the Foreign Assistance Act of 1961 (75 Stat. 440, 22 U.S.C. 2356(b)) and DoD Directive 2000.3, authority to enter into agreements with claimants in full settlement and compromise of any claim against the United States under Section 606(a) of the Foreign Assistance Act of 1961, subject to the requirements of DFARS subpart 227.70 and subpart 5127.70 and other rules and regulations published by higher headquarters, is authorized for the Commander, AMC; and the Chief of Engineers in accordance with AR 27-60, at 6-13. The Chief of Engineers may not delegate this authority. The Commander, AMC may delegate to the commanders of major subordinate commands only.

(2)(i) All agreements authorized by the Foreign Assistance Act of 1961 (22 U.S.C. 2356), the Invention Secrecy Act (35 U.S.C. 181-188) or 10 U.S.C. 2386 require approval by the Judge Advocate General when the agreement –

- (A) Provides for total payment by the Government, including reasonable anticipated royalties, of \$500,000 or more;
- (B) Includes a license to different Government agencies on different terms;
- (C) Provides for compensation for damages other than for infringement of patents or copyrights, e.g., claims under the Foreign Assistance Act or the Invention Secrecy Act;
- (D) Contains a release or license, which may operate to release a contractor from an obligation to indemnify the Government;
- (E) Is in settlement of patent or copyright infringement liability for the use of foreign patents or copyrights;
- (F) Is with a government or national representative of a government within the scope of a Foreign Assistance Program; or
- (G) Requires the signature of, or concurrence on behalf of, another agency of the Government.

(ii) The office requesting approval shall submit the number of executed agreements with original signatures to the Chief, Regulatory Law and Intellectual Property Law Division, Office of the Judge Advocate General (OTJAG). (See 5127.201-2 for address.) The submission package shall include the agreement and a memorandum of facts signed by an authorized official of the office requesting approval.

(iii) Upon approval of the agreement by the Judge Advocate General forward one executed and approved copy of the agreement directly to the United States Patent and Trademark Office for recording. Send the remaining executed and approved copies to the office that requested approval, for distribution.

(d) Distribution of agreements.

- (1) Each contracting party and each office processing the request for approval shall retain an executed and approved agreement with original signatures.
- (2) The office requesting approval shall forward a copy of each license, which provides for the payment of a running royalty, to each interested HCA. Receipt of a copy of the license shall constitute notice that further procurement of the licensed subject matter requires the payment of royalties to the licensor. When necessary, the HCA shall notify the contracting offices affected.

5127.7011 Procurement of rights in inventions, patents, and copyrights.

(1) Subject to the limitations in DFARS subpart 227.70 and subpart AFARS 5127.70, the following may acquire the items and rights described in 10 U.S.C. 2386 and may enter into agreements in settlement of resulting claims:

- (i) The Commander, AMC.
- (ii) The Chief of Engineers.
- (iii) The Surgeon General.
- (iv) The Commander, U.S. Army Space and Missile Defense Command.

(2) Other contracting activities must obtain written approval of any proposed agreement from the addressee at 5101.290(b)(1) through the Chief, Regulatory Law and Intellectual Property Law Division, OTJAG, (see 5127.201-2 for address), except for agreements for acquisition of the right to reproduce copyrighted material when acquisition cost is \$2,500 or less.

(3) Immediately send all communications relating to proposed patent licenses or assignment to the chief patent counsel or legal officer supporting the contracting office.

(4) To assist national defense, various patent owners voluntarily grant royalty-free licenses, assignments and releases to the Government to use the inventions covered by their patents and applications for patents. Obtain a recommended, standardized format for such a grant from the Chief, Regulatory Law and Intellectual Property Law Division, OTJAG.

Subpart 5127.71 - Rights in Technical Data

5127.7103 Noncommercial items or processes.

5127.7103-13 Government right to review, verify, challenge, and validate asserted restrictions.

(d)(6)(iii) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, shall make the notification as described in DFARS 227.7103-13(d)(6)(iii).

5127.7103-14 Conformity, acceptance, and warranty of technical data.

(a)(2) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) is authorized to perform the duties described at DFARS 227.7103-14(a)(2). See Appendix GG for further delegation.

Subpart 5127.72 - Rights In Computer Software and Computer Software Documentation

5127.7203 Noncommercial computer software and noncommercial computer software documentation.

5127.7203-13 Government right to review, verify, challenge, and validate asserted restrictions.

(e)(1) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, shall make the notification as described in DFARS 227.7203-13(e)(1).

Part 5128 - Bonds and Insurance

Subpart 5128.1 - Bonds and Other Financial Protections

5128.101 Bid guarantees.

5128.101-1 Policy and use.

5128.105 Other types of bonds.

5128.106 Administration.

5128.106-2 Substitution of surety bonds.

5128.106-6 Furnishing information.

Subpart 5128.2 - Sureties and Other Security for Bonds

5128.202 Acceptability of corporate sureties.

5128.203 Acceptability of individual sureties.

5128.203-5 Exclusion of individual sureties.

5128.204 Alternatives in lieu of corporate or individual sureties.

5128.204-1 United States bonds or notes.

Subpart 5128.3 - Insurance

5128.301 Policy.

5128.305 Overseas workers compensation and war hazard insurance.

5128.307 Insurance under cost-reimbursement contracts.

5128.307-1 Group insurance plans.

5128.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

5128.311-1 Contract clause.

5128.370 Additional clauses.

Subpart 5128.1 - Bonds and Other Financial Protections

5128.101 Bid guarantees.

5128.101-1 Policy and use.

(c) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may authorize class waivers at FAR 28.101-1. See Appendix GG for further delegation.

5128.105 Other types of bonds.

The head of the contracting activity may approve using other types of bonds in connection with acquiring particular supplies or services. See Appendix GG for further delegation.

5128.106 Administration.

5128.106-2 Substitution of surety bonds.

(a) The head of the contracting activity may approve actions at FAR 28.106-2. See Appendix GG for further delegation.

5128.106-6 Furnishing information.

(c) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination at FAR 28.106-6(c). See Appendix GG for further delegation.

Subpart 5128.2 - Sureties and Other Security for Bonds

5128.202 Acceptability of corporate sureties.

(c) If corporate surety information from the U.S. Department of the Treasury website is not available, distribute in accordance with head of the contracting activity (HCA) instructions.

5128.203 Acceptability of individual sureties.

(g) Refer evidence to the local contracting office's procurement fraud advisor. See Army Regulation 27-40 Litigation.

5128.203-5 Exclusion of individual sureties.

(d) Send the determination and findings justifying acceptance to the HCA. If the HCA concurs, send the request and concurrence through the addressee in 5101.290(b)(5) to the Assistant Secretary of the Army (Acquisition, Logistics and Technology) for a determination. See Appendix GG for further delegation.

5128.204 Alternatives in lieu of corporate or individual sureties.

5128.204-1 United States bonds or notes.

When a contractor furnishes security in lieu of corporate or individual sureties on bonds, the contracting officer must send a certified copy of the receipt for the deposited security and a certified copy of any required power of attorney and agreement to legal counsel along with the bond.

Subpart 5128.3 - Insurance

5128.301 Policy.

(b) When more than one agency is involved and the Army retains contract administration functions, the contracting officer responsible for contract administration is the point of contact. Contracting officers shall

review and approve the contractor's insurance program and coordinate with other interested agencies before acting on significant insurance matters.

5128.305 Overseas workers compensation and war hazard insurance.

(d) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the recommendation as described in FAR 28.305(d). See Appendix GG for further delegation.

5128.307 Insurance under cost-reimbursement contracts.

5128.307-1 Group insurance plans.

(a) *Prior approval requirement.* Group insurance plans under cost-reimbursement contracts administered by the Army must be submitted for approval to the contracting officer.

5128.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

5128.311-1 Contract clause.

The head of the contracting activity may waive the requirement at DFARS 228.311-1. See Appendix GG for further delegation. When required in paragraph (g) of the clause at FAR 52.228-7, Insurance – Liability to Third Persons, the contracting officer must send a notification to the following address with a request to inform the Director, Torts Branch, Civil Division, Attorney General:

Attn: JALS-LTT Army Litigation Division

U.S. Army Legal Services Agency (USALSA)

9275 Gunston Road

Fort Belvoir, VA 22060.

5128.370 Additional clauses.

(a)(2) The head of the contracting activity makes the decision at DFARS 228.370(a)(2). See Appendix GG for further delegation.

Part 5129 - Taxes

Subpart 5129.1 - General

5129.101 Resolving tax problems.

Subpart 5129.2 - Federal Excise Taxes

5129.201 General.

Subpart 5129.3 - State and Local Taxes

5129.303 Application of state and local taxes to government contractors and subcontractors.

Subpart 5129.1 - General

5129.101 Resolving tax problems.

- (a) The contracting officer shall provide to the legal counsel a comprehensive statement of facts and issues supported by –
- (i) Copies of correspondence and documents needed to understand the problem;
 - (ii) A copy of the contract or relevant portion; and
 - (iii) The comments and recommendations of the contracting officer, the reviewer and local counsel at each echelon of command through which the correspondence passes.

Subpart 5129.2 - Federal Excise Taxes

5129.201 General.

- (b) Process applications to the Bureau of Alcohol, Tobacco, and Firearms for permits to procure alcohol free of tax pursuant to guidance at Title 27 Code of Federal Regulations, Section 22.172 Application and permit. The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has signature authority. See Appendix GG for further delegation.

Alcohol and Tobacco Tax and Trade Bureau Director National Revenue Center

550 Main Street, Suite 8002,

Cincinnati, Ohio 45202-5215.

Subpart 5129.3 - State and Local Taxes

5129.303 Application of state and local taxes to government contractors and subcontractors.

- (a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall perform the review as set forth in FAR 29.303(a). See Appendix GG for further delegation.

Part 5130 - Cost Accounting Standards Administration

(Revised 30 September 2022)

Subpart 5130.2 - CAS Program Requirements

5130.201 Contract requirements.

5130.201-5 Waiver.

5130.202 Disclosure requirements.

5130.202-6 Responsibilities.

Subpart 5130.2 - CAS Program Requirements

5130.201 Contract requirements.

5130.201-5 Waiver.

(a)(2) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall perform the duties at FAR 30.201-5(a) and (b). See Appendix GG for further delegation.

(e) Requests for waiver of CAS shall be submitted IAW AFARS PGI 5130.201-5(e).

5130.202 Disclosure requirements.

5130.202-6 Responsibilities.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, shall make the authorization as described in FAR 30.202-6(b).

Part 5131 - Contract Cost Principles and Procedures

Subpart 5131.2 - Contracts with Commercial Organizations

5131.205 Selected costs.

5131.205-6 Compensation for personal services.

Subpart 5131.2 - Contracts with Commercial Organizations

5131.205 Selected costs.

5131.205-6 Compensation for personal services.

(g)(6) *Severance pay.* The Assistant Secretary of the Army (Acquisition, Logistics and Technology) is permitted to waive certain cost allowability limitations as set forth in FAR 31.205-6(g)(6). See Appendix GG for further delegation.

(p)(4)(iii) *Limitation on allowability of compensation.* The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may establish exceptions as described at FAR 31.205-6(p)(4)(iii). See Appendix GG for further delegation.

Part 5132 - Contract Financing

(Revised 23 March 2022)

5132.006 Reduction or suspension of contract payments upon finding of fraud.

5132.006-1 General.

5132.006-2 Definition.

5132.006-3 Responsibilities.

5132.007 Contract financing payments.

Subpart 5132.1 - Non-Commercial Item Purchase Financing

5132.111 Contract clauses for non-commercial purchases.

5132.114 Unusual contract financing.

Subpart 5132.2 - Commercial Item Purchase Financing

5132.201 Statutory authority.

5132.202 General.

5132.202-1 Policy.

Subpart 5132.4 - Advance Payments for Non-Commercial Items

5132.402 General.

5132.407 Interest.

Subpart 5132.5 - Progress Payments Based on Costs

5132.501 General.

5132.501-2 Unusual progress payments.

Subpart 5132.6 - Contract Debts

5132.606 Debt collection.

5132.607 Installment payments and deferment of collection.

5132.607-2 Deferment of collection.

5132.671 Bankruptcy reporting.

Subpart 5132.7 - Contract Funding

5132.702 Policy.

Subpart 5132.8 - Assignment of Claims

5132.803 Policies.

Subpart 5132.9 - Prompt Payment

5132.901 Applicability.

5132.903 Responsibilities.

5132.906 Making payments.

Subpart 5132.11 - Electronic Funds Transfer

5132.1106 EFT mechanisms.

Subpart 5132.71 - Levies on Contract Payments

5132.7101 Policy and procedures.

5132.006 Reduction or suspension of contract payments upon finding of fraud.

5132.006-1 General.

(c) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has the authority to reduce or suspend contract payments where there is substantial evidence that the contractor's request for advance, partial, or progress payments is based on fraud. See Appendix GG for further delegation.

5132.006-2 Definition.

The Army's remedy coordination official is the Chief, Procurement Fraud Branch, Office of The Judge Advocate General; telephone (703) 696-1550; Fax (703) 696-1559.

5132.006-3 Responsibilities.

(b) Report suspected fraud related to advance, partial, or progress payments to the contracting office's procurement fraud advisor, who will coordinate the matter as prescribed in Army Regulation 27-40.

5132.007 Contract financing payments.

(a)(3) and (4) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may prescribe the periods for payment as described in FAR 32.007(a)(3) and (4). See Appendix GG for further delegation.

Subpart 5132.1 - Non-Commercial Item Purchase Financing

5132.111 Contract clauses for non-commercial purchases.

(a)(7) The contracting officer must document the contract file with the rationale to support the amount of payments withheld under FAR 52.232-7(a)(7).

5132.114 Unusual contract financing.

The Director, Defense Procurement and Acquisition Policy, on a non-delegable basis, shall approve actions as stated in FAR 32.114 and DFARS 201.402(1)(vi).

Subpart 5132.2 - Commercial Item Purchase Financing

5132.201 Statutory authority.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described at FAR 32.201. See Appendix GG for further delegation.

5132.202 General.

5132.202-1 Policy.

(d) The Director, Defense Procurement and Acquisition Policy, on a non-delegable basis, shall approve actions as stated in FAR 32.202-1 and DFARS 201.402(1)(vi).

Subpart 5132.4 - Advance Payments for Non-Commercial Items

5132.402 General.

(c)(1)(iii)(A) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, shall make the determination that the advance payment is in the public interest as described at FAR 32.402(c)(1)(iii)(A).

(c)(1)(iii)(B) The Secretary of the Army, on a non-delegable basis, shall make the determination that the advance payment facilitates the national defense as described at FAR 32.402(c)(1)(iii)(B).

5132.407 Interest.

(d) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the authorization as described at FAR 32.407(d).

Subpart 5132.5 - Progress Payments Based on Costs

5132.501 General.

5132.501-2 Unusual progress payments.

(a)(2) Requests for approval of unusual progress payments must include the following documentation from the contractor:

(A) Monthly cash flow forecasts for the period, which include the additional financing.

(B) Estimated profit and loss statements and balance sheets for the same period as the cash flow forecast.

(C) The most recent, audited financial statements.

(D) A description of significant events before or after preparation of financial statements that materially affect the financial condition of the company, the operating statement, or the cash flow statement.

(3) See DFARS PGI 232.501-2. Submit all unusual progress payments requests to the addressee in 5101.290(b)(3).

Subpart 5132.6 - Contract Debts

5132.606 Debt collection.

(c)(i) Send case files to the contract financing office within 15 calendar days after the end of the 30-day period following the contracting officer's demand for payment. The address is as follows:

Defense Finance and Accounting Service-Columbus Center

Attn: DFAS-JDCBB/CO

Debt Management Office, P.O. Box 182559

Columbus, Ohio 43218-2559.

(ii) The case file must include a copy of the contracting officer's demand; a statement as to whether or not the contract contains an interest clause; and, if so, a copy of the clause or a reference to the clause number.

(iii) If the debt represents excess costs incurred in purchasing supplies or services against the account of a defaulted contractor, the case file shall include –

(A) The name and address of the replacement contractor;

(B) The disbursing office voucher number;

(C) The date paid;

(D) Bills of lading numbers, if any;

(E) The name of the carrier, when applicable; and

(F) The name and symbol number of the disbursing officer.

(iv) If the debt represents liquidated damages, the case file shall include an explanation of the basis for assessing liquidated damages.

5132.607 Installment payments and deferment of collection.

5132.607-2 Deferment of collection.

(b) When a request for deferment of a contract debt is received from a contractor, the contracting officer must notify the payment office and advise the payment office identified in the contract that the contractor's request is under consideration IAW FAR 32.607-2(b). See AFARS PGI 5132.607-2(c)(2)-1 for further instruction.

5132.671 Bankruptcy reporting.

Send information required in Defense Finance and Accounting Service – Indianapolis Regulation 37-1 to the addressee in 5132.606(c).

Subpart 5132.7 - Contract Funding

5132.702 Policy.

(a)(i) Except as authorized in FAR subparts 17.1 and 32.7 and in paragraphs (a)(ii) and (iii) in this section, before issuing a solicitation, the contracting officer must have a written statement or equivalent indicating that sufficient funds are available.

(ii) Contracting officers may issue solicitations for high priority requirements and Research, Development, Test and Evaluation incrementally funded contracts before ensuring availability of funds when there is a high probability that the requiring activity will not cancel the requirement. For foreign military sales cases, contracting officers may issue solicitations after the acceptance of a foreign military sales case, but before assurance of funds availability when the United States Army Security Assistance Command determines in writing that the offer appears certain to be accepted.

(A) The contracting officer shall not issue a solicitation under the circumstances in (a)(ii) unless the comptroller has signed the following statement on the purchase request:

“This requirement is included or provided for in the financial plan for fiscal year _____. The accounting classification will be _____. This statement is not a commitment of funds.”

(B) The contracting officer shall include the following statement in all solicitations issued pursuant to this authority when the clause at FAR 52.232-18, Availability of Funds, is not used:

“Funds are not presently available for this acquisition. No contract award will be made until appropriated funds are made available.”

(C) The operating official designated, by local regulations or by a “delegation of authority” letter, as the official authorized to certify funds availability, must certify funds available prior to contract award.

(D) The contracting officer shall not issue a research and development solicitation for a contract that is incrementally funded over successive years without sufficient planned funds (Future Years Defense Program) to cover the entire period of the multi-year performance. The head of the contracting activity may approve an exception, provided the approval identifies steps to revise the approved Future Years Defense Program to include adequate resources.

(iii) Industrial-funded public activities need not comply with (i) and (ii), when they solicit offers under the Defense Depot Maintenance Competition Program (Pub. L. 102-396), the Partnership Program (10 U.S.C. 2208(j)) or competition under the Arsenal Act (10 U.S.C.4532(a)).

Subpart 5132.8 - Assignment of Claims

5132.803 Policies.

(d) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, shall make the determination as described at FAR 32.803(d).

Subpart 5132.9 - Prompt Payment

5132.901 Applicability.

(1)(ii) The head of the contracting activity, after consultation with the cognizant comptroller, will make the determination at DFARS 232.901(1)(ii). See Appendix GG for further delegation.

(3) The head of the contracting activity will make the determination at DFARS 232.901(3). See Appendix GG for further delegation.

5132.903 Responsibilities.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall perform the duties as set forth in FAR 32.903(a). See Appendix GG for further delegation.

5132.906 Making payments.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described in FAR 32.906(a). See Appendix GG for further delegation.

Subpart 5132.11 - Electronic Funds Transfer

5132.1106 EFT mechanisms.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described in FAR 32.1106 (a) and (b). See Appendix GG for further delegation.

Subpart 5132.71 - Levies on Contract Payments

5132.7101 Policy and procedures.

(b)(4) Subject to DFARS 232.7101(b) and the procedures at the DFARS PGI 232.7101(b), the contracting officer shall ensure the senior contracting official (SCO) endorses the notification memorandum sent to the Director, Defense Procurement and Acquisition Policy (DPAP). The SCO may not delegate this endorsement to a lower level. In addition to the assessment the contractor provides, the contracting officer shall obtain from the appropriate requiring activity any other information necessary to prepare the notification. The contract file will clearly show all reviews and coordination for the action at the SCO and lower levels, to include legal counsel review. When the contracting officer sends the notification memorandum to the Director, DPAP, the contracting officer shall provide a copy of this memorandum to the address at 5101.290(b)(2)(ii)(A).

(c) When the contracting officer receives a response from DPAP, the contracting officer shall send a copy of the response to the address at 5101.290(b)(2)(ii)(A).

Part 5133 - Protests, Disputes, and Appeals

(Revised 20 May 2022)

5133.090 Definition.

Subpart 5133.1 - Protests

5133.102 General.

5133.103 Protests to the agency.

5133.103-90 Annual agency bid protest report.

5133.104 Protests to GAO.

5133.170 Briefing requirement for protested acquisitions valued at \$1 billion or more.

5133.170-90 Procedures.

5133.190 Reporting and analysis of bid protests.

5133.190-1 Bid protest action report.

5133.190-2 Quarterly bid protest analysis report.

Subpart 5133.2 - Disputes and Appeals

5133.203 Applicability.

5133.204 Policy.

5133.212 Contracting officers duties upon appeal.

5133.212-90 Appeal procedures.

5133.212-91 Notice of an appeal.

5133.212-92 Comprehensive report to the Chief Trial Attorney.

5133.212-93 Review of appeal.

5133.212-94 Receipt of complaint.

5133.212-95 Litigation.

5133.212-96 Disposition.

5133.212-97 Review of ASBCA decisions.

5133.212-98 Dispute settlement and judgments, use of the Judgment Fund.

5133.213 Obligation to continue performance.

5133.215 Contract clauses.

Subpart 5133.90 - Grant and Cooperative Agreement Claims, Disputes and Appeals

5133.9001 Designation of grant appeal authority.

5133.090 Definition.

“Alternative dispute resolution (ADR)” means any procedure, in lieu of litigation, used to resolve issues in controversy, including but not limited to facilitation, conciliation, mediation, early neutral evaluation, non-binding arbitration, minitrial, fact-finding, ombudsman process, or any combination thereof.

Subpart 5133.1 - Protests

5133.102 General.

(a)(1) See 5104.802(f) for the requirement to use the Protest and Claims Tracking tool.

(2) Contracting officers and their legal counsel are encouraged to use the Government Accountability Office’s (GAO’s) flexible alternative procedures, including alternative dispute resolution, when appropriate in defending a GAO protest.

(b)(i) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may make agency head determinations regarding actions described in FAR 33.102(b) (1) through (b)(3). See Appendix GG for further delegation.

(ii) Actions taken must be consistent with 10 U.S.C. 2305(f), 31 U.S.C. 3554, and FAR part 33.

(iii) For award of costs, contracting officers must attempt to reach an agreement on the amounts the Government will pay to a protester or an interested party. If the contracting officer and the protester or interested party do not reach agreement, persons exercising authority as cited in paragraph (b)(i) of this section may make the agency determination on the amount the Government will pay, at the request of the protester or an interested party.

(iv) Officials must consult legal counsel in exercising this authority.

5133.103 Protests to the agency.

(d)(3) As soon as practicable, the contracting officer must consult with the legal office concerning the protest. Refer protests received at a level higher than the contracting office to the contracting office for resolution. Concurrent with this referral, the office that initially received the protest must inform the protester, identifying the contracting office that will handle the protest and giving the point of contact within that office.

(4) Handle requests for independent review of a protest at a level above the contracting officer as follows:

(i) For contracting officers under the jurisdiction of the Army Materiel Command (AMC), in accordance with AMC established procedures.

(ii) For contracting officers under the jurisdiction of the United States Army Corps of Engineers (USACE), in accordance with the USACE established procedures.

(iii) For contracting officers in all other contracting activities, in accordance with activity established procedures. If contracting personnel will conduct the independent review, the HCA will appoint a review authority. See Appendix GG for further delegation. The HCA or delegated designee, may also appoint individuals assigned outside contracting channels as a review authority (e.g., attorneys, chief of staff, installation commanders).

5133.103-90 Annual agency bid protest report.

HCA must prepare an annual report of agency bid protests and send it to the addressee in AFARS 5101.290(b)(2)(ii)(B) not later than 30 calendar days following the end of the fiscal year. The analysis must include –

(a) The number of protests received during the reporting period, to include their disposition;

(b) An assessment of the causes of the most frequently recurring issues, including a description of all corrective actions taken to include the award of protest costs;

(c) The distribution of protests by subordinate contracting offices; and

(d) Any additional information considered necessary to a full understanding of the efficiency and effectiveness of the activity's agency protest procedures.

5133.104 Protests to GAO.

(a) *General procedure.* The contracting officer must take the action required of the "agency" in FAR 33.104.

(3)(i)(I) Contracting offices must use the following reporting procedures; the SCO may require the contracting offices to send the report through the SCO's office:

(i) Contracting offices reporting to AMC must send the report directly to the addressee in 5101.290(b)(7).

(ii) Contracting offices reporting directly to the USACE must send the report directly to the following address:

U.S. Army Corps of Engineers

Attn: CECC-C

441 G St., N.W.

Washington, DC 20314-1000.

(iii) All other Army contracting offices must send the report via courier or express mail service to:

U.S. Legal Services Agency, ATTN: JALS-KFLD

Contract and Fiscal Law Division

9275 Gunston Road, Suite 2100

Fort Belvoir, VA 22060-5546.

(iv) The contracting officer must send the report not later than 20 days after the Government Accountability Office (GAO) notifies the agency by telephone that a protest has been filed. If the GAO decides to use the express option and the contracting officer concludes that the report cannot be furnished in time, he/she must notify the appropriate office in (i)-(iii) at once so that it may request an extension from GAO.

(2) Before forwarding the report to the GAO Comptroller General, the addressees in paragraphs (a)(3)(i)(I)(i)-(iii) of this section must review the report and recommend any changes required to ensure that the report is accurate, complete, and legally sufficient.

(b) *Protests before award.* See Appendix GG.

(1)(A) The contracting officer must prepare a determination and findings (D&F) for HCA concurrence when it is necessary to request authorization to award a contract notwithstanding a protest. The D&F must clearly address –

(1) Whether significant adverse consequences will necessarily occur if the stay is not overridden;

(2) Whether reasonable alternatives to the override exist that would adequately address the circumstances presented;

(3) How the potential costs of proceeding with the override, including the costs associated with the potential that GAO might sustain the protest, compare to the benefits associated with the approach being considered for addressing the agency's needs; and

(4) The impact of the override on competition and the integrity of the procurement system.

(B) The contracting officer must have approval from the Deputy Assistant Secretary of the Army (Procurement) (DASA(P)) prior to any award or selection, except for contracting offices reporting to AMC, where the HCA provides approval. The contracting officer must also prepare a request for approval that identifies all protest issues and addresses the merits and expected resolution of the protest. Include details of any congressional interest in the protest. After legal review, the HQAMC, Office of

Command Counsel, will forward the request, with the D&F, in accordance with agency procedures to the HCA. (See Override of Competition in Contracting Act (CICA) Stays: A Guidebook, which is available via the Internet at [https://www.jagcnet.army.mil/Sites%5C%5Contractandfiscallaw.nsf/0/9DE4D2C744ABFC3F85257B42004536AC/\\$File/CICA%20Override%20Guidebook%20_June%2](https://www.jagcnet.army.mil/Sites%5C%5Contractandfiscallaw.nsf/0/9DE4D2C744ABFC3F85257B42004536AC/$File/CICA%20Override%20Guidebook%20_June%2)

(C) Within three days after the contracting office receives notification of the protest, the HCA may endorse the request for approval and electronically transmit the request and the D&F to the appropriate office in paragraphs (a)(3)(i)(I)(i)-(ii) of this section. That office shall immediately distribute the request and the D&F to the addressee in 5101.290(b)(1).

(c) *Protests after award.* See Appendix GG.

(2) Process the finding as required at paragraph (b) of this section. The D&F must clearly address the areas identified in paragraph (b)(1)(A). The DASA(P) must approve the D&F before the contracting officer authorizes continuing performance, except for contracting offices reporting to AMC, where the HCA provides approval.. Process the request for approval as required in paragraph (b).

(g) *Notice to GAO.* The head of the contracting activity shall report to GAO as described at FAR 33.104(g). See Appendix GG for further delegation. Send the report to the addressee in 5101.290(b)(1) not later than 45 days after receipt of the recommendations.

5133.170 Briefing requirement for protested acquisitions valued at \$1 billion or more.

5133.170-90 Procedures.

(a) Within 10 days of receipt of a protest, provide an initial, written notification of the protest via email to the Office of the DASA(P) and furnish a copy to the SCO, field attorney and trial attorney. The initial notification shall be in the form of a briefing and shall include the following items:

(1) Buying activity and contracting officer with phone number and email address.

(2) Protester and counsel.

(3) Protest number and date filed.

(4) Protest forum (GAO or Court of Federal Claims).

(5) Description of the protested acquisition, estimated dollar value and whether it is a pre- or post-award protest.

(6) Summary of protest allegations.

(7) Status of the stay or stop work order.

(8) Anticipated date of protest resolution.

(9) Any other information deemed appropriate.

(10) Attach a copy of the protest.

(b) After the contracting officer formulates the agency response, he/she may provide more detailed information relating to the position that the agency will take before filing the agency report in the protest action.

(c) If required, the contracting officer shall schedule a formal briefing on the protest with the DASA(P) or Defense Procurement and Acquisition Policy subsequent to the submission of the follow-up information.

5133.190 Reporting and analysis of bid protests.

5133.190-1 Bid protest action report.

Within 15 calendar days following notification of resolution of a GAO protest, the contracting officer must send a bid protest action report in the format in 5153.303-6 (double spaced between item numbers) to the following addressees:

(a) AMC contracting activities send the report to the addressee in 5101.290(b)(7).

(b) USACE contracting activities send the report to

U.S. Army Corps of Engineers

Attn: CECC-C

441 G St., N.W.

Washington, DC 20314-1000.

(c) All other contracting activities send the report to the addressee in 5133.104(a)(3)(i)(I)(iii).

5133.190-2 Quarterly bid protest analysis report.

(a) AMC, USACE and the Contract and Fiscal Law Division, U.S. Army Legal Services Agency must prepare a quarterly bid protest analysis report for GAO protests in the format in 5153.303-7 (double space between item numbers) and send it with the bid protest action reports to the addressee in 5101.290(b)(2)(ii)(B) not later than 30 calendar days following the end of the quarter. The analysis will include the number of protests in which a flexible alternative procedure was used, in accordance with 4 C.F.R. 21.10, and will also include an assessment of the causes of the most frequently recurring issues and recommendations for appropriate corrective action. Reconcile the numbers submitted with the most current data available from the GAO.

(b) The DASA(P) will prepare a consolidated quarterly report not later than 45 calendar days following the end of each quarter.

Subpart 5133.2 - Disputes and Appeals

5133.203 Applicability.

(b)(2) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall determine the application at FAR 33.203. See Appendix GG for further delegation.

5133.204 Policy.

(a) As used in this section:

“Dispute Resolution Specialist” means the official designated by the head of an agency to implement agency ADR policy as prescribed by Section 3(b) of the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571-584 and Note. The Principal Deputy General Counsel of the Army is designated the Army Dispute Resolution Specialist.

“Issue in controversy” means a material disagreement between the Army and a contractor that may result in a claim, or is all or part of an existing claim.

(b) Contracting officers and their legal counsel, assisted by other members of the Acquisition Team as necessary, are encouraged to use alternative dispute resolution (ADR) techniques to resolve pre-appeal disputes (e.g., claims, unresolved requests for equitable adjustment, and other issues in controversy) to the maximum extent practicable and appropriate. For any dispute in which unassisted negotiations have reached impasse or in which the contracting officer has received a request for ADR, the contracting officer shall review the dispute to determine whether ADR is appropriate for resolving it, applying the reasons listed in paragraph (c) of this section. If the contracting officer finds ADR to be appropriate, the contracting officer should offer or agree to ADR. Participation in ADR does not obligate any party to settle or accept a proposal for settlement. This section does not create any right to ADR for any contractor or prospective contractor, and a decision by the contracting officer finding ADR to be inappropriate is not subject to appeal.

(c) The use of ADR to resolve an issue in controversy is generally authorized if the parties agree. However, the contracting officer or other authorized official may decide that ADR is inappropriate to resolve the issue for any of the following reasons:

(1) A definitive or authoritative resolution of the matter is required for precedential value, and an ADR proceeding is not likely to be accepted generally as an authoritative precedent.

(2) The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and an ADR proceeding would not likely serve to develop a recommended policy for the Army.

(3) Maintaining established policies is of special importance, so that variations among individual decisions are not increased, and an ADR proceeding would not likely reach consistent results among individual decisions.

(4) The matter significantly affects persons or organizations who are not parties to the ADR proceeding.

(5) A full public record of the proceeding is important, and an ADR proceeding cannot provide such a record.

(6) The Army must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the Army’s fulfillment of that requirement.

(7) The issue is amenable to a disposition that will fully resolve the matter quickly and with a high probability of finality, including procedures under Rules 11 and 12 of the Rules of the Armed Services Board of Contract Appeals (ASBCA).

(8) The anticipated transaction costs of ADR in money and time materially exceed the anticipated transaction costs of litigation.

(9) The dispute involves one or more credible allegations or indications of fraud, gross mismanagement, abuse of official authority, or violation of federal or state criminal laws.

(10) Any other specific reason why the contracting officer determines ADR is inappropriate. Sole reliance on this provision to find ADR inappropriate must be approved by the cognizant senior contracting official (SCO), or higher authority. Forward a copy of any decision based on this provision, with supporting rationale, to the Army Dispute Resolution Specialist at usarmy.pentagon.hqda-ogc.mbx.adr@mail.mil. Include the name, telephone number and email address of the point of contact for the decision.

(d) The contracting officer, legal advisor, attorney of record, or other official responsible for procurement ADR matters within the cognizant interested organization(s) may contact the Army ADR Program Office in the Office of the Army General Counsel (SAGC-ADR) for advice and guidance on ADR processes, strategies, and other informal dispute resolution matters. Send correspondence to:

Department of the Army General Counsel

ADR Program Office (SAGC-ADR)

104 Army Pentagon

Washington DC 20310-0104;

by fax to 703-614-8073; or by email to: usarmy.pentagon.hqda-ogc.mbx.adr@mail.mil. Ensure appropriate coordination through command channels before contacting SAGC-ADR directly for assistance under this section. USACE contracting activities may also contact

U.S. Army Corps of Engineers

Attn: CECC-C Alternative Dispute Resolution Specialist

441 G St., N.W.

Washington, DC 20314-1000,

for dispute resolution guidance.

(e) Appeals filed with the ASBCA are eligible for ADR consideration, consistent with the Chief Trial Attorney’s authority over litigation of all ASBCA matters. Apply the reasons in paragraph (c) of this section when considering whether to participate in ADR. All decisions whether to participate in ADR for any issue in controversy are within the Chief Trial Attorney’s discretion, and are not subject to appeal.

5133.212 Contracting officers duties upon appeal.

5133.212-90 Appeal procedures.

(a) For purposes of this section and DFARS Appendix A, the Army Chief Trial Attorney or the Engineer Chief Trial Attorney performs the duties and responsibilities of the Chief Trial Attorney as follows:

(1) In accordance with Army Regulation (AR) 27-1, the Army Chief Trial Attorney is the authorized representative of the Secretary of the Army with sole authority and responsibility for the conduct and control of litigation of contract disputes for all Department of the Army cases docketed with the ASBCA, except for United States Army Corps of Engineers cases described in (2) and (3). The Judge Advocate General appoints the Army Chief Trial Attorney.

(2) The Engineer Chief Trial Attorney is the authorized representative of the Secretary of the Army and has sole authority and responsibility for the conduct and control of litigation of contract disputes for all Corps of Engineers cases docketed with the ASBCA of a value of less than \$3 million. The Chief Counsel, Corps of Engineers appoints the Engineer Chief Trial Attorney.

(3) The Director, Civil Law and Litigation, U.S. Army Legal Services Agency may determine, on a case-by-case basis, to delegate Corps of Engineers cases of a value of \$3 million or more to the Engineer Chief Trial Attorney.

(b) All contract disputes addressed in this section remain subject to the litigation oversight authority and responsibility of the General Counsel of the Department of the Army.

5133.212-91 Notice of an appeal.

Contracting officers must perform the following actions concurrently:

(a) Send any notice of appeal received directly, including the envelope showing the postmark directly to:

Chairman, ASBCA

5109 Leesburg Pike

Skyline 6, Room 703

Falls Church, VA 22041-3208.

(b) When the Defense Contract Management Agency staff has participated in contract award and/or administration, send to the Defense Contract Management Agency office involved a notice of the appeal with direction to preserve all documents pertaining to the contract.

5133.212-92 Comprehensive report to the Chief Trial Attorney.

(a) Concurrent with forwarding the appeal file to the ASBCA, the contracting officer must send the following documents to the addressee in 5133.104(a)(3)(i)(I)(ii) or (iii) as applicable with a copy to the reviewing official designated in accordance with 5133.212-93:

(1) A copy of the appeal file.

(2) A trial attorney's litigation file, except the report in paragraph 5-2c(4) of AR 335-15. The contracting officer shall not provide this report to the ASBCA or the contractor. The litigation file shall include the information listed in paragraphs (2)(i) through (iv) of this section.

(i) The names, current addresses and telephone numbers of all potential witnesses (including the contractor's) who have information concerning the facts in dispute.

(ii) A signed statement of each Government witness itemizing personal knowledge of the facts to which the witness will testify under oath at hearing, or a summary if it is impossible to obtain a signed statement. Include the following:

(A) Background and circumstances surrounding the generation of pertinent documents.

(B) Explanation, basis and/or rationale of those portions of the available documents which will require clarification at the hearing.

(C) List of any facts and events not shown by available documents.

(D) Identification of any other persons who have personal knowledge of pertinent facts.

(E) A statement regarding the expected availability of the witness for the hearing.

(iii) An analysis for the Chief Trial Attorney discussing the contractor's individual allegations and overall position with an opinion of the validity of each, and an appraisal of the strengths and weaknesses apparent in both parties' positions.

(iv) A memorandum by the legal advisor or the official making the decision, with input from legal counsel, setting forth an analysis of the legal issues involved in the dispute, including comments about the adequacy of the findings of fact and the legal sufficiency of the decision.

(b) The contracting officer must send a copy of all correspondence, and other data pertinent to the dispute, to the Chief Trial Attorney. This includes all documents received after submitting the trial attorney's litigation. The contracting officer shall forward copies to the reviewing official.

(c) The Chief Trial Attorney may, upon discovery of new facts or circumstances, have the reviewing official reconsider the matter.

5133.212-93 Review of appeal.

(a) The head of the contracting activity (HCA) shall –

(1) Furnish technical and legal assistance to the contracting officer as required; and

(2) Establish procedures to ensure that review of all appeals filed under the disputes clause occur at a level higher than the contracting officer.

- (b) The HCA designated reviewing official shall –
- (1) Ensure that the findings cover all issues in dispute and are consistent with the decision from the appeal;
 - (2) Ensure that the contracting officer's comprehensive report to the Chief Trial Attorney, including the evidence submitted in support of the contracting officer's decision, is complete;
 - (3) Within 10 calendar days after receiving the contracting officer's comprehensive report, forward to the Chief Trial Attorney –
 - (i) Evaluations, conclusions and recommendations;
 - (ii) Any additional evidence considered essential to enable the Chief Trial Attorney to protect the interests of the Government before the ASBCA; and
 - (iii) If the reviewing official decides that the available evidence does not sufficiently support contracting officer's decision, or that the decision is erroneous, an estimated date by which the contracting office will either furnish additional support or withdraw the decision; and
 - (4) Assist the Chief Trial Attorney in obtaining additional evidence or in making other necessary preparations for presenting the Government's position before the ASBCA.

5133.212-94 Receipt of complaint.

(a) See DFARS Appendix A, Part 2, Preliminary Procedures, Rule 6, paragraph b. If the contracting officer receives the complaint after forwarding the comprehensive report to the Chief Trial Attorney, he/she must, within 15 calendar days after receipt of the complaint, send directly to the Chief Trial Attorney supplementary information regarding any issues raised in the complaint that the comprehensive report did not sufficiently cover. Include specific admissions or denials of each allegation of fact contained in the complaint and a statement of any affirmative defenses or counterclaims applicable.

(b) Provide copies of the supplementary information furnished the Chief Trial Attorney to the reviewing official.

5133.212-95 Litigation.

(a) See 5133.212-90(a)(1) regarding the authority and responsibility of the Chief Trial Attorney.

(b) The Chief Trial Attorney will present all Army cases to the ASBCA, using trial attorneys assigned to the office, except the Chief Trial Attorney may authorize local contract attorneys to act as trial attorneys or to assist in the presentation of Army cases if the appeal has particular significance to the contracting activity and that it involves difficult operational issues and technical facts.

(c) Local legal counsel and personnel within the contracting activity assist and support the Office of the Chief Trial Attorney in preparing the case.

(d) The Chief Trial Attorney and the attorneys assigned may communicate directly with any person or organization to secure any witnesses, documents, or information considered necessary in connection with representing the Government in matters before the ASBCA. The Chief Trial Attorney must inform the contracting officer of any actions taken in connection with these matters.

5133.212-96 Disposition.

(a) The authority and responsibility to settle contract disputes docketed with the ASBCA remains with the contracting officer, subject to (b) and the following:

(1) The contracting officer must advise the Chief Trial Attorney of all offers of settlement from a contractor, whether directly from the contractor or through the contractor's attorney.

(2) The contracting officer must consult with the Chief Trial Attorney before accepting a contractor's offer of settlement and before making a settlement offer to the contractor.

(b) The Chief Trial Attorney has all necessary authority to conclude settlement agreements with the concurrence of the contracting officer, the reviewing official, or the Deputy Assistant Secretary of the Army (Procurement). He/she must notify the appropriate Army Command legal office/staff judge advocate of any disagreement regarding the settlement of a case before raising the matter to the Assistant Secretary of the Army (Acquisition, Logistics and Technology).

(1) The Chief Trial Attorney or an individual trial attorney may enter into an agreement on matters for which there is no substantial controversy and which will not have the effect of disposing of an appeal, provided that, in the case of a pre-hearing written stipulation or agreement, the Chief Trial Attorney has granted this authority to the individual trial attorney in advance.

(2) In appropriate cases, such as those where time-consuming delays would occur by returning the appeal to the contracting officer, the Chief Trial Attorney or an individual trial attorney acting with the prior approval of the Chief Trial Attorney may enter into an agreement with an appellant which will have the effect of disposing of an appeal after obtaining concurrence from a representative of the HCA. Such agreement may then become the basis of an ASBCA decision disposing of the appeal.

5133.212-97 Review of ASBCA decisions.

(a) *Contracting activity review*.

(1) The contracting activity must review ASBCA decisions and, if the HCA thinks that the ASBCA should reconsider a decision or appeal to the U.S. Court of Appeals for the Federal Circuit, the HCA may within 10 calendar days after receipt of the decision, request the Chief Trial Attorney to either –

(i) File a motion for reconsideration, stating the grounds relied upon to sustain the motion; or

(ii) Initiate action seeking an appeal to the U.S. Court of Appeals for the Federal Circuit, stating the basis for such an appeal pursuant to the review standards of section 7107(b) of the Disputes statute (41 U.S.C. chapter 71).

(2) If the Chief Trial Attorney does not concur with a request of the HCA within five calendar days, the Chief Trial Attorney shall forward the request, together with reasons for opposition, through the Judge Advocate General to the addressee in 5101.290(b)(1) for the decision in coordination with the General Counsel of the Army. If the Deputy Assistant Secretary of the Army (Procurement) determines that the Government will not make a motion for reconsideration or that the Government will not take an appeal to the U.S. Court of Appeals for the Federal Circuit, the Chief Trial Attorney may certify this fact to the ASBCA.

(3) When it appears that an adverse decision of the ASBCA has resulted from flaws in the regulations that implement DoD policy rather than an error by the ASBCA, recommendations for changes to acquisition regulations should be developed following the format in DFARS 201.201-1(d)(i) and submitted to the addressee in 5101.290(b)(2)(ii)(B).

(b) *Chief Trial Attorney review.* The Chief Trial Attorney independently reviews all ASBCA decisions involving Army contracts to determine whether the ASBCA should reconsider any decision or if the Army should appeal a decision to the U.S. Court of Appeals for the Federal Circuit.

5133.212-98 Dispute settlement and judgments, use of the Judgment Fund.

(a) Judgment Fund.

(1) The Disputes statute provides for the use of the Judgment Fund ("the Fund") (31 U.S.C. 1304) to pay for adverse judgments against the Government. Under certain circumstances, the Army can convert settlement agreements in Disputes statute cases before the ASBCA into consent judgments to access the Judgment Fund to pay for settlements. In Disputes statute cases before federal courts where Department of Justice represents the Army, the Department of Justice may use its independent authority to use the Judgment Fund for settlements. Contracting officers should consult with their legal counsel and their local resource management office prior to taking any actions related to the use of the Judgment Fund. Only authorized officials of a federal agency may submit a request for payment from the Judgment Fund. Requests submitted by anyone other than an authorized federal official are deemed fraudulent. Filing a false or fraudulent claim constitutes a Federal offense that is punishable by fines, imprisonment, or both. (See 31 U.S.C. 3729 and 18 U.S.C. 287.) The authorized official for Army is the Assistant Secretary of the Army (Financial Management and Comptroller). See Appendix GG for further delegation. Army contracting activities shall follow the policy set forth in this section of the AFARS.

(2) The Army must reimburse the Judgment Fund with funds current as of the date of the judgment. According to the Department of Defense Financial Management Regulation, (DoD FMR), Volume 3, Chapter 8, paragraph 080304F.5, approval authority is required from the cognizant Assistant Secretary of the Military Department (Financial Management and Comptroller) or Defense Agency Comptroller for all Judgment Fund Reimbursements to the Department of the Treasury in excess of \$1,000,000.

(b) *Fiscal considerations in settlements.* If funds appropriate to pay a settlement are expired but the account remains open, contracting officers must use expired funds to pay the settlement. If the account remains open but no expired funds remain, contracting officers must use the Judgment Fund to access current funds to pay the settlement. Access to the Fund requires a consent judgment from the Board or use of the Department of Justice's independent authority to use the Fund. The contracting officer may use current funds to pay the settlement if appropriate accounts are canceled or closed.

(c) Settlement procedures.

(1) The Office of the Assistant Secretary of the Army (Financial Management and Comptroller) (ASA(FM&C)), tracks available expired funds within the Service.

(2) The Army shall use the following procedures for settlements:

(i) In situations where contract funds have expired but the accounts have not closed, the Army shall fund settlements with expired funds if available. Contracting officers will ascertain the availability of appropriate expired funds through their resource management office.

(ii) If the resource management office determines that no expired funds exist within the Army to fund the settlement and the accounts are not closed, the contracting officer must access the Judgment Fund through a consent judgment in order to use current year funds to pay the settlement (i.e., reimburse the Fund).

(iii) If no expired funds exist but the account remains open, use the following procedure. If current year funds are available to reimburse the Fund, then the contracting officer may enter into a consent decree and allow the Fund to pay the judgment. If there is not sufficient current funding to reimburse the Fund, the contracting officer must receive authorization from the ASA(FM&C) prior to entering into a consent decree.

(iv) If the accounts are closed, use the following procedure. If the contracting officer has sufficient funds to pay the settlement, he/she will not use the Fund, and pay the settlement with Agency funds. If sufficient current funds are not available, ASA(FM&C) will provide approval to access the Fund prior to the contracting officer entering into a consent judgment.

(v) When use of the Judgment Fund is authorized, the contracting officer shall work with the resource management office to ensure execution of the appropriate Certificate of Finality and Financial Management Service forms (FMS Forms 195, 196, 197A and 198 (if appropriate)) and submit the payment request to the FMS. The "reimbursement contact" on FMS Form 196 shall be the ASA(FM&C).

(d) Judgments. Use the following procedures to pay judgments using the Judgment Fund.

(1) The contracting officer shall ascertain the availability of current funds through financial management channels. If current funds are available, the contracting officer will not use the Fund, and will pay the judgment with Agency funds.

(2) If current funds are not available, the contracting officer will pay the judgment using the Fund after proper coordination and authorization from the ASA(FM&C).

(e) *Settlement agreements.* All settlements converted to consent judgments and funded by the Judgment Fund shall be in writing and contain appropriate release language. The contracting officer, local attorney and trial attorney shall insure that all settlement amounts are fair and reasonable.

(f) *Expedited handling.* To expedite handling of settlements, inquiries and approvals that these procedures require may be oral so long as the contracting officer documents them in a memorandum for record.

5133.213 Obligation to continue performance.

(a) The HCA must approve the determination to use the alternate paragraph in the clause at FAR 52.233-1. See Appendix GG for further delegation.

5133.215 Contract clauses.

(3) The head of the contracting activity shall make the determination at DFARS 233.215(3). See Appendix GG for further delegation.

Subpart 5133.90 - Grant and Cooperative Agreement Claims, Disputes and Appeals

5133.9001 Designation of grant appeal authority.

(a) Procedures governing grants and cooperative agreements are set forth in Department of Defense Directive 3210.06, Defense Grant and Agreement Regulatory System (DGARS) and the Code of Federal Regulation (CFR) provisions cited in that directive.

- (b) 32 CFR section 22.815(e)(1) requires the designation of grant appeal authorities to decide formal administrative appeals brought under 32 CFR section 22.815(e).
- (c) The head of the contracting activity (HCA) that awarded the grant or cooperative agreement shall serve as the grant appeal authority, provided that the individual is a general officer or member of the Senior Executive Service. The grant appeal authority may utilize a board in accordance with 32 CFR section 22.815(e)(1). (d) The HCA may not delegate grant appeal authority. In the event that the HCA is not a general officer or member of the Senior Executive Service, the Deputy Assistant Secretary of the Army (Procurement) shall designate a qualified individual as the grant appeal authority on a case-by-case basis.
- (d) The grant appeal authority shall utilize the procedures specified in 32 CFR sections 22.815(e) and (f).

Part 5134 - Major System Acquisition

Subpart 5134.0 - General

5134.003 Responsibilities.

Subpart 5134.2 - Earned Value Management System

Subpart 5134.70 - Acquisition of Major Weapon Systems as Commercial Items

5134.7002 Policy.

Subpart 5134.0 - General

5134.003 Responsibilities.

See Army Regulation 70-1, Army Acquisition Policy.

Subpart 5134.2 - Earned Value Management System

See Army Class Deviation, Approval of Class Deviation from the Earned Value Management System Requirements of the Defense Federal Acquisition Regulation Supplement for Certain Fixed-Price Incentive (Firm Target) (FPIF) Contracts, dated 6 December 2015. This class deviation allows a deviation from the Earned Value Management System (EVMS) requirements prescribed in DFARS 234.2 and associated DFARS clauses 252.234-7001 and 252.234-7002. The class deviation applies to FPIF contracts for full rate production (FRP) subsequent to the first FRP lot, in support of Defense acquisition programs, supporting services contracts where work is not measurable and discrete, and contracts for non-developmental services not supporting a Defense acquisition program. This deviation is effective until incorporated in the DFARS or rescinded.

See Army Class Deviation ,Approval of Class Deviation from the Earned Value Management System Requirements of the DFARS for Requirements with an Approved Department of Defense Instruction (DoDI) 5000.02 Earned Value Management Applicability Determination or Waiver. This class deviation applies when a DoDI 5000.02 EVM applicability determination finds that EVM is not applicable or an EVM waiver has been executed by the designated officials.

Subpart 5134.70 - Acquisition of Major Weapon Systems as Commercial Items

5134.7002 Policy.

(d)(4) The head of the contracting activity shall make the determination under DFARS 234.7002(d)(4). See Appendix GG for further delegation.

Part 5135 - Research and Development Contracting

5135.006 Contracting methods and contract type.

5135.014 Government property and title.

5135.014-90 Special requirements for research and development contracts.

5135.015 Contracts for research with educational institutions and nonprofit organizations.

5135.015-70 Special use allowances for research facilities acquired by educational institutions.

5135.070 Indemnification against unusually hazardous risks.

5135.070-1 Indemnification under research and development contracts.

5135.006 Contracting methods and contract type.

(b)(i) The contracting officer cannot release the solicitation until the milestone decision authority approves the contract method and contract type.

5135.014 Government property and title.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) makes the determination as set forth in FAR 35.014(b). See Appendix GG for further delegation.

5135.014-90 Special requirements for research and development contracts.

(a) Prior to entering into a contract for research or development or both which provides for the acquisition or construction by, or furnishing to, the contractor of research, development, or test facilities and equipment, the Secretary of the Army must determine that the facilities and equipment are necessary for the performance of the contract (10 U.S.C. 2353). See 5101.707.

(b) Send each request for secretarial determination to the addressee in 5101.290(b)(2)(ii)(C). Each request must contain the following:

(1) A detailed description of the acquisition supporting a finding that the contract is for research or development or both.

(2) The contract type.

(3) The type of funds, appropriation and amount.

(4) Required property or services.

(5) Name of the potential contractor.

(6) Any urgency considerations.

(7) A description of the research, development or test facilities and associated equipment and specialized housing which the contractor will acquire or construct or which the Government will furnish to the contractor.

Include the contractor or Government-furnished property estimated cost and the reasons this property is necessary for the performance of the contract.

(8) When the Government will furnish property to the contractor, an explanation of how it will do so, e.g., loan, lease, sale, or other. When the Government will seek reimbursement under a lease or sale, provide the fair market value that Government will charge to the contractor.

(9) Details concerning ownership of land on which the facilities or equipment are to be located, e.g., Government owned, private, etc.

(10) Details concerning whether the installed or constructed facilities will be removable or separable without unreasonable expense or unreasonable loss of value.

(11) In the case of installed or constructed facilities on property the United States does not own, and that are not removable or separable without unreasonable expense or unreasonable loss of value, describe the provisions to be included in the contract for –

(i) Reimbursing the United States for the fair value of the facilities at the completion or termination of the contract or within a reasonable time thereafter;

(ii) An option for the United States to acquire the underlying land; or

(iii) An alternative provision considered adequate to protect the interests of the United States in the facilities and an explanation of why it is adequate.

5135.015 Contracts for research with educational institutions and nonprofit organizations.

5135.015-70 Special use allowances for research facilities acquired by educational institutions.

(c) The head of the contracting activity may approve special use allowances as described at DFARS 235.015-70(c). See Appendix GG for further delegation.

(d)(3)(ii) The head of the contracting activity shall make the determination at DFARS 235.015-70(d)(3)(ii). See Appendix GG for further delegation.

5135.070 Indemnification against unusually hazardous risks.

5135.070-1 Indemnification under research and development contracts.

(1) Send requests for authorization through contracting channels to the addressee in 5101.290(b)(2)(ii)(C) in time to reach the addressee at least 30 working days prior to the planned release of the solicitation.

(2) Each secretarial request for authorization must contain –

(i) The information required by FAR 50.104-3(b) except (b)(1)(iii);

(ii) The clause and facts showing that the contract is for research or development or both;

(iii) A statement that the proposed indemnification clause complies fully with the requirements of 10 U.S.C. 2354;

- (iv) The reasons the use of the indemnification clause would be in the Government's interest; and
 - (v) The signatures of the head of the contracting activity or the senior contracting official and the contracting officer.
- (3) Handle requests for indemnification under Pub. L. 85-804 in accordance with FAR 50.104-3 and DFARS 250.104-3-70.

Part 5136 - Construction and Architect-Engineer Contracts

(Revised 30 September 2022)

Subpart 5136.2 - Special Aspects of Contracting for Construction

5136.201 Evaluation of contractor performance.

5136.2-90 Special procedures for job order contracts.

5136.208 Concurrent performance of firm-fixed-price and other types of construction contracts.

5136.209 Construction contracts with architect-engineer firms.

5136.213 Special procedures for sealed bidding in construction contracting.

5136.213-2 Presolicitation notices.

5136.270 Expediting construction contracts.

5136.272 Prequalification of sources.

Subpart 5136.3 - Two-Phase Design-Build Selection Procedures

5136.301 Use of two-phase design-build selection procedures.

Subpart 5136.5 - Contract Clauses

5136.570 Additional provisions and clauses.

Subpart 5136.6 - Architect-Engineer Services

5136.601 Policy.

5136.601-90 Authority for architect-engineer contracting.

5136.601-3 Applicable contracting procedures.

5136.601-3-90 Limitations.

5136.602 Selection of firms for architect-engineer contracts.

5136.602-1 Selection criteria.

5136.602-4 Selection authority.

5136.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

5136.604 Performance evaluation.

5136.609 Contract clauses.

5136.609-1 Design within funding limitations.

Subpart 5136.2 - Special Aspects of Contracting for Construction

5136.201 Evaluation of contractor performance.

(1) See 5142.1503-90 for the requirements to prepare contractor past performance evaluations on construction contracts.

(2) At a minimum, prepare the report (DD Form 2626, Performance Evaluation (Construction)) at the final acceptance of work. The contracting officer's representative, or ordering officer if there is no contracting officer's representative, must be responsible for monitoring contract performance.

5136.2-90 Special procedures for job order contracts.

Before awarding a job order contract, contracting officers must review all performance evaluations in the Contractor Performance Assessment Rating System on those offerors in range for award. Contracting officers may rely solely on the Contractor Performance Assessment Rating System database information in assessing past performance.

5136.208 Concurrent performance of firm-fixed-price and other types of construction contracts.

The head of the contracting activity may approve contracts with cost variation or cost adjustment features as described at FAR 36.208. See Appendix GG for further delegation.

5136.209 Construction contracts with architect-engineer firms.

Subject to the resolution of organizational conflict of interest concerns, the Assistant Secretary of the Army (Acquisition, Logistics and Technology) may approve award of a construction contract to the firm that designed the project. See Appendix GG for further delegation.

5136.213 Special procedures for sealed bidding in construction contracting.

5136.213-2 Presolicitation notices.

(a) The head of the contracting activity may waive the requirement as stated in FAR 36.213-2(a). See Appendix GG for further delegation.

5136.270 Expediting construction contracts.

The Secretary of the Army shall make the approval set forth in DFARS 236.270. This approval authority may not be redelegated.

5136.272 Prequalification of sources.

(b) The head of the contracting activity must perform the functions at DFARS 236.272(b). See Appendix GG for further delegation.

Subpart 5136.3 - Two-Phase Design-Build Selection Procedures

5136.301 Use of two-phase design-build selection procedures.

(b)(3)(vi) The head of the contracting activity, on a non-delegable basis, shall establish other criteria as described at FAR 36.301(b)(3)(vi).

Subpart 5136.5 - Contract Clauses

5136.570 Additional provisions and clauses.

(b)(2) The head of the contracting activity shall approve actions as described at DFARS 236.570(b)(2). See Appendix GG for further delegation.

Subpart 5136.6 - Architect-Engineer Services

5136.601 Policy.

5136.601-90 Authority for architect-engineer contracting.

(a) Army contracting activities, and subordinate offices, authorized to contract for architect-engineer services are as follows:

(1) The U.S. Army Corps of Engineers (USACE).

(2) The National Guard Bureau (NGB).

(3) The U.S. Army Mission and Installation Contracting Command.

(4) The U.S. Army Contracting Command, 414th Contracting Support Brigade, Vicenza, Italy, for architect-engineer services for operations and maintenance appropriations and Army Family Housing (Operations) funded projects.

(b) Other Army contracting activities, as mutually agreed with the USACE, may execute task orders for architect-engineer services, under USACE indefinite-delivery contracts. The installation contracting officer and facilities engineering personnel must comply with the instructions of the USACE contracting officer regarding the negotiation, issuance, and administration of task orders.

5136.601-3 Applicable contracting procedures.

5136.601-3-90 Limitations.

Headquarters, USACE, and Headquarters, NGB, must establish appropriate controls on the use of indefinite-delivery contracts for architect-engineering services by subordinate contracting offices.

5136.602 Selection of firms for architect-engineer contracts.

5136.602-1 Selection criteria.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA(ALT)) has the authority to approve design competition. See Appendix GG for further delegation.

5136.602-4 Selection authority.

(a) The ASA(ALT) has the authority to make the final selection decision in accordance with all appropriate source selection guidance. See Appendix GG for further delegation.

5136.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

The USACE and the NGB may use both short processes.

(b)(2) The ASA(ALT) has the authority to approve the selection report or return it to the chairperson for appropriate revision. See Appendix GG for further delegation.

5136.604 Performance evaluation.

See 5142.1503-90 for the requirements to prepare contractor past performance evaluations on architect-engineer contracts.

5136.609 Contract clauses.

5136.609-1 Design within funding limitations.

(c)(1) The head of the contracting activity shall make the determination at FAR 36.609-1(c)(1). See Appendix GG for further delegation.

Part 5137 - Service Contracting

(Revised March 1, 2023)

Subpart 5137.1 - Service Contracts - General

5137.102-90 Policy.

5137.104 Personal services contracts.

5137.112 Government use of private sector temporaries.

5137.113-1 Waiver of cost allowability limitations.

5137.170 Approval of contracts and task orders for services.

5137.170-2 Approval requirements.

Subpart 5137.2 - Advisory and Assistance Services

5137.204 Guidelines for determining availability of personnel.

Subpart 5137.5 - Management Oversight of Service Contracts

5137.503 Agency-head responsibilities.

5137.590-1 Definitions.

5137.590-2 Applicability.

5137.590-3 Review thresholds.

5137.590-4 Review procedures.

5137.590-5 Reserved.

5137.590-6 Acquisition strategy content.

5137.590-7 Data collection and reporting.

Subpart 5137.72 - Educational Service Agreements

5137.7204 Format and clauses for educational service agreements.

5137.7204-90 Establishing educational service agreements.

5137.7204-91 Purchase requests.

5137.7204-92 Ordering procedures.

5137.7204-93 Distribution of orders.

5137.7204-94 Gratuitous agreements.

Subpart 5137.74 - Services at Installations Being Closed

5137.7401 Policy.

Subpart 5137.90 - Security Clearances and Identification for Contractor Personnel

5137.9001 Responsibilities.

Subpart 5137.91 - Accounting for Contract Services

5137.9101 Policy.

Subpart 5137.1 - Service Contracts - General

5137.102-90 Policy.

Department of Defense Instruction (DoDI) 5000.74, Defense Acquisition Services, dated 5 January 2016, is the primary authority for service acquisitions.

5137.104 Personal services contracts.

(b)(i) The head of the contracting activity (HCA) will make the determination as required by DFARS 237.104(b)(i) to authorize contracts pursuant to 10 U.S.C. 129b and 5 U.S.C. 3109. See [Appendix GG](#) for further delegation. When a blanket determination and findings (D&F) applies, the contracting officer will include in the contract file a copy of the blanket D&F and a statement signed by the contracting officer clearly showing why the blanket D&F is applicable to the proposed contract.

(ii)(C)(2) The HCA for the U.S. Army Medical Command must approve requirements for services at DFARS 237.104(b)(ii)(C)(2). See [Appendix GG](#) for further delegation.

(iii)(A)(2) The HCA will make the determination as required by DFARS 237.104(b)(iii) to authorize contracts pursuant to 10 U.S.C. 129b(d). See [Appendix GG](#) for further delegation.

(S-90) Contracting officers will ensure that purchase requests for personal services in the areas listed in DA Pamphlet 25-91 (Visual Information Procedures) have been approved by the local multimedia/visual information activity. See Army Regulation 25-1.

5137.112 Government use of private sector temporaries.

Direct questions about acquisition of these services to the civilian personnel office.

5137.113-1 Waiver of cost allowability limitations.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has authority to make the determination at FAR 37.113-1. See [Appendix GG](#) for further delegation.

5137.170 Approval of contracts and task orders for services.

5137.170-2 Approval requirements.

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

(1) The HCA has authority to approve actions for the dollar threshold identified at DFARS 237.170-2(a)(1). See [Appendix GG](#) for further delegation.

(2) The senior procurement executive has authority to approve actions for the dollar threshold identified at DFARS 237.170-2(a)(2). See [Appendix GG](#) for further delegation.

Subpart 5137.2 - Advisory and Assistance Services

5137.204 Guidelines for determining availability of personnel.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has authority to make the determination at FAR 37.204. See [Appendix GG](#) for further delegation.

Subpart 5137.5 - Management Oversight of Service Contracts

5137.503 Agency-head responsibilities.

Army Regulation 70-13, Management and Oversight of Service Contracts, chapter 2, implements the responsibilities set forth in FAR 37.503(a), (b) and (d). See 5107.5 for implementation of FAR 37.503(c) and DFARS 237.503.

5137.590-1 Definitions.

As used in this section –

“Acquisition of services” means the execution of one or multiple contracts or other instruments committing or obligating funds (e.g., fund transfer, orders under the Federal Supply Schedules or other existing contracts, etc.) to acquire services for a specified requirement.

“Decision authority” means the official with review and approval responsibility as designated and associated with the thresholds at 5137.590-3.

“Information Technology (IT) services” means the performance of any work related to IT and the operation of IT, including National Security Systems. This includes outsourced IT-based business processes, outsourced information technology and outsourced information functions.

“Service” means the engagement of the time and effort of a contractor whose primary purpose is to perform an identifiable task, or tasks, rather than to furnish an end item of supply.

5137.590-2 Applicability.

(a) Oversight of services acquisition is the shared responsibility of requiring activities, contracting activities, and the Office of the ASA(ALT). See DoDI 5000.74, Defense Acquisition of Services, section 2 for applicability of the instruction and this subpart.

(b) Except as provided in paragraphs (d) and (e) below, and DoDI 5000.74, paragraph 1.1. b, the requirements in this section apply to service acquisitions including any service acquisition determined to be of special interest by the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)), the ASA(ALT), the Deputy Assistant Secretary of the Army (Procurement) (DASA(P)), and the Senior Services Manager (SSM).

(c) The requirements in this section also apply to any acquisition of services that is made through the use of a contract or task order entered into or issued by an agency other than the DoD, unless the non-defense agency has certified in accordance with FAR 17.703(a).

(d) Task orders executed within a service acquisition reviewed pursuant to this subpart do not require a separate acquisition strategy or review, provided the contracting officer issues the task order consistent with any conditions specified by the acquisition strategy decision authority. A separate acquisition strategy may be executed for complex task orders.

(e) Decision authorities shall retain the ability to respond rapidly to emergencies. Accordingly, the decision authority may approve either verbally or electronically services determined to be an emergency acquisition in accordance with FAR 18.001(a), (b) or (c). This procedure requires a formal notification of intent by the contracting officer to the decision authority. This procedure also requires the submission of a formal acquisition strategy to the decision authority within 30 days of the notice to proceed.

5137.590-3 Review thresholds.

(a) DoDI 5000.74, Defense Acquisition of Services, dated 5 January 2016 (incorporating change 2, 31 August 2018) sets forth review thresholds for review of Acquisition Strategies. The Army Acquisition Executive (AAE) has delegated the authority for Army Acquisition of Services Categories. See Appendix GG for delegations. Special interest programs may be designated by the USD(AT&L) regardless of the estimated dollar value.

(b) After approval of the acquisition strategy, the acquisition may proceed, and the contracting officer may release the final solicitation, subject to the separate peer review process outlined in DFARS 201.170 and in AFARS 5101.170, and any other required local reviews.

5137.590-4 Review procedures.

The HCA shall establish procedures for reviews of service acquisitions as delegated. Contracting officers shall forward, through the contracting chain as necessary, service acquisitions meeting the review thresholds identified in Appendix GG to the appropriate approval authority for review and approval prior to issuance of the solicitation. For service acquisitions requiring USD(AT&L), DASA(P) or SSM review and approval, the HCA (or SCO if delegated) will submit the acquisition strategy via the TMT to the Office of the DASA(P), ATTN: Senior Services Manager usarmy.pentagon.hqda-asa-alt.list.saal-p-ssm@mail.mil. At a minimum, the strategy will contain all the information included at 5137.590-6.

5137.590-5 Reserved.

5137.590-6 Acquisition strategy content.

(a) At a minimum, the acquisition strategy will address the following:

(1) *Requirement.* The outcomes to be satisfied and if such outcomes are performance-based (see FAR subpart 37.6). If not performance-based, obtain the Senior Procurement Executive's approval for acquisitions exceeding the dollar threshold identified at DFARS 237.170-2(a)(2). Address the service acquisition measures of success and how the requirement will be satisfied or was previously satisfied.

(i) Will the requirement be satisfied through the use of a non-DOD contract? If so, indicate whether the appropriate official has approved the acquisition in accordance with the policy and procedures described at 5117.770.

(ii) Include a discussion of the procurement history.

(iii) Address challenges that drive the mission or acquisition approach.

(iv) Indicate if there is any congressional interest in the requirement.

(v) Discuss opportunities for strategic sourcing.

(vi) All acquisitions of IT services, regardless of dollar value, are subject to the Clinger-Cohen Act: 40 U.S.C. 11101 et seq. Discuss the specific applicability and implications of the Clinger-Cohen Act.

(vii) Describe the use of Category Management procedures when planning for this acquisition. Category Management is the business practice of buying common goods and services using an enterprise approach to reduce redundancies, increase efficiencies and drive savings from Government acquisition programs. All Category Management guidance/terminology is explained in Memorandum 19-13, dated 20 March 2019, titled, Category Management: Making Smarter Use of Common Contract Solutions and Practices. The Army implemented Category Management in a memorandum released on 06 February 2020, titled Category Management Implementation and Execution.

(a) Discuss review of existing Spend Under Management (SUM) contracts and how the command analyzed specific requirement in context of all forecasted contract requirements within the command/enterprise.

(b) If a SUM contract was not utilized, provide rationale for utilizing a Tier 0 contract.

(2) *Risk Management*. Provide an assessment of current and potential technical, cost, schedule and performance risks, the level of stated risks, and a risk mitigation plan.

(3) *Competition*. Explain how the acquisition will provide for full and open competition. If other than full and open competition applies to the acquisition, explain why and include a citation of the statutory authority that allows for other than full and open competition. Address plans for competition for any foreseeable follow-on acquisitions.

(i) Describe the nature and extent of the market research that the Government acquisition team conducted. This should, at a minimum, address the identification of small business sources capable of performing the services and discuss how this information impacted the acquisition strategy for both prime and subcontracting opportunities.

(ii) Is this a consolidated requirement? If so, indicate whether appropriate official has approved the consolidation (see 5107.170-3(a)(3)).

(4) *Socio-Economic Implications*. Address how the new acquisition will support the achievements of small business goals and targets. Address how the new acquisition will support any other socio-economic program and/or required-source program, such as AbilityOne.

(i) If this is a bundled requirement, include the benefit analysis as prescribed in the DoD Benefit Analysis Guidebook located at: http://www.acq.osd.mil/osbp/docs/benefits_analysis_guidebook.pdf.

(ii) Indicate whether the Small Business Administration procurement center representative has concurred on the DD Form 2579.

(iii) Include a discussion of subcontracting potential and goals.

(5) *Business Arrangements*. Address how the acquisition will be funded, the type of business arrangements anticipated (e.g., single contract, multiple award task order contract, task orders under existing multiple award contracts, interdepartmental transfers, and interdepartmental purchase requests), the duration of each business arrangement (base period and all option periods), cost estimate for the total planned acquisition, and pricing arrangements (e.g., fixed price, cost reimbursement, time and materials, labor hour, or variations, based on guidance in FAR part 16 and, for commercial services, in FAR part 12). At a minimum, address the following:

(i) Include the total estimated dollar value of the procurement, to include all options.

(ii) Address whether funding is available and the type of funds that will be used.

(iii) Address the contract type and the basis for selection. If the contracting officer anticipates using a contract type with award fee, include a discussion of the award fee plan, related criteria and evaluation process to include how the award fee evaluation will incorporate attainment of the metrics.

(iv) Assess long-term continuing requirements using cost-type contracts for conversion to fixed price or other lower risk contractual arrangement, especially when the contracting officer decides to use a cost-type contract after initial analysis indicates that a fixed-price or other low-risk contract instrument may be appropriate.

(v) Discuss the source selection process, including whether it will be formal or informal, proposed evaluation criteria, and the basis for award. If the procurement will use a formal source selection process, do not identify the name of the SSA in the strategy.

(vi) Discuss any waivers or deviations that will be required.

(vii) Discuss contract administration to include the involvement of the contracting officer's representative and/or the Defense Contract Management Agency.

(viii) Discuss the existing or planned management approach following contract award to include the tracking procedures or processes used to monitor contract performance. This approach could include, but not be limited to, a quality assurance surveillance plan and written oversight plans and responsibilities.

(ix) Include a milestone schedule which contains key points up to time of award.

(6) *Multi-year contracts*. If the acquisition strategy calls for a multi-year service contract as defined in FAR subpart 17.1 (see also DFARS 217.171) under the authority of 10 U.S.C. 2306c, the acquisition strategy must address the Army's plans for budgeting for termination liability.

(7) *Leases*. Include a lease-purchase strategy if required by OMB Circular A-94, Section 13.

(8) *Metrics*. Address the cost, the schedule and the performance metrics to include the plan for measuring service acquisition outcomes against requirements. If the acquisition strategy does not include metrics, the contracting officer must submit the metrics for the decision authority approval prior to execution of any business instrument (e.g., contract, military interdepartmental purchase request (MIPR)) that initiates the acquisition.

5137.590-7 Data collection and reporting.

(a) Data identified in DoDI 5000.74 Enclosure 6 should be collected by the Office of the Senior Service Manager, for all requirements regardless of dollar amount, and reported in the Annual DoD Services Acquisition Report. Data collection will be automated, as it is already captured in the DoD standard procurement data systems.

(b) Post award peer reviews will be done in accordance with 5101.170(b)(vi) for actions with a total planned dollar value of \$250 million or more but less than \$1 billion. For actions over \$1 billion, reviews will be done in accordance with 5101.170(a).

Subpart 5137.72 - Educational Service Agreements

5137.7204 Format and clauses for educational service agreements.

Contracting officers may use DD Form 1155 or Standard Form 26, as appropriate, as order forms under educational service agreements.

5137.7204-90 Establishing educational service agreements.

One of the offices in 5137.7204-93 will furnish requests and information necessary for the establishment of an educational service agreement.

5137.7204-91 Purchase requests.

(a) Requests to issue an order under the educational service agreement must include –

- (1) The estimated cost of training by year, semester, term, or quarter;
- (2) The authority to adjust cost figures without requesting approval whenever the actual cost of a course will exceed the estimated cost by less than \$100, except when the course is taught by professors of military science; and
- (3) The information in 5137.7204-92(c)(1)-(4).

(b) The contracting officer shall obtain additional funds in writing from the funding activity when the actual cost of a course will exceed the estimated cost by \$100 or more, except when professors of military science teach the course.

5137.7204-92 Ordering procedures.

(a) The contracting officer shall issue a separate order for each required training session (e.g. year, semester, term, or quarter), and obligate funds to cover the instruction of those individuals identified on the order form for the period specified.

(b) The contracting officer may issue an order for the next fiscal year prior to the availability of funds, notwithstanding 5132.7 to preclude delays in enrollment. Insert the clause in FAR 52.232-18, Availability of Funds, in the order. When the funds become available, the contracting officer shall use Standard Form 30 to modify the order to cite the appropriation chargeable and to delete the Availability of Funds clause.

(c) An order may authorize the enrollment of any number of military personnel or Reserve Officers' Training Corps (ROTC) scholarship cadets and must –

(1) Identify each individual authorized to enroll by name and rank; for ROTC scholarship cadets, show social security number in lieu of rank;

(2) Identify the individual as an Army Medical Department member or ROTC scholarship cadet, when applicable;

(3) Identify each course for which the individual is enrolling and its actual or estimated cost;

(4) State the appropriation chargeable for the instruction of each individual; and

(5) Include the statement: "Whenever the actual cost of a course will exceed the estimated cost shown on this order by \$100 or more, the Contractor shall submit a written request for approval to the Contracting Officer prior to commencing instruction."

5137.7204-93 Distribution of orders.

Distribute one copy of each order, modification, and payment voucher as follows –

(a) For Army Medical Department personnel,

Commander, AMEDDC&S, Department of Health Education and Training

Attn: MCCS-HE

2377 Greeley Road, Suite B

Fort Sam Houston, TX 78234-5075;

(b) The appropriate professor of military science for ROTC scholarship cadets;

(c) For Army officer personnel other than those identified in (a) and (b),

Office of the Deputy Chief of Staff, G1

Director of Military Personnel Management, Officer Division

Attn: DAPE-MPO-S

300 Army Pentagon

Washington DC 20310-0300;

(d) For Army enlisted personnel other than those identified in (a),

Office of the Deputy Chief of Staff, G1

Director of Military Personnel Management, Enlisted Division

Attn: DAPE-MPE-PD

300 Army Pentagon

Washington DC 20310-0300.

5137.7204-94 Gratuitous agreements.

(a) A gratuitous agreement is an agreement with a civilian educational institution or with a commercial firm for training of military personnel for which the Government does not pay.

(b) One of the offices in 5137.7204-93 will furnish requests and information necessary for the execution of a gratuitous agreement to the contracting office.

(c) The contracting officer shall furnish two copies of the gratuitous agreement to the appropriate addressee in 5137.7204-93. In addition, the contracting officer shall furnish a copy of the agreement to all Army activities likely to have use for the training covered by the agreement.

Subpart 5137.74 - Services at Installations Being Closed

5137.7401 Policy.

(c) The head of the contracting activity makes the determination at DFARS 237.7401(c). See Appendix GG for further delegation.

Subpart 5137.90 - Security Clearances and Identification for Contractor Personnel

5137.9001 Responsibilities.

The contracting officer is responsible for identifying contractor required security clearances in the solicitation and including the DD Form 254 as an attachment. The contracting officer is also responsible for including the process and procedures for contractor personnel to obtain identification cards, tags, and badges.

Subpart 5137.91 - Accounting for Contract Services

5137.9101 Policy.

(a) Contracting officers shall ensure that the requirement to report contractor manpower is included in all contracts, task/delivery orders and modifications. The cognizant contracting officer shall include a separate line item in Section B of the contract to allow for payment in compliance with this requirement.

(b) Report all services contracts that meet the threshold outlined in FAR 4.1703 – Reporting Requirements. The list of contracts for which reporting is not applicable is located on the Assistant Secretary of the Army Manpower and Reserve Affairs (ASA(M&RA)) website <http://www.asamra.army.mil/scra/documents/ServicesContractApprovalForm.pdf>.

(c) The Under Secretary of Defense for Acquisition & Sustainment established services contractor reporting in www.SAM.gov on October 15, 2020. It provides most of the source data for compliance with section 2330a of Title 10, United States Code.

(d) Enter data into the www.SAM.gov system at any time during the contract's period of performance. However, data must be accurate and complete and entered into www.SAM.gov not later than October 31 after the completion of each fiscal year or part of a fiscal year for which such contract is active.

(e) The Contractor Manpower Reporting application is available at <https://www.SAM.gov>.

Part 5139 - Acquisition of Information Technology

(Revised 27 February, 2023)

Subpart 5139.1 - General

5139.101 Policy.

5139.101-90 Policy.

Subpart 5139.74 - Telecommunications Services

5139.7402 Policy.

Subpart 5139.76 - Cloud Computing

5139.7602 Policy and Responsibilities.

Subpart 5139.1 - General

See AFARS PGI 5139.1-1 for guidance on Internal Use Software in contract documentation.

See AFARS PGI 5139.1-2 for information on reform of information technology desktop and notebook purchase and configuration.

See AFARS PGI 5139.1-3 for instruction on development, security, and operations (DevSecOps).

5139.101 Policy.

(1) The head of the contracting activity has the authority to make the determination under DFARS 239.101(1). See Appendix GG for further delegation.

(2) Information technology (IT) purchases must be submitted through the Information Technology Approval System (ITAS). The ITAS approval memo and supporting documentation shall be part of the requirements package submitted to the Contracting Officer and shall also be part of the resulting solicitation and contract file documentation. The ITAS Approval website is located at <https://cprobe.army.mil/enterprise-portal/web/itas/home>.

5139.101-90 Policy.

(a) *Commercial information technology hardware and software.*

(1) The Army's Computer Hardware, Enterprise Software and Solutions (CHESS) program, under the Program Executive Office Enterprise Information Systems, is the mandatory source for commercial IT hardware and software purchases. CHESS contracts provide IT products and services that comply with U.S. Army Network Enterprise Technology Command, Army and DoD policy and standards. Purchasers of commercial hardware and software must satisfy their IT requirements by utilizing the Joint and Enterprise License Agreements (J/ELA), DoD Enterprise Software Initiative (ESI) agreements, and/or CHESS contracts first, regardless of dollar value or financial appropriation. Additionally, purchasers of IT requirements through a third party such as a system integrator must ensure solicitations and contract vehicles include the requirement to purchase through the CHESS and the DoD ESI agreements.

(2) Any IT hardware or software purchase made outside of the CHESS contracts requires an Army Deputy Chief of Staff (DCS), G-6 approved ITAS Approval, unless the purchase meets one of the exceptions in paragraph (a).
(3) The ITAS Approval along with supporting documentation shall be part of the procurement package submitted to the Contracting Officer and shall also be part of the resulting solicitation and contract file(s). Supporting documentation must include documentation submitted with the ITAS Approval request such as a CHESS Statement of Non-Availability (SONA) for items that are not available from CHESS or other rationale for not using CHESS. The CHESS website located at <http://chess.army.mil> provides a complete list of CHESS contracts, the DoD ESI as well as information concerning ITAS Approvals and CHESS SONAs. The ITAS Approval website is located at <https://cprobe.army.mil/enterprise-portal/web/itas/home>.

(3) Exceptions

(i) IT embedded in weapons systems.

(ii) Purchases of peripheral electronic supplies for IT equipment (for example, keyboards, mice, webcams, compact disks, cables or cords, and so forth) up to \$500 per purchase of supplies (not per item). GPC rules regarding split purchases still apply.

(iii) Contracting Officers may purchase commercial IT hardware or software outside of the CHESS contracts, for procurements in support of Non-Program Executive Officer (PEO)/Project Manager (PM) managed National Intelligence Program (NIP) or Military Intelligence Program (MIP) systems (Non-PEO/PM managed NIP or MIP will be requested using the Army G-2 Army Request for Information Technology–Military Intelligence (ARFIT-MI)).

(iv) The Product Lead, Common Hardware Systems (PdL CHS) coordinates across the Army's computing environments and tactical program offices to modify commercially available off-the-shelf IT to meet specific program requirements for transport or ruggedization, to ensure configuration and end of life management. Organizations that receive written authorization from PdL CHS to use a CHS contract are exempt from the requirement to obtain a CHESS SoNA. In such circumstances, requiring activities will provide PdL CHS's written authorization to the contracting officer as part of the procurement package. Contracting Officers shall place the written authorization in the contract file.

(v) CHESS exemptions. The following are exempt from both the mandatory use of CHESS and the requirement to submit a statement of non-availability (SoNA) for obtaining ITAS approval to procure IT outside of CHESS

(A) Commercially developed IT offered to the Army's accredited institutions of higher education at a price discount more favorable for the Army than prices available through CHESS.

(B) Procurements of government off-the-shelf information technology (GOTS IT) as defined by the Committee on National Security Systems: software and hardware developed by the technical staff of a U.S. Government organization for use by the Government. GOTS IT sales and distribution are controlled by the Government. GOTS IT is both commercially unavailable to the public and unavailable via CHESS.

(b) *Information technology services.*

(1) The Army's CHESS program is the mandatory source for the purchase of commercial IT services. Purchasers of commercial IT services must satisfy their requirements by utilizing the CHESS contracts first, regardless of dollar value or financial appropriation. When procuring IT services, contracting personnel must consider setting aside requirements for small businesses and other small business categories in accordance with FAR 13.003(b)(1) and FAR subpart 19.5. Contracting Officers shall ensure that the procurement package contains sufficient supporting documentation to assist the contracting officer in determining whether to set aside the requirement for small businesses and other small business categories in accordance with FAR 13.003(b)(1) and FAR subpart 19.5. Purchasers of commercial IT services that meet the requirement for small business set-asides shall use the

small business/socioeconomic set-aside functions within the CHESS RFP tool. If no small business within the CHESS contracts can satisfy the requirement, a CHESS SONA should be requested.

(2) Any purchase of commercial IT services made outside of the CHESS contracts requires an Army DCS, G6 approved ITAS Approval. The ITAS Approval along with supporting documentation shall be part of the procurement package submitted to the Contracting Officer and shall also be part of the resulting solicitation and contract file(s). Supporting documentation must include documentation submitted with the ITAS Approval request such as a CHESS SONA for items that are not available from CHESS, market research analysis, or other rationale for not using CHESS. The CHESS website located at <http://chess.army.mil> provides a complete list of CHESS contracts as well as information concerning ITAS Approval and CHESS SONAs. The ITAS Approval website is located at <https://cprobe.army.mil/enterprise-portal/web/itas/home>.

(3) If a services requirement includes any IT hardware and/or software, the Contracting Officer must ensure solicitations and contract vehicles include the requirement to purchase through the J/ELA, DoD ESI agreements, and/or CHESS contracts. If a services requirement includes non-CHESS IT hardware or software, personnel must secure an Army DCS, G-6 approved ITAS Approval for the non-CHESS IT hardware and software per paragraph (a)(2) in this section. The procurement package and contract file documentation requirements of paragraph (a)(2) apply to hardware and software purchased as part of IT services requirements.

(4) Exceptions

(i) IT embedded in weapons systems.

(ii) Purchases of peripheral electronic supplies for IT equipment (for example, keyboards, mice, webcams, compact disks, cables or cords, and so forth) up to \$500 per purchase of supplies (not per item). GPC rules regarding split purchases still apply.

(iii) Contracting Officers may purchase commercial IT services outside of the CHESS contracts, for procurements in support of Non-Program Executive Officer (PEO)/Project Manager (PM) managed National Intelligence Program (NIP) or Military Intelligence Program (MIP) systems (Non-PEO/PM managed NIP or MIP will be requested using the Army G-2 Army Request for Information Technology–Military Intelligence (ARFIT-MI)).

(iv) The Product Lead, Common Hardware Systems (PdL CHS) coordinates across the Army's computing environments and tactical program offices to modify commercially available off-the-shelf IT to meet specific program requirements for transport or ruggedization, to ensure configuration and end of life management. Organizations that receive written authorization from PdL CHS to use a CHS contract are exempt from the requirement to obtain a CHESS SoNA. In such circumstances, requiring activities will provide PdL CHS's written authorization to the contracting officer as part of the procurement package. Contracting Officers shall place the written authorization in the contract file.

(v) CHESS exemptions. The following are exempt from both the mandatory use of CHESS and the requirement to submit a statement of non-availability (SoNA) for obtaining ITAS approval to procure IT outside of CHESS

(A) Commercially developed IT offered to the Army's accredited institutions of higher education at a price discount more favorable for the Army than prices available through CHESS.

(B) Procurements of government off-the-shelf information technology (GOTS IT) as defined by the Committee on National Security Systems: software and hardware developed by the technical staff of a U.S. Government organization for use by the Government. GOTS IT sales and distribution are controlled by the Government. GOTS IT is both commercially unavailable to the public and unavailable via CHESS.

(c) *Training*. Senior contracting officials must ensure that contracting personnel receive appropriate CHESS training, and should ensure that contracting personnel document the training on their individual development

plans. Personnel can request CHESS training and view the training slides at <https://chess.army.mil/UserTrainingRequest>.

(d) *Cloud Computing.* The Army Enterprise Cloud Management Office (ECMA) is the central point for all efforts and processes related to cloud adoption across the Army. The ECMO will establish a standardized cloud architecture which is intended for use by all Army mission areas.

ECMA will provide enterprise-level contracts for commercial CSP offerings, common services, and application migration support.

Subpart 5139.74 - Telecommunications Services

5139.7402 Policy.

(b)(4) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may authorize actions as described in DFARS 239.7402(b)(4). See Appendix GG for further delegation.

Subpart 5139.76 - Cloud Computing

5139.7602 Policy and Responsibilities.

(1) Contracting Officers are responsible to ensure that Purchase Request Packages for NEW Contracts include a PWS with the approved/standard language in accordance with 5111.106 unless a waiver approved by ECMA is included. The standard language is provided in Appendix HH. The waiver must be filed in the official contract file. This includes follow-on contracts.

(2) Contracting Officers are responsible to ensure Purchase Request Packages for Exercising an Option on an Existing Contracts are coordinated with ECMA IAW 5111.106. The coordination document shall be filed in the contract file.

(3) Contracting Officers are responsible to ensure Purchase Request Packages for issuing a New Order against an Existing Contract are coordinated with ECMA IAW 5111.106. The coordination documentation shall be filed in the contract file.

(4) For New contracts to Cloud Service Providers, Contracting Officers are responsible to ensure maximum use of the Common and Data Service Descriptions as defined by ECMA in the Army Cloud Plan and issued to Contracting by DASA(P). See Appendix HH.

(5) For New contracts for Cloud Migration, Hosting, and Managed Services, Contracting Officers and requiring activities will maximize use of the CLIN/SLIN descriptions. See Appendix HH.

Part 5141 - Acquisition of Utility Services

Subpart 5141.1 - General

5141.102 Applicability.

Subpart 5141.2 - Acquiring Utility Services

5141.201 Policy.

Subpart 5141.1 - General

5141.102 Applicability.

See Army Regulation 420-41 Acquisition and Sale of Utilities Services.

Subpart 5141.2 - Acquiring Utility Services

5141.201 Policy.

In accordance with Army Regulation 420-41, the Chief of Engineers is the Department of the Army power procurement officer and is responsible for the administration of the purchase and sale of utility services and for policies, engineering, rates, and legal sufficiency in connection with all utility services transactions and contracts in which the Army has a monetary interest. The Chief of Engineers may enter into definite term utility contracts for utility services for periods not to exceed 10 years. The Chief of Engineers may redelegate this authority to the deputy Army power procurement officer.

Part 5142 - Contract Administration and Audit Services

(Revised 10 February 2023)

Subpart 5142.1 - Contract Audit Services

5142.190 Follow-up on contract audit reports.

5142.190-1 Responsibilities.

5142.190-2 Tracking of contract audit report recommendations.

5142.190-3 Reporting.

5142.190-4 Overage Audit Review Boards.

Subpart 5142.2 - Contract Administration Services

5142.202 Assignment of contract administration.

Subpart 5142.3 - Contract Administration Office Functions

5142.302 Contract administration functions.

Subpart 5142.6 - Corporate Administrative Contracting Officer

5142.602 Assignment and location.

Subpart 5142.7 - Indirect Cost Rates

5142.703 General.

5142.703-2 Certification of indirect costs.

Subpart 5142.15 - Contractor Performance Information

5142.1502 Policy.

5142.1503 Procedures.

5142.1503-90 Policy.

Subpart 5142.71 - Voluntary Refunds

5142.7100 General.

Subpart 5142.1 - Contract Audit Services

5142.190 Follow-up on contract audit reports.

5142.190-1 Responsibilities.

(a) The Deputy Assistant Secretary of the Army (Procurement) is the Army's contract audit follow-up official.

(b) The senior contracting official (SCO) shall perform the functions of the Army's contract audit follow-up official for their respective commands. SCOs shall –

(1) Establish Overage Audit Review Boards;

(2) Ensure that the effective resolution and disposition of audit findings and recommendations in a timely manner while fully protecting the Government's interests is a factor in organizational and individual performance standards and objectives; and

(3) Maintain close surveillance of all contract audit reports, resolve, and dispose any audit reported.

(c) Chiefs of contracting or contract administration offices shall track and assist contracting officers in the resolution and disposition of those audit recommendations which appear unlikely to be resolved within six months of the date of an audit report.

(d) Contract Audit Follow Up Monitor

(1) The Monitor shall receive new audits and coordinate with Contracting Officers, their SCO and the ODASA(P) to resolve and disposition audits in a timely manner.

(2) The Monitor shall ensure Contracting Officers receive a copy of the audit and status updates on the resolution and disposition of the audit on a monthly basis.

(3) The Monitor shall maintain current information and status of the audits in the Contract Audit Follow Up system.

(e) Contracting officers shall –

(1) Resolve the recommendations as described in DoD Instruction (DoDI) 7640.02 not later than six months from the date of the audit report and dispose those recommendations within 12 months;

(2) Invite the auditor to participate in the review when it is considered necessary; and

(3) Appear before the Overage Audit Review Board to discuss the resolution and disposition of any audit reported in accordance with 5142.190-4 Overage Audit Review Boards.(a)(4).

5142.190-2 Tracking of contract audit report recommendations.

(a) Centrally track all contract audit reports from request for audit through receipt, resolution and disposition. Each contracting or contract administration office, including satellite offices such as Government-owned contractor-operated, shall establish a single entity for requesting, receiving and tracking all audit reports. Provide the activity name, address, attention symbol, point of contact and telephone number of the single entity to the contract administration services office and Defense Contract Audit Agency regions involved.

(b) Centrally track and report audit report data in accordance with DoDI 7640.2. Maintain a file for each audit report and include in each file the following information:

(1) Report number.

(2) Activity address code.

(3) Issuing agency.

(4) Date of report.

(5) Contractor name.

- (6) Contract number(s).
 - (7) Organization responsible for disposition.
 - (8) Contracting officer responsible for disposition.
 - (9) Total amount subjected to audit.
 - (10) Total questioned costs.
- (c) For reportable audit reports, the central files shall also include the following information:
- (1) Type(s) of recommendations contained in report. Use the codes in DoDI 7640.2.
 - (2) Target date of resolution.
 - (3) Actual date of resolution.
 - (4) Target date for disposition.
 - (5) Date of final decision (if any) of contracting officer.
 - (6) Date of filing with Armed Services Board of Contract Appeals or court (if any) and docket or case number.
 - (7) Disposition results in terms of questioned costs sustained.

5142.190-3 Reporting.

Each contracting or contract administrative office shall submit the Status Report on Specified Contract Audit Reports (RCS DD-IG (SA)1580), as required by DoDI 7640.2 to reach the addressee at 5101.290(b)(2)(ii)(A), not later than 15 April and 15 October of each year. Obtain the program and instructions from the addressee at 5101.290(b)(2)(ii)(A). Negative reports are required.

5142.190-4 Overage Audit Review Boards.

- (a) Make every effort to resolve audit recommendations within six months of the date of an audit report and disposition them within 12 months. Each SCO shall establish and chair an Overage Audit Review Board (the Board) to review the status of open audits reported as overage or unresolved on the Status Report on Specified Contract Audit Reports. The SCO shall chair the Board. The Board shall –
 - (1) Be comprised of the contracting activity's senior legal, contracting, and pricing personnel;
 - (2) Review all open, unresolved audits over six months old and resolved audits over 12 months old that are reported as open on the most recent Status Report on Specified Contract Audit Reports;
 - (3) Meet early in November to consider those audits reported on the report due 15 October and early in May to consider those audits listed on the report due 15 April. The Board may meet at other times, as necessary;
 - (4) Hear the contracting officer's presentation of efforts to resolve and dispose the audit recommendations;
 - (5) Assist the contracting officer in developing a plan of action for timely resolution and disposition of the audit recommendations; and
 - (6) Provide the contracting officer with necessary guidance and assistance to resolve and dispose the audit recommendations. This shall include reordering priorities, assigning additional or alternate resources or

committing the personal attention of the HCA or the SCO to the effort.

(b) Upon completion of its review, but not later than 30 November and 31 May, the Overage Audit Review Board shall submit to the addressee in 5101.290(b)(2)(ii)(A), under a summary cover letter from the SCO, a detailed plan of action for the resolution and disposition of each audit report in the four major categories listed in (1).

(1) The Board shall separate the audits into the following four major categories for reporting:

- (i) 6-12 months old, unresolved.
- (ii) Overage (over 12 months old), unresolved.
- (iii) Overage (over 12 months old), resolved.
- (iv) Resolution date slip from previous report.

(2) Each plan of action shall contain the following information:

- (i) Audit report number.
- (ii) Report date.
- (iii) Contractor name.
- (iv) Type of audit.
- (v) Cost questioned or cost avoidance.
- (vi) A narrative plan of action for resolution and disposition of the audit findings.
- (vii) Target resolution date.
- (viii) Target disposition date.
- (ix) Contracting officer's name.
- (x) Contracting officer's phone number.

(3) The Board's report shall describe the action taken to resolve the audit and identify attendees and their role in the process, such as the contracting officer.

Subpart 5142.2 - Contract Administration Services

5142.202 Assignment of contract administration.

(c)(2) The head of the contracting activity shall approve the delegation as stated in FAR 42.202(c)(2). See Appendix GG for further delegation.

Subpart 5142.3 - Contract Administration Office Functions

5142.302 Contract administration functions.

(a)(S-75)(c)(1)(i)(C) The head of the contracting activity shall direct a formal program of Government monitoring of contractor policies, procedures, and practices for controlling costs at contractor locations as stated in DFARS PGI 242.302(a)(S-75)(c)(1)(i)(C). See Appendix GG for further delegation.

Subpart 5142.6 - Corporate Administrative Contracting Officer

5142.602 Assignment and location.

(a)(2) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) approves the need for a CACO. See Appendix GG for further delegation.

Subpart 5142.7 - Indirect Cost Rates

5142.703 General.

5142.703-2 Certification of indirect costs.

(b)(1) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may waive the certification requirement at FAR 42.703-2. See Appendix GG for further delegation.

Subpart 5142.15 - Contractor Performance Information

5142.1502 Policy.

(d) *Orders under single-agency contracts.* Where the scope of the indefinite delivery contract is narrow or orders will be essentially similar, the contracting officer shall prepare reports at the base contract level.

5142.1503 Procedures.

(a)(1)(ii)(I) Contracting officer's representatives (CORs) will assist the contracting officer with entering objective performance information in the Contractor Performance Assessment Reports System (CPARS) for each contract or order assigned. The contracting officer may assign the COR the role of assessing official representative in CPARS.

(2) Include the contracting officer in the assessment process prior to forwarding a report to the contractor for review.

(2) See 5142.1503-90(a) for a list of CPARS assessing officials (AOs) for contracts in different business sectors.

(b)(2)(vi) The AO shall consider the extent to which the contractor complied with Department of Defense policy for item unique identification; see DFARS 211.274-2 Policy for item unique identification, and AFARS 5111.274-2.

(b)(4) The AO shall support the rating assigned to an element or sub-element with narrative rationale. Narratives shall clearly convey the rationale behind the rating to the contractor, as well as to a Government source selection official who is not familiar with the instant contract. This is especially important for any rating above or below satisfactory. The AO should support narratives with quantifiable or verifiable documentation. While larger or more complex efforts warrant greater detail, narratives should be clear and concise.

(f) See Army Regulation 715-30, as revised, for maintenance of past performance information that cannot be maintained in an unclassified database.

(h)(2) The contracting officer shall process the CPARS initial registration consolidated format and a CPARS access request form and shall ensure the CPARS focal point receives both documents to ensure completion of registration within 30 calendar days from award of a contract. CPARS registration formats are located at 5153.303-9 Initial registration and 5153.303-10 Access request.

5142.1503-90 Policy.

(a) The CPARS AOs are as follows:

Business Sector **CPARS Assessing Official**

Systems Program Manager (PM)

Operations Support Contracting Officer

Services Contracting Officer or PM*

Information
Technology Contracting Officer

Construction Contracting Officer

Architect-
Engineering Contracting Officer

All other contracts Contracting Officer

* The PM (program/project/product manager) is the assessing official for those service contracts providing technical or management support to the program office.

(b) The AO may prepare an out-of-cycle or “addendum” report if there is a need to record an extraordinary event prior to the next regularly scheduled evaluation or if it is necessary to report a meaningful occurrence during the period between physical completion of the contract and contract closeout. The AO shall prepare an addendum report in CPARS if any unusual or extraordinary action occurs during contract execution including the issuance of a show cause letter, stop work order or termination of the contract. Additionally, the AO may prepare addendum reports to record contractor’s performance relative to contract close-out and other administrative requirements (e.g., final indirect cost proposals, technical data, etc.).

(c) For job order contracts, the contracting officer shall ensure completion of an assessment report for each order of \$700,000 or more.

Subpart 5142.71 - Voluntary Refunds

5142.7100 General.

(4) Voluntary refunds must be approved by the head of the contracting activity as described in DFARS PGI 242.7100(4). See Appendix GG for further delegation.

Part 5143 - Contract Modifications

Subpart 5143.2 - Change Orders

5143.204 Administration.

5143.204-70-5 Exceptions.

5143.204-70-6 Allowable profit.

5143.205 Contract clauses.

Subpart 5143.2 - Change Orders

5143.204 Administration.

5143.204-70-5 Exceptions.

(c) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may waive the limitations under DFARS 243.204-70-2, 243.204-70-3, and 243.204-70-4. See Appendix GG for further delegation.

5143.204-70-6 Allowable profit.

The head of the contracting activity shall ensure the profit allowed reflects the conventions under DFARS 243.204-70-6. See Appendix GG for further delegation.

5143.205 Contract clauses.

(c) The contracting officer may change the period in which the contractor may assert claims under the clause at FAR 52.243-3, Changes—Time-and-Materials or Labor-Hours, to a period less than “30 days.”

Part 5144 - Subcontracting Policies and Procedures

Subpart 5144.3 - Contractors Purchasing System Reviews

5144.302 Requirements.

Subpart 5144.3 - Contractors Purchasing System Reviews

5144.302 Requirements.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, may raise or lower the \$50 million review level for contracts administered by the Army, if it is considered to be in the Government's best interest.

Part 5145 - Government Property

5145.000 Scope of part.

Subpart 5145.1 - General

5145.101 Definitions.

5145.102 Policy.

5145.103 General.

5145.103-70 Furnishing Government property to contractors.

5145.103-72 Government-furnished property attachments to solicitations and awards.

5145.103-73 Government property under sustainment contracts.

5145.103-74 Contracting office responsibilities.

5145.105 Contractor's property management system compliance.

5145.107 Contract Clauses.

5145.190-1 Leasing personal property.

5145.190-2 Furnishing Government property after award.

Subpart 5145.2 - Solicitation and Evaluation ProceduresSolicitation and Evaluation Procedures

5145.201 Solicitation.

5145.202 Evaluation Procedures.

Subpart 5145.3 - Authorizing the Use and Rental of Government Property

5145.301 Use and rental.

5145.390 Documentation of Government property in contracts.

Subpart 5145.4 - Title to Government Property

5145.402-70 Policy.

Subpart 5145.5 - Support Government Property Administration

5145.570-90 Storage at the Governments expense.

Subpart 5145.6 - Reporting, Reutilization, and Disposal

5145.605 Inventory disposal reports.

5145.000 Scope of part.

As used in this part—

“Accounting Requirements Code” (ARC) is a code assigned to each item of supply to identify its specific classification and the degree of accounting and control that must be applied at the user level. Logistics Support Activity assigns the accounting requirements code (ARC) using the ARC assignment criteria contained in DA Pam 708-2, Cataloging and Supply Management Data Procedures for the Army Enterprise Material Master.

“Nonexpendable”, as used in the definition of equipment at AR 735-5, Property Accountability Policies refers to an item that is not consumed in use and that retains its original identity during the period of use. These items have an ARC of “N” contained in the Federal Logistics Data Base (FEDLOG)

Subpart 5145.1 - General

5145.101 Definitions.

As used in this part—

“Accounting Requirements Code” (ARC) is a code assigned to each item of supply to identify its specific classification and the degree of accounting and control that must be applied at the user level. Logistics Support Activity assigns the accounting requirements code (ARC) using the ARC assignment criteria contained in DA Pam 708-2, Cataloging and Supply Management Data Procedures for the Army Enterprise Material Master.

“Nonexpendable”, as used in the definition of equipment at AR 735-5, Property Accountability Policies refers to an item that is not consumed in use and that retains its original identity during the period of use. These items have an ARC of “N” contained in the Federal Logistics Data Base (FEDLOG)

5145.102 Policy.

(b) See 5145.103-70.

(e) The head of the contracting activity shall make the determination at FAR 45.102(e). See Appendix GG for further delegation.

(4) *Government-furnished property identification.*

(ii)(B) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has the authority to determine exceptions to the item unique identification requirement to tag, mark and label items used to support a contingency operation, or to facilitate defense against or recovery from nuclear, biological, chemical or radiological attack as set forth in DFARS 245.102(4)(ii)(B). See Appendix GG for further delegation.

(C)(1)(i) The responsible Program Executive Officer shall execute the determination and findings for all ACAT I programs.

(ii) The head of the contracting activity shall execute the determination and findings for all non-ACAT I programs. See Appendix GG for further delegation.

5145.103 General.

See AFARS PGI 5145.103(a)(6) for instructions associated with declaring excess property.

5145.103-70 Furnishing Government property to contractors.

(2) The contracting officer shall ensure the Requiring Activity’s documentation to support furnishing government property for commercial services below the Simplified Acquisition Threshold (SAT), as defined in FAR 2.101, meets the requirements outlined in FAR 45.102 and DFARS PGI 245.103-70(2).

The contracting officer shall include documentation received from the Requiring Activity which supports the decision to provide Government Property in the Paperless Contract File (PCF) Pre-award Section (i.e., Requirements Package folder), in accordance with AFARS 5104.8.

5145.103-72 Government-furnished property attachments to solicitations and awards.

(a) The requiring activity is responsible for initiating the GFP attachment in the GFP module.

5145.103-73 Government property under sustainment contracts.

(1) Contracting officers may accept alternate Data Item Description from that identified in the DFARS PGI 245.103-73, if the requiring activity so determines.

See AFARS PGI 5145.103-74(1)(a) for instructions associated with the use of Logistics Management Program (LMP) and Total Asset Visibility at Contractor Locations (TAV-C).

5145.103-74 Contracting office responsibilities.

See AFARS PGI 5145.103-74 for instructions associated with documentation of Government Property and recurring inventory reports.

5145.105 Contractor's property management system compliance.

See AFARS PGI 5145.105 for instructions associated with the Contractor's property management system compliance.

5145.107 Contract Clauses.

See AFARS PGI 5145.107 for instructions associated with the use of clauses in solicitations and contracts which include the use of GFP 5145.190 Leasing personal property.

5145.190-1 Leasing personal property.

(a) See Army Regulation 700-131 para 2-3 Government Furnished Equipment.

5145.190-2 Furnishing Government property after award.

See AFARS PGI 5145.190-2 for instructions associated with the Furnishing Government property after award.

Subpart 5145.2 - Solicitation and Evaluation ProceduresSolicitation and Evaluation Procedures

5145.201 Solicitation.

See AFARS PGI 5145.201 for instructions associated with the solicitation procedures.

5145.202 Evaluation Procedures.

See AFARS PGI 5145.202 for instructions associated with the evaluation procedures.

Subpart 5145.3 - Authorizing the Use and Rental of Government Property

5145.301 Use and rental.

(f) The head of the contracting activity shall provide prior approval where non-Government use is expected to exceed 25 percent of the total use of Government and commercial work performed. See Appendix GG for further delegation.

5145.390 Documentation of Government property in contracts.

Contracting officers must ensure that changes to Government property made over time are reflected by modifications to the contract. Any changes to the GFP attachment over the life of the contract require both a contract modification and a GFP attachment update.

(a) Contracting officers must ensure that additions and deletions of GFP made over time are reflected by modifications to the contract and the GFP attachment within the PIEE module at least annually (see 5145.103-74 Contracting office responsibilities).

(b) Contracting officers shall ensure that the contract action report statement within Federal Procurement Data System – Next Generation (FPDS-NG) is annotated as “Transaction uses GFP” on the initial action and all subsequent contract modifications until all property is dispositioned.

Subpart 5145.4 - Title to Government Property

5145.402-70 Policy.

See AFARS PGI 5145.402- 70 for instructions associated with Contractor Acquired Property (CAP).

Requiring activities and accountable property officials shall obtain Government property records from the Procurement Integrated Enterprise Environment (PIEE) GFP module, including loss and disposition records.

Subpart 5145.5 - Support Government Property Administration

5145.570-90 Storage at the Governments expense.

The approval authority for determinations that contractor inventory may be stored at the Government's expense for one year or more must be one level higher than the contracting officer.

Subpart 5145.6 - Reporting, Reutilization, and Disposal

5145.605 Inventory disposal reports.

See AFARS PGI 5145.605 for instructions associated with Inventory disposal reports.

Part 5146 - Quality Assurance

Subpart 5146.5 - Acceptance

5146.501 General.

5146.503 Place of acceptance.

Subpart 5146.7 - Warranties

5146.702 General.

Subpart 5146.5 - Acceptance

5146.501 General.

Include acceptance documentation as a permanent part of the contract file prior to contract closure.

5146.503 Place of acceptance.

When contemplating destination acceptance in solicitations and contracts, contracting officers shall—

- (1) Verify the Department of Defense Activity Address Code (DoDAAC) of each receiving activity in the solicitation or contract (DoDAAC verification information is available via the Internet at <https://www.transactionservices.dla.mil/daasing/>);
- (2) Prior to assigning acceptance responsibility, ensure that there is a registered acceptor available in Wide Area Workflow (WAWF) for each destination acceptance point (WAWF acceptor information is available at <https://wawf.eb.mil> under “Active DoDAACs and Roles”);
- (3) When no WAWF acceptor is available at destination, use source acceptance or “acceptance at other” in WAWF;
- (4) Not designate destination acceptance at a contractor location, but shall instead clearly designate a Government acceptance point within Section E of the contract schedule; and
- (5) Clearly define the acceptance procedures in Section E.

Subpart 5146.7 - Warranties

5146.702 General.

- (c) See Army Regulation 700-139 for procedures on tracking and accumulating data on warranty costs.

Part 5148 - Value Engineering

Subpart 5148.1 - Policies and Procedures

5148.102 Policies.

5148.104 Sharing arrangements.

5148.104-3 Sharing collateral savings.

Subpart 5148.2 - Contract Clauses

5148.201 Clauses for supply or service contracts.

5148.202 Clause for construction contracts.

Subpart 5148.1 - Policies and Procedures

5148.102 Policies.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has authority to exempt individual contracts, or specific classes of contracts, from including value engineering provisions as prescribed by FAR 48.201 and 48.202. See Appendix GG for further delegation.

(b) Refer to the Department of the Army Pamphlet 70-3, 11 March 2014, paragraph 6-14, which is available via the Internet at https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/p70_3.pdf.

5148.104 Sharing arrangements.

5148.104-3 Sharing collateral savings.

(a) The head of the contracting activity shall make the determination at FAR 48.104-3(a). See Appendix GG for further delegation.

Subpart 5148.2 - Contract Clauses

5148.201 Clauses for supply or service contracts.

(a)(6) See 5148.102(a).

(e) The head of the contracting activity shall make the determination at FAR 48.201(e). See Appendix GG for further delegation.

5148.202 Clause for construction contracts.

The head of the contracting activity shall make the determination at FAR 48.202. See Appendix GG for further delegation.

Part 5149 - Termination of Contracts

Subpart 5149.1 - General Principles

5149.101 Authorities and responsibilities.

5149.101-90 Contracts resulting from military interdepartmental purchase requests.

5149.102 Notice of termination.

5149.107 Audit of prime contract settlement proposals and subcontract settlements.

Subpart 5149.4 - Termination for Default

5149.401 General.

5149.402 Termination of fixed-price contracts for default.

5149.402-3 Procedure for default.

Subpart 5149.5 - Contract Termination Clauses

5149.501 General.

5149.501-70 Special termination costs.

Subpart 5149.70 - Special Termination Requirements

5149.7001 Congressional notification on significant contract terminations.

5149.7003 Notification of anticipated contract terminations or reductions.

Subpart 5149.1 - General Principles

5149.101 Authorities and responsibilities.

(b)(i) Contracting officers should exercise the authority to terminate a contract for convenience of the Government only after full coordination with senior officials of the activity which requested establishment of the contract.

5149.101-90 Contracts resulting from military interdepartmental purchase requests.

Terminate contracts resulting from military interdepartmental purchase requests in accordance with DFARS 208.7004, DFARS PGI 208.7004-6 and 208.7004-7.

5149.102 Notice of termination.

The contracting officer shall notify the cognizant suspension and debarment official of all decisions to terminate a contractor for default. Send the notification to the suspension and debarment official in accordance with 5109.403. Include a copy of the contracting officer's notice of termination for default or cause to the contractor in accordance with FAR 49.102(a).

5149.107 Audit of prime contract settlement proposals and subcontract settlements.

(a) Within five calendar days after receipt from the contractor, send electronically all settlement proposals to the responsible audit office. Include inventory and accounting information and related documents.

Subpart 5149.4 - Termination for Default

5149.401 General.

See 5142.1503-90(b) for the requirement to prepare a contractor past performance assessment report for all contracts or orders immediately upon termination for default.

5149.402 Termination of fixed-price contracts for default.

5149.402-3 Procedure for default.

(e)(4) Contracting officers should not terminate for default any contract with a small business firm to whom a Certificate of Competency was issued, or to whom loans were made with the Small Business Administration's participation, without prior written approval of the head of the contracting activity.

(f)(6) When unliquidated progress payments, advance payments, guaranteed loans, or anticipated excess repurchase costs are involved, the contracting officer must –

(A) Obtain from the administrative contracting officer a statement of the value of the inventory that may be available for offset against the outstanding financing; and

(B) Identify and state the approximate amount of the excess acquisition costs applicable.

Subpart 5149.5 - Contract Termination Clauses

5149.501 General.

5149.501-70 Special termination costs.

(a) IAW DFARS 249.501-70, the Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall approve use of clause at DFARS 252.249-7000. See Appendix GG for further delegation.

Subpart 5149.70 - Special Termination Requirements

5149.7001 Congressional notification on significant contract terminations.

(1) The contracting officer shall send to the Office of the Deputy Assistant Secretary of the Army (Procurement) (ODASA(P)) notifications of significant contract terminations –

(i) As soon as the contracting officer identifies a potential full or partial termination; and

(ii) Once the contracting officer has made a final decision to terminate.

(2) The contracting officer is not authorized to release any termination notice or any information concerning the proposed significant contract termination until the Office of the Chief Legislative Liaison clears the termination

notice. The ODASA(P) will coordinate notification with the Office of the Chief Legislative Liaison. ODASA(P) will then notify the contracting officer whether the action is cleared for termination.

(3) The contracting officer shall send termination notifications in the format in DFARS PGI 249.7001. Send the unclassified notices through the senior contracting official (SCO) to the address at AFARS 5101.290(b)(2)(ii)(C).

(4) See FAR 3.104-4(f)(1) if the notification discloses any contractor bid or proposal information or source selection information.

5149.7003 Notification of anticipated contract terminations or reductions.

(b)(i) The requirements in DFARS 249.7003 apply for terminations or substantial reductions under major defense programs, notwithstanding the separate congressional notification required in DFARS 249.7001 and AFARS 5149.7001.

(ii) Contracting officers shall send the Secretary of Labor notice required in DFARS 249.7003 to ODASA(P). ODASA(P) will be responsible for coordinating the notification to the Secretary of Labor.

(iii) The contracting officer shall send termination notifications in the format in DFARS PGI 249.7001. Send the unclassified notices through the SCO directly to the address at 5101.290(b)(2)(ii)(C). Contracting officers and SCOs shall ensure the Secretary of Labor notice arrives at ODASA(P) with sufficient time for ODASA(P) to process and send the notice to the Secretary of Labor.

(iv) If both DFARS 249.7001 and 249.7003 apply, the timing requirements of 249.7003 may necessitate release of the 249.7003(b)(2) notification before the 249.7001 notification. In such cases, the contracting officer shall provide the DFARS 249.7003(b)(2) notices within the required timeframe, but shall not provide the contractor with other information on the anticipated termination until the requirements at DFARS 249.7001 and 5149.7001 have been satisfied.

Part 5150 - Extraordinary Contractual Actions and the Safety Act

(Revised 07 October 2022)

Subpart 5150.1 - Extraordinary Contractual Actions

5150.101 General.

5150.101-3 Records.

5150.102 Delegation of and limitations on exercise of authority.

5150.102-1 Delegation of authority.

5150.102-2 Contract adjustments boards.

5150.103 Contract adjustments.

5150.103-5 Processing cases.

Subpart 5150.1 - Extraordinary Contractual Actions

5150.101 General.

5150.101-3 Records.

(1)(iii) See DFARS PGI 250.103. Unless otherwise specified, the contracting officer is responsible for maintaining all records under subpart 5150.1. The Office of the Deputy Assistant Secretary of the Army (Procurement) will maintain a record of all memorandums of decision executed at the Secretariat level.

5150.102 Delegation of and limitations on exercise of authority.

5150.102-1 Delegation of authority.

(b) Contractor requests for contract adjustments are addressed by the Army Contract Adjustment Board. See AFARS 5150.102.

(d) The Secretary of the Army, on a non-delegable basis, has the authority to indemnify against unusually hazardous or nuclear risks, including extension of such indemnification to subcontracts.

5150.102-2 Contract adjustments boards.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) convenes the Army Contract Adjustment Board (ACAB) on an as-needed basis. In accordance with Headquarters, Department of the Army General Orders Number 2017-01 (and any successor document) the Office of the Army General Counsel provides the ACAB Recorder.

5150.103 Contract adjustments.

5150.103-5 Processing cases.

Within five working days of receipt of a request for contract adjustment, regardless of dollar amount, the contracting officer shall submit the request, through procurement channels as described below.

(1) For contract adjustment on existing firm-fixed-price contracts to account for inflationary conditions (See <https://www.acq.osd.mil/dpap/policy/policyvault/USA001773-22-DPC.pdf> for Defense Pricing and Contracting guidance)—

(a) Contracting officers shall send FAR Part 50 contract adjustment requests to the Office of the DASA(P) via usarmy.pentagon.hqda-asa-alt.list.saal-ps-staff@army.mil, within 5-business days of receipt. Subject line should state “FAR Part 50 Extraordinary Contractual Actions _Inflation Impacts _Vendor Name”

(b) The Office of the DASA(P) will submit the contractor request to DPC within 5-business days of receipt from the contracting officer. The request will be submitted to DPC via osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

(c) AFARS sub-parts 5150.103-5(1)(a) and (b) satisfy DPC reporting guidance of 10-business days.

(2) For processing and disposition of cases for contract adjustments, contracting officers shall—

(a) Submit the Preliminary Record of Request for Adjustment, through their local headquarters office, to the Office of the DASA(P) via the Enterprise Task Management System 2.0 (ETMS2 – commonly referred to as the Task Management Tool or TMT) within 30 days after the close of the month in which the record is prepared.

(b) Follow the procedures at DFARS PGI 250.103-5 and DFARS PGI 250.101-3(2) to prepare the preliminary and final record and coordinate with their local Senior Contracting Official and legal counsel prior to submitting to the ODASA(P).

(3) The ODASA(P) will staff the request with the Office of the General Counsel/Acquisition Law Practice Group and the Army Contract Adjustment Board (ACAB).

(4) The ACAB is convened by the ASA/ALT on an as-needed basis. The ACAB will approve or disapprove the request. The Contracting Officer will be notified of the ACAB’s decision and shall prepare the final record as described in DFARS PGI 250.103-6.

Part 5152 - Solicitation Provisions and Contract Clauses

Subpart 5152.1 - Instructions for Using Provisions and Clauses

5152.101 Using part 5152.

Subpart 5152.2 - Texts of Provisions and Clauses

5152.211-9000 Evaluation of Subline Items.

5152.211-9001 Variations in Estimated Quantities—Subline Items.

5152.237-9000 Adjustments to Contractors Coefficient for Option Years (Job Order Contracts).

5152.247-7027 Riding gang members requirements.

Subpart 5152.1 - Instructions for Using Provisions and Clauses

5152.101 Using part 5152.

(b) *Numbering.*

(2) *Provisions or clauses that supplement the FAR.*

(i)(C) Requests for approval of nonstandard clauses or provisions which are deviations, one time and recurring, must be processed in accordance with 5101.4.

(ii)(A) The Office of the Deputy Assistant Secretary of the Army (Procurement) (ODASA(P)) Procurement Policy Directorate (SAAL-PP), will assign clause and provision numbers for the AFARS and Army suborganizational level clauses in accordance with Appendix FF, the Department of the Army Plan for Control of Nonstandard Clauses. SAAL-PP will number Army provisions and clauses in the same manner in which the FAR numbers provisions and clauses, except if the contracting activity must publish the provision or clause in the *Federal Register* and codify it in Title 48, Code of Federal Regulations (see FAR 1.3 and 1.5), precede the number with “51.”

(B) AFARS provision or clause numbers use a four digit sequential number in the 9000 series, e.g., -9000, -9001, and 9002. Army command, subordinate command or contracting offices provision or clause numbers also use a four-digit sequential number in the 9000 series.

Subpart 5152.2 - Texts of Provisions and Clauses

5152.211-9000 Evaluation of Subline Items.

As prescribed in 5111.703(c)(i), insert the following provision:

EVALUATION OF SUB LINE ITEMS (DEC 2019)

Item Nos. _____ are subdivided into two or more estimated quantities and are to be separately priced. The Government will evaluate each of these items on the basis of total price of its subline items.

(End of provision)

5152.211-9001 Variations in Estimated Quantities—Subline Items.

As prescribed in 5111.703(c)(ii), insert the following clause:

VARIATIONS IN ESTIMATED QUANTITIES — SUB LINE ITEMS (DEC 2019)

This variation in estimated quantities clause is applicable only to item Nos. ____.

- (a) Variation from the estimated quantity in the actual work performed under any second or subsequent subline item or elimination of all work under such a second or subsequent subline item will not be the basis for an adjustment in contract unit price.
- (b) Where the actual quantity of work performed for item Nos. ____ is less than 85% of the quantity of the first subline item listed under such item, the contractor will be paid at the contract unit price for that subline item for the actual quantity of work performed and, in addition, an equitable adjustment shall be made in accordance with the clause at Federal Acquisition Regulation (FAR) 52.211-18, Variation in Estimated Quantities.

- (c) If the actual quantity of work performed under item Nos. ____ exceeds 115% or is less than 85% of the total estimated quantity of the subline item under that item and/or if the quantity of the work performed under the second subline item or any subsequent subline item under item Nos. ____ exceeds 115% or is less than 85% of the estimated quantity of any such subline item, and if such variation causes an increase or a decrease in the time required for performance of this contract the contract completion time will be adjusted in accordance with the clause FAR 52.211-18, Variation in Estimated Quantities.

(End of clause)

5152.237-9000 Adjustments to Contractors Coefficient for Option Years (Job Order Contracts).

For job order contracts, insert the following clause in solicitations and contracts in accordance with 5117.9004-2(e).

ADJUSTMENTS TO CONTRACTOR'S COEFFICIENT FOR OPTION YEARS (JOB ORDER CONTRACTS) (FEB 2005)

Pricing of option periods, to include consideration of any adjustments shall be performed by an economic price adjustment for those periods, as follows:

An economic adjustment will be applied to the contract coefficient(s) addressing changes in the cost of labor, equipment and material in the Unit Price Book (UPB) (this includes consideration of Davis Bacon issues). This allows for economic increase or decrease of the prices in the UPB and serves to adjust line item prices by the percentage increase or decrease of the economic trend in the construction market. The economic price adjustment will be based on the Building Cost Index (BCI) found in the Market Trend pages of the Engineering News Record (ENR). The economic adjustment is not applied to the cost items comprising the coefficient. No upward adjustment shall apply to task orders awarded prior to the effective date of the adjustment, regardless of the date of commencement of work hereunder.

The adjustment will be made in accordance with the following equation. The resulting revised coefficient(s) shall be applied throughout the option year.

$$N = C + I$$

Where: N = New Coefficient

C = Base Year Coefficient

I = Change Factor (% increase or decrease from base to option year)

The Index Factor, I, shall be computed according to the following equation:

$$I = (BCIN/BCIC) - 1$$

Where:

BCIN is the Building Cost Index, published in the most current issue of ENR at the time of award of the option period.

BCIC is the Building Cost Index, as published in the ENR on the date of the award of the contract. The BCIC is _____, based on the award date of _____.

If the BCI or the ENR ceases to be published, the parties shall agree on substitute indices.

EXAMPLE: For the base year of a contract the coefficient is 1.10. The cost to the government for a line item whose cost is \$100.00 is $1.10 \times \$100.00 = \110.00 .

OPTION YEAR 1. For the first option year the coefficient will be adjusted as follows:

$$I = (BCIN/BCIC) - 1$$

$$I = (3111.86/3071.10) - 1$$

$$I = 1.0133 - 1$$

$$I = 0.0133$$

The new coefficient would be calculated as follows:

$$N = C + I$$

$$N = 1.10 + 0.0133$$

$$N = 1.1133$$

The above line item under the option period would be

$$1.1133 \times \$100.00 = \$111.33.$$

OPTION YEAR 2. For the second option year, if the BCI is 3062.99, the coefficient will be adjusted as follows:

$$I = (BCIN/BCIC) - 1$$

$$I = (3062.99/3071.10) - 1$$

$$I = 0.9974 - 1$$

$$I = -0.0026$$

The new coefficient will be calculated as follows:

$$N = C + I$$

$$N = 1.10 + (-0.0026)$$

N 1.0974

The above line item under the second option period would be

$$1.0974 \times \$100.00 = \$109.74.$$

Note 1. Round calculations for the Change Factor (I) to the nearest ten thousandth.

[End of clause.]

5152.247-7027 Riding gang members requirements.

(c)(2)(ii) The head of the contracting activity may waive the requirement, under certain circumstances, for riding gang members to pass a Department of Defense background check. See Appendix GG for further delegation.