Sunshine Act Meetings

Federal Register
Vol. 49, No. 59
Monday, March 26, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, March 21, 1984.

LOCATION: Eighth Floor Conference Room, 1111-18th Street NW., Washington, D.C.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement matter OS #3572

The Commission will consider issues related to enforcement matter OS #3572.

(For a recorded message containing the latest agenda information call: 301-492-5709.)

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Maryland 20207.

Sheldon D. Butts,

Deputy Secretary.

March 22, 1984.

[FR Doc. 84-8146 Filed 3-22-84; 2:31 pm]

BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 27, 1984.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Kerosene Heaters: Voluntary Standard Status

The staff will brief the Commission on the status of activities to upgrade existing voluntary standards for kerosene heaters. Representatives of Underwriters' Laboratories and the National Kerosene Heater Association will also address the Commission.

(For a recorded message containing the latest agenda information call 301-492-5709.)

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Maryland 20207, 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

March 22, 1984.

[FR Doc. 84-8146 Filed 3-22-84; 2:31 pm]

BILLING CODE 6355-01-M

3

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, March 28, 1984.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open to the public:

MATTERS TO BE CONSIDERED:

1. Indoor Air Quality: Status Report

The staff will brief the Commission on a status report on the Indoor Air Quality Monitoring Study in 40 homes at Oak Ridge National Laboratory (ORNL).

2. Crib Hardware: 30(d) Rule, Final

The Commission will consider issues related to failures of hardware on cribs and a final rule under Section 30(d) of the Consumer Product Safety Act, which transfers the regulation of risks of injury associated with crib hardware failures from the Federal Hazardous Substances Act to the Consumer Product Safety Act.

Closed to the public:

3. Enforcement Matter OS #4112

The Commission will consider enforcement matter OS #4112.

(For a recorded message containing the latest agenda information call: 301-492-5709.)

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Maryland 20207.

Sheldon D. Butts,

Deputy Secretary.

March 22, 1984.

[FR Doc. 84-8146 Filed 3-22-84; 2:31 pm]

BILLING CODE 6355-01-M

4

FEDERAL ENERGY REGULATORY COMMISSION

March 21, 1984.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5, U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: 10:00 a.m., March 28, 1984.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda

788th Meeting—March 28, 1984: Regular Meeting (10:00 a.m.)

CAP-1: Project No. 7315-000, Carson Hydro
CAP-2: Project No. 82-008, Alabama Power Company
CAP-3:
Project Nos. 4024-002, 003, 004, 6439-001 and 002, Gregory Wilcox
Project No. 6423-001 and 002, et al., Uncompahgre Valley Water Users Association and Montrose Partners
CAP-4: Project No. 6954-002, Hydro Power Development, Inc.
CAP-5: Project No. 2861-004, Robert W. Shaw
CAP-6: Project No. 4412-004, Thornton Lake Resource Company
CAP-7: Project No. 7258-001, China Flat Company
CAP-8: Project No. 7123-001, W. B. Deoreo and R. J. McLaughlin
CAP-9: Project No. 5279-003, Yankee Power Company
CAP-10: Project Nos. 346-014 and 469-002, Minnesota Power & Light Company
CAP-11: Project No. 6477-011, Western Hydro Electric, Inc.
CAP-12: Project No. Omitted
CAP-13: Project No. Omitted
CAP-14: Docket No. ER84-117-001, Philadelphia Electric Company
CAP-15: Docket No. ER84-131-001, Kansas Gas and Electric Company
CAP-16: Docket No. ER84-450-004, Union Electric Company
CAP-17: Docket No. ER81-187-005, Public Service Company of New Mexico
CAP-18: Docket No. QF84-126-000, Reynolds Irrigation District
CAP-19: Docket Nos. ER81-736-003, ER83-192-002 and ER83-248-003 (Phase I), Central Illinois Public Service Company

CAP–20: Docket No. EL81–14–003, American Municipal Power-Ohio, Inc. and the City of St. Marys, Ohio v. the Dayton Power & Light Company
CAP–21: Docket No. ER83–351–000, the Dayton Power and Light Company
CAP–22: Docket No. ER84–9–000 and ER84–10–000, Philadelphia Electric Company
CAP–23:
Docket No. ER83–342–000, Vermont Electric Power Company, Inc.
Docket No. ER83–343–000, Vermont Yankee Nuclear Power Company

Consent Miscellaneous Agenda

CAM–1: Docket Nos. RM–83–2–000, RM83–2–001, RM83–2–002 and RM83–2–003, Fees Applicable to Natural Gas Pipeline Rate Matters
CAM–2: Docket No. RM82–25–000, RM82–25–001 and RM82–25–002, Fees Applicable to Producer Matters Under the Natural Gas Act
CAM–3: Docket No. RM79–76–224 (Colorado-35 Addition), High-Cost Gas Produced From Tight Formations
CAM–4:
Docket No. GP84–5–001, Stowers Oil and Gas Company, et al.
Docket No. GP84–7–001, Northern Natural Gas Company, Division of Internorth, Inc.
CAM–5: Docket No. GP84–21–000, Sonat Exploration Company

Consent Gas Agenda

CAG–1: Docket Nos. RP83–35–012 and 013, RP81–109–000, RP82–37–000 and RP74–41–016, et al., Texas Eastern Transmission Corporation
CAG–2: Docket No. RP74–41–032 (RP78–87 and RP81–102), Texas Eastern Transmission Corporation
CAG–3: Docket Nos. RP81–130–009, 010 and 011; RP83–25–009, 010; TA82–2–42–011, 012; TA83–1–42–003 and 004, Transwestern Pipeline Company
CAG–4: Docket No. RP84–38–002, Transcontinental Gas Pipe Line Corporation
CAG–5:
Docket No. TA84–1–16–001 (PGA84–1), National Fuel Gas Supply Corporation
Docket No. GP84–17–000, National Fuel Gas Supply Corporation
CAG–6: Docket No. TA84–2–41–000 (PGA84–2), Southwest Gas Corporation
CAG–7: Docket No. TA84–2–33–000 (PGA84–2), El Paso Natural Gas Company
CAG–8: Docket No. TA84–2–7–000 (PGA84–2), Southern Natural Gas Company
CAG–9: Docket No. TA84–2–62–000 (PGA84–1), Pacific Offshore Pipeline Company
CAG–10: Docket No. TA84–2–31–000 (PGA84–3), Arkansas Louisiana Gas Company
CAG–11: Docket Nos. TA84–2–37–000 and 001 (PGA84–2), Northwest Pipeline Corporation
CAG–12: Omitted
CAG–13: Docket No. TA84–2–42–000 (PGA84–3), Transwestern Pipeline Company
CAG–14: Docket No. TA84–2–34–000 (PGA84–2) Florida Gas Transmission Company
CAG–15: Docket No. TA84–2–40–000 (PGA84–2), Raton Natural Gas Company
CAG–16: Docket No. RP84–53–000, Ozark Gas Transmission System
CAG–17: Docket No. RP84–10–001, Peoples Natural Gas Company, a Division of Internorth, Inc.
CAG–18: Docket No. RP73–35–011, Trunkline Gas Company
CAG–19: Docket No. TA84–1–34–000 (PGA84–1), Florida Gas Transmission Company
CAG–20: Docket No. RP81–38–007, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG–21: Docket No. TA84–1–46–000, Kentucky West Virginia Gas Company
CAG–22: Docket No. TA84–1–55–000 (PGA84–1), Mountain Fuel Resources, Inc.
CAG–23: Docket No. RP83–24–007, Alabama-Tennessee Natural Gas Company
CAG–24: Docket No. RP83–30–000, Transcontinental Gas Pipe Line Corporation
CAG–25: Omitted
CAG–26: Docket No. TA84–1–24–000, Equitable Gas Company
CAG–27: Docket No. TA84–1–48–000, ANR Pipeline Company
CAG–28: Docket No. RP84–35–001, Consolidated Gas Supply Corporation
CAG–29:
Docket No. CP74–314–008, El Paso Natural Gas Company
Docket No. CP76–327–000, Northwest Pipeline Corporation
Docket No. CI77–526–000, Sun Oil Company, et al.
CAG–30:
Docket No. G–3653–007, et al., Sun Exploration and Production Company, et al.
Docket No. G–3711–006, et al., Breton Resources Company, et al.
Docket Nos. CI83–337–003 and CI83–350–003, Exxon Corporation
CAG–31: Docket No. CI79–501–001, the Offshore Company
CAG–32: Docket No. CI78–851–005, Chevron U.S.A. Inc.
CAG–33:
Docket No. CI84–148–001, TBP Offshore Company
Docket No. CI84–168–001, Mobil Producing Texas and New Mexico Inc.
CAG–34:
Docket No. CP73–184–002, Colorado Interstate Gas Company, a Division of Colorado Interstate Corporation
Docket No. CI73–485–002, CIG Exploration, Inc.
CAG–35: Docket Nos. RI74–188–027 and RI75–21–002, Independent Oil & Gas Association of West Virginia
CAG–36: Docket Nos. RI74–188–026 and RI75–21–022, Independent Oil & Gas Association of West Virginia
CAG–37: Docket No. CP84–69–000, United Gas Pipe Line Company
CAG–38: Docket No. CP81–114–000, Panhandle Eastern Pipe Line Company and Trunkline Gas Company
CAG–39:
Docket Nos. CP77–321–004, CP78–241–003 and CP79–73–002, Southern Natural Gas Company
Docket No. CP77–421–019, Transcontinental Gas Pipe Line Corporation
CAG–40: Docket No. CP77–435–005, Transcontinental Gas Pipe Line Corporation
CAG–41: Docket No. CP81–81–002, Sea Robin Pipeline Company and Transcontinental Gas Pipe Line Corporation
CAG–42: Docket No. CP83–60–001, Arkansas Louisiana Gas Company
CAG–43: Docket No. CP83–518–000, Arkansas Louisiana Gas Company, a Division of Arkla, Inc.
CAG–44: Docket No. CP77–363–008, National Fuel Gas Supply Corporation and Columbia Gas Transmission Corporation
CAG–45: Docket No. CP78–41–002, Columbia Gas Transmission Corporation and Equitable Gas Company
CAG–46:
Docket No. CP84–46–000, Southern Natural Gas Company
Docket No. CP84–175–000, Crown Zellerbach Corporation
CAG–47: Docket Nos. CP83–193–000 and 001, Mountain Fuel Supply Corporation
CAG–48: Docket No. CP84–197–000, United Gas Pipe Line Company

Power Agenda

I. Licensed Project Matters

P–1: Project Nos. 3610–003 and 004, Banister Development, Ltd.
P–2: Project No. 5766–000, Frank B. Nichols
P–3: Project No. 6617–000, Olympus Energy Corporation
P–4: Project No. 7172–000, Douglas Water Power Company
P–5: Project No. 2959–002, City of Seattle, Washington
P–6:
Project No. 5403–000, Puget Sound Power & Light Company
Project No. 6220–000, Weyerhaeuser Company

II. Electric Rate Matters

ER–1: Docket No. ER84–244–000, Vermont Yankee Nuclear Power Corporation
ER–2: Docket No. ER84–241–000, Southern California Edison Company
ER–3: Docket No. ER84–210–000, Southern Company Services, Inc.
ER–4: Docket Nos. ER81–267–003 and ER81–341–005, Kentucky Utilities Company
ER–5: Docket No. EL84–6–000, the Attorney General of the Commonwealth of Massachusetts, the Department of Public Utilities of the Commonwealth of Massachusetts, the Attorney General of the State of Rhode Island Division of Public Utilities and Carriers v. New England Power Company

Miscellaneous Agenda

M–1: Reserved
M–2: Reserved
M–3: Omitted
M–4: Docket No. GP84–11–000, Texas General Land Office
M–5:
(A) Docket No. RM79–67–000, Procedures Governing Applications for Special Relief Under Sections 104, 106 and 109 of the Natural Gas Policy Act of 1978
(B) Docket No. RI76–130–000, et al., A. O. Phillips Estatge, et al.
(C) Docket No. CI77–244–000, et al., Clark Oil Producing, et al.

(D) Docket No. RM84–8–000, Ashland Oil Inc., et al.
M–6: Docket No. SA80–72–000, Humko Chemical, a Division of Witco Chemical Corporation

Gas Agenda

I. Pipeline Rate Matters

RP–1: Docket Nos. OR78–1–022, 023 and 024 (Quality Bank), Trans Alaska Pipeline System
RP–2: Docket Nos. RP83–113–006, 007, 008, 009 and 010, Pacific Gas Transmission Corporation
Docket Nos. RP83–135–001, 002 and 003, Pacific Interstate Transmission Company
Docket Nos. RP83–136–001 and 002, Pacific Offshore Pipeline Company
Docket No. RP83–139–002, El Paso Natural Gas Company
Docket No. RP81–130–007, Transwestern Pipeline Company
Docket No. RP84–28–000, Pacific Interstate Offshore Company
RP–3: Docket Nos. TA84–1–17–002 (PGA84–1, IPR84–1 and DCA84–1), and RP83–102–000, Texas Eastern Transmission Corporation
RP–4: Docket Nos. RP79–23–018 and RP79–24–011, Distrigas of Massachusetts Corporation and Distrigas Corporation
RP–5: Docket Nos. TA80–2–21–003, 004, 005 and 006, Columbia Gas Transmission Corporation, et al.
RP–6: Docket No. RP84–1–001, ANR Pipeline Company
RP–7: Docket Nos. RP80–2–000, 008, 009, 010 and RP83–65–000, Alabama-Tennessee Natural Gas Company
RP–8: Docket No. TA82–1–59–000, Northern Natural Gas Company
RP–9: Omitted
RP–10: Docket No. TA84–2–5–000 (PGA84–2), Midwestern Gas Transmission Company

II. Producer Matters

CI–1: Reserved

III. Pipeline Certificate Matters

CP–1: Omitted
CP–2: Docket Nos. CP84–56–000, CP83–374–002 and CP83–378–002, Texas Gas Transmission Corporation

Lois D. Cashell,

Acting Secretary.

[FR Doc. 84–8090 Filed 3–22–84; 9:43 am]
BILLING CODE 6717–01–M

federal register

Monday
March 26, 1984

Part II

Department of Defense

48 CFR Ch. 2
DoD FAR Supplement; Final Rule

DEPARTMENT OF DEFENSE

48 CFR Ch. 2

DoD FAR Supplement

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Federal Acquisition Regulation (FAR) establishes (i) a single regulation for use by all executive agencies in their acquisition of supplies and services with appropriated funds; and (ii) the Federal Acquisition Regulations System consisting of the FAR and agency acquisition regulations that implement or supplement the FAR. The FAR and the DoD FAR Supplement will replace the Defense Acquisition Regulation (DAR) and will be effective for new solicitations issued on or after April 1, 1984. Provisions and clauses in the FAR and the DoD FAR Supplement shall not be included in solicitations issued prior to April 1, 1984. The DAR will remain in effect for those solicitations issued prior to April 1, 1984.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulation Council, OUSDRE(AM)(DARS), OUSDRE(M&RS), Room 3D 139, Pentagon, Washington, D.C. 20301, telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION: .

Note.—Copies of the DoD FAR Supplement in the **Federal Register**, looseleaf, and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

Suggestions or other comments concerning this reformatting of existing DoD acquisition policies and procedures should be addressed to: J. Brannan, Director, Defense Acquisition Regulatory Council, OUSDRE(AM)(DARS), OUSDRE(M&RS), Room 3D139, Pentagon, Washington, D.C. 20301, telephone (202) 697–7266. The DoD FAR Supplement will be effective April 1, 1984.

List of Subjects in 48 CFR Chapter 2

Government procurement.

For the reasons stated in the preamble, there is established in the Code of Federal Regulations Title 48—Federal Acquisition Regulations System, Chapter 2—Department of Defense, to read as furnished in this document.

APRIL 1984 EDITION

Foreword

The Department of Defense Supplement to the Federal Acquisition Regulation (FAR) is issued under statutory authorities of the Secretary of Defense. The FAR and the DoD FAR Supplement will replace the Defense Acquisition Regulation (DAR) and will be effective for new solicitations issued on or after 1 April 1984. Provisions and clauses in the FAR and this Supplement shall not be included in solicitations issued prior to 1 April 1984. Those provisions and clauses shall be included in solicitations issued on or after 1 April 1984, but need not be included in solicitations already in process of preparation when their inclusion would cause an undue delay in the solicitation.

The DAR, FAR, and DoD FAR Supplement contain directions to DoD contracting personnel as to (i) what provisions, clauses and cost principles are authorized for DoD contracts and (ii) what other procedures and actions they must follow in awarding and administering DoD contracts. Contracts will be administered in accordance with the provisions set forth therein, e.g., a contract citing the FAR cost principles will be administered in accordance with applicable paragraphs of the FAR and this DoD FAR Supplement. The noncontractual procedures to be followed by DoD contracting personnel will, for the most part, be as directed by the FAR and this Supplement on 1 April 1984. But many contracts will be affected by both the DAR and the FAR. As an example, a contract resulting from a solicitation issued before 1 April may require administration based on the DAR clauses and cost principles while the actions of the contracting officer relating to contract reporting, contract close-out, and other such matters, are as directed by the FAR (to the extent nothing in the contract requires otherwise). Applicable DAR appendices, manuals, and supplements are referenced in the Table of Contents and continue in use until they are updated, cancelled or superseded.

Certain DAR deviations have been authorized without established terms. Others have been, or may be, approved for terms extending beyond the effective date of the FAR. All such deviations shall, notwithstanding their stated terms, terminate no later than the effective date of the FAR. The foregoing does not affect DAR deviations incorporated in contracts awarded prior to the FAR's effective date.

The DoD FAR Supplement contains material that implements the FAR, as well as supplementary material that is unique to the Department of Defense. This Supplement is not a stand-alone document and must be read in conjunction with the FAR.

Prior to the effective date of this document, a Defense Acquisition Circular (DAC) will be published to update it to reflect current legislation and DoD acquisition policy. The first change to this Supplement will be numbered Defense Acquisition Circular 84–1 and later DACs will be numbered in the same series (e.g., 84–2).

Consistent with the FAR, this document generally represents a restructuring and reformatting of current DAR policy. Due to the compressed nature of the DAR-to-FAR conversion, inadvertent errors may have been made. A form for correcting errors in the FAR and this Supplement such as misspelled words, omitted words or lines, or errors in format, is attached. Please do not use this form for submission of suggested revisions to the content of this Supplement. Proposed revisions to the FAR and this Supplement will be submitted by DoD personnel in accordance with departmental procedures. Other interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

Requests for copies of the Regulation should be made through normal departmental distribution sources or directly to the Government Printing Office, Washington, D.C. 20402.

James T. Brannan,

Director, Defense Acquisition Regulatory Council.

EDITORIAL NOTE

The Department of Defense FAR Supplement is also printed by the DAR Council in looseleaf format. The loose leaf edition formed the basis for this CFR edition. Because the codification structure used in the loose leaf edition does not conform to the structure required to ensure codification in Chapter 2 of Title 48, Code of Federal Regulations, the Office of the Federal Register has redesignated the DoD FAR supplement to meet its codification requirements.

In general, the major redesignations are of two types.

1. The Office of the Federal Register has assigned Chapter 1 (Parts 1–99) of Title 48 CFR to the jointly issued FAR regulations. Supplementing agency regulations are to be issued in Chapters 2 to 69 of Title 48. OFR has assigned Chapter 2 (consisting of Parts 200–299) to the Department of Defense for its DoD FAR Supplement. Since the loose leaf DoD FAR Supplement uses the exact same numbers as the basic FAR regulations, the OFR has found it necessary to renumber all DoD FAR Supplement units by incrementing the Part numbers by 200. Thus, in the loose leaf edition a citation to 4.105 of the DoD FAR Supplement would become 204.105 in the CFR edition; a citation to 45.505.14 (a) (3)

in the loose leaf would become 245.505–14 (a)(3) in the CFR edition.

2. The FAR provides for both implementing and supplementing agency regulations, and adopts an editorial convention known as the "Rule of 70" to distinguish supplementary regulations for which there is no corresponding counterpart. (See 48 CFR 1.303). The FAR only describes supplementation down to the subsection unit level. In some cases, supplemental material in subdivisions below the section or subsection level (i.e., (a), (a)(1), (a)(1)(i), or (a)(1)(i)(A)) may be indicated by use of (70) through (89) in the DoD FAR Supplement.

The CFR has a standardized paragraphing structure as specified in 1 CFR 21.11(h) which sets up a hierarchy of paragraphs using alphabetic characters, arabic numerals and lower case roman numerals. For example, 1.1 (d) (3) (iv) or 3.5 (g) (17) (ii). Because the DoD FAR Supplement's use of (70), (71) etc., does not follow sequentially the specified CFR codification style, OFR has adopted a convention for use with the DoD FAR Supplement. For purposes of the **Federal Register** and the **Code of Federal Regulations** publications, an "S–" is added within the parenthesis to indicate supplemental material. For example, 204.804–1(S–70) or 204.804–5(a)(S–70).

Title 48 of the Code of Federal Regulations is amended by establishing Chapter 2 to read as follows:

CHAPTER 2—DEPARTMENT OF DEFENSE

SUBCHAPTER A—GENERAL

Part 201 Federal Acquisition Regulations System
Part 202 Definitions of words and terms
Part 203 Improper business practices and personal conflicts of interest
Part 204 Administrative matters
Part 205 Publicizing contract actions
Part 206 [Reserved in FAR]

SUBCHAPTER B—ACQUISITION PLANNING

Part 207 Acquisition planning
Part 208 Required sources of supplies and services
Part 209 Contractor qualifications
Part 210 Specifications, standards, and other purchase descriptions
Part 211 Acquisition and distribution of commercial products
Part 212 Contract delivery or performance

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part 213 Small purchase and other simplified purchase procedures
Part 214 Formal advertising
Part 215 Contracting by negotiation
Part 216 Types of contracts
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Part 219 Small business and small disadvantaged business concerns
Part 220 Labor surplus area concerns
Part 221 [Reserved in FAR]
Part 222 Application of labor laws to government acquisitions
Part 223 Environmental, conservation; and occupational safety
Part 224 Protection of privacy and freedom of information
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Part 226 [Reserved in FAR]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 227 Patents, data, and copyrights
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Part 231 Contract cost principles and procedures
Part 232 Contract financing
Part 233 Disputes and appeals

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Part 234 Major system acquisition
Part 235 Research and development contracting
Part 236 Construction and architect-engineer contracts
Part 237 Service contracting
Part 238 Federal supply schedule contracting
Part 239 Management, acquisition, and use of information resources
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Part 241 [Reserved in FAR]

SUBCHAPTER G—CONTRACT MANAGEMENT

Part 242 Contract administration
Part 243 Contract modifications
Part 244 Subcontracting policies and procedures
Part 245 Government property
Part 246 Quality assurance
Part 247 Transportation
Part 248 Value engineering
Part 249 Termination of contracts
Part 250 Extraordinary contractual actions
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ASPR Supplement No. 5—Procurement of Utility Services (ASPS No. 5) (1 OCT 74)
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SUBCHAPTER A—GENERAL

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 201.1—Purpose, Authority, Issuance

201.101 Purpose.

The Department of Defense FAR Supplement is issued by the Under Secretary of Defense for Research and Engineering by direction of the Secretary of Defense and in coordination with the Secretaries of the Army, Navy and Air Force, and the Director of the Defense Logistics Agency. It establishes for the Department of Defense uniform policies and procedures, implementing and supplementing the Federal Acquisition Regulation.

201.103 Applicability.

(a) This supplement applies to all purchases and contracts made within and outside the United States (but see 201.405) for the procurement of supplies or services which obligate appropriated funds (including available contract authorizations). This supplement and the FAR also apply to purchases and contracts made in support of foreign miltary sales without regard to the nature or sources of funds obligated, unless otherwise specified in this regulation.

(b) Neither the FAR nor this supplement applies to transportation services purchased by transportation requests, transportation warrants, bills of lading, and similar transportation forms. Purchase of these excepted transportation services shall be in accordance with specific regulations and instructions issued by the Military Traffic Management Command, Military Sealift Command, Military Airlift Command, and the Departments.

201.104 Issuance.

201.104–1 Publication and Code arrangement.

This regulation is issued as Chapter 2 of Title 48, CFR. Other chapters are reserved for Departmental acquisition regulations that implement or supplement this regulation. It is also available in a loose-leaf edition.

201.104–2 Arrangement of regulations.

(a) This regulation is numbered according to whether the information implements or supplements the FAR. The differentiation is made by using the numbers 70–89 as new parts, subparts, sections, or subsections when supplementation is required. Implementing coverage uses the same numbers as the FAR material implemented. Numbers 1–69 have been reserved to the FAR. A series of numbers beginning with 7000 is used for provisions and clauses.

(1) A new Part 70 is used in the DoD FAR Supplement for new material which is not coverd by the FAR and is a distinct part only applicable to the Department of Defense.

(2) A new Subpart 225.72 could be used as the third subpart supplementing FAR Part 25, with Subparts 225.70 and 225.71 having preceded it.

(3) A new Section 225.173 could be used as the fourth section supplementing FAR Sections that begin with 25.101. In this case, the FAR can only be numbered through 25.169.

(4) A new Section 225.101–79 could be used as the 10th subsection supplementing FAR Subsections that begin with FAR 25.101–1.

(5) A new Subsection 252.225–7001 could be used as the second clause supplementing the FAR clauses prescribed by Part 25 beginning with 252.225–1. The number 7000 is used because of the potential existence of more than 20 clauses supplementing a given part over the lifetime of the FAR.

(6) Departmental supplementation of the FAR or this regulation will use the same rules, except that numbers 90 and above are reserved for supplementary material, and 9000 and above are reserved for supplementary clauses.

(c) *References and citations.*

(2) This regulation may be referred to as the Department of Defense Federal Acquisition Regulation Supplement or the DoD FAR Supplement. Cross reference to the FAR in this regulation will cite "FAR" followed by the appropriate part, subpart, etc.

References to this regulation will be without a name or acronym prefix. References to FAR citations in this supplement should be read to include the corresponding paragraphs of this supplement and any additional authorizations, restrictions, policies or procedures they may contain. For example, the words "* * * when authorized under FAR Part 25 * * *" include authorities granted under both FAR Part 25 and Part 225 of this supplement.

201.104-3 Copies.

Copies of the DoD FAR Supplement in loose-leaf and CFR from may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

Subpart 201.2—Administration

201.201 Maintenance of the FAR.

201.201-1 The two Councils.

(a) The Defense Acquisition Regulatory (DAR) Council shall maintain the FAR and the DoD FAR Supplement.

(c) The composition and operation of the DAR Council shall be as prescribed by DoD Directive 5000.35.

Subpart 201.3—Agency Acquisition Regulations

201.301 Policy.

(S-70) Defense Acquisition Circulars.

(1) In accordance with the authority in FAR 1.301, a Defense Acquisition Circular, supplementary to this regulation, shall be published as often as may be necessary or advisable for distribution to all recipients of this regulation. Material to be published in each Defense Acquisition Circular shall first be approved by the Defense Acquisition Regulatory Council.

(2) The purposes of the Defense Acquisition Circular are:

(i) To promulgate as rapidly as possible selected material revising this regulation.

(ii) To disseminate material applicable to procurement which is not suitable for insertion in this regulation, but which may have the effect of a directive to, or be of importance and interest to its recipients; and

(iii) To supplement this regulation as may be necessary to reduce the size and frequency of issue of subsidiary Departmental procurement instructions.

(3) Unless otherwise indicated in the introductory language preceding an item, each item in Defense Acquisition Circulars will remain in effect until specifically canceled.

(4) Statements in Defense Acquisition Circulars to the effect that the material published therein is "effective upon receipt" or upon a specified date, or that changes set forth in the circular are "to be used upon receipt," mean that any new or revised clauses or forms included in the circular shall be included in invitations for bids and requests for proposal issued thereafter, unless a different meaning is expressed in the circular. However, unless otherwise provided in the circular, the new or revised clauses or forms need not be included in solicitations already in process of preparation where their inclusion would cause an undue delay in the solicitation.

(5) As a convenience to the Departments and to insure early and wide dissemination, selected DoD policy promulgations of general interest to contracting activities are republished as DAC items. Unless otherwise indicated, subsequent cancellation of such DAC items is not to be construed as cancellation of the underlying policy. Cancellation of such policy will normally be accomplished by separate and specific OSD action.

201.304 Agency control and compliance procedures.

(b)(1) The Departments and their subordinate organizations shall not issue instructions (including directives, regulations, policies, or procedures), contract forms or contract clauses implementing or supplementing the FAR or this regulation, unless permitted by one of the following and if consistent with (b)(2) below:

(i) Internal procurement management instructions, such as designations and delegations of authority, assignments of responsibilities; work flow procedures, and internal reporting requirements;

(ii) Any special contract clause of a nonrepetitive nature designed specifically to accomplish the peculiar requirements of an individual procurement, provided a clause relating to the subject matter is not set forth in the FAR or this regulation;

(iii) A variation of any contract clause which is set forth in the FAR or this regulation but not for use verbatim, provided that such variation is not inconsistent with the intent, principle and substance of the FAR or DoD FAR Supplement clause or related coverage of the subject matter;

(iv) Interim instructions, including service test of new techniques or methods of procurement, having an effective duration not exceeding six months (unless approved for a longer period by the DAR Council) which are essential:

(A) To meet current operational needs, provided the instructions are submitted prior to issuance or immediately thereafter for consideration by the DAR Council; or

(B) To effect greater efficiency in procurement management, provided the instructions authorized are submitted for approval of the DAR Council prior to issuance;

(v) Procurement procedures specifically identified as being essential for carrying out the peculiar needs of specialized commodity areas when authorized by: for the Army, Deputy Assistant Secretary (Acquisition), Office of the Assistant Secretary of the Army (Research, Development and Acquisition); for the Navy, Deputy Chief of Naval Material for Contracts and Business Management; for the Air Force, Director of Contracting and Manufacturing, Office of the Deputy Chief of Staff (Research, Development and Acquisition); for the Defense Logistics Agency, Executive Director, Contracting, or the Executive Director for Contract Management; for the National Security Agency, the Director; for the Defense Communications Agency, the Director; for the Defense Nuclear Agency, the Deputy Director, Operations and Administration; for the Defense Mapping Agency, the Staff Director of Logistics; and notification is given to the DAR Council immediately upon such authorization for the purpose of determining whether such procedures should be included in this regulation, or the FAR;

(vi) Procurement instructions specifically identified as being essential for carrying out the peculiar needs of overseas commands when authorized by the cognizant unified commander and notification is given to the DAR Council immediately upon such authorization for the purpose of determining whether such instructions should be included in this regulation or the FAR;

(vii) Material expressly determined by the DAR Council to be inappropriate for FAR or DoD FAR Supplement coverage, but appropriate for inclusion in Departmental publications.

(2) Instructions issued in accordance with (a) above shall not contain material which unnecessarily duplicates, is inconsistent with, or increases or restricts the use of, any authority contained in this regulation or the FAR.

(c) Each Department shall establish procedures to screen all instructions (including directives, regulations, policies or procedures), contract forms, and contract clauses issued pursuant to (a) and (b) above to assure strict compliance with this paragraph, and to

determine if the subject matter is appropriate for inclusion in this regulation or the FAR.

201.371 USEUCOM Supplement.

A supplement, entitled USEUCOM Supplement, is applicable to all purchasing officers of the Department of Defense in the North Atlantic-Mediterranean area, including all of Europe. The USEUCOM Supplement and changes thereto are developed by USEUCOM and concurred in by the Offshore Procurement Policy Coordinating Committee representing the purchasing offices in that area and, after adoption and approval by the Defense Acquisition Regulatory Council, are published and distributed by the Headquarters, United States European Command, as an integral part of this Regulation. In addition, Headquarters USEUCOM publishes Tabs to the USEUCOM Supplement which contain source and informational material (such as government-to-government agreements and tax information) and which do not require approval by the DAR Council.

Subpart 201.4—Deviations From the FAR

201.402 Policy.

(a) The FAR and the DoD FAR Supplement are not intended to stifle the development of new techniques or methods of procurement. Innovation to attain desirable objectives will occasionally necessitate deviations from this regulation and the FAR, and it is the responsibility of contracting officers to request such deviations whenever they are required in the best interest of the Government. For the purpose of this paragraph, a deviation shall be considered to be any of the following:

(1) When a contract clause is set forth in the FAR or DoD FAR Supplement for use verbatim, use of a contract clause covering the same subject matter which varies from the FAR or DoD FAR Supplement coverage, or use of a collateral provision which modifies either the clause or its prescribed application constitutes a deviation; however, in the case of a purchase or contract of an offshore contracting activity with a foreign contractor made outside the United States, its possessions, or Puerto Rico, such contract clauses may (subject to the direction of authority above the level of the contracting officer) be modified if no change in intent, principle, or substance is made (offshore contracting activities shall keep the cognizant unified commander advised of significant deviations effected under this subparagraph (a)(1);

(2) When a contract clause is set forth in the FAR or this regulation but not for use verbatim, use of a contract clause covering the same subject matter which is inconsistent with the intent, principle and substance of the FAR or DoD FAR Supplement clause or related coverage of the subject matter;

(3) Omission of any mandatory contract clause;

(4) When a Standard, DD, or other form is prescribed by the FAR or a Department of Defense Directive, use of any other form for the same purpose;

(5) Alteration of a Standard, DD, or other form (other than Departmental forms), except as authorized by the FAR, this regulation, or a Department of Defense Directive;

(6) When limitations are imposed in FAR, this regulation, or a Department of Defense Directive, upon the use of a contract clause, form, procedure, type of contract, or any other procurement action, including but not limited to the making or amendment of a contract, or actions taken in connection with the solicitation of bids or proposals, award, administration or settlement of contracts, the imposition of lesser or greater limitations;

(7) When a policy, procedure, method or practice of conducting procurement actions of any kind at any stage of the procurement process is covered by the FAR or this regulation, any policy, procedure, method or practice which is inconsistent with that set forth;

(8) Issuance of any instructions described in 201.304 (including an instruction for any additional contract clause, form, or type, or additional procurement policy, procedure, method of practice, not covered in the FAR, this regulation or in Department of Defense Directives) unless permitted under 201.304;

(9) A contract saving clause whereby the parties are committed to a contract modification in the event of changes in controlling statutes or regulations during the term of the contract. Any such saving clause shall require approval pursuant to 201.404.

(b) Requests for approval of any deviation from the FAR or this regulation shall be forwarded to the approving authority through procurement channels. Each submission shall contain as a minimum:

(1) Identification of the FAR or DoD FAR Supplement requirement from which deviation is sought;

(2) A full description of the deviation and the circumstances in which it will be used;

(3) A description of the intended effect of the deviation;

(4) A copy of any pertinent document, including forms or clauses and the proposed contractor's request, if any;

(5) A statement of the period of time for which the deviation is needed; and

(6) Detailed reasons supporting the request.

201.403 Individual deviations.

(a) Except where elsewhere prohibited, deviations from the FAR or this supplement or a Department of Defense Directive which affect only one contract or procurement may be made or authorized in accordance with Departmental procedures, provided such circumstances justify a deviation, and written notice of such deviation, describing its nature and the basis for its justification, is furnished to each of the following:

The Deputy Under Secretary (Acquisition Management), OUSD(R&E) Attention: DAR Council, Washington, DC 20301

The Assistant Secretary of the Army (RDA), Attn: DAR Council Policy Member, The Pentagon, Washington, DC 20310

The Assistant Secretary of the Navy (S&L), Attn: DARS Staff, Crystal Plaza, Bldg. 5, Washington, DC 20360

The Director of Contracting and Manufacturing Policy, Attn: AF/RDC (DAR), The Pentagon, Washington, DC 20330

Executive Directorate, Contract Management, Defense Logistics Agency, Attn: DLA-AA, Cameron Station, Alexandria, VA 22314

Such written notice shall be given in advance of the effective date of such deviations unless exigency of the situation requires immediate action.

(b) Examples of deviations from certain provisions of the FAR or this regulation not permitted under (a) above, although affecting only one contract or procurement, are:

(1) Provisions required by statute or executive order;

(2) Subpart 227.4;

(3) Subpart 231.1;

(4) Subpart 231.2;

(5) Part 232 (except 232.7, 232.8, and the Payment clauses in 232.1).

201.404 Class deviations.

Except as authorized in 201.403, deviations from this supplement or a Department of Defense Directive will not be effected unless approved in advance by the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Management), (DUSD(AM)); provided, however that unanimous approval by the members of the DAR Council will constitute approval of the DUSD(AM) of all matters except those involving major

policy. Written requests for such approval will be submitted to the DUSD(AM) through the DAR Council as far in advance as exigencies of the situation will permit.

201.405 Deviations pertaining to treaties and executive agreements.

(b) and (c) Notwithstanding 201.403 and 201.404, deviations from the FAR or this supplement that are required in order to comply with a treaty or executive agreement to which the United States is a party are authorized in accordance with FAR 1.405 (b) and (c).

(d) A copy of the text of any deviation authorized under FAR 1.405 (b) or (c) shall be submitted to the DAR Council.

(e) If a deviation required to comply with a treaty or an executive agreement is not authorized by FAR 1.405 (b) or (c), the request for deviation shall be submitted to the DAR Council for consideration.

Subpart 201.6—Contracting Authority and Responsibilities

201.601 Responsibility of each contracting activity.

Except as otherwise prescribed by procedures of each respective Department, the Head of a Contracting Activity is responsible for acquisitions under or assigned to his activity.

201.602 Authority of contracting officers.

Contracting officers at contracting offices are authorized to enter into contracts for supplies or services on behalf of the Government, and in the name of The United States of America, by formal advertising, by negotiation, or by coordinated or interdepartmental procurement; and, when authorized under FAR Part 42, to administer such contracts. This authority is subject to the requirements, consistent with this supplement and the FAR, imposed by the appointing authority. Contracting officers at contract administration offices are, except as provided in FAR Part 42, authorized to perform the applicable contract administration functions and to perform additional procurement functions when delegated by the contracting office.

201.670 Ratification of unauthorized commitments.

201.670–1 Authority.

Only contracting officers acting within the scope of their authority (see FAR 1.602) may enter into contracts on behalf of the Government. Subject to the limitations in 201.670–4 below, the Head of the Contracting Activity may ratify an unauthorized commitment, *provided:*

(a) The Government has obtained a benefit resulting from the unauthorized commitment;

(b) The Head of the Contracting Activity could have granted authority to enter into the commitment at the time it was made and still has the power to do so; and

(c) The resulting contract would otherwise have been proper if made by an authorized contracting officer.

201.670–2 Definitions.

"Ratification," as used in this section, means the act of approving an unauthorized commitment, by an official who has the authority to do so, for the purpose of paying for supplies or services provided to the Government as a result of the unauthorized commitment.

"Unauthorized commitment," as used in this section, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into a contract on behalf of the Government.

201.670–3 Procedures.

(a) The authority of 201.670–1 above may be delegated in accordance with Departmental procedures, *provided,* that in no case shall this authority be delegated below the Chief of the Contracting Office.

(b) DoD components shall process unauthorized commitments using the ratification authority set forth herein in lieu of referral of such actions to the General Accounting Office for resolution as "quantum meruit/quantum valebat" claims.

201.670–4 Limitations on Exercise of Authority.

The authority in 201.670–1 above may be exercised only where—

(a) Supplies or services have been provided to and accepted by the Government;

(b) The contracting officer determines the price to be fair and reasonable;

(c) The contracting officer recommends payment and legal counsel concurs in the recommendation;

(d) Funds are available and were available at the time the unauthorized commitment was made;

(e) Administrative settlement of the unauthorized commitment would not involve a claim subject to resolution under the Contract Disputes Act of 1978.

201.670–5 Nonratifiable Commitments.

Cases that are not ratifiable under this section may be subject to resolution as recommended by the General Accounting Office under its claim procedure (4 GAO 5.1), or as authorized by FAR Part 50. Legal advice should be obtained in these cases.

PART 202—DEFINITIONS OF WORDS AND TERMS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 202.1—Definitions

202.1 Definitions.

"Department of Defense" means the Office of the Secretary of Defense and the Military Departments.

"Department" or "Military Department" includes the Department of the Army, the Department of the Navy, the Department of the Air Force, the Defense Logistics Agency, the Defense Communications Agency, the Defense Nuclear Agency, the Defense Mapping Agency, and the National Security Agency.

"Head of the agency" means the Under Secretary or any Assistant Secretary of the Army, Navy and Air Force, and the Director and Deputy Director of the Defense agencies, except to the extent that any law or executive order limits the exercise of authority to persons at the Secretarial level. In the latter situation, the Under Secretary of Defense (Research and Engineering) shall exercise the authority for Defense agencies.

(a) *Contracting activities* include:

For the Army:

Office of the Deputy Assistant Secretary (Acquisition), Assistant Secretary of the Army (Research, Development and Acquisition);

Directorate of Procurement & Production, Headquarters, U.S. Army Materiel Development and Readiness Command;

U.S. Army Armament Munitions and Chemical Command;

U.S. Army Missile Command;

U.S. Army Electronics Research and Development Command;

U.S. Army Communications-Electronics Command;

U.S. Army Troop Support Agency;

U.S. Army Troop Support and Aviation Materiel Readiness Command;

U.S. Army Tank-Automotive Command;

U.S. Army Aviation Research and Development Command;

U.S. Army Training and Doctrine Command;

U.S. Army Test and Evaluation Command;

U.S. Army Forces Command;

U.S. Army Health Services Command;

Military District of Washington, U.S. Army;

U.S. Army, Europe;
National Guard Bureau;
Office of the Chief of Engineers;
U.S. Army Communications Command;
Office of The Surgeon General;
U.S. Army Western Command;
Military Traffic Management Command;
U.S. Army Ballistic Missile Defense Systems Command;
Office of the Assistant Deputy Chief of Staff for Operations and Plans (Command, Control, Communications and Computers); and
Eighth U.S. Army.
For the Navy:
Office of Acquisition and Contract Policy, Office of the Assistant Secretary of the Navy, Shipbuilding and Logistics.
Headquarters, Naval Material Command;
Office of the Deputy Chief of Naval Material (Contracts and Business Management);
Naval Air Systems Command;
Naval Data Automation Command;
Naval Electronic Systems Command;
Naval Facilities Engineering Command;
Naval Sea Systems Command;
Naval Supply Systems Command;
Office of Naval Research;
Navy Aviation Supply Office;
Military Sealift Command;
Ships Parts Control Center;
Headquarters, United States Marine Corps; and
Installations and Logistics Department, Headquarters, U.S. Marine Corps.
For the Air Force:
HQ USAF, Director of Contracting and Manufacturing Policy;
Air Force Logistics Command;
Air Force Systems Command;
Strategic Air Command;
Tactical Air Command;
Air Force Communications Command;
Military Airlift Command;
Air Training Command;
Pacific Air Forces;
United States Air Forces in Europe;
Alaskan Air Command; and
Space Command.
For the Defense Logistics Agency:
Office of the Executive Director, Contract Management;
Office of the Executive Director, Contracting;
Defense Supply Centers; and
Defense Personnel Support Center.
For the Defense Communications Agency:
Headquarters, Defense Communications Agency; and
Defense Commercial Communications Office.
For the Defense Nuclear Agency:
Headquarters, Defense Nuclear Agency.
For Defense Mapping Agency:
Headquarters, Defense Mapping Agency, Logistics Office.
For the National Security Agency:
Headquarters, National Security Agency.
For the Defense Supply Service—Washington:
Director, Defense Supply Service—Washington.

(b) "Contracting activity" also includes any other contracting activity hereafter established. The number and designation of particular contracting activities of any Military Department may be changed by directive of the Secretary.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

203.000 Scope of part.

Reports of suspected criminal conduct, noncompetitive practices, kickbacks, and other procurement irregularities shall be made by each Department in accordance with procedures set forth in 209.472 and Departmental procedures. Such reports are specified by 203.103–2, 203.203, 203.301, 203.409, and 203.502 of this Part.

Subpart 203.1—Safeguards

203.101 Standards of conduct.

203.101–3 Agency regulations.

The applicable Department of Defense directive on Standards of Conduct is DODD 5500.7. See AR 600–50 for the Army; SECNAV Instr. 5370.2E of 29 November 1967, for the Navy; AFR 30–30, for the Air Force; DLAR 5500.1, for the Defense Logistics Agency; DCA Inst. 220–50–1, for the Defense Communications Agency; DNA Inst. 5500.7A, for the Defense Nuclear Agency; and DMA Inst. 5500.1, for the Defense Mapping Agency.

203.103 Independent pricing.

203.103–2 Evaluating the certification.

(b)(3) Whenever an offer is rejected under FAR 3.103–2(b) (1) or (2), or the certificate is suspected of being false, the matter shall be reported in accordance with 203.000 as well as being reported to the Attorney General in accordance with FAR 3.303.

Subpart 203.2—Contractor Gratuities to Government Personnel

203.203 Reporting suspected violations of the gratuities clause.

Suspected violations of the Gratuities clause shall be reported in accordance with 203.000 and Departmental procedures.

203.204 Treatment of violations.

Procedural requirements for hearings under the Gratuities clause are set out in Appendix D.

Subpart 203.3—Reports of Identical Bids and Suspected Antitrust Violations

203.301 General.

(b) Suspected antitrust violations shall be reported in accordance with 203.000 and Departmental procedures.

Subpart 203.4—Contingent Fees

203.409 Misrepresentations or violations of the convenant against contingent fees.

(b) When the chief of the contracting office has reviewed the facts and found evidence or basis for suspicion of fraud or other criminal conduct, the matter shall be reported in accordance with 203.000 and Departmental procedures.

203.410 Records.

Where the receipt of new Standard Form 119 makes previously received information obsolete, the obsolete information may be destroyed if its retention is no longer needed for enforcement purposes.

Subpart 203.5—Other Improper Business Practices

203.502 Subcontractor kickbacks.

Suspected violations of the Antitrust Kickback Act shall be reported in accordance with 203.000 and Departmental procedures.

203.570 Implied endorsement by military resale activities.

The contracting officer shall include the clause at 252.203–7000 in all solicitations and contracts for supplies purchased for resale to preclude any implied endorsement by military resale activities of commercially advertised products.

PART 204—ADMINISTRATIVE MATTERS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 204.2—Contract Distributon

204.201 Procedures.

(e) One copy of each of the following type contracts and of each modification thereto shall be distributed to the appropriate Defense Contract Audit Agency (DCAA) field audit office (listed

in the DCAA Directory—Headquarters and Field Offices):

(1) Cost reimbursement

(2) Time-and-materials

(3) Labor-hour

(4) Fixed price contracts with provisions for redetermination, incentives, economic price adjustment, or cost allowability

(5) Any other contract which requires audit service. (If there is a question as to the appropriate DCAA field audit office, contracting officers may request the assistance of the DCAA procurement liaison auditor or the nearest DCAA field audit office.)

(f) Two copies shall be distributed directly to the contract administration office cognizant of each manufacturing location where contract administration services will be required (see DoD Directory of Contract Administration Services Components 4105.59H), when administration of the contract is performed at other than the place of manufacture.

204.202 DoD distribution requirements.

(a) The contracting officer executing a contract or modification is responsible for complete distribution of the document.

(b) Except as provided in this paragraph and FAR 4.201(a), the procuring contracting officer shall maintain the original executed procurement document in the official contract file. The original of each modification executed by the ACO or TCO shall be provided to the PCO. Unless otherwise directed by the department concerned, the original executed provisioning orders shall be maintained by the office issuing the orders.

(c) In addition to the distribution in FAR 4.201, copies of contracts (including agreements) shall be distributed as specified below:

(1) Four copies to the contract administration office (distribution shall be effected simultaneously with the copy furnished under FAR 4.201(b);

(2) one copy to each consignee indicated in the contract (a transshipping terminal is not a consignee);

(3) one copy to the appropriate transportation office when required by FAR 42.1402, and additional copies as required by Departmental regulations;

(4) ten copies to the MIPR initiating activity in the case of coordinated procurement;

(5) one copy to the CAO ADP point, except when the DoDAAD code (see DoD Directory 4105.59H) is the same as that of either the CAO or payment office.

(d) When a payment office is added to, or changed under, an existing contract by modification, a copy of the basic contract and all modifications thereto shall be furnished to the added/new payment office. A copy of the modification affecting such addition or change shall also be furnished to the original or losing payment office. When a contract administration office, an accounting office and finance office (funding office), a consignee or other activity is added by a modification, the contracting officer shall determine the extent to which each activity is concerned with the basic contract and modifications and make distribution accordingly.

(e) Distribution of modifications issued pursuant to 204.7004–3(a)(2)(B) and 204.7004–4(b)(2) may be limited to the following:

(1) Contractor;

(2) Receiving Activity;

(3) Contract Administration Office;

(4) Payment Office;

(5) CAO ADP point in accordance with (c)(5) above.

(f) Distribution of overhead rate agreements may be limited to the contractor and the executing contracting officer.

(g) Distribution of contract modifications generated by mechanical means (computer program) may be limited to the following:

(1) Contractor, one copy;

(2) CAO, one copy;

(3) New Payment Office, one copy

(4) PCO, one copy;

(5) Funding Activities, one copy to each.

Subpart 204.6—Contract Reporting

204.670–1 Scope.

This section prescribes uniform reports which are required to be prepared by purchasing and contract administration offices in order to meet the requirements of the Federal Procurement Data System and provide management with necessary information to help formulate, change or measure the effectiveness of acquisition policy.

204.670–2 Definitions.

As used in 204.671 and 204.672 the following terms have the meanings stated below.

"Contracting Action" means any written action obligating or deobligating funds in connection with the purchasing, renting, leasing, or otherwise obtaining supplies, services, or construction. The term includes: preliminary contractual instruments; letter contracts; definitive contract, including notices of award; purchase orders; BPA calls; imprest fund purchases; SF 44 purchases; job orders; task orders; delivery orders; contingency orders; administrative notices; communciation services authorizations (CSA's); production lists; priced exhibits; other orders against existing contracts; and contract modification such as change orders or agreements, supplemental agreements, funding changes, option exercises, and notices of termination or cancellation.

"Purchasing Office" means any office which awards or executes a contracting action when that action is accomplished by the PCO. Included in the term are activities which place orders under DoD contracts, under another agency contract, or under GSA Federal Supply Schedule, when such action is not taken in conjunction with an assigned contract administration responsibility.

"Contract Administration Office" means the office which awards or executes a contracting action as defined above when such action is accomplished by an ACO on behalf of the PCO who assigned contract administration responsibility to that office, including actions taken by a TCO relating to the settlement of terminated contracts.

204.670–3 DUNS Number.

Contracting Officers shall insert in solicitations exceeding the small purchase limit the provision at 252.204–7004 to request the offeror to supply his Data Universal Numbering System (DUNS) Number.

204.670–4 Distribution of defense subcontracts placed overseas.

To assist DoD monitoring of arms cooperation agreements with friendly governments, the clause at 252.204–7005 shall be inserted in any contract for other then commercial items to be awarded which is expected to exceed $500,000, or when any modification increases the amount of a contract to more than $500,000. In the latter case, the reporting requirement will not be retroactive so as to require the reporting of subcontracts awarded prior to such modification. This clause shall not be inserted in contracts for ores, natural gas, utilities, petroleum products and crudes, timber (logs) and subsistence.

204.671 Individual procurement action report (DD Form 350).

204.671–1 Scope.

This Section prescribes the reporting on DD Form 350 of individual contracting actions in excess of $25,000. This reporting requirement has been assigned Report Control Symbol: DD–DR&E(M) 1014.

204.671-2 Purpose.

The DD Form 350 is used to collect data on contract placement statistics within DoD. The data gathered by means of the DD Form 350 are used for reporting the size and distribution of DoD procurement actions; types of contracts used; methods used in contracting; numbers and amount of contracts placed with categories of contractors such as small, small disadvantaged, and women-owned small business concerns; the negotiation authority used; the extent of competition achieved; and other essential facts about contract actions over $25,000 written by DoD. In many respects, the data summarized from the DD Form 350 are used to measure the efficiency and adequency of the way in which the DoD procurement program is executed. The data serve as the basis for internal DoD reports as well as reports to other departments of the executive branch, Congress, GAO, etc. They frequently provide a basis for new or revised procurement policies. Therefore, it is most important that accurate and complete data be reported in a timely manner through the DD Form 350.

204.671-3 Applicability and coverage.

(a) DD Form 350 consist of 6 parts. Part A identifies the report and the reporting activity. Part B identifies the transaction: contract number, contractor, dollars, product, etc. Part C gathers data concerning contracting procedures and methodology. Part D gathers data relating to the placement of the contract and to several statutory requirements relating to DoD procurements. Part E is set aside for departmental or higher authority use. Part F identifies the cognizant reporting official.

(b) DD Form 350 shall be prepared (typewritten or machine produced equivalent) for each contracting action obligating or deobligating more than $25,000 which is executed by a component of the Department of Defense except as indicated in (d) below. At the option of the headquarters of the Departments, purchasing offices may submit an automated record in lieu of a DD Form 350, *Provided,* that the contract file reflects such information on a separate worksheet or print-out for each individual contracting action in excess of $25,000.

(c) Multiple reports are required for a single action when both the Foreign Military Sales Program and other programs are involved (see 204.671-5(b)(12)). Multiple reports may be required if more than one type of contract is involved (see 204.671-5(c)(6)(ii)).

(d) DD Form 350 shall not be prepared for the following contracting actions:

(1) Transactions which cite nonappropriated funds, such as funds belonging to the Army and Air Force Exchange Service. Funds held in trust accounts for foreign governments shall be treated as appropriated funds.

(2) Transactions for leased communications placed by the Defense Communications Agency, Defense Commercial Communications Office (DECCO).

(3) Transactions for purchase of land, or rental or lease of real property.

(4) Orders from GSA Stock and the GSA Consolidated Purchase Program.

(5) Transactions which involve Government bills of lading or transportation requests.

(6) Grants for basic research with educational institutions and other nonprofit organizations.

(7) Orders placed against indefinite delivery type contracts entered into by the Defense Fuel Supply Center and the Military Sealift Command. The estimated value of the orders to be placed in each fiscal year against each contract shall be reported on a separate DD Form 350 in the appropriate fiscal year by the Defense Fuel Supply Center and Military Sealift Command for their respective contracts.

(8) Orders placed against indefinite delivery type contracts entered into by the Military Traffic Management Command for stevedoring services. Orders under each such contract shall be consolidated quarterly and the cumulative dollar amount reported on a single DD Form 350.

(9) Awards to individuals in support of dependent schools, e.g., principals and teachers. These transactions shall be consolidated monthly and the cumulative dollar amount reported on a single DD Form 350.

(10) Military Airlift Command awards for international airlift services. These actions shall be reported at the end of each operating month by the issuance of one master DD Form 350 for each airlift contract.

(11) Orders placed of resale items in excess of $25,000 against brand name contracts entered into by the Defense Logistics Agency and published in Supply Bulletin Series 10-500. Orders under each such contract shall be consolidated monthly and cumulative dollar amounts reported on a single DD Form 350 in accordance with departmental regulations.

(12) Vouchers processed by the U.S. Army Contracting Agency, Europe (USACAE), for the purchase of utilities from municipalities, such as gas, electricity, water, sewage, steam, snow removal, and garbage collection. These transactions shall be consolidated monthly and the cumulative dollar amount reported on a separate DD Form 350 in accordance with departmental regulations.

204.671-4 Due date and distribution.

(a) The signed original of each DD Form 350 shall be forwarded by the purchasing office within 3 working days after the date on which the dollars were actually obligated or deobligated by the contracting office, with the following exceptions:

(1) For those Defense Fuel Supply Center major petroleum acquisitions which result in multiple awards, the signed original of the DD Form 350 shall be forwarded within 10 working days.

(2) For actions executed in the month of September only, prescribed due dates are extended 10 calendar days for the forwarding of reports in order to assure complete coverage of all contracting actions occurring in the fiscal year.

(b) Corrected reports shall be distributed in exactly the same manner as original reports.

(c) DD Forms 350 shall be submitted as unclassified documents. If necessary, the commodity description (Item B8D) may be omitted and the work "classified" inserted in lieu thereof. In addition, enter 9999 in Block B8A and zeros (000) in Blocks B8D and B8C. Should further modification of coding of items on DD Form 350 be deemed necessary for security classification purposes, the appropriate department offices identified in (d) below shall be contacted for special instructions.

(d) Distribution of DD Form 350 shall be as follows:

(1) Army purchasing offices (except for Engineer Civil Functions purchasing offices) to HQDA(JDHQ-SV-W-P), Washington, D.C. 20310.

(2) Army Engineer Civil Functions purchasing offices to HQDA(DAEN-PRP), Washington, D.C. 20314.

(3) Navy purchasing offices as directed by COMNAVSUP(SUP-024).

(4) Air Force purchasing offices as directed by HQUSAF.

(5) Defense Logistics Agency purchasing offices to Executive Director, Contracting, Defense Logistics Agency, Cameron Station, Attn.: DLA-PA, Alexandria, VA 22314.

(6) All other purchasing offices of the Department of Defense shall forward the signed originals to HQDA(JDHQ-SV-W-P), Washington, D.C. 20310.

(e) Purchasing offices shall prepare DD Form 350 for contracting actions in excess of $25,000 which are reportable in accordance with 204.671-3 and are

accomplished by contract administration offices. To facilitate such reporting, the ACO or TCO, within one working day after the action date, shall transmit to the purchasing office on whose behalf the action was taken a copy of the contractual instrument clearly annotated in the heading in large block letters as the "DD FORM 350 REPORTING COPY". The purchasing office shall prepare and submit the DD Form 350 within 3 working days after the receipt of this "REPORTING COPY".

204.671-5 Instructions for completion of DD Form 350.

(a) *Part A of DD Form 350.*

(1) *Item A1, Type of report.*

(i) If this is an original report, enter Code zero in Item A1 and complete sections A through F as appropriate.

(ii) If it is necessary to cancel a previously submitted report in its entirety, i.e., the report should not have been submitted, then enter Code 1 in Item A1 and complete Items A2, A3, and B1 only.

(iii) To change any data elements on a previously submitted report, enter Code 2 in Item A1, enter in Items A2, A3, and B1 the same codes that were entered on the report being changed, and enter the corrected codes in each other item being corrected. Leave all other items blank. If it is necessary to change Items A2, A3, or B1 on a previously submitted report because a code was incorrect, that report must be cancelled and a new "original" report submitted.

(2) *Items A2, Report number.*

(i) Each purchasing office shall assign to DD Form 350 a unique 4-position number with alpha or numeric characters. It more than one activity within a purchasing office utilizes the same reporting office code, the purchasing office shall assign separate clocks of numbers to each such activity in order to prevent duplication of report numbers.

(ii) If Item A1 is coded 1 or 2 (a cancelling or correcting action), then enter the report number assigned to the report being cancelled or corrected.

(3) *Item A3, Purchasing office code.* Enter in Item A3 the code assigned to the purchasing office in accordance with DoD Procurement Coding Manual, Volume III.

(4) *Item 4A, Name of purchasing office.* Enter in the space provided sufficient detail to establish the identity of the purchasing office submitting the report.

(b) *Part B, DD Form 350.*

(1) *Item B1, Contract number.* Enter either, left justified, the Department of Defense contract number or, for orders under contracts awarded by other Federal agencies, the contract number of that Federal agency.

(i) For DoD contracts, enter the basic (13 alpha-numeric character) procurement instrument identification number (PIIN) that was assigned in accodance with 204.70. Contracts numbered under exceptions permitted by 204.7001 shall include the identification of the purchasing office and the fiscal year in accordance with 204.7003-1 (a) and (b) and Appendix N, plus 5 characters. Do not enter other supplementary procurement instrument numbers as part of the contract number; such numbers shall be entered in Item B2. Also, do not enter dashes, slants, or similar punctuation marks, and do not show spaces between numbers or letters in the PIIN.

(ii) For other agency contracts, enter the contract number of the Federal agency as it appears in the contractual instrument, except that spaces between characters shall not be shown, and dashes, slants, and other punctuation marks shall not be entered (e.g., for GS-OOS-27773, enter GS00S27773; for GP-16251 A, enter GP16251A, etc.).

(2) *Item B2, Modification, order or other supplementary procurement instrument identification number.* If applicable, enter the supplementary procurement instrument identification number (up to 13 characters) that was assigned in accordance with 204.7004 or other identification permitted by 204.7004 or other identification permitted by 204.7001.

(3) *Item B3, Action date.* Enter the year, month and day when a mutually binding agreement was reached. This shall be the effective date for fiscal obligation purposes. As a general rule, this occurs when a notice of award or fully executed document is manually delivered or placed in the mail to the contractor. Enter each segment as a 2-digit number using 01 through 12 for January through December. For example, enter 2 January 1984 as 840102. For contracts awarded in one fiscal year and not effective until a subsequent fiscal year because they are contingent on the availability of funds or for other reasons, the date shall be the date of the fund availability or the date when the contract becomes effective (see 204.671-5(b)(13)(iii) and (viii)).

(4) *Item B4, Contractor identification information.*

(i) *Item B4A, DUNS number.* Enter the 9-position number assigned by Dun and Bradstreet, Inc. (excluding dashes) that identifies the contractor establishment receiving the award. This DUNS Contractors Establishment Number should be for the division or plant identified. For contracts placed with the Canadian Commercial Corporation, enter "208891788" in Item B4A. For contracts placed with the Small Business Administration pursuant to the Small Business Act—Pub. L. 85-536, Section 8(a), enter the DUNS code for the small business firm which will be performing under the contract. The DUNS Contractor Establishment Number is available from one of the following sources:

(A) The offeror's response to the solicitation;

(B) If not provided with the offer, the successful offeror shall be contacted and requested to supply his applicable 9-digit number;

(C) If not provided by the successful offeror, the Federal Procurement Data Center (FPDC) DUNS Contractor Identification File, Alphabetical Listing shall be consulted.

(D) If this listing has no entry for the establishment, the applicable 9-digit number shall be obtained by contacting a Dun and Bradstreet, Inc. representative at the following commercial telephone numbers: 215-776-4388/4389/4390/4391. All requestors should provide the following information:

a. Name of requesting purchasing office;

b. Purchasing location (city/town; state/country) and commercial telephone number (including area code);

c. Name of individual making the request;

d. The total number of requests, if more than one; and

e. Contractor establishment name, street address (and/or P.O. Box), city/town, state/country, and zip code, if applicable, as displayed in Items B4B and B4C.

(ii) *Item B4B, Contractor name.* In the space provided, enter the name (including division name) of the contractor.

(iii) *Item B4C, Contractor address.* In the space provided enter the address of the contractor. Include street address (and/or P.O. Box), city/town, state/country, and zip code, if applicable.

(5) *Item B5, Principal place of performance.*

(i) Principal place of performance, in general, refers to the prime contractor's final assembly point of a manufactured article, construction site, place of mining, or place where a service is preformed for the Government, including military installations. If more than one location is involved, show the location involving the largest dollar amount of procurement. Do not show more than one location in Item B5. Do not leave the "name" portion of Item B5 blank.

(A) For purchase from regular dealers (FAR 22.601), the place of performance shall be the dealer's location if shipment is made from stock, or the subcontractor's location if shipment is made from a subcontractor's plant.

(B) For construction contracts, report the actual site of construction.

(C) For architect-engineering contracts, report the planned site of the construction.

(D) In cases where the places of performance will be varied or unknown, enter the home office location of the contractor.

(E) Where labor surplus area set-aside preference is given, the principal place of performance shall be the city and state of the area which determined the preference.

(ii) *Item B5A.* Enter the city or place code from Federal Information Processing Standard (FIPS) Publication 55, "Names of Populated Places and Related Entities of the States of The United States", of the principal place of preformance. If the city or locality is not listed in FIPS Publication 55, find the nearest county in FIPS Publication 55, and enter the 3-digit numeric county code, preceded by 2 zeros. Leave this item blank for Washington, D.C., foreign countries, and United States possessions or territories other than Puerto Rico.

(iii) *Item B5B.* Enter the state or country code from U.S. Department of Commerce, National Bureau of Standards (NBS) Letter Circular (LC) 1067, "Codes for Names of Countries and Outlying Areas of the United States", of the principal place of performance. For Washington, D.C., enter "11" and leave Item B5A blank.

(iv) *Item B5C.* Enter the name of the principal place of performance. If the location is the same as for Item B4C, enter the work "same".

(6) *Item B6, Type of obligation.* This item is used to identify the nature of the amount to be entered in Item B7. Enter Code 1 to show an obligation; Code 2 to show a deobligation.

(7) *Item B7, Total dollars (obligated/deobligated).* Enter the new amount of funds obligated or deobligated by the contractual instrument being reported. Enter whole dollars only.

(8) *Item B8, Principal product or service.*

(i) *Item B8A, FSC or Service Code.* Enter a Federal Supply Classification Code, a Research, Development, Test and Evaluation (RDT&E) Code, or a Service Code in accordance with Section I, Volume I of the Department of Defense Procurement Coding Manual (DoD 4105.61M). Each DD From 350 must contain a 4-character entry for this item. If more than one classification is applicable to the procurement action, enter the one accounting for the largest dollar volume of procurement.

(A) *Research, Development, test, and evaluation. (RDT&E)* is defined in FAR 35.001. Each DD Form 350 action for RDT&E shall be assigned, a code beginning with the letter "A" in accordance with Section I, Part A of the referenced coding manual. Do not assign RDT&E codes of the procurement (including rental or lease) of equipment, supplies, or services separately purchased in support of RDT&E work. Procurement of services or supplies that is incidental to the fulfillment of RDT&E work, but does not require contractor RDT&E performance, shall be coded in accordance with Parts B and C, Section I of the referenced coding manual, even though such purchases are in support of RDT&E work and RDT&E funds are cited. In no case shall RDT&E codes be assigned for orders under GSA Federal Supply Schedule contracts.

(B) *Services.* All services (except RDT&E actions) and lease or rental of equipment or facilities shall be coded in accordance with Part B, Section I of the referenced coding manual. Each category is assigned a series of 4-character codes for specific types of services and construction.

(C) *Supply.* Procurement of supply items shall be assigned a Federal Supply Classification (all numeric) Code from Part C, Section I of Volume I of the referenced coding manual. The Department of Defense Federal Supply Classification Cataloging Handbooks H2–1, H2–2, and H2–3 aslo may be used as a reference in identifying the correct 4-character code. Lease or rental of equipment/facilities should be coded as a service in accordance with Part B, Section I of the referenced coding manual.

(ii) *Item B8B, DD Claimant program code.* Enter the appropriate DDCP code that identifies the commodity described in Item B8D. Claimant Program Codes are defined in Section III, Volume I of the referenced coding manual. If the description in Item B8D is for research development, the objective of the research and development shall control the DDCP code to be entered; e.g., if the objective of the research and development is a guided missile, enter code A20. If the description in Item B8D is for research that cannot be identified with a particular claimant program, enter Code A10. Contracts for ship repair, inspection, and repair as necessary (IRAN), modification of aircraft, overhaul of engines, and like maintenance, repair or modification services shall be identified with a particular claimant program where possible. Equipment rental (including rental of automated data processing equipment (as defined at Part 70) and utility services shall be coded S10. If a particular claimant program cannot be identified, enter code S10 for services and code C9E for supplies or equipment.

(iii) *Item B8C, system or equipment code.* Enter the appropriate weapons system or equipment code in accordance with Section II, Volume I of the referenced coding manual. If a weapon system or equipment code is not applicable, enter 3 zeros. This reporting requirement is not applicable to the Defense Logistics Agency.

(iv) *Item B8D, name or description.* Enter the name or brief description of commodity or service. When the description of a commodity or service is classified, enter only the word "Classified"; however, do not specify "Classified, if a code name, such as Minuteman, Polaris, Trident, Pershing, etc., or an identifying programs number; e.g., WS–107A, can be used without classifying the report.

(9) *Item B9, Consulting services contract.* Enter Code 1 if the services being acquired are consulting services as defined in FAR 37.201; otherwise enter Code 2.

(10) *Item B10, Multi-year contract.* Enter code 1 if this report concerns multiyear contracting for supplies or services pursuant to FAR 17.1; otherwise enter Code 2.

(11) *Item B11, Total multi-year value.* Enter the estimated multiyear contract value if Item B10 is coded 1 and Item B13 is coded 1 or 3; otherwise, leave blank.

(12) *Item B12, Foreign military sales.* Enter Code 1 if the contracting action is under Foreign Military Sales arrangements, or under any other arrangements whereby a foreign country or international organization undertakes to bear the cost of the procurement. If not, enter code 2. If only part of a contracting action is for foreign military sales, that part (if in excess of $25,000) shall be reported on one DD Form 350, and the other part (if in excess of $25,000) shall be reported on a second DD Form 350. If this item is coded 1, do not complete Parts C and D.

(13) *Item B13, Kind of contracting action.* Enter one of the available codes as appropriate. Do not complete Parts C and D of DD Form 350 if Item B13 is coded 6 or 7.

(i) *Code 1—Initial letter contract.* Enter this code when a new letter contract is executed. (For a letter contract which is designated as a modification of an existing contract, enter Code A.)

(ii) *Code 2—Definitive contract superseding letter contract.* Enter this code when applicable. (For a definitive modification which supersedes a letter contract designated as a modification of an existing contract, enter Code A.)

(iii) *Code 3—Definitive contract (including notice of award).* Enter this code when the first binding document is the instrument containing all the terms and conditions of the agreement. Also enter code 3 for a modification which is the initial citation and obligation of funds for a contract awarded in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons. Use this code for definitive contract awards under the Small Business Administration 8(a) Program.

(iv) *Code 4—Order under DoD basic ordering agreement.* Enter this code when reporting orders or modifications to order under basic ordering agreements, priced exhibits and production lists entered into by a DoD Component.

(v) *Code 5—Order under DoD contract.* Enter this code when reporting orders or modifications to orders against indefinite delivery type contracts, DLA schedules, job orders, task orders, and the like where firm obligations are created by the issuance of such documents and where the basic contract was awarded by a DoD Component. Use this code for orders placed under DoD contracts with the Small Business Administration 8(a) Program. Also use this code for procurements from Workshops for the Blind or Other Severely Handicapped.

(vi) *Code 6—Order under GSA Federal Supply Schedule.* Enter this code for all procurements (including modifications) under the GSA Federal Supply Schedule Contracts (see FAR 8.4). Also enter this code for all contracting actions (including modifications) under GSA ADP Schedule Contracts and GSA Area Contracts for Utility Services.

(vii) *Code 7—Action with another Federal agency.* Enter this code for all procurements (including definitive contracts, orders, and contract modifications) from or through other Federal agencies (except General Services Administration), such as the Government Printing Office, Federal Prison Industries, Veterans Administration, Tennessee Valley Authority, and the Department of Treasury, Agriculture and Energy.

(viii) *Code A—Additional work, new agreement.* Enter this code when additional work is acquired by means of a supplemental agreement as follows:

(A) Bilateral modifications which increase the scope of work of existing contracts, including letter contracts.

(B) Modifications which are the initial citation and obligation of funds for a supplemental agreement to increase quantities or extend performance that was awarded in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons.

(ix) *Code B—Additional work, other.* Enter this code when additional work is acquired by means of modification to the basic contract as follows:

(A) Exercise of options for increased quantities or extended performance.

(B) Incremental yearly buys under multiyear contracts.

(C) Amendment to letter contracts, supplemental agreements, and other modifying actions which add work and are made pursuant to the terms of existing contracts.

(x) *Code C—Funding action.* Enter this code for amendments to letter contracts and other contract modifications which do not change the scope of work of the existing contract but obligate or deobligate funds. This includes, by way of illustration, incremental funding (other than incremental yearly buys under multiyear contracts), increasing the estimated cost on cost-reimbursement contracts, and repricing actions covering incentive price revision, and economic price adjustment. Do not use this code for a modification which is the initial citation and obligation of funds for a contract/modification awarded in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons (see (iii) and (viii) (B) above). For funding actions involving the kind of contracting actions covered in (iv), (v), (vi), and (vii) above, Codes 4, 5, 6, and 7 shall be used as appropriate.

(xi) *Code D—Change order.* Enter this code when reporting changes orders issued pursuant to the "Changes", "Differing Site Conditions", or similar provisions of existing contracts.

(xii) *Code E.* Enter this code of Termination for default.

(xiii) *Code F.* Enter this code for Termination for convenience.

(xiv) *Code G.* Enter this code for cancellation.

(c) *Part C of DD Form 350.* The following rules apply to each of the items listed in Part C of DD Form 350: If Item B12 is coded 1 or if Item B13 is coded 6 or 7, leave all items in this Part C blank. If Item B13 is coded 1 through 4, coding of all items in this Part C shall be accomplished in accordance with the coding instructions for that item. If Item B13 is coded 5, or B through G, enter the same code in each item in Part C that was reported on the DD Form 350 to the original contract governing this transaction. If a DD Form 350 to the original contract was not submitted because a DD Form 350 was not required, enter the code which is applicable to the original contract governing this transaction.

(1) *Item C1, Synopsis in Commerce Business Daily.* Enter code 1 if a synopsis of the proposed action was prepared and transmitted in accordance with FAR 5.2. If not, enter code 2.

(2) *Item C2, Reason not synopsized.* Enter the applicable code as follows (see FAR 5.201):

Code and Reason

0 Original estimate less than $10,000;
1 The procurement for security reasons is of a classified nature;
2 Procurement of perishable subsistence when made by placement of an order under a contract covered by FAR 16.5;
3 Procurement is for utility services and only one source is available;
4 Procurement which is of such unusual and compelling urgency that the Government would be seriously injured by the delay involved in permitting the date set for receipt of bids, proposals, or quotations to be more than the time periods specified at FAR 5.203;
5 Procurement to be made by an order placed under an existing contract covered by FAR 16.5;
6 Procurement to be made from another Government department or agency, including procurements from the SBA using the authority of section 8(a) of the Small Business Act, or a mandatory source of supply such as an agency for the blind under the blind-made products program;
7 Procurement that results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal that demonstrates a unique or innovative research concept and publication of such unsolicted proposal would improperly disclose the originality of thought or innovativeness of the proposed research;
8 Procurement for which a foreign government reimburses the Department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such international agreement or treaty;
9 When it has been determined in writing by the Secretary with the concurrence of the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable.

(3) *Item C3, Method of contracting.* Enter code 1 when accomplished by

formal advertising; enter code 2 when accomplished by negotiation, including restricted advertising actions and modifications made pursuant to the provisions of Pub. L. 85–804. When code 1 is entered, no entries shall be made in Items C4 and C5.

(4) *Item C4, Negotiation authority.* This item shall be completed where Item C3 was coded 2. Enter the code below which corresponds to the negotiation exception of 10 U.S.C. 2304(a) (see FAR 1015.201–15.217) cited as the negotiation authority.

Code and Negotiation Authority

0101 Labor Surplus Area Set-aside (FAR 15.201)
0102 Unilateral Small Business Set-aside (FAR 15.201)
0200 Public Exigency (FAR 15.202)
0400 Personal or Professional Services (FAR 15.204)
0500 Services of Educational Institutions (FAR 15.205)
0600 Purchases Outside the United States (FAR 15.206)
0700 Medicines or Medical Supplies (FAR 15.207)
0800 Supplies Purchased for Authorized Resale (FAR 15.208)
0900 Perishable or Nonperishable Subsistence Supplies (FAR 15.209)
1001 Sole Source of Supply (FAR 15.210)
1002 Patent Rights or Copyrights (FAR 15.210)
1003 No Responsive Bids Received (FAR 15.210)
1004 Remaining Requirements (FAR 15.210)
1005 Public Utility Services (FAR 15.210)
1006 Films, Motion Pictures, Manuscripts (FAR 15.210)
1007 Technical Nonpersonal Services (FAR 15.210)
1008 Studies or Surveys (FAR 15.210)
1009 Nature or Amount of work unknown (FAR 15.210)
1010 Rates Established by Law or Regulations (FAR 15.210)
1011 Commercial Transportation (FAR 15.210)
1012 Services Relating to Perishable Subsistence (FAR 15.210)
1013 Inadequate Specifications (FAR 15.210)
1014 Storage of Household Goods (FAR 15.210)
1015 Replacement Parts (FAR 15.210)
1016 Sole Source Facilities Contract (FAR 15.210)
1017 Additional Construction Same Site (FAR 15.210)
1018 Foreign Military Sales (FAR 15.210)
1019 Reserved for Departmental Instructions
1020 Reserved for Departmental Instructions
1021 Reserved for Departmental Instructions
1022 Reserved for Departmental Instructions
1023 Reserved for Departmental Instructions
1024 Reserved for Departmental Instructions
1025 Reserved for Departmental Instructions
1026 Not otherwise applicable
1100 Experimental, Developmental or Research Work (FAR 15.211)
1200 Classified Purchases (FAR 15.212)
1300 Standardization and Interchangeability of Parts (FAR 15.213)
1400 Substantial Initial Investment or Extended Preparation (FAR 15.216)
1500 Negotiation After Advertising (FAR 15.214)
1600 In the Interest of National Defense (FAR 15.217)
1701 Joint Small Business Set-Aside (FAR 15.217)
1702 Otherwise Authorized by Law (FAR 15.215)
1703 Repurchase Following Default (FAR 15.217)

(5) *Item C5, Extent of competition in Negotiation.*

(i) This item shall be completed where Item C3 was coded 2. Enter the code below which corresponds to the extent of competition in the negotiated action:

Code and Extent of Competition

1 Price competition
2 Design or technical competition
3 Follow-on after price competition
4 Follow-on after design or technical competition
5 Other noncompetition
6 Non-competition based on catalog or market price
7 Competition not applicable

(ii) Definitions of the Extent of Competition Codes:

(A) *Price competition, Code 1.*

(a) A contract shall be reported as "price competition" if offers were solicited and received from at least two responsible offerors capable of satisfying the Government's requirements wholly or partially, and the award or awards were made to the offeror or offerors submitting the lowest evaluated prices (including catalog or market prices). In addition, a contract may also be reported as "price competition" even though only one offer is received, when offers are solicited from at least 2 responsible offerors who normally contend for contracts of the same or similar items. Where only one responsive offer was received and the solicitation was restricted to a prime contractor and his subcontractor for that item, use Code 5. Actions shall not be reported as "price competition" solely on the basis of the number of solicitations made. Contracting officers shall consider in the content of the response of the solicitation, the contract history of the items purchased, and other relevant information, and shall exercise sound judgment in reporting actions as "price competition". In no case shall cost-reimbursement type contracts be coded 1. Even though catalog or market prices were offered, if the criteria for "price competition" as specified here have been met, then enter Code 1.

(b) Multiple awards in such areas as subsistence, clothing, and equipage, and other commodities where several awards normally result from one solicitation may be reported as "price competition", even though the total quantity of the solicitation is not awarded, if in the judgment of the contracting officer there are sufficient facts to support a valid finding of "price competition".

(B) *Design or technical competition, Code 2.* Design or technical competition is present when 2 or more qualified sources of supply are invited to submit design or technical proposals, with the subsequent contract award based primarily on this factor, rather than on a price basis. Many research and development contracts and many initial contracts for new military weapons fall into the category of design or technical competition.

(C) *Follow-on after price competition, Code 3, and follow-on after design/technical competition, Code 4.* A follow-on contract means a new procurement (whether placed by a separate new contract or by a supplemental agreement) placed with a particular contractor to continue or augment a specific military program in instances where such placement was necessitated by prior procurement decisions. An example of a follow-on contract is one which by force of circumstances had to be awarded to a contractor who was just completing a research development contract in the same program. Other examples of follow-on contracts include those for support equipment, maintenance support, technical representatives or spare parts which have been awarded without competition to the contractor because he furnished the original equipment. Follow-on contracts in which the selection of the contractor at the inception of the program was on a competitive basis (i.e., price or design or technical shall be reported as Code 3 or 4, as appropriate). Follow-on contracts in which the selection of the contractor at the inception of the program was on a noncompetitive basis shall be reported as Code 5.

(D) *Other noncompetition, Code 5.* A contracting action shall be reported other noncompetition if there was no competition in the award, the work involved was not a follow-on procurement reportable as Code 3 or 4 above, and the reasonableness of price was not based on established catalog or

market prices reportable as Code 6. Also, use this code to report actions where only one responsive offer was received and the solicitation was restricted to a prime contractor and his subcontractor for that item.

(E) *Noncompetition and based on catalog or market price, Code 6.* A contracting action shall be reported Code 6 if there was no competition in the award and the reasonableness of price was based on established catalog or market prices of commercial item sold in substantial quantities to the general public as defined in (FAR 15.804–3(c). If the award involved catalog or market prices and the criteria for "price competition" as specified in (c)(5)(ii)(A) above have been met, enter Code 1 versus Code 6.

(F) *Not applicable, Code 7.* The following action shall be entered as Code 7:

(a) Awards for brand name items for commissary resale;

(b) Awards to nonprofit institutions;

(c) Awards to regulated monopolies for utilities "where the price negotiated is based on prices set by law or regulation"; and,

(d) Awards made pursuant to Section 8(a), Small Business Act (15 U.S.C. 637(a)).

(c) *Item C6, Type of contract.*

(i) Enter the code below which corresponds to the type of contract provided of in the provisions of the action reported.

Code	Type of Contract
A	Fixed Price Redetermination: Type A
B	Fixed Price Redetermination: Type B
J	Firm Fixed Price
K	Fixed Price economic price adjustment
L	Fixed Price incentive with performance incentive
M	Fixed Price incentive without performance incentive
R	Cost Plus Award Fee
S	Cost Contract
T	Cost Sharing
U	Cost Plus Fixed Fee
V	Cost Plus incentive fee—with performance incentive
W	Cost Plus incentive fee—without performance incentive
Y	Time and materials
Z	Labor Hour

(ii) *Multiple contract types.* Where the action involves more than one type of contract, the predominant type based on dollar shall be entered. However, if any nonpredominant portion of a multi-type contract exceeds $500,000, a separate DD Form 350 shall be used to report each such portion of the action. The total of the DD Forms 350 so reported shall equal the total contract action.

(iii) *Letter contracts.* When reporting original letter contracts and amendments thereto, enter the code of the type of contract that will be used when the letter contract is converted to a definitive contract.

(d) *Part D of DD Form 350.* The following rules apply to each of the items listed in Part D of DD Form 350: If Item B12 is coded 1 or if Item B13 is coded 6 or 7, leave all items in this part blank. If Item B13 is coded 1 through 4, or A, coding of all items in this Part D shall be accomplished in accordance with the coding instructions for that item, and the status of the concern, such as its size or ownership, shall be determined as of the date of the award. If Item B13 is coded 5, or B through G, enter the same code in each item in Part D that was reported on the DD Form 350 to the original contract governing this transaction. If a DD Form 350 to the original contract was not submitted because a DD Form 350 was not required, enter the code which is applicable to the original contract governing this transaction.

(1) *Item D1, Type of business.*

(i) Enter Code 1 if the award was made to a domestic large business concern, and the place of performance (Item B5C) is within the United States, its possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

(ii) Enter Code 2 if the award was made to a small business concern as defined in FAR 19.101 and the place of performance (Item B5C) is within the United States, its possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

(iii) Enter Code 3 if the award is made to a foreign concern (FAR 25.101).

(iv) Enter Code 4 if the award is made to a domestic large or small business concern and the place of performance (Item B5C) is outside the United States, its possessions, Puerto Rico or the Trust Territory of the Pacific Islands.

(v) Enter Code A, B, C, D, or E if the award was made to a nonprofit institution and the place of performance (Item B5C) was within the United States, its possessions, Puerto Rico, or the Trust Territory of the Pacific Islands. A nonprofit institution not organized for profit, no part of the net earnings of which inure to the benefit of any private shareholder or individual. Included are educational and scientific institutions of a nonprofit nature, and state, local, and other non-Federal Government agencies. Enter Code A if the contractor is an educational institution, Code B if a hospital, Code C if a workshop of the blind or other severely handicapped and the action is an acquisition from the Procurement List FAR 8.703 Code D if a workshop for the blind or other severely handicapped and the action is not an acquisition from the Procurement List (Optional Placement) FAR 8.173, and Code E for all other nonprofit institutions.

(d)(2) *Item D2, Reason not awarded to small business concern.* If the action was not awarded to a small business concern, enter an appropriate code from the available codes below. Otherwise, leave blank.

(i) Use Code 1 if there was no known small business source.

(ii) Use Code 2 if there was no known small business source but it was not solicited for a bid or proposal.

(iii) Use Code 3 if a small business concern was solicited, but no bid or proposal was received from such concern, or the concern did not offer sufficient quantity to cover the total requirement but received an award of the portion bid on.

(iv) Use Code 4 if a small business concern was solicited but the low or most advantageous offer was not from small business. Enter Code 4 if a small business concern was not willing to accept award of a set-aside portion of an action at the price offered as determined by the price the Government would otherwise have had to pay.

(v) Use Code 5 if not awarded to small business for any other reason.

(3) *Item D3, Small disadvantaged business.*

(i) Enter Code 1 if the contractor is not a small disadvantaged business concern in accordance with the representation required in FAR 19.304(a).

(ii) Enter Code 2 if the contract was awarded to the U.S. Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act (FAR 19.8).

(iii) Enter Code 3 if the award is not an SBA 8(a) award but is made to a firm determined to be a small disadvantaged business concern in accordance with the representation required in FAR 19.304(b).

(4) *Item D4, Reason not awarded to small disadvantaged business concern.* If the action was not awarded to a small disadvantaged business concern, enter an appropriate code from the available codes below. Otherwise, leave blank.

(i) Use Code 1 if there was no known small disadvantaged business source.

(ii) Use Code 2 if there was a known small disadvantaged business source but it was not solicited for a bid or proposal.

(iii) Use Code 3 if a small disadvantaged business concern was solicited, but no bid or proposal was received from such concern, or the concern did not offer sufficient quantity to cover the total requirement but received an award for the portion bid on.

(iv) Use Code 4 if a small disadvantaged business concern was solicited but the low or most advantageous offer was not from a small disadvantaged business concern.

(v) Use Code 5 if not awarded to a small disadvantaged business for any other reason.

(d)(5) *Item D5, Women-owned small business.*

(i) Enter Code 1 if the contractor's response to FAR 52.219–3 indicates the firm is not a women-owned small business.

(ii) Enter Code 2 if the response to FAR 52.219–3 indicates in the affirmative that the contractor is a women-owned small business.

(iii) Enter Code 3 if the information is not available because the contractor did not complete the certification under FAR 52.219–3.

(6) *Item D6, Small business set-aside preference.*

(i) Enter Code 1 if the solicitation/award was not totally or partially set aside for small business pursuant to FAR 19.502–2, FAR 19.502–3, and 20.70.

(ii) Enter Code 2 if the solicitation/award was totally set aside for small business pursuant to FAR 19.502–2.

(iii) Enter Code 3 if the solicitation/award was partially set aside for small business pursuant to FAR 19.502–3 and 20.70.

(7) *Item D7, Subcontracting plan for small and small disadvantaged businesses.* Enter the appropriate code as follows:

(i) Enter Code 1 if a subcontracting plan was not included in the contract because subcontracting possibilities do not exist (FAR 19.706).

(ii) Enter Code 2 if the subcontracting plan was not required for other reasons e.g., the action was awarded to a small business firm or the dollar value of the award was less than the cited threshold (FAR 19.708(b)).

(iii) Enter Code 3 if the subcontracting plan was required but the incentive provisions referenced in FAR 19.708(c) were not included.

(iv) Enter Code 4 if the subcontracting plan was required and incentive provisions specifically pertaining to subcontracting with small and small disadvantaged business referenced in FAR 19.708(c) were included.

(8) *Item D8, Small Business Innovation Research (SBIR) Program.* Enter the appropriate code as follows:

(i) Enter Code 1 if the action is *not* in support of the Small Business Innovation Research Program (Pub. L. 97–219).

(ii) Enter Code 2 if the action is related to a Phase I contract in support of the Small Business Innovation Research Program (Pub. L. 97–219).

(iii) Enter Code 3 if the action is related to a Phase II contract in support of the Small Business Innovation Research Program (Pub. L. 97–219).

(9) *Item D9, Labor Surplus Area (LSA) Preference.* The Department of Labor publication "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy No. 4B and Executive Orders 10582 and 12073" defines all areas classified as labor surplus areas. If Code 2, 3, 4, 5, or 6 is entered, the entry in Item B5C must be a location which on the date of the action is located within a labor surplus area.

(i) Enter Code 1 if no preference was given to labor surplus area concerns.

(ii) Enter Code 2 when reporting the labor surplus portion of a combined set-aside (219.502–70).

(iii) Enter Code 3 if the action was awarded to a concern in a labor surplus area wherein preference was given under partial labor surplus area set-aside procedures 220.7003 except if set-aside preference resulted from a combined small business/labor surplus area set-aside as set forth in (d)(9)(ii) above.

(iv) Enter Code 4 if the action was awarded to a concern in a labor surplus area and tie bid preference (FAR 15.407–6) was given.

(v) Enter Code 5 when reporting an award that it totally set-aside for labor surplus areas, but with no further preference as to whether it is a large or small business firm.

(vi) Enter Code 6 when reporting an award that is totally set aside for labor surplus area concerns which are also small business concerns.

(10) *Item D10, Subject to labor standards statutes.* Enter the appropriate code as follows:

(i) Enter Code 1 if subject to the provisions of the Walsh-Healey Act, Manufacturer (see FAR 22.6).

(ii) Enter Code 2 if subject to the provisions of the Walsh-Healey Act, Regular Dealer (see FAR 22.6).

(iii) Enter Code 3 if subject to the provisions of the Service Contract Act, as amended (see FAR 22.6).

(iv) Enter Code 4 if subject to the Davis-Bacon Act.

(v) Enter Code 5 if not subject to any of the statutory requirements above.

(11) *Item D11, Certificate of current cost of pricing data.* Enter Code 1 if a certificate of current cost or pricing data (see FAR 15.804–4) was obtained, Code 2 if the certificate was not obtained, or Code 3 if the requirement was waived.

(12) *Item D12, Trade data relating to products or components not manufactured in the United States or services performed by foreign concerns.*

(i) *Item D12A, Number of offerors.* Enter the number of offerors of end-products not manufactured in the United States, its possessions, Puerto Rico, or the Trust Territory of the Pacific Islands. If zero, enter 0; if greater than 9, enter 9.

(ii) *Item D12B, Buy American Act percent difference.* If the evaluation factor under the Buy American Act is used and results in an award to a firm offering a domestic product, enter the percent difference between the award price and low firm offering a foreign end product, computed before application of the Buy American Act differential; i.e., the difference divided by the price of the low firm offering a foreign end product. Enter the percentage as a whole number (i.e., for 5%, enter 05; for 11%, enter 1). If the evaluation factor under the Buy American Act is not used, enter 2 zeros (00).

(iii) *Item D12C, Country of origin.* Enter appropriate country code shown as follows:

(A) If the product shown in Item B8D is manufactured in the U.S. and more than 50% of the cost of all its components is not manufactured in the U.S., enter the letter A and the 2-digit code of the country/area providing the greatest part of such components, as shown in NBS LC 1067, "Codes for Names of Countries and Outlying Areas of the United States".

(B) If the product is manufactured, mined, or grown outside the U.S., enter the letter B and the 2-digit code of the country/area of origin, as shown in NBS LC 1067.

(C) If a service shown in Item B8A is performed by a foreign concern (see FAR 25.101) enter the letter B and the country/area code of the concern, as shown in NBS LC 1067.

(D) In all other cases, leave this item blank.

(13) *Item D13, Contract financing (progress payments or advance payments).* Enter the appropriate code as follows if Item C6 is coded A, B, J, K, L, or M.

(i) Enter Code 1 if the action contains the clause at 7–104.35(a) or (b).

(ii) Enter Code 2 if the action contains the clause at 7–104.35(c).

(iii) Enter Code 3 if the action is for either shipbuilding or construction and percentage-of-completion-progress-payment financing is provided (see FAR 32.102(e)).

(iv) Enter Code 4 if the action provides Unusual Progress Payments or Advance Payments (see FAR 32.4, and FAR 32.501–2).

(v) Enter code 5 if none of the above apply.

(e) *Part E, DD Form 350.*

For departmental or higher authority use.

(f) *Part F, DD Form 350.*

(f)(1) *Item F1, Name of contracting officer or representative.* Enter name (Last, First, MI) of the contracting officer or representative.

(f)(2) *Item F2, Signature.* Contracting Officer or Representative.

(f)(3) *Item F3, Telephone number.* Installations serviced by the Automatic Voice Network shall enter the AUTOVON number plus extension.

(f)(4) *Item F4, Date.* Enter date (Yr/Mo/Da) that DD Form 350 Report is submitted.

204.672 Monthly procurement summary (DD Form 1057).

204.672-1 Scope.

This Section prescribes the reporting on DD Form 1057 of contracting actions of $25,000 or less each. This form in conjunction with DD Form 350 is used to prepare recurring and special reports as indicated in 204.671-2. This reporting requirement has been assigned Report Control Symbol: DD-DR&E (M) 1015.

204.672-2 Applicability and coverage.

(a) A DD Form 1057 shall be prepared (typewritten or machine reproduced) by each purchasing officer of the Department of Defense to which a reporting office code has been assigned in the DoD Procurement Coding Manual, Volume III. The DD Form 1057 shall cover all contracting actions of $25,000 or less. Separate codes may be assigned to an installation, base, or activity by Volume III of the DoD Procurement Coding Manual in order to distinguish between various types of procurement, such as base and central procurement, or RDT&E and non-RDT&E procurement. Subject to the approval of the organizations listed in 204.672-3 a machine printout or other machine product containing the information on the DD Form 1057 may be submitted in lieu of the form.

(b) DD Form 1057 shall include all debit or credit contracting actions of $25,000 or less involving:

(1) Appropriated funds;

(2) Contract authorizations;

(3) Stock or other revolving funds which are replenished or reimbursed from appropriated funds;

(4) Appropriated funds transferred to the Departments, such as Military Assistance Program funds; and,

(5) Appropriated funds obligated pursuant to provisions of Pub. L. 85-804.

(c) The report shall exclude actions of $25,000 or less which:

(1) Involve nonappropriated funds;

(2) Are delivery orders against indefinite delivery type contracts entered into by the Defense Fuel Supply Center; Defense Fuel Supply Center shall report the estimated total cost of indefinite delivery type contracts;

(3) Are requisitions transferring supplies within and among the Departments and Agencies of the Department of Defense;

(4) Are placed by the Defense Communications Agency, Defense Commercial Communications Office (DECCO). These actions are covered by other reporting instructions;

(5) Are orders on GSA stores depots;

(6) Involve Government bills of lading or transportation request; and

(7) Are for purchase of land, or rental or lease of real property.

204.672-3 Due date and distribution.

(a) In addition to instructions given in (b) through (f) below for purchasing offices of specified Departments and Agencies, the following instructions are applicable to all purchasing offices.

(1) Reports shall be submitted in time to reach the recipient within three (3) working days after the close of each month. To meet this due date, purchasing offices are authorized to cut off no earlier than the 25th calendar day of the month reported. For the month of September only, the due date is extended by 10 additional calendar days, but the cut-off date must be as of 30 September.

(2) Negative reports shall be submitted if a purchasing office has not transacted a reportable action during the month.

(3) Letter of transmittal is not required.

(b) Army purchasing offices shall distribute DD Form 1057 as follows:

(1) The original (except from Army Engineer Civil Functions purchasing offices) shall be forwarded to HQDA (JDHQ-SV-W-P), Washington, D.C. 20310.

(2) Army Engineer Civil Functions purchasing offices shall forward the original to HQDA (DAEN-PRP), Washington, D.C. 20314. A copy is not required for HQDA.

(c) Navy purchasing offices shall forward the original DD Form 1057 as directed by COMNAVSUP (SUP-024).

(d) Air Force contracting offices shall forward the original DD Form 1057 as directed by HQ USAF/RDC.

(e) Defense Logistics Agency purchasing offices shall forward the original DD Form 1057 to Executive Director, Contract, Defense Logistics Agency, Cameron Station, Alexandria, VA 22314, ATTN: DLA-PA.

(f) All other purchasing offices of the Department of Defense shall forward the original DD Form 1057 to HQHA (JDHQ-SV-W-P), Washington, D.C. 20310.

(g) Contracting actions of $25,000 or less which are reportable in accordance with 204.672-2 and are accomplished by contract administration offices shall be handled as follows:

(1) When the contractual instrument is being distributed, a copy shall be clearly annotated "DD Form 1057 Reporting Copy" and shall be forwarded to the appropriate purchasing office listed in Appendix N.

(2) Purchasing offices shall include data for such instruments in their reports on DD Form 1057.

204.672-4 Terms used.

The Terms used on DD Form 1057 will, in all cases, have the same meaning as they do for the purpose of preparing DD Form 350.

204.672-5 Instructions for completion of the DD Form 1057.

(a) *Heading.*

(1) *Month ending.* Enter the year, month and day indicating the ending date of the month reported. Enter each segment as a 2-digit number using 01 through 12 for January through December. For example, for the month ending 30 April 1984, enter 840430.

(2) *Purchasing office and mailing address.* Enter sufficient detail to establish the identity of the purchasing office submitting the report.

(3) *Reporting office code.* Enter the code assigned to the purchasing office pursuant to Volume III of the DoD Procurement Coding Manual. This is the same code that is used for Item A3 of DD Form 350.

(4) *Number of actions.*

(i) Only transactions that obligate or deobligate funds shall be counted. Except as provided in (a)(4)(ii) below, each call or order under a blanket purchase agreement, imprest fund, requirements type contract, or indefinite delivery indefinite quantity contract shall be counted as an action. A definite quantity indefinite delivery contract shall be counted once at the time of award, and orders under such contracts shall not be counted. If it is not possible to determine the price of an order or call when it is placed, it may be counted when the voucher is paid, but care shall be exercised to avoid double counting of such actions.

(ii) For the following transactions, each voucher paid during the report period shall be counted as one action, and no other count shall be reported. (If the voucher is in excess of $25,000, the

action shall be reported on DD Form 350 rather than DD Form 1057):

(A) Meals and lodging;

(B) Automatic deliveries, such as bread, milk, and ice cream;

(C) Utilities, such as, electricity, gas, and telephone. (Headquarters, Naval Facilities Engineering Command, will submit consolidated reports on utilities contracts for all Naval Shore Establishments).

(5) *Dollar value.* All dollar amounts shall be entered in whole dollars. Do not enter cents. For example, $2,510.10 or $2,510.90 shall be reported as $2,510. Do not enter $2,510.00 or $2,510.—. If the net amount is a decrease, enter the symbol "CR" immediately following the amount to signify a credit entry. Do not enter parentheses or dashes.

(b) *Section A, Contracting actions.*

(1) Enter under Lines 1 through 4, the number and value of actions of $25,000 or less according to type of contractor (i.e., small business, large business, educational and nonprofit institutions), and for work outside the U.S., in accordance with instructions in (b) (2), (3), (4), and (5) below.

(2) Enter on Lines 1.a, 2.a., 3.a., and 4.a., the number and dollar amount of those contracting actions accomplished by formal advertising.

(3) Enter on Lines 1.b., 2.b., and 4.b., the number and dollar amount of those negotiated contracting actions considered for competition where price competition or design or technical competition was present in accordance with the criteria set forth in 204.671–5(c)(5)(ii) (A) and (B).

(4) Enter on Lines 1.c., 2.c., and 4.c., the number and dollar amount of those negotiated contracting actions accomplished where competition was not present as covered in 204.671–5(c)(5)(ii) (C), (D), and (E).

(5) Enter on Lines 1.d., 2.d., and 4.d., the number and dollar amount of those negotiated contracting actions meeting the requirements of 204.671–5(c)(5)(ii)(F) which are excluded from the competition base.

(6) Enter on Line 3.b., the number and dollar amount of contracting actions accomplished by negotiation.

(7) Enter under Line 5, and on Lines 6 and 7, the number and dollar amount of contracting actions as appropriate.

(c) *Section B, Negotiation authority 10 U.S.C.*

(1) Enter the number and dollar amount of negotiated contracting actions of $25,000 or less according to the authority of 10 U.S.C. 2304(a) which was used. The totals of Lines 1 through 17 in Section B shall equal the sums of the entries on Lines 1.b., 1.c., 1.d., 2.b., 2.c., 2.d., 3.b., 4.b., and 4.d. in Section A.

(2) Enter on Line 3.a., the number and dollar value of actions of $10,000 or less which were negotiated under 10 U.S.C. 2304(a)(3) and are not small business-small purchase set-asides in accordance with FAR 13.105.

(4) The following provision is applicable only to U.S. Army Troop Support Agency Activities. In lieu of separately tabulating nonfood/food transactions for commissary resale items that are reportable under negotiation authority 10 U.S.C. 2304(a) (8) and (9), a ratio of the total shall be reported as follows:

(i) Enter 26% of the total actions on Line 8 and 74% on Line 9.

(ii) Enter 37% of the total dollar value on Line 8 and 63% on Line 9.

(d) *Section C, Research development, test and evaluation actions.* (These actions are also reported in Sections A and B). Enter the number and dollar amount of contracting actions of $25,000 or less of research, development, test and evaluation work on Lines 1 through 4. Do not include purchases of supplies or services that are incidental to the fulfillment of RDT&E work but do not require contractor RDT&E performance.

(e) *Section D, Selected other actions.*

(1) Enter on Line 1.a., the number and dollar amount of awards made to small disadvantaged business concerns that were made through the Small Business Administration pursuant to the Small Business Act—Pub. L. 85–536, Section 8(a). Entries on this line shall also be reflected on Line 17.b. of Section B.

(2) Enter on Line 1.b., the number and dollar amount of awards made directly to small disadvantaged business concerns.

(3) Enter on Line 2, the number and dollar amount of awards shown in Section A that were made to women-owned small businesses.

(f) *Adjustments.* Revised DD Form 1057 reports shall not be submitted; but the amounts of corrections or adjustments, if required, shall be included in the report of the following month. If the correction or adjustment results in a net reduction of either action or dollar amounts, enter the symbol "CR" following the amount to signify a credit entry.

204.673 Report of individual contract profit (DD Form 1499)

204.673–1 Scope.

This section prescribes the reporting on DD Form 1499 of cost and profit plans on contract actions of $500,000 or more, negotiated by specified contracting offices. The form provides a basis for analyzing profit patterns and weighted guidelines objectives on defense contracts. As used in this section, the term *cost* includes target cost as well as estimated cost, and the term *profit* includes fee.

204.673–2 Applicability.

DD Form 1499 shall be prepared by each contracting office of the—

(a) Army Materiel Development and Readiness Command, Ballistic Missile Defense Systems Command, Defense Supply Service, Washington, and U.S. Army Corps of Engineers;

(b) Air Force Logistics and Systems Commands; and

(c) Naval Air, Sea, and Electronic Systems Commands, Naval Facilities Engineering Command, Naval Regional Contracting Office, Philadelphia. The form also shall be prepared by the following Navy activities of the Naval Supply Systems Command: Navy Aviation Supply Office, Philadelphia; Navy Ships Parts Control Center, Mechanicsburg; and Naval Regional Contracting Office, Long Beach. Contracting offices located outside the United States, its possessions, and Puerto Rico, under the jurisdiction of the above-mentioned commands, are exempt from this reporting requirement.

204.673–3 Coverage.

(a) A DD Form 1499 shall be prepared by the contracting offices described in 204.673–2 for each negotiation of a contractual agreement involving a separate cost and profit that together total $500,000 or more. This negotiated total may agree, but not necessarily, with the amount obligated by the contractural instrument. The instrument may be a new definitive contract, an indefinite delivery-type contract, the definitization of a letter contract, or order under a basic ordering agreement, a supplemental agreement, or any other action in which the contracting officer and contractor negotiate an estimated cost and profit. If, in connection with a fixed-price-type contract or contract modification, the contracting officer requires the contractor to submit cost or pricing data pursuant to FAR 15.804–2 a DD Form 1499 shall be prepared showing the contracting officer's best estimate of cost and profit.

(b) If more than one profit rate applies to a negotiation and the amount for each rate is $500,000 or more, a separate DD Form 1499 shall be used to report data for each rate. If the dollar amount for any profit rate of a multirate negotiation is less than $500,000, the data for the amount below $500,000 shall not be reported. If the separation of a contract into different rates produces no portion

of $500,000 or more, a report on DD Form 1499 shall not be submitted.

(c) If any reportable negotiation includes a cost or cost-sharing portion or a firm fixed-price portion not reportable pursuant to (a) above, that portion shall not be reported on DD Form 1499. If the application of this provision fragments an action so that an otherwise reportable portion is less than $500,000, that portion shall not be reported on DD Form 1499.

(d) A DD Form 1499 shall be submitted if the above conditions are met, even though price competition was used, weighted guidelines were not used, or a supplemental agreement involving cost and profit was executed without changing the profit rate applicable to the basic contract.

204.673-4 Due Date and Distribution.

(a) Contracting offices shall prepare DD Form 1499 as soon as possible after the date of action, assemble the reports for the month of action, and forward the reports in duplicate within 10 days after the close of the month as follows:

(1) *Army:* HQDA (JDHQ-SV-W-P), Washington, D.C. 20310:

(i) Contracting offices under the jurisdiction of DARCOM and the BMDS Command shall report through U.S. Army Material Development and Readiness Command, Attn: DRCPP-SC, 5001 Eisenhower Avenue, Alexandria, VA 22333;

(ii) Contracting offices under the jurisdiction of the U.S. Army Corps of Engineers shall report through the Office, Chief of Engineers, HQDA (DAEN-PRP), Washington, D.C. 20314.

(2) *Navy:* Headquarters, Naval Material Command, Attn: MATO8C1D, Washington, D.C. 20360.

(3) *Air Force:* AFLC/ACOCD, Wright-Patterson Air Force Base, Ohio 45433.

(b) Prior to submission of DD Form 1499, contracting offices shall review the form and associated contract files sufficiently to insure that all reportable transactions are reported and that reports are complete and accurate.

(c) DD Form 1499 shall be submitted as an unclassified document. If the reporting office considers it necessary to apply a security classification to a DD Form 1499, a communication relating the reasons for the classification shall be submitted to the Office of the Assistant Secretary of Defense (Comptroller), Attn: Directorate for Information Operations and Control, through the appropriate organization in (a) above. In no case shall security classification be considered a reason for not reporting on DD Form 1499.

(d) The reporting requirements of this part are assigned RCS:DD-R&E(M)1215.

204.673-5 Specific entries on DD Form 1499.

(a) *Department.* Enter Army, Navy, or Air Force, as appropriate.

(b) *Item 1, Report No.* Each contracting office identified by a separate number in the item 5 code block shall enter a four-digit number assigned consecutively starting with 0001 at the beginning of each fiscal year. This number shall be followed by the last two digits of the fiscal year. Numbers with less than four significant digits shall be preceded by zeros; e.g., the fourth report in fiscal year 1977 would be numbered 0004-77. This number identifies a specific DD Form and is not related to any DD Form 350 number.

(c) *Item 2, Contract No.* Enter the contract number in items 2.a., b., c., and d., in the manner prescribed for DD Form 350.in 4.671-5(e).

(d) *Item 3, SPIIN.* Enter in item 3 any order, supplemental agreement, or other modification number in the manner prescribed in 4.671-5(b)(2).

(e) *Item 4, Date of action.* Enter in numeric terms the year and month (e.g., 77-03 for 1977 March) when a mutually binding agreement was reached on the estimated cost and profit. For example, this may be the date when—

(1) A new definitive contract was awarded,

(2) A letter contract was definitized,

(3) A supplemental agreement was executed,

(4) A change order was definitized, etc.

(f) *Item 5, Contractor office name.* Enter the name of the contracting office submitting the report, and enter in the item 5 code space, the symbol or number assigned to that contracting office in the DoD Procurement Coding Manual, Volume III.

(g) *Item 6, Type of pricing action.* Enter in the item 6 code space Code A for the first reporting action pertaining to a contract, i.e., the award of a new definitive contract, a definitive contract superseding a letter contract, or an indefinite delivery-type contract. Enter Code B for all other types of actions, including orders under basic ordering agreements.

(h) *Item 7, Contracting identification.* Enter the complete name of the concern and, if applicable, the name of the division to which the award was made. Enter in the item 7 code space the first six digits of the contractor code as shown in the DoD Procurement Coding Manual, Volume II. If the contractor is not listed in the manual, no code shall be entered by the contracting office.

(i) *Item 8, Principal place of performance.* Enter the actual location of the plant or place of business where the items will be produced or the service rendered in accordance with instructions in 204.671-5(b)5. Enter in the item 8 code space the city and state codes shown for the contractor at the specified location in the DoD Procurement Coding Manual, Volume II. If the contractor's name is not listed in the manual, or is listed for a location or locations other than the one reported, no code shall be entered by the contracting office.

(j) *Item 9, Federal supply class or service code.* Enter the appropriate Federal Supply Class or Service Code from the DoD Procurement Coding Manual, Volume I, in accordance with instructions prescribed for item 10A of DD Form 350 in.

(k) *Item 10, DD claimant program No.* Enter in the item 10 code space the code from the DoD Procurement Coding Manual, Volume I, Section III, that describes the commodity or service called for by the contract.

(l) *Item 11, Weighted guidelines category.* Enter in the item 11 code space only one of the Codes A, B, C, or D, to identify the weighted guidelines applicable to the reported action.

(m) *Item 12, Type of contract.* Enter in the item 12 code space only one of the codes A, J, K, L, R, U, or V to show the pricing provisions applicable to the reported action. If more than one type of pricing applies to a single negotiation, the provisions of 204.673-3 (c) and (d) apply. That is, separate DD Forms 1499 shall be prepared for each type of pricing involving a cost and profit totaling $500,000 or more. DD Forms 1499 shall not be prepared for types of pricing with less than aggregate cost and profit of $500,000, cost-no-fee, or firm fixed-price without a negotiated cost and profit.

(n) *Item 13, Netgotiation summary.*

(1) Enter dollar amounts applicable to lines a. through f. as proposed by the contractor, the Government's objective, and the negotiated amounts. These entries shall be to to the nearest whole dollar; do not show cents, or make entries involving cent positions. For example, $568,035.54 shall be entered as $568,036 and not as $568,036.00; $500,400.49 shall be entered as $500,500.

(2) The dollar entries shall reflect the entire reportable amounts negotiated in the contractural agreement, not merely the portion obligated. Thus, awards contemplating incremental funding shall be reported as total negotiated cost and profit at the time of initial award, not as the amounts initially obligated. However, amounts applicable to options for additional quantities shall be

excluded unless the options are exercised. When options are exercised, a report shall be submitted if the amounts meet the dollar threshold of 204.673-3.

(3) For cost-plus-award-fee (CPAF) contracts, only the base fee shall be reported.

(4) For indefinite delivery-type contracts, the amounts reported shall reflect the best estimate of the annual requirement on the first reportable delivery order.

(5) Enter on line g. the cost of money percentage rate proposed by the contractor, obtained from the block 1 of the CASB-CMF form. The objective and negotiated rate will be the cost of money percentage rate used on the DD Form 1861.

(o) *Item 14, Weighted guidelines profit factors (see DD Form 1547).* If weighted guidelines are used, show the measurement base and profit/fee dollars in whole numbers in accordance with (n) above. If the weighted guidelines are not used to develop the prenegotiation profit objective, enter the measurement bases on line a. and complete only lines e., f., and g. The manufacturing guidelines adjustment, line a. (11), shall be completed only for contracts coded A in item 11 and must equal 30 percent of the amount entered on line a. (10). The cost of money adjustment, line e., shall be completed for all contracts coded as B, C, or D in item 11 and must equal the objective amount in item 13.b.

Subpart 204.7—Contractor Records Retention

204.706 Microfilming records.

204.706-1 General.

(d)(2) The ACO, with advice of DCAA, may agree to a lesser retention period where the contractor has established adequate internal controls including continuing surveillance over the microfilm system.

Subpart 204.8—Contract Files

204.801 General.

(c)(3) Purchasing and contract administration offices shall file in the contractor general file those documents accumulated or created by them which pertain in general to a contractor or prospective contractor, and those which relate to two or more contracts and which due to their nature should not or need not be filed with an individual contract file. (As appropriate, however, copies of such documents are filed with or cross-referenced in the related contract files.) This file shall include, as applicable, preaward surveys, reports, correspondence, and other records documenting the contractor's capabilities, past performance, accounting system, pricing method, quality assurance procedures, labor policies, insurance programs, and equal opportunity and comparable policies, programs, and systems that serve as a general source of information on a contractor's current and future capability or responsibility.

(c)(S-70) *Contract Cross Reference/ Locator File.* This file consists of Contract Cross Reference Data Forms (DD Forms 1592) maintained as prescribed in 204.802-73.

204.802 Contract files.

(a)(1) Authenticated or conformed copies of contractual instruments and signed or official record copies of correspondence, memoranda, and other documents shall be used in compiling the official files. Authenticated copies are documents shown to be genuine by certification as a true copy by signature of an authorized person or by official seal. Except to the extent that contract clauses or specifications are incorporated by reference, conformed copies are complete and accurate copies of the contractual instrument, including the date of execution and the names and titles of signatories. Documents reproduced by fast-copy process that deteriorates when exposed to excessive heat or light shall not be included in the official file.

(c)(4) When the bulk of the material is unclassified, classified material relating to the same contract shall be maintained in a separate file folder and container, and the unclassified folder marked or cross-referenced to indicate the location of the classified material. The front and back of each folder containing classified material shall be marked with the highest classification assigned to any of the documents in the folder.

204.802-70 Use of standard file folders for drawer and shelf filing.

(a) For all short duration contracts and for small purchase files, standard letter-size folders shall be used. For complex long-duration high-dollar value contracts, heavy individual or 6-part partitioned folders, with front and back flaps, two dividers, expansion gussets between flaps and dividers, and fasteners mounted at the top of the insides of the flaps and on each side of the dividers, may be used.

(b) Loose dividers (file inserts), prepunched at the top for fastening documents, may be used for subdividing material within the same folder when special folders are not used.

204.802-71 Filing of documents.

(a) Documents relating to a specific contract and described in FAR 4.803(a), (b) and (c) should normally be placed in chronological order in an "OFFICIAL FILE" folder or folders. Each folder shall be marked or labeled with the procurement instrument identification number and, when more than one folder is required for the same contract, with information as to the file segment. Other identifying data, such as the contractor's name, should be added only when needed to facilitate filing and locating.

(1) A separate folder need not be established for each subcontract, mechanized small purchase, or small dollar value contract, on which little or no administration is required; these should be filed in numerical sequence within the same folder.

(2) When a single folder is used, basic procurement documents and all modifications ordinarily should be filed on the left side of the folder and all other material on the right side. As volume warrants, a contract file may be subdivided further, either within the folder or by using additional folders, as appropriate. The following are examples:

(i) For the purchasing office, by pre-contract documents, basic contract, contract modifications, termination documents, general correspondence, and other; and

(ii) For the contract administration office, by basic contract, contract modifications, quality assurance and progressing and production surveillance, property administration and plant clearance, termination documents, and general correspondence. Documents shall be arranged chronologically within each section or folder.

(3) When it is impractical to file certain documents in the official case folder because of their bulk or use, they may be maintained separately in other suitable containers, but they shall be handled as "OFFICIAL FILES" and cross-referenced in the contract case file.

(4) Documents relating to two or more contracts may be filed in one contract file and cross-referenced in the others, or enough copies reproduced to provide for filing one in each related contract file. Other pertinent documents of a more general nature may be filed separately in the contractor general file and cross-referenced in the contract file.

(b) Documents described in 204.801(c)(3) and relating generally to the contractor rather than to a specific contract shall be placed in a folder labeled with the contractor's name. When necessary, additional folders may

be used and the material subdivided by subject, such as general, production, termination, property control, and performance.

204.802-72 Arrangement of files.

(a) Contract file folders normally should be arranged numerically by contract serial number. Under the Department of Defense uniform procurement instrument identification numbering system (see 204.70), the 10th through the 13th digits are the serial number. Large numbers of contract files (10,000 or more) are best arranged by the terminal digit filing method, using the four-digit serial number. When special circumstances warrant, contract folders may be arranged alphabetically by contractor's name, by commodity, or by type of contract, and thereunder numerically.

(b) Contractor general file folders shall be arranged alphabetically by name of the contractor.

204.802-73 Contract cross reference/locator system.

(a) Contract administration offices shall maintain a contract cross reference/locator system, manual or mechanized as appropriate. For a manual system, Contract Cross Reference Data (DD Form 1592), which is a two-part carbon interleaved form, shall be used as follows:

(1) For a prime contract, one set shall be prepared, the original filed alphabetically by contractor's name, and the duplicate filed numerically by contract number, using the terminal digit filing method when contract files are so maintained;

(2) For a subcontract, two sets shall be prepared, one set filed as in (a)(1) above, and the other set filed by subcontractor's name and subcontract number;

(3) Additional information as necessary shall be included under "Remarks," such as dollar value, contract type, brief description of item or service, special or limited administration requirements, secondary inspection office, and security classification.

(b) Offices, other than contract administration offices, which require a contract cross-reference/locator system to meet reference requirements or other special needs also shall use the system prescribed in (a) above.

204.803 Contents of contract files.

(a) *Contracting office contract file.*

(a)(8) Drawings and specifications should be included with the solicitation or referenced therein.

(a)(23) Exceptions or exemptions from the Buy American Act or appropriations act restrictions.

(a)(37) When applicable, a Contract Completion Statement (DD Form 1594) shall be included.

(a)(38) Termination documents include—

(i) Recommendation or request to terminate together with reason for terminating, and, in the case of major contracts, plans therefore.

(ii) Review board actions accomplished by the purchasing office.

(iii) Copy of termination notice.

(iv) Documents supporting termination actions taken when terminated for default, such as notice of possible termination, show cause letter and reply, and record of conferences, if any.

(v) Record of repurchase, including written demand to contractor for excess costs.

(a)(S-70) *Verification of requirements.*

(b) *Contract Administration Office contract file.* The extent to which the following list shall apply depends upon the type of contract, dollar value, and functions assigned to the contract administration office.

(b)(3) This includes the Contract Security Classification Specification (DD Form 254).

(b)(14) Progressing, expediting, and production surveillance records (these are to be maintained separately to facilitate their early disposal as prescribed in FAR 4.805(g)). They include such records as—

(i) Production plans and delivery schedules.

(ii) Progress or status reports.

(iii) Advice of delays or delinquencies, and of corrective and production follow-up actions.

(iv) Documents reflecting deliveries or production completion.

(b)(15) Quality assurance/control (inspection) records used in planning, conducting, and recording product verifications, testing, reviewing quality programs and plans, evaluating procedures and processes or technical performance, and effecting corrective actions, where required (these records are to be maintained separately for earlier disposal); they include:

(i) Quality assurance records, such as:

(A) Reference to Contractor's Quality Program document, and disapproval if any.

(B) Subcontract inspection control records (request for source inspection, and waiver of usual inspection procedure).

(C) Inspection requests, agreements, and assignments.

(D) Requests for waivers and deviations, and copy of approvals or disapprovals, if any (including Material Review Board decisions).

(E) Required inspection and test reports.

(ii) Quality control (inspection) records, such as:

(A) Quality program review reports (procedures and processes evaluation, periodic quality assurance survey).

(B) Government inspection and test reports.

(C) Authority to ship and acceptance documents (e.g., DD Form 1384, Transportation Control and Movement Document; DD Form 250, Material Inspection and Receiving Report; DD Form 1155, Order for Supplies or Services/Request for Quotations); routing requests and orders, and shipment copies of bills of lading (DD Form 250 may be excluded when maintained in paying office file and paying office is located at the contract administration office).

(D) Reports of unsatisfactory material and corrective actions, and reports of damaged or improper shipments.

(E) Other papers necessary to document the quality control or inspection function.

(b)(16) Property administration records used in the administration of Government property provisions of the contract (these are to be maintained separately for disposition). These include—

(i) Contract number, type of contract, and contractor name and address.

(ii) Name and dates of tenure of administrative contracting officer(s) and property administrator(s).

(iii) End item(s) and points of inspection and acceptance.

(iv) Record of contract clauses, amendments and changes pertaining to Government property.

(v) Record of contract clauses pertaining to contractor's liability.

(vi) Record of written approval of contractor's property control system or withdrawal of approval and cause, dates system approval reinstated, and deviations granted.

(vii) Listing and type of subcontracts which involve Government property or reference to location of such information.

(viii) Record of secondary administration assignments.

(ix) Record of system surveys performed, deficiencies found and corrective action taken.

(x) Record of property audits and inspections.

(xi) Record of findings and determination that inventory adjustments are reasonable.

(xii) Records of investigation and recommendations of the property administrator, and written advice of the administrative contracting officer on cases involving contractor's liability for Government property lost, damaged, destroyed, or consumed in unreasonable quantities.

(xiii) Original of final property administration clearance statement executed by the property administrator or other relief from assignment documentation.

(xiv) Reports relating to Government property.

(xv) Correspondence, messages, memoranda of calls and visits, and any additional documents pertinent to Government property.

(b)(17) Documentation regarding termination actions for which the contract administration office is responsible, including, as appropriate—

(i) Termination authority and instructions.

(ii) Copy of termination notice.

(iii) Record of initial meeting with contractor.

(iv) Contractor's request, and approval thereof if other than inventory basis is to be used.

(v) Settlement Proposal.

(vi) Application for Partial Payment and approval thereof, together with record of security required.

(vii) Record of the examination of prime contractor and subcontractor proposals, including engineering analysis, audit report or waiver, and request therefore.

(viii) Request to plant clearance office for action on inventory schedules.

(ix) Request from prime contractor for authority to settle subcontractor proposals without approval or ratification of contracting officer, and actions thereon.

(x) Recommendations by prime contractor covering subcontractor's proposal.

(xi) Approval of subcontractor's proposed settlements.

(xii) Record of plant clearance actions, such as verification of and determination of allocability and allowability of inventory schedules, record of inventory redistribution and disposal actions including diversion, screening, scrap determination, sale, abandonment, donation, and storage, as appropriate.

(xiii) Contracting officer's negotiations memorandum (presentation to Settlement Review Board).

(xiv) Required approvals by Settlement Review Board or others.

(xv) Settlement agreement, including record of any exceptions and, when agreement was not reached, a copy of determination by the contracting officer and written supporting evidence.

(xvi) Documents supporting termination actions taken when termination for default, such as notice of possible termination, copy of show cause letter and reply, and record of conference.

(b)(20) When applicable, this includes the Contract Completion Statement (DD Form 1594).

(c) *Paying Office contract file.*

(c)(2) Supporting documents may include:

(i) Shipment, acceptance, or receiving reports, such as DD Forms 250 and 1155 (Note: file DD Forms 250 and 1155 as a separate file series when it will facilitate compilation of contract status and statistical reports), and

(ii) Authorizations for advance and progress payments.

204.804–1 Closeout by the office administering the contract.

(a)(S–70) *Closed contracts.* Firm Fixed Price Unilateral Purchase Orders are closed when evidence of physical completion is received by the PCO. All other contracts are closed when they are physically complete and when all administrative actions are taken, including the accomplishment of one of the two Contract Completion Statements, DD Form 1594 or MILSCAP Format Identifier PK9.

(a)(S–71) Time standards established in FAR 4.804(a) are based upon the time required for closing the majority of contracts. It is recognized that delays beyond the above standards may occur (such as in the case of terminations). Where delays occur, contracts shall be reported in accordance with 204.804–4.

204.804–4 Physically completed contracts.

Status of Physically Completed Unclosed Contracts. Contract Administration Offices shall advise the appropriate procuring contracting officers within 15 days after the end of the month following the month in which a physically completed contract has not been closed within the time periods specified in FAR 4.804–1. This advice shall include the reasons for the delay, and the target date which has been set for closing. If the contract is not closed by the target date specified, the contract administration office shall, unless information is requested earlier by the PCO, advise the PCO of the reasons for the further delay and the new target date. MILSCAP Format Identifier PKX, Unclosed Contract Status, shall be used to provide this advice to the PCO when MILSCAP procedures apply.

204.804–5 Detailed procedures for closing out contract files.

(a)(S–70) *When Purchasing Office administers the contract.* When the purchasing office administers a contract, that office is responsible for insuring that all required purchase actions and contract administration have been completed, utilizing as necessary DD Form 1597, Contract Closeout Check List, and DD Form 1593, Contract Administration Completion Record. When all required actions have been completed, the purchasing office shall prepare DD Form 1594, or MILSCAP Format Identifier PK9, Contract Completion Statement, for all contracts in excess of $10,000. The Contract Completion Statement shall be made a part of the official contract file. For all contracts not in excess of $10,000, the contracting officer shall include in the contract file a statement that all contract actions have been completed. The completed form or statement is authority for closing out of the contract file. The file shall be closed out as provided in 204.804–70(a)(2).

(a)(S–71) *When Purchasing Office does not administer the contract.* When the purchasing office does not administer a contract, that office, upon receipt of DD Form 1594, or MILSCAP Format Identifier PK9, Contract Completion Statement, from the Contract Administration Office (see 204.804–5(b)(3)) shall insure that all actions required of the Purchasing Office have been completed, shall then complete Item 10 of the DD Form 1594, or where the MILSCAP PK9 is used, prepare a statement that all contract actions have been completed, and shall make the completed form or statement a part of the official contract file. The completed form or statement is authority for closing out the purchasing office contract file. Closeout of the file shall be effected as provided in 204.804–70(a)(2). The date in Item 9d of DD Form 1594, or Columns 59–65 of the MILSCAP Format Identifier PK9, Contract Completion Statement, shall be used as the closeout date for file purposes, except that the date in Item 10e of DD Form 1594 or the date of the closeout statement when the MILSCAP PK9 is received shall be used when completion of any pending significant purchasing office action extends more than three months beyond the date shown in Item 9d of DD Form 1594 or Columns 59–65 or the MILSCAP PK9. In the latter case, the purchasing office shall advise the contract administration office of the revised closeout date by sending a reproduced copy of the completed DD Form 1594, or by preparation of MILSCAP Format

Identifier PKZ, Contract Closeout Extension.

(b) With respect to all contracts which the contract administration office administers, that office is responsible for insuring that all contract administration has been completed and for initiating closeout action. The organizational element to which this responsibility is assigned shall proceed as follows upon determination or advice (such as by final DD Form 250 or other final report) that the contract has been fully performed (including final payment) or has been terminated completely:

(1) Prepare DD Form 1597, Contract Closeout Check List, when necessary to determine that all required actions have been accomplished.

(2) If appropriate, initiate DD Form 1594, Contract Administration Completion Record, to obtain statements from other organizational elements certifying completion of actions required of each (normally a single copy should be routed in turn to offices concerned, but separate forms may be routed when necessary, such as when closeout actions may be complex and extensive or when offices are at different locations).

(3) Upon determination of final completion, process MILSCAP Format Identifier PK9 or complete Items 1 through 9 of DD Form 1594 certifying that all contract administration office actions have been fully and satisfactorily accomplished, and forward the original of the form to the purchasing office (which will utilize it to close out its contract file).

(4) Retain one copy of the completed form, which is authority for closing out the contract administration file.

204.804–70 Review, separation, and retirement of completed contract files.

(a) Upon determination of contract completion under the procedures outlined in FAR Section 4.804 and 4.804 above, each office shall review all files pertaining to the individual contract as described below. For disposal criteria, see FAR 4.805.

(1) *Duplicate or working contract case file*—Remove any original or official file copies of documents and place them in the appropriate "official" file; destroy immediately any remaining material, or segregate and mark it for early disposal.

(2) *Official contract case file*—Remove folder for completed contract from the active file series, mark each folder or folder tab "Completed *(Date)*" and place folder in completed (inactive) contract file series; separate series should be established for contracts of $10,000 or less and for contracts of more than $10,000, to facilitate later disposal.

(3) *Cross reference/locater file*—remove any contract cross reference data forms relating to the completed contract, mark each "Completed *(Date)*" and place them in completed (inactive) cross reference/locator file series for later disposal.

(b) *Review of contractor general files.* Each office shall review contractor general files at least once annually and—

(1) Remove obsolete and superseded documents relating generally to the contractor (e.g., documents no longer pertinent to any aspect of contractor's current or future capability, performance, or programs, and documents relating to a contractor who is no longer a possible source of supplies, services, or technical assistance) and dispose as authorized.

(2) Remove any documents pertaining only to completed contracts, place those not routine in nature in inactive contractor file for later disposal and immediately dispose of routine documents as authorized.

(c) *Retirement of completed files.* Completed files series shall be cut off at least annually, and new series begun to facilitate destruction in blocks—normally annual blocks. The cut-off series shall be held in the office maintaining the records for an additional period not to exceed one year and then stored locally in recordholding or staging areas, if available, until they are eligible for destruction (see FAR 4.805); when such space is not available, the files shall then be transferred to the General Services Administration Federal Records center servicing the area. Completed cross reference/locator files shall be held locally until eligible for destruction.

204.805–70 Disposal of duplicate or working contract or contractor files.

Duplicate copies of official file documents and extraneous materials not required or appropriate for filing in official files shall be destroyed as soon as they have served their purpose, when actions which the file facilitated have been taken, or upon physical completion or final payment under the contract, as appropriate. In no case shall such copies be retained for longer than one year after final payment under the contract. However, pricing review files containing documents related to reviews of contractor price proposals, subject to certification of cost or pricing data (see FAR 15.804–2), shall not be destroyed before the expiration of 6 years from the date of final payment under the contract. If conditions exist, however, which do not permit cross-referencing the pricing review file to the official contract file to determine the date of final payment, the pricing review file will, in that case, be retained for 9 years following completion of the proposal review.

204.805–71 Disposal of contract cross reference/locator files.

Completed contract cross reference/locator files shall be destroyed at the same time as the related contract file, or when they are no longer required as contract cross-reference/locator.

Subpart 204.70—Uniform Procurement Instrument Identification Numbers

204.7001 Scope.

This subpart prescribes procedures for assigning identifying numbers to all contracts and to other instruments related thereto, including solicitation documents and delivery orders, issued pursuant to this supplement. This subpart does not apply to procurement instruments issued by the Defense Commercial Communications Office, Defense Communications Agency. The provisions of this subpart are optional where the procurement instrument will be completely administered by the purchasing office or the consignee, except that as a minimum such instrument numbers shall not exceed 19 characters (excluding hyphens) for the procurement instrument identification number including any supplemental modification or other identification number, and such instrument numbers shall commence with the identification of the purchasing office and the fiscal year, in accordance with 204.7003–2 (a) and (b) and Appendix N.

204.7002 Policy.

(a) The uniform procurement instrument identification (hereafter referred to as PII) numbering system as prescribed in this subpart shall be used for instruments of the types listed in 204.7003–1(c), 204–7004–2, 204–7004–3, and 204–7004–4.

(b) Numbers, including Federal Supply Contract Numbers and any prescribed supplementary numbers, shall be placed in spaces provided on the applicable procurement forms, with major elements separated by dashes; for example, DABE01–66–M–0001. If a space is not otherwise provided, the prescribed numbers shall be placed in the upper right-hand corner of the form.

(c) Alpha-numeric characters, other than those prescribed in this subpart, shall not be used as a part of the PII numbering system. If other identification is required in accordance with

Departmental procedures, it shall be placed on the procurement instrument in such a location as to clearly separate it from the PII number prescribed herein.

204.7003 Basic procurement instrument identification number.

204.7003-1 Elements of number.

The basic PII number should be retained unchanged for the life of the particular instrument and shall consist of 13 alpha-numeric characters positioned as follows:

(a) The first 6 positions shall commence with the capital letters assigned to the Department preparing the instrument as follows:

DA Department of the Army
F Department of the Air Force
DCA Defense Communications Agency
N Department of the Navy (except Marine Corps)
M Marine Corps
DLA Defense Logistics Agency
DNA Defense Nuclear Agency
DMA Defense Mapping Agency
DCPA Defense Civil Preparedness Agency

The remainder of the first 6 positions shall be the alpha-numeric characters which, together with the Departmental identification shown above, identify the activity preparing the instrument. All 6 positions shall be used. If necessary, nonsignificant zeros shall be placed between the Department identifier and the activity identifier. A listing of applicable numbers is contained in Appendix N.

(b) The 7th and 8th positions shall be the last two digits of the fiscal year in which the PII number is assigned.

(c) The 9th position shall be a capital letter assigned to indicate the type of instrument code, as follows:

A Blanket Purchase Agreements
B Invitation for Bid
C Contracts, including Letter Contracts, contracts incorporating basic agreements, and contracts providing subsequent provisioning, but excluding Indefinite Delivery Type Contracts
D Indefinite Delivery Type Contracts
E Facilities Contract
F Delivery orders placed with or through other Government Departments or agencies or against contracts placed by such Departments or agencies (i.e., outside the Department of Defense and including blind-made supplies)
G Basic Ordering Agreements
H Agreements, including Basic Agreements
L Lease Agreement
M Purchase Order—manual (assign W when numbering capability of M becomes exhausted during a fiscal year
N Notice of Intent to Purchase
P Purchase Order—automated (assign V when numbering capability of P becomes exhausted during a fiscal year)
Q Request for Quotation—manual
R Request for Proposal
S Sales Contract
T Request for Quotation—automated (assign U when numbering capability of T becomes exhausted during a fiscal year).

The letters X, Y and Z are reserved for Departmental use.

(d) The 10th through 13th positions shall be the serial number of the instrument. A separate series of serial numbers may be used for any type of instrument listed in (c) above. Each such series of PII numbers for the same activity shall commence with the number 0001 at the start of each fiscal year. Alpha-numeric serial numbers shall be used when more than 9,999 numbers are required. Alpha-numeric numbers shall be serially assigned with an alpha in the first (or first and second) position followed by the three (or two) position numeric serial number. The following alpha-numeric sequence shall be used (the letters I and O shall not be used):

A001 through A999, B001 through B999, and so on to Z001 through Z999;

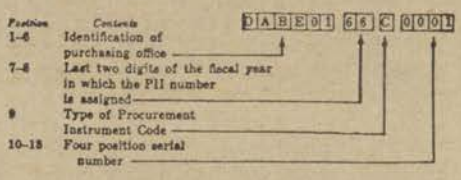
Then AA01 through AA99, AB01 through AB99, and so on to AZ01 through AZ99;

Then BA01 through BA99, BB01 through BB99, and so on to BZ01 through BZ99; and so on to

ZA01 through ZA99, ZB01 through ZB99, and so on to ZZ01 through ZZ99.

204.7003-2 Illustration of number.

The following illustrates the configuration of the PII number as prescribed in 204.7003.



204.7004 Supplementary procurement instrument identification numbers.

204.7004-1 Uses of the number.

Supplementary numbers, used in conjunction with basic PII numbers, shall be employed to identify:

(a) Amendments to solicitation documents;

(b) Modifications of contracts and agreements (Provisioned Item Orders will be treated and numbered as modifications); and

(c) Calls/orders under contracts (except Federal Supply Schedule contracts), under basic ordering agreements and under blanket purchase agreements.

204.7004-2 Amendments to solicitation documents.

Amendments to each solicitation document shall be sequentially numbered by use of a four position numeric serial number supplementary to the basic PII number, commencing with 0001.

204.7004-3 Modifications of contracts and agreements.

(a) Contract modifications, as defined in FAR Subpart 43.1, and modifications to agreements shall be numbered by use of a six-position alpha-numeric number supplementary to the 13-position basic PII number as follows:

(1) The first position shall be a capital letter identifying the issuing office and the type of modification as indicated below:

A Contract Administration Office modifications
P Purchasing Office modifications

(2) The second through sixth positions shall be a serial number. The second and third positions may be alpha or numeric, except that the letters K, L, M, N, P, S, T, U, V, W, X, Y and Z are excluded and reserved for the express purposes as follows:

(i) For a definitized letter contract the second position shall be a Z; in other words, the letter Z will be used only for that modification which represents the definitized contract. The serial numbers of modifications occurring after the definitization will continue the sequence in the manner provided in this paragraph, without the letter Z.

(ii) Only the letters T, U, V, W, X, or Y may be used in the second position when a modification is issued providing initial shipping instructions or amending those shipping instructions previously issued in those cases in which the contract provides delivery FOB origin and no price change is involved. Modifications shall be serially numbered by each issuing activity. The foregoing is not mandatory on purchase offices that issue and control all modifications.

(iii) The letter S only may be used in the second position when a modification is issued providing initial or amended shipping instructions in those cases in which the contract provides delivery FOB destination or the contract provides delivery FOB origin and a price change is involved. Each modification shall be serially numbered.

(iv) The letters K, L, M, N P, and Q are reserved for the exclusive use of the Air Force only in the second position for a Provisioned Items Order. Provisioned Items Orders shall be serially numbered by each issuing activity.

(v) The fourth through sixth positions shall always be numeric. A separate series of serial numbers shall be used for each type modification listed in (a)(1) and (2)(ii), (iii), and (iv) above. The modifications issued by an activity for a

contract shall be numbered as set forth below:

Normal Modification	Provisioned Items Order (Reserved for exclusive use by the Air Force only)	Shipping Instructions
00001-99999	K0001-K9999	S0001-S9999
then	KA001-KZ999	SA001-SZ999
A0001-A9999	L0001-L9999	T0001-T9999
B0001-B9999	LA001-LZ999	TA001-TZ999
and so on to	M0001-M9999	U0001-U9999
H0001-H9999	MA001-MZ999	UA001-UZ999
then	N0001-N9999	V0001-V9999
J0001-J9999	NA001-NZ999	VA001-VZ999
then	P0001-P9999	W0001-W9999
R0001-R9999	PA001-PZ999	WA001-WZ999
then	Q0001-Q9999	X0001-X9999
AA001-HZ999	QA001-QZ999	XA001-XZ999
then		Y0001-Y9999
JA001-JZ999		YA001-YZ999
then		
RA001-RZ999		

(3) ARZ999 is the six-position alpha-numeric number to be utilized the first time the office of administration or disbursement is being changed by use of computer generated modifications initiated by a CAO. The second change will utilize ARZ998, the third change ARZ997, and so forth. This method will only be utilized when mass changes are required.

(b) Supplementary identification numbers for modifications shall be assigned in consecutive chronological sequence by each issuing office authorized to issue modifications. To assure chronological assignment, modification numbers shall be assigned only after it has been determined that a modification is to be issued.

204.7004–4 Delivery orders under indefinite delivery type contracts, orders under basic ordering agreements, and calls under blanket purchase agreements.

(a) Delivery orders under indefinite delivery type contracts (orders), orders under basic ordering agreements (orders), and calls under blanket purchase agreements (calls) shall be identified by a four-position alpha-numeric "call/order serial number" which is supplementary to the 13-position basic PII number.

(1) Calls/orders issued by the purchasing office identified in the basic PII number shall be assigned numeric call/order serial numbers, beginning with 0002 through 9999.

(2) Calls/orders issued by an office other than the purchasing office identified in the basic PII number shall be assigned alpha-numeric call/order serial numbers as follows:

(i) The first and second position shall be the alpha-numeric call/order serial number assigned to Appendix N to the activity issuing the call/order. The letters A, I, O, and P shall not be used in the first position; however, A and P may be used in the second position.

(ii) The third and fourth positions shall be a serial number assigned by the issuing activity. The first call or order issued each contract or agreement shall be numbered 01. After the serial number 99 is used, a uniform series of numeric/alpha, alpha/numeric, and finally alpha serial numbers shall be assigned as follows (the letters I and O shall not be used):

1A, 1B, and so on to 1Z, then 2A, 2B, and so on to 2Z, and so on to
9A, 9B, and so on to 9Z, followed by
A1, A2, and so on to A9, then B1, B2, and so on to B9, and so on to
Z1, Z2, and so on to Z9, followed by
AA, AB, and so on to AZ, then BA, BB, and so on to BZ, and so on to
ZA, ZB, and so on to ZZ.

(b) If it is necessary to modify a call/order, a two-position alpha-numeric suffix (know as the call/order modification indicator) shall be added to the supplementary PII number as follows (the letters I and O shall not be used):

(1) Modification to a call/order—issued by the purchasing office, excluding any modification providing shipping instructions in those cases described in (b) (2) and (3) below—01, 02, and so on through 99, then B1—B9, BA—BZ, C1, and so on through NZ and Z1 through ZZ;

(2) Modification to a call/order issued by a purchasing office providing initial or amended shipping instructions in those cases in which the call/order provides for delivery FOB destination or delivery FOB orgin and a price change is involved— P1, P9, PA—PZ, Q1—Q9, QA—QZ, etc., through TZ;

(3) Modification to a call/order issued by a purchasing office providing initial shipping instructions or amending those shipping instructions previously issued in those cases in which the call/order provides delivery FOB origin and no price change is involved—U1—U9, UA—UZ, V1—V9, VA—VZ, and so on through YZ; and

(4) Modifications to a call/order issued by a Contract Administration Office (CAO) will begin with 1A, 1B, and so on to 1Z; then 1A, 2B, and so on to 2Z; and so on to 9A, 9B, and so on to 9Z, followed by A1, A2, and so on to A9; then AA, AB, and so on through AZ.

AZ will be utilized the first time a modification is generated by mechanical means (computer program) to change the name of the administration office or disbursing office. The second change will utilize AY, the third change AX, and so forth. This method will only be utilized when mass changes are required.

Subpart 204.71—Uniform Contract Line Item Numbering System

204.7101 Scope of subpart.

This subpart prescribes procedures for establishing and numbering all items of supplies or services set forth in contracts and in other documents related thereto issued pursuant to this supplement.

204.7102 Policy.

(a) These procedures provide criteria for establishing and numbering contract line items, contract subline items, exhibits, exhibit line items, and exhibit subline items.

(b) The procedures prescribed in this subpart shall be used in contracts (as defined in FAR 2.1) and in provisioning and other documents which are expected to become parts of contracts.

(c) When practicable, these procedures also shall be used in solicitations and other contractual documents.

(d) These procedures are mandatory for all contracts except as follows:

(1) When no postaward contract administration function on the specific contract is assigned to any office listed in DoD Directory of Contract Administration Services Components;

(2) Indefinite delivery type contracts for petroleum products under which posts, camps, and stations issue delivery orders for such products for their own use; or

(3) Communication Service Authorizations issued by the Defense Commercial Communications Office, Defense Communications Agency.

(e) For cost-reimbursement type contracts, the provisions of this subpart apply except for the requirements in 204.7103–1(a)(1) and 204.7104.2(c)(2) for a single unit price or single total price or amount for each contract line or subline item.

(f) For maintenance and repair service type contracts in which firm prices for elements of the total price of an item are established but the number and quantity of such elements performed in order to determine the final item price to be paid are not known until performance (for example, a labor-hour contract), the provisions of this subpart apply except for the requirements in 204.7103–1(a)(1) and 204.7104–2(c)(2) for separate contract line items or subline items because of unit price differences for individual quantities of a line item or subline item. In lieu of establishing separate contract line items or subline items because of price differences, contractual documents for these types of contracts may be structured to reflect a

firm or estimated total item amount for each such line or subline item only (omitting unit price).

204.7103 Contract line items.

204.7103-1 Criteria for establishing.

(a) Requirements for supplies or services shall be established as contract line items. Each contract line item shall:

(1) Have, or be anticipated to have, a single unit price or, if no unit price is established, a single total price or amount (unless associated subline items of other than an informational nature are separately priced in accordance with 204.7104-2(c)(2), in which case, no price shall be assigned to the contract line item, except for informational purposes unit prices and/or amounts may be entered in parentheses within the item description block); however, the unit price may be entered as "NSP" (not separately priced); *Provided,* the price of this item is included in the unit price of another contract line item;

(2) Be separately identifiable, i.e., no more than one National Stock Number, one item description, one Manufacturer's Part Number, etc., for a supply line item, or no more than one Scope of Work, one Description of Services, etc., for a services line item (unless this identification is provided by associated subline items of other than an informational nature; in which case, a general narrative description shall be assigned to the contract line item number and the subline item shall include the actual detailed identification in accordance with 204.7104-2(c)(3); and

(3) Have a separate delivery schedule, period of performance or completion date expressly stated in the procurement instrument ("as required" is an expressly stated delivery schedule) unless there are associated subline items of other than an informational character that meet this requirement. (When a requirement has multi-delivery dates or multi-destinations or multi-performance dates/points, that factor alone shall not require but does not preclude establishment of more than one contract line item. However, when more than one delivery date and/or more than one destination are identified to a single contract line item, the delivery schedule will specify delivery dates for the item by the destination when established, or individual contract line items may be established for each destination and/or delivery date and/or requisition.)

(b) As an alternative to setting forth in the Schedule an extensive list of contract line items, they may be shown in a contract exhibit as exhibit line items (see 204.7105 and 204.7106). In these cases, a Contract Line Item Number (CLIN) which references the exhibit will be assigned in the schedule and shall specify the exhibit identifier. Contract line items for provisioned spares shown on a contract exhibit and data items shown on DD Form 1423, Contract Data Requirements List, when used as an exhibit, shall specify the exhibit identifiers.

(c) Requirements for test model approval under the development phase or for first article approval under the production phase (whether the requirement is for first article delivery for Government testing or for first article approval test report delivery based on contractor testing) shall require the establishment of a separate contract line or subline item for each item of supply or service (one Scope of Work, one Performance Description, one National Stock Number, one Manufacturer's Part Number, one drawing and piece number) unless the test model or first article consists of a lot composed of a mixture of items, in which case a single contract line or subline item may be established for the lot.

(d) Requirements expressing contractor responsibilities for which a separate price is not established or contained in the price of a supply or service line item but for which the contractor may be entitled to payment, shall not be assigned a contract line or subline item number, but shall be identified in the contract schedule. Examples of such requirements are transportation, packaging and handling, reusable containers, and state and/or local taxes. If it is determined that a separate price is to be established for these requirements, they shall meet the criteria in (a) above or in 204.7104-2(c) and shall be established as a line or subline item.

204.7103-2 Procedures for numbering.

(a) Contract line items within a contract shall consist of 4 numeric digits 0001 through 9999 and shall be numbered sequentially but not necessarily consecutively. Unless there is a valid reason to the contrary, the identical line item number assigned to an item in a solicitation pursuant to 204.7102(c) shall be assigned to that item when an award is made. Any given contract line item number shall not be assigned more then once in a contract, and line item numbers beyond "9999" shall not be used.

(b) When a contract line item contains subline items, each such subline item shall be numbered by adding to the basic line item number, two alphabetic or two numeric characters as specified in 204.7104.

204.7104 Contract subline items.

204.7104-1 General.

Contract subline items provide a further subdivision of the basic contract line item when it is necessary for contract performance or administration purposes to separately identify subordinate requirements. There are only two categories of contract sublines.

(a) The first category comprises those subline items that are included in the procurement instrument for information purposes only and are identified by a numeric suffix. These subline items are an integral part of the associated contract line item but shall not be scheduled separately for delivery, separately identified for shipment or performance, or separately priced for payment purposes.

(b) The second category comprises those subline items that have a separate delivery schedule, require separate identification at the time of shipment or performance and/or are separately priced for payment purposes. These subline items are identified by an alpha suffix.

204.7104-2 Criteria for establishing.

(a) Subline items included in procurement instruments for informational purposes only (numeric suffix) shall be established at the discretion of the contracting officer. This type of subline item identifies information that relates directly to and is an integral part of the contract line item; e.g., parts of an assembly or parts of a kit. Such subline items shall not have a separate delivery schedule, a separate price for payment purposes or require separate identification at the time of shipment or performance. Informational quantities, prices or amounts determined by the contracting officer as necessary to satisfy management requirements may be identified to such subline items provided that such quantities, prices or amounts are set forth in parentheses within the Supplies/Services (item description) column of the contractual document (i.e., not within the quantity and price columns).

(b) Subline items that have a separate delivery schedule, require a separate identification at the time of shipment, and/or are separately priced for payment purposes (alpha suffix) shall be established in lieu of line items at the discretion of the contracting officer. This category subline item shall be established whenever a capability must be provided to accumulate separately identified price and/or quantity data at the contract line item level. For instance,

this category subline may be used to identify:

(1) Identical items that are to be paid from more than one accounting classification (unless separate contract line items have been established for each accounting classification or accounting classifications have been identified to each consignee in the contract line item delivery schedule in accordance with 204.7108);

(2) Items of an identical nature where different sizes have been assigned discrete Federal supply stock numbers and/or different prices;

(3) Individually payable items such as packaging costs that pertain to a contract line item but are not included in the contract line item price (in this case, item description, price and quantity data for the line item also are to be entered as a separate subline item);

(4) Individual delivery dates and/or destinations and/or requisitions when multiple delivery dates, destinations and/or requisitions are designated in the procurement instrument for a contract line item; or

(5) Parts of an assembly or parts of a kit when the parts have a separate delivery schedule, require separate identification at the time of shipment or performance, and are separately priced for payment purposes.

Whenever subline items of this category (alpha suffix) are established, the associated contract line item shall serve only as a common denominator for the accumulation of management data by the procuring activity and all requirements for the associated contract line item will be identified as subline items. (All shipments and payment will be made at the subline item level.)

(c) Subline items in the alpha suffix category ((b) above) shall:

(1) Have a separate (i.e., subline item level) delivery schedule, period of performance or completion date expressly stated in the procurement instrument ("as required" is an expressly stated delivery schedule); and

(2) Have or be anticipated to have a single unit price or, if no unit price is established, a single total price or amount (When all subline items for a particular contract line item are identical services or supply items that have identical unit prices, the unit price and total amount (extended unit price for all subline items) may be shown at the contract line item level, or the unit price may be shown at the contract line item level and the extended amounts shown at subline item level, or the unit price and total amounts may be shown at subline item level, but only one of these methods may be used for a contract line item and its associated subline items. However, if any subline item has a different unit price than the remainder of the subline items, all subline items shall be separately priced and the contract line item shall not be priced. In this latter instance, subline items that are not separately priced but must be separately identified for shipment and management purposes may indicate a unit price of "NSP" (not separately priced); *provided*, the price of this item is included in the unit price of another subline item or different contract line item. The clause set forth in 2052.204–7000 shall be inserted in applicable contracts when in the opinion of the contracting officer because of dollar value or other considerations it is necessary to preclude payment for a subline item until all related subline items identified as not separately priced have been delivered. In no instance will the contract line item/subline item structure be constructed in such a way as to require the identification of contractor products or services (shipment or performance) at the subline item level and contractor payment at the contract line item level); and

(3) Be separately identifiable (i.e., no more than one National Stock Number, one Item Description, one Manufacturer's Part Number, etc., for a supply subline item, or no more than one Scope of Work, one Description of Services, etc.) for a services subline item.

204.7104–3 Procedures for numbering.

(a) When contract subline items are established within a contract line item, the total effort shall be assigned a contract line item number and each subline item shall be assigned a contract subline item number.

(b) Contract subline items established within a contract line item for information purposes only (204.7104–1(a) and 204.7104–2(a)) shall be numbered by adding to the contract line item number two numeric characters commencing with ":01" and continuing through "99." No such designation shall be assigned more than once to the same contract line item number within a procurement instrument. The two supplemental numeric characters shall be placed immediately following the contract line item number without separation by spaces or special characters. Example follows:

Item No.	Supplies/Services	Quantity	Unit	Unit price (dollars)	Amount (dollars)
0002	15B/EE Periscope Adapter System. NSN-2040-00-916-2842, including one set of the following for each system.	12	Each	72,831	873,972
000201	Indicator and Control Box (1 ea)				
000202	Well Junction Box (1 ea)				
000203	Remote Indicator Box (ECM RM) (1 ea)				
	* * * * *				
000210	Set Dip Loop Cables (1 ea)				

NOTE: In the above instance, the delivery schedule will identify the contract line item (not the subline items) and all shipments and payments will be at the contract line item level. Shipment documents and payment vouchers will not identify subline items.

(c) Contract subline items established to identify contractual requirements that have a separate delivery schedule, require identification at the time of shipment or accomplishment and/or are separately priced for payment purposes (see 204.7104–1(b) and 204.7104–2(b)) shall:

(1) Be numbered by adding to the contract line item number two alphabetic characters commencing with "AA" and continuing through "ZZ." (The letters "I" and "O" shall not be used.) Contract sublines shall be numbered sequentially but not necessarily consecutively. No such designation shall be assigned more than once to the same contract line item number within a contract;

(2) Be sequenced within a contract line item as follows: AA, AB, AC through AZ; then BA, BB, BC through BZ; and continuing, if necessary, through ZZ; and

(3) Be constructed by placing the two supplemental alphabetic characters immediately following the contract line item without separation by spaces or special characters. For example, with contract line item number "0001" the first three contract subline items, if consecutive, would be numbered "0001AA," "0001AB," and "0001AC."

Examples of correct line item structures in this category are shown on the following pages.

Example 1: Subline items structured to identify destinations for identical items, identically priced (Delivery schedule shall be established for each subline item, not the contract line item.).

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0001	NSN 1615-00-591-6620 Shim, Aluminum Alloy, . . . Apbl, Rotor, Helicopter. PRON A1-9-63821-M1-M1 ACR: AA				
0001AA	A3168R-9030-4025 A2537M IPD: 2 RDD: 334 PROJ: 501.	10	EA	$100.00	$1,000.00
0001AB	A3168R-9030-4026 A51AXBM IPD: 2 RRD: 325 PROJ: 502.	10	EA	100.00	1,000.00
0001AC	A3168R-9030-4027 A67KBCM IPD: 2 RDD: 349 PROJ: 503.	15	EA	100.00	1,500.00

Example 2: Subline items structured to identify destinations for identical items, not identically priced (Delivery schedule shall be established for each subline item, not the contract line item.).

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0001	NSN 1615-00-591-6620 Shim, Aluminum Alloy, . . . Apbl, Rotor, Helicopter. PRON A1-9-63821-M1-M1 ACR: AA				
0001AA	A3168R-9030-4025 A2537M IPD: 2 RDD: 334 PROJ: 501.	10	EA	$100.00	$1,000.00
0001AB	A3168R-9030-4026 A51AXBM IPD: 2 RRD: 325 PROJ: 502.	20	EA	99.00	1,980.00
0001AC	A3168R-9030-4027 A67KBCM IPD: 2 RDD: 349 PROJ: 503.	30	EA	98.00	2,940.00

Note: Difference in prices for identical items is due to separate destinations for FOB destination delivery.

Example 3: Subline items structured to identify different sizes of an item that are identically priced (Delivery schedule shall be established for each subline item, not the contract line item.).

Item No.	Supplies services	Quantity	Unit	Unit price	Amount
0013	Boots Insulted, Cold Weather White, Type II, Class 1		PR	$38.35	$13,422.50
0013AA	8430-00-655-5541 Size 5N	50			
0013AB	8430-00-655-5544 Size 8N	70			
0013AC	8430-00-655-5551 Size 9N	30			
0013AD	8430-00-655-5535 Size 9R	200			

Note: Unit price and total amount shown at line item level rather then at subline item level, as authorized by 204.7104-2(c)(2), when all subline items of a line item are identically priced.

Example 4: Subline items structured to identify different sizes of an item that are not identically priced (Delivery schedule shall be established for each subline item, not the contract line item.)

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0002	Body Armor Ground Troops Variable Type Small Arms, Fragmentation Protective Nylon Felt Vest, Front and Back Plates, Ceramic Plate, Type I.				
0002AA	First Article	1	LO	NSP	
0002AB	8470-00-141-0935, Medium Regular	1936	SE	$331.77	$642,306.72
0002AC	8470-00-141-0936, Large Regular	625	SE	355.77	222,356.25
0002AD	8470-00-141-0937, Medium Long	1,237	SE	346.77	428,954.49
0002AE	8470-00-141-0938, Large Long	804	SE	365.77	294,079.08

Note.—First Article entered as "Lot" in accordance with 204.7103-1(c).

Example 5: Subline items structured to provide the capability for relating subordinate separated priced packaging costs to the overall contract line item (Separate delivery schedules shall be established for the subline item identifying the contractor's product and for the subline item identifying packaging. No schedule will be established for the contract line item.)

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0001	6105-00-635-6568 50380 Ref. No. 63504-WZ Armature Motor ACR: AA.				
0001AA	6105-00-635-6568 50380 Ref. No. 63504-WZ Armature Motor.	2	EA	$2,895.87	5,791.74

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0001AB	Packaging	2	EA	289.58	579.16

Example 6: Subline items structured to identify different accounting classifications for identical items (Delivery schedule shall be established for each subline item, not the contract line item.)

Accounting and Appropriation Data

AJ: 17X1505183503150691000000192B000000000000000000
AK: 17X1505183703175691000000192B000000000000000000
AL: 17X1505193503143691000000192B000000000000000000

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0002	Pulse Decoder KY-312/A5Q-19		EA	$3,037.40	
0002AA	Pulse Decoder KY-312/A5Q-19ACR: AJ	2			$6,074.80
0002AB	Pulse Decoder KY-312/A5Q-19ACR: AK	6			18,224.40
0002AB	Pulse Decoder KY-312/A5Q-19ACR: AL	2			6,074.80

Note: Unit price may be shown at line item level and total amounts shown at subline item level, as authorized by 204.7104–2(c)(2), when all subline items of a line item are identically priced.

Example 7: Subline items structured to identify parts of an assembly (Delivery schedule and price shall be established for each identified part at the subline item level, not for the assembly at the contract line item level.).

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0003	Automatic Degausing System Consisting of: (2 ea @ $52,061; $104,122 total).				
0003AA	Switchboard	2	EA	$52,061.00	$104,122.00
0003AB	Remote Control Panel	2	EA	NSP	
0003AC	Power Supply (M Coil) SSM Type (145 Amps, 220 V DC).	2	EA	NSP	
*	* * *			*	
0003AF	Power supply (A Coil) SSM Type (118 Amps, 220 V DC)	2	EA	NSP	

Note: In the above instance, the price of all other subline items indicated by "NSP" is included in the Switchboard. The clause set forth in 252.204–7000 shall be inserted in applicable contracts when in the opinion of the contracting officer because of dollar value or other considerations, it is necessary to preclude payment for a subline item until all related subline items identified as not separately priced have been delivered.

Example 8: Subline items structured to identify parts of a kit (Delivery schedule and price shall be established for each identified part at the subline item level, not for the kit at the contract line item level.).

Item No.	Supplies/services	Quantity	Unit	Unit price	Amount
0031	Conversion Kit to Convert Torpedo MK 45 Mod 0 to Torpedo MK 45 Mod 1 (50 Kt @ $10,868.52; $543,426 total).				
0031AA	Integrator Assy LD 620106	50	EA	$10,868.52	$543,426.00
0031AB	Pulse Generator Assy LD 587569	50	EA	NSP	
0031AC	Drive Shaft Assy LD 587559	50	EA	NSP	
*	* * *			*	
0031BF	Actuator Panel Assy LD 542924	50	EA	NSP	

Note: In the above instance, the price of all other subline items indicated by "NSP" is included in the Integrator Assembly. The clause set forth in 252.204–7000 shall be inserted in applicable contracts when in the opinion of the contracting officer because of dollar value or other considerations, it is necessary to preclude payment for a subline item until all related subline items identified as not separately priced have been delivered.

204.7105 Contract exhibits.

204.7105–1 Definition.

"Exhibit" means a document attached to a procurement instrument, referenced by its capital letter identifier in a line or subline item in the procurement instrument Schedule, which establishes deliverable requirements in the attached document as an alternative to establishing an extensive list of line or subline items in the procurement instrument Schedule.

204.7105–2 Criteria for establishing.

(a) As an alternative to setting forth in the Schedule an extensive list of contract line or subline items (e.g., spare parts lists), a contract line item may be established referencing a document attached to the contract which shall be designated an exhibit. The exhibit shall set forth as exhibit line items what would otherwise be shown as contract line items. When exhibits are used, the following shall apply:

(1) Each exhibit shall apply to one contract line or subline item only; however, more than one exhibit may apply to a single contract line item.

(2) DD Form 1423 (Contract Data Requirements List) may be used as an exhibit or as an attachment. If used as an exhibit, the exhibit identifier (204.7105–3) shall be entered in the "TO EXHIBIT" line in the upper left corner of the form (the "ATCH NR" line shall be left blank), one contract line or subline item shall be established in the Schedule which reflects the exhibit, and the standard procedures for identifying exhibits prescribed in 204.7105–3 below and for numbering exhibit line and subline items prescribed in 204.7106 shall be followed. If the DD Form 1423 is used as an attachment, a numeric attachment number shall be entered in the "ATCH NR" line in the upper left corner of the form (the "TO EXHIBIT" line shall be left blank) and a separate contract line or subline item shall be established in the Schedule for, and which references, each deliverable sequence number of data on the DD Form 1423.

(3) Contract line or subline items in the Schedule which reference an exhibit shall not contain unit prices or total amounts, except when necessary to reflect the amount of funds for actual or estimated requirements to satisfy the management needs of the individual procuring activity. When unit prices or total amounts are shown to satisfy a management need, such prices or amounts shall be set forth in parentheses within the item description block of the contractual document (i.e., not within the unit price or amount columns).

(b) As an alternative to setting forth in the Schedule an extensive list of contract subline items, a contract subline item may be established which references an exhibit in the same manner as for a contract line item.

(c) The term "Exhibit" shall not be used to identify any other attachment to a procurement instrument. When

contract line items or subline items refer to a document attached to a procurement instrument which establishes a deliverable requirement, such as spare parts or data on a DD Form 1423, this document shall be termed an Exhibit. When other types of documentation are appended to or incorporated by reference in a procurement instrument, such documentation shall be referred to as an "Attachment" or other term identifying it as appended documentation. Such documentation may be attached to a contract exhibit, provided such documentation does not identify a deliverable requirement which is not established by a contract or exhibit line or subline item.

204.7105–3 Procedures for identifying.

Exhibits shall be identified by either a single or double capital letters. The letters "I" and "O" shall not be used. Exhibit identifiers need not be assigned consecutively, nor sequentially, but they shall not be duplicated within a procurement instrument and shall always appear in the first or first and second positions of all applicable "Exhibit Line Item Numbers" (see 204.7106). Each page of the exhibit shall have the procurement instrument identification number, exhibit identifier, and applicable contract line or subline item number cited thereon.

204.7106 Exhibit line and subline items.

204.7106–1 Criteria for establishing.

Criteria for the establishment of exhibit line and subline items shall be the same as for establishing contract line and subline items (see 204.7103–1 and 204.7104–2, respectively).

204.7106–2 Procedures for numbering.

(a) Exhibit line items within an exhibit shall be assigned four-position numbers. The exhibit identifier (see 204.7105–3) is used for the first or first and second positions, the remaining positions are assigned sequentially within each exhibit using alpha and numeric characters. The letters "I" and "O" shall not be used. Exhibit line item numbers shall be sequenced as set forth in 204.7106–3, except that numeric numbering may be employed in those cases where such numbering is adequate to meet the criteria established by 204.7106–1.

(b) Exhibit subline items shall be numbered in the same manner as specified for contract subline items (see 204.7104–3).

204.7106–3 Sequence of exhibit line item numbers.

TWO-POSITION SERIAL NUMBER FOR DOUBLE-LETTER EXHIBIT IDENTIFIER

Cumulative No. of Line Items	Serial Number Sequence
1–33	01 thru 09, then 0A thru 0Z, then
34–67	10 thru 19, then 1A thru 1Z, then
68–101	20 thru 29, then 2A thru 2Z, then
102–135	30 thru 39, then 3A thru 3Z, then
136–169	40 thru 49, then 4A thru 4Z, then
170–203	50 thru 59, then 5A thru 5Z, then
204–237	60 thru 69, then 6A thru 6Z, then
238–271	70 thru 79, then 7A thru 7Z, then
272–305	80 thru 89, then 8A thru 8Z, then
306–339	90 thru 99, then 9A thru 9Z, then
340–373	A0 thru A9, then AA thru AZ, then
374–407	B0 thru B9, then BA thru BZ, then
408–441	C0 thru C9, then CA thru CZ, then
442–475	D0 thru D9, then DA thru DZ, then
476–509	E0 thru E9, then EA thru EZ, then
510–543	F0 thru F9, then FA thru FZ, then
544–577	G0 thru G9, then GA thru GZ, then
578–611	H0 thru H9, then HA thru HZ, then
612–645	J0 thru J9, then JA thru JZ, then
646–679	K0 thru K9, then KA thru KZ, then
680–713	L0 thru L9, then LA thru LZ, then
714–747	M0 thru M9, then MA thru MZ, then
748–781	N0 thru N9, then NA thru NZ, then
782–815	P0 thru P9, then PA thru PZ, then
816–849	Q0 thru Q9, then QA thru QZ, then
850–883	R0 thru R9, then RA thru RZ, then
884–917	S0 thru S9, then SA thru SZ, then
918–951	T0 thru T9, then TA thru TZ, then
952–985	U0 thru U9, then UA thru UZ, then
986–1019	V0 thru V9, then VA thru VZ, then
1020–1053	W0 thru W9, then WA thru WZ, then
1054–1087	X0 thru X9, then XA thru XZ, then
1088–1121	Y0 thru Y9, then YA thru YZ, then
1122–1155	Z0 thru Z9, then ZA thru ZZ,

THREE-POSITION SERIAL NUMBERS FOR DOUBLE-LETTER EXHIBIT IDENTIFIER

Cumulative No. of Line Items	Serial Number Sequence
1–33	001 thru 009, then 00A thru 00Z, then
34–67	010 thru 019, then 01A thru 01Z, then
68–101	020 thru 029, then 02A thru 02Z, then
102–135	030 thru 039, then 03A thru 03Z
136–305	and so on to
306–339	090 thru 099, then 09A thru 09Z, then
340–373	0A0 thru 0A9, then 0AA thru 0AZ, then
374–407	0B0 thru 0B9, then 0BA thru 0BZ, then
408–441	0C0 thru 0C9, then 0CA thru 0BZ
422–1121	and so on to
1122–1155	0Z0 thru 0Z9, then 0ZA thru 0ZZ, then
1156–1189	100 thru 109, then 10A thru 10Z, then
1190–1223	110 thru 119, then 11A thru 11Z, then
1224–1257	120 thru 129, then 12A thru 12Z
1258–1461	and so on to
1462–1495	190 thru 199, then 19A thru 19Z, then
1496–1529	1A0 thru 1A9, then 1AA thru 1AZ, then
1530–1563	1B0 thru 1B9, then 1BA thru 1BZ
1564–2277	and so on to
2278–2311	1Z0 thru 1Z9, then 1ZA thru 1ZZ, then
2312–2345	200 thru 209, then 20A thru 20Z, then
2346–2379	210 thru 219, then 21A thru 21Z, then
2380–2413	220 thru 229, then 22A thru 22Z
2414–2617	and so on to
2618–2651	290 thru 299, then 29A thru 29Z, then
2652–2685	2A0 thru 2Z9, then 2ZA thru 2ZZ, then
2686–2719	2B0 thru 2B9, then 2BA thru 2BZ
2720–3433	and so on to
3434–3467	2Z0 thru 2Z9, then 2ZA thru 2ZZ, then
3468–3501	300 thru 309, then 30A thru 30Z
3502–10,403	and so on to
10,404–10,437	900 thru 909, then 90A thru 90Z, then
10,438–10,471	910 thru 919, then 91A thru 91Z
10,710–10,743	990 thru 999, then 99A thru 99Z, then
10,744–10,777	9A0 thru 9A9, then 9AA thru 9AZ, then
10,778–10,811	9B0 thru 9B9, then 9BA thru 9BZ
10,812–11,525	and so on to
11,526–11,559	9Z0 thru 9Z9, then 9ZA thru 9ZZ

204.7107 Contract modifications.

Items of supplies or services set forth in contract or exhibit modifications shall reflect the applicable line or subline item numbers, if any, appearing in the basic contract, except in those instances when the nature of the modification necessitates re-identification of a partial quantity of an existing contract line item or exhibit line item. Situations described below are intended to furnish guidance as to when a new line or subline item number should or should not be assigned as the result of a contract modification.

(a) Modification applying to definitized items (firm price of item is included in the contract or, if this modification establishes additional quantities of items already included in the contract, the price of the item in the modification is the same as in the contract or, if this is a new item, the modification contains a firm price):

(1) If the modification applies to the total quantity of the existing line or subline item, the original line or subline item number may be retained.

(2) If the modification changes the specification of a partial quantity of the existing contract or exhibit line or subline item, but the specification change is not of sufficient magnitude to make the partial quantity separately identifiable (e.g., new National Stock Number or item description, see 204.7103–1(a)(2) and 204.7104–2(c)(3)), and the unit price change is averaged to provide a revised single unit price for the total quantity on the line or subline item, the original contract or exhibit line or subline item number may be retained.

(3) If the modification adds a new item of supply or services to the contract or exhibit, the new item shall be assigned the next unused contract or exhibit line or subline item number.

(4) If the modification affects only a partial quantity of an existing contract or exhibit line item or subline item and changes other than delivery date and/or, ship to mark for data, the unchanged portion shall retain the original contract or exhibit line or subline item number. The changed portion shall be assigned the next unused contract or exhibit line or subline item number.

(b) Modifications applying to undefinitized items (although a requirement for this item has already been included in the contract or previous exhibit a firm price has not been negotiated or, if this modification establishes additional quantities of an item, the price of the item in the modification is not firm or if this modification adds a new item for which the firm price has not been established):

(1) If the modification applies to the total quantity of the existing line or subline item, the original line or subline item number may be retained.

(2) If the modification changes the specification of a partial quantity of the existing contract or exhibit line or subline item, but the specification change is not of sufficient magnitude to make the partial quantity separately identifiable (e.g., new National Stock Number or item description, see 204.7103–1(a)(2) and 204.7104–2(c)(32)), and the unit price change is averaged to provide a revised single estimated unit price for the total quantity on the line or subline item, the original contract or exhibit line or subline item number may be retained.

(3) If the modification adds a new item of supply or service to the contract or exhibit, the new item shall be assigned the next unused contract or exhibit line or subline item number.

(4) If the modification is undefinitized (price) and increases the quantity of an existing definitized (price) contract or exhibit line or subline item, the next unused contract or exhibit line or subline item number will be assigned to the increased quantity.

(5) If the modification increases the quantity of an existing but undefinitized (price) contract or exhibit line or subline item, the original line item number may be retained if the same unit price applies to the total quantity (existing plus increase) of the line item; if the unit price of the increased quantity differs from that of the existing quantity, the next unused contract or exhibit line item or subline item number will be assigned to the increased quantity.

(6) If the modification affects only a partial quantity of an existing contract or exhibit line or subline item and definitizes price, the definitized portion shall retain the original contract or exhibit line or subline item number. The undefinitized portion shall be assigned the next unused contract or exhibit line or subline item number; however, if the same item on another existing contract or exhibit line or subline item has already been definitized and the newly definitized quantity is definitized at the same unit price as the existing definitized quantity, or an average definitized unit price is established for the new and the existing definitized quantities, then the undefinitized portion may retain its existing line item number and the newly definitized quantity may be added to the contract or exhibit line item for the previously definitized quantity.

(7) If the modification affects only a partial quantity of an existing contract or exhibit line or subline item and does not change the delivery schedule nor definitize price, the unchanged portion shall retain the original contract or exhibit line or subline item number. The changed portion shall be assigned the next unused contract or exhibit line or subline item number.

(c) In any event, all items of supplies or services appearing in modifications and exhibits shall be established and numbered in accordance with the uniform numbering procedures prescribed in this subpart. If subline numbers are assigned, all requirements for the associated contract or exhibit line item will be identified as subline items, and the contract or exhibit line item will serve only as a common denominator for the accumulation of management data.

204.7108 Contract Accounting Classification Reference Number (ACRN).

204.7108–1 General.

As a method of relating the long line accounting classification citation number to detail line item scheduled information, the Accounting Classification Reference Number (ACRN) shall be utilized in all contracts assigned for the contract administration to the Defense Contract Administration Services, DLA, and to Plant Cognizance Repesentatives of the Military Departments and Agencies.

204.7108–2 Criteria for establishing.

This two position alpha/numeric control code is required for Military Standard Contract Administration Procedures (MILSCAP) processing, and may also be used in contracts administered by each Service/Agency. Under MILSCAP, the ACRN is required to associate the Accounting Classification Trailer Record, the Supplies Schedules Data Record and the Services Line Item Data Record with the long line accounting classification. The reference number is also used to associate the various record formats of the Contract Payment Notice as described in Chapter 9 of the MILSCAP Manual, DoD 4105.63–M.

204.7108–3 Procedures for using the Accounting Classification Reference Number (ACRN).

(a) The ACRN will be any combination of a two position alpha/numeric code assigned discretely to each accounting classification within each contract. The letters "I" and "O" shall not be used.

(b) This code will be shown as a detached prefix to the long line accounting classification number in the Accounting and Appropriation Data block and/or Section K (Contract Administration Data) of the contract, except that accounting classification numbers included in the contract only for the information of the Transportation Officer for citation on Government bills of lading for shipment at Government expense of items on an f.o.b. origin contract need not be prefixed with an ACRN. In the case of modifications to contracts/orders which have been previously assigned a long line accounting classification number(s), only the ACRN(s) assigned to that number(s) need be shown in the Accounting and Appropriations Data block and/or Continuation Sheet(s) of the modification.

(c) If more than one ACRN is assigned in the contract, the ACRN shall also be shown in the contract Schedule as follows:

(1) The ACRN shall be shown adjacent to the identity code of each "Ship To/Mark For," unless the procedure in (c) (2) or (3) below is used. Only one ACRN may be assigned to the same "Ship To/Mark For" within the same contract line or subline item number, except in rare cases when multiple accounting classifications apply to a single unit so the quantity cannot be subdivided to relate to a single accounting classification. In such case, the contract shall provide sufficient information under the heading "Payment Instructions for Multiple Fund Accounting Citations" to permit proper payment and fund accounting;

(2) If only one accounting classification applies to a subline item, the ACRN may be shown in the Supplies/Services column near the subline item description;

(3) If only one accounting classification applies to a line item, the ACRN may be shown in the Supplies/Services column near the line item description; and

(4) The ACRN shall be shown in the contract Schedule in the following manner: ACR:1D

(5) For cost-reimbursement type contracts, the provisions of this paragraph (c) do not apply.

(d) The purchasing office executing a contract, basic ordering agreement, or blanket purchase agreement is responsible for control of assignment of ACRNs pertaining thereto. Contract or agreement provisions which provide for the issuance of contract modifications (including provisioned item order modifications), calls, orders, or work requests by organizations other than the purchasing office executing the contract or agreement will contain instructions for ACRN assignment. This may be accomplished by individual assignments

as funds are cited, by assignment of blocks of ACRNs to offices authorized to issue contract modifications, calls, orders or work requests or by some other appropriate method. In no case, however, will an ACRN apply to more than one long line accounting classification in a contract. The authority to control ACRN assignment shall not be delegated to another office by the purchasing office issuing the contract or agreement.

204.7109 Indefinite delivery type contracts.

(a) When an indefinite delivery type contract includes provisions wherein the price of an item is determined at the time a delivery order is issued based on such factors as the quantity to be ordered (e.e., 10–99 at $1.00, 100–249 at $.98, and 250 or more at $.95), the FOB provision, the destination, or the type pack required in the delivery order, it shall not be necessary to assign a separate line item number in the indefinite delivery type contract to each price for the same item. Each line or subline item in the individual delivery order, however, shall cite only one of the unit prices in the indefinite delivery type contract.

(b) Except as noted in (a) above, criteria for contract line item assignment (see 204.7103) shall be applicable to indefinite delivery type contracts.

PART 205—PUBLICIZING CONTRACT ACTIONS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

205.001 Policy.

(c) Small business specialists in each purchasing office are responsible for screening all proposed procurements and for recommending action to be taken with respect to publicizing such procurements in accordance with the requirements of this subpart. In those offices where no small business specialist is assigned, the contracting officer or other designated representative shall accomplish the foregoing.

Subpart 205.1—Dissemination of Information

205.101 Methods of Disseminating Information.

(a)(2) *Displaying in Public Place.* A copy of each solicitation for an unclassified procurement in excess of $5,000 which provides at least 10 calendar days for submission of offers shall be displayed at the contracting office and, if appropriate, at some additional public place from the date issued until 7 days after bids or proposals have been opened. But see Part 13 for small purchases.

205.102 Availability of Solicitations.

(a)(1) In determining the "reasonable number" of copies to be maintained, the contracting officer shall consider, among other things, the extent of initial solicitation, reproduction costs, the nature of the acquisition, whether access to classified matter is involved, the anticipated requests for copies based upon responses to synopses and other means of publication in previous similar situations, and the fact that publishers and others who disseminate information regarding proposed acquisitions normally do not require voluminous specifications or drawings. With regard to classified acquisitions, the foregoing instructions apply to the extent consistent with Departmental security instructions and procedures.

(4)(i) When the purchase activity is not in possession of complete sets of specifications, plans and drawings (as in some procurements of airframes, shipbuilding, or major weapons systems), or the drawings and specifications are classified, or are so voluminous that display and distribution in accordance with prescribed procedures is impracticable, the solicitation shall contain notice of this fact and of the location at which the specifications, plans, or drawings may be examined.

Subpart 205.2—Synopses of Proposed Contracts

205.201 General.

(b) *Commodity assignments.* When an item is assigned or is within a Federal Supply Class assigned for procurement in FAR Subpart 17.5 and is purchased by other than the assigned Department, the synopsis shall cite the applicable purchase exclusion number from 208.7101–1 or 208.7101–2.

(S–70) Publication of Procurement Less Than $10,000. When recommendation by procurement personnel or the small business specialist, and approved by the contracting officer, proposed procurement less than $10,000 may be publicized in the *Commence Business Daily.*

205.202 Exceptions.

The following need not be publicized in the Synopsis:

(i) The procurement for security reasons is of a classified nature;

(ii) Procurement of perishable subsistence when made by placement of an order under a contract by FAR 16.5;

(iii) Procurement is for utility services and only one source is available;

(iv) Procurement which is of such unusual and compelling urgency that the Government would be seriously injured by the delay involved in permitting the date set for receipt of bids, proposals, or quotations to be more than the time periods specified at FAR 5.203;

(v) Procurement to be made by an order placed under an existing contract covered by FAR Subpart 5.2;

(vi) Procurement to be made from another Government Department or agency including procurements from the SBA using the authority of Section 8(a) of the Small Business Act, or a mandatory source of supply, such as an agency for the blind under the blind-made products program;

(vii) Procurement that results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal that demonstrates a unique or innovative research concept and pubication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research;

(viii) Procurement for which a foreign government reimburses the Department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty;

(ix) When it has been determined in writing by the Secretary, with the concurrence of the Administrator of the Small Business Administration, that advances notice is not appropriate or reasonable.

205.203 Time of synopsizing.

When synopsis is required, contracting offices shall not issue a competitive solicitation until at least 15 days after the date of publication of a proper notice of the procurement action in the *Commerce Business Daily*; *Provided;* That, in the case of research and development procurements, the interval shall be 30 days from the date of publication. Contracting officers may presume that notice has been published 5 days (2 days if electronically transmitted) following transmittal of the synopsis to the *Commerce Business Daily.*

205.204 Presolicitation notices.

See FAR 14.205—(c) and 15.404(b).

205.205 Special situations.

(c)(1) Each procurement to be made in the United States, its possessions, or Puerto Rico for which the total fee (including phases and options) is expected to be $10,000 or more shall be synopsized in accordance with 205.207(d)(S–71).

(c)(2) A notice of procurements with fees not expected to be less than $10,000, or to be made outside the United States, its possessions, or Puerto Rico, shall be displayed at the contracting office and need not be publicized in the *Commerce Business Daily*.

(c)(S–70) For procurements with an estimated total fee of $300,000 and which require notification to Congress in accordance with 10 U.S.C. 2807, no public announcement shall be made until two weeks after Congress has been notified.

205.207 Preparation and transmittal of synopses.

(b)(1) The first line of the text will state the number of the synopses being sent. Synopses will be numbered consecutively by the reporting activity during the calendar year, using a new series of numbers for each year.

(d)(2) When referenced, Numbered Note 12 will appear in the *Commerce Business Daily* as follows:

Note 12: One or more of the items under this procurement may be subject to the requirements of the Agreement on Government Procurement approved and implemented in the United States by the Trade Agreements Act of 1979. All offers shall be in the English language and in U.S. dollars. The solicitation procedure is open; that is, all interested suppliers may submit an offer.

(End of Note)

(d)(S–70) If the synopsis is for a sole source contract, the synopsis shall include reference to Numbered Note 22. The Numbered Note will appear in the *Commerce Business Daily* as follows:

Note 22: This procurement is for supplies or services for which the Government intends to solicit and negotiate with only one source. Interested persons are invited to identify their interest and capability to respond to the requirement or to submit proposals in responses to this notice. This notice of intent is not a request for competitive proposals. A determination by the Government not to open the requirement to competition based upon response to this notice is solely within the discretion of the Government. Information received as a result of the notice intent will normally be considerd solely for the purpose of determinng whether to conduct a competitive procurement. Nevertheless, the sole source may not presume that the solicitation will be amended in the event that competitive proposals are received if the solicitation, as issued, is sufficient to support a competitive procurement. In that case, award may be made pursuant to the solicitation's terms. In accordance with Pub. L. 98–72, the contracting officer will not commence negotiations for award of a contract until at least 30 days have elapsed from the date of this notice.

(End of Note)

(d)(S–71) Each notice publicizing procurement or architect-engineer services shall be headed *"R. Architect-Engineer Services"*. The project shall be listed with a brief statement concerning the location, scope of service required, the significant evaluation criteria and the relative order of importance the Government attaches thereto, the estimated construction cost range (see FAR 36.204), the construction cost limitation (see FAR 36.205), the type of contract proposed, the estimated start and completion dates, and the date by which responses to the notice must be received, including submission of Standard Form 255, if required. Appropriate statements shall be made concerning any specialized qualifications, security classifications, and limitations on eligibility for consideration. Qualifications or performance data required from architect-engineer firms shall be described. The foregoing data shall be followed by the statement *"Firms desiring consideration shall submit appropriate data as described in Numbered Note 62. This is not a request for a proposal"*. The name of the responsible procurement office should follow together with the complete address and telephone number. The numbered note will appear in one issue each week of the *Commerce Business Daily* as follows:

Note 62: Architect-engineer firms which meet the requirements described in this announcement are invited to submit: (1) a Standard Form 254, Architect-Engineer and Related Services Questionnaire; (2) a Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, when requested; and (3) any requested supplemental data to the procurement office shown. Firms having a current Standard Form 254 on file with the procurement office are not required to resubmit this form. Firms responding to this announcement before the closing date will be considered for selection, subject to any limitations indicated with respect to size and geographic location of firm, specialized technical expertise or other requirements as listed. Following an initial evaluation of the qualification and performance data submitted, three or more firms considered to be the most highly qualified to provide the services required will be chosen for interview. The Department of Defense policy for selection of architect-engineer firms is not based upon competitive bidding procedures, but rather upon the professional qualifications necessary for the satisfactory performance of the professional services required, subject to the following additional considerations: (1) specialized experience of the firm in the type of work required; (2) capacity of the firm to accomplish the work in the required time; (3) past experience, if any, of the firm with respect to performance on Department of Defense contracts; (4) location of the firm in the general geographical area of the project, provided that there is an appropriate number of qualified firms therein for consideration; and (5) volume of work previously awarded to the firm by the Department of Defense, with the object of effecting an equitable distribution of contracts among qualified architect-engineer firms including minority-owned firms and firms that have not had prior Department of Defense contracts. Firms desiring to register for consideration for future projects administered by the procurement office (subject to specific requirements for individual prejects are encouraged to submit annually a statement of qualifications and performance data, utilizing Standard Form 254, Architect-Engineer and Related Services Questionnaire.

(End of Note)

Note 62 is a *Commerce Business Daily* standard Numbered Note which applies to all DoD notices publicizing procurement of architect-engineer services. When the notice is used in accordance with FAR 2055.205(C), the substance of the Numbered Note shall be included.

Subpart 205.3—Synopses of Contract Awards

205.301 General.

(a) Except for classified awards, all awards of contracts to be performed in whole or in part within the United States, in excess of $25,000, which are likely to result in the award of subcontracts, shall be promptly published in the *Commerce Business Daily*, "Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards."

205.302 Preparation and transmittal of synopses of awards.

(b) The synopsis of contract awards shall also contain the following information:

(S–70) the classification code (4-digit) applicable to the procurement action;

(S–71) a clear and concise description of the supplies or services being procured, including a national stock number or a service stock number when assigned.

(S–72) the quantity of each item;

(S–73) the name, size status ((S) for small business and (L) for large business), and the full address of the contractor.

205.303 Announcement of contract awards.

(a) *Public announcement.* Information on proposed contractual actions over $3 million shall be submitted in writing in accordance with Departmental/Agency procedures. Report Control Symbol DD–LA–(AR) 1279 applies. Departments will submit reports to the Office of the Assistant Secretary of Defense (Public Affair) by the close of business the day before contract award is proposed.

(S–70) *Congressional notification.* In accordance with Departmental procedures, Departments shall notify the appropriate Members of Congress (Senator and Representatives in whose state and district the proposed contractor is located and, if different, in whose state and district the work is to be performed) of contract awards of over $3 million concurrent with the public announcement described in (a) above.

Subpart 205.4—Release of Information

205.404–1 Release procedures.

(b)(1) Classified Information shall be released through existing security channels in accordance with DoD Industrial Security Regulation (DoD 5220.22R).

205.404–2 Announcements of long-range acquisition estimates.

Activities publishing long-range procurement estimates shall, publicize them in the *Commerce Business Daily* by forwarding to the address listed in FAR 5.207 an announcement reflecting the fact that a long-range procurement estimate has been published and citing the address of the office from which a copy of the estimate can be obtained. Each announcement should be prepared substantially as the following example.

"The Defense Personnel Support Center has published an estimate of equipment and footwear procurement requirements for and Quarters FY . These estimates, *which are subject to revision and are in no way binding on the Government,* may be obtained, by request, from the Defense Personnel Support Center (ATTN: Procurement and Production Directorate), 2800 South 20th Street, Philadelphia, Pennsylvania 19101."

Subpart 205.5—Paid Advertisements

205.501 Definitions.

(a) *Media* means any vehicle used to convey an advertising message; it includes newspapers, magazines, trade and professional journals, special printed media, radio and television;

(b) *Newspaper* means a publication printed and distributed at stated intervals to convey news and includes trade journals which carry news in addition to technical matter.

(c) *Space* means the space purchased for advertising messages in printed media, and the time purchased for advertising messages on radio or television broadcasts;

205.502 Authority.

(a) The authorization shall specify the limitations, if any, of the authority granted. Administrative duties involved in accomplishing the advertising may be delegated in writing, personally signed by the delegate, setting forth the extent of the administrative duties involved. A copy of the instrument delegating authority to advertise and a copy of the instrument assigning administrative duties thereunder will either be attached to the first voucher submitted for payment or shall be forwarded immediately upon issuance to the General Accounting Office address to which records of the Department are submitted for audit purposes. When authority to advertise has been delegated by the Secretary of the Department concerned, a reference to the authorizing directive on the advertisement order is acceptable in lieu of attaching a copy of the authority to the payment voucher. Copies of such instruments also shall be attached to the duplicate voucher submitted to the paying office.

(1) Special or general authority to place advertisements in newspapers must be secured in advance by the use of DD Form 1535, Request/Approval for Authority to Advertise. Special authority permits the publication of a given advertisement a specified number of times in designated newspapers. General authority permits the publication of such advertisements during a designated fiscal year as may be required.

(2) Requests for authority to place advertisements in newspapers shall be submitted through channels to the Secretary or his designee.

(b) Unless the Secretary of the Department concerned determines otherwise, DD Form 1535 is not required as authority to place advertisements in media other than newspapers. Paid advertisements to recruit civilian personnel shall be subject to the limitations in Section 332–1–9 of the Federal Personnel Manual.

205.504 Use of advertising agencies.

(b) The services of the advertising agencies include but are not limited to counseling as to the selection of the media for insertion of the advertisement; contacting the media in the interest of the Government agency concerned; placing of insertion orders; selection and ordering of typography; copywriting; and preparation of rough layouts.

Part 206 [Reserved in FAR]

SUBCHAPTER B—ACQUISITION PLANNING

PART 207—ACQUISITION PLANNING

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 207.1—Acquisition Plans

207.102 Policy.

The Departments shall preform coordinated planning as prescribed by FAR Subpart 7.1 and this supplement for those acquisitions which meet the criteria and thresholds in 207.103(a)(2).

207.103 Agency-head responsibilities.

(a)(1) The acquisition planning provided for herein and in FAR Subpart 207.1 applies to the more complex and costly programs to procure hardware developed and produced to satisfy the need for modern military equipment. These acquisition planning principles may also be adapted to the acquisition of all supplies and services. Although some degree of acquisition planning is necessary to buy shoes, subsistence, or other common items of supply, the detailed planning described herein and in FAR Subpart 207.1 is not applicable to such items.

(a)(2) Acquisition plans shall be prepared for—

(i) Development acquisitions (see FAR 35.001) whose total contractual cost is estimated at $2,000,000 or more, and

(ii) Production and service acquisitions whose contractual cost is estimated at $15,000,000 for all years or $5,000,000 for any fiscal year. These plans shall include the contents described in FAR 207.105, as appropriate.

(a)(3) Acquisition plans for acquisitions described in (a)(2)(i) and (ii) above should be keyed to the Department of Defense Five Year Defense Program, applicable budget submissions, and the Decision Coordinating Paper/Program Memorandum, as appropriate.

(a)(4) The criteria and thresholds in (a)(2) above do not preclude the

preparation of acquisition plans for any acquisition, whether short-range or long-range, when determined necessary by the Departments.

(a)(5) Acquisitions which represent a final buyout, a one-time buy, or small, repetitive buys (see FAR 7.102) are exempt from the requirements of (a)(2) and (4) above.

(b) Acquisition plans meeting the criteria and thresholds of (a)(2) above, shall be prepared on a system basis covering the major items of hardware/equipment to be developed/produced including Government-furnished equipment and system support. Other acquisition plans may be written on either a system or individual contract basis.

(c) The Departments shall ensure that the principles of FAR Subpart 7.1 and this Subpart are used as appropriate.

(d) The program manager, or other official responsible for the program concerned has overall responsibility for the requisite acquisition planning as this official has for all other planning for the program. The contracting officer or the contracting officer's designee shall support this official by preparing and maintaining the acquisition plan. The contracting officer shall enlist the aid of cognizant engineering, production, logistics, quality assurance, maintenance and other functional staff business management personnel at command and subordinate buying activity levels as required. The head of the contracting activity, or the chief contracting official of the buying activity, in coordination with the program manager, must ensure that the objectives of the acquisition plan are realistic and achievable and that solicitations and contracts will be appropriately structured to equitably distribute technical, financial, and economic or business risks, consistent with the program phase of the acquisition, the technical requirements and needs of the specific program, and salient business and legal constraints. All personnel engaged in the management of the acquisition process, including program, technical and financial personnel, are essential to the comprehensive acquisition planning and preparations necessary to achieve the acquisition objectives. These personnel must be made cognizant of their responsibilities and actively participate in the development and preparation of the acquisition plan, if acquisition planning is to be successful.

(e) Acquisition plans shall be reviewed and approved in accordance with Departmental procedures.

(f)(1) *Design-to-cost criteria and thresholds.*

(i) Design-to-cost principles shall be applied—

(A) in all acquisitions for major defense systems (DoD Directive 5000.1) unless exempted by the Secretary of Defense, and

(B) to the acquisition of systems, subsystems, and components below the thresholds for major defense systems to the extent prescribed in DoD Directive 5000.28, and in accordance with Departmental proceduers. (See DoDD 5000.28 for the policies and procedures applicable to design-to-cost.)

(ii) In solicitations and contracts including design-to-cost principles, consideration should be govern to prescribing and tailoring the required cost, technical and schedule parameters to the particular program, and to providing the contractor with flexibility to identify unnecessary or marginally cost effective technical and schedule features susceptible to trade-offs (see DoDD 4105.62). This is to facilitate product development at the lowest life-cycle-cost consistent with mandatory schedule and performance requirements. (For the relationship of design-to-cost to value engineering, see FAR 48.105)

(2) *Life-cycle-cost criteria.*

(i) Since the cost of operating and supporting a system or equipment over its useful life is substantial and, in many cases, greater than the acquisition cost, it is essential that such costs be considered in development and acquisition decisions in order that proper consideration can be given to those systems or equipments that will result in the lowest life-cycle-cost to the Government. Guidelines, including representative detailed procedures for implementing life-cycle-costing are contained in the following documents published by the Under Secretary of Defense for Research and Engineering:

(A) LCC–1, DoD Life-Cycle-Costing Procurement Guide (Interim);

(B) LCC–2, DoD Life-Cycle-Costing Casebook; and

(C) LCC–3, Life-Cycle-Costing Guide for System Acquisitions (Interim).

(g) The following format is illustrative of an acquisition plan and is designed merely to give guidance in the preparation of acquisition plans. It may be modified to suit the acquisition being planned as well as the phase of program formulation. The narrative portion of the acquisition plan should be brief but comprehensive. It should provide not only the background necessary to understand the acquisition but also a plan for contracting for the item or system, including the rationale and assumptions upon which the plan is predicated. It should reference other documents where applicable. The milestone chart introduces discipline into the planning process by identifying in graphic form the points at which critical decisions must be made and time factors that must be observed when action is necessary to produce an item or to make a competitive buy possible. The chart not only forces consideration of all factors involved but it also provides a visual portrayal of the decisions necessary to achieve objectives and indicates the time at which they should be made. The milestone chart portrays the step-by-step planning and normally covers the period from advance development through delivery of the production items. The chart tells the story of time, cost and quantity of required items, illustrating milestones which must be recognized in the decision making process. However, it is important to recognize that the format of the milestone chart is flexible, because the same milestones may not be present in every acquisition program.

ILLUSTRATIVE ACQUISITION PLAN FORMAT

ACQUISITION PLAN NO.

PROGRAM _____

PROGRAM MANAGER

DESCRIPTION OF PROGRAM/SYSTEM/COMMODITY, ETC.

_____

_____

APPROVED:

CONTRACTING REPRESENTATIVE

DATE ———

PROGRAM MANAGER ———

DATE ———

(Address each of plan content elements in FAR 7.105(a) and (b) and 207.105, as appropriate.)

ILLUSTRATIVE MILESTONE CHART FORMAT [RESERVED]

207.104 General procedures.

(c) See Appendix J when an acquisition plan is used to support a determination and findings (D&F).

207.105 Contents of written acquisition plans.

In addition to the contents prescribed by the FAR, acquisition plans should include the following, as appropriate:

(a) *Acquisition background and objectives.*

(a)(7) *Risks.* As appropriate, discuss the effect of business base changes of major contractors' workload on program cost.

(a)(S–70) *Applicability of a Decision Coordinating Paper (DCP), program memorandum Defense System*

Acquisition Review Council (DSARC), and/or internal service reviews. Describe the options set forth in the DCP/Program Memorandum and delineate which option the acquisition plan supports. Delineate the DSARC and/or internal service reviews on the milestone chart.

(a)(S–71) *Approval for operational use.* Indicate the date approval for operational use has been or will be obtained. If waivers are requested, describe the need for the waivers.

(a)(S–72) *Milestone chart attachment depicting the objectives of the acquisition.* Provide a chart in general accordance with the sample milestone chart at 207.103(g).

(a)(S–73) *Milestones for updating the acquisition plan.* Indicate when the plan will be updated. Updates should be scheduled to coincide with DSARC reviews and the transition from one phase to another (full-scale development to production).

(b) *Plan of action.*

(b)(5) *Authority for contracting by negotiation.* See Appendix J for the information required to be included in the acquisition plan if the plan is to be used to support a determination and findings (D&F).

(b)(6) *Budgeting and funding.* Include specific references to budget line items and program elements, where applicable, estimated production unit cost, and the total cost for remaining production.

(b)(13) *Logistics considerations.*

(i) Describe the extent of integrated logistic support planning to date, including references to approved plans.

(ii) In discussing the reliability and maintainability (R&M) objective, including warranties, discuss the mission profile, R&M program plan, R&M predictions, redundancy, qualifed parts lists, parts and material qualification, R&M requirements imposed on vendors, failure analysis, corrective action and feedback, and R&M design reviews and trade-off studies.

(b)(S–70) *Acquisition approach for each proposed contract.* If not elsewhere described in the plan, describe the acquisition approach for each proposed contract, including the following, as appropriate.

(i) Item description.

(ii) Estimated cost.

(iii) Proposed sources and basis for selection.

(iv) Source selection procedures. If formal source selection procedures will be used, discuss milestones for development of the plan and provide a general overview of how the selection is to be conducted.

(v) Contract type. Provide rationale for recommendation of contract type.

(vi) Negotiation authority recommended. Discuss basis for recommendation of negotiation exception (see FAR 207.105(b)(5)).

(vii) Repurchase data. Provide a complete discussion of use of repurchase data to increase competition, including funding available for repurchase data and the contractual approach to acquiring such data, including proprietary rights and patent considerations.

(viii) Other considerations, as applicable.

(ix) Alternative acquisition approaches considered. Briefly discuss the merits and shortcomings of other approaches.

(x) Milestones for the contract cycle. Address those steps in FAR 7.105(b)(19) and any others, as appropriate.

Subpart 207.3—Contractor Versus Government Performance

207.302 General.

(d) DoD activities shall not convert a commercial activity to performance by a private contractor without having first conducted a cost comparison which demonstrates that contract performance is more economical.

207.304 Procedures.

(a)(3) In addition to the FAR requirement for the contracting officer to review the Performance-Oriented Work Statement (PWS), the contracting officer shall work in conjunction with the functional activity in the preparation of the PWS.

207.307 Appeals.

(b) The contracting officer shall forward requests for review of any discrepancy in the cost comparison to the preparer of the in-house cost estimate, for consideration in accordance with departmental procedures.

Subpart 207.4—Equipment Lease or Purchase

207.401 Acquisition considerations.

(a) The contracting officer shall obtain rationale, as prescribed by FAR 7.401 and 7.402, supporting the decision to lease or purchase from the requiring activity. This rationale shall be retained in the contract file.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

208.002 Use of other government supply sources.

(f) The GSA has responsibility of the disposition of strategic and critical materials which are in excess of national stockpile requirements. These materials are primarily metals, ores, chemicals and similar raw material items, and are listed and described in a GSA Bulletin which is disseminated to contracting activities through Departmental channels. Prior to initiating acquisitions of materials which are listed as being available for transfer from the GSA, the contracting activity should screen the list to determine whether the requirement may be met through transfer of materials from the GSA. Due consideration should be given to the quantity, quality and location of the material, and to the timeliness of its availability. Detailed information on these excess materials is available from the Property Management and Disposal Service, General Services Administration, Washington, D.C. 20405.

(g) It is the policy of the Department of Defense (see Pub. L. 86–777) to obtain its requirement of helium as follows:

(1) Bulk helium requirements (tank car lots) shall be acquired either directly from the Department of Interior (Bureau of Mines) or from private helium distributors which establish and maintain their eligibility in accordance with Bureau of Mines Regulations. Copies of the current list of eligible private helium distributors may be obtained from the Bureau of Mines, Helium Operations, P.O. Box H4372 Herring Plaza, Amarillo, Texas 79101;

(2) Helium in cylinders or trailers shall be acquired from the Department of Interior (Bureau of Mines) either direct or through General Services Administration Federal Supply Schedule contracts. Department of Defense activities will make a determination annually as to whether or not helium in cylinders and trailers will be obtained directly from the Bureau of Mines or through Federal Supply Schedules. If a determination is made that it is more economical to obtain such helium through Federal Supply Schedules, the estimated requirements will be processed to GSA. Once estimated requirements are processed to GSA, the resultant Federal Supply Schedule (FSG 68, Part III, section G) is mandatory on the requiring activities for the contract period.

208.002-70 Acquisition from the Department of Energy (DOE).

(a) *General.* This subpart covers the acquisition of material and supplies from the DOE.

(b) *Acquisition of radioisotopes and enriched stable isotopes.*

(1) DOE F Form 5400.3, "U.S. DOE Isotope Order Blank", and NRC Form 313, "NRC Application for Byproduct Material License", shall be used for the acquisition of radioisotopes and enriched stable isotopes from any of the DOE laboratories. No other type of order blank, purchase order, or contract shall be used in lieu of these forms.

(2) In the acquisition of radioisotopes, NRC Form 313 shall be filed with the Chief, Materials Licensing Branch Division of Fuel Cycle and Material Safety, Office of Nuclear Material Safety and Safeguards, United States Nuclear Regulatory Commission, Washington, D.C. 20555. If the application meets all regulatory requirement and applicable standards, NRC Form 374, "U.S. Nuclear Regulatory Commission Byproduct Materials License," will be issued to the applicant by the Radioisotopes Licensing Branch, Nuclear Regulatory Commission. After receipt of the NRC Form 374, a complete DOE F Form 5400.3 (in duplicate, if the contracting office desires to receive an accepted copy of the form back from the supplier), the license (NRC Form 374), and a Standard Form 1103, "U.S. Government Bill of Lading", shall be sent to the appropriate DOE laboratory. If a bill of lading is not furnished, shipment shall be made collect on a commercial bill of lading, to be converted at destination.

(3) The "Terms and Conditions" on the reverse side of the DOE F Form 5400.3 shall control all requisitions for radioisotopes and enriched stable isotopes acquired by the Departments from the DOE National Laboratories.

(4) NRC Form 313, "NRC Application for Byproduct Material License", shall be requisitioned directly from: United States Nuclear Regulatory Commission, Attn: Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, Washington, D.C. 20555. DOE F Form 5400.3 shall be acquisitioned directly from: Oakridge, TN 37830 (commercial telephone 615–574–6984) or Mound Facility, Monsanto Research Corporation, P.O. Box 32, Miamisburg, OH 45342 (commercial telephone 513–865–3501).

Subpart 208.3—Acquisition of Utility Services

See Supplement No. 5, Procurement of Utilities Services.

Subpart 208.4—Ordering From Federal Supply Schedules

208.402 Applicability.

(b) The subpart does not apply to items under the cognizance of the Defense Personnel Support Center.

208.404–1 Mandatory use.

(a) *Urgent requirements.* If delivery is offered in a shorter time than the maximum stated in the Schedule, but later than that required by the purchase request, the contracting officer shall ascertain from the activity initiating the purchase request whether the offered delivery is acceptable. This procedure need not be followed when transportation time from the contractor's shipping point or time required for inquiry and reply make conformance impracticable. When multiple award schedules are involved, the purchasing office need query only one contractor after considering the requirements of FAR 208.405–1.

208.404–2 Optional use.

(a)(S–70) DoD activities shall consider optional schedules as another source of supply to assure that purchase of supplies and services of the type contained in such schedules are really to the best advantage of the Government, price, delivery and other factors considered.

208.404–3 Requests for waivers.

(a) If such waiver is not granted, the case shall be referred to the Head of the Contracting Activity or his deputy, or to such higher authority as may be required by the Departments, and in the case of the Air Force, Commanders of AFLC Air Logistics Centers who shall make the final decision as to whether the nonschedule item will be purchased and shall promptly notify the Commissioner, Federal Supply Service, and the Purchasing Office, of the decision reached.

(b) When supplies or services are to be procured from other sources and the situation will not permit the delay incident to following the normal channels of obtaining a waiver from the General Services Administration prior to purchase, such waiver shall not be requested. In emergency situations, the head of the office initiating the purchase request, or his designated representative, shall furnish to the purchasing office a signed statement identifying the supplies or services to be purchased, and explaining why similar items listed in the applicable Federal Supply Schedule will not meet the specific requirements. The purchasing office shall, within 15 days of the date of purchase, furnish such statement to the Commissioner, Federal Supply Service, General Services Administration.

208.404–70 Applicability of Listed Federal Supply Schedules.

Supplies and services covered by the Federal Supply Schedules listed herein are mandatory in whole or in part upon some element of the Department of Defense. Some of the Federal Supply Schedules listed include classes unrelated to the Federal Supply Group which identifies the Schedule. To aid in locating an item in the mandatory Schedules, the classes included in each Schedule have been listed. The Remarks column states exceptions to the mandatory provisions of the Schedule when applicable. (But see 208.470–6 for mandatory use of GSA Term Contracts for maintenance, repair, rehabilitation and reclamation of personal property.) The Schedules should be checked for complete details concerning the exceptions.

(a) MANDATORY NATIONALLY

FSC		Title of Schedule	Remarks
Group	Class		
25		VEHICULAR EQUIPMENT COMPONENTS, Part I	No Exceptions.
	2520	Clutch Facings (Metallic).	
	2530	Brake Linings (Metallic).	
	2540	Tire Chains.	
26		PNEUMATIC TIRES AND INNER TUBES, Part II	No Exceptions.
	2610	Highway, Off-Highway and Industrial.	
26		PNEUMATIC TIRES, Part V	No Exceptions.
	2610	Motorcycle, Emergency/Pursuit and Agricultural.	
35		SERVICE AND TRADE EQUIPMENT, Part I	No Exceptions.
	3540	Sealing and Packaging Machinery.	
	3590	Heat and Cold Process and Laminating Presses.	
35		SERVICE AND TRADE EQUIPMENT, Part III	No Exceptions.
	3550	Vending Machines.	

(a) MANDATORY NATIONALLY—Continued

FSC Group	FSC Class	Title of Schedule	Remarks
36		SPECIAL INDUSTRY MACHINERY, Part II	Not Mandatory on DoD for the following items: 51-1, 51-1-1, 51-1-2, 51-1-3, 51-2, 51-3, 51-60, 51-61, 51-62, 51-104, 51-105, 51-106, 51-110, 51-110-1, 51-111, 51-112, 51-113, 51-114, 51-115, 51-125, 51-125-1, 51-126, 51-127, 51-146, 51-165, 51-166, 51-167 and 51-2017.
	3610	Lithographic Printing Plates and Solutions; Masters, Spirit Duplication, Thermal Process; Printing Duplicating and Book Binding Equipment.	
	3615	Pulverizing, Pulping and Shredding Machines.	
36		SPECIAL INDUSTRY MACHINERY, Part IV	Not Mandatory on DoD for the following items: 51-4, 51-5, 51-6, 51-10, 51-11, 51-12, 51-28, 51-29, 51-30, 51-32, 51-43, 51-44, 51-45, 51-46, 51-47, 51-48, 51-52, 51-53, 51-54, 51-55, 51-55-1, 51-56 and 51-57.
	3610	Copying Equipment, Supplies and Services.	
37		LAWN AND GARDEN EQUIPMENT, PART II, Section A	No Exceptions.
	3750	Lawnmowers, Mowers, Shredders, Edgers, Trimmers, etc.	
41		AIR CONDITIONING EQUIPMENT, Part I	No Exceptions.
	4120	Window Types and Remote Air-Cooled Condenser Units.	
45		SANITATION EQUIPMENT, Part II	No Exceptions.
	4540	Security Incinerators and Accessories.	
	6685	Replacement Pyrometer.	
51		TOOLS	Mandatory on DoD only for items in FSCs 5120 and 5130.
	5120	Hand tools, Nonpowered.	
	5130	Hand Tools, Powered. Note: This Schedule also includes certain items in FSCs 3220, 3405, 3413, 3415, 3416, 3417 and 3439.	
	5180	Pneumatic, hydraulic, powder actuated, gasoline engines	No Exceptions.
52		MEASURING TOOLS	No Exceptions.
	5210	Measuring Tapes.	
53		ABRASIVES	No Exceptions.
	5345	Belts, Disks and Stones.	
	5350	Cloth, Grain and Paper.	
58		COMMUNICATION EQUIPMENT, Part III, Section A	Mandatory on DoD, except FSC 5830.
	5830	Electronic Megaphones.	
	5835	Semi-Professional Audio Recording Equipment.	
58		COMMUNICATION EQUIPMENT, Part III, Section B	Mandatory on DoD, except FSC 5820.
	5820	Professional Video Recording Equipment.	
	5835	Professional Audio Recording Equipment.	
58		COMMUNICATION SUPPLIES, Part V	No Exceptions.
	5820	Tape, Video.	
	5835	Sound Recording Tape, Magnetic Tape Cartridges.	
	7430	Magnetic Cards.	
	7045	Electronic Date Processing Tape (widths other than ½").	
58		COMMUNICATION SUPPLIES, Part V. Section C	No Exceptions.
	5835	Instrumentation Recording Tape, Standard and High Resolution.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section H	No Exceptions.
	6830	Fire Extinguishing Fluorocarbons.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section J	No Exceptions.
	6830	Argon, Missile Checkout, NSN 6830-00-882-1793.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section K	Mandatory on DoD for Destinations listed in the Schedule.
	6830	Oxygen: Aviator's Breathing.	
70		DATA PROCESSING STORAGE AND RELATED EQUIPMENT, Part X	No Exceptions.
	5820	Video Tape Storage, Handling and Transportation Equipment.	
	5835	Audio, Instrumentation, and other Tape Storage, Handling, and Transportation Equipment.	
	7045	ADP Storage and Handling Equipment.	
	7110	Cabinets and Desks, Card Punch and Programmers.	
	7430	MTST Magnetic Tape Cartridge Storage.	
70		DATA PROCESSING SUPPLIES, Part XI. Edp ½" wide, 800, 1600 and 6250 bpi	No Exceptions.
71		HOUSEHOLD FURNITURE Part I, Section A	No Exceptions.
	7105	Ranch Style. Note: This Schedule also includes FSCs 7195 and 7520.	
71		HOUSEHOLD FURNITURE, Part I, Section B	No Exceptions other than those items obtainable from FPI Schedule of Products.
	7105	Early American and Eighteenth Century English and American Reproductions.	
71		HOUSEHOLD FURNITURE Part II, Section A	Not Mandatory on DoD for Index items 331 through 438.
	7105	Upholstered Living Room.	
71		HOUSEHOLD FURNITURE Part II, Section B	No exceptions other than those items obtainable from FPI Schedule of Products.
	7105	Modular Multiple Seating Units, Wood and Metal.	
71		HOUSEHOLD FURNITURE Part III	No Exceptions.
	7105	Danish, Traditional and Modern Styles.	
71		HOUSEHOLD FURNITURE, Part IV	No Exceptions.
	7105	Rattan Style.	
71		OFFICE FURNITURE, Part V, Section C	No Exceptions.
	7110	Steel Vertical blueprint Filing Cabinets, Roll Drawing Files, High Density and movable shelf Filing Systems.	
71		HOUSEHOLD FURNITURE, Part VII, Section A	Not Mandatory on DoD for items covered by Military Specifications or items obtainable from FPI Schedule of Products.
	7105	Metal, Indoor-Outdoor, Hospital and Quarters and Recreation Room.	
	7110	Lobby Use and Reception Room.	
71		HOUSEHOLD FURNITURE, Part VII, Section B	Not Mandatory on DoD for items covered by Military Specifications or items obtainable from FPI Schedule of Products.
	7105	Metal Frame Dormitory Furniture for Quaters Use.	
71		FURNITURE, Part X, Sections A and B	Not Mandatory on DoD for Self-Edged Tables or items obtainable from FPI Schedule of Products.
	7105	Section A—Classroom Furniture, Student Chairs, Desks and Tables; Teachers	
	7195	Chairs and Desks.	
	7105	Section B—Special Purpose Furniture, Cafeteria Tables and Chairs, Lockers,	
	7110	Training and Conference Tables & Chairs.	
	7125		
71		OFFICE FURNITURE, Part XI, Section B	No Exceptions.
	7110	Security Filing Cabinets, Safes, Vaultdoors, and Map and Plan Files.	
71		OFFICE FURNITURE, METAL AND WOOD, Part XII	No Exceptions.
	7110	Executive Modern, Wood and Metal.	
71		LIBRARY FURNITURE, Part XIII, Section A	No Exceptions.
	7195	Wood Shelving and Wood & Metal Case goods.	
71		LIBRARY FURNITURE, Part XIII, Section B	No Exceptions.
	7195	Metal Shelving.	
71		HOUSEHOLD FURNITURE, Part XV	No Exceptions other than those items obtainable form FPI Schedule of Products.
	7105	Traditional Wood, and Composite metal and Wood.	
71		HOUSEHOLD FURNITURE, Part XVI, Section A	No Exceptions.

(a) MANDATORY NATIONALLY—Continued

FSC Group	FSC Class	Title of Schedule	Remarks
	7105	Sofa Beds.	
58		COMMUNICATION SUPPLIES, Part V, Section	No Exceptions.
	5835	¼ Audio Recording Tape and reel and hubs.	
58		COMMUNICATION EQUIPMENT, Part VII	Not Mandatory on DoD for Rental, Repair and Maintenance of Government owned Equipment.
	5820	Radio Transmitting/Receiving equipment, tone/voice paging systems, and antennas.	
	5985		
61		BATTERIES, Part III	Mandatory on DoD, except Index Numbers 14 through 22.
	6135	Batteries and Dry Cells for: Alarm Systems, Emergency Lighting, Flashlights and Lanterns, Telephone Circuits, Tube Radios, Walkie Talkie and Paging Systems.	
	6140	Nickel Cadmium Batteries.	
62		LIGHTING FIXTURES AND LAMPS, Part I	Not Mandatory on the Dept. of Army, Air Force for any item covered by Army/Military Specification.
	6230	Household and Quarters Lamps.	
62		LIGHTING FIXTURES AND LAMPS, Part II	No Exceptions.
	6230	Light Sets, Emergency and Auxiliary.	
62		LIGHTING FIXTURES AND LAMPS, Part III	No Exceptions.
	6240	Fluorescent and Incandescent.	
62&67		LIGHTING FIXTURES AND LAMPS	No Exceptions.
	6240	Electric Lamps.	
	6750	Photographic Lamps.	
66		INSTRUMENTS AND LABORATORY EQUIPMENT, Part III	No Exceptions.
	6645	Time Recorders, Date and Time Stamps, Card Racks.	
67		MICROPHOTOGRAPHIC EQUIPMENT AND SUPPLIES, Part IV, Section B	Mandatory on DoD, except for items: 21-4(a), 21-4(b), 21-4(c), 21-6, 21-7, 21-12-1, 21-12-2, 21-12-3, 21-21, 21-21(a), 21,-22, 21-22(a), 21-40, 21-41 and NSN 6750-00-608-1092.
	6720	Microfilm Cameras.	
	6730	Microfilm Projectors and Readers.	
	6740	Microphotographic Equipment.	
	6750	Microphotographic Supplies.	
	6760	Microfilm Cartridges and Magazines.	
	7530	Microfilm Print Paper.	
	7670	Microfilmed Library Systems.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Sections E and F	No Exceptions.
	6830	Compressed and Liquefied Gases.	
		Section E—Refrigerant Gases.	
		Section F—Sulfur and Hexafluoride.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section G	Mandatory on DoD for Destinations listed in the Schedule.
	6830	Helium.	
71		HOUSEHOLD FURNITURE, Part XVI, Section B	No Exceptions.
	7105	Motel Type.	
71		FURNITURE, Part XXII	No Exceptions.
	7105	Lounge and Reception Room.	
72		AHOUSEHOLD AND COMMERCIAL FURNISHINGS, Part I, Section	Not Mandatory on DoD for Deck Covering and other items required for use aboard Vessels.
	7220	Carpets, Rugs, Carpet Tile and Carpet Cushions.	
72		HOUSEHOLD AND COMMERCIAL FURNISHINGS, Part I, Section B	Not Mandatory on DoD for Deck Covering and other items required for use aboard Vessels.
	7220	Floor Coverings, Tile Linoleum and Vinyl Sheet.	
72		HOUSEHOLD AND COMMERCIAL FURNISHINGS, Part I, Section C	Not Mandatory on DoD for Deck Covering and other items required for use aboard Vessels.
	7220	Entranceway Carpet Mats and Mattings.	
72		HOUSEHOLD AND COMMERCIAL FURNISHINGS, Part II	Mandatory on DoD for Window Shades only, FSC 7230.
	7230 8305	Window Shades, Cloth and Vinyl.	
74		OFFICE MACHINES, Part I	Not Mandatory on DoD for Repair Parts, Rental, Repair, Maintenance and Exchange Allowances.
	7430	Electric Typewriters, Composing, Photocomposing and Word Processing Machines.	
		(See FSC Group 74, Part V for Manual Typewriters).	
74		OFFICE MACHINES, Parts II and III	Not Mandatory on DoD for Repair Parts, Rental, Repair and Maintenance.
	7420	Accounting and Calculating Machines.	
	7450	Office Type Dictating and Transcribing Machines.	
	7490		Miscellaneous Office Machines
74		VISIBLE RECORD EQUIPMENT, Part IV	Not Mandatory on DoD for Rental, Repair and Maintenance.
	7460	Control Boards, Files and Frames.	
74		OFFICE MACHINES, Part V	No Exceptions.
	7430	Manual Typewriters and Repair Parts.	
		(See FSC Group 74, Part I for Electric Typewriters).	
75		OFFICE SUPPLIES, Part I, Section A. (Supplements 1 and 2)	No Exceptions.
	7510	Office Supplies (includes certain items of Art and Drafting supplies), and Label Tape, Pressure Sensitive Adhesive.	
	7690	Label Marking Tape.	
75		OFFICE SUPPLIES AND DEVICES, Part I, Section B. (Supplements 1, 2 and 3.)	No Exceptions.
	7520	Office Devices and Accessories.	
	7510	Tape, Pressure Sensitive.	
	81350	Tape, Pressure Sensitive, Packaging and Packing.	
	9310	Cardboard Bristol.	
75		OFFICE SUPPLIES, Part I, Section C	No Exceptions.
	7530	Special Use Paper; Drawings and Tracing; Graph; Paperboard; Index Sheet Set and Plastic Sheets.	
75		OFFICE SUPPLIES, Part IV	No Exceptions.
	7520	Rubber Stamps.	75
75		OFFICE SUPPLIES, Part V	No Exceptions; however plain envelopes for use in the District of Columbia shall be procured from GPO in accordance with Title 44 USC, Section 225.
	7530	Envelopes: Mailing, Printed and Plain.	
75		TABULATING CARDS, Part VIII	No Exceptions.
	7530	Tabulating Cards, Aperture Cards and Copy Cards.	
76		PUBLICATIONS, Part I	No Exceptions.
	7610	Books, Pamphlets, Dictionaries, Maps, Atlases, Charts and Globes.	
76		LAW BOOKS AND TAX AND OTHER REGULATORY REPORTING PERIODICALS, Part II.	No Exceptions.
	7610	Law Books.	
	7630	Tax and Other Regulatory Reporting Periodicals.	
77		HOME ENTERTAINMENT EQUIPMENT, Part I	No Exceptions.
	7740	Phonograph Records; Tapes; (8) Track Cartridge and Cassettes.	
77		HOME ENTERTAINMENT EQUIPMENT, Part III	No Exceptions.
	7730	TVs, Radios, Phonos, Combination Sets and Related Accessories.	
78		RECREATIONAL AND ATHLETIC EQUIPMENT, Part I, Section A	No Exceptions.
	7610	Athletic and Sporting Equipment.	

(a) MANDATORY NATIONALLY—Continued

FSC Group	FSC Class	Title of Schedule	Remarks
78		ATHLETIC AND RECREATIONAL EQUIPMENT, Part I, Section B	No Exceptions.
	7820	Games and Toys.	
	7830	Recreational and Gymnasium Equipment.	
78		ATHLETIC AND RECREATIONAL EQUIPMENT, Part I, Section C	No Exceptions.
	7820	Outdoor Recreational Equipment.	
	7830		
79		CLEANING EQUIPMENT AND SUPPLIES	No Exceptions.
	7910	Vacuum Cleaners, Carpet Shampooers, Floor Polishing and Scrubbing Machines.	
80		PAINT, Part I, Section A	No Exceptions.
	8010	Tree Marking.	

(b) MANDATORY WITHIN THE SPECIFIED GSA GEOGRAPHICAL AREAS

FSC Group	FSC Class	Title of Schedule	Remarks
42		FIREFIGHTING EQUIPMENT AND SUPPLIES, Part I	Not Mandatory on DoD for Fire Hose or NSNs 4210-00-251-7904 and 4210-00-720-1815.
	4210	Fire Extinguishers, Accessories and Fire Hose.	
	4720		
67		PHOTOGRAPHIC SUPPLIES Part II, Section B	Mandatory on Dod for items 19-1, 19-2 and 19-6 only.
	6750	Sensitized and Chemical Supplies.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section A	Mandatory on DoD activities located within the specified GSA Geographical Areas other than Region 3, except for items procured through DPSC.
	6505	Medical Gases.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section B	Mandatory on DoD activities located within the specified GSA Geographical Areas other than Region 3, except for items procured through DPSC.
	6830	Industrial Gases.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section C	Mandatory on DoD activities located within the specified GSA Geographical Areas other than Region 3, except for items procured through DPSC.
	6830	Dry Ice.	
87		AGRICULTURAL SUPPLIES, Part I	No Exceptions.
	8710	Forage and Feed.	
87		AGRICULTURAL SUPPLIES, Part IV	No Exceptions.
	8730	Seed.	
89		SUBSISTENCE, Part III	No Exceptions.
	8960	Ice.	
IG			
721		SERVICES	Mandatory on DoD activities located within the specified GSA Geographical Areas, except for Custodial Contracts.
	7213	Wiping Cloth Service.	

(c) MANDATORY IN GSA AREAS OTHER THAN REGION 3

FSC Group	FSC Class	Title of Schedule	Remarks
68		CHEMICALS AND CHEMICAL PRODUCTS, PART III, SECTIONS A, B, C, AND D	Mandatory on DOD Activities located within the specified GSA Geographical Area other than Region 3 except for Items procured through the Defense Personnel Support Center.
	6505	Medical Gases.	
	6830	Industrial Gases; Compressed and Liquefied.	
99		RECRUITING AIDS, Part V, Section A	Mandatory for requirements of recruiting commands; not for requirements of other DoD activities.
	9905	Advertising and Promotional Aids.	

208.404-71 Establishment or revision of federal supply schedules mandatory upon DOD.

(a) *Policy.* The Administrator of General Services Administration has agreed that the concurrence of the Office of Secretary of Defense will be obtained prior to establishing a Federal Supply Schedule which is mandatory upon the Department of Defense, or prior to adding or removing any items from Federal Supply Schedules which are mandatory upon the Department of Defense, or making any other changes in such Schedules affecting their use by Department of Defense in meeting its supply requirements. However, deletion of an item from a Federal Supply Schedule will not require Office of the Secretary of Defense concurrence when the reports of sales for that item amount to less than $1,000 per year, except where—

(1) The item is a part or accessory incidental to a basic item;

(2) The item is a component of a unit assembly;

(3) The item has a demonstrated need to fill out a range of colors, sizes or other characteristic; or

(4) The item involves a contract for services.

(b) *Procedures.* Requests for the establishment of or a change in a Federal Supply Schedule mandatory on elements of the Department of Defense shall be forwarded to the Executive Director, Contracting, Defense Logistics Agency, for coordination with the Departments. Such proposals normally shall be forwarded in sufficient time to provide three months for consideration by all interested elements of the Department of Defense and General Services Administration prior to the desired effective date. In the event action on such proposals is desired in a shorter period of time, a minimum of 35 days for consideration should be anticipated. These proposals will be distributed to the representatives of the Departments and General Services Administration engaged in the Federal Supply Schedule review program, as appropriate, for comment or concurrence. Any questions will be jointly considered before final action is taken. If the Departments and General Services Administration representatives cannot reach agreement on a question raised, the question will be forwarded to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) for resolution.

208.405 Ordering office responsibilities.

208.405-1 Ordering from multiple-Award schedules.

(c) When purchase of an item of foreign origin is specifically required, the using activity shall furnish the procuring activity sufficient information to permit the determination required by FAR Part 25 to be made.

208.405-2 Order placement.

(S-70) Oral orders not to exceed $10,000.

(1) *General.* Purchasing offices are authorized to make procurements not in excess of $10,000 by oral orders from Federal Supply Schedule contractors. Ordering activities shall obtain an agreement from the contractor that for each shipment under an oral order he will furnish a delivery ticket, in the number of copies required by each purchasing office, which shall contain the following information:

(i) Contract number;

(ii) Order number under the contract;

(iii) Date of order;

(iv) Name and title of the person placing order;

(v) Itemized listing of supplies or services furnished; and

(vi) Date of delivery or shipment.

(2) *Payment.* Optional methods of invoicing are permissible. An individual invoice accompanied by a receipted copy of the related delivery ticket may be submitted for payment. Alternatively, a summarized monthly invoice covering all oral orders made during the month, accompanied by a receipted copy of each delivery ticket or a statement by the contracting officer that the supplies have been received by the Government, may be submitted for payment. The monthly billing procedure is preferred when numerous oral orders may be placed.

(S-71) Imprest funds (petty cash method). In buying commodities where cash payment is advantageous, the imprest funds method (see FAR 13.5) is authorized; *Provided*, the order does not exceed $150 ($300 under emergency conditions), and the contractor agrees to such a procedure.

208.470 Acquisition from GSA sources.

208.470-1 Applicability.

This subsection applies to the procurement of supplies available from General Services Administration stock for delivery in the contiguous United States, including the satisfaction of overseas requirements when such requirements are routed to facilities in the contiguous states for supply action in accordance with instructions prescribed by the Departments. This subsection may be applied optionally in Alaska and Hawaii. It does not apply in any event to any order which amounts to $25.00 or less, or to:

(a) Any subsistence or medical item which is under the cognizance of the Defense Personnel Support Center;

(b) Any item which is being purchased for resale; or

(c) Any item used by commissaries for operation and maintenance that is available through local purchase at a price lower than from GSA stock.

This subsection also applies to the mandatory use of General Services Administration services and term contracts for the maintenance, repair, rehabilitation, and reclamation of all personal property described in 208.470-6, in the United States, Puerto Rico and the Virgin Islands. Services of this type which are available from Federal Prisons Industries and Agencies for the Blind will be procured under the provisions of FAR Subparts 8.6 and 8.7.

208.470-2 Procurement from General Services Administration stock.

It is the policy of the Department of Defense that for an item which has been decentralized for local purchase and which is available from the General Services Administration stock, such items will be ordered from GSA unless delivery requirements cannot be met. The mandatory provisions of Department of Defense, General Services Administration Interagency Purchase Assignments (208.7106) are not applicable to decentralized items which are within these assignments and which are available from the stock. Such items will be ordered in accordance with the above-stated policy.

208.470-3 GSA supply catalog.

The General Services Administration Supply Catalog sets forth, among other things, information with respect to some of the items of supply carried in stock, prices, and delivery information, and a listing of the General Services Administration regional offices. The catalogs do not list all of the items carried in stock. Items within the classes assigned to GSA in accordance with DoD/GSA agreements and not recorded in the management data lists of the Federal catalog publications as managed by another service or agency and not recorded for decentralized procurement, should be requisitioned from GSA. Copies of the GSA Supply Catalog may be obtained by completing GSA Form 457 (FSS Publications Mailing List Application) and mailing it to the GSA Centralized Mailing Lists Service, Building 41, Denver Federal Center, Denver, Colorado 80225. GSA Form 457 may be obtained from the GSA Centralized Mailing Lists Service by letter or by telephoning 303-234-4195.

208.470-4 General Services Administration regional offices.

The General Services Administration regional offices, located in the cities listed below, serve the areas indicated in the GSA Supply Catalog guide. The addresses shown are the mailing addresses to which all orders and correspondence should be forwarded.

GSA Region and Address

(a) Boston, MA—John W. McCormack, Post Office & Courthouse, Boston, MA 02109.

(b) New York, NY—26 Federal Plaza, New York, NY 10007.

(c) Philadelphia, PA—Ninth & Market Streets, Philadelphia, PA 19107.

(d) Atlanta, GA—75 Spring Street, SW, Atlanta, GA 30303.

(e) Chicago, IL—230 S. Dearborn Street, Chicago, IL 60604.

(f) Kansas City, MO—1500 East Bannister Road, Kansas City, MO 64131.

(g) Fort Worth, TX—819 Taylor Street, Fort Worth, TX 76102.

(h) Denver, CO—Denver Federal Center, Bldg. 41, Denver, CO 80225.

(i) San Francisco, CA—525 Market Street, San Francisco, CA 94105.

(j) Auburn, WA—General Services Administration Center, Auburn, WA 98002.

(k) National Capital—7th & D Streets, S.W., Washington, DC 20407.

208.470-5 Order for supplies.

Orders for supplies from the General Services Administration shall be submitted in accordance with the Military Standard Requisitioning and Issue Procedures (MILSTRIP) (DoD 4140.17-M).

208.470-6 Mandatory sources for maintenance, repair, rehabilitation and reclamation of personal property.

General Services Administration regional offices provide facilities for maintenance, repair, rehabilitation and reclamation of Government-owned personal property and, in addition, have Term Contracts with commercial concerns for similar services. These contracts are published as General Services Term Contracts. When requirements exceed the in-house capabilities of a Departmental activity or installation, or it is otherwise required that outside sources be used, it is mandatory that General Services Administration sources for such services be used except when:

(a) The items involved are military weapons systems, specialized military support equipment, or specialized technical or scientific equipment;

(b) Such services are available from the Federal Prison Industries or

Agencies for the Blind or Other Severely Handicapped;

(c) The required services are covered by warranty or other preexisting contract;

(d) Delivery requirements for repair and refinishing services cannot be met (the provisions of FAR 8.404–1 are applicable when determining whether a General Services Administration source can meet the delivery requirements);

(e) The required services are not within the scope of the existing GSA Term Contract or a waiver is first obtained from the GSA Regional Property Management and Disposal Service office administering the contract (such waivers are not required when the exigency of the procurement will not permit delay; however, telephonic clearances will be given by GSA in appropriate cases); and

(f) The requiring activity is outside the geographic area covered in the GSA Term Contract. (Normally, this area extends no more than a 15-mile radius from the contractor's location. Each contract specifies the area covered which may in some cases extend beyond that distance.)

208.470–7 Personal property covered under mandatory GSA term contracts.

The items of personal property listed below are indicative of those for which General Services Administration sources are mandatory for maintenance, repair, rehabilitation, and reclamation services. They are not all inclusive. For detailed listings, see the latest Federal Supply Catalog entitled "Guide to Sources of Supply and Service." Copies are available from GSA Regional Office and should be obtained by each installation and activity that may have need of such services. Copies of existing GSA Term Contract for these services are routinely forwarded by each GSA Regional Office to all affected Government activities within the respective regions.

Sample List of Items

Adders, calculators, and comptometers
Fire extinguishers (Industrial and Commercial)
Furniture (office, household, quarters, institutional and hospital type)
Household appliances
Mattresses
Motors and generators (Industrial and Commercial)
Tires (except for aircraft)
Typewriters (manual and electric)
Watches and clocks (Industrial and Commercial)

208.470–8 Order for services.

Orders for maintenance, repair, rehabilitation, or reclamation services from General Services Administration sources shall be placed as follows:

(a) *GSA repair facility.* A delivery order on Order for Supplies or Services/Request for Quotations (DD Form 1155) shall be submitted to the General Services Administration regional office which normally serves the procuring activity. Each delivery order which is subject to fiscal year limitations necessitating GSA procurement action to be completed not later than September 30 shall contain a notation to that effect.

(b) *Commercial sources.* Delivery orders on DD Form 1155 will be placed directly with contractors pursuant to GSA Term Contracts.

(1) *Inspection and Acceptance.* Arrangements for inspection and acceptance shall be the responsibility of the ordering agency, except when the GSA Term Contract specifically provides for source inspection by GSA.

(2) *Default Terminations.* The GSA contracting office shall be notified each time an order is terminated for default in accordance with contract provisions.

Subpart 208.70—Coordinated Procurement

208.7000 Applicability.

Although the Department of Defense Coordinated Procurement Program includes items assigned to one or more of the Departments or the General Services Administration for integrated materiel management, the procedures set forth in this Part apply to items assigned for purchase responsibility only, and not to those in the integrated materiel management program. The latter items will be obtained in accordance with current supply procedures.

208.7001 Definitions.

As used in this Part, the following terms have the meanings set forth below.

"Acceptance of MIPR" means DD Form 448–2 (Acceptance of MIPR) executed by a Procuring Department as notice to the Requiring Department that an MIPR has been received and accepted for procurement action.

"Coordinated procurement" means (a) procurement by procurement activities, within the 48 contiguous States and the District of Columbia, of certain supplies to satisfy the requirements (including overseas requirements) of all Departments in compliance with assignment responsibilities set forth in Subpart 208.71; (b) procurement assignments made by the respective Unified Commanders in Alaska, Hawaii, and outside the United States, regardless of funds utilized; and (c) procurement assignments made in accordance with 208.7018. It does not include procurements made in Alaska, Hawaii, or outside the United States which do not fall within (a) or (b) above.

"Direct citation procurement (Category II Method of Funding)" means a procurement having separate identification of the items and citing the funds of the Requiring Department, and may be accomplished by combining the requirements of two or more Departments under one contract with separate schedules showing the quantities, prices, dollar amounts, and citation of funds of each Requiring Department, or by placing separate contracts for each department.

"Integrated materiel management items" means items assigned to one Department of the General Services Administration for entire Department of Defense management. Such management normally includes responsibility for computation of requirements, funding, budgeting, storing, issuing, cataloging, standardizing and procuring functions.

"Military service managed items" means items which are within Federal Supply Classes assigned to the Defense Logistics Agency or the General Services Administration but which are retained for supply management by the Requiring Department.

"Procuring department" means the Department or the General Services Administration whichever is assigned the procurement responsibility for the supplies.

"Purchase request" means the following types of authorized purchase requisitions: (a) Military Interdepartmental Purchase Request (MIPR) (DD Form 448); and (b) Requisition for Coal, Coke, and Briquettes (DD Form 416).

"Reimbursable procurement (Category I Method of Funding)" means the procurement of supplies for a Requiring Department on a contract funded by the Procuring Department, without separate identification of the items or separate citation of funds of the Requiring Department, with subsequent delivery to and reimbursement by the Requiring Department.

"Requiring department" means the Department originating a requisition or purchase request for supplies.

208.7002 Responsibilities under coordinated procurement.

The Procuring Department is generally responsible for the following under coordinated procurement:

(a) Operational phases of procurement planning (phasing the submission of requirements, consolidating or dividing requirements, analyzing the market, and determining patterns for the phased placement of orders in such a manner as to assure meeting the needs of the Requiring Departments at the lowest possible price to the Government, and at the same time avoiding unnecessary peaks and valleys of production);

(b) Purchasing;

(c) Performing or arranging through a contract administration office for contract administration, including followup and expediting of inspection and transportation; and

(d) Acquisition of licenses under patents or other proprietary rights covering the subject matter of the procurement and the settlement of patent infringement claims arising out of the procurement; approval of the Departments whose funds are to be charged for acquisition of licenses or settlement of claims shall be obtained.

208.7003 General principles governing implementation procurement assignments.

208.7003-1 Standard format-development and promulgation of implementing procedures.

Implementation of procurement assignments shall be in accordance with Enclosure 1 of Department of Defense Instruction 4115.1, dated October 14, 1968 (and amendments thereof), Subj: Department of Defense Coordinated Procurement Program—Purchase Assignments (NAVSUPINST 4215.4B).

208.7003-2 Relationship between research and development and coordinated procurement.

Items are not subject to procurement assignment until they have reached the production stage.

208.7003-3 Small dollar value purchases.

Requirement of small dollar value shall be procured in accordance with the provisions of the approved implementing procedures covering the particular assignment. Such implementing procedures shall normally provide a small dollar limitation of $2,500; however, in special situations, the limit may very depending upon the commodity area any may be expressed either in a higher or lower dollar value, by tonnage, less-than-carload lot quantities, or other units, as appropriate. Such implementing procedures shall clearly state that requirements of a value of quantity less than the prescribed limitations shall, wherever feasible, be procured by the Requiring Department. A MIPR for a military type item need not contain such a notation. The Procuring Department shall not return a MIPR submitted in accordance with the foregoing, but shall procure such items.

208.7003-4 Emergency.

In case of emergency, when the exigencies of the situation will not permit the delay incident to following the normal channels of coordinated procurement, purchases may be made without the prior authorization of the Procuring Department. When an emergency purchase is made, one copy of the contractual instrument, bearing or accompanied by a statement of the emergency, shall be transmitted promptly to the purchasing activity of the Procuring Department (the coordinated procurement assignee). The provisions of this paragraph will not normally be used for stock replenishment. These emergency procedures do not apply to the purchase of integrated materiel management items as described by 208.7001. Emergency purchase of such items is covered by 208.7101-2(d).

208.7003-5 Department of defense manufacturing establishment.

When procurement assignments have been made for items required by manufacturing establishments of the Departments, these items shall be obtained through the facilities of the Procuring Department unless such action will unduly hinder or delay production. When procurements are made other than through the Procuring Department, one copy of the contractual instrument bearing or accompanied by a statement of the circumstances necessitating such procurement shall be transmitted prompty to the purchasing activity of Procuring Department. This paragraph is not applicable when purchases are made pursuant to 208.7003-3 above.

208.7003-6 Consolidation of requirements.

The primary objective of coordinated procurement is to obtain for the Government maximum economy through the consolidation of requirements and the elimination thereby of competitive purchases among the Departments. The Procuring Department shall, to the extent consistent with the delivery schedule of the Requiring Department, consolidate in one contract its own requirements for the same or similar, items plus all requirements via MIPRs or other purchase requests.

208.7004 Items in short supply.

When shortages develop in the market for supplies being purchased and requirements have been submitted by more than one Department, the normal procedure shall be to resolve the problem on a Departmental level between or among the Departments based on priorities for the supplies. If agreement cannot be reached, the subject shall be referred to the Deputy Under Secretary of Defense for Acquisition Management for decision.

208.7005 Transfer of uncompleted contracts.

208.7005-1 Effect of assignment of procurement responsibility.

As a general rule, when the procurement responsibility for a commodity or class of commodities is assigned to one Department, or the General Services Administration, uncompleted contracts of any other Department, or the General Services Administration, for any commodity or class of commodities will not be transferred but will continue to be administered by the Procuring Department of Defense Contract Administration Services as appropriate.

208.7005-2 Contracting officers under transferred contracts.

In the case of any contract transferred, or to be transferred, to any Department, the successor to the contracting officer for each such contract shall be the Head of the Procuring Activity (or any contracting officer thereof) to which the administration of any such contract is assigned, and any such successor shall have all of the rights and responsibilities of a contracting officer under such transferred contract.

208.7006 Purchase authorization.

208.7006-1 MIPRs or other authorized purchase requests.

(a) Military Interdepartmental Purchase Requests (MIPRs) or other authorized purchase requests when received by the Procuring Department shall be the authority to procure the supplies or nonpersonal services in accordance with single department procurement assignments or agreements between the Departments concerned as provided in 208.7018. The Procuring Department is authorized to create obligations against the funds cited in a MIPR without further referral to the Requiring Department. The Procuring Department has no responsibility to determine the validity of a stated requirement in an approved MIPR; however, it should bring apparent errors in the requirement to the attention of the Requiring Department.

(b) When purchase requests other than MIPRs (see 208.7001) are used as

the basis for procurement, the general procedures prescribed for processing, amending, accepting and terminating requirements on MIPRs as prescribed in other paragraphs of this subpart shall normally be followed, except as otherwise agreed to by the Departments involved.

208.7006–2 Use of advance MIPRs.

(a) An Advance MIPR is an unfunded MIPR provided to the procuring activity in advance of the formal funded MIPR whereby initial steps in planning procurement action can begin at an earlier date.

(b) Advance MIPRs may be used only when the Procuring Department and the Requiring Department agree that the procedure may be beneficial in placing the procurement and obtaining the requirements in a more timely manner.

(c) Advance MIPRs shall not be released to a procuring activity until proper approval of the requirement is obtained.

(d) When Advance MIPRs are used, the DD 448 shall be prominently marked "Advance MIPR."

(e) For urgent requirements, the Advance MIPR may be in the form of an electrically transmitted message.

(f) On the basis of an Advance MIPR, the Procuring Department may take the initial steps toward establishing a contract, such as obtaining internal coordination, preparing a procurement plan, and making a Determinations and Findings. The extent of such action may be determined by the procuring Departments. However, contracts shall not be awarded on the basis of Advance MIPRs.

208.7006–3 Determinations and findings.

(a) *General.*

(1) When coordinated procurement is by negotiation, the Procuring Department, except as provided in (a)(2) below, shall make the required determinations and findings. The Requiring Department shall furnish with the purchase request the information required by the Procuring Department to develop the determinations and findings.

(2) When coordinated procurement is negotiated pursuant to 10 U.S.C. 2304(a)(13) and FAR 15.213, the Requiring Department shall make the determinations and findings in accordance with FAR 15.213(c)(3). When the Requiring Department is responsible for securing Secretarial approval under 10 U.S.C. 2304(a)(16) and FAR 15.217, the MIPR shall contain a statement that the required determinations and findings has been executed for the specific case in question or program involved. In both instances the Requiring Department shall preserve the original determinations and findings with supporting data as required by 215.3 except that two copies shall be attached to the MIPR or purchase request in the Procuring Department's contract file.

(b) *Foreign End Products.* Where a foreign end product is specified by the Requiring Department, that Department is responsible for determining that a domestic source end product is not available as required by FAR 25.108 and FAR 25.302. Two copies of the determination that a domestic source end product is not available shall be furnished to the Procuring Department with the MIPR.

208.7006–4 Delivery schedules.

(a) In submitting MIPRs the Requiring Department should take into consideration the normal administrative lead time of the particular commodity in order to insure delivery by the date required. The time of delivery or performance is an essential element for inclusion in a contract and must be clearly stated in each MIPR. Delivery and performance schedules on MIPRs shall be designed to meet the requirements of the particular procurement and must be realistic (see FAR 12.1). If the delivery schedule, as set forth in a MIPR, is unrealistic or cannot be accepted by the Procuring Department, the DD Form 448–2 "Acceptance of MIPR" will be so annotated (see 208.7009–3). Changes in the requested delivery schedule shall be accomplished in accordance with 208.7008–5.

(b) When a short delivery schedule is mandatory, the MIPR shall be marked "URGENT" in bold letters. The Requiring Department's justification for the "URGENT" marking shall be stated on the MIPR or attached thereto, in order to enable the Procuring Department to apply any necessary expediting techniques to assure the required delivery.

208.7006–5 Specifications, drawings, and other purchase data.

The Requiring Department shall furnish to the Procuring Department a list (or copies) of specifications, drawings, and other data, as appropriate, required for the procurement. If Federal, Military, Departmental, or other specifications, or drawings or data are available to the Procuring Department and referenced in the MIPR, they need not be furnished by the Requiring Department (but see FAR 46.407). Required changes in such purchase data shall be accomplished as set forth in 208.7008–5.

208.7006–6 Utilization of existing department of defense assets.

The Requiring Department is responsible for insuring compliance with FAR 8.001 prior to submitting military interdepartmental purchase requests for procurement action.

208.7006–7 Options for increased quantities.

If the Requiring Department desires an option to purchase an additional quantity, the MIPR shall so stipulate and shall contain a justification therefore.

208.7007 Funds and payments.

208.7007–1 Citation of appropriation and funds of Requiring Department—Category II method of funding.

Except as provided in 208.7007–2, contracts and orders for other than integrated supply management materiel shall cite the specific fund citation(s) and the MIPR number of the Requiring Department. The Procuring Department shall determine which type of funding (direct citation or reimbursable procurements) shall be used.

208.7007–2 Citation of funds of Procuring Department—Category I method of funding.

Under the conditions listed below, only the funds of the Procuring Department shall be cited in the consolidated contracts; and the contracts and orders thereunder shall provide for payment by the Procuring Department or by the Defense Contract Administration Services as appropriate:

(a) Delivery is from existing inventories of the Procuring Department;

(b) Delivery is by diversion from existing contracts of the Procuring Department which cite the funds of the Procuring Department;

(c) Production or assembly is through government work orders in Government-owned plants;

(d) Allocation of production quantities among users from one or more contracts for which the identity of specific quantities of the end item to individual contracts is not feasible at teh time of MIPR acceptance;

(e) Procurement of the end items involves separate procurement of components to be assembled by the Procuring Department;

(f) Payments will be made without reference to deliveries of end items; e.g., cost-reimbursement type contracts and fixed-price contracts with progress payment clauses; or

(g) It is not feasible and economical to use Category II method of funding.

208.7007-3 Disbursement.

When the contract is funded with DoD funds and is to be administered by the Defense Contract Administration Services, the Procuring Department shall cite as the disbursement office the Defense Contract Administration Services Region Disbursing Office (see 242.102). If the contract is not administered by the Defense Contract Administration Services, the Procuring Department shall cite as the disbursement office the payment office designated by the Requiring Department (see 208.7008-1).

208.7007-4 Authorization for exceeding MIPR estimates.

Each MIPR shall indicate on its face whether or not the total MIPR estimate may be exceeded by the purchasing office, and if affirmative, by what amount. The additional amount shall not be more than $20,000, or 10% of the total estimated MIPR amount, whichever is less.

208.7008 Preparation and use of DD Form 448 (MIPR).

DD Form 448 is substantially self-explanatory. Information provided in MIPRs shall be arranged in Uniform Contract Format to the extent feasible. If desired, each Department may overpricing fixed repetitive information.

208.7008-1 Special instructions.

(a) *MIPR Number.* The MIPR number will consist of:

(1) The requiring agency identification code as prescribed in the DoD Activity Address Directory (DoDAAD), DoD 4000.25D;

(2) The last digit of the fiscal year; and

(3) The number of the particular MIPR (numbered consecutively by the requiring activity). Amendments will be numbered with the MIPR number suffixed with the amendment number assigned in consecutive numbered sequence.

(b) Appropriate checks in Item 9 shall be accomplished in compliance with Department of Defense policy which requires interdepartmental screening of items in accordance with FAR 8.001 to determine stock availability within other Departments prior to preparation of a DD Form 448. Items which are determined to be available from stocks of other Departments shall be requisitioned as follows:

(1) Items within the scope of MILSTRIP (see DoD 4140.17-M (MILSTRIP) of 1 May 1964, as amended) shall be obtained by use of DD Form 1348/1348m, DoD Single Line Item Requisition System Document;

(2) Items not covered by MILSTRIP shall be obtained by use of DD Form 1149, Requisition and Invoice/Shipping Document. If a Procuring Department determines after receipt of a MIPR that the items can be supplied from stock, the MIPR shall be used for effecting supply from such stock.

(c) Normally a MIPR shall be restricted to one major end item, including its required spare parts, ground support equipment, and similar related items. MIPRs for other than major end items normally shall be limited to items within a single Federal Supply Classification.

(d) Attachments to MIPRs (Item 10) must be prepared in sufficient numbers so that each copy of a MIPR submitted to the Procuring Department is complete with a copy of all attachments. "Ship To and Mark For" addresses in shipping instructions shall include the clear text identification and DoDAAD code if assigned.

(e) Item 13 is used to identify the name and address of the office to receive invoices and make payment only if the resulting contract is not to be paid by the Defense Contract Administration Services in accordance with 208.7007-3, and the office to receive invoices and make payment is known at the time of preparation of the MIPR. If payment is to be made by an office designated to receive invoices, also enter the DoDAAD code that office. If payment is to be made by an office other than the office to which the invoice is to be mailed (Item 13), the name, address, and DoDAAD code of the payment office shall be set forth in detail as an attachment to the MIPR. If multiple offices are to receive invoices and make payment, the names and addresses of those offices shall be set forth as an attachment to the MIPR, including the DoDAAD code of each payment office. Whenever the payment office(s) is included in an attachment, an appropriate reference to the attachment will be included in Item 13. If the names and addresses of those offices are to be provided to the Procuring Department after preparation of the MIPR, the DoDAAD code also shall be provided for each payment office.

(f) Allotment data for the procurement of supplies shall be entered in Item 14. Allotment data for the transportation of supplies at Government expense, if cited in the MIPR in accordance with 208.7017 shall be entered in Item 12. Each citation in Item 14 shall be set forth in the appropriate space in the following manner:

(1) *ACRN.* If the Accounting Classification Reference Number procedurs of 204.7108 are used in the MIPR to relate allotment data to the MIPR item or delivery, the ACRN for each fund citation in Item 14 shall be entered. (The Procuring Department is not required to use in the resulting contract the ACRN assigned to a fund citation in the MIPR).

(2) Appropriation. Will be shown in the ten positions as follows:

(i) First and second positions shall be the Treasury Department number identifying the Department or Agency to which the appropriation applies or has been transferred.

(ii) Third and fourth positions shall be the Treasury Department number identifying the Department or Agency from which an appropriation has been transferred; shall be blank if no transfer is involved.

(iii) Fifth and sixth positions shall identify the Appropriation Fiscal Year. For multiple-year appropriations, the fifth position shall be the last digit of the first year of availability and the sixth position shall be the last digit of the final year of availability. For annual appropriations the fifth position shall be blank and the sixth position shall be the "X".

(iv) Seventh through tenth positions shall be the Treasury Department appropriation serial number.

(3) *Limit/Subhead.* Up to four characters; if less than four characters, leave empty spaces blank.

(4) *Supplemental Accounting Classification Data.* Shall not exceed 36 characters. Enter in accordance with Departmental or Agency regulations.

(5) *Accounting Station.* Shall show the six character DoDAAD code of the accounting station (not used with Navy and Marine Corps funds).

(6) *Amount.* Enter the amount for each fund citation if more than one allotment is cited.

(7) Additional Citations. If space is required for additional fund citations, they shall be set forth in the same manner as an attachment to the MIPR and a reference to the attachment will be included on the form.

(g) Requiring Activities shall provide MILSTRIP requisition data prescribed in Appendix B of the MILSTRIP Manual, for each line item which is to be delivered to each "ship to" address. Repetitive data applicable to all lines on the MIPR may be overprinted.

(h) The Requiring Activity will furnish estimated weight, cube and dimensions for each line item or a statement that such data are not available and the reasons therefor.

208.7008–2 Cutoff dates for submission of Category II (direct citation) MIPRs.

(a) Unless otherwise agreed between the Departments, a cutoff date of 31 May of each year is established for the receipt of MIPRs citing expiring appropriations which must be obligated by 30 September of that fiscal year. If circumstances arise which require the submission of MIPRs citing expiring appropriations after the cutoff date, the Requiring Department will communicate with the Procuring Department prior to submission to ascertain whether or not it will be possible for the Procuring Department to execute a contract or otherwise obligate the funds by the end of the fiscal year. Procuring Departments will make every effort to obligate funds for all such MIPRs accepted after the cutoff date. However, acceptance of a late MIPR does not constitute assurance by the Procuring Department that all such funds are not to be construed as restrictive in the processing of MIPRs when it is within the capabilities of the Procuring Department to execute contracts or otherwise obligate the funds prior to the end of the fiscal year.

(b) MIPRs citing continuing appropriations are not restricted by law to time limits for obligation; therefore, the cutoff date of 31 May is not applicable to such MIPRs and procurement action should continue regardless of whether obligation will be accomplished before or after the end of the fiscal year. However, as the timely accomplishment of obligations is a factor affecting delivery of material, every effort must be made by the Procuring Department to obligate available funds as soon after receipt of the MIPR as is possible.

208.7008–3 Notification of inability to obligate.

On 1 August of each fiscal year, the Procuring Department will advise the Requiring Department of any Category II (direct citation) MIPRs on hand citing expiring appropriations on which they will be unable to obligate the funds prior to the fund expiration date. If an unforeseen situation develops after 1 August which will prevent execution of a contract, the Procuring Department will notify the Requiring Department of that fact by the most expeditious means and return the MIPR accompanied by a letter of transmittal authorizing purchase by the Requiring Department including the reason that procurement could not be accomplished.

208.7008–4 Number of copies of MIPRs with attachments to be submitted.

Unless otherwise agreed by the Departments, the original and six copies of each MIPR, all complete with attachments, shall be forwarded to the Procuring Department. When copies of specifications, drawings or other data are to be furnished with MIPRs (see 208.7006–5), the number of copies of such data to be furnished shall be as agreed upon by the Requiring and Procuring Departments.

208.7008–5 Changes to MIPRs.

(a) Normally, changes that affect the contents of the MIPR must be processed as a MIPR amendment regardless of the status of the MIPR. However, a MIPR amendment for increased quantities of items specified in the original MIPR may be used when it is known that the original MIPR requirements have not been released for solicitation but then only after coordination and agreement with the Procuring Department. Changes may be initially provided by expeditious means such as telegraphic message but shall be confirmed by a MIPR amendment. Requirements for additional line items of supplies or services not provided for in the original MIPR shall be submitted as a new MIPR.

(b) Only those items of the DD Form 448 that are applicable to the change, revision, etc., being written, which vary or deviate from the data shown on the basic MIPR or prior amendment thereto will be filled out. All other items will have "n/c" inserted to reflect no change. However, basic information in items 1 through 8 must always be shown.

(c) A MIPR amendment is not required for change of a disbursing office set forth on a DoD funded MIPR when the resultant contract is assigned for contract administration to a Defense Contract Administrative Services Region. Such change may be made by the DCASR by issuance of an administrative change order; copies of which will be provided to the PCO for transmittal to the requiring activity.

208.7008–6 Requests for additional funds.

When the Procuring Department requires additional funds to complete procurement actions for the Requiring Department, the request for additional funds must identify the exact items involved and the reason why additional funds are required. The Requiring Department shall take expeditious action to provide such funds by an amendment to the MIPR or to reduce requirements accordingly. In case of any anticipated delay in furnishing required additional funds, the Procuring Department will be advised accordingly.

208.7009 Acceptance of MIPR.

As soon as practicable, but not later than 30 days after receipt of a MIPR, the Procuring Department shall formally accept the MIPR by DD Form 448–2, "Acceptance of MIPR." If this time limit cannot be met, the Requiring Department shall be informed of the reason for the delay and the anticipated date the MIPR will be accepted. In any event, Category I MIPRs must be accepted in writing by the Procuring Department prior to the expiration of funds cited. When accepted for reimbursable procurement, the executed DD Form 448–2 is the authority for the Requiring Department to record the obligation of funds. When accepted for direct citation procurement, the accomplished date and a conformed copy of the contract will be the authority to record the obligation. The accepting activity of the Procuring Department shall remain responsible for the MIPR even though that activity may split the MIPR into segments for actions among other procurement activites.

208.7009–1 Qualified acceptance.

Where contingencies, price revisions or variations in quantities are anticipated by the Procuring Department under reimbursable procurement, the acceptance will be so annotated on DD Form 448–2. When the acceptance is qualified, the Procuring Department will periodically advise the Requiring Department prior to submission of billings, of any changes in the acceptance figure so that an amendment to the MIPR may be issued by the Requiring Department and the appropriate adjustment may be made to the recorded obligation to reflect the current price.

208.7009–2 Non-Qualified acceptance.

If the acceptance of a MIPR is not qualified by the Procuring Department for anticipated contingencies under reimbursable procurement, the price on the acceptance will be final and will be billed at time of delivery.

208.7009–3 Preparation and use of DD Form 448–2 (acceptance of MIPR).

(a) DD Form 448–2 is substantially self-explanatory; however, certain details are defined below. Only pertinent items should be accomplished.

(1) Check the specific terms in Item 6 under which the MIPR is being accepted (see 208.7007–3).

(2) If any one of the MIPR line items is not accepted, Item 7 will be checked and the affected MIPR line item number and reason recorded in Item 13.

(3) Items 8 and 9 will be used only:

(i) When Item 6c acceptance is indicated, (identify the MIPR line item numbers that will be provided under each method of financing in numbers that will be provided under each method of financing in Items 8a and 9a respectively); or

(ii) If quantities or estimated costs cited in a MIPR require adjustment (the affected MIPR line item numbers will be listed together with the adjusted quantities or estimated costs in the columns provided under Items 8 and 9 as may be appropriate).

(4) Whenever a MIPR is accepted in part or in total under Category II (direct citation) method of financing, the Procuring Department will forecast in Item 10 the approximate date that contractual placement is expected to be accomplished.

(5) Enter the total amount of funds in Item 11 required by the Procuring Department to fund the MIPR items, as accepted.

(6) Complete Item 12 only in those cases where the amount recorded in Item 11 is not in agreement with the amount recorded in Item 5. This will serve either as (i) request on the Requiring Department to issue a MIPR amendment to provide the additional funds required, or (ii) authority for the Requiring Department to withdraw the available excess funds. When funds of two or more appropriations are involved, proper breakdown information will be provided in Item 13.

(7) Item 13 will be used to record (i) justification, by MIPR line item, for any additional funds required; (ii) explanation for rejection of MIPR whether in part or in total; (iii) appropriation and subhead data cited on the MIPR; and (iv) such other data as may be pertinent.

(b) DD Form 448–2 shall be executed for all MIPR amendments involving an adjustment of funds or delivery schedule, and in all other cases only when requested by the Requiring Department.

(c) The Requiring Department will be furnished four copies (one signed) of each accomplished DD Form 448–2 unless otherwise agreed between the Departments.

208.7009–4 Withdrawal of funds.

(a) When the Procuring Department accepts a MIPR for reimbursable procurement in a lesser amount than authorized on the MIPR, the DD Form 448–2 is the authorization for the Requiring Department to withdraw such excess funds by MIPR amendment. Upon receipt of the final billing (SF 1080) and a subsequent determination that all items requested on the MIPR have been delivered and billed in an amount less than the MIPR, the Requiring Department may adjust their fiscal records accordingly without authorization from or notice to the Procuring Department.

(b) When the Procuring Department has accepted a MIPR for direct citation procurement, and initial contract placement is completed, any unused funds remaining on the MIPR become excess and are no longer authorized for use of the Procuring Department. Any such excess funds will be immediately reported to the Requiring Department. Although the Procuring Department is prohibited from further use of such excess funds, the Requiring Department will confirm the withdrawal of excess funds by the issuance of a MIPR amendment.

208.7010 Components of end items.

208.7010–1 Contractor-furnished components.

In the procurement of end items where the contractor normally secures all components thereof from his own source (not Government-furnished), the procurement assignment does not apply to the component items required by such contractor.

208.7010–2 Government-furnished components.

In the procurement of end items where the Government furnishes components which are covered by a procurement assignment, such components shall be procured in accordance with the procurement assignment. However, direct purchase may be made by a Requiring Department in exceptional cases where agreement is reached with the Procuring Department or is authorized in accordance with subpart 208.71.

208.7010–3 Purchase of components over and above those initially purchased with the end item.

The procurement of components covered by a procurement assignment, over and above those initially purchased with the end item, shall be effected in accordance with the procurement assignment. However, direct purchase may be made by a Requiring Department in exceptional cases where agreement is reached with the Procuring Department or is authorized in accordance with 208.7100.

208.7011 Distribution of contracts and order. (See 204.201(c)(3)).

208.7012 Cancellation of requirements.

(a) *Direct citation procurement.* When all or any part of the supplies or services requested in the MIPR are to be canceled by the Requiring Department, that Department shall so notify the Procuring Department by telegraphic notice. In the event that the Procuring Department has not entered into a contract for the supplies and services to be canceled, the Requiring Department shall be immediately notified to that effect. Upon receipt of such notification, the Requiring Department shall initiate a MIPR amendment to revoke the estimated amount shown on the original MIPR for the canceled items.

(1) In the event that the items to be canceled have already been placed under contract, the following procedures will apply. As soon as practicable but in any event within 45 days after receipt of the notice of cancellation from the Requiring Department, the Procuring Contracting Officer shall issue a Termination Data Letter to the Requiring Department (original and 4 copies) which will contain as a minimum the information set forth below.

SUBJECT: Termination Data Re:
Contract No. _____
Termination No. _____
Contract _____
TO:

(a) As termination act is now in progress on the above contract, the following information is submitted:

(1) Brief description of items terminated.

(2) You are notified that the sum of $—— is available for release under the subject contract which sum represents the difference between $——, the value of items terminated under subject contract, and $—— estimated to be required for settlement of the terminated contract. The estimated amount available required for settlement of the terminated contract. The estimated amount available for release is allocated by the appropriations cited on the contract as follows:

MIPR NO. —— ACCOUNTING CLASSIFICATION —— AMOUNT

Total available for release at this time $——

(b) You are requested to forward an amendment to MIPR —— on DD Form 448 to reflect the reduced quantity and amount of funds available for release.

(c) Periodic examinations (not less than 60 days) will be made as termination proceedings progress to redetermine the Government's probable obligation.

(Signature of Procuring Contracting Officer)

(2) Periodic examinations of the termination proceedings will be accomplished no less often than every 60 days by the termination contracting officer to reassess the Government's probable obligation. If any additional funds are excess to the probable settlement requirements, or if it appears that previous release of excess funds will result in a shortage of the amount which will be required to consummate settlement, prompt action will be taken

to notify the purchasing office, which will amend the Termination Data Letter accordingly. A MIPR amendment to reflect the reinstatement of funds shall be processed by the Requiring Department within 30 days after the amended Termination Data Letter requesting reinstatement of funds has been received from the purchasing office.

(3) If required, an amendment to the MIPR covering final removal of any remaining excess funds with respect to terminated quantities shall be prepared by the Requiring Department upon receipt of its copy of the Termination Settlement Agreement.

(b) *Reimbursable procurement.* When all or any part of the supplies or services requested in the MIPR are to be canceled by the Requiring Department, that Department shall notify the Procuring Department by telegraphic notice. Within 30 days, the Procuring Department shall notify the Requiring Department as to the quantity of items available for termination and the amount of funds in excess of the estimated settlement costs. Upon receipt of this information, the Requiring Department shall issue a MIPR amendment to reduce the quantities and funds accordingly.

(c) *Termination by default.* When the Procuring Department exercises authority to terminate for default (see FAR Part 49), that Department will query the Requiring Department as to whether the supplies or services to be terminated are still required so that repurchase action can be undertaken.

(1) The Requiring Department will not obligate funds on a contract terminated for default until such time as a contractual supplemental agreement of settlement or other written evidence from the Procuring Department as to release of funds is received.

(2) On the repurchase action, the Procuring Department will not exceed the unliquidated funds on the defaulted contract without the provisions of additional funds by the Requiring Department.

208.7013 Administrative costs.

The Procuring Department shall bear, without reimbursement therefor, the administrative costs incidental to its procurement of supplies for another Department. However, when a procurement responsibility is transferred from one Department to another Department, funds appropriated or to be appropriated for defraying the administrative costs of such procurement responsibility shall be made available to the successor Procuring Department which shall assume budget cognizance at the earliest possible date.

208.7014 Inspection.

Policies and procedures concerning inspection and acceptance for use in conjunction with this subpart are set forth in FAR Part 46 of this Regulation.

208.7015 Execution of contracts.

Generally, the Procuring Department shall execute a single contract where an award embodying the requirements of more than one Department is made to a single contractor.

208.7016 Status reporting.

(a) The Procuring Department shall maintain an appropriate system of MIPR followup so that the Requiring Department may be informed of the current status of their requests. In addition, an appropriate system of followup shall be maintained by the contract administration office so that the Procuring Department may be currently informed as to contractor performance and in turn to insure that the Requiring Department is apprised of the status of contracts resulting from MIPRs.

(b) If requested by the Requiring Department, the Procuring Department will furnish the Requiring Department a copy of the solicitation document for materiel management status information when the request is satisfied through the use of direct citation of funds (Category II Method of Funding).

(c) Any reimbursement billings, shipping documents, contractual documents, project orders or related documentation furnished to the Requiring Department will identify the Requiring Department's MIPR number, quantities of items, and funds covered thereby.

208.7017 Transportation of supplies.

The Requiring Department is responsible for advising the Procuring Department or the Transportation Officer in the Contract Administration Office, as appropriate, the appropriate fund account chargeable for transportation costs in effecting delivery of supplies at Government expense. The Requiring Department shall accomplish this by either citing the fund account on each MIPR or providing the appropriate fund account to the Transportation Officer of the office administering the contract, at the commencement of each fiscal year, for citation on the Government bill of lading. In every instance, the Government bill of lading, which is generally issued by the Transportation Officer in the responsible Contract Administration Office, shall show the Requiring Department as the Department to be billed, and the appropriate fund account designated by that Department.

208.7018 Procurement agreements.

(a) This paragraph establishes policy as authorized in 10 U.S.C. 2308 with regard to agreements between the Departments or other agencies for procurement of commodities or services not assigned in accordance with 208.71.

(b) 10 U.S.C. 2308 provides that Department Heads by agreement may make assignments and delegations of procurement responsibilities from one Department to another or may create joint or combined offices to exercise procurement functions and responsibilities.

(c) Agreements may be made on either a one-time basis or a continuing basis. The submission of a MIPR by a requiring activity and its acceptance by the purchasing activity of another Department, even though based on oral communication, shall establish a one-time agreement. Delegated procurement responsibilities of a continuing nature shall be considered for coordinated procurement assignment. However, all agreements of a continuing nature shall be formalized, implemented, and distributed among the activities concerned even though not considered suitable for coordinated procurement assignment.

Subpart 208.71—Commodity Assignments

208.7100 Assignment authority.

The commodity assignments set forth below have been made by the Deputy Under Secretary of Defense for Acquisition Management to the Military Departments. Also included are assignments to the General Services Administration made by the Deputy Under Secretary of Defense for Acquisition Management in accordance with DoD/GSA Agreements. The letter "P" appearing after an FSC Code indicates a partial FSC assignment. There may be specific items within any of the assignments which have been designated for DoD Integrated Materiel Management to other than the coordinated procurement assignee. Such items will be purchased by the DoD Integrated Materiel Manager.

208.7100-1 Exclusions—Military Department assignments (Except DLA).

General exclusions to applicability of commodity assignments made to a Military Department (except Defense Logistics Agency) are:

(a) Emergency procurements, as determined by the Requiring Department;

(b) Procurements not in excess of $2,500 per line item;

(c) Procurements of items authorized for local purchase; pursuant to mutual agreement between the assignee and the other users;

(d) Items in a research and development stage; and

(e) Item subject to rapid design changes, or to continuous redesign or modification during the production or operational use phases which necessitate continual contact between industry and technical personnel of the requiring service to insure that the item procured is exactly that which is required.

208.7100-2 Exclusions—DLA and GSA assignments.

(a) *Optional Exclusions.* With respect to commodity assignments made to the Defense Logistics Agency or the General Services Administration, the following categories of service-managed items within an assigned class may be purchased by the Departments of the Army, Navy, or Air Force at their option:

(1) Items in a research and development stage—This exception permits the Military Departments to contract for research and development requirements, including quantities for testing purposes and items undergoing in-service evaluation (not yet in actual production, but beyond prototype). The term "research and development" as used herein relates only to procurements described in FAR Part 35. Generally, this exception can be used only when the procurement is covered by research and development funds; and

(2) Items peculiar to Nuclear Ordnance Materiel, because of design characteristics or because of test-inspection requirements which are controlled by the Department of Energy (DOE) or by the DoD to insure reliability of nuclear weapons.

(i) This exception applies to all items designed for and peculiar to nuclear ordnance regardless of Agency control, or to any item which requires test or inspection conducted or controlled by DOE or DoD. The Defense Nuclear Agency will have DoD procurement responsibility for all items assigned for integrated management in accordance with DoD Directive 5105.31.

(ii) This exception does not cover items used for both nuclear ordnance and other purposes if such items are not subject to the special testing procedures.

(3) Items to be procured under the authority of a Determination and Findings issued pursuant to 10 U.S.C. 2304(a)(12) and FAR 15.212, Classified Purchases (i.e., purchases or contracts classified "Confidential" or higher, or where because of other considerations, a contract should not be publicly disclosed);

(4) Items to be procured under the authority of a Determination and Findings issued pursuant to 10 U.S.C. 2304(a)(14) and FAR 15.216, Technical or Specialized Supplies, Requiring Substantial Initial Investment or Extended Period of Preparation For Manufacture; and

(5) Items which are directly related to a weapon/defense/space system and which are design-controlled by, and procured from either the system manufacturer or a manufacturer of a major subsystem thereof;

(i) This exception is intended to cover a specific and relatively small portion of "weapon/defense/space system" related items. An exempted item must meet two conditions. First, it must be directly related to the weapon system. Secondly, it must be both design controlled and procured from the system or major subsystem contractor.

(ii) The exception is intended, for example, to permit a Service to contract for an item which it procures from an airframe manufacturer (as sole source), provided the airframe manufacturer is responsible for the design of the item. It would likewise pertain to a component of a Government-furnished engine to be installed in the airframe, if the Service procures the component from the engine manufacturer and the engine manufacturer has design cognizance of the item.

(iii) The exception is not intended to cover the broad category of weapons related items but only that portion which is both procured from and design controlled by the system or major subsystem contractor.

(6) Items subject to rapid design changes or to continuous redesign or modification during the production and/or operational use phases which necessitate continual contact between industry and technical personnel of the Requiring Department to insure that the item procured is exactly what is required.

(i) This exception permits the Military Departments to contract for items of highly unstable design. Its use must be predicated on a determination that it is clearly impractical, both from a technical and contracting viewpoint, to refer the procurement to DLA or GSA. Thus, the possibility of a number of design changes occurring during the course of the contract is not in itself sufficient evidence for retention of the procurement. Neither is the fact that a procurement would possibly qualify for placement as a negotiated contract. Conversely, a procurement for an item covered by a reasonably firm specification which can be placed under the formal advertised procedure is prima facie evidence that the use of the exception is not valid.

(ii) This exception also applies to items requiring compatibility testing as a contract requirement, provided that such testing requires continual contact between industry and technical personnel of the Requiring Department.

(7) Containers procured only with items for which they are designed; and

(8) Emergency procurements, as determined by the Requiring Department:

(i) This exception permits the Services to make emergency procurements (valued at over $2,500) in the context of 208.7003-4 when the exigencies of the situation will not permit the delay incident to follow the normal channels of coordinated procurement.

(ii) As a general rule, this exception should cover items only when they are readily available from commercial inventories or in current production. It should not be used with extended production leadtime.

(iii) Unless the item is immediately available from a commercial source, emergency procurements should be coordinated with the cognizant DLA Center or GSA Support Region by telephone or other rapid communication prior to proceeding with the local procurement. This will serve the interests of the Requiring Department for the following reasons:

(A) The need may be satisfied immediately by diversion from a current DLA or GSA contract;

(B) The Center or the GSA Support Region may arrange to satisfy the requirement from other Military Department stocks or DLA/GSA stocks recently delivered under a DLA or GSA contract; and

(C) The Center or GSA Support Region may be able to "add on" to an existing DLA or GSA contract and obtain the material faster than the Requiring Department could by a unilateral procurement.

(9) Procurements of military service-managed or noncataloged items not in excess of $2,500 per line item—This exception permits the Military Departments to procure a line item which does not exceed a value of $2,500. It does not apply to a line item valued at $2,500 or under which is included in a Federal Supply Schedule mandatory for use by DoD activities; and

(10) Noncatalog items in the nature of a one-time buy and not contemplated as an item in the supply system:

(i) This exception is intended to permit the Military Departments to contract for a nonrecurring requirement for a noncataloged item. "Not contemplated as an item in the supply system" as a practical matter means that the item is not in the supply system nor is such anticipated. This exception could cover a part or component for a prototype and such part or component may be stock numbered at a later date.

(ii) This exception may not be used to cover purchases of recurring requirements for an item based solely on the fact that the item is not stock numbered nor may it be used to purchase items which have only slightly different characteristics from previously cataloged items.

(b) *Defense Logistics Agency and General Services Administration responsibility to procure excluded items upon request.* Items other than nuclear ordnance materiel which may be purchased by the other Military Departments at their option under (a) above shall be procured by DLA or GSA at the requests of the Military Departments.

(c) *Exclusions to Defense Logistics Agency or General Services Administation assignments by agreement.* The Military Departments shall process to the appropriate DLA center or GSA Support Region for procurement those service-managed items which do not meet the exception criteria set forth in (a) above, unless by mutual agreement between the cognizant Military Service Inventory Manager and the DLA Center concerned, or the GSA Support Region, the item is determined to be most satisfactorily procured on a Military Service basis. The Military Departments shall insure that subsequent procurements of items previously classified as exceptions under (a) above do in fact continue to meet the exception criteria at the time of the subsequent procurement. Otherwise, such procurements shall be forwarded to DLA or GSA for purchase.

(d) *Exclusions for local purchase of integrated materiel managed items.* Requiring Departments may purchase at their option any DLA or GSA centrally managed, commercially available item provided:

(1) In the case of an emergency requirement, such as a work stoppage, the purchase action is limited to immediate-use quantity, or

(2) In the case of routine requirements, the total line item value does not exceed $10.00 and local purchase is determined to be the most economical method of supply.

208.7101 Department of the Army.

Federal Supply Class Code and Commodity

FSC ("P" after the FSC number indicates a partial FSC assignment).

Electronic Equipment.

Each Department is assigned procurement responsibility for those items which the Department either designed or for which it sponsored development. See FSC 5821 under Navy listings for assignment of certain commercially developed radio sets (*i.e.*, developed without the use of government funds).

1005 P* Guns, through 30mm. This partial FSC assignment applies to guns, through 30mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type guns; MK 11 and MK 12, 20mm gun; and aircraft gun mounts.

1010 P* Guns, over 30mm, up to 75mm. This partial FSC assignment applies to guns, over 30mm and up to 75mm, and parts and equipment therefor, as listed in Department of the Army Supply Manuals/Catalogs. It does not apply to naval ordnance type guns and aircraft gun mounts.

1015 P* Guns, 75mm through 125mm. This partial FSC assignment applies to guns, 75mm through 125mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type guns.

1020 P* Guns over 125mm through 150mm.

1025 P* Guns over 150mm through 200mm.

1030 P* Guns over 200mm through 300mm.

1035 P* Guns over 300mm. These partial FSC assignments apply to guns, over 125mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. They do not apply to naval ordnance type guns.

1040 Chemical Weapons and Equipment.

1055 P* Launchers, Rocket and Pyrotechnic. This partial FSC assignment applies to launchers, rocket and pyrotechnic, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type and airborne type, with the exception of 2.75 inch Rocket Launchers which are included in this partial FSC assignment to the Department of the Army.

1090 P Assemblies Interchangeable Between Weapons in Two or More Classes. This partial FSC assignment applies to the following items:

National Stock Number Nomenclature

1090–563–7232 Staff Section, Class.

1090–699–0633 Staff Section.

1090–796–8760 Power Supply.

1090–885–8451 Wrench Corrector.

1090–986–9707 Reticle Assembly.

1095 P* Miscellaneous Weapons. This partial FSC assignment applies to miscellaneous weapons, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type; line throwing guns (which are under DoD Coordinated Procurement assignment to the Department of the Navy); and aircraft type miscellaneous weapons.

1210 P* Fire Control Directors.

1220 P* Fire Control Computing Sights and Devices.

1230 P* Fire Control Systems, Complete.

1240 P* Optical Sighting and Ranging Equipment.

1250 P* Fire Control Stabilizing Mechanisms.

1260 P* Fire Control Designating and Indicating Equipment.

1265 P* Fire Control Transmitting and Receiving Equipment, Except Airborne.

1285 P* Fire Control Radar Equipment, Except Airborne.

1290 P* Miscellaneous Fire Control Equipment. The above nine partial FSC assignments apply to fire control equipment, as listed in Department of the Army Supply Maunals/Catalogs. They do not apply to naval ordnance type and aircraft type.

1305 P* Ammunition, through 30mm. This partial FSC assignment applies to ammunition through 30mm as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type and ammunition for the MK 11 and MK 12, 20 mm gun.

1310 P* Ammunition, over 30mm up to 75 mm. This partial FSC assignment applies to ammunition, over 30mm up to 75mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type and to 40mm ammunition (which is under DoD procurement assignment to the Navy.) The Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.

1315 P* Ammunition 75mm through 125mm. This partial FSC assignment applies to ammunition, 75mm through 125mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type. The Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.

1320 P* Ammmunition, over 125mm. This partial FSC assignment applies to ammunition over 125mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type. The Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.

1325 P* Bombs. This partial FSC assignment applies to Bombs as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Navy assigned Bombs as shown in list of assignments to the Navy; however, the Department of the Army is responsible for the procurement of fillers and the loading, assembling and

packing of toxicological, incapacitating riot control, smoke and incendiary munitions, and for other loading, assembling and packing in excess of Navy owned capacity.

1330 Grenades.

1340P Rockets and Rocket Ammunition. This partial FSC assignment applies to:
66mm Rocket, HEAT, M72.
2.75 Rocket FFAR, Service and Practice.
Heads MK5 and Mods (HEAT).
HE, M151.
HE, XM229 (17 lb Warhead).
HE, XM157 (Spotting Red).
HE, XM158 (Spotting Yellow).
MK81 Practice (5 lb Slug).
XM230 Practice (10 lb).
Motors MK4 and Mods (High Performance Aircraft).
MK40 and Mods (Low Performance Aircraft).
3.5 In. Rocket Heat, M35.
Practice, M36.
Smoke, WP M30.
4.5 In. Motor, Drill, M24.
HE, M32.
Practice, M33. Incendiary and toxicological rockets, as listed in Army Supply Bulletins.
It does not apply to Navy assigned rockets as shown in list of assignments to the Navy. However, the Department of the Army is responsible for procurement of filler and for filling of all smoke and toxicological rockets.

1345 Land Mines.

1365 Military Chemical Agents.

1370 P Pyrotechnics. This partial FSC assignment does not apply to shipboard and aircraft pyrotechnics.

1375 P Demolition Materials. This partial FSC assignment is applicable to Blasting Agents and supplies such as:
Bangalore torpedo.
Blocks, demolition.
Caps, blasting, electric and nonelectric.
Charge, cratering.
Charge, shaped and demolition.
Chests, demolition platoon and squad.
Cord detonating.
Demolition equipment sets, with ancillary items.
Detonators, all types.
Dynamite.
Firing Devices.
Fuze, safety.
Kit, demolition.
Lighter, fuse.
Machine blasting.
Primer, percussion cap.
It does not apply to Navy underwater demolition requirements.

1376 P Bulk Explosives. This partial FSC assignment is applicable to solid propellants and explosives such as:
Ammonium Picrate (Explosive D) JAN–A–166A.
Trinitrotoluene (TNT) MIL–T–248A.
Tetryl JAN–T–339.
Pantacrythrite Tetranitrate (PETN) JAN–P–387.
RDX.
Composition B.
Composition B–3.
Pentolite, 50.
Composition C–3.
Composition A–3.
Composition A–4.
Nitroguanidine (Picrate).
It does not apply to production capacity for any of the above listed explosives at the U.S. Naval Propellant Plant, Indian Head, Maryland.

1377 P Cartridge and Propellant Actuated Devices and Components. This partial FSC assignment is applicable to the following devices:
(Reserved pending Services agreement as to items which shall be included in this assignment.)

1380 Military Biological Agents.

1390 P* Fuzes and Primers. This partial FSC assignment applies to Fuzes and Primers for Army assigned ammunition.
It does not apply to naval ordnance type, which is under DoD procurement assignment to the Department of the Navy; and guided missile fuzes.

2210 Locomotives.

2220 Rail Cars.

2240 Locomotive and Rail Car Accessories and Components.

2250 Track Materials, Railroad.

2310 P Passenger Motor Vehicles.

2320 P Trucks and Truck Tractors. The above two partial Federal Supply Class Assignments apply to tactical vehicles; trucks over 10,000 pounds Gross Vehicle Weight (GVW); and the following types of vehicles:
Bus, convertible to ambulance;
Truck, 4 x 4, convertible to ambulance;
Truck, 4 x 4, dump, 9,000 GVW, with cut-down cab.
These assignments do not apply to tracked landing vehicles which are not under DoD Coordinated Procurement assignment, and airport crash rescue vehicles, which are under DoD Coordinated Procurement assignment to the Department of the Air Force. With the exception of the types enumerated above, these assignments do not apply to commercial passenger carrying vehicles and trucks up to 10,000 pounds GVW, which are assigned for DoD Coordinated Procurement to the General Services Administration.

2330 P Trailers. This partial FSC assignment does not apply to two wheel lubrication trailers, two wheel steam cleaning trailers, and troop transporter semitrailers which are not under DoD Coordinated Procurement assignment, and airport crash rescue trailer units which are under DoD Coordinated Procurement assignment to the Department of the Air Force.

2340 P Motorcycles, Motor Scooters, and Bicycles. This partial FSC assignment does not apply to bicycles and tricycles.

2350 Tanks and Self-propelled Weapons.

2430 Tractors, Track Laying, High Speed.

2510 P** Vehicular Cab, Body, and Frame Structural Components.

2520 P** Vehicular Power Transmission Components.

2530 P** Vehicular Brake, Steering, Axle, Wheel, and Track Components.

2540 P** Vehicular Furniture and Accessories.

2590 P** Miscellaneous Vehicular Components.

2610 Tires and Tubes, Pneumatic, except Aircraft.

2630 Tires, solid and cushion.

2640 Tire Rebuilding and Tire and Tube Repair Materials.

2805 P** Gasoline Reciprocating Engines, except Aircraft; and Components.

2910 P** Engine Fuel System Components, Nonaircraft.

2920 P** Engine Electrical System Components, Nonaircraft.

2930 P** Engine Cooling System Components, Nonaircraft.

2940 P** Engine Air and Oil Filters, Strainers and Cleaners, Nonaircraft.

2990 P** Miscellaneous Engine Accessories, Nonaircraft.

4210 P Fire Fighting Equipment. This partial FSC assignment applies only to equipment developed by or under the sponsorship of the Department of the Army.

4230 P Decontaminating and Impregnating Equipment. This partial FSC assignment applies only to items peculiar to chemical warfare.

4240 P Safety and Rescue Equipment. This partial FSC assignment applies only to military respiratory protective equipment for chemical warfare.

5805 P Telephone and Telegraph Equipment. This partial FSC assignment applies only to military (wire) equipment, field type.

5815 P Teletype and Facsimile Equipment. This partial FSC assignment applies only to military (wire) equipment, field type.

5820 P Radio and Television Communication Equipment, except Airborne. This partial FSC assignment applies to non-tactical, off-the-shelf, commercially available radio and television equipment and supplies used by the Armed Forces Radio and Television Stations including equipment and supplies used by the Armed Forces for closed TV circuit educational and training programs.

5830 P Intercommunication and Public Address Systems: Except Airborne. This partial FSC assignment applies only to military (wire) equipment, field type.

6135 P Batteries, Primary. This partial FSC assignment applies to MIL type, dry cell batteries, only.

6625 P Electrical and Electronic Properties Measuring and Testing Instruments. This partial FSC assignment applies only to instruments for testing military (wire) equipment, field type.

6645 P Time Measuring Instruments. This partial FSC assignment applies to the following watches; aircraft instrument panel clocks; cases and spare parts therefore: Master navigation watches; pocket watches; stop watches; second setting wrist watches; wrist watches; athletic timers; aircraft clocks; aircraft panel clocks; mechanical aircraft clocks; navigation watch cases; pocket watch cases; watch holders; watch case assemblies and watch movements.

6660 P Meteorological Instruments and Apparatus. Each Department is assigned procurement responsibility for those systems, instruments and end items in

FSC 6660 for which the Department either designed or for which it sponsored development. For purposes of this assignment, the developing Department is the department which awarded the developmental contract, notwithstanding that other Departments may have provided funds for the development.

6665 P Hazard-Detecting Instruments and Apparatus. This partial FSC assignment applies only to items peculiar to chemical warfare.

6695 P Combination and Miscellaneous Instruments. This partial FSC assignment applies to jewel bearings only.

6820 P Dyes. This partial FSC assignment applies only to items peculiar to chemical warfare.

6910 P Training Aids. This partial FSC assignment applies only to items peculiar to Army assignments under weapons, fire control equipment, ammunition and explosives and chemical and biological warfare.

6920 P Armament Training Devices. This partial FSC assignment applies to armament training devices as listed in DA Catalogs SC 6910, ML/IL and SC 6920 ML/IL. It does not apply to clay pigeons in DA Catalogs SC 6910, ML/IL and SC 6920 ML/IL. It not apply to clay pigeons.

6940 P Communication Training Devices. This partial FSC assignment applies only to code training sets, code practice equipment, and other telephone and telegraph training devices.

8130 P Reels and Spools. This partial FSC assignment applies only to reels and spools for military (wire) equipment, field type.

8140 P Ammunition Boxes, Packages, and Special Containers. This partial FSC assignment applies only to boxes, packages and containers peculiar to Army assignments under ammunitions, explosives, and chemical and biological warfare as listed in DA Catalog SC 8140 IL and SC 8140 ML.

* For purposes of procurement. Naval Ordnance comprises all arms, armor, and armament for the Department of the Navy and includes all offensive and defensive weapons, together with their components, controlling devices and ammunition used in executing the Navy's mission in National Defense (except small arms and those items of aviation ordnance procured from the Army).

** This partial FSC assignment apply only to repair parts peculiar to combat and tactical vehicles. In addition, the assignment in FSC–2805 applies to military standard engines 1.5 HP through 20 HP and parts peculiar therefor. Balance of these Federal Supply Classes are assigned to the Defense Supply Agency (Defense Construction Supply Center).

208.7102 Department of the Navy.

Federal Supply Class Code and Commodity

FSC ("P" after the FSC number indicates a partial FSC assignment.).

Electronic Equipment.

Each Department is assigned procurement responsibility for those items which the Department either designed or for which it sponsored development. See FSC 5821 for assignment of certain commercially developed radio sets to the Department of the Navy (i.e., developed without the use of government funds.).

1095 P Miscellaneous Weapons. This partial FSC assignment applies to line throwing guns only.

1310 P Ammunition, over 30mm up to 75mm. This partial FSC assignment applies only to reels and spools for military.

1325 P Bombs. This partial FSC assignment applies to armor-piercing; depth bombs; externally suspended low drag bombs; and components and practice bombs therefor, as listed in Ord Pamphlets, and the MK 43, Target Detecting Device. With respect to this assignment the Department of the Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control-smoke and incendiary munitions and for other loading, assembling and packing in excess of Navy-owned capacity.

1340 P Rockets and Rocket Ammunition. This partial FSC assignment applies to:

Fuze, Rocket, V.T., MK93–0.

2.25 In. Rocket SCAR, Practice.
Heads MK3 and Mods.
Motors MK15 and Mods.
MK16 and Mods.

5 In. Rocket HVAR, service and practice.
Heads MK2 and Mods (common) MK6 and Mods (GP).
MK4 and Mods (smoke) MK25 and Mods (ATAR).
Motors MK10 and Mods.

5 In. Rocket FFAR service and practice.
Heads MK24 and Mods (General Purposes).
MK32 and Mods (Shaped Charged).
MK26 and Mods (Illum).
Motor MK16 and Mods.

With respect to this assignment the Department of the Army is responsible for procurement of filler and for filling of all smoke and toxicological rockets.

1390 P Fuzes and Primers. This partial FSC assignment applies to fuzes and primers for Navy assigned ammunition.

1550 P Drones. This partial FSC assignment applies only to Drone, Model BQM34E.

1905 P Combat Ships and Landing Vessels. This partial FSC assignment applies to landing vessels only.

1910 P Transport Vessels, Passenger and Troop. This partial FSC assignment applies to ferryboats only.

1920 Fishing Vessels.

1925 Special Service Vessels.

1930 Barges and Lighters, Cargo.

1935 P Barges and Lighters, Special Purpose. This partial FSC assignment does not apply to Derricks, Pile Drivers, Rock Cutters, Concrete Mixing Plants, Mechanical Bank Grader Barges, Other Bank Revetment Barges, and Barge Power Plans.

1940 Small Craft.

1945 P Pontoons and Floating Docks. This partial FSC assignment applies only to Naval Facilities Engineering Command Type Pontoons.

1950 Floating Drydocks.

1990 P Miscellaneous Vessels. This partial FSC assignment applies to commercial sailing vessels only.

2010 Ship and Boat Propulsion Components.

2020 Rigging and Rigging Gear.

2030 Deck Machinery.

2040 Marine Hardware and Hull Items.

2060 Commercial Fishing Equipment.

2090 Miscellaneous Ship and Marine Equipment.

2820 P Steam Engines, Reciprocating, and Components. This partial FSC assignment applies to Marine Main Propulsion Steam Engines only.

2825 P Steam Turbines and Components. This partial FSC assignment applies to Marine Steam Turbines only.

4210 P Fire Fighting Equipment. This partial FSC assignment applies only to fire fighting equipment developed by or under the sponsorship of the Department of Navy.

4410 P Industrial Boilers. This partial FSC assignment applies only to Boilers for use aboard those ships assigned to the Navy for coordinated procurement.

4420 P Heat Exchangers and Steam Condensers. This partial FSC assignment applies only to Heat Exchangers for use aboard those ships assigned to the Navy for coordinated procurements.

4925 P Ammunition Maintenance and Repair Shop Specialized Equipment. This partial FSC assignment applies to sets, kits and outfits of tools and equipment for explosive ordnance as defined in pertinent Military Service regulations and documents.

5821 P Radio and Television Communication Equipment, Airborne. This partial FSC assignment applies only to the following commercially developed radio sets. (The term "commercially developed" means that no government funds were provided for development purposes.) HF–101, 102, 103, 104, 105, 106, 107, 108, 109, 111, 113; ARC–94, 102, 105, 110, 112, 119, 120; MRC–95, 108; VC–102, 104, 105, 106, 109, 110, and components of the foregoing including the 490T antenna coupler.

6125 P Converters, Electrical, Rotating. This partial FSC assignment applies only to Motor-Generator Sets for use aboard ships assigned to the Navy for coordinated procurement.

6320 P Shipboard Alarm and Signal System. This partial FSC assignment applies only to Alarm Systems; Fire Alarm Systems; Indicating Systems; Telegraph Systems (Signal and Signaling) (Less Electronic Type) for use aboard ships assigned to the Navy coordinated procurement.

6605 P Navigational Instruments. This partial FSC assignment applies only to lifeboat and raft compasses; aircraft sextants; Hand Leads (Soundings); Lead Reels; Sounding Machines and Pelorus Stands for use aboard ships assigned to the Navy for coordinated procurement.

6645 P Time Measuring Instruments. This partial FSC assignment applies to the following instruments, cases and spare parts therefor:

Chronometers including gimbal, padded and make break circuit.
Clocks, Alarm; boat; deck; direct reading; electrical; floor; interval timer; marine; mechanical; master control; master program; master regulating; mechanical message center; nurses; program; shelf; stop; wall; watchman's.
Counters, time period.
Meters; engine running time; hour recording; and electrical time totalizing.
Timers; bombing; engine hours; sequential; stop; and program.
Program control instrument.
Cases; chronometer, including gimbal and padded; chronometer carrying; makebreak circuit chronometer.
Cans; chronometer shipping and storage.
Clock keys; clock movements; clock motors.

6650 P Optical Instruments. This partial FSC assignment applies only to Stands, telescope, for use aboard ships assigned to the Navy for coordinated procurement.

6660 P Meterological Instruments and Apparatus. Each Department is assigned procurement responsibility for those systems, instruments and end items in FSC 6660 for which the Department either designed or for which it sponsored development. For purposes of this assignment, the developing Department is the department which awarded the developmental contract, notwithstanding that other Departments may have provided funds for the develoment.

6665 P Hazard-Detecting Instruments and Apparatus. This partial FSC assignment applies only to Hazard Determining Safety Devices, for use aboard ships assigned to the Navy for coordinated procurement.

8140 P Ammunition Boxes, Packages, and Special Containers. This partial FSC assignment applies only to boxes, packages and containers for 40mm ammunition.

208.7103 Department of the Air Force.

Federal Supply Class Code and Commodity

FCS ("P" after the FSC number indicates a partial FSC assignment).
Electronic Equipment.
Each Department is assigned procurement responsibility for those items which the Department either designed or for which it sponsored development. See FSC 5821 under Navy listing for assignment of certain commercially developed radio sets (*i.e.*, developed without the use of government funds).

1550 P Drones. This partial assignment applies only to the following model drones: Model 147; Model 154; BQM 34A and MQM 34D.

2320 P Trucks and Truck Tractors. This partial FSC assignment applies only to Airport Crash Rescue Vehicles.

2330 P Trailers. This partial FSC assignment applies only to Airport Crash Rescue Trailer Units.

4210 P Fire Fighting Equipment. This partial FSC assignment applies only to fire fighting equipment developed by or under the sponsorship of the Department of the Air Force.

6660 P Meteorological Instruments and Apparatus. Each Department is assigned procurement responsibility for those systems, instruments and end items in FSC 6660 for which the Department either designed or for which it sponsored development. For purposes of this assignment the developing Department is the Department which awarded the developmental contract, notwithstanding that other Departments may have provided funds for the development.

6710 P * Cameras, Motion Picture. This partial FSC assignment does not apply to Submarine Periscope and Underwater Cameras.

6720 P * Cameras, Still Picture. This partial FSC assignment does not apply to Submarine Periscope and Underwater Cameras.

6730 P * Photographic Projection Equipment. This partial FSC assignment does not apply to 35 mm Theater Projectors.

6740 * Photographic Developing and Finishing Equipment.

6760 * Photographic Equipment and Accessories.

6780 * Photographic Sets, Kits, and Outfits.

8820 P Live Animals Not Raised For Food. This partial FSC assignment applies only to the following types of working dogs: scout, sentry, patrol, mine/tunnel, tracker, detector-narcotic/contraband, sledge, bloodhound, water dog and patrol/detector.

* This partial FSC assignment does not apply to Photographic Equipment controlled by the Congressional Joint Committee on Printing, and Micro-Film Equipment and Supplies.

208.7104 Defense Logistics Agency.

Federal Supply Class Code		Commodity	DSA Center *
FSC ("P" after the FSC number indicates a partial FSC assignment.)			
2230		Right of Way Construction and Maintenance Equipment, Railroad.	DCSC
2410		Tractor, Full Track, Low Speed	DCSC
2420		Tractors, Wheeled	DCSC
2510	P *	Vehicular Cab, Body, and Frame, Structural Components.	DCSC
2520	P *	Vehicular Power Transmission Components.	DCSC
2530	P *	Vehicular Brake, Steering, Axle, Wheel and Track Components.	DCSC
2540	P *	Vehicular Furniture and Accessories.	DCSC
2590	P *	Miscellaneous Vehicular Components.	DCSC
2805	P *	Gasoline Reciprocating Engines, Except Aircraft; and Component.	DCSC
2815		Diesel Engines and Components	DCSC
2895		Miscellaneous Engines and Components.	DCSC
2910	P *	Engine Fuel System Components, Nonaircraft.	DCSC
2920	P *	Engine Electrical System Components, Nonaircraft.	DCSC
2930	P *	Engine Cooling System Components, Nonaircraft.	DCSC
2940	P *	Engine Air and Oil Filters, Strainers and Cleaners, Nonaircraft.	DCSC
2990	P *	Miscellaneous Engine Accessories, Nonaircraft.	DCSC
3020		Gears, Pulleys, Sprockets and Transmission Chain.	DCSC
3030		Belting, Drive Belts, Fan Belts, and Accessories.	DCSC
3040		Miscellaneous Power Transmission Equipment.	DCSC
3110		Bearings, Antifriction, Unmounted.	DISC
3120		Bearings, Plain Unmounted	DISC
3130		Bearings, Mounted	DISC
3210		Sawmill and Planing Mill Machinery.	DGSC
3220		Woodworking Machines	DGSC
3230		Tools and Attachments for Woodworking Machinery.	DGSC
3405	P *	Saws and Filing Machines	DGSC
3408	P *	Machining Centers and Way-Type Machines.	DGSC
3410	P *	Electrical and Ultrasonic Erosion Machines.	DGSC
3411	P *	Boring Machines	DGSC
3412	P *	Broaching Machines	DGSC
3413	P *	Drilling and Tapping Machines	DGSC
3414	P *	Gear Cutting and Finishing Machines.	DGSC
3415	P *	Grinding Machines	DGSC
3416	P *	Lathes	DGSC
3417	P *	Milling Machines	DGSC
3418	P *	Planers and Shapers	DGSC
3419	P *	Miscellaneous Machine Tools	DGSC
3422	P *	Rolling Mills and Drawing Machines.	DGSC
3424	P *	Metal Heat Treating Equipment	DGSC
3426	P *	Metal Finishing Equipment	DGSC
3431		Electric Arc Welding Equipment	DGSC
3432	P *	Electric Resistance Welding Equipment.	DGSC
3433	P *	Gas Welding, Heat Cutting & Metalizing Equipment.	DGSC
3436	P *	Welding Positioners and Manipulators.	DGSC
3438	P *	Miscellaneous Welding Equipment.	DGSC
3439	P *	Miscellaneous Welding, Soldering and Brazing Suppliers and Accessories.	DGSC
3441	P *	Bending and Forming Machines	DGSC
3442	P *	Hydraulic and Pneumatic Presses, Power Driven.	DGSC
3443	P *	Mechanical Presses, Power Driven.	DGSC
3444	P *	Manual Presses	DGSC
3445	P *	Punching and Shearing Machines.	DGSC
3446	P *	Forging Machinery and Hammers	DGSC
3447	P *	Wire and Metal Ribbon Forming Machinery.	DGSC
3448	P *	Riveting Machines	DGSC
3449	P *	Misc. Secondary Metal Forming and Cutting Machines.	DGSC
3450	P *	Machine Tools, Portable	DGSC
3455	P *	Cutting Tools for Machine Tools	DGSC
3456	P *	Cutting and Forming Tools for Secondary Metal Working Machines.	DGSC
3460	P *	Machine Tool Accessories	DGSC
3461	P *	Accessories for Secondary Metalworking Machinery.	DGSC
3465	P *	Production Jigs, Fixtures and Templates.	DGSC
3470	P *	Machine Shop Sets, Kits, and Outfits.	DGSC
3510		Laundry and Dry Cleaning Equipment.	DGSC
3520		Shoe Repairing Equipment	DGSC
3580		Industrial Sewing Machines & Mobile Textile Repair Shops.	DGSC
3610		Printing, Duplicating, and Bookbinding Equipment.	DGSC
3611	P *	Industrial Marking Machines	DGSC
3620	P *	Rubber and Plastics Working Machinery.	DGSC
3635	P *	Crystal and Glass Industries Machinery.	DGSC
3650	P *	Chemical & Pharmaceutical Products Manufacturing Machinery.	DGSC
3655		Gas Generating and Dispensing Systems, Fixed or Mobile.	DGSC
3660	P *	Industrial Size Reduction Machinery.	DGSC
3680	P *	Foundry Machinery, Related Equipment and Supplies.	DGSC
3685	P *	Specialized Metal Container Manufacturing Machinery and Related Equipment.	DGSC

Federal Supply Class Code	Commodity	DSA Center [a]
3693 P [a]	Industrial Assembly Machines	DGSC
3694 P [a]	Clean Work Stations, Controlled Environment & Related Equipment.	DGSC
3695	Miscellaneous Special Industry Machinery.	DGSC
3710	Soil Preparation Equipment	DCSC
3720	Harvesting Equipment	DCSC
3740	Pest, Disease, and Frost Control Equipment.	DCSC
3770	Saddlery, Harness, Whips and Related Animal Furnishings.	DCSC
3805	Earth Moving and Excavating Equipment.	DCSC
3810	Cranes and Crane-Shovels	DCSC
3815	Crane and Crane-Shovel Attachments.	DCSC
3820	Mining, Rock Drilling, Earth Boring, and Related Equipment.	DCSC
3825	Road Clearing and Cleaning Equipment.	DCSC
3830	Truck and Tractor Attachments	DCSC
3835	Petroleum Production and Distribution Equipment.	DCSC
3895	Miscellaneous Construction Equipment.	DCSC
3910	Conveyors	DCSC
3920	Materials Handling Equipment, Nonself-Propelled.	DGSC
3930	Warehouse Trucks and Tractors, Self-Propelled.	DCSC
3940	Blocks, Tackle, Rigging, and Slings.	DISC
3950	Winches, Hoists, Cranes, and Derricks.	DCSC
3990	Miscellaneous Materials Handling Equipment.	DGSC
4010	Chain and Wire Rope	DISC
4020	Fiber Rope, Cordage and Twine	DISC
4030	Fittings for Rope, Cable and Chain.	DISC
4110	Refrigeration Equipment	DGSC
4120	Air Conditioning Equipment	DGSC
4130	Refrigeration and Air Conditioning Components.	DGSC
4140	Fans, Air Circulators, and Blower Equipment.	DGSC
4210 P [a]	Fire Fighting Equipment	DCSC
4220	Marine Lifesaving and Diving Equipment.	DCSC
4310	Compressors and Vacuum Pumps.	DCSC
4320	Power and Hand Pumps	DCSC
4330	Centrifugals, Separators, and Pressure and Vacuum Filters.	DCSC
4440	Driers, Dehydrators, and Anhydrators.	DCSC
4450	Industrial Fan and Blower Equipment.	DCSC
4460	Air Purification Equipment	DCSC
4510	Plumbing Fixtures and Accessories.	DCSC
4520	Space Heating Equipment and Domestic Water Heaters.	DCSC
4530	Fuel Burning Equipment Units	DCSC
4540	Miscellaneous Plumbing, Heating and Sanitation Equipment.	DCSC
4610	Water Purification Equipment	DCSC
4620	Water Distillation Equipment, Marine and Industrial.	DCSC
4630	Sewage Treatment Equipment	DCSC
4710	Pipe and Tube	DCSC
4720	Hose and Tubing, Flexible	DCSC
4730	Fittings and Specialities; Hose, Pipe and Tube.	DCSC
4810	Valves, Powered	DCSC
4820	Valves, Nonpowered	DCSC
4930	Lubrication and Fuel Dispensing Equipment.	DCSC
5280	Sets, Kits, and Outfits of Measuring Tools.	DGSC
5305	Screws	DISC
5306	Bolts	DISC
5307	Studs	DISC
5310	Nuts and Washers	DISC
5315	Nails, Keys and Pins	DISC
5320	Rivets	DISC
5325	Fastening Devices	DISC
5330	Packing and Gasket Materials	DISC
5335	Metal Screening	DISC
5340	Miscellaneous Hardware	DISC
5355	Knobs and Pointers	DISC
5360	Coil, Flat and Wire Springs	DISC
5365	Rings, Shims and Spacers	DISC
5410	Prefabricated and Portable Buildings.	DCSC
5420	Bridges, Fixed and Floating	DCSC
5430	Storage Tanks	DCSC
5440	Scaffolding Equipment and Concrete Forms.	DCSC
5445	Prefabricated Tower Structures	DCSC
5450	Miscellaneous Prefabricated Structures.	DCSC
5510	Lumber and Related Basic Wood Materials.	DCSC
5520	Millwork	DCSC
5530	Plywood and Veneer	DCSC
5660	Fencing, Fences and Gates	DCSC
5680 P	Miscellaneous Construction Materials. This partial FSC assignment applies only to airplane landing mat. (Also, see footnote 1 at end of list relative to purchase of DSA managed items in GSA assigned classes.)	DESC
5905	Resistors	DESC
5910	Capacitors	DESC
5915	Filters and Networks	DESC
5920	Fuses and Lightning Arrestors	DESC
5925	Circuit Breakers	DESC
5930	Switches	DESC
5935	Connectors, Electrical	DESC
5940	Lugs, Terminals and Terminals Strips.	DGSC
5945	Relays, Contractors, and Solenoids.	DESC
5950	Coils and Transformers	DESC
5955	Piezoelectric Crystals	DESC
5960	Electron Tubes and Associated Hardware.	DESC
5961	Semiconductor Devices and Associated Hardware.	DESC
5962	Microelectronic Circuit Devices	DESC
5965	Headsets, Handsets, Microphones and Speakers.	DESC
5970	Electrical Insulators and Insulating Materials.	DGSC
5975	Electrical Hardware and Supplies	DGSC
5977	Electrical Contact Brushes and Electrodes.	DGSC
5985	Antennas, Waveguides, and Related Equipment.	DESC
5990	Synchros and Resolvers	DESC
5995	Cable, Cord, and Wire Assemblies: Communication Equipment.	DGSC
5999	Miscellaneous Electrical and Electronic Components.	DESC
6105	Motors, Electrical	DGSC
6110	Electrical Control Equipment	DGSC
6115 P [a]	Generators and Generator Sets, Electrical.	DGSC
6120	Transformers: Distribution and Power Station.	DGSC
6145	Wire and Cable, Electrical	DISC
6150	Miscellaneous Electric Power and Distribution Equipment.	DGSC
6210	Indoor and Outdoor Electric Lighting Fixtures.	DGSC
6220	Electric Vehicular Lights and Fixtures.	DGSC
6230	Electric Portable and Hand Lighting Equipment.	DGSC
6240	Electric Lamps	DGSC
6250	Ballasts, Lampholders and Starters.	DGSC
6260	Nonelectrical Lighting Fixtures	DGSC
6350	Miscellaneous Alarm and Signal Systems.	DGSC
6505 [4]	Drugs, Biologicals, and Official Reagents.	DPSC
6508 [4]	Medicated Cosmetics and Toiletries.	DPSC
6510 [4]	Surgical Dressing Materials	DPSC
6515 [4]	Medical and Surgical Instruments, Equipment and Supplies.	DPSC
6520 [4]	Dental Instruments, Equipment, and Supplies.	DPSC
6525 [4]	X-ray Equipment and Supplies: Medical, Dental and Veterinary.	DPSC
6530 [4]	Hospital Furniture, Equipment, Utensils, and Supplies.	DPSC
6532	Hospital and Surgical Clothing and Textile Special Purpose Items.	DPSC
6540 [4]	Opticians' Instruments, Equipment and Supplies.	DPSC
6545 [4]	Medical Sets, Kits, and Outfits	DPSC
6630	Chemical Analysis Instruments	DGSC
6635	Physical Properties Testing Equipment.	DGSC
6640	Laboratory Equipment and Supplies.	DPSC
6655	Geophysical and Astronomical Instruments.	DGSC
6670	Scales and Balances	DGSC
6675	Drafting, Surveying and Mapping Instruments.	DGSC
6680	Liquid and Gas Flow, Liquid Level and Mechanical Motion Measuring Instruments.	DGSC
6750	Photographic Supplies	DGSC
6810 [7]	Chemicals	DFSC & DGSC
6820	Dyes	DGSC
6830	Gases: Compressed and Liquefied.	DGSC
6840	Pest Control Agents and Disinfectants.	DGSC
6850 [7]	Miscellaneous Chemical Specialties.	DFSC
		DGSC
7210	Household Furnishings	DPSC
7310	Food Cooking, Baking and Serving Equipment.	DGSC
7320	Kitchen Equipment and Appliances.	DGSC
7360	Sets, Kits and Outfits: Food Preparation and Serving.	DGSC
7610	Books and Pamphlets	DGSC
7660	Sheet and Book Music	DGSC
7690	Miscellaneous Printed Matter	DGSC
8110	Drums and Cans	DGSC
8120	Commercial and Industrial Gas Cylinders.	DGSC
8125	Bottles and Jars	DGSC
8305	Textile Fabrics. FSC 8305 does not include laminated cloth used exclusively in the repair of lighter than air envelopes.	DPSC
8310	Yarn and Thread	DPSC
8315	Notions and Apparel Findings. FSC 8315 does not include coated cloth tape used exclusively in the repair of lighter than air envelopes.	DPSC
8320	Padding and Stuffing Materials	DPSC
8325	Fur Materials	DPSC
8330	Leather	DPSC
8335	Shoe Bindings and Soling Materials.	DPSC
8340	Tents and Tarpaulins	DPSC
8345	Flags and Pennants	DPSC
8405	Outerwear, Men's	DPSC
8410	Outerwear, Women's	DPSC
8415	Clothing, Special Purpose. FSC 8415 includes all submarine clothing.	DPSC
8420	Underwear and Nightwear, Men's.	DPSC
8425	Underwear and Nightwear, Women's.	DPSC
8430	Footwear, Men's	DPSC
8435	Footwear, Women's	DPSC
8440	Hosiery, Handwear, and Clothing Accessories, Men's.	DPSC
8445	Hosiery, Handwear, and Clothing Accessories, Women's.	DPSC
8450	Children's and Infants' Apparel and Accessories.	DPSC
8455	Badges and Insignia	DPSC
8460	Luggage	DPSC
8465	Individual Equipment	DPSC
8470	Armor, Personal	DPSC
8475	Specialized Flight Clothing and Accessories.	DPSC
8905 [5]	Meat, Poultry, and Fish	DPSC
8910 [5]	Dairy Foods and Eggs	DPSC
8915 [5]	Fruits and Vegetables	DPSC
8920 [5]	Bakery and Cereal Products	DPSC
8925 [5]	Sugar, Confectionry and Nuts	DPSC
8930 [5]	Jams, Jellies, and Preserves	DPSC

Federal Supply Class Code		Commodity	DSA Center [6]
8935	[5]	Soups and Bouillons	DPSC
8940	[5]	Special Dietary Foods and Food Specialty Preparations.	DPSC
8945	[5]	Food Oils and Fats	DPSC
8950	[5]	Condiments and Related Products.	DPSC
8955	[5]	Coffee, Tea, and Cocoa	DPSC
8960	[5]	Beverages, Nonalcoholic	DPSC
8970	[5]	Composite Food Packages	DPSC
8975	[5]	Tobacco Products	DPSC
9110		Fuels, Solid	DFSC
9130		Liquid Propellants and Fuels, Petroleum Base.	DFSC [7]
9140		Fuel Oils	DFSC
9150		Oils and Greases: Cutting, Lubricating, and Hydraulic.	DFSC
9160		Miscellaneous Waxes, Oils, and Fats.	DFSC
9320		Rubber Fabricated Materials	DGSC
9330		Plastics Fabricated Materials	DGSC
9340		Glass Fabricated Materials	DGSC
9350		Refractories and Fire Surfacing Materials.	DGSC
9390		Miscellaneous Fabricated Nonmetallic Materials.	DGSC
9420	P	Fibers: Vegetable, Animal and Synthetic. This partial FSC assignment applies only to raw cotton and raw wool.	DPSC
9430	P	Miscellaneous Crude Animal Products, Inedible. This partial FSC assignment applies only to crude hides.	DPSC
9505		Wire, Nonelectrical, Iron and Steel.	DISC
9510		Bars and Rods, Iron and Steel	DISC
9515		Plate, Sheet, and Strip: Iron and Steel.	DISC
9520		Structural Shapes, Iron and Steel.	DISC
9525		Wire, Nonelectrical, Nonferrous Base Metal.	DISC
9530		Bars and Rods, Nonferrous Base Metal.	DISC
9535		Plate, Sheet, Strip, and Foil: Nonferrous Base Metal.	DISC
9540		Structural Shapes, Nonferrous Base Metal.	DISC
9545		Plate, Sheet, Strip, Foil and Wire: Precious Metal.	DISC
9620	P	Minerals, Natural and Synthetic. This partial FSC assignment applies only to crude petroleum and crude shale oil.	DFSC
9925		Ecclesiastical Equipment, Furnishings and Supplies.	DGSC
9930		Memorials, Cemeterial and Mortuary Equipment and Supplies.	DGSC
9999		Miscellaneous Items	DGSC

[1] These assignments do not apply to items decentralized by the DLA Center Commander, i.e., designated for purchase by each Military Department, and to those items in DLA assigned Federal Supply Classes, which may be assigned to GSA for supply management. In addition, see 8.7100-2 which describes conditions under which a Military Service may purchase (contract for) Military Service supply managed items in DLA assigned Federal Supply Classes. See notes 2 and 3 below for further exceptions pertaining to certain DLA assignments.

[2] DLA assignments in FSC 2510, 2520, 2530, 2540, 2590, 2805, 2910, 2920, 2930, 2940 and 2990 do not apply to repair parts peculiar to combat and tactical vehicles, which are assigned for coordinated procurement to the Department of the Army. In addition, the assignment in FSC-2805 does not apply to military standard engines 1.5 HP through 20 HP and parts peculiar therefor, which are assigned for coordinated procurement to the Department of the Army.

[3] This partial FSC assignment in FSC 4210 does not apply to Fire Fighting Equipment developed by or under the sponsorship of a Military Department. The procurement responsibility for such equipment is assigned to the Department which developed or sponsored its development.

[4] The Defense Logistics Agency has procurement responsibility for all the items in the Classes of FS Group 65. In addition, DLA has procurement responsibility for all equipment and supplies related to the medical, dental, veterinary professions in Non-Group 65 Classes where the Military medical services have the sole or prime interest in such items. The specific item coverage of these Non-Group 65 items is published in the DoD Section of the Federal Supply Catalog for Medical Material C3-1 through C3-12, inclusive.

[5] This assignment includes Health and Comfort items listed in AR 700-23. It also includes resale items for commissary stores (including brand name items).

[6] DLA Centers are identified as follows:
DCSC—Defense Construction Supply Center.
DESC—Defense Electronics Supply Center.
DFSC—Defense Fuel Supply Center.
DGSC—Defense General Supply Center.
DISC—Defense Industrial Supply Center.
DPSC—Defense Personnel Support Center.

[7] DFSC is responsible for procurement of only petroleum base items in FSC 6810 and FSC 6850.

[8] This partial assignment applies only to secondary items not identified as IPE. Such secondary items are listed in the applicable Federal Supply Catalog Management Data Lists of each respective Service.

[9] This partial FSC assignment in FSC 6115 does not apply to Mobile Electric Power Generating Sources (MPECS). The procurement direction responsibility for MEPCS is assigned to the DoD Project Manager, Mobile Electric Power by DoD Directive 4120.11. DoD components desiring to use other than the DoD Standard Family of Generator Sets, contained in MIL-STD 633, shall process a Request for Deviation in accordance with Joint Operating Procedures, AR 700-101, AFR 400-50, NAVMATINST 4120.100A, MCO 11310.8c and DLAR 4120.7, Subject: Management and Standardization of Mobile Electric Power Generating Sources, prior to initiating procurement.

208.7105 Defense Nuclear Agency.

Federal Supply Class Code and Commodity

1105 Nuclear Bombs.
1110 Nuclear Projectiles.
1115 Nuclear Warheads and Warhead Sections.
1125 Nuclear Demolition Charges.
1127 Nuclear Rockets.
1130 Conversion Kits, Nuclear Ordnance.
1135 Fuzing and Firing Devices, Nuclear Ordnance.
1140 Nuclear Components.
1145 High Explosive Charges, Propellants, and Detonators: Nuclear Ordnance.
1190 Specialized Test and Handling Equipment, Nuclear Ordnance.
1195 Miscellaneous Nuclear Ordnance.

* In addition to the above, assignments to DNA include all items for which DNA has integrated management responsibility in accordance with DoD Directive 5105.31.

208.7106 General Services Administration.

Federal Supply Class Code and Commodity

FSC ("P" after FSC number indicates partial FSC assignment.)
2310 P Passenger Motor Vehicles.
2320 P Trucks and Truck Tractors. The above two partial Federal Supply Class Assignments apply to all commercial passenger carrying vehicles and trucks up to 10,000 pounds Gross Vehicle Weight (GVW) except the following types which are assigned for DoD Coordinated Procurement to the Department of the Army.
Bus, convertible to ambulance.
Truck, 4 x 4, convertible to ambulance.
Truck, 4 x 4, dump, 9,000 pounds GVW, with cut-down cab.
(See Army Coordinated Procurement assignments in FSC 2310 and FSC 2320.)
3540 Wrapping and Packaging Machinery.
3550 Vending and Coin Operated Machines.
3590 Miscellaneous Service and Trade Equipment.
3750 Gardening Implements and Tools.
5110 Hand Tools, Edged, Nonpowered.
5120 Hand Tools, Nonedged, Nonpowered.
5130 Hand Tools, Power Driven.
5133 Drill Bits, Counterbores, and Countersinks: Hand and Machine.
5136 Taps, Dies and Collects: Hand and Machine.
5140 Tool and Hardware Boxes.
5180 Sets, Kits and Outfits of Hand Tools.
5210 Measuring Tools, Craftmen's.
5345 Disks and Stones, Abrasive.
5350 Abrasive Materials.
5610 Mineral Construction Materials, Bulk.
5620 Building Glass, Tile, Brick and Block.
5630 Pipe and Conduit, Nonmetallic.
5640 Wallboard, Building Paper, and Thermal Insulation Materials.
5650 Roofing and Siding Materials.
5670 Architectural and Related Metal Products.
5680 P** Miscellaneous Construction Materials.
7105 Household Furniture.
7110 Office Furniture.
7125 Cabinets, Lockers, Bins and Shelving.
7195 Miscellaneous Furniture and Fixtures.
7220 Floor Coverings.
7230 Draperies, Awnings, and Shades.
7240 Household and Commercial Utility Containers.
7290 Miscellaneous Household and Commercial Furnishings and Appliances.
7330 Kitchen Hand Tools and Utensils.
7340 Cutlery and Flatware.
7350 Tableware.
7410 Punched Card System Machines.
7420 Accounting and Calculating Machines.
7430 Typewriters and Office-type Composing Machines.
This FSC assignment does not apply to machines controlled by the Congressional Joint Committee on Printing.
7450 Office-type Sound Recording and Reproducing Machines.
7460 Visible Record Equipment.
7490 Miscellaneous Office Machines.
This FSC assignment does not apply to equipment controlled by the Congressional Joint Committee on Printing.
7510 Office Supplies.
This FSC assignment does not apply to Office Supplies, including special inks, when DoD requirements of such items are procured through Government Printing Office channels.
7520 Office Devices and Accessories.
This FSC assignment does not apply to office devices and accessories when DoD requirements of such items are procured through Government Printing Office channels.
7530 Stationery and Record Forms.
This FSC assignment does not apply to Stationery and Record Forms when DoD requirements of such items are procured through Government Printing Office channels including those items covered by term contracts issued by GPO for tabulating cards and marginally punched continuous forms.
7710 Musical Instruments.
7720 Musical Instrument Parts and Accessories.
7730 Phonographs, Radios, and Television Sets: Home Type.
7740 Phonograph Records.
7810 Athletic and Sporting Equipment.
7820 Games, Toys, and Wheeled Goods.
7830 Recreational and Gymnastic Equipment.
7910 Floor Polishers and Vacuum Cleaning Equipment.
7920 Brooms, Brushes, Mops and Sponges.

7930 Cleaning and Polishing Compounds and Preparations.
8010 Paints, Dopes, Varnishes, and Related Products.
8020 Paint and Artists Brushes.
8030 Preservative and Sealing Compounds.
8040 Adhesives.
8105 Bags and Sacks.
8115 Boxes, Cartons and Crates.
8135 Packaging and Packing Bulk Materials.
8510 Perfumes, Toilet Preparations and Powders.
8520 Toilet Soap, Shaving Preparations and Dentifrices.
8530 Personal Toiletry Articles.
8540 Toiletry Paper Products.
8710 Forage and Feed.
8720 Fertilizers.
8730 Seeds and Nursery Stock.
9310 Paper and Paperboard.
9905 Signs, Advertising Displays, and Identification Plates.
9910 Jewelry.
9915 Collectors' Items.
9920 Smokers' Articles and Matches.

*These GSA assignments do not apply to items as described under FSC 7430, 7490, 7510, 7520, and 7530, and those items in the GSA assigned Federal Supply Classes which have been retained for DLA supply management as listed in the applicable Federal Supply Catalog Management Data Lists. In addition, see 208.7100-2 which describes conditions under which a Military Service may purchase (contract for) Military Service Supply managed items in GSA assigned Federal Supply Classes.

**This partial FSC assignment does not include landing mats which are assigned to the Defense Logistics Agency.

Subpart 208.72—Procurement for NASA

208.7200 Authorization and policy.

(a) NASA is authorized by Public Law 85-568 to use the procurement services, personnel, equipment and facilities of the Departments with their consent, with or without reimbursement, and on a similar basis to cooperate with the Departments in the use of procurement services, equipment and facilities.

(b) The Department will cooperate fully with NASA in making their procurement services, equipment, personnel and facilities available on the basis of mutual agreement.

(c) The Departments will not claim reimbursement for administrative costs incident to procurements for NASA, except as may be otherwise agreed prior to the time the services are performed.

(d) When procuring supplies or services for NASA or performing field service functions in support of NASA contracts, the Department concerned will use its own methods, except when required by the terms of the agreement involved.

(e) The Departments normally will use their own funds when procuring supplies or services for NASA, or performing services, and will not cite NASA funds on any Defense obligation or payment document.

208.7201 NASA purchase request and acceptance.

(a) The NASA-Defense Purchase Request (NASA Form Number 523) will be used by NASA for requesting procurement of supplies or services, from all activities of the Departments.

(b) Except as provided in (d) below, within 30 days after receipt of a NASA-Defense Purchase Request, the Department concerned will forward to the initiator of the request a DD Acceptance of MIPR Form, DD Form 448-2, in quadruplicate in accordance with instructions contained in 208.7009. Each DD Form 448-2 will show the action being taken or to be taken to fill the requirement and the name and complete address of the Department of Defense procurement activity for future direct contact by the initiator.

(c) To the extent feasible, all documents including acceptances, contracts, correspondence, shipping documents, work or project orders, and Standard Form 1080 (Voucher for Transfer Between Appropriations and/or Funds) billings will reference the NASA-Defense Purchase Request Number and the item number when appropriate.

(d) Acceptance by the Department is not required for NASA-Defense Purchase Request covering deliveries of common-use standard stock items which the supplying department has on hand or on order for prompt delivery at published prices.

208.7202 Changes in estimated total prices.

When a Department determines that the estimated total price (Block 9, NASA Form 523) of the items to be procured for NASA is not sufficient to cover the required reimbursement, or is in excess of the amount required, a request for an amendment will be forwarded to the NASA originating office. The request will indicate a specific dollar amount, rather than a percentage, and will include justification for any upward adjustment requested. Upon approval of the request, an amendment to the NASA-Defense Purchase Request will be forwarded to the procuring activity.

208.7203 Inquiries.

Inquiries and correspondence will be directed to the NASA originating office.

208.7204 Payments.

Payments to the Departments for supplies and services furnished or procured for NASA will be effected on the basis of Standard Form 1080 billings submitted to the NASA office designated in Block 11 of the NASA-Defense Purchase Request, except where agreements provide that reimbursement is not required. Billings will be supported in the same manner as billings between Departments.

Subpart 208.73—Miniature and Instrument Ball Bearings

208.7301 Definitions.

"Domestic manufacture" means miniature and instrument ball bearings manufactured in the United States or Canada. When a ball bearing assembly is involved, all components of the bearing must also have been manufactured in the United States or Canada.

"Miniature and instrument ball bearings" are all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, irrespective of material, tolerance, performance, or quality characteristics.

208.7302 Policy.

It has been determined that defense requirements for miniature and instrument ball bearings must be procured from domestic manufacturing sources to the maximum extent practicable. Accordingly, all procurements of miniature and instrument ball bearings and all procurements of items containing miniature and instrument ball bearings shall include, except as provided in 208.7303 below, a requirement that such ball bearings delivered under the contract be of domestic manufacture only.

208.7303 Procedures.

(a) The clause set forth at 252.208-7000, Required Sources for Miniature and Instrument Ball Bearings, shall be inserted in all contracts except:

(1) When the contracting officer knows that the item being procured does not contain miniature or instrument ball bearings:

(2) When the urgency of the military requirement necessitates delivery of an end item containing other than domestically manufactured miniature or instrument ball bearings;

(3) In small purchases using small purchase procedures, other than in purchase of bearings as the end item;

(4) Purchases of standard commercial items, other than—

(i) Those which are intended for use as components or subassemblies of defense equipments or systems (e.g., repair parts) or

(ii) Purchases of bearings as the end item; or

(5) Purchases made overseas for overseas use.

(b) Subsequent to the award of a contract which includes the clause required by (a) above, the contracting officer may waive the "use" but not the acquisition requirements of the clause. Such waiver may be granted upon submission of a written request by the contractor if the contractor or subcontractor has on hand subassemblies or end items containing nondomestic ball bearings, and either:

(1) The production of such subassemblies or end items in the performance of all or a part of the contract using ball bearings of domestic manufacture would interfere with economical or normal production scheduling of the military product under contract or with production of another item (military or commercial); or

(2) The delivery schedule under the contract or subcontract is such that use of other than domestic ball bearings or subassemblies or parts is necessary.

The contracting officer should grant waivers only to the extent and for the period of time necessary to permit the contractor to acquire and use domestic bearings.

Subpart 208.74—Precision Components for Mechanical Time Devices

208.7401 Definitions.

"Domestic manufacture" means precision components for mechanical time devices manufactured in the United States or Canada. When a mechanical timing assembly is involved, all components of the assembly must also have been manufactured in the United States or Canada.

"Precision components for mechanical time devices" are parts which closely relate so that precise control and selection of working production tolerances can be maintained to accomplish the desired function and reliability. In terms of accuracy, such precision components have total tolerances under 0.003 inches, eccentricities less than 0.0015 inches, and surface finishes better than 64 rms. Examples of such precision components include: gears, pinions, posts, and plates. Precision components subject to the provisions of this subpart are those which are included in fuzes, boosters, and aircraft clocks in the following Federal Supply Classes:

FS class and description

1305 Ammunition through 30mm
1310 Ammunition, over 30mm up to 75mm
1315 Ammunition, 75mm through 125mm
1320 Ammunition over 125mm
1325 Bombs
1330 Grenades
1340 Rockets and Rocket Ammunition
1345 Land Mines
1390 Fuzes and Primers
6645 Time Measuring Instruments (aircraft clocks only)

208.7402 Policy.

It has been determined that defense requirements for precision components for mechanical time devices must be procured from domestic manufacturing sources to the maximum extent practicable. Accordingly, all procurements of precision components for mechanical time devices and all procurements of items containing precision components for mechanical time devices shall include, except as provided in 7403 below, a requirement that such components delivered under the contract be of domestic manufacture only.

208.7403 Procedures.

(a) All procurements of items in the Federal Supply Classes listed above or any subassembly, component, or part thereof shall provide that precision components for mechanical time devices, in the quantities and of the type and sizes (including tolerances) required to produce the end item being supplied, be of domestic manufacture and incorporated into the items delivered by the contractor and subcontractor at every tier. To accomplish this, the clause set forth at 252.208–7001, Required Sources for Precision Components for Mechanical Time Devices, shall be inserted in all contracts except:

(1) When the contracting officer knows that the item being procured does not contain precision components for mechanical time devices;

(2) When the urgency of the military requirement necessitates delivery of an end item containing other than domestically manufactured precision components for mechanical time devices;

(3) In small purchases using small purchase procedures, other than in purchase of precision components for mechanical time devices as the end item;

(4) Purchases of standard commercial items, other than—

(i) Those which are intended for use as components or subassemblies of defense equipment or systems (e.g., repair parts); or

(ii) Purchases of precision components for mechanical time devices as the end item; or

(5) Purchases made overseas for overseas use.

(b) Subsequent to the award of a contract which includes the clause required by (a) above, the contracting officer may waive the "use" but not the acquisition requirements of the clause. Such waiver may be granted upon submission of a written request by the contractor if the contractor or subcontractor has on hand subassemblies or end items containing nondomestic precision components for mechanical time devices and either:

(1) The production of such subassemblies or end items in performance of all or a part of the contract using precision components for mechanical time devices of domestic manufacture would interfere with economical or normal production scheduling of the military product under contract or with production of another item (military or commercial); or

(2) The delivery schedule under the contract or subcontract is such that use of other than domestic precision components for mechanical time devices or subassemblies or parts is necessary.

The contracting officer should grant waivers only to the extent and for the period of time necessary to permit the contractor to acquire and use domestic components.

Subpart 208.75—High-Purity Silicon

208.7501 Definitions.

"Domestic manufacture" means high-purity silicon manufactured in the United States or Canada. When an item or subassembly containing high-purity silicon is involved, all such silicon (polycrystal and single crystal) incorporated in the item or subassembly must also have been manufactured in the United States or Canada.

"High-purity silicon" is N or P type and has a resistivity greater than 3000 ohm—centimeter.

208.7502 Policy.

It has been determined that defense requirements for High-Purity Silicon must be acquired from qualified domestic manufacturing sources to the maximum extent practicable. Accordingly, all acquisitions of high-purity silicon and all acquisitions of items containing high-purity silicon shall include, except as provided in 208.7503 below, a requirement that such high-purity silicon and high-purity silicon incorporated in items containing high-purity silicon delivered under the contract be of domestic manufacture only.

208.7503 Procedures.

(a) The clause set forth at 252.208–7002, Required Sources for High Purity

Silicon, shall be inserted in all contracts except:

(1) When the contracting officer knows that the item being acquired does not contain high-purity silicon;

(2) In small purchases using small purchase procedures, other than in purchase of high-purity silicon as the end item;

(3) Purchase of standard commercial items, other than purchases of high-purity silicon as the end item; or

(4) Purchases made overseas for overseas use.

(b) Subsequent to the award of a contract, the contracting officer may waive the requirements set forth at 252.208-7002, Required Sources for High Purity Silicon. Such waiver may be granted upon submission of a written request by the contractor if the contractor or subcontractor has on hand subassemblies or end items containing nondomestic high-purity silicon, and either:

(1) The production of such subassemblies or end items in the performance of all or a part of the contract using high-purity silicon of domestic manufacture would interfere with the normal production scheduling of the military product under contract or with production of another item (military or commercial); or

(2) The delivery schedule under the contract or subcontract is such that use of other than domestic high-purity silicon is necessary. The contracting officer should grant waivers only to the extent and for the period of time necessary to permit the contractor to acquire and use domestic high-purity silicon.

PART 209—CONTRACTOR QUALIFICATIONS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 209.1—Responsible Prospective Contractors

209.103 Policy.

(S-70) *Acquisition from concerns in qualifying countries.*

(1) Awards to concerns in qualifying countries are subject to this subpart and other sections of this Supplement concerning NATO participating country sources.

(2) A Canadian firm proposed by the Canadian Commercial Corporation (CCC) as its subcontractor generally shall be accepted by the contracting officer under the provisions of FAR 9.104-4 as the basis for his determination under FAR 9.103.

209.104 Standards.

209.104-3 Application of standards.

(c) *Satisfactory performance record.*

(c)(2) Quality is a significant consideration in determining satisfactory performance. Quality defects of a critical or repetitive nature without adequate and timely corrective action, including repair or replacement of items, shall also be presumptive of inability to meet this requirement. DoD components shall assure that contracts are not awarded to contractors with a history of providing supplies or services of an unsatisfactory quality.

(S-70) In cases where the firm proposed by CCC is so accepted, pre-award survey forms need not be completed. When the CCC proposal is not consistent with other information which may be available to the contracting officer, he shall request from CCC and any other sources whatever additional information or plant surveys he may deem necessary to make the determination of responsibility of sources proposed by CCC. Such additional data may be requested on the pre-award survey forms or on any other forms. Upon request, CCC shall be furnished an explanation of the reasons for rejection of its proposed firm.

209.105 Procedures.

209.105-70 Current information.

(a) Maximum practicable use shall be made of currently valid information on file or within the knowledge of personnel in the Department of Defense. Each Deaprtment, shall at such level and manner as it deems appropriate, maintain useful records and experience data for the guidance of contracting officers in the placement of new procurement, and shall inform its contracting officers and the other Departments of the means of access thereto. Notwithstanding this direction contract administration offices shall maintain files of information reflecting upon the ability of contractors to perform Government contracts successfully.

(b) Any purchasing office becoming aware of circumstances which, for any reason, casts doubt upon the ability of a contractor to perform contracts successfully, shall immediately advise the cognizant contract administration office. A contract administration office, upon being notified by a purchasing office of unfavorable information affecting a contractor under its cognizance, or upon developing unfavorable information during the course of contract administration activities, shall advise the purchasing offices of the other Departments. When a contract administration office is requested to perform a pre-award survey and it has been notified of the existence of unfavorable information relative to the contractor, it shall obtain the details including full supporting information. Careful and full consideration shall be given such information.

(c) In addition to the requirements of FAR 9.105-1, pre-award surveys shall be requested and conducted in accordance with Appendix K, Pre-Award Survey Procedures. For preaward survey assistance for contracts requiring performance of Contract Administration Services (CAS) on military installations, see 242.270.

209.106 Pre-award surveys.

209.106-70 Audit responsibilities for pre-award surveys and reviews.

Pre-award surveys of potential contractors' competence to perform proposed contracts shall be managed and conducted by the contract administration office. When information is required on the adequacy of the contractor's accounting system or its suitability for administration of the proposed type of contract, such information shall always be obtained by the ACO from the auditor. The contract administration office shall be responsible for advising the PCO on matters concerning the contractor's financial competence or credit needs.

Subpart 209.2—Qualified Products

209.204 Justification for including qualification requirements.

The specification preparing activity's (SPA) parent agency authorized to make the approval required by FAR 9.204 is as follows:

In the Army, Headquarters, U.S. Army Materiel Development and Readiness Command, (DRCMT-S);

In the Navy, the Chief of Naval Material;

In the Air Force, Departmental Standardization Office (SAF/ALG);

In the Defense Logistics Agency, the Executive Director, Contracting;

In the National Security Agency, the Director of Procurement;

In the Defense Communication Agency, the Director;

In the Defense Nuclear Agency, the Deputy Director, Operations and Administration; and

In the Defense Mapping Agency, the Staff Director of Logistics.

Subpart 209.3—First Article Testing and Approval

209.302 General.

The Government may require that first articles be manufactured using the same facilities and the same production processes, methods and materials, with which the item is to be produced for the contract (see 209.308 below).

209.303 Use.

(b)(1) The term "processes" as used in FAR 9.303(b)(1) includes materials or production facilities.

209.305 Risk.

This authorization may be given to a contractor only after approval at a level higher than the contracting officer (See FAR 9.308).

209.306 Solicitation requirements.

(i) The Government's estimate shall be documented in the contract file.

209.308 Contract clauses.

Alternate I of the clauses at FAR 52.209–3 or 52.209–4, as appropriate, may be included by the Contracting Officer whenever:

(i) The form, fit, or function of the product would be adversely affected by contractor changes in the production facilities, processes, methods, or materials subsequent to first article approval; and

(ii) The Government has relied upon first article testing in the absence of complete design specifications to supplement a performance specification; or

(iii) It is essential to have an approved first article to serve as a manufacturing standard.

Subpart 209.4—Debarment, Suspension, and Ineligibility

209.403 Definitions.

"Authorized Representative" means an official who has been designated by and authorized to act on behalf of the Secretary concerned for the purposes of this subpart (see 209.470) including, but not limited to, acting as a debarring or suspending official.

209.404 Consolidated list of debarred, suspended, and ineligible contractors.

(c)(4) At a minimum, each Department shall maintain records relating to each contractor it has debarred or suspended that contain the following information:

(i) The contractor's name and address;

(ii) The cause of the action (see FAR 9.406–2 and FAR 9.407–2);

(iii) The effective date of the action and, in the case of debarments, the termination date for each listing; and

(iv) The name and telephone number of the Department's point of contact for the action.

209.405 Effect of listing.

(a)(1) Prior to initiating a pre-award survey or any of the procurement actions set forth in FAR 9.405, the consolidated list shall be reviewed. Bids received from any listed contractor in response to an Invitation for Bids shall be opened, entered on the Abstract of Bids, and rejected unless the Secretary concerned or his authorized representative determines in writing that there is a compelling reason to make an exception. Proposals, quotations or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, and discussions shall not be conducted with such offeror, unless the Secretary concerned or his authorized representative determines in writing that there is a compelling reason to make an exception.

(2) When a Department makes an exception, a notice describing the exception shall be forwarded to the GSA Office of Acquisition Policy. Some examples of circumstances that may constitute a compelling reason include: (i) the property or services to be acquired are available only from the listed contractor; (ii) the urgency of the requirement dictates that the Department deal with the contractor; (iii) the contractor and the Department have entered an agreement covering the same events which resulted in the listing and the agreement includes a decision by the Department not to debar or suspend the contractor; and (iv) for such other reasons related to the national defense which required continued business dealings with the listed contractor.

209.406 Debarment.

209.406–1 General.

(S–70) If no suspension is in effect under FAR 209.407 at the time dabarment is proposed by a Department, bids or proposals shall not be solicited from, contracts shall not be awarded to, existing contracts shall not be renewed or otherwise extended with, and subcontracts shall not be consented to or approved for the contractor by any DoD component pending a debarment decision unless the Secretary concerned or his authorized representative states in writing the compelling reason to do so.

209.406–3 Procedures.

(c)(7) For purposes of this FAR subsection, "agency" includes all DoD components. The Secretary concerned or his authorized representative may, however, make an exception in accordance with 209.406–1(S–70).

209.470 Authorized representatives.

For the purpose of FAR Subpart 9.4 the authorized representatives of the Secretaries are:

(a) In the Army, an Assistant Judge Advocate General;

(b) In the Navy, the Chief of Naval Material;

(c) In the Air Force, the Deputy Chief of Staff, Research, Development and Acquisition;

(d) In the Defense Logistics Agency, the General Counsel;

(e) In the National Security Agency, The Director;

(f) In the Defense Communications Agency, the General Counsel;

(g) In the Defense Nuclear Agency, the Director; and

(h) In the Defense Mapping Agency, the General Counsel.

209.471 Interchange of information.

Debarment or suspension of a contractor by one Department can have an adverse impact on the missions of other Departments with which the contractor does business. Accordingly, if it appears that there is the potential for such an adverse impact, the cognizant debarring or suspending official should solicit the comments of those Departments that he believes could be affected before taking action. A Department that believes it could be affected by the proposed action should comment directly to the cognizant debarring or suspending official. If several Departments independently are contemplating a debarment or suspension action against the same contractor, consideration should be given to designating one Department as the lead agency for making the decision.

209.472 Reporting.

209.472–1 Situations where reports are required.

A report incorporating the information required by 209.472–2 shall be prepared by the contracting officer when:

(a) A contractor has committed, or is suspected of having committed, any of the acts described in FAR 9.406–2 and 9.407–2;

(b) A report is required by 203.000;

(c) A report is required by 203.409 (contingent fees);

(d) A report is required by FAR 49.106 (termination settlements);

(e) Buy American Act violations are suspected (see FAR 25.204); or,

(f) A contractor is suspected of attempting to evade the prohibitions or

debarments or suspensions imposed under this Regulation by changes of address, multiple addresses, formation of new companies, or by other devices.

209.472-2 Contents of reports.

Each report prepared pursuant to this subsection shall contain the name and telephone number of the individual assigned to the case as the point of contact for the activity making the report, and shall include substantially the following information, where available:

(a) Name and address of the contractor;

(b) Names of the principals, officers, partners, owners, or managers;

(c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation;

(d) Description of the contract or contracts concerned, including the contract number, and all office identifying numbers or symbols, the amount of each contract, the degree of completion, the amount paid the contractor and the amount still due, and the percentage of work to be completed;

(e) The status of vouchers;

(f) Whether the contract has been assigned pursuant to the Assignment of Claims Act, and if so assigned, the name and address of the assignee and a copy of the assignment;

(g) Whether any other contracts are outstanding with the contractor or any of his affiliates, and if so, the amount of such contracts, whether they are assigned pursuant to the Assignment of Claims Act, and the amounts paid or due on such contracts;

(h) A complete summary of all pertinent evidence;

(i) A recommendation as to the continuation of all current contracts with a full explanation of the reason for such recommendation, or if no recommendation is made, the reason therefor;

(j) An estimate of damages, if any, sustained by the Government as a result of the action of the contractor, including an explanation of the method used in making the estimate;

(k) The comments and recommendations of the contracting officer and of each successive echelon as to (1) whether the contractor should be suspended or debarred, (2) whether any limitations should be applied to such action, and (3) the period of any debarment; and,

(l) As an enclosure, a copy of the contract (or contracts) or pertinent excerpts therefrom, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation, such as affidavits, copies of investigative reports and certified copies of indictments and judgments.

209.472-3 Addresses and copies of reports.

Reports shall be submitted in three complete copies, including inclosures, to the authorized representatives of the Secretaries concerned, unless otherwise provided by Departmental procedures. Additional copies without enclosures may be required by Departmental procedures for other addresses.

209.473 Procurement outside United States.

209.473-1 General.

The foregoing provisions of this subpart shall be applied by overseas commanders to procurement outside the United States and its possessions, whenever possible, and as modified by the following provisions, with due consideration to laws or customs of the foreign countries concerned.

209.473-2 Responsibilities and area coverage.

The Commander in Chief, United States European Command (CINCEUR), the Commander in Chief, Pacific (CINCPAC) and the Commander in Chief, Southern Command (CINCSOUTH), or the Commanders of a component command which each of these unified commanders may designate, shall establish and maintain a consolidated list of offshore suppliers to whom contracts will not be awarded and from whom bids or proposals will not be solicited. The CINCEUR consolidated list will include names in the North Atlantic and Mediterranean areas, including all of Europe, North Africa, and the Middle East. The CINCPAC consolidated list will include names in the Far East and Pacific Ocean areas, excluding the United States and its possessions. The CINCSOUTH consolidated list will include names in Central and South America, excluding possessions. All other overseas commanders shall utilize and contribute to such lists as appropriate to their geographical location or areas in which they award contracts. Lists shall not be established or maintained except as provided above.

209.473-3 Information contained on overseas lists.

The list shall show as a minimum the following information:

(a) Names and addresses of those contractors to whom contracts shall not be awarded and from whom bids or proposals shall not be solicited (Names will be set forth alphabetically with appropriate cross reference where more than one name is involved in a single action or where a parent contractor in one country is known to control subsidiaries, branches, or agencies in the same or other countries.);

(b) Basis or authority for each action;

(c) Extent of restrictions imposed;

(d) Termination date for each debarred listing; and

(e) Originating activity, component, or agency.

209.473-4 Maintenance and distribution of lists.

The lists shall be kept current by issuance of notices of additions or deletions and by periodic reprinting. Copies of the lists shall be distributed to contracting officers as the unified commanders and their component commanders direct. CINCEUR, CINCPAC, and CINCSOUTH shall exchange lists directly. Copies shall also be furnished the Deputy Under Secretary of Defense (Acquisition Management), OUSDRE, the Assistant Secretary of Defense (International Security Affairs), and the authorized representative of the Secretaries.

209.473-5 Basis of addition of contractors to lists.

In addition to the names of offshore contractors which may be included on the lists as falling into the categories outlined in FAR 9.405, the names of contractors abroad shall be included on the list in the following additional categories:

(a) Those who are "designated nationals" under the Foreign Assets Control Regulations;

(b) Those found by the Assistant Secretary of Defense (International Security Affairs) or his authorized representative to have engaged in improper East-West trade activity;

(c) Those found by the Assistant Secretary of Defense (International Security Affairs) or his authorized representative to be ineligible because they do not meet the political or security criteria;

(d) Those found by the United States Diplomatic Mission or a Country Team (consisting of members of the United States Diplomatic Mission in the country or countries in which the contractors are located) to be ineligible because they do not meet the labor-political criteria; and,

(e) Those who for other causes of a serious and compelling nature are so designated by the unified commander.

209.473-6 Treatment to be accorded contractors in debarred or ineligible status.

The provisions of FAR 9.405 shall be complied with, if applicable. In addition,

contracts shall not be awarded to, nor shall bids or proposals be solicited from or furnished to contractors abroad which come within the categories in 209.473–5. With respect to 209.473–5(a), and exception may be made only by the Secretary of the Treasury. With respect to 209.473–5(b), (c), and (d), an exception may be made by the Assistant Secretary of Defense (International Security Affairs) or his authorized representative.

209.473–7 Causes and conditions for which unified commanders may place names on the consolidated list.

CINCEUR, CINCPAC, and CINCSOUTH, or their designated component commanders are authorized to place on the list names of contractors doing business within the areas for which they are responsible, for any of the causes and under the conditions set forth in 209.473–5 and 209.473–6. Overseas commanders or unified commanders overseas other than CINCEUR, CINCPAC, and CINCSOUTH are similarly authorized to place on the list the names of contractors in their command areas and shall promptly notify CINCEUR, CINCPAC, or CINCSOUTH as appropriate, of such action, furnishing the information required by 209.473–3. CINCEUR, CINCPAC, or CINCSOUTH shall add the names to his consolidated list. The listing shall operate to deny contracts and subcontracts (when Government approval is required) to such contractors throughout the Department of Defense. Unified commanders shall be notified of the action based on causes and under conditions set forth in 209.473–5 and 209.473–6 through the "Economic Defense List", transmitted by the Department of Commerce through State Department channels, which contains the names of contractors affected or by direct communication from the Office of the Assistant Secretary of Defense (International Security Affairs).

209.473–8 Liaison with United States diplomatic missions.

The Chief of the United States Diplomatic Mission, or such attache or other officer as he directs, in the country where the contractor concerned is located, shall be notified of actions contemplated under the foregoing paragraphs which may have important political significance. In cases of contemplated action against a branch or subsidiary in one or more countries, the Chief of the United States Diplomatic Mission in each country, including that in which the parent or principal is located, will be notified.

209.474 Use of lists.

(a) Due to the length of the lists, the numerous revisions, and the distances involved, as well as the infrequent contracting by offices with suppliers outside their respective areas, the United States, CINCEUR, CINCPAC, and CINCSOUTH consolidated lists shall not be distributed to contracting officers outside the area covered by the respective lists. However, no contracts shall be awarded by contracting officers to suppliers without ascertaining that the names of the contractors involved do not appear on the consolidated list for the geographical area in which the contractor is located. All lists shall be held for reference in each of the Departments, and in offices designated by CINCEUR, CINCPAC, and CINCSOUTH, and shall be utilized in accordance with procedures established by them.

(b) When a contracting officer becomes aware that a prospective contractor proposes to furnish products of a concern that has been placed on an overseas list in accordance with 209.473–5 (a), (c), or (e), the matter shall be referred to the authorized representatives of the Secretaries concerned.

PART 210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

210.004 Selecting Specifications or Descriptions for Use.

(b)(3)(i) *General.*

(A) Purchase descriptions which contain references to one or more brand name products followed by the words "or equal" may be used only when authorized by FAR 10.004(b) and 210.006(a) and in accordance with 210.004(b)(3) (ii) and (iii). The term "brand name product" means a commercial product described by brand name and make or model number or other appropriate nomenclature by which such product is offered for sale to the public by the particular manufacturer, producer, or distributor. When feasible, all known acceptable brand name products should be referenced. Where a "brand name or equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of the Government in essentially the same manner as those referenced. If modifications to manufactures' standard products to meet the purchase description requirements are anticipated, a minimum of 30 calendar days shall be allowed between issuance of the solicitation and opening of bids or receipts of proposals, *provided* that periods of less than 30 days may be set in cases of urgency.

(B) "Brand name or equal" purchase descriptions should set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the needs of the Government. For example, when interchangeability of parts is required, such requirement should be specified. Purchase descriptions shall contain the following information to the extent available, and include such other information as is necessary to describe the item required:

(a) Complete common generic identification of the item required;

(b) Applicable model, make, or catalog number for each brand name product referenced, and identity of the commercial catalog in which it appears; and

(c) Name of manufacturer, producer, or distributor of each brand name product referenced (and address if not well known).

(C) When necessary to describe adequately the item required, an applicable commercial catalog description, or pertinent extracts therefrom, may be used if such description is identified in the invitation for bids or request for proposals as being that of the particular named manufacturer, producer, or distributor. The contracting officer will insure that a copy of any catalogs referenced (except parts catalogs) is available on request for review by bidders at the purchasing office.

(ii) *Invitations for bids.*

(A) Except as provided in (b)(3)(ii)(C) below, when a "brand name or equal" purchase description is included in an invitation for bids, the following shall be inserted after each item so described in the invitation, for completion by the bidder:

Bidding on:
Manufacturer's Name _____
Brand _____
No. _____

(B) In addition, the clause at 52.210–7000, Brand Name or Equal, shall be included.

(C) When component parts of an end item are described in the invitation for bids by a "brand name or equal" purchase description and the contracting officer determines that application of the clause in (b)(3)(ii)(B) above to such component parts would be impracticable, the requirements of (b)(3)(ii)(A) above shall not apply with respect to such component parts. In such

cases, if the clause is included in the Invitation for Bids for other reasons, a statement substantially as follows also shall be included:

The clause entitled "Brand Name or Equal" does not apply to the following component parts. (List the component parts as to which the clause does not apply.)

In the alternative, if the contracting officer determines that the clause in (b)(3)(ii)(B) above should apply to only certain such component parts, the requirements of (b)(3)(ii)(A) above shall apply to such component parts and a statement substantially as follows also shall be included:

The clause entitled "Brand Name or Equal" applies to the following component parts: (List the component parts to which the clause applies.)

(D) When an invitation for bids contains "brand name or equal" purchase descriptions, bidders who offer brand name products referenced in such descriptions shall not be required to furnish bid samples of the referenced brand name products; however, invitations for bids may require the submission of bid samples in the case of bidders offering "or equal" products.

(iii) *Bid evaluation and award.*

(A) Bids offering products which differ from brand name products referenced in a "brand name or equal" purchase description shall be considered for award when the contracting officer determines in accordance with the terms of the clause at 252.210–7000 that the offered products are equal in all material respects to the products referenced. Bids shall not be rejected because of minor differences in design, construction, or features which do not affect the suitability of the products for their intended use.

(B) Award documents shall identify, or incorporate by reference an identification of, the specific products which the contractor is to furnish. Such identification shall include any brand name and make or model number, descriptive material, and any modifications of brand name products specified in the bid. Included in this requirement are those instances when the description of the end item contains "brand name or equal" purchase descriptions of component parts or of accessories related to the end item, and the clause at 252.210–7000 was applicable to such component parts or accessories (see 210.004(b)(3)(ii)(C)).

(iv) *Procedure for negotiated procurements.*

(A) The policies and procedures prescribed in 210.004(b)(3) (i) and (iii) for formally advertised procurements shall be generally applicable to negotiated procurements.

(B) The clause at 252.210–7000 may be adapted for use in negotiated procurements. If use of the clause is not practicable (as may be the case in exigency purchases), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that such offered products are equal in all significant and material respects to the products referenced.

210.008 Identification and availability of specifications.

(g)(1) A Department of Defense Single Stock Point (DODSSP) has been established at the Naval Publications and Forms Center in Philadelphia for unclassified Federal, Military and other specifications and standards (including commercial) listed in the Department of Defense Index of Specifications and Standards (DODISS) and data item descriptions listed in the Department of Defense Acquisition Management Systems and Data Requirements Control List (AMSDL) DODD 5000.19–L, Volume II.

(2) Purchasing activities may obtain copies of the DODISS and the AMSDL, as well as all unclassified specifications and standards (including commercial) listed in the DODISS, and data item descriptions listed in the AMSDL by sending DD Form 1425 to the DODSSP.

210.011 Solicitation provisions and contract clauses.

(S–70) The contracting officer shall insert the provision at 252.210–7001 in addition to the provision at FAR 52.210–2, Availability of Specifications Listed in the DoD Index of Specifications and Standards (DODISS), in all solicitations containing data item descriptions.

(S–71) Specifications and standards not listed in the DODISS, and plans, drawings, and other pertinent documents (including new or revised Federal or Military specifications and standards not yet listed in DODISS) and data item descriptions not listed in DoD Directive 5000.19–L, Volume II, normally shall be furnished with the solicitation. When this is not feasible because of the bulk of the documents, the limited number of copies available, or for some other good reason, the contracting officer shall insert a provision substantially similar to the provision at 252.210–7002, Availability of Specifications and Standards Not Listed in DODISS, Data Item Descriptions Not Listed in DoD Directive 5000.19–L, Volume II, and Plans, Drawings, and Other Pertinent Documents or the provision at 252.210–7003, Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents, as appropriate.

Part 211—Acquistion and Distribution of Commercial Products [No DoD FAR Supplement]

PART 212—CONTRACT DELIVERY OR PERFORMANCE

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 212.1—Delivery or Performance Schedules

212.102 Factors to consider in establishing schedules.

(b)(S–70) *Construction.* When economies to the Government would result by excluding certain specified periods of time from contractor performance in computing the completion date, the solicitation shall contain the clause in 252.212–7000, Exclusion of Periods in Computing Completion Schedules.

212.103 Supplies or services.

(S–70) Solicitations shall generally indicate either a desired term of performance or a completion date. In cases where development of a tangible item by a given date is urgent, solicitation shall indicate such urgency. Generally, solicitations to conduct research exploratory development work will specify a level of effort for a term of performance. However, solicitations calling for a specific item in the category of such exploratory or advanced development will specify a completion date. A contractor may propose an alternate term of performance or completion date without disqualification of his proposal.

212.104 Contract clauses.

(a)(2) The clauses at FAR 52.212–1 and FAR 52.212–2 can also be used in contracts for research, development facilities, time and material and labor hours.

(a)(3) The clauses at FAR 52.212–1 and FAR 52.212–2 can also be used in contracts for research, development facilities, time and material, and labor hours.

Subpart 212.2—Liquidated Damages

212.204 Contract clauses.

(b) The contracting officer shall insert the clause at FAR 52.212–5 in all construction contracts in excess of $25,000 except cost-plus-fixed-fee

contracts, or those where the contractor cannot control the pace of the work. Use of the liquidated damages clause is optional for contracts of $25,000 or less.

Subpart 212.3—Priorities, Allocations, and Allotments

212.302 General.

(S–70) *DoD Priorities and Allocations Manual.*

Department of Defense implementation of all rules and regulations published by the Bureau of Domestic Commerce (BDC), of the Department of Commerce for which the Department of Defense is delegated administrative responsibility is published in the Priorities and Allocations Manual promulgated by Department of Defense Instruction 4400.1. Authorized deviations to the priorities and allocations rules and regulations is likewise published in the Manual.

Subpart 212.4—Variation in Quantity

212.401 Supply contracts.

(a) The permissible variation in the procurement of small quantities of subsistence may be stated in the Schedule as follows:

(1) Standard pack items purchased on a package, carton, can or other than pound basis: maximum variation for 250 units or less—nearest full shipping container.

(2) Nonstandard pack items other than carcass meats not purchased on a package, carton, or can basis: maximum variation for 250 pounds or less—nearest piece or shipping container.

(3) Carcass meats: maximum variation for 500 pounds or less—nearest piece, quarter, side or carcass.

Subchapter C—Contracting Methods and Contract Types

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 213.1—General

213.104 Procedures.

(a) Installation or activity transportation facilities may be used for delivery from local suppliers to the purchasing installation only after consideration of the following methods:

(1) Supplier delivery.

(2) Common carrier.

(3) Parcel post.

(4) Other mail classes.

(b) In other acquisitions using small purchase procedures, solicitation of foreign firms located in qualifying countries (see 225.001) is not required unless determined to be in the best interests of the Government.

213.106 Competition and price reasonableness.

(b) *Purchases over $1,000.* Display in a public place of written requests for quotation which provide at least 10 calendar days for submission of quotes and which have an estimated value in excess of $5,000 is encouraged. Display of such requests below that value is permitted.

(c) *Data to support small purchases over $1,000.* If a separate form is used for documentation of price reasonableness, DD Form 1784, Small Purchase Pricing Memorandum, shall be used.

Subpart 213.2—Blanket Purchase Agreements

213.203 Establishment of blanket purchase agreements.

213.203–2 Clauses.

(a) *Form.*

(1) Except as provided in (a)(2) below, blanket purchase agreements shall be prepared and issued on DD Form 1155 (Order for Supplies or Services/Request for Quotations). Either the "General Provisions", DD Form 1155r, or the "Reverse of Order for Supplies or Services/Request for Quotations-Foreign", DD Form 1155r–1, as applicable, shall be used. Other applicable provisions of the blanket purchase agreement shall be set forth on the Standard Form 36 (Continuation Sheet) or on a blank sheet of paper. Clauses authorized in 213.505–2(S–73)(1) which are mandatory for use in purchases over $10,000 shall be included in blanket purchase agreements that permit the placement of individual calls valued at more than $10,000. Additionally, the following provisions may be applicable:

(i) The Contract Work Hours and Safety Standards Act—Overtime Compensation clause at FAR 52.222–4 shall be added unless it is reasonably anticipated that the aggregate of the total dollar amounts of orders to be placed thereunder will be $2,500 or less;

(ii) When the agreement is for the intended purchase of services covered by the Service Contract Act of 1965, as amended, the clause at FAR 52.222–40 shall be substituted for Clause 15 of the General Provisions and the procedures in FAR 22.1005 complied with, unless it is reasonably anticipated that the aggregate of the total dollar amounts of orders to be placed thereunder will be $2,500 or less;

(iii) When the agreement is for the intended purchase of supplies, the Walsh-Healey Public Contracts Act clause at FAR 52.222–20 shall be added, unless the agreement limits the aggregate total dollar amounts of orders to be placed thereunder to $10,000; and

(iv) When the agreement is for the intended purchase of supplies, the applicable Equal Opportunity Clause at FAR 52.222–26 shall be added.

(2) Blanket purchase agreements issued by the Defense Personnel Support Center may be prepared on its form "Order for Subsistence."

(b) *Numbering.* Enter the Procurement Instrument Identification (PII) number as prescribed in Subpart 204.70.

(c) *Negotiation authority.* The Schedule of each agreement shall be annotated as follows:

(1) The issuance of individual calls under this blanket purchase agreement will be made under the authority of 10 U.S.C. 2304(a)(1), 10 U.S.C. 2304(a)(3), 10 U.S.C. 2304(a)(6), or 10 U.S.C. 2304(a)(17).

(2) If for the purchase of subsistence: The issuance of individual calls under this blanket purchase agreement will be made under the authority of 10 U.S.C. 2304(a)(1), 10 U.S.C. 2304(a)(3), 10 U.S.C. 2304(a)(6), 10 U.S.C. 2304(a)(9) or 10 U.S.C. 2304(a)(17).

(3) This annotation shall not be duplicated on forms used to document individual calls, although the specific authority for the call may be cited therein.

213.204 Purchase under blanket purchase agreements.

(b) A blanket purchase agreement may not be used when a call exceeds $10,000, except that BPA calls up to $25.000 may be placed by Inventory Control Points and calls for subsistence are unlimited as to dollar value. When synopsis is required by Subpart 205.2, purchases of $10,000 and above shall not be issued until 30 days after either publication of the synopsis or issuance of a solicitation, as appropriate.

Subpart 213.3—Fast Payment Procedure

213.302 Conditions for use.

(a) Individual orders do not exceed $25,000, except that for purchases of brand name commissary resale subsistence and commercial type medical supplies for direct shipment overseas, the procedure may be used without dollar limitation.

Subpart 213.4—Imprest Fund

213.402 General.

(a) *Authority.* Commanders of installations and of activities with

purchasing authority are authorized to approve the establishment of imprest funds. The number of imprest funds at an installation shall be kept to a minimum, and one imprest fund should be sufficient in most instances. Exceptions to this general rule may be justified for isolated activities when the location of the established fund is not readily accessible.

(b) *Amount of imprest funds.* The amount of each fund shall be established on the basis of the estimated monthly payments therefrom and the need for replenishment without undue administrative burden, but shall not exceed $5,000. A review shall be made at least quarterly to ensure that the fund is not in excess of actual needs, and necessary adjustments shall be made.

(c) *Imprest fund cashiers.*

(1) Imprest fund cashiers must be appointed by the head of an installation or activity to make authorized cash payments for materials and nonpersonal services, maintain custody of funds, and file periodic vouchers to account for and replenish the imprest fund. An imprest fund cashier should be established at a convenient location on the installation or activity for the purpose of making payments to vendors or carriers, e.g., in "Central Receiving." Disbursing officers and individuals responsible for originating, approving and processing requirements are not eligible for appointment as imprest fund cashiers. Exceptions to this rule may be granted by the major headquarters exercising control over the installation or activity. In no event shall an imprest fund cashier have access or control of more than one imprest fund.

(2) Each appointment and termination of appointment shall be approved by the head of the installation or activity. After approval, administrative orders signed by the appropriate authority shall be issued. Appointment orders shall contain the following:

(i) Name of individual and duty station;

(ii) Identification of disbursing station for which the cashier will act, including the accounting number assigned thereto;

(iii) Specific duties to be performed;

(iv) Effective date; and

(v) Amount and location of fund.

An alternate cashier may be appointed (see (c)(3) below) on the same order as the principal. Two copies of the orders shall be furnished to cashiers, and one copy each to the disbursing office and the installation or activity purchasing office.

(3) An alternate imprest fund cashier may be appointed to provide service during the absence of the principal cashier. Appointment requirements for principal cashiers shall apply to alternate cashiers. In planned absences of the principal cashier, cash may be advanced by the principal to the alternate in any amount up to the limit of the fund. The principal shall obtain a signed cash receipt from the alternate. Upon resumption of his duties, the principal cashier shall return the cash receipt to the alternate after obtaining paid receipts, subvouchers and residual cash. In the unforeseen absence of the principal cashier, funds may be advanced to the alternate in the normal manner by the disbursing officer. These funds shall be in addition to the amount currently advanced to the principal cashier under the established fund, but shall not exceed the amount of the fund. Upon return of the principal cashier, the alternate shall return paid receipts, subvouchers, and residual cash, to the disbursing officer.

213.404 Conditions for use.

(a) Imprest funds may also be used for small purchase when:

(1) The supplies or services are available for delivery within 60 days, whether at the supplier's place of business or at destination.

(2) The purchase does not require detailed technical specifications or technical inspection.

(b) Imprest funds may also be used for payment of:

(1) Charges for local delivery, parcel post (including c.o.d. postal charges) and line haul or inter-city transportation charges of $75.00 or less for supplies ordered for payment from imprest funds when the vendor is requested to arrange for delivery.

(2) C.O.D. charges for supplies ordered for payment from imprest funds.

(3) Civilian volunteers for participation in approved medical research projects.

(c) The conditions for use specified in (a) and (b) above do not preclude the use of imprest funds for other expenditures not related to small purchases (e.g., travel advances, travel expenses, transportation charges, and purchases of postage stamps and transportation tokens or passes), when such expenditures are authorized by other regulations governing the use of imprest funds.

(d) Imprest funds shall not be used for:

(1) Payments of salaries and wages.

(2) Advances, other than those authorized in 213.402.

(3) Cashing of checks or other negotiable instruments.

213.405 Procedures.

(a) *Receipt of material.*

(1) All material purchased through the imprest fund shall be delivered to a designated receiving activity. The receiver shall examine the material to ascertain that the quantities and items described on the purchase request document and the supplier's sales document are present and in satisfactory condition. If the material is acceptable, the receiver shall stamp the supplier's sales document "Received and Accepted," date and sign the document, and pass it to the imprest fund cashier for payment. A supplier's sales document, a receipted Standard Form 1165 (Receipt for Cash—Subvoucher), DD Form 1155 (Order for Supplies or Services/Request for Quotations), or DD Form 1348–1 (DoD Single Line Item Release/Receipt Document) may be used to record the receipt of purchases made from the imprest fund and shall be processed in the same manner. The minimum information specified in 213.404(b) above shall be included in the document used to record the receipt of purchases.

(2) When it is not practicable to obtain delivery of material at destination on a c.o.d. basis, advance arrangement may be made for the material to be picked up. The imprest fund cashier may then advance cash to an authorized individual to pick up and pay for the material. Necessary certification of receipt and acceptance of material shall be obtained on one of the documents as indicated in (a)(1) above. Receipt for cash payment (see (e) below) shall be made on the same document, which will serve as the imprest fund receipt.

(3) When prior arrangement for pick up of material is not practicable, the imprest fund cashier may advance cash to an authorized individual to make a proposed purchase.

(b) *Advance of funds.* Individuals receiving a cash advance from the imprest fund cashier shall be required to sign the "Interim Receipt for Cash" portion of Standard Form 1165, or an equivalent receipt form. After purchase has been made, the individual will return any unused cash to the imprest fund cashier with the necessary certifications of receipt, acceptance, and cash payment, at which time the imprest fund cashier shall "void" the interim receipt for cash. Cash so advanced should be accounted for daily, but under unusual circumstances, cash may be advanced for longer periods.

(c) *Certification of cash payment.* The original receipt document (or a copy tendered as the original) presented to the imprest fund cashier for payment

shall be stamped with a certification containing the following information:

(1) Statement that cash payment was received in full.

(2) Amount paid.

(3) Date of payment.

(4) Signature and title of supplier or his agent receiving the cash payment.

Alterations or corrections to documents tendered for payment shall be initialed by the person making the change. Changes in the amount paid shall be initialed by the individual receiving payment.

(d) *Responsibilities of imprest fund cashier.*

(1) Pending receipt of material, the imprest fund cashier shall keep a file of purchase request documents covering imprest fund purchases. Prior to payment, or acceptance of the document tendered for settlement of an advance, the cashier shall verify the necessary certification of receipt and the supplier's billed price or the price paid. If the supplier's receipt for cash payment is not obtained for purchases of $15 or less, the imprest fund cashier shall complete the cash receipt document and have the person receiving the fund sign this document. Receipt for U.S. parcel post c.o.d. charges should be obtained on Standrd Form 1165. When receipt cannot be obtained for c.o.d. purchases, imprest fund cashiers located in foreign countries are authorized to certify on the receipt document, "Delivered by (name of post office or carrier) no receipt given." The c.o.d. label shall be removed from the parcel and affixed to the receipt document in support of the reimbursement voucher. Imprest fund cashiers at any location may accept a signed c.o.d. receipt to support the subvoucher if the carrier refuses to sign a Government form.

(2) After completion of settlement transaction, each subvoucher shall be numbered consecutively and this number placed on the original of the paid receipt documents. These subvouchers will support the cashier's claim for reimbursement of the imprest fund. The imprest fund cashier will not request duplicate receipt documents nor retain such documents if provided.

(3) When total charges stated on the sales document are paid, without deduction of discounts offered and earned, or without correction of minor billing errors, action will be taken to obtain a refund from the supplier. Collection action may be waived for refunds of one dollar or less.

(e) *Payments.*

(1) *C.O.D.* Upon presentation of an authorized document with the necessary certification of receipt for supplies or services, the imprest fund cashier or other authorized individual shall pay the supplier or his agent and obtain the certification of cash payment as set forth in 213.405(d)(1).

(2) *Receipt from common carrier or post office.* When c.o.d. shipments are received or picked up from a common carrier or post office, the certification of cash payment may be accomplished on a list of the packages provided by the post office of common carrier. Such receipt will be supported by copies of the applicable sales documents, if available.

(3) *Periodic payments.* When a blanket purchase agreement is not suitable and it is administratively convenient and agreeable to the supplier, periodic payments from the imprest fund may be made for supplies delivered on a repetitive basis, provided that the accumulated amount of the deliveries for the specified period does not exceed the dollar limitation imposed on the imprest fund method by FAR 13.404.

(4) *Failure to Ship C.O.D.* When material is ordered c.o.d. but is shipped by the supplier subject to payment by check, Standard Form 1034 (Public Voucher for Purchases and Services Other than Personal), may be used to make payment. Under these circumstances, the receiver shall prepare the necessary certification of receipt and forward the receipted document through the imprest fund cashier, for attachment of the supporting documents which authorized the shipment and submission to the disbursing officer for payment.

(f) *Reimbursement of imprest funds.*

(1) The imprest fund shall be reimbursed by use of Standard Form 1129 (Reimbursement Voucher) supported by cashier's subvouchers. The imprest fund cashier shall prepare and submit Standard Form 1129 in triplicate to the disbursing officer as freqently as necessary, but not less often than monthly. At the close of the fiscal year, a reimbursement voucher covering all remaining subvouchers through 30 September shall be submitted before the closing of the allotment accounts for the month. When required, subvouchers shall be summarized by account to complete the accounting classification block of Standard Form 1129 and submitted to the disbursing officer for reimbursement of the imprest fund. One copy of Standard Form 1129 shall be retained by the imprest fund cashier pending the return of the "paid" copy of the form with the reimbursement checks or currency in the amounts requested by the cashier. When the imprest fund is reimbursed by mail, or when long delays in the reimbursement are encountered, the imprest fund cashier may retain copies of subvouchers until reimbursement is accomplished. When copies are retained, they shall be placed in a sealed envelope identified to the reimbursement voucher involved. When reimbursement is received, the sealed envelope will be presented to the official who signed the Administrative certificate on the Standard Form 1129 for destruction.

(2) When a supplier refunds cash prior to the submission of Standard Form 1129 covering such payment, the imprest fund cashier shall accept the refund, return the money to the imprest fund, and enter the amount of the refund on the original of the supplier's receipt. When the refund is made subsequent to the submission of the applicable Standard Form 1129, the imprest fund cashier shall enter the amount of the refund on the retained copy of the reimbursement voucher, promptly submit the refund to the disbursing officer, and obtain a receipt.

(g) *Accounting.* Recordkeeping for the imprest fund shall be as simple as possible consistent with the maintenance of adequate controls. A file of supplier's receipts for amounts paid and not yet vouchered for reimbursement, and copies of paid reimbursement vouchers ordinarily will suffice for the record of the imprest fund cashier.

(h) *Review.* The imprest fund cashier shall be required to account for the established fund at any time, by cash on hand, paid supplier's receipts, unpaid reimbursement vouchers, and interim receipts for cash. Unannounced inspections, including cash counts are required to be made of each imprest fund at least quarterly by qualified individuals who are under the jurisdiction of the Comptroller or Chief Accounting Officer of the installation, where such positions exist, but in any case by individuals, excluding the disbursing officer advancing the funds and subordinates of the imprest fund cashier.

Subpart 213.5—Purchase Orders

213.502 Unpriced purchase orders.

(c) Unpriced purchase orders may be issued by using DD Form 1155.

213.503 Obtaining contractor acceptance and modifying purchase orders.

(b) Standard Form 30 shall be used to modify the purchase order for administrative or other changes.

(1) Modifications making administrative changes such as the

correction of typographical errors, changes in paying office, and changes in accounting and appropriation data do not require contractor acceptance. In addition, the issuance of no cost Amended Shipping Instructions (ASIs) which modify unilateral purchase orders and which have been concurred in by the contractor by telephone or letter do not require contractor acceptance by signature on the Standard Form 30.

(2) To otherwise modify a purchase order prior to commencement of performance and within the scope of the original order, a unilateral modification may be issued on a Standard Form 30. The modification may not be unilaterally issued unless:

(i) The modification reflects the contractor's written or oral confirmation of the proposed revision(s). Unilateral modifications may include withdrawal of all or part of the original purchase order.

(ii) Block 11a of the Standard Form 30 is annotated to reflect the issuance of an authorized unilateral modification.

(3) To otherwise modify the purchase order, and if not previously included in the purchase order, the Additional General Provisions (Clauses 16–19 of DD Form 1155r) shall be incorporated by reference in the Standard Form 30, Amendment of Solicitation/Modification of Contract, and the contractor's acceptance obtained by signature on the Standard Form 30. Subsequent changes pursuant to the Changes clause shall not require contractor acceptance. However, other modifications outside the scope of the Changes clause, such as the addition of the Government Property clause, shall require contractor acceptance by signature on the Standard Form 30.

213.505 Purchase order and related forms.

213.505–2 Agency order forms in lieu of optional Forms 347 and 348.

(S–70) Negotiated purchases of supplies, nonpersonal services and construction not in excess of $25,000 may be effected by using DD Form 1155, Order for Supplies or Services/Request for Quotations, and its ancillary forms. Standard Form 44, Purchase Order-Invoice-Voucher, may also be used for material and non personal services purchases not in excess of $2,500.

(S–71) The DD Form 1155 provides for the arrangement of information in fixed locations, including sequential numbering of all blocks, and within certain of these blocks, a code box for inserting alpha-numeric codes. The uniform arrangement of data and the provision for codes facilitates manual and automated processing of contractual documents and interchange of information between purchasing offices and contract administration activities.

(S–72) *Forms.*

The following forms may be used to issue purchase orders:

(1) DD Form 1155, Order for Supplies or Services/Request for Quotations, which, when used with DD Form 1155r in accordance with 213.505–2(S–73)(1), or with DD Form 1115r–1 in accordance with 213.505–2(S–73)(2), as appropriate, provides in one document—

(i) A purchase order, a blanket purchase agreement, a delivery order under a contract or delivery order on Government agencies outside the Department of Defense;

(ii) A receiving and inspection report;

(iii) A property voucher;

(iv) A public voucher; and

(v) A document for acceptance by the supplier.

(2) Standard Form 36, Continuation Sheet, provides additional space, or a blank sheet of paper may be used.

(3) DD Form 1155c–1, Commissary Continuation Sheet, (for use on an optional basis), provides columns suited for commissary procurements.

(4) Standard Form 30, Amendment of Solicitation/Modification of Contract, shall be used in all modifications to DD Form 1155 (see 213.503).

(5) The foregoing forms may be used as snap-out manifold forms, as cut sheets, as reproducible masters, or automatically printed. In addition, DD Form 1155r or DD Form 1155r–1 may be printed on the reverse of DD Form 1155.

(S–73) *Conditions for use.*

(1) *Use as a Purchase Order of Not More Than $25,000 in the United States, its Possessions, and Puerto Rico.* The *United States,* when used in a geographical sense, means the States and the District of Columbia. Possessions, in a geographical sense, include the Virgin Islands, the Swan Islands, Guantanamo Bay, Johnston Island, American Samoa, Guam, Wake Island, Midway Island, and the Guano Islands, but do not include Puerto Rico, leased bases, or trust territories. Definitions of the *United States,* in a contractual sense, vary according to individual laws, orders or regulations. DD Form 1155 is authorized for negotiated purchases of not more than $25,000 within the United States, its possessions, and Puerto Rico, *provided,*

(i) The procurement is unclassified, except that DD Form 1155 may be used for classified procurement if:

(A) The Security Requirements clause in FAR 52.204–2 is inserted in the schedule.

(B) DD Form 254, Contract Security Classification Specification, (see FAR 4.403(c) and FAR 53.204–1) is incorporated in the purchase order.

(C) The contractor's acceptance of the purchase order is obtained by use of DD Form 1155r at the time of issuance of the order.

(ii) No clause covering the subject matter of any clause set forth in this supplement, other than clauses on DD Form 1155r and clauses referred to in this paragraph (213.505–2(S–73)(a)(1)) and in FAR 13.502, Unpriced Purchase Order, FAR 13.503, Obtaining Contractor Acceptance and Modifying the Purchase Order, FAR 46.301, Contractor Inspection Requirements, FAR 46.302, Standard Inspection Requirements, and FAR 46.504, Certificate of Conformance, is to be used.

(iii) When the order specifies the delivery of data, one of the clauses in 52.227, Rights in Technical Data and Computer Software, shall be used as appropriate in accordance with the instructions contained in 227.4.

(iv) When required by FAR 25.7, the clause, Certain Communist Areas, in FAR 52.225–11 shall be used.

(v) When required by FAR 12.4, the clause in FAR 52.212–9, Variation in Quantity, shall be used.

(vi) When required by FAR 32.111 the clause in 52.232.7000, Invoices, shall be used.

(vii) When the order is assigned to other than the purchasing office for adminstration, or if otherwise desired by the purchasing office, the clause, Material Inspection and Receiving Report in 52.246–7000, shall be used.

(viii) When Government property having an acquisition cost in excess of $50,000 is to be furnished (for use in performance of an order or for repair), the appropriate Government Property clause or clauses in FAR 52.245–1, 2, 3, or 19 shall be inserted in the Schedule. When Government property having an acquisition cost not in excess of $50,000 is to be furnished for use in performance of the order or for repair, the Government-Furnished Property (Short Form) clause in FAR 52.245–4 shall be inserted in the Schedule, *provided* that use of the clause shall be optional when the acquisition cost of property furnished for repair is not in excess of $10,000. When a Government Property clause is inserted in the Schedule, the contractor's signature shall be obtained on the DD Form 1155r.

(ix) When the order is for Military Assistance Program items, the United States Products Certificate (Military Assistance Program), at 252.225–7008, and the clause, United States Products (Military Assistance Program), in 252.225–7009, shall be inserted in the

Schedule, and Clause 6, Foreign Supplies, of the General Provisions shall be deleted. In addition, the contractor's signature shall be obtained on DD Form 1155r.

(x) [Reserved]

(xi) The clauses, New Material, (FAR 52.210–5) and Used, Reconditioned, Residual Inventory and Former Government Surplus Property (FAR 52.210–6 and 7), may be used in accordance with the provisions of FAR 10.010 and FAR 10.011.

(xii) When the order is for mortuary services;

(A) The following clauses shall be inserted in the Schedule:

a. The Specifications clause in 252.237–7104;

b. The Delivery and Performance clause in 252.237–7107;

c. The Subcontracting clause in 252.237–7108;

d. The Professional Requirements clause in 252.237–7111;

e. The Facility Requirements clause in 252.237–7112;

f. The Preparation History clause in 252.237–7113;

g. The Inspection of Services clause in FAR 52.246–4.

(B) The Additional Default Provision clause in 252.237–7109 shall be inserted in the Schedule, with the following substitutions for paragraph (a) and the first sentence of paragraph (b) of that clause:

"(*1*) This clause supplements the "Termination for Default" clause of this contract.

(*2*) This contract may be terminated for default by written notice if during the performance of this contract:"

(C) The Changes clause in FAR 52.243–1 shall be substituted for paragraph 16 of the Additional General Provisions on DD Form 1155r.

(xiii) [Reserved]

(xiv) When required by 225.70, the clauses 252.225–7005, Preference for Certain Domestic Commodities, 252.225.7004(a), Preference for Domestic Specialty Metals (Major Programs), and 252–225–7004(b), Preference for Domestic Specialty Metals, shall be added.

(xv) When required by FAR Subpart 22.10, the clause, Service Contract Act of 1965, at FAR 52.222–41 for service contracts in excess of $2,500, or FAR 52.222–40 for service contracts not in excess of $2,500, shall be added.

(xvi) When required by FAR 47.305–6, the clause, Clearance and Documentation Requirements-Shipments to DoD Air or Water Terminal Transportation Points at FAR 52.247–52 shall be added.

(xvii) In accordance with FAR 46.805, the clause in FAR 52.246–23, Limitation of Liability, or FAR 52.246–25, Limitation of Liability—Services, may be inserted.

(xviii) When the order requires the use of a Government bill of lading or mailing indicia, the clause, FOB Origin-Government Bills of Lading or Prepaid Postage, at FAR 52.242–10 or FOB Origin-Government Bills of Lading or Indicia Mail, at FAR 52.242–11, shall be added.

(xix) [Reserved]

(xx) [Reserved]

(xxi) At the contracting officer's discretion, the clause, Duty-Free Entry—Qualifying Country End Products and Supplies, at 252.225–7003 may be used (see 225.605(S–72)).

(xxii) When required by FAR 22.305, the Contract Work Hours and Safety Standards Act—Overtime Compensation—General, clause in FAR 52.222–4 shall be added.

(xxiii) [Reserved]

(xxiv) [Reserved]

(xxv) When required by FAR 19.508(c), the Notice of Total Small Business Set-Aside clause in FAR 52.219–6 shall be added.

(xxvi) The changes authorized by Appendix U, para. 16–402.2 shall be incorporated when construction procedures are negotiated in accordance with FAR 36.401(c).

(xxvii) When required by FAR 47.305–4, the clause, FOB Destination, in FAR 52.247–34, and the clause, FOB Destination—Evidence of Shipments, in FAR 52.247–48, shall be added.

(xxviii) When required by 208.7303, the clause, Required Sources for Miniature and Instrument Ball Bearings, in 252.208–7000 shall be added.

(xxix) When required by 208.7403, the clause, Required Sources for Precision Components for Mechanical Time Devices, in 252.208–7001 shall be added.

(xxx) In accordance with 225.7312, all orders for the purchase of goods or services for Military Assistance Program (MAP), International Military Education Training (IMET) and Foreign Military Sales (FMS) shall include the clause, Exclusionary Policies and Practices of Foreign Governments, in 252.225–7013.

(xxxi) As required by FAR 22.1408, insert the clause, Affirmative Action for Handicapped Workers, in FAR 52.222–36.

(xxxii) If the order is to involve materials of a hazardous nature, include the clause, Hazardous Material Identification and Material Safety Data, in FAR 52.223–3, as prescribed in FAR 23.303.

(xxxiii) When the order involves the purchase of gas in contractor-furnished returnable cylinders and the contractor retains title to the cylinders, the clause in 252.213–7001, Returnable Gas Cylinders, shall be added. A similar clause may also be used in orders for other supplies involving reels, spools, drums, carboys, liquid petroleum gas containers, or other returnable containers, when the contractor is to retain title to the containers.

(xxxiv) In orders, except those exempted by FAR 22.807(a) or (b)(2) through (4), insert the Equal Opportunity clause in FAR 52.222–26.

(xxxv) When the purchase order includes FMS requirements, clearly indicate "FMS Requirement" on its face and specify within the order each FMS case indentifier code by line/subline item number, e.g., FMS Case Identifier GY–D–DCA.

(xxxvi) The clause, Delivery of Excess Quantities of $100 or Less, in FAR 52.212–10, may be used in accordance with instructions at FAR 12.403(b).

(xxxvii) For orders requiring payment in Canadian currency, the contract price shall be quoted in terms of Canadian dollars and shall be identified by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the U.S./Canadian conversion rate in effect at the time of award and the US dollar equivalent of the Canadian dollar contract amount.

(xxxviii) The Walsh-Healey Public Contracts Act clause in FAR 52.222–20 shall be used in each order for supplies that exceeds $10,000 and is otherwise subject to the act, in accordance with FAR 22.603.

(xxxix) Unless excepted under FAR 22.1302 or FAR 22.1308, the clause in FAR 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans, shall be in all orders of $10,000 or more.

(xl) The clause, Utilization of Small Business and Small Disadvantaged Business Concerns, in FAR 52.219–8 shall be in all orders exceeding $10,000 except those which will be performed entirely outside the United States, the District of Columbia, or the Commonwealth of Puerto Rico, or for orders which are for services personal in nature.

(xli) [Reserved]

(xlii) The clause Affirmative Action Compliance Requirements for Construction, in FAR 52.222–27 shall be inserted in orders exceeding $10,000 in accordance with FAR 22.810, unless excepted under FAR 22.807.

(xliii) The Equal Opportunity clause in FAR 52.222–26 shall be included in architect-engineering contracts and is applicable to contractors who have been or are awarded Federal contracts and/

or subcontracts which have an aggregate value in excess of $10,000. The clause is also applicable unless exempted under the rules, regulations and relevant orders of the Secretary of Labor (41 CFR, Ch. 60).

(xliv) Unless exempted by FAR 22.810, the clause, Certification of Nonsegregated Facilities, FAR 52.222–21 shall be inserted in orders exceeding $10,000 and is applicable to orders, subcontracts and agreements with applicants who are themselves performing Federally assisted construction contracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause.

(xlv) In accordance with FAR 22.810, the clause, Previous Contracts and Compliance Reports, in FAR 52.222–22 shall be inserted in all contracts that exceed $10,000.

(xlvi) Except for construction orders, the clause, Affirmative Action Compliance, in FAR 52.222–25 shall be inserted in all contracts that include the Equal Opportunity clause, in accordance with FAR 22.810.

(xlvii) Unless exempted by FAR 22.807, the clause, Notification of Visa Denial, FAR 52.222–29, shall be included in all orders to be performed in or on behalf of a foreign country.

(xlviii) In accordance with FAR 22.810, insert the clause, Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity, in FAR 52.222–23, in applicable solicitations involving construction in excess of $10,000. Follow the provision's parenthetical instructions for inserting the applicable construction trade(s), percentage goals, and geographical description of the covered area.

(xlix) In accordance with FAR 19.508(a), insert the clause, Notice of Small Business-Small Purchase Set-Aside, in FAR 52.219–4, in all requests for quotations and purchase orders of $10,000 or less, which are subject to small purchase procedures, unless excepted under FAR 13.105.

(2) *Use as a purchase order of not more than $25,000 outside the United States, its possessions, and Puerto Rico.* DD Form 1155 and 1155r–1, with executed contractor's acceptance when required, are authorized for negotiated purchases of not more than $25,000 when such purchases are for supplies and services procured and used outside the United States, its possessions, and Puerto Rico, *provided:*

(i) The procurement is unclassified.

(ii) No clauses covering the subject matter of any clause set forth in this Regulation, other than clauses set forth in DD Form 1155r–1, are to be used, except that—

(A) The Disputes clause at FAR 52.233–1 is inserted in the Schedule unless the contract is exempt pursuant to FAR 33.003.

(B) When the order is translated into another language, the Schedule shall contain the provision in 252.213–7000.

(C) When Government property having acquisition cost in excess of $50,000 is to be furnished (for use in performance of an order or for repair), the Government Property clause in FAR 52.245–2 shall be inserted in the Schedule in accordance with instruction in FAR 45.106. When Government property having an acquisition cost not in excess of $50,000 is to be furnished for use in performance of the order or for repair, the Government-Furnished Property (Short Form) clause in FAR 52.245–4 shall be inserted in the Schedule in accordance with instructions in that paragraph, *provided* that use of the clause shall be optional when the acquisition cost of property furnished for repair is not in excess of $10,000. When a Government Property clause is inserted in the Schedule, the contractor's signature shall be obtained on DD Form 1155r–1.

(D) A commercial warranty clause may be used in accordance with FAR 46.706.

(E) When required by 225.70 one of the clauses in 252.227–7005, Preference for Certain Domestic Commodities; or 252.227–7004(a), Preference for Domestic Specialty Metals (Major Programs); or 252.227–7004(b), Preference for Domestic Specialty Metals, shall be added. In purchases in excess of $2,500, the clause, Certain Communist Areas, in FAR 52.225–11 shall be inserted in the Schedule when acceptance of supplies, services, or construction is to take place outside the United States, its possessions or Puerto Rico. FAR 25.603 provides that supplies from the Communist areas of North Korea, Vietnam or Cuba may be acquired only in unusual situations; for example, in an emergency or when supplies are not available from any other source and a substitute supply is not acceptable. In such situations, the contracting officer shall determine for small purchases that there is need for an exception in accordance with Departmental procedures.

(F) The clause, Delivery of Excess Quantities of $100 or Less, in FAR 52.212–10 may be used in accordance with instructions at FAR 12.403(b).

(F) Unless exempted by FAR 22.807, the clause, Notification of Visa Denial, at FAR 52.222–29, shall be included in all orders to be performed in or on behalf of a foreign country.

(H) In accordance with FAR 25.302, the statement in FAR 52.225–6 or 7 to provide reporting of the balance of payments consequences of Defense procurement, will be placed on the face of applicable purchase orders.

(I) The contracting officer may delete the Taxes clause from the DD Form 1155r–1 in purchases under $1,000 if he determines that the administrative burden of securing relief from such taxes would be out of proportion to the relief obtained, *provided,* that such clause shall be included in all orders in support of NATO infrastructure programs involving the expenditures of funds under Section 503(b) of the Foreign Military Sales Act of 1968. (see FAR 29.402 on use of foreign taxes clauses).

213.505–70 Instructions for entries on DD Form 1155 and Standard Form 36.

(a) The instructions herein are mandatory for the preparation of orders if administration is assigned: (1) to DCAS, or (2) to a non-DCAS office listed in the DoD Directory of Contract Administration Services Components and the contractor is located in the continental United States or Canada.

(b) The organizational entity codes (address codes) referenced throughout Part 13 are as follows:

(1) *Codes published in DoD Activity Address Directory (DODAAD), DoD 4000.25D.* These codes will be used for Government entities in Blocks 6, 7, 9, 14, 15, and 19. However, the "Ship To" (Block 14) and "Ship To"/"Mark For" (Block 19) (viii) and (xi)) shall use a DODAAD code for non-Government entities for shipments to satisfy MILSTRIP requisitions for that non-Government entity. Foreign Military Sales (FMS) and Military Assistance Program (MAP), "Ship To"/"Mark For" (Block 14) shall use a Military Assistance Program Address Directory (MAPAD) code (MAPAC and TAC) in accordance with DoD 5105.38–D.

(2) *Codes published in Handbook of Non-Government Organizations for MILSCAP H8–1/H8–2 Handbooks.* These codes will be used for non-Government entities in Blocks 9, 14, and 19, except for the condition as noted in (b)(1) above.

(c) The right hand columns designate by alpha code the activities responsible for completing certain blocks on the DD Form 1155. The legend is "C" for contractor, "P" for purchasing office, and "—" for not applicable.

TITLE AND INSTRUCTIONS FOR ENTRIES

Block No.		Applicable to—		
		RFQ	PO	DO
1	*Contract/Purchase Order Number*—Enter the Procurement Instrument Identification (PII) number and, when applicable, the supplementary identification number for contracts and purchase orders as prescribed in Subpart 204.70.	—	P	P
2	*Delivery Order Number*—Enter PII number for delivery orders as prescribed in Subpart 204.70.	—	—	P
3	*Date of Order*—Enter the date of the order, i.e., 2 position numeric year, 3 position alpha month and 2 position numeric day. For example: 71 Sep 30.	—	P	P
4	*Requisition/Purchase Request Number*—Enter the applicable number authorizing the purchase. When the number differs by line item it will be listed in the schedule and this block annotated "see schedule".	P	P	P
5	*Certified for National Defense Under DMS Reg 1*—Enter the appropriate claimant program number as defined in Volume I, Section III of the DoD Procurement Coding Manual.	—	P	P
6	*Issued By*—Insert the name and address of the issuing office. In the Code Block, insert the appropriate DODAAD code for the issuing office. Directly below the address insert: Buyer/Symbol, followed by the appropriate buyer's name and routing symbol. Directly below the Buyer/Symbol insert: Phone: followed by the buyer's phone number and extension.	P	P	P
7	*Administered by*—Enter the name and address of the DCAS or military activity responsible for administration service. The "DoD Directory of Contract Administration Services Components" No. 4105.59H contains the complete listing of activities performing contract administration services. On purchase orders retained by purchasing offices for administration this block may be marked "see block 6." Enter in the code block the organizational entity code (address code) of the administration services offics. In the lower right or left-hand corner, insert Criticality Designator code (see FAR 42.1105).	—	P	P
8.	*Delivery FOB*—Indicate the FOB point by checking applicable box	P	P	P
9	*Contractor/Quoter*—(i) Enter the full business name and address of the contractor or quoter. Enter in the first code block the organizational entity code (address code) of the contractor. (ii) If it is known that all the work covered by the order is to be performed at an address different than the address represented by the contractor's code, and any contract administration function will be required at that facility, enter in the facility code block the appropriate address code for that facility, i.e., H8–1/H8–2 code for a nongovernment entity or DODAAD code for a government entity (DODAAD codes shall be used only to indicate "performed at" locations for orders specifying services at a government location.) If it is known that multiple facilities are involved, i.e., when the work covered by the order is performed both at the contractor's address and one or more other facilities, or when all the work is to be performed at two or more facilities other than the contractor's address), indicate the codes for all facilities at which work is to be performed, including the contractor's code if work is performed at that address, in the Standard Form 36 Continuation Sheet and mark the facility code block with "See Schedule." For orders specifying services which will be performed at locations other than the contractor's address, the locations shall be indicated as required above.	P	P	P
10	*Delivery to FOB Point by*—If a single date of delivery is applicable to the entire order it shall be entered in this block. Multiple delivery dates will be listed in the schedule and this block annotated "See Schedule".	P	P	P
11	*Small Business*—Check if the contractor/quoter is a small business concern as defined in FAR 19.	C	P	P
	Minority Business—Check if the contractor/quoter is a minority business enterprise as defined in FAR 52.219-2.	C	P	P
12	*Discount Terms*—Enter the discount for prompt payment in terms of percentages and corresponding days allowed. The percentage will be expressed in whole numbers and decimals. For example: 3.25%—10 days; 0.50%—20 days.	C	P	—
13	*Mail Invoices to*—Enter a reference to the block number containing the appropriate address to which invoices are to be mailed. When not contained in blocks 6, 7, 14 or 15 insert in block 18 "See Schedule".	—	P	P
14	*Ship to*—If a single ship to point is applicable to the entire order the name and address of that point may be entered in this block. Multiple ship to points will be shown in the schedule and this block annotated "See Schedule".	P	P	P
15	*Payment Will be Made by*—Enter the name and address of the activity making payment. For purchase orders assigned to DCAS see the "DoD Directory of Contract Administration Components No. 4105.59H for the DCAS Regional Office authorized to make payment. Enter in code block, the organizational entity code (address code) of the paying activity.	—	P	P
16	*Type of Order*—Indicate by checking the appropriate box whether order is a purchase or delivery order. If a purchase order, further entries are made as follows: (i) Indentify the type of quotation, i.e., orsl, letter or TWX on which the order is based. (ii) When the Fast Payment procedure is applicable, indicate by checking the appropriate box. (iii) Check the box when acceptance of the purchase order by the Contractor is desired and indicate the number of copies of the order to be returned to the issuing office.	—	P	P
17	*Accounting and Appropriation Data*—Enter the accounting classification applicable to the order. Enter the Accounting Classification Reference Number(s) in accordance with 4.71.	—	P	P
18	*Item Number*—Enter an item number for each item of supply or service separately identified in accordance with Subpart 204.71.	P	P	P
19	*Schedule of Supplies/Services*—The Schedule contains several elements of data. In order to accomplish standardization objectives, it will be necessary to treat and enter separately certain elements of data as indicated below. Though the order and arrangement of data in the schedule is only mandatory for purchase and delivery orders assigned to DCAS or Plant Cognizance Representatives for administration, it is encouraged, in order to establish uniformity, that this format be adopted for all orders.	P	P	P
	(i) *National Stock Number (NSN)*—Total Item Quantity for the line or subline item number followed by the appropriate National Stock Number or the word "non" if an NSN has not been assigned. On the same line and adjacent to NSN, enter the words "Total Item Quantity." This phrase is used in conjunction with the total quantity, unit of issue unit price, and dollar amount of the stock number or item cited (see entries for blocks 20, 21, 22 and 23).	P	P	P
	(ii) *Item Identification*—Enter first the most descriptive noun or verb of the supplies or services to be furnished, supplemented by additional description as prescribed in FAR 10. If multiple accounting classifications apply to the contract, enter the Accounting Classification Reference Number in accordance with Subpart 204.71.	P	P	P

TITLE AND INSTRUCTIONS FOR ENTRIES—Continued

Block No.		Applicable to—		
		RFQ	PO	DO
	(iii) *Quantity Variance*—Enter the quantity variance permitted for the line item in terms of percentages, indicating whether the percentage is plus or minus and if applicable to each destination.	P	P	P
	(iv) *Inspection/Acceptance*—Enter the point at which inspection/acceptance will take place	P	P	P
	(v) *Preservation and Packaging*—Enter the preservation and packaging requirements for the item described. These requirements may be expressed in terms of MIL-STD-726 codes or reference to applicable specifications. 1st Example: MIL STD 726 PRES/PACK: B/10/1/00/2/10/c/00/21/3/22/4/3/2/00. 2nd Example: Preservation and packaging shall be in accordance with instructions below DGSP P-54 in lieu of level "c" requirement.	P	P	P
	(vi) *Packing*—When required, enter the packing level designator and specification, standard, or document in which the requirements are stated or state the specific requirements. 1st Example: Packing. Preserved and packaged items shall be packed Level (A, B, or C depending on destination) in accordance with MIL-STD-794; 2nd Example: Packing. Preserved and packaged items shall be packed level (A, B, or C) in accordance with DESC. Manual 4100./.	P	P	P
	(vii) *Unitization*—When desired by the requiring activity, a requirement for cargo unitization for a particular destination should be specified for shipments involving two or more shipping containers having an aggregate total of not less than 20 cubic feet or 200 pounds. Example 1: Items packed for shipment shall be unitized in accordance with MIL-STD-147. Example 2: Nonperishable subsistence, packed as specified shall be unitized in accordance with MIL-L-35078C Type (I or II) Class (A through F for Type I, A through D for Type II.) Supplemental waterproofing requirements of Appendix II (are/are not) applicable.	P	P	P
	(viii) *Ship to*—Enter the organizational entity code (address code) of the ship to point on the first line and the corresponding name and address on succeeding lines. If multiple accounting classifications apply to the same line or subline item, enter the Accounting Classification Reference Number in accordance with Subpart 204.71. When several items are to be shipped to the same point, the code will be listed; but, it will not be necessary to repeat the clear text address.	P	P	P
	(ix) *Delivery Date*—When multiple delivery dates apply, enter the required date of delivery on the same line with Ship to Code.	P	P	P
	(x) *Mark For*—Enter the organizational code (address code) on the first line and name and address of the ultimate recipient of the supplies and services on succeeding lines.	P	P	P
20	*Quantity Ordered/Accepted*—Enter the total quantity ordered for the line item. If applicable, enter the breakdown on quantities for each ship to point within the line item.	P	P	P
21	*Unit*—Enter the unit of measure applicable to the line items described	P	P	P
22	*Unit Price*—Enter the unit price applicable to the line item described	—	P	P
23	*Amount*—Enter the extended dollar amount (quantity x unit price) for each line item	—	P	P
24	*Contracting/Ordering Officer*—The contracting/ordering officer's signature will be entered in this block.	—	P	P
25	*Total Amount*—Enter the total dollar amount for all line items on the order	—	P	P
26-42	These blocks are utilized in the receiving and payment functions. Procedures for making entries are prescribed by the respective departments.			

213.505-71 Use of DD Form 1155 as a public voucher.

DD Form 1155 is authorized for use as a public voucher:

(a) Not exceeding $25,000 when the form is used as a purchase order,

(b) Without monetary limitation when the form is used as a delivery order, and

(c) Without monetary limitation as the basis for payment of an invoice against blanket purchase agreements, or basic ordering agreements with a firm price has been established.

PART 214—FORMAL ADVERTISING

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 214.2—Solicitation of Bids

214.201 Preparation of invitations for bids.

Reserved, pending determination to what extent guidance may be necessary.

214.202 General rules for solicitation of bids.

214.202-1 Bidding time.

(a) *Policy.* For potential sources in participating countries, see 225.7403(a); for sources in FMS/offset arrangement countries, see 225.7310(c)(2); and for sources in defense cooperation countries, see 225.7502.

214.202-5 Descriptive literature.

(b) *Policy.* It may be appropriate to require descriptive literature in the acquisition of highly technical or specialized equipment, where considerations such as design or style are important in determining acceptability of the product.

(d) *Requirements of invitation for bids.* When brand name or equal purchase descriptions are used, the requirements of FAR 14.202-5 are met by inserting in the invitation for bids the brand names provision at 252.210-7000.

214.205 Solicitation mailing lists.

214.205-1 Establishment of lists.

(a) For special instructions relative to the establishment of a Research and Development Bidders Mailing List, see Supplement No. 4, "Procedures for Submission of Applications to be Placed on Research and Development Bidders Mailing Lists."

214.205-5 Release of solicitation mailing lists.

(a) When it is necessary to dispatch identical information by means of electrical transmission to prospective bidders or offerors, the electrically transmitted message, when released for communications handling, shall be marked "BOOK MESSAGE—TRANSMIT A SINGLE ADDRESS MESSAGE" to preclude prospective bidders or offerors knowing the names of others solicited. However, information as to sources solicited may be made available to other Government agencies, at their specific request and upon the condition that the list will not be made available for inspection prior to award to anyone outside the Government.

214.207 Pre-bid conference.

A pre-bid conference may be used only when approved at a level higher than the contracting officer. All interested parties, including representatives from qualifying country sources, shall be invited to the pre-bid conference. (See 225.7403(a), 225.7310(c)(2), and 225.7502.)

214.208 Amendment of invitation for bids.

(a) Pen and ink entries, deletions, or alterations shall not be made in an invitation for bids after it has been reproduced for issue to prospective bidders. Any changes required to the IFB shall be made by standard Form 30.

214.270 Master solicitation.

A master solicitation is a document containing the text of special provisions which have been identified as being essential for carrying out the peculiar needs of a specific commodity assignment to a single contracting activity within DoD. The document is prepositioned with potential sources who are requested to retain them for continued and repetitive use. The purpose of this technique is to simplify solicitation and award documents, to reduce the size of solicitations and awards, and concurrently to achieve time and dollar savings for both the Government and industry. The master solicitation technique involves two separate phases, the issuance of the master solicitation and the issuance of the individual solicitation/award. In addition, use of this technique to meet such peculiar requirements shall be subject to the following criteria:

(a) The master solicitation shall not be used unless repetitive purchases are anticipated.

(b) The master solicitation shall not include nonessential or infrequently used provisions.

(c) The master solicitation shall consist primarily of those locally developed provisions relating to instructions and procedures requiring repetitive use that cannot otherwise be avoided through use of FAR or DoD FAR Supplement clauses. The master solicitation may include FAR Part 52 clauses and DoD FAR Supplement clauses.

(d) Copies of a master solicitation shall be made available upon request.

(e) Each individual solicitation shall reference the date of the current master solicitation and any changes thereto. Significant revisions or a significant number of revisions should result in a reissuance of the entire master solicitation.

(f) Copies of contracts furnished to the contract administration activity must be complete and shall include a copy of the master solicitation unless prior arrangements have been made.

(g) The use of this technique shall be limited to those situations where it is clearly demonstrable that a substantial reduction of paperwork and simplification of the contracting process will result. Approval by the Head of the Contracting Activity is required.

Subpart 214.4—Opening of Bids and Award of Contract

214.406 Mistakes in bids.

214.406-3 Other mistakes disclosed before award.

(e) Authority for making a determination under FAR 14.406-3(a), (b), (c), and (d) may be delegated, without power of redelegation, as follows:

(1) Department of the Army: To the Deputy Assistant Secretary (Acquisition), Office of the Assistant Secretary of the Army (Research, Development and Acquisition); General Counsel of the U.S. Army Materiel Development and Readiness Command; General Counsel of the Office of the Chief of Engineers; Chief, Contract law Division, Office of The Judge Advocate General, Headquarters, Department of the Army.

(2) Department of the Navy: To the Assistant Commander for Contracts, Naval Facilities Engineering Command Headquarters; the Deputy Commander Purchasing, Naval Supply Systems Command Headquarters.

(3) Department of the Air Force: To the Staff Judge Advocate, Headquarters, Air Force Logistics Command.

(4) Defense Logistics Agency: The Counsel and Assistant Counsel.

(5) National Security Agency: Director of Procurement.

(6) Defense Communications Agency: The Counsel.

(7) Defense Nuclear Agency: The Counsel.

(8) Defense Mapping Agency: The Counsel.

(g)(3)(iv) Supporting evidence (such as work sheets, or other data used in preparing the bid) of the existence of the mistake and manner in which it occurred, and supporting evidence of the bid actually intended, shall be submitted with the bidder's written request.

(h) A signed copy of the administrative determination authorizing withdrawal or modification of the bid made in accordance with FAR 14.406-3 shall accompany the appropriate finance center copy of the contract award.

214.407 Award.

214.407-1 General.

(c)(3) When two or more awards are made to a single bidder on an invitation, the copy of the successful bid marked "original" will be attached to the appropriate finance center copy and a copy marked "duplicate" will be attached to the retained office copy of the first award issued. Succeeding awards will be inscribed to indicate the number of the award to which the original and duplicated bids are attached. This is necessary for legal review and auditing the General Accounting Office.

214.407-3 Prompt payment discounts.

If the acquisition is one regarding which bidders may offer prompt payment discounts, the discounts provision in 252.214-7000 shall be included in the solicitation.

214.407-6 Equal low bids.

(b) When award is to be made by drawing by lot and the information available shows that the product of a particular manufacturer has been offered by more than one bidder, a preliminary drawing by lot shall be made to ascertain which of the bidders offering the product of a particular manufacturer will be included in the final drawing to determine the award.

214.408 Information to bidders.

214.408-2 Award of classified contracts.

Disposition action shall be taken in accordance with the industrial Security Manual, (DoD 5220.22-M).

Subpart 214.5—Two-step Formal Advertising

214.503 Procedures.

214.503-1 Step one.

(a) Requests for technical proposals may be in the form of letter.

(i) The written notification to offerors required by FAR 14.503-1(i) shall advise offerors of the discontinuance of two-step formal advertising and the reason therefor.

214.503-2 Step two.

(a)(3) The statement required by FAR 14.503-2(a)(3) should be set forth in the item description by a provision substantially in the form of the following example:

Radio Antenna, in accordance with Exhibit No.——dated——(use other description of specifications as appropriate), and your Technical Proposal——(insert specific identification of the bidder's proposal, including any revision thereof as finally accepted), incorporated herein by reference. Nothing contained in said Technical Proposal shall constitute a waiver of any of provisions of said Exhibit (or specifications).

PART 215—CONTRACTING BY NEGOTIATION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 215.1—General Requirements for Negotiation

215.104 Authorization and approval.

(c) Business clearances or approvals shall be obtained as prescribed by applicable departmental procedures.

215.105 Competition.

(S-70) *Responsibility of requirements and other logistics personnel in purchasing offices.* Personnel other than the contracting officer, who determine type, quality, quantity, and delivery requirements for items to be purchased, can influence the degree of competition obtainable and exert a material effect upon prices. Failure to determine requirements in sufficient time to allow: (i) a reasonable period for preparation of requests for proposals; (ii) preparation of quotations be offerors; (iii) contract negotiation and preparation; or (iv) adequate manufacturing lead time; causes delays in deliveries and uneconomical prices. Requirements issued on an urgent basis or with unrealistic delivery schedules should be avoided, since they generally increase prices or restrict desired competition.

215.170 Records and reports of negotiated contracts.

In addition to the records and reports described in FAR 4.8 and this Supplement 215.211 and 215.217, each department is required to maintain a record of the total value of all contracts negotiated by it during each fiscal year under each of the circumstances permitting negotiation enumerated in FAR 15.2. These records, and reports based thereon, are maintained through the Department of Defense procurement reporting system described in Subpart 204.6.

215.171 Aid to small business and disadvantaged business concerns in negotiated acquisitions.

When negotiation is conducted, consideration shall be given to the size and minority status of the business concerns, and when subcontracting is consistent with the best interest of the Government, the extensive use of subcontractors shall be a favorable factor (See Part 219 and Subpart 217.1).

215.172 Aid to labor surplus area concerns in negotiated acquisitions.

When negotiation is conducted, consideration shall be given as to whether the prospective supplier is a labor surplus area concern (See Part 220).

215.173 Negotiation of initial production contracts for technical or specialized military supplies.

(a) The production of important new technical or specialized military supplies generally involves development, evaluation, and initial production phases. Examples of such supplies are tanks, radar, guided missiles, aircraft, rockets, and equipment of similar complexity; major components of such equipment as the foregoing; and any items of technical or specialized nature necessary for the use, maintenance or operation of such equipment. Contracting officers shall avoid, wherever practicable, awarding initial production contracts for supplies until completion of the development and evaluation phases. At the time of placing the initial production contract, it is essential that the Government be completely free to select the contractor as the best interest of the Government may dictate. In the placement and administration of research or development contracts, no commitments shall be made to contractors with respect to obtaining subsequent production contracts. Acquisition of initial production quantity of an item shall not be initiated until the item has been approved for service use unless prior approval has been obtained. When justified by special circumstances, acquisition of production quantities in advance of approval for service use may be authorized for the Departments of the Army and Air Force by Heads of the Contracting Activity, and for the Department of the Navy by the appropriate authority set forth in SECNAV Instruction 3900.30 and 3960.2.

(b) In connection with the foregoing it may be in the best interest of the Government that the initial production contract for technical and specialized supplies be placed with the contractor responsible for the development of the design for such supplies. Accordingly, it is essential that, in placing such initial production contracts, an analysis be made of the importance to be attached to the following considerations:

(1) Extensive preliminary research and development work which can be put to most effective use in production by the resarch and development contractor for any of the following reasons:

(i) A need for adaptation of the newly developed equipment for quantity manufacture, and for introduction of advanced production methods, together with a significant interrelationship between the design engineering and production engineering, which will yield best results from the standpoint of performance, reliability, and producibility; or

(ii) The substantial time and money which would be required for another contractor to indoctrinate and train his engineering staff in the specialized techniques or novel design concepts which have been employed, thereby adding to production lead time.

(2) Continuing improvement of the equipment, concurrent with production which can be most effectively accomplished by a single contractor because of the advantages of unified responsibility and close coordination of improved design features with production processes and equipment.

(3) Substantial time and effort which have been already expended by the development contractor in developing a prototype.

(4) The advantages to be gained through obtaining production drawings, e.g., detailed manufacturing, process, and assembly drawings, with rights to use for acquisition purposes at the earliest possible date for competitive reprocurement purposes by placing production engineering contracts and the first production contract with the developer (see (d) below).

(c) When it is in the Government's interest to award the initial production contract to the development contractor, price alone should not be allowed to dictate an award elsewhere unless a fair and reasonable price cannot be negotiated with the development contractor, or unless the price advantaged in award to another supplier is so substantial as to outweigh the other factors involved. This 215.173 is not to be construed to require or to prevent competitive pricing. Initial production contracts shall not be awarded to development contractors who do not have fully adequate and available financial, technical and production resources.

(d) The number of items to be acquired under an initial production contract will be established only after considering all pertinent factors, including the practical minimum quantity suitable to permit the development of the production design and a data package adequate to establish competitive acquisition of the item at the earliest practicable date.

(e) To the extent practicable, the initial production contract should also provide for the furnishing of an initial supply of special testing equipment, special tools, demonstration sets, and manuals required for operation, maintenance and training.

215.174 Abstract of offers.

The abstract of offers required by FAR 4.803(a)(10) shall be prepared on Abstract of Offers (SF Form 1409) or Abstract of Offers-Construction (SF Form 1419) appropriately modified (see FAR 53.2) to include all the information necessary for evaluation (but see FAR 15.413 and FAR 15.610). These forms need not be used in the case of acquisition from a single source of supply, for research and development, for the chartering of vessels by the Military Sealift Command, for the acquisition of coal and petroleum products by the Defense Fuel Supply Center, or for perishable subsistence items by the Defense Personnel Support Center.

Subpart 215.2—Negotiation Authorities

215.202 Public exigency.

(b) *Application.* The following are illustrative of circumstances with respect to which the authority of 10 U.S.C. 2304(a)(2) may be used:

(1) Supplies, services or construction needed at once because of fire, flood, explosion, or other disaster;

(2) Essential equipment for, or repair to, a ship when such equipment repair is needed at once for compliance with the orders of the ship;

(3) Essential equipment for, or repair to, aircraft grounded or about to be

grounded, when such equipment or repair is needed at once for the performance of the operational mission of such aircraft;

(4) Construction needed at once to preserve a structure or its contents from damage;

(5) Essential equipment for, or repair to, missiles or missile support equipment, when such equipment or repair is needed at once to preclude impairment of launch capabilities or mission performance;

(6) Purchase requests citing an issue priority designator under the Uniform Material Movement and Issue Priority system (UMMIPS), which may justify negotiation under this or other negotiation authority, but in such cases the specific circumstances must be set forth in the determination and findings; or

(7) Purchase requests citing "Electronic Warfare QRC Priority" as the priority designator.

215.210 Impracticable to secure competition by formal advertising.

(b) *Application.*

(14) The applicable agency regulation within DoD referred to in FAR 15.210(b)(14) is Joint Regulation DoD 4500.34–R.

215.213 Technical equipment requiring standardization and interchangeability of parts.

(b) *Application.*

(2)(ii) The phrase "during combat or other emergency" applies to the end of FAR 15.213(b)(2)(ii) within DoD.

(3)(ii) Within DoD, the "agency standardization program" referred to in FAR 15.213(b)(3)(ii) is the Defense Standardization Program.

(5) The period of standardization shall not exceed 6 years. In addition to this period bearing a reasonable relationship to the life of the equipment, it shall also be related to the anticipated rate of change in design and interchangeability of components. Actions taken under the authority of FAR 15.213 and this Section shall be recorded and reviewed by the originating department at a level designated by the approving authority, at least once every two years to determine whether the standardization should be continued, revised, or cancelled. The redesign or redesignation of a model which has been standardized will not require revision or cancellation of standardization approval if interchangeability of parts of the new model with those of the model standardized is not affected in any significant respect.

215.215 Otherwise authorized by law.

(b)(2) *Application.* The authority of this paragraph shall be used only if, and to the extent, approved for any Department and in accordance with Departmental procedures.

215.270 Records and reports for purchases for experimental, development or research work and purchases in the interest of national defense or industrial mobilization.

Each department is required to maintain a record of the name of each contractor with whom a contract has been entered into pursuant to the authority of FAR 15.211 and FAR 15.217, together with the amount of the contract and (with due consideration given to the national security) a description of the work required to be performed thereunder. These records, and reports based thereon, are maintained through the Department of Defense acquisition reporting system described in Subpart 204.6.

Subpart 215.3—Determinations and Findings to Justify Negotiation

215.302 General.

(c) As an example of reasonable variations in estimated quantities, if at the time a D&F is submitted for approval, historical evidence indicates the possibility of increased quantities, e.g., requirements of other Departments, and Military Assistance Program requirements, at the time of negotiation, the supporting data and the D&F may provide for limited additional quantities. Similarly, a provision may be included authorizing increased quantities if negotiations reveal that additional quantities can be acquired under the approved program and within available funds.

215.304 Content.

Additional guidance to that contained in FAR 15.304 for the preparation of a justification for negotiation in support of a D&F is set forth in Appendix J. A D&F with respect to negotiation of an individual contract or class of contracts should conform generally to the appropriate format set forth in Appendix J.

215.307 Signatory authority.

The Agency Head may also make any of the determinations, and written findings in support thereof, that may be made by the head of any contracting activity signing as a chief officer responsible for contracting or by a contracting officer. Determinations, and findings in support thereof, not required to be made by higher authority may be made with respect to individual purchases or contracts by the head of a contracting activity signing as chief officer responsible for contracting. D&Fs for acquisition by negotiation with respect to coordinated acquisition shall be made in accordance with Subpart 208.70. Whenever Table 15–1 of FAR 15.307 limits authority to sign a D&F to the agency head (see Subpart 2.1), the Under Secretary of Defense Research and Engineering shall exercise the authority with regard to any procurement proposed by a defense agency.

215.370 Responsibility for preparing the D&F.

The contracting officer is responsible for preparing the D&F. Requirements and technical personnel are responsible for the accuracy and adequacy of the factual information supporting the findings. Supporting information within the functional areas of requirements and technical personnel shall be furnished to the contracting officer in writing.

Subpart 215.4—Solicitation and Receipt of Proposals and Quotations

215.402 General.

(f) Examples of circumstances under which an oral solicitation may be used include those listed in 215.202(b). However, oral solicitation is not to be considered justified solely because a high issue Priority Designator has been assigned to the requirement. Should the issuance of a resulting contractual instrument be unduly delayed, following oral solicitation, the contract file should be documented to describe the reasons for the delay and justify award based upon the oral solicitation.

215.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

Reserved, pending determination to what extent guidance may be necessary.

215.410 Amendment of solicitations before closing date.

Requests for quotations may be amended by letter.

215.411 Receipt of proposals and quotations.

215.411–70 Maintenance and disposition of proposals and quotations.

Both solicited and unsolicited proposals shall be maintained and disposed of pursuant to FAR 4.803.

215.414 Forms.

(a) Letter RFPs and RFQs may also be used provided they otherwise comply with the requirements of FAR and this regulation.

(b) In the acquisition of subsistence, DPSC Form 300, Order for Subsistence, may be used for award purposes.

215.470 Master solicitation.

A master solicitation for negotiated contracts may be established, maintained, and utilized in accordance with 214.270.

Subpart 215.5—Unsolicited Proposals

215.504 Advance guidance.

(b)(2) Agencies shall, where applicable, in addition to the requirements of FAR 15.504(b)(2), also make available to potential offerors of unsolicited proposals requirements concerning cost sharing (see 235.003(b)).

215.506 Agency procedures.

215.506–1 Receipt and initial review.

(c) In addition to the requirements of FAR 15.506–1(c), agencies shall advise offerors of the disposition or intended disposition of the material submitted as the unsolicited proposal. The agency shall not deny reconsideration of a timely and appropriately revised or supplemented proposal which meets the requirements of FAR 15.506–1(a). When it is determined that a meritorious unsolicited proposal is not related to the mission of the recipient agency or may be of interest to other agencies in addition to the recipient agency, the recipient agency may identify for the offeror other agencies whose missions bear a relationship to the subject matter of the unsolicited proposal.

215.507 Contracting methods.

(b)(S–70). When so limited by an applicable DoD Appropriation Act, contracts for studies, analyses, or consulting services (see FAR 37.2) may be entered into on the basis of an unsolicited proposal only when the head of the contracting activity or his designee (no lower than the chief of the contracting office) determines that:

(i) As a result of thorough evaluation, only one source is found fully qualified to perform the proposal work; or

(ii) The purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source; or

(iii) The purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support; except that this limitation shall not apply to contracts in an amount of less than $25,000, contracts related to improvements of equipment that is in development or production, or contracts as to which a civilian official of the Department of Defense who has been confirmed by the Senate, determines that the award of such contract is in the interest of national defense.

Subpart 215.6—Source Selection

215.603 Purpose.

(d) In addition, source selection procedures are designed to ensure selection of the source whose proposals in the best interests of the Government, price and other factors considered.

215.607 Disclosure of mistakes before award.

(c)(3) Authority to make the determination is delegated to the head of the contracting activity with authority to redelegate to the chief of the contracting office.

215.613 Alternative source selection procedures.

"Four-Step" Source Selection Procedures are as follows:

(a) *General.*

(1) The Four-Step process, briefly described, is the (i) submission and evaluation of the offeror's technical proposal; (ii) submission and evaluation of the offeror's cost proposal; (iii) establishment of the competitive range and selection of the apparent successful offeror; and (iv) negotiation of a definitive contract.

(2) The conventional process differs in that (i) offerors' technical and cost proposals are submitted and evaluated simultaneously; (ii) definitive contracts are negotiated with all offerors in the competitive range; and (iii) the contractor is selected. One additional difference in the two processes involves discussion of proposal deficiencies. In the Four-Step process, deficiencies are not revealed to the individual offerors, while in the conventional process protracted discussions may evolve around proposal deficiencies.

(3) These procedures are designed primarily to: focus attention on technical excellence, maintain the integrity of each offeror's proposal, provide visibility of discriminating features between proposals, reduce the opportunity for buy-ins, preclude the opportunity for the use of auctioning techniques and assure a disciplined and orderly process in the selection of sources. To this end, early and open dialogue, e.g., pre-solicitation notices and conferences, pre-proposal conferences, informal solicitations and the tailoring of specifications, is encouraged to establish a better understanding of the Government's needs.

(4) Following the technical evaluation and discussions, cost/price proposals are obtained from each offeror together with any necessary clarifications of technical proposals. Subsequent to the receipt of the cost/price proposals and any technical clarifications, a competitive range is established. Those proposals outside the competitive range are eliminated at this point and the offerors so notified. Limited discussions are then held with the remaining offerors on their cost/prices proposals and any technical clarifications. Following such discussions, a proposal may be eliminated from further consideration and the offeror so notified when it is determined to be no longer in the competitive range.

(5) At the completion of technical and cost price discussions, a common cut-off date of the receipt of final technical and cost/price proposals based upon those discussions is then established and the remaining offerors so notified. An evaluation is then made of each offeror's total proposal and a single offeror is normally selected for negotiation of a contract (see 215.613(h)(7)). In order to release proposal teams at the earliest practical date, all offerors are notified of the contractor selected.

(6) A definitive contract is then nogotiated with the selected offeror and contract award accomplished. These negotiations must be completed in a timely manner and must not involve changes in the Government's requirements or the contractor's proposal which would affect the basis for source selection. In the event a definitive contract cannot be awarded on a timely basis, negotiations may be terminated and a new source selection decision made.

(b) *Applicability.* These procedures may be used at the discretion of the Contracting Officer for competitively negotiated research and development acquisitions with an estimated value of two million dollars or more. They may also be used for any other acquisition when approved in accordance with Departmental procedures subject to the restrictions below. Use of these procedures is not appropriate when Government evaluation of initial proposals, without discussion of proposal deficiencies, will be sufficient to determine the best overall offer to the Government. Acquisitions for which these procedures are not used shall follow the procedures of FAR 15.6.

(c) *Restrictions.* These procedures should not be used for acquisitions in which the necessity to conduct

extensive negotiations is anticipated. These procedures shall not be used for any acquisitions which:

(1) Are negotiated pursuant to FAR 15.202;

(2) Are solely for personal or nonpersonal services;

(3) Are for architect-engineer services; or

(4) Have an estimated value of less than two million dollars.

(d) *Procedures.* Acquisitions subject to this paragraph shall be conducted in accordance with the following procedures:

(1) *Solicitations.* Solicitations shall be developed in accordance with FAR 15.4 and shall include the following special requirements and instructions:

(i) A general statement explaining the concept and procedures to be used in the selection of a contractural source of the proposed acquisition.

(ii) The relative importance of technical/system performance criteria.

(iii) A notification that any proposals which are unrealistic in terms of technical or schedule commitments or unrealistically low in cost or price will be deemed reflective of an inherent lack of technical competence or indicative of failure to comprehend the complexity and risks of the proposed contractual requirements and may be grounds for the rejection of the proposal.

(iv) A schedule of planned source selection events including, but not limited to, specific dates for the submission of both technical and cost/price proposals.

(v) Provisions requiring sequential submission of separate technical and cost/price proposals.

(vi) Requirements for the technical proposal to include, where appropriate, identification of trade-offs among performance, production costs, operating and support costs, schedule and logistic support factors; and requirements for cost estimates which illustrate the impact of these trade-offs. In addition, requirements of the technical proposal to include information necessary to indicate that the design to cost and operating and support cost objectives, when used, would be achieved when the item(s) enters production.

(vii) Requirements for the cost proposal to include the detailed, substantiating cost information pertaining to the performance of the contemplated contract and other detailed data necessary for evaluation of cost factors to be considered in the source selection decision.

(viii) A statement that both technical and cost/price discussions will be limited as set forth in (f)(2) (ii) and (iii) below.

(ix) A notification that negotiations will be conducted only with the selected offeror, and that offerors should represent their most favorable technical and cost/price proposals initially.

(e) *Step one—evaluation and discussion of technical proposals.* A detailed evaluation shall be accomplished on all technical proposals received based upon the established criteria in the solicitation. Upon completion of the initial evaluation, limited discussions shall be conducted with all offerors for the purpose of achieving maximum understanding and clarification of the contents of the proposal. During such discussions, offerors shall not be advised of deficiencies in their proposals. A deficiency is defined as that part of an offeror's proposals which would not satisfy the Government's requirements. Offerors shall be advised of areas of their proposal in which the intent or meaning is unclear or for which additional substantiating data is required for evaluation. When necessary for complete understanding of proposals, clarifications and/or additional substantiating data may be requested concerning those areas of an offeror's proposal when there is uncertainty that a deficiency exists. In most cases, clarification of proposals and additional substantiating data, if required, will be included by offerors with their cost/price proposals in Step Two. When it is apparent from the proposals received that the Government's requirements have been misinterpreted, clarification shall be provided to all offerors to ensure complete understanding.

(f) *Step two—evaluation and discussion of cost price proposals.*

(1) Following the technical evaluation and discussions, complete, fully documented cost/priced proposals and clarifications, if required, of technical proposals shall be obtained. Each proposal shall be evaluated and those which have a no reasonable chance for award may be eliminated from the competition at this point and the offerors notified that they are outside the competitive range and will be given no further consideration.

(2) Limited discussions as indicated herein shall then be conducted with all remaining offerors in connection with their respective cost/price proposals, either on an element-by-element basis or in their entirety. These discussions may include (i) rectification and/or correction of inconsistencies or mathematical errors; (ii) correlation of elements of cost with their respective technical efforts, in order to assess the extent of realism in the cost proposal; and (iii) discussion necessary to ensure a complete understanding of the Government's requirements, what is being offered (including delivery schedules, trade-offs among performance, design to cost, life cycle cost, and logistics support factors) and other contract terms. An offeror shall not be advised during these discussions that its proposal or any of its elements are either too high or too low. When discussions of technical proposals are required they shall be limited as stated in (f)(2)(ii) above.

(3) Following such discussions, a proposal may be eliminated from further consideration and the offeror so notified (i) when the proposal was initially included in the competitive range because it might have been susceptible of being made acceptable, or (ii) because there was uncertainty whether it was in the competitive range, and in either case, through discussions relating to ambiguities and omissions it becomes clear that the proposal should not have been included in the competitive range initially.

(g) *Step three—common cut-off.*

(1) A common cut-off date for receipt of technical and cost/price proposal clarifications or substantiations shall be established and all participants so notified in accordance with FAR 15.611.

(2) Offerors shall be informed that any changes incorporated in the final proposal must be fully substantiated. Supporting data must provide traceability to the causative technical, business, or financial conditions that brought about any change. Lump sum reductions in cost/price shall not be accepted without supporting rationale.

(3) After the common cut-off date, requirements shall not be imposed for additional proposals or revisions to submitted technical or cost proposals without the prior approval of an official at a level no lower than that of a Head of a Contracting Activity (HCA). Auctioning through repetitive calls for offers is strictly prohibited.

(4) Final detailed negotiations leading to the bilateral execution of a definitive contract shall be deferred until after the selection of an offeror for final contract negotiations.

(h) *Selection of an offeror for final contract negotiations.*

(1) Complete evaluation of all factors in accordance with the criteria set forth in the solicitation, including cost/fee or price, shall be conducted with careful regard for security procedures and good business practice.

(2) Based upon the offeror's latest total acceptable technical and cost proposals, selection of a single source shall be made for the conduct of final negotiations leading to a definitive contract. (This does not preclude selecting more than one source when multiple sources are desired; e.g., competitive prototypes.) Procedures for waiver of this requirement are at (h)(7) below.

(3) Proposals unrealistic in terms of technical or schedule commitments or unrealistically low in cost or price will be deemed reflective of an inherent lack of technical competence or indicative of failure to comprehend the complexity and risks of the contract requirements and may be grounds for rejection of the proposal.

(4) The selection will be based on an integrated decision, involving consideration of technical approach, capability, management, design to cost, operating and support cost objectives, historical performance, price/cost and other factors.

(5) Following selection of the best offeror, all competitors shall be notified of the source to be awarded the contract, subject to negotiation of a satisfactory definitive contract.

(6) The source selection decision is conditional in that award of a fully negotiated contract to the selected offeror must be accomplished within a period of time prescribed by the source selection authority. In the event a definitive contract cannot be awarded on a timely basis, negotiations may be terminated and a new source selection decision made.

(7) Proposed contracts may be negotiated with two or more offerors within the competitive range, if the HCA makes a written determination that a final selection of a single source should not be made until such proposed contract have been negotiated. Such determination shall not be made solely for the purpose of maintaining a competitive environment. However, such a determination may be based, for example, on unique situations where there are no significant discriminating technical or cost features between two or more offerors. Notification of such determination shall be provided to OUSDRE(AM) through Departmental procedures.

(i) *Step four—final negotiations and contract award.* Final negotiations leading to bilateral execution of a single definitive contract will be conducted only with the selected offeror except when multiple negotiations are authorized by the HCA. Final negotiations shall include the disclosure and resolution of all technical deficiencies and all unsubstantiated areas of cost. Negotiations shall not involve changes in the Government's requirements or the contractor's proposal which would affect the basis for source selection. In the event that such changes are necessary, the procedures in FAR 15.606 shall be followed. The final negotiated contract must represent a reasonable probability that the Government's requirements will be satisfied at a fair and reasonable cost/fee or price.

(j) *Debriefings.* Formal debriefings shall be conducted after contract award, in accordance with FAR.

Subpart 215.7—Make-Or-Buy Programs

215.704 Items and work included.

The minimum dollar threshold within DOD referred to in FAR 15.704(b) is $500,000.

215.706 Evaluation, negotiation, and agreement.

(d) Contracting officers shall also give primary consideration to the effect of the proposed make-or-buy program on the contemplated type of subcontract.

215.707 Incorporating make-or-buy programs in contracts.

(a)(2) The contracting officer may exclude the make-or-buy program from (i) cost-plus-incentive-fee contracts to which FAR 15.707(b) is applicable and (ii) from cost-plus-incentive fee contracts having a cost incentive which provides for a swing from target fee of at least 3 percent and a contractors' overall share of cost of at least 10 percent (authority may be requested (see FAR Subpart 1.4) to exclude the make-or-buy program from other cost-plus-incentive-fee contracts having different incentive and cost-sharing patterns, whenever the contracting officer finds that such other contracts provide sufficient incentive for control of costs).

Subpart 215.8—Price Negotiation

215.802 Policy.

(b)(2) (This prohibition neither prevents the negotiation of indirect costs and other rates applicable to several contracts nor prohibits FPRA's applicable to several contracts.)

215.803 General.

(b) When necessary, requirements and technical specialists should be consulted. The primary responsibility for the adequacy of specifications and for the delivery requirements must necessarily rest with requirements and technical groups. However, the contracting officer should be aware of the effect which these factors may have on prices and competition, and should, prior to award, inform requirements and technical groups of any unsatisfactory effect which their decisions have on prices or competition.

(d) When products are sold in the open market, costs are not necessarily the controlling factor in establishing a particular seller's price. Similarly, where competition may be ineffective or lacking, estimated costs plus estimated profit are not the only pricing criteria. In some cases, the price appropriately may represent only a part of the seller's cost and include no estimate for profit or fee, as in research and development projects where the contractor is willing to share part of the costs. In other cases, price may be controlled by competition. The objective of the contracting officer shall be to negotiate fair and reasonable prices in which due weight is given to all relevant factors. When negotiations indicate the need for using other than a firm fixed-price contract, there should be compatibility between the type of contract selected and the contractor's accounting system.

215.804 Cost or pricing data.

215.804-2 Requiring certified cost or pricing data.

(a)(1)(ii) The term "price adjustment" or "pricing adjustment" means the aggregate increases and/or decreases in costs plus applicable profits.

(2) Partial or limited data may be requested when less than complete cost analysis (e.g., analysis of only specific factors) will provide a reasonable pricing result on awards under $500,000 without the submission of complete cost or pricing data. The contracting officer shall request only that data which he considers adequate to support the limited extent of the cost analysis required and he will not require certification.

(b)(1) Cost of pricing data shall not be required merely in anticipation of postaward review of the contract.

(2) If, after cost or pricing data were initially requested and received, it is determined that adequate price competition does exist, the data need not be certified.

215.804-3 Exemption from or waiver of submission of certified cost or pricing data.

(a)(1) When economic price adjustment provisions are included in competitive procurements, see FAR 16.203-2(b).

(b)(2)(ii) An example of a determinative advantage is where substantial costs, such as start-up or

other nonrecurring expenses, have already been absorbed in connection with previous sales, thus placing the competitor in a preferential position.

(3) Examples of a price "based on" adequate price competition are: (i) exercise of an option in a contract for which there was adequate price competition if the option price has been determined to be reasonable in accordance with FAR 17.207(d); and (ii) an item normally is procured competitively but in a particular situation only one offer is solicited or received, and the price clearly is reasonable in comparison with recent purchases of comparable quantities for which there was adequate price competition.

(c)(6) In addition, cost or pricing data may be requested, if necessary, where there is such a disparity between the quantity being procured and the quantity for which there is such a catalog or market price that pricing cannot reasonably be accomplished by comparing the two.

(7) In determining exemptions, it is the item under consideration that must meet the test. The ultimate objective is to achieve fair and reasonable prices for items bought. Altered terms, minor configuration changes, extra inspection requirements, or quantity differences are adequate reasons for pricing items differently from catalog or market prices.

(e)(3) In anticipation of repetitive procurements of a catalog item, the PCO or the cognizant ACO may make special arragements of submission of the exemption claim. The submission need not be on a Standard Form 1412, but shall include any data required by the form and include or incorporate by reference all the applicable definitions, representations and rights included in the form. Government approval of the exemption claim shall set forth the effective period, usually not more than one year, and require the contractor to furnish any later information that might raise a question as to the continuation of the exemption. Such approval may be extended to other Government purchasing offices with their concurrence. A copy of each waiver shall be sent to the Assistant Deputy Under Secretary for Acquisition, Office of Under Secretary of Defense, Research and Engineering.

215.804-4 Certificate of current cost or pricing data.

(c) The data on numerous minor material items each of which by itself would be insignificant may be reasonably available only as of a cut-off date prior to agreement on price because the volume of transactions would make the use of any later data impracticable. Furthermore, except where a single item is used in substantial quantity, the net effect of any changes to the prices of such minor items would likely be insignificant.

215.804-6 Procedural requirements.

(b)(2) The following may be used with the SF 1411:

(i) When Contract Cost Data Reports are required by the purchase request, the contractor shall be required to submit DD Forms 1921 and/or 1921-1 to support the SF 1411. The DD Forms 1921 shall be prepared in accordance with the Contractor Cost Data Reporting (CCDR) System (Army—AMCP 715-8, Navy—NAVMAT P5241, and Air Force—AFLCP/AFSCP 800-15). The contractor supporting data shall be prepared in such a manner as to support each cost element on the DD Form 1921-1.

(ii) *Contract Pricing Proposal Supporting Schedules* may be devised by contracting offices to require such supporting data to the foregoing forms as is considered necessary and reasonable through knowledge of industry, company or commodity practices.

(c) To the extent possible, the understanding should relate to the contractor's formal estimating system. Notwithstanding the foregoing, significant matters important to contractor management and to the Government and any related data within the contractor's organization or the organization of a subcontractor or prospective subcontractor would be expected to be current on the date of agreement on price and, therefore, will be treated as reasonably available as of that date. Although changes in the labor base or in prices of major material items are generally significant matters, no hard and fast rule can be laid down since what is significant can depend upon such circumstances as the size and nature of the procurement.

(e) The referral to higher authority shall also include a complete statement of the attempts made to resolve the matter, including (1) steps taken to secure essential cost or pricing data, (2) efforts to secure the contractor's cooperation in the establishment of a satisfactory business relationship, and (3) any assurances offered, such as agreements to adequately safeguard information furnished.

(f) Since an offeror may propose a price which does not include all preproduction and startup or other nonrecurring costs for the purpose of obtaining the first production contract and for gaining an advantage over competitors in negotiations for future procurements, it is important to know whether the offeror intends to absorb any portion of these costs or whether he plans to recover them in connection with subsequent pricing actions under the proposed or future contracts. This information is needed in evaluating competing proposals to determine which proposal is most likely to result in the lowest overall cost to the Government, particularly where the successful offeror is likely to become, in effect, a sole source for follow on procurements (including spare parts or other support items).

(g)(3) In addition to submitting cost or pricing data from the prospective subcontractor most likely to be awarded the subcontract, the contractor shall submit other data pertaining to subcontract costs, including other subcontractor quotations. Failure by the contractor to submit subcontract cost or pricing data may be cause for disqualification of the contractor from further consideration for award of the proposed contract.

215.804-7 Defective cost or pricing data.

(b)(2) In the absence of evidence to the contrary, the natural and probable consequence of defective data is an increase in the contract price in the amount of the defect plus related burden and profit or fee; therefore, unless there is a clear indication that the defective data were not used, or were not relied upon, the contract price should be reduced in that amount. In establishing that the defective data caused an increase in the contract price, the contracting officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

(d) An auditor's advisory report of postaward reviews of cost and pricing data may result either from a specific request of a contracting officer or from audit action initiated independent of a contracting officer's request.

(e) In exercising the Government's rights in such cases, the contracting officer will consider the varying circumstances discussed below.

(e)(S-70) In some instances, the prime contractor may have reached agreement on price with a subcontractor before the prime contractor and the Government agree on a definitive price. This might occur, for example, if the prime contractor commenced performance under an unpriced action such as a letter

contract. In such cases, the subcontractor's cost or pricing data must be submitted with the prime contractor's submission. If any such subcontractor data are subsequently found to be defective, the prime contract is subject to price adjustment in the same manner as would be the case if any other cost or pricing data submitted by the prime contractor proved to be defective.

(e)(S–71) The Government and the prime contractor will normally agree on the price of a contract prior to final agreement on price between the prime contractor and his subcontractor. In such cases, the prime contract price will be based, in part, on subcontract cost estimates. The prime contractor will be expected to support his subcontract cost estimates with subcontractor cost or pricing data. The prime contract price will be subject to adjustment on the basis of defective subcontractor cost or pricing data submitted prior to agreement on the prime contract price if:

(i) Such subcontractor data were not accurate, complete, or current as of the date certified in the prime contractor's Certificate of Cost or Pricing Data, or in some cases were not accurate as submitted by the subcontractor, and

(iii) The prime contract price was increased by a significant sum because of such defective subcontractor data.

(f) Conditions may be prescribed by: the Office of the Assistant Secretary of the Army (Research, Development and Acquisition), for the Army; Chief of Naval Material (DCNM for Contracts and Business Management), for the Navy; the Director of Contracting and Manufacturing Policy, Headquarters, USAF (AF/RDC), for the Air Force; and the Executive Director, Contracting, for the Defense Logistics Agency.

(2) Although the action is taken under those price reduction clauses rather than under Part 231 as a practical matter the result is the same, i.e., the increased costs will be disallowed under cost-type contracts or not considered as actual costs for final pricing of redeterminable or incentive-type contracts. The action is taken under the price reduction clauses because not only will the increased costs be disallowed or not considered as actual costs but also the fixed-fee or target profit included in the initial price may be subject to reduction in accordance with (1) and (2) of 215.804–7(e) above.

215.804–8 Contract clauses.

The requirement for inclusion of the specified clauses in contracts with foreign governments or agencies may be waived in exceptional cases by the Agency head (see FAR 15.804–3(i)). The contracting officer shall also include the clause at FAR 52.215–22 when obtaining partial cost or pricing data in accordance with 215.804–2(a)(2).

(S–70) The clause at 252.215–7000 shall be included in all solicitations and contracts which include a clause at FAR 52.215–23, FAR 52.215–24, or at FAR 52.215–25. The Contracting Officer may insert a lesser dollar amount, if appropriate.

(S–71) The contracting officer shall insert the clause at 252.215–7001, Pricing of Adjustments, in solicitations and contracts for supplies, services, and construction when a fixed-price contract is contemplated.

215.805 Proposal analysis.

215.805–1 General.

(a) The contracting officer should also note the following:

(a)(S–70) Each contracting officer is responsible for performing or having performed all administrative actions necessary for effective contracting.

(a)(S–71) For certain acquisitions, it may be necessary to convene a formal "Should Cost" (see FAR 15.810) team of specialists to evaluate the contractor's cost projections, supporting standards, and other in-plant management, operational and performance practices, on which cost projections are based.

(a)(S–72) Contract auditors are professional accountants who, although organizationally independent, are the principal advisors to contracting officers on contractor accounting and contract audit matters. Contract audit services are available in two forms:

(i) Audit reports setting forth the results of auditors' reviews and analyses of cost data submitted by contractors as part of pricing proposals, reviews of contractors' accounting systems, estimating methods, and other related matters; and

(ii) "On-the-spot" personal consultation and advice to contracting and contract administration personnel in connection with analyses of contractors' cost representations and related matters by liaison auditors stationed at contracting and contract administration offices. (DCAA provides procurement liaison auditors (PLAs) at most major procurement and contract administration offices to facilitate the receipt and use of audit service and to provide accounting and audit advice as to whether or not audit review of a price proposal should be waived.)

(b) Some form of price or cost analysis is required in connection with every negotiated procurement action. The method and degree of analysis, however, is dependent on the facts surrounding the particular procurement and pricing situation. The extent of cost analysis should be that necessary to assure reasonableness of the pricing result, taking into consideration the amount and complexity of the proposed contract. Normally, a sound conclusion as to value cannot be made on the basis of cost analysis alone. Depending on the information available, a price arrived at by cost analysis should be corroborated through price analysis techniques.

215.805–2 Price analysis.

(b) To provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors as time of prior purchases, specifications, quantities ordered, time for delivery, Government-furnished materials, and experienced trends of improvement in production efficiency. It must also be recognized that such comparison may not detect an unreasonable current quotation unless the reasonableness of the prior prices was established and unless changes in the general level of business and prices have been considered.

215.805–4 Technical analysis.

Technical analyses by the Plant Rep/ACO and his team shall be based on their knowledge of such factors as production, quality assurance, engineering and manufacturing practices and techniques, and information as to plant capacity, scheduling, engineering and production "know-how," Government property, make-or-buy considerations, and industrial security, particularly as these relate to practices of the specific prospective contractor.

215.805–5 Field pricing support.

(a)(1) Information of the type described in (a)(1) (i) through (vi) below, which is often available to the contracting officer from the Plant Rep/ACO or from the Procurement Liaison Auditor (PLA), should be useful in determining the extent of any field pricing support that is needed.

(i) In-house engineering determination of level of effort required in connection with research and development or study contracts.

(ii) Audited cost information from contract awards in process, or recently negotiated contracts.

(iii) Adequately reviewed data on proposed subcontracts items which constitute the major portion of the prime contract price proposal.

(iv) Prices of standard commercial items which constitute the major portion of the prime contract price proposal.

(v) Special forward pricing formulas or rates such as for support items, or

forecast overhead rates, prescribed in an existing advance agreement.

(vi) Current labor rates, overhead rates, loading factors, per diem rates, and lot data based upon actual costs and labor hours. It should be borne in mind that no single category of information is necessarily sufficient by itself; for example, information as to rates for labor and overhead would normally require data concerning the base elements—labor hours, material costs, etc.—to which the rates apply.

(2) The Plant Rep/ACO, as well as the contract auditor, will be responsible for providing a complete and accurate field pricing report to the PCO. (See FAR 15.810(e) for field pricing reports submitted on acquisitions where should-cost analysis is conducted.) To accomplish this end, the Plant Rep/ACO must:

(i) In concert with the auditor and in consideration of his workload, establish a deadline for the auditor's input, subject to date adjustments when considered necessary (adjustments will be coordinated by the Plant Rep/ACO with the PCO and the contract auditor);

(ii) Identify areas for special consideration (these are areas in addition to those specified by the PCO);

(iii) Arrange for exchanges of technical and audit information; and

(iv) Be fully responsive to a request for technical information from the auditor.

(c)(1)(S–70) When field pricing reviews are required, contracting officers should note the following:

(A) The Plant Rep/ACO is the team manager for all PCO requests for field pricing support. Therefore, the PCO shall send all requests for field pricing support to the cognizant field contract administration activity; generally, the Plant Representative (Plant Rep) for the Services and the Administrative Contracting Officer (ACO) for DCAS(DLA). A copy of the request will also be sent to the cognizant audit activity.

(B) In sole source procurements, when the contracting officer knows in advance that field pricing support will be required, he shall provide the cognizant Plant Rep/ACO and auditor a copy of the solicitation. In addition, he may require the contractor to provide copies of his proposal direct to the Plant Rep/ACO and auditor. In this event the PCO shall, as soon as possible after receipt of the contractor's proposal, identify those specific areas for which field pricing support is required.

(C) Where audit reports are received on procurement actions that are subsequently canceled or unsuccessful, the cognizant auditor shall be notified in writing.

(d) The efforts of all field pricing support team members are complementary, advisory and also offer an excellent check and balance of the various analyses imperative to the PCO's final pricing decision. Therefore, it is essential that there be close understanding, cooperation and communication to ensure the exchange of information of mutual interest during the period of analysis. While they shall review the data concurrently when possible, each shall render his services within his own area of responsibility. For example, on quantitative factors (such as labor hours), the auditor may find it necessary to compare proposed hours with hours actually expended on the same or similar products in the past as reflected on the cost records of the contractor. From this information he can often project trend data. The technical specialist may also analyze the proposed hours on the basis of his knowledge of such things as shop practices, industrial engineering, time and motion factors, and the contractor's plant organization and capabilities. The interchange of this information will not only prevent duplication but will assure adequate and complementary analysis.

(e) The terms "audit review" and "audit" refer to examinations by contract auditors of contractors' statements of actual or estimated costs to the extent deemed appropriate by the auditors in the light of their experience with contractors and relying upon their appraisals of the effectiveness of contractors' policies, procedures, controls, and practices. Such audit reviews or audits may consist of desk reviews, test checks of a limited number of transactions, or examinations in depth, at the discretion of the auditor. The contract auditor is responsible for submission of information and advice, based on his analysis of the contractor's books and accounting records or other related data, as to the acceptability of the contractor's incurred and estimated costs.

(e)(6) Reports of technical analysis and review should be furnished to the auditor at the earliest possible date and at least five days prior to the due date of the audit report to enable the auditor to include the financial effect of technical findings in the audit report (for example, the necessary computations of dollar amounts arising from changes in proposed kinds and quantities of materials, labor hours, etc.). In the event the technical analyses are not available in time to be reflected in the audit report, the audit report shall so state, and this shall be made known to the Plant Rep/ACO so that comments may be incorporated in his submission to the PCO. If technical analyses are received later by the auditor, he shall issue a supplemental report if the status of the negotiation is such that a report would serve a useful purpose. The original of all technical reports received by the auditor shall be made a part of the audit report submitted to the Plant Rep/ACO.

(e)(7) When the PCO determines that deficiencies in the contractor's accounting system or estimating methods are such that the proposed contract cannot be adequately priced or administered, he shall, with the advice of the contract auditor and the Plant Rep/ACO, assure that necessary corrective action is initiated prior to the award of such contract. The auditor is responsible for performing that part of reviews and cost analyses which requires access to the contractor's books and financial records supporting proposed cost or pricing data, regardless of the dollar amount involved.

(e)(8) During the course of the examination, the Plant Rep/ACO and the auditor shall each confer with the contractor to fully understand the basis for each item in the contractor's proposal and to remove any doubts as to the validity and accuracy of their conclusions and findings.

(g) The Plant Rep/ACO (price analyst or negotiator) shall query the auditor or technical personnel about matters in audit or technical reports which appear to need clarification. When developing the Plant Rep/ACO statement to the PCO transmitting audit and technical reports, comments or observations shall be added about pertinent matters whether or not covered in the audit or technical reports. However, it is not contemplated, for example, that the price analyst or negotiator should attempt an examination of the contractor's accounting records for this purpose since the contract auditor has this responsibility.

(i) If in the opinion of the PCO, Plant Rep/ACO, or auditor, the review of a prime contractor's proposal requires further review of subcontractors' cost estimates at the subcontractors' plants (after due consideration of reviews performed by the prime contractor), such reviews should be fully coordinated with the Plant Rep/ACO having cognizance of the prime contractor before being initiated. If a review is required of a subcontract proposal, the prime Plant Rep/ACO shall forward the request to the subcontract ACO with an information copy to the subcontract auditor. In the event a lower tier subcontract proposal

requires review, the request should be coordinated in sequence with the Plant Rep/ACO's at higher tiers in the subcontract chain. The resulting pricing reports, including any audit reports, shall be forwarded by the subcontract Plant Rep/ACO to the prime Plant Rep/ACO with an information copy to the prime auditor. If the review is of a lower tier subcontract proposal, the report shall be transmitted through the Plant Rep/ACO's in the subcontract chain.

(j) The appropriate contract administration activities will be notified by the HCA when review and evaluation of subcontractors' proposals will require extensive field pricing assistance in connection with the acquisition of a major new weapon system, or require special or expedited action by field pricing personnel and such action if being, or has been, delayed.

215.806 Subcontract pricing considerations.

(S–70) Other subcontract pricing considerations include:

(1) Subcontract costs and pricing arrangements are significant elements to be considered during negotiation of prime contracts and during contract administration.

(2) Basic responsibility rests with the prime contractor for decisions to make or buy, for selection of subcontractors, for subcontract prices, and for subcontract performance. The contracting officer who is responsible for negotiating the contract price with the prime contractor must have adequate knowledge of these elements as they affect prime contract prices.

(3) Contractors' "make-or-buy" programs and proposed subcontracts must be reviewed in accordance with FAR Subpart 15.7 and with FAR Part 44. Information from these reviews should be used in evaluating subcontract costs when negotiating prime contract prices. The contracting officer, when appropriate, should secure from the contractor information concerning:

(i) The prime contractor's purchasing practices; and

(ii) The principal components to be subcontracted and the prospective or actual subcontractors, including (A) the extent of competition obtained or to be obtained, (B) the basis for the subcontract costs included in the contract pricing proposal (SF 1411), (C) any contractor cost or price analyses of subcontract proposals, including the cost or pricing data submitted by subcontractors, (D) the pricing arrangement contemplated or negotiated, and (E) the extent or subcontract supervision.

(4) The PCO is responsible for the reasonableness of the prime contract price which includes satisfying himself as to the reasonableness of the subcontract costs included in the prime contract price. Field pricing support from the Plant Rep/ACO cognizant of the prime contractor is generally required in determining reasonableness of the prime contract price. In some instances, it may be necessary to obtain field pricing support of proposed subcontracts. On the basis of a request from the PCO and/or advice from members of the field pricing team, the ACO cognizant of the prime contractor may request field pricing support from the ACO cognizant of the prospective subcontractor. These actions will be taken in accordance with 215.805–5.

(5) If the prime contractor's analysis is not considered adequate, the ACO will return the analysis package to the contractor for re-accomplishment indicating areas of inadequacy. In this case, the prime contractor will accomplish or cause the accomplishment of the additional review and resubmit the package to the ACO.

(6) When subcontracts have been placed on a price redetermination or fixed-price incentive basis and the prime contract is to be repriced, it may be appropriate to negotiate a firm prime contract price, even though the contractor has not yet established final subcontract prices. The contracting officer may do this when convinced the amount included for subcontracting is reasonable, e.g., where realistic cost or pricing data on subcontract efforts are available. However, even though the available cost data are highly indefinite and there is a distinct chance that one or more of the subcontracts eventually may be redetermined at prices that are lower than those predicted in redetermining the prime contract price, other circumstances may require the prompt negotiation of the final contract price. In such a case, the contract modification which evidences the revised contract prices should provide for adjustment of the total amount paid or to be paid under the contract on account of subsequent redetermination of the specified subcontracts. This may be done by including in the contract modification a statement substantially as follows:

Promptly upon the establishment of firm prices for each of the subcontracts listed below, the Contractor shall submit, in such form and detail as the Contracting Officer may reasonably require, a statement of costs incurred in the performance of such subcontract and the firm price established therefor. Thereupon, notwithstanding any other provisions of this contract as amended by this modification, the Contractor and the Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect such subcontract price revision. The equitable adjustment shall be evidenced by a modification to this contract. (List Subcontracts)

(7) In considering cost-plus-fee subcontracts, the contracting officer shall make every effort to insure that fees under such subcontracts never exceed the fee limitations indentified in 215.903(d).

(8) The prime contractor may submit subcontractor claims for exemption at any time to the contracting officer for an advance review of their acceptability, but otherwise the prime contractor shall submit them with its proposal or request for subcontract consent; or other action by the contracting officer, whichever comes first.

215.807 Prenegotiation objectives.

(b) Prenegotiation objectives will be documented in accordance with Departmental procedures.

215.808 Price negotiation memorandum.

(a)(4) Comments should also be included on the current status of their contractor systems (e.g., estimating, accounting, compensation, etc.) to the extent that they impacted and were considered in the negotiation.

(10) The following applies to documentation of profit or fee negotiated:

(i) Since the profit objective is the contracting officer's pre-negotiation evaluation of the total estimated profit under the proposed contract, the amounts set forth for each category of cost will probably change in the course of negotiation. Furthermore, the negotiated profit will probably vary from the profit objective, and from a detailed application of the weighted guidelines method to each element of the Contractor's Input to Total Performance as anticipated prior to negotiation. Since the profit objective is viewed as a whole rather than as its component parts, insignificant variations from the pre-negotiation profit objective, as a result of changes of the Contractor's Input to Total Performance, need not be documented in detail. Conversely, significant deviations from the profit objective necessary to reach a final agreement on profit or fee shall be explained. The profit earned as a result of contract performance will generally vary from that anticipated at the time of negotiation.

(ii) When the weighted guidelines method is not used because of unusual pricing situations (see Subpart 215.9), the contract file shall be documented to support the exceptions.

(iii) DD Form 1547 (see Subpart 215.9) may be used in the Price Negotiation Memorandum, *Provided* that the rationale used in assigning the various rates is fully documented.

(iv) See also 215.807(c).

215.809 Forward pricing rate agreements.

(e) Indirect costs commonly known as overhead are defined and described in FAR 31.203. Criteria for treatment and application of indirect costs to contracts are also set forth in FAR 31.203. To assure a reasonable approximation and allocation of indirect costs on an equitable basis to individual contracts, negotiators shall utilize audited indirect cost data or negotiated indirect cost rates, when available, in connection with negotiation of contracts and shall not, unless authorized by the head of the contracting activity, seek preferential indirect cost rates. If there is any question with respect to audited indirect cost data or negotiated indirect cost rates, or if such are not available, the negotiator should normally use the advisory services of the cognizant Department of Defense auditor.

(e)(2) In assessing changed conditions, the ACO will consider: (i) the type of contract contemplated; (ii) whether the dollar amount of the proposed contract action would significantly change the rates in the agreement; (iii) whether the performance period of the proposed contract action is significantly different from the period to which the rate agreement applies; and (iv) any new data or other information that may raise a question as to the acceptability of the rates.

(f) When procurement representatives have received notice that changed conditions negate FPRA's, individual procurement actions should not be delayed.

215.810 Should-cost analysis.

(b) A should-cost review will be made in connection with the procurement of a system or item which will require a DSARC approval, unless the contracting officer makes written determination that the potential savings to be realized do not justify the expense of such a should-cost review.

215.811 Estimating systems.

(a)(S–70) The establishment, maintenance, and consistent use of formal cost estimating systems by contractors is to the mutual benefit of the Government and industry, particularly where a large portion of the contractor's business is defense work and there are a number of significant proposals requiring review. Procuring activities and contract administration activities are required to furnish full support to a program of encouraging major defense contractors to formalize and follow good estimating procedures. It is recognized that estimating procedures will vary among contractors, and may vary between plants or divisions of a contractor due to differences in products, size and methods of operations, production vs. research, and other factors. While formal systems do not eliminate the need for judgmental factors to be applied by contractors in developing cost proposals, they do provide a sound foundation for the systematic and orderly application of these judgment factors to specific proposals.

(a)(S–71) Reviews and reports shall be accomplished as a joint contract audit and contract administration office team effort, with the contract auditor designated as its head. Reviews shall be tailored to take full advantage of the day-to-day work done as an integral part of both the contract audit and contract administration activities. The program established by the contract audit activity shall be coordinated with the appropriate contract administration activity to assure that team membership includes qualified technical specialists, and that adequate personnel resources are made available to accomplish the program.

215.870 Procedures for identifying contractors' unallowable costs.

(a) The establishment, maintenance, and consistent use of procedures for identifying and segregating unallowable costs, which will assure compliance with CAS 405 and FAR Part 31 will benefit both the Government and contractors. Such procedures may vary between plants or divisions of a contractor due to size, mix of business and complexity of organization. Some of the advantages of sound procedures are that:

(1) A greater degree of confidence can be placed on the accuracy and reliability of contractors' proposals, billings and claims;

(2) They expedite the negotiation process; and

(3) They may reduce the scope of reviews performed by audit and other technical and procurement personnel.

(b) The responsible Federal Contract Audit organization shall review contractors' procedures and practices in conjunction with other contract audit activities. Deficiencies shall be reported to the cognizant ACO, and, as appropriate, PCOs having substantial business with the contractor. Among the matters to be considered in determining the adequacy of a contractor's procedures are its policy, practices and techniques for:

(1) Assignment of responsibilities within the contractor's organization for reviewing and approving claims against the Government;

(2) Identification of unallowable costs (expressly unallowable, mutually agreed to be unallowable or specifically designated as unallowable by written decision of the contracting officer) together with the individual employees incurring such costs;

(3) Identification and computation of directly associated costs;

(4) Assurance that unallowable and directly associated costs are not included in estimated costs proposed, or incurred amounts claimed by the contractor;

(5) Coordination and communication between the elements of the contractor's organization that prepare proposals and claims and those responsible for identifying unallowable and directly associated costs; and

(6) Assuring the adequacy of the documentation maintained by the contractor identifying the unallowable costs together with directly associated costs.

(c) Documentation in support of the contractor's procedures shall be made available to authorized Government personnel.

215.871 Estimated data prices (DD Form 1423).

(a) The Department of Defense requires estimates of the prices of data in order to evaluate the cost to the Government of data items in terms of their management, product or engineering value.

(b) When data are required to be delivered under a contract, the solicitation will include DD Form 1423, Contract Data Requirements List. The form and the provision included in the solicitation request the offeror to state what portion of the total price is estimated to be attributable to the production or development of the listed data for the Government (not to the sale of rights in the data). However, offerors' estimated prices may not reflect all such costs; and different offerors may reflect these costs in a different manner, for the following reasons:

(1) Differences in business practices in competitive situations;

(2) Differences in accounting systems among offerors;

(3) Use of factors or rates on some portions of the data;

(4) Application of common effort to two or more data items;

(5) Differences in data preparation methods among offerors.

For these and other reasons, data price estimates should not be used for contract pricing purposes without further analysis.

(c) The contracting officer shall assure that the contract does not include a requirement for data which the contractor has delivered or is obligated to deliver to the Government under another contract or subcontract, and that the successful offeror furnishes any certification required by the solicitation. However, where duplicate data are desired, the contract price shall include the costs of duplication, but not of preparation, of such data.

(d) In the case of procurements of $100,000 or over, the contracting officer, after agreeing upon a negotiated contract price, will adjust the estimated prices in Blocks 26 of the original DD Form 1423 for the data items listed thereon to equal the amount included in the related priced contract line or subline item(s) for the data item(s). Adjusted DD Form 1423 will be maintained so as to be available at each procuring activity. The detachable portion of the DD Form 1423 (Blocks 17–26) with the estimated or adjusted prices shall not appear in the contract.

(e) When printing is to be procured as an integral part of a contract for other supplies or services, each requirement in the contract for printing shall be listed as a separate line item on DD Form 1423; and the approval or waiver obtained pursuant to Subpart 208.8 shall be appropriately identified.

215.872 Capital Investment Incentives.

(a) *General.* Although the DoD profit policy is normally sufficient encouragement to increase contractor investment, it is recognized that situations will arise when additional incentives may be appropriate. In these individual cases, a special Capital Investment Incentive clause may be negotiated and included in contracts for research, development, and/or production of weapon systems or material to provide incentives to contractors to invest in severable plant equipment capital assets. Such clause must be tailored to the requirements of the individual situation, and then only after a careful analysis of the benefits in each case is made, to assure optimum results are obtained for the Government. This clause would become operative in the event that the contract or program is terminated or funds are not provided in subsequent fiscal years for the planned acquisition upon which the investment decision was based. Such clause may permit the Government to acquire specific capital investments at no more than the depreciated value. This value may be determined by considering a combination of investment incentives, income tax credits or incentives, and allowable depreciation costs pursuant to cost principles established in FAR Part 31.

(b) *Scope.*

(1) This technique is designed to transfer to the Government some of the risk associated with acquisition of certain capital assets by contractors. Its purpose is to cover only specifically identified cost-effective capital assets. It is not to be used to override the general policy that all facilities needed for the performance of Government contracts will be provided by the contractor as set forth in FAR Part 45.

(2) Capital assets which may be covered by such an investment clause are subject to the following criteria:

(i) Includes only severable industrial plant equipment, and other types of severable plant equipment with a unit value in excess of $10,000, including associated accessories which would be capitalized in accordance with the contractor's disclosed accounting practices, but excluding real property;

(ii) The capital investment would not otherwise be made by the contractor except to substantially benefit the program(s) involved;

(iii) The overall savings that will accrue to the Government on the program(s) for covered equipment exceed the related investment costs by a margin sufficient to make the acquisition economically viable;

(iv) The savings that will result from use of this equipment, as developed under (c) below, will be reflected in the pricing of the individual contracts.

(c) *Determination.* Prior to implementing this investment clause, the contracting officer shall make a written determination that the contractor will not make the investment without the use of this technique. This determination should be detailed and include the following elements:

(i) Consideration of the alternatives of acquiring such equipment through the manner listed in FAR 45.302;

(ii) An analysis of the costs of the investment and the overall cost savings to the Government, including the payback quantities and/or payback periods;

(iii) An assessment of the degree of competition present for the proposed requirement. If a competitive environment is present, the competition may cause the firms to consider bearing the total risks for the investments. When this technique is to be used, it shall be a factor in the source selection evaluation criteria;

(iv) An assessment stating the rationale why the DoD profit policy is insufficient motivation for the investment;

(v) Other considerations which should be addressed are:

(A) Effect upon the contractor's make or buy plan;

(B) Subcontractor participation in the investment technique;

(C) Consistency of depreciation rates with FAR 31.205.11;

(vi) Any other matter which has a bearing on the investment plan.

(d) *Limitations.*

(1) This investment incentive is designed primarily for DOD program which are listed in the Five Year Defense Program (FYDP) and designated as Defense System Acquisition Review Council (DSARC) Programs, in accordance with DOD Directive 5000.1, "Acquisition of Major Defense Systems." This incentive may also be extended to other DOD programs provided approval is obtained from the Secretary of the Department. The programs must provide for a sufficient buy to allow for amortization of the planned investment.

(2) The fiscal authority who commits funds to the resultant contract must certify that the following actions have been accomplished:

(i) The Approval Authority (see (g)(1) below) has approved by fiscal year the amount of contingent Government liability;

(ii) The Approval Authority has notified the Congress in advance that the technique will be used on contracts for a specific weapon system or material program element. Unless there are unusual circumstances, this notification will be included in the justification material submitted to the Congress in support of authorization and appropriation requests. A copy of the notification shall be retained in the contract file.

(3) *Negotiation requirements.*

(1) Since this investment incentive is predicated on the written determination specified in paragraph (c) above, the impact on contract cost will be recognized in the price(s) negotiated.

(2) In order for items of plant equipment to be covered, they must be listed (nomenclature and value) in the Capital Investment Incentive clause. The items of equipment can be incorporated in the contract using either or both of the following procedures:

(i) When the exact value and nomenclature of the item of plant equipment is known at the time of negotiations, it shall be listed in the investment clause at the time of the contract award. The contractor's proposal should reflect the impact on cost and other benefit to the Government that will accrue from use of the equipment in order to comply with Pub. L. 87–653;

(ii) If the exact value and nomenclature of each investment is not known at the time of negotiations and it can be mutually agreed that certain categories of plant equipment would benefit the Government, an additional provision to the investment clause should be used. This additional provision shall stipulate the conditions which the individual items of plant equipment must meet to be subsequently incorporated into the investment clause and shall establish the requirement for the contractor to submit financial and other justification necessary for the contracting officer to make the determination specifed in (c) above. Such items of equipment will be incorporated into the contract by supplemental agreement and the price revised, as appropriate; *Provided:* (A) they meet the contractual conditions and (B) the equipment value, when added to the value of previously covered equipment, will not exceed the stated dollar ceiling.

(3) The limit of the Government's contingent liability is subject to negotiation. Provision should be made to assume only that liability which is sufficient to motivate the contractor to invest.

(4) Application of the weighted guidelines in subpart 215.9 should reflect the assumption of risk by the parties associated with items covered by this technique.

(f) *Contractual requirements.* In order to incorporate this investment incentive, a special contractual Capital Investment clause shall be developed. Such a clause should include but not be limited to the following:

(1) A listing of the exact nomenclature and value of each item of plant equipment covered.

(2) A provision for additions to the listing after contract award, if appropriate. Such provision shall establish the conditions that must be met, the categories of equipment that will be covered, and the requirement for such additions to be incorporated by contract modification. This provision should allow for removal of an item from coverage at the request of the contractor with the concurrence of the contracting officer.

(3) Criteria for ascertaining when this special provision can be invoked as well as the criteria which will cancel the Government's contingent liability under the clause such as end-item quantity thresholds and performance dates, whichever occurs first.

(4) The dollar ceiling of the value of covered items as well as the Government's contingent liability by fiscal year.

(5) A specific method to establish the price to the Government at which each item would be acquired if this special provision is invoked.

(6) A provision that within 30 days of a Government decision that provides a basis for the contractor to invoke the special provision, the contracting officer shall notify the contractor in writing that the event has occurred and its date of occurrence. Further, the provision shall require that within 90 days after notification by the contracting officer, the contractor must provide to the contracting officer, in writing, a list of the specific investments which he desires to have the Government acquire. This list shall not include any investments which have not been incorporated into the investment clause of the contract prior to the contracting officer's notice to the contractor.

(7) A provision that once the contractor requests the Government to buy any equipment covered by the investment clause, the Government has the right to buy any and/or all other equipment covered by the clause whether the contractor requests it to do so or not.

(8) A provision for deferral of Government acquisition of those items of equipment needed for contract or program completion.

(9) A provision that the investment clause be carried over to successor contracts until the Government's responsibility to acquire the equipment expires.

(10) A provision that a supplemental agreement shall be executed for any equipment acquired by the Government under this special clause.

(11) A provision that as a condition of Government acquisition, the equipment shall be in good operating condition.

(12) Criteria for providing disposition instructions should the special provision for capital investment be exercised. Identify which party is to bear the cost of restoration, storage, disconnect and removal, packing and transportation upon removal of the equipment. The provisions of FAR 45.6 shall apply unless the contract provides specific exception thereto.

(13) A provision that in the event this special clause is invoked, the limitation stated in FAR 31.205–39 does not prevent acquisition or any payment for the covered equipment.

(14) A provision that this special clause for capital investment shall not apply in the event of contract termination for default.

(15) Provide that this investment clause can be made applicable to subcontracts, if appropriate benefits, as outlined in paragraph (b) above, are available. Provision must be made for Government approval, as outlined in paragraph (c) above, of all equipment for which the Government may assume contingent liability as well as a provision that the clause can be invoked only as a direct flow down from the prime's ability to invoke the clause.

(16) A provision that establishes the extent to which the contractor may use this equipment for other business.

(g) *Administration.*

(1) Approval for use of this investment incentive for contigent liabilities must be obtained from the Secretary of the Military Department or the Director of DLA. Authority up to $50 million may be delegated no lower than the Commander, AFSC, AFLC, NMC, DARCOM.

(2) In the event that it becomes apparent that the contingent liability resulting from the use of this technique will become an actual obligation, the approval authority shall be notified and immediate steps shall be taken to obtain sufficient funds to cover the obligation. These funds must be made available at the time the actual obligation materializes, to preclude a violation of the Anti-Deficiency Act.

Subpart 215.9—Profit

215.901 General.

(c) Furthermore, low average profit rates on defense contracts overall are detrimental to the public interest. Effective national defense in a free enterprise economy requires that the best industrial capabilities be attracted to defense contracts. These capabilities will be driven away from the defense market if defense contracts are characterized by low profit opportunities. Consequently, negotiations aimed merely at reducing prices by reducing profits, with no realization of the function of profit, cannot be condoned. For each contract in which profit is negotiated as a separate element of the contract price, the aim of negotiation should be to employ the profit motive so as to impel effective contract performance by which overall costs are economically controlled. To this end, the profit

objective must be fitted to the circumstances of the particular acquisition, giving due weight to each of the effort, risk, facilities investment, and special factors set forth in this subpart. This will result in a wider range of profits which, in many cases, will be significantly higher than previous norms.

215.902 Policy.

(a)(1) The weighted guidelines method shall be used as the structured approach for determining profit or fee in accordance with 215.905 and the following:

(i) The weighted guidelines method provides contracting officers with a technique that will insure consideration of the relative value of the appropriate profit factors in the establishment of a profit objective and the conduct of negotiations; and a basis for documentation of this objective, including an explanation of any significant departure from it in reaching a final agreement. The contracting officer's analysis of these profit factors is based on information available prior to negotiations. Such information is furnished in proposals, audit data, performance reports, preaward surveys, and the like. Except as set forth in 215.902(a)(2), the weighted guidelines method shall be used in the negotiation of all contracts where cost analysis is performed for:

(A) The manufacturing of supplies and equipment;

(B) Research and development as described in FAR Part 35, encompassing research, exploratory development, advanced development, engineering development, and operational systems development;

(C) Services as described in FAR Part 37.

a. The profit objective for manufacturing contracts shall be computed, except as indicated in *e.* below, using the manufacturing weighted guidelines method, which provides profit opportunity based on facilities capital investment.

b. The profit objective for research and development contracts shall be computed using the research and development weighted guidelines method unless, in the judgment of the contracting officer, a significant amount of facilities is required for efficient contract performance, in which case the manufacturing weighted guidelines shall be used.

c. The profit objective for service contracts shall be computed using the service contract weighted guidelines method unless, in the judgment of the contracting officer, a significant amount of facilities is required for efficient contract performance, in which case the manufacturing weighted guidelines shall be used.

d. In determining whether a particular contract shall be classified as manufacturing, research and development, or services, primary reliance shall be placed on the nature of the work to be performed, as indicated by the coding for Item B8A of the DD Form 350 (see DOD 4105.61–M, Department of Defense Procurement Coding Manual, Volume 1), notwithstanding the appropriation or negotiation authority used. The following guidelines shall apply:

1. Manufacturing Weighted Guidelines. Contracts coded under Section I, Part C, Supplies and Equipment.

2. Research and Development Weighted Guidelines. Contracts coded under Section I, Part A, Research, Development, Test and Evaluation, except for contracts coded as AD2–, Defense Services, and A–6, Management and Support.

3. Services Weighted Guidelines. Contracts coded under Section I, Part B, Other Services and Construction; and under Section I, Part A, as AD2– and as A—. Note, however, that there are blanket exceptions for certain services (see 215.902(a)(2)).

e. The categories listed above are intended to be used as a point of departure in determining which weighted guidelines method applies. Many contracts for research and development and for services will require a significant amount of facilities for efficient contract performance. When this is the case, the manufacturing weighted guidelines method shall be used. Similarly, certain contracts for the manufacture of small quantities of high technology supplies and equipment may not require a significant amount of facilities. In such cases, the research and development weighted guidelines method shall be used. Contracting officers shall apply sound judgment in determining which weighted guidelines method is most appropriate for a particular contracting situation. The difference in profit objectives that would result from the application of alternative weighted guidelines methods shall not be a consideration in making this determination.

f. In determining whether a significant amount of facilities is required for efficient contract performance, the contracting officer should assess the facilities needed, including contractor owned and leased and Government owned. When there is a relatively small amount of facilities capital cost of money allocated to the contract because some facilities are provided through operating leases and by the Government, this does not necessarily mean that an insignificant amount of facilities is required for efficient contract performance.

g. When a method other than the manufacturing weighted guidelines method is used to establish the prenegotiation profit objective, the profit objective shall be reduced by the amount of facilities capital cost of money allowed in accordance with 231.205–10. On cost-plus-award-fee contracts, the base fee shall be reduced by the amount of facilities capital cost of money or the contract shall contain a provision to disallow the cost.

(ii) The contractor's proposal should include cost information for evaluation and a total profit figure. Contractors shall not be required to submit the details of their profit objectives but they shall not be prohibited from doing so if they desire. Elaborate and voluminous presentations are neither required nor desired and may indicate a low index of cost effectiveness, which fact itself shall be taken into consideration by the contracting officer.

(iii) The negotiation process does not contemplate or require agreement on either estimated cost elements or profit elements, although the details of analysis and evaluation may be discussed in the fact-finding phase of the negotiation. If the difference between the contractor's profit objective and the contracting officer's profit objective is relatively small, no discussion of individual factors may be necessary. If the negotiating parties' objectives are relatively far apart, a disclosure of weightings and rationale by both parties may be made concerning the total assigned to contractor effort, contractor risk, facilities investment, and special factors. By thus developing a mutual understanding of the logic of the respective positions, an orderly progression to final agreement should result. Simultaneous, not sequential, agreement will be reached on cost, any incentive profit-sharing formulas or limitation on profits, and price. The profit objective is a part of an overall negotiation objective which, as a going-in objective, bears a distinct relationship to the target cost objective and any proposed sharing arrangement. Since the profit is merely one of several interrelated variables, the Government negotiator shall not complete the profit negotiation without simultaneously agreeing on the other variables. Specific agreement on the exact weights or values of the individual factors is not required and shall not be attempted.

(iv) The prime contractor may use the weighted guidelines or a structured approach that discriminates among different levels of investment if the acquisition would be subject to the weighted guidelines under a prime contract. (For applicability, see 230.570–1(c).) If the acquisition falls into one of the exceptions to the weighted guidelines (see 215.902(a)(2)), the prime contractor may use another method to establish profit objectives. In the absence of structured approach that discriminates among different levels of investment, similar to the weighted guidelines, the profit objective will be reduced by the amount of facilities capital cost of money allowed in accordance with FAR 231.205–10.

(v) The following factors shall be considered in all cases in which profit is to be specifically negotiated. The weight ranges listed after each factor shall be used in all instances where the weighted guidelines method is used.

	Weight ranges		
	Manufacturing*	R&D	Services
A. CONTRACTOR EFFORT			
Material Acquisition:			
Subcontract Items	1 to 5%	1 to 5%	1 to 5%.
Purchased Parts	1 to 4%	1 to 4%	1 to 4%.
Other Material	1 to 4%	1 to 4%	1 to 4%.
Engineering: Direct Labor	9 to 15%	9 to 15%	N/A.
Manufacturing: Direct Labor	5 to 9%	5 to 9%	N/A.
Services:			
Direct Labor	N/A	N/A	5 to 15%.
Overhead	N/A	N/A	4 to 8%.
Other: General Management	6 to 8%	6 to 8%	6 to 8%.
B. CONTRACTOR RISK	0 to 8%	0 to 7%	0 to 4%.
C. FACILITIES INVESTMENT	16 to 20%	N/A	N/A.
D. SPECIAL FACTORS			
Productivity	See 15.905–2(a).	N/A	N/A.
Independent Development	1 to 4%	1 to 4%	N/A.
Other	−5 to +5%	−5 to +5%	−5 to +5%.

*An adjustment factor of .7 is applied to the results of the Contractor Effort evaluation to arrive at the dollar profit objective for this factor (see DD Form 1547).

(vi) Under the weighted guidelines method, the contracting officer shall first measure the "Contractor's Effort" by the assignment of a profit percentage, within the designated weight ranges, to each element of contract cost recognized by the contracting officer. Although certain classifications of acceptable cost, including travel, subsistence, facilities, test equipment, special tooling, Federal manufacturers' excise taxes, and royalty expenses, may have been historically excluded from the base upon which profit has been computed, they shall not be excluded when using the weighted guidelines method. Not to be included for the computation of profit as part of the cost base is the amount calculated for the cost of money for facilities capital. How this cost is determined and how it will be applied and administered is fully set forth in 230.70.

(vii) The suggested categories under the Contractor's Effort are similar to those on the Contract Pricing Proposal (SF 1411). Often, individual proposals will be in a different format, but since these categories are broad and basic, they provide sufficient guidance to evaluate all other items of cost.

(viii) After computing a total dollar profit for the Contractor's Effort, the contracting officer then shall add the specific profit dollars assigned for cost risk, facilities investment risk, and special factors. Weighted Guidelines Profit/Fee Objective (DD Form 1547) is to be used, as appropriate, to facilitate the calculation of this profit objective.

(ix) The weighted guidelines method was designed for arriving at profit or fee objectives for other than nonprofit organizations. However, if appropriate adjustments are made to reflect differences between profit and nonprofit organizations, the weighted guidelines method can be used as a basis for arriving at fee objectives for nonprofit organizations. Therefore, the policy of the Department of Defense is to use the weighted guidelines method, as modified in (a)(1)(ix)(B) below, to establish fee objectives that will stimulate efficient contract performance and attract the best capabilities of nonprofit organizations to defense-oriented activities. The modifications shall not be applied as deductions against historical fee levels but to the fee objective for such a contract, as calculated under the weighted guidelines method.

(A) For purposes of this subparagraph, nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings inure to the benefit of any private shareholder or individual, of which no substantial part of the activities is carrying on propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under Section 501 of the Internal Revenue Code.

(B) For contracts with nonprofit organizations where fees are involved, the following adjustments are required in the weighted guidelines method.

a. An adjustment of −1% of the total effort shall be assigned in all cases where the manufacturing weighted guidelines method is used. An adjustment of −3% of the total effort shall be assigned in all cases where the research and development or services weighted guidelines method is used.

b. The weight range under "Contractor Cost Risk" shall be −1% to 0% in lieu of 0% to 8% for contracts with those nonprofit organizations, or elements thereof, identified by the Secretary of Defense or the Secretary of a Department (or their respective designees) as receiving sustaining support on a cost-plus-a-fixed-fee basis from a particular Department or Agency of the Department of Defense.

(x) In making a judgment of the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors, together with considerations for evaluating them as set forth herein.

(i) Under the following listed circumstances, other methods for establishing profit objectives may be used:

(A) Architect-engineering contracts;

(B) Management contracts for operation and/or maintenance of Government facilities;

(C) Construction contracts;

(D) Contracts primarily requiring delivery of material supplied by subcontractors;

(E) Termination settlements;

(F) Cost-plus-award-fee contracts;

(G) Contracts not expected to exceed $500,000; and

(H) Unusual pricing situations where the weighted guidelines method has been determined to be unsuitable. Such exceptions shall be justified in writing and shall be authorized by the head of the contracting activity.

(ii) If the contracting officer makes a written determination that the pricing situation meets any of the circumstances set forth above and that application of the manufacturing weighted guidelines will result in an equitable profit objective, other methods for establishing the profit objective may be used. These

methods shall be supported in a manner similar to that used in the weighted guidelines (profit factor breakdown and documentation of profit objectives); however, investment or other factors that would not be applicable to the contract shall be excluded from the profit objectives for noncapital intensive contracts that are below those generally developed for capital intensive contracts.

215.903 Contracting officer responsibilities.

(b) In analyzing profit, contracting officers should consider the following:

(1) When cost analysis is performed pursuant to 215.805–3, profit consideration shall be in accordance with the objectives set forth below. The Government should establish a profit objective for contract negotiations, which will—

(i) Motivate contractors to undertake more difficult work requiring higher skills and reward those who do so;

(ii) Allow the contractors an opportunity to earn profits commensurate with the extent of the cost risk they are willing to assume;

(iii) Motivate contractors to provide their own facilities and financing and to establish their competence through development work undertaken at their own risk and reward those who do so; and

(iv) Reward contractors for productivity increases.

The weighted guidelines method set forth in 215.902 for establishing profit objectives is designed to provide reasonably precise guidance in applying these principles. This method, properly applied, will tailor profits to the circumstances of each contract in such a way that long-range, cost-reduction objectives will be fostered, and a spread of profits will be achieved that is commensurate with varying circumstances.

(2) Development of a profit objective should not begin until after a thorough—

(i) Review of proposed contract work;

(ii) Review of all available knowledge regarding the contractor, including capability reports, audit data, preaward survey reports and financial statements, as appropriate; and

(iii) Analysis of the contractor's cost estimate and comparison with the Government's estimate or projection of cost.

(3) A profit objective is that part of the estimated contract price objective or value which, in the judgment of the contracting officer, is appropriate for the acquisition being considered, covering the profit or fee element of the price objective. This objective should realistically reflect the total overall task to be performed and the requirements placed on the contractor. Prior to the negotiation of a contract, change order, or contract modification where cost analysis is undertaken, the negotiator shall develop a profit objective. The weighted guidelines method, if applicable, shall be used for developing this profit objective.

(f) In cases where the change or modification calls for substantially different work, then the basic contract profit and the contractor's effort may be radically changed and a detailed analysis is necessary. Also, if the dollar amount of the change or contract modification is very significant in comparison to the contract dollar amount, a detailed analysis shall be made.

215.905 Profit-analysis factors.

215.905–1 Common factors.

(a) This factor is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirements in an efficient manner. This factor, which is apart from the contractor's responsibility for contract performance, takes into account what resources are necessary and what the contractor must do to accomplish a conversion of ideas and materials into the final product called for in the contract. This is a recognition that, within a given performance output or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value and quantity, and that the profit objective should reflect the extent and nature of the contractor's contribution to total performance. The evaluation of this factor requires an analysis of the cost content of the proposed contract as follows.

(1) Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required purchased parts, subcontracted items, and other materials, including special tooling. This evaluation shall include consideration of the number of orders and suppliers and whether established sources are available or new sources must be developed. The contracting officer shall also determine whether the contractor will obtain the material and tooling by routine orders from readily available supplies (particularly those of substantial value in relation to the total contract cost) or by detailed subcontracts for which the prime contractor will be required to develop complex specifications involving creative design or close tolerance manufacturing requirements. Consideration shall be given to the managerial and technical efforts necessary for the prime contractor to administer subcontracts and select subcontractors, including efforts to break out subcontracts from sole sources through the introduction of competition. These determinations shall be made for purchases of raw materials or basic commodities, purchases of processed material, including all types of components of standard or near standard characteristics, and purchases of pieces, assemblies, subassemblies, special tooling, and other products special to the end item. In the application of this criterion, it should be recognized that the contribution of the prime contractor to his purchasing program may be substantial. This may apply in the management of subcontracting programs involving many sources, new complex components and instrumentation, incomplete specifications, and close surveillance by the prime contractor's representative. Recognized costs proposed as direct material costs, like scrap charges, shall be treated as material for profit evaluation. If the intracompany transfers are accepted at price, they shall be evaluated as material. Other intracompany transfers shall be evaluated by individual components of cost, i.e., material, labor, and overhead. Normally, the lowest unadjusted weight for direct material is 2%. A weighting of less than 2% would be appropriate only in unusual circumstances when there is a minimal contribution by the contractor.

(2) Analysis of the engineering, manufacturing, and service labor items of the cost content of the contract shall include evaluation of the comparative quality and level of the engineering talents, manufacturing and service skills, and experience to be employed. In evaluating engineering labor for the purpose of assigning profit dollars, consideration shall be given to the amount of notable scientific talent or unusual or scarce engineering talent needed in contrast to journeyman engineering effort or supporting personnel. The diversity, or lack thereof, of scientific and engineering specialties required for contract performance and the corresponding need for engineering supervision and coordination shall be evaluated. Similarly, the variety of manufacturing labor skills required and the contractor's manpower resources for meeting these requirements shall be considered. Service contract labor shall be evaluated in a like manner by

assigning higher weights to engineering or professional-type skills and lower weights to semiprofessional or other type skills required for contract performance. A weighting in excess of 10% for service contract labor will be justified normally only when the quality, skill, and experience of the service contract labor warrant a corresponding weighting under a research and development contract.

(3)(i) Analysis of conversion related indirect costs and general management (FAR 15.905–1(a)(4)) includes the evaluation of the makeup of these expenses and how much they contribute to contract performance. This analysis shall include a determination of the amount of labor within these overhead pools and how this labor would be treated if it were considered as direct labor under the contract. The allocable labor elements shall be given the same profit consideration that they would receive if they were treated as direct labor. The other elements of these overhead pools shall be evaluated to determine whether they are routine expenses, like utilities, depreciation, and maintenance, and hence given lesser profit consideration, or whether they are significant contributing elements. The composite of the individual determinations in relation to the elements of the overhead pools will be the profit consideration given the pools as a whole. The procedure for assigning relative values to these overhead expenses differs from the method used in assigning values of the direct labor. The upper and lower limits assignable to the direct labor are absolute. In the case of overhead expenses, individual expenses may be assigned values outside the range as long as the composite ratio is within the range.

(ii) It is not necessary that the contractor's accounting system break down the overhead expenses within the classifications of engineering overhead, manufacturing overhead, and general and administrative expenses, unless dictated by cost accounting standards (CAS). The contractor whose accounting system only reflects one overhead rate on all direct labor need not change the system (if CAS-exempt) to correspond with the above classifications. In evaluating such a contractor's overhead rate, the contracting officer can break out the applicable sections of the composite rate which can be classified as engineering overhead, manufacturing overhead, and general and administrative expenses, and follow the appropriate evaluation technique.

(iii) There is a critical factor to consider in the determination of profit in this area. Management problems surface in various degrees and the management expertise exercised to solve them shall be considered as an element of profit. For example, a new program for an item that is on the cutting edge of the state of the art will cause more problems and require more managerial time and abilities of a higher order than a follow-on contract. If new contracts create more problems and require a higher profit weight, follow-ons shall be adjusted downward as many of the problems shall have been solved. In any event, an evaluation shall be made of the underlying managerial effort involved on a case-by-case basis.

(iv) It may not be necessary for the contracting officer to make a separate profit evaluation of overhead expenses with each acquisition of substantially the same product with the same contractor. Where an analysis of the profit weight to be assigned to the overhead pool has been made, the weight assigned may be used for future contracts with the same contractor until there is a change in the cost composition of the overhead pool or the contract circumstances, or until the factors discussed in (a)(3)(iii) above are relevant.

(4) See (a)(3) above.

(b) In evaluating contract cost risk, contracting officers should also consider the following:

(1) This factor reflects the policy of the Department of Defense that contractors bear an equitable share of contract cost risk, and to compensate them for the assumption of that risk. A contractor's risk associated with costs to perform under a Government contract is usually minimal under cost-reimbursement type contracts. However, as acquisition progress from basic research through follow-on production and supply contracts, the use of increased contractor-risk-assumption-type contracts is appropriate for increasing the contractor's responsibility for performance. The generally accepted progression of the acquisition spectrum ranging from basic research through supply acquisitions and from cost to firm fixed-price contracts, is shown below:

Type of effort	Type of contract
1. Basic Research	Cost, CPFF.
2. Applied Research	Cost, CPFF.
3. Exploratory Development	Cost, CPFF.
4. Advanced Development	CPFF, CPAF.
5. Engineering Development	CPFF, CPAF, CPIF.
6. Operational System Development	CPIF, CPAF, FPI.
7. First Production	FPI.
8. Follow-on Production	FPI, FFP.
9. Supply	FFP.

(2) In developing the prenegotiation profit objective, the contracting officer will need to consider strongly the type of contract anticipated to be negotiated and the associated contractor risk when selecting the position in the weight range for profit that is appropriate for the risk to be borne by the contractor. This is one of the most important factors in arriving at prenegotiation profit objectives.

(3) Evaluation of this risk requires a determination of (i) the degree of cost responsibility the contractor assumes, (ii) the reliability of the cost estimates in relation to the task assumed, and (iii) the complexity of the task assumed by the contractor. This factor is specifically limited to the risk of contract costs. Thus, such risks on the part of the contractor as reputation, losing a commercial market, losing potential profits in other fields, or any risk on the part of the contracting activity, such as the risk of not acquiring an effective weapon, are not within the scope of this factor.

(4) The first and basic determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk by contract cost by the Government and the contractor through the selection of contract type. The extremes are a cost-plus-fixed-fee contract, requiring only that the contractor use his best efforts to perform a task, and firm fixed-price contract for a complex item. A cost-plus-fixed-fee contract reflects a minimum assumption of cost responsibility, whereas a firm fixed-price contract reflects a complete assumption of cost responsibility.

(5) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. Prior production experience assists the contractor in preparing reliable cost estimates on new contracts for similar equipment. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the contractor's assumption of contract cost risk.

(6) The third determination is that of the difficulty of the contractor's task. The contractor's task can be difficult or easy, regardless of the type of contract.

(7) Contractors are likely to assume greater cost risk only if contracting officers objectively analyze the risk incident to proposed contracts and are willing to compensate contractors for it. Generally, a cost-plus-fixed-fee contract will not justify a reward for risk in excess of 0.5%, nor will a firm fixed-price contract justify a reward of less

than the minimum on the weighted guidelines. Where proper contract-type selection has been made, the reward for risk, by contract type, will usually fall into the following percentage ranges:

(i) Type of contract and percentage ranges for profit objectives developed by using the manufacturing weighted guidelines method:

Cost-Plus-Fixed Fee	0 to 0.5%.
Cost-Plus-Incentive Fee	
With Cost Incentives Only	1 to 2%.
With Multiple Incentives	1.5 to 3%.
Fixed-Price-Incentive	
With Cost Incentives Only	3 to 5%.
With Multiple Incentives	4 to 6%.
Prospective Price Redetermination	4 to 6%.
Firm Fixed-Price	6 to 8%.

(ii) Type of contract and percentage ranges for profit objectives developed by using the research and development weighted guidelines method:

Cost-Plus-Fixed Fee	0 to 0.5%.
Cost-Plus-Incentive Fee	
With Cost Incentives Only	1 to 2%.
With Multiple Incentives	1.5 to 3%.
Fixed-Price-Incentive	
With Cost Incentives Only	2 to 4%.
With Multiple Incentives	3 to 5%.
Prospective Price Redetermination	3 to 5%.
Firm Fixed-Price	5 to 7%.

(iii) Type of contract and percentage ranges for profit objectives developed by using the service contract weighted guidelines method:

Cost-Plus-Fixed Fee	0 to 0.5%.
Cost-Plus-Incentive Fee	1 to 2%.
Fixed-Price-Incentive	2 to 3%.
Firm Fixed-Price	3 to 4%.

(A) These ranges may not be appropriate for all acquisitions. For instance, a fixed-price-incentive contract that is closely priced with a low ceiling price and high incentive share may be tantamount to a firm fixed-price contract. In this situation, the contracting officer may determine that a basis exists for high confidence in the reasonableness of the estimate and that little opportunity exists for cost reduction without extraordinary efforts. On the other hand, a contract with a high ceiling and low incentive formula can be considered to contain cost-plus-incentive-fee contract features. In this situation, the contracting officer may determine that the Government is retaining much of the contract cost responsibility and that the risk assumed by the contractor is minimal. Similarly, if a cost-plus-incentive-fee contract includes an unlimited downward (negative) fee adjustment on cost control, it could be comparable to a fixed-price-incentive contract. In such a pricing environment, the contracting officer may determine that the Government has transferred a greater amount of cost responsibility to the contractor than is typical under a normal cost-plus-incentive-fee contract.

(B) The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a contract form. It can cause risk to increase or decrease in terms of both cost and performance. This consideration shall be a part of the contracting officer's overall evaluation in selecting a factor to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor and the contract cost risk evaluation, as a result, may be below the range that would otherwise apply for the contract type being proposed. This situation will be found to exist only in a few extraordinary situations under circumstances of (i) a follow-on production contract, in which a substantial portion of the total contract costs represents a single subcontract or a few subcontracts, (ii) the fullest incentive reward and penalty feature on cost performance having been passed by the prime contractor to the subcontractor. In an acquisition in which all of these circumstances are found to exist, a lower than usual profit weight may be applied to the aggregate of all recognized costs including the subcontract portion. The contract cost risk evaluation shall not be lowered, however, merely on the basis that a substantial portion of the contract costs represents subcontracts without any substantial transfer of contractor's risk, since this can result eventually in a lessening of the amount of work let on subcontracts.

(C) In making a contract cost risk evaluation in an acquisition that involves definitization of a letter contract, unpriced change orders, and unpriced orders, under BOAs, consider the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances it may be reasoned that the total amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk remained substantially unchanged. To be equitable, the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all attendant circumstances and not be just the portion of costs incurred, or percentage of work completed, prior to definitization.

(D) Time and material, labor hour, and overhaul contracts priced on a time and material basis shall be considered to be cost-plus-fixed-fee contracts for the purpose of establishing a profit weight in the evaluation of the contractor's assumption of contract cost risk.

(E) In determining the contract cost risk percentage under CONTRACTOR RISK in profit factors of the weighted guidelines provided in 215.902(a)(1), it is appropriate to consider additional risks associated with foreign military sales (FMS). To be recognized, an additional cost risk factor shall be demonstrated by the contractor to be significant and over and above that normally present in DoD contracts for similar items. If an additional cost risk factor associated with FMS is recognized, the total profit under the CONTRACTOR RISK Section shall not exceed the limits set forth in FAR 15.903(d) for different types of contracts. For example, when the manufacturing weighted guidelines method is used, the limitation will be 0.5% for CPFF contracts, 3% for CPIF contracts, 6% for FPI contracts, and 8% for FFP contracts. The additional cost risk factor shall not apply to FMS made from inventories or stocks nor to acquisitions made under DoD cooperative logistics support arrangements.

(c) See 215.905–2.

(d) This element relates to the consideration to be given in the profit objective in recognition of the investment risk associated with the facilities employed by the contractor. Sixteen to 20% of the net book value of facilities capital allocated to the contract is the normal range of weight for this profit factor. The key factors that the contracting officer shall consider in evaluating this risk are:

(1) The overall cost effectiveness of the facilities employed;

(2) Whether the facilities are general purpose or special purpose items;

(3) The age of the facilities;

(4) The undepreciated value of the facilities;

(5) The relationship of the remaining writeoff life of the investment and the length of the program(s) or contract(s) on which the facilities are employed; and

(6) Special contract provisions that reduce the contractor's risk of recovery of facilities capital investment (termination-protection clauses, multiyear cancellation ceilings, etc.). To assist in evaluating new investment, the contracting officer should request the contractor to submit reasonable evidence that the new facilities are part of an approved investment plan and that achievable benefits to the Government will result from the investment. New

industrial facilities and equipment shall receive maximum weight when they—

(i) Are to be acquired by the contractor primarily for defense business;

(ii) Have a long service life;

(iii) Have a limited economic life due to limited alternative uses; and

(iv) Reduce the total life cycle cost of the products produced for the Department of Defense.

To the extent that the new investment represents routine replacement of existing assets, a lesser weight shall be assigned.

(e) See 215.905–2.

(f) See 215.905–2.

215.905–2 Additional factors.

(a) *Productivity.*

(1) *General.* A key objective of the DoD profit policy is to reduce the cost of defense preparedness by incentivizing defense contractors' investment in modern cost-reducing facilities and other improvements in efficiency. To the extent that costs serve as the basis for pricing (both cost and profit), success in reducing costs can serve, in turn, to reduce profit dollars opportunity. For example, a fixed-price incentive-type contract is typically used for the first production contract of a major weapon system program. The incentive to increase productivity and reduce cost within one contract works against a contractor on follow-on production contracts because the reduced level of cost becomes a part of the basis for pricing subsequent contracts. In order to mitigate the loss of profit dollars opportunity that occurs when costs are reduced due to productivity gains, a special "Productivity Reward" may be included in the prenegotiation profit objective of a pending acquisition under certain circumstances.

(2) *Applicability criteria.* The "Productivity Reward" may be applied when the following criteria are met:

(i) The pending acquisition involves a follow-on production contract.

(ii) Reliable actual cost data is available to establish a fair and reasonable cost baseline.

(iii) Changes made in the configuration of the item being acquired are not of sufficient magnitude to invalidate price comparability.

(3) *Implementation procedures.* The amount of productivity reward for a given contract is based on the estimated cost reduction that can be attributed to productivity gains. Set forth below are principles and procedures that apply to estimating cost reductions and calculating the productivity reward:

(i) The contractor shall prepare and support the cost reduction estimate.

(ii) The overall contract cost decrease shall be based on estimated decreases measured at the unit cost level.

(iii) The lowest average unit cost (exclusive of profit) for a preceding production run shall serve as the unit cost baseline.

(iv) A technique shall be employed to determine that portion of the cost decrease attributable to productivity gains as opposed to the effects of quantity differences between the base contract and the pending acquisition.

(v) When the parties agree that the estimated overall contract cost decrease is materially affected by price level differences between the base period and the current point in time, an economic price adjustment may be applied to the estimate.

(vi) The productivity reward shall be calculated by multiplying the contract cost decrease due to productivity gains by the base profit objective rate.

(vii) The degree of review and validation of the data supporting the productivity reward calculation shall be commensurate with the materiality of this profit element in relation to the overall price objective. There may be several methods advanced, by both contracting officers and contractors, to quantify productivity gains. Any technique may be acceptable; *Provided* it takes into account equitably the principles and procedures listed above.

(b) *Independent development.* Contractors who develop items that have potential military application without Government assistance are entitled to special profit consideration on those items as a special profit factor to be considered within the weighted guidelines in arriving at a profit objective. One to 4% of recognized cost is established as the normal range of value for this profit factor. The criteria for selection of the specific percentage shall be the importance of the development in advancing defense purposes, the demonstratable initiative in determining the need and application of the development, the extent of the contractor's cost risk, and whether the development cost was recovered directly or indirectly from Government sources.

(c) *Other factors.* A composite percentage weight within the range of −5% to +5% of the basic profit objective may be assigned to other profit factors in arriving at the total profit objective. These other profit factors, which may apply to special circumstances or particular acquisitions, relate to contractor participation in the Government's Small Business, Small Disadvantaged Business, and Labor Surplus Programs, and to special situations not specifically set forth elsewhere in these guidelines. Participation that is rated as merely satisfactory shall be assigned a weight of zero, generally. Evidence of energetic support may justify a plus weight, and poor support a negative weight. Special situations may be assigned either a plus or minus weight, depending on the particular circumstances of the acquisition.

(1) *Small business and small disadvantaged business participation.* The contractor's policies and procedures that energetically support Government small business and small disadvantaged business subcontracting programs, pursuant to FAR 19, shall be given favorable consideration. Any unusual effort that the contractor displays in subcontracting with small business or small disadvantaged business concerns, particularly for development-type work likely to result in later production opportunities, and the overall effectiveness of the contractor in subcontracting with and furnishing assistance to such concerns shall be considered. Conversely, failure or unwillingness on the part of the contractor to support Government small business or small disadvantaged business policies shall be viewed as evidence of poor performance for the purpose of establishing a profit objective.

(2) *Labor surplus area participation.* A similar review and evaluation (as required in (c)(1) above) shall be given to the contractor's policies and procedures supporting the Government's Labor Surplus Area Program, pursuant to FAR 20. In particular, favorable consideration shall be given to a contractor who (i) makes a significant effort to help find jobs and provide training for the hardcore unemployed, or (ii) promotes maximum subcontractor utilization of certified eligible concerns, as defined in FAR 20.101.

(3) *Energy Conservation.* Favorable consideration shall be given to the contractor's initiatives and accomplishments in the conservation of energy.

(4) *Special Situations.* Particular situations may justify use of a profit factor other than those specifically identified in these guidelines. These situations shall be identified and the reason(s) for their use documented in the records of price negotiation. Examples of such situations include contractor effort to exploit additional production cost-reduction opportunities or to improve or develop new product/manufacturing technologies to reduce production cost.

Subpart 215.10—Preaward and Postaward Notifications, Protests and Mistakes

215.1001 Notification to Offerors.

(b)(1) Within DoD, the threshold for notification is $25,000 in accordance with 10 U.S.C. 2304(g).

(b)(2) Procurements processed under small purchase procedures are exempt from the requirements of FAR 15.1001(b)(2).

(c) Within DoD, the threshold for notification is $25,000 in accordance with 10 U.S.C. 2304(g).

215.1002 Debriefing Of Unsuccessful Offerors.

(a) Debriefings shall be provided at the earliest feasible time after contract award. They shall be conducted by purchasing office officials familiar with the rationale for the selection decision and contract award.

215.1070 Classified Information.

Classified information shall be furnished only in accordance with regulations governing classified information.

PART 216—TYPES OF CONTRACTS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 216.1—Selecting Contract Types

216.101 General.

(a) In addition, the role of profit in selecting contract type includes the following:

(1) Profit, generally, is the basic motive of business enterprise. Both the Government and its defense contractors should be concerned with harnessing this motive to work for the effective and economical contract performance required in the interest of national defense. To this end, the parties should seek to negotiate and use the contract type best calculated to stimulate outstanding performance. The objective should be to insure that outstandingly effective and economical performance is met by high profits, mediocre performance by mediocre profits, and poor performance by low profits or losses. The proper application of these objectives on a contract by contract basis should normally result in a range of profit rates.

(2) Success in harnessing the profit motive begins with the negotiation of sound performance goals and standards. This objective is met if the contractor either benefits or losses in relation to achieving or failing to achieve realistic targets. When award is based on effective price competition, there is reasonable assurance that the contract price represents a realistic pricing standard, including a profit factor which reflects an appropriate return to the contractor for the financial risk assumed in undertaking performance at the competitive price. In the absence of competitive forces, however, the contract type selected should provide for a profit factor that will tie profits to the contractor's efficiency in controlling costs and meeting desired standards of performance, reliability, quality, and delivery. Therefore, in noncompetitive situations, the degree to which available cost estimates are realistic, and the degree of uncertainty affecting the work to be performed, should be carefully considered in determining which type of contract should be selected and how it should be used.

(3) The policies in (a) (1) and (2) above required that the contractor assume a reasonable degree of cost responsibility as early in contract performance as is possible. This can be achieved only through vigorous contract administration and effort on the part of both parties to assure timely pricing. Particularly in fixed-price type contracts providing the price revisions, delays in pricing actions by either party may distort the type of contract which has been agreed upon and such delays must be avoided.

(4) When a contract type providing for a reasonable degree of contractor cost responsibility cannot be negotiated on a timely basis, due to the contractor's unwillingness to assume reasonable risk, profits should be negotiated so as to reflect this fact.

(4) When a contract type providing for a reasonable degree of contractor cost responsibility cannot be negotiated on a timely basis, due to the contractor's unwillingness to assume reasonable risk, profits should be negotiated so as to reflect this fact.

(5) Notwithstanding the validity of profit as a motivating factor in general, there are situations, particularly in the early stages of research and development, in which the profit motive may be secondary. Harnessing the profit motive at the early stages of such procurements may not be effective or desirable in view of the high degree of technical and cost risk associated with performance or consistent with achieving desired technical objectives. The contracting officer's objective should still be "effective and economical performance," but the relative weight of these factors must be kept in balance (see 216.104(S–71)). Of course, outstanding performance can still be rewarded under a research and development contract, by proper application of incentive techniques.

(6) The firm fixed-price contract is the most preferred type for harnessing the profit motive because the contractor accepts full cost responsibility, and the relationship between cost control and profit dollars is established at the outset of the contract. Accordingly, when a reasonable basis for firm pricing exists (see 216.202), the firm fixed-price contract shall be used, because its use under these circumstances will provide the contractor with a maximum profit incentive to control the costs of performance. However, the contracting officer must be alert to the fact that in certain situations the use of special contract incentive provisions may be more appropriate. While maximum incentive to a contract exists in a firm fixed-price contract, the basis for the application of firm fixed-price is the knowledge that the price has been arrived at either through competition or through sound pricing techniques which keep pricing uncertainties to a minimum. When contracting for research and development, or when price competition is not present, and (i) when the cost or pricing data available does not permit sufficiently realistic estimates of the probable cost of performance, or (ii) uncertainties surrounding the contract performance cannot be sufficiently identified to evaluate their impact on price, the use of a type of contract other than firm fixed-price should be considered. For example, a profit incentive to control costs can be achieved through use of the fixed-price incentive contract, and to a lesser degree, the cost-plus-incentive-fee contract, when appropriate target costs and incentive arrangements can be negotiated.

(b) The specific type of contract should be determined by the degree of risk in contract performance. When the risk is minimal or can be predicted with an acceptable degree of certainty, a firm fixed-price contract is preferred. However, as the uncertainties become more significant, other fixed price or cost type contracts should be employed to accommodate these uncertainties and to avoid placing too great a cost risk on the contractor.

216.104 Factors in selecting contract types.

(S–70) *Stability of Design.* Other factors to consider are stability of design, which in turn may influence such subordinate considerations as the adequacy and firmness of specifications, and the availability of relevant

historical pricing data and prior production experience and adequacy of the contractor's estimating system.

(S–71) Other factors based on development stage.

(1) *Research and development (R&D).* The selection of the appropriate contract type is, in the final analysis, the responsibility of the contracting officer. However, because of the importance of technical considerations at the R&D stage, the choice of contract type shall not be made without obtaining the recommendations of cognizant technical personnel. Generally, the selection of contract type should also be discussed with prospective contractors. Where appropriate, R&D solicitations should permit prospective contractors to propose an alternative contract type. Any counterproposal must be supported by the contractor's rationale for his choice. The contracting officer shall include a statement in the file, setting forth his rationale for the type of contract ultimately selected. The categories of Research, Exploratory Development, Advanced Development, Engineering Development and Operational Systems Development, represent the spectrum of the R&D cycle and were so designated to provide an appropriate breakdown of R&D effort for management purposes. Each category has a prime technical or functional objective and certain distinctive features. It should not be inferred, however, that each category is a discrete step in the R&D process with a clear beginning and end entirely separate and distinct each from the other. In the latter categories of development, it is possible for different parts of a project to fit several different category definitions. Thus, a project properly categorized as Engineering Development may include subsystem work or elements of work that are, because of their particular technical state of development, truly Advanced Development, or in rare cases, even Exploratory Development. Again, the contract must be selected to fit the work required, not selected solely on the basis of the classification of the overall program.

(2) *Research and exploratory development.* The categories of Research and Exploratory Development form a logical grouping of the R&D process at one end of the spectrum. In Research and Exploratory Development contracting, the nature of the work, the usual lack of definitive requirements, the inability to measure technical objectives, the inability to measure risk, the amount of government technical direction and control desired, the lack of competition, and whether the contractor will be an educational institution, commercial company, or a not-for-profit organization, may be primary consideration in choosing the type of contract. Price is not necessarily the primary factor in determining the contract type. While no restriction exists on the type of contract which may be used, the nature of the work in these categories most frequently necessitates the negotiation of a CPAF, CPFF term, cost-no-fee, or cost-sharing contract. In cases where the level of contractor effort desired can be identified and agreed upon in advance of performance, negotiation of a firm fixed-price level of effort contract may be appropriate. Incentive type contracts should not be used unless the contractor and Government agree that an incentive arrangement is desirable, can be effective, and, upon completion, can be evaluated in terms of the incentives.

(3) *Advanced development.* The primary objective of Advanced Development is to determine and demonstrate, experimentally, the acceptability of the technical, economic, logistic and operational characteristics of one or more advanced concepts considered suitable for solution of a clearly stated military problem or technical objective. Advanced development provides the development effort which couples the inventory of science, technological and feasibility concepts derived from research and exploratory development to the end use oriented engineering and operational system developments. Included in this is the experimental demonstration of advanced technologies, equipment, subsystems, or systems, as well as the study, design, development, test and evaluation of advanced or innovated hardware, equipment or instrumentation necessary to provide a basis for selection among alternatives. It includes systems analyses trade-off studies, cost effectiveness analyses and particularly exploratory technological effort directly responsive to the objectives of the specific advanced development. Further, it includes conceptual effort required to generate the information to satisfy the prerequisites to initiation of system development wherein advanced development efforts are aimed at risk reduction and providing feasibility—often referred to as the validation phase or prototype phase. It is in this category that the first significant hardware for test is developed. In this broad category of work, selection of the best contract type should be made only after careful identification of the specific nature of the work required. No restriction exists as to the type of contract that may be used for work in this category. The nature of the work, however, often necessitates the use of CPFF completion type contracts. Incentive contracts can be effectively used in this category when realistic, measurable targets can be identified and program success can be predicted with a reasonable degree of accuracy. Contracts with only cost incentive should not be used in procurement where, at the outset, it can be expected that there will be a large number of major technical changes in the project or where actions beyond the control of the contractor may influence the just determination of the contractor's achievement. Competition may be used in these efforts for risk reduction, design innovation and cost reduction.

(4) *Engineering development and operational systems development.* Engineering and Operational Systems Development, because of many similarities, from a logical grouping in the spectrum of R&D categories. These categories, the ultimate aim of which is production and development, include all effort the primary objective of which is the enginneering design and final engineering demonstration of the technical, economic, logistic and operational characteristic of an experimentally feasible and acceptable system, equipment, subsystem, component or process judged to be the optimum solution to clearly stated military problems or technical objectives. In Engineering Development, such effort is founded on the probability of eventual procurement for inventory and use, and, therefore, includes effort leading to the demonstration of acceptability for such procurement. Operational Systems Development effort has the primary objectives of producibility demonstation and R&D support of final service test of the logical and operational development of an acceptable system, equipment, subsystem or component, approved for procurement and operational deployment or otherwise specifically approved for inclusion in this category. It may include the building of one or more production prototypes utilizing all processes, tooling, and test equipment considered for the production process thereby constituting a demonstration and qualification of the production process. Even when the overall project is in Engineering or Operational System Development, there may be integral supporting tasks that are still in the Advanced Development stage and the contract type for these tasks should be selected accordingly. The type of contract selected should be decided on

the basis of major factors such as: (i) the definitiveness of the project at this stage and its bearing on the accuracy of cost estimates; (ii) the completion schedule required for satisfactory operational deployment; (iii) the degree of risk and uncertainty expected; (iv) the ability to establish meaningful and measureable incentives; (v) the need for effort overlapping that of earlier development stages; (vi) the desirability of firm technical direction by the Government and (vii) the degree of configuration control to be exercised. Any one or combination of these factors could have a direct bearing on the type of contract selected. Cost reimbursement type contracts are preferred to all development efforts and particularly for major defense systems. When risk has been reduced to the extent that realistic pricing can occur, fixed price type contracts should be used, e.g., when a program has reached the final stages of development and technical risks are minimal. The use of letter contracts shall be minimized.

Subpart 16.2—Fixed-Price Contracts

216.203-4 Contract clauses.

(a) In addition, the clause should normally be used only when the total contract price is over $5,000 and delivery is not to be completed within six months after the contract date.

(b) In addition, the clause should normally be used only when the total contract price is over $5,000 and delivery is not to be completed within six months after the contract date.

(c)(1) in addition, the clause shall be limited to contracts in which the price exceeds $50,000 and the period of performance exceeds six months unless its use otherwise is approved by the Chief of the contracting office. An appropriate modification of the clause may be used in advertised procurements. Further, the clause may be modified by increasing the 10 percent limit on aggregate increases specified in subparagraph (c)(4) of the clause upon approval by the chief of the contracting office.

(3) The following sample format illustrates a type of schedule description that may be used:

The following types of labor and material are subject to price adjustment pursuant to the "Economic Price Adjustment—Labor and Material" clause of this contract.

CONTRACT ITEM NO. 1

Type of labor and material	Rates of pay and material prices	Quantities and direct costs/unit of procurment
Drill press operator.	$3.00/hour, no fringe benefits included	
	$3.00	20 min—$1.00.
Welder	$2.75/hour .05/hour—vacation pay .20/hour—pension plan	
	$3.00	10 min—$0.50.
Copper sheet	$0.40/lb.	2 lb.—$0.80.
Purchased parts:		
(1) ABC tube X5721.	$1.00 each	3 ea.—$3.00.
(2) XYZ part #9348.	$0.50 each	10 ea.—$5.00.

(c)(4) Also, the specific terms and conditions of the authorized clause are not applicable, a modified economic price adjustment clause to cover increases or decreases in the actual costs incurred by the contractor for labor or materials may be included if it is consistent with the above guidelines and is approved by the department concerned.

(iv) Make the full amount of decrease in the labor rates and fringe benefits or unit prices for materials.

(d)(3) The following factors may be considered in preparing a price adjustment clause meeting the criteria above including construction of appropriate indices:

(i) The clause should not be overly complex.

(ii) Normally, the clause should not provide either a ceiling or a floor for adjustment unless adjustment is based on indices below the four digit level of the Bureau of Labor Statistics Producer Price Index or the Wage and Income Series by Standard Industrial Classification (Labor);

(iii) Normally, the clause should cover all potential economic fluctuations within the original contract period of performance;

(iv) The clause must have a positive and accurate identification of the applicable index(es) upon which adjustments will be based and provide appropriate economic fluctuation in the event of the discontinuance of the publication of the movement of the designated index. This might include the substitution of another index if the time remaining would so justify and an appropriate index is reasonably available, or some other method for repricing of the remaining portion of the work to be performed. There should not normally be any need to make an adjustment in the event computation of the identified index is altered; however, provision may be made to adjust the economic fluctuation computations in the event there is such a substantial alteration to the method of computing the index as to negate the original intent of the parties. When an index to be used is subject to revision (e.g., the Bureau of Labor Statistic Producer Price Indexes), the economic price adjustment clause shall further specify that any economic price adjustment shall be based upon the applicable revised index;

(v) An index should be structured to encompass a large sample of relevant items yet bear a logical relationship to the type of contract costs being measured. The basis of the index should not be so large and diverse that it is significantly affected by fluctuations not relevant to the contract performance, yet must be significantly broad so as to assure the minimal effect of any single company, including the anticipated contractors.

(vi) Construction of an index is largely dependent upon two general series published by the U.S. Department of Labor, Bureau of Statistics (BLS). These are the industrial Commodities portion of the Producer Price Index and the Wage and Income Series by Standard Industrial Classification for labor. Since there are no BLS published series currently available that relate directly to total prices of delivered DoD aircraft, ships, missiles, electronics, etc., such composite indices from major portions of the two series described above should be made.

(vii) Normally not more than two indices should be used, i.e., one for labor (direct and indirect) and one for material (direct and indirect).

(viii) The clause must establish and properly identify a base period comparable to the contract periods for which adjustments are to be made as a reference point for application of an index.

(ix) The clause should provide for adjustment from the beginning of the contract or from such period of time that the rate of expenditure is commensurate with the administrative cost and effort to adjust, but it should not provide for adjustment beyond the original contract performance period.

(x) The expenditure profile for both labor and material should be based on a predetermined rate of expenditure (expressed as the percentage of material or labor usage as it relates to total contract price) in lieu of actual cost incurred. In the event the clause is to be used in a competitive procurement, the labor and material allocations, with regard to both mix of labor and material

and rate of expenditure by percentage, shall be determined by the PCO in a manner which will, as nearly as possible, approximate the average expenditure profile of all companies to be solicited in order that all companies may compete on an equal basis. If the clause is to be used in a noncompetitive procurement, the labor and material allocations as determined by the PCO may be subject to negotiation and agreement. For multi-year contracts, there should be established predetermined expenditure profile tables for each of the annual increments in the multi-year buy, with each of the second and subsequent year tables being cumulative to reflect the total expenditures for all increments funded through the latest multi-year funding.

(xi) The clause should state that percentage of the contract price subject to price adjustment. Normally, adjustments would not be applied to the profit portion of the contract. Additionally, the labor and material portions of the contract must be examined to exclude any areas that do not require adjustment. It may not be necessary, for example, to include all subcontracting as being subject to economic price adjustment because some of the subcontracting could be for shorter periods of time during the early life of the contract and, would be covered therefor, by firm priced subcontracting. It may be possible to exclude certain areas of overhead from economic price adjustment protection; for example, depreciation charges, prepaid insurance costs, rental costs, leases, certain taxes, and utility charges are illustrated as some of the areas that should be examined in detail. In the same manner, consideration should be given to the necessities to include economic fluctuation protection covering that portion of labor for the period of time for which a definitive union agreement exists without additional factoring for such things as cost of living increases. Care should be taken to allocate to labor and material only those costs likely to be affected by fluctuation in the economy. That portion of the contract which is determined to be proper for economic fluctuation protection shall then be allocated to specific periods of time (e.g., quarterly, semiannually, etc.) based on the most probable expenditure or commitment basis (expenditure profile).

(xii) The clause should provide for definite times or events positive for price adjustments. Adjustments should be of such a frequency so as to afford the contractor appropriate economic relief without at the same time creating a burdensome administrative effort. The adjustment period should normally range from a minimum of quarterly to a maximum of annually.

(xiii) When the contract contains cost incentives, any sums paid to the contractor on account of economic price adjustment provisions shall be subtracted from the total of the contractor's allowable cost for the purpose of establishing the total costs to which the cost incentive provisions apply. If the incentive arrangement is cited in percentage ranges rather than dollar ranges, above and below target costs, the economic price adjustment clause should be structured to maintain the original contract incentive range in dollars.

(xiv) The economic price adjustment clause should provide that once the labor and material allocations have been established, they remain fixed through the life of the contract and are not modified except in the event of partial termination of the contract. The clause should state that pricing actions pursuant to the Changes clause or other provisions of the contract will be priced as though there were no provisions for economic price adjustment.

(4) Consistent with the factors set forth above, the contracting officer may also determine it appropriate to provide for certain economic price adjustment arrangements between the prime contractor and subcontractors to properly allocate risks. In such circumstances, provision for incorporation of price adjustment clauses in specified subcontracts should be included in the price adjustment provision of the prime contract.

(5) When economic price adjustment provisions are included in contracts that do not require submission of cost or pricing data as provided for in 215.804–3, it will be the responsibility of the contracting officer to obtain adequate information to establish the base line from which adjustments will be made. In addition, the contracting officer may require verification of the data submitted to the extent considered necessary to permit reliance upon it as a reasonable base line.

216.203–70 Fixed-price contracts with economic price adjustment.

(a) *Price adjustment for basic steel, aluminum, brass, bronze or copper mill products.* The price adjustment clause at 252.216–7000 is authorized for use in fixed-price supply contracts for basic steel, aluminum, brass, bronze or copper mill products, such as sheets, plates and bars, when an established catalog or market price exists for the particular product being procured and has been verified in accordance with criteria in 215.804–3(c). The 10 percent figure in paragraph (c)(1) of the clause shall not be exceeded unless approved by the Chief of the Contracting Office. No adjustment under this clause shall be made in the contract price until the requested adjustment has been verified by the contracting officer, in accordance with the criteria set forth in FAR 15.804–3 and as required by paragraph (c)(4) of the clause.

(b) *Price adjustment for nonstandard steel items.* The price adjustment clause at 252.216–7001 is authorized for use in fixed price supply contracts when:

(1) The contractor is a steel producer and actually manufactures the standard steel mill item referred to in paragraph (d) of the clause; and

(2) The items being procured are nonstandard steel items made wholly or in part of standard steel mill items.

When this clause is included in invitations for bids, Note (8) of the clause is inapplicable and shall be omitted. Invitations for bids or requests for proposals shall instruct bidders or offerors to complete all blanks in accordance with the applicable notes. When the clause is to provide for adjustment based on the contractor's "established price" (see paragraphs (a) and (d) of the clause and Note (8) of the clause), the established price shall be verified in accordance with 215.804–3 prior to contract award. When the clause is to provide for adjustment on another basis (see Note (9) of the clause), that price must be verified. No adjustment under this clause shall be made in the contract price until the requested adjustment has been verified by the contracting officer, in accordance with criteria set forth in FAR 15.804–3 (but see Note (8) of the clause) and as required by paragraph (f) of the clause. The 110% figure in paragraph (e) of the clause shall not be exceeded unless approved by the Chief of the Contracting Office.

216.206 Fixed-ceiling price contracts with retroactive price redetermination.

216.206–1 Description.

The redetermined price should be negotiated so as to give weight to the management effectiveness and ingenuity exhibited by the contractor during performance, and the basis for such negotiation should be fully discussed with the contractor when this type of contract is negotiated. Because the price is redetermined on a completely retroactive basis, this contract type (except for the price ceiling) does not provide the contractor with a calculable

incentive for effective cost control. Once established, the ceiling price is subject to adjustment only if required by the operation of other contract clauses (see FAR 16.201).

216.207 Firm-fixed-price, level-of-effort term contracts.

216.207-1 Description.

This type of contract can be a useful tool, particularly in the Research and Exploratory Development categories when the work cannot be clearly defined and the level of effort desired can be identified and agreed upon in advance of performance.

Subpart 216.3—Cost-Reimbursement Contracts

216.301 General.

216.301-2 Application.

While cost reimbursement contracts are particularly useful for procurements involving substantial amounts, e.g., estimated cost of $100,000 or more, the parties may agree in a given case to use this type of contract to cover transactions in which the estimated costs are less than $100,000.

216.303 Cost sharing contracts.

(b) *Application.* Cost sharing contracts are for use in research or development procurements.

216.306 Cost-plus-fixed-fee contracts.

(b) *Application.* In addition to the conditions of FAR 16.301–2 being present, a cost-plus-fixed-fee contract is suitable when:

(1) A cost-reimbursement type of contract is found necessary in accordance with 216.301–2;

(2) The parties agree that the contract should be fee bearing;

(3) Where the level of effort required is unknown; and where measuring achievements in contract performance does not lend itself to the subjective evaluation required in CPAF contracts;

(c)(S–70) This type of contract normally should not be used in the development of major weapons and equipment, once prerequisite preliminary exploration, studies, and risk reductions have indicated a high degree of probability that the development is achievable and the Government generally has determined its desired performance objectives and schedule of completion. The cost-plus-fixed-fee contract shall not be used for procurements categorized as either Engineering Development or Operational System Development; which have completed the Validation Phase except with the approval of the Head of a Contracting Activity or his designee, it may be used in these categories for individual procurements, ancillary to the development of a major weapons system or equipment, where the purpose of the procurement is clearly to determine or solve scientific problems associated with the major weapon system or equipment.

Subpart 216.4—Incentive Contracts

216.402 Application of predetermined, formula-type incentives.

216.402-2 Technical performance incentives.

Increases in profits or fees resulting from the use of incentive provisions are made only because cost, performance, or other contractual goals or standards have been surpassed.

(S–70) *Description.* A contract with a performance incentive is one which incorporates an incentive to the contractor to surpass stated performance targets by providing for increases to the extent that such targets are not met. Salient features and considerations in the use of this type of contract are as follows:

(1) "Performance," as used in this paragraph refers not only to the performance of the article being procured, but to the performance of the contractor as well. Performance which is the minimum which the Government will accept shall be mandatory under the terms of the Completion form contract and shall warrant only the minimum profit or fee related thereto. Performance which meets the stated targets will warrant the "target" profit or fee. Performance which surpasses these targets will be rewarded by additional profit or fee. The incentive feature (providing for increases or decreases, as appropriate) is applied to performance targets rather than performance requirements.

(2) The incentive, when applied to the product, should relate to specific performance characteristics, such as range of a missile, speed of an aircraft or ship, thrust of an engine, maneuverability to a vehicle, and fuel economy. However, high overall performance of the end item is the primary objective of such contracts. Accordingly, the incentive feature should reflect a balancing of the various characteristics which together account for overall performance, so that no one characteristic will be exaggerated to the detriment of the end item as a whole. When applied to the performance of the contractor, the incentive should relate to specific performance areas of milestones, such as delivery or test schedules, quality controls, maintenance requirements, and reliability standards.

(3) Since performance tests generally are essential in order to determine the degree of attainment of performance targets, the control must be as specific as possible in establishing test criteria, such as conditions of testing, precision of instrumentation, and interpretation of test data.

(S–71) *Application.* Contracts with performance incentives are suitable for use in procurements where it is desired to provide the contractor with an incentive in the form of financial reward for surpassing stated performance targets, counter-balance by a penalty in the form of decreased profit or fee for failure to achieve such targets. Performance incentives are particularly appropriate for inclusion in contracts for major weapons and equipment, both in development when desired performance objectives are known and the fabrication of prototypes for test and evaluation is required, and in production where there is potential for improved performance that would be highly desirable to the Government. Effort always should be made in these procurement situations to include a performance incentive in the contract. Performance incentives present complex problems in contract administration and should be negotiated and administered by contracting officers with full cooperation of Government engineering and pricing specialists.

216.403 Fixed-price incentive contracts.

(b)(3) *Application.* Separate incentive provisions may be made applicable to individual line items of a contract, e.g., when dissimilar work is best incentivized by use of separate formulas.

(c) *Limitations.* In no case should such contracts be used where the sole or principal purpose is to shift substantially all cost responsibility to the Government. Further, in no case shall the firm target profit or formula for final profit and price be established independently.

216.403-2 Fixed-price incentive (successive targets).

(a)(1) This formula does not apply for the life of the contract but simply is used to fix the firm target profit for the contract. To provide an incentive consistent with the circumstances, the formula for fixing the firm target profit should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset.

216.404 Cost-reimbursement incentive contracts.

216.404-1 Cost-plus incentive fee contracts.

(b) *Application.* Where it is highly probable that the development is feasible and the Government generally has determined its desired performance objectives, the cost-plus-incentive-fee contract should be used in conjunction with performance incentives in the development of major systems, and in other development programs where use of the cost and performance incentive approach is considered both desirable and administratively practical. Range of fee and the fee adjustment formula should be negotiated so as to give appropriate weight to basic procurement objectives. For example, in an initial product development contract, it may be appropriate to negotiate a cost-plus-incentive-fee contract providing for relatively small increases, or decreases in fee tied to the cost incentive feature, balanced by the inclusion of performance incentive provisions providing for significant upward or downward fee adjustment as an incentive for the contractor to meet or surpass negotiated performance targets. Conversely, in subsequent development and test contracts, it may be more appropriate to negotiate an incentive formula where the opportunity to earn additional fee is based primarily on the contractor's success in controlling costs. With regard to the cost incentive provisions of a contract, the minimum and maximum fees, and the fee adjustment formula, should be negotiated so as to provide an incentive which will be effective over variations in costs throughout the full range of reasonably foreseeable variations from target cost. Whenever this type of contract, with or without the inclusion of performance incentives, is negotiated so as to provide incentive up to a high maximum fee, the contract also shall provide for a low minimum fee, which may even be a "zero" fee or, in rare cases, a "negative" fee.

216.404-2 Cost-plus-award-fee contracts.

(a) *Description.* The CPAF contract is a cost reimbursement type of contract with special fee provisions. It provides a means of applying incentives in contracts which are not susceptible to finite measurements of performance necessary for structuring incentive contracts. Award fee may be earned in whole or in part. The number of criteria used and the requirements which are represented will differ widely from one contract to another. Therefore, when determining criteria and rating plans the using activity should be flexible and select a plan which will motivate the contractor in a positive way to improve performance. Evaluations are furnished to the contractor to afford him an opportunity to comment on the evaluation findings. The decision that award fee has been earned is based on the reports of performance made by the Government personnel knowledgeable with respect to the contract requirements.

(b) *Application.* The CPAF contract is suitable for:

(1)(S-70) Level of effort contracts for performance of services where mission feasibility is established but measurement of achievement must be by subjective evaluation rather than objective measurement; and

(1)(S-71) Work which would have been placed under another type of contract is the performance objectives could be expressed in advance by definite milestones, targets or goals susceptible of measuring actual performance.

(b)(S-70) *Weighted guidelines.* The weighted guidelines method shall not be applied to CPAF contracts with respect to either the base (fixed) fee or the award fee.

(b)(S-71) *Fee.* The amount of the base fee shall not exceed three percent of the estimated cost of the contract exclusive of the fee, and the maximum fee (base fee plus award fee) shall not exceed the limitations stated in FAR 15.903.

(b)(S-72)(i) *Evaluation.* The contract should provide for evaluation at stated intervals during contract performance, so that the contractor will periodically be made aware of the quality of his performance and will know in which areas improvement is expected. Partial payment of fee will generally correspond to the evaluation periods. This will make effective the incentive which the award fee can create by inducing the contractor to improve poor performance or to continue good performance.

(ii) Consideration may be given to (A) constituting a board to evaluate the contractor's performance and determine the amount of the award fee or recommend an amount to the contracting officer and, (B) to afford the contractor an opportunity to present matters on his own behalf.

(iii) The contract shall set forth those criteria to be used in evaluating the contractor's performance to arrive at the award fee. See examples of such criteria set forth in charts below.

(b)(S-73) *Disputes.* The contract shall expressly exclude from the operation of the Disputes clause any dispute over the amount of the award fee.

(c)(S-70) *Limitations.* The CPAF contract shall not be used as an administrative technique to avoid CPFF contracts when the criteria for CPFF contracts apply, nor shall a CPAF contract be used to avoid the effort of establishing objective targets so as to make feasible the use of a CPIF type contract.

(c)(S-71) The CPAF contract shall not be used where the contract amount, period of performance or the benefits expected are insufficient to warrant the additional administrative effort or cost.

(c)(S-72) The CPAF contract shall not be used for procurements categorized as either Engineering Development or Operational System Development which have undergone contract definition, except that where it may be more advantageous to do so, it may be used in these categories for individual procurements, ancillary to the development of a major weapon system or equipment, where the purpose of the procurement is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(S-70) *Other application of the award fee provision.* In certain cases, it may be desirable to motivate and reward a contractor for management performance over and above that which can be objectively measured and incentivised under other forms of government contracts. For example, logistics support, quality, timeliness, cooperation, ingenuity, and cost effectiveness are areas under the control of management which may be susceptible only to subjective measurement and evaluation. In such cases, the "award amount" portion of the fee applicable to the CPAF contract is an ideal method for incorporation of these additional incentives into government contracts; the "base fee" or fixed amount portion would not be applicable in these procurements. When approved by the Chief of the Contracting Office, the "award amount" portion of the CPAF contract may be used in conjunction with other types and kinds of contracts for Government's benefit. An Award Review Board shall be appointed at each appropriate installation or activity. Procedures shall be established for the conduct of the evaluation. Further, the award fee provision shall not be used in conjunction with other types and kinds of contracts when the administrative effort or costs for evaluation exceed the benefits to be derived from the use of this arrangement.

Examples of Criteria

(Examples on Following Pages)

PERFORMANCE EVALUATION REPORT CRITERIA

		Submarginal 0-60	Marignal 61-70	Good 71-80	Very Good 81-90	Excellent 91-100
A Time of Delivery.	(A-1) Adherence to plan schedule.	Consistently late on 20% of plans.	Late on 10% plans w/o prior agreement.	Occasional plan late w/o justification.	Meets plan schedule	Delivers all plans on schedule & meets prod. change requirements on schedule.
	(A-2) Action on Anticipated delays.	Does not expose changes or resolve them as soon as recognized.	Exposes changes but is dilatory in resolution on plans.	Anticipates changes, advise Shipyard but misses completion of design plans 10%.	Keeps Yard posted on delays, resolves independently on plans.	Anticipates in good time, advises Shipyard, resolves independently and meets production schedule.
	(A-3) Plan Maintenance.	Does not complete interrelated systems studies concurrently.	System studies completed but constr. plan changes delayed.	Major work plans coordinated in time to meet production schedules.	Design changes from studies and interrelated plans issued in time to meet product schedules.	Design changes, studies resolved and test data issued ahead of production requirements.
B Quality of Work.	(B-1) Work Appearance.	25% dwgs. not compatible with Shipyard repro. processes and use.	20% not compatible with Shipyard repro. processes and use.	10% not compatible with Shipyard repro. processes and use.	0% dwgs. prepared by Des. agent not compatible with Shipyard repro. processes and use.	0% dwgs. presented incl. Des. agent, vendors, subcontr. not compatible with Shipyard repro. processes and use.
	(B-2) Thoroughness and Accuracy of Work.	Is brief on plans tending to leave questionable situations for Shipyard to resolve.	Has followed guidance, type and standard dwgs.	Has followed guidance, type & standard dwgs. questioning and resolving doubtful areas.	Work complete with notes and thorough explanations for anticipated questionable areas.	Work of highest caliber incorporating all pertinent data required including related activities.
	(B-3) Engineering Competence.	Tendency to follow past practice with no variation to meet reqmts. job in hand.	Adequate engrg. to use & adapt existing designs to suit job on hand for routine work.	Engineered to satisfy specs., guidance plans and material provided.	Displays excellent knowledge of constr. reqmts. considering systems aspect, cost, shop capabilities and procurement problems.	Exceptional knowledge of Naval shipwork & adaptability to work process incorporating knowledge of future planning in Design.
	(B-4) Liaison Effectiveness.	Indifferent to requirements of associated activities, related systems, and Shipyard advise.	Satisfactory but dependent on Shipyard to force resolution of problems without constructive recommendations to subcontr. or vendors.	Maintains normal contact with associated activities depending on Shipyard for problems requiring military resolution.	Maintains independent contact with all associated activities, keeping them informed to produce compatible design with little assist. for Yard.	Maintains expert contact, keeping Yard informed, obtaining info from equip., supplies w/o prompting by Shipyard.
	(B-5) Independence and Initiative.	Constant surveillance req'd. to keep job from slipping—assign to low priority to satisfy needs.	Requires occasional prodding to stay on schedule & expects Shipyard resolution of most problems.	Normal interest and desire to provide workable plans with average assistance & direction by Shipyard.	Complete & accurate job, free of incompatibilities with little or no direction by Shipyard.	Develops complete and accurate plans, seeks out problem areas and resolves with assoc. act. ahead of schedule.
C Effectiveness in Controlling and/or Reducing Costs.	(C-1) Utilization of Personnel.	Planning of work left to designers on drafting boards.	Supervision acts & reviews goals for designers.	System planningby supervisory, personnel, studies checked by engineers.	Design parameters established by system engineers & held in design plans.	Mods. to design plans limited to less than 5% as result lack engrg. system correlation
	(C-2) Control Direct Charges (Except labor)..	Expenditures not controlled for services.	Expenditures reviewed occasionally by supervision.	Direct charges set & accounted for on each work package.	Provides services as part of normal design function w/o extra charges.	No cost overruns on original estimates absorbs service demands by Shipyard.
	(C-3) Performance to Cost Estimates.	Does not meet cost estimate for original work or changes 30% time.	Does not meet cost estimate for original work or changes 20% time.	Exceeds original est. on change orders 10% time and meets original design costs.	Exceeds original est. on change orders 5% time.	Never exceeds estimates of original package or change orders.

CONTRACTOR PERFORMANCE EVALUATION REPORT

Ratings

Excellent	(91-100)
Very good	(81- 90)
Good	(71- 80)
Marginal	(61- 70)
Submarginal	(0- 60)

Period of ..... 19.....
Contract Number .....
Contractor.....
Date of Report.....
PNS Technical Monitor/s....
.....

Category	Criteria	Rating	Item factor	Evaluation rating	Category factor	Efficiency rating
A.....	TIME OF DELIVERY					
	A-1 Adherence to Plan Schedule.....	.....	×.40=	.....		
	A-2 Action on Anticipated Delays.....	.....	×.30=	.....		
	A-3 Plan Maintenance.....	.....	×.30=	.....		
		Total Item Weighed Rating.....			×.30=	
B.....	QUALITY OF WORK					
	B-1 Work Appearance.....	.....	×.15=	.....		
	B-2 Thoroughness and Accuracy of Work.....	.....	×.30=	.....		
	B-3 Engineering Competence.....	.....	×.20=	.....		
	B-4 Liaison Effectiveness.....	.....	×.15=	.....		
	B-5 Independence and Initiative.....	.....	×.20=	.....		
		Total Item Weighed Rating.....			×.40=	
C.....	EFFECTIVENESS IN CONTROLLING AND/OR REDUCING COSTS					
	C-1 Utilization of Personnel.....	.....	×.30=	.....		
	C-2 Control of all Direct Charges other than labor.....	.....	×.30=	.....		

Category	Criteria	Rating	Item factor	Evaluation rating	Category factor	Efficiency rating
	C-3 Performance to Cost Estimate		×.40=			
		Total Item Weighed Rating			×.30=	
		TOTAL WEIGHED RATING				
		Rated by:				
		Signature(s)				

NOTE: Provide supporting data and/or justification for below average or outstanding item ratings.

Subpart 216.5—Indefinite-Delivery Contracts

216.501 General.

(d) For items with a shelf-life of less than six months, consideration will be given to use of indefinite type contracts with orders to be placed either (i) directly by the users, or (ii) by central purchasing offices with deliveries direct to users. When it is desired to authorize the use of the fast pay procedure for orders not in excess of $10,000, the special data required by FAR 13.3 shall be included in the contract. The required clause in FAR 52.213-1 shall be modified for this purpose to refer to delivery orders and to the appropriate contract clause of the indefinite delivery type contract for the preparation of invoices.

216.502 Definite quantity contracts.

(S-70) Advantages of this type of contract are that it permits stocks in storage depots to be maintained at minimum levels and permits direct shipment to the user. Further advantages of this type of contract are:

(1) Flexibility with respect to both quantities and delivery scheduling;

(2) Supplies or services need to be ordered only after actual needs have materialized;

(3) The obligation of the Government is limited; and

(4) It permits stocks to be maintained at minimum levels and allows direct shipment to the user.

216.503 Requirement contracts.

(S-70) Advantages of this type of contract are:

(1) Flexibility with respect to both quantities and delivery scheduling;

(2) Supplies or services need be ordered only after actual needs have materialized;

(3) When production lead time is involved, deliveries may be made more promptly because the contractor is usually willing to maintain limited stocks in view of the Government's commitment;

(4) Price advantages or savings may be realized through combining several anticipated requirements into one quantity procurement; and

(5) It permits stocks to be maintained at minimum levels and allows direct shipment to the user.

Subpart 216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

216.601 Time-and-material contracts.

(b)(2) Material handling costs may include all indirect costs, including general and administrative expense, allocated to direct materials in accordance with the contractor's usual accounting practices consistent with Part 231. Such material handling cost should include only costs clearly excluded from the labor hour rate. This type of contract does not afford the contractor any positive profit incentive to control the cost of materials or to manage his labor force effectively. This type of contract may be used in the procurement of (i) engineering and design services in connection with the production of supplies; (ii) the engineering, design and manufacture of discs, jigs, fixtures, gauges, and special machine tools, (iii) repair, maintenance or overhaul work; and (iv) work to be performed in emergency situations.

216.603 Letter contracts.

216.603-2 Application.

(c) Letter contracts shall be specifically negotiated and, as a minimum, shall include the appropriate clauses from Part 252. Whether executed on Standard Form 26 or Standard Form 30, a definitized contract will be numbered as a modification of the letter contract as provided in Subpart 208.70.

Subpart 16.7—Agreements

216.702 Basic agreements.

(b) *Application.* The use of the basic agreement contemplates the coverage which will provide for the scope of the work, price, delivery, and additional matters peculiar to the requirements of the specific procurement involved, and shall incorporate by reference or append the contract clauses agreed upon in the basic agreement as required or applicable.

(3) To minimize modification, revisions to FAR involving changes in authorized contract clauses utilized in basic agreements will provide appropriate direction with respect to any required modifications of basic agreements and to the extent possible, modifications will be required only in matters resulting from changes in statutes or Executive Orders.

(b)(S-70) Basic agreements may include negotiated overhead rates for cost-reimbursement type contracts. A basic agreement shall be used to cover all subsequent procurements which fall within its scope. Provisions of the basic agreement, including supplements thereto, shall be incorporated into the formal contractual document covering the particular procurement by referring therein to the number of the basic agreement and each of its supplements. The reference "Basic Agreement No.—, as amended," shall not be used.

(b)(S-71) Basic agreements generally shall be utilized only in connection with negotiated contracts. An existing contract may be amended by a supplemental agreement affecting new procurement without incorporating the most recent basic agreement only if all clauses then required by statute, Executive Order, and this Regulation are included in the contract or the proposed supplemental agreement.

(b)(S-72) Supplemental agreements negotiated pursuant to the terms of an existing contract and not involving new procurement may, if determined to be in the interest of the Government, amend the existing contract to conform to a subsequently executed or supplemented basic agreement.

(b)(S-73) Clauses pertaining to subjects not covered in a basic agreement but applicable to the contract being negotiated shall be included in the contract as if no basic agreement existed.

(b)(S-74) Where a clause which was included in the basic agreement pursuant to a deviation must be replaced by a revised clause, the revised clause may deviate to the same extent as the original clause if the revision is not related to the deviation, and if the deviation has not expired or been rescinded.

(b)(S-75) If a letter contract has been entered into under a basic agreement

which thereafter was superseded by a new basic agreement, or amended by supplemental agreement, the contractual instrument which definitizes such letter contract shall incorporate the superseding basic agreement or supplemental agreement, as applicable. If the basic agreement has been terminated without being superseded, or has expired, the definitive contract which supersedes the letter contract shall incorporate the clauses required by statute, Executive Order, or this Regulation.

(S–70) *Content and form.*

Basic agreements shall contain a set of "General Provisions." These general provisions shall include two groups of clauses. The first group, identified as "Part A", shall include all of the clauses made mandatory by statute, Executive Order, the FAR and this Supplement, for use in negotiated Government contracts, and shall be made a part of each formal contractual document. The second group, identified as "Part B", shall consist of clauses which may be made a part of each formal contractual document, depending upon their applicability to the particular procurement. The format set forth below may be adapted to fit specific circumstances.

BASIC AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND

———.

This Agreement is entered into as of the — day of ———, 19— between the United States of America, hereinafter called the "Government", represented by the Contracting Officer, ——— and ———, a corporation organized and existing under the laws of the State of ———, herein called "Contractor."

The clauses and provisions of Parts A and B hereinafter set forth have been agreed upon by the parties hereto for use in negotiated ——— type contracts and in letter contracts contemplating conversion to ——— type contracts, between parties, entered into on or after the date of this Agreement, and prior to its termination. It is further agreed that (i) the clauses and provisions set forth in Part A are mandatory clauses and shall, by reference or attachment, be incorporated in each contract awarded pursuant to this Agreement, and (ii) the clauses and provisions set forth in Part B are to be similarly incorporated in such contracts only when applicable and agreed to by the parties for each individual contract.

This Agreement, including Parts A and B hereof, may be amended only by mutual agreement of the parties, and the Agreement may be terminated in its entirety by either party upon thirty (30) days written notice to the other party, except that this Agreement may be terminated by the Government at any time if the parties fail to agree upon any deletion, amendment or addition to this Agreement which is required by statute, Executive Order, or the FAR and this Supplement. No deletion, modification, addition to, or termination of, this Agreement shall affect any contracts theretofore entered into between the parties in which this Agreement or a portion thereof has been incorporated by reference.

This Agreement shall be reviewed, as a minimum annually before the anniversary of its effective date, and revised to conform with all requirements of statutes, Exective Orders, or the FAR and this Supplement. This revision shall be evidenced by an agreement modifying this Basic Agreement or by the issuance of a superseding Basic Agreement.

This Agreement shall not be referred to by the Contractor in bids submitted in response to invitations for bids nor become a part of any contract placed through the process of formal advertising.

In WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written:

UNITED STATES OF AMERICA

By _____

(Contracting Officer)

_____

(Name of Company)

By _____

(Title)

216.703 Basic ordering agreements.

(b) *Application.* If after a competitive solicitation of quotations or proposals from the maximum number of qualified sources, other than a solicitation accomplished by use of Standard Form 33, it is determined that the successful responsive offeror holds a basic ordering agreement, the terms of which are either identical to those of the solicitation or different in a way that could have no impact on price, quality or delivery, and if it is determined further that issuance of an order against the basic ordering agreement rather than preparation of a separate contract would not be prejudicial to the other offerors. In situations covered by the foregoing, the choice of firms to be solicited shall be made in accordance with normal procedures, without regard to which firms hold basic ordering agreements; firms not holding a basic ordering agreement shall not be precluded by the solicitation from proposing or quoting; and the existence of a basic ordering agreement shall not be a consideration in source selection.

(c) *Limitations.* The clause in 252.213–1 shall be modified to refer to orders and to the appropriate clause of the basic ordering agreement for the preparation of invoices when fast pay is desired on orders less than $25,000. The basic ordering agreement shall specify the point at which each order becomes a binding contract. For example, the agreement may provide either (1) that issuance of an order gives rise to a contract immediately, (2) that a contract arises upon the contractor's failure to reject the order within a specified number of days, or (3) that a contract arises when the contractor accepts the order in a specified manner, such as by postcard, telegram, letter, signing and returning a copy of Standard Form 26 or DD Form 1155.

(c)(S–70) As a general rule, prices should be established prior to authorizing the contractor to begin work. However, where the contractor is allowed to begin work prior to pricing in accordance with this paragraph, the contractor and the contracting officer shall proceed with pricing as soon as practicable. The basic ordering agreement shall provide that failure to reach agreement on price in such circumstances will constitute a dispute subject to the procedures of the Disputes clause.

(c)(S–71) To minimize modifications, revisions to FAR involving changes in authorized contract clauses, utilized in basic ordering agreements shall provide appropriate direction with respect to any required modifications of basic ordering agreements; and, to the extent possible, modifications shall be required only in matters resulting from changes in statutes, or Executive Order.

(c)(S–72) The basic ordering agreement shall list one or more activities which are authorized to issue orders under the agreement. Any activity so named may issue orders specifying the supplies or services required. Orders shall be issued on DD Form 1155 or Standard Form 26 and shall incorporate by reference the provisions of the basic ordering agreement.

(d)(1)(S–70) The contracting officer issuing an order under a basic ordering agreement shall be responsible for assuring compliance with the provisions of all limitations of this section.

(d)(3)(ii) However, incentive provisions consistent with this part are permitted.

PART 217—SPECIAL CONTRACTING METHODS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 217.1—Multiyear Contracting

217.101 Definitions.

"Property," as used in this subpart means items of supplies, including but not limited to systems, subsystems, major equipment, components, parts, materials, supplies, and the advance acquisition thereof, and commercial and noncommercial items.

217.102 Policy.

217.102-2 General.

(a) Multiyear contract quantities are budgeted for and financed in accordance with the applicable program year as reflected in the DoD Five-Year Defense Program.

217.102-3 Objectives.

(a)(S-70) Implementation of the industrial preparedness program for planned items with planned producers;

(d)(4) The decision not to request dual proposals must also take into account the determinations required by 217.103-1(b) (S-70) or (S-71).

217.103 Procedures.

217.103-1 General.

(a)(1) The use of such a contract will promote the national security of the United States.

(b)(1) For exceptions to this paragraph see 217.104-70 for multiyear contracting of specified services, and 217.104-71 for multiyear contracting of supplies and services of the maintenance and operation of family housing.

(b)(S-70) A multiyear contract may not be executed in the case of services, until a written determination has been made by the HCA or his designee that (i) there will be a continuing requirement for the services and incidental supplies, consonant with current plans for the proposed contract period; (ii) the furnishing of such services and incidental supplies will require a substantial initial investment in plant or equipment or the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force, or other substantial startup costs; and (iii) the use of such a contract will promote the best interest of the United States by encouraging effective competition and promoting economies of operation.

(b)(S-71) A multiyear contract may not be executed in the case of property, until a written determination has been made by the Secretary or his designee that the criteria specified in FAR 17.103-1 have been met.

(d)(1) Such ceilings shall be expressed in the schedule and shall be a not-to-exceed amount to apply alike to all bidders or offerors.

217.103-2 Solicitations.

Solicitations for multiyear contracts should be appropriately structured to reflect any selected variations to standard multiyear techniques allowed by FAR 17.102-3(d).

217.103-4 Awards.

(c) Prior to award of a multiyear contract, the contracting officer shall verify that findings made in accordance with 217.103-1(b) (S-70) or (S-71) remain valid and shall annotate the findings document accordingly.

217.103-70 Funding of multiyear contracts.

Before any multiyear contract that contains a clause setting forth a cancellation ceiling in excess of $100 million may be awarded, the Secretary shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives, and such contract may not then be awarded until the end of a period of 30 calendar days beginning on the date of such notification. Departments shall establish reporting procedures. Copies of the notification shall be submitted to the Office of the Secretary of Defense, OUSDRE(AM), and Deputy Assistant Secretary of Defense, OASD(C) (P/B). Departments shall also comply with any notification requirements or restrictions contained in annual authorization or appropriation acts.

(a) The planning and coordination of multiyear acquisition strategies should begin sufficiently early to permit required integration of the acquisition into the Planning Programming and Budgeting System (PPBS). The degree of integration and the extent of data required will vary with the type and size of the program. Guidelines shall be included, as required, in DoD and Service instructions for preparing program objective memoranda (POM) submissions and budget estimate submissions (BES).

(b) Policies and procedures for the funding of procurements within the procurement title of the DoD Appropriation Act are contained in DoD Directive (DoDD) 7200.4, Full Funding of DoD Procurement Programs.

217.104 Related areas.

217.104-70 Multiyear contracting of services under Pub. L. 90-378.

(a) Under Pub. L. 90-378 (10 U.S.C. 2306(g)), the Department of Defense is authorized to enter into multiyear acquisitions for the following listed services, to obtain requirements which are not in excess of the Five-Year Defense Program and for which funds are limited by statute for obligation during the fiscal year in which the contract is executed:

(1) Operation, maintenance, and support of facilities and installations;

(2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(3) Specialized training necessitating high quality instructor skills (for example, pilot and other aircrew members; foreign language training); and

(4) Base services (for example, ground maintenance; in-plane refueling; bus transportation; refuse collection and disposal). However, such acquisitions shall be entered into for no more than a 5-year period and only when such acquisitions are consistent with the policies of and satisfy the requirements set forth in FAR 17.101 through 17.105. The performance years specified in the schedule shall not extend beyond the end of any fiscal year (1 October-30 September).

(b) Since acquisitions under this authority are limited for execution on a fiscal year basis, references to "program year" throughout 217.104-70 shall be considered to mean "fiscal year".

217.104-71 Multiyear acquisition of supplies and services under Pub. L. 91-142.

(a) Under Section 512 of Pub. L. 91-142, the Department of Defense is authorized to enter into contracts for periods of no more than 4 years for supplies and services required for the maintenance and operation of family housing for which funds would otherwise be available only within the fiscal year for which appropriated. Such acquisitions shall be entered into only when they are consistent with the policies and satisfy the requirements set forth in FAR 17.101 through 17.105. The performance years specified in the schedule shall not extend beyond the end of any fiscal year (1 October-30 September).

(b) Since acquisitions under this authority are limited for execution on a fiscal year basis, references to "program year" shall be considered to mean "fiscal year".

Subpart 217.2—Options

217.203 Solicitations.

(a) When the contracting officer knows or anticipates that the option may be exercised to fulfill Foreign Military Sales (FMS) commitments and when the Government and the contractor are able to negotiate a price in advance for FMS requirements, the solicitation and contract shall notify contractors of the Government's intent in this regard and shall identify the FMS requirements (see 217.208(d)). When the contracting officer knows or anticipates that the option may be exercised to fulfill FMS requirements and the

Government and the contractor are unable to negotiate any additional cost or profit considerations attributable to FMS included in until a specific country or countries are subsequently identified, the solicitation and contract shall advise contractors that the U.S. Government will identify the foreign country for the purpose of negotiating an equitable price adjustment for any additional cost or profit considerations attributable to FMS included in (see 217.208(d)). Such notification shall not be placed in solicitations and contracts for the establishment or replenishment of DoD inventories or stocks or acquisitions made under DoD Cooperative Logistics Support Arrangements.

(g)(2) The Chief of the Contracting Office is the person authorized to make the approval cited in FAR 17.203(g)(2).

217.206 Evaluation.

(a) The Chief of the Contracting Office is the person authorized to make the determination referred to in FAR 17.206(a).

(b) The contracting officer may consider the option quantity in the award evaluation for types of contracts other than those discussed in FAR 17.206 (a) and (b) if—

(1) The determination in FAR 17.206(a) was made before issuance of the solicitation; and

(2) Departmental approval procedures are followed.

217.207 Exercise of options.

(c)(2) An FMS commitment undertaken by the United States Government on behalf of a foreign country constitutes the type of need described in FAR 17.207(c)(2). In such cases, the contract shall expressly provide for the Government's right to exercise the option for FMS purposes (see 217.203(a)).

217.208 Solicitation provisions and contract clauses.

(d) The contracting officer shall insert the clause at 252.217–7000, Exercise of Option to Fulfill Foreign Military Sales Commitments, in solicitations and contracts when the inclusion of such a clause is appropriate (see 217.203(a)). This clause shall also be inserted in solicitation and contracts, as appropriate, when the clauses described in FAR 17.208 (e), (f) or (g) are inserted in solicitation and contracts.

Subpart 217.5—Interagency Acquisitions Under the Economy Act

217.502 General.

(a) For purposes of FAR 17.502, the designee of the head of the requesting agency within DoD is the contracting officer unless otherwise directed by departmental regulations.

(b) Except as provided in FAR Subpart 7.3, it is the policy of the Department of Defense not to place Government agencies in direct competition with commercial sources.

(c) An order for services shall not be placed with a department or agency when such services can be performed as conveniently or more economically by private contractors.

217.503 Determination requirements.

(b) In addition to the requirements of FAR 17.503(b), the determination shall also include a finding that the services cannot be performed as conveniently or more economically by private contractors.

217.504 Ordering procedures.

(b) Invitations for bids and requests for proposals shall not be sent to Government agencies. Orders for supplies and services placed within a department shall be in accordance with procedures prescribed by that department. Delivery orders may be placed on DD Form 1155.

Subpart 217.6—Management and Operating Contracts

The provisions of FAR Subpart 17.6 are not applicable within DOD.

Subpart 217.70—Exchange of Personal Property

217.7000 Scope of subpart.

This subpart prescribes contracting policy and procedures governing the use by Department of Defense components of the exchange authority of Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)), when exchange is accomplished concurrently with procurement. The Act authorizes the exchange of personal property and the application of the exchange allowance to the acquisition of similar property. Exchange policy, authority, applicability, and limitations are governed by the Federal Property Management Regulations issued by the Administrator for General Services, and by Department of Defense Instruction 4140.51, "Exchange of Nonexcess Personal Property in the Department of Defense."

217.7001 Definitions.

"Exchange (trade-in) property" means property not in excess of the needs of the owning DoD component, but eligible for replacement because of obsolescence, unserviceability, or other valid reason, that is exchanged and applied as whole or partial payment allowance toward the acquisition of similar items.

"Similar items" in exchange transactions means both the item being acquired and the item being replaced. Both must fall within one of the single generic categories listed in 217.7003–1, and the item being acquired must be designed and constructed for the same specific purpose as the item being replaced.

217.7002 Policy.

It is DoD policy to use exchange processing for replacing eligible nonexcess items. It shall be used to the maximum extent possible when such transactions foster the economical and efficient accomplishment of an approved program.

217.7003 Categories of property eligible for exchange and categories of property ineligible for exchange.

217.7003–1 Property eligible for exchange.

Nonexcess personal property in the categories listed below is eligible for exchange. However, in the exchange of such property, both the item to be acquired and the item to be replaced must fall within a single number category. Categories of property not listed below or not included in 17.7003–2 are also eligible for exchange if designed and constructed for the same specific purpose.

1. Agriculture products, processed foods, and forage.
2. Ammunition and ammunition components.
3. Animals and animal products.
4. Batteries, storage.
5. Cards, tabulating.
6. Ditching machines.
7. Dozer blades.
8. Drill presses.
9. Drugs, biologicals, and official reagents.
10. Earth augers.
11. Graders, self-powered and towed.
12. Lathes.
13. Machines, adding and calculating.
14. Machines, addressing and mailing.
15. Machines, dictating and transcribing.
16. Machines, duplicating.
17. Machines, punched card, bookkeeping, tabulating, and accounting.
18. Milling machines.
19. Mixers, concrete, portable or truck mounted.
20. Pile drivers.
21. Plows, snow, motor.
22. Road rollers, wheeled and sheepsfoot.

23. Saws, circular or band.
24. Scrapers, earth moving, self-powered.
25. Scrapers, earth moving, towed.
26. Sedans, station wagons, coupes, limousines.
27. Shovels, power.
28. Spreaders, aggregate and line.
29. Tractors, warehouse.
30. Tractors, wheeled or crawler, with or without special attachments, up to 65 h.p.
31. Tractors, wheeled or crawler, with or without special attachments, 65 h.p. and up.
32. Trailers, general purpose, multiple axle.
33. Trailers, general purpose, single axle.
34. Trailers, tank mounted.
35. Trucks, forklift.
36. Trucks, general purpose, cargo and construction, 12,500 GVW and up (including truck tractors, dump, and multiple drive).
37. Trucks, general purpose and utility, up to 12,500 GVW (including suburbans, carryalls, and sedan deliveries)
38. Trucks, straddle.
39. Trucks, tank (special purpose truck on which the tank is integral part of the construction).
40. Trucks, warehouse, platform, electric and gasoline powered.
41. Typewriters, manual and electric.

217.7003-2 Property ineligible for exchange.

Items that are found in any of the FSCGs listed below are not eligible for handling under exchange procedures without the prior approval of the General Services Administration. (Such approval shall accompany the purchase request):

10 Weapons
11 Nuclear ordnance
12 Fire control equipment
14 Guided missiles
15 Aircraft, and airframe structural components*
16 Aircraft components and accessories*
17 Aircraft launching, landing, and ground handling equipment
20 Ship and marine equipment
22 Railway equipment
31 Bearings
32 Woodworking machinery and equipment, except lathes, milling machines, and saws, circular or band
34 Metalworking machinery, except drill presses, lathes, milling machines, and saws, circular or band
40 Rope, cable, chain, and fittings
41 Refrigeration and air conditioning equipment
42 Fire fighting, rescue, and safety equipment
44 Furnace, steam plant, and drying equipment; and nuclear reactors
45 Plumbing, heating, and sanitation equipment
46 Water purification and sewage treatment equipment
47 Pipes, tubing, hoses, and fittings
48 Valves
51 Hand Tools
53 Hardware and abrasives
54 Prefabricated structures and scaffolding
55 Lumber, millwork, plywood, and veneer
56 Construction and building materials
68 Chemicals and chemical products, except medicinal chemicals
71 Furniture
75 Office supplies and devices, except cards, tabulating
83 Textiles, leather, and furs
84 Clothing and individual equipment

217.7004 Procedures.

217.7004-1 Offering property for exchange.

(a) Sale of nonexcess personal property is not authorized pursuant to this Part. The objective in exchanging nonexcess personal property shall be to acquire new property from an offeror whose offer will be most advantageous to the Government, price and other factors considered. When acquiring new property concurrent with offering exchange property, formal advertising shall be used, except that—

(1) Property may be exchanged through negotiation, obtaining maximum practicable competition, in accordance with applicable laws and regulations.

(2) When the personal property is required to be acquired against a mandatory Federal Supply Schedule Contract, the property shall be acquired against such contract, regardless of whether the exchange can be effected under such contract.

(b) The following notation shall be included in the solicitation:

The property described in item number(s) ———, is being offered in accordance with the exchange provisions of Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384 (40 U.S.C. 481(c)).

(c) A minimum of 14 calendar days should be allowed in Continental United States (CONUS) for the inspection of property being offered for exchange. For exchanges outside Continental United States, the minimum inspection period should normally be 21 calendar days.

217.7004-2 Purchase request and certification.

In connection with an acquisition involving exchange, the purchase request must be accompanied by a certification that the property is eligible for exchange and complies with all conditions and limitations specified in DODI 4140.51 including a written administrative determination of economic advantage which shall indicate—

(a) The anticipated economic advantage to the Government resulting from the use of the exchange authority.

(b) That exchange allowances shall be applied toward or in partial payment for the items to be acquired.

(c) That if required, the exchange property has been rendered safe or innocuous, or has been demilitarized.

217.7005 Exchange of exchange property.

Each solicitation listing exchange property, in addition to asking for prices for the new items being acquired, shall request offers in terms of exchange (trade-in allowance) for the exchange property listed. The solicitation shall provide for award(s) which are in the best overall interest of the Government. Exchanges may only be effected with the successful offeror. Thus, if the lowest net price to the Government of the property to be procured (i.e., the price of the new property less the amount offered for the exchange property) results from an offer by a supplier of the new property who agrees to accept the exchange property as a trade-in, a single award would be made which would cover both the acquisition by the Government of the new property and the disposal of the exchange property by trade-in. If, however, the lowest net price to the Government results from a low offered price from a supplier of the new property, without exchange of the exchange property, award shall be made to the low offeror to purchase the new property and the exchange shall not be made.

Subpart 217.71—Master Agreement for Repair and Alteration of Vessels

Reserved, guidance will be included prior to 1 April 1984.

Subpart 217.72—Acquisition of Component Parts

217.7201 Privately developed items.

217.7201-1 General.

It is Department of Defense policy:

*These line items shall be exchanged directly when the Military Departments rely on a contract with a manufacturer for full spare parts support for commercial type aircraft.

(a) To make all procurements on a competitive basis to the maximum practicable extent, and

(b) To provide an incentive to industry creativity by honoring the rights in data resulting from private development and by limiting the demands for such data to that which is essential for Government purposes.

It is important that the efforts directed toward increasing competition do not demand or use privately developed data in a manner which is contrary to the policies and procedures established in FAR Part 27. Accordingly, when the two policies stated above produce situations which require the contracting officer to decide whether to procure data for future competitive procurement, the provisions of Part 227, as supplemented by this paragraph, shall govern.

217.7201-2 Specific procurement methods.

(a) When Defense requirements are for items which are available from more than one source as a result of either licensing, competitive copying, or independent, the contracting officer shall seek full and free competition for such items.

(b) When the Government desires to purchase privately developed items but does not have necessary data with unlimited rights for use in a specification for competitive procurement, the contracting officer shall use one of the following alternative procedures with reference in the order of this listing (see also 217.7203).

(1) When practical, procurement shall be competitive using performance or other specifications, including purchase descriptions, which do not contain data developed at private expense to which the Government does not have unlimited rights. Procurement in this basis will normally not provide items of identical design. However, it frequently is not necessary that items of identical design be purchased. There are two methods of competitive procurement which may provide items of the same or of similar design and suitable performance. One of these is purchased by two-step formal advertising. The other is by the use of "brand name or equal" purchase descriptions. To encourage participating by technically oriented firms that are desirous of offering their privately developed products in competition with similar articles, procuring activities should consider incorporating a requirement in the IFB or RFP for a bid sample to be used for evaluation purposes only (see 210.004(b)(3)(i)).

(2) When items of design or composition similar or identical to a privately developed item are required and it is determined that competitive procurement is not practicable, procurement should be on a noncompetitive basis from the firm which developed or designed the item or process or its licensees, *provided* productive capacity and quality are adequate and price is fair and reasonable.

(3) When additional sources are required for items of design or composition similar or identical to a privately developed item in order to meet total current or mobilization requirements, and the procedures in (b)(1) above cannot practicably be used to create additional sources, the developer should be encouraged to license others to manufacture such items. Procuring activities should also consider the specific acquisition by the Government of the necessary rights in data. When complex technical equipment is involved and the establishment of satisfactory additional sources will require, in addition to data, technical assistance from the primary source, consideration should be given to the use of the leader company procurement technique (see FAR Subpart 17.4).

(4) As a last alternative, a design specification may be developed by the Government through inspection and analysis of the product (i.e. reverse engineering) and used for competitive procurement. Reverse engineering shall not be used unless significant cost savings can be reasonably demonstrated and the action is authorized by the Head of the Contracting Activity. In the case of the Air Force this authority may be delegated to the Commanders of the Air Force Systems Command Divisions and Centers and the Air Force Logistics Command Air Logistics Centers.

217.7201-3 Purchase of patented items when Government is a licensee.

Award of a contract shall not be refused to a bidder/offeror merely because he is not the owner of or a licensee under any patent involved in the procurement. If, at the time a solicitation is issued, the Government is obligated to pay royalties applicable to the proposed procurement because of a pre-existing license agreement between the Government and a patent owner, the solicitation shall so state and shall: (a) Identify the patents and specify the royalty rate; and (b) advise that an amount equal to the royalty which the Government will be required to pay under the license agreement will be added as an evaluation factor to each bid/offer unless the bidder/offeror includes in his bid/offer a statement that he is the owner of or a licensee under the patents.

217.7202 Component Breakout.

217.7202-1 Scope of paragraph.

(a) This section sets forth guidance of making decisions on whether or not components should be purchased by the Government directly and furnished to an end item contractor as Government-furnished material, for incorporation in the end item. This paragraph, however, does not pertain to all such decisions, but only to those which deal with whether components that have been included as contractor-furnished material in a previous procurement of the end item should be "broken out" from a forthcoming end item procurement for direct Government purchase. Thus, except as set forth in, this paragraph does not pertain to the initial Government-furnished equipment/contractor-furnished equipment decisions that must be made at the inception of a procurement program.

(b) Parts procured for replenishment are not covered by this paragraph, but are governed by Supplement 6, Replenishment Parts Breakout Program.

(c) This paragraph applies to procurements of weapons systems or other items of major equipment involving components whose direct purchase by the Government may result in substantial net cost savings over the life of the procurement program. Accordingly, it will seldom be applicable to a procurement of such a system or item of less than $1,000,000. The term "component," as used in this paragraph, includes subsystems, assemblies, subassemblies, and other major elements of an end item, but does not include elements of relatively small annual purchase value.

217.7202-2 Policy.

Whenever it is anticipated that the prime contract for a weapons system or other major end item will be awarded without adequate price competition, and the prime contractor is expected to acquire a component without such competition, it is Department of Defense policy to break out that component if:

(a) Substantial net cost savings will probably be achieved; and

(b) Such action will not jeopardize the quality, reliability, performance or timely delivery of the end item. The desirability of breakout should also be considered (regardless of whether the prime contract or the component being purchased by the prime contractor is on the basis of price competition) whenever substantial net cost savings will result

(1) from greater quantity purchases or (2) from such factors as improved logistics support through reduction in varieties of spare parts and economies in operations and training through standardization of design. Primary breakout consideration shall be given to those components of the end item representing the highest annual procurement costs and offering the largest potential net savings through breakout.

217.7202-3 Responsibility for component breakout selection, review and decision

The program manager, project manager, project officer, program director, or other official responsible for the material program concerned, supported by a project team (to include the Small Business Specialist, cognizant engineering, production, logistics, maintenance and other appropriate personnel, and the contracting officer or his designee), shall be responsible for:

(i) Earmarking as susceptible to breakout those components potentially conforming to the criteria and policy set forth herein;

(ii) Conducting the breakout review and evaluation described in 217.7202-4;

(iii) Making the decision whether or not to break out the component; and

(iv) Preparing records explaining such decisions in compliance with 217.7202-5.

217.7202-4 Breakout guidelines.

(a) Each decision on whether or not to break out a component must embrace (1) assessment of the potential risks of degrading the end item through such contingencies as delayed delivery and reduced reliability of the component, (2) calculation of estimated net cost savings (i.e., estimated purchase savings less any offsetting costs), and (3) analysis of the technical, operational, logistic and administrative factors involved. As to each of these, the decision must be supported by adequate explanatory information, including an assessment by, and consultation with, the end item contractor when feasible.

(b) In deciding whether a component should be broken out, the guidelines set forth below (in the form of questions) should be considered. Answers will rarely be "positively yes" or "positively no" but usually "probably yes" or "probably no", with the degree of probability governed by the facts of the particular case. The decisions will depend largely upon the degree and significance of the risks to quality performance, reliability and timely delivery of the end item which would be involved in breakout and upon the estimated overall cost savings. Where the risks, if any, are acceptable and breakout is expected to result in substantial overall costs savings, the component should be broken out. On the other hand, if such risks are unacceptable, the components should not be broken out.

(1) Are the design of the component (and the design of the end item insofar as it will affect the component) sufficiently stable that further design or engineering effort by the end item contractor in respect to the component is unlikely to be required?

(2) Is a suitable data package available with rights to use if for Government procurement? (Note that breakout may be warranted even though competitive procurement is not possible.)

(3) Can any problems of quality control and reliability of the component be resolved without requiring effort by the end item contractor?

(4) Is it anticipated that requirements for technical support (i.e., functions such as development of proposed detailed specifications; development of test requirements to prove design adequacy or compliance with design; monitoring tests to assure compliance with established requirements; definition of quality assurance requirements for production of articles; and analysis and correction of service-revealed deficiencies) heretofore performed by the end item contractor will be negligible? If not, does the Government have the resources (manpower, technical competence, facilities, etc.) to provide such support, or can such support be obtained from the end item contractor (even though the component is broken out) or other source?

(5) Can breakout be accomplished without causing unacceptable difficulties in logistics support (e.g., by jeopardizing requisite standardization of components)?

(6) Can breakout be accomplished without causing over fragmentation of the end item that might materially impede administration, management, and performance of the end item contract (e.g., by unduly complicating production scheduling or identifying (and fixing responsibility for) end item failure that may be caused by a defective component)?

(7) Can breakout be accomplished without jeopardizing delivery requirements of the end item?

(8) If a decision is made to break out a component and to acquire it from a new source, can advance procurement funds be made available to provide that source any necessary additional lead time?

(9) Is there a source other than the present manufacturer capable of supplying the component?

(10) Has the component been (or is it known that it is going to be) purchased directly by the Government as a support item in the supply system or as GFE in other end items?

(11) Would the financial risks and other responsibilities being assumed by the prime contractor that will have to be assumed by the Government if the item is broken out be acceptable?

(12) Will breakout result in substantial net cost savings? Estimates of probable savings in cost, should be developed for each case on its own facts, with consideration given to any estimated offsetting costs such as increases in the cost of requirements determination and control, contracting, contract administration, data package purchase, material inspection, qualification or preproduction testing, ground support and test equipment, transportation, security, storage, distribution, and technical support.

(c) If application of the guidelines in (b) above reveals conditions currently unfavorable to breakout, the feasibility of eliminating such conditions should be considered. For example, where adequate technical support is not available from Government resources, or similar assistance must be obtained in order to successfully accomplish breakout, consideration should be given to the procurement of the necessary services, such as product assurance suitability services, from the end item contractor or other qualified source.

217.7202-5 Records and review procedure.

The records of the purchasing activity shall contain documentation of:

(a) Those components which have been reviewed and determined to have no potential for breakout;

(b) Those components which have been reviewed and earmarked as being susceptible to breakout pursuant to 217.7202-3; and

(c) Those components for which a decision to breakout has been made.

Documentation of these three categories, and for those components once earmarked but no longer considered susceptible to breakout, shall be signed by the cognizant project manager or other designated official and reflect the facts and conditions of the case, including any assessment by the contractor, and the basis for the decision. Components that have been earmarked for potential breakout shall be reviewed well in advance of each successive procurement, with a decision

made as to whether the component will be broken out for the ensuing procurement. Such reviews, made preferably in the course of requirements determination, but in any event before procurement of the requirement is initiated, shall be repeated until a final decision on whether or not to breakout is reached, and shall be documented. When breakout is delayed or postponed, the documentation shall include a description of the actions required to accomplish breakout, identify the activities responsible for such actions, and indicate the fiscal year when breakout should be effected.

217.7203 Procurement of parts.

(a) Any part, subassembly, or component (hereinafter called "part") for military equipment, to be used for replenishment of stock, repair, or replacement, must be procured so as to assure the requisite safe, dependable, and effective operation of the equipment. Where it is feasible to do so without impairing this assurance, parts should be procured on a competitive basis, as in the kind of cases described in (b) below. However, where this assurance can be had only if the parts are procured from the original manufacturer of the equipment or his supplier, the procurement should be restricted accordingly, as in the kind of cases described in (c) below. Centrally managed replenishment parts for military systems and equipment (except replenishment parts acquired under other specifically defined initial support programs or acquired through local purchase) are governed by Supplement 6, the Replenishment Parts Breakout Program.

(b) Parts that are fully identified and can be obtained from a number of known sources, and parts for which fully adequate manufacturing drawings and any other needed data are available with the right to use for procurement purposes (or can be made so available in keeping with the policies in FAR Part 27 are to be procured on a competitive basis. In general, such parts are of a standard design configuration. They include individual items that are susceptible of separate procurement, such as resistors, transformers, generators, spark plugs, electron tubes, or other parts having commercial equivalents.

(c) Parts not within the scope of (b) above generally should be procured (either directly or indirectly) only from sources that have satisfactorily manufactured or furnished such parts in the past, unless fully adequate data (including any necessary data developed at private expense), test results, and quality assurance procedures, are available with the right to use for procurement purposes (or can reasonably be made so available in keeping with the policies in FAR Part 27 to assure the requisite reliability and interchangeability of the parts, and acquisition on a competitive basis would be consistent with the assurance described in (a) above. In assessing this assurance, the nature and function of the equipment of which the part is needed should be considered. Parts qualifying under this criteria are normally sole source or source controlled parts (see MILSTD 100) which exclusively provide the performance, installation and interchangeability characteristics required for specific critical applications. To illustrate, acceptable tolerances for a commercial television part may be far less stringent than those for a comparable military radar part, permitting competitive contracting for the former but not for the latter. The exacting performance requirements of specially designed military equipment may demand that parts be closely controlled and have proven capabilities of precise integration with the system in which they operate, to a degree that precludes the use of even apparently identical parts from new sources, since the functioning of the whole may depend on latent characteristics of each part which are not definitely known.

(d) When an award is made to a source that has not previously produced the item, the cognizant Government inspection activity and the appropriate contract administration office should be notified by the contracting office that the contractor will be producing the item for the first time.

Subpart 217.73—Special Commodities

217.7301 Bakery and dairy products contracts.

217.7301-1 Scope.

This section sets forth special policies and requirements for acquisition of perishable bakery and dairy products.

217.7301-2 Plant locations.

Prior to award of a contract for perishable bakery or dairy products the contractor must identify the plant or plants at which any manufacturing or processing will occur and from which shipment will be made. The plants named by the successful contractor shall be listed in the Schedule.

217.7301-3 Chemical and microbiological requirements (fresh dairy foods).

(a) *Chemical requirements.* Fresh dairy foods shall meet the chemical requirements for each fresh dairy food specification cited in the contract on the date of award.

(b) *Microbiological requirements.* Milk and milk products as defined in DLAM 8200.1, shall meet microbiological requirements stated in the Public Health Service Publication 229 in effect on the date of award. In the event of conflict between these requirements and individual product specifications, the requirements of Public Health Service Publication 229 shall govern.

(c) *Cultured products.* Cultured products shall meet the coliform requirements as specified in the Public Health Service Publication 229 in effect on the date of award. In the event of conflict between these requirements and individual product specifications, the requirements of Public Health Service Publication 229 shall govern.

(d) *Solicitation and contract requirements.* The requirements of (a), (b) and (c) above shall be expressed in solicitations and contracts for fresh dairy products.

217.7301-4 Containers and equipment (milk dispensing).

If the contractor is to furnish cabinets for dispensing milk from bulk containers, a notice so stating shall be included in the Schedule of solicitations and resultant contracts. The notice shall state (a) the number of dispenser cabinets required, or a reasonably accurate estimate thereof, (b) whether metal stands for the cabinets are required, (c) the number of cabinets required with a capacity of two containers each, and (d) the number required with a capacity of three containers each.

217.7301-5 Contract clauses.

(a) The contracting officer shall insert the following clauses in solicitations and contracts for perishable bakery and dairy products when an indefinite delivery type contract (see FAR 16.5) is to be used.

(1) 252.217-7300, Delivery Vehicles.

(2) 252.217-7301, Time of Delivery. When an indefinite quantity contract is to be used, rather than a requirements contract, the contracting officer shall use the clause as modified by its Alternate I.

(3) 252.217-7302, Change in Plant Location, (see 217.7301-2).

(4) 252.217-7303, Sanitary Conditions. When an indefinite quantity contract is used, rather than a requirements contract, the contracting officer shall use the clause as modified by its Alternate I.

(5) 252.217-7304, Remedies Under Delivery Orders. When delivery orders are to be placed by an activity other

than the activity which awarded the contract, and in order to establish authority in the ordering officer under the Changes, Extras, Inspection, Default (Fixed Price Supply and Service), and Disputes clauses, the contracting officer shall use the clause with its Alternate I.

(b) The contracting officer shall insert the following clauses, substantially the same as the clauses prescribed below, in solicitations and indefinite delivery contracts for perishable dairy products.

(1) 252.217–7305, Examination and Testing.

(2) 252.217–7306, Deficiency Adjustment. The formulas prescribed in the clause may be modified to accommodate purchasing or ordering activities which do not have access to the Department of Agriculture reports cited therein.

(3) 252.217–7307, Warning.

(4) 252.217–7308, Suspension. When an indefinite quantity contract is used, rather than a requirements contract, the contracting officer shall use the clause with its Alternate I.

(5) 252.217–7309, Default.

(6) 252.217–7310, Reinstatement.

(c) The contracting officer shall insert the clause at 252.217–7311, Code Dating, in solicitations and indefinite delivery type contracts for perishable bakery and dairy products when a Schedule or specification provision requires the labels of one or more items to show the date of pasteurization, manufacture, production, or processing, and in order to permit the use of a coding system.

(d) The contracting officer shall insert the clause at 252.217–7312, Marking, in solicitations and indefinite delivery contracts for perishable bakery and dairy products except when a provision is inserted in the Schedule specifically requiring supplies to be marked in accordance with MIL–STD–129, Marking for Shipment and Storage.

(e) The contracting officer shall insert the clause at 252.217–7313, Responsibility for Containers and Equipment, in solicitations and indefinite delivery contracts for perishable bakery and dairy products when the contractor is to provide reusable containers and equipment.

(f) The contracting officer shall insert the clause at 252.217–7314, Containers and Equipment, in solicitations and indefinite delivery contracts for perishable bakery and dairy products when the contractor is to furnish cabinets for dispensing milk from bulk containers (see 217.7301–4).

Subchapter D—Socioeconomic Programs

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 219.1—Terms and Size Standards

219.102–6 Size standards for transportation industries.

(c) No concern offering to provide local and/or long distance trucking, warehousing and/or packing and crating, and/or freight forwarding will be denied small business status for the purpose of Government acquisition solely because of its contractual relationship with a large interstate van line if the concern's annual receipts have not exceeded $7 million during its most recently completed fiscal year.

Subpart 219.2—Policies

219.201 General policy.

(b)(1) The Director of Small and Disadvantaged Business Utilization is responsible for the development of overall DoD small business and disadvantaged business goals and for consulting with SBA regarding the establishment of such goals.

(2) Departmental Directors of Small and Disadvantaged Business Utilization are responsible for the development of small business and disadvantaged business utilization goals for subordinate elements within their department. These goals will be further assigned by these subordinate elements as appropriate, such as engineer district offices or individual contracting divisions within a central contracting activity or major commodity command.

(3) Heads of contracting activities are responsible for the attainment of assigned small business and disadvantaged business utilization goals.

(4) Within 60 days after the conclusion of each fiscal year, the Secretaries of the Military Departments and the Directors of Defense agencies shall report to the Secretary of Defense on the extent of participation by small business concerns and disadvantaged business concerns in contracts awarded by their Department. Such report shall contain appropriate justifications for failure to meet goals established by the Office of the Secretary of Defense, as well as actions planned to increase the rate of participation by such firms in future contract awards. The Office of the Secretary of Defense will submit information to SBA concerning any failure to meet established goals and actions to be taken to improve future performance.

(d)(1) Small and disadvantaged business utilization specialists shall be appointed by name, in writing, for contracting activities, contract administration offices, and other such offices, as the Departments consider appropriate. They shall be responsible directly to the appointing authority and shall not be subject to the direction of contracting, contract administration, or technical personnel. The appointing authority, without power of redelegation, is as follows:

(i) Army—Commanders of major commands, Commanders of major subordinate commands, and installation, post, camp, station or activity commanders. For each major command, one specialist will be appointed as the Associate Director for Small and Disadvantaged Business Utilization, reporting directly to the Commander or the second-in-command. The Associate Director will have primary responsibility for the effective implemention of the Army's small business, disadvantaged business utilization, labor surplus area and other socio-economic business programs within the Command. The Associate Director for Small and Disadvantaged Business Utilization Policy at Major Command Headquarters other than at the Materiel Development and Readiness Command (DARCOM), Office, Chief of Engineers (OCE), Forces Command (FORSCOM), Training and Doctrine Command (TRADOC), may be assigned on a part-time basis.

(ii) Navy—Head of a contracting activity or the official in charge of an activity having purchase authority of $10,000 or more, or in charge of a contract administration activity;

(iii) Air Force—Commander of each central procurement activity; the Wing/Base Commander of each local purchasing activity and the Chief of each contract administration activity. In addition, an Executive for Small and Disadvantaged Business Utilization shall be appointed by the Commander of each Major Air Command in the United States, not mandatorily reporting directly to the Commander but having ready access to such person, who will have primary responsibility for the effective implementation of the Air Force small business, small disadvantaged business utilization and labor area programs(s) within the Command;

(iv) Defense Logistics Agency—Commanders of Defense Supply Centers, Commanders, Defense Contract Administration Services Regions and

Commanders of other DLA contracting activities;

(v) National Security Agency—the Director;

(vi) Defense Communications Agency—the Director;

(vii) Defense Nuclear Agency—the Director;

(viii) Defense Mapping Agency—Director; directors of subordinate components.

A copy of each appointment and termination of appointment of all such specialists shall be forwarded to the appropriate Department or Agency Office of Small and Disadvantaged Business Utilization (219.201(S-71)). In addition to performing that portion of the specific program outlined in (d)(2) below that is normally performed in the activity to which he is assigned, the small and disadvantaged business utilization specialist shall advise the head of the activity and shall perform such additional functions as are prescribed for him in furtherance of the overall small business, small disadvantaged business utilization and labor surplus area programs. A small and disadvantaged business utilization specialist shall be appointed on a full-time basis in all activities having sufficient business or program responsibility to justify such action. When the volume of contracting does not warrant assignment of a full time small and disadvantaged business utilization specialist, an individual shall be appointed as the specialist on a part-time basis. The responsibilities of this assignment shall take precedence over collateral responsibilities.

(2) A small and disadvantaged business utilization specialist (SADBU), appointed pursuant to the above, shall: Perform the following duties, as determined to be appropirate to the activity by the appointing officer or by the Departmental or Agency Director or Staff Director of Small and Disadvantaged Business Utilization. The SADRU shall:

(i) Maintain a program designed to locate capable small business, small disadvantaged business and labor surplus area business sources for current and future acquisitions, through SBA or other methods;

(ii) Coordinate inquiries and requests for advice from small business, small disadvantaged business and labor surplus area business concerns on acquisition matters;

(iii) Review acquisitions to insure maximum opportunity for participation by small and disadvantaged business, women-owned, and LSA, and to make recommendations for set-aside and 8(a) awards (see 19.501(c));

(iv) When small business concerns cannot be given an opportunity to compete because adequate specifications or drawings are not available, unless there are sufficient and valid reasons to the contrary, initiate action, in writing, with appropriate technical and contracting personnel to insure that necessary specifications or drawings of the current or future acquisitions, as appropriate, are available;

(v) Review acquisition programs for possible breakout of items suitable for acquisition from small business concerns;

(vi) Insure that financial assistance available under existing regulations is offered and that requests by small business concerns for proper assistance are not treated as a handicap in the award of contracts;

(vii) Participate in determinations concerning responsibility of a prospective contractor whenever small business concerns are involved;

(viii) Participate in the evaluation of a prime contractor's small business, labor surplus, and small disadvantaged business subcontracting plans;

(ix) Review and make appropriate recommendations to the contracting officer on any proposal to furnish Government-owned facilities to a contractor if such action may hurt the small business program;

(x) Assure that participation of small business concerns is accurately reported;

(xi) Bring to the attention of the Department Director or Staff Director for Small and Disadvantaged Business Utilization possible contracting opportunities in labor surplus area;

(xii) Make available to SBA copies of solicitations when so requested;

(xiii) When a bid from a small business, small disadvantaged business or labor surplus area firm has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(xiv) Participate in government-industry conferences to assist small business, small disadvantaged business and labor surplus area concerns, including Business Opportunity/Federal Procurement Conferences, Minority Business Enterprises Procurement Seminars, and Minority Business Opportunity Committee meetings;

(xv) Advise potential suppliers how they can obtain information about formal advertising and negotiated acquisitions and that they can subscribe to the Commerce Business Daily as a source of information on proposed acquisitions;

(xvi) Brief his commander at least once quarterly concerning the status of the installation's small business, small disadvantaged business utilization and labor surplus area programs in relation to goals and objectives established by higher headquarters;

(xvii) Participate in the development, implementation and review of automated contracting systems to assure that the interests of small business, small disadvantaged business and labor surplus area firms are fully considered with particular reference to FAR 19.202-4(c), FAR 19.501(c), and FAR 19.502;

(xviii) Assist program managers as early as possible in the development cycle of major system aquisitions and system programs as pertains to the small business programs;

(xix) Assist contracting officers in establishing criteria for and determining acceptability of small business and small disadvantaged business concerns subcontracting plans submitted by prime contractors;

(xx) Assure that the installation's small business, small disadvantaged business and labor surplus area business programs are frequently publicized in the appropiate media;

(xxi) Assure that the organization maintains a list of products and services which have been placed on repetitive small business set-aside;

(xxii) Provide small business, small disadvantaged business and labor surplus area firms information regarding assistance available from Federal agencies such as the Small Business Administration, Office of Minority Business Enterprise, Bureau of Indian Affairs, Office of Economic Development, National Science Foundation, Department of Labor and others including state, trade, and other associations;

(xxiii) Be responsible for establishing an education and training program for personnel whose duties and functions affect the activity's small business, small disadvantaged business and firms located in labor surplus areas;

(xxiv) Recommend to his Commander the activity small business and disadvantaged business utilization overall goals and goals to be placed on subordinate contracting offices;

(xxv) Participate in interagency programs relating to small business, small disadvantaged business and labor surplus area matters as authorized by the Director of SADBU; and

(xxvi) Advise and assist contracting officers in discharging their responsibilities by:

(A) Monitoring and reviewing contractor performance to determine compliance with small and disadvantaged small business subcontracting plans;

(B) Developing and maintaining records and reports that reflect such compliance or noncompliance.

(S-70) *Office of the Secretary of Defense Directors.*

(1) *Director of Small and Disadvantaged Business Utilization.* The Director of Small and Disadvantaged Business Utilization reports directly to the Deputy Secretary of Defense and is responsible for the overall management and direction of the DoD small business, disadvantaged business utilization, and labor surplus area programs and for advising the Secretary of Defense and the Deputy Secretary of Defense in matters relating to these programs. To that end, the Director will provide guidance to the Departments and periodically review the direction and implementation of their activities in promoting contract awards to small business, small disadvantaged business, and labor surplus area concerns.

(2) *Director of Small Business and Economic Utilization Policy.* The Director of Small Business and Economic Utilization Policy is responsible for the establishment, implementation, and execution of DoD small business and labor surplus area programs. Negotiations with the SBA, the Office of Federal Procurement Policy, the Office of Management and Budget, and other agencies or departments outside the Department of Defense, concerning small business and labor surplus area policy, programs, and DoD goals shall be conducted by the Director of Small Business and Economic Utilization Policy or, with authorization, by representatives of the Departments. The Director of Small Business and Economic Utilization Policy, on behalf of the Director of Small and Disadvantaged Business Utilization will provide guidance to the Departments' Directors of Small and Disadvantaged Business Utilization regarding small business and labor surplus area matters.

(3) *Director of Disadvantaged Business Utilization Policy.* The Director of Disadvantaged Business Utilization Policy is responsible for the establishment, implementation, and execution of the DoD socially and economically disadvantaged business utilization program. Negotiations with the Small Business Administration, the Office of Federal Procurement Policy, the Office of Management and Budget, and other agencies or departments outside the Department of Defense, concerning disadvantaged business utilization policy, programs, and DoD goals shall be conducted by the Director for Disadvantaged Business Utilization Policy or, with authorization, by representatives of the Departments. The Director of Disadvantaged Business Utilization Policy, on behalf of the Director of Small and Disadvantaged Business Utilization, will provide guidance to the Departments' Directors of Small and Disadvantaged Business Utilization regarding disadvantaged business utilization matters.

(S-71) *Departmental Directors of Small and Disadvantaged Business Utilization.*

(1) Each department or agency shall maintain an Office of Small and Disadvantaged Business Utilization as follows:

(i) Army—Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary of the Army, Pentagon, Washington, D.C. 20310;

(ii) Navy—Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary of the Navy, Washington, D.C. 20360;

(iii) Air Force—Director, Office of Small and Disadvantaged Business Utilization, DCS/RD&A, Pentagon, Washington, D.C. 20330;

(iv) Defense Logistics Agency—Staff Director, Office of Small and Disadvantaged Business Utilization, Code DLA-U, Cameron Station, Alexandria, VA 22314;

(v) National Security Agency—Director, Office of Small and Disadvantaged Business Utilization, Fort Meade, MD 20755;

(vi) Defense Communications Agency—Director, Office of Small and Disadvantaged Business Utilization, Code 260, Washington, D.C. 20035;

(vii) Defense Nuclear Agency—Director, Office of Small and Disadvantaged Business Utilization (Code OAFR), Washington, D.C. 20305;

(viii) Defense Mapping Agency—Director, Office of Small and Disadvantaged Business Utilization, Headquarters, Washington, D.C. 20305.

(2) Each Departmental Office of Small and Disadvantaged Business Utilization shall be managed by a Director who shall be appointed by the Secretary of the department and shall be responsible to and report directly to the Secretary or Under Secretary of the Department. Directors of Defense agencies shall appoint a Staff Director for Small and Disadvantaged Business Utilization who shall be responsible to and report directly to the Director or his Deputy.

(3) The primary responsibility of the Director or Staff Director of each Office of Small and Disadvantaged Business Utilization shall be in matters concerning small business, small disadvantaged business utilization, and labor surplus areas. The Director or Staff Director advises the Secretary on small business, small disadvantaged business utilization and labor surplus area matters, implements such DoD programs within the Department or Agency and represents the Department or Agency in negotiations with other Departments or Governmental agencies on small business, small disadvantaged business utilization and labor surplus area matters. The Director or Staff Director will exercise supervisory authority over Department or Agency Small and Disadvantaged Business Utilization Specialists regarding small business, disadvantaged business utilization and labor surplus area matters. Appointment of Small and Disadvantaged Business Utilization Specialists shall be made after consultation with the Director or Staff Director of the Office of Small and Disadvantaged Business Utilization of the Department or Agency involved. In addition, such Director shall be afforded an opportunity to comment upon, and contribute to the performance evaluations of the Specialists for the contracting activities and contract administration offices or major organizational elements of the Department involved, including pay pursuant to the Civil Service Reform Act of 1978.

(S-72) *Small Business Technical Advisor.*

(1) The Military Departments shall assign small business technical advisors to assist each resident SBA Procurement Center Representative in the performance of his duties.

(2) A Small Business Technical Advisor (SBTA) shall be a full-time employee of the contracting activity and shall be well qualified, technically trained, and familiar with the supplies or services acquired at the activity.

(3) The principal duty of this advisor shall be to assist the SBA Procurement Center Representative in his duties and functions relating to Sections 8 and 15 of the Small Business Act. Providing such assistance shall take precedence over any other collateral duties that may be the responsibility of the SBTA.

219.202-1 Encouraging small business participation in acquisitions.

The Departments to the extent consistent with the best interests of the Government and in order to broaden the industrial base shall:

(a) Attempt to locate additional qualified small business suppliers by all appropriate methods including use of the assistance of SBA, particularly where only a limited number of small business concerns are on bidders' mailing lists;

(b) Give wide publicity to contracting methods and practices;

(c) Publicize proposed acquisitions by use of advance notices or other appropriate methods (see FAR 5.2);

(d) Include all established and qualified potential small business suppliers on mailing lists;

(e) Send solicitations to all firms on the appropriate list, except that where less than a complete list is to be used pursuant to FAR 14.205-4, at least a *pro rata* number of small business concerns shall be solicited;

(f) Divide proposed acquisition of supplies and services, except construction, into quantities not less than economic production runs, so as to permit bidding on quantities less than the total requirements; allow the maximum time practicable for preparation and submission of bids, proposals, or quotations; where feasible, establish delivery schedules which will encourage small business participation;

(g) Examine each major acquisition to determine the extent to which small business subcontracting should be encouraged or required;

(h) Use small business concerns to the maximum extent feasible as planned producers in the Industrial Readiness Planning Program; and

(i) Maintain liaison with Federal, State (including Governor's Commissions), and local agencies and other organizations for the purpose of providing information and assistance to small business concerns.

219.202-5 Data collection and reporting requirements

Records of the total value of contracts and subcontracts placed with small business concerns during each fiscal year shall be maintained by the use of DD Form 350 (Individual Procurement Action Report), DD Form 1057 (Monthly Procurement Summary by Purchasing Office), Standard Form 294 (Subcontracting Report for Individual Contracts), and Standard Form 295 (Summary Subcontract Report), as appropriate.

Subpart 219.4—Cooperation With the Small Business Administration

219.401 General.

(b) The contracting activity Small and Disadvantaged Business Utilization Specialist shall be the activity focal point for interface with the SBA.

219.402 Small business administration procurement center representatives.

(b) The SBA procurement center representative's request for access to contract information will be processed through the activity's Small and Disadvantaged Business Utilization Office.

Subpart 219.5—Set-asides for small business

219.501 General.

(c) The Small and Disadvantaged Business Utilization Specialist is responsible for reviewing those acquisitions not set-aside or not acquired through small business-small purchase set-aside. The SADBU shall, prior to the issuance of solicitation or contract modifications (except those which exercise an option), (1) for additional supplies or services in excess of $5,000 which have not been set-aside under FAR 19.502, or (2) for a dissolved small business-small purchase set-aside in excess of $5,000 (FAR 13.105), review the acquisition and the contracting officer's justification for not making a set-aside or for dissolving a small business-small purchase set-aside. The SADBU shall make recommendation to the contracting officer for set-aside, as appropriate, on an individual acquisition, or class of acquisition, or portion thereof. In automated contracting systems, such reviews will be accomplished prior to entering the item into the automated system after which no further review of the individual acquisition will be necessary if the automated system is so programmed that any changes in the acquisition of the item satisfy the provisions of FAR 19.502-2. Disagreements between the specialist and the contracting officer on proposed set-aside actions for small business shall be resolved under FAR 19.505. Disagreements on small business-small purchase set-asides shall be resolved under FAR 13.105.1(d)(2) by the contracting officer.

(d) All cases involving the noninitiation of a set-aside, whether resulting from a joint decision of the small business specialist and the contracting officer or a determination by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for his review. The SBA representative will either concur with the decision of the contracting officer or appeal the case in accordance with the provisions of FAR 19-505.

(g) This procedure is applicable to DoD.

219.502 Setting aside acquisitions.

219.502-1 Requirements for setting aside acquisitions.

Department of Defense activities follow the order of precedence in 219.504. Acquisition of supplies which were developed and financed in whole or in part by Canadian sources under the U.S.-Canadian Defense Development Sharing Program shall not be set-aside for small business. Supplies covered by the Program shall be identified by the cognizant Department.

219.502-2 Total set-asides.

Where multiyear contracting procedures are appropriate, total set-asides may be made in connection therewith.

219.502-4 Methods of conducting set-asides.

(a) Contracts for total (including combined small business/LSA) or partial set-asides entered into by conventional negotiation or by "Small Business Restricted Advertising" are negotiated acquisitions and shall cite as authority 10 U.S.C 2304(a)(1) in the case of a unilateral determination or U.S.C. 2304.(a)(17) and Section 15 of the Small Business Act in the case of a joint determination.

219.502-70 Combined small business—labor surplus area set-asides.

(a) In the acquisition of certain items, the objectives of both the Small Business Act and Defense Manpower Policy (DMP) No. 4 may be attained in a single acquisition. Under this procedure, the total required quantity of an item would be set aside for exclusive participation by small business firms and a portion of that total quantity would be further set-aside for award to small business concerns which are also LSA firms.

(b) For acquisitions exceeding $25,000 the use of this combined small business-LSA set-aside procedure shall be considered. This procedure shall be used in preference to all others when the proposed acquisition meets the criteria for:

(1) Total small business set-aside (FAR 19.502-2), and

(2) A partial LSA set-aside (220.7003(a)).

(c) Contracts utilizing this procedure may be entered into by "Small Business Restricted Advertising," the preferred method, (FAR 15.201) or by conventional negotiation. This set-aside procedure may be used in multi-year contracting (FAR Subpart 17.1). Solicitations shall provide that offers may be submitted by small business firms only and that a part of the total requirement is further set-aside for LSA firms which are also small business concerns. Offers received from firms which do not qualify as small business concerns shall be considered nonresponsive and shall be rejected.

(d)(1) In combined small business-LSA set-asides each solicitation shall contain the clause at 252.219–7001, Notice of Combined Small Business Labor Surplus Area Set Aside (except see (d)(2) below).

(2) When experience indicates that token bidding, block bidding, tie-in bidding, or similar devices may occur, the alternate clause at 252.219-7002, Notice of Combined Small Business Labor Surplus Area Set Aside, Alternate, may be used.

(e)(1) After the award price for the non-LSA set-aside portion has been determined, negotiations may be conducted for the LSA set-aside portion. Acquisition of the LSA set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non-LSA set-aside portion. Negotiations shall be conducted in the order of priority as indicated in the foregoing clause; *provided* that, when equal low offers are received on the non-LSA set-aside portion from concerns which are equally eligible for the LSA set-aside portion, the concern which is awarded the non-LSA set-aside portion (under the equal low bid procedure of 214.407–6) shall have first priority with respect to negotiations for the LSA set-aside portion. The LSA set-aside portion shall be awarded as provided in the clause. An offeror entitled to receive the award for quantities of an item under the non-LSA set-aside portion and who accepts the award of additional quantities under the LSA set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the acquisition. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, acceptance of voluntary refunds, or the changes of prices after award by negotiation of a contract modification.

(2) Offers obtained under the provisions of the set-aside clause from firms eligible for the set-aside portion of the requirement shall be in writing and shall include (i) agreement as to the established set-aside price for the available set-aside quantity, (ii) agreement as to the required delivery, (iii) agreement that all other terms and conditions of the solicitation will apply to the set-aside award, and (iv) agreement to inclusion of the clauses at FAR 52.215–1, Examination of Records by Comptroller General, and at FAR 52.215–2, Audit—Negotiation.

(3) When the award of the non-set-aside portion has been made to a small business concern and the same small business concern is entitled to receive the set-aside portion of the solicitation, the LSA set-aside portion may be added to the basic contract by supplemental agreement utilizing Standard Form 30. The supplemental agreement shall (1) include a reference to the contractor's letter offering on the set-aside quantity, (ii) state the price and delivery schedule applicable to the set-aside quantity, and (iii) include the clauses at FAR 52.215–1, Examination of Records by Comptroller General, and at FAR 52.215–2, Audit—Negotiation, applicable to the LSA set-aside portion only. Copies of all pertinent documents, including the signed offer, shall be attached. The supplemental agreement shall be signed by the contracting officer but need not be signed by the contractor since his signature on the attached offer will be deemed sufficient.

(4) When the award for the non-set-aside portion has been made to a firm other than the concern entitled to receive the set-aside portion of the solicitation, award of the set-aside portion will be made utilizing Standard Form 26. The offers obtained and the award utilized shall reference and include the same data indicated in paragraphs (e) (2) and (3) above. Also, the award shall reference in Block 26 of the Standard From 26, the applicable solicitation and the contractor's written offer, and copies of the solicitation and offer shall be attached. The Standard Form 26 shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient.

For purposes of Subpart 204.6, the non-LSA-set-aside portion shall be reported separately. (See FAR 19.507 for automatic dissolution of set-asides.)

219.503 Setting aside a class of acquisitions.

(d) The contracting officer may initiate withdrawal of an individual acquisition or modification of a class set-aside by giving written notice to the activity's SADBUS and the SBA procurement center representative. In case of disagreement, the matter will be resolved under the procedures in FAR 19.506(b).

219.504 Set-aside program order of precedence.

(b) The following order of precedence applies to DoD:

(1) Combined small business/LSA set-aside 219.502–70)

(2) Partial set-aside for LSA firms (220.7003(a))

(3) Total set-aside for small business firms (FAR 19.502–2)

(4) Partial set-aside for small business (FAR 19.502–3)

219.505 Rejecting set-aside recommendations.

(a) Upon a recommendation of the Small and Disadvantaged Business Utilization Specialist that an individual acquisition or class of acquisitions, or portion thereof, be set-aside the contracting officer shall promptly either:

(1) Concur in the recommendation, or

(2) Disapprove, stating in writing his reasons for disapproval.

If the contracting officer disapproves the recommendation of the Small and Disadvantaged Business Utilization Specialist, the case shall be promptly referred to the SBA representative (if one is assigned and available) for his review. No further appeal action will be taken by the small business specialist. In those cases where an SBA representative is not assigned or available, and the contracting officer disagrees with the recommendation of the small business specialist regarding a small business set-aside for an individual acquisition or class of acquisitions or a portion thereof and so notifies the small business specialist in writing, or if the small business specialist disagrees with the contracting officer regarding a withdrawal or modification of a set-aside determination, the small business specialist may appeal in writing to the appointing authority (see 219.201(d)(1)) for decision. A memorandum of the decision by the appointing authority shall be placed in the contract file. After receipt of a decision from the appointing authority, which shall be decision final, and if the decision approves the action of the contracting officer, the small busi-

ness specialist shall forward for information and management purposes complete documentation of the case to the appropriate Departmental Director for Small and Disadvantaged Business Utilization or his designee as identified in 219.201(c)(S–71). The specialist's signed memorandum of nonconcurrence in a recommended set-aside action or of any withdrawal or modification shall be made and retained in the contract file.

(b) The head of the contracting activity's designee shall be at a level no lower than the chief of the contracting office.

(d) The matter shall be forwarded with full justification of the action taken through normal channels.

(e) Should it be determined that a decision cannot be made within 30 business days, a later date will be established in writing by the Secretary of the Department concerned to the Administrator, SBA, citing the reasons why additional time is required. A copy of such correspondence will be provided to the Director of Small and Disadvantaged Business Utilization, Office of the Deputy Secretary of Defense.

(f) The contracting officer must determine that contracting action must proceed without delay in order to protect the public interest. The contracting officer's statement shall be approved at a level above the contracting officer.

219.506 Withdrawing or modifying set-asides.

(b) Disagreements between the contracting officer and the Small and Disadvantaged Business Utilization Specialist will be resolved in accordance with the procedures in 219–505.

219.508 Solicitation provisions and contract clauses.

(d) When using the clause at FAR 52.219–7, the contracting officer shall insert the clause at 252.219–7003, Determining the Set-Aside Award Price.

(S–70) The contracting officer shall insert the clause at 252.219–7004, Eligibility for Preference as a Labor Surplus Concern, in solicitations and contracts for partial small business set-asides under FAR 19.502–3, for Combined Small Business—Labor Surplus Area Set-Asides under 219.502–70, and for partial set asides for Labor Surplus Area Concerns under 220.7003.

Subpart 219.6—Certificates of Competency and Determinations of Eligibility

219.602 Procedures.

219.602–1 Referral.

(a) A preaward survey shall be conducted prior to a determination by a contracting officer that a small business concern is not responsible on a proposed award. The contracting officer will refer the matter directly to the SBA, or he may notify the preaward survey activity to refer the matter to the SBA, whichever is more expeditious (e.g., where the surveying activity is nearer to the cognizant SBA office). The activity that refers the matter to the SBA shall maintain close liaison. If the activity does not hear from the cognizant SBA field office within 5 working days after referral, the activity will contact the SBA office to which the matter was referred to determine whether a Certificate of Competency (CoC) is being processed. When the PCO has requested the preaward survey activity to refer the matter to SBA, that activity shall keep the PCO advised of significant developments, including the results of any inquiry to the SBA at the end of the 5-working day period, and any new or additional facts that warrant a change in the preaward survey activity's findings.

219.602–3 Resolving differences between the agency and the Small Business Administration.

(a) Prior to final SBA action, the PCO (or the preaward survey activity when authorized to act as his representative) will be afforded an opportunity to meet or communicate with SBA field office representatives and furnish to them new or additional information on the cases. Copies of significant data developed by SBA that are pertinent to the case will be available, upon request, to the PCO or his representative at such a meeting or through correspondence. SBA case files may be examined at the meeting and pertinent notes taken by the contracting officer or his representative, but such files will not be released outside of SBA. Personnel from a contracting office or surveying activity who participated in a preaward survey of the prospective contractor or other personnel having cognizance of the survey shall be prepared to discuss with the SBA the basis for the preaward findings. Every effort should be made to resolve any differences between the SBA and the Departments through a complete exchange of preaward information developed by each agency.

(b)(2) If the contracting officer intends to appeal a proposed CoC issuance, upon receipt of initial notification from the SBA Central Office that it concurs with its Regional Office, the contracting officer shall immediately inform the Department or Agency Director or Staff Director of Small and Disadvantaged Business Utilization identified in 219.201(c)(S–71). If the Department elects to present a formal appeal to HQ SBA, a factual case shall be prepared as expeditiously as possible and processed through Departmental channels for approval at the Secretarial level prior to presenting the matter to HQ SBA. Any competent level of review within the Department or Agency may conclude that a formal appeal should not be made and that the contract should be awarded to the small business concern in question without a CoC or that a CoC should be accepted and the award made. If such action is taken, the contracting officer and HQ SBA shall be advised accordingly.

219.670 Quarterly reporting.

The Departmental Director or Staff Director of Small and Disadvantaged Business Utilization, identified in 219.201(c)(S–71), shall be informed by the contracting activity Small and Disadvantaged Business Utilization Specialist, in writing, on a quarterly basis, of all certificate of competency cases initiated during a particular quarter and of the final disposition made on cases during the quarter, including the number and dollar value of CoC's issued during the period. The information shall include company name, item being acquired, solicitation number, dollar value of the contract, and the date the case was submitted to SBA. In addition, advice and data will be furnished for all cases where (a) the small business concern elects not to file an application for a CoC; or (b) SBA declines to issue a CoC; or (c) the contracting activity reverses the preaward survey activity's negative finding concerning responsibility, withdraws the request for the CoC, and makes the award. This reporting requirement is assigned RCS DD–DR&E(Q)1152.

Subpart 219.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

219.703 Eligibility requirements for participating in the program.

(a) The SBA Size Appeals Board has final authority to determine the eligibility of a concern to be designated as a small business. The contracting

officer, in connection with small business subcontracting requirements, may question the prime contractor concerning a written representation of small business status, or the refusal to accept such written representation by either the prime contractor or a subcontractor, of a concern offering as a subcontractor on a particular acquisition. Other interested parties may also question such representation or refusal. If the matter(s) cannot be resolved, the contractor (prime or sub) is responsible for referring it for a size determination to the SBA Regional Office in which region the concern submitting the written representation has its principal office.

219.706 Responsibilities of the cognizant administrative contracting officer.

(a) *Evaluation of subcontract reports.* The ACO is responsible for reviewing, evaluating, and approving master subcontracting plans. In the evaluation of subcontract reports, the SADBU Specialist shall support the ACO in evaluating a contractor's performance and compliance with its subcontract plans. The original of the Standard Form 294, Subcontracting Report for Individual Contracts, and a copy of the Standard Form 295, Summary Subcontract Report, and reports of periodic reviews of contractor performance shall be retained by the cognizant SADBU Specialist. These reports together with other pertinent information shall be used as a basis for advising the ACO as to contractor's compliance with subcontracting plans.

219.708 Solicitation provisions and contract clauses.

(b) The contracting officer shall include the clause at 252.219-7000, Small Business and Small Disadvantaged Business Subcontracting Plan (Master Plans), in all solicitations and contracts that contain the clause at FAR 52.219-9.

Subpart 219.8—Contracting With the Small Business Administration (the 8(a) Program)

219.809 Preparing the contracts.

219.809-1 General.

(a) The negotiation authority to be cited is 10 U.S.C. 2304(a)(17).

PART 220—LABOR SURPLUS AREA CONCERNS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 220.70—Labor Surplus Area Policy and Procedures

220.7000 Scope.

As authorized by FAR 20.201-2, this subpart sets forth Department of Defense policy and procedures with respect to aiding labor surplus areas in the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands. This subpart implements Defense Manpower Policy No. 4B, 23 May 1980 (44 CFR Part 331), and the Small Business Act as amended (15 U.S.C. 631), and U.S. Department of Labor Regs (20 CFR Part 654). Defense Manpower Policy No. 4B states the policy of the Government to encourage the placing of contracts and facilities in labor surplus areas and to assist such areas in making the best use of their available resources.

220.7001 General policy.

Except as provided in 220.7005 with respect to depressed industries, it is the policy of the Department of Defense to aid Labor Surplus Areas (LSA) by placing contracts with LSA concerns, to the extent consistent with procurement objectives and when such contracts can be awarded at prices no higher than those obtainable from other concerns and by encouraging prime contractors to place subcontracts with LSA concerns. In carrying out this policy, and to accommodate the small business policies of Part 19, preference shall be given in the following order of priority to (i) LSA concerns which are also small business concerns, (ii) other LSA concerns, and (iii) small business concerns which are not LSA concerns. In no case will price differentials be paid for the purpose of carrying out this policy. Heads of contracting activities and chiefs of purchasing and contract administration offices are responsible for the effective implementation of the Labor Surplus Area Program within their respective offices. Responsibility for administration of the program shall be assigned to small business specialists appointed pursuant to Part 19.

220.7002 Application of policy.

(a) Within the policy set forth in 220.7001, the following shall be applied to contracts which are estimated to exceed $25,000:

(1) Negotiated contracts shall, where acquisition objectives permit, be awarded to labor surplus area concerns; *provided,* that in no case shall price differentials be paid for the purpose of carrying out this policy;

(2) When appropriate, acquisitions shall be made from LSA concerns by partial set-aside procedures, in accordance with 220.7003 (but no total set-aside shall be made for LSA concerns) and such set-asides shall be given preference over any small business set-aside;

(3) Each Department shall assure that information identifying LSA is disseminated promptly to contracting personnel;

(4) When less than a complete bidders list is to be used pursuant to 214.205-4, at least a *pro rata* number of prospective LSA concerns shall be solicited;

(5) Subcontracting with concerns in LSA shall be encouraged in accordance with 220.7004.

(6) See 225.103 regarding purchase from qualifying country sources where LSA set-asides are involved.

(b) Records of the total value of all contracts in excess of $25,000 placed with LSA concerns during each fiscal year, and reports based thereon, are maintained by each Department through the Department of Defense Reporting System described Subpart 204.6. Accordingly, each Department, in soliciting bids and proposals for any contract estimated to exceed $25,000 shall request from any offeror, or other source, any information needed to determine whether the offeror is a LSA concern. Contract files shall be documented to indicate the extent to which LSA concerns were considered and the action taken with respect thereto.

220.7003 Partial set-asiders for labor surplus area concerns.

(a) *General.*

(1)(i) In accordance with the policy set forth in 220.7001 and 220.7002 (see also 219.504) a portion of each acquisition shall be set aside for LSA concerns if:

(A) The acquisition is severable into two or more economic production runs or reasonable lots; and

(B) One or more LSA concerns are expected to qualify as LSA concerns and to have the capability to furnish a severable portion of the acquisition at a reasonable price, except that a partial set-aside shall not be made if there is a reasonable expectation that offers will be received from only two concerns with capability (one concern which will not qualify as a LSA concern and one concern which will qualify as a LSA concern) unless authorized by the Head of the Contracting Activity on a case-by-case basis. Before reaching this conclusion, the contracting officer shall consult with the LSA specialist and may make advance inquires to determine the number and expected classification of interested concerns.

(ii) In determining whether a proposed procurement is susceptible to division into two or more economic production runs or reasonable lots, consideration should be given to the following factors and any others deemed appropriate:

(A) Price and procurement history of the items,

(B) Open industry capacity,

(C) Startup cost including special tooling requirements,

(D) Delivery schedule, and

(E) Nature of item and quantity being procured.

Before a portion or portions, constituting more than 50% of the total requirement may be set aside, a determination must be made that there is a reasonable expectation the action proposed will not result in the payment of a price differential. The determination and supporting information will be made part of the contract file.

(iii) In furtherance of the policy to assure that a fair proportion of procurements is placed with small business concerns, each LSA set-aside shall provide that, in addition to LSA concerns, small business concerns not performing in such areas are also eligible for participation in the set-aside for such quantities thereof as are not awarded to LSA concerns. In this respect, see the provisions of 220.7003(b)(2)(i) for notice to offerors, and 220.7003(b)(2)(ii) for conduct of set-aside negotiations.

(2) None of the following is, in itself, sufficient cause for not making a set-aside:

(i) A large part of previous procurements of the item in question has been placed with LSA concerns;

(ii) The item to be purchased is on an established planning list under the Industrial Readiness Planning Program;

(iii) The item to be purchased is on a Qualified Products List;

(iv) A period of less than 30 days from the date of issuance of invitations for bids or requests for proposals is prescribed for the submission of offers;

(v) The procurement is classified; or

(vi) LSA concerns are receiving a fair proportion of contracts.

(3) Procurement of supplies which were developed and financed in whole or in part by Canadian sources under the U.S.-Canadian Defense Development Sharing Program shall not be set aside for LSA. Identification of the supplies covered by the Program will be in accordance with Departmental procedures.

(b) *Set-aside procedures.*

(1) When a portion of a procurement is to be set aside, the procurement shall be divided into a non-set-aside portion and set-aside portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practical, the set-aside portion of this Part will be such as to make the maximum use of the capacity of LSA concerns. Delivery terms and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

(2)(i) In procurements involving set-asides pursuant to this Part, each solicitation and resulting contract shall contain the clause in 252.220–7000, Notice of Labor Surplus Area Set-Asides, (except see (b)(2)(ii) below).

(ii) When experience indictes that token bidding, block bidding, tie-in bidding, or similar devices may occur, the alternate clause in 252.220–7001, Notice of Labor Surplus Area Set-Asides, may be used.

(iii) See 219.508(S–70) for use of the clause at 252.219–7004 for preference as a Labor Surplus concern.

(3)(i) After the award price for the non-set-aside portion has been determined, negotiations may be conducted for the set-aside portion. Procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non-set-aside portion. Negotiations shall be conducted in the order of priority as indicated in the clauses required by 220.7003(b)(2) (i) and (ii) above; *provided* that, when equal low offers are received on the non-set-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under the equal low bid procedure of 214.407–6 shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion shall be awarded as provided in the clause. An offeror entitled to receive the award for quantities of an item under the non-set-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the procurement. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, acceptance of voluntary refunds or the change of prices after award by negotiation of a contract modification. If the entire set-aside portion cannot be awarded by the method described herein, any unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations, FAR 15.201 or 15.210 as to negotiation. Since considerable time may have elapsed since the initiation of the requirement, contracting officers, prior to issuing a new solicitation, shall review the required delivery schedule (see FAR 12.101) to ensure that it is realistic in the light of all relevant factors including the capabilities of LSA concerns.

(ii) Offers obtained under the provisions of the set-aside clause from firms eligible for the set-aside portion of the requirement shall be in writing and shall include (A) agreement as to the established set-aside price for the available set-aside quantity, (B) agreement as to the required delivery, (C) agreement that all other terms and conditions of the original solicitation will apply to the set-aside award, and (D) agreement to inclusion of the clauses *"Examination of Records by the Comptroller General"* in FAR 52.215–1 and *"Audit Negotiation"* in FAR 52.215–2.

(iii) When the award of the non-set-aside portion has been made to a concern which is entitled to receive the set-aside portion of the solicitation, the set-aside portion may be added to the basic contract by supplemental agreement utilizing Standard Form 30. The supplemental agreement shall (A) include a reference to the contractor's letter offering on the set-aside quantity, (B) state the price and delivery schedule applicable to the set-aside quantity, and (C) include the clauses *"Examination of Records by Comptroller General"* in FAR 52.215–1 and *"Audit Negotiation"* in FAR 52.215–2 applicable to the set-aside portion only. Copies of all pertinent documents, including the signed offer, should be attached. The supplemental agreement shall be signed by the contracting officer but need not be signed by the contractor since his signature on the attached offer will be deemed sufficient.

(iv) When the award for the non-set-aside portion has been made to a firm other than the concern entitled to receive the set-aside portion of the solicitation, award of the set-aside portion will be made utilizing Standard Form 26. The offers obtained and the award utilized shall reference and include the same data indicated in paragraphs (b)(3)(ii) and (iii) above. Also, the award shall reference in Block 26 of Standard Form 26, the applicable solicitation and the contractor's written offer, and copies of the solicitation and offer shall be attached. The Standard

Form 26 shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient. For purposes of Subpart 204.6, the non-set-aside and set-aside portions shall be reported separately.

(c) *Withdrawal of set-asides.* If, prior to the award of a contract involving a labor surplus set-aside, the contracting officer considers that the set-aside is detrimental to the public interest, e.g., because of unreasonable prices, the contracting officer shall withdraw the set-aside and complete the procurement by advertising or negotiation as appropriate in accordance with existing regulations. A signed memorandum setting forth the basis of the withdrawal of any set-aside shall be made and retained.

(d) *Contract authority.* Contracts for set-aside made under this shall cite as authority 10 U.S.C. 2304(a)(1). For reporting purposes, see FAR 15.201(b)(1)(i) for contracts awarded to labor surplus area concerns and FAR 15.201(b)(1)(ii) for contracts awarded to small business concerns which are not labor surplus area concerns.

220.7004 Subcontracting with labor surplus area concerns.

(a) *General policy.*

(1) It is the policy of the Government to promote equitable opportunities for labor surplus area concerns to compete for defense subcontracts and to encourage placement of subcontracts with concerns which will perform such contracts substantially in labor surplus areas in the order of priority described in 220.7001 where this can be done, consistent with efficient performance of contracts, at prices no higher than are obtainable elsewhere.

(2) To more effectively carry out the Government's policy objectives stated in (a) above, prime contractors and subcontractors having labor surplus area subcontracting programs must be informed of (i) the Government's evaluation of their efforts in carrying out an effective labor surplus area subcontracting program, (ii) any specific noted deficiencies in their Labor Surplus Area Subcontracting Programs, and (iii) any areas of outstanding achievement where they may have exceeded contractual requirements. To motivate a contractor to improve his program, he should be advised in general terms as to the type of actions which will result in a reward, penalty, or no impact on profit or fee actions. Any evaluation and remarks to the contractor which has exceeded contractual requirements, must be documented to furnish a basis for evaluation in connection with future awards.

(b) *Labor surplus area subcontracting program.* The Government's labor surplus area subcontracting program requires Government prime contractors to assume an affirmative obligation with respect to subcontracting with labor surplus area concerns. These obligations are in addition to those required by the minority business enterprise subcontracting program and the small business subcontracting program, FAR Subpart 19.7. In contracts which range from $25,000 to $500,000, the contractor undertakes the simple obligation of using his best efforts to place his subcontracts with concerns which will perform such subcontracts substantially in labor surplus areas where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. This undertaking is set forth in the contract clause prescribed in 220.7004(c)(1). In contracts which may exceed $500,000, the contractor is required, pursuant to the clause required by 220.7004(c)(2) to undertake a number of specific responsibilities designed to ensure achievement of the objectives referred to above and to impose similar responsibilities on major subcontractors.

(c) *Required clauses.*

(1) The clause at FAR 52.220-3, Utilization of Labor Surplus Area Concerns, shall be inserted in all contracts which may exceed $25,000, except:

(i) Contracts with foreign contractors which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands;

(ii) Contracts for services which are personal in nature;

(iii) Contracts for construction; and

(iv) Contracts with the petroleum and petroleum products industry.

(2) The clause at FAR 52.220-4, Labor Surplus Area Subcontracting Program, shall be included in all contracts which may exceed $500,000, but which contain the clause required by (a) above and which, in the opinion of the purchasing activity, offer substantial subcontracting possibilities. Prime contractors who are to be awarded contracts that do not exceed $500,000, which in the opinion of the purchasing activity offer substantial subcontracting possibilities, shall be urged to accept the clause.

220.7005 Depressed industries.

(a) *General.* When an entire industry is depressed, the Director of the Federal Preparedness Agency of the General Services Administration may, under Defense Manpower Policy No. 4, establish appropriate measures on an industry-wide, rather than on an area, basis. Designations of such industries are made by the Federal Preparedness Agency and such industries will be given special treatment as specified therein.

(b) *Petroleum and petroleum products industry. (Notification No. 58).* There shall be no labor surplus area set-asides in this industry.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 222.1—Basic Labor Policies

222.101 Labor Relations.

222.101-1 General.

(S-70) Authorization shall be obtained from Departmental headquarters prior to initiating any contact on labor relation matters with a national office of any labor organization, Government department, agency or other governmental organization and shall promptly notify such headquarters of each contact by the national office of any of these organizations.

(S-71) All problems arising out of the industrial labor relations of contractors and all communications with contractors, labor organizations or Federal agencies relative thereto shall be handled in accordance with the procedures prescribed in this Section. Industrial security matters concerning contractor employees are governed by the DoD Industrial Security Regulation 5220.22R and the DoD Industrial Security Manual 5220.22M.

(S-72) Approval of the Office of the Deputy Under Secretary of Defense R&E(AM) will be obtained on major policies relating to all labor relations matters. Recommendations for plant seizure or injunctive action relating to potential or actual work stoppages and resolution of inter-service disagreements are examples of major policy actions.

(S-73) [Reserved]

(S-74) Questions involving FAR Part 22 or other contractor labor relations matters may be addressed to the appropriate departmental/agency headquarters labor advisor:

For the Army: Assistant Secretary of the Army (RDA), Attention: Labor Advisor

For the Navy: Chief of Naval Material, Attention: Contractor Labor Relations Advisor

For the Air Force: Headquarters, United States Air Force/RDC-LA, Attention: Special Assistant for Labor Affairs

For the DLA: Headquarters, Defense Logistics Agency; For all matters excepting strikes and disputes-Executive Directorate contracting, Attention: DLA–PA; For matters involving strikes and disputes-Executive Director Contract Management, Attention: DLA–AP

For the DCA: Headquarters, Defense Communications Agency, Attention: Counsel

For the DMA: Headquarters, Defense Mapping Agency, Attention: Staff Director of Logistics

For the DNA: Headquarters, Defense Nuclear Agency, Attention: Deputy Director of Operations and Administration

For the NSA: Headquarters, National Security Agency, Attention: Director of Procurement

222.101–2 Contract pricing and administration.

(S–70) Nothing in FAR 22.101–1 should be construed to relieve a contracting office from the responsibility to achieve efficient contract pricing and administration.

(S–71) Inspection personnel in the discharge of their duties, consistent with the policy of FAR 22.101–1(b), shall refrain from taking or expressing a position upon the merits of any dispute between labor and private management.

222.101–3 Reporting labor disputes.

When an interference is likely to occur, the CAO shall notify the purchasing offices, their Heads of Contracting Activities and their Departmental headquarters labor relations office (see listing at 222.101–1(S–74)). Further dissemination of labor dispute information shall be made by the CAO as requested by the Departmental headquarters labor relations offices. Labor disputes should be reported on DD Form 1507, Work Stoppage Report. An initial report should be submitted when a work stoppage due to a labor dispute is imminent or when such work stoppage occurs and thereafter when a significant changes occurs in the dispute situation. This reporting requirement is assigned RCS DD I&L (AR) 1153 (See 253.303–70–DD–1507).

222.101–4 Removal of items from contractors' facilities affected by work stoppages.

(a) It is the policy of the Department of Defense with respect to the movement of items from facilities affected by work stoppages to avoid the use of force or the appearance of force and to prevent the occurrence of incidents which will detrimentally affect relations with labor and management.

(b) Materials which the contractor is unable to deliver because of a work stoppage at the plant, and the delivery of which is urgent and critical to an important program, and may be obtained in accordance with procedures set forth below:

(1) The procuring contracting officer, upon the direction of the Departmental Headquarters Labor Relations Office, (see listing at 222.101–1(S–74)) shall furnish a written request for removal of the material to Contract Administration Office (CAO) having cognizance over the plant. The Commander of the cognizant CAO, his representative or the Headquarters Labor Relations Advisor shall attempt to work out an arrangement agreeable to both management and the labor representatives involved for shipment by normal means of urgently required material: Prior to making any removal, the Departmental Headquarters Labor Relations Office will solicit the opinion of the National Office of the Federal Mediation and Conciliation Service or other appropriate mediation agency as to the effect the movement of items would have on negotiations. The procuring contracting officer's request will include the following:

(i) A statement as to the urgency and criticality of the system, subsystem or item needed;

(ii) Description of items to be moved (Nature of item; amount, approximate weight and cubic feet, contract number, item number, etc.);

(iii) Mode of transportation by which items are to be moved if different from contract and whether by Government or commercial bill of lading; and

(iv) Destination of material if different than contract.

(2) If an arrangement in accord with (i) cannot be made, the Commander of the CAO or his representative, after obtaining approval from the Departmental Headquarters Labor Relations Office, may seek the concurrence of parties to the dispute to permit movement of the required material by military vehicles with military personnel to the extent needed. On receipt of such concurrences, he may proceed to make necessary arrangements to move the material.

(3) If satisfactory arrangements under (i) and (ii) cannot be made, the matter shall be referred to the Departmental Headquarters Labor Relations Office with the information required by 222.101–70(b). If that office is unsuccessful in obtaining the voluntary concurrences of the parties for movement of the material involved and further action to obtain the material is deemed necessary, the matter shall be referred to the DUSD, R&E(AM).

(4) Upon review and vertification that the material is urgently or critically needed and cannot be moved with the consent of the parties, the DUSD, R&E(AM) may request the Secretary of the Department to order removal of the material from the plant or plants involved.

222.101–70 Impact of labor disputes on defense programs.

(a) Each Department shall determine the degree of impact of potential or actual labor disputes on its own programs and requirements, considering among others the following factors:

(1) Whether the dispute involves a product, project (including construction) or service which must be obtained in order to meet schedules of urgently needed military programs or requirements; or

(2) Whether alternative sources of supply for the product, project, or service involved are reasonably available to fulfill the requirement or program in time to maintain essential military schedules.

(b) Within each department, the contracting activity involved shall obtain and develop data reflecting the impact of a dispute on requirements and programs. Upon determining the impact, the Head of the Contracting Activity shall submit through appropriate channels a report of his findings, together with recommendations, to the headquarters labor relations office originally notified pursuant to FAR 22.101–3. Such report shall be in narrative form and shall include the following information:

(1) Location of dispute and name of contractor or subcontractor involved;

(2) A statement indicating the degree of impact, relating specific items or construction involved to the programs or requirements affected;

(3) Identity of alternate sources available to furnish supply or service within the time required; and

(4) A description of any action taken to reduce impact.

(c) Reports of impact shall be made to the Office of the Deputy Under Secretary of Defense, R&E(AM).

(1) Upon specific request; or

(2) When considered by the Department to be of sufficient urgency to warrant the attention of the Deputy Under Secretary.

(d) Report submitted in accordance with (c) above shall be developed by the headquarters labor relations office concerned and shall cover the following areas of fact, as appropriate:

(1) *Description of military program, project, or service*—Identify item, project, or service which will be or is being affected by the work stoppage, describing its normal use and current functions in combat, combat support, or deterrent operations. For components or raw materials identify the end item(s) for which used.

(2) *Requirements and assets*—State requirements and assets in appropriate detail in terms commonly used by the DoD component.

(i) For *production programs* include requirements for each using military service. Where applicable, state in detail production schedules, inventory objectives, assets against these objectives, and critical shortages. For spares and highly expendable items, such as ground and air ammunition, show usage (consumption) rates and assets in absolute terms and in terms of daily, weekly, or monthly supplies. For components, include requirements for spares.

(ii) For *projects*, describe the potential adverse effects of a delay in meeting schedules and explain how a security disadvantage would result from such a delay. Attention should be given to feature any relative loss in balance of strength vis-a-vis potential enemies' capabilities.

(iii) For *services*, describe how a loss or interruption affects ability to support defense operations in terms of traffic requirements, assets, testing programs, etc.

(3) *Possible measures to minimize strike impact*—Describe:

(i) Capabilities, if any, to substitute items or to use alternate sources. (Note how many other facilities are available and the relative capabilities of such facilities in meeting total requirements.);

(ii) How much time would be required to replace the loss of the facilities or service affected by a work stoppage; and

(iii) Feasibility of transfer of assets from theater to theater to relieve deficits in some areas of urgency.

(4) *Conclusion: Impact on operations of a 15–30, of a 30–60, and of a 60–90 day work stoppage*—Degree of criticality of a program, project, or service resulting from a work stoppage will be projected on a calendar basis, indicating the increased impact, if any, as the stoppage lengthens. Criticality is measured by the time required for the work stoppage to have an effect on operational capability. This time must be stated in terms of days.

222.101–71 Procurement of stevedoring services during labor disputes.

When stevedoring services are furnished by a contractor to a Department, and the performance under the contract, although urgently required, is delayed through a labor dispute, the following procedures shall be utilized in the order or priority listed. Each successive procedure shall be used only when the preceding steps are inadequate.

(a) An attempt shall be made to have management and labor voluntarily agree to exempt military supplies from the labor dispute by continuing the movement of such material.

(b) Vessels shall be diverted to alternate ports able to provide necessary stevedoring services.

(c) Consideration shall be given to contracting with reliable alternative sources of supply within the stevedoring industry.

(d) Civil Service stevedores shall be utilized to perform the work therefore performed by contract stevedores.

(e) Military personnel shall be utilized to handle the cargo which was being handled by contract stevedores prior to the labor dispute.

(f) When the exigencies of a situation require deviation format the procedures outlined above, the Departmental headquarters labor advisor (see listing at 222.101–1(S–74)) shall be promptly notified.

222.102 Federal and state labor requirements.

222.102–70 Applications by contractors for relaxation of requirements.

(a) Departments shall not initiate applications of any kind for suspension or relaxation of labor requirements without prior coordination of the departmental headquarter labor advisor (see listing at 222.101–1(S–74)). They may, however, support such applications by contractors or suppliers when all of the following circumstances and conditions have been met:

(1) The interested contractor or supplier has filed his application for relaxation of the laws, orders or regulations involved with the appropriate Governmental official charged with the enforcement of such labor requirements applicable to the contract involved;

(2) The required products or services are in short supply and unless the application is granted, production schedules for critically needed military material cannot be met;

(3) There is no alternative source of supply reasonably available to furnish the products or services within the period of time delivery is required;

(4) There is no practicable possibility of taking remedial action (such as recruiting, training, and more effective utilization of manpower) as an alternative to relaxation of applicable Governmental labor requirements;

(5) The apparent supply of labor, and in particular of critical skills, is limited, and it is not practicable to set up new production lines or to use additional facilities as an alternative to the relief requested; and

(6) The granting of the application will not result in an excessive increase in hours or work, an unreasonable curtailment of rest and lunch periods, an undesireable impairment of working conditions, or otherwise adversely affect the productivity of the facility involved.

(b) Requests for authority to support an application on behalf of a contractor or supplier shall be submitted to the Departmental headquarters labor advisor (see listing at 222.101–1(S–74)). Such requests shall contain the following information:

(1) The facilities and services involved and affected;

(2) Provision(s) of law which require relaxation;

(3) Criticality or relative scarcity of the material;

(4) Circumstances necessitating the relaxation (for example, a shortage in the local supply of skilled labor);

(5) Remedial action being taken by the manufacturer (e.g., training, recruiting, more effective utilization of manpower);

(6) The most limited relaxation of the requirement necessary for completion of the specific work; and

(7) The approximate period of time required for completion of the work.

(c) Consistent with the limitations of security and the foregoing requirements, contract information may be furnished to the appropriate Governmental official, upon his request, in connection with an application of a contractor or supplier for relaxation of a labor requirement as to the execution of a contract in pursuance of a military procurement program.

222.103 Overtime.

222.103–4 Approvals.

The Deputy Assistant Secretary (Acquisition), Office of the Assistant Secretary of the Army (Research Development and Acquisition), for the Army; the Deputy Chief of Naval Material (Contracts and Business Management), for the Navy; the Director of Contracting and Manufacturing Policy, Headquarters, USAF, for the Air

Force; the Executive Director for Contracting, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; the Assistant to the Director for Administration, for the Defense Communications Agency; the Chief, Office of Procurement, for the Defense Nuclear Agency; and the Staff Director of Logistics, of the Defense Mapping Agency; are authorized, without power of delegation, to designate without power of redesignation, offices and civilian officials for the purpose of approving overtime premiums at Government expense. Such approval may be for an individual contract, project, or program, or for a plant, divisions, or company, as most practicable, and shall ordinarily be prospective, but may be retroactive when justified by the circumstances. When two or more purchasing offices have current contract at a single facility, and the approval of overtime by one purchasing office will affect the performance or cost of contracts of another, the approving official will obtain the concurrence of other appropriate approving officials and seek agreement as to the contracts under which overtime premiums will be approved. If the approving officials do not agree within a reasonable time as to the action to be taken, a decision shall be obtained through normal channels. Ordinarily, in the absence of evidence to the contrary, a purchasing office may relay on the contractor's statement that such approval will not affect the performance, or payments in connection with any contract of another purchasing office.

Subpart 222.4—Labor Standards for Contracts Involving Construction

This Subpart has been reserved pending development of appropriate coverage in FAR Subpart 22.4 to reflect recent changes in Department of Labor Regulations. Coverage on this subject matter will be provided prior to the FAR effective date.

Subpart 222.6—Walsh-Healey Public Contracts Act

222.604 Exemptions.

222.604-4 Regulatory exemptions.

(c) In addition to the requirements contained in FAR 2.604-2(c) regarding head of agency requests to the Secretary of Labor for exemption of contracts or classes of contracts from any or all stipulations of the Walsh-Healey Public Contracts Act, all applications for such exemptions shall (1) contain pertinent data (including a statement of justification) and recommendation and (2) be submitted through contract channels to the departmental headquarters labor relations advisor (see listing at 222.101-1(S-74)).

222.609 Regional Jurisdictions of the Department of Labor, Wage and Hour Division.

In contrast to FAR 22.609, the regional office locations set forth below contain both street addresses and telephone numbers.

(a) *Boston Region*—For the States of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, and Connecticut: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 1612C, John F. Kennedy Federal Building, Government Center, Boston, MA 02203 (telephone: 617-223-2035).

(b) *New York Region*—For the States of New York and New Jersey and for Puerto Rico and the Virgin Islands: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, 1515 Broadway, New York, NY 10036 (telephone: 212-971-5451).

(c) *Philadelphia*—For the States of Pennsylvania, Maryland, Delaware, Virginia, West Virginia, and the District of Columbia: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 704C, 1317 Filbert Street, Philadelphia, PA 19107 (telephone: 215-597-9633).

(d) *Atlanta Region*—For the States of Florida, Georgia, North Carolina, South Carolina, Tennessee, Alabama, Kentucky, and Mississippi: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 331, 1371 Peachtree Street, NE, Atlanta, GA 30309 (telephone: 404-526-5801).

(e) *Chicago Region*—For the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Regional Administrator, Employment Standards Administration, U.S. Department of Labor U.S. Courthouse and Federal Office Building, Room 742, 219 South Dearborn Street, Chicago, IL 60604 (telephone: 312-353-7280).

(f) *Dallas Region*—For the States of Texas, New Mexico, Oklahoma, Arkansas, and Louisiana: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 13F12, 1100 Commerce Street, Dallas, TX 75202 (telephone: 214-749-2037).

(g) *Kansas City Region*—For the States of Missouri, Kansas, Nebraska, and Iowa: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 2000, Federal Office Building, 911 Walnut Street, Kansas City, MO 64102 (telephone: 816-374-5384).

(h) *Denver Region*—For the States of Colorado, North Dakota, South Dakota, Utah, Wyoming, and Montana: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, Room 246, 232 New Customshouse, 721 19th Street, Denver, CO 80202 (telephone: 303-837-4613.

(i) *San Francisco Region*—For the States of California, Nevada, Arizona, and Hawaii, and for Guam, and various Pacific Islands: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, 450 Golden Gate Avenue, Room 10431, San Francisco, CA 94102 (telephone: 415-556-1318).

(j) *Seattle Region*—For the States of Washington, Oregon, Idaho, and Alaska: Regional Administrator, Employment Standards Administration, U.S. Department of Labor, 2008 Smith Tower, 506 Second Avenue, Seattle, WA 98104 (telephone: 206-442-1536).

Subpart 222.8—Equal Employment Opportunity

222.804 Affirmative action programs.

222.804-2 Construction.

(b) Requests for instructions shall be forwarded through contracting channels to: Labor Advisor, OASA(RDA), for the Army; the cognizant field office of the Naval Facilities Engineering Command, for the Navy; Director of Contracting and Manufacturing Policy, Headquarters USAF, for the Air Force; Executive Director for Contracting, for the Defense Logistics Agency; Director of Procurement, for the National Security Agency; the Counsel, for the Defense Communications Agency; Director, Acquisition Management, for the Defense Nuclear Agency; Staff Director of Logistics, for the Defense Mapping Agency and the Assistant Director for Administrative Services for the Defense Civil Preparedness Agency.

222.805 Procedures.

(a)(2) A listing of Department of Labor regional offices can be found at 222.609 (in using the listing, replace "Wage and Hour Division" with "Office of Federal Compliance Programs").

222.806 Inquiries.

(b) Matters requiring the attention of OFCCP, Washington, D.C. Headquarters shall be forwarded to the departmental labor advisor (see listing at 222.101-1(S-74)) for referral to the Director, OFCCP.

222.807 Exemptions.

(c) The contracting officer's justification for exemption, shall be submitted through appropriate contracting channels to the departmental labor advisor (see listing at 222.101(S–74)) for departmental coordination and submission, if favorably endorsed, to the Deputy Under Secretary of Defense for Research and Engineering (Acquisition Management) (DUSD, R&E(AM)). If the request is submitted under FAR 222.807(a)(1), the DUSD, R&E(AM) shall forward it to the Secretary of Defense for granting of the exemption, and if the exemption is granted, shall notify the Director, OFCCP within 30 days of such action. If the request is submitted under FAR 22.807(a)(2) or FAR 22.807(b)(5), the DUSD, R&E(AM) shall forward it to the Director, OFCCP.

Subpart 222.10—Service Contract Act of 1965

222.1003 Applicability.

(e) *Requests for determinations and exemptions.*

(1) The contracting officer shall direct requests for determination of applicability of the Act or determination of the applicability or appropriateness of Department of Labor Wage determinations of the departmental labor advisor (see listing at 222.101–1(S–74)).

(2) The contracting officer shall submit in writing requests for exemption from the Act through contracting channels, as appropriate, to the departmental labor advisor (see 222.101–1(S–74)). The labor advisor shall effect necessary departmental coordination and submit the request, if endorsed, to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

222.1006 Clauses for contracts over $2,500.

(S–70) *Potential application clause.* The contracting officer shall insert the clause at 252.222–7000, Potential Application of the Service Contract Act, As Amended (Fixed Price), (SEP 1979) in solicitations and contracts for overhaul and modification of equipment, which are considered by the contracting office to be subject to the Walsh-Healey Public Contracts Act rather than the Service Contract Act, as amended. In paragraph (c) of the clause, "60 days" may be substituted for "30 days".

(S–71) *Minimum wages and fringe benefits.* The contracting officer shall insert the clause at 252.222–7001, Service Contract Act (SCA) Minimum Wages and Fringe Benefits, in solicitations and contracts when-

(1) The Clause at FAR 52.222–41 applies;

(2) The contract resulting from the solicitation succeeds an ongoing contract for substantially the same services;

(3) The incumbent contractor has negotiated or is negotiating a CBA with some or all of its service employes; an

(4) All applicable Department of Labor wage determinations have been requested but not received.

222.1007 Notice of intent to make a service contract.

(e) Requests, other than routine requests to check the status of the submitted Notice of Intention to Make a Service Contract and Response to Notice (SF–98/98(a)), to the Department of Labor, Washington, D.C. headquarters is not authorized other-than-routine requests shall be made through the departmental labor advisor (see listing at 222.101–1(S–74)) who, if the request is justified, shall contact cognizant Department of Labor headquarters officials regarding the request.

(S–70)(1) If the SCA wage determination requested in accordance with FAR 22.1007(a) is not received in time for inclusion in the solicitation, and absent an incumbent contractor union agreement, the contracting officer should proceed using the latest wage determination included in the existing contract, if any. If a new wage determination is subsequently received 10 or more days prior to the opening of bids or the date established for the initial receipt of proposals, the solicitation must be amended accordingly. However, if a new wage determination is received less than 10 days before the opening of bids or the date established for the initial receipt of proposals, it shall be included in the solicitation only when there is a reasonable time to notify offerors thereof.

(2) In those cases involving an incumbent contractor operating under a collective bargaining agreement, the wage determination in the incumbent's contract shall not be included in any solicitation that must be released without a new SCA wage determination. Instead, using the solicitation provisions as prescribed at 222.1006(S–71), offerors shall be informed that—

(i) The economic terms of such agreement(s) will apply to the contract and should be considered in developing an offer; however,

(ii) Pursuant to Department of Labor Regulations at 29 CFR 4.1c, and subject to the conditions set forth in FAR 22.1007(f) and 222.1008–1, the economic terms of any agreement entered into subsequent to this solicitation might apply to the contract.

(3) The contracting officer shall notify, in writing, the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, of each case when compelled to proceed without a new wage determination due to a delayed response from the Department of Labor. An information copy of each such notice shall be forwarded to the appropriate departmental labor advisor (see 222.101–1(S–74)).

222.1008 Wage determinations and collective bargaining agreements.

222.1008–1 Before award.

(a) Solicitations and contracts for more than $2,500 shall contain an attachment (wage determination or appropriate revisions thereto) issue by the Administrator in response to the notice required under FAR 22.1007(a), setting forth the minimum wages and fringe benefits for service employees to be employed thereunder. However, wage determinations and revisions thereto shall *not* apply:

(1) Where no collective bargaining agreement exists and wage determinations or revisions are received less than 10 days before the opening of bids or date established for the initial receipt of proposals, unless the contracting officer finds that there is a reasonable time to notify bidders or offerors thereof;

(2) Where a collective bargaining agreement does exist and (i) the contracting agency has received notice of the existence thereof less than 10 days before bid opening or commencement of performance of a negotiated contract, option, or contract extension, *and* (ii) the contracting officer determines that there is not reasonable time to incorporate a new wage determination in the solicitation, *and* (iii) the notices required by FAR 22.1007(a) and (f) have been given.

222.1009 Notice of award.

Two copies of SF 99 shall be prepared for contracts of $2,500 or more but less than $25,000 containing the clause in FAR 52.222–41; for the initial order (if less than $25,000) under an indefinite-type contract or basic ordering agreement containing the clause in FAR 52.222–41; and for the initial purchase (if less than $25,000) under a blanket purchase agreement containing the clause in FAR 52.222–41. The address for

the Department of Labor office cited is Washington, D.C. 20210.

(S–70) *Individual Procurement Action Report (DD Form 350).* The contracting officer shall not report to the Department of Labor awards of service contracts of $25,000 or more containing the clause in FAR 52.222–41 and initial orders/calls of $25,000 or more under indefinite delivery-type contracts, basic ordering agreements, and blanket purchase agreements containing the clause in FAR 52.222–41. SF 99 information pertinent to such contracts and agreements is contained in DD Form 350 Data Input which is accessible to the Department of Labor via the Federal Procurement Data System.

222.1011 Hearings.

(a) The contracting officer shall submit a request for a hearing to the departmental labor advisor (see listing at 222.101–1(S–74)) who shall effect necessary departmental coordination and forward the request, if endorsed, to the Department of Labor.

222.1012 Withholding of contract payments.

Generally, sums withheld shall be forwarded immediately to the Department of Labor for payment to employees unless otherwise directed by the Department of Labor.

Subpart 222.13—Special Disabled and Vietnam Era Veterans

222.1303 Waivers.

(c) The contracting officer shall submit a request for waiver under FAR 22.1303(a) and (b) via appropriate procurement channels to the departmental or agency headquarters contractor labor relations advisor (see 222.101–1(S–74)) for listing of advisors). If the waiver request is justified, the advisor shall endorse the request and forward it to the ODUSD, R&E(AM) (CP) for waiver by the Secretary of Defense. Only the Secretary of Defense may make waivers under FAR 22.1303.

222.1306 Complaint procedures.

Each complaint received shall be forwarded by the contracting officer as indicated in FAR 22.1306. Also, the contracting officer shall notify the complainant of such referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

Subpart 222.14—Employment of the Handicapped

222.1403 Waivers.

(c) The contracting officer shall submit a request for waiver under FAR 22.1403 (a) and (b) via appropriate procurement channels to the departmental or agency headquarters contractor labor relations advisor (see 222.101–1(S–74) for listing of advisors). If the waiver request is justified, the advisor shall endorse the request and forward it to the ODUSD, R&E(AM) (CP) for waiver by the Secretary of Defense. Only the Secretary of Defense may make waiver under FAR 222.1403.

222.1404 Department of Labor notices.

To assist the contracting officer in obtaining appropriate notices to be furnished the contractor, a listing of Department of Labor regional offices is located at 222.609 (for this purpose, replace "Wage and Hour Division" with "Office of Federal Contract Compliance Programs").

222.1406 Complaint procedures.

Each complaint received shall be forwarded by the contracting officer as indicated in FAR 12.1406 (see 222.609 for listing of Department of Labor regional/area offices). Also, the contracting officer shall notify the complainant of such referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

Subpart 222.70—Safety and Health Regulations for Shipyard and Related Employment

222.7001 Safety and health regulations.

The Secretary of Labor has promulgated safety and health regulations for shipyard and related employment pursuant to the authority of Pub. L. 85–742, 72 Stat. 835 (approved August 23, 1958) amending section 41 of the Longshoremen's and Harbor Worker's Compensation Act (33 U.S.C. 941). These regulations are set forth in Title 29, Code of Federal Regulations, Subtitle B, Part 1915.

222.7002 Applicability.

These regulations apply to ship repair and shipbuilding or related work, as defined therein, performed within the Federal maritime jurisdiction on the navigable waters of the United States, including any dry dock or marine railway.

222.7003 Contract clause.

The Master Agreement for Repair and Alteration of Vessels includes a clause entitled "U.S. Department of Labor Safety and Health Regulations for Ship Repairing" directing the attention of the contractor to the applicability of these regulations. Similar clauses should be included in shipbuilding and ship conversion contracts.

222.7004 Administration and enforcement.

The responsibility for compliance with the U.S. Department of Labor Regulations is placed upon employers, any of whose employees are engaged in any ship repair, shipbuilding, or related employment aboard any vessel upon the navigable waters of the United States, including any dry dock or marine railway. Consequently, prime contractors or subcontractors or both may be responsible for compliance with these regulations. Insofar as the Government is concerned, the responsibility for the administration and enforcement of these regulations is with the U.S. Department of Labor. Contractors or employees who inquire concerning applicability or interpretation of the foregoing regulations shall be advised that rulings concerning such matters fall within the jurisdiction of the U.S. Department of Labor and shall be given the address of the appropriate field office of the Bureau of Labor Standards of the U.S. Department of Labor.

Subpart 222.71—Fair Labor Standards Act of 1938

222.7101 Basic statute.

The Fair Labor Standards Act of 1938 (Act of June 30, 1938; 29 U.S.C. 201–219), as amended, provides for the establishment of minimum wage and maximum hour standards, creates a Wage and Hour Division in the Department of Labor for purposes of interpretation and enforcement (including investigations and inspections of Government contractors), and prohibits oppressive child labor. Said Act applies to all employees, unless otherwise exempted, who are engaged in (a) interstate commerce or (b) any closely related process or occupation essential to such production.

222.7102 Suits against government contractors.

Payments made pursuant to the provisions of the Fair Labor Standards Act are usually reimbursable under cost or cost-plus-a-fixed-fee contracts. Consequently, each Department has a direct interest in claims and suits under said Act which are made or brought in connection with such contracts. In this connection, procedures have been established, by agreement between the

Department of Justice on the one hand and the Departments on the other hand, governing the defense of such Fair Labor Standards Act suits. These procedures in general contemplate the defense of Fair Labor Standards Act suits by private counsel employed by the contractor, the employment of whom is approved by the Department concerned. These procedures must be followed if contractors are to be reimbursed for the amount of any judgment under said Act, or for any litigation expenses (including the reasonable fees of such private counsel).

222.7103 Rulings on applicability or interpretation.

Contractors or contractor employees who inquire concerning applicability or interpretation of the Fair Labor Standards Act shall be advised that rulings concerning such matters fall within the jurisdiction of the Department of Labor and shall be given the address of the appropriate Regional Director of the Wage and Hour and Public Contracts Divisions of the Department of Labor.

Part 223—Environmental, Conservation and Occupational Safety [No DoD FAR Supplement]

PART 224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 224.1—Protection of Individual Privacy

224.102 General.

(a)(1) The Act applies to systems of records on individuals when, for example:

(i) Determinations on benefits are made by Federal agencies;

(ii) Records are maintained for administrative functions of the Federal agency such as personnel, payroll, etc.; or

(iii) Health records are maintained by an outside contractor engaged to provide health services to agency personnel.

(2) The Act does not apply to systems of records on individuals when:

(i) Records are maintained by the contractor on individuals whom the contractor employs in the process of providing goods and services to the Federal Government;

(ii) An agency contracts with a state or private educational organization to provide training, and the records generated on contract students pursuant to their attendance (admission forms, grade reports) are similar to those maintained on other students and are commingled with their records on other students.

224.103 Procedures.

(b)(2) Implementation of the requirements of the Privacy Act is located in DoD Directive 5400.11 (see Appendix P).

Subpart 224.2—Freedom of Information Act

224.202 Policy.

Implementation of the requirements of the Freedom of Information Act is located in DoD Directive 5400.7 and DoD Regulation 5400.7–R (see Appendix L).

PART 25—FOREIGN ACQUISITION

Coverage on Part 25: Subject Matter will be provided prior to the FAR effective date.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 27—PATENTS, DATA, AND COPYRIGHTS

Patents, Data, and Copyrights has been reserved pending final development of FAR Part 227. Coverage on Part 227 subject matter will be provided prior to the FAR effective date.

PART 228—BONDS AND INSURANCE

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

228.001 Definitions.

"Fidelity bond" means a bond which secures an employer up to an amount stated in the bond for losses caused by dishonesty on the part of an employee. A blanket fidelity bond covers all employees, except those expressly excluded by written endorsement on the bond.

"Forgery bond or policy" (Depositors Form) means a bond or policy which secures the person or persons named therein up to the amount stated for losses caused by the forging or altering of a check, draft, or similar instrument issued by or purporting to have been issued by any of the insureds, and for losses resulting from a check or draft having been obtained from the insureds through impersonation.

"Purchased insurance" means insurance purchased from insurers independent of and external to the contractor.

"Self-insurance" means the assumption or retention of the risk of loss, whether voluntarily or involuntarily, by the contractor. Self-insurance includes the deductible portion of purchased insurance. Insurance provided by captive insurers; i.e., insurers owned by or under the control of the contractor, is self-insurance except that if the captive insurer sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive forces, then the insurance will be considered purchased insurance. This definition applies only to contracts subject to the provisions of the Cost Accounting Standard (CAS) 416 or to contracts not subject to the provisions of CAS 416 when the contractor elects to establish a program of self-insurance (FAR 31.205–19(a)). Self-insurance is not recognized on contracts not subject to the provisions of CAS 416 unless the contractor makes such an election.

Subpart 228.1—Bonds

228.102 Performance and payment bonds for construction contracts.

228.102–1 General

(a) The requirement of a performance and payment bond has been waived for all cost-reimbursement type construction contracts. In unusual circumstances, either or both bonds may be required of a prime contractor, subject to approval by the Chief of the Contracting Office. Contracting officers shall, however, require a cost-reimbursement type prime contractor to obtain a payment bond from his subcontractor in favor of the prime contractor, in an amount sufficient to assure payment of suppliers of labor and materials for any fixed-priced construction subcontract exceeding $25,000. In such a case, a performance bond in an equal amount should also be obtained if available at no additional cost.

228.103 Performance and payment bonds for other than construction contracts.

228.103–1 General.

Subcontract bonds shall not be executed on Standard Forms 25 and 25–A, or on DD Form 1673. The forms set forth in FAR 53.228 are authorized and may be adapted to fit specific cases.

228.103–2 Performance bonds.

(a)(1) Subject to the general policy stated in FAR 28.103–2, determinations that performance bonds will be required in specified classes of cases (e.g., for particular types of supplies or services) may be made (i) for the Army, by the Director and Deputy Director of Procurement and Production, US Army

Materiel and Development Command, and by all Heads of Contracting Activities not subordinate to that command; (ii) for the Navy, by the Chief of Naval Material; (iii) for the Air Force, by the Director of Contracting and Manufacturing Policy, DCS/RD&A; (iv) for the Defense Logistics Agency, by the Executive Director, Contracting; (v) for the National Security Agency, by the Director of Procurement; (vi) for the Defense Nuclear Agency, by the Director; (vii) for the Defense Communications Agency, by the Chief, Contract Management Division (Code 260); and for the Defense Mapping Agency, by the Staff Director of Logistics. A copy of each such determination covering a class of cases shall be forwarded to the Office of Under Secretary of Defense (Research and Engineering) for information.

(a)(4) The contracting officer shall insert the provision at 252.228–7004, Bonds or Other Security, as well as the clause at FAR 252.228–1, Bid Guarantee, in solicitations for dismantling, demolition, or removal of improvements in accordance with 237.302.

228.105 Other types of bonds.

228.105–70 Fidelity and forgery bonds.

Fidelity and forgery bonds are not generally required in any procurement. However, in connection with cost-reimbursement contracts for supplies, construction, or for operation of government-owned plants, such bonds may be required when necessary for the protection of the Government or the contractor, or when it is considered desirable to obtain the investigative and claims services of a surety company. Approval for requiring these bonds shall be obtained, (a) for the Army, by the Head of a Contracting Activity; (b) for the Navy, by the Chief of Naval Material (MAT 0242); (c) for the Air Force, by the Air Force Logistics Command (PMC); (d) for the Defense Logistics Agency, by the Head of a Contracting Activity; (e) for the National Security Agency, by the Director of Procurement; (f) for the Defense Communications Agency, by the Chief, Contract Management Division (Code 260); (g) for the Defense Nuclear Agency, by the Director, and (h) for the Defense Mapping Agency, by the Staff Director of Logistics.

228.106 Administration.

228.106–2 Substitution of surety bonds.

A new surety bond may be substituted when approved, (a) for the Army, by The Judge Advocate General; (b) for the Navy, by the Chief of Naval Material; (c) for the Air Force, by the Air Force Logistics Command; (d) for the Defense Logistics Agency, by the Head of a Contracting Activity; (e) for the National Security Agency, by the Director of Procurement; (f) for the Defense Communications Agency, by the Chief, Contract Management Division (Code 260); (g) for the Defense Nuclear Agency, by the Director; and (h) for the Defense Mapping Agency, by the Staff Director of Logistics. When so approved and authorized by Departments other than the Air Force, the principal and surety of the original bond will be notified that the original bond will not be considered as security for any default occurring after the date of acceptance of the new bond. When approved by the Air Force, authority to relieve an original surety of liability for default occurring subsequent to the date of approval of a substitute bond will be obtained from the Commander, Air Force Logistics Command, prior to giving such notification.

228.106–70 Review of bonds and notification of surety.

All bonds will be reviewed by the contracting officer to ascertain that the bond is in the penal sum required and, when appropriate, properly describes the contract. Additional review, approval, and distribution of bonds and consents of surety will be accomplished by each military department. When a contractor is performing his contract in such a manner as to lead to default, timely notification to the surety may result in action by the surety that will avoid a default. Therefore, on all such contracts, the surety shall be promptly notified of any failure by the contractor to perform (see FAR 49.402–4(a)).

Subpart 228.3—Insurance

228.304 Risk-pooling arrangements.

The following describes the Department of Defense Special Casualty Insurance Rating Plan, the National Defense Projects Rating Plan.

(a) *Special casualty insurance rating plan.* The National Defense Projects Rating Plan is available for application on both domestic and foreign contracts, which meet the eligibility requirements set forth herein. This plan provides a special rating formula for the purchase of the casualty insurance coverages listed in FAR 28.307–2 (a) through (c), and is mandatory as to contracts which meet the use and eligibility standards in (c) below. Construction subcontractors whose contracts provide that the prime contractor shall furnish insurance, and whose operations are at the project site, shall be included automatically in the prime contractor's rating plan policies for similar coverage. Construction subcontractors whose operations are away from the project site shall be included in the prime contractor's rating plan.

(b) This plan is effected by endorsements attached to standard insurance policy forms for workmen's compensation, employer's liability, general liability, and automobile liability. The rating plan provides for a fixed deposit premium, for a reduced rate of current premium payments, for yearly adjustments of the premium depending upon loss experience during the period, and for final adjustment of the premium based upon the experience of the entire period covered by the policies. The final adjustment may be deferred for a maximum of 68 months after expiration of the policies. The total adjusted premium is the sum of the following:

(1) A fixed charge which is a percentage of the standard premium and is to compensate the insurance company for general expenses other than those referred to hereafter;

(2) Modified losses, which are the losses paid or incurred, multiplied by a conversion factor of 201.12 to compensate the insurance company for claim department expense;

(3) Allocated claims expenses, which are expenses for claims services not of the type ordinarily rendered by the insurer's claim department, such as actual expenditures for attorney's fees and other trial or hearing expenses in connection with litigated cases;

(4) Special assessments imposed by the applicable jurisdiction for purposes such as second injury funds, rehabilitation funds, maintenance of workmen's compensation commissions, etc.; and

(5) Actual premium taxes.

Each of the above adjustments are subject to review by authorized representatives of the Department concerned, and the total adjusted premium derived therefrom, cannot exceed a maximum premium which is a percentage of the standard premium developed by use of manual rates issued or approved by the appropriate rating organization. In general, the plan is a variation of commercially available insurance rating plans, but has been specifically developed to meet the requirements of the Departments.

(c) The rating plan shall be applied to all eligible defense projects where such application is determined by the Heads of Contracting Activities, for the Department of the Army; the Chief of Naval Material, Attn: Contract Insurance Branch, for the Department of the Navy; Air Force Systems Command,

administrative contracting officers, for the Department of the Air Force; the Deputy Director, Contract Administration Services, Attn: DLA–AF, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; the Director, for the Defense Communications Agency; the Chief, Office of Procurement, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency; to be in the best interest of the Government. The rating plan may be applied to cost-reimbursement type contracts and also, in appropriate cases, to fixed-price contracts with price redetermination provisions. A defense project is eligible for application of a plan when (i) eligible Government contracts represent, at inception of the plan, at least 90 percent of the payroll for total operations at the specific locations of the project; and (ii) the annual premium for insurance is estimated to be at least $10,000. A defense project may include contracts awarded by more than one Department to the same contractor.

(d) The following agreement shall be used for accomplishing the assignment to the Government of the interest in return premiums, premium refund, etc., on insurance policies issued under the National Defense Projects Rating Plan, upon termination or completion of the contract, when the Government has assumed the payment of the contractor's obligation for futher premium payment under such policies:

Special Casualty Insurance Rating Plan Assignment-Assumption of Premium Obligations

It is agreed that 100 percent* of the return premiums and premium refunds (and dividends) due or to become due the prime contractor under the policies to which the National Defense Projects Rating Plan Endorsement made a part of policy _____ applies are hereby assigned to and shall be paid to the United States of America, and the prime contractor directs the Company to make such payments to the office designated for contract administration acting for and on account of the United States of America.

The United States of America hereby assumes and agrees to fulfill all present and future obligations of the prime contractor with respect to the payment of 100 percent* of the premiums under said policies.

* In the event the Government has less than a 100% interest in premium refunds or dividends, the assignment shall be appropriately modified to reflect the percentage of interest and of the extent of the Government's assumption of additional premium obligation.

This agreement, upon acceptance by the prime contractor, the United States of America and the Company shall be effective from _____

Accepted _____ (Date)

_____

(Name of Insurance Company)

By _____

(Title of Official Signing)

Accepted _____ (Date)

United States of America

By _____

(Authorized Representative)

Accepted _____ (Date)

_____

(Prime Contractor)

By _____

(Authorized Representative)

(e) Since the Federal Tort Claims Act provides protection for employees of the Government while driving government-owned vehicles within the scope of their employment, the National Defense Projects Rating Plan shall exclude coverage for such employees. The following endorsement shall be attached to automobile liability coverage provided under the plan:

It is agreed that such insurance as is afforded by the policy with respect to the ownership, maintenance or use of automobiles, including loading and unloading thereof, does not apply to the following as insureds: The United States of America, any of its agencies, or any of its officers or employees.

228.305 Overseas workers' compensation and war hazard insurance.

(d) Requests for waivers shall be submitted through channels (1) for the Army, to the Labor Advisor, Office of the Assistant Secretary of the Army (RDA); (2) for the Navy, to the Chief of Naval Material; (3) for the Air Force, to the Directorate of Contracting and Manufacturing Policy, Headquarters USAF: (4) for the Defense Logistics Agency, to the Deputy Director, Contract Administration Services, Attn: DCAS–AF; (5) for the Defense Communications Agency, to the Chief, Contract Management Division; (6) for the Defense Nuclear Agency, to the Chief, Office of Procurement; and (7) for the Defense Mapping Agency, to the Staff Director of Logistics. The request for waiver shall include the following:

(i) Name of contractor;

(ii) Business mailing address of contractor;

(iii) Contract number;

(iv) Date of award;

(v) Geographic location where the contract will be performed;

(vi) Name of insurance company providing the Defense Base Act coverage;

(vii) Nationality of employees to whom waiver is to apply; and

(viii) Reason for waiver.

(e)(1) If the Defense Base Act has been waived with respect to some or all of the contractor's employees, the benefits of the War Hazards Compensation Act will also have been waived as to such employees. In case of such waivers, the contractor shall provide protection against the risk of work injury or death (workmen's compensation type coverage) for the benefit of such waived employees. Insurance for this purpose as in any other case should be obtained at competitive rates in line with the policies of FAR Part 31, particularly if there has been a waiver and the insurance has been or is to be obtained to comply with workmen's compensation or equivalent statutes of a foreign country.

(2) The contractor shall also assume liability to such waived employees and their beneficiaries for war hazard injury, death, capture or detention. At the option of the Government, either the costs of this liability or the reasonable cost of insurance against this liability shall be allowed as a cost under the contract. When the clause at FAR 52.228–4 is required and if it is decided by the Head of the Contracting Activity or designee that the contractor shall not purchase insurance against this liability, the contracting officer shall insert the clause at 252.228–7000, Reimbursement for War Hazard Losses.

228.306 Insurance under fixed-price contracts.

(a) *General.*

(1) Negotiated fixed-price type contracts for the production, modification, maintenance, or overhaul of aircraft shall, except as provided in (a)(2) below, include the clause at 252.228–7001, Ground and Flight Risk.

(2)(i) In paragraph (b) of the clause at 252.228–7001, certain of the defined terms may be modified by insertion of appropriate additional definitions in the contract in accordance with the following. The purpose of the clause is to have the Government to assume risks which generally entail unusually high insurance premiums and which are not covered by the contractor's "contents," "work-in-process," or other similar insurance. It is recognized that all of the definitions prescribed in the clause may not cover all situations which should be covered if the above purpose is to be accomplished. Therefore, changes may be effected in the contract as set forth below.

(A) Since the standard definition of "aircraft" contemplates conventional types of winged aircraft, a modified definition is necessary if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional types of aircraft. The modified definition should take into consideration that the aircraft has reached a point of manufacture comparable to that required in the standard definition;

(B) The definition of "in the open" may be modified to include "hush houses", test hangars, and comparable structures, and other designated areas;

(C) "Contractor's premises" shall be expressly defined and shall be limited to those locations where aircraft, as defined in the clause, may be located during and for the performance of the contract. "Contractor's premises" may include, but are not limited, premises owned or leased by the contractor or premises as to which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

(ii) The Government need not assume the risk of damage to, or loss or destruction of, aircraft, as provided by the clause, if the best estimate of premium costs which would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than $500. The Government shall not assume such risks if the aircraft is being acquired in connection with a Foreign Military Sale and the foreign government involved has not agreed to assume such risks. If it is determined not to assume such risks, the clause shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover such risks shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the Flight Risks clause in 252.228–7002, suitably adapted for use in a fixed-price type contract, shall be used.

(iii) Subparagraph (d) of the clause in 252.228–7001 may be varied to provide for government assumption of risk of transportation by conveyance on streets or highways where the contracting officer determines that such transportation is limited to the vicinity of the contractor's premises and is merely an incident to work being performed under the contract.

228.307 Insurance under cost-reimbursement contracts.

228.307–1 Group insurance plans.

(a) *Prior approval requirement.* Group insurance plans under cost-reimbursement contracts shall be submitted for approval to the Heads of Contracting Activities, for the Department of the Army; the Chief of Naval Material for the Department of the Navy; Air Force Systems Command, administrative contracting officers, for the Department of the Air Force; the Director of Procurement, for the National Security Agency; the Director, for the Defense Communications Agency; the Director, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency. For the Defense Logistics Agency such plans shall be submitted for approval to the Directors, Directorate of Contract Administration, DCASR New York (DCRN–C), DCASR Chicago (DCRI–C), or DCASR Los Angeles (DCRL–C), as appropriate.

(S–70) The Defense Department Group Term Insurance Plan is available for use by cost-reimbursement type contractors. A contractor is eligible only if the number of covered employees is 500 or more, and (i) the contractor is wholly engaged in operations under eligible contracts, or (ii) 90 percent or more of the payroll of contractor's operations to be insured under the Plan arises under eligible contracts. Insurance policies under this plan shall be submitted for approval to the Heads of Contracting Activities, for the Department of the Army; the Chief of Naval Material, for the Department of the Navy; Air Force Systems Command, administrative contracting officers for the Department of the Air Force; the Deputy Director, Contract Administration Services, Attn: DLA–AF, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; the Director, for the Defense Communications Agency; the Chief, Office of Procurement, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency.

228.307–2 Liability.

(S–70) *Aircraft flight risk.*

(1) Cost-reimbursement-type contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor by the Government, shall, except as provided in (2) below, include the clause at 252.228–7002, Flight Risks.

(2) In the clause, the definition of "aircraft" may be appropriately modified if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft.

228.309 Contract clauses for workers' compensation insurance.

(S–70) The Contracting Officer is authorized to insert the clause at 252.228–7003, Capture and Detention, when the employees of a contractor are subject to capture and detention under circumstances which may be outside the scope of the War Hazards Compensation Act (42 U.S.C. 1701 et seq.).

228.311 Solicitation provision and contract clause on insurance liability under cost reimbursement contracts.

(S–70) *Contract clause for construction.* The Contracting Officer shall insert the clause at 252.228–7005, Insurance, in accordance with 236.573.

Subpart 228.70—Indemnification

228.7000 General.

Indemnification under research and development contracts against unusually hazardous risks is covered in 235.070(a). Indemnification under Pub. L. 85–804 is covered in FAR Subpart 50.4. Indemnification under contracts involving both research and development and work that cannot be so classified is covered in 235.070(b) and 250.403–70.

Subpart 228.71—Accident Reporting and Safety

228.7101 Accident reporting.

The Contracting Officer may insert the clause at 252.228–7006, Accident Reporting and Investigation Involving Aircraft, Missiles and Space Launch Vehicles, in solicitations and contracts which involve or are in connection with the manufacture, modification, overhaul or repair of aircraft, missiles or space launch vehicles.

228.7102 Safety precautions for ammunition and explosives.

(a) The safety requirements of DoD 4145.26M, "DoD Contractors' Safety Manual for Ammunition, Explosives, and Related Dangerous Material" are to be applied to all contracts involving ammunition or explosives. To accomplish this policy, all solicitations and resulting contracts involving the development, testing, storage, manufacture, modification, renovation, demilitarization, packaging, transportation, handling, disposal, inspection, repair or other use of ammunition and explosives shall include the clause set forth in 252.228–

7007, Safety Precautions for Ammunition and Explosives. The clause is not to be included in contracts solely because of:

(1) Insert components containing no explosives, active chemicals or pyrotechnics, or

(2) Flammable liquids, acids or other chemicals are intended for initiation, propulsion or detonation as an integral or component part of an ammunition or explosive end item or weapon system.

(b) It is essential that contracts containing the above clause be administered in such a manner as to assure safety without unnecessary application of the requirements of the Manual to contractor operations or facilities not directly involved. As provided in the clause, the requirements of the manual are to be applied only to the contractor's operation relating to ammunition and explosives.

(c) Omission of the clause from solicitation and contracts referred to in (a) above or waiver of mandatory requirements of the Manual prior to contract award must be approved by the HCA or his sole designee. When mandatory requirements of the Manual are to be waived prior to award, the specific requirements to be waived must be set forth in the solicitation or by modification there to. Care must be taken to assure that the waivers grated are compatible with sound safety principles.

(d) In contracts involving shipments of ammunition and explosives by military aircraft or to an aerial part of embarkation, add Alternate I to the basic clause.

PART 229—TAXES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 229.1—General

229.101 Resolving tax problems

(a) Agency-designated legal counsel are responsbile for resolving tax issues affecting the agency. Within the Department of Defense, these agency-designated legal counsel are: Chief, Contract Law Division, Office of the Judge Advocate General, for the Army; the General Counsel, for the Navy; the General Counsel, for the Air Force; the General Counsel, for the Defense Logistics Agency; the General Counsel, for the National Security Agency; the General Counsel, for the Defense Communications Agency; the General Counsel, for the Defense Nuclear Agency; and the General Counsel, for the Defense Mapping Agency.

(b) and (c) Within the Department of Defense, a contractor having a cost-reimbursement type contract or a fixed-price type contract containing a tax escalation clause may be directed, after coordination with the appropriate agency-designated legal counsel through the Department of Defense Tax Policy and Advisory Group, to litigate the applicability of a particular tax. In such cases, guidance will be issued in Defense Acquisition Circulars informing purchasing activities of the litigation, the need for special contract clauses covering the tax in question, and instructions to be given contractors regarding nonpayment, payment, protest or other specific treatment of the tax. In addition, similar guidance may be furnished concerning an anticipated repeal or reduction in the rate of a tax. It is particularly important that this guidance be considered by those negotiating incentive type contracts in order that the tax in question may be treated separately in the establishment of a target price.

229.101-70 Resolving foreign tax relief issues.

(a) The definitions, policies, and responsibilities of the DoD Foreign Tax Relief Program are set forth in DoD Directive 5100.64, and that Directive and applicable implementing regulations or instructions should be consulted by contracting activities prior to the initiation of foreign procurement. Implementing instructions within the Services and DoD agencies are as follows:

Department of the Army Regulation AR 27-70;

Department of the Navy Instruction SECNAVINST 5840.5;

Department of the Air force Regulation AFR 110-18;

Defense Communications Agency Instruction 100-50-6;

Defense Contract Audit Agency Regulation 5110.2;

Defense Mapping Agency Instruction 5500.2;

Defense Nuclear Agency Instruction 5100.64; and

Defense Logistics Agency Regulation 5500.6.

(b) In addition, the following Unified Commands have issued management procedures to guide and coordinate the administration of the foreign tax relief program throughout their respective area commands—

Commander in Chief, European Command (USCINCEUR) EUCOM DIRECTIVE 45-8;

Commander in Chief, Atlantic Command (CINCLANT) CINCLANTINST 5840.2A;

Commander in Chief, Pacific Command (CINCPAC) CINCPACINST 5840.2B

As regards Canada and Greenland, Commander, SPACE COMMAND Regulation 110.1.

(c) Questions relating to the implementation of the DoD Foreign Tax Relief Program shall first be referred to the designated Commanding Officers below. Several foreign countries or areas have been designated, pursuant to subsection E.7 of DODD 5100.64, to make and maintain a current tax law study, serve as a single point of contact for U.S. contracting officers and contracting activities for the investigation and resolution of specific foreign tax relief matters, and to serve as a liaison point with the responsible diplomatic mission and local foreign tax authorities:

Country or area	Designated Commanding Officer
Australia	Commander in Chief, Pacific Rep., Australia.
Azores	Commander, U.S. Forces, Azores.
Bahrain	Commander in Chief, U.S. Naval Forces, Europe.
Belgium	Commander in Chief, U.S. Army, Europe.
Bermuda	Commanding Officer, U.S. Naval Air Station, Bermuda.
Canada	Commander, Space Command.
Caribbean Islands (including Bahamas).	Commander, Antilles Defense Command.
Denmark	Commander in Chief, U.S. Air Forces, Europe.
Ethiopia	Commander in Chief, U.S. Army, Europe.
France	Commander in Chief, U.S. Army, Europe.
Germany	Commander in Chief, U.S. Army, Europe.
Greece	Commander in Chief, U.S. Air Forces, Europe.
Greenland	Commander, Space Command.
Iceland	Commander, Iceland Defense Force.
Iran	Commander in Chief, U.S. Army, Europe.
Italy	Commander in Chief, U.S. Naval Forces, Europe.
Japan	Commander, U.S. Forces, Japan.
Korea	Commander, U.S. Forces, Korea.
Luxembourg	Commander in Chief, U.S. Army, Europe.
Morocco	Commander in Chief, U.S. Naval Forces, Europe.
Netherlands	Commander in Chief, U.S. Air Forces, Europe.
New Zealand	Commander, U.S. Naval Support Forces, Antarctica.
Norway	Commander in Chief, U.S. Air Forces, Europe.
Philippines	Commander in Chief, Pacific Rep., Phillippines.
Portugal	Commander in Chief, U.S. Naval Forces, Europe.
Spain	Commander in Chief, U.S. Air Forces, Europe.
Taiwan	Commander, U.S. Military Assistance Command, Thailand.
Turkey	Commander in Chief, U.S. Air Forces, Europe.
United Kingdom	Commander in Chief, U.S. Air Forces, Europe

(d) The activity initially raising the tax issue shall, in turn, refer unanswered questions on the DoD Foreign Tax Relief

Program to its agency designated legal counsel listed at 229.101.

Subpart 229.2—Federal Excise Taxes

229.202 General exemptions.

(b) *Certificate of export to a possession or to Puerto Rico.* The following form of exemption certificate shall be used as proof of export or shipment to a possession or to Puerto Rico:

Certificate of Export

(For use by purchasers of articles for export or shipment to a possession under Section 4221(a)(2), Internal Revenue Code of 1954)

——————19——————

(Name of Contractor)

The undersigned does hereby certify that——————(quantity and description of supplies)——————which were purchased for export, or for shipment to a possession of the United States or to Puerto Rico, under Contract No.———, were in fact exported to a foreign country, or shipped to a possession of the United States or to Puerto Rico, and a copy of the documents pursuant to which the supplies were shipped, is being retained in the files of—————— (official address of office).

(Signature)

(Title)

(Address)

(d) *Exemption certificate for supplies for vessels of war.* The following form of exemption certificate shall be used in claiming an exemption for supplies for vessels of war (including aircraft).

Exemption Certificate

(For use by purchasers of articles for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on certain vessels under Section 4041(g)(1) and 4221(d)(3), Internal Revenue Code)

——————19——————

(Name of Contractor)

The undersigned hereby certifies that he is an authorized agent of the United States of America and that the article or articles specified in the accompanying orders, or a specified below, or on the reverse side hereof, will be used only for fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of a foreign nation, including aircraft owned by the United States or by a foreign nation and constituting a part of the armed forces thereof.

The undersigned understands that if the article or articles are used for any purpose other than as stated in this certificate, or are resold or otherwise disposed of, the purchaser must report such fact to the manufacturer; or, in the case of special motor fuel, that if the fuel is sold or used otherwise than as stated in 4041(g) of the Internal Revenue Code, liability for the tax upon such sale or use will attach. The undersigned also understands that the purchases must be prepared to establish by satisfactory evidence the purposes for which the article was used.

The fraudulent use of this certificate for the purpose of securing exemption from the payment or adjustment of taxes will subject the guilty party to a fine of not more than $10,000 or imprisonment for not more than five (5) years, or both, together with cost of prosecution.

(Signature)

(Title)

(Address)

(S–70) *Federal tax exemptions-other exemptions.*

(1) Pursuant to Title 26, Section 4293, the Secretary of the Treasury may authorize exemption for specific taxes imposed on particular articles or services purchased for the exclusive use of the United States when such impositions will cause substantial burden or expense which can be avoided by granting a tax exemption and when the full benefit of such exemption will accrue to the United States. The Secretary of Treasury has authorized tax exemptions from taxes imposed in the following Articles and Services:

(i) Communication Supplies and Services for the Exclusive Use of the United States;

(ii) Air Transportation of Persons and Property; and,

(iii) Manufacture of Trucks and Production or Purchase of Tread Rubber.

(2) Pursuant to Title 26, Section 4483(b), the Secretary of the Treasury has authorized exemption from the Federal excise tax imposed by Section 4481 of the Internal Revenue Code on the use of heavy highway vehicles on the public highways in the United States when the use of such heavy highway vehicles is by the United States and whether or not such highway vehicles are owned by the United States.

Subpart 229.3—State and Local Taxes

229.303 Application of State and local taxes to government contracts and subcontractors.

(a)(1) It is DoD policy that DoD contract shall not contain contract clauses expressly designating prime contractors of cost-type contracts to be performed within the United States as agents of the Government to purchase supplies for the purposes of avoiding state and local taxes. This policy was adopted to preclude the inclusion of contract clauses designed to avoid otherwise validly impose state or local taxes.

(2) Although circumstances may exist under which a contractor is an agent of the Government, even in the absence of a contract clause expressly designating the contractor as such, these circumstances are exceedingly rare. Before any DoD activity may contend that any of its contractors are agents of the Government for the purpose of claiming immunity from state and local sales and use taxes, the matter will be referred to the Office of the Secretary of Defense (OSD), Under Secretary of Defense (R&E) for review to ensure that DoD policy is compiled with and that the agency contention is fully in accord with the pertinent legal principles and precedents. Each case forwarded will be reviewed by the head of the agency before referral to OSD. The referral will include all pertinent data on which an agency contention is based, together with a thorough analysis of all relevant legal precedents.

(3) Whenever clauses, procedures and business practices are cited by DoD activities to support the contention that a contractor is an agent of the Government for the purpose of immunity from a state or local sales or use tax, contracting activities should whenever possible, devise alternative clauses, procedures and practices for future use which will accomplish their intended purpose without providing the basis for the contention that the contractor is an agent of the Government for the purpose of immunity from state or local sales or use taxes. Therefore, any referral to OSD will include comment on the extent to which alternate clauses, procedures or practices may be utilized to accomplish the intended purpose without providing the basis for the contention that the contractor is an agent of the Government for the purpose of immunity from state and local sales and use taxes.

Subpart 229.4—Contract Clauses

229.402 Foreign contracts.

229.402-1 Foreign fixed-price contracts.

(S–70) The contracting officer shall insert a clause substantially as shown at 252.229–7000, Fixed-Price, Into-Plane, Fuel Contracts at Overseas Locations, in solicitations and contracts when a fixed-price contract is contemplated for into-Plane fueling at overseas locations.

229.402-70 Use of foreign tax clauses

(a) *Exclusion of specific taxes from the contract price.* The contracting officer shall not attempt to provide a contractor or prospective contractor information as to foreign taxes or duties normally applicable to the acquisition.

The contracting officer shall, however, at the time of negotiation of a contract to be performed in a country or area listed in 229.101–70(c) obtain from the appropriate Designated Commanding Officer detailed information concerning the taxes and duties from which the Government of the United States is exempt under the provisions of applicable international agreements or foreign law. Information obtained by the contracting officer regarding exemptions shall be made available to the contractor or prospective contractor and retained as part of the contract file.

(b) *Tax exemption certificates and other assistance.* During the administration of the contract, the contracting officer shall, as appropriate, issue tax exemption certificates or use other procedures, if available, to assist the contractor in obtaining relief from foreign taxes and duties which were excluded from the contract price. If, in accordance with its contract, the contractor notifies the contracting officer that a tax or duty has been assessed by a foreign government on the contractor which could result in an increase in the contract price, the contracting officer shall immediately seek advice and assistance in accordance with 229.101–70(d).

PART 230—COST ACCOUNTING STANDARDS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 230.1—General

230.103 Cost Accounting Standards Board (CASB) publications.

Copies of the CASB Standards, Regulations, and Interpretations are contained in Appendix O.

Subpart 230.4—CAS Administration

230.401 Responsibility.

(a) In accordance with FAR Part 30, Cost Accounting Standards, and FAR Part 31, Contract Cost Principles and Procedures, the cognizant contract auditor shall be responsible for making recommendations to the ACO as to whether:

(1) A contractor's Disclosure Statement, submitted as a condition of contracting, adequately describes the actual or proposed cost accounting practices as required by Pub. L. 91–379, 50 U.S.C. App. 2168, as implemented by the Cost Accounting Standards Board;

(2) A contractor's disclosed cost accounting practices are in compliance with FAR Part 31 and applicable cost accounting standards;

(3) A contractor's or subcontractor's failure to comply with applicable cost accounting standards or to follow consistently his disclosed cost accounting practices has resulted, or may result, in any increased cost paid by the Government; and

(4) A contractor's or subcontractor's proposed price changes, submitted as a result of changes made to previously disclosed or established cost accounting practices, are fair and reasonable.

Subpart 230.70—Facilities Capital Employed for Facilities in Use

230.7001 Policy.

(a) It is the policy of the Department of Defense to recognize facilities capital employed as an element in establishing the price of certain negotiated defense contracts when such contracts are priced on the basis of cost analysis. The inclusion of this recognition is intended to reward contractor investments, motivate increased productivity and reduced costs through the use of modern manufacturing technology, and to generate other efficiencies in the performance of defense contracts. The recognition of contractor investments in the development of the profit objective will result in a profit objective based on a combination of effort, risk, and investment factors.

(b) Separate recognition shall be given to the cost of capital and the special risk associated with the facilities capital employed for defense contract purposes.

(1) The risk aspect of facilities capital employed shall be recognized as a part of profit when the profit objective is established in accordance with the guidelines set forth in 215.905–1(d).

(2) Cost of money for facilities capital will be recognized as an allowable cost in those negotiated defense contracts priced on the basis of cost analysis (See FAR 31.205–10(a)).

230.7002 Definitions, measurement and allocation.

Cost Accounting Standard (CAS) No. 414, "Cost of Money as an Element of the Cost of Facilities Capital" (See Appendix O), establishes criteria for the measurement and allocation of the cost of capital committed to facilities, as an element of contract cost for historical cost determination purposes. Important features of the CAS are its definitions, techniques for application, and a prescribed Form CASB–CMF with instructions. This Subpart adopts the techniques of CAS 414 as the approved methods of measurement and allocation of facilities cost of money to overhead pools at the business unit level, and adds only such supplementary procedures as are necessary to extend those techniques to contract forward pricing and administration purposes. Therefore, these procedures are intended to be completely compatible with, and an extension of, the definitions, criteria and techniques of CAS 414. Contractors who computerize their financial data are encouraged to meet the requirements of both CAS 414 and this Subpart from the same data bank and programs.

30.7003 Estimating business unit facilities capital and cost of money.

The method of estimating the business unit facilities capital and cost of money utilizes the techniques of CAS 414. Cost of money factors (CMF) by overhead pools at the business unit are developed using Form CASB–CMF. Three elements are required to develop cost of money factors: business unit facilities capital data, overhead allocation base data, and the interest rate promulgated by the Secretary of the Treasury pursuant to Pub. L. 92–41. These elements are discussed below.

(a) *Business unit facilities capital data.* The net book value (acquisition cost less accumulated depreciation) is used for each cost accounting period. The net book value used is the total of (1) the new book value of facilities recorded on the accounting records of the business unit, (2) the capitalized value of leases (See FAR 31.205–2 and FAR 31.205–36) and (3) the net book value of facilities at the corporate or group level that support depreciation charges allocated to the business unit in accordance with the provisions of CAS 403. Projections of facilities capital will be supported by budget plans and/or similar type documentation and the estimated depreciation will be the same as used in projected overhead rates. Projections will accommodate changes in the level of facilities net book value, e.g., facilities additions, deletions of facilities by sale, abandonment or other disposal, idle facilities (See FAR 31.205–17).

(b) *Overhead allocation bases.* The base data used to compute the CMF must be the same as that used to compute the proposed overhead rates. CMF's should be submitted and evaluated as part of the proposal.

(c) *Interest rate.* For purpose of projection, the most recent interest rate promulgated by the Secretary of the Treasury will be used as the cost of money rate in Column 1 of Form CASB–CMF and the same rate must be used on the DD Form 1861 to determine Contract Facilities Capital Employed (See 230.7004 below). Where actual costs are

used in definitization actions, the actual treasury rate(s) applicable to the period(s) of the incurred cost will be recognized by development of a composite rate.

(d) *Determination of final cost of money.* CMF's estimated in accordance with the above procedures are used to develop the facilities investment base used in the pre-negotiation profit objectives. Actual CMF's are required when it is necessary to determine final allowable costs for cost settlement and/or repricing in accordance with CAS 414 and FAR 31.205–10.

230.7004 Contract facilities capital estimates.

(a) After the appropriate Forms CASB–CMF have been analyzed and CMF's have been developed, the contracting officer is in a position to estimate the facilities capital cost of money and capital employed for a contract proposal. DD Form 1861 "Contract Facilities Capital and Cost of Money" has been provided for this purpose and, when properly completed, becomes a connecting link between the Forms CASB–CMF and DD Form 1547 "Weighted Guidelines Profit/Fee Objectives". An evaluated contract cost breakdown, reduced to the contracting officer's prenegotiation cost objective must be available. The procedure is similar to applying overhead rates to appropriate overhead allocations bases to determine contract overhead costs.

(b) DD Form 1861 provides for listing overhead pools and direct-charging service centers (if used) in the same structure they appear on the contractor's cost proposal and Forms CASB–CMF. The structure and allocation base units-of-measure must be compatible on all three displays. The base for each overhead pool must be broken down by year to match each separate Form CASB–CMF. Appropriate contract overhead allocation base data are extracted by year from the evaluated cost breakdown or pre-negotiation cost objective, and are listed against each separate Form CASB–CMF. Each allocation base is multiplied by its corresponding cost of money factor to get the Facilities Capital Cost of Money estimated to be incurred each year. The sum of these products represents the estimated Contract Facilities Capital Cost of Money for the year's effort. Total contract facilities cost of money is the sum of the yearly amounts.

(c) Since the Facilities Capital Cost of Money Factors reflect the applicable cost of money rate in Column 1 of Form CASB–CMF, the Contract Facilities Capital Employed can be determined by dividing the contract Cost of Money by that same rate. DD Form 1861 is designed to record and compute all the above in the most direct way possible, and the end result is the Contract Facilities Capital Cost of Money and Capital Employed which is carried forward to DD Form 1547.

230.7005 Pre-award facilities capital applications.

Facilities Capital Cost of Money and Capital Employed as determined above, are applied in establishing cost and price objectives as follows:

(a) *Cost of money.*

(1) *Cost objective.* The special, imputed cost of money shall be used, together with normal, booked costs, in establishing a cost objective or the target cost when structuring an incentive type contract. Target costs thus established at the outset, shall not be adjusted as actual cost of money rates become available for the periods during which contract performance takes place.

(2) *Profit objective.* Cost of money shall not be included as part of the cost base when measuring the contractor's effort in connection with establishing a pre-negotiation profit objective. The cost base for this purpose shall be restricted to normal, booked costs.

(b) *Facilities capital employed.* The profit objective as it relates to the risk associated with facilities capital employed shall be assessed and weighted in accordance with the profit guidelines set forth in 215.905–1(d).

230.7006 Post award facilities capital applications.

(a) *Interim billings based on costs incurred.* Contract Facilities Capital Cost of Money may be included in cost reimbursement and progress of the "Cost Reimbursement, Fee and Payment" or "Progress Payment" clause of the contract is the result of multiplying the incurred portions of the overhead pool allocation bases by the latest available Cost of Money Factors. Like applied overhead at forecasted overhead rates, such computations are interim estimates subject to adjustment. As each year's data are finalized by computation of the actual Cost of Money Factors under CAS 414 and FAR 31.205–10 the new factor should be used to calculate contract facilities cost of money for the next accounting period.

(b) *Final settlement.* Contract facilities capital cost of money for final cost determination or repricing is based on each year's final Cost of Money Factors determined under CAS 414 and supported by separate Forms CASB–CMF. Contract cost must be separately computed in a manner similar to yearly final overhead rates. Also like overhead costs, the final settlement will include an adjustment from interim to final contract cost of money. However, estimated or target cost will not be adjusted.

230.7007 Administrative procedures.

(a) Contractor submission of Forms CASB–CMF will normally be initiated under the same circumstances as Forward Pricing Rate Agreements (See FAR 15.809) and evaluated as complementary documents and procedures. Separate Forms are required for each prospective cost accounting period during which Government contract performance is anticipated. If the contractor does not annually negotiate FPRA's submissions may nevertheless be made annually or with individual contract pricing proposals, as agreed to by the contractor and the cognizant ACO. The cognizant ACO shall, with the assistance of the cognizant auditor, evaluate the cost of money factors, and retain approved factors with other negotiated forward pricing data and rates.

(b) When a contracting officer uses the Weighted Guidelines method of determining a profit objective under the criteria of 215.902 DD Form 1861 "Contract Facilities Capital and Cost of Money" after evaluating the contractor's cost proposal and determining this prenegotiation cost objective, but before completing a DD Form 1547 "Weighted Guidelines Profit/Fee Objective". When available, a computer generated form is acceptable, provided all essential elements of data are included and identified as DD Form 1861 data. At his option, a PCO may request the cognizant ACO to complete the DD Form 1861 in connection with normal field pricing support under FAR 15.805, and include it in his field pricing report with appropriate evaluation comments and recommendations.

(c) A final Form CASB–CMF must be submitted by the contractor under CAS 414 as soon after the end of each cost accounting period as possible, for the purpose of final cost determinations and/or repricing. The submission should accompany the contractor's proposal for actual overhead costs and rates, and be evaluated as complementary documents and procedures.

Subpart 230.71—Facilities Capital Employed for Facilities Under Construction

230.7101 Policy.

It is the policy of the Department of Defense to recognize a contractor's investment in capital facilities while

these are being constructed, fabricated, or developed for the contractor's own use. This recognition is made through the allowance of an imputed cost of money amount which is (a) calculated in accordance with 230.7103 below, (b) capitalized along with the other costs of the asset for which the investment is made, and (c) allocated to Department of Defense contracts in accordance with 230.7104.

230.7102 Definitions.

The following definitions have been taken or developed from Cost Accounting Standard (CAS) 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction (See Appendix O).

(a) *Intangible capital asset.* An asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefit it yields.

(b) *Tangible capital asset.* An asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the service it yields.

(c) *Cost of money rate.* The cost of money rate is either the interest rate determined by the Secretary of the Treasury pursuant to Pub. L. 92–41 (85 Stat 97), or the time-weighted average of such rates for each cost accounting period during which the asset is being constructed, fabricated, or developed. The time-weighted average interest rate is calculated by multiplying the various rates in effect during the months of construction by the number of months each rate was in effect. The sum of the products is divided by the total number of months in which the rates were experienced.

(d) *Representative investment.* The representative investment is the calculated amount considered invested by the contractor in the project to construct, fabricate, or develop the asset during the cost accounting period. In calculating the representative investment, consideration must be given to the rate or expenditure pattern of the investment, i.e., if most of the investment was at the end of the cost accounting period, the representative investment calculation must reflect this fact.

(1) If the contractor experiences an irregular or uneven expenditure pattern in the construction, fabrication, or development of a capital asset, i.e., a majority of the construction costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor must either:

(i) Determine a representative investment amount for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

(ii) Treat month-end balances as individual representative investment amounts.

(2) If the construction, fabrication, or development costs were incurred in a fairly uniform expenditure pattern throughout the construction period, the contractor may:

(i) Determine a representative investment amount for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period; or

(ii) Treat month-end balances as individual representative investment amounts.

230.7103 Measurement.

(a) The imputed cost of money for an asset under construction, fabrication, or development is calculated by applying a cost of money rate (see 230.7102(c)) to the representative investment amount (see 230.7102(d)).

(1) When a representative investment amount is determined for a cost accounting period in accordance with 230.7102(d)(1)(i) or 230.7102(d)(2)(1) the cost of money rate used shall be the time-weighted average rate.

(2) When a monthly representative investment amount (see 230.7102(d)(2)(ii) or 230.7102(d)(2)(ii)) is used, the cost of money rate shall be the rate in effect each month (Note: Under this method, the cost of money calculation is made monthly and the total for the cost accounting period is the sum of the monthly calculations).

(b) The method chosen by a contractor for determining the representative investment amount may be different for each capital asset being constructed, fabricated, or developed as long as the method fits the expenditure pattern of the construction costs incurred.

(c) The imputed cost of money will be capitalized only once in any cost accounting period; either at the end of the period or at the end of the construction period, whichever comes first.

(d) When the construction of an asset takes more than one cost accounting period, the cost of money capitalized for the first cost accounting period will be included in determining the representative investment amount for any future cost accounting periods.

230.7104 Composition and allocation of costs.

(a) The cost of money for a tangible capital asset determined in accordance with 230.7102 and 230.7103 shall be capitalized along with the other construction, fabrication, or development cost of that asset for purposes of depreciation pursuant to FAR 31.205–11.

(b) The cost of money for an intangible capital asset determined in accordance with 230.7102 and 230.7103 shall be capitalized along with other construction, fabrication, or development costs of that asset and amortized over appropriate cost accounting periods.

(c) Where CAS 414 cost of money is allocated to construction, fabrication, or development effort in accordance with 230.70 it will be recognized and considered an element of total construction costs and be included in all calculations of the asset's representative investment amount.

230.7105 Limitations.

If substantially all activities necessary to get an asset ready for its intended use are discontinued, cost of money shall not be capitalized for the period of discontinuance, except when such discontinuance arises out of causes beyond the control and without the fault or negligence of the contractor.

230.7106 Preaward capital employed application.

An offset to the profit objectives as set forth in FAR 15.9 required for CAS 417 cost of money.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 231.1—Applicability

231.101 Objectives.

Pursuant to FAR 31.101 and to reflect DoD policy, the DAR Council has granted certain exceptions to FAR Part 31 cost principles. These exceptions are set forth in this supplement.

231.103 Contracts with commercial organizations.

(S–70) The FAR and this supplement apply to purchases and contracts made by the DoD in support of Foreign Military Sales (FMS) (see 201.103). Accordingly, the cost principles and procedures in FAR 31.2, as supplemented, shall be used in pricing FMS contracts (see 225.7304 and 225.7305).

Subpart 231.2—Contracts With Commercial Organizations

231.201 General.

The contracting officer shall insert the clause at 252.231-7000, Supplemental Cost Principles, in all solicitations and contracts, except acquisitions made under the small purchase procedures in FAR Part 13.

231.205-10 Cost of money.

(a)(2)(i) The contractor's capital investment must also be measured, allocated to contracts, and costed in accordance with 230.70.

(ii) The contractor must also maintain records to demonstrate compliance with (i) above.

(b)(2)(i)(A) The cost of money must be calculated, allocated to contracts, and costed in accordance with 230.70.

(B) The contractor must also maintain records to demonstrate compliance with (b)(a)(i)(A) above.

231.205-18 Independent research and development and bid and proposal costs.

(c) The total amount of IR&D/B&P costs allocated to DoD contracts shall not exceed the total of expenditures for IR&D/B&P projects with a potential relationship to a military function or operation. For contracts which do not provide for cost determinations on a historical basis, the requirement will be considered to have been met if the estimated IR&D/B&P costs allocated to the contract do not exceed its proportionate share of the total estimated costs of IR&D/B&P with a potential relationship to a military function or operation. IR&D/B&P costs will be considered to satisfy the potential relationship requirement when the contractor can demonstrate that the effort under a proposed contract or grant would have a potential relationship to a military function or operation. The potential relationship of IR&D/B&P will be determined by the contracting officer, and the results of the determination will be made available to the contractor. For additional allowability requirements affecting Foreign Military Sales (FMS) contracts, see 225.7304.

231.205-22 Lobbying costs.

For DoD contracts, the following lobbying cost principle is substituted for the lobbying cost principle contained in FAR 231.205-22:

(a) For the purpose of this section, lobbying is defined as any activity, including legislative liaison, or communication which is intended or designed to influence, directly or indirectly, or to engage in any campaign to encourage others to influence members of any legislative body, their staffs, or the staffs of their committees to favor or oppose legislation, appropriations or other actions of the legislative body, its members, or its committees. Lobbying activity includes, but is not limited to, all forms of communications for the above-mentioned purposes by the contractor, its employees, or its agents with the legislative body, its members, and staffs of members and committees.

(b) The costs of lobbying as defined herein, including the applicable portion of the salaries of the contractor's employees and the fees of individuals or firms engaged in lobbying, on behalf of the contractor (whether or not the individuals or firms are registered as lobbyists under any applicable law) are unallowable. In addition, the directly associated costs (FAR 231.201-6) of lobbying are unallowable.

231.205-38 Selling costs.

Additional allowability requirements for Foreign Military Sales (FMS) contracts are contained in 225.7304 and 225.7305.

PART 232—CONTRACT FINANCING

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 232.1—General

232.102 Description of contract financing methods.

(e)(2) Progress payments based on percentage or state of completion will be confined to contracts for construction, shipbuilding and ship conversion, alteration or repair.

232.108 Financial consultation.

The contract financing offices are: the Chief of Contract Financing, Office of the Comptroller of the Army; the Executive Assistant Comptroller for Banking, Cash Management, Contract Financing and Compensation Systems, Assistant Comptroller of the Navy for Financial Management; the Chief of Banking and Contract Financing, Directorate of Accounting, Air Force Accounting and Finance Center; and the Comptroller, Defense Logistics Agency. For other Departments, the contracting financing office will be within the Office of the Agency Comptroller.

232.111 Contract clauses.

(a), (b), (c) and (d) See DAC 76-42, Item I, for authorized modifications with respect to payment due dates.

(S-70) The contracting officer shall insert the clause at 252.232-7000, Invoices, in solicitations and contracts for supplies and services when a fixed price contract is contemplated.

232.170 Responsibilities.

232.170-1 Organization.

The financing function should be separated from the procurement function, but close cooperation should be preserved at all times. For progress payments, contract financing officers will ordinarily participate in the development of appropriate regulations and standard contract provisions designed to avoid undue risk to the Government, and in specific cases involving policy questions or unusual financing arrangements.

232.170-2 Resolution of disagreements.

If a disagreement arises between the financing office and the procuring activity on financing provisions, the matter will be referred to and resolved in the higher echelons of the authority responsible for both financing and procurement functions.

232.170-3 Responsibility, administration, contract finance committee.

The Deputy Under Secretary of Defense, Research and Engineering (Acquisition Management) has the responsibility for insuring uniform administration of financing. Only policy issues or important procedural problems shall be referred to the Office of the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Management). Usual financing operations shall be the responsibility of the Departments.

(a) Responsibility for financing in each Department shall be in the Under or Assistant Secretary, or other designated official, responsible for the comptroller function, with the focal point for such activities at Departmental headquarters. Contract financing offices may be established at the operational level determined by the Departments.

(b) There shall be a Contract Finance Committee composed of a representative of the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Management) as chairman, a representative of the Assistant Secretary of Defense (Comptroller), and two representatives of each Military Department and DLA (one representing procurement and one representing the contract finance office). The Committee shall meet upon call by the Chairman or when requested by a member. The Committee shall advise and assist the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Management) in assuring proper and uniform application of

policies, procedures and forms. The Committee may recommend to the Secretary of Defense through the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Management) further policy directives on financing matters. The Committee shall be responsible for the formulation, revision and promulgation of uniform contract financing regulations.

232.171 Deviations.

Actions in the exercise of the judgment and discretion allowed by these regulations are not deviations. Actions contrary to or inconsistent with these regulations constitute deviations. Deviations will be permitted only in exceptional circumstances, after the proposed deviation has been presented to the Contract Finance Committee and a recommendation obtained, and the approval of the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Management) or his designated representative has been given. This procedure will also be followed for amendments to these regulations.

232.172 Financial responsibility of contractors.

Procuring activities must give due regard to the financial capabilities of potential suppliers. Financial difficulties encountered by contractors and subcontractors may disrupt production schedules; cause wastage of manpower and materials; and if connected with guaranteed loans, advance payments or progress payments, result in monetary loss to the Government. If financial crises occur in the course of a contractor's production, the need for continued production may make guaranteed loans or advance payments imperative for continued production, even though monetary losses may be likely.

232.173 Financial information and analysis.

(a) The necessity for financial information and analysis of the financial capability of contractors vary with the circumstances of particular cases. Judgment must be used in accumulating and evaluating data. Financial analysis would serve little useful purpose when providing customary progress payments:

(1) For contractors who are known from experience to be fairly relied upon to perform their contracts satisfactorily;

(2) For contractors who are in a satisfactory financial condition and operating profitably, where the items involved are regularly produced by the contractor and the contract amounts are within the normal sales volume of the contractor. In such cases, the financial evaluation may consist of scrutiny of the contractor's balance sheets and operating statements. In doubtful cases, the financial analysis would have to be as detailed as necessary to fit the circumstances.

(b) Obtaining and analyzing data on a contractor's financial capability is of particular importance when:

(1) The contractor is a new supplier,

(2) The contractor has not supplied the item (or a similar item) within the preceding twelve months,

(3) The contractor is a newly organized concern,

(4) The contractor is on a list requiring pre-award clearances or special clearance prior to award,

(5) The contractor is on any current list indicating current or post contract defaults or delinquencies,

(6) The contractor is known to be involved in performance difficulties as a supplier or subcontractor for private customers on Government or commercial work,

(7) The contractor is listed on the Consolidated List of Contractors Indebted to the Government (Hold-Up List), or,

(8) There are any facts or circumstances which support reasonable doubts as to the contractor's financial capability to perform.

232.174 Appropriate information.

The kinds of information and data that may be appropriate in particular cases are outlined below. Only those items which are appropriate to a particular case are required. The purpose of obtaining this data is to gain a full understanding of the propriety and reasonable necessity for contract financing, for evaluation of a contractor's ability to perform contracts without loss to the Government, and for informed judgment related to terms, conditions and protective provisions that may be appropriate for the protection of the Government.

(a) Balance sheet and income statement for the recent fiscal year prepared and certified by an independent public accountant (including his comments, if any), and, if available, similar financial data for the two previous years; latest available interim balance sheet and income statement of the current fiscal year; a separate statement of amounts of defense and commercial sales. If audited reports are not available, then corresponding statements should be submitted, certified by an authorized officer, partner, or individual proprietor as truly and fully setting forth the financial condition and operating results of the applicant; if a proprietorship, partnership or joint venture, personal financial statements of proprietor, partners, or members of joint venture and description of individual liabilities of partners or members of joint venture on contracts of partnership or joint venture;

(b) Summary history of contractor and its principal management personnel, indicating particularly any past insolvencies of the contractor or a predecessor or of the officers, partners, or proprietors; also a description of its products or services;

(c) Statement of all affiliates of the contractor, showing financial interests of the contractor in affiliates and of affiliates in the contractor, and also mutual officers, directors and major stockholders or owners, and disclosing character and amount of business transactions with affiliates or with officers, directors, major stockholders or owners of the contractor or its affiliates; also, if a corporation, list of major stockholders, and shares held;

(d) Statement of compensation payable to each officer, partner, proprietor, and principal executive, and to each key employee receiving comparable compensation, including bonus, commission, and profit-sharing arrangements, together with similar data for the past two years; also past and projected dividends, unless obtained with (a) above;

(e) Schedule of principal contracts and orders on hand, showing defense orders and civilian orders separately, and showing face amounts, unfinished amounts, and unliquidated advance or progress payments, and also indicating bids outstanding and contemplated and explanation concerning contracts under negotiation;

(f) Cash forecast, showing estimated disbursements and receipts for the period or periods involved (see 232.174–1 and 232.174–2);

(g) Estimated income statements and estimated balance sheets (see 232.174–3);

(h) Comparison of past financial results with estimates previously furnished by the contractor;

(i) Credit agency ratings of the contractor, and, when significant, credit agency ratings of principal subcontractors and of principal business customers (defense and commercial) of the contractor;

(j) Existing and contemplated credit or financing arrangements, names of parties and relationship, if any, to contractor, amounts available or to be available, periods of availability, and required or contemplated payments,

including (1) loans and credits, (2) advances and progress payments, (3) projected equity capital increases, (4) deferred trade credit, if any, (5) creditor subordinations or standbys, and (6) mortgages, liens, pledges, assignments, conditional sales, lease/purchases, hypothecations, and other encumbrances or security arrangements, both existing and contemplated;

(k) Status of all tax accounts, particularly Federal income, excise, and withholding taxes, and social security taxes or contributions (including verification with Internal Revenue Service, when appropriate) with special attention to the matter of Federal tax delinquencies (which are covered by the lien and right of distraint and levy provided by Sections 6321 and 6331 of the Internal Revenue Code);

(l) Appropriate information, explanation and schedules to indicate (1) leases, deferred purchased arrangements, and patent or royalty arrangements, outlining terms and showing relationship, if any, of other parties to the contractor, (2) insurance maintained and to be maintained, (3) contemplated capital expenditures, debt reduction or retirement, and acquisitions of capital stock, (4) delinquencies on contracts, subcontracts or purchase orders, and status thereof, (5) pending or anticipated liability for contract price refunds, or for renegotiation, or for other Government claims, (6) anticipated losses on contracts, (7) contingent liabilities, including those on endorsements, guarantees, warranties, surety bonds, and material litigation pending or threatened, (8) aging and collectibility of accounts and notes receivable, status of disputed receivables, identification of any amounts included in receivables but not currently due and payable, (9) obsolescence of inventory and method of valuing inventory, (10) aging of accounts and notes payable, identifying major creditors and interest rates and other charges, if any, and status of significant disputed items, (11) adequacy of reserves for depreciation, (12) analysis of surplus;

(m) Significant ratios such as (1) inventory to annual sales, (2) inventory to current assets, (3) liquid assets to current assets, (4) liquid assets to current liabilities, (5) current assets to current liabilities, and (6) net worth to debt;

(n) Comments and opinion of audit agency concerning contractor's accounting system and controls, and available audit agency analysis of important elements of financial statements or projections;

(o) Other facts that may be appropriate for the purposes stated at the beginning of this 232.174.

232.174-1 Cash flow forecast and estimated financial statements.

In doubtful cases, an estimated cash budget (Cash Flow Forecast) and related estimated income statements and estimated balance sheets prepared by the contractor, will be very useful for the purpose of arriving at an informed judgement as to the cash requirements (both for the contract and for the contractor's other activities), cash receipts for the contract period, and cash or credit needed to supply any excess or projected expenditures over projected receipts. When considered useful or necessary, such estimates should be requested from the prospective contractor, analyzed by financial personnel, and discussed to the extent necessary or appropriate with the prospective contractor. Many contractors will have such projects readily available, perhaps not including estimated balance sheets. The failure of the contractor to have prepared such estimates, or resistance to their preparation, or difficulties and delays in preparation, or poor quality of the projections, or the use of unreasonable or unrealistic assumptions in their preparation, may well constitute warning signals that the company's planning has been insufficient and that significant financial troubles may be encountered during the contemplated period of contract performance.

232.174-2 Realistic assumptions.

Cash forecasts can, of course, be no more reliable and representative of probable financial developments than the assumptions on which these forecasts are based. Each cash forecast and related projection should disclose the important underlying assumptions. Most important of these assumptions are the—

(1) Estimated amounts and timing of purchases of materials, parts, components, subassemblies, services, and payments therefor;

(2) Estimated amounts of timing of purchases of machinery and equipment, other production or test facilities, other fixed assets, and purchases or production of special tooling, and payments therefore;

(3) Schedule of fixed cash charges, such as debt installments, interest, rentals and taxes;

(4) Projected manufacturing and production schedules;

(5) Projected shipments, or delivery acceptances;

(6) Estimated amounts and timing of billings to customers (including progress payments), and customer payments;

(7) Estimated amounts and timing of cash receipts from lenders or other credit sources, and liquidation of loans; and

(8) Estimated amounts and timing of cash receipts from other sources.

The assumptions underlying cash forecasts should be checked for reasonableness and realism—with the contractor, Government personnel responsible in the areas of engineering, production scheduling, cost and price analysis, and with others (including prospective supply, subcontract, and loan or credit sources)—as may be prudent in the circumstances of the case.

232.174-3 Estimated income statements and balance sheets.

The cash budget or cash forecast does not show anticipated profit or loss, and is limited to the forecast of movements within a company's cash account. The concurrent submission of an estimated income statement covering the same period serves to tie in the anticipated cash transactions with the estimated sales and expense activity, and culminates in the estimated balance sheet position. The estimated income statement also can serve as a guide for evaluating the company's projections with respect to sales volume, cost of goods sold, gross profit and net profit in relation to the known results of past performance.

232.175 Interpretations.

It is important that these regulations and contract clauses be applied fairly and uniformly for all contractors. When a serious question of interpretation or application of these regulations arises, an advance opinion should be obtained from the procurement policy office at the headquarters of the Department primarily interested. If the circumstances do not reasonably permit requesting an advance opinion, report of an interpretation made should be made to the appropriate Departmental headquarters procurement policy office. That office should obtain the views of interested offices of the other Departments, including the contract financing offices (232.108). When questions submitted are considered to be of importance in the general interest of uniformity and of fair and effective administration of these regulations, appropriate revision of these regulations will be considered. Changes and additions to these regulations will be developed by the Contract Finance

Committee (see 232.170–3(b) and 232.171).

Subpart 232.3—Loan Guarantees for Defense Production

232.302 Authority.

(a) The Department of the Army, the Department of the Navy, the Department of the Air Force, and the Defense Logistics Agency, among others, are designated as "guaranteeing agencies" within the Department of Defense.

232.304 Procedures.

232.304–1 Application for guarantee.

(a) Guaranteed loans will be used primarily for working capital purposes and not for facilities expansion. Guarantees are not precluded where a relatively small portion of the loan might be used for facilities expansion of a minor or incidental nature, provided that the contractor's financial condition is such that the facilities expansion will not impair repayment of the guaranteed loan.

232.304–2 Certificate of eligibility.

(a) Contracting officers are expected to immediately take appropriate steps for the determination of eligibility. Their findings and report, including certificate of eligibility where appropriate, should be submitted to the contract financing office within the guaranteeing agency.

(c) The Department that has the preponderance of interest on the basis of the dollar amount of unfilled and unpaid balances (without regard to the existence of progress payments and without regard to the issuance or nonissuance of certificates of eligibility on particular contracts) on contracts and subcontracts will be the guaranteeing agency. Contracts with advance payments will be included only if the guaranteed loan will liquidate the advance payment. Service procurement contracts are deemed those of the purchasing department. If the application is approved and a guarantee agreement is executed, the guaranteeing agency will bear all losses and expenses and receive all revenues under the guarantee. In exceptional cases, one Department may act for others through a sharing arrangement. If preponderance of interest should shift to another Department during the guaranteed loan period, actions on requests for increases in amount or extension of maturity will ordinarily be taken by the Department with the current preponderance of interest. However, the new guarantee should simply replace the former guarantee so as not to disturb or impair any security for the existing loan. The existing loan agreement and collateral security instruments should be appropriately revised. The contract financing office of the Department which authorized the existing guaranteed loan will transfer the file to the contract financing office of the Department with the current preponderance of interest. If the loan is in distress with foreseeable losses, and the purpose of the request is for the purpose of orderly liquidation of the loan to reduce the amount of the loss, the Department which guaranteed the loan will take action.

232.304–70 Gurauranteed loans for an extended period of time.

It is not the policy of the Department of Defense to continue furnishing assistance in the form of guaranteed loans over an extended period of time unless it is reasonably necessary to obtain required products.

Subpart 232.4—Advance Payments

232.409 Contracting officer action.

232.409–1 Recommendation for approval.

The departmental contract financing office (see 32.108) shall prepare the documents required by FAR 32.409–1(e)&(f). This is necessary to assure uniform application of this subpart as required by FAR 32.402(e)(1).

232.410 Findings, determination, and authorization.

(a) Modifications to incorporate special facts and circumstances are permitted.

(b) In cases where the procedure for advance payments without a special bank account is to be used in accordance with 232.470, insert the following paragraph instead of paragraph (a)(4) of the Findings, Determination, and Authorization for Advance Payments at FAR 32.410.

(4) The proposed advance payment clause contains appropriate provisions for the protection of the Government, as security for advance payments. These include provisions that the outstanding advance payments will be liquidated from cost reimbursements as they become due the contractor. Such security is deemed to be adequate.

232.412 Contract clause.

(S–70) The contracting office shall insert the clause at 252.232–7001, Advance Payments Pool, in any contract that will be subject to the terms of an advance payment pool agreement with a nonprofit educational or research and development institution. Normally this will include all cost reimbursement type contracts with the particular institution.

(S–71) The contracting office shall insert the clause at 252.232–7002, Disposition of Payment, in contracts when the payments under the contract are to be made by a disbursing officer other than the disbursing office designated in the advance payment pool agreement.

232.470 Procedure for advance payments to nonprofit educational and research and development institutions without a special bank account.

In view of the nonprofit position of educational and certain research institutions and the Government objective of strengthening the research capabilities of these institutions, interest-free advance payments in reasonable amounts may be authorized, when prudent and practical, to finance experimental, research and development contracts. The advance payments may be made directly to the institutions without the use of either a special bank account or letter of credit under the procedure described below:

(a) The contracting officer shall advise the departmental contract financing office upon the award of any cost-type contract to an institutions with an advance payment pool arrangement (see 232.471).

(b) The agreement set forth at 232.472 will be used. These arrangements will allow advance payments directly to the contractor to meet its contractual cash needs for the shortest practical periods of time to cover contract performance. The contractor shall periodically determine its cash requirements for contract(s) performance and submit requests for advance payments, in an acceptable format with supporting information as prescribed by the administering office, to the designated approving official who shall determine the necessity for the advance payment. If the approving official concurs with the amount of advance payment requested by the contractor, the request will be promptly approved and forwarded to the designated disbursing office for payment. In the event that the approving official determines that the amount of advance payments requested for the specified period is in excess of the needs, the request will be approved and forwarded to the disbursing office for payment of only the amount needed. The approving official shall act promptly, in accordance with the contract or pool agreement terms and departmental procedures, to resolve any disagreement on the unapproved portion of the request.

(c) The contractor shall submit cost reimbursement vouchers on a monthly basis for the contract(s) being financed by advance payments to the disbursing office designated in the contract. The

proceeds from the payments that would otherwise be due the contractor shall be applied in liquidation of the outstanding advance payments. If the proceeds exceed the outstanding advance payments, the remaining balance shall be paid to the contractor.

(d) The advance payments shall be requested, approved, and paid based on estimates. There may be a variance between the contractor's estimated and actual cash requirements for each period. These variances represent over-or-under financing by the Government and could become significant. Consequently, these variances must be identified and taken into consideration with each new request for an advance payment. This is a joint responsibility of the contractor and the approving official.

232.471 Pooled advance payments.

An advance payment pool arrangement is an instrument for conveniently financing the performance of more than one contract, held by a single contractor. The agreement is separate from the contracts financed under it. It is especially convenient for the financing of cost-type contracts with nonprofit educational or research institutions for experimental, or research and development work, when several contracts or a series of contracts require financing by advance payments. When advance payments are appropriate, pooled advance payments may also be used to finance performance of other types of contracts held by a single contractor. They may be established without regard to the number of appropriations involved, and regardless of the fact that contracts affected may be those of more than one DOD purchasing office, DOD procuring activity, or Military Department. If more convenient or otherwise preferable, there also may be more than one advance payment pool agreement in force at the same time with a single contractor, designed separately to finance contracts of the Military Departments respectively concerned, or of one or more DOD procuring activities respectively. Advance payment pool agreements may be established under the statutes mentioned in FAR 232.401 and will be in accordance with the procedure that follows for arrangements with nonprofit institutions. Advance payment pool arrangements with other than nonprofit organizations shall be in accordance with the specific directions of the departmental contract financing office.

232.471-1 Distinction between pool contracts and designated pool contracts.

An advance payment pool agreement may cover a broad area of a contractor's financial needs rather than piecemeal segments related to separate contracts. A pool agreement is based upon the contractor's financing requirements for a group of DOD contracts to be performed at the same time. The monetary requirements for the group of contracts are considered in fixing the maximum dollar amount for the advance payment pool agreement. Advances are normally not made on each separate contract, but can be made on and charged against one or more contracts, so as to supply the monetary requirements of smaller contracts included in the advance payment pool. A contract to which the advance payments are charged is called a "designated pool contract." All other contracts financed by the pool agreement are called "pool contracts."

232.471-2 Advance payment pool agreement—special features.

The principal features distinguishing an advance payment pool agreement from an advance payment provision affecting only a single contract are:

(a) The advance payment pool agreement specifies one or more designated pool contract, and provides for substitution from time to time of new or different contracts as the designated pool contract(s);

(c) The advance payment pool agreement defines the contracts included as pool contracts, and provides for inclusion of them as they are awarded;

(d) All payments under the pool contracts and designated pool contracts are made into a special bank account, except where the procedure for advance payments without a special bank account is to be used in accordance with 232.409-3 and 232.470. Where a special bank account is not used, payments otherwise due the contractor are applied in liquidation of the outstanding advance payments; and

(e) The appropriate provisions of the advance payment clause are made applicable to all pool contracts, including the designated pool contracts.

232.471-3 Liquidation—designated pool contracts—administering office.

It is imperative for each advance payment pool that effective arrangements be made to ensure that the advances outstanding do not exceed the amount authorized in the advance payment pool agreement and that timely liquidation is accomplished. For each pool agreement, there shall be a single administering office, and to the extent possible, there should be a single disbursing office for all of the contracts in the pool, especially those contracts which are designated pool contracts.

232.471-4 Advance payment pool—understandings.

Advance payment pools including contracts of more than one Military Department require approval from the contract financing office of each department concerned. The following guidance is provided:

(a) Requests to establish an advance payment pool agreement may be initiated by the contractor, the contracting officer, chief of a procuring activity, or at Departmental headquarters.

(b) When the advance payment pool includes contracts of more than one Military Department, the authorizing Department should be the one having a preponderant interest in the contractor's unfinished contracts. The Military Department with the preponderant interest is the Department with the largest dollar value of the contractor's unfinished contracts. Possible exceptions to the preponderance principle are cases in which it would be more convenient to use a relatively large long-term contract of a nonpreponderant Department as the designated pool contract, or where it is reasonably expected that preponderance will shift during the term of the advance payment pool agreement.

(c) Situations may occur in which the remaining payments available on pool contracts are not sufficient to liquidate the outstanding advance. These circumstances will not affect the normal practice of offsetting mutual debits and credits. If there is only one open designated pool contract, the entire advance payment loss should fall on that contract. If there is more than one open designated pool contract on which advance payments remain outstanding after adjustment for debits and credits under each separate contract, the advance payment loss (insofar as contracts of two or more Military Departments are involved) will fall on all of those designated pool contracts, in proportion to the contract prices of the designated pool contracts.

(d) Normally, records will not be maintained to show separately the amount of advance payments invested in each one of the separate contracts. The keeping of such records is unnecessary, and would not be consistent with the purposes of advance payment pools.

232.472 Agreement for advance payments without special bank account.

An agreement with a nonprofit educational or research and development institution for pooled advance payments without a special bank account is constructed by making the following changes to the Advance Payments clause at 252.232-12.

(a) Change the clause title to "Advance Payment Pool Agreement Without Special Bank Account."

(b) Throughout the clause text: Change all occurrences of the word "contract" to "agreement."

(c) Add the following preamble immediately below the title:

This agreement is entered into this ——— day of ———, 19— between the United States of America (the government), represented by ———————, and ——————— (insert institution name and appropriate identification information) (hereinafter referred to as the "contractor").

(d) In paragraph "(a)(2)," in the blank space left for the amount, insert the following:

* * * the amount stated in the Designations and Determinations paragraph hereof or the aggregate of the total unpaid designated pool contracts' prices, whichever is less.

(e) Delete paragraph (b) and insert the following:

(b) Amount of Advance Payments.

(1) The Contractor shall determine the estimated amount of advance payment(s) necessary to meet the requirements of paragraph (c) herein entitled "Use of Funds" to cover performance of the pool contract(s). This determination shall be pursuant to written instructions provided by the Administering Office (see Designations and Determinations paragraph herein) relative to the (i) shortest practical period for which advance payments will be provided, (ii) format and frequency of requests for advance payments, and (iii) data required in support of each request. The estimate shall be adjusted for the amount by which actual cash expenditures for prior period performance of the pool contract(s) exceeded or was less than the advance payments provided for such performance. The Contractor shall submit its estimate and supporting data in a request for advance payment(s) to the Approving Official designated in writing by the Administering Office for advance payments. The request should be submitted sufficiently early to permit review, approval, and disbursement of the required advance payment(s) by the time the funds are actually needed by the Contractor.

(2) The Approving Official will review the Contractor's advance payment requirements to determine the reasonableness thereof, and if concurrence is given, the request will be approved and the Disbursing Office designated (see Designations and Determinations paragraph herein) will be notified by the Approving Official to make payment. If the Approving Official determines that the advance payment requested by the Contractor is in excess of cash requirements for performance of pool contract during the specified period of time, the Approving Official will approve an amount based on such determination and notify the Disbursing Office of the reduced amount. Upon any such reduction, the Approving Official will immediately notify the Administering Office for this advance payment pool agreement in writing, with a copy to the Contractor, of the amount requested, the amount approved, and the reasons for reduction. The Administering Office will determine whether additional funds will be advanced to the Contractor.

(3) Upon notification of the approved request, the Disbursing Office will draw a Treasury check payable to the Contractor for the amount authorized by the Approving Official and mail such check to the Contractor in time to be received on or about the date the funds are required for contract performance.

(f) Delete paragraph (c) and insert the following:

(c) *Use of funds.* Advance payments hereunder are to be used by the Contractor solely for the purpose of making payments for direct materials, direct labor, and administrative and overhead expenses allowable in accordance with the provisions of the pool contracts, or for the purpose of reimbursing the Contractor for such payments. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

(g) Delete the last sentence of paragraph (d).

(h) Delete paragraph (e) and insert the following:

(e) *Liquidation.* The Contractor will submit monthly cost reimbursement vouchers in accordance with the payment provisions of the pool contracts. The Government shall withhold payments of such vouchers due the Contractor and apply the amounts withheld against the Contractor's obligation to repay advance payments made hereunder and interest charges thereon until such advance payments and interest charges shall have been fully liquidated. Upon completion or termination of the advance payment pool agreement, the balance of liquidated advance payments shall be deducted from any amount otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

(i) Add the following to the last sentence of paragraph (f)(2):

* * * except as provided in the Liquidation and Default paragraphs herein.

(j) Add the following sentence at the end of paragraph (f)(2):

If interest is required, the interest will be calculated in accordance with paragraph (f) herein.

(k) Delete from paragraph (f)(3):

* * * the higher of (i) the published prime rate of the banking institution (depository) in which the special bank account is established or (ii) * * *

(l) Delete paragraphs (g) and (h).

(m) Change paragraph letters (i) through (p) to (g) through (n).

(n) Delete old paragraph (m) and insert the following:

(k) *Information and access to records.* The Contractor shall furnish to the administering office (1) monthly or at other intervals as required, signed or certified balance sheets and profit and loss statements together; and (2) if requested, other information concerning the operation of the Contractor's business. The Contractor shall provide the authorized Government representatives proper facilities for inspection of the Contractor's books, records, and accounts.

(o) Add the following new paragraphs:

(o) *Designations and determinations:*

(1) *Amount.* The amount of advance payments at any time outstanding shall not exceed $——— of the aggregate of the total undisbursed obligation of the designated pool contract, whichever is less.

(2) *Administering office.* The office administering advance payments:

———————————

(3) *Disbursing office.* The office making advance payments under this Agreement:

———————————

(4) *Approving office.* The approving office shall be ———————.

(p) *Limiting date.* Advance payments made hereunder are to finance all pool contracts subject to this Agreement, including amendments issued thereunder which result in increasing the contract price, that are executed on or before ——————— (insert a date, normally not more than two years in the future).

(p) Add the following at the conclusion of the agreement:

Signatures and official titles:
For the Contractor:
———————————(name)
———————————(title)
———————————(date)
For the United States:
———————————(name)
———————————(title)
———————————(date)

Subpart 232.5—Progress Payments Based on Costs

232.501 General.

232.501-1 Customary progress payment rates.

(a) The customary progress payment rate applicable to Foreign Military Sales requirements is 95% for other than small businesses, and 100% for small businesses. The customary progress payment rate for flexible progress payments is the rate determined by use of the CASH II computer program in accordance with the requirements of 232.502-1(S-71). Except for contracts which contain both U.S. and FMS

requirements, no more than one progress payment rate or liquidation rate is applicable to a contract at any point in time.

232.501-2 Unusual progress payments.

(a) Contracting officers shall not modify contracts to authorize unliquidated unusual progress payments in excess of $25,000,000 without the prior written consent of the Office of The Deputy Under Secretary of Defense (Research and Engineering). All other unusual progress payment provisions shall be coordinated by the departmental contract financing office, with the Department of Defense Contract Finance Committee.

232.501-3 Contract price.

(b) For purposes of making progress payments, the contract price may exceed the funds obligated under the contract if the contract contains an appropriate Limitation of Funds clause. In such cases, the progress payments shall be limited to the lesser of the applicable percentage of the contract price, or 100% of the funds obligated.

232.502 Preaward matters.

232.502-1 Use of customary progress payments.

(S-70) *Customary FMS progress payments.*

(1) FMS progress payments shall be applicable to Department of Defense acquisitions on behalf of foreign governments or international organizations pursuant to Section 22 of the Arms Export Control Act (FMS requirements).

(2) FMS progress payments are not applicable to:

(i) Acquisitions for replenishment of U.S. Government inventories or stocks, and

(ii) Acquisitions made under DoD cooperative logistic support arrangements.

(S-71) *Customary flexible progress payments.*

(1) Paying progress payments assists in financing a contractor's performance and reduces the contractor's investment in its work in progress inventory. The actual investment held by a contractor in work in process inventory is influenced by a number of factors in addition to progress payments, such as delivery schedules, cash management practices, and Government payment practices. Progress payments amounts that are determined by using uniform, standard progress payment rates (i.e., 90% or 95%) are insensitive to these factors influencing investment and, as a consequence, result in investments by contractors in work process inventory that vary among contractors and across contracts; on the other hand, flexible progress payment rates (expressed as a percentage that will be applied to costs to determine the amount payable as a progress payment in the same manner as uniform, standard progress payment rates) are designed to tailor more closely the progress payment rate to the cash needs for financing performance of a particular contractor for a given contract.

(2) For flexible progress payments, cash needs are measured and projected in relation to investment underlying the work in process inventory over the life of the contract. Total investment is measured by a weighted average of total costs paid by the contractor to complete performance of the contract, and the contractor's investment is the weighted average of the amount not paid by the Government. The Department of Defense (DoD), as a matter of policy, has concluded that a contractor should retain at least a 5% investment in work in process inventory over the live of the contract. Accordingly, the DoD will make progress payments at a rate (expressed as a whole number) that is the highest rate which yields a corresponding investment by the contractor in work in process inventory of not less than 5%. This progress payment rate is to be determined by the DoD Cash Flow Computer Model. In no event will the progress payment rate be greater than 100%, or less than the uniform, standard progress payment rate that would have been applied to the contract absent flexible progress payments.

(3) Contracting officers shall use a flexible progress payment rate in lieu of the uniform standard rates if:

(i) The contractor requests the use of flexible progress payments rates,

(ii) The contractor agrees to the requirements of this section, and

(iii) The criteria in paragraph (a)(5) below are met.

(4) The flexible progress payment rate shall be determined through application of the DoD Cash Flow Computer Model, available to contracting officers on the COPPER IMPACT computer time sharing network under the computer file name "CASH II." The model takes into account key cash flow factors, such as contract cost profile, delivery schedules, subcontractor progress payments, liquidation rates, and payment/reimbursement cycles. Operating instructions and cash flow data requirements are retrievable within the model in a conversational mode. Contractors may obtain copies of the DoD Cash Flow Computer Model User's Guide from the Defense Technical Information Center, Building 5, Cameron Station, Alexandria, VA 22314. Contracting officers shall not grant contractor access to Government leased COPPER IMPACT time sharing computer network.

(5) Contractors who submit certified cost pricing data, as defined in FAR 15.804-2, for negotiated fixed-price contracts in excess of $1 million may request flexible progress payments. Formally advertised contracts are not eligible for flexible progress payments. Flexible progress payments are not available for contracts awarded and performed entirely outside of the United States, its possessions and territories.

(6) Contractors will furnish to the contracting officer cash flow data in the form and context specified by the DoD Cash Flow Computer Model. These data include: actual and projected incurred cost broken down by element of cost and by month for the duration of the contract, float times for each element of cost, progress payment receipts and delivery payment receipts and associated contract prices and profit percentage. Contracting officers will verify the cash flow data in accordance with normal procedures used to verify contractor cost and pricing data. Administrative contracting officers are encouraged to establish advance agreements at contractor locations for float and payment lag which are common to several contracts. Such agreements should be established when administratively practical.

(7) A redetermination of the flexible progress payment rate shall be made upon the request of the Government or contractor if measurement of the contractor's cumulative investment in work in process inventory using actual and projected cash flow data indicates an investment level above 7% or below 3%. The cash flow computer model is designed to generate a progress payment rate that yields a target investment of 5%, based on a weighted average. Accordingly, there should normally be no need to request actual and projected contract cash flow data unless delivery schedules are revised, Government progress payment lag times are substantially changed from those used in the establishment of the progress payment rate, or substantial new work (e.g., option) is added to the contract.

(8) As noted in FAR 32.504, the standards for progress payments to subcontractors ought to be the same as those applicable to prime contractors. Accordingly, subcontractors who request a flexible progress payment rate, meet the criteria in paragraph (a)(5) above and agree to the requirements of

this section are to receive a flexible progress payment rate. The subcontract flexible progress payment rate will be determined by the prime contractor without regard to the progress payment rate in the prime contract. The DoD Cash Flow Computer Model and associated procedures will be used by the prime contractor and a reasonable review of the cash flow data provided by the subcontractor will be made.

(9) When flexible progress payments are contemplated for use on a definitive contract superseding a letter contract or an unpriced BOA order, the applicable standard progress payment clause at FAR 52.232–16 shall be used until definitization.

232.502–2 Contract finance office clearance.

Deviation from the Progress Payment clause, policy and procedures prescribed in FAR Part 32 and this Supplement shall be authorized only by the Office of The Deputy Under Secretary of Defense (Research and Engineering), in accordance with 232.171.

232.502–4 Contract clauses.

(S–70) The contracting officer shall insert the clause at 252.232–7003, Progress Payments for Foreign Military Sales Acquisitions, in any contract that provides for progress payments and contains FMS requirements.

(S–71) The contracting officer shall insert the clause at 252.232–7004, Flexible Progress Payments, when a flexible progress payment rate is used in the contract.

232.503 Postaward matters.

232.503–1 Contractor requests.

Subject to the specific requirements of agency procedures, contractor requests for progress payments may be submitted by computer generated equivalents of the Standard Form 1443.

232.503–6 Suspension or reduction of payments.

(g) *Loss contracts.*

(S–70) *Loss ratio adjustment procedures.* The following procedures shall be followed whenever the adjustments required by FAR 32.503–6 (f) and (g) are made;

(i) Except as provided in paragraph (g)(S–70)(ii) below, the loss ratio adjustment shall be calculated by the contracting officer using the procedures in FAR 32.503–6(g) by preparation of a supplementary analysis to the contractor's request for progress payments;

(ii) The Contractor may be requested to prepare the supplementary analysis as an attachment to the progress payment request, when the contracting officer determines, after a review, that the contractor's methods of estimating the Costs to Complete are reliable, accurate, and not susceptible to improper influences, prejudicial to the Government's interests; and

(iii) In order to maintain an audit trail, and permit verification of calculations, the loss ratio adjustment shall not be made by alteration or replacement of the data on the contractor's original request for progress payment (SF 1443 or computer generated equivalent).

Subpart 232.6—Contract Debts

232.600 Scope.

This subpart provides additional guidance for the collection of contract debts, the charging of interest thereon, the deferral of payments, the compromise and termination of claims, and the reporting of contractor bankruptcies.

232.601 Definition.

Unless otherwise indicated in this subpart, the contract financing office within each military department and DLA is the "responsible official" for purposes of FAR Subpart 32.6.

232.605 Responsibilities and cooperation among government officials.

(b) A disbursing officer has primary responsibility for determining the amount and collection of contract debt whenever overpayments or erroneous payments have been made. The disbursing officer also has such primary responsibility when the amounts due and dates for payment are fixed by the terms of the contract itself, and copy of such contract has been furnished to the disbursing officer with notice to collect as amounts become due. Disbursing officers are those officials designated to make payments under a contract or to receive payments of amounts due under a contract, including finance and accounting officers at installations where integrated accounting is in effect.

232.606 Debt determination and collection.

(c)(9)(vii) Upon transfer of a case to the contract financing office, the debt record mantained by a contracting officer shall be closed by appropriate reference to the date of transfer. When a disbursing officer is primarily responsible for collection, the record of the debt shall be maintained until payment or advice of collection is received. In all cases transferred to a contract financing office, that office shall establish and maintain an accounts receivable record showing all pertinent information relating to the debt, including an indebtedness and payment record reflecting current status, to be closed upon collection or compromise, or referral of the case to the General Accounting Office or to the Department of Justice.

(d) In the absence of a deferment agreement made by the contract financing office, a report of indebtedness will be made to the General Accounting Office upon failure to effect collection within a reasonable period, generally not to exceed 180 days from the date the debt is established.

(e) Before a debt is placed on the Hold-Up List (see 232.173), or before distribution of a new listing, the office undertaking to effect collection may sometimes request other offices having dealings with the contractor on other contracts, whether contracting officers or disbursing officers, to withhold payments on contracts, for application on the debt. Government personnel are expected to cooperate and assist in the fulfillment of such requests, giving due regard, however, to the effect of abrupt cessation of payments on the operations of the contractor, performance of the contracts, and the interest of the United States in such contracts. In the making of these requests to other offices, and in complying with such requests, care will be taken at all times to avoid overcollection or duplicate collection. Each check to liquidate indebtedness pursuant to such requests will be drawn payable to "(contractor's name (or office designated for contract administration))," and transmitted to the disbursing officer on the contract under which the indebtedness arose, and will be accompained by a statement sufficient to identify the indebtedness to which it is to be applied. Appropriate notice of the deduction will be given to the contractor concerned, by the agency making the deduction.

232.610 Demand for payment of contract debt.

(a) Demands for payment of contract debts resulting from other than a termination of default shall be made by the office which first determines an amount due, whether it be the Contract Administration Office, the Contracting Office, the Disbursing Office, or the selling office/agency, and will be handled in accordance with the regulations of the department or agency to which that office is assigned. A copy of the demand shall be provided to the payment office cited in the contract and designated to receive payment. Demands for payment of contract debts resulting from a termination for default,

e.g., excess costs, unliquidated progress payments, and liquidated damages, shall be made by the Procuring Contracting Officer and shall direct the debtor to make payment to an office of the Procuring Department. If this action will result in the payment being made to a payment office other than the one cited in the contract, the assigned ACO will issue a contract modification designating the new payment office.

232.613 Deferment of collection.

(S–70) Deferment requests will be forwarded as soon as possible to the contract financing office of the Department concerned. Such requests shall be supported by adequate identifying and explanatory information, including relevant memoranda and correspondence, accounting data, amounts and dates of any collections, name and location of disbursing office and, if applicable, the assignee, date of filing of appeal or of action with the Claims Court, information on hand concerning financial condition of the contractor, and recommendations for action on the deferment request. Incident to its review and action of a deferment or installment proposal, the contract financing office may request additional information, as well as other assistance needed from the transmitting office. Such requested information and assistance will be furnished promptly so that final action on the proposed deferment or installment may be taken by the contract financing office without unnecessary delay. Whenever deemed appropriate by the contract financing office, it may deal directly with the contractor concerning collection or deferment of the debt.

(S–71) When the contract financing office enters into a deferral agreement or a compromise, it will furnish copies to the appropriate contracting officer and disbursing officer when deemed necessary.

(S–72) When the contract financing office denies a deferral request, or does not reach agreement with a contractor on a deferment, it will give timely notice to the appropriate contracting officer when deemed necessary.

232.614 Interest.

232.614–1 Interest charges.

(c) The interest rates established by the Secretary of the Treasury will be published in the **Federal Register** every 6 months. The current rate may also be obtained from the Departmental contract financing office representative.

232.616 Compromise actions.

Department of Defense authority under the cited statute and joint regulations has been delegated to the Departments. Within each Department, for those debts covered by this subpart authority to act in conformity to the cited statute and joint regulations has been delegated to the contract financing office.

232.617 Contract clause.

(a)(7) The following further exceptions have been established:

(i) contracts for instructions of military personnel or ROTC personnel at civilian schools, colleges, and universities;

(ii) basic agreements with telephone companies, under which communications services and facilities will be ordered, and purchases under such agreements; and

(iii) transportation contracts with common carriers for common carrier services, e.g., common carrier transportation services procured by transportation requests, transportation warrants, bills of lading, and similar transportation forms.

(S–70) Contractors and contracts mentioned in FAR 32.617 (a) (2) through (5), and other contractors in exceptional circumstances, may be exempted from the administrative interest charges required by this subpart when so agreed by the DoD Contract Finance Committee, with the approval of the Under Secretary of Defense (Research and Engineering) or his representative.

232.670 Transfer of responsibility for debt collection.

(a) Transfer of the debt case will be made to the contract financing office upon the expiration of 45 days without full collection after the date of initial demand, whether or not postponement has been requested. Debt cases under contracts terminated for default shall be transferred to the contract financing office of the Procuring Department. Debt cases transferred to the contract financing office of the Procuring Department under contracts terminated for default shall not include that portion of a debt related to actions where a disbursing officer has primary responsibility. All debt cases where the disbursing officer has primary responsibility shall be transferred to the contract financing office of the disbursing office's department. Other types of debt cases shall be transferred to the contract financing office or other office of the Department which first determines an amount to be due in accordance with the regulations of that Department.

(b) The transfers required above will not be made for amounts less than $600.00. However, it is incumbent on contracting officers and disbursing officers to effect collection whenever and by such means as are practicable.

(c) The contract financing office of each military department shall take appropriate actions to effect collection of debts referred to it. This includes administration of deferment agreements; causing debts to be listed on the consolidated list of contractors indebted to the United States, commonly known as the "Hold-Up List;" to remove names from the "Hold-Up List;" to determine administrative uncollectibility; and to refer debts to the General Accounting Office or the Department of Justice as appropriate. Within each Department, no arrangement for installment or deferral of payments may be made without the approval of the contract financing office. Acting in conformity to the standards stated in this subpart, those offices may approve or deny deferment proposals transmitted to them or made directly to them by contractors, or approve such proposals on prescribed conditions.

(d) Responsibility for assuring effective administration in accordance with this subpart shall be in the Under Secretary of Defense (Research and Engineering). Responsibility for effective administration under this subpart in each Department shall be in the Under or Assistant Secretary, or other designated official, responsible for the comptroller function. The DoD Contract Finance Committee shall advise and assist the Under Secretary of Defense (Research and Engineering) in assuring proper application of policies and the development of procedures hereunder, and in the formulation of such further instructions on this subject as may appear desirable. That Committee is responsible for this section and will develop and promulgate herein supplemental instructions on this subject.

232.671 Bankruptcy reporting.

For those debts covered by this subpart, claims in bankruptcy, insolvency, or in proceedings for reorganization or rearrangement will be furnished to the Department of Justice. These claims are (a) those which have been transferred to a contract financing office; (b) those on their way to a contract financing office at inception of bankruptcy or insolvency proceedings; (c) those pending and not forwarded to a contract financing office at inception of bankruptcy or insolvency proceedings; and (d) those which are the consequence of bankruptcy or insolvency proceedings. Information on a bankruptcy, insolvency, reorganization

or rearrangement will be provided as soon as possible by the office or origin of a debt to that office within a Department designated to receive such information. Proof of claim, with pertinent supporting data and documentation shall be furnished to the Department of Justice by the contract financing office or by such other office as may be designated within a Department. All claims arising under the same contract will be filed by the procuring department which awarded the contract. Information, reports, and proof of claim under this paragraph are not expected on debts of less than $600.

Subpart 232.7—Contract Funding

232.705 Contract Clauses.

232.705-2 Clauses for limitation of cost or funds.

(a) When a contract is of the installment type, the clause at FAR 52.232-20, Limitation of Costs, may be appropriately modified.

(c) When a contract is of the installment type, the clause at FAR 52.232-22, Limitation of Funds, may be appropriately modified.

Subpart 232.8—Assignment of Claims

232.800 Scope of subpart.

Note: 31 U.S.C. 203 has been recodified at 31 U.S.C. 3727 by Public Law 97-258.

232.803 Policies.

(b) Only DOD contracts for personal services may prohibit the assignment of claims (see FAR 32.806(b) for appropriate clause).

(d) For purposes of DOD contracts, a national emergency shall be deemed to exist (see 50 U.S.C. 1651(a) (4) and (5)). Departments, in accordance with their procedures, may exclude a no set-off commitment when they determine it is in the Government's interest.

232.806 Contract clauses.

(a)(2) When the clause at FAR 52.232-32 is used, the contracting officer shall also insert Alternate I, unless excluded under FAR 32.803(d).

PART 233—DISPUTES AND APPEALS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

233.013 Obligation to continue performance.

(a) The acquisitions of aircraft, naval vessels, missiles, tracked combat vehicles, and related electronic systems shall include the alternate paragraph (h). In addition, the alternate (h) may also be used in those contracts or classes of contracts when it has been determined, in accordance with Department procedures, that it is essential because of unusual circumstances in which the performance of a contract may be so vital to the national security or to the public health and welfare that performance must be guaranteed even in the event of a dispute that may be characterized as a claim relating to, as opposed to arising under, the contract. Examples of the types of unusual circumstances when continued performance may be determined to be vital to the national security or public health and welfare include the acquisition of weapons, support systems, and related components other than those listed above, or other essential supplies or services whose timely reprocurement from other sources would be impracticable. The determination to use the alternate paragraph (h) in other situations shall be made by the head of the contracting activity responsible for the acquisition involved.

233.014 Contract clause.

The contracting officer may use Alternate I under the conditions set forth in 233.013(a) above.

233.070 Claims for interest penalties under the Prompt Payment Act.

(a) The Prompt Payment Act (Public Law 97-177) provides that a contractor will be paid interest penalties when certain payments by the Government are not made on time or when discounts are taken for payments that are not made within the discount period. The act applies to payments made on contracts awarded on or after 1 October 1982. Under the act, interest penalties are due if the contractor is not paid for delivery of complete items of supplies or services within 15 days after the required payment date (within 3 days for meat or meat food products and within 5 days for perishable agricultural commodities). Interest penalties are also due on the unpaid portion of discount payments made after the discount period. Claims for interest penalties not paid may be made under the Contract Disputes Act.

(b) The required payment date for purposes of the Prompt Payment Act is the date on which payment is due under the terms of the contract or, if a specific date on which payment is due is not established by the contract, 30 days after the later of the date on which a proper invoice is received in the designated paying office or the date on which the supplies or services are accepted. The required payment date for meat and meat food products is not later than the 7th day after delivery, and for perishable agricultural commodities is not later than the 10th day after delivery, unless another date is specified in the contract. The required payment date for improperly taken discounts is the last day of the discount period.

(c) Interest penalties begin to accrue on the day after the required payment date and end on the date on which payment of the amount due is made. Interest penalties do not continue to accrue under the Prompt Payment Act after the filing of a claim for such penalties under the Contract Disputes Act or for more than one year. Interest penalties also do not accrue under the Prompt Payment Act when payment is not made within the prescribed period after the required payment date because of a dispute over the amount of the payment or other allegations concerning compliance with the contract.

Subpart 233.70—Certification Under Section 813 of Public Law 95-485

233.7000 Certification of requests for adjustment or relief exceeding $100,000.

(a) Section 813 of the 1979 Department of Defense Appropriation Authorization Act, Public Law 95-485, requires the certification of contract claims, requests for equitable adjustment to contract terms, requests for relief under Public Law 85-804, and similar requests exceeding $100,000. This certification must be signed by a senior company official in charge at the plant or location involved. Although the law only requires submission of the certification with requests exceeding $100,000, even if the requirement is not set forth in the contract, the clause contained at 252.233-7000, Certification of Requests for Adjustments or Relief Exceeding $100,000, shall be inserted in all contracts expected to exceed $100,000 in value.

(b) Submission of the Section 813 certification is required in addition to any certification required by the Truth in Negotiations Act and by FAR 15.804-4.

(c) Section 6(c) of the Contract Disputes Act, Public Law 95-563, also requires the certification of claims. The Section 813 certification described above is due when the claim or request for relief is first asserted to the Government. However, the certification under the Contract Disputes Act is due only after a dispute has come into being and the contractor submits a written claim for the purpose of obtaining a contracting officer's decision. A single certification, using the language

prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, can be used to comply with both statutes in those situations where the first assertion of a claim or request for relief coincides with the inception of a contract dispute.

(d) In determining when the dollar thresholds requiring a Section 813 certification described above are met, the aggregate amount of both the increased and decreased costs shall be used. (See 215.804–2(a)(1) (ii).)

Subchapter F—Special Categories of Contracting

PART 234—MAJOR SYSTEM ACQUISITION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

234.000 Scope of part.

Department of Defense implementation of OMB Circular A–109, Major System Acquisitions, is contained in DoD Directive 5000.1, Major System Acquisitions, and DoD Instruction 5000.2, Major System Acquisition Procedures.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

235.001 Definitions.

The following terms and categories relating to "research and development" are those set forth by the Department of Defense for management of RDT&E programs. However, the term "research and development" as used in this regulation ordinarily encompasses only the Research, Exploratory Development, Advanced Development, Engineering Development, and Operational Systems Development categories below. Generally, it does not cover the management and support category. For example, construction of recreational facilities at an installation used exclusively or generally for research and development would not be acquisition of "research and development" under this regulation. Nevertheless in an exceptional case, depending upon the particular facts, some kinds of work within management and support could be "research and development" within this regulation:

"Advanced development" means all effort directed toward projects which have moved into the development of hardware for test. The prime result of this type of effort is proof of design concept rather than the development of hardware for service use. Projects in this category have a potential military application.

"Educational or other nonprofit organization" means any corporation, foundation, trust, or institution operated for purposes of higher education or whose primary purpose is the conduct of scientific research, nor organized for profit and no part of whose net earnings inure to the profit of any private shareholder or individual.

"Engineering development" means those projects in full-scale engineering development for Service use but which have not yet received approval for production or had production funds included in the DoD budget submission for the budget or subsequent fiscal year. This area is characterized by major line item projects and program control will be exercised by review of individual projects.

"Exploratory development" means all effort directed toward the solution of specific military problems, short of major development projects. This type of effort may vary from fairly fundamental applied research to quite sophisticated bread-board hardware, study programming and planning efforts. It would thus include studies, investigations and minor development effort. The dominant characteristic of this category of effort is that it be pointed toward specific military problem areas with a view toward developing and evaluating the feasibility and practicability of proposed solutions and determining their parameters.

"Management and support" means all effort directed toward support of installations or operations required for general research and development use. Included would be military construction of a general nature unrelated to specific programs, maintenance support of laboratories, operation and maintenance of test ranges, and maintenance of test aircraft and ships. Costs of laboratory personnel, either in-house or contract-operated, would be assigned to appropriate projects or as a line item in the Research Exploratory Development, or Advanced Development Program areas, as appropriate.

"Operational system development" means those projects still in full-scale engineering development but which have received approval for production through DSARC or other action, or production funds have been included in the DoD budget submission for the budget or subsequent fiscal year. All items in this area are major line items projects which appear as RDT&E Costs of Weapons Systems Elements in other programs. Program control will thus be exercised by review of the individual projects.

"Research" means all effort of scientific study and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental and life sciences related to long-term national security needs. It provides fundamental knowledge required for the solution of military problems. It forms a part of the base for (a) subsequent exploratory and advanced developments in Defense related technologies, and (b) new or improved military functional capabilities in areas such as communications, detection, tracking, surveillance, propulsion, mobility, guidance and control, navigation, energy conversion, materials and structures, and personnel support.

"Unsolicited proposal" means a research or development proposal which is made to the Government by a prospective contractor without prior formal or informal solicitation from a contracting activity. Also see FAR subpart 15.5.

235.003 Policy.

(a) *Use of contracts.* Grants are authorized under 42 U.S.C. 1891 for basic research at educational institutions and other nonprofit organizations whose primary purpose is the conduct of scientific research. The policies and procedures for grants are prescribed by other Department of Defense directives as implemented in Departmental procedures.

(b) *Cost sharing.* Cost sharing under DoD contracts is encouraged in accordance with Federal Management Circular, FMC 73–3: "Cost Sharing on Federal Research," in the acquisition of basic and applied research. This paragraph provides guidelines for participation by contractors, both profit and nonprofit, in the cost of research supported by DoD.

(b)(S–70) *Scope.*

(i) These guidelines are applicable to all research contracts.

(ii) These guidelines need not be applied to development projects (i.e., projects for which the principal purpose is the production of, or design, testing or improvement of, products, materials devices, systems of methods). However, contracting officers may apply some or all of these guidelines to development contracts.

(b)(S–71) *Cost participation by contractors.*

(i) Participation by contractors in the cost of conducting research projects is intended to serve the mutual interests of the DoD and the contractors by helping

to assure efficient utilization of the resources available for the conduct of research projects and by promoting sound planning and prudent fiscal policies by contractors.

(ii) Contractors shall be encouraged to contribute to the cost of performing research unless it is concluded that a request for cost sharing would not be appropriate because of any one of the following:

(A) The particular research objective or scope of effort for the contract is specified by the Government rather than proposed by the contractor; this would usually include any formal Government request for proposals for a specific project;

(B) The research effort has only minor relevance to the commercial activities of the contractor, and the organization is proposing to undertake the research primarily as a service to the Government; or

(C) The contractor has little or no outside sources of funds from which to make a cost contribution. Cost sharing should generally not be requested if cost sharing would mean that the Government would have to provide funds through some other means (such as fees) to enable the contractor to cost share. It should be recognized that those contractors who are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to make a cost contribution.

(b)(S–72) *Amount of cost sharing.* When cost sharing is required, the amount of cost participation by the contractor may vary in accordance with a number of factors relating to the contractor's organization (profit or nonprofit), and the character of the research effort. The amount of cost participation should reflect the mutual agreement of the parties. Factors which the contracting officer may consider in any negotiations with contractors regarding the amount of cost participation, include the following:

(i) Cost participation by educational institutions and other not-for-profit or nonprofit contractors should normally be at least 1% of total contract cost. In many cases cost sharing of less than 5% of total project cost would be appropriate in view of the contractor's nonprofit status and limited ability to recover the cost of such participation from non-Federal sources. However, in some cases, it may be appropriate for educational institutions to provide a higher degree of cost sharing, such as when the cost of the research consists primarily of the academic year salary of faculty members, or when the equipment acquired by the institution for the project will be of significant value to the institution in its educational activities.

(ii) The amount of cost participation by commercial contractors should depend to a large extent on whether the research effort or results are likely to enhance the contractor's capability, expertise or competitive position, and the value of such enhancement to the contractor. It should be recognized that those contractors who are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to derive a monetary benefit from their research under Government contracts. Therefore, cost participation by commercial contractors could reasonably range from as little as 1% or less of the total project cost, to more than 50% of total project cost.

(iii) If the contractor will not acquire title to or the right to use inventions, patents, or technical information resulting from the research project, it would generally be appropriate to obtain less cost sharing than in cases in which the contractor acquires such rights.

(iv) A relatively low degree of cost sharing may be appropriate if, in the view of the contracting officer, an area of research requires special stimulus in the national interest.

(v) A fee or profit will usually not be paid if the contractor is to contribute to the cost of the research effort, but the amount of cost sharing may be reduced to reflect the fact that the organization is foregoing a normal fee or profit on the research. However, if the research is expected to be of only minor value to the contractor, it may be appropriate for the contractor to make a contribution in the form of a reduced fee or profit rather than sharing the costs of the contract.

(b)(S–73) *Administration.*

(i) Cost participation may be accomplished by a contribution to either direct or indirect costs, provided that such costs would otherwise be allowable in accordance with any cost principles applicable to the contract, and that the costs are not charged to the Government under any other grant or contract.

(ii) The amount of cost participation by a contractor may be determined for each individual research contract or, if the contracting officer desires, for the aggregate of all or some of the contractor's research projects supported by DoD. When the amount of cost sharing is determined for individual projects, the contracting officer may consider the contractor's participation over the total term of the project so that a relatively high contribution in one year may be offset by a relatively low contribution in another year. If the amount of the contractor's cost sharing is to be determined for the aggregate of all or some of DoD's projects, relatively high contributions on some projects may be offset by relatively low contributions on other projects.

(c) *Recoupment.* The policy and procedures in Subpart 235.71 apply with respect to the recovery of nonrecurring costs on commercial sales of defense products and technology. Also, see Part 225 for guidance on recovery of nonrecurring research, development, test and evaluation costs when acquisitions are made for foreign military sales customers.

235.004 Publicizing requirements and expanding research and development sources.

(a) In addition to the requirements of FAR 35.004(a), where the contracting mission warrants it, Research and Development Bidders Mailing Lists will be established by purchasing activities in accordance with Supplement No. 4, Procedures for Submission of Applications To Be Placed on Research and Development Bidders Mailing Lists.

(a)(2) Contracting officers, technical personnel, and small business specialists shall cooperatively seek and develop information on the technical competence of small business concerns for research and development contracts. Small business specialists shall regularly bring to the attention of contracting officers and technical personnel descriptive data, brochures, and other information as to small business concerns that are apparently competent to perform research or development work in fields in which the contracting activity is interested. In order to cooperate with the Small Business Administration in carrying out its responsibility of assisting small business concerns to obtain contracts for research and development, contracting officers, technical personnel and small business specialists shall, upon request, provide to authorized SBA representatives information necessary to understand the Government's need concerning research and development programs consideration for specific future acquisition actions. Normally, this information shall be provided, as early as practicable, to SBA representatives assigned to a contracting activity and shall cover the Government's requirements for each proposed research and development acquisition exceeding $25,000. To the maximum extent feasible, SBA shall be afforded a

minimum of 15 working days to provide pertinent information concerning qualified potential small business sources developed through its investigation of the capabilities of specific firms in the particular field of research and development covered by such acquisitions. Full evaluation shall be given to any such information in selecting qualified sources. Sources recommended by SBA for a specific acquisition shall be solicited. Exception to the policy of providing SBA a minimum 15 working day interval to recommend additional qualified small research and development sources for a proposed acquisition will be permitted only in those cases where the head of the contracting activity or the HCA's designated representative advises the SBA representative that such action would result in unjustifiable delay.

235.005 Work statement.

(d)(6) Other considerations peculiar to the work to be performed include—

(i) Technical considerations, such as any known specific phenomena or techniques, and

(ii) A detailed description of the technical requirements and subordinate tasks (the emphasis on the detailed description of the technical requirements and subordinate tasks shall be on achievement of performance, operational and support requirements, rather than specifying detailed procedures or methods of accomplishment).

235.006 Contracting methods and contract type.

(a) Acquisition by negotiation may not be necessary in research and development acquisitions. Two-step formal advertising (see FAR 14.5) may be appropriate, for example, in the case of an advanced developmental project.

235.007 Solicitations.

(a) Through its research and development programs, the Department of Defense must seek the most advanced scientific knowledge attainable and the best possible equipment, weapons, and weapon systems that can be devised and produced. This means two things. First, it means seeking the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances and schedules. Second, it means continuing efforts to increase the number of qualified sources, and to encourage participation by small business concerns, as well as others, in Defense research and development (see also FAR 9.104).

(5) Other relevant factors include review of information obtained as a result of synopsis of the requirement or other advance publicity (FAR 35.004(a)(1)).

(b) Sources that become known as a result of synopsis or other means of publicizing requirements shall be solicited only if such sources possess the necessary security clearance. When a source not initially solicited requests a copy of a solicitation and such source has been technically evaluated within the past six months and determined not qualified, he may be so advised and his request denied. In the event such source has not been technically evaluated within the past six months, a copy of the request for proposal shall be furnished but only after advice has been given to the source making the request as to the reasons for the limited solicitation and, as appropriate, the unlikelihood of any other source being able to qualify for a contract award under the circumstances. The formal solicitation process is not the only method of entering into contracts for research and development. The ongoing research and development work pursued in industrial laboratories is producing ideas and products of interest to the Government; this is especially true in the exploratory and advanced development segment of the research and development spectrum. In the R&D areas where there has been unique and significant industrial accomplishment by a specific concern, the establishment of specifications for solicitation of others may defeat the purpose of taking advantage of this industrial initiative. In such cases, see FAR 35.007(i). In all acquisitions of research and development in which no small business source was solicited for a proposal, a statement shall be included in the solicitation file setting forth the reasons for not soliciting small business. Where there is no substantial question as to the choice of the source, as set forth in (b)(1), (2) and (3) below, solicitations may be limited to a single source:

(1) As a result of thorough evaluation, only one source is found fully qualified to perform the proposed work.

(2) The purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source.

(3) Where the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support.

(c) The requirements of FAR 35.007(c) apply only as applicable to a specific acquisition. Solicitations shall also provide offerors the opportunity to indicate the appropriate specifications and standards and to specify the way they will be applied and tailored to achieve the objectives, desired results and comply with the requirements stated in the solicitation.

(g) In soliciting proposals for the conduct of research and exploratory development, it may be desirable for the Government to furnish prospective contractors with certain information elaborating on the proposed statement of work, in order to permit optimum response by offerors and to allow more timely and comparable evaluation of proposals by the Government. This information normally should consist of the Government's estimate of the scientific and technical man-effort, or other reasonable indicators, it envisions when it is not possible to describe the magnitude of the proposed work to a sufficiently definitive degree. For example, the estimated effort may be expressed in terms of numbers of man-months or years in particular occupational categories. This technique may be appropriate in cases of contractors for research studies, investigations, or laboratory scale evaluations of feasibility where the Government desires to limit the scope of effort or depth of research. Where the degree of effort type of information is furnished, it should be made clear that such information is advisory only and is not cause for restricting what the contractor believes to be a meritorious technical proposal.

(i) Under the circumstances discussed in FAR 35.007(i) and subject to 215.2 and 215.5, the contracting officer may discuss new ideas or products, encourage submission of proposals and negotiate with prospective sources without a formal solicitation.

235.008 Evaluation for award.

(a) Before determining the technical competence of prospective contractors, and recommending to the contracting officer the concern or concerns that they consider most technically competent, cognizant technical personnel shall consider all the evaluation factors set forth in the solicitation (see FAR 35.007(e) for examples of evaluation factors).

(e) Proposals for cost reimbursement type or fixed price type contracts may be penalized during evaluation to the degree that the estimated cost is unrealistically low. The contracting officer, in accordance with FAR 15.1001, shall notify of that decision those

offerors whose proposals or offers have been determined to be unacceptable.

(e)(S–70) *Evaluation of price and costs.*

(i) While cost or price should not be the controlling factor in selecting a contractor for a research or development contract, cost or price should not be disregarded in the choice of the contractor.

(ii) Price analysis generally considers the overall reasonableness of the proposals in relation to the total contemplated expenditures and the extent and nature of the task scheduled to be accomplished. In most research and development contracts, the inability to define specifications and the nature of the end items prevent the effective use of certain techniques of price analysis, such as comparisons with prior quotations and current prices and evaluations in terms of quantitative yardsticks. The conclusions reached by price analysis techniques must be supported by cost analysis procedures, used to examine the details of the offerors' proposals.

(iii) The analysis of cost factors begins with an evaluation of the reliability of the offeror's cost estimating procedures and the dependability of his cost controls, as demonstrated by his history of cost management in the performance of other contracts or by his establishment of sound practice for this purpose. The cost analysis proceeds with a critical examination of the composition of each cost element in terms of its expected application to the objectives of the contract, and its conformance to the accepted principles of allocability and reasonableness. (See FAR 31.3 and FAR 31.201). A Government cost estimate may help in projecting tools for these purposes and may develop the expected incidence of various cost factors in relation to performance phases, planned segments, or identification "milestones." This estimate should provide a summary forecast of the time, effort, materials, equipment, and services necessary to accomplish the research or development objective. The comparison and reconciliation of the Government cost estimate with the offeror's cost estimate for the same phases, segments, or events should bring into focus any areas of excessive or insufficient emphasis and provide a foundation for meaningful discussions with the offeror.

(iv) Special care should be exercised to comply with FAR 31.205–1 and FAR 31.205–18 in the allowance of advertising costs under FAR 31.311–1.

(e)(S–71) *Documentation.* Contract files for research and development acquisition shall be fully documented to include the basis and reasons for the selection of the sources solicited and for the award. Such documentation should be adequate to justify the selection of the contractor over others whose proposals, from the standpoint of some single factor (such as lower estimated costs or short performance time), might appear more advantageous to the Government (see FAR 4.1).

235.010 Scientific and technical reports.

(a) Scientific and technical reports are documents written for the permanent record to document results obtained from and recommendations made on scientific and technical activities relating to a single project, task or contract, or relating to a small group of closely connected efforts within the Department of Defense Research and Development Program. A completed Report Documentation Page (DD Form 1473) is to be included in each copy of a scientific or technical report required by the contract (see Part 53). Whenever a scientific or technical report is required as a product of the Research, Development Test and Evaluation Effort, the contracting officer will assure that the requirement for a completed DD Form 1473 is clearly stated and that a complete DD Form 1473 is included with each copy of the required scientific and technical reports. Scientific and technical reports should be reproduced as economically as practicable, consistent with the reporting needs of the Government.

(b) Copies of scientific and technical reports resulting from DoD contracts are furnished to the Defense Technical Information Center (DTIC) which provides a central service for the interchange of scientific and technical information of value to the Department of Defense and its contractors. Organizations may become eligible for this service by registering in accordance with Defense Logistics Agency Regulation 4185.10, Certification and Registration for Access to DoD Defense Technical Information, which is available from the Defense Technical Information Center, Cameron Station, Alexandria, Virginia 22314.

235.011 Data.

(a) The data clauses as required by Subpart 227.4 usually provide, among other things, for the reproduction and use for any purpose of the Government of any or all of the information to be provided under the contract. Contracting officers shall require contractors to furnish all such information resulting from research and development contracts.

235.014 Government property and title.

(b) The basic requirements to be observed by the Departments for establishing and maintaining control over Government Property are set forth in Part 245.

(1) In determining whether to grant the approval to the contractor, the contracting officer shall determine that the proposed acquisition is essential to performance of the contract. Approval may be granted either on a line item basis or for clearly defined classes of items.

(c) Headquarters, Air Force Systems Command (AFSC) (PMPR), Andrews Air Force Base, Maryland 20334, is responsible in the Department of Defense for obtaining and maintaining files of Letters of Assurance from nonprofit institutions of higher education and other nonprofit institutions which provide for the agreement specified in FAR 35.014(c). AFSC (PMPR) will distribute, and periodically update, a list of institutions which furnished a Letter of Assurance. Contracting organizations may request a copy of this list; or at any time, inquire as to whether a particular institution has furnished the required Letter of Assurance. If transfer of title to equipment is contemplated and the contractor has not furnished a Letter of Assurance, the contracting office will request, in writing, that AFSC (PMPR) obtain a Letter of Assurance from the contractor. This request must give the complete mailing address of the contractor.

235.015 Contracts for research with educational institutions and nonprofit organizations.

(b) *Basic agreements.*

(2) The responsibility for negotiating Basic Agreements with appropriate educational institutions and nonprofit organizations for DoD, except designated Federal Contract Research Centers (FCRC), is assigned to the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia 22217. Copies of the agreements will be maintained by the Office of Naval Research and provided to DoD and other purchasing activities upon their request. The Office of Naval Research will periodically provide a listing of current Basic Agreements to the DAR Council for publication in a DoD FAR Supplement Circular. The need for special clauses should not preclude the purchasing office from utilizing these basic agreements. The Basic Agreement is incorporated by reference in Section I contract clauses, of the contract. Special clause requirements may be

incorporated into Section H—Special Provisions, of the contract.

(S–70) *Special use allowances for research facilities acquired by educational institutions.*

(1) *Definitions.*

"Research facility" means real property, other than land, and includes structures, alterations, and improvements, acquired for the purpose of conducting scientific research under contracts with agencies of the Department of Defense; and

"Special use allowance" means a negotiated direct or indirect allowance for buildings, structures, and real property, other than land, computed at an annual rate in excess of the rate which normally would be allowed under FAR Subpart 31.3.

(2) *Policy.* The expanding requirements of the Department of Defense for the performance of scientific research programs by educational institutions may create special situations wherein the acquisition or construction of additional research facilities by such institutions is essential for the effective performance of scientific research programs of major importance to the Department of Defense. Educational institutions are expected to furnish facilities required for the performance of Defense contracts, and the extent of reimbursement by the Government for the research programs of such institutions shall be governed by the principles set forth in FAR Subpart 31.3 However, in certain limited situations an educational institution may be unable to provide capital for new laboratories or other expanded facilities necessitated by Defense contracts unless the institution is given Governmental assistance in return for the risks and expenses it assumes in acquiring or constructing such facilities. Special use allowances constitute a means for recognizing these risks and expenses on the part of the educational institution and also provide a basis for permitting essential governmental research programs to go forward. The resort to special use allowances as provided by this paragraph is an extraordinary type of arrangement and constitutes an exception to the provisions for normal use allowances contained in FAR 31.311–10. Any specific agreement providing for a special use allowance shall be negotiated on a case-by-case basis using the criteria established herein.

(3) *Authorization of special use allowances.* The head of a contracting activity may approve special use allowances for the acquisition of construction costs of research facilities financed by educational institutions only when all of the following conditions are met:

(i) The research facility is essential to the performance of Department of Defense contracts;

(ii) The program requirements cannot be met practically and effectively by existing facilities, either Government or non-Government;

(iii) The proposed agreement for the special use allowances represents a sound business arrangement;

(iv) It is undesirable or impractical for the Government to provide Government-owned facilities for the performance of the research; and

(v) The proposed use of the research facility is consonance with the underlying objective of the Government in granting the special use allowance.

(4) *Negotiation and administration of contracts providing for special use allowance.* The negotiation and administration of contracts providing for special use allowances are subject to the conditions set forth in (S–70)(4)(i) through (S–70)(4)(xiii) below:

(i) The terms of the agreement for special use allowances authorized herein shall be specified or incorporated by reference in the applicable contracts.

(ii) When the special use allowance is based on the total acquisition cost, no normal use allowance or other use or depreciation charge will apply during the special allowance period nor after the educational institution has recovered the total acquisition cost under Government contracts or from other users. When the special use allowance is based on less than total acquisition cost of the research facility, the agreement will specify whether any normal use allowance or other use or depreciation charge will apply to the balance during the special use allowance period; however, no more than the normal use allowance computed in accordance with FAR Subpart 31.3 may be applied thereafter to the balance.

(iii) During the period of the special use allowance, and for subsequent periods to the extent agreed upon, the research facility shall be available for Government research use on a priority basis over non-Government use. Any significant use during such period other than which justified the special use allowance shall be subject to prior consent of the cognizant approval authority specified in (S–70)(3) above.

(iv) Special use allowances are applicable only in years in which the Government has contracts in effect with the educational institution for research to be conducted in the facility. The Government has no liability to the educational institution for the special use allowance in any year in which there is no Government contract. In any year when the level of research effort under Government contracts has been reduced to a point where the special use allowance is excessive in relation to the extent of the Government research funding, the parties may negotiate a special use allowance for that year at a mutually acceptable rate.

(v) When more than one Government contract is to be performed in the research facility, special use allowances generally should be allocated to using contracts on an equitable basis.

(vi) If during the period when a special use allowance is in effect, any substantial use is made of the research facility for parties other than the Government, only an allocable share of the special use allowance shall be charged to the Government.

(vii) Special use allowances shall not include any maintenance, utilities, or other operational costs.

(viii) Generally, the period for which a special use allowance is authorized shall be at least ten years. However, a shorter period of time is authorized where the total amount to be allowed is less than acquisition cost for the research facility.

(ix) Reimbursements under contracts for special use allowances shall not commence until the research facility is occupied and used for research under the contract. However, equitable adjustments may be made in the special use allowance during the construction period if the research facility is partially used for research under the contract.

(x) Determination of the amount of a special use allowance shall be based on the comparative need for the research facility by the Department of Defense and by the educational institution. In no event shall the institution be paid more than the acquisition costs.

(xi) In establishing the annual special use allowance, due consideration shall be given to rental costs for similar space in the area where the research facility is to be located.

(xii) No payment shall be made to the educational institution for costs of land or interest charges on capital, used or borrowed, for the acquisition of the research facility.

(xiii) Information copies of each special use allowance agreement negotiated shall be furnished to each authorizing official specified in (S–70)(3) and to the Deputy Under Secretary (Research and Advanced Technology), Office of the Under Secretary of Defense for Research and Engineering.

235.070 Indemnification against unusually hazardous risks.

(a) *Indemnification under research and development contracts.*

(1) *Use of clause.* Pursuant to the authority of 10 U.S.C. 2354 and when authorized by the Secretary concerned (or his designee under 10 U.S.C. 2356), a contract for research and development, or both, may provide for indemnification of the contractor and subcontractors against:

(i) Claims by third persons (including employees) for death, bodily injury, or loss of or damage to property; and

(ii) Loss of or damage to the contractor's property, to the extent that such liability, loss or damage—

(A) Results from a risk that the contract defines as "unusually hazardous",

(B) Arises out of the direct performance of the contract, and

(C) Is not compensated by insurance or otherwise.

When authorization has been obtained, the appropriate clause prescribed in 235.071 (a) or (b) shall be used.

(2) Each contract containing a clause authorized by (a) above shall clearly define the specific unusually hazardous risks to which the clause applies. This definition shall be submitted for approval with the request for authorization to grant indemnification. The definition may be included as an additional paragraph of the clause or inserted elsewhere in the contract. The fact that one or more risks under a contract may be appropriately define as unusually hazardous does not justify so defining other risks of contract performance which are not in themselves unusually hazardous; neither does it preclude indemnification of such other risks under other appropriate authority.

(b) *Indemnification under contracts involving both research and development and work that cannot be so classified.* Certain contracts require a substantial amount of research and development work as well as a substantial amount of work that cannot be so classified. When indemnification is to be provided for such contracts, an appropriate clause, utilizing the authority of both 10 U.S.C. 2354 and Pub. L. 85–804 may be used. In such cases, the use of Pub. L. 85–804 to provide indemnification is limited to work which cannot be indemnified pursuant to 10 U.S.C. 2354 and is subject to compliance with the provisions of FAR Subpart 50.4.

235.071 Contract clauses.

(a) The contracting officer shall insert the clause at 252.235–7000, Indemnification Under 10 U.S.C. 2354—Fixed Price, as provided for in 235.070.

(b) The contracting officer shall insert the clause at 252.235–7001, Indemnification Under 10 U.S.C. 2354—Cost Reimbursement, as provided for in 235.070.

(c) The contracting officer shall insert the clause at 252.235–7002, Recovery of Nonrecurring Costs on Commercial Sales, as provided for in 235.7103(a).

(d) The contracting officer shall insert the clause at 252.235–7003, Care of Laboratory Animals, in all contracts in compliance with law and in furtherance of the Department of Defense policy that all aspects of investigative programs involving the use of experimental or laboratory animals be humanely conducted in accordance with recognized principles. The clause shall be included in all contracts awarded in the United States, its possessions, and Puerto Rico which may involve the use of such animals.

(e) The contracting officer shall insert the clause at 252.235–7004, Frequency Authorization, in any contract which calls for developing, producing, constructing, testing, or operating a device for which a radio frequency authorization is required.

Subpart 235.70—Short Form Research Contract

Reserved, guidance will be included prior to 1 April 1984.

Subpart 235.71—Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology

235.71 Scope.

This subpart sets forth policy and procedures established in DoD Directive 2140.2 for the recovery of no recurring costs on commercial sales by contractors of products, components, and related technology developed with DoD appropriations or, in special cases, with Foreign Military Sales (FMS) funds. The objective of recovery is to ensure that a customer pays a fair share of the nonrecurring investment cost incurred by the Department of Defense or a foreign government.

235.7101 Policy.

(a) It is the policy of the Department of Defense to recover a fair share of its investment in nonrecurring costs related to products, and/or a fair price for its contribution to the development of related technology, when the products are sold, and when technology relating to the manufacture of the products is sold or licensed, to a foreign government, international organization, foreign commercial firm, or domestic organization (here referred to as "customers").

(b) Furthermore, in selected cases, it is DoD policy to recover, on behalf of a foreign government or international organization, a fair share of the nonrecurring costs for a special feature or product paid by the foreign government or international organization under an FMS case where subsequent customers purchase the same specialized feature(s). However, the U.S. Government will not collect this recoupment on behalf of a foreign government beyond 8 years from the date of the acceptance of the original DoD Offer and Acceptance (DD Form 1513) that included the nonrecurring investment.

235.7102 Applicability.

(a) This policy applies to those products and technologies for which investment costs equal or exceed $5 million for any of the following:

(1) Nonrecurring research, development, test, and evaluation (RDT&E) costs to develop defense products and related technology. The determination of RDT&E costs shall be based upon the current and predecessor models of an item or equipment.

(2) Nonrecurring production cost.

(3) RDT&E and nonrecurring production costs for special features under a foreign military sale when requested by the FMS customer and agreed to by the U.S. Government.

(b) In the event an end item contains one or more components that individually meet the above thresholds, recoupment will be made on a component when it is sold separately.

(c) In the case of product sales, if the dollar threshold is met for either nonrecurring RDT&E or production costs, recoupment for both categories of investment costs will be charged.

235.7103 Procedures.

(a) To assure the recovery of investment in nonrecurring costs and related technology, the clause in 252.235–7002, Recovery on Non Recurring Costs on Commercial Sales, shall be included in all RDT&E and production contracts and subcontracts of $1 million or more as prescribed at 235.071(c). This clause requires the contractor and qualifying subcontractors to pay to the U.S. Government the amounts established by the U.S. Government in the event of the contractor's commercial sale of products, or sale or license of related technology, that meet the thresholds of 235.7102.

(b) If the recoupment charge has been previously established, the contracting office, at the time of each commercial sale, shall determine if there have been significant changes in factors or assumptions used to compute the original charge (for example, changes in identifiable RDT&E cost of the anticipated production run). When significant changes are identified, the contracting office shall submit a request in accordance with departmental procedures to the Office of the Secretary of Defense (see (c) below) for authority to make appropriate changes in nonrecurring cost recoupment charges. Such revised charges shall not be retroactively applied to past sales or to sales that have been consummated by a written contract between the parties.

(c) If the recoupment charge has not been previously established, the contracting office shall expeditiously obtain a charge determination from the office in each DoD component that is responsible for establishing the charge. The Office of the Secretary of Defense must approve certain charges, as follows:

(1) The Director, Defense Security Assistance Agency (DSAA)—nonrecurring cost unit recoupment charges for the sale of major defense equipment (as defined in 252.235–7002).

(2) The Under Secretary of Defense for Research and Engineering (USDRE)—all technology charge determinations.

(d) The amount to be reimbursed to the U.S. Government for the commercial sale of products and components and for the sale or license of technology is provided for in 252.235–7002 and in DoD Directive 2140.2.

235.7104 Deviations.

(a) A DoD component, a foreign government, or a Defense contractor (vice president or higher) may request deviation, in whole or in part, from assessing the charges prescribed here for a commercial sale when it is considered to be in the best interest of the United States to satisfy a demonstrable right of the manufacturer or the purchaser or to obtain advantage to the Department of Defense. Consideration may also be given to nonmonetary returns that are advantageous to national security, foreign policy, and the public interest.

(b) Requests for deviation associated with product sales under foreign sales shall be submitted through channels to the Director of the Defense Security Assistance Agency. Requests for deviation for product sale charges to domestic organizations and requests for deviation for technology sales shall be submitted to the Under Secretary of Defense for Research and Engineering. A request for deviation from the otherwise appropriate charges shall contain:

(1) A summary statement of the facts;

(2) The Benefits expected, with justification;

(3) The specific areas to which the deviation would apply; and

(4) Calculations necessary to ascertain the extent of any monetary involvement and how the calculations are to be handled by either the DoD component or the contractor, as appropriate.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 236.1—General

236.102 Definitions.

"Construction Activity" means an activity, at any organizational level of the Military Departments, which has responsibility for the architectural, engineering, and other related technical aspects of the planning, design, and construction of facilities, and which receives its technical guidance from the Army Office of the Chief of Engineers, Naval Facilities Engineering Command, or Air Force Directorate of Civil Engineering.

236.103 Methods of contracting.

(a) Overseas contruction may be procured by means of formal advertising provided that the Head of a Contracting Activity, or his designee, determines that the use of formal advertising, in strict accordance with FAR Part 14, is practicable and advantageous to the United States as to a specific country or other geographic area outside the United States, its possessions, and Puerto Rico.

236.170 Sources of construction services.

Generally, military construction in the United States shall be performed by contract. The following exceptions to this policy are authorized:

(a) Military construction units, other military personnel and Civil Service maintenance personnel may:

(1) Perform construction in periods of emergency arising from fire, flood, explosion, pestilence or other disaster to provide essential facilities for shelter, safety, and protection of personnel and property.

(2) Perform construction where the isolated location of the work makes it impracticable to obtain qualified contractors.

(3) Perform construction where the necessity for obtaining security clearances for contractor personnel introduces unacceptable delays in operational schedules.

(b) Military construction units may perform construction in addition to that set forth in (a) above, but only when the integrity of the unit will be maintained and the project will contribute to the training of the unit of its wartime mission.

(c) Military personnel, other than military construction units, may, in addition to (a), above:

(1) Perform construction in connection with welfare and recreational facilities intended for their own use.

(2) Perform repair incident to maintenance:

(i) When required for reasons of security.

(ii) For disciplinary action arising from military offenses.

(iii) For training and maintaining competence in recognized trade skills.

(iv) In and around the barracks which they themselves occupy or are about to occupy.

(d) Civil Service maintenance forces may, in addition to (a), above:

(1) Perform construction where the work is of a minor nature.

(2) Perform construction where conditions are such that it is impracticable to prepare plans and specifications.

(3) Perform construction where the work must be performed intermittently to avoid disrupting other important operations.

(4) Perform repair incident to maintenance.

Subpart 236.2—Special Aspects of Contracting for Construction

236.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.*

(1)(S–70) The contracting officer shall also prepare a performance evaluation report for each construction contract of $10,000 or more when any element of performance was either unsatisfactory or outstanding.

(c) *Distribution and use of performance reports.*

(1) The original of the performance evaluation report for every contract will be retained by the activity preparing the report for a minimum of six years after date of the report. In addition, the reviewing official will forward a copy of the following reports:

(i) Reports with an overall unsatisfactory evaluation,

(ii) Reports which cite outstanding performance, and

(iii) Reports for all contracts in excess of $200,000 to the:

Office of the Chief of Engineers, ATTN: DAEN–PR
Pulaski Building
Washington, DC 20314

This office is responsible for establishing procedures and practices which will assure appropriate distribution and utilization of performance evaluation data within the Departments.

(2) Performance evaluations of construction contractors shall be used in making responsibility determinations. In the selection of fully qualified responsible contractors for future awards or negotiation of construction contracts above $1,000,000, the contracting officer shall also obtain from the central data bank the following:

(i) A record of the number of contracts and the total dollar amount for all satisfactory evaluations; and

(ii) Complete transcripts of all performance evaluations showing unsatisfactory performance either on individual elements or overall evaluation, or remarks on outstanding performance. These transcript(s) or statement(s) may be obtained for smaller awards.

236.203 Government estimate of construction costs.

(c) The Government estimate shall be designated "For Official Use Only" unless the nature of the information therein requires a security classification, in which event it shall be handled in accordance with applicable security regulations. The "For Official Use Only" designation shall be removed only when the estimate is made public in accordance with instructions below. If the procurement is by formal advertising (except two-step formal advertising) a sealed copy of the detailed Government estimate shall be filed with the bids until bid opening. After the bids are read and recorded, the "For Official Use Only" designation shall be removed and the estimate shall be read and recorded in the same detail as the bids.

236.205 Statutory cost limitations.

(c) A bid or proposal containing prices that exceed applicable statutory cost limitations shall be rejected, unless for construction of cold storage or regular (general purpose) warehousing, barracks for enlisted personnel or bachelor officer's quarters, and the determination of the Assistant Secretary of Defense, Manpower, Reserve Affairs and Logistics (MRA&L) has been obtained that the limitations on construction costs in the annual Military Construction Act shall not apply as impracticable.

236.206 Liquidated damages.

A liquidated damages clause shall be included in all contracts in excess of $25,000 except cost-plus-fixed-fee contracts or those where the contractor cannot control the pace of the work. Use of a liquidated damages clause is optional for contracts of $25,000 or less. Where such a provision is used, the clause set forth in FAR 52.212–5 shall be included in the invitation for bids or request for proposals. Where different completion dates for separate parts or stages of the work are specified in the contract, this clause should be revised appropriately to provide for liquidated damages for delay of each separate part or stage of the work. The minimum amount of liquidated damages should be based on the estimated cost of inspection and superintendence for each day of delay in completion. Whenever the Government will suffer other specific losses due to the failure of the contractor to complete the work on time, such as the cost of substitute facilities, the rental of buildings, or the continued payment of quarters allowances, an amount for such items should also be included.

236.270 Minimum standards for responsible prospective contractors.

In evaluating the responsibility of a prospective contractor, the contracting officer shall consider whether a bid bond has been furnished and performance and payment bonds are to be furnished. Prior to underwriting bid performance and payment bonds, it is normal practice for each surety company to conduct a prequalification survey which examines, verifies and evaluates the contractor's financial resources, technical expertise for the type work involved, management and organization ability, current workload, and capability to complete the contract in the required time. Normally, the contracting officer is not expected to duplicate this effort in conducting the pre-award survey, but should emphasize in addition thereto the evaluation of information which is uniquely available to the Government, such as the Consolidated List of Debarred, Suspended, and Ineligible Contractors (see FAR 9.404), contractor experience lists, and performance evaluations on present or previous contracts with the Government. More extensive pre-award surveys should be conducted when the project requires unique or unusual construction expertise or when information available to the contracting officer indicates that the contractor may not be responsible (see FAR 9.104). The responsibility for determination of the extent of pre-award survey appropriate to the circumstances rests with the contracting officer. Where the prospective contractor is a joint venture, the sum of its financial resources and the individual capacities of all its members will be used in determining the responsibility of the joint venture.

236.271 Expediting construction contracts.

No expediting action, advancing the completion date and involving additional costs under a contract funded under the provisions of the annual Military Construction Appropriation Act or any similar legislations, shall be taken without the prior approval of the Assistant Secretary of Defense (MRA&L).

236.272 Cost-plus-fixed fee contracts.

Annual Military Construction Appropriation Acts provide that cost-plus-fixed-fee construction contracts estimated to exceed $25,000 to be performed within the United States, except Alaska, and to be charged to such appropriations shall not be executed unless the specific written approval of the Assistant Secretary of Defense (MRA&L), setting forth the reasons therefore, is obtained.

236.273 Prequalification of bidders and offerors.

(a) The prequalification procedures are used when it is necessary to assure timely and efficient performance of critical construction projects by limiting bidding or offers to concerns of proven competence to perform in the required manner. The result of a prequalification is a list of constructors who are determined to be qualified to perform a specific construction contract.

(b) The Head of a Contracting Activity may authorize the prequalification when he determines in writing that a construction project is of such urgency or complexity as to require prequalification.

(c) Procedures to be used shall be approved by the Head of a Contracting Activity. They shall provide, in connection with small business concerns, that:

(1) If the qualifying authority is of the opinion that a small business concern is not qualified for reasons relating to responsibility, the recommendation of the appropriate Small Business Regional Office shall be requested;

(2) If the office expresses the opinion that the concern appears to have the requisite responsibility, it shall be permitted to submit a bid or offer, and

(3) If a small business concern is found to be non-responsible, the procedures prescribed by FAR 19.6 shall be followed.

Subpart 236.3—Special Aspects of Formal Advertising in Construction Contracting

236.303 Invitation for bids.

(c)(S–70) *The Cost Limitations provision* (see 236.580–1 and 252.236–7081).

(S–70) If it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the invitation for a first or base bid item covering the work generally as specified and for one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order of priority. In such case, the invitation shall include a provision substantially as prescribed at 236.580–2, and the low bidder and the bid items to be awarded shall be determined as therein provided. The contracting officer, prior to the opening of bids, shall determine and record in the contract file the amount of funds available for the project. The amount so recorded shall be controlling for determining the low bidder but may be increased for determining the bid items to be awarded to him; *Provided* that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

Subpart 236.4—Special Procedures for Negotiation of Construction Contracts

236.401 Use of negotiated contracts.

(b)(2) See 236.103(a).

236.402 Price Negotiation.

(S–70) *Profit or fee.*

(1) *Fixed-price construction and architect-engineer contracts.* The guidance set forth in FAR 15.9, while not required, may be used in considering profit as an element of price under fixed-price construction and architect-engineer contracts.

(2) *Cost-reimbursement type construction contracts.*

(i) The fees of prime contractors under cost-plus-fixed-fee construction contracts shall be negotiated in accordance with Departmental procedures which have been approved by the Assistant Secretary of Defense (MRA&L).

(ii) The target fee of prime contractors in incentive fee contracts shall be established using the criteria and fee schedules provided for under Departmental procedures as a guide in conjunction with the reasonableness of the target cost, the maximum and minimum fees to be established and the fee adjustment formula.

(iii) Limitations of fees for cost-reimbursement type contracts are set forth in FAR 15.903(d).

(3) *Cost-plus-fixed fee contracts.* Annual Military Construction Appropriation Acts provide that cost-plus-fixed-fee architect-engineer contracts estimated to exceed $25,000 to be performed within the United States, except Alaska, and to be charged to such appropriations shall not be executed unless the specific written approval of the Assistant Secretary of Defense (MRA&L), setting forth the reasons therefore, is obtained.

Subpart 236.5—Contract Clauses

236.501 Performance of work by the contractor.

(a) The contractor shall be required to perform not less than 15 percent on housing and not less than 20 percent on other work.

236.570 Additional clauses.

Section 236.571 through 236.578 present additional clauses for insertion in contracts for construction and architect-engineer services.

236.571 Clauses.

The following Clauses are required in fixed-price construction contracts and solicitations.

236.571–1 Composition of contractor.

The contracting officer shall insert the clause at 252.236–7000, Composition of Contractor, in solicitations and contracts when a fixed-price construction contract is contemplated.

236.571–2 Modification proposals-price breakdown.

The contracting officer shall insert the clause at 252.236–7001, Modification of Proposals-Price Breakdown, in solicitations and contracts when a fixed-price construction contract is contemplated.

236.571–3 Contract drawings, maps and specifications.

The contracting officer shall insert the clause at 252.236–7002, Contract Drawings, Maps and Specifications, in solicitations and contracts when a fixed-price construction contract is contemplated.

236.571–4 Shop drawings.

The contracting officer shall insert the clause at 252.236–7003, Shop Drawings, in solicitations and contracts when a fixed-price construction contract is contemplated.

236.572 Clauses.

The following clauses will be inserted in fixed-price construction contracts and solicitations as set forth below.

236.572–1 Contract prices—bidding schedule.

The contracting officer shall insert the clause at 252.236–7004, Contract Prices—Bidding Schedule, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract is to contain only unit prices for specified items.

236.572–2 Salvage materials and equipment.

The contracting officer shall insert the clause at 252.236–7005, Salvage Materials and Equipment, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract will involve Government furnished property which is to be salvaged and reused.

236.572–3 Misplaced material.

The contracting officer shall insert the clause at 252.236–7006, Misplaced Material, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract will involve work near or on navigable waterways.

236.572–4 Identification of employees.

The contracting officer shall insert the clause substantially as set out at 252.236–7007, Identification of Employees, in solicitations and contracts when a fixed-price construction contract is contemplated and identification of employees is required for security or other reasons.

236.572–5 Superintendence of subcontractors.

The contracting officer shall insert the clause at 252.236–7008, Superintendence of Subcontractors, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract will be for work of a highly technical and complicated nature requiring extraordinary control by the contractor of the several parts of the work, or the contract will cover work spread over several places on the site of work.

236.572–6 Payment for mobilization and preparatory work.

The contracting officer shall insert one of the clauses at 252.236–7009 (see below) in solicitations and contracts when a fixed-price construction contract is contemplated which will contain a

separate bid item for mobilization and preparatory work with the approval of the Head of the Contracting Activity.

(a) In major construction contracts requiring major or special items of plant and equipment or large stockpiles of material which are considered to be in excess of the type, kind and quantity presumed to be normal equipment of a contractor qualified to undertake the work, insert the clause at 252.236-7009(a), Payment for Mobilization and Preparatory Work, Payment Item No. ——.

(b) In contracts involving major mobilization expense or plant equipment and material other than such as are covered in (a) above, which is occasioned by the location or nature of the work such as mobilization at an offshore location or towing a dredge to a remote location, insert one of the following clauses:

(1) When it is expected demobilization will occur at the time of contract completion or shortly thereafter, insert the clause at 252.236-7009(b)(1), Mobilization and Demobilization, Payment Item No. ——.

(2) When there is a likelihood that there will be substantial time lapse between demobilization and final payment under the contract due to such contractual requirements as clean-up or seeding of a disposal area, insert the clause at 252.236-7009(b)(2), Mobilization and Demobilization, Payment Item No. ——.

(c) The percentage of the lump sum price, for mobilization and demobilization in paragraph (a) of the clauses at 252.236-7009(b) (1) and (2), attributed to mobilization should generally be 60 percent and the remaining 40 percent considered to be the cost of demobilization. These percentages may be varied to reflect the situation contemplated under the particular contract, but in no event should mobilization exceed 80 percent of the payment item.

236.572-7 [Reserved]

236.572-8 Airfield safety precautions.

The contracting officer shall insert the clause at 252.236-7011, "Airfield Safety Precautions," in solicitations and contracts when a fixed-price construction contract is contemplated which is to be performed on or near airfields.

236.572-9 Contractor prepared network analysis system.

(a) The contracting officer is authorized to insert a clause substantially as set forth at 252.236-7012, "Contractor Prepared Network Analysis System," in solicitations and contracts when a fixed-price construction contract is contemplated in accordance with the instructions in (b) below. Since the clause is broad in scope, modifications thereto will be necessary to accommodate individual project requirements.

(b)(1) (See Paragraph (b)(2).) The requirements pertaining to the identification of separate buildings and features and to the minimum number of activities may be deleted for projects where this information is not needed. This portion should always be used when more than one line item is being constructed under a single contract to provide data for Government costing purposes. The column showing the minimum number of activities per building or feature may be deleted if not considered necessary.

(2) (See Paragraph (b)(3).) The requirement for time scaling the summary network diagram may be deleted. The use of time scaling provides a more easily comprehended diagram for those not intimately familiar with a project and hence is of value to higher level management. It is also of considerable value for evaluating the utilization of resources of manpower and equipment and the scheduling of those activities which have slack available. On the other hand, revisions are much more difficult to make on time scaled diagrams requiring considerable if not complete redrafting. This makes time scaling more expensive to maintain and may result in delays in submitting diagrams. The advantages to management as against the possibility of additional cost and delay in submission must be considered in deciding whether time scaling should be included. If time scaling is omitted, references thereto in paragraph (e) should also be deleted.

(3) (See Paragraphs (b)(4) and (b)(7).) Any items may be included or deleted as project requirements and local computer capabilities indicate. It should be noted that many computer system programs are written so as to provide only part of the information listed, and it is probable that there is no single program which will provide all. The listings should be revised to require only the minimum necessary for project management.

(4) (See Paragraph (b)(6)(i).) Two means of estimating the computing time required can be used, (i) based on normal work days (excluding Saturdays, Sundays and holidays), or (ii) based on calendar days. This paragarph should be retained if the former method is to be used. If the latter method is to be used, this paragraph should be deleted and the following inserted at the end of paragraph (b)(2):

In calculating activity durations, Saturdays, Sundays, holidays, and normal inclement weather should be considered.

(5) (See Paragraph (b)(6)(ii) and (iii).) Requirements for manpower loading and list of equipment will be deleted unless the nature of the project is such as to make their inclusion necessary for proper surveillance by the resident engineer. When these requirements are deleted here, references thereto in other sections should also be deleted.

(6) (See Paragraph (c).) The times allowed for the various submissions may be revised to fit individual project requirements based on project duration and complexity.

(7) (See Paragraph (e).) The time for submission of periodic reports may be changed based on project requirements. Normally, reports will be required twice a month with payments made once a month based on the work shown as accomplished in the last two reports.

(8) (See Paragraph (f).) For partially completed activities, a relatively broad estimate of the portion completed is normally adequate, for example, 25%, 50%, 75% or 100%, and the clause may be changed accordingly. Due to the multiplicity of activities and their normally small dollar value, a more precise evaluation frequently may be impractical. On activities with significant costs, a more precise estimate should be used.

(9) (See Paragraphs (g), (h) and (i).) The sheet size of diagrams and number of copies of report to be submitted may be revised to suit individual project requirements.

236.572-10 Government-prepared network analysis system.

The contracting officer is authorized to insert the clause at 252.236-7013, "Government-Prepared Network Analysis System," in solicitations and contracts when a fixed-price construction contract is contemplated in accordance with the following instructions:

(a) (See Paragraph (a).) This paragraph shall be used when the project is of long duration and a schedule of the first two months' operation is necessary for controlling the project until the "Construction Progress Schedule" is submitted. The blank will be filled in with the number of days desired. This pragraph will be deleted when the contruction project is of short duration.

(b) (See Paragraph (b).) Proper number of days for submittals shall be inserted by the contracting officer.

(c) Paragraphs (c)(1) and (c)(2) shall be modified to agree with detail and

type of network analysis system the Government proposes to prepare.

236.573 Clauses.

The following clauses are required in cost-reimbursement construction contracts and solicitations.

236.573-1 Statement of work.

The contracting officer shall insert the clause at 252.236-7014, Statement of Work, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

236.573-2 Estimated cost, performance period.

The contracting officer shall insert the clause at 252.236-7015, Estimated Cost, Performance Period, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

236.573-3 Direct payments.

The contracting officer shall insert the clause at 252.236-7016, Direct Payments, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

236.573-4 Approved construction plant.

The contracting officer shall insert the clause at 252.236-7017, Approved Construction Plant, in solicitations and constracts when a cost-reimbursement construction contract is contemplated.

236.573-5 Insurance.

The contracting officer shall insert the clause prescribed at 228.311-70 in solicitations and contracts when a cost reimbursement construction contract is contemplated.

236.574 Option for supervision and inspection services.

The contracting officer shall insert the clause at 252.236-7018, Option for Supervision and Inspection Services, in solicitations and contracts when a fixed-price architect-engineer contract is contemplated, and supervision and inspection services by the architect-engineer during construction are contemplated. The details of such services must be set out in Appendix A of the contract.

236.575 Notice and approval of restricted designs.

The contracting officer is authorized to insert the clause at 252.236-7019, Notice and Approval of Restricted Designs, in solicitations and contracts when a fixed-price architect-engineer contract is contemplated in accordance with 236.7202-6.

236.576 Patent indemnity.

The contracting officer shall insert the clause at 252.236-7050(a), Patent Indemnity, in accordance with 236.7202-3(a), and the clause at 252.236-7050(b), Items Excluded from Patent Indemnity, in accordance with 236.7202-3(b).

236.577 Rights in shop drawings.

The contracting officer shall insert the clause at 252.236-7051, Rights in Shop Drawings, in accordance with 236.7205-1(b).

236.578 Architectural designs and data-government rights.

The contracting officer shall insert the clause at 252.236-7052(a), Government Rights (Unlimited), in accordance with 236.7205-1(a), or the clause at 252.236-7052(b), Drawings and Other Data to Become Property of Government, in accordance with 236.7203(c) and 236.7205-1(a)(2).

236.580 Solicitation provisions.

This section prescribes additional solicitation provisions applicable only to construction contracting.

236.580-1 Cost limitations.

The contracting officer shall insert the provision at 252.236-7081, Cost Limitations, if the solicitation contains one or more items subject to statutory cost limitations, except when a waiver has been granted pursuant to FAR 36.205.

236.580-2 Additive or deductive items.

The contracting officer shall insert the provision at 252.236-7082, Additive or Deductive Items, under the conditions set forth at 236.303(S-70).

Subpart 236.6—Architect-Engineer Services

236.602 Selection of forms for architect-engineer contracts.

236.602-1 Selection criteria.

(a)(6) The volume of work previously awarded to the firm by the Department of Defense shall also be considered, with the object of effecting an equitable distribution of Department of Defense architect-engineer contracts among qualified architect-engineer firms, including small and small disadvantaged business firms, and firms that have not had prior Department of Defense contracts.

(S-70) For contracts estimated to cost more than $2,500, criteria which will be used to evaluate the qualifications of the architect-engineer firms to be considered should be established in advance. In addition to the general considerations listed in FAR 36.601, the criteria should be specific as to desired qualifications, size and expertise of staff, required past expericence, and, as appropriate, esthetic considerations, special conceptual or design elements, and related factors. The information contained in the DD Form 1391 for the construction project, if applicable, should be used in preparing the criteria. The criteria shall be set forth in the public announcement as required by FAR 5.20.

236.602-2 Evaluation boards.

(a) Preselection boards are authorized. A preselection list of the maximum practicable number of qualified firms shall be prepared by a preselection board from data described in FAR 36.603 and other pertinent information which may be available, and the list shall be approved by the head of the construction activity, or his designee. Preparation of preselection lists for contracts estimated to cost more than $10,000, and selections for contracts estimated to cost more than $2,500, shall be accomplished by formally constituted boards consisting of at least three members.

236.602-4 Selection authority.

(a) All selection actions, including preselection, shall be under the cognizance of the construction activity responsible for the work.

(c) Approval authorities shall not add firms to any selection report. If the firms on a submitted selection report are deemed to be unqualified or the list is considered inadequate for other reasons, the approval authority shall record the reasons and return the report through channels to the preselection board for the preparation of a revised report. However, the finding that certain firms on the selection report are unqualified shall not preclude approval of the report provided that a minimum of three firms remain. In such cases the reasons for finding a firm or firms unqualified shall be recorded and reports may be approved with respect to the three or more qualified firms remaining.

(S-70) *Special approval of selections.* Special approval shall be required for certain selections as indicated below:

(1) When the estimated cost of a contract to be awarded by a field activity exceeds $200,000, the selection shall require the approval of the next higher organizational level of the construction activity;

(2) When a firm, to which a field contracting office has previously awarded contracts totaling over $200,000 during the current calendar year, has been selected for an additional award to be made by the same contracting office, the selection shall require, prior to negotiation with the firm, the approval

of the next higher organizational level of the construction activity;

(3) When a selection is made by the Army Corps of Engineers, the Naval Facilities Engineering Command, or the Air Force Directorate of Civil Engineering for a contract whose estimated cost is $500,000 or more, the selection shall require the approval of the Chief of Engineers, the Commander, Naval. Facilities Engineering Command, or the Director of Civil Engineering, respectively, or their designees;

(4) When supplemental work to be added to an existing contract will bring the total contract cost to any of the various levels of approval noted above, the selection for such work shall require approval as indicated for the appropriate level (such approval is not required for supplemental work accomplished pursuant to the Changes clause of the contract); and

(5) When approval of a selection for a contract has been obtained at a particular approval level, further approval shall not be required for the selection of the same firm to accomplish supplemental work under that contract, unless the total cost of the basic contract plus all supplemental work is an amount requiring approval of the selection at the next higher approval level.

236.604 Performance evaluation.

(a) *Preparation of performance reports.*

(1) For each contract over $10,000 awarded, a performance evaluation report shall be prepared by the cognizant construction activity. Such reports may also be prepared for contracts of lesser amounts. For contracts of over $10,000, the construction activity shall distribute the SF 1421 to all other offices within the region or geographical area as listed in the book, "How to Obtain Consideration for Architect-Engineer Contracts with the Department of Defense," and to the Washington, D.C. Headquarters of their respective construction activities. The SF 1421 shall be filed and utilized in a manner similar to the qualifications data (Standard Form 254).

(c) *Distribution and use of performance reports.* For the purposes of receiving and distributing architect-engineer qualification and performance data, the United States is divided into regions, and the rest of the world into general geographic areas. These regions and areas are described and delineated in a booklet entitled, "How to Obtain Consideration for Architect-Engineer Contracts with the Department of Defense," which is published by the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) and is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, or from DoD construction activities.

236.605 Government cost estimate for architect-engineer work.

(a) An independent Government estimate of the cost of architect-engineer services shall be prepared for each proposed contract or contract modification expected to exceed $10,000.

236.606 Negotiatons.

(S–70) Negotiations shall be conducted with the first selected architect-engineer until a price which is fair and reasonable and not in excess of the Government estimate, revised to correct errors of fact or judgment, has been obtained. Where the negotiations result in a price in excess of the Government estimate, as revised, the contracting officer shall terminate the negotiations and request a proposal from the architect-engineer next in order of preference.

(S–71) In no event shall a contract for architect-engineer services for the preparation designs, plans, drawings and specifications exceed the statutory limitation of six percent (6%) of the estimated construction costs of the project. If the contract also covers any other type services than the preparation of designs, plans, drawings and specifications, the part of the contract price for such other services shall not be subject to the six percent (6%) limitaions.

(S–72) Modifications. Where the modification involves work not initially included in the contract, the limitation on the total contract price set forth in 236.606–71 is applicable, as applied to the revised total estimated construction costs. Where redesign is required and the contract is modified, the following method shall be used to insure that the six percent (6%) statutory limitation is not exceeded:

(1) The estimated construction cost of the redesigned features will be added to the original estimated construction cost;

(2) The contract cost for the original design will be added to the contract cost for redesign; and

(3) The total contract design cost obtained by (S–72)(2) above will be divided by the total construction cost obtained by (S–72)(1) above. The resulting percentage may not exceed the six percent (6%) statutory limitation.

Subpart 236.70—Construction in Foreign Countries

236.7001 General.

Construction in foreign countries includes construction anywhere outside the United States, its possessions and Puerto Rico. In contracts which are entered into with foreign contractors or are for performance in foreign countries, the term "United States" will appear before the word "Government."

236.7002 Technical agreements.

When construction is contemplated in a foreign country, the Office of the Chief of Engineers, Department of the Army, or the Naval Engineering Facilities Command, Department of the Navy, as appropriate, should be invited to participate in the negotiations of any technical working agreement with a foreign government concerning the construction. This agreement negotiated between appropriate officials of the United States and the foreign government should, to the extent feasible and where not otherwise provided for in other agreements, cover all elements necessary for the construction required by the laws, regulations and customs of the United States and the foreign government relating to:

(a) The acquisition of all necessary rights;

(b) The expeditious, duty free importation of labor, material and equipment;

(c) The payment of taxes applicable to contractors, personnel, materials and equipment;

(d) The applicability of workmen's compensation laws and other labor laws to citizens of the United States, citizens of the host country and citizens of other countries;

(e) The provisions of utility services;

(f) The disposition of surplus materials and equipment;

(g) The handling of claims and litigation; and

(h) Any other problems which can be foreseen and appropriately resolved by such agreement.

236.7003 Labor laws of host country.

Contractors shall comply with the applicable labor laws of the host country. Exemption from such laws shall be sought by means of treaty, executive agreement or express authorization from proper officials, where compliance with the laws is impractical or serves no useful purpose.

Subpart 236.71—Termination of Contracts

236.7100 Scope.

This subpart sets forth policies and instructions unique to construction and architect-engineer contracts relating to termination of such contracts through default or for the convenience of the Government.

236.7101 Contractor inventory.

This subpart and FAR 45.6 cover the disposition of all contractor inventory generated under construction and architect-engineer contracts. It applies to termination inventory and to any other inventory which is:

(a) Excess because of a contract modification; or

(b) Excess under a price revision type contract; and the cost thereof is included in the contractor's claim for an equitable adjustment or revision in price. It also applies to all property which is excess to the requirements of a cost-reimbursement type contract and includes excess Government-furnished property under any type contract.

236.7101-1 Inventory schedules.

In addition to the requirements contained in FAR 45.606, construction equipment shall be submitted on separate schedules.

236.7101-2 Allocability of contractor-acquired property on inventory schedules.

It is the responsibility of the contracting officer to determine that all property listed on inventory schedules is qualitatively and quantitatively allocable to the terminated contract or the terminated portion thereof, taking into consideration any work in place. Also, where applicable, the contracting officer must determine that the difference between the cost of allocable property on the inventory schedules and the total cost of property included in the settlement has been incorporated in the work or consumed in the performance thereof.

236.7101-3 Contractor's certificate-property incorporated in work.

Each contractor whose settlement proposal includes the cost of property (materials, etc.) incorporated into the work shall execute a certificate to the effect that all property not accounted for on the inventory schedules has been incorporated into the work or consumed in the performance thereof.

236.7101-4 Inventory at construction site.

Every effort will be made by the contracting officer to relieve the contractor, as promptly as possible, of the responsibility for the preservation and protection of termination inventory located at the construction site. Property, including construction equipment, which is not to be included on inventory schedules shall be removed by the contractor as promptly as possible.

236.7101-5 Screening of contractor inventory.

Inventories of construction materials and equipment shall be screened in accordance with FAR 45.608 in the Army, by the Corps of Engineers; in the Navy, by the Naval Facilities Engineering Command; and in the Air Force, by the Director, Civil Engineering.

Subpart 236.72—Patents, Data, and Copyright

236.7200 Scope.

This subpart sets forth policies, instructions, and contract clauses pertaining to patents, data, and copyrights unique to the procurement of construction and architect-engineer services. The provisions of FAR Part 27 as they relate to supplies are applicable when the procurement is of construction materials or supplies as such, as distinguished from construction as defined in FAR 36.102. Similarly, the provisions of FAR Part 27 as they relate to research and development apply when one of the purposes of the procurement is experimental, developmental or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction. When the proposed contract calls for either (a) experimental, developmental, or research work, or (b) supplies and materials, in addition to either construction or architect-engineer work, the pertinent provisions of FAR Part 27 shall be added to the contract pursuant to instructions contained in this subpart. In such cases, the contract shall indicate clearly which of the clauses apply only to the experimental, developmental, or research work, or to the supplies and materials being procured, and which apply only to the construction or architect-engineer work.

236.7201 Authorization and consent.

The Authorization and Consent clause shall be included in all contracts for construction materials or supplies and in all construction contracts, except when both complete performance and delivery (if any) are to be accomplished outside the United States, its possessions, or Puerto Rico. Normally, an authorization and consent clause shall not be included in an architect-engineer contract; however, the clause shall be included in architect-engineer contracts which require the delivery of models, samples, or other products, or which may require the use of patented devices or processes to test or perform any part of the work, under the architect-engineer contract, except where the contract is to be performed wholly outside the United States, its possessions, or Puerto Rico.

236.7202 Patent indemnification of Government by contractor.

236.7202-1 General.

A patent indemnity clause shall not be included in contracts calling solely for architect-engineer or experimental, developmental, or research work in the field of construction.

236.7202-2 Patent indemnity clauses in supply contracts.

The clauses required by FAR Part 27 relating to the procurement of supplies are applicable when the procurement is solely for construction materials or supplies.

236.7202-3 Patent indemnity clause in construction contracts.

(a) Except when performance is to be accomplished outside the United States, its possessions, and Puerto Rico, all contracts in excess of $25,000 calling for "construction" shall contain the clause at 252.236-7050(a).

(b) If it is determined that the construction will necessarily involve the use of structures, products, materials, equipment, processes, or methods which are nonstandard, noncommercial or special, the contract may list them in the specifications and may expressly exclude them from the patent indemnification by inserting in the contract the clause at 252.236-7050(b).

236.7202-4 Waiver of indemnity by the Government.

Exemption of specific patents from the patent indemnity provisions of the clauses prescribed in 236.7202-2 and 236.7202-3(a) shall be made only upon the authorization of the Secretary concerned or his authorized representative.

236.7202-5 Notice and assistance.

Subject to the prohibitions of FAR Part 27, all contracts calling for construction work shall include the Notice and Assistance Regarding Patent and Copyright Infringement clause.

236.7202-6 Approval of restricted designs.

Specifications for construction should allow for maximum latitude in the use of various types of commercially available products, materials, equipment or processes which will meet objective

Government requirements. However, Government requirements may necessitate, or the architect-engineer may contemplate the use of structures, products, materials, equipment or processes which are available only from a sole source. In such event the architect-engineer should report to the contracting officer the items known to him to be sole source, and the reasons therefore, and advise the contracting officer of the extent to which such items are considered necessary to meet the Government's requirements. This will make possible timely planning and arrangements for the use of sole source items, or where appropriate, consideration of alternate items. This procedure is not intended to restrict the use of patented or copyrighted items, but is meant to give the Government an opportunity to consider whether the specifications being drawn by the architect-engineer, in regard to any one item, are unnecessarily restricted, according to objective Government requirements, to a single sole item. The procedure is primarily for use in instances where the proposed design is expected to be conventional or standard and where the design may be used in subsequent procurements. For this purpose, the clause in 252.236–7019 may be inserted in architect-engineer contracts.

236.7203 Patent rights.

(a) Any construction or architect-engineer contract which calls for or can be expected to involve the design, for use in the construction or operation of a Government facility, or novel structures, machines, products, materials, processes, or equipment, and any contract having as one of its purposes the performance of experimental, developmental, or research work or test and evaluation studies involving such work should include a patent rights clause in accordance with the policy and guidance of FAR Part 27.

(b) Any construction or architect-engineer contract which calls for or can be expected to involve only standard types of construction to be built by previously developed equipment, methods, and processes shall not include a patent rights clause. The term "standard types of construction" as used herein means construction in which the distinctive features, if any, in all likelihood will amount to no more than:

(1) Variations in size, shape or capacity of otherwise structurally orthodox and conventionally acting single structural members or multi-member structural groupings; or

(2) Purely artistic or esthetic (as distinguished from functionally significant) architectural configurations and designs of both structural and nonstructural members or groupings, which may or may not be sufficiently novel or meritorious to qualify for protection under the design patent or copyright laws. Rights of the Government in and to any such distinctive design or copyright features, as distinguished from inventions of a mechanical or functional nature resulting from an architect-engineer contract or from a contract for construction involving architect-engineer services are provided for in the clause at 252.236–7052(b) entitled, "Drawings and Other Data to Become Property of Government."

(c) Construction and architect-engineer contracts which require the development of novel structures, machines, products, equipment, materials or processes shall include the clause in 252.236–7052(b) in addition to the appropriate "Patent Rights" clause prescribed by FAR Part 27.

236.7204 Patent royalties.

The provisions of FAR Part 27, Concerning Patent Royalties are applicable to contracts for construction or construction supplies.

236.7205 Acquisition and use of plans, specifications and drawings.

236.7205–1 Architectural designs and data clauses for architect-engineer or construction contracts.

(a) *Plans and specifications and as-built drawings.*

(1) Except as provided in (a) (2) below, insert the "Government Rights (Unlimited)" clause in 252.236–7052(a) in contracts calling for architect-engineer services or in contracts for construction involving architect-engineer services.

(2) When the purpose of a contract for architect-engineer services or for construction involving architect-engineer services is to obtain a unique architectural design of a building, a monument, or construction of similar nature, which for artistic, esthetic or other special reasons the Government does not want duplicated by anyone else, the Government may desire to acquire exclusive control of the data pertaining to such design. In those cases only where the contracting officer determines for the foregoing reasons that it is desirable to maintain exclusive control over the design and data, the "Drawings and Other Data to Become Property of Government" clause shall be used. If the contract is for architect-engineer services, the "Government Rights (Unlimited)" clause at 252.236–7052(a) shall be deleted and the clause at 252.236–7052(b) substituted therefor. If the contract is for construction involving architect-engineer services, the clause in 252.236–7052(b) shall be included.

(b) *Shop drawings for construction.* In procuring shop drawings for construction, the Govenment shall obtain the unlimited rught to use and reproduce such drawings, but shall not exclude a similar right in the designer or others. Accordingly, in contracts calling for delivery of such drawings, insert the clause in 252.236–7051.

236.7205–2 Data clauses for construction supplies and research and development.

The provisions of FAR Part 27, relating to the acquisition of data and rights therein in connection with the procurement of supplies and materials and research and development are applicable where the procurement is confined to either construction supplies and materials or experimental, developmental, or research work, or both. In some circumstances the right to use such data, including drawings, may be limited in accordance with appropriate paragraphs of FAR Part 27.

236.7205–3 Mixed contracts.

Where the proposed contract calls for either (a) experimental, developmental, or research work, (b) supplies and materials, or (c) both, in addition to either construction or architect-engineer work, the pertinent clauses prescribed by FAR Part 27, shall be included in the contract, in addition to the appropriate clause or clauses prescribed by 236.7205–1. In such cases, the contract shall indicate clearly that the clauses prescribed by FAR Part 27, apply only to the experimental, developmental, or research work, or only to the supplies and materials being procured, or to both, and that the appropriate clause or clauses prescribed by 236.7205–1 apply only to the construction or archtect-engineer work.

PART 237—SERVICE CONTRACTING

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 237.1—Service Contracts-General

237.104 Personal services contracts.

(b) Also see 237.104(S–70)(b) for additional authority required by Defense activities for use of 5 U.S.C. 3109.

(S–70) Procurement of the personal services of experts or consultants.

(a) *Scope.* This subsection sets forth policy and procedures for the procurement by contract, pursuant to 5 U.S.C. 3109, of the personal services of

individual experts or consultants (including stenographic reporting services) from individuals and from firms, regardless of the terms of contract arrangements or whether with an individual expert or consultant or a firm employing such individuals. This subsection does not govern employment of individual experts or consultants by excepted appointment: the requirements for such employment are set forth in the Federal Personnel Manual, Chapter 304, "Employment of Experts and Consultants" and the regulations of the respective Departments. In addition, this subsection does not govern policy and procedures for advisory committees and their membership; the requirements for advisory committees are set forth in OMB Circular A-63, "Review of Federal Advisory Committees". Expert or consultant services as used in this subsection involve personal services contracts issued pursuant to 5 U.S.C. 3109 and may also involve "consulting" services subject to FAR 37.2 and 237.270 of this supplement.

(b) *Statutory authority.*

(1) Authority for the procurement by contract of the personal services of experts and consultants is found in 5 U.S.C. 3109, as implemented by annual appropriation acts or by other legislation. Most contracts for expert or consultant services are executed by the Departments pursuant to the authority contained in the General Provisions of the Annual Department of Defense Appropriation Act.

(i) 5 U.S.C. 3109 provides:

(a) For the purpose of this section—

(1) "agency" has the meaning given it by section 5721 of this title; and

(2) "appropriation" includes funds made available by statute under section 849 of title 31.

(b) When authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting services. Services procured under this section are without regard to—

(1) the provisions of this title governing appointment in the competitive service;

(2) Chapter 51 and subchapter III of chapter 53 of this title; and

(3) Section 5 of title 41, except in the case of stenographic reporting services by an organization. However, an agency subject to chapter 51 of subchapter III of chapter 53 of this title may pay a rate for services under this section in excess of the daily equivalent of the highest rate payable under section 5332 of this title only when specifically authorized the procurement of the services.

(ii) Typical of the language which is enacted each year in the General Provisions of the Department of Defense Appropriation Act implementing 5 U.S.C. 3109 in Section 703 of the Act of December 21, 1979 (Pub. L. 96-154; 93 Stat. 1139), which provides:

During the current fiscal year, the Secretary of Defense and the Secretaries of the Army, Navy and Air Force, respectively, if they should deem it advantageous to the national defense, and if in their opinions the existing facilities of the Department of Defense are inadequate, are authorized to procure services in accordance with Section 3109 of Title 5, United States Code, under regulations prescribed by the Secretary of Defense, and to pay in connection therewith travel expenses of individuals, including actual transportation and per diem in lieu of subsistence while traveling from their homes or places of business to official duty stations and return as may be authorized by law: Provided, that such contracts may be renewed annually.

(2) Contracts with individuals or firms for the personal services of experts or consultants are usually negotiated, normally under the authority of 10 U.S.C. 2304(a)(4), as implemented by FAR 15-204.

(c) *Definition of experts and consultants.*

(1) The terms "experts" and "consultants" shall include those persons who are exceptionally qualified, by education or by experience, in a particular field to perform some specialized service. For the purpose of this subsection, an "expert" is an individual who is a recognized professional or highly skilled practitioner normally used to perform an operation function rather than to provide advisory or consulting services. A "consultant" is an individual who primarily serves in an advisory capacity in a particular field, rather than in the performance or supervision of an operating function (or functions). Depending on how they are used individuals may be either experts or consultants.

(2) Stenographic reporting services by individuals is included in the term "expert or consultant services" for purposes of procurement by contract under this subsection.

(d) *Policy.* The proper use of experts and consultants is a legitimate and economical way to improve Government services and operations. Activities of the Departments can be strengthened by utilizing the highly specialized knowledge and skills of such individuals. However, the personal services of experts and consultants shall not be used to perform duties which can be performed by regular employees, to fill positions which call for full-time continuing employees, or to circumvent competitive civil service procedures and Classification Act pay limits.

(e) *Limitations on use of expert or consultant authority.* Obtaining the personal services of individual experts or consultants by contract, pursuant to 5 U.S.C. 3109, is subject to the following limitations:

(1) The employment of individual experts or consultants shall be by contract only when the services required cannot be obtained by excepted appointment in accordance with personnel regulations.

(2) The nature of the duties to be performed must be temporary (not more than one year) or intermittent (not cumulatively more than 130 days in one year). Accordingly, no contract shall be entered into for longer than one year at a time.

(3) Procurement of the services must be advantageous to the national defense.

(4) Such services shall not be used when existing facilities of the particular Department are adequate or when personnel with the necessary skills can be obtained through normal civil service appointment procedures.

(5) Procurement of such services by contract shall not be used as a means of circumventing manpower space ceilings.

(6) Preference shall not be given to former Government employees per se.

(7) Consultant services shall not under any circumstances be used to specifically aid in influencing or enacting legislation.

(f) *Contracts crossing fiscal years.* Because the implementing appropriation act authorizing the procurement of expert and consultant services expires and must be renewed each fiscal year—even in cases where funds could properly be obligated to a contract calling for services in parts of two fiscal years—unless it calls for an end product which cannot feasibly be subdivided for separate performances in each fiscal year. No contract shall cross fiscal years unless authorized to do so in accordance with 237.104(S-70)(g). This paragraph shall apply equally to personal services contracts with individuals and with firms.

(g) *Authorization to enter into contracts: "Determinations and findings".*

(1) All contracts to be entered into pursuant to 5 U.S.C. 3109 for the personal services of experts or consultants must be authorized in writing by a Determinations and Findings (D&F) signed in accordance with Departmental regulations. Ordinarily each contract shall be separately authorized. However, when the determinations can appropriately be made with respect to a class of

contracts, the authorizing official may issue blanket authority for that class of contracts by signing a class D&F.

(2) Each D&F shall authorize a contract or class of contracts to be entered into during a stated period not to exceed one year, which ordinarily shall be within one fiscal year. A D&F may be issued during one fiscal year to authorize a contract or class of contracts to be entered into during the following fiscal year, provided the determinations are reasonably expected to hold true at the time the contract or contracts are to be entered into and provided that either the D&F is made contingent upon enactment of implementing legislation or implementing legislation of the next fiscal year has already been enacted.

(3) Each D&F shall contain the following:

(i) A brief description of the services authorized to be procured, including for individual D&Fs the estimated time of performance and the estimated cost;

(ii) A determination by the authorizing official with respect to the particular contract or class of contracts that:

(A) The duties to be performed are of a temporary or intermittent nature;

(B) Procurement of the services is advantageous to the national defense;

(C) The existing facilities of his Department are inadequate to furnish the services;

(D) It is not feasible to obtain personnel with the necessary skills through normal civil service appointment procedures;

(E) A nonpersonal services contract is not practicable; and,

(F) Any other determination required by applicable statutes has been made;

(iii) A citation of statutory authority, namely 5 U.S.C. 3109 and (except where (g)(3)(vii) below, is applicable) appropriate implementing legislation; the latter may be the current annual Department of Defense Appropriation Act, a current temporary Department of Defense appropriation enactment, or other appropriate legislation;

(iv) A grant of authority to procure the required services and, if desired, to extend the contract;

(v) The condition that the necessary funds must be available for obligation;

(vi) The condition that no contract may be entered into for longer than one year at a time;

(vii) An added condition, in cases where the D&F covers a period for which implementing legislation has not yet been enacted, that at the time the procurement is entered into there must be in effect a law authorizing the procurement pursuant to 5 U.S.C. 3109 and requiring no further Secretarial action than that required by the implementing legislation current at the time the D&F is issued;

(viii) Where appropriate, authorization to contract across fiscal years (see 237.104(S–70)(f)), and in such cases, where the implementing authority cited is annual legislation, an added condition that in the event the implementing authority is not renewed for the following fiscal year the contracting officer shall terminate the contract in accordance with its terms; and

(ix) The date of expiration of the authority granted by the D&F.

(h) *Requests for determinations and findings.* Requests for authorization to procure the personal services of experts or consultants, pursuant to 5 U.S.C. 3109, whether from individuals or from firms, must contain statements required by Departmental regulations to support the determinations. The responsibilities of the various organizational levels in the Departments with respect to requests for D&Fs are also set forth in Departmental regulations.

(i) *Contracts with individual experts or consultants.*

(1) *Method and amount of payment.* The contract may provide for compensation at rate for time actually worked (e.g., amount per day, per week, per month, etc.) or it may provide for performance of a specific task at a fixed price, or it may provide for nominal compensation. The amount or rate of payment will be determined on a case-by-case basis, taking into account (among any other relevant factors) the relative importance of the duties to be performed, the stature of the individual in his specialized field, comparable pay positions under the Classification Act or other Federal pay systems, rates paid by private employers, and rates previously paid other experts or consultants for similar work. Compensation for personal services is subject to the limitation in 237.104(S–70)(1).

(2) *Benefits.* When an individual expert or consultant is furnishing personal services and the contract provides for a regularly scheduled tour of duty during each administrative work week, the contract shall also provide that the contractor will be accorded the same paid annual and sick leave benefits as those to which he would be entitled under Departmental personnel regulations if he were employed by excepted appointment during the period of the contract. The contract may also provide for similar benefits (e.g., paid holidays, paid administrative leave), but these shall in no event exceed those to which the individual would be entitled under excepted appointment. No benefits shall be accorded the contractor which are not specifically provided for in the written contract. The contracting officer shall effect necessary coordination with the cognizant civilian personnel office.

(3) *Taxes.* When the individual is to render personal services, the compensation generally is subject to FICA (Social Security), FUTA (Unemployment), and federal income witholding tax. It may also be necessary to report or withhold state income tax under 5 U.S.C. 84b. The contracting officer shall take appropriate steps in coordination with the cognizant civilian personnel office to have deductions and reports made where required by law.

(4) *Conflict of interest.* The contracting officer shall ensure that individual experts or consultants who are to render personal services under contract familiarize themselves with Executive Order 11222, May 8, 1965, "Prescribing Standards of Ethical Conduct for Government Officers and Employees", 30 FR 6469 (1965), and that they comply with it and with Departmental regulations implementing it.

(5) *Administrative treatments.* Individual experts or consultants who are to render personal services under contract are charged against personnel ceilings in the same way as experts and consultants employed by excepted appointment. Also, the cognizant civilian personnel office must maintain certain records on individual experts and consultants who render personal services. Therefore, the contracting officer shall effect necessary coordination with the coginzant civilian personnel office before award of a contract for personal services and may also designate the appropriate personnel office as his representative for the purpose of administering contract provisions relating to benefits, obtaining necessary data from contractor for tax withholding purposes, and administering applicable conflict of interest provisions.

(j) *Contracts with firms for expert or consultant services.* When contracts with firms for the services of specified individual experts or consultants are considered to be personal services contracts (see FAR 37.104), payment for the services of each expert or consultant is subject to the guidelines in 237.104(S–70)(i) and the limitations in 237.104(S–70)(e). Contracts with firms for consulting or other management support services, where those services are nonpersonal in nature, are not entered into pursuant to the authority of this subsection and should not specifically address individual compensation by the firm or with any other rights or

obligations as between the firm and these individuals, but should deal only with rights and obligations as between the Government and the firm.

(k) *Contracts for stenographic reporting services.*

(1) Stenographic reporting services normally are provided by regular civilian employees appointed under the usual civil service procedures. However, under certain circumstances these services may be procured by contract from individuals or firms (pursuant to 5 U.S.C. 3109, if personal) as where there are variable requirements or insufficient qualified personnel, and necessity or economy to the Government demand.

(2) Such contracts shall normally be written on an end-product basis and payment made according to delivered items (e.g., number of copies of transcript, words per page, etc.), and the contractor ordinarily shall be required to furnish the necessary materials (typewriter, paper, bindings, etc.).

(3) Contracts for stenographic reporting services may be considered to be for nonpersonal services, and therefore not subject to the provisions of this subsection, *provided* that:

(i) They are written in accordance with (b) above;

(ii) They do not involve ordinary, day-to-day stenographic or secretarial services;

(iii) They do not involve direct or indirect Government supervision of contractor employees; and

(iv) They involve temporary or intermittent requirements.

(l) *Limitation on payment for personal services.*

(1) When the personal services of individual experts or consultants are being procured pursuant to 5 U.S.C. 3109, payment of the services of each expert or consultants shall not exceed the highest rate fixed by the Classification Act pay schedule for grade GS–15-or, in the case of professional engineering services primarily involving research and development or professional services involving physical or natural sciences or medicine, the highest rate payable to a GS–18. In addition, the contract may provide for such per diem and travel expenses as would be authorized for a Government employee, including actual transportation and per diem in lieu of subsistence while the expert or consultant is traveling between his home or place of business and his official duty station.

(2) If a fixed-price contract which is predominantly for nonpersonal services also includes personal services, the requirements of (a) above are applicable to the personal services if it is feasible and practicable to price them separately.

(m) *Modification of contracts.* When supplemental agreements or change orders are required which substantially change the basis upon which the D&F was made, such as to revise substantially the scope of work or time limitations, or to apply additional funds, authorization shall be requested in the same way as authorization to procure the services by contract in the first place.

(n) *Extension of contracts.*

(1) A contract may provide for extension for a maximum of one year each time-by written notification to the contractor from the contracting officer.

(2) A contract shall not be extened unless either a new D&F has been issued, or the D&F authorizing the original contract (or a prior extension) has not yet expired and specifically authorizes the extension, or an unexpired class D&F covering that type of contract is in effect, (also see, 237.104(S–70)(f)).

(3) Extension of a contract legally creates a new contract; therefore, extension of a contract is improper unless all the requirements and limitations of this subsection have been complied with.

237.106 Funding and term of service contracts.

Categories of service contracts funded by annual appropriations that are authorized to extend beyond the end of the fiscal year of the annual appropriation used are as follows:

(a) A one year contract for maintenance of tools or facilities if authorized under the current Department of Defense Appropriations Act;

(b) A multi-year service contract;

(c) A one-year requirements or indefinite quantity contract, as defined in FAR 16.503 and FAR 16.504, in which any specified minimum quantities are certain to be ordered in the fiscal year current at the beginning of the contract term (but see FAR 32.705–1(b)); or

(d) A contract for the personal services of experts or consultants entered into in accordance with 237.104(S–70), or a contract for educational services, which cannot feasibly be subdivided for separate performance in each fiscal year.

Subpart 237.2—Consulting Services

237.204 Policy.

(S–70) For personal services contracts for or with individual consultants the requirements of 237.104(S–70) apply.

(S–71) For proposed contracts to be awarded as a result of an unsolicited proposal, the limitations of 215.507(b)(S–70) apply.

237.205 Management controls.

237.205–70 Responsibilities of the contracting officer.

(a) The contracting officer is also responsible, in coordination with the requiring/sponsoring activitiy, for determining whether a proposed contract requirement regardless of dollar value, is for services as defined in 237.270 of this document. The contracting officer's determination shall be final. In this regard the contracting officer, in coordination with the sponsor and the supporting comptroller, should assure that funds provided are proper to the category of service required.

(b) Prior to issuing any solicitation for the services covered by 237.270, the contracting officer shall assure that the applicable provisions of this part have been adhered to and that documentation required is complete and included in the official contract file.

(c) The contracting officer shall assure that the following written evaluations are included in each contract file (these evaluations shall normally be prepared by the sponsoring/requiring activity), when services as defined in FAR 37.201 or 237.270 herein are acquired:

(1) An evaluation discussing the timeliness and quality of performance and the contractor's compliance with the statement of work and terms of the contract, and;

(2) At contract completion, an evaluation documenting the use made of the services or products obtained and their value to the sponsoring organization.

(d) The contracting officer is responsible for timely and accurate reporting of contract actions for services described in this subpart. Contract awards for consulting services are reported on DD Form 350 under Item B9 as well in Item B8A.

237.205–71 Departmental procedures.

(a) Departments shall ensure that for all contract actions for services defined in FAR 37.201 and 237.270 of this supplement:

(1) Each requirement is appropriate; fully justified in writing; does not unnecessarily duplicate any previously performed work or services; and is approved in advance in accordance with (b) below and Departmental procedures.

(2) Work statements are specific and complete to the maximum extent practicable, and specify a fixed period

of performance of the services to be provided;

(3) Contracts are competitively awarded to the maximum extent practicable to ensure that prices are reasonable (see 215.507(b)(S–70) with regard to proposed contracts resulting from unsolicited proposals);

(4) Appropriate disclosure is required of, and warning provisions are given to, prospective contractors to avoid conflicts of interest;

(5) Contracts are properly administered and monitored to ensure that performance is satisfactory;

(6) Contract reports prominently display on the cover of the report the following information:

(i) Name and business address of the contractor;

(ii) Contract number;

(iii) Contract dollar amount;

(iv) A statement as to whether the contract was competitively or non-competitively awarded; and,

(v) Name of the sponsoring individual in the agency and his/her office identification and location; and

(7) The sponsoring element, at contract completion, documents the use made of the services or products obtained and their value to the sponsoring organization.

(b) Departments shall further ensure that the approval of the need for the use of the services defined in FAR 37.201 and 237.270 is based on the policy and guidelines contained in this section, and that, for actions greater than $50,000 the approval authority is not below the SES manager or General or Flag Officer level, except when 0–6 personnel are filling such command or management positions or have subordinate SES personnel.

237.270 Studies and analyses and professional and management services.

(a) *Definitions.*

"Professional and Management Services" means services of a "white collar" professional nature, e.g., preparation of reports or documentation, software development, development of logistics support plans, and other similar tasks, in support of management and control of programs.

"Studies and Analyses" means the broad class of intellectual activities characterized by the application of the tools of analysis to address a wide range of problems. Studies are analytic examinations used to support DoD decision-makers and activities. Studies contribute to greater understanding of relevant issues and provide one means for addressing those matters facing the Department of Defense. Studies and support of studies include development of data bases, models, and methodologies. Results of studies are documented products including oral and written briefings, formal reports, and computer products. Excluded from the scope of this definition are the following categories:

(i) Basic and applied research, development, and technology demonstrations;

(ii) Architect and engineering studies related to construction projects;

(iii) Value engineering;

(iv) System fabrication;

(v) System test;

(vi) Operational test and evaluation;

(vii) Technology development;

(viii) Clinical medicine;

(ix) Project/program planning or monitoring;

(x) Automatic data processing services;

(xi) National Foreign Intelligence Program;

(xii) General Defense Intelligence Program.

(b) Contract awards for these services are generally reported on the DD Form 350 under FSC Code R400 or R500 series. Management and support services for research and development activities should also be recorded appropriately under these codes.

(c) The management controls stated at FAR 37.205 and 237.205–70 herein also apply to these services.

Subpart 237.3—Dismantling, Demolition, or Removal of Improvements

237.302 Bonds or other security.

If the contracting officer determines that it is in the best interest of the Government to require the contractor to furnish a performance bond or other security, the "Bid Guarantee" clause at FAR 252.228–1 and the "Bonds or Other Security" provision at 252.228–7004 shall be included in the solicitation.

237.304 Contract clauses.

(S–70) *Statement of work.* The contracting officer shall insert the clause at 252.237–7000, "Statement of Work," in solicitations and contracts for dismantling, demolition or removal of improvements in order to specify the property to be dismantled, demolished or removed, the dates of commencement and completion of the work, requirements for conditioning, handling and storing property retained by the Government, and applicable bond requirements.

(S–71) *Composition of contractor.* The contracting officer shall insert the clause at 252.236–7000, "Composition of Contractor," in solicitations and contracts for dismantling, demolition or removal of improvements to specify that if the contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable for compliance with all provisions of the contract.

(S–72) *Misplaced material.* The contracting officer shall insert the clause at 252.236–7006, "Misplaced Material," in solicitations and contracts for dismantling, demolition or removal of improvements when the contract involves work on or near navigable waterways in order to set forth the contractor's responsibility for misplaced material.

(S–73) *Identification of employees.* The contracting officer shall insert the clause at 252.236–7007, "Identification of Employees," in solicitations and contracts for dismantling, demolition or removal of improvements when necessary for security or other reasons to require the contractor to furnish employee identification.

Subpart 237.70—Engineering and Technical Services

237.7001 Definitions.

"Contractor engineering and technical services" means the furnishing of advice, instruction, and training to Department of Defense personnel, by commercial or industrial companies, in the installation, operation, and maintenance of Department of Defense weapons, equipment, and systems. This includes transmitting the knowledge necessary to develop among those Department of Defense personnel the technical skill required for installing, maintaining and operating such equipment in a high state of military readiness.

(a) *Contract Field Services (CFS)* means those engineering and technical services provided on site at defense locations by the trained and qualified engineers and technicians of commercial or industrial companies.

(b) *Contract Plant Services (CPS)* means those engineering and technical services provided by the trained and qualified engineers and technicians of a manufacturer of military equipment or components, in the manufacturer's own plants and facilities.

(3) *Field Service Representatives* means those employees of a manufacturer of military equipment or components who provide a liaison or advisory service between their company and the military users of their company's equipment or components.

237.7002 Contracting for engineering and technical services.

(a) *General.* Every contract calling for engineering and technical services, whether it calls for only those services or whether it calls for those services in connection with the furnishing of an end item, shall show those services in connection with the furnishing of an end item, shall show those services as a separate and identifiable line item separately priced. The contract shall contain definitive specifications for the services and shall show the man-months involved.

(b) *Personal services.* Notwithstanding FAR 237.104, in the event unusual requirements involving essential mission accomplishment necessitate the procurement of contract field services (CFS) which appear to be personal services, those services may be obtained by contract for an interim period if that particular procurement is specifically authorized by the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics).

Subpart 237.71—Mortuary Services

237.7100 Scope.

Acquisition procedures peculiar to contracts for mortuary services (the care of remains) of military personnel within the United States are set forth in this subpart. These procedures may be used as guidance in areas outside the United States in procuring such services for both deceased military and civilian personnel.

237.7101 Method of acquisition:

(a) *Acquisitions by requirements type contract.* By agreement among the military activities involved, one military activity in each geographical area shall contract for the estimated requirements for the care of remains for all activities in the area. Acquisition shall be by use of a requirements type contract (see FAR 16.503) when the estimated annual requirements for the individual activity concerned, or for the activities using one contract, are 10 or more. Except where negotiation is authorized under FAR Subpart 15.2, such contracts shall be formally advertised.

(b) *Acquisitions by purchase order.* Where no contract exists, such services shall be obtained by use of DD Form 1155, "Order for Supplies and Services/ Request for Quotations," and DD Form 1155r, "General Provisions" (see FAR 13.5), inserting in the Schedule the clauses prescribed in 213.505–2.

(c) *Solicitation planning.* Bids or offers for annual requirements for the next fiscal year shall be solicited in sufficient time to permit award prior to the beginning of the fiscal year.

(d) *Area of performance.* Each contract for care of remains (except Port of Entry Requirements contracts) shall clearly define the geographical area covered by the contract. The area shall be determined by the activity entering into the contract in accordance with the following general guidelines. It shall be an area using political boundaries, streets, or other features as demarcation lines. Generally, this should be a size roughly equivalent to the contiguous metropolitan or municipal area enlarged to include the activities served. In the event the area of performance best suited to the needs of a particular contract is not large enough to include a carrier terminal commonly used by people within such area, the contract area of performance shall specifically state that it includes such terminal as a pickup or delivery point.

(e) *Distribution of contracts.* In addition to normal contract distribution, three copies of each contract shall be furnished to each activity authorized to use it, and two copies to each of the following:

(1) HQDA (DAAG–PED), Alexandria, VA 22331.

(2) Bureau of Medicine and Surger, Department of the Navy (MED 3134), 23nd and E Streets, NW., Washington, DC 20372.

(3) Headquarters, AFMPC/MPCCM, Randolph AFB, TX 78150.

237.7102 Schedule formats.

(a) *Schedule format for other than port, of entry requirements contracts.* Set forth below is an example of a Schedule format suitable for use in solicitations and contracts for other than port of entry requirements. The estimated quantities are only illustrative.

Item No.	Supplies, services, and transportation	Estimated quantity	Unit	Unit price	Amount
0001	For a standard size casket, supplies and services in accordance with specifications.	10.	Each.	.....	.....
0002	Shipping container conforming to performance testing specification requirements of the air carrier and subsequent connecting carriers.	2.	Each.	.....	.....
0003	For an oversized casket, supplies and services in accordance with specifications.	4.	Each.	.....	.....
0004	Shipping container conforming to performance testing specification requirements of the air carrier and subsequent connecting carriers.	1.	Each.	.....	.....
0005	For transportation of remains, in accordance with specifications and as provided for in paragraphs (b) and (c) of the "Area of Performance" clause of this contract.	200 loaded miles.	(Loaded mile.)	.....	.....

Additional items may be added (in numerical sequence), as required.

(b) *Schedule format for port of entry requirements contracts.* Set forth below is an example of a Schedule format suitable for use in solicitations and contents for port of entry requirements. The estimated quantities are only illustrative.

Item No.	Supplies, services, and transportation	Estimated quantity	Unit	Unit price	Amount
0001	For standard size casket, supplies and services in accordance with specifications.	20	Each		
0002	Shipping container conforming to performance testing specification requirements of the air carrier and subsequent connecting carriers.	17	Each		
0003	For an oversized casket, supplies and services in accordance with specifications.	5	Each		
0004	Shipping container conforming to performance testing specification requirements of the air carrier and subsequent connecting carriers.	3	Each		
0005	For inspection and/or reprocessing of casketed remains prior to delivery to selected common carrier.	18	Each		
0006	For transportation of remains between _____ and processing facility.	31	(Loaded trip each.)		
0007	For transportation of remains between processing facility and selected common carrier or National Cemetery as indicated below:		(Loaded trip each.)		
	X	9			
	Y	10			
	Z	9			
0008	For transportation of remains between processing facility and any point within 100 miles as designated by the contracting officer.				

Additional items may be added (in numerical sequence), as required.

237.7103 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 252.237–7100, Award to Single Bidder, in formally advertised solicitations for mortuary services contracts.

(b) The contracting officer shall insert the provision at 252.237–7101, Award to Single Offeror, in negotiated solicitations for mortuary services contracts.

(c) The contracting officer shall insert the following clauses in mortuary services solicitations and contracts except those for port of entry requirements:

(1) 252.237–7102, Requirements;

(2) 252.237–7103, Area of Performance;

(3) 252.237–7104, Specifications;

(4) 252.237–7105, Using Activities;

(5) 252.237–7106, Delivery Orders and Invoices;

(6) 252.237–7107, Delivery and Performance;

(7) 252.237–7108, Subcontracting;

(8) 252.237–7109, Additional Default Provision;

(9) 252.237–7110, Group Interment;

(10) 252.237–7111, Professional Requirements;

(11) 252.237–7112, Facility Requirements;

(12) 252.237–7113, Preparation History.

(d) Except for the "Area of Performance" and the "Facility Requirements" clauses, the contracting officer shall insert all of the clauses in (c) above, as well as the Government-Furnished Property (Short Form) clause at FAR 52.245–4 in port of entry solicitations and contracts for mortuary services.

Subpart 237.72—Laundry and Dry Cleaning Services

237.7200 Scope.

This subpart contains instructions for the preparation and use of contracts for laundry and dry cleaning services within the United States. It may be used as guidance in all other locations.

237.7201 General policy.

Except for laundry and dry cleaning services acquired under small purchase procedures, the normal method of contracting for laundry and dry cleaning services shall be by formal advertising.

237.7202 Selection of count of articles or weight (unsorted or presorted) basis.

Laundry services in support of hospitals may be acquired on the basis of (a) a count of articles or (b) by bulk weight. Acquisitions by weight may be on either a pre-sorted (bag type) or unsorted (simple bulk weight) basis. The basis of acquisition shall be at the discretion of the requiring activity in conjunction with advice of the contracting officer based on consideration of such factors as price, administrative costs, aseptic requirements, risk of contamination/cross-contamination, volume and nature of articles to be serviced. All other laundry and dry cleaning services shall be acquired on a count of articles basis.

237.7203 Schedule format.

Set forth below are examples of schedule formats suitable for use in solicitations. The estimated quantities are only illustrative.

(a) Count of articles.

Item No.	Item	Estimated quantity for contract period	Unit	Unit price	Estimated amount
	LOT I *Laundering*				
0001	Pillowcase (P)	100,000	Each		
0002	Nurses Uniform, with belt (S) (P) (OH)*	25,000	Each		
0003	Slippers	50,000	Pair		

Item No.	Item	Estimated quantity for contract period	Unit	Unit price	Estimated amount
	LOT II *Dry Cleaning*				
0004	Curtains	500	Each		
0005	Trousers (P)	5,000	Each		
	LOT III** *Individual Laundry*				
0006	Individual bundle (26 piece)	1,000	Each		
0007	Individual bundle (13 piece)	1,000	Each		
***					

* (S)—Starched, (P)—Pressed, (OH)—Item delivered on hanger (hanger included in Unit Price), and ( ) Other instructions as required.
** Include in contracts containing the Individual Laundry clause at 252.237-7208.
*** See Subpart 204.71 for Line Item Numbering Procedures.

(b) Bulk weight (unsorted).

Item No.	Item	Estimated quantity of serviced laundry for contract period	Unit	Unit price	Estimated amount
0001	Laundry services for the items listed below *	100,000	Lb		
	*The following articles are to be serviced. Separate prices are not to be submitted for these articles.				
	Towels, hand	40,000	Lb	NSP	
	Sheets	40,000	Lb	NSP	
	Wash cloths	20,000	Lb	NSP	

(c) Bulk weight (bag type).

Item No	Item	Estimated quantity of serviced laundry for contract period	Unit	Unit price	Estimated amount
0001	BAG TYPE I (Patient items; sheets, pillow cases.)	200,000	Lb		
0002	BAG TYPE II (Terry Type: Towels, wash cloths.)	100,000	Lb		
0003	BAG TYPE III (Surgical items: masks, caps, shirts.)	50,000	Lb		
0004	BAG TYPE IV CONTAMINATED (May include any or all items in above listed bag types.)	75,000	Lb		

237.7204 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert a provision similar to that set forth at 252.237-7200, Instructions to Bidders (Count of Articles), in solicitations for laundry and dry cleaning services when such services are to be provided on a count of articles basis.

(b) The contracting officer shall insert a provision similar to that set forth at 252.237-7201, Instructions to Bidders (Bulk Weight), in solicitations for laundry services when such services are to be provided on a bulk weight basis.

(c)(1) The contracting officer shall insert the clause at 252.237-7202, Count of Articles, in solicitations and contracts for laundry and dry cleaning services to be provided on a count of articles basis.

(2) When laundry and dry cleaning services are to be provided to individual personnel on a count of articles basic, the contracting officer shall use the clause with its Alternate I.

(d) The contracting officer shall insert the clause at 252.237-7203, Loss or Damage (Count of Articles), in solicitations and contracts for laundry and dry cleaning services to be provided on a count of articles basis.

(e) The contracting officer shall insert the following clauses, substantially the same as the clauses prescribed below, in solicitations and contracts for laundry services to be provided on a bulk weight basis:

(1) 252.237-7204, Weight of Articles (Bag Type), for bag type laundry;

(2) 252.237-7205, Weight of Articles (Unsorted), for unsorted laundry;

(3) 252.237-7206, Loss or Damage (Weight of Articles);

(4) 252.237-7207, Maximum Weight Loss.

(f) The contracting officer shall insert the clause at 252.237-7208, Individual Laundry, in solicitations and contracts for laundry services to be provided to individual personnel.

(g) The contracting officer shall insert the clause at 252.237-7209, Special Definitions of Government Property, in solicitations and contracts for laundry and dry cleaning services.

Subpart 237.73—Educational Service Agreements

237.7300 Scope.

This subpart prescribes acquisition procedures for agreements with established schools, colleges, or universities, or other educational institutions for educational services using the institution's facilities, standard courses, and prevailing tuition and fees applicable to the general public. As used in the Part, "facilities" does not include the institution's dining rooms or dormitories. Also, as used in the subpart, "fees" does not include charges for meals or lodging. Tuition assistance agreements, i.e., payment by the Government of partial tuition under the off-duty educational program, are not included under this subpart. Except in connection with the detailing of commissioned officers to law schools pursuant to 10 U.S.C. 2004, no agreement

shall be made under this subpart which will provide for, or results in, payments of Government funds for tuition or other expenses in connection with training in any legal profession.

237.7301 Educational service agreement.

An educational service agreement is one which calls for educational services to be provided under the following conditions:

(a) The Government pays all normal tuition and fees for educational services provided to a student by the contractor under its regularly established schedule of tuition and fees applicable to all students generally; and

(b) Enrollment is at the contrator's institution under his regular rules and in courses and curricula which the institution offers to all students meeting the contractor's admission requirements, with no special courses or special fees applicable to Government students.

237.7302 Method of acquisition.

(a) An educational service agreement is not a contract, but is a continuing offer which may be accepted by the Government by the placing of requests for services. Each request for services results in a separate contract.

(b) The terms of the educational service agreement provide that requests for services are negotiated under the authority of 10 U.S.C. 2304(a)(5) when the contractor is in the United States, its possessions, or Puerto Rico, or 10 U.S.C. 2304(a)(6) if elsewhere.

237.7303 Duration.

Educational service agreements shall be for an indefinite duration and shall remain in effect until terminated. However, the issuing activity shall establish procedures to review each educational service agreement at least once each year (with due regard to the institution's academic calendar and at least 30 days before the beginning of a term) for the purpose of incorporating changes to reflect requirements of any Statute, Executive Order, or this regulation. If the parties do not agree on such required changes, the contracting officer shall terminate the agreement in accordance with its terms.

237.7304 Format and clauses for educational service agreements.

Educational service agreements authorized by this Subpart shall be on locally reproduced forms consisting of a cover page, general provisions, schedule, and signature page, in the format set forth in this paragraph. The contracting officer may add to the schedule any other provisions necessary to describe the requirements of the Department, as long as such provisions do not contradict any of the general provisions or schedule provisions prescribed by this paragraph or otherwise alter the concept of acquiring educational services in the form of standard course offerings at the prevailing rates of the institution.

(a) *Cover page.* The cover page shall contain the following provisions and necessary information to complete the provisions.

Educational Service Agreement

Agreement No. ——.

1. This agreement entered into on the — day of ————, 19—, between the United States of America, hereinafter called the "Government", represented by the Contracting Officer, and (name of institution), an educational institution located at ———— (City) ———— (State), herein after called the "Contractor", is for educational services to be provided to Government personnel at the Contractor's institution. The parties intend that the Contractor shall provide instruction with standard offerings of courses available to the public and shall receive payment for services rendered in accordance with the Contractor's schedule of tuition and fees applicable to the public and in effect at the time the services are performed.

2. This agreement may be amended only by mutual consent of the parties.

3. The Government will review this agreement annually before the anniversary of its effective date for the purpose of incorporating changes required by Statutes, Executive Orders, the Federal Acquisition Regulation, or the DoD FAR Supplement; such changes will be evidenced by a modification to this agreement or by a superseding agreement. If the parties fail to agree upon any such change, the Government will terminate this agreement.

4. This agreement shall commence on the effective date above and shall continue until terminated.

5. The estimated annual cost hereunder is $————; however, this estimate is for administrative purposes only and shall not impose any obligation on the Government to request any services or to make any payment except as provided herein.

6. Requests for services hereunder are negotiated under the authority of 10 U.S.C 2304(a)(5) when the contractor is in the United States, its possessions, or Puerto Rico, or (6) if elsewhere.

7. Advance payments are authorized by 31 U.S.C. 529i.

8. Submit invoices to: ———— (Name and Address of Activity).

9. This agreement consists of this cover page, a Schedule of ———— (number of pages) pages, General Provisions of ———— (number of pages) pages, and a Signature Page.

(b) *Schedule provisions.*

Schedule Provisions

1. *Ordering procedures and services to be provided.*

(a) The Contractor shall promptly deliver to the Contracting Officer one copy of each catalog applicable to this agreement, and one copy of any subsequent revision thereof.

(b) The Government will request educational services under this agreement by delivery to the Contractor of (insert type of request that will be used; e.g., delivery order, official Government order, or other written communication) containing the number of this agreement and designating as students at the Contractor's institution under this agreement one or more Government-selected persons who have already been accepted for admission under the Contractor's usual standards of admission.

(c) All students under this agreement shall register in the same manner, be subject to the same academic regulations, and have the same privileges, including the use of all facilities and equipment as regular non-Government students (hereinafter called civilian students).

(d) Upon enrolling each student pursuant to this agreement, the Contractor shall, where the resident or nonresident status involves a difference in tuition or fees:

(i) Determine the resident or nonresident status of the student and notify the student and the contracting officer of such determination, and if there is an appeal of such determination, process the appeal in accordance with the Contractor's standard procedures and notify the appellant of the result; and

(ii) Make the above determination a part of the student's permanent record.

(e) The Contractor shall not furnish any instruction or other services to any student pursuant to this agreement prior to the effective date of a request for such services in the form specified above.

2. *Change in curriculum.* The Contracting Officer may vary the curriculum for any student enrolled under this agreement but shall not require or make any change in any course as offered by the Contractor without the Contractor's consent.

3. *Payment.*

(a) The Government shall pay the Contractor the regularly established tuition and fees which the Contractor charges civilian students pursuing the same or similar curricula, except for any tuition and fees which this agreement specifically excludes. The Contractor shall have the right to change any tuition and fees, provided that the Contractor publishes such revisions in a catalog or otherwise publicly announces such revisions and applies them uniformly to all students pursuing the same or similar curricula as Government students enrolled under this agreement. The Contractor shall provide the Contracting Officer notice of such changes prior to their effective date.

(b) The Contractor shall not establish any tuition or fees which apply solely to Government students.

(c) If the Contractor regularly charges higher tuition and fees for students who are not residents of the state in which the Contractor is located, the Contractor may charge the Government such regularly established nonresident tuition and fees for those Government students who are in fact nonresidents. The Government shall not claim resident tuition and fees for any

student solely on the basis of his residing in the state as a consequence of enrollment under this agreement.

(d) The Contractor shall charge the Government only the tuition and fees (which may include (i) penalty fees for late registration or change of course occasioned by action of the Government and (ii) mandatory health fees and health insurance charges) which relate directly to enrollment as a student and are a consequence of his being a student. The Contractor shall not charge the Government for permit fees, such as vehicle registration or parking fees, unless specifically authorized in the request placed hereunder. In addition to the above, the Contractor shall not make any charge under this agreement for any equipment, refundable deposits, or any items or services (such as computer time) related to student research. However, any flat rate charge applicable to all students registered for research and which appears in the Contractor's publicly announced fee schedule shall be chargeable under this agreement.

(e) Normally the Contractor shall not directly charge individual students for application fees or any other fee roperly chargeable to this agreement. However, if the Contractor's standard procedures require payment of any fee before the student is enrolled under this agreement, the Contractor shall reimburse the student in full for any such fee when the Contractor receives payment therefor under this agreement.

(f) For each term in which the Contractor enrolls students under this agreement the Contractor shall submit —— copies of an invoice listing charges for each student separately. Contractors shall submit invoices within —— days after the start of the term it covers and shall include:

(i) Agreeement number and inclusive dates of the term to which the invoice applies;

(ii) Name of each student;

(iii) Schools which charge by credit hour shall list each course of each student;

(iv) The resident or nonresident status of each student (if applicable to the Contractor's school);

(v) Breakdown of charges for each student, identifying each element; e.g., Credit Hours: $———, Tuition: $———, Application Fee: $———, Labor Fee (Chem 300): $———, Contractor shall show the *total of fees for each student and grand total for all students listed on the invoice.*

(g) If unforeseen events require additional charges which are otherwise payable in accordance with the Contractor's published tuition and fee schedule, the Contractor may submit a supplemental invoice or make the adjustment on the next regular invoice under this agreement. In either case the Contractor shall clearly identify and explain the supplemental invoice or the adjustment.

(h) The Contractor shall apply to subsequent invoices submitted under this agreement any credits resulting from withdrawal of students, or from any other cause in accordance with its standard procedures. Such credits should appear on the first invoice submitted after the action resulting in such credits. If no subsequent invoice is submitted, the Contractor shall deliver to the Contracting Officer a check drawn to the order of the office designated for contract administration. Contractor shall identify the reason for the credit and the applicable term dates in all cases.

4. *Withdrawal of students.*

(a) The Government may, at its option and at any time, withdraw financial support for any student by issuing official orders. The Government shall furnish —— copies of such orders to the Contractor within a reasonable time after publication.

(b) The Contractor may request withdrawal by the Government of any student for academic or disciplinary reasons.

(c) If such withdrawal occurs prior to the end of a term, the Government shall pay any tuition and fees due for the current term in which the student may be enrolled, and the Contractor shall credit the Government with any charges eligible for refund under the Contractor's standard procedures for civilian students in effect on the effective date of such withdrawal.

(d) Withdrawal of students by the Government shall not be the basis for any special charge or claim by the Contractor other than as provided by the Contractor's standard procedures.

5. *Transcripts.* Within a reasonable period of time after withdrawal of a student for any reason, or after graduation, the Contractor shall send to the Contracting Officer (or to such other address as the Contracting Officer may specify) one copy of an official transcript showing all work by the student at the Contractor's institution until such withdrawal or graduation.

6. *Student teaching.* Awarding of fellowships and assistantships by the Contractor to students attending school under this agreement is not anticipated. In the case of graduate students, however, should both the student and the Contractor deem it to be in the best interests of the student for him to assist in the teaching program of the institution, the Contractor may provide nominal compensation for such students' part-time service in accordance with the Contractor's established practices and procedures for other students of similar accomplishment in that department or field. Such compensation shall be applied as a credit against any invoices presented for payment for any period in which he performed the part-time teaching service.

7. *Termination of agreement.*

(a) Either party may terminate this agreement by giving thirty (30) days advance written notice of the effective date of termination. In the event of termination, the Government shall have the right, at its option, to continue to receive educational services for those students already enrolled in the Contractor's institution under this agreement until such time that the students complete their courses or curricula or the Government withdraws them from the Contractor's institution. The terms and conditions of this agreement in effect on the effective date of the termination shall continue to apply to such students remaining in the Contractor's institution.

(b) Withdrawal of students pursuant to Schedule Provision 4 shall not be considered a termination within the meaning of this provision.

(c) Termination by either party shall not be the basis for any special charge or claim by the Contractor other than as provided by the Contractor's standard procedures.

(c) *General provisions.*

General Provisions

1. *Definitions.* Insert the clause at FAR 52.202–1, Definitions, with the following additional paragraphs.

(d) The word "term" means the period of time into which the Contractor divides the academic year for purposes of instruction; this includes "semester," "trimester," "quarter," or any similar word the Contractor may use.

(e) The word "course" means a series of lectures or instructions, and/or laboratory periods, relating to one specific representation of subject matter, such as Elementary College Algebra, German 401 or Surveying. Normally, student completes a course in one term and receives a certain number of semester hours credit (or equivalent) upon successful completion.

(f) The word "curriculum" means a series of courses having a unified purpose and belonging primarily to one major academic field. It will usually include certain required courses and elective courses within established criteria. Examples include Business Administration, Civil Engineering, Fine and Applied Arts, and Physics. A curriculum normally covers more than one term and leads to a degree or diploma upon successful completion.

(g) The word "catalog" means any medium by which the Contractor publicly announces terms and conditions for enrollment in the Contractor's institution, including tuition and fees to be charged. This includes "bulletin," "announcement," or any other similar word the Contractor may use.

(h) The word "tuition" means the amount of money charged by an educational institution for instruction, not including fees as defined below.

(i) The word "fees" means those applicable charges directly related to enrollment in the Contractor's institution. This shall not include any permit charge (e.g., parking, vehicle registration or charges for services of a personal nature (e.g., food, housing, laundry) unless specifically called for in the request placed hereunder.

2. *Gratuities.* Insert the clause at FAR 52.203–3.

3. *Covenant against contingent fees.* Insert the clause at FAR 52.203–5.

4. *Officials not to benefit.* Insert the clause at FAR 52.203–1.

5. *Approval of contract.* Insert clause from FAR 52.204–1 in accordance with Departmental procedures when it is desired to cover the subject matter thereof.

6. *Order of precedence.* Insert clause from FAR 52.215–18.

7. *Conflicts between agreement and catalog.* Insert the following clause:

Conflicts Between Agreement and Catalog

To the extent of any inconsistency between the provisions of this agreement and any catalog or other document incorporated in this agreement by reference or otherwise or

any of the Contractor's rules and regulations, the provisions of this agreement shall govern.

8. *Disputes.* Insert the clause at FAR 52.233–1.

9. *Convict labor.* Insert the clause at FAR 52.222–3.

10. *Equal opportunity.* In accordance with FAR 22.802, 22.807, and FAR 22.810 insert the appropriate clause from FAR 52.222–26.

11. *Assignment of claims.* Insert the following clause:

Assignment of Claims

No claim under this agreement shall be assigned.

12. *Examination of records by Comptroller General.* In accordance with the requirements of FAR 52.215–1 insert the clause therein.

13. *Alterations in contract.* Insert the clause at FAR 52.252–4 in accordance with Departmental procedures when it is desired to cover the subject matter thereof.

(d) *Signature page.* The signature page shall be in the following format:

Agreement No. ———.

Signature Page

In Witness Whereof, the parties hereunto have executed this agreement as of the day and year first above written.

The United States of America

By: ———————————

(Contracting Officer)

Activity ———————————

Location ———————————

(Name of Contractor)

By: ———————————

(Title) ———————————

Subpart 237.74—Communication Services

237.7401 Definitions.

"Appropriate Governmental Regulatory Body" means the Federal Communications Commission, any state-wide regulatory body, or any body with less than state-wide jurisdiction when operating pursuant to state authority. Regulatory bodies whose decisions are not subject to judicial appeal and regulatory bodies which regulate a company owned by the same entity which creates the regulatory body are not "appropriate governmental regulatory bodies" for the purposes of this subpart.

"Common Carriers" means any person, partnership, association, joint-stock company, trust governmental body, or corporation engaged in the business of providing communications services to the general public, normally authorized or franchised by the Federal Communications Commission (FCC) or other appropriate governmental body.

"Communications Services" means those services provided by all types of systems and facilities connected therewith that employ electric or electromagnetic signals to transmit information between two or more points by means of radio, wire, cable, satellite, and other media. Included are telephone, telegraph, teletypewriter, remote writing, remote display, data transmission, facsimile and television transmission services, as well as terminal devices, switches, private branch exchanges, transmission facilities and other components of the systems that supply these services. Also included are all local, post, camp, station or long distance services, as well as all fixed or mobile facilities that are interconnected to systems providing these types of services.

"Foreign Carrier" means any person, partnership, association, joint-stock company, trust, governmental body, or corporation not subject to regulation by an appropriate United States governmental regulatory body and not doing business as a citizen of the United States, which provides communications services outside the territorial limits of the United States.

"Noncommon Carrier" means any entity other than a common carrier which offers communications facilities, services or equipment for lease.

237.7402 Applicability.

This subpart applies to acquisition of communications services from communications common carriers regulated by the Federal Communications Commission or an appropriate governmental regulatory body. In addition, except as otherwise specifically provided, this subpart provides guidelines for the acquisition of all other communications services (e.g., from nonregulated common carriers, noncommon carriers and foreign carriers) but is not mandatory for use in such acquisitions.

237.7403 Policy.

In accordance with instructions contained in Department of Defense directives and implementing departmental regulations concerning the operation of commercial and industrial type activities, and specifically with those concerning the sources for communications services, the Department of Defense generally procures communications services of a kind offered by common carriers, including equipment and facilities incidental to those services, from common carriers in accordance with tariff provisions, and at tariff rates established with the Federal Communications Commission (FCC) or with other appropriate governmental regulatory bodies unless cost or operational requirements dictate otherwise.

237.7404 Regulatory bodies.

(a) The Federal Communications Commission (FCC) and other appropriate governmental regulatory bodies generally publish rules and regulations governing the operations of common carriers and prescribe accounting principles to be employed in the establishment of rates. Notwithstanding other provisions of this Supplement, the regulations, practices, and decisions of the FCC and other appropriate governmental regulatory bodies concerning rates, cost principles, and accounting practices shall be recognized in the procurement of communications services from common carriers. With respect to those issues concerning common carrier services (1) on which the appropriate governmental regulatory body has not expressed itself, (2) over which the appropriate governmental regulatory body has declined jurisdiction, or (3) as to which there is no appropriate governmental regulatory body to make a decision, specific provisions should be made in the contract for adoption of FCC-approved practices or the generally accepted practices of the industry.

(b) Since the Department of Defense frequently requires unusual or special communications services advancing the "state of the art," Defense Department activities frequently move into areas which the cognizant governmental regulatory bodies have not explored. In such situations, the Defense Department frequently is the sole or primary user of many of a given common carrier's offerings. In addition, because of the large volume or normal services which the Defense Department requires, the day-to-day decisions of governmental regulatory bodies may have a vast dollar impact upon it. It is not Defense Department policy to duplicate the efforts of appropriate governmental regulatory bodies or to act as a second regulatory body. On the other hand, the Defense Department's self interest requires that it act as an informed and intelligent consumer, seeing to it that its sidde of the case is presented to the cognizant bodies and working with the common carriers to ensure that in those areas in which the FCC cannot or will not rule, sound regulatory practices are followed. Every effort should be made to avoid the time and expense of litigation by full and fair disclosure of both the carrier's and the Government's position in advance. Nevertheless, in the event actions short of litigation are not productive or just, reasonable or otherwise lawful rates, or when there is a refusal to provide required services or file appropriate tariffs, legal actions

should be initiated and vigorously pursued. All contacts with the regulatory bodies should be through cognizant counsel in accordance with established Departmental and Defense Communications Agency procedures.

(c) Upon receipt of tariff information received in accordance with 252.237-7411, Tariff Information, the contracting officer shall immediately provide copies to the cognizant counsel.

237.7405 Sources for communications services.

237.7405-1 Common carriers.

(a) Generally, communication services shall be procured from the communication common carrier authorized by the appropriate regulatory body to operate within the service area in which the services are required.

(b) Although normally only one carrier is authorized to provide a specific type of service at any given location, there are locations at which no single communication common carrier has the exclusive right to provide the required service. When this is the case and more than one common carrier is authorized and can provide the required service, the procurement shall be made from the source offering the lowest cost to the Government, if practicable. If this is not practicable, the contract file shall be documented as to the reasons for selection of another source (e.g., unique ability to meet service date; more timely and effective maintenance; security reasons; system integrity). In any event, special assembly items and entire communications systems shall be acquired on a competitive basis to the maximum extent practicable; and every effort should be made to exclude from the service contract any provisions which would require the Government to leasc from the source of service any associated and related items such as circuits, circuit extensions, and terminal equipment.

237.7405-2 Noncommon carriers.

While communications services generally shall be acquired from common carriers; they may be acquired from noncommon carriers when equipment and the services function as a complete communication system or are an integral part of a communication system. Equipment and services shall be considered an integral part of a communication system if the combination of equipment and services is necessary to perform the desired services.

237.7405-3 Foreign carriers.

The acquisition of communication services within or between foreign countries and the acquisition from a foreign carrier of communication services from a foreign country to the Unites States present problems beyond the scope of this subpart. Frequently, foreign carriers are owned by the Government of the country in which they operate, and their methods of doing business are prescribed by the foreign Government. In many countries, an international agreement with the host country prescribes guidelines for how the Defense Department will obtain communication services. In addition, there are frequently severe problems with taxes on communications in foreign countries. In other countries, a corporate subsidiary of a carrier not indigenous to the country (often a U.S. parent) is the sole source for communication services. As a general rule in foreign countries, rates and practices should be spelled out in as much detail as possible in a contractual document. It consistently has been Defense Department policy not to pay discriminatory rates and to pay no more for communication services in a foreign country than does the military of that country. Special problems with communications procurement in foreign countries should be channeled to higher headquarters for resolution with the assistance of State Department representatives as appropriate.

237.7406 Who may acquire communication services.

(a) The general authority of the Head of a Contracting Activity contained in FAR 1.601 includes the acquisition of communication services. In addition, the Administrator, General Services Administration, has delegated to the Secretary of Defense under the terms of the Federal Property and Administrative Services Act, as amended, authority to enter into contracts for communication services extending beyond the fiscal year, but not longer than ten years under the following circumstances:

(1) The Government obtains lower rates, larger discounts, or more favorable conditions of service than those available under a contract for a definite term not extending beyond the current fiscal year; or

(2) Nonrecurring or termination charges payable under contracts for a definite term not extending beyond the current fiscal year are eliminated or reduced; or

(3) The carrier refuses to render the desired service except under contract for a definite term extending beyond the current fiscal year.

(b) The secretary of Defense has delegated the authority to him by the Administrator, GSA, to the Secretaries of the Military Departments and the Director, Defense Communications Agency, who have in turn delegated it to the following (with power of redelegation):

(1) For the Department of the Army: The Commanding General, United States Army Communications Command; and the Commanding General, United States Continental Army Command.

(2) For the Department of the Navy: The Commander, Naval Facilities Engineering Command;

(3) For the Department of the Air Force: The Deputy Chief of Staff, Research Development and Acquisition; and the Director of Contracting and Manufacturing Policy, DCS/RD&A, HQ USAF;

(4) For the Defense Communications Agency: The Chief, Defense Commercial Communications Office;

(5) For the Defense Logistics Agency: For the leasing of local telecommunications facilities and services, Commanders of DLA centers, depots, and DCAS regions; and

(6) For the Defense Nuclear Agency: For contracts not in excess of $1,000,000, The Commander, Field Command, DNA.

(c) The ten-year limitation of (a) above does not apply to "general contracts" (see 237.7408) but to obligating the Government for a longer period than ten years by orders placed under the general contract.

237.7407 Cost of pricing data.

(a) Rates or preliminary estimates quoted by a common carrier for tariffed services are considered to be prices set by regulation within the provisions of Pub. L. 87-653, even if the tariff will not be established until after execution of the contract. Accordingly, except as provided in (b), common carriers are not required to submit cost or pricing data prior to award of contracts for tariffed services. On the other hand, rates or preliminary estimates quoted by a common carrier for nontariffed service or by a noncommon carrier for any service are not considered to be prices set by regulation; and the provisions of Pub. L. 87-653 and FAR 15.804 shall be applied accordingly.

(b) Even when not required by Pub. L. 87-653, certified cost or pricing data shall be obtained whenever the contracting officer is unable to determine that the prices are reasonable on the basis of price analysis (see FAR 15.805-2). However certified cost or pricing data shall not be required to support annual recurring costs below $5,000 and nonrecurring costs or basic termination liabilities below $10,000. Situations in which cost or pricing data

may be found necessary within the above policy are:

(1) A tariff, whether filed or contemplated to be filed is for new services installed or developed primarily for Government use (and the data shall cover special construction charges in connection therewith);

(2) A tariff, whether filed or contemplated to be filed, in which specific rates and charges are not included;

(3) More than one commercial source (one or more of which is a noncommon carrier) can offer the desired service but price competition is not considered adequate;

(4) To support the reasonableness of special assembly rates and charges;

(5) To support the reasonableness of special construction and equipment charges;

(6) To support the reasonableness of those contingent liabilities which are fixed at the outset of the service; or

(7) To support proposed cancellation and termination charges (pursuant to the clause entitled "Cancellation or Termination of Orders") and reuse arrangements (pursuant to the clause entitled "Reuse Arrangements").

(c) Cost or pricing data need not be obtained for each order in the case of services obtained by delivery order under a general call type contract which is negotiated for use by Government ordering activities and includes detailed and approved price schedules as a part of the general contract.

(d) As to the form and detail of cost or pricing data, the following will apply:

(1) For data submitted by common carriers, the data may be in the same form and detail normally submitted to the governmental regulatory body having jurisdiction over the carrier in question; provided, this form and detail is sufficient for the Government to make an adequate evaluation.

(2) For data submitted by other than common carrier, the data should be that required by FAR 15.8.

(e) In the case of noncommon carriers or common carriers quoting for services not to be furnished pursuant to tariff, the contracting activity shall require that the cost or pricing data be accompanied with a certificate as required in FAR 15.804–4. In the case of a common carrier furnishing service pursuant to a tariff filed or to be filed, the contracting activity shall require that data submitted pursuant to (b) above be accompanied with a certificate that to the best of the company's knowledge the data are accurate, complete, and a statement that either;

(1) The rates for services in question are based on these data which will be used or are currently being used to justify the tariff for such service; or

(2) The rates for services in question are not based on these data but are based upon filed tariffs.

The contracting activity shall inform carriers required to furnish cost or pricing data under this subparagraph (e) that the data and certifications will be used by the Government, if appropriate, in any subsequent proceedings relative to this tariffed service.

(f) If any noncommon carrier or any common carrier providing a service not to be furnished pursuant to tariff refuses to furnish cost or pricing data required under this paragraph, applications for waiver shall be processed in accordance with FAR 15.804.

237.7408 Type of contract.

237.7408–1 General.

Generally, the procurement of communication services is facilitated by a contractual arrangement which (a) permits the activities served to order services directly from time to time as specific requirements are developed; and/or (b) provides a written instrument of understanding between the Department of Defense or a contracting activity and the contractor which sets forth the basis under which future procurements will be entered into as required during the term of the agreement.

237.7408–2 General agreements.

General agreements, referred to as "general contracts" within the communication industry, are widely used to facilitate awards for communication services. Such an instrument is not a contract, but rather represents a written instrument of understanding executed between a procurement activity and a communications contractor which sets forth the negotiated contract clauses and other matters which shall be applicable to future procurements entered into between the parties during the term of agreement. The general agreement together with the order issued thereunder (see 237.7408–3) represents the contract. General agreements shall not be used in any manner to restrict available competition. All general agreements will be executed in the name of the United States Government.

237.7408–3 Communication Service Authorization (CSA).

DD Form 428, Communication Service Authorization (CSA), or an electronic data processing substitute (when the volume of transactions necessitates preparation of orders by other than manual process, a format suitable for an electronic data processing system may be used in lieu of DD Form 428, provided that all essential elements of the DD Form 428 are incorporated) shall be used to order services under the general contract and to modify, cancel, or terminate services when a CSA has been used to establish the service. As a general rule, prices should be established prior to authorizing the contractor to begin work. However, when the contractor is allowed to begin work prior to pricing in accordance with this paragraph, an estimated price or ceiling shall be included; and the contractor and the contracting officer shall proceed with definitive pricing as soon as practicable. In addition, a CSA may be issued which includes a ceiling or a series of ceilings for the states services. Normally, this type of CSA is called a "maximum limit authorization" in the communications industry. This maximum limit authorization also may provide, in addition to the established ceilings, limited authority to designated individuals to effect modifications in service within the dollar ceilings by the use of work orders designated for this purpose. Each CSA issued under a general agreement shall be subject to such reviews, approvals and determinations and findings specified in this Supplement as would be applicable if the CSA were a contract entered into apart from the general contract.

237.7408–4 Federal Supply Schedule contracts.

General Services Administration Federal Supply Schedule contracts covering communication services, including equipment and facilities incidental to the services, are optional for use by the Department of Defense and may be used in accordance with FAR 8.404 when it is not more advantageous to negotiate a separate contract. The DD Form 428 may be used as a delivery order.

237.7409 Funding of Communication Service Authorizations (CSA) under general contracts.

(a) Funding is a comptroller responsibility and shall be handled in accordance with appropriate Department of Defense comptroller related directives and departmental implementations thereof. The guidelines in (b) through (e) below are provided for the contracting officer's information.

(b) In acquisitions of communication services, unlike other types of acquisitions, obligations are usually recorded when the service starts or if and when a cancellation or termination

is ordered. The funds are not obligated by the "general contract," but are ordinarily obligated by CSAs issued under the "general contracts" (see 252.237-7408, Ordering of Facilities and Services—Common Carriers).

(c) Each individual CSA establishes a basis for the obligation of funds to cover recurring charges for services to be provided during the fiscal year in which the CSA is issued, together with such onetime charges as are applicable to those services.

(d) The same CSA continues to be the basis for the obligation of funds when the same services are required to be continued into subsequent fiscal years. However, obligation of funds for recurring charges for such subsequent fiscal years must be subject to the availability of appropriations therefor; and in the event funds are not appropriated, a cancellation or termination CSA must be issued.

(e) The contracting officer, through his comptroller, must insure that funds are available at the time service is provided or at the time a cancellation or termination CSA is issued. FAR 32.702-2 does not apply to the issuance of CSAs.

237.7410 Special construction.

237.7410-1 General.

(a) Special Construction, as defined by tariffs, normally involves the furnishing of some special service or facility by a common carrier incident to the performance of the basic service. Under a given tariff, this may include (1) moving or relocating specified equipment, (2) providing temporary facilities, (3) expediting provision of facilities, or (4) providing channel facilities which must be specially constructed to meet the requirements of the Government. The procurement of "special construction," as that term is used in the communication industry, shall be governed by the provisions of this part and shall not ordinarily be subject to the provisions of FAR Part 36.

(b) Special construction costs may take the following forms:

(1) Contingent liability for utilizing the services for a shorter period of time than the specified minimum to reimburse the contractor for his unamortized nonrecoverable costs and usually expressed in terms of a termination liability, as provided in the contract or by tariff;

(2) A onetime special construction charge;

(3) Recurring charges for constructed facilities;

(4) A minimum service charge;

(5) An expediting charge; or

(6) A move or relocation change.

(c) When a common carrier submits a proposal or quotation of charges which indicates that special construction will be necessary, he shall be required to submit a detailed special construction proposal as well. All special construction proposals shall be analyzed to (1) determine the adequacy of the proposed construction; (2) disclose excessive or duplicative construction; and (3) when different forms of charge are possible, insure that the form most advantageous to the Government is provided for.

(d) When possible, special construction charges should be analyzed and approved prior to provision of the service. If, because of operational requirements, prior approval is not possible and a contractor is authorized to proceed, a ceiling cost for the special construction shall be imposed. Special construction charges must be approved and authorized prior to total payment thereof.

(e) Special construction provisions shall be administered by the contracting officer issuing the CSA. This involves administration of the cost and payment provisions, recording the unamortized termination liabilities (if any), and monitoring minimum service charges, (MSC) reuse of MSC facilities—all in coordination with the requiring Department, office or agency and with the Defense Contract Audit Agency, as appropriate.

237.7410-2 Applicability of construction labor standards to CSAs for special construction.

(a) The construction labor standards in FAR 22.4 ordinarily do not apply to "special construction." However, if the special construction includes construction (as defined in FAR 36.102) of a public building or public work, the construction labor standards may be applicable. Applicability must be determined under FAR 22.402.

(b) Individual CSAs which are subject to construction labor standards under FAR 22.402 shall specifically recite that fact.

237.7411 Special assembly.

(a) Special assembly is the designing, manufacturing, arranging, assembling or wiring of an item or items of equipment to provide service that cannot be provided with equipment normally employed for general use.

(b) Special assembly rates and charges shall be based on estimated costs and shall be negotiated prior to commencement of service whenever possible. When it is not possible to negotiate in advance, the initial rates and charges shall be preliminary and tentative only and shall be subject to adjustment to the extent appropriate at the time that final rates and charges are negotiated.

237.7412 Cancellation and termination.

(a)(1) Cancellation is the discontinuance of a requirement subsequent to the placing of an order, but prior to initiation of service.

(2) Termination is the discontinuation of a service for the convenience of the Government after the service has been initiated.

(b) Cancellation or termination charges shall be determined in accordance with the provisions of the applicable tariff or contract.

(c) At the conclusion of a cancellation or termination settlement negotiation, the contracting officer shall document the contract file as to the principal elements involved in the settlement and in a manner which will enable reviewing authorities to understand the appropriateness of the proposed settlement.

(d) Pursuant to the Cancellation or Termination of Orders clause, partial payments on cancellation or termination claims may be made prior to settlement under the applicable policy and procedures of FAR 49.112-1

237.7413 Contract clauses.

(a) The contracting officer shall insert the following clauses, modified if necessary to meet the specific requirements of an appropriate governmental regulatory agency or when the basic intent is not changed, in solicitations and contracts when a contract for communications services with a common or a noncommon carrier is contemplated.

(1) The clause at 252.237-7400, Definitions (Communications);

(2) The clause at 252.237-7401, Patent Indemnity (Communications);

(3) The clause at 252.237-7402, Access;

(4) The clause at 252.237-7403, Amendment of Contract; and

(5) The clause at 252.237-7404, Obligation of the Government.

(b) The contracting officer shall insert the following clauses, modified if necessary to meet the specific requirements of an appropriate governmental regulatory agency or when the basic intent is not changed, in solicitations and contracts when a contract for communications services with a common carrier is contemplated.

(1) The clause at 252.237-7405, Authorization and Consent—Common Carriers;

(2) The clause at 252.237-7406, Continuation of Orders;

(3) The clause at 252.237-7407, Facilities and Services to be Furnished—Common Carriers;

(4) The clause at 252.237-7408, Ordering of Facilities and Services—Common Carriers;

(5) The clause at 252.237-7409, Rates, Charges, and Services—Common Carriers;

(6) The clause at 252.237-7410, Payment—Common Carriers;

(7) The clause at 252.237-7411, Tariff Information;

(8) The clause at 252.237-7412, Cancellation or Termination of Orders—Common Carriers;

(9) The clause at 252.237-7413, Reuse Arrangements;

(10) The clause at 252.237-7414, Submission of Cost or Pricing Data—Common Carriers;

(11) The clause at 252.237-7415, Audit and Records—Common Carriers; and

(12) The clause at 252.237-7416, Term and Termination of Contract—Common Carriers.

(c) The contracting officer shall insert the following clauses, modified if necessary to meet the specific requirements of an appropriate governmental regulatory agency or when the basic intent is not changed, in solicitations and contracts when a contract with a common or a noncommon carrier is contemplated and when special construction charges are expected:

(1) The clause at 252.237-7417, Special Construction and Equipment Charges; and

(2) The clause at 252.237-7418, Title to Communication Facilities and Equipment.

Subpart 237.75—Services of Students at Research and Development Laboratories

237.7500 Scope.

This subpart prescribes procedures for the acquisition by contract under the authority of 10 U.S.C. Section 2360, of the temporary or intermittent services of students at institutions of higher learning for the purpose of providing technical support at defense research and development laboratories.

237.7501 Definitions.

For the purpose of this subpart, the following terms are defined:

"Institution of Higher Learning." An institution of higher learning means any public or private post-secondary school, junior college, college, university, or other degree granting educational institution located in the United States, its possessions, and Puerto Rico with an accredited education program approved by an appropriate accrediting body and offering a program of study at any level beyond that of high school.

"Nonprofit Organization." A nonprofit organization means any organization described by Section 501(c)(3) of Title 26 of the United States Code which is exempt from taxation under Section 501(a) of Title 26.

"Student." A student means an individual who is enrolled (or has been accepted for enrollment) prior to the term of the student technical support contract and remains in good standing at an institution of higher learning in a curriculum designed to lead to the granting by that institution of a recognized degree, during the term of the contract.

"Technical Support." Technical support means any scientific or engineering work in support of the mission of the DoD laboratory involved. It does not include services of an administrative or clerical nature.

237.7502 Policy.

These contracts shall not be used solely to circumvent personnel ceilings or to provide for an increase in the civilian workforce.

237.7503 General.

Pursuant to this subpart, acquisition of services of students at institutions of higher learning generally shall be acquired by contract between a nonprofit organization employing the student and the Government. When it is in the best interest of the Government to do so, however, contracts may be made directly with students.

(a) *Special considerations.* Any contract entered into pursuant to this subpart shall be considered to be a nonpersonal service contract for the purposes of FAR Part 13. Such contracts are not subject to the provisions of FAR 19.202, 19.501, 19.508(a), or FAR 13.105.

(b) *Contract Authority.* Contracts under this subpart are negotiated acquisitions and shall cite 10 U.S.C. 2304(a)(17) and 10 U.S.C. 2360 as authority.

237.7504 Contract clauses.

Any contract with an individual student made pursuant to this subpart shall contain the clauses at FAR 52.232-3, Payments Under Personal Services Contracts, and FAR 52.249-12, Termination (Personal Services).

PART 238—FEDERAL SUPPLY SCHEDULE CONTRACTING

No DoD FAR Supplement.

PART 239—MANAGEMENT, ACQUISITION, AND USE OF INFORMATION RESOURCES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

(See Part 270.)

Subchapter G—Contract Management

PART 242—CONTRACT ADMINISTRATION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 242.1—Interagency Contract Administration and Audit Services

242.101 Policy.

(d) *Reimbursement.*

(1) Except as noted in (d)(2) and (3) below, reimbursement for services shall be required from non-DoD organizations covered by this part as the current standard rate determined by the Assistant Secretary of Defense (Comptroller).

(2) Reimbursement is not required for quality assurance, inspection, and contract audit services under an effective reciprocal agreement which provides for such services to be rendered on a no-charge basis.

(3) Reimbursement is not required for services performed under contracts awarded by the Small Business Administration in accordance with FAR Subpart 19.9.

(4) Request for exceptions other than those noted in (d)(2) and (3) above shall be submitted to the ASD (Comptroller) for resolution or approval when it can be shown that such exceptions are in the best interests of the U.S. Government.

242.102 Procedures.

(S-70) *Department of National Defense Production (Canada).*

(1) Department of Defense components shall, upon direct request, provide contract administration services to the Department of National Defense Production (Canada). Performance for other Canadian Government organizations shall be in accordance with 242.102-70(b).

(2) Performance without charge of contract administration services by the Department of Defense components is provided for in 225.7105 concerning Canadian purchases.

(S-71) *Foreign governments and international agencies.*

(1) *Performance of services in the United States.* Department of Defense contract administration services

components shall, on receipt of requests from the DoD Central Control Point, provide contract administration services to foreign governments and international organizations who are making direct purchases from United States producers. "Direct purchase" is the purchase of defense supplies in the United States by a foreign government or contractor or international organization in which the supplies are purchased through commercial channels for use by the foreign government or international organization.

(2) *Operations of DoD Central Control Point (CCP).* Requests from foreign governments and international organizations shall be forwarded to the Defense Contract Administration Services Region (DCASR), New York, NY, which is the designated CCP. The CCP will—

(i) Determine that the request is from a friendly foreign government or from an international agency in which the United States is a participant;

(ii) Determine that the services requested are consistent with Department of Defense mutual security program policies (questions as to eligibility of foreign governments or international organizations to receive services from DoD contract administration services components will be referred to the Assistant Secretary of Defense (International Security Affairs));

(iii) Assure that the reimbursement arrangements are consistent with 42.101(d);

(iv) Determine that the requested services can be provided, and acknowledge receipt of the request;

(v) Distribute the procurement documents and related material to the cognizant contract administration services component, receive statements of costs from performing contract administration services components, bill the foreign governments or international organizations for services rendered, and distribute the remittance when received.

(S–72) *Performance of services outside the United States.* When services are performed by Department of Defense contract administration services personnel outside the United States, the levels of technical capability and the administrative procedures, not already prescribed in existing laws or Department of Defense policies, shall be in accordance with arrangements suitable and acceptable to the United States country teams or commanders of unified and specified commands, as appropriate.

(S–73) *Payment for services rendered.* Department of Defense components shall pay for services rendered at the rate established by the performing activity for such services, except where formal agreements provide for reciprocal performance without reimbursement. When services are requested from foreign governments and international organizations, DoD components should check with the Office of the Assistant Secretary of Defense (Comptroller) to determine whether any reciprocal agreements are in effect which would preclude payment for services requested.

Subpart 242.2—Assignment of Contract Administration

242.203 Retention of contract administration.

(a) When any field contract administration service is required, the contract will be assigned for administration regardless of dollar value.

(1) The purchasing office may retain responsibility for administration of contracts listed below:

(i) Contracts of or in support of the National Security Agency;

(ii) Contracts for coal or bulk petroleum;

(iii) Research and development contracts;

(iv) Grants;

(v) Contracts for flight training;

(vi) Contracts for headstones and gravemarkers;

(vii) Contracts for industry technical representatives;

(viii) Contracts for consultant support services;

(ix) Geodetic mapping, air charting, and information center contracts;

(x) Base, post, camp, and station purchases;

(xi) Contracts for operation or maintenance of, or installation of equipment at radar or communications network sites, e.g., SAGE, BMEWS, JCSAN, WHITE ALICE, etc.;

(xii) Communications service contracts;

(xiii) Contracts for installation, operation and maintenance of spacetrack sensors and relays;

(xiv) Dependents Medicare Program contracts;

(xv) Stevedoring contracts;

(xvi) Contracts for construction and maintenance of military and civil public works, including harbors, docks, port facilities, military housing, development of recreational facilities, water resources, flood control, and public utilities;

(xvii) Architect-engineer (A–E) contracts;

(xviii) Contracts for airlift and sealift—Military Airlift Command and Military Sealift Command may perform contract administration services at contractor locations involved solely in performance of airlift or sealift contracts;

(xix) Contracts for subsistence supplies;

(xx) Ballistic missile site contracts—supporting administration of these contracts may be performed at missile activation sites during the installation, test, and checkout of the missiles and associated equipment; and

(xxi) Contracts for operation and maintenance of, or installation of equipment at, military test ranges, facilities, and installations.

(b) To avoid duplication of field contract administration capability, except for the performance of (a)(2)(xviii) and (xx) above, contract administration personnel from the purchasing office shall not be located at contractors' facilities. If field assistance from a DoD contract administration services component is needed in the administration of these contracts, such assistance will be requested by assignment of supporting contract administration to the contract administration offices listed in DoD Directory 4105.59–H as cognizant of the contractor's facility (facilities) at which the supporting contract administration function(s) is required. Specific instructions as to the assistance needed will be furnished. If field assistance is needed in the performance of the major portion of applicable contract administration functions, the contract will be reassigned to the cognizant contract administration office.

242.204 Supporting contract administration.

(a) Generally, the office for performing supporting functions shall be selected from the list in DoD Directory 4105.59–H. However, in special circumstances (for example, when contractor's worksite is a military base), a component of a military command not listed in DoD Directory 4105.59–H may be selected to perform supporting contract administration when prior coordination between the offices concerned has indicated that such an arrangement is feasible and that adequate resources are available, but see 242.270. Where supporting contract administration is required on a contractor purchase order or subcontract which includes FMS requirements, the requesting CAO shall clearly indicate "FMS Requirement" on the face of the document and provide the FMS case identifier code, associated item quantity, and related DoD prime contract number and contract line/

subline item number. When more than one FMS case is involved, the information shall be provided for each.

242.205 Designation of the Paying Office.

(a) *Defense contract administration services disbursing office.* Contracts assigned to an office of Defense Contract Administration Services for administration shall also specify disbursement by the cognizant Defense Contract Administration Services Regional Office if funded with DoD funds (i.e., Department codes 17 (Navy), 21 (Army), 57 (Air Force), 97 (OSD, including Defense Agencies), and 43 (Civil Defense). For any other department or agency funds, the payment office serving that department or agency must be cited for the portion of the contract covered by non-DoD funds, even though the contract is otherwise wholly administered by the DCASR.

(b) *Other disbursing office(s).* Any contract not assigned to a Defense Contract Administration Services Office for administration shall designate a disbursing office in accordance with Departmental or Agency regulations. Such contract, if issued for requirements of more than one Department or Agency, may provide for payment by more than one disbursing office.

(c) *Disbursement for Air Force missile propellant contracts.* The Department of the Air Force shall retain the disbursement function on all contracts for Air Force missile propellants.

242.270 Contracts requiring performance of contract administration services (CAS) on military installations.

(a) Contract administration functions on a military installation are normally performed by the installation commander who is responsible for its continued operation as a military base. Where work on the military installation is unrelated to the base mission and requires skills and resources which exceed the installation commander's capability, DCAS shall, upon request by the relevant service, provide the required contract administration functions. When a contractor's normal place of industrial operation is located on a military base because of the availability of real estate or the existence of an industiral facility on that base, DCAS shall have cognizance of that facility, unless cognizance has otherwise been assigned to a Military Department in accordance with DoDI 4105.59.

(b) The Military Departments shall coordinate their Departmental contract administration efforts so as to avoid mixed contract administration arrangements which result when more than one CAS activity performs CAS at the same military installation.

(c) DCAS shall provide preaward survey assistance for post, camp, and station work performed on military installations. The purchasing office and the DCAS preaward survey monitor shall jointly determine the scope of the survey and individual responsibilities.

(d) All requests from the Military Departments for Defense Logistics Agency/Defense Contract Administration Services support under (a) above should be coordinated to ensure availability of the capability and resources for performing requested functions.

Subpart 242.3—Contract Administration Office Functions

242.302 Contract administration functions.

(a)(11) (ii) and (iii) For those contractors with which the Tri-Service Contracting Officer negotiates advance agreements pursuant to FAR 42.10, he shall have full authority for determinations related to CAS 420.

(S–70) Perform industrial readiness and mobilization production planning field surveys and schedule negotiations.

(S–71) Perform post award surveillance of contractor progress toward demonstration of Cost/Schedule Control Systems to meet the Cost/Schedule Control Systems Criteria, provide assistance in the review and acceptance of contractors' Cost/Schedule Control Systems, and perform contractors' accepted systems. The contracting officer shall insert the clauses at 252.242–7001, Notice of Cost/Schedule Control Systems, and 252.242–7002, Cost/Schedule Control Systems, when required by DoDI 7000.2.

(S–72) Monitor the contractor's costs as prescribed under FAR 242.302(a).

(S–73) In connection with classified contracts, administer those portions of the Industrial Security Program designated as ACO responsibilities in the ISR and ISM. (See Appendix C, Industrial Security Regulation, DoD 5220.22–R, for partial listing of primary responsibilities (also see FAR 4.401).)

Subpart 242.4—Correspondence and Visits

242.402 Visits to contractors' facilities.

(a) If access to classified information will be involved, the contractor must be given advance notice, in writing, as required by the Industrial Security Regulation (DoD 5220.22–R).

Subpart 242.5—Postaward Orientation

242.501 General.

The need for a postaward orientation conference normally will be established as a result of substantive review and analysis of the contract by the Contract Administration Office. However, the contracting officer or technical representative of the purchasing office may initiate the request for a conference. A conference of Government personnel normally shall be held prior to notifying and conferring with the contractor to assure that the Government position on all matters is established.

242.503–1 Postaward conference arrangements.

(a)(2) the agenda of the postaward conference may include such matters as are indicated on DD Form 1484.

242.503–2 Postaward conference procedure.

The chairperson shall use the DD Form 1484 in conducting the conference to assure that all significant matters are covered.

242.503–3 Postaward conference report.

The chairperson may use the DD Form 1484 as the summary report where appropriate.

Subpart 242.6—Corporate Administrative Contracting Officer

242.602 Assignment and location.

(a)(1) If a particular corporate complex does not meet the criteria for the establishment of a CACO, but a Department believes a CACO assignment is required, such determination requires approval of the Secretary of his designee.

(2) When a corporate entity has divisions under the contract administration cognizance of more than one Department, CACO assignments shall be determined by the Department concerned. When agreement cannot be reached, the matter shall be referred to the DUSD(AM), Office of Under Secretary of Defense, Research and Engineering, for resolution.

242.603 Responsibilities.

The CACO shall be responsible for the negotiation of advance agreements for independent research and development costs and bid and proposal costs except when this responsibility is assigned in the master list published annually in a Defense Acquisition Circular for Tri-Service Department negotiation. Departmental Tri-Service

contracting activities may delegate such negotiations to established CACOs.

Subpart 242.7—Indirect Cost Rates

242.705 Final indirect cost rates.

242.705–1 Contracting officer determination procedure.

(a)(1) When a multi-divisional contractor has a CACO, the decision as to whether final overhead rate negotiations will be on a coordinated or centralized basis will be made jointly by the CACO and the individual ACO's based upon the degree of centralization within the contractor complex and the requirements of the parties concerned. When negotiations are conducted on a coordinated basis, individual ACO's are responsible for coordinating with the CACO to assure consistency of cost determinations.

(b)(1) In addition to submitting a final indirect cost proposal to the contracting officer, the contractor shall also submit a copy of the proposal to the cognizant auditor.

(b)(3) Particularly when there is a significant difference of opinion between the Government and contractor concerning the allowability or reasonableness of indirect costs or the acceptability of the bases used in developing the overhead rates, representatives of the audit activity, the technical activity, and the contracting officer will discuss the areas of disagreement prior to the negotiation conference with the contractor. Special attention should be directed to those issues which impact prospective and subsequent final overhead rate determinations. Such issues should be resolved in order to preclude repetitive consideration of the same items.

242.705–2 Auditor determination procedure.

(b)(2)(iii) The agreement shall be signed by the contractor and the auditor-in-charge.

(b)(2)(v) If, under the auditor determination procedure agreement with the contractor cannot be reached, the auditor, in addition to submitting an advisory audit report to the contracting officer pursuant to FAR 42.705–2(b)(iv), will issue DCAA Form 1 detailing the items of exception to which the contractor can submit a request in writing to the cognizant ACO to reconsider the auditor's determination.

242.705–3 Educational institutions.

(a)(3) In addition to following the procedure in FAR when negotiating postdetermined final indirect cost rates, the contracting officer shall also follow the guidance in 242.705–1(b).

242.706 Distribution of documents.

(a) One executed copy of the overhead rate agreement will be furnished to the contractor, the cognizant CACO (if assigned), the cognizant ACO, and the cognizant auditor. In addition, copies will be distributed to other Departments, and (upon specific request) any other interested Government agencies. Departments may make further distribution to activities within their departments and shall insert one copy in each contractor general file (see S–101.2 and S2–102.4).

(b)(1) One copy of the overhead negotiation memorandum, if prepared under contracting officer determination procedures, or the audit report, if prepared under auditor determination procedures, will be furnished to the cognizant CAO (if assigned), the cognizant ACO, and the cognizant auditor. Upon specific request, a copy will be furnished to other Departments or Government agencies.

Subpart 242.8—Disallowance of Costs

242.801 Notice of intent to disallow costs.

(e) A Corporate Administrative Contracting Officer (CACO) need not obtain the approval of local cognizant ACOs for items of corporate expense.

242.803 Disallowing costs after incurrence.

(a) *Contracting officer receipt of vouchers.* This procedure is applicable only for Cost-Reimbursement Type Contracts involving Canadian Contractors (see 225.7104(c)).

(1) On contracts with the Canadian Commercial Corporation (CCC), CCC will certify and forward the invoice with Standard Form 1034 (Public Voucher) to the ACO for further processing and transmittal to the disbursing officer.

(2) On contracts placed directly with Canadian firms, invoices, as provisionally approved by the ASB/DSS auditor and accompanied by Standard Form 1034 (Public Voucher), are forwarded to the ACO for further processing and transmittal to the disbursing officer. In the event that costs claimed are suspended or disapproved, the ACO shall issue the DCAA Form 1, "Notice of Contract Costs Suspended and/or Disapproved" to the contractor. DCAA Form 1 will be processed in the same manner as indicated in FAR 42.803(b)(3) with regard to contractor appeals.

(b) *Auditor receipt of vouchers.*

(1) and (2) The contract auditor is the authorized representative of the contracting officer for these functions, except that vouchers are approved for provisional payment and transmitted to the cognizant disbursing officer (but see 242.803(a) for certain Canadian contracts). DCAA Form 1, "Notice of Contract Costs Suspended and/or Disapproved", shall be used for this purpose. In addition, the contracting officer may direct the issuance of DCAA Form 1 with respect to any cost that he has reason to believe should be suspended or disapproved. The contract auditor will approve fee portions of vouchers for provisional payment in accordance with the contract schedule and any instructions received from the administrative contracting officer. Completion vouchers shall be forwarded to the ACO for approval and transmittal to the cognizant disbursing officer.

Subpart 242.10—Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs

242.1005 Lead negotiating agency responsibilities.

(b) The technical evaluation, performed or arranged for by the lead negotiating agency, shall include an opinion as to the potential relationship of the proposed IR&D program to relevancy requirements established under 231.205–18.

(c) The contractor shall be provided a contracting officer's determination concerning the potential relationship of proposed IR&D/B&P projects to the relevancy requirements established under 231.205–18.

242.1006 Conducting negotiations.

(a) In negotiating ceilings, the contracting officer shall pay attention to the determination of the potential relationship of the company's IR&D/B&P to a military function or operation.

242.1007 Content of advance agreements.

Advance agreements negotiated in accordance with this subpart shall include, where appropriate:

(S–70) A statement that a relevancy review has been performed and a determination made that the Government's allocable share of the negotiated ceiling(s) passes the relevancy test at the time of negotiation.

(S–71) For those companies meeting the threshold requirements, a provision that the recovery of IR&D/B&P costs under Government contracts shall not exceed the lesser of (i) such contracts' allocable share of incurred costs up to the total ceiling or (ii) the amount of incurred costs having a potential relationship to a Government function or operation.

242.1008 Administrative appeals.

Each Department will establish an appeals hearing group consisting of an acquisition member, who shall be chairman, a technical member and a legal member. Determinations of the appeals group shall be the final and conclusive determination of the Department of Defense. Members shall be appointed as follows:

(S-70)(1) *For the Army.* The Deputy Assistant Secretary (Acquisition) will appoint the acquisition member. The Deputy Assistant Secretary (Research, Development and Systems) will appoint the technical member. The Deputy General Counsel (Logistics) will appoint the legal member.

(S-70)(2) *For the Navy.* The Principal Deputy Assistant Secretary (Shipbuilding and Logistics) will appoint the acquisition member. The Principal Deputy Assistant Secretary (Research, Engineering and Systems) will appoint the technical member. The Deputy General Counsel (Logistics) will appoint the legal member.

(S-70)(3) *For the Air Force.* The Deputy Assistant Secretary (Acquisition Management) will appoint the acquisition member. The Deputy Assistant Secretary for Systems will appoint the technical member. The Assistant General Counsel (Procurement) will appoint the legal member.

(S-70)(4) *For the Defense Logistics Agency (DLA).* The Director, DLA (or the Deputy Director, DLA) will appoint the acquisition member, the technical member, and the legal member.

Subpart 242.11—Production Surveillance and Reporting

242.1101 General.

Delinquency includes—

(a) Actual failure by the contractor, that is, his failure, regardless of reason, to meet the contract delivery or performance schedule; and

(b) Potential failure by the contractor, that is, his failure, regardless of reason, to maintain such progress in contract performance as is required to meet his contract delivery or performance schedule.

242.1104 Surveillance requirements.

(a)(S-70) *Initial contract review.*

(i) The contract administration office shall, during initial contract review, assign contracts to production surveillance or review categories as follows:

(A) Category 1 is conducted by an industrial specialist or other person qualified to assess the contractor's plan for production and evaluate progress toward the successful accomplishment of that plan. This type of effort is adaptable to contracts which have a production/performance lead time of at least several months, and which entail identifiable milestone or pacing events against which progress may be measured. Contracts assigned this category should include those contracts which are of the complexity described under FAR 42.1104(a) and have a Criticality Designator A or are with a contractor which has either a history of generally poor production performance or a poor performance history on the same or similar supplies or services as those on the current contract.

(B) Category 2 is conducted by personnel qualified to assess information provided by the contractor in terms of delivery probability. They may be assisted by industrial specialists or other technically qualified personnel who will visit the production facility when there is probability of failure by the contractor to deliver or perform according to schedule, or when contractor-furnished information is questionable, or when contractor-furnished information is questionable, or in other occasions when the assistance of technical personnel may contribute to the avoidance or minimizing of a delinquency. This category of surveillance entails, as a minimum, a written or telephonic reminder to the contractor in advance of the required delivery or performance date(s) including inquiry as to whether he will perform on schedule or as to the cause and duration of any anticipated delay, and periodic followup and expediting of supplies or services not delivered or performed on time. This category is adaptable to contracts which warrant surveillance effort by the Government in advance of the required due date. Any contract with a Criticality Designator A not assigned to Category 1 shall be assigned to Category 2. All Criticality Designator B contracts and those Criticality Designator C contracts placed with contractors having a history of generally poor production performance also shall also be assigned to this category.

(C) Category 3 is conducted by the same personnel assigned Category 2 contracts. This category of surveillance entails inquiry and expediting effort after a failure to delivery or perform within the contract schedule has occurred, and periodic followup. It may involve assistance by technical personnel.

(ii) Regardless of assigned category, if a contract is reported by DD Form 375, Production Progress Report, as delinquent or anticipated to become delinquent, the surveillance efforts will provide continuous knowledge of the status of the problems causing the delinquency and of the corrective efforts being taken.

(iii) If Category 1 is assigned to a contract, the contract administration office shall also:

(A) Review the contract in conjuction with any preaward survey (see FAR 9.1) to ascertain what contract performance difficulties may be expected.

(B) Determine the extent of postaward orientation required in the production area (see FAR 42.5).

(C) Determine any special procedures to be followed.

(b) The contract administration office shall determine, in accordance with FAR 42.1104(a), the extent of production surveillance required regardless of dollar value.

(d) After deliquency has occurred, and before the PCO has determined the action to be taken, it is particularly important that surveillance be limited to fact finding to avoid waiver of the contract delivery and performance schedules.

242.1105 Assignment of criticality designator.

(a) The assigned designator may be changed only by the purchasing office. Ordinarily, unilateral purchase orders shall be assigned Criticality Designator C.

(b) DoD contract items on which a priority 01, 02, 03, or 06 (if emergency supply of clothing) has been assigned based on DoDD 4410.6, Uniform Material Movement and Issue Priority System and nonstocked items which otherwise meet the criteria for Force Activity Designator 1 and Urgency or Need Designator A thereunder shall fall under Criticality Designator A.

242.1106 Reporting requirements.

(b)(1) If the contractor's report indicates that the contract schedule will be met and the contract administration office is required.

(2) If, on the other hand, either the contractor forecasts delivery or performance failure, or the contract administration office does not concur in the contractor's no failure report, and in either case the delay is expected to be for more than 30 days, or purchasing office action, in any case, is deemed necessary, the contract administration office shall add an endorsement and forward a copy to the purchasing office and to the inventory control manager unless otherwise specified in the contract, within 4 working days after

receipt of the contractor's report. The endorsement shall include:

(i) Comments as to nonconcerrence, if applicable;

(ii) Action taken by the contractor and by the Government to overcome the anticipated or actual delinquency.

(iii) Action required—a positive recommendation to the purchasing office of the action necessary to correct the delinquency, including any realistic schedule revision which can be met by the contractor and the extent to which the contractor may have excusable cause of delay. When other actions are indicated, such as those leading to default termination, the contract administration office shall indicate specific dates by which Government action should be taken to preserve the Government's rights.

(c) *Reports initiated by contract administration offices.* Reports may be furnished by use of:

(1) DD Form 375–2, or DLA Form 1654 (Test), Delay in Delivery (Flash Notices); or

(2) DD Form 375, Production Progress Report and DD Form 375c (continuation).

242.1107 Contract clause.

(b)(1) Contract schedule provisions supporting the clause at FAR 52.242–2 shall contain but not be limited to instructions relative to:

(i) The frequency and timing (normally 5 working days after each reporting period of reporting);

(ii) The contract line items, exhibits, or exhibit line items for which reporting is required;

(iii) Offices and mailing addresses to which reports shall be sent including the purchasing office, the contract administration office (3 copies), status control activities and inventory managers, if appropriate; special requirements as to codes and formats.

(2) When reporting an actual or potential delinquency, the contractor-prepared DD Form 375c shall, as a minimum, contain the following data:

(i) Problem—a statement of the difficulty, the reasons therefor, and whether caused by the Government or the contractor;

(ii) Items and quantities affected;

(iii) Date of commencement of the anticipated or actual delinquency;

(iv) Action taken by the contractor to overcome the anticipated or actual delinquency.

(v) Estimated recovery date based upon evaluation of the factors contributing to the delinquency; and

(vi) A realistic schedule revision which can be met by the contractor. In the absence of an actual or potential delinquency, the DD Form 375c may be used to provide any information which the contractor deems appropriate.

Subpart 242.12—Novation and Change-of-Name Agreements

242.1203 Processing agreements.

(b)(1) The list of contracts required by FAR 42.1204(c)(2) will be included with the notice. Notice shall be provided to the Departments and Defense Agencies and NASA having contracts with the contractor or contractors concerned. Notice shall include the list of contracts required by FAR 42.1204(c)(2). Each list need contain only those contracts issued by purchasing offices of the addressee. Such notice shall be transmitted to the appropriate addressee listed below. In the case of contracts awarded by Departments or agencies not listed below, the notice shall be furnished directly to the cognizant contracting or contract administration office.

Department of the Army: HQ, U.S. Army Material Development and Readiness Command, ATTN: DRCGC-P, 5001 Eisenhower Avenue, Alexandria, VA 22333

Department of the Navy: Chief of Naval Material, ATTN: MAT 023D, Washington, DC 20360

Department of the Air Force: HQ, U.S. Air Force Systems Command, ATTN: PMP, Washington, DC 20331

Defense Logistics Agency, ATTN: DLA-PPR, Cameron Station, Alexandria, VA 22314

National Aeronautics and Space Administration, Assistant Administrator for Procurement, ATTN: HR, Washington, DC 20546

(c) Where substantial alterations or additions to the formats shown at FAR 42.1204(e) and FAR 42.1205(b) are considered appropriate by the cognizant ACO processing the proposed agreement, coordination will be made with the appropriate addressees listed above involved prior to execution. Any objection shall be resolved before the agreement is executed. If, for any reason, NASA indicates a desire to consummate a separate agreement with the contractor, the cognizant ACO shall continue to process the agreement only for the Departments and Defense agencies concerned.

(e)(S–70) In addition to the distribution prescribed in FAR 42.1203(e), two copies of the agreement will be sent to the appropriate addresses listed in (b)(1) above. When the ACO responsible for the corporate office is the cognizant ACO, one copy will be distributed to each CAO responsible for contract administration at a plant or division. The CAO will, in turn, reproduce and distribute copies for each of its affected contracts. Each purchasing office will reproduce the necessary number of copies of the administrative change and will make distribution as determined necessary by that office. Reproduction and distribution of copies for CAOs will be accomplished by the ACO who executed the administrative change.

(e)(S–71) Novation and change-of-name agreements amending contracts and basic agreements for storage and related services for personal property of military and civilian personnel shall be forwarded to the cognizant area command of the Military Traffic Management Command as set forth below for execution without regard to other provisions.

Commander, Eastern Area, Military Traffic Management Command, ATTN: MTE-PPS, Bayonne, NJ 07002

Commander, Western Area, Military Traffic Management Command, Oakland Army Base, ATTN: MTW-PPS, Oakland, CA 94626

(f) NASA contracts shall not be included in this list since NASA will issue its own administrative change. A total of 2 copies of the administrative change, with the list of contracts affected, shall be furnished to the appropriate addressee(s) listed in (b)(1) above. Each list need contain only those contracts issued by purchasing offices of the addressee.

Subpart 242.14—Traffic and Transportation Management

242.1402 Volume movements within the Continental United States.

(a)(1)(i) On FMS shipments, the aggregate will be 200,000 pounds or more.

(a)(2)(S–70) As soon as production schedules and planned destinations have been established, the contracting officer should report this information to the transportation office serving the purchase office. The transportation office will review the contracts and report planned volume movements in accordance with Chapter 201 of the Military Traffic Management Regulation (AR55–355, NAVSUP PUB 444 (Rev), AFM 75–2, MCO P4600 14A, DLAR 4500.3) (MTMR).

(S–71) The purchasing office shall forward a copy of the volume movement report to the contract administration office. The transportation office serving the CAO shall submit a volume movement report when:

(A) It is determined, upon review of the contract, that no volume movement report has been submitted by the purchasing office.

(B) Movement requirements are refined or changed to such a degree that

a revised volume movement report should be submitted.

(S–72) On FMS shipments the volume movement report should also include the destination country, foreign forwarder, and port of embarkation, if known.

242.1403–1 U.S. Government bills of lading (GBLs).

(a) See 242.1472 for procedures whereby contractors shall obtain GBLs.

242.1403–2 Contractor-prepaid commercial bills of lading.

(a)(S–70) The term commerical bill of lading (CBL) includes the use of any commercial form or procedure.

(a)(S–71) Appendix V of the MTMR contains the list of carriers and carrier associations that have entered into agreements with MTMC to provide the required transportation under commerical forms and procedures within CONUS.

(S–70) Contract clause. The contracting officer shall insert the clause at 252.242–7000, Submission of Commercial Freight Bill to the General Services Administration for Audit, when transportation costs are to be reimbursed to the contractor under a cost reimbursement type contract.

242.1404–2 Contract clauses.

(a) The clause at FAR 52.242–10 will not be included in those f.o.b. origin supply or service contracts containing the Fast Payment Procedure clause, FAR 52.213–1.

(b) The clause at FAR 52.242–11 will not be included in those f.o.b. origin supply or service contracts containing the Fast Payment Procedure clause, FAR 52.213–1.

(S–70) When the clauses at FAR 52.242–10 or FAR 52.242–11 are used in DoD contracts, the contract or ordering instrument shall instruct contractors desiring to obtain GBLs under paragraph (b) of those clauses to submit DD Form 1659, Application for United States Government Bills of Lading/Domestic Route Order/Export Traffic Release.

242.1405 Discrepancies incident to shipment of supplies.

(S–70) Improper markings or consignment deficiencies may result in misdirected shipments or additional handling or stowing of shipments, or affect identification of contents which necessitates opening of containers.

(S–71) The administrative procedures required in Chapter 221 of the Military Traffic Managment Regulation govern the actions to be taken with respect to discrepancies caused by carriers.

242.1470 Routing, tracing, and expediting shipments.

(a) Routing of military freight consists of determining a mode of transportation and the carrier which will effect safe and timely delivery of supplies at the lowest overall costs.

(b) Tracing is the procedure used for locating unduly delayed shipments.

(c) Expediting is the procedure used when a shipment is urgently needed at destination or when congestion is likely to occur on the lines of the carriers over which the shipment is to move.

(d) Methods for tracing or expediting shipments are outlined in Chapter 220, Military Traffic Management Regulation.

242.1471 Demurrage and detention charges.

(a) Demurrage is a fixed charge made by rail carriers on cars held by, or for, a consignor or consignee for loading, unloading, or for any other purpose. A contractor who detains cars for these reasons is required to pay the carrier's published tariff charges for demurage. Generally, carrier demurrage rules allow a definite period called "free time" for loading or unloading cars or for any other purpose, and impose a definite per day per car charge for cars held beyond this period. The free time allowed is usually 48 hours for loading or unloading cars and 24 hours when cars are held for reconsignment, diversion, reshipment, or held in transit on orders of the shipper or consignee. Normally, the free time starts from the first 7 a.m. (excluding Saturdays, Sundays, and holidays) after placement of the car.

(b) Detention is the term used when motor carrier equipment is held by, or on behalf of, a shipper or cosignee beyond a reasonable period allowed for loading, unloading, forwarding directions, or for any other purpose. Motor carrier detention rules and charges are not uniform and are published in individual carrier or agency tariffs. Detention charges are usually based on an hourly rate.

(c) Procedures involving payment or collection of demurrage or detention charges are contained in paragraph 219010 of the Military Traffic Management Regulation.

242.1472 DD Form 1659 (1 Apr 70), Application for U.S. Government Bill(s) of Lading/Domestic Route Order/Export Traffic Release.

DD Form 1659 shall be prepared by the contactor for submission of advance shipping data to the cognizant contract administration office. In response, the transportation office shall furnish the required U.S. Government bill of lading, Domestic Route Order or Export Traffic Release when necessary, required for use in connection with Government contract.

Subpart 242.70—Monitoring Contractors' Costs

242.7000 Scope.

This subpart sets forth guidelines for monitoring the policies, procedures, and practices used by contractors to control direct and indirect costs related to Government business. These procedures are intended to eliminate duplication in monitoring contractors' costs.

242.7001 Purpose.

To ensure the most efficient and economical performance of DoD contracts, it is essential that contract costs be managed effectively. Contractors are responsible for managing and controlling their direct and indirect costs. However, DoD components need to systematically monitor the management of such costs to assure that contractors are fulfilling their responsibilities.

242.7002 Application.

A formal program of Government monitoring of contractor policies, procedures, and practices to control costs should be conducted at:

(a) All major contractor locations where—

(1) Sales to the Government are expected to exceed $50 million during the contractor's next fiscal year on other than firm-fixed-price and fixed-price-with-escalation contracts:

(2) The Government's share of indirect costs for such sales is at least 50 percent of the total of such indirect costs; and

(3) A contract administration office has been established at the location.

(b) Other critical locations with significant Government business where specifically directed by the HCA. Decisions to implement or terminate cost monitoring should be based upon sound estimates of Government business for the coming year and not upon minor interim volume fluctations. This does not preclude action to start or stop the program during a given year where there is a significant change in volume and the anticipated new level of business is expected to remain stable for a reasonable period of time.

242.7003 Designation of a Cost Monitoring Coordinator.

A member of the contract administration office (CAO) cognizant of a contractor location shall be designated as the Cost Monitoring Coordinator (CMC) after the location

has been identified as qualified under 242.7002 for application of this program. Depending upon the circumstances, the designee may be the ACO or any other staff member whose normal function relates to evaluation of contractor performance.

242.7004 Responsibilities of the Cost Monitoring Coordinator.

(a) In performing his assigned contract administration duties, the Plant Rep/ACO acts as a high-level manager calling upon the various specialists established within DoD to review and report on those areas that fall within their respective areas of expertise. It is not intended that the Plant Rep/ACO duplicate the functional capabilities or work of such specialists. Likewise, the CMC in the contract administration organization will fully utilize the work of these specialists in monitoring contractor costs through coordination with their various organizations.

(b) The CMC shall be responsible for:

(1) Preparing and maintaining an annual consolidated written plan and schedule for reviewing contractor operations from coordinated long-range plans established by each team member including the DCAA auditor. This composite plan and schedule will assure cost monitoring responsibilities are being fully implemented and that the technical and professional expertise of various organizational units of the CAO are used without duplication of effort or skills;

(2) Coordinating the performance of the cost monitoring effort of the organizational units of the CAO;

(3) Coordinating the cost monitoring efforts of the CAO with those of the DCAA auditor;

(4) Advising the head of the CAO of situations where the contractor should correct conditions, policies, or practices which are not considered the most economical and efficient for the performance of Government contracts, and recommending corrective action, including issuance of formal written notices to the contractor advising of specific costs which may not be allowed if incurred;

(5) Coordinating CAO actions to assure that the procuring contracting officer, project manager, the head of the procuring activity, DCAA, and other responsible officials are informed of relevant matters significantly affecting the most economical and effective performance of Government contracts;

(6) Coordinating actions to assist the CAO, DCAA, and other Government personnel in obtaining access to pertinent contractor policies, procedures, and related data, and obtaining the assistance of the head of the CAO when such access is being denied or impaired;

(7) Maintaining an inventory of CAO, DCAA, and other Government reports on significant issues relating to monitoring costs;

(8) Continuously monitoring the status of recommendations made to the contractor concerning cost performance stemming from all Government reports. While contractors are responsible for managing their direct and indirect costs, the CMC monitors the contractors' effort through this task. In the event agreement is not reached on a recommendation and the cost or principle involved is sufficiently important, the CMC should prepare for the ACO's consideration, a *Notice of Intent to Disallow or Not Recognize Costs;*

(9) Maintaining current organizational charts of the operations identifiable to the contractor's functional centers of his cost control systems.

(c) The plan required by (b)(1) above must be tailored to the contractor, taking into account the extent of competition in awarded contracts, the contractor's operating methods, the nature of work being done, procurement cycle stage, business and industry practices, types of contracts involved, degree of technical and financial risk, ratio of Government/commercial work, and extent that performance efficiencies have been previously demonstrated. The plan should stress the importance of anticipating potential problems and provide a means of calling them to the attention of the contractor at an early stage so that preventive action can be taken. Reviews required by this supplement and the contracting officer must be included in the plan.

242.7005 DCAA auditor responsibility.

DCAA audit offices are responsible for performing all necessary contract audit for DoD and providing accounting financial advisory service regarding contracts and subcontracts to all DoD components responsible for procurement and contract administration. The auditor is responsible for submitting information and advice based on his analysis of the contractor's financial and accounting records or other related data as to the acceptability of the contractor's incurred and estimated costs, as well as for reviewing the financial and accounting aspects of the contractor's cost control systems. The auditor is also responsible for performing that part of reviews and such analysis which requires access to the contractor's financial and accounting records supporting proposed costs or pricing data. This does not preclude the Program Manager, PCO, Plant Rep/ACO, or their technical representatives from requesting any data from, or reviewing records of, the contractor (such as CSCS/C data, lists of labor operations, process sheets, etc.) necessary to the discharge of their responsibilities. The CAO will utilize the auditor's services whenever such expertise is needed, particularly regarding the contractor's financial management reports, books, and records.

242.7006 Procedure.

(a) *Selecting operations for review.* It is not possible to review all elements of a contractor's entire operation each year. Therefore, the CMC, together with the auditor, is to select for review those operations that have the greatest potential for charging Government contracts with significant amounts of unacceptable costs. To select these cost-risk areas on a sound and orderly basis, an overview must first be obtained of the contractor's entire operation. Before the beginning of each Government fiscal year, the CMC should arrange for a joint meeting between CAO, DCAA, and other directly interested Government representatives to coordinate selection of the areas to be reviewed during the coming year. The following data will be used in the selection process:

(1) The contractor's forecasts for the coming year supporting direct and indirect costs by functional centers of his cost control system and the results of the latest survey performed of such systems (DCAA responsibility);

(2) Detailed organizational charts for the contractor's entire operation (CAO responsibility);

(3) An outline of the contractor's accounting system to understand the flow of costs by function (DCAA responsibility);

(4) The determination of Government participation in the dollars attributable to the operations and cost accounts under consideration (DCAA responsibility);

(5) A complete list of recent reviews and audits performed by CAO, the DCAA, and other Government representatives that would effect the selection of areas to be reviewed in the current year. This listing should show outstanding weaknesses and deficiencies in the contractor's operations (CAO responsibility);

(6) Evidence of under and overstaffing (CAO–DCAA responsibility);

(7) Significant departures from established contractor productivity standards (CAO responsibility);

(8) Major financial variances from forecasts in prior years (DCAA responsibility);

(9) Evidences of idle or underused capacity (CAO–DCAA responsibility).

(b) *Planning for reviews.* The primary purpose of the joint meeting described above is to develop a mutually acceptable annual plan for reviewing the contractor's operation. The plan should provide coverage for each significant operational area of the contractor over a period of two to three years and should be modified to reflect any changed conditions during subsequent meetings. The schedule and resource limitations of participating organizantions will be considered in preparing the annual plan. The plan will identify the organizations having the primary responsibility for performing the reviews:

(1) The CAO will review the technical aspects of contractor operations requiring minimal or no access to contractors' financial and accounting records and will sign reports on these reviews;

(2) DCAA will review the financial and accounting aspects of contractor operations requiring minimal or no technical considerations and will sign reports on these reviews;

(3) The CAO and DCAA will jointly perform reviews requiring significant CAO and DCAA expertise. Reports resulting from these reviews will be signed by the heads of the respective local organizations.

Some operations reviews such as the purchasing (CAO) and estimating system reviews (DCAA) are assigned to the responsible reviewing organization. These assignments will continue to be recognized. All others will be performed according to the above criteria. The annual plan will be formally approved by heads of the local CAO and the DCAA resident offices.

(c) *Joint Review.*

(1) *Objective.* The objectives of joint CAO–DCAA reviews of contractor operations are:

(i) To optimize the utilization of DCAA–CAO personnel in performing selected operations reviews; and

(ii) To generate joint reports of the reviews that contain findings, conclusions, and recommendations mutually agreed upon by the DCAA auditor and the CAO to improve the effectiveness and economy of contractor operations.

(2) *Exist conference with contractor.* During the course of the review, there may be several informal briefings with contractor management personnel to exchange information. Every opportunity should be afforded each party, to either update the information provided or to conduct additional reviews to preclude misconceptions that could develop as a result of obtaining incomplete or inaccurate data. An exist conference with contractor management personnel provides the opportunity to explain CAO/DCAA findings, conclusions and recommendations. On joint reviews, the ACO or his representative shall arrange the exist conference with the contractor. Both CAO and DCAA will be represented at the exist conference.

(d) *Reports.* All reports prepared separately or jointly by DCAA or CAS personnel will be forwarded through the ACO to the contractor. While these review reports are advisory to the ACO, the ACO has responsibility to assure that (i) appropriate recognition is given to the results of such reviews in any contract negotiations and (ii) the contractor implements appropriate corrective actions. In event of any dispute with the contractor, the ACO has the ultimate responsibility and authority to effect final settlement.

Subpart 242.71—Voluntary Refunds

242.7100 General.

A voluntary refund is a payment or credit, not required by any contractual or other legal obligation, made to the Government by a contractor or subcontractor either as a payment or as an adjustment under one or more contracts or subcontracts. It may be unsolicited or it may be made in response to a request by the Government. Where it is desired to solicit a voluntary refund from a subcontractor, the prime contractor should be encouraged to facilitate the making of such refund. In deciding whether to solicit a voluntary refund or to accept an unsolicited refund, the contracting officer shall ask legal counsel to review the contract or contracts and all data relevant thereto to determine whether the Government's rights would be jeopardized or impaired by the contracting officer's proposed action.

242.7101 Solicited refunds.

Voluntary refunds may be requested during or after contract performance. They shall be requested only when it is considered that the Government was overcharged under a contract or was inadequately compensated for the use of Government-owned property, or in the disposition of contractor inventory, and retention by the contractor or subcontractor of the amount in question would be contrary to good conscience and equity. Generally, retention by the contractor or subcontractor shall not be considered contrary to good conscience and equity, and thus voluntary refund shall not be requested, unless the overcharge or inadequate compensation was due, at least in part, to the fault of the contractor or subcontractor. The decision to solicit a voluntary refund shall be made by the Secretary concerned.

242.7102 Disposition of voluntary refunds.

(a) If a refund is offered prior to final payment, it is preferable that the contract price be appropriately modified to reflect the refund. In such a case, the amount of the refund shall be credited to the applicable appropriation cited in the contract.

(b) In cases where the refund is to be made by check rather then by an adjustment in the contract price, the check shall be made payable to the office designated for the contract administration and shall be forwarded immediately to the comptroller of the appropriate Department or other Departmental officer responsible for the control of funds. When forwarded, the check shall be accompanied by a letter identifying it is a voluntary refund, giving the number of the contract or contracts involved and, where possible, giving the account number of the appropriation to which the refund should be credited.

PART 243—CONTRACT MODIFICATIONS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 243.1—General

243.104 Notification of contract changes.

(a) No unilateral change will be made in the terms and conditions of a contract except for changes identified as such in writing and signed by the contracting officer pursuant to the "Changes" clause or other clause in the contract. Government representatives shall avoid conduct (written or oral communications, actions and inactions) that could constitute an unauthorized unilateral change in the terms and conditions of a contract. When a contracting officer or other Government representative, by conduct, causes a contractor to perform changed work, such conduct may be the basis for a claim by the contractor. Examples of such Government conduct include: furnishing defective Government specifications; requiring adherence to delivery schedules when a contractor is

entitled to a time extension; denying a contractor the opportunity to employ a permissible method or sequence of work; or erroneously requiring a contractor to perform contrary to his correct interpretation of the contract requirements. Government representatives shall act promptly to resolve such situations as soon as they are made known to the Government.

(b)(1) Only the Procuring Contracting Officer (PCO) is authorized to take the actions prescribed in paragraphs (c) and (d) of the clause at FAR 52.243–7, except when the PCO expressly delegates in writing any or all of such actions to the Administrative Contracting Officer (ACO).

(2) In exceptional cases, the PCO may designate a "specifically authorized representative" to issue directions and interpretations as provided in the clause contained in FAR 52.243–7 when he anticipates that continuity of the contractor's performance for a particular phase or task under a contract is so important that no delay or diminution of performance is acceptable. If such a designation is made, the notice of designation shall: (i) Be in writing and furnished promptly to the contractor, the ACO, and the "specifically authorized representative," and (ii) clearly prescribe the scope and duration of authority of the "specifically authorized representative," *Provided,* however, that such designated authority in no event shall exceed the authority of the PCO. All directions, communications, interpretations, orders and similar conduct of a "specifically authorized representative" shall be reduced to writing as promptly as possible after their occurrence and copies thereof shall be furnished to the contractor and to the PCO and ACO. No notice of designation, however, shall be issued retroactively to confirm directions earlier communicated by a representative of the Government. The PCO shall promptly countermand any directions of "specifically authorized representative" which exceed his designated authority. A sample of such designation is:

I, John Doe, Contracting Officer, pursuant to (a) of the Notification of Changes clause in Contract N000000–83–0001 hereby designate Ralph Roe, quality assurance representative resident at the contractor's facility as my representative empowered to communicate directions, interpretations, determinations and orders concerning qualification test specification No. ABCD dated 6 August 1979 during the forthcoming qualification testing of the XYZ weapon system between 29 November and 4 December 1983.

243.105 Availability of funds.

(S–70)(1) It is the policy of the Department of Defense that unexpended dollar balances determined to be excess to known contractual requirements shall be released promptly. Contracting officers shall monitor contract fund status and take action to reduce the dollar balance of contracts when determined to be in excess of the amounts necessary for payment of outstanding contract requirements.

(2) To accomplish such determination, consultation with contractors and coordination between contracting offices and CAOs may be required to properly establish funding levels. A determination may be based upon, but is not limited to: (i) contractually required funding reports; (ii) fund status reviews; (iii) advice from the contractor; (iv) advice from the buying office, CAO, or DCAA; (v) examination of vouchers or invoices; and (vi) a review of contract progress. Upon determination of excess funds, contracting officers shall take appropriate action to assure such funds are removed from contracts as expeditiously as possible. For release of funds excess to a termination claim, see FAR 49.105–2 and 49.604.

243.170 Identification of FMS contract modifications.

If the modification adds FMS requirements, identify the modification by clearly stamping or otherwise indicating the "FMS Requirement" on the face of the modification and specify within the modification each FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY–D–DCA, for such added FMS items.

Subpart 243.2—Change Orders

243.201 General.

(a) Fair and economical processing of change orders does not occur automatically merely by issuance of an authorized change order. Procedures are necessary to:

(1) Establish the authority of the Government to request a contractor to originate a change or to evaluate a Government proposed change;

(2) Promote the policy of forward pricing of changes when feasible;

(3) Require the contractor to submit and to certify cost or pricing data in support of his equitable adjustment;

(4) Provide that contractor-originated changes of less than a specified magnitude may be made without price adjustment;

(5) Provide for recording of and accounting for segregable direct costs of changed work in support of equitable adjustment claims; and

(6) Equitably adjust the contract in a single, final and complete supplemental agreement.

243.202 Authority to issue change orders.

(S–70) *Originating engineering change proposals.*

(a) Engineering changes may be originated by either party to the contract. The Government needs to obtain detailed information supporting and documenting the proposed change; to evaluate the technical, cost and schedule effects of implementing the change; and to price the change in advance when possible. The clause at 252.243–7000 may be used to require a contractor to submit engineering change impact evaluation information, including the maximum equitable adjustment resulting from the change.

(b) The clause at 252.242–7000 includes a sample of an optional paragraph (c) supplementing the basic clause to discourage a large number of small-dollar, contractor-initiated engineering changes and to reduce the administrative cost of reviewing such changes.

243.204 Administration.

(S–70) *Correction or revision.* Upon receiving a copy of the change order from the PCO, the ACO shall review it to assure that its provisions are compatible with the status of performance. For example, if the contractor has progressed beyond the effective point specified in the change order, the ACO shall determine the earliest practical point at which the change order could be made effective and advise the PCO accordingly. Correction, revision or supersession of a change order shall be made by issuing another change order. The definitizing supplemental agreement shall cite both change orders.

(S–71) *Responsibility for negotiation of equitable adjustments.* Except for those change orders assigned to the ACO, the PCO shall be responsible for negotiating all equitable adjustments resulting from change orders, including the execution of supplemental agreements in Standard Form 30, Amendment of Solicitation/Modification of Contract. The ACO shall forward to the PCO the contractor's proposal, together with an analysis thereof. Except at the specific request of the PCO, the analysis shall not include the negotiation of any element of the contractor's proposal, although obvious mistakes may be called to the contractor's attention. Differences between the contractor's proposal and the results of the analysis made by the

contract administration office shall be called to the attention of the PCO.

(S–72) *Use of supplemental agreements.* Supplemental agreements are used:

(1) To reflect the agreement reached in the negotiation of change orders;

(2) In preference to a change order when a supplemental agreement is considered feasible, even though authority exists to accomplish the modification by change order;

(3) To definitize letter contracts;

(4) To reflect other agreements of the parties modifying the terms of contract; and

(5) To definitize provisioned items orders.

(S–73) *Modifications to letter contracts.*

(1) Modifications to letter contracts shall be accomplished under the same policies and procedures as those applicable to definitive contracts.

(2) Bilateral modifications (supplemental agreements) issued prior to definitizing a letter contract may be processed in the same manner as the letter contract, i.e., the PCO may sign prior to the contractor.

243.205 Contract clauses.

(S–70) The contracting officer may insert the clause at 252.243–7000, Engineering Change Proposals, under the conditions at 243.202(S–70)(a).

(S–71) The contracting officer shall insert the clause at 252.243–7001, Pricing of Adjustments, in solicitations and contracts when a fixed-price type contract is contemplated.

Subpart 243.3—Forms

243.301 Use of forms.

(a)(2)(ii) The SF 30 shall be used in connection with termination actions as follows:

(A) *Notice of termination for convenience of the Government.* SF 30 shall be used as the initial or confirming notice, and shall include the information outlined in FAR 49.601–2, appropriately modified as required. If the termination is partial, the line items and quantities affected by the termination shall be identified to the extent practicable. If the termination is complete, line item identification may be omitted, since the contract is considered to be physically completed upon issuance of a notice of complete termination. (See DAR Supplement 2 (S2–301.1).) The same modification number and effective date shall be assigned to the initial and confirming modification.

(B) *Notice of termination for default.* SF 30 shall include all information outlined in FAR 49.402–3(g), including the statement that the modification constitutes a decision of the contracting officer from which the contractor has the right of appeal pursuant to the Disputes clause, if the contracting officer has determined that failure to perform was not excusable. If the notice does not include the decision of the contracting officer, the decision, when made, shall be issued in letter form pursuant to FAR 49.402–3(k).

(C) *Amendment to termination notice.* Each amendment to a termination notice, including rescission of the termination, reinstatement of items or quantities previously terminated, or termination of additional items or quantities, shall be issued on SF 30.

(D) *Conversion of default termination to convenience.* If a termination for default is subsequently converted to a termination for convenience of the Government, either by a decision of the contracting officer or by a decision of ASBCA on an appeal filed by the contractor, the converted designation shall be reflected on SF 30. The effective date of the termination for default shall be indicated in the modification as the effective date of the convenience termination.

(E) *Determination of contracting officer.* SF 30 shall be used to reflect a determination of the amount due in settlement of a contract terminated for convenience:

(*a*) In cases where the contractor has lost the right of appeal for failure to submit a timely settlement proposal in accordance with the Termination clause; and

(*b*) To confirm the determination, if the contractor does not appeal the decision of the TCO.

SF 30, prepared pursuant to (a)(2)(ii)(E)(*b*) above, shall indicate the same effective date as the letter determination previously issued. Block 12 of the modification may be limited to a reference to the letter determination and a statement of the net amount determined to be due in settlement of the termination. To assure sequential numbering of modifications, a Supplementary Procurement Instrument Identification Number shall not be assigned to the letter determination.

(a)(S–70) Three copies of Standard Form 30 should be sent to the contractor with instructions to return the original and one copy.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 244.3—Contractors' Purchasing Systems Reviews

244.301 Objective.

This subpart sets forth the DoD requirements for conducting a contractor purchasing system review (CPSR) under the direction of a purchasing system analyst (PSA). When deemed necessary, Contractor Purchasing System Review Boards may be established in accordance with Departmental procedures. If no board is to be convened, the report shall be forwarded directly to the ACO by the CPSR team captain. If it is determined that a review board is necessary, the report of the CPSR team shall be reviewed and evaluated by the board, which shall make appropriate recommendations to the ACO.

244.302 Requirements.

(b)(1) *Initial review.* An initial review is a complete, intensive, first-time analysis of a contractor's purchasing system.

(2) *Subsequent review.* A subsequent review is an analysis of a contractor's purchasing system, performed to validate the adequacy of the system.

(i) Plants in which there is a full-time resident PSA shall receive, after an initial review, continuing surveillance equivalent to a subsequent review on an annual basis or continuing surveillance with subsequent reviews at 3-year intervals.

(ii) Plants in which there is no resident PSA shall receive, after initial review, surveillance through on-site visits (44.304), and a subsequent review in alternate years. The contracting officer may call for a subsequent review prior to the regularly scheduled review if circumstances indicate the need.

(3) *Special reviews.* A special review is an investigation of specific weaknesses identified in any contractor's purchasing system, using the same techniques followed in performing an initial or subsequent review. The ACO, or the PSA, with the concurrence of the ACO, may initiate special review of any contractor's purchasing system in connection with deficiencies revealed as a result of:

(i) The initial or subsequent review, or continuing indepth surveillance;

(ii) The review of subcontracts submitted under the notification and consent to subcontract requirements of contract clauses;

(iii) Major changes in the contractor's purchasing policies, procedures, or key personnel;

(iv) Changes in plant workload or type of work; or

(v) Information provided by Government personnel.

In conducting special reviews, the same criteria used in initial or subsequent reviews shall be applied to the area being examined. The summary report format will be used as appropriate.

(4) *Followup review.* A followup review is an investigation performed when a contractor's purchasing system approval is withheld or withdrawn, to determine whether a contractor has implemented the recommendations of the ACO and corrected the deficiencies revealed by any purchasing system review. The techniques used in making an initial or subsequent review are employed in the followup review. If approval of a contractor's purchasing system is withheld or withdrawn, a followup review shall be made as soon as evidence is received from the contractor that the factors leading to the action have been corrected. Whether this followup review consists of a complete reexamination of the contractor's purchasing system or is confined to the areas found deficient shall be a matter of judgment and will depend on the time lapse between the notice to the contractor of withholding or withdrawal of approval and the followup review. The summary report format will be used as appropriate.

244.303 Extent of review.

Supplement 1 contains additional guidance for conducting CPSR's on Defense contractors.

244.304 Surveillance.

(a) Each Military Department and the Defense Logistics Agency will establish controls to assure maintenance of a viable surveillance program.

(b) The surveillance plan shall specifically include the contractor response for corrective action to the recommendations made by the ACO as a result of an initial or indepth subsequent purchasing system review and the Government's planned surveillance tests of the contractor's corrective implementation. The surveillance plan shall provide procedures for informing the contractor of surveillance findings and related recommendations; for followup, as necessary, to effect recommended improvements; and when warranted by the findings, for rescinding approval of the contractor's purchasing system. The contractor must make available the necessary procedures and data to permit adequate surveillance.

(1) The surveillance plan shall encompass pertinent phases of the contractor's purchasing system (Preaward/Postaward/Performance/Contract Completion) and pertinent operations which impact the contractor's purchasing and subcontracting. As considered necessary, surveillance shall include:

(i) Determination and limitation of requirements;

(ii) Advance planning (market testing, source development, performance evaluations, program objectives, make-or-buy);

(iii) Solicitation of proposals (development of solicitations, statement of work, specifications/drawings, facility surveys, financial analysis, preaward audits, terms and conditions, selection of contract type, establishing a competitive base, socio-economic consideration, bidders lists, presolicitation and indoctrination of potential bidders);

(iv) Proposal evaluations (cost, technical, and management considerations);

(v) Source selection (restrictive clauses, flowdown of prime contract provisions, compliance with Public Law 87–653, "Truth in Negotiations Act," compliance with Public Law 91–379, "Cost Accounting Standards," cost/price analysis/assist audits and cost studies, progress payments to subcontractors, changes in technical content of statement of work, factfinding and bidders conference);

(vi) Provisioning, management influence and overriding consideration, documentation, compliance with FAR 9.104–4 and other provisions of this Supplement concerning Subcontractor Responsibility;

(vii) Management approvals;

(viii) Advance notification and consent requirements;

(ix) Early definition (TWX and letter contracts);

(x) Change control (timely and effective action);

(xi) Engineering;

(xii) Schedules;

(xiii) Production;

(xiv) Material control;

(xv) Quality control and quality assurance;

(xvi) Management reporting (advance payments, progress payments, cost performance, funding requirements discounts, milestone and progress reports);

(xvii) Management support (residencies, secondary administration, buyer control of commitments, buyer's role, subcontract management, subcontract modification, expediting, transportation, subcontractor system surveillance);

(xviii) Contract completion (termination partial or complete, stopwork orders, default actions, excusable delays);

(xix) Closeout actions;

(xx) Postaward audits; and

(xxi) Performance evaluation and reports (thorough review of all areas, including documentation for future business).

(2) The plan shall give appropriate consideration to the data furnished by the contractor when providing the required advance notification of intent to place certain subcontracts.

(3) Surveillance tests that require audit effort should be accomplished for the ACO by the contract auditor in conjunction with other audit duties.

(4) Certain subcontractors may require additional surveillance because of the emphasis in the flowdown of system acquisition policies in subcontracts, with particular concern for subcontractor cost, schedule, and technical performance. The contracting officer, the PSA, the review team, and/or subcontract management personnel may request assistance of the contract administration office having cognizance over the subcontractor to provide supplementary information as a means of verifying the information obtained from the contractor's records and, if needed, the request will call for a complete report on the subcontractor's purchasing system.

244.305 Granting, withholding, or withdrawing approval.

An exist conference shall be held with the contractor at completion of the inplant review. At that time, the contractor should be given the review team's recommendations signed by the ACO. The contractor shall be requested to furnish his plan for accomplishing the necessary actions within 15 days.

244.305–2 Notification.

(c) If at any time other than during a CPSR, recommendations are made for improvement of an approved system, the contractor shall be requested to furnish within 15 days of such notification a concurrence or position with respect to the recommendations.

244.307 Reports.

After receipt of the complete report (Parts I and II), the ACO, within 5 days, shall review and evaluate the report, prepare a letter to the contractor stating the status of the purchasing system, and provide copies of the report and the letter to those described in FAR 44.307 and such others as approved by the ACO. One copy of the summary report (Part I only) shall be sent to a contracting office when requested. Also,

where there is a resident PSA assigned to the contractor's plant, the cognizant CAS organization has the option of preparing only a summary report, which shall be distributed in accordance with FAR 44.307. A copy of the ACO's letter to the contractor, setting forth the status of the purchasing system, shall be attached to the summary report.

PART 245—GOVERNMENT PROPERTY

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 245.3—Providing Government Property To Subcontractors

245.301 Definitions.

"Agency-peculiar property," as used in DoD, means military property and includes end items and integral components of military weapons systems, along with the related peculiar support equipment which is not readily available as a commercial item.

"Facilities Project" means an undertaking by the Government to provide facilities to a contractor for the performance of a Government contract or subcontract or to modernize or replace facilities for the same purpose.

"Industrial Plant Equipment" (IPE) is that part of plant equipment with an acquisition cost of $5,000 or more; used for the purpose of cutting, abrading, grinding, shaping, forming, joining, testing, measuring, heating, treating, or otherwise altering the physical, electrical or chemical properties of materials, components or end items entailed in manufacturing, maintenance, supply, processing, assembly, or research and development operations; and IPE is further identified by noun name in the following Joint DoD Handbooks:

INDEX OF INDUSTRIAL PLANT EQUIPMENT HANDBOOKS

[NOTE.—Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402]

FSC	Title	Army	Navy	Air Force	DLA	Marine Corps
3424, 4430	Industrial Furnaces & Ovens, Volume 1 and 2.	SB 708-4430-1	NAVSUP Pub 5502	AFM 78-8	DLAH 4215.4	MCO P4870.8B
6635	Physical Properties Testing Equipment	SB 708-6635-1	NAVSUP Pub 5504	AFM 78-10	DLAH 4215.6	MCO P4870.10C
6636	Environmental Chambers	SB 708-6636-1	NAVSUP Pub 5508	AFM 78-14	DLAH 4215.10	MCO P4870-14C
3422, 3426	Rolling Mills, Drawing Machines & Metal Finishing Equipment.	SB 708-3400-2	NAVSUP Pub 5510	AFM 78-15	DLAH 4215.12	MCO P4870.16C
3450, 3460	Portable Machine Tools & Metalworking Machinery Accessories.	SB 708-3400-3	NAVSUP Pub 5511	AFM 78-16	DLAH 4215.13	MCO P4870.17B
6650, 6670	Scales, Balances & Optical Instruments	SB 708-6600-2	NAVSUP Pub 5516	AFM 78-25	DLAH 4215.18	MCO P4870.22B
3680	Foundry Equipment	SB 708-3680-1	NAVSUP Pub 5517	AFM 78-23	DLAH 4215.19	MCO P4870.23A
6630, 6640	Chemical Analysis & Laboratory Instruments.	SB 708-6600-3	NAVSUP Pub 5529	AFM 78-38	DLAH 4215.30	MCO P4870.35B
3620	Rubber and Plastics Working Machinery	SB 708-3620-1	NAVSUP Pub 5534	AFM 78-28	DLAH 4215.35	MCO P4870.40B
3611, 3693, 3695	Marking, Assembly, and Miscellaneous Industry Machinery.	SB 708-3600-2	NAVSUP Pub 5535	AFM 78-26	DLAH 4215.36	MCO P4870.41B
3650	Chemical & Pharmaceutical Products Manufacturing Machinery.	SB 708-3650-1	NAVSUP Pub 5536	AFM 78-45	DLAH 4215.37	MCO P4870.42A
4940	Miscellaneous Maintenance and Repair Shop Specialized Equipment.	SB 708-4940-1	NAVSUP Pub 5537	AFM 78-48	DLAH 4215.38	MCO P4870.43A
3690, 4925	Specialized Ammunition and Ordnance Machinery.	SB 708-4900-1	NAVSUP Pub 5538	AFM 78-49	DLAH 4215.39	MCO P4870.44A
3405	Metalworking Saws & Filing Machines	SB 708-3405-1	NAVSUP Pub 5539	AFM 78-34	DLAH 4215.40	MCO P4870.47B
3418	Planers and Shapers (Includes Shapers, formerly Part of FSC 3419).	SB 708-3418-1	NAVSUP Pub 5540	AFM 78-37	DLAH 4215.41	MCO P4870.48A
3431, 3432, 3433, 3436, 3438.	Welding, Heat Cutting, and Metalizing Equipment.	SB 708-3400-4	NAVSUP Pub 5541	AFM 78-39	DLAH 4215.42	MCO P4870.49A
3408, 3410	Machining Centers, Way Type Machines, Electrical and Ultrasonic Erosion Machines.	SB 708-3400-5	NAVSUP Pub 5542	AFM 78-41	DLAH 4215.43	MCO P4870.50B
3419	Miscellaneous Machine Tools	SB 708-3400-6	NAVSUP Pub 5547	AFM 78-46	DLAH 4215.44	MCO P4870.51A
3413	Drilling and Tapping Machines	SB 708-3413-1	NAVSUP Pub 5548	AFM 78-50	DLAH 4215.45	MCO P4870.53B
3411, 3412, 3414	Boring Machines, Broaching Machines, Gear Cutting and Finishing Machines.	SB 708-3400-7	NAVSUP Pub 5549	AFM 78-51	DLAH 4215.46	MCO P4870.55A
3441, 3442, 3443, 3445, 3446, 3447, 3448, 3449.	Secondary Metal Forming and Cutting Machines.	SB 708-3400-81	NAVSUP Pub 5551	AFM 78-53	DLAH 4215.48	MCO P4870.56A
3416	Metalworking Lathes	SB 708-3416-1	NAVSUP Pub 5552	AFM 78-54	DLAH 4215.49	MCO P4870.57A
5860	Stimulated Coherent Radiation Devices (Lasers).	SB 708-5860-1	NAVSUP Pub 5553	AFM 78-55	DLAH 4215.50	MCO P4870.58B
3415	Grinding Machines	SB 708-3415-1	NAVSUP Pub 5554	AFM 78-56	DLAH 4215.51	MCO P4870.59
3417	Milling Machines	SB 708-3417-1	NAVSUP Pub 5555	AFM 78-57	DLAH 4215.52	MCO P4870.60A
3670	Specialized Semiconductor, Microelectronic Circuit Board Manufacturing Machinery.	SB 708-3670-1	NAVSUP Pub 5557	AFM 78-58	DLAH 4215.53	MCO P4870.61

"Other Plant Equipment" (OPE) is that part of plant equipment, regardless of dollar value, which is used in or in conjunction with the manufacture of components or end items relative to maintenance, supply, processing, assembly or research and development operations, but excluding items categorized as IPE.

"Provide," as used in the context of such phrases as "Government property provides to the contractor" and "Government-provided property," means either to furnish, as in "Government-furnished property," or to acquire, as in "contractor-acquired property."

245.302 Providing facilities.

245.302-1 Policy.

(S-70) A facilities contract shall be terminated when the Government production and research property covered thereby is no longer required for the performance of Government contracts or subcontracts, unless such termination is detrimental to the Government's interests. The contractor shall not be granted the unilateral right, at his election, to extend the time during which he is entitled to use the property provided under the facilities contract.

245.302-70 Securing approval for facilities projects.

(a) The Secretaries of the Military Departments or their designees and the Directors of Defense Agencies may approve requests for Government-owned facilities projects if—

(1) The facilities projects that are funded from procurement appropriations will be approved on a location basis and shall not exceed $5 million for all property efforts (expansion, modernization, rehabilitation, etc.) during one fiscal year;

(2) It is a research and development-funded project that will not exceed $3 million per fiscal year; or

(3) The total plant and equipment investment cost to support a specific major system or subsystem (including ammunition-related project request) will not exceed $25 million during the projected acquisition or maintenance effort. (Approval authority shall not be redelegated lower than the level of Assistant Secretary.) Approval may be granted only when there is compliance with all provisions of this regulation and DoD Directive 4275.5, "Acquisition and Management.

(b) All projects which will exceed the above limitations will be submitted to the Under Secretary of Defense for Research and Engineering for approval.

(c) Facilities projects that involve real property transactions shall not be undertaken prior to reporting such transactions to the Committees on Armed Services of the House of Representatives and the Senate, as required by 10 U.S.C. 2662, and during the 30-day period prescribed therein. Further, Congress must be notified in advance of starting any construction regardless of cost. If not included in the annual budget, submission to all appropriate Congressional Committees will be made by using DD 1391 Forms.

245.302-71 Providing industrial plant equipment (IPE).

(a) Prior to acquiring IPE, having an item acquisition cost of $10,000 or more, DoD Industrial Plant Equipment Requisition (DD Form 1419) shall be submitted to the Defense Industrial Plant Equipment Center, Memphis, Tennessee 38114, to ascertain whether existing reallocable Government-owned facilities can be utilized. If the requested facilities are numerically controlled, DD Form 1342, Section VI (page 2), shall be prepared and submitted with the DD Form 1419. No acquisition of any listed item shall be made until a certificate of nonavailability is received from the Defense Industrial Plant Equipment Center (DIPEC). However, prior to issuing a certificate of nonavailability, DIPEC shall determine if technical data (e.g., parts listings, maintenance, overhaul and repair manuals, wiring diagrams, etc.) are available. If it is determined that such data is not available at the time of issuance of the nonavailability certificate for equipment, DIPEC may request, by an appropriate instruction in block 51 of DD Form 1419, that an additional set of technical (maintenance) data be acquired with the new facilities when they are obtained. This additional set of data shall be delivered to the repository address specified by DIPEC in block 51 of DD Form 1419. In addition to acquiring technical (maintenance) data for new facilities, a description of the features of numerically controlled facilities on DD Form 1342, Section VI (page 2), shall also be acquired.

(b) Acquisition of new numerically controlled facilities shall include the requirement for the builder to complete Section VI of DD Form 1342 in triplicate, affix one copy to inside of numerical control cabinet door in a manner to preclude removal or destruction, place two copies in an envelope, and tape to door near the first copy. When warranted by the urgency of the situation, requests for screening may be submitted to DIPEC by whatever means determined expedient. When submitting urgent screening requirements other than on a DD Form 1419, the following elements of information must be furnished for each item of equipment:

(1) Requisition number;

(2) PEC/NSN;

(3) Description data sufficient to enable DIPEC to make an urgency determination of availability;

(4) Date item required;

(5) Name and address of requiring agency;

(6) Contract number and program;

(7) Statement as to whether item is for production or mobilization, replacement or modernization, whether item will be procured if not available from DIPEC, and date of availability from procurement;

(8) Assigned urgency rating; and

(9) Estimated cost.

(c) Upon notification of availability by DIPEC, a DD Form 1419 will be submitted to DIPEC for each item accepted by the requestor. However, if DIPEC does not have the item available, or cannot furnish the item within the time specified by the requestor, DIPEC will furnish a statement of nonavailability including a certificate number. This statement will be the official Certificate of Nonavailability and will confirm that the plant equipment item has been screened against the idle inventory.

245.302-72 Providing ADPE as government property.

The proposed acquisition of automatic data processing equipment by a contractor shall be submitted through the Administrative Contracting Officer to Headquarters, Defense Logistics Agency, ATTN: Defense ADP Resource Office (DARO), Cameron Station, Alexandria, VA 22314, in accordance with DoD Manual 4160.19-M.

245.303 Providing material.

245.303-2 Procedures.

When the contractor is to be responsible for preparing requisitioning documentation, the contract shall require such documentation to be prepared in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP)" (see Appendix H).

245.306 Providing special tooling.

245.306-2 Acquiring special tooling.

(S-70) Criteria for waiving special tooling provisions in subcontracts.

In determining whether rights to acquire special tooling from the subcontractors are not of substantial interest to the Government so as to permit the omission of special tooling provisions from the affected subcontracts pursuant to paragraph (k) of the clause at FAR 52.245-17, the contracting officer shall consider the factors listed in FAR 45.306-2. It is desirable that such determination be made before execution of the contract, to the extent practicable, in which case the price shall reflect the authorized omission of special tooling provisions in any affected subcontract. If this question is presented to the contracting officer after execution of the contract, he shall condition his determination upon securing the contractor's consent to an equitable reduction in the contract price to reflect any reduction in the price of the affected subcontracts resulting from the omission of such provisions.

Subpart 245.4—Contractor Use and Rental of Government Property

245.401 Policy.

The prior approval of the contracting officer having cognizance of Government production and research property is required for any use, whether Government or non-Government, to insure that the

Government receives adequate consideration and that no unfair competitive advantage is crated to the benefit of the contractor or subcontractor. Government use is in support of performance of US Government contracts (including foreign military sales) and non-Government use is all other use (including direct commercial sales to either domestic or foreign customers, and independent research and development).

245.402 Authorizing use of Government production and research property.

(a) A contracting officer desiring to authorize use of Government production and research property under the cognizance of another contracting officer shall request the latter to give his concurrence in such use. If concurrence is denied, the matter shall be raised to a level higher than the contracting officer.

245.403 Rental—use and charges clause.

(a) The Use and Charges clause shall be included in the contract under which the facilities are accountable.

(b) The policies and procedures of Recovery of Nonrecurring Costs in DoD Directive 2140.2, shall apply to the recovery of a fair share of DoD cost for special tooling and special test equipment. Where the recoupment thresholds are not met, charges for special tooling and special test equipment shall be assessed by an equitable method when determined by the cognizant contracting officer to be administratively practicable.

245.405 Contracts with foreign governments or international organizations.

(a) A contractor may use Government production and research property on work for foreign governments and international organizations only upon written approval of the contracting officer having cognizance of the property. Such approval shall be granted only if such use will not interfere with foreseeable requirements of the United States, and if:

(1) The work is undertaken as a DoD Foreign Military Sale; or

(2) In the case of a direct commercial sale, the foreign country or international organization would be authorized to place the contract with the Department concerned under the Arms Export Control Act.

(b) The Use and Charges clause shall not be applicable to wholly Government-owned plants operated by private contractors on a fee basis. In such cases, any sales to foreign countries or international organizations will require an asset use charge (see (c) below) in place of the Use and Charges clause.

(c) In those circumstances where the Secretary or designee determines that a special rental agreement or the Use and Charges clause is not appropriate or is impractical, and Government facilities are to be used for foreign military sales, an asset use charge will be computed and assessed by the DoD officials responsible for preparation of the DoD Offer and Acceptance (DD Form 1513).

(d) When a particular foreign government or international organization has funded the acquisition of specific production and research property, no rental charges, asset use charges, or nonrecurring recoupments shall be assessed that foreign government or international organization for the use of such property.

(e) Requests for waivers or reduction governments of charges for the use of Government facilities on work for foreign governments or international organizations shall be submitted to the contracting officer who shall refer the matter through procurement channels. Approval may be granted only by the Director, Defense Security Assistance Agency for particular sales which would, if made, significantly advance U.S. Government interests in North Atlantic Treaty Organization (NATO) standardization, or foreign procurement in the United States under coproduction arrangements.

(f) Rental charges for the use of U.S. Government production and research property on commercial sales of Defense items to the Government of Canada are waived through 31 July 1985.

245.407 Non-government use of plant equipment.

(a) Non-Government of Industrial Plant Equipment (IPE) exceeding 25% requires prior approval of the Assistant Secretary of the Army (RD&A), Assistant Secretary of the Navy (S&L), Assistant Secretary of the Air Force (RD&L),or the Director of the Defense Logistics Agency. This authority shall not be redelegated without formal OUSDRE(AM) approval. Requests requiring Departmental level approval should be submitted by the contractor to the cognizant contract administration office at least six weeks in advance of the projected use and shall include:

(1) The total number of active IPE items involved and the total acquisition cost thereof; and

(2) An itemized listing of active equipment having an acquisition cost of $25,000 or more, showing for each item the nomenclature, plant equipment code, year of manufacture, and the acquisition cost.

The percentage of non-Government use shall be computed on the basis of the time available for use. For this purpose the contractor's normal work schedule as represented by the scheduled production shift hours shall be used. The base time period for determining percentages for non-Government use shall be neither less than three months or more than one year. Non-Government use of IPE located at a single plant may be averaged for all items used having a unit acquisition cost of less than $25,000. Equipment having a unit acquisition cost of $25,000 or more shall be considered on an item-by-item basis. Approving officials shall retain for periodic review, sufficient documentation of the circumstances justifying non-Government use approvals.

Subpart 245.5—Management of Government Property in the Possession of Contractors

245.505-5 Records of plant equipment.

(a) DD Form 1342 may be used as a source document for setting up prescribed records.

245.505-6 Special reports of plant equipment.

The contractor shall prepare a DD Form 1342 for each item of equipment identified as Industrial Plant Equipment (IPE), including items which, though part of a manufacturing system, would otherwise qualify as industrial plant equipment. Section VI (page 2) of the DD Form 1342 will be prepared for each item of IPE with numerically controlled features. General purpose components of special test equipment, which would otherwise qualify as IPE, should not be reported until there is no longer a requirement for the test equipment. The DD Form 1342, including Section VI, as appropriate, will be prepared in accordance with instructions contained in AR 700-43/NAVSUP PUB 5009/AFM 78-9/DLAM 4215.1, Management of Defense-Owned Industrial Plant Equipment (IPE), at the time (a) of receipt and acceptance of accountability by the contractor; (b) major changes as specified by DLAM 4215.1 occur in the data initially submitted to DIPEC: (c) IPE is no longer required for the purpose authorized or provided; or (d) disposal is completed. The DD Form 1342 prepared at the time IPE is no longer required for the purpose authorized or provided shall reflect all changes in data not previously reported to DIPEC. The contractor shall retain the original of each DD Form 1342 which may be used as the official

property record. Copies of the DD Form 1342, including Section VI, as appropriate, shall be forwarded directly to DIPEC through the property administrator. Each DD Form 1342 will be prepared and forwarded within 15 working days after the events which created the need for its preparation and forwarding. AR 700-43/NAVSUP PUB 5009/AFM 78-9/DLAM 4215.1 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (see 245.301).

245.505-14 Reports of Government property.

(a) The contractor's property control system shall provide annually the total acquisition cost of Government facilities in the following classifications:

(1) Land right therein;

(2) Other real property, including utility distribution systems, buildings, structures, and improvements thereto;

(3) IPE required to be reported to DIPEC;

(4) Other plant equipment (OPE). The contractor shall furnish to the property administrator, as of 30 September of each year, a report by contract, of the total acquisition cost of Government (DoD) facilities and the quantity of the IPE for which the contractor is accountable in each of the above classifications. This shall include facilities at subcontractor plants and at alternate locations for which the prime contractor is accountable. Reports shall be prepared on DD Form 1662 (Report of Government (DoD) Facilities), and furnished to the property administrator in duplicate no later than 20 October of each year.

Subpart 245.6—Reporting, Redistribution, and Disposal of Contractor Inventory

245.600 Scope of subpart.

In connection with reporting, redistribution, and disposal of contractor inventory, 245.71 prescribes Forms, Instructions, and Reports applicable to DoD plant clearance actions.

245.601 Definitions.

"Controlled substances" means any of the following:

(1) Narcotic (opium), depressant, stimulant (demerol), or hallucinogenic drug (marijuana) or substance;

(2) Any other drug or substance found by the Attorney General to require control as provided by Title II of the Compehensive Drug Abuse Prevention and Control Act of 1970; or

(3) Any other drug or substance required to be controlled by the U.S. by international treaty, convention or protocol.

"Demilitarization" means the act of destroying the military offensive or defensive characteristics inherent in certain types of equipment or material so as to prevent their further military or lethal use.

245.604 Restrictions on purchase or retention of contractor inventory.

(S-70) A contractor, when authorized to sell contractor inventory, shall not sell such inventory to persons known by him to be: (1) A civilian employee of the Department of Defense or the United States Coast Guard whose duties include any functional or supervisory responsibility for or within the Defense Property Disposal Program, or for the disposal of contractor inventory; (2) a member of the Armed Forces of the United States, including the United States Coast Guard, whose duties include any functional or supervisory responsibility for or within the Defense Property Disposal Program, or for the disposal of contractor inventory; or (3) an agent, employee or immediate member of the household of personnel in (S-70) (1) and (2) above.

(S-71) The authority of a contractor to approve a sale, purchase, or retention at less than cost, by a subcontractor, and the authority of a subcontractor to sell, purchase, or retain at less than cost, contractor inventory with the approval of the next higher-tier contractor does not include authority to approve:

(1) A sale by a subcontractor to the next higher-tier contractor or to an affiliate of such contractor or of the subcontractor; or

(2) A sale, purchase, or retention at less than cost, by a subcontractor affiliated with the next higher-tier contractor.

(S-72) Each excluded sale, purchase, or retention requires the written approval of the plant clearance officer.

245.606-3 Acceptance.

(a) If the schedules are acceptable, the plant clearance officer shall, within 15 days, execute and transmit to the contractor a DD Form 1637, Notice of Acceptance of Inventory.

245.606-5 Instructions for preparing and submitting schedules of contractor inventory.

(See 245.7001-4 for specific duties and responsibilities of DoD plant clearance officers.)

(d) *General instructions for completing forms.*

(4) For purposes of indicating condition of the property, the codes indicated below should be used in combination with the disposal condition codes (1-9, X, and S). Use a letter and a number (such as A1 or F7) or two letters (such as SS):

A. New, used, repaired, or reconditioned property which is serviceable and issuable to all customers without limitations or restriction. Includes material with more than 6 months shelf-life remaining.

B. New, used, repaired, or reconditioned property which is serviceable and issuable for its intended purpose but which is restricted from issue to specific units, activities, or geographical areas by reason of its limited usefulness or short service-life expectancy. Includes material with 3 through 6 months shelf-life remaining.

F. Economically reparable property which requires repair, overhaul, or reconditioning. Includes reparable items which are radioactively contaminated.

H. Property which has been determined to be unserviceable and does not meet repair criteria.

S. Property that has no value except for its basic material content.

245.607 Scrap.

245.607-70 Pre-inventory scrap determinations.

The contractor may request the plant clearance officer to make a pre-inventory scrap determination of inventory considered by the contractor to be without value except as scrap. These pre-inventory scrap determinations shall be based on on-site surveys. If the contractor's scrap recommendation is approved, the contractor may make a single descriptive entry on an inventory schedule covering that property and indicating its approximate total cost. If the plant clearance officer determines that any of the property listed by the contractor as scrap is serviceable, usable, or salvable, the contractor shall, in accordance with this determination, submit appropriate inventory schedules. If the determination is made subsequent to the submission of a scrap inventory schedule, the contractor shall be required to submit revised inventory schedules in proper form.

245.607-71 Segregation.

Property determined to be scrap shall be segregated by the contractor to the extent necessary to assure the highest net proceeds. In appropriate cases, when approved by the plant clearance officer, these sales may be consolidated with the contractor's sales of scrap generated from his other work.

245.607-72 Contractor's approved scrap procedure.

(a) When a contractor has an approved scrap procedure, certain property may be routinely disposed of in accordance with that procedure and not

processed under this Part. Production scrap and production spoilage may be disposed of through the contractor's approved scrap procedure. In addition, worn, broken mutilated, or otherwise rejected parts excess to overhaul and repair contracts, may be similarly processed with the approval of the plant clearance officer.

(b) A plant clearance case shall not be established for property which is disposed of through the contractor's approved scrap procedure.

(c) The contractor's scrap and salvage procedures, particularly the sales aspects thereof, shall be reviewed by the plant clearance officer prior to its approval by the property administrator. The plant clearance officer shall assure that the procedure contains adequate requirements for inspection and examination of items to be disposed as scrap. When the contractor's approved scrap procedure does not require physical segregation and disposition of Government-owned from contractor-owned scrap, care shall be exercised to assure that a contract change, which generates a large quantity of property, does not result in an inequitable return to the Government. In these cases, a determination shall be made as to whether separate disposition of Government scrap would be appropriate.

(d) Scrap, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in accordance with the provisions of FAR Part 45 and this supplement.

(e) Silver, gold, platinum, palladium, rhodium, iridium, osmium and ruthenium; scrap bearing such metals; and items containing recoverable quantities thereof will be reported to the Defense Property Disposal Service, DPDS–R, Federal Center, Battle Creek, Michigan 49016, for disposition instructions.

245.608 Screening of contractor inventory.

245.608–1 General.

(b) The 75th day shall be designated as the automatic release date (ARD) by the plant clearance officer. The full 90-day period shall be designated as the Screening Completion Date (SCD). Plant clearance officers will designate two dates on all screening documents, the 75th day as the ARD and the 90th day as the SCD, neither of which shall be extended.

245.608–7 Reimbursement of costs for transfer of contractor inventory.

Costs incident to movement of IPE under the direction and control of the Defense Industrial Plant Equipment Center shall be borne by the Defense Logistics Agency.

245.608–70 Contractor inventory redistribution system (CIRS).

Serviceable and usable contractor inventory of the type listed on SF Forms 1428, Inventory Schedule B or SF Forms 1434, Inventory Schedule E, having a National Stock Number (NSN) and a line item acquisition value (acquisition value of each unit times the number of units) in excess of $50, or having no NSN and a line item acquisition value in excess of $500 shall be processed as follows:

(a) The 90-day screening period normally applies and the plant clearance officer establishes the ARD and SCD; and

(b) Two copies of the SF Form 1428, SF Form 1434, or authorized substitutes will be transmitted by Standard Form 120 to the Defense Industrial Plant Equipment Center (DIPEC), Attn: DIPEC–SSB; and

(c) DIPEC will return an annotated copy of each SF Form 1428 or 1434 received to the plant clearance officer with a Notification of Receipt form attached. This notification will inform the plant clearance officer which items were processed, and not accepted, or are now available for local area screening; and

(d) Property submitted for CIRS-processing will be subjected to a 30-day DoD screening period. The requiring activity within the requiring Department shall have requisitioning priority over other activities within that requiring Department and over the procuring Department when the requiring and procuring Departments are different. DIPEC reports items not requisitioned to the General Services Administration on the 31st day, unless the plant clearance officer provided special instructions to the contrary on the Standard Form 120; and

(e) DIPEC will issue shipping instructions on DD Form 1348–1 to the plant clearance officer. The plant clearance officer shall reroute requisitions received directly from the requisitioner to DIPEC during the first 45 days of the screening period. Requisitions received by DIPEC or by the plant clearance officer after the 45th day of the screening cycle shall be forwarded directly to the General Services Administration; and

(f) The plant clearance officer will instruct the contractor to send one copy of the completed DD Form 1348–1 to DIPEC, Attn: DIPEC–SSB, when shipment has been made; and

(g) Unless the contracting officer directs otherwise, motor vehicles generated under Army and Navy contracts shall be screened through CIRS.

245.608–71 Procedures for industrial plant equipment.

(a) *Reporting idle industrial plant equipment.* Industrial plant equipment (IPE) having an acquisition cost of $5,000 or more shall be listed on DD Form 1342, DoD Property Record. The DD Form 1342 shall be prepared by the contractor and submitted to the assigned Government property administrator for appropriate review and transmittal to the plant clearance officer. If the IPE has numerically controlled features, the contractor shall prepare and submit DD Form 1342, Section VI (page 2), Numerically Controlled Machine Data. Upon receipt of an acceptable DD Form 1342, the plant clearance officer will designate the 75th day from that date as the ARD, with the 90th day from that date as the SCD. The ARD will be entered in block 24 of the DD Form 1342 and shall not be extended, except as provided in (c) below. The plant clearance officer will forward copies of the DD Form 1342 to the Defense Industrial Plant Equipment Center, Memphis, TN 38114, for all IPE in condition codes other than "X." Condition code "X" IPE shall be processed in accordance with agency procedures. The DD Form 1342 shall be forwarded to DIPEC within 15 working days after becoming idle. No other distribution of this form will be made by the plant clearance officer.

(b) *Screening—first through 30th day.* DIPEC shall screen excess IPE against all requirements submitted by Department of Defense activities, including Department of Defense reserve requirements, with priority being given to requirements of the owning Department through the 30th day. DIPEC will issue a shipping instruction containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions for items selected to the appropriate contract administration office.

(c) *Screening—31st through 75th day.* On the 31st day, DIPEC will forward excess data to the applicable General Services Administration regional office for Federal utilization screening through the 75th day. During the period from the 31st through the 75th day, the General Services Administration will approve requests from any agency of the

Government on a "first come-first served" basis, and will approve and forward transfer orders containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions to the appropriate contract administration office. The General Service Administration will forward copies of the approved transfer orders to DIPEC.

(d) *Screening—76th through 90th day.* During this period the General Services Administration will provide for the screening of all remaining IPE for possible donation. The General Services Administration will receive and approve donation applications for IPE and will forward approved donation applications, containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions to the appropriate contract administration office. The General Services Administration will forward copies of the approved donation applications to DIPEC.

(e) If a Department of Defense requirement develops after the 90th day and the item is still available, the item will be shipped against such requirement, unless the plant clearance officer has justified and compelling reasons for not making the shipment.

(f) Items of plant equipment with an acquisition cost of less than $5,000, and items of plant equipment with an acquisition cost of more than $5,000 not qualifying as IPE, as defined in 245.301, shall not be reported to DIPEC but shall be reported and screened in accordance with FAR 45.608 and this supplement.

(g) The plant clearance officer shall, when IPE has been transferred, donated, sold, destroyed, abandoned, or other disposition taken, assure that the contractor prepares a DD Form 1342 for submission to DIPEC through the property administrator within 15 working days. In the case of a transfer of the IPE, assure that the Shipment Status Card or a copy of the completed shipping document is sent to DIPEC.

245.609 Donations.

(S–70)(1) Classification of eligible donees in order of precedence and approval requirements are:

(i) for property schedules transmitted to GSA—

(A) *Public airports.* Donations approved during the first five days of the donation screening period. State or local public airport donations require approval of an appropriate official of the Federal Aviation Administration, Department of Transportation, and GSA.

(B) *Service educational activities (SEA).* SEA's have the same order of precedence as in (S–70)(2) below. Approval required of their national headquarters and GSA.

(C) *Educational, public health, and civil defense institutions and organizations.* Donations approved on a first-come, first-served basis with public airports and SEAs, during the last 10 days of the donation screening period. GSA has the over-all responsibility for selecting property determined to be usable and necessary for educational, public health and civil defense purposes, including research for any such purposes. Surplus property is screened and distributed for educational, public health, and civil defense purposes by State Agencies for Surplus Property (SASP). Approval of GSA is required.

(ii) For property screened in accordance with FAR 45.608, public airports, SEAs, and SASP screen and select property for donation approval by GSA on a first-come, first-served basis.

(iii) *Public bodies.* Surplus property may be donated to public bodies in lieu of destruction or abandonment in accordance with FAR 45.611.

(2) In addition to the activities indicated in (a) above, a Department may donate, without expense to the United States, certain material not needed by the Department of Defense to veterans' organizations, soldiers' monument associations, state museums, and incorporated museums operated and maintained only for educational purposes, whose charter denies them the right to operate for profit. For guidance as to limitations and requirements for donation to these activities, see Chapter III, Part 3, DoD 4160.21–M.

245.610 Sale of surplus contractor inventory.

245.610–1 Responsibility.

(a) *Property under DoD control.*

(1) *General.*

(i) It is the Department of Defense policy that when surplus contractor inventory is to be disposed of by means of sale, such sale will be conducted by the contractor in possession in accordance with procedures provided in this Section. The contractor is required to use best efforts to sell contractor inventory in the manner, at the times, to the extent, and at the prices approved by the plant clearance officer. The contractor is not required to extend credit to any purchaser.

(ii) Surplus contractor inventory included in the contractor's inventory schedules which has not been utilized or donated under FAR 45.609, or retained at cost pursuant to FAR 45.605, shall be sold in accordance with (a)(2) below at any time after notification by the plant clearance officer that screening has been accomplished. Any such purchase, retention, or sale shall be subject to the approval of the plant clearance officer.

(iii) *Description of Property.* Description of property must be adequate for identification by prospective bidders. Accuracy is essential and commercial terminology desirable. The original manufacturer and brand name shall be included, if appropriate. When property is boxed or packaged, information as to type of packaging shall be included.

(iv) *Condition.* Condition shall be stated as "used" or "unused" and shall not be described as new. If unused property is still in manufacturer's original containers, a statement to that effect shall be included. Appropriate qualifying statements shall supplement the basic noun description, i.e., "well preserved," some surface rust," "repairs required," etc. Condition codes shall not be used. Because of its non-specific meaning to the trade, the term "salvage" risks downgrading of the property in the bidder's viewpoint and shall not be used.

(v) *Lotting* shall be in accordance with the following:

(A) Unused items shall be lotted by make or manufacturer, except when quantities or dollar values are small;

(B) Commercially similar items shall be lotted together when practicable;

(C) Used and unused items shall be lotted separately, unless the quantity, value, or nature is such that it is uneconomical to sell separately;

(D) Within the bounds of economical considerations, the size of lots shall be influenced by an effort to encourage bidding by small businesses or individuals;

(E) No lot shall be so small that the administrative cost of selling will be disproportionate to the anticipated proceeds;

(F) An alternative bid for groups of items or for the entire offering may be solicited by use of an additional item described as follows:

Item ——— (Alternate Bid). This item consists of all property listed and described in Items ——— to ———, inclusive. Award under this item may be made only if the highest acceptable bid on this item is equal to, or greater than, the total of the highest acceptable bids on Items ——— to ———, inclusive.

(vi) *Basis of sale* shall be:

(A) *Unit price basis.* Items offered for sale shall require the bid price to be stated in terms of the quantity or weight

generally applied by industry in the commercial sale of such items.

(B) *Lot price basis.* When a sales offering is made on a lot price basis, bids shall be requested only for the entire lot. Use of the lot price basis shall be held to a minimum, since it precludes adjustments. The lot price basis shall be used only when property cannot be sold by unit measure or the potential monetary recovery is small.

(vii) *Format of invitation.* In large sales, a summary list of items offered shall be set forth and used as an item bid sheet, with detailed item descriptions on attached sheets.

(viii) *Bidder's lists.* The plant clearance officer shall assure that commodity bidder's lists sufficient to obtain adequate competition in the sale of contractor inventory are maintained. The plant clearance officer may obtain additional listings, as required, from the Defense Property Disposal Service (DPDS–R), Federal Center, Battle Creek, Michigan 49016. Use of listings maintained by DPDS is encouraged when extremely large quantities of property, special commodities, or unusual geographic location is involved.

(ix) *Auction, spot bid, and retail sales.* Auction, spot bid, and retail sales shall be utilized for selling contractor inventory, unless approved on an individual case basis by the departmental headquarters of the administering activity.

(x) *Market impact.* Contracting Officers or plant clearance officers shall submit data to the Defense Logistics Services Center (DLSC) relative to the proposed sale of machine tools of any one type on hand at any single location in minimum condition A1, A2, or A4, with a total acquisition cost exceeding $250,000. Sales data shall include the Plant Equipment Code (PEC) number, noun description, quantity, location of property, and the proposed method of sale. DLSC shall advise the contracting officer or plant clearance officer within five working days whether or not sale proposal is approved. Priority for sales approval shall be given in those instances when plant clearance or other expedited actions are involved.

(2) *Competitive sales.*

(i) *General.* Surplus contractor inventory shall be offered for sale on a competitive basis except as provided in (a)(3) below. To the extent feasible, subcontractors and suppliers should be solicited when additional competition is likely to result. The plant clearance officer shall provide the contractor with instructions relative to the method of soliciting bids and the basis for offering the property for sale (i.e., serviceable or scrap). In determining the sales method to be used, the plant clearance officer shall consider the expected sales proceeds (based on previous experience and current market) versus the cost of conducting the sale. When it is determined that an individual sale will be uneconomical, the material to be sold shall be combined with other material offered for sale, disposed of through the contractor's approved production generated scrap disposal procedure or abandoned. Case files will be documented to show the basis for the decision. The contractor's overall program, including all forms and procedures, shall be evaluated by the plant clearance officer and shall be subject to surveillance. To the extent necessary, the plant clearance officer may reserve the right to approve individual sales offerings prior to distribution. When the plant clearance officer determines that sale services are required, such services will be arranged for by the plant clearance officer directly with the organization requested to provide the services. The plant clearance officer will justify and document this need. These documents shall be a part of the plant clearance case file. The agreement reached will provide for the Defense Property Disposal Office or General Services Administration Regional Office to return total proceeds to the plant clearance officer for crediting in compliance with FAR 45.610–3.

(ii) *Solicitation of bids.* Contractors shall solicit bids by formal invitations, unless informal bid procedures have been approved by the plant clearance officer as provided in (a)(2)(ii)(B) below:

(A) *Formal bid procedures.*

Bids shall be solicited a minimum of 15 calendar days in advance of the opening of bids to allow bidders an adequate opportunity to inspect the property and prepare and formally submit bids;

Invitations shall be circulated to a sufficient number of prospective bidders to assure wide competition, including the original suppliers and those prospective bidders designated by the plant clearance officer and the contractor;

In addition to mailing or delivering a notice of the proposed sale to all prospective bidders, the contractor may supplement this sales method by—

Displaying a notice of the proposed sale in appropriate public places;

Displaying a notice of the proposed sale in appropriate trade journals or magazines; or

Publishing a notice of the proposed sale in a newspaper of general circulation in the locality in which the property is located, when the results of such paid commercial advertising is expected to justify the additional expenses involved.

When the acquisition cost of property to be sold at one time, at one place, is $250,000 or more, notice of each such proposed sale shall be transmitted to the U.S. Department of Commerce, Commerce Business Daily Office, Sales Section, P.O. Lock Box 5999, Chicago, Illinois 60680. The notice shall be sent at as early a date as possible in advance of the sale but at least 20 days prior to the date when the bids will be opened, or, in the case of spot bid or auction sale, when the sale will be conducted. Such notice shall be transmitted by fastest mail available and shall be in synopsis form suitable for printing directly from the text so transmitted without editing or condensing. Double space lines will be used to describe each sales action; and the length of the line should be approximately 65, but not to exceed 69 character spaces and will contain the following information in the order listed: the name and address of the contractor who will issue the invitation; the name or title, address, and telephone number of the official from whom copies of the sales offering and other information can be obtained; a description of the property to be sold; when deemed desirable, the total estimated acquisition cost; the number of the invitation or sale; the date of the sale or bid opening, the types of sale, i.e., sealed bid, spot bid, or auction; and the location(s) of the property. The utmost care should be exercised in describing the types of property to be sold in order to assure interest by the maximum number of potential buyers but, at the same time, condense the information so that minimum space in the Department of Commerce publication will be required for printing. Where the acquisition cost is less than $250,000 such notice may be transmitted, when considered desirable, in accordance with the procedures prescribed above.

(B) *Informal bid procedures.* When the amount or value of the property is not large enough to warrant preparation of a formal notice of the proposed sale or other special circumstances are present, invitations to bid may, with the approval of the plant clearance officer, be issued orally, by telephone or by other informal media, so long as the element of competition is maintained and each such sale is fully documented to include a record of solicitations and written confirmation of informal bids. Any bid by the contractor or its employees shall be submitted to the plant clearance officer prior to

solicitation of bids by the contractor from other prospective bidders.

(iii) *Formal invitations.* Sale by formal invitation shall include as a minimum general sale terms and conditions provided in 245.7102–6(a) and, when necessary, special conditions in 245.7102–6(b). The plant clearance officer or his representative shall be present to witness bid openings. Within two working days after bid opening, the contractor shall submit to the plant clearance officer two copies of an abstract of all bids, signed by the witnessing Government representative. All awards shall be subject to the approval of the plant clearance officer as indicated in (a)(2)(iv) below.

(iii) *Bid reservations.* All invitations for bid shall reserve the right to reject any or all bids and shall require payment of the full purchase price prior to delivery of the property to the purchaser.

(iv) *Approval of sale.* Bids shall be evaluated by the plant clearance officer to establish that the sale price is fair and reasonable in the light of reasonable knowledge or test of the market, due regard being given to current prices for products for which quotations are published and to the circumstances, nature, condition, quantity, and location of the property. Current market price appraisal or price received may be obtained from DPDS upon request. Awards shall be approved to that responsible bidder whose bid is most advantageous to the Government, price and other factors considered. Award shall not be approved to any bidder who would not be eligible to enter into a sales contract with the Department of Defense in accordance with the provisions of the Consolidated List of Debarred, Suspended, and Ineligible Contractors. If it is determined that a compelling reason exists to make an award to a contractor on the Consolidated List, the plant clearance officer shall request approval from the departmental headquarters of the administering activity.

(vi) *Award by contractor.* The plant clearance office shall notify the contractor within five working days of the bidder to whom an award shall be made. The contractor shall make the award, collect the proceeds of sale, and release the property to the purchaser. The contractor shall provide the plant clearance office with evidence of delivery reflecting actual quantities released to the purchaser.

(3) *Negotiated sales.*

(i) Negotiated sales, including purchases or retentions at less than cost by the contractor, may be made when the procuring department or the plant clearance officer determines and documents in accordance with FAR 15.304 and 245.613(d), as appropriate, that the use of this method of sale is essential to expeditious plant clearance, or is otherwise justified on the basis of circumstances enumerated below, *provided,* that the Government's interest are adequately protected. Negotiated sales, including purchases or retentions at less than cost by the contractor, shall be at prices which are fair and reasonable and not less than the proceeds which could reasonably be expected to be obtained if the property was offered for competitive sale. Specific conditions justifying negotiated sales are:

(A) Scientific equipment allocated to terminated research and development contracts with educational institutions;

(B) When no acceptable bids have been received as a result of competitive bidding under a suitably advertised sale;

(C) When property is of such small value that the proceeds to be derived would not warrant the expense of a formal competitive sale;

(D) When the disposal will be to states, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained;

(E) When the specialized nature and limited use potential of the property would create negligible bidder interest;

(F) When removal of the property would result in a significant reduction in value, or the accrual of disproportionate expenses in handling; or

(G) When it can be clearly established that such action is essential to the Government's interests.

(ii) In those instances when the procuring department has concluded that it is appropriate to sell production equipment to the contractor in possession by means of noncompetitive negotiated sale, the department will provide the CAO with the required sales justification including any special sales provisions that may be appropriate.

(4) *Applicability of antitrust laws.* When contractor inventory with an acquisition cost of $3,000,000 or more (or any patents, processes, techniques, or inventions, irrespective of cost) is to be sold or otherwise disposed of to private interest, the Department concerned shall promptly notify the Attorney General and the Administrator, General Services Administration, of the proposed disposal and the probable terms or conditions thereof. Prior to approving or effecting the proposed disposition, the plant clearance officer shall obtain antitrust clearance by transmitting the following information relative to the proposed sale through departmental channels of the administering activity for submission by that activity to the Department of Justice and the General Services Administration: Report Control Symbol DD DR&E(AR) 1492 has been assigned for this reporting requirement.

(i) Location and description of property (specifying the tonnage, if scrap);

(ii) Proposed sale price of property (explaining the circumstances if proposed purchaser was not highest bidder);

(iii) Acquisition cost of property of Government;

(iv) Manner of sale, indicating whether by—

(A) Sealed bid (specifying number of purchasers solicited and bids received),

(B) Auction or spot bid (stating how sale was advertised), or

(C) Negotiation (explaining why property was not offered for sale by competitive bid);

(v) Proposed purchaser's name, address, and trade name (if any), under which he is doing business;

(vi) If a corporation, give name of state and date of incorporation, and name and address of—

(A) Each holder of 25 percent or more of the corporate stock,

(B) Each subsidiary, and

(C) Each company under common control with proposed purchaser;

(vii) If a partnership, give—

(A) Name and address of each partner, and

(B) Other business connections of each partner;

(viii) Nature of proposed purchaser's business, indicating whether its scope is local, statewide, regional, or national;

(ix) Estimated dollar volume of sales of proposed purchaser (as of latest calendar or fiscal year);

(x) Estimated net worth of proposed purchaser; and

(xi) Proposed purchaser's intended use of property. Disposition shall be withheld pending receipt of advice from the Attorney General as to whether the proposed disposal action would tend to create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises that the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws, such disposition will not be made. When property with a total acquisition cost of $3,000,000 or more is offered for sale on a competitive bid basis, the condition of sale specified in 245.7102–6(b)(viii) shall be included in the invitation for bid. When the sale is not competitive, the

prospective purchaser shall be informed that final consummation of the sale is subject to determination by the Attorney General. The purchaser on either a competitive or noncompetitive sale shall be required to complete a questionnaire, providing the information outlined in (a)(4) (v) through (xi) above.

(5) *Foreign Contractor Inventory.*

(i) To prevent diversion, transshipment, or re-export of contractor inventory located in foreign countries to prohibited destinations and the use of such inventory adversely to the interests of the United States, the sale or other disposition of such inventory by the contractor, including sales to foreign governments, shall be made in accordance with (a)(5) (ii) and (iii) below.

(ii) Sales contracts or other documents for passing title to foreign contractor inventory shall contain the following certificate:

> The Purchaser certifies that the property covered by this contract will be used in ———— (insert name of country). In the event resale or export is to be effected by the Purchaser of any of the property, acquired at a price in excess of One Thousand United States Dollars ($1,000) or its equivalent in other currency at the official rate of exchange, the Purchaser agrees to obtain the approval of ———— (insert name and address of Sales Contracting Officer).

(iii) The sales contracting officer shall approve sales contracts and requests for approval of resales or exports only if:

(A) The proposed purchaser's name does not appear on the Consolidated List of Debarred, Suspended and Ineligible Contractors, and

(B) If the sales contract contains a provision prohibiting exports by purchasers and subpurchasers to communist areas, as listed in FAR 25.702.

(iv) Any disposals of foreign contractor inventory by the United States Government, as distinguished from disposal by a contractor, shall be in accordance with the security trade control regulation on foreign excess sales, and regulations dealing with integrity and reliability checks.

(v) Generally, disposal activities of the Military Departments shall be utilized to accomplish the disposition of surplus contractor inventory located in foreign countries except Canada. Contractor-conducted sales may be authorized, *provided* the interests of the Government are adequately protected.

245.610-3 Proceeds of sale.

(S-70) When payments are due the contractor under the applicable contract, and unless otherwise provided in the contract, the proceeds of any sale, purchase, or retention shall be credited to the Government as part of the settlement agreement, or otherwise credited to the price or cost of the work covered by the contract, or applied in the manner directed by the contracting officer. The plant clearance officer will maintain an open suspense record until he has verified that credit has in fact been applied, unless another Government representative has specifically assumed this responsibility.

(S-71) Proceeds from contractor-conducted sales which have not been credited as provided in (S-70) above shall be collected by the contractor and remitted to the plant clearance officer.

(S-72) All proceeds of sale remitted to the plant clearance officer shall be delivered to the designated disbursing officer by means of DD Form 1131, Cash Collection Voucher, within two working days after receipt. Transmittals shall identify the procurement contract by number and name of the contractor.

245.613 Property disposal determinations.

Written determinations supporting disposal actions in the following categories shall be made and placed in the plant clearance case file:

(a) Salvage determination;

(b) Scrap determinations (not required for production scrap);

(c) Abandonment and/or destruction determinations;

(d) Disposal by noncompetitive sale; and

(e) Other actions considered necessary by the plant clearance officer.

Determinations shall be recorded on DD Form 1641, Disposal Determination/Approval.

Subpart 245.70—Appointment of Property Administrator

245.7001 Appointment of property administrator.

245.7001-1 Selection, appointment and termination.

The selection, appointment and termination of appointment of property administrators shall be made in writing by the Head of a Procuring Activity or designee for the Defense Logistics Agency and by the head of the contract administration office or designee for the other Departments. In selecting qualified property administrators, the appointing authority shall consider experience, training, education, business acumen, judgment, character, and ethics.

245.7001-2 Evaluation criteria.

In considering experience, training and education, the following shall be evaluated:

(a) Experience in accounting, material control, inventory control and allied functions;

(b) Formal education or specialization in such areas as evaluating, monitoring, administering, or coordinating industrial property programs or implementing plans and policies in support of diversified property control system; and

(c) Knowledge of the provisions of this and other applicable regulations.

245.7001-3 Assignment of contracts for property adminstration.

(a) All Department of Defense contracts under which Government property will be provided and which will be performed at a single location by a contractor shall be assigned to a single property administrator.

(b) Each contract under which Government property will be provided to the contractor will be assigned to a property administrator by the CAO. The assignment document shall contain the (1) name and address of the contractor, (2) PII (contract) number, and (3) type of contract.

(c) The assignment shall be terminated when:

(1) It has been determined that no Government property has been or will be furnished or acquired; or

(2) The contract is reassigned to another CAO or to another property administrator.

245.7001-4 Duties and responsibilities of plant clearance officer.

The plant clearance officer shall be responsible for:

(a) Providing the contractor with instructions and advice regarding the proper preparation of inventory schedules;

(b) Accepting or rejecting inventory schedules and DD Form 1342;

(c) Conducting or arranging for inventory verification;

(d) Initiating prescribed screening and effecting resulting transfer and donation actions;

(e) Final plant clearance of contractor inventory;

(f) Pre-inventory scrap determinations, as appropriate;

(g) Evaluating the adequacy of the contractor's procedures for effecting property disposal actions;

(h) Determining method of disposal;

(i) Surveillance of contractor-conducted sales;

(j) Accounting for all contractor inventory reported by the contractor;

(k) Advising and assisting, as appropriate, the contractor, inventory control manager, other federal agencies, or higher headquarters in all actions

relating to the proper and timely disposal of contractor inventory;

(l) Approving method of sale, evaluating bids, and approving sale prices for contractor-conducted sales;

(m) Recommending the reasonableness of selling expenses on contractor-conducted sales;

(n) Securing anti-trust clearance, as required; and

(o) Advising the contractor officer on all property disposal matters.

Subpart 245.71—Forms, Instructions, and Reports

245.7101 Forms.

The forms listed below are prescribed for use in the performance of plant clearance actions covered in FAR Subpart 45.6 and Subpart 245.6.

245.7101-1 Standard Form 97.

Standard Form 97, Certificate of Release of a Motor Vehicle (agency record copy), will be executed by the contracting officer and furnished to the purchaser. Plant clearance officers will process Standard Form 97 in connection with transfers, donations, and sales of motor vehicles. Precautionary measures will be taken to prevent unauthorized persons from obtaining these forms. (245.7102-6)

245.7101-2 DD Form 1131.

DD Form 1131, Cash Collection Voucher, shall be used to remit proceeds of sale to the appropriate disbursing officer.

245.7101-3 DD Form 1149.

DD Form 1149, Requisition and Invoice Shipping Document, shall be used for transfers and donations of excess or surplus contractor inventory, except IPE shall ordinarily be shipped by DD Form 1348-1, provided that any donation of IPE may be shipped via DD Form 1149.

245.7101-4 DD Form 1342.

DD Form 1342, DOD Property Record, shall be used to report idle industrial plant equipment to DIPEC for worldwide screening.

245.7101-5 DD Form 1640.

DD Form 1640, Request for Plant Clearance, shall be used to request plant clearance assistance or transfer plant clearance.

245.7101-6 DD Form 1638.

DD Form 1638, Report of Excess and Surplus Contractor Inventory, shall be used to provide a uniform reporting system of essential management data reflecting the scope and effectiveness of the contractor inventory utilization and disposal program.

245.7101-7 DD Form 1641.

DD Form 1641, Disposal Determination/Approval, shall be used to support disposal determinations.

245.7101-8 DD Form 1635.

DD Form 1635, Plant Clearance Case Register, provides a permanent numerical listing of plant clearance cases and shall be maintained by each office performing a plant clearance function. The space provided on the right-hand side of the form may be used for additional columns and headings considered essential by management officials. In those instances when the plant clearance register has been mechanized, a mechanized form may be used in lieu of the DD Form 1635.

245.7101-9 DD Form 1348-1.

DD Form 1348-1, DOD Single Line Item Release/Receipt Document, shall be used for all transfers of idle Industrial Plant Equipment and Contractor Inventory Redistribution System (CIRS) inventory when directed by DIPEC.

245.7102 Instructions.

Additional instructions are provided below for completing the forms or reports prescribed in this Section.

245.7102-1 Instructions for performing inventory verification and determination of allowability.

The following instructions shall be observed in verifying inventory schedules:

(a) *Allocability.* Determine allocability of inventory by reviewing contract requirements, delivery schedules, bills of material, and other pertinent material. Determine whether schedules include:

(1) Material which would not have been required for completion of the terminated or modified portion of the contract;

(2) Material in quantities indicating an unreasonable anticipation of contract requirements; or

(3) Material which might be utilized on the continuing portion of the contract, or diverted to other work of the contractor, either commercial or Government. Utilize sound judgment and experience gained during the life of the contract in detecting common items. In addition review—

(i) Contractor's purchase orders for current procurement of similar material,

(ii) Contractor's plans and orders for current and scheduled production.

(iii) Contractor's stock record cards, and

(iv) Contractor's bills of material prepared for items similar to the terminated or modified items.

(b) *Quantity.* Assure that the quantities of inventory available are in accordance with the quantities listed on the inventory schedules. While a complete physical count of each item of inventory normally need not be performed, sufficient checks to assure that the quantities are accurate shall be performed.

(c) *Condition.* Assure that the condition of the inventory is in accordance with that shown on the inventory schedules.

245.7102-2 DD Form 1638.

DD Form 1638, Report of Excess and Surplus Contractor Inventory, shall be used by all contract administration offices having plant clearance responsibility for reporting cases under which disposition of contractor inventory actually has been effected. Cases transferred to other offices will not be included. Only the column total for each line of this report will be completed, unless the departmental headquarters of the administering activity desires a breakout of DIPEC-controlled property and directs completion of other column. Reports shall be prepared on a quarterly basis covering report periods ending 31 March, 30 June, 30 September, and 31 December, and shall be submitted in duplicate to the Departmental Headquarters of the administering activity, no later than 10 working days after the close of the report period. This reporting requirement is assigned Report Control Symbol DD(I&L)(Q)1430. All items on the report are self-explanatory except as follows:

(a) *Line 1.* Insert exact totals from line 7 of preceding report.

(b) *Line 2.* Insert net increase or decrease due to shortage, overages, errors, or withdrawals (other than purchases or retentions at cost).

(c) *Line 3.* Insert totals representing all excess inventory reported by the contractors for plant clearance purposes during reporting period.

(d) *Line 4.* Insert total of lines 1, 2, and 3.

(e) *Line 5.* Insert totals representing all plant clearance cases completed during the reporting period. Cases shall not be reported as completed until physical removal (or other final disposition) has been accomplished. Acquisition cost must equal acquisition cost on line 19.

(f) *Line 8.* Insert amount which contractor in possession is retaining or withdrawing at full acquisition cost.

(g) *Line 9.* Insert full acquisition cost in appropriate column, and in "Proceeds" column insert the acquisition cost less approved handling, transportation, or restocking charges.

(h) *Line 10.* Insert total acquisition cost of all transfers accomplished during the reporting period. On lines 10A through 10H, insert subtotals representing value of transfers to each service or agency indicated. Line 10 represents the total of the individual amounts shown on lines 10A through 10H. Caution should be taken to exclude the amount on lines 10A through 10H when obtaining the grand total on line 19 of the several columns of Section II.

(i) *Lines 12 through 14.* Insert gross proceeds. When approved costs of sale are reimbursed from proceeds, net proceeds shall be identified in "Remarks".

(j) *Line 15.* Insert acquisition cost of inventory sold by the contractor with proceeds applied as a credit to overhead.

(k) *Lines 16 and 18.* Lines 16 and 18 may be used to identify and report transactions not otherwise identified.

(l) *Line 19.* Insert total of lines 8 through 18. Acquisition cost must equal acquisition cost on line 5.

245.7102-3 Instructions for establishing a plant clearance case.

Upon receipt of acceptable inventory schedules or DD Form 1342 from the contractor or from other Government sources provided by this Part, the plant clearance officer shall assign a plant clearance case number in accordance with 245.7102-4 and establish a plant clearance case file. The case number, contractor's name, and contract number shall be identified on the case folder. Termination inventory shall be identified with the work "Termination" on the outside of the case folder to insure priority handling. Separate submissions of inventory schedules and DD Forms 1342, applicable to one contract at the same location, shall be consolidated, whenever possible, under one plant clearance case. The plant clearance case file, as a minimum, shall contain the following:

(a) Copy of inventory schedules or DD Form 1342 (The copy of the inventory schedule will be annotated by the plant clearance office to reflect all disposal actions accomplished. Upon completion of all plant clearance actions, this copy should reflect disposition of all inventory reported for plant clearance action.);

(b) Copy of letters or transmittal documents forwarding contractor inventory to the appropriate screening activity;

(c) Copies of all shipping instructions, correspondence, or other instructions directing the disposition of contractor inventory, or evidence of no requirements;

(d) Copies of all shipping documents accomplishing transfer or shipment of contractor inventory;

(e) Copy of Inventory Verification Survey or other forms evidencing completion of allocability review;

(f) Copies of appropriate forms authorizing donation;

(g) Copies of all appropriate forms evidencing the sale of contractor inventory;

(h) Appropriate documentation indicating proper disposition of any proceeds resulting from plant clearance action;

(i) Copies of all other correspondence or forms bearing on disposal actions concerned with the case;

(j) Copies of all pertinent correspondence and approvals concerning Property Disposal Review Board cases, and antitrust clearance, when required; and

(k) Copy of Inventory Disposal Report.

245.7102-4 Instructions for assigning plant clearance case number.

(a) The plant case number shall consist of a three-part, 11-digit number constructed as follows:

(1) The first part shall be a six digit (alphanumeric combination), as shown in the DoD Activity Address Directory assigned to the contract administering activity.

(2) The second part, digits 7 through 10 shall consist of the following: 7th through 9th digits—Consecutively numbered serial number, locally assigned, using alpha and numeric characters commencing with 001 at the beginning of each calendar year, and continuing as necessary through ZZZ.

(3) The third part, 11th digit, will be a single alpha code to identify the Department:

C—Army
Q—Navy
E—Air Force
L—Marine Corps
U—Defense Logistics Agency
N—Defense Nuclear Agency
M—Defense Mapping Agency
S—National Aeronautics and Space Administration
O—Non-DoD Activities

(b) Combined, the plant clearance case number assigned by the plant clearance officer will be in accordance with the following examples: "S4403A-0010-Q" and "54403A-ZZZ2-Q"

(1) "S4403A" indicates that the Dallas Defense Contract Administration Services Region is designated as the office to which the plant clearance officer is assigned.

(2) "0010" indicates that this is the first case established by the Dallas Defense Contract Administration Services Region in calendar year 1970 and "ZZZ2" the 8199th case in calendar year 1972.

(3) "Q" indicates that the Navy is the owning military service.

(c) The plant clearance case number assigned will be recorded on DD Form 1635, Plant Clearance Case Register, which will provide a permanent numerical listing of plant clearance cases.

245.7102-5 Form letter for transmitting DD Form 1342 to DIPEC.

The following minimum information shall be included in the letter:

(1) The number of DD Form 1342 included;

(2) Automatic Release Date;

(3) Screening Complete Date;

(4) Contractor's name and address;

(5) Procurement Instrument Identification (Contract) Number;

(6) The name and address of the procuring activity that awarded the facility or other type contract which permitted the contractor to acquire the industrial plant equipment;

(7) The location of the industrial plant equipment;

(8) Total acquisition cost;

(9) A note stating that the ARD will not be extended;

(10) A note substantially as follows:

All requests for transfer or shipment must indicate appropriate fund citation for packing, crating, and handling charges. Government Bills of Lading (GBL) should be furnished when possible. If shipments will be accomplished by other than a GBL, DIPEC must cite transportation funds; and

(11) A signature block containing the name of the plant clearance officer.

245.7102-6 General sales terms and conditions, and special conditions of sale.

(a) The following general sales terms and conditions shall be included, as a minimum, in contractor-conducted sales by formal invitation:

(1) *Inspection.* The Bidder is invited, urged, and cautioned to inspect the property to be sold prior to submitting a bid. Property will be available for inspection at the places and times specified in the Invitation. In no case will failure to inspect constitute grounds for the withdrawal of a bid after opening.

(2) *Condition and location of property.* Unless otherwise specifically provided in the Invitation, all property listed

therein is offered for sale "as is" and "where is." If it is provided therein that the Contractor shall load, then "where is" means f.o.b. conveyance at the point specified in the Invitation. The description is based on the best available information. However, the Contractor makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of any of the property or its fitness for any use or purpose. Except as provided in Conditions No. (8) and (10), no request for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

(3) *Consideration of bids.* The Bidder agrees that his bid will not be withdrawn within the period of time specified for the acceptance thereof following the opening of bids (sixty (60) calendar days if no period is specified by the Contractor or by the Bidder, but not less than ten (10) calendar days in any case) and that during such period his bid will remain firm and irrevocable. The right is reserved to reject any or all bids, to waive any technical defects in bids, and unless otherwise specified in the offering or by the Bidder, to accept any one item or group of items in the bid. Unless the Invitation otherwise provides, bids may be submitted on any or all items. However, unless the Invitation otherwise provides, a bid covering any listed item must be submitted on the basis of the unit specified for that item and must cover the total number of units designated for that item. In case of error in the extension of prices, unit prices will govern.

(4) *Payment.* The Purchaser agrees to pay for property awarded to him in accordance with the prices quoted in his bid. Payment of the full purchase price, subject to any adjustment pursuant to Condition No. (8), must be made within the time specified for removal and prior to delivery of any of the property. In the event that any adjustment is made pursuant to Condition No. (8), payment must be completed immediately subsequent to such adjustment. The balance of the purchase price after applying the total bid deposit made by the Purchaser (if a bid deposit was required) under the Invitation (or otherwise the full purchase price) shall be paid to the Contractor in cash or by certified check, cashier's check, traveler's check, bank draft, or postal or express money order. The Contractor reserves the right to apply any bid deposits made under this Invitation by a Bidder against any amounts due to the Contractor under a contract awarded by him under this Invitation for Bid. In those instances where the total sum becoming due to the Contractor from the Purchaser on a contract awarded to him under the Invitation is less than the total amount deposited with his bid, the difference shall be promptly refunded. Deposits accompanying bids which are not accepted shall be promptly returned.

(5) *Title.* Unless otherwise specified in the Invitation, title to the items of property sold hereunder shall vest in the Purchaser as and when full and final payment is made, except that if the Invitation provides that loading will be performed by the contractor, title shall not vest until such payment and loading are completed. On all motor vehicles and motor-propelled or motor-drawn equipment requiring licensing, a certificate of release, Standard Form 97, Certificate of Release of a Motor Vehicle, executed by the Contracting Officer (or a State certificate of title), shall be furnished for each vehicle and piece of equipment.

(6) *Delivery and removal of property.* Unless otherwise specified in the Invitation, the Purchaser shall be entitled to obtain the property upon vesting of title of the property in him. Delivery shall be made at the designated location, and the Purchaser shall remove the property at his expense within the period of time originally specified in the Invitation or within such additional time as may be allowed by the Contractor. The Purchaser shall reimburse the Contractor for any damage to the Contractor's property caused by the removal operations of the Purchaser. If the Purchaser is permitted by the Contractor to remove the property after the expiration of the period prescribed or allowed for removal, the Contractor, without limiting any other rights which it may have, may require the Purchaser to pay a reasonable storage charge.

(7) *Default.* If the successful Bidder fails to make full payment, to remove property on the specified date, or to comply with any other terms and conditions thereof, the right is reserved to sell or otherwise dispose of any or all such property and to charge losses and expenses incidental thereto to the account of the defaulting Bidder. The bid deposit (if required in the Invitation) shall be applied against any such losses and expenses.

(8) *Adjustment for variation in quantity or weight.* When property is sold on a "unit price" basis, the Contractor reserves the right to vary the quantity or weight delivered by fifteen percent (15%) from the quantity or weight listed in the Invitation; and the Purchaser agrees to accept delivery of any quantity or weight within these limits. The purchase price shall be adjusted upwards or downward in accordance with the unit price and on the basis of the quantity or weight actually delivered. No adjustment for variation shall be made where property is sold on a "price for the lot" basis.

(9) *Weighing.* When weighing is necessary to determine the exact purchase price hereunder, the Purchaser shall arrange for and pay all expenses of weighing material. All switching charges shall be paid by the Purchaser. When removal is by truck, weighing shall be subject to supervision and accomplished on (i) contractor scales, (ii) certified scales, or (iii) other scales acceptable to both parties. When removal is by rail, weighing shall be on railroad track scales or by other means acceptable to the railroad for freight purposes. Approved weighing shall establish the exact purchase price and govern the making of full payment thereon.

(10) *Risk of loss.* After mailing notice of award and prior to the date specified for removal, the Contractor shall be responsible only for the exercise of reasonable care for the protection of the property. After passage of title and after the date specified for removal of the property or any extension approved in writing by the Contractor, all risk of loss, damage, or destruction from any cause whatsoever shall be borne by the Purchaser.

(11) *Limitation on contractor and government liability.* The measure of Contractor and Government liability in any case when liability of Contractor and Government to the Purchaser has been established shall not exceed refund of such portion of the purchase price as the Contractor may have received.

(12) *Oral statements and modifications.* Any oral statement or representation by any representative of the Contractor changing or supplementing the contract or any condition thereof is unauthorized and shall confer no right upon the Purchaser.

(13) *Eligibility of bidders.* The Bidder certifies that he is not: (i) a civilian employee of the Department of Defense or the United States Coast Guard whose duties include any functional or supervisory responsibility for disposal of contractor inventory; (ii) a member of the Armed Forces of the United States, including the United States Coast Guard, whose duties include any functional or supervisory responsibility for disposal of contractor inventory; (iii) an agent, employee or immediate member of the household of personnel in (a)(13) (i) and (ii) above.

(14) *Claims liability.* The Purchaser or Bidder agrees to save the Contractor and Government harmless from any and all claims, demands, actions, debts, liabilities, judgments, costs, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property of, and injuries to or the death of any and all persons whatsoever, in any manner caused or contributed to by the Purchaser or Bidder, their agents, servants or employees, while in, upon, or about the sale or the property site on which the property sold or offered for sale is located, or while going to or departing from such areas; and to save the Contractor and Government harmless from and on account of damages of any kind which the Contractor may suffer as the result of the acts of any of the Purchaser's agents, servants, or employees while in or about the said sites.

(b) The following special conditions of sale shall be included in contractor-conducted sales by formal invitation, as required, or at the specific request and direction of the plant clearance office:

(1) *Demilitarization.* When demilitarization of property by the Purchaser is required, whether on or off the contractor or Government premises, the following special conditions shall be included in the invitation for bids on property located in the United States or outside the United States, as appropriate—

(i) *Demilitarization.* Item(s) ——— are required to be demilitarized by the Purchaser in the manner and to the degree set forth below: ———

(A) Insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Part 2 of Defense Demilitarization Manual, DoD 4160.21–M–1 for property located in the United States.

(B) For property located outside the United States, insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Part 3 of DoD 4160.21–M–1.

(ii) *Demilitarization on government premises.* The property requiring demilitarization shall not be removed from Government premises and title shall not pass to the Purchaser until demilitarization has been completed by the Purchaser and approved by the Contractor's authorized representative and a Government representative. Demilitarization will be accomplished as specified elsewhere in the contract. Component parts essential to the military or lethal purpose of the item shall be rendered unusable as prescribed herein. The Purchaser agrees to assume all costs incident to the demilitarization and further agrees to do any necessary work to restore the working area to its present condition after completely removing the demilitarized property.

(iii) *Demilitarization on other than government premises.* The property requiring demilitarization shall be demilitarized by the Purchaser under supervision of qualified Department of Defense personnel and title shall not pass to the Purchaser until demilitarization has been completed by the Purchaser and approved by the Contractor's authorized representative and a Government representative. Demilitarization will be accomplished as specified elsewhere in the contract. Component parts essential to the military or lethal purpose of the item shall be rendered unusable as prescribed herein. The Purchaser agrees to assume all costs incident to the demilitarization.

(iv) *Failure to demilitarize.* If the Purchaser fails to demilitarize the property being sold herein in accordance with the terms of the contract, the contractor may, at his option and upon ten (10) days written notice (calculated from date of mailing) to the Purchaser:

(A) Repossess the property, complete the demilitarization thereof, and return the property to the Purchaser. The Purchaser hereby agrees to pay to the Contractor prior to the return of the property to the Purchaser all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property to the Purchaser.

(B) Repossess the property, complete the demilitarization thereof, resell the property, and charge the defaulting Purchaser with all excess costs occasioned the Contractor thereby. The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser. In the event the excess costs incurred by the Contractor in repossessing, demilitarizing, and reselling the property exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

(C) Repossess the property and resell it under similar terms and conditions. In the event this option is exercised, the Contractor shall charge the defaulting Purchaser with all excess costs occasioned the Contractor thereby. The Contractor shall deduct these excess costs for the original purchase price, if any, to the defaulting Purchaser. Should the cost to the Contractor of repossessing and reselling the property exceed the purchase price, the defaulting Purchaser hereby agrees, to pay these excess costs to the Contractor.

(2) *Performance bond.* When work, other than loading, is to be performed by the purchaser and it is considered necessary to insure performance by the purchaser, a performance bond shall be required. Generally, the amount of each performance bond shall be 100% of the estimated cost of the work to be performed. If a requirement for a 100% performance bond would be disadvantageous to the contractor or to the Government, the amount may be reduced to not less than 50% of the estimated cost of the work to be performed. The execution of a performance bond in a specified amount shall be required, as follows:

Performance Bond. Within ten (10) days after notice of award, the Purchaser shall furnish a performance bond in the sum of $——— to cover the Purchaser's obligations and undertakings herein. Such bond shall remain in full force and effect during the term of the contract any extensions as may be agreed upon. The Purchaser shall not be permitted to begin performance until such time as the bond has been received.

(3) *Liability and insurance.* The following shall be required when the work to be performed by the purchaser warrants a special condition of sale:

Liability and Insurance. The Purchaser shall at his own expense procure and maintain during the term of the contract insurance as follows:

(i) Standard workmen's compensation and employer's liability insurance such as may be proper under State and Federal statutes. However, upon receipt of satisfactory evidence that the Purchaser is qualified as a self-insurer under applicable provisions of law, the Contractor may waive this requirement.

(ii) Bodily injury liability insurance in the amount of not less than $300,000 any one occurrence.

(c) Property damage liability insurance including any and all property, whether or not in the care, custody, or control of the Purchaser.

(4) *Dangerous property.* A warning of potential danger shall be included in all cases when it cannot be certified that the property is completely innocuous. The following condition shall be used for this purpose:

Dangerous Property. Purchasers are warned that the property purchased may contain items of an explosive, toxic, or inflammable nature, notwithstanding reasonable care exercised by the Contractor to render the property harmless. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or his employees, or to any other person, arising from or

incident to the purchaser of the property, or its use or disposition by the Purchaser. The Purchaser shall save the Contractor and the Government harmless from any and all such claims.

(5) *Controlled substances.* The sale of any controlled substance, e.g., narcotics, stimulants, depressants, hallucinogenic drugs, shall be subject to the following special conditions:

Controlled Substances. Bids will be rejected unless the Bidder submits the following certification with his bid: "The undersigned represents and warrants that he is registered under The Comprehensive Drug Abuse Prevention and Control Act of 1970, and is authorized under the law and by the Attorney General, U.S. Department of Justice (Bureau of Narcotics and Dangerous Drugs) to buy controlled substances either as a medical practitioner, dealer or manufacturer of controlled substances."

Narcotic Drug and Chemicals. Bids will be rejected unless the Bidder submits the following certification with his bid: "The undersigned represents and warrants that he is registered under Federal narcotics laws and is authorized by law and by the Bureau of Narcotics, United States Treasury Department, as a manufacturer of narcotics."

(6) *Radioactive material.* The following condition shall be used whenever there is the possibility that the property offered for sale is capable of emitting ionized radiation:

Radioactive Material. Purchasers are warned that the property may be capable of emitting ionized radiation in varying degrees. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or his employees, or to any other person arising from or incident to the purchase of the property or its use or disposition by the Purchaser. The Purchaser shall hold the Contractor and the Government harmless from any and all such claims. As a safety precaution, the Purchaser should warn future possessors or users of the property that it may be capable of emitting ionized radiation.

(7) *Scrap warranty.* The following condition shall be used whenever property, other than production scrap, is offered for sale as scrap:

Scrap Warranty. The Purchaser represents and warrants that the property will be used only as scrap, in its existing condition or after further preparation, and will not be resold until (a) scrapping has been accomplished, or (b) the Purchaser obtains an identical warranty from any subsequent purchaser.

(8) *Antitrust clearance.* When a sales offering includes property with an acquisition cost of $3,000,000 or more, the following condition shall be included:

Antitrust. To comply with Section 207 of the Federal Property and Administrative Services Act of 1949, as amended, when property offered for sale has an acquisition cost of $3,000,000 or more, or when the property consists of patents, processes, techniques, or inventions, irrespective of cost, the successful Bidder shall be required to furnish additional information and shall allow up to sixty (60) days for acceptance of his bid. Award shall be made only upon advice from the Department of Justice that the proposed sale would not tend to create or maintain a situation inconsistent with the antitrust laws.

(9) *Small business representation.* The following provision shall be included in the general sales terms and conditions for all formal sales invitations covering contractor conducted sales of surplus industrial plant equipment.

Bidder Represents:
(Check appropriate box)
(a) That he (—) is, (—) is not, a small business concern.
(b) For definitions and applicable size standards, see FAR Subpart 19.1 and Code of Federal Regulations, Title 13, Part 121, as amended.
(End of provision)

(c) The following special conditions of sale may be added at the option of the contractor:

(1) *Sales and use tax liability.* If the purchase of the property is subject to a state sales or use tax, a special condition of sale shall be included stipulating that the Purchaser shall pay and the Contractor shall collect the amount of the tax, which shall be itemized separately on the billing document.

(2) *Safety, security, and fire regulations.*

(3) *Bid deposits.*

(4) *Other special conditions.* All other special conditions of sale considered necessary by the Contractor shall be subject to the prior approval of the plant clearance officer. Approval shall be granted, *provided,* the prescribed conditions of sale are not altered or affected thereby and the interest of the Government is not adversely affected.

PART 246—QUALITY ASSURANCE

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 246.1—General

246.101 Definitions.

"Calibration", is the comparison of a measurement system or device of unverified accuracy to a measurement system or device of known or greater accuracy to detect and correct any variation from required performance specification of the unverified measurement system or device.

"Metrology", is the science of weights and measures used to determine conformance to technical requirements including the development of standards and systems for absolute and relative measurements.

"Quality", means the composite of material attributes including performance features and characteristics of a product or service to satisfy a given need.

"Quality Assurance", is a planned and systematic pattern of all actions necessary to provide adequate confidence that adequate technical requirements are established; products and services conform to established technical requirements; and satisfactory performance is achieved.

"Quality Audit", is a systematic examination of the acts and decisions with respect to quality in order to independently verify or evaluate the operational requirements of the Quality program or the specification or contract requirements of the product or service.

"Quality Program", is a program which is developed, planned, and managed to carry out cost effectively all efforts to effect the quality of materials and services from concept through validation, full-scale development, production, deployment, and disposal.

246.102 Policy.

(S–70) The Departments shall develop and manage a cost effective quality program to assure that all services provided and products designed, developed, purchased, produced, stored distributed, operated, maintained, or disposed of, by contractors for the Department of Defense, conform to specified requirements.

(S–71) The Departments will plan and implement a quality program as an integral part of all phases of the acquisition and support process, and will conduct quality audits to assure the attainment of quality products and services.

(S–72) The Government shall determine the type and extent of Government contract quality assurance actions required, based upon the particular acquisition.

(1) These actions may include:

(i) Inspection of supplies and services;

(ii) Review of the contractor's inspection system, quality program, or other means employed by the contractor to control quality and to comply with contract requirements:

(iii) Maintenance of Government records to reflect actions, deficiencies, and corrective measures; and

(iv) Review and evaluation of quality data, including reports from the user, to initiate required corrective actions or to adjust Government contract quality assurance actions.

(2) The Government shall hold contractors responsible for the quality of products and services by means of:

(i) Contract provisions that place responsibility on contractors;

(ii) The Government's exercising its right to reject or return contractor-responsible defective items for repair, correction or replacement; and

(iii) Warranty clauses, when appropriate.

(3) The Government shall consider the use of:

(i) Contractual means for encouraging excellence in the conduct of contractor-responsible quality efforts;

(ii) Incentive fee or award fee arrangements for achieving quality goals;

(iii) Reduced Government surveillance when contractor's quality performance so indicates; and

(iv) Other noncontractual motivation techniques.

(4) Contractors shall be provided maximum flexibility in establishing efficient and effective quality programs within specified contractual requirements.

246.103 Contracting office responsibilities.

The contracting office may conduct, in conjunction, where necessary, with the activity responsible for technical requirements, product-oriented surveys and evaluations to determine the adequacy of the technical requirements relating to quality and product conformance to design intent. The contracting office may arrange with the contract administration office to participate in pre-award surveys, post-award, and preproduction conferences, and first article testing. The contracting office may aid the contract administration office in the transition from research and development to production, aid the technical activity in improving the quality requirements in contracts when first designed for competitive acquisition, and aid in ascertaining the source of difficulties associated with user experience reports.

246.104 Contract administration office responsibilities.

(d) Written instructions from the contracting office shall be continued as prescribed until any recommendation has been acted upon by the contracting office (also see FAR 46.103(c)).

246.170 Organization responsible for technical requirements.

(a) The activity responsible for technical requirements (e.g., specifications, drawings and standards) is responsible for prescribing inspection, testing, or other contract quality requirements that are essential to assure the integrity of products and services.

(b) To the extent feasible, alternative but substantially equivalent inspection methods shall be provided in order to obtain wide competition and low cost. Contractor-recommended alternatives may be authorized when in the interest of the Government and after approval by the activity responsible for technical requirements.

(c) The activity responsible for technical requirements may also prepare instructions regarding the type and extent of Government inspections pertaining to contracts for specific supplies or services that are complex or for which unusual requirements have been established. Such instructions shall be kept to a minimum taking into account the policy contained in 246-474(b). Normally, issuance of these instructions will not be appropriate for standard commercial items except when items having critical characteristics are being purchased. After issuance of these instructions, production problems, product-oriented visits, user experience and input from the contract administration office shall be analyzed periodically to determine whether conditions warrant a change in type and extent of the inspection requirements. Such analysis may result in decreasing or increasing Government inspection. These instructions shall be prepared on a contract-by-contract basis and shall not be issued:

(1) As a substitute for incomplete contract quality requirements;

(2) Where the contract does not impose equal or greater inspection requirements on the contractor;

(3) Encompassing broad or general designations such as "all requirements", "all characteristics", or "all characteristics in the classification of defects";

(4) On routine administrative procedures; or

(5) Specifying continued inspection requirements when statistically sound sampling will provide an adequate degree of protection.

(d) In the preparation of such instructions, the technical activity shall consider, to the extent available and applicable, such factors as:

(1) The past quality history of the contractor;

(2) The criticality of the material acquired in relation to its ultimate use considering such factors as reliability, safety and interchangeability;

(3) Problems encountered in the development of the product;

(4) Problems encountered in the acquisition of the same or similar material;

(5) Previously generated feedback data from receiving, testing or using activities; and

(6) Other contractor's experience in overcoming manufacturing problems.

When knowledge of the determining factors, which resulted in the requirement for Government inspection, would be useful to the contract administration office in performing the contract quality assurance function, these factors should be provided to the contract administration office.

Subpart 246.2—Contract Quality Requirements

246.202 Types of contract quality requirements.

246.202-3 Higher-level contract quality requirements.

(S-70) Inspection System Requirement is a requirement, in addition to the Standard Inspection Requirement, that the contractor establish and maintain an inspection system in accordance with a Government specification. This requirement shall be referenced in contracts when technical requirements are such as to require control of quality by in-process as well as final end-item inspection, including control of such elements of the manufacturing process as measuring and testing equipment, drawings and changes, inspection, documentation and records. The objectives and essential elements of an inspection system are prescribed in MIL-I-45208, which shall be referenced in contracts when an inspection system requirement has been established.

(S-71) Quality Program Requirement is a requirement, in addition to the Standard Inspection Requirement, that the contractor establish and maintain a quality program in accordance with a Government specification. Such a requirement shall be established when the technical requirements of the contact are such as to require control of work operations, in-process controls, and inspection, as well as attention to other factors (e.g., organizations, planning, work instructions, documentation control, advanced metrology). The objectives and essential elements of a quality program are prescribed in MIL-Q-9858 which shall be referenced in contract when a quality program requirement has been established.

246.203 Criteria for use of contract quality requirements.

(c) *Criticality.* Whether peculiar or common, purchases of critical items must have contract quality requirements.

246.204 Application of criteria.

For DoD the following table implements FAR 46-204, Table 46-1, for higher-level contract quality requirements:

TABLE 46-1—CONTRACT QUALITY REQUIREMENTS GUIDE

Item		Type of contract	
Technical description	Complexity	Application	Quality requirement
Commercial	Complex	Critical	MIL-I-45208
Military-Federal.	Non-complex.	Critical	MIL-I-45208
Military-Federal.	Complex	Non-Critical Peculiar.	MIL-I-45208
Military-Federal.	Complex	Critical	MIL-Q-9858

Subpart 246.3—Contract Clauses

246.370 Material inspection and receiving report.

The contracting officer shall insert the clause at 252.246-7000, Material Inspection and Receiving Report, in solicitations and contracts when delivery of a separate and distinct object or entity, whether separately priced or not, is anticipated. However, when contract administration is retained by the contracting office, the clause is not required in the following situations unless the use of a MIRR is desired by the contracting officer:

(a) Contracts effected under FAR Part 13;

(b) Negotiated subsistence contracts;

(c) Contracts for fresh milk and related fresh dairy products;

(d) Contracts for which the end item is a scientific or technical report;

(e) Research and development contracts not requiring the delivery of separately priced end items;

(f) Base, post, camp or station contracts;

(g) In overseas areas when the contracting officer determines that the preparation and distribution of DD Form 250 by the contractor would be impracticable, the contracting office shall arrange for the contractor to provide the information necessary for the preparation of the DD Form 250 by the contract administration personnel; and,

(h) Contracts for services when hardware is not acquired as an item in the contract, e.g., level of effort type contracts; field service type contracts, etc.

A MIRR is not required when indefinite delivery type contracts are placed by central contracting offices which authorize only base, post, camp or station activities to issue orders, provided that such contracts and orders are not assigned for administration.

246.371 Inspection records.

Inspection records referenced in the following FAR clause paragraphs include any data analysis or summary of records used by the contractor to complement his inspection system: 252.246-2(b), 252.246-4(b), 252.246-5(b), 252.246-6(b), 252.246-7(a), 252.246-8(b), 252.246-10(b), and 252.246-12(b).

Subpart 246.4—Government Contract Quality Assurance

246.405 Subcontracts.

Selective evaluation of the contractor's control of his subcontractors may be requested by the contract administration office responsible for the contract in order to provide that office with additional assurance that supplies being received from subcontractors conform to quality requirements. Communications between contract administration offices concerning contract quality assurance actions to be performed shall be through Government channels. Requests for selective evaluation shall indicate Government contract quality actions to be performed, e.g., specific characteristics, processes and procedures to be verified, tests to be witnessed, and records, reports, and certificates to be evaluated.

246.406 Foreign governments.

(S-70) *FMS Requirements.*

If a contractor's purchase order or subcontract includes FMS requirements and "quality assurance only" is requested at source, the requesting CAO shall clearly indicates "FMS Requirement" on the face of the document and provide the FMS case identifier code, associated item quantity and related DoD prime contract number and contract line/subline item number. When more than one FMS case is involved, the information shall be provided for each.

(S-71) *Quality assurance among NATO countries.*

(1) NATO Standardization Agreement (STANAG) 4107-Mutual Acceptance of Government Quality Assurance sets forth procedures, terms and conditions under which mutual government quality assurance of military material and services is to be performed by the national authority of one NATO country on request of another NATO country, or a NATO organization. This agreement, with certain reservations, has been ratified by the United States and other nations in the North Atlantic Treaty Organization. The Military Departments may request NATO countries to perform quality assurance in accordance with STANAG 4107. Military Departments will also perform quality assurance in accordance with STANAG 4107 when requested by a NATO country. As a reservation to STANAG 4107, the U.S. Government reserves the right to require reimbursement for work performed for other NATO countries and organizations. 242.102-70(d) applies.

(2) NATO Standardization Agreement (STANAG) 4108, Allied Quality Assurance Publications, provides for the application of Allied Quality Assurance Publications (AQAP's). Its annexes furnish a list of AQAP's and the criteria for the application of those AQAP's which are contractually required in contracts between NATO countries.

(S-72) *International military sales (Non-NATO).*

Department of Defense components shall:

(1) Perform quality assurance (QA) services on international military sales contracts or in accordance with existing agreements;

(2) Assure conformance to technical and quality requirements of international military sales contracts;

(3) Keep Government personnel and contractors informed on the use of QA publications; and,

(4) Specify appropriate quality requirements in contracts awarded to other countries, and delegate QA services to the host government whenever satisfactory services are available, as appropriate.

246.470 Quality assurance by other agencies.

Under Pub. L. 85-726 (72 Stat. 776, 49 U.S.C. 1423), the Federal Aviation Administration (FAA) has certain responsibilities and prerogatives in connection with the issuance and continuation of various certificates applicable to the design, manufacture, and airworthiness criteria of certain types of commercial aircraft and of aircraft equipment and accessories. The FAA evaluations are not a substitute for normal Department of Defense evaluations of the contractor's quality assurance measures. Actual records of such FAA evaluations may be of benefit, however, and should be utilized to maximum advantage by the contract administration office. That office is responsible for assuring that the supplies and services conform to the terms of the contract and that any required certificates and approvals are in the possession of the contractor prior to acceptance.

246.471 Contract administration of special commodities.

246.471-1 Subsistence.

(a) Any Federal activity capable of assuring wholesomeness and quality in food, including medical service personnel of the Military Departments, may be designated by the purchasing office to perform Government contract quality assurance actions on a reimbursable basis when appropriate, for subsistence contract items.

(b) The following is an explanation of particular terms used in this section:

(1) Subsistence—food for, and provisions to be used in, feeding of personnel and animals;

(2) Medical Service Personnel—officers and enlisted personnel of the Medical Services of the Departments of the Army, Navy, and Air Force designated to perform the required inspections of subsistence;

(3) Wholesomeness of Food—that characteristic possessed by a food product which promotes good health and well being in the consumer; and

(4) Quality of Food—the required elements or characteristics stated in the specification or other contractual document which the food must possess to comply with the desired degree of excellence exclusive of those characteristics required to assure wholesomeness.

(c) The Surgeons General of the Military Departments are responsible of the acceptance criteria, technical requirements, and inspection procedures needed to assure wholesomeness of foods. Wholesomeness assurance measures will include but not be limited to:

(1) Establishment of standards of tolerances to evaluate wholesomeness.

(2) Inspection of sources for sanitation including sources of component items when required;

(3) Approval of manufacturing processes to assure wholesomeness is incorporated and used; and

(4) Use of test and examination techniques during processing or for the finished item to detect unsanitary practices or unwholesome food.

(d) Maximum utilization shall be made of existing inspection and grading services of other Federal agencies to perform contract quality assurance actions in processing plants economically and efficiently. However, an adequate Government contract quality assurance workload shall be retained for training of medical service personnel and to provide a base for rotation of personnel between the continental United States and overseas.

246.471-2 Petroleum.

The contract administration office may authorize the release of petroleum supplies without requiring the signing or stamping of shipping papers by a representative of the contract administration office, if the alternative procedures of 246.473(b) are used. In that event on petroleum servicing contracts for receiving, storing, and issuing Government-owned petroleum products, the contractor shall be required to type or stamp and to sign the following statement on each copy of the shipping papers:

> I certify that the above supplies were (a) in the quality indicated, (b) taken from Government-owned and approved stocks, and (c) loaded into inspected and approved containers. This shipment was released in accordance with paragraph 46-471-2 under authorization of (Name and title of the authorized representative of the Contract Administration Office) in a letter dated (Date of authorizing letter).
>
> (Signature and Title of Contractor's designated official.)

246.471-3 Construction projects.

(a) On-site inspection of buildings and other structures is normally performed by the Military Department responsible for their construction.

(b) Government contract quality assurance actions for construction materials and supplies acquired for military and civil works projects shall be performed by the contract administration office in accordance with this Section.

(c) The functions in (a) and (b) above will be performed so as to assure compatibility of buildings and structures and installed equipment.

246.472 Inspection stamping.

(a) There is one Department of Defense inspection approval marking design for identification of material which has been inspected for conformance to only a portion of the contract quality requirements, and another for material which has been completely inspected for all contract quality requirements at source. The designs and their uses are as follows:

(1) *Partial (Circle) Inspection Approval Stamp.* This stamp is circular and is used by or under the direct supervision of the Government representative to identify contract or subcontract material which has been subjected to only a portion of the contract quality requirements applicable to the material at the time and place of Government contract quality assurance. Partial inspection approval stamping shall identify, for Government personnel, material which complies and all contract quality requirements applicable at the time and place of Government contract quality assurance, excepting those listed as uninspected on the associated Material Inspection and Receiving Report (DD Form 250), packing list, or comparable document.

(2) *Complete (Square) Inspection Approval Stamp.* This stamp is square and is used by or under the direct supervision of the Government representative to identify contract or subcontract material which has satisfied all contract quality requirements. Complete inspection approval stamping shall identify, for Government personnel, material which is in complete conformance with all contract quality requirements applicable to the material at the time and place of inspection. Complete inspection approval establishes that material which once was partially approved has subsequently received complete approval. One imprint of the square stamp will void multiple imprints of the circle stamp.

(b) The marking of each item is neither required nor prohibited. Ordinarily, the stamping of shipping containers, packing lists, or lost routing tickets adequately serves to provide the necessary indication status and to control or facilitate the movement of material. No material shall be stamped in such a way as to damage the material.

(c) The placing of a Department of Defense Inspection Approval Stamp upon material does not mean that the material has been accepted by the Government. Acceptance is ordinarily evidenced by execution of the acceptance certificate on the applicable inspection and receiving report.

(d) NASA Publications include detailed policies and procedures regarding the use of National Aeronautics and Space Administration (NASA) Quality Status Stamps. When requested by NASA Centers, the Government representative shall use NASA Quality Status Stamps and apply the procedures of current NASA requirements for all NASA delegations.

246.473 Authorizing shipment of supplies.

(a) *General.* Ordinarily, a representative of the contract administration office shall sign or stamp the shipping papers accompanying Government source-inspected supplies of both prime contracts and subcontracts to release them for shipment. In accordance with the criteria in 246.473(b), however, an alternative procedure may be used in which the contractor assumes the

responsibility of the release for shipment of such supplies inspected at his or his subcontractor's facilities, just as the contractor may be given the authority of other functions pertaining to the control of quality. When this alternative procedure is used, it will release Department of Defense manpower for technical functions by eliminating routine signing or stamping of the papers accompanying each shipment.

(b) *Alternative procedures—contractor release for shipment.*

(1) The contract administation office may give the contractor authorization in writing to release supplies for shipment when:

(i) The stamping or signing of the shipping papers by a representative of the contract administration office impairs the operation of a planned Government contract quality assurance program or places an unreasonable demand on the Government representative's time; and

(ii) There is sufficient continuity of production to permit the establishment of a systematic and continuing Government evaluation of the contactor's control of quality; and

(iii) The contractor has a record of satisfactory product quality including quality pertaining to preparation for shipment.

(2) When there is an indication that the conditions in (b)(1)(i) (ii) or (iii) above no longer prevail, the authorization shall be withdrawn in writing.

(3) When the alternative procedure is used, the contractor shall:

(i) Type or stamp, and sign, the following statement on the required copy or copies of the shipping paper(s) or on an attachment thereto:

The supplies comprising this shipment have been subjected to and have passed all examinations and tests required by the contract, were shipped in accordance with authorized shipping instructions, and conform to the quality, identity and condition called for in contractual requirements and to the quantity shown on this document. This shipment was released in accordance with paragraph 246.475 of the DoD FAR for authorizing Shipment of Supplies under authorization of (Name and Title of the authorized representative of the Contract Administration Office) in a letter dated (Date authorizing letter).

(Signature and Title of Contractor's designated official), and

(ii) Release and process, in accordance with established instructions, the DD Form 250 (Material Inspection and Receiving Report) or any other receiving report authorized by this Supplement.

246.474 Government contract quality assurance actions.

(a) *Planning.*

(1) Government contract quality assurance actions to determine a contractor's compliance with contract quality requirements shall be systematically planned, taking into consideration the relative importance of the product and the variety of tasks required of the available resources. Systematic planning shall include:

(i) Review and analysis of pre-award surveys, post-award conferences, technical data packages, and first article approvals;

(ii) Identification of the specific products, processes and procedures to be subjected to Government contract quality assurance as well as the specific characteristics of such products, processes, or procedures to be verified (in the absence of identification of specific characteristics by the purchasing office, those established by the contractor will be used to the maximum extent possible);

(iii) Provisions for effective distribution and utilization of the Government's efforts and resources between inspection of products and inspection of the contractor's methods of regulating quality; and provisions for keeping and using records.

(2) Planning to determine the extent of Government contract quality assurance actions shall include as a minimum:

(i) Possible effect of failure on health or safety of personnel, or on associated or related equipment;

(ii) Tactical, strategic, or technical importance;

(iii) Complexity and the need for required reliability;

(iv) Pertinency, completeness, and reliability of the contractor's quality records;

(v) Previous quality history of the contractor; and

(vi) Unit cost.

(b) *Implementation.*

(1) Determination of conformance to contract quality requirements shall be made on the basis of objective evidence of quality. In determining the acceptability of supplies or services, the contract administration office shall make optimum use of quality data generated by contractors. To the extent that contractor quality data are available and reliable, as determined by the contract administration office, such data shall be used to adjust the amount of Government contract quality assurance to a minimum consistent with proper assurance that the supplies or services accepted conform to contract quality requirements.

(2) When the contract requires the contractor to conduct particularly expensive tests involving destruction of supplies, extended periods of time for conducting the tests, or other factors contributing to high-testing costs, the tests shall be coordinated between the contractor and the Government to the maximum extent practicable to avoid the need for later independent Government examination and testing.

(3) The following basic actions shall be taken to determine the contractor's compliance with the contract quality requirements:

(i) Review and evaluation of the contractor's inspection procedures;

(ii) Review and evaluation of the contractor's selection, calibration, maintenance, and use of gauges and measuring and test equipment;

(iii) Review and evaluation of the contractor's quality records; and

(iv) Performance of product verification inspection by the Government.

(4) Because of configuration, innumerable design characteristics, and life and reliability requirements, the quality of complex supplies and equipment cannot be adequately evaluated by inspection only; such supplies and equipment must be produced under regulated conditions if adequate assurance of product quality is to be realized. Systematic control of manufacturing processes by the producer is an essential prerequisite for assuring the quality of such items. It is also essential that the Government verify systematically that such control is, in fact, established and maintained by contractors.

(5) The Government, under the Inspection clause at FAR 52.246–2, reserves the right to charge to the contractor any additional cost of Government inspection and test when supplies are not ready at the time such is requested by the contractor or when reinspection or retest is necessitated by prior rejection. When a contract contains this clause, a record shall be maintained of the additional cost occasioned the Government by the delay, reinspection or retest. Such record shall include a description of any delay, the reasons for any reinspection or retest and a statement of the hours spent by the Government, including wait time, as well as the cost of any applicable travel and transportation. When the Quality Assurance Representative considers that the circumstances warrant the assessment of the additional costs occasioned the Government by the delay, reinspection or retest, he shall forward his

recommendation together with the record of additional costs to the contracting officer. If the contracting officer determines that such additional costs should be charged to the contractor, he shall notify the contractor, in writing, of his determination to exercise the Government's right under the Inspection clause and demand payment of such costs in accordance with the collection procedures established under FAR Subpart 32.6. In arriving at any such recommendation and determination, consideration should be given to the frequency of such delay, reinspection or retest under both current and prior contracts; the cause of such delay, reinspection or retest; and the expense of recovering the additional costs. Charges for such delay, reinspection or retest normally should not be assessed when such delay, reinspection or retest occurs only occasionally, or results from causes beyond the contractor's control, or when the expense of recovery outweighs the costs to be recovered. Costs shall be determined at the standard DoD reimbursable rate in effect at the time of the delay, reinspection or retest.

(c) *Maintenance of government records.* Suitable records shall be maintained by the contract administration office as part of the performance records of contractors in order to reflect:

(1) The nature of all Government contract quality assurance actions, including when appropriate the number of observations made and the number and type of deficiencies;

(2) Decisions regarding the acceptability of the products, the processes, and the requirements, together with action taken to correct deficiencies; and;

(3) Distribution of Government contract quality assurance effort.

(d) *Quality evaluation data.* The contract administration office shall establish a system providing as a minimum for the collection, evaluation and use of quality date developed by the contractor during manufacture and by the Government through contract quality assurance actions and reports by users during initial use phase, where available. The objectives of the system are to:

(1) Provide a foundation of technical actions aimed at maintaining and making needed improvements in the quality characteristics of both current and future products (subject to military requirements and cost considerations);

(2) Upgrade the methods and practices used to assure quality during manufacture, delivery, and use of the item;

(3) Provide a basis for managerial decisions relative to the allocation of Government contract quality assurance resources among different products and activities; and

(4) Determine production source capabilities as measured by product quality.

Subpart 246.6—Material Inspection and Receiving Reports

246.670 General.

Appendix I, Material Inspection and Receiving Report, contains procedures and instructions for the use, preparation, and distribution of the Material Inspection and Receiving Report (MIRR) (DD Forms 250 Series) and suppliers commercial shipping/packing lists used to evidence Government contract quality assurance (see FAR 46.401).

246.671 Policy.

(a) Material Inspection and Receiving Reports (MIRRs) are used to document contract quality assurance, acceptance of supplies and services, and shipments. They are used by receiving, status control, technical, contracting, inventory control, requisitioning, and paying activities. MIRRs shall not be used for:

(1) Shipments by subcontractors where direct shipment is not made to the Government; or

(2) Shipment of contractor inventory.

(b) The provisions of Appendix I are applicable to supplies or services acquired by the Department of Defense (DoD) when the Material Inspection and Receiving Report clause (see 252.246–7000) is included in the contract (see 246.370).

(c) When the Department of Defense provides contract quality assurance and/or acceptance services for non-DoD activities, the MIRR shall be prepared in accordance with Appendix I unless otherwise specified in the contract.

Subpart 246.7—Warranties

246.701 Definitions.

"Acceptance", as used in this subpart and in the warranty clauses at FAR 52.246–17, Warranty of Supplies of a Non-Complex Nature; FAR 52.246–18, Warranty of Supplies of a Complex Nature; FAR 52.246–19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria; and FAR 52.246–20, Warranty of Services; means the execution of an official document (e.g., DD Form 250) by an authorized representative of the Government. The above clauses shall be modified accordingly in DoD contracts.

246.704 Authority for use of warranties.

The Chief of the Purchasing Office must approve use of warranty, except for commercial items (see FAR 246.709), firm fixed price and fixed price with economic price adjustment contracts containing quality assurance provisions that reference MIL–I–45208 or MIL–Q–9858; construction contracts when the warranties contained in federal, military or construction guide specifications applicable to a given construction project are used; and technical data, unless the warranty provides for extended liability (see 246.770).

246.705 Limitations.

(a) The contracting officer shall not include warranties in cost reimbursement contracts except for those warranties contained in the FAR clauses at FAR 52.246–3, Inspection of Supplies—Cost Reimbursement; FAR 52.246–8, Inspection of Research Development—Cost Reimbursement; and at 252.246–7001, Warranty of Technical Data.

246.706 Warranty terms and conditions.

(b)(5) *Markings.* If items delivered under the contract are to be stamped or marked, it shall be done in accordance with MIL Standard 129, "Marking of Shipments".

246.708 Warranties of technical data.

The contracting officer shall consider the factors contained in 246.703 in deciding whether to provide for warranties of technical data and whether there should be an extended liability provision (see 252.246–7001, Warranty of Technical Data, Alternates I and II). Particular emphasis should be placed on whether the extended liability is justified by (a) the likelihood that correction or replacement of the nonconforming data, or a price adjustment in lieu thereof, will not afford adequate protection to the Government, and (b) the effectiveness of the additional remedy as a deterrent against furnishing nonconforming data.

246.770 Special contract clauses.

In accordance with 246.708, the contracting officer may insert a clause substantially the same as the clause at 252.246–7001, Warranty of Technical Data, in solicitations and contracts when a fixed-priced or cost-reimbursement contract is contemplated that will require data to be furnished. When this clause is not used, technical data is warranted under the clauses at FAR 52.246–3, Inspection of Supplies—Cost Reimbursement; FAR 52.246–6, Inspection—Time-and-Material and

Labor Hour; FAR 52.246-8, Inspection of Research and Development—Cost Reimbursement; and FAR 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design criteria.

(a) If extended liability is desired and a firm fixed-price contract is contemplated, the contracting officer may use the clause with its Alternate I.

(b) If extended liability is desired and a fixed-price incentive contract is contemplated, the contracting officer may use the clause with its Alternate II.

PART 247—TRANSPORTATION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 247.1—General

247.103 Transportation documentation and audit regulation (TDA).

(b)(2) Appendix N of the MTMR contains the list of carriers and carrier associations that have entered into agreements with MTMC to provide the required transportation under commercial forms and procedures within CONUS.

247.104-3 Cost-reimbursement contracts.

Section 10721 rates are not applicable on Foreign Military Sales (FMS) shipments. However, on stock fund items from a manufacturer to a depot, Section 10721 rates do apply, unless it is clear that the quantity in a specific transportation unit will be delivered to an FMS purchaser. When it is known that a portion of the material in a transportation unit will be delivered to an FMS purchaser, that portion will be shipped on a separate bill of lading and Section 10721 rates will not apply.

247.104-5 Citations of Government rate tenders.

(a) DoD shippers within CONUS use Section IX, Chapter 214 of the MTMR for instructions pertaining to commercial bills of lading to be converted to GBLs.

247.105 Transportation assistance.

(b)(1) The term transportation assistance/traffic management advice includes any and all transportation factors, such as freight rates (for evaluation of bids or routing purposes), other transportation costs, transit agreements, time in transit, or port capabilities.

(2) MTMC is responsible for the performance of traffic management functions within CONUS, including the direction, control, and supervision of all functions incident to the effective and economical acquisition and use of freight and passenger transportation services from commercial for-hire transportation companies, including rail, highway, air, inland waterway, coastwide and intercoastal carriers. Therefore, requests for assistance, rates or other cost factors pertaining to transportation matters other than those outlined above should be directed to the appropriate military activity, i.e., the Military Airlift Command (MAC), Military Sealift Command (MSC) or Headquarters of the Military Service sponsoring the cargo (see 247.372).

(3) The locations and geographical areas of jurisdiction of each area headquarters of the Military Traffic Management Command (MTMC) are listed in Chapter 108 of the MTMR.

(4) Requests for assistance, rates or other costs applicable to shipments of bulk petroleum via ocean tanker transportation should be obtained from the Military Sealift Command.

(5) Requests for assistance, rates or other costs applicable for supplies to be shipped between points outside of the continental United States, including Alaska and Hawaii, shall be obtained from the Headquarters of the Military Service which sponsors the cargo. Requests should be directed as follows:

(i) *Army:* Deputy Chief of Staff for Logistics, Department of the Army, ATTN: LOG/MM-SSB, Washington, D.C. 20315.

(ii) *Navy:* Navy Supply Systems Command, Code 05, Washington, D.C. 20390.

(iii) *Air Force:* Applicable Overseas Air Force Command.

(iv) *Marine Corps:* Director, Transportation Division, HQ, U.S. Marine Corps, COS, Washington, D.C. 20380.

(6) Requests for rates and related costs for the evaluation of bids or proposals shall include the bid opening or proposal due date and the expected date of initial shipment, if established (see 247.373).

Subpart 247.2—Contracts for Transportation or for Transportation-Related Services

247.270 Stevedoring contracts.

247.270-1 Scope of section.

Acquisition procedures peculiar to stevedoring are set forth in this subsection. This section, however, does not contain or cross reference all provisions of this regulation applying to service contracts which shall be adhered to where applicable.

247.270-2 Definition.

Stevedoring is the loading of cargo from an agreed point of rest on a pier or lighter and its storage aboard a vessel, or the breaking out and discharging of cargo from any space in the vessel to an agreed point of rest dockside or in a lighter.

247.270-3 Method of acquisition.

Acquisition of stevedoring services shall be made by formal advertising pursuant to 10 U.S.C. 2304(a) whenever such method is feasible and practicable under existing conditions and circumstances even though such conditions and circumstances would otherwise satisfy the requirements of FAR Part 15.

247.270-4 Type of contract.

Normally, stevedoring services will be contracted for by means of an indefinite quantity type contract. Contracts for single job stevedoring services may be made when no indefinite quantity contract is available to fulfill the requirements.

247.270-5 Technical provisions.

(a) Since conditions vary at different ports and sometimes within the same port, standard technical provisions covering all phases of stevedoring operations are impractical. If car loading and unloading or other dock and terminal work will be performed under a stevedoring contract, technical provisions appropriate for such dock and terminal work should be added to the contract as separate items of work.

247.270-6 Evaluation of bids and proposals.

(a) *General.* Contractors shall be required to include in their bids and proposals tonnage or commodity rates which apply to the bulk of the cargo worked under normal conditions. Schedules of man-hour rates which apply to services not covered by commodity rates or to work performed under hardship conditions shall also be required.

(b) *Analysis of tonnage or commodity rates.*

(1) The price quoted for handling a ton (weight or measurement) of a specified commodity is a commodity rate. This rate is computed by dividing the hourly stevedoring gang cost by the estimated number of tons of the specified commodity which can be handled in one hour. The gang cost consists of the following:

(i) The total hourly wages paid to the men in the gang in accordance with the collective bargaining agreement between the maritime industry and the unions at a specific port;

(ii) Payments of workmen's compensation, social security taxes, unemployment insurance, taxes, and

liability and property damage insurance; and

(iii) General and administrative expenses and profit.

(2) The direct costs shall be verified by the contracting officer. Since the negotiated stevedoring contract is designed to minimize the contractor's risk, the contractor's gang cost should contain no allowance for contingencies and the profit rate should be less than is granted in the usual fixed-price contract. The estimated number of tons of the specified commodity which can be handled in one hour is based on the contractor's experience and should be compared with the records of experience at the required activity. The evaluation of bids and proposals shall include an extension of the quoted commodity rates against the payable tonnage estimated to be handled for each commodity.

247.270-7 Analysis of man-hour and equipment rental rates.

Man-hour rates shall be established for every category of labor expected to be necessary to perform services required under the contract. The development of man-hour rates follows a pattern similar to the method used in arriving at a gang cost. Specifically, it is composed of the basic wage rate of the man, workmen's compensation, social security taxes, insurance, general and administrative expenses, and profit. The evaluations of bids and proposals shall include an extension of the quoted man-hour rates against the estimated man-hour requirements for each artisan classification. Rates for equipment rental shall be extended against estimated equipment hours.

247.270-8 Award of contract.

The award shall be made to the responsible contractor who offers the lowest overall acceptable bid or proposal after evaluating the total estimated cost of tonnage to be moved at commodity rates and estimated cost at man-hour rates.

247.270-9 Contract clauses.

(a) The contracting officer shall insert the clauses at 252.247-7000, Scope of Contract, and 252.247-7001, Schedule of Rates in solicitations and contracts for stevedoring services, as appropriate to the contracting situation. While these clauses, containing technical provisions, cover most situations adequately, the various provisions may be deleted, added to, modified, or rearranged as necessary to meet local conditions.

(b) The contracting officer shall insert the clause at 252.247-7002, Price Escalation, in formally advertised solicitations and contracts for stevedoring services.

(c) The contracting officer shall insert the clause at 252.247-7003, Revision of Prices, in negotiated solicitations and contracts for stevedoring services.

(d) The contracting officer shall insert the clause at 252.247-7004, Changes, in solicitations and contracts for stevedoring services, in lieu of the clause at FAR 52.243-1—Alternate I.

(e) The contracting officer shall insert the clause at 252.247-7005, Termination, in solicitations or contracts for stevedoring services when it is desired that the contract may be terminated by either party.

(f) The contracting officer shall insert the clause at 252.247-7006, Indefinite Quantities-Fixed Charges, in solicitations and contracts for stevedoring services when the contract will provide for the payment of "Fixed Charges."

(g) The contracting officer shall insert the clause at 252.247-7007, Indefinite Quantities-No Fixed Charges, in solicitations and contracts for stevedoring services when the contract will not provide for the payment of "Fixed Charges."

(h) The contracting officer shall insert the clauses at 252.247-7008, Employees of Contractor; 252.247-7009, Removal of Contractor's Employees; and 252.247-7010, Liability and Insurance, in solicitations and contracts for stevedoring services.

247.271 Contracts for the preparation of personal property for shipment or storage.

247.271-1 Scope of section.

Acquisition procedures peculiar to the preparation of personal property for shipment or storage and for the performance of intra-area movement or intra-city movements are set forth in this section. This section, however, does not contain or cross reference all provisions of this regulation applying to service contracts which shall be adhered to where applicable.

247.271-2 Policy.

(a) *Annual contracts.* Services for the preparation of personal property for shipment or storage and for the performance of intra-area movement normally shall be obtained by requirements contracts awarded as a result of formal advertising. Such contracts shall be on a calendar year basis except for noncontinuous requirements for shorter periods. Award of contracts should be made prior to 1 November of each year.

(b) *Area of performance.* The solicitation shall define clearly each area of performance. One or more areas may be established; but, the number should be held to a minimum consistent with local conditions. Each schedule may provide for the same or different areas of performance. An area shall be determined in accordance with the following general guidelines. It shall be an area using political boundaries, streets, or any other features as lines of demarcation. Determination as to the number of areas thereof shall take into consideration such matters as total volume, size of overall area and isolated areas of high population density which will be serviced. Frequently used terminals will be specifically identified and considered as being included in each area of performance described in the solicitation.

(c) *Use of pre-bid conference.* In accordance with provisions of FAR 14.207, the use of pre-bid conference shall be considered and is encouraged.

(d) *Appropriate post-award orientation of contractors.* Contracting officers will assure that in accordance with FAR 42.503, each successful contractor is provided appropriate post-award orientation.

(e) *Maximum requirements-minimum capability.* The quantities established by the contracting officer in the Estimated Quantities clauses must be realistic. He must be assured that the Government's minimum acceptable daily capability will provide for at least the maximum authorized individual weight allowance as prescribed by the Joint Travel Regulations. Extreme caution must be exercised to ensure that the established minimum acceptable daily capability does not preclude the submission of bids by small but otherwise acceptable bidders.

247.271-3 Procedure.

(a) *Single CONUS military installations or activities assigned total multi-service personal property areas of responsibility.*

(1) When two or more military installations or activities are assigned personal property responsibilities for a given area, one military activity shall contract for the estimated requirements of all activities in a contiguous area. The activity shall be designated by mutual agreement of the installation commanders concerned.

(2) The Commander, Military Traffic Management Command (MTMC), shall designate the contracting activity when local commanders are unable to reach an agreement as to the activity to be designated.

(b) *Additional services and excess requirements.*

(1) *Excess requirements.* Excess requirements are those services which exceed the contractors' capabilities available under contracts. When excess requirements exist, they may be obtained by using small purchase procedures (see FAR Part 13).

(2) *Additional services.* Additional services include, but are not limited to, attempted pickups or deliveries, handling in and out, hoisting or lowering of articles, drayage to or from residences outside area of performance, extra long carry, carrying of pianos or organs, re-weighing, waiting time, special packaging, loading or unloading of railroad cars to include bracing and blocking and unbracing and unblocking as required. At the option of the contracting officer, additional services may be obtained by:

(i) Inclusion as items within the contract; provided, they are not used in the evaluation of bids (see 252.247–7100); and

(ii) Using Small Purchase Procedures (see FAR Part 13). Prices for additional services may be predetermined with the contractor or negotiated on a case-by-case basis.

(3) *Ordering of additional services.* Additional services other than attempted pickup or delivery will be performed by the contractor only upon authorization of the contracting officer regardless of the method of purchase. To the maximum extent possible, additional services required incident to an order should be identified prior to placement of the order or during the premove survey when applicable.

(c) *Contract distribution.* In addition to the distribution requirements of FAR Subpart 4.2, one copy of each contract will be furnished as follows:

(1) CONUS personal property shipping activities forward to the MTMC Personal Property Office having jurisdiction over the respective activity. These offices are: Commander, Military Traffic Management Command, Eastern Area, ATTN: MTE–PP, Bayonne, New Jersey 07002; and Commander, Military Traffic Management Command, Western Area, ATTN: MTW–PP, Oakland, California 94626.

(2) Personal property shipping activities in the European and Pacific areas forward to the appropriate Military Traffic Management Command Field Office. Other overseas personal property shipping activities forward to the Commander, Military Traffic Management Command, ATTN: MT–PPQ, Washington, D.C. 20315.

247.271–4 Solicitation provisions, schedule formats, and contract clauses.

(a) *Solicitation provisions and schedule formats.* Solicitation provisions and schedules may be revised as appropriate if negotiation procedures are employed.

(1) The contracting officer shall insert the provision at 252.247–7100, Evaluation of Bids, in solicitations for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement. When "additional services" items are added to any schedule, the contracting officer shall insert the provision at Alternate I (also see 247.271–3(b)).

(2) The contracting officer shall insert the provision at 252.247–7101, Award, in solicitations for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement.

(3) The contracting officer shall insert the provision at 252.247–7102, Estimated Quantities, in solicitations and resulting contractual instruments for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement.

(4) The contracting officer shall insert the schedules at 252.247–7103 in solicitations and resulting contractual instruments for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement. When a requirement does not exist for an item or sub-item in a schedule, that item or sub-item number, in its proper numerical sequence, will be indicated and the statement "No Requirement" added. Within Schedules I (Outbound) and II (Inbound), item numbers have been reserved to permit the contracting officer to include additional items as may be required by local conditions. Overseas activities, except those in Alaska and Hawaii, may modify the schedules when necessary to conform with local trade practices and country (including political subdivisions thereof) laws and regulations. All generic terminology, schedule and item numbers in proper sequence shall follow those contained in the basic format. All other modifications, other than those authorized herein, of schedule format will be processed as a request for deviation in accordance with Subpart 201.4. When it is determined to be in the best interest of the Government to have both outbound and inbound services within a given area of performance furnished by the same contractor, the contracting officer may modify the schedule format to combine both services in a single schedule; however, items shall follow the same sequential order as in the basic format. Whenever FED SPEC PPP–B–580 containers are specified in a schedule, containers listed in MTMC Pamphlet 55–12, dated 12 October 1978, may be substituted.

(b) *Contract clauses.* The contracting officer shall insert the clauses set forth below in solicitations and contracts for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement (except see 247.271–3(b)). Overseas commands, except those in Alaska and Hawaii, may modify these clauses when necessary to conform with local practices and country (including political subdivisions thereof) laws and regulations.

(1) 252.247–7104, Scope of Contract.

(2) 252.247–7105, Period of Contract. When the period of performance is less than a calendar year, the clause shall be modified to show the appropriate beginning and ending. However, the date for the end of the contract period shall not be later than 31 December of the year in which the contract is awarded.

(3) FAR 52.216–18, Ordering. In addition to the designation of each ordering activity, the individuals authorized to place orders for each activity shall be identified by name or position title. When provisions are made for the placement of oral orders in accordance with FAR 16.506(b), required documentation of such oral orders will be in accordance with Departmental instructions.

(4) 252.247–7106, Ordering Limitation.

(5) 252.247–7107, Contract Areas of Performance.

(6) 252.247–7108, Requirements. The contracting officer shall insert the clause at FAR 52.216–21 except that paragraph (f) of the clause shall be deleted and the paragraph (f) at 252.247–7108 shall be inserted in its place.

(7) 252.247–7109, Facilities. Also see FAR 28.3 regarding insurance policies.

(8) 252.247–7110, Performance.

(9) 252.247–7111, Time Requirements.

(10) 252.247–7112, Demurrage.

(11) 252.247–7113, Vans.

(12) 252.247–7114, Drayage.

(13) 252.247–7115, Liability.

(14) 252.247–7116, Erroneous Shipments.

(15) 252.247–7117, Additional Marking Instructions.

(16) 252.247–7118, Weight Certificates.

(17) 252.247–7119, Report of Lost/Damaged Material.

(18) 252.247–7120, Subcontracting.

(19) 252.247–7121, Additional Services.

Subpart 47.3—Transportation in Supply Contracts

247.301-2 Participation of transportation officers.

See FAR 47.105(b) for information concerning additional traffic management assistance.

247.301-3 Using the Defense Transportation System (DTS).

Contractual documents shall specify that the contractor shall not ship directly to a consolidation or containerization point (CCP) without authorization from the designated contract administration office.

247.305-10 Packing, marking and consignment.

(a)(1) Consignment instructions shall include, as a minimum, the clear text and coded MILSTRIP data as follows:

(i) Department of Defense Activity Address Director (DODAAD), Military Assistance Program Address Director (MAPAD) code (MAPAC and TAC) in accordance with DoD 5105.308–D or H8–1/H8–2 code of consignee and clear text identification of consignee and destination;

(ii) Project code, when applicable;

(iii) Transportation Priority (TP);

(iv) Required Delivery Date (RDD); and

(v) Coded MILSTRIP document number, demand/suffix code, a supplementary address and signal code.

Non-MILSTRIP shipments shall include data similar to (a)(1)(i) through (iv) above and the applicable portion of (a)(1)(v), together with the notation "Non-MILSTRIP".

(2) In addition to the data requirements of (a)(1)(i) through (v) of (1) above, amended shipping instructions shall include the following when appropriate:

(i) Name of the activity originally designated, from which the stated quantities are to be deducted; and

(ii) Any other features of the amended instructions not contained in the basic contract.

(b) For contracts assigned for any contract administration function listed in FAR Subpart 42.3 to any office listed in DoD 4105.59–H, DoD Directory of Contract Administration Services Components, such instructions shall include the modification serial number and, if a new line item is created by the issuance of shipping instructions, the new line item number and the existing line item number if affected.

(c) For diversions of petroleum, oil and lubricant (POL) products overseas to new destinations, instructions issued by an office other than that issuing the contract or delivery order and issued by telephone, teletype or telegram are exempted from the requirement to include the modification serial number and the new line item number in such instructions.

(d) See 247.371.

247.306-2 Lowest overall transportation costs.

(a) See 247.105 for information concerning sources for the lowest available freight and related accessorial and incidental charges.

(b) See 247.372 and 247.373.

247.370 DD Form 1384 (1 Apr 66), Transportation Control and Movement Document.

Reporting procedures and instructions for this form will be in compliance with DoD Regulation 4500.32–R, MILSTAMP.

247.371 The Standard Form 30, Amendment of Solicitation/Modification of Contract.

When complete consignment instructions are not initially known (See 247.305–10) Form 30 will be used to issue or amend consignment instructions and when necessary, to confirm consignment instructions issued telephonically, via teletype or telegram. When issued to confirm delivery instructions the Form 30 will:

(a) Be stamped or marked "CONFIRMATION" in block letters and shall specify in detail those instructions being confirmed.

(b) Contain no changes to the instructions being confirmed. The confirming Standard Form 30 shall be processed as follows:

(1) For contracts assigned for any contract administration function listed in Subpart 242.3 to any office listed in DoD 4105.59–H within five working days;

(2) For diversions of petroleum, oil and lubricants (POL) products overseas to new destinations within 30 days of instructions being confirmed.

(3) Other contracts—

(i) Telephone—within five working days; and

(ii) Teletype or telegraph—consolidate on a monthly basis.

247.372 DD Form 1653 (1 Mar 68), Transportation Data for IFBs and RFPs.

DD Form 1653 which will contain recommendations to the PCO concerning f.o.b. terms best suited for the procurement, and other suggested transportation provisions for inclusion in the IFB/RFP, shall be completed upon request of the PCO by the transportation specialist, for association with the appropriate purchase request. When appropriate, DD Form 1653 will also include information on combined port handling and transportation charges to be included in the IFB/RFP in connection with export shipments.

247.373 DD Form 1654 (1 Mar 68), Evaluation of Transportation Cost Factors.

DD Form 1654 permits procurement personnel to furnish basic information to the transportation office for development of transportation cost factors which shall be used by the procuring contacting officer in the evaluation of f.o.b. origin bids or proposals.

Subpart 247.5—Ocean Transportation by U.S.-Flag Vessels

247.503 Applicability.

(S–70) For the purpose of this subpart, the following geographic areas are established:

(1) *North Atlantic:* Includes Eastern Canada from the United States border to Goose Bay, Labrador; and Narsarssuak, Greenland.

(2) *U.S. East Coast:* Includes the eastern United States from the Canadian border to (and including) Key West, Florida.

(3) *U.S. Gulf:* Extends from (but excluding) Key West, Florida, to the Mexican border.

(4) *Caribbean:* Includes Bermuda; Bahamas; Cuba; Puerto Rico, Haiti; Dominican Republic; Jamaica; Windward and Leeward Islands; Trinidad; the eastern coast of Mexico; the eastern coast of Central America; and the northern coast of South America up to (and including) French Guiana.

(5) *Eastern South America:* Includes the eastern coast of South America from (but excluding) French Guiana to Cape Horn.

(6) *North Europe:* From the northern boundary of Portugal includes northern Atlantic and Biscay ports of Spain; Bordeaux/Hamburg range; Scandinavian and Baltic Sea Ports; England, Wales, Scotland and Ireland; Iceland.

(7) *Mediterranean:* Includes Azores; Canary Islands; Morocco; Spanish Morocco; Mediterranean ports extending from Gibraltar to Suez Canal; ports on Adriatic and Aegean Sea, Sea of Marmora and Black Sea; and Atlantic ports of Portugal and Spain from Gibraltar to the northern boundary of Portugal.

(8) *West Africa:* Includes the western coast of Africa from northern boundary of Rio de Oro to southern boundary of Angola and includes the Cape Verde Islands, Ascension Island and St. Helena.

(9) *South and East Africa:* Includes the southern and eastern coast of Africa and Madagascar from southern boundary of Angola on the west coast and around the south and east coast to Cape Guardafui between the Gulf of Aden and the Indian Ocean.

(10) *South Asia:* Extends from Suez to but excluding New Guinea. Includes the shores of the Red Sea; shore of the Gulf of Aden; the northern shores of the Indian Ocean including extensions such as the Persian Gulf; the East Indies including Borneo, the Celebes, etc., but excluding the Philippines and New Guinea; and the Malay Peninsula excluding Thailand.

(11) *New Guinea-Australia:* Includes Australia; New Guinea; Tasmania; New Zealand and Melanesia (comprising generally the Admiralty Islands, New Ireland, New Britain, the Solomons, New Hebrides and New Caledonia).

(12) *East Asia:* Includes the ports of the mainland and islands of East Asia from and including Thailand to and including Japan; includes the Philippines, Formosa, the Ryukyu Islands and the Bonins.

(13) *Hawaii-Central Pacific:* Hawaiian Islands; Wake/Marcus; and Oceania and Micronesia (comprising generally Palau, Marianas, Carolines, Gilberts, Fijis, Marquesas, Tuamotu Archipelago, etc., but excluding oceanic island possessions of South American countries).

(14) *Alaska and Aleutian Islands:* Includes the western coast of Canada and Alaska (including the Aleutian Islands) south of Cape Prince of Wales.

(15) *U.S. Northwest:* Includes all Oregon and Washington ports.

(16) *U.S. West Coast:* Includes all California.

(17) *Western Mexico and Central America:* Includes the western coast of Mexico and the western coast of Central America.

(18) *Western South America:* Includes the western coast of South America from (and including) the Republic of Colombia to Cape Horn, and the Pacific Islands possessions of South American countries.

(19) *Exempt Areas:*

(i) Alaska north of Cape Prince of Wales.

(ii) Greenland, except Narsarssuak.

(iii) Northern and eastern Canada from Goose Bay, Labrador, to Alaska.

(iv) Ports and facilities under security restrictions in otherwise nonexempt areas.

(v) Antarctica.

(S–71) The procedures set forth at FAR 47.506 and 47.506 below are applicable to all ocean shipments of supplies except:

(1) Shipments in vessels assigned to United States Navy fleets other than the Military Sealift Command;

(2) Shipments which originate or terminate in "exempt areas" as established in (S–70) above;

(3) Shipments which originate and terminate in the same geographic area; provided, however, that supplies of the type described in FAR 47.503(a)(1) shall be transported in United States flag vessels to the extent such vessels are available at fair and reasonable United States-flag rates.

247.506 Procedures.

(S–70) Except for those supplies obtained for nonreimbursable contributions to foreign assistance programs for which the ocean transportation is to be provided by and at the expense of the recipient government, ocean transportation and supplies owned by the Government and in the possession of either a Department, or a contractor, or subcontractor of any tier, of a Department, will be provided by the Military Sealift Command. Upon receipt of advice from the contracting officer, the Military Sealift Command shall take such action as may be necessary and practicable to assure proper utilization of Government vessels and private United States vessels in accordance with this subpart and applicable regulations. The Commander of the Military Sealift Command or his designated representative is authorized to make any determination as to availability of United States-flag vessels required to assure such proper utilization.

247.507 Contract clauses.

(a) Forward the applicable shipping document specified in the clause set forth at FAR 52.247–64 to the Department of the Navy (Commander, Military Sealift Command, ATTN: MT–5), Washington, D.C. 20390, for shipments made under arrangements by the contractor or by a Government agency other than the Military Sealift Command.

(S–70) The contracting officer shall insert the clause at 252.247–7200, Ocean Transportation of Government-Owned Supplies, in solicitations and contracts which may involve ocean transportation or property owned by the Government and in the possession of the contractor or any of his subcontractors, including any contract under which title to property may pass to the Government prior to shipment.

PART 249—TERMINATION OF CONTRACTS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 249.1—General Principles

249.102 Notice of termination.

See 243.301(a)(1)(S–70) for use of the Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, in providing notice of termination and amendment of the termination notice.

249.105 Duties of termination contracting officer after issuance of notice of termination.

249.105–1 Termination status report.

Upon receipt of the termination notice, it is the responsibility of the contract adminisration office to prepare DD Form 1598, Contract Termination Status Report, and transmit two copies to the purchasing office and one copy to the headquarters office to which the contract administration office is directly responsible. In addition, these reports shall be furnished on a quarterly basis for the quarters ending March, June, September, and December, within 30 days after the end of the respective quarter, and upon closing of the termination case. This reporting requirement is assigned Report Control Symbol: DD(I&L)(Q&AR) 1411.

249.108 Settlement of subcontract settlement proposals.

249.108–4 Authorization for subcontract settlements without approval or ratification.

(a)(1)(ii) However, no industrial plant equipment included in such inventory shall be disposed of prior to screening pursuant to FAR 45.6.

(e) However, industrial plant equipment, the cost of which is included in determining the amount of the claim, shall not be disposed of prior to screening pursuant to FAR 45.6.

249.109 Settlement agreements.

249.109–7 Settlement by determination.

See 243.301(a)(S–70) for use of the Standard form 30 (SF 30), Amendment of Solicitation/Modification of Contract, to reflect a determination of the amount due.

249.110 Negotiation memorandum.

(a)(1) *Format for termination contracting officer's settlement memorandum for fixed-price type contract terminated for convenience of the Government.* This memorandum shall be addressed to a reviewing authority or the file as appropriate.

Contractors and subcontractors should be encouraged to use this format appropriately modified to cover subcontract settlements submitted for review and approval.

Part I—General Information

1. *Identification.* (Identify memorandum as to its purpose and content.)

a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.

b. Names and titles of both contractor and Government personnel who participated in the negotiation.

2. *Description of Terminated Contract.*

a. Date of contract and contract number.

b. Type of contract (*e.g.*, fixed price, or fixed price incentive).

c. General description of contract items.

d. Total contract price.

e. Furnish reference to the contract termination clauses (cite FAR/DoD FAR Supplement designation or other special provisions).

3. *Termination Notice.*

a. Reference termination notice and state effective date of termination.

b. Scope and nature of termination (complete or partial), items terminated, unit price and total price of items terminated).

c. State whether termination notice was amended, and if so, explain.

d. Statement whether contractor stopped work on effective termination date. If he did not, furnish details. Also state whether subcontracts were terminated promptly by the contractor.

e. Statement as to diversion of common items and return of goods to suppliers, if any.

f. Furnish information as to contract performance and timely deliveries on part of contractor.

Part II—Contractor's Settlement Proposal

1. *Date and Amount.* Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)

2. *Basis of Claim.* State whether claim was filed on inventory, total cost or other basis. Explain approval granted in connection with submission on other than inventory basis.

3. *Examination of Proposal.* State type of reviews made and by whom (audit, engineering, legal, or other).

Part III—Tabular Summary of Contractor's Claim

Prepare a summary substantially as follows:

(Where field recommendations are to be considered, expand the format to include such recommendations.)

AUDITOR'S RECOMMENDATION

	Contractor's Proposal	Dollars accepted	Cost questioned	Unresolved items	TCO negotiated amount
Item claimed:					
1. Contractor's costs as set forth on Settlement Proposal, Metals, Raw materials, etc.					
Total					
2. Profit					
3. Settlement Expense					
4. Total					
5. Settlement with Subs					
6. Acceptable Finished Product					
7. Gross Total					
8. Disposal and Other Credits					
9. Net Settlement					
10. Partial, Progress & Advance Payments					
11. Net Payment Requested					

Part IV—Discussion of Settlement

1. *Contractor's Cost.*

a. If the settlement was negotiated on the basis of individual items, specify the factors and consideration with respect to each item.

b. In the case of a lump sum settlement, comment on the general basis for and major factors concerning each element of cost and profit included therein.

c. Comment on any important adjustments made to costs claimed or any significant amounts in relation to the total claim.

d. If a partial termination is involved, state whether the contractor has requested an equitable adjustment in the price of the continued portion of the contract.

e. Comment on any unadjusted contractual changes which are included in the settlement.

f. Comment on whether or not a loss would have been incurred and explain adjustment for loss, if any.

g. Furnish other information believed helpful to any reviewing authority in understanding the recommended settlement.

2. *Profit.* Explain the basis and factors considered in arriving at a fair profit.

3. *Settlement Expenses.* Comment on and summarize those expenses not included in audit review.

4. *Subcontractor's Settlements.*

Number of Settlements . . . Net Amount

Approved by Termination Contracting Officer ———

Concluded by contractor under delegation of authority

No Cost Settlements ———

Total ———

5. *Partial Payments.* Furnish total amount of partial payments, if any.

6. *Progress or Advance Payments.* Furnish total of unliquidated amounts, if any.

7. *Claims of the Government Against the Contractor Included in Settlement Agreement Reservations.* List all outstanding claims, if any, which the Government has against the contractor in connection with the terminated contract or terminated portion thereof.

8. *Assignments.* List any assignments, giving name and address of assignee.

9. *Disposal Credits.* Furnish information as to applicable disposal credits and give dollar amounts of all disposal credits.

10. *Plant Clearance.* State whether all plant clearance action has been complete and all inventory sold, retained or otherwise properly disposed of in accordance with applicable plant clearance regulations. Comment on any unusual matters pertaining to plant clearance. Consolidated closing plant clearance report is attached.

11. *Government Property.* State whether all Government property has been accounted for.

12. *Special Tooling.* If involved, furnish comment on disposition.

13. *Summary of Settlement.* Summarize the settlement in tabular form substantially as follows:

TABULAR SUMMARY FOR COMPLETE OR PARTIAL TERMINATION—Continued

	Amount claimed	Allowed amount
Prime Contractor's Charges (before disposal credits)	$	$
Plus: Subcontractor charges (after disposal credits)		
Gross Settlement	$	$
Less: Disposal Credits—Prime	XXXXX	
Net Settlement	$	
Less: Prior Payment Credits (This Settlement)		
Previous Partial Settlements		
Other Credits or Deductions		
Total		$
Net Payment		
Total Contract Price (Complete Termination)		$
CPIT (for partial termination): Less: Total Payments to date		
Net Payment from this Settlement		
Fund Reserved for Reservations		
Final Contract Price (Terminated Portion for partial termination)		$
Reduction in Contract Price		

14. *Exclusions.* Describe any proposed reservation of rights to the Government or to the contractor.

Part V—Recommendation

1. *Recommendation.* Include statement as to the amount of the gross settlement and recommendation that it is fair and reasonable to the Government and the contractor.

2. *Signature.* The Contracting Officer will sign and date the memorandum.

(End of Memorandum)

(2) *Format for termination contracting officer's settlement memorandum for cost-reimbursement type contracts.* This memorandum shall be addressed to a reviewing authority or the file as appropriate. This format may be appropriately modified and used to cover subcontract settlements.

Part I—General Information

1. *Identification.* (Identify memorandum as to its purpose and content.)

a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.

b. Names and titles of contractor and Government personnel who participated in the negotiation.

2. *Description of Terminated Contract.*

a. Date of contract and contract number.

b. Type of contract.

c. General description of contract items.

d. State total contract cost and fee data if complete termination.

e. Furnish reference to the contract termination clauses (cite FAR/DoD FAR Supplement —— or other special provisions).

3. *Termination Notice.*

a. Reference termination notice and state effective date of termination.

b. Scope and nature of termination (complete or partial, items terminated, estimated costs and fee data applicable to items terminated).

c. State whether termination notice was amended, and if so, explain.

d. Explain scope of the settlement as to whether settlement concerns fee only or whether costs are also included.

Part II—Contractor's Settlement Proposal

1. *Date and Amount.* Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)

2. *Examination of Proposal.* State type of reviews made and by whom (audit, engineering, legal, or other).

Part III—Tabular Summary of Settlement

1. *Summary.* Summarize the proposed settlement in tabular form substantially as shown in Attachments A and B. Partial settlements may be summarized on Attachment B.

2. *Comments.* Furnish comments in amplification of tabular summaries.

a. Summary of Final Settlement (see Attachment A).

(1) If the auditor's final report was not available for consideration, state the circumstances.

(2) Explain how the fixed fee was adjusted. Identify basis used, such as percentage of completion. Include a description of factors considered and how they were considered. Include any tabular summaries and breakdowns deemed helpful to an understanding of the process. Factors which may be given consideration are outlined in FAR 49.305.

(3) Briefly identify matters included in liability for property and other charges against the contractor arising from the contract.

(4) Identify reservations included in the settlement that are other than standard reservations required by regulations and which are concerned with pending claims and refunds.

(5) Explain substantial or otherwise important adjustments made in cost figures submitted by the contractor in arriving at the proposed settlement.

(6) If unreimbursed costs were settled on a lump sum basis, explain the general basis for and the major factors considered in arriving at this settlement.

(7) Comment on an unusual item of cost included in the claim and on any phase of cost allocation requiring particular attention and not covered above.

(8) If auditor's recommendations for nonacceptance were not followed, explain briefly the main reasons why such recommendations were not followed.

(9) On items recommended for further consideration by the auditor, explain, in general, the basis for the action taken thereon.

(10) If any cost previously disallowed by a contracting officer is included in the proposed settlement, identify and explain the reason for inclusion of such costs.

(11) Show settlements with subcontractors by breakdown as follows:

	Number of settlements	Total dollar amount
Approved by Termination Contracting Officer.		
Concluded by contractor under delegation of authority.		
No Cost Settlements		
Total		

(12) The following summary will be followed where settlement includes costs and fixed fee in a complete termination.

Gross Settlement	$
Less: Disposal credits	
Net Settlement	
Less: Prior Payments	
Other credits or deductions	
Total	
Net Payment	
Total contract estimated cost plus fixed fee	
Less: Net settlement	
Estimated reserve for exclusions	
Final contract price (Consisting of $— for reimbursement of costs and $— for adjusted fixed fee)	
Reduction in contract price (credit)	

(13) *Plant Clearance.* Indicate dollar value of termination inventory and state whether plant clearance has been completed. Attach consolidated plant clearance report (DD Form 1636, Inventory Disposal Report).

(14) *Government Property.* State whether all Government property has been accounted for.

Part IV—Recommendation

1. *Recommendation.* Set forth the amount of the proposed negotiated settlement and make recommendation that the settlement is fair and reasonable to the Government and the contractor and as such should be approved.

2. *Signature.* The termination contracting officer and negotiator will sign and date the memorandum.

SUMMARY OF SETTLEMENT—COST TYPE CONTRACT [1]

Contract No. ————

Termination No. ————

	Amount claimed	Amount allowed
1. Previous Reimbursed Costs—Prime and Subs	$	$
2. Previous Unreimbursed Costs		
3. Total Cost Settlement	$	$
4. Previous Fees Paid—Prime	$	$
5. Previous Fees Unpaid—Prime		
6. Total Fee Settlement	$	$
7. Gross Settlement		
	$	$
	$	$
Less: Deductions not reflected in Items 1–7		
a. Disposal credits	$	
b. Other charges against contractor arising from contract	$	
8. Net Settlement	$	
Less: Prior Payment credits		
9. Net Payment	$	
10. Recapitulation of previous settlements (insert number of previous partial settlements effected on account of this particular termination):		
Aggregate gross amount of previous settlements	$	
Aggregate net amount of previous partial settlements	$	
Aggregate net payment provided in previous partial settlements	$	
Aggregate amount allowed for prime contractor acquired property taken over by the Government in connection with previous partial settlements.	$	

[1] Use applicable portion for partial settlement.

Attachment A

UNREIMBURSED COSTS SUBMITTED ON DD FORM 547[1]

Costs	Amounts claimed by contractor's proposal	Auditor's Recommendation		TCO's computation
		Cost questioned	Unresolved items	
1. Direct material				
2. Direct labor				
3. Indirect factory expense				
4. Dies, jigs, fixtures and special tools				
5. Other costs				
6. General and administrative expense				
7. Fee				
8. Settlement expense				
9. Settlements with subs				
10. Total costs (items 1–9)				

[1] Expend the format to include recommendations of technical personnel as required.

Attachment B

(End of Memorandum)

Subpart 249.4—Termination for Default

249.402 Termination of fixed-price contracts for default.

249.402-3 Procedure for default.

See 243.301(a)(1)(70) for use of the Standard Form 30 (SF 30), Amendment of Solicitations/Modification of Contract, in providing notice of termination.

Subpart 249.6—Contract Termination Forms and Formats

249.601 Notice of termination for convenience.

See 243.301(a)(1)(70) for use of the Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, in providing notice of termination.

Subpart 249.70—Special Requirements

249.7001 Terminated contracts with Canadian Commercial Corporation.

(a) The termination and settlement of contracts with the Canadian Commercial Corporation shall be effected in accordance with the provisions of (1) the Letter of Agreement between the Department of Defense Production (Canada) and the United States Department of Defense (see Appendix T.201, Canadian Agreements); (2) policies in T.201 and Part 49; and (3) the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada).

(b) The termination proposal of Canadian Commercial Corporation shall be submitted in the form prescribed in FAR 49.602 and shall reflect the amount of settlements with subcontractors. The letter transmitting the proposal shall certify that (1) subcontract settlements with Canadian subcontractors have been approved by the Contracts Settlement Committee of the Department of Defence Production (Canada), if required pursuant to the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada), and (2) that disposition of inventory has been completed. The TCO shall prepare an appropriate settlement agreement pursuant to the provisions of FAR 49.603.

(c) All Canadian subcontracts shall be settled by the Canadian Commercial Corporation pursuant to T.201. Schedules listing serviceable or usable contractor inventory shall be submitted by the Canadian Commerical Corporation to the TCO for screening in accordance with the provisions of FAR 45.6. Transfer instructions resulting from screening procedures shall be submitted to the Canadian Commercial Corporation for action. At the expiration of the screening period, the TCO shall advise the Canadian Commercial Corporation to proceed with disposition of contractor inventory determined to be surplus to the requirements of the Government. The settlement of Canadian subcontracts shall not be subject to approval or ratification by the TCO, except that in cases that result in a proposed negotiated settlement in excess of the total contract price of the prime contract, ratification of the proposed settlement by the United States PCO, evidenced by a contract modification increasing the contract price and obligating required additional funds shall be obtained by the TCO prior to final settlement.

(d) Termination proposals submitted by the United States subcontractors and suppliers normally should be referred by the Canadian Commercial Corporation to the TCO (normally DCASR, Cleveland) for settlement in accordance with this Part and T.201. Upon

completion of all settlement action, the TCO shall advise the Canadian Commercial Corporation of the amount of the net settlement agreed upon, which shall be included in the termination proposal submitted pursuant to (b) above. Execution of a settlement agreement with the subcontractor shall be the responsibility of the Canadian Commercial Corporation.

249.7002 Prior notification of significant contract terminations.

(a) Prior Defense Department clearance of the information release is required before any notice or any information concerning a proposed contract termination involving a reduction in employment of 100 or more contractor employees is released to a contractor. Coordination of the timing of the notice to the contractor and release of information to Congress or the public is the responsibility of each Department through its liaison point designated in (d) below. In a labor surplus area, a lesser number than 100 may be significant, and if so, such information release should be similarly cleared.

(b) The following information will be submitted to the appropriate Departmental liaison point:

(1) Contract number, date, type of contract;

(2) Name of company;

(3) Nature of contract or end item;

(4) The reasons for the termination;

(5) Contract price of items terminated;

(6) Total number of contractor employees, involved including the Government's estimate of the number who may be discharged;

(7) Statement of anticipated impact on the company and the community (identify); identify area labor category; whether contractor is large or small business, and include any known impact on hardcore disadvantage employment programs;

(8) Total number of subcontractors involved as well as the impact in this area, if known; and

(9) Draft (unclassified) of suggested press release of information.

(c) Clearance to release the information will be requested as soon as possible after the decision has been made to terminate a contract. Pending receipt of clearance to release, information pertinent to the termination will require "For Official Use Only" handling unless a security clearance is required.

(d) The Departmental liaison points for prior clearance to release information on significant terminations are as follows:

Army—OSA, OCLL (SACLL), ASA (I&L) (copy)
Navy—Chief of Legislative Affairs (OLA-N)
Air Force—HQ USAF (AF/RDC)
Defense Logistics Agency—DLA-PC
Defense Communications Agency—Contract Management Division (Code 260)
Defense Nuclear Agency—Chief, Office of Procurement, OATR
Defense Mapping Agency—DMA/LO

(e) Liaison offices of Departments will act promptly on the request for clearance to release information (not later than two working days after receipt) to avoid the accrual of termination costs.

(f) This reporting requirement is assigned Report Control Symbol: DD(I&L) (AR) 1412.

249.7003 Special termination costs.

(a) The clause at 252.249-7000, Special Termination Costs, is authorized for use in an incrementally funded contract when:

(1) The contract term is two years or more;

(2) The contract is estimated to require total RDT&E financing in excess of $100 million;

(3) Adequate resources are available within existing appropriated amounts to cover the contingent reserved liability for special termination costs in the event of contract termination; and

(4) The use of the clause in the contract is approved by the Secretary of the Department concerned or his designee. The clause may be used in circumstances other than those in (a)(1) and (2) above when approved by the Secretary of the Department concerned or his designee. Any addition to the categories of special termination costs listed in paragraph (a)(1) through (4) of the clause in 252.249-7000 shall be processed in accordance with 201.404.

(b) The contractor and the contracting officer shall agree upon an amount that represents their best estimate of the total special termination costs to which the contractor would be entitled in the event of termination of the contract. Such amount shall be inserted in the clause.

(c) A provision allowing for negotiated adjustments of the amount reserved for special termination costs may be inserted as paragraph (d) of the clause. Contract provisions for periodic adjustments by mutual agreement of the parties may be established based on, among other things, (1) set time periods within the contract, (2) the Government's incremental assignment of funds to the contract, or (3) the time when certain performance milestones are accomplished by the contractor. Provisions for such adjustments may be considered desirable in contracts containing unusually long performance periods, or in contracts where the contractor's cost risk associated with the contingent special termination costs, in the event of Government termination, fluctuates extensively over the period of the contract, depending on the scope of work to be performed during a certain period of the contract, or the amount of funds to be assigned to the contract during any one increment.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

250.001 Definitions.

"Agency head," as used within this part by the Department of Defense, does not include heads of defense agencies.

"Secretarial level," as used within this part by the Department of Defense, means an official at or above the level of an Assistant Secretary (or his Deputy) of Defense or of the Army, Navy, or Air Force, and a Contract Adjustment Board established by the Secretary concerned.

Subpart 250.1—General

50.103 Deviations.

For purposes of this section, "defense agencies" include the Departments of the Army, Navy, and Air Force, as well as agencies within the Office of the Secretary of Defense.

250.104 Reports.

Departmental and agency supplements will designate officials responsible for preparing and processing the reports required by this section.

250.105 Records.

(S-70) *Record of requests and dispositions.*

(1) *General.* In order that adequate records of actions by each Department pursuant to the Act may be maintained, 250.303(S-71) requires the preparation of a preliminary record when each request is filed for an adjustment under FAR Subpart 50.3, and 250.306(S-70) requires the preparation of a final record indicating the disposition of the request. This paragraph describes in detail the information which should be included in these records. A suggested format for the records is shown in 250.105(S-70)(4). It is designed so that the information required for the preliminary and final record with respect to each request may be combined on the same form. Departmental and agency supplements will designate the offices or officials responsible for preparing, submitting, receiving, and maintaining all records required by this part. Records required

by this supplement shall be maintained in the Departments of the Army, Navy, and Air Force by their respective Contract Adjustment Boards and in the Headquarters of the defense agencies.

(2) *Preliminary records.* Each preliminary record prepared pursuant to 250.303(S–71) should contain the following information:

(i) *Type of record.* The fact that the record is a preliminary record should be indicated.

(ii) *Date of contractor's request.* The date on the face of the contractor's request for adjustment should be inserted.

(iii) *Date received by government.* The date the request for adjustment is received in any Government office to which the contractor may properly submit his request should be inserted.

(iv) *Name and address of contractor.* The full and correct name and address of the contractor filing the request should be inserted. If the contractor is a small business, this fact should be indicated.

(v) *Name and address of the contractor's representative, if any.* If a particular named person (employee, attorney, etc.) is the point of contact with the contractor, his full name and address should be inserted.

(vi) *Cognizant contracting officer or office.* The contracting officer administering the contract for which an adjustment was requested or, if none, the contracting officer or office cognizant of the request should be inserted.

(vii) *Procuring activity.* The name of the procuring activity with jurisdiction over the contracting officer or official referred to in (6) above, should be inserted.

(viii) *Property or service involved.* A brief description of the item being procured or services being rendered should be inserted.

(ix) *Extent of performance as of date of request.* A brief indication, as of the date of the request, of the degree of completion of the contract should be inserted; for example, 50 percent completed, or performance not yet begun; if work is completed, indicate date of completion and whether final payment has been made.

(x) *Contract number and date.* The identifying numbers and dates of the contracts for which an adjustment is requested should be inserted. If there is no contract, then the word "None" should be inserted. If the question arises under a letter of intent, then that fact and the date of such letter should be inserted.

(xi) *Advertised or negotiated.* Whether the contract was entered into pursuant to advertising or negotiation should be indicated. If negotiated, the specific authority should be indicated; example: "Neg. — 10 U.S.C. 2304(a)(14)".

(xii) *Type of contract.* The type of contract involved (see FAR Part 16) should be inserted; e.g., FFP (firm fixed-price), FPI (fixed-price incentive), CPFF (cost-plus-fixed-fee), or T&M (time and materials).

(xiii) *Category of case.* Whether the request involves an amendment without consideration, a mistake, or an informal commitment should be indicated. If the case involves two or more categories, each should be indicated; however, the most significant category involved should be listed first.

(xiv) *Amount or description of request.* If the request is expressed in dollars, as a change in price, then that fact should be inserted as follows: "$5,250 increase" or "$5,250 decrease." If the request seeks an adjustment which cannot be expressed in monetary terms, then some brief description of it should be inserted, such as "Cancellation" or "Modification of Terms." The fact that an adjustment is not easily expressed in dollar terms should not deter an estimate if such an estimate is made by the contractor in his request.

(xv) *Date of this record.* The date on which the record is signed and forwarded should be inserted.

(xvi) *Signature.* The record should be signed by an authorized representative of the reporting authority.

(3) *Final records.* Each final record prepared pursuant to 250.306 (S–70) should contain the information listed in (S–70)(2) (ii) through (xvi) above, and, in addition, should contain the following information:

(i) *Type of record.* The fact that the record is a final record should be indicated.

(ii) *Action below secretarial level.* The disposition of the case, the office which took action, and the date thereof should be inserted. The disposition should be indicated as: "withdrawn," "denied," "approved," or "forwarded." If the request was approved in whole or in part, the dollar amount or nature of the action should be indicated in a manner similar to that described in 250.105 (S–70)(2)(xiv). The date should correspond with the date of the Memorandum of Decision or of the letter forwarding the request to the Board.

(iii) *Action by contract adjustment board and date.* The disposition of the case by the Contract Adjustment Board and the date thereof should be indicated in a manner similar to that described in (S–70)(2) above.

(iv) *Implementation and date.* The contractual action or correspondence which implements the decision of the approving authority or of the Board should be inserted as follows: "amendment," "new contract," or "letter of denial."

(4) *Sample format.* The preliminary and final records described in (S–70) (2) and (3) above may be prepared in a format substantially as follows:

☐ PRELIMINARY	RECORD OF	FINAL ☐
DATE OF REQUEST	REQUEST FOR ADJUSTMENT PUBLIC LAW 85–804	DATE RECEIVED BY GOVERNMENT
CONTRACTOR'S NAME AND ADDRESS		☐ SMALL BUSINESS
NAME AND ADDRESS OF CONTRACTOR'S REPRESENTATIVE, IF ANY		
COGNIZANT CONTRACTING OFFICER OR OFFICE	PROCURING ACTIVITY	
PROPERTY OR SERVICE INVOLVED	EXTENT OF PERFORMANCE AS OF DATE OF REQUEST	
CONTRACT NUMBER / DATE	ADVERTISED OR NEGOTIATED / TYPE OF CONTRACT	
CATEGORY OF CASE	AMOUNT OR DESCRIPTION OF REQUEST	
ACTION BELOW SECRETARIAL LEVEL		DATE
ACTION BY CAB		DATE
IMPLEMENTATION		DATE
ADDITIONAL DATA OR REMARKS		
DATE THIS RECORD SIGNED	SIGNATURE	

Subpart 250.2—Delegation of and Limitations on Exercise of Authority

250.201 Delegation of authority.

(b) Authority to approve actions under FAR Subpart 50.4—Residual Powers, obligating $50,000 or less may not be delegated below the level of the Head of the Contracting Activity (but see FAR 50.201(d) for indemnification authority).

(S–70) *Authority delegated:*

(1) *Departments of the Army, Navy, and the Air Force.* Delegations and levels of authority for actions by the Departments of the Army, Navy, and Air Force under the Act and the Executive Order are contained in their departmental supplements.

(2) *Defense agencies.* Subject to the restrictions on delegations of authority in FAR 50.201 and 50.201 above, the Directors of the Defense Logistics Agency, the Defense Communications Agency, the Defense Nuclear Agency, the National Security Agency, and the Defense Mapping Agency may exercise and further delegate authority under the

Act and the Executive Order. Levels of such authority are contained in defense agency supplements. Recommendations for approval of actions in excess of the authority delegated by this paragraph will be submitted to the Under Secretary of Defense, Research and Engineering.

(3) *Approvals.* Authorities may be delegated and redelegated only with the written approval of the Secretary of Director concerned.

250.202 Contract Adjustment Boards.

(S–70) *Organization and authority.*

(1) *Organization.* A Contract Adjustment Board has been established within the Departments of the Army, Navy, and Air Force by the Secretary. Such Boards consist of a Chairman and not less than two nor more than six other members, one of whom may be designated the Vice-Chairman. A majority constitutes a quorum for any purpose and the concurring vote of a majority of the total Board membership constitutes an action of the Board. Alternates may be appointed to act in the absence of members.

(2) *Authority.* The Contract Adjustment Board in each Department has been given authority to approve, authorize and direct appropriate action under the standards set forth in FAR Subpart 50.3 in any case submitted to it, by an official designated to submit cases, and to make all determinations and findings which are necessary or appropriate. When deemed necessary to the exercise of the foregoing authority, such Boards may authorize any appropriate action not precluded by FAR 50.203, including the modification or release of any obligations.

Subpart 250.3—Contract Adjustments

250.303 Contractor requests.

(S–70) *Filing of requests.* If a request is filed with an administrative contracting officer, it shall be forwarded promptly to the procuring contracting officer for appropriate action. If such filing is impracticable, requests will be deemed to be properly filed if filed with the following addresses for forwarding to the cognizant contracting officer:

(1) *In the Army:* The Head of Contracting Activity listed in Part 202 appearing to be cognizant of the contract or commitment involved;

(2) *In the Navy:* The Head of Contracting Activity listed in Part 202 appearing to be cognizant of the contract or commitment involved;

(3) *In the Air Force:* Commander Air Force Logistics Command, ATTN: PPC, Wright-Patterson Air Force Base, Ohio;

(4) *In the Defense Logistics Agency:* Commanders of the Defense Supply Center concerned;

(5) *In the Defense Communications Agency:* Director, DCA, ATTN: Code 260;

(6) *In the Defense Nuclear Agency:* Director, DNA, ATTN: OAPR;

(7) *In the National Security Agency:* Director, NSA; and

(8) *In the Defense Mapping Agency:* Director, DMA, ATTN: LO.

(S–71) *Record of request.* At the time the request is filed, a preliminary record as described in 250.105(S–70)(2) shall be prepared by, and forwarded within 30 days after the close of the month in which prepared, to those officials designated pursuant to 250.105(S–70)(1).

250.305 Processing cases.

(S–70) *Processing cases by Contract Adjustment Board.*

(1) *Statement to Board.* Cases to be submitted for consideration of the cognizant Contract Adjustment Board shall be forwarded by means of a letter signed by the officer or official responsible for the case. The letter shall state:

(i) The nature of the case;

(ii) The basis for the Board's authority to act;

(iii) The findings of fact essential to the case (see FAR 50.304) arranged chronologically with cross references to supporting enclosures;

(iv) The conclusions drawn from applying the standards for deciding cases, as set forth in FAR subpart 50.3, to the findings of fact; and

(v) The disposition recommended, and, if contractual action is recommended, the opinion of the signer that such action will facilitate the national defense.

The letter shall enclose copies of the contractor's request, the evidentiary materials, and all endorsements, reports and comments of cognizant Government officials. The letter and enclosure shall be in duplicate.

(2) *Amendments without consideration under FAR 50.302–1(a).* A letter to the Board recommending an amendment without consideration under the standards of FAR 50.302–1(a) should, in addition to the requirements of paragraph (a) above, ordinarily cover, with supporting data as appropriate, the findings and conclusions with respect to all of the items set forth in FAR 50.304(b) and, in addition, findings as to:

(i) The contractor's performance record, including the quality of product, rate of production and promptness of deliveries;

(ii) The importance to the Government, particularly to the operating forces, of the performance of the contract by the contractors and the importance of the contractor to the national defense;

(iii) Forecast of future contracts with the contractor; and

(iv) Other available sources of supply for the supplies or services covered by the contract, and the time and cost of having contract performance completed by such other sources.

(3) *Forwarding to Boards.* Cases to be submitted to the Boards will be forwarded through channels in accordance with departmental supplements.

(4) *Processing by Boards.* Upon receipt of cases, the Contract Adjustment Boards, each in accord with its own procedures, shall render decisions as expeditiously as practicable. The chairman shall sign a Memorandum of Decision disposing of the case, which shall be dated and shall contain the information required by FAR 50.306. The Memorandum of Decision shall omit any information classified "Confidential" or higher. The Board's decision will be communicated to the appropriate officer or official for implementing action.

250.306 Disposition.

(S–70) Record of disposition.

(1) In each case when the request for relief is denied or approved below the Secretarial level, each of the following documents shall be submitted to the office designated pursuant to 250.105–(S–70)(1) within 30 days after the close of the month during which it is executed:

(i) Two copies of the Memorandum of Decision;

(ii) One copy of the contractual document implementing any decision approving contractual action (not to be submitted in the case of the Army); and

(iii) One copy of a final record, as prescribed in 250.105–(S–70)(3) prepared by the office designated pursuant to 250.105–(S–70)(1).

(2) When a Contract Adjustment Board decision is implemented, the documents listed in (S–70)(1) (ii) and (iii) above shall be prepared and submitted to the Board by the activity which forwarded the case to the Board.

Subpart 250.4—Residual Powers

250.403–70 Indemnification under contract involving both research and development and work that cannot be so classified.

Certain contracts require a substantial amount of research and developmental work as well as a substantial amount of work that cannot be so classified. When indemnification is to be provided for

such contracts, an appropriate clause, utilizing the authority of both 10 U.S.C. 2354 and Pub. L. 85–804 may be used. In such cases, the use of Pub. L. 85–804 to provide indemnification is limited to work which cannot be indemnified pursuant to 10 U.S.C. 2354 and is subject to compliance with FAR subpart 50.4. Indemnification pursuant to the authority of 10 U.S.C. 2354 is covered by 235.070.

Subpart 250.70—Act and Executive Order

250.7000 Scope.

This subpart sets forth in full the Act and Executive Order.

250.7001 Act of August 28, 1958, as amended.

(Public Law 85–804); 72 Stat. 972, as amended by 87 Stat. 605 (1973); 50 U.S.C. 1431–1435, as amended:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President may authorize any department or agency of the Government which exercises functions in connection with the national defense, acting in accordance with regulations as prescribed by the President for the protection of the Government, to enter into contracts or into amendments or modifications of contracts heretofore or hereafter made and to make advance payments thereon, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he deems that such action would facilitate the national defense. The authority conferred by this Section shall not be utilized to obligate the United States in an amount in excess of $50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or an assistant head or his deputy, of such department or agency, or by a Contract Adjustment Board established therein. The authority conferred by this Section may not be utilized to obligate the United States in any amount in excess of $25,000,000 unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed obligation and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60 day period, a resolution disapproving such obligation. For purposes of this Section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60 day period.

Sec. 2. Nothing in this Act shall be construed to constitute authorization hereunder for—

(a) the use of the cost-plus-a-percentage-of-cost system of contracting;

(b) any contract in violation of existing law relating to limitation of profits;

(c) the negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;

(d) the waiver of any bid, payment, performance, or other bond required by law;

(e) the amendment of a contract negotiated under section 2304(a)(15), title 10, United States Code, or under section 302(c)(13) of the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 377, 394), to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder, or;

(f) the formalization of an informal commitment, unless it is found that at the time the commitment was made it was impracticable to use normal procurement procedures.

Sec. 3(a) All actions under the authority of this Act shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be detrimental to the national security.

(b) All contracts entered into, amended, or modified pursuant to authority contained in this Act shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of and involving transactions related to such contracts or subcontracts.

Sec. 4(a) Every department and agency acting under authority of this Act shall, by March 15 of each year, report to Congress all such actions taken by that department or agency during the preceding calendar year. With respect to actions which involve actual or potential cost to the United States in excess of $50,000, the report shall—

(1) name the contractor;

(2) state the actual costs or estimated potential cost involved;

(3) describe the property or services involved; and

(4) state further the circumstances justifying the action taken. With respect to (1), (2), (3), and (4), above, and under regulations prescribed by the President, there may be omitted any information the disclosure of which would be detrimental to the national security.

(b) The Clerk of the House and the Secretary of the Senate shall cause to be published in the Congressional Record all reports submitted pursuant to this section.

Sec. 5. This Act shall be effective only during a national emergency declared by Congress or the President and for six months after the termination thereof or until such earlier time as Congress, by concurrent resolution, may designate."

250.7002 Executive Order 10789 of November 14, 1958.

(23 FR 8897) as amended by Executive Order 11051, dated 27 September 1962, Executive Order 11382 of November 28, 1967, and Executive Order 11610 of July 22, 1971:

"AUTHORIZING AGENCIES OF THE GOVERNMENT TO EXERCISE CERTAIN CONTRACTING AUTHORITY IN CONNECTION WITH NATIONAL DEFENSE FUNCTIONS AND PRESCRIBING REGULATIONS GOVERNING THE EXERCISE OF SUCH AUTHORITY.

By virtue of the authority vested in me by the act of August 28, 1958, 72 Stat. 972, hereinafter called the act, and as President of the United States, and in view of the existing national emergency declared by Proclamation No. 2914 of December 16, 1950, and deeming that such action will facilitate the national defense, it is hereby ordered as follows:

Part 1—Department of Defense

Under such regulations, which shall be uniform to the extent practicable, as may be prescribed or approved by the Secretary of Defense:

1. The Department of Defense is authorized, within the limits of the amounts appropriated and the contract authorization provided therefor, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made, and to make advance payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts, whenever, in the judgment of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the duly authorized representative of any such Secretary, the national defense will be facilitated thereby.

(a) The limitation in paragraph 1 to amounts appropriated and the contract authorization provided therefor shall not apply to contractual provisions which provide that the United States will hold harmless and indemnify the contractor against any of the claims or losses set forth in subparagraph (b), whether resulting from the negligence or wrongful act or omission of the contractor or otherwise (except as provided in subparagraph (b)(2)). This exception from the limitations of paragraph 1 shall apply only to claims or losses arising out of or resulting from risks that the contract defines as unusually hazardous or nuclear in nature. Such a contractual provision shall be approved in advance by an official at a level not below that of the Secretary of a military department and may require each contractor so indemnified to provide and maintain financial protection of such type and in such amounts as is determined by the approving official to be appropriate under the circumstances. In deciding whether to approve the use of an indemnification provision and in determining the amount of financial protection to be provided and maintained by the indemnified contractor, the appropriate official shall take into account such factors as the availability, cost and terms of private insurance, self-insurance, other proof of financial responsibility and workmen's compensation insurance. Such approval and determination, as required by the preceding two sentences, shall be final.

(b)(1) Subparagraph (a) shall apply to claims (including reasonable expenses of litigation and settlement) or losses, not compensated by insurance or otherwise, of the following types:

(A) Claims by third persons, including employees of the contractor, for death, personal injury, or loss of, damage to, or loss of use of property;

(B) Loss of, damage to, or loss of use of property of the contrtactor;

(C) Loss of, damage to, or loss of use of property of the Government;

(D) Claims arising (i) from indemnification agreements between the contractor and a subcontractor or subcontractors, or (ii) from such arrangements and further indemnification arrangements between the subcontractor at any tier, *provided* that all such arrangements were entered into pursuant to regulations prescribed or approved by the Secretaries of Defense, the Army, the Navy, or the Air Force.

(2) Indemnification and hold harmless agreements entered into pursuant to this subsection, whether between the United States and a contractor, or between a contractor and a subcontractor, or between two subcontractors, shall not cover claims or losses caused by the willful misconduct or lact of good faith on the part of any of the contractor's or subcontractor's directors or officers or principal officials which are (i) claims by the United States (other than those arising through subrogation) against the contractor or subcontractor, or (ii) losses affecting the property of such contractor or subcontractor. Regulations to be prescribed or approved by the Secretaries of Defense, the Army, the Navy or the Air Force shall define the scope of the term *"principal officials"*.

(3) The United States may discharge its obligation under a provision authorized by subparagraph (a) by making payments directly to subcontractors or to third persons to whom a contractor or subcontractor may be liable.

(c) A contractual provision made under subparagraph (a) that provides for indemnification must also provide for—

(1) notice to the United States of any claim or action against, or of any loss by, the contractor or subcontractor which is covered by such contractual provision; and

(2) control or assistance by the United States, at its election, in the settlement or defense of any such claim or action.

2. The Secretaries of Defense, the Army, the Navy, and the Air Force, respectively, may exercise the authority herein conferred and, in their discretion and by their direction, may delegate such authority to any other military or civilian officers or officials of their respective departments, and may confer upon any such military or civilian officers or officials the power to make further delegations of such authority within their respective commands or organizations: *Provided*, That the authority herein conferred shall not be utilized to obligate the United States in an amount in excess of $50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or by a departmental Contract Adjustment Board.

3. The contracts hereby authorized to be made shall include agreements of all kinds (whether in the form of letters of intent, purchase orders, or otherwise) for all types and kinds of property or services necessary, appropriate, or convenient for the national defense, or for the invention, development, or production of, or research concerning, any such property or services, including, but not limited to, aircraft, missiles, buildings, vessels, arms, armament, equipment or supplies of any kind, or any portion thereof, including plans, spare parts and equipment therefor, materials, supplies, facilities, utilities, machinery, machine tools, and any other equipment without any restriction of any kind as to type, character, location, or form.

4. The Department of Defense may by agreement modify or amend or settle claims under contracts heretofore or hereafter made, may make advance payments upon such contracts of any portion of the contract price, and may enter into agreements with contractors or obligors modifying or releasing accrued obligations of any sort, including accrued liquidated damages or liability under surety or other bonds. Amendments or modifications of contracts may be with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished hereunder, irrespective of the time or circumstances of the making, or the form, of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof.

5. Proper records of all actions taken under the authority of the act shall be maintained within the Department of Defense. The Secretaries of Defense, the Army, the Navy, and the Air Force shall make such records available for public inspection except to the extent that they, or their duly authorized representatives, may respectively deem the disclosure of information therein to be detrimental to the national security.

6. The Department of Defense shall, by March 15 of each year, report to the congress all actions taken within that department under the authority of the act during the preceding calendar year. With respect to actions which involve actual or potential cost to the United States in excess of $50,000, the report shall (except as the disclosure of such information may be deemed to be detrimental to the national security)—

(a) name the contractor;

(b) state the actual cost or estimated cost involved;

(c) describe the property or services involved; and

(d) state further the circumstances justifying the action taken.

7. There shall be no discrimination in any act performed hereunder against any person on the ground of race, religion, color, or national origin, and all contracts entered into, amended, or modified hereunder shall contain such nondiscrimination provision as otherwise may be required by statute or Executive order.

8. No claim against the United States arising under any purchase or contract made under the authority of the act and this order shall be assigned except in accordance with the Assignment of Claims Act of 1940 (54 Stat. 1029), as amended.

9. Advance payments shall be made hereunder only upon obtaining adequate security.

10. Every contract entered into, amended, or modified pursuant to this order shall contain a warranty by the contractor in substantially the following terms:

"The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona-fide employees or bona-fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the government shall have the right to annul this contract without liablity or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee."

11. Except as provided in the act of September 1966 (80 Stat. 850), contracts entered into, amended, or modified pursuant to authority of this order shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of, and involving transactions related to, such contracts or subcontracts. Before exercising the authority provided in the Act of September 27, 1966, (80 Stat. 850), the Secretaries of Defense, the Army, the Navy, or the Air Force, or their designees, shall first determine that all reasonable efforts have been made to include the clause prescribed above and that alternate sources of supply are not reasonably available.

12. Nothing herein contained shall be construed to constitute authorization hereunder for—

(a) the use of the cost-plus-a-percentage-of-cost system of contracting;

(b) any contract in violation of existing law relating to limitation of profits of fees;

(c) the negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;

(d) the waiver of any bid, payment, performance, or other bond required by law;

(e) the amendment of a contract negotiated under section 2304(a)(15) of title 10 of the United States Code to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or

(f) the formalization of an informal commitment, unless the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the duly authorized representative of any such Secretary, finds that at the time the commitment was made it was impracticable to use normal procurement procedures.

13. The provisions of the Walsh-Healey Act (49 Stat. 2036), as amended, the Davis-Bacon Act (49 Stat. 1101), as amended, the Copeland Act (48 Stat. 948), as amended, and the Eight Hour Law (37 Stat. 137), as amended, if otherwise applicable, shall apply to contracts made and performed under the authority of this order.

14. Nothing herein contained shall prejudice anything heretofore done under Executive Order No. 9001 of December 27, 1941, or Executive Order No. 10210 of February 2, 1951, or any amendments or extensions thereof, or the continuance in force of an action heretofore taken under those orders or any amendments or extensions thereof.

15. Nothing herein contained shall prejudice any other authority which the Department of Defense may have to enter into, amend, or modify contracts, and to make advance payments.

Part II— Extension of Provisions of Paragraphs 1–14

21. Subject to the limitations and regulations contained in paragraphs 1 to 14, inclusive, hereof, and under any regulations prescribed by him in pursuance of the provisions of paragraph 22 hereof, the head of each of the following named agencies is authorized to perform or exercise as to his agency, independently of any Secretary referred to in the said paragraphs 1 to 14, all the functions and authority vested by those paragraphs in the Secretaries mentioned therein:

Department of the Treasury
Department of the Interior
Department of Agriculture
Department of Commerce
Department of Transportation
Atomic Energy Commission
General Services Administration
National Aeronautics and Space Administration
Tennessee Valley Authority
Government Printing Office

22. The head of each agency named in paragraph 21 hereof is authorized to prescribe regulations governing the carrying out of the functions and authority vested with respect to this agency by the provisions of paragraph 21 hereof. Such regulations shall, to the extent practicable, be uniform with the regulations prescribed or approved by the Secretary of Defense under the provisions of Part 1 of this order.

23. Nothing contained herein shall prejudice any other authority which any agency named in paragraph 21 hereof may have to enter into, amend, or modify contracts and to make advance payments.

24. Nothing contained in this Part shall constitute authorization thereunder for the amendment of a contract negotiated under section 302(c)(14) of the Federal Property and Administrative Services Act of 1949 (63 Stat. 394), as amended by section 2(b) of the act of August 28, 1958, 72 Stat. 966, to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder.

DWIGHT D. EISENHOWER"

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 251.1—Contractor Use of Government Supply Sources

251.100 Scope of subpart.

FAR Subpart 251.1 and this Subpart are applicable to the acquisition of supplies to be delivered in the United States, its possessions, or Puerto Rico. (The use of GSA sources by grantees is not authorized.)

251.102 Authorization to use Government supply sources.

(e) The following is the form of authorization to the contractor:

Subject: Authorization to Purchase from Government Supply Sources.
(Contractor's Name) ———
(Address) ———

1. You are hereby authorized to utilize Government sources in performing Contract No. ——— for the Department of ——— as follows:

(Insert applicable purchasing authority given to the contractor.)

2.a. Purchase Orders Under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules. Orders will be placed in accordance with the terms and conditions of the attached Schedule(s) and this authorization. A copy of the authorization shall be attached to the order (unless a copy was previously furnished to the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contractor) and the order shall contain the following statement:

This order is placed under written authorization from ——— dated ——— (*———). In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contract, the latter will govern.

b. Requisitioning from GSA or DoD. Orders will be placed in accordance with the Federal Standard Requisitioning and Issue Procedures (FEDSTRIP) or Military Standard Requisitioning and Issue Procedures (MILSTRIP), as appropriate, and this authorization. Orders shall include the activity address code cited in paragraph 5 below. Bills will not be issued by Government supply sources until after the supplies have been shipped. Payment shall be made promptly upon receipt of billings.

3. Insert other provisions, as necessary.

4. This authority hereby granted is not transferable or assignable.

5. The DoD Activity Address Directory (DODAAD) (DLAH 4140.1, AR 725–60–1, MCO P4420.2H, CG 364, AFM 75–6, NAVSUP PUB 5544)** Activity Address Code to which this Authorization applies is ———.

6. This authorization expires ———.
(Contracting Officer) ———

(e)(3)(ii) In addition to the procedure and form authorized by FAR 251.102(e)(3)(ii), contractors are also authorized to use DD Form 1155 when requisitioning from the VA.

251.103 Ordering from government supply sources.

(b) "Contracting agency" as used in FAR 251.103(b) shall be construed to mean the contracting officer.

251.104 Furnishing assistance to contractors.

(b)(2) GSA Form 457 may be obtained from the GSA regional office serving the area in which the requesting activity is located.

251.106 Title.

(b) With DoD, title to property having an acquisition cost of $5,000 or less shall vest in the contractor under the circumstances prescribed in FAR 251.106(b).

251.107 Contract clause.

The contracting officer shall insert the clause at 252.251–7000, Ordering from Government Supply Sources, in solicitations and contracts which include the clause at FAR 251.251–1.

Subpart 251.2—Contractor Use of Interagency Motor Pool Vehicles

251.202 Authorization.

(a)(2) See FAR 28.307–2(c), and FAR 28.308 and 28.001 for policy on contractor insurance and self-insurance, respectively, and FAR 31.205–19 for allowability of insurance costs.

(5) Paragraph (e) of the clause at 252.251–7001 satisfies the requirement of FAR 51.202(a)(5) for the written statement required by that paragraph.

251.205 Contract clause.

The contracting officer shall insert the clause at 252.251–7001, Use of Interagency Motor Pool Vehicles and Related Services, in solicitations and contracts which include the clause at FAR 52.251–2.

* Insert "a copy of which is attached," or "a copy of which you have on file," or other suitable language, as appropriate.

** The sponsoring service assumes responsibility for monitoring and controlling all activity address codes utilized in the letters of authority.

SUBCHAPTER H—CLAUSES AND FORMS

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 252.1—Instructions for Using Provisions and Clauses

252.101 Using Part 252.

(b) *Numbering.*

(2) *Provisions of clauses that supplement the FAR.*

(ii) Provisions and clauses in this supplement are not preceded by the assigned CFR chapter number. The sequential numbers are "7000" or higher, not to exceed "8999." Sequential numbers "9000" and higher are reserved for departmental supplementation (see 201.104–2).

(f) *Dates.* Provisions and clauses in this supplement that were formerly in the DAR bear the DAR date when the provision or clause was transferred verbatim to this supplement.

252.106 Derivations of FAR provisions and clauses.

Provisions and clauses in this supplement derived from the DAR do not include derivation notations.

Subpart 252.2—Texts of Provisions and Clauses

252.270 Scope of subpart.

This subpart sets forth the texts of all DoD FAR Supplement provisions and clauses and for each, gives a cross-reference to the location in the DoD FAR Supplement that prescribes its use.

252.203–7000 Advertising and coupon redemption for military resale activities.

As prescribed at 203.570, insert the following clause:

ADVERTISING AND COUPON REDEMPTION FOR MILITARY RESALE ACTIVITIES (APR 1974)

The Contractor will not represent in any manner, expressed or implied, that the products purchased hereunder are approved or endorsed by any element of the United States Government. Any advertisement by the Contractor, including price-off coupons, which refers to a military resale activity, shall contain the following statement:

"This advertisement is neither paid for nor sponsored, in whole or in part, by any element of the United States Government."

(End of clause)

252.204–7000 Contract schedule subline items not separately priced—withholding of billing and payment.

As prescribed at 204.7104–2(c)(2), insert the following clause:

CONTRACT SCHEDULE SUBLINE ITEMS NOT SEPARATELY PRICED—WITHHOLDING OF BILLING AND PAYMENT (NOV 1970)

If the unit price of any contract subline or exhibit subline item contained in the Schedule of this contract is not separately priced ("NSP" entered as the unit price column), and the unit price for such subline item is included within the unit price of a related subline item, payment shall not be made nor shall the Contractor invoice the Government for any portion of a contract line item or exhibit line item which contains an "NSP" subline until the total quantity of all related contract subline items or exhibit subline items have been delivered and accepted. This clause is not applicable to technical data.

(End of clause)

252.204–7004 Data Universal Numbering System (DUNS) number reporting.

As prescribed at 204.670–3, insert the following provision:

DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER REPORTING (DEC 1980)

In the block with its name and address, the offeror should supply the Data Universal Numbering System (DUNS) Number applicable to that name and address. The DUNS Number should be preceded by "DUNS:". If the offeror does not have a DUNS Number, it may obtain one from any Dun and Bradstreet branch office. No offeror should delay the submission of its offer pending receipt of its DUNS Number.

(End of provision)

252.204–7005 Overseas distribution of defense subcontracts.

As prescribed at 204.670–4, insert the following clause:

OVERSEAS DISTRIBUTION OF DEFENSE CONTRACTS (JUN 1982)

(a) For each subcontract or modification thereof which exceeds $10,000, where the principal place of performance is outside the United States or its territories and possessions, the Contractor agrees to furnish the information listed below on a quarterly basis to Director of Information, Operations and Reports, Washington, D.C. 20301.

(i) Name and address of prime contractor (or subcontractor required to report).

(ii) Prime contract number.

(iii) Name and address of overseas subcontractor. (This item is important for discussion of trade balances with other countries, but submission of this information is not mandatory.)

(iv) Subcontract number (including modification number) being reported.

(v) Dollar amount of this action (enclose decommitments in parentheses).

(vi) Principal place of subcontract performance.

(vii) Type of supply or service.

(b) The required information, if any, shall be as of the last day of the calendar year quarter and submitted within ten (10) days of the end of each quarter.

(c) The prime Contractor agrees to insert a provision substantially similar to this in all first-tier subcontracts over $100,000 except subcontracts for ores, natural gas, utilities, petroleum products and crudes, timber (logs), and subsistence. The prime Contractor shall also identify the applicable prime contract number to the subcontractor for reporting purposes.

(End of clause)

252.208–7000 Required sources for miniature and instrument ball bearings.

As prescribed at 208.7303(a), insert the following clause:

REQUIRED SOURCES FOR MINIATURE AND INSTRUMENT BALL BEARINGS (JUL 1971)

(a) For the purpose of this clause:

"Domestic manufacture" means manufacture in the United States or Canada and, when a ball bearing assembly is involved, all components of the bearing must also have been manufactured in the United States or Canada; and

"Miniature and instrument ball bearings" are all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, irrespective of material, tolerance, performance, or quality characteristics.

(b) The Contractor agrees that end items and components thereof delivered under this contract shall contain miniature and instrument ball bearings that are of domestic manufacture only.

(c) The requirement for delivery in (b) above may be waived in whole or in part by the Contracting Officer when such waiver is determined to be in the Government's interest. In the event a waiver is granted, the Contractor agrees to acquire for non-Government use, domestically manufactured miniature and instrument ball bearings of a like quantity and type.

(d) The Contractor agrees to retain until the expiration of three (3) years from the date of final payment under this contract and to make available during such period, upon request of the Contracting Officer, records showing compliance with this clause.

(e) The Contractor agrees to insert this clause, including this paragraph (e), in every subcontract and purchase order issued in performance of this contract, unless he knows that the item being purchased contains no miniature or instrument ball bearings.

(End of clause)

252.208–7001 Required sources for precision components and mechanical time devices.

As prescribed at 208.7403(a), insert the following clause:

REQUIRED SOURCES FOR PRECISION COMPONENTS FOR MECHANICAL TIME DEVICES (AUG 1971)

(a) For the purpose of this clause:

"Domestic manufacture" means manufacture in the United States or Canada, and, when a mechanical timing assembly is involved, all precision components of the assembly must also have been manufactured in the United States or Canada.

"Precision components for mechanical time devices" are parts which closely relate so that precise control and selection of working production tolerances can be maintained to accomplish the desired function and reliability. In terms of accuracy, such precision components have total tolerances under 0.003 inches, eccentricities less than 0.0015 inches, and surface finishes better than 65 rms. Examples of such precision components include: gears, pinions, posts, and plates.

(b) The Contractor agrees that end items and components thereof delivered under this contract shall contain precision components for mechanical time devices that are of domestic manufacture only.

(c) The requirement for delivery in (b) above may be waived in whole or in part by the Contracting Officer when such waiver is determined to be in the Government's interest. In the event a waiver is granted, the Contractor agrees to acquire, for non-Government use, domestically manufactured precision components for mechanical time devices of a like quantity and type.

(d) The Contractor agrees to retain until the expiration of three (3) years from the date of final payment under this contract and to make available during such period, upon request of the Contracting Officer, records showing compliance with this clause.

(e) The Contractor agrees to insert this clause, including this paragraph (e), in every subcontract and purchase order issued in performance of this contract, unless he knows that the item being purchased contains no precision components for mechanical time devices.

(End of clause)

252.208-7002 Required sources for high-purity silicon.

As prescribed at 208.7503(a), insert the following clause:

REQUIRED SOURCES FOR HIGH-PURITY SILICON (JUN 1983)

(a) For the purpose of this clause:

"Domestic manufacture" means high-purity silicon manufactured in the United States or Canada. When an item or subassembly containing high-purity silicon is involved, all such high-purity silicon incorporated in the item or subassembly must also have been manufactured in the United States or Canada.

"High-purity silicon" is N or P type and has a resistivity greater than 3000 ohm-centimeter.

(b) The Contractor agrees that end items and components thereof delivered under this contract shall contain high-purity silicon of domestic manufacture only.

(c) The requirement for delivery in (b) above may be waived in whole or in part by the Contracting Officer when such waiver is determined to be in the Government's interest.

(d) The Contractor agrees to retain until the expiration of three (3) years from the date of final payment under this contract and to make available during such period, upon request of the Contracting Officer, records showing compliance with this clause.

(e) The Contractor agrees to insert this clause, including this paragraph (e), in every subcontract or purchase order which involves the purchase of an item or subassembly containing high-purity silicon.

(End of clause)

252.210-7000 Brand name or equal.

As prescribed at 210.004(b)(3)(ii)(B), insert the following provision:

BRAND NAME OR EQUAL (APR 1973)

(As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this Invitation for Bids have been identified in the Schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bid offering "equal" products including products of the brand name manufacturer other than the one described by brand name will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in the Invitation for Bids.

(b) Unless the bidder clearly indicates in his bid that he is offering an "equal" product, his bid shall be considered as offering a brand name product referenced in the Invitation for Bids.

(c)(1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation for Bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his bid, as well as other information reasonably available to the purchasing activity. CAUTION TO BIDDERS. The purchasing activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the salient characteristics requirements of the Invitation for Bids and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, he shall (i) include in his bid a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

(End of provision)

252.210-7001 Availability of descriptions listed in DoD Directive 5000.19-L, Volume II.

As prescribed at 210.011 (S-70), insert the following provision:

AVAILABILITY OF DESCRIPTIONS LISTED IN DOD DIRECTIVE 5000.19-L, VOLUME II (APR 1984)

Copies of the Acquisition Management Systems and Data Requirements Control List, DoD Directive 5000.19-L, Volume II, may also be ordered from the supply point listed herein. When requesting a data item description, the request shall cite the applicable data item number set forth in the solicitation.

(End of provision)

252.210-7002 Availability of specifications and standards not listed in DODISS, data item descriptions not listed in Department of Defense Directive 5000.19-L, Volume II, and plans, drawings, and other pertinent documents.

As prescribed at 210.011 (S-71), insert the following provision:

AVAILABILITY OF SPECIFICATIONS AND STANDARDS NOT LISTED IN DODISS, DATA ITEM DESCRIPTIONS NOT LISTED IN DOD DIRECTIVE 5000.19-L, VOLUME II, AND PLANS, DRAWINGS, AND OTHER PERTINENT DOCUMENTS (JUN 1977)

The specifications, standards, plans, drawings, descriptions and other pertinent documents cited in this solicitation may be obtained by submitting request to:

(Activity) _____

(Complete Address) _____

Requests should give the number of the solicitation and the title and number of the specification, standard, plan, drawing or other pertinent document requested, exactly as cited in this solicitation.

(End of provision)

252.210-7003 Availability for examination of specifications, standards, plans, drawings, data item descriptions, and other pertinent documents.

As prescribed at 210.011(S-71), insert the following provision:

AVAILABILITY FOR EXAMINATION OF SPECIFICATIONS, STANDARDS, PLANS, DRAWINGS, DATA ITEM DESCRIPTIONS, AND OTHER PERTINENT DOCUMENTS (JUN 1977) The specification, standards, plans, drawings, descriptions, and other pertinent documents cited in this solicitation may be examined at the following locations:

_____

(Insert Complete Address)

(End of provision)

252.212-7000 Exclusion of periods in computing completion schedules.

As prescribed at 212.102(b), insert the following clause:

EXCLUSION OF PERIODS IN COMPUTING COMPLETION SCHEDULES (JAN 1965)

No work will be required during the period between ——— and ——— inclusive and such period has not been considered in computing the time allowed for completion. The Contractor may, however, perform work during all or any part of this period upon giving prior written notice to the Contracting Officer. If the work performed during such period is less than * (——— cubic yards) (the average monthly work necessary to complete the contract within the time specified) and the Contracting Officer maintains an inspection force during this period to inspect the work, the Contractor will be charged the percentage of the cost of maintaining such force that his work is less than * (——— cubic yards) (the average monthly work necessary to complete the contract within the time specified).

(End of clause)

252.213-7000 Inconsistency between English version and translation of contract.

As prescribed at 213.505-2(S-73)(2)(ii)(B), insert the following provision:

INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (APR 1966)

In the event of inconsistency between any terms of this contract and any translation thereof into another language, the English language meaning shall control.

(End of clause)

252.213-7001 Returnable gas cylinders.

As prescribed at 213.505-2(S-73)(1)(xxxiii), insert the following clause:

RETURNABLE GAS CYLINDERS (OCT 1966)

(a) Cylinders shall remain the property of the Contractor but will be loaned without charge to the Government for a period of thirty (30) days* after the date of delivery of the cylinders to the f.o.b. point specified in the contract. Beginning with the first day after the expiration of the thirty (30) day loan period to and including the day the cylinders are delivered to the Contractor where the original delivery was f.o.b. origin or to and including the date the cylinders are delivered or are made available for delivery to the Contractor's designated carrier in the case where the original delivery was f.o.b. destination, the Government shall pay the Contractor a rental of ——— dollars ($———) per cylinder per day, regardless of type or capacity.

(b) This rental charge will be computed separately for cylinders of different types, sizes, and capacities, and for each point of delivery named in the contract. A credit of thirty (30) cylinder days will accrue to the Government for each cylinder, regardless of type or capacity, delivered by the Contractor. A debit of one (1) cylinder day will accrue to the Government for each cylinder for each day after delivery to the f.o.b. point specified in this contract. At the end of the contract, if the total number of debits exceeds the total number of credits, rental shall be charged for the difference. If the total number of credits equals or exceeds the total number of debits, no rental charges will be made for the cylinders. No rental shall accrue to the Contractor in excess of the replacement value per cylinder specified in (c) below.

(c) For each cylinder lost or damaged beyond repair, while in the Government's possession, the Government shall pay to the Contractor the replacement value as follows, less the allocable rental paid therefor:

(i) Oxygen cylinders of 100–110 cubic foot capacity $———;

(ii) Oxygen cylinders of 200–220 cubic foot capacity $———;

(iii) Acetylene cylinders of 100–150 cubic foot capacity $———; and

(iv) Acetylene cylinders of 230–300 cubic foot capacity $———.

(d) Cylinders lost, or damaged beyond repair, and paid for by the Government shall become the property of the Government, subject to the following: If any lost cylinder is located within ——— (insert period of time) after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government an amount equal to the replacement value, less rental computed in accordance with (a) above, beginning at the expiration of the thirty (30) day loan period specified in (a) above, and continuing to the date on which the cylinder was delivered to the Contractor.

(End of clause)

252.214-7000 Discounts.

As prescribed at 214.407-3, insert the following provision:

DISCOUNTS (APR 1984)

Prompt payment discounts will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(End of provision)

252.215-7000 Pricing of adjustments.

As prescribed at 215.804-8(S-70), insert the following clause:

PRICING OF ADJUSTMENTS (APR 1984)

When costs are a factor in any determination of a contract price adjustment pursuant to the Changes clause or any other clause of this contract, such costs shall be in accordance with Part 31 of the Federal Acquisition Regulation and the DoD FAR Supplement in effect on the date of this contract.

(End of clause)

252.216-7000 Economic price adjustment—basic steel, aluminum, brass, bronze or copper mill products.

As prescribed at 216.203(S-70)(a), insert the following clauses:

ECONOMIC PRICE ADJUSTMENT—BASIC STEEL, ALUMINUM, BRASS, BRONZE OR COPPER MILL PRODUCTS (AUG 1978)

(a) The Contractor warrants that the unit price stated herein for ——— is not in excess of the Contractor's applicable established price in effect on the date set for opening of bids (or the contract date if this is not a contract entered into by means of formal advertising) for like quantities of the same item. The term "unit price" excludes any part of the price which reflects requirements for preservation, packaging and packing beyond standard commercial practice. The term "established price" means one which (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public and (2) meets the criteria of FAR 15.804-3. Such price is the net price after applying any applicable standard trade discounts offered by the Contractor from his catalog, list, or schedule price.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each corresponding contract unit price shall be decreased by the same percentage that the said established price is decreased. Such decrease shall apply to items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly. The Contractor shall certify on each invoice that each unit price stated therein reflects all decreases required by this clause, or shall certify on the final invoice that all price decreases required by this clause have been applied in the manner herein required.

(c) If the Contractor's applicable established price is increased after the date set for opening of bids (or the contract date, if this is not a contract entered into by means of formal advertising), the corresponding contract unit price shall be increased, upon the Contractor's request in writing to the Contracting Officer, by the same percentage that the established price is increased and the contract shall be modified accordingly, *provided* that:

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed ten percent (10%) of the original contract unit price;

(2) The increased contract unit price shall be effective on the effective date of the increase in the applicable established price if the Contractor's written request is received by the Contracting Officer within 10 days thereafter, but if not, the effective date of increased unit price shall be the date of receipt by the Contracting Officer of such request;

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date

* (Delete inapplicable provision).

* The time period may be modified to comply with the customary commercial practice for the particular type of container being rented.

of the increased contract unit price unless the Contractor's failure to deliver before such date results from causes beyond the control and without the fault of negligence of the Contractor, within the meaning of the "Default" clause of this contract.

(4) No modification incorporating an increase in a contract unit price shall be executed pursuant to this clause until the increase in the applicable established price has been verified by the Contracting Officer.

(d) Within 30 days after receipt of the Contractor's written request the Contracting Officer may cancel, without liability to either party, any portion of the contract affected by the requested increase and undelivered at the time of such cancellation, except that the Contractor may thereafter deliver any items which the Contractor certifies, by notice received by the Contracting Officer within 10 days after the Contractor receives the cancellation notice, were completed or in the process of manufacture at the time of receipt of such cancellation notice, and the Government shall pay for such items so delivered at the contract unit price increased to the extent provided by (c) above. Any standard steel supply shall be deemed to be in the process of manufacture when the steel therefor is in any state of processing after the beginning of the furnace melt.

(e) Pending any cancellation of this contract as provided in (d) above and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the delivery schedule of the contract and shall be paid for such deliveries at the contract unit price increased to the extent provied by (c) above.

(End of clause)

252.216-7001 Economic price adjustment—nonstandard steel items.

As prescribed at 216.203 (S-70)(b), insert the following clause:

ECONOMIC PRICE ADJUSTMENT—NONSTANDARD STEEL ITEMS (AUG 1978)

(a) The term "established price" as used in this clause is one which (1) is an established catalog or market price of a commercial item sold in substantial quantities to the general public and (2) meets the criteria of Federal Acquisition Regulation 215.804-3. Such a price is the net price after applying any applicable standard trade discounts offered by the Contractor from his catalog, list, or scheduled price. (But see Note (8)).

(b) Each contract unit price shall be subject to revision, pursuant to the provisions of this clause, to reflect changes in the cost of labor and steel. For the purpose of any such price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified in paragraph (d) below shall be ——— percent, and the proportion of the contract unit price attributable to the cost of steel shall be ——— percent. *(See Note (1)).*

(c) For the purposes of this paragraph, the term "labor index" shall mean the average straight time hourly earnings of the Contactor's employees in the ——— shop of the Contractor's ——— plant *(see Note (2))* for any particular month. The word "month" as used herein means "calendar month; *provided,* however, that if the Contractor's accounting period does not coincide with the calendar month, then such accounting period shall be used throughout the clause in lieu of "month." Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the particular shop identified above for any given month by the total number of straight time hours worked by such employees in that month. Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the "base labor index," which shall be the average of the labor indices for the three months consisting of the month of ———, 19— *(see Note (3))*, the month immediately preceding and the month immediately following, and to the "current labor index," which shall be the average of the labor indices for the month in which delivery of supplies is required to be made in accordance with the terms of this contract and the month preceding.

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the "base steel index," which shall be the Contractor's established price *(see Note (8))* including all applicable extras of $——— per ——— *(see Note (4))* for ——— *(See Note (5))* on ———, 19—, *(See Note (6))* and the "current steel index," which shall be the Contractor's established price *(see Note (8))* of said item including all applicable extras in effect ——— days *(see Note (7))* prior to the first day of the month in which delivery of supplies is required to be made in accordance with the terms of the contract.

(e) Each contract unit price shall be revised for each month in which, by the terms of this contract, delivery of supplies is required to be made, and such revised contract unit price shall apply to the deliveries of those quantities of supplies required to be made in that month regardless of when actual delivery be made of said quantities of supplies. Each revised contract unit price for any month shall be computed by adding together the following three amounts: (1) the amount (representing the adjusted cost of labor) obtained by multiplying ——— percent of the contract unit price by a fraction, the numerator of which shall be the current labor index and the denominator of which shall be the base labor index; (2) the amount (representing the adjusted cost of steel) obtained by multiplying ——— percent of the contract unit price by a fraction, the numerator of which shall be the current steel index and the denominator of which shall be the base steel index; and (3) the amount equal to ——— percent of the original contract unit price (representing that portion of such unit price which relates neither to the cost of labor nor to cost of steel and which is therefore not subject to revision *(see Note (1))*; *provided,* however, that any revised contract unit price made pursuant to the provisions of this clause shall in no event exceed one hundred and ten percent (110%) of the original contract unit price. All computations shall be made to the nearest one-hundredth of one cent.

(f) Pending revisions of the contract unit prices, if any, to be made pursuant to this clause, the Contractor shall be paid the contract unit price for deliveries made. Within thirty days after the final delivery of supplies, or within such further period of time as may be authorized by the Contracting Officer, the Contractor shall furnish a statement setting forth and certifying the correctness of (1) the average straight time hourly earnings of the Contractor's employees in the shop of the Contractor identified in paragraph (c) above which earnings are relevant to the computations of the "base labor index" and the "current labor index" and (2) the Contactor's established prices *(see Note (8))* including all applicable extras for like quantities of the item identified in paragraph (d) above, which prices are relevant to the computation of the "base steel index" and the "current steel index." Upon request of the Contracting Officer, the Contractor shall make available his records used in the computation of the labor indices. After the reciept of such certificate by the Contracting Officer, the revised contract unit prices shall be computed in accordance with the provisions of this clause, and this contract shall be modified accordingly. However, no modification to this contract shall be made pursuant to this clause until the revised established price *(see Note (8))* has been verified by the Contracting Officer.

(g) In the event of any total or partial termination of any item of this contract for the convenience of the Government, the month in which notice of such termination is received by the Contractor, if prior to the month in which the delivery is required by this contract, shall be considered the month in which delivery of such terminated or partially terminated item is required for the purpose of determining the current labor and steel indices under paragraphs (c) and (d) hereof; *provided,* however, that as to the quantity of such item which is not terminated for convenience, the month in which delivery is required by this contract shall continue to apply for determining said indices. In the case of termination of any steel item for default of the Contractor, any price revision shall be limited to the quantity of such item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of notice of termination for default.

(h) As used in this clause the phrase "the month in which delivery of supplies is required to be made in accordance with the terms of this contract" shall mean any month in which under the terms of this contract a specific quantity of units of the supplies called for by this contract is required to be delivered; *provided,* however, that in the case of the failure of the Contractor to make delivery of such quantity shall have arisen out of causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the clause of this contract entitled "Default," the quantity not delivered shall be required to be delivered as promptly as possible after the cessation of the cause of such failure, and the delivery schedule set forth in this contract shall be amended accordingly.

Notes

(1) Bidder insert the same percentage figures for the corresponding blanks in paragraphs (b) and (e)(1) and (2). In paragraph (e)(3), bidder insert the percentage representing the difference between the sum or the percentages inserted in paragraph (b) and (100 percent.

(2) Bidder identify the shop and plant in which the standard steel mill item identified in paragraph (d) will be finally fabricated or processed into the contract item.

(3) Bidder insert the month of bid opening, or the month in which the Contractor submitted his proposal if this is a negotiated contract.

(4) Bidder insert the unit price and unit measure of the standard steel mill item used by the Contractor in the manufacture of the contract item.

(5) Bidder identify the standard steel mill item used by the Contractor in the manufacture of the contract item.

(6) Bidder insert the date set for bid opening, or the date of the Contractor's quotation if this is a negotiated contract.

(7) Bidder insert the number of days which represents the Contractor's best estimate of the period of item required for processing the standard steel mill item in the shop identified in paragraph (c).

(8) In negotiated procurements of nonstandard steel items, when there is no "established price" or when it is not desirable to use such price, this paragraph may refer to another appropriate price basis, such as an established interplant price.

(End of clause)

252.217-7000 Exercise of option to fulfill foreign military sales commitments.

As prescribed at 217.208(d), insert the following clause:

EXERCISE OF OPTION TO FULFILL FOREIGN MILITARY SALES COMMITMENTS (APR 1984)

The U.S. Government may exercise the option or options under the option clause of this contract to fulfill Foreign Military Sales commitments undertaken by the U.S. Government on behalf of a foreign country. At the date of exercise of the option, the U.S. Government will identify the foreign country for the purpose of negotiating an equitable price adjustment for any additional cost or profit considerations attributable to Foreign Military Sales included in 225.7304 and paragraph 215.905-1(b)(7)(iii)(E) of the DoD FAR Supplement. Failure to agree to such an equitable adjustment shall be treated as a dispute within the meaning of the clause of this contract titled "DISPUTES".

(End of clause)

252.217-7300 Delivery vehicles.

As prescribed at 217.7301-5(a)(1), insert the following clause:

DELIVERY VEHICLES (APR 1967)

The supplies delivered under this contract shall be transported in clean, closed vehicles. The vehicles shall be maintained in a sanitary condition to prevent contamination of the supplies and shall be equipped to maintain any temperature requirement prescribed in the specification or elsewhere in this contract. The vehicles shall be subject to inspection by the Government at all reasonable times and at all places, including the plant of the Contractor. Supplies tendered for acceptance in vehicles which are not sanitary, or which are not equipped to maintain any prescribed temperatures, may be rejected without further inspection.

(End of clause)

252.217-7301 Time of delivery.

As prescribed at 217.7301-5(a)(2), insert the following clause:

TIME OF DELIVERY (APR 1967)

Individual written delivery orders issued or oral delivery orders placed under this contract shall specify the locations to which deliveries shall be made and the quantities for each location. Deliveries will be completed within the hours prescribed in the Schedule of this contract and on the days specified by the order. Orders which call for delivery within less than twenty-four (24) hours from the time the Contractor receives said orders shall be governed by paragraph (e) of the clause entitled "Requirements."

(End of clause)

ALTERNATE I

If an indefinite quantity contract is used, rather than a requirements contract, the following shall be substituted for the last sentence of the basic clause:

The Contractor shall not be required to deliver within less than ——— hours from the time the Contractor receives a delivery order.

253.217-7302 Change in plant location.

As prescribed at 217.7301-5(a)(3), insert the following clause:

CHANGE IN PLANT LOCATION (APR 1967)

The performance of any work under this contract at any place other than that named in this contract is prohibited unless specific written advance approval is obtained from the Contracting Officer.

(End of clause)

252.217-7303 Sanitary conditions.

As prescribed at 217.7301-5(a)(4), insert the following clause:

SANITARY CONDITIONS (APR 1967)

(a) All plant facilities, machinery, equipment, and apparatus used in the production, processing, handling, storage, or delivery of supplies under this contract, and all supplies (as the term "supplies" is defined in paragraph (a) of the clause entitled "Inspection of Supplies (Fixed Price)") delivered under this contract, shall meet the sanitary standards, including bacteriological requirements, prescribed by the specifications cited elsewhere in this contract.

(b) All plant facilities machinery, equipment, and apparatus used in the production, processing, handling, storage, or delivery of supplies under this contract shall be subject to inspection and test by the Government at all places and at all reasonable times.

(c) The Government shall notify the Contractor in writing of any failure to meet the sanitary standards, including bacteriological requirements, prescribed by this contract. If such failure has not been corrected within three (3) days from the date the Contractor receives said notice, the whole or any part of this contract may be terminated for default or, at the option of the Contracting Officer, the Contractor's right to perform under this contract may be partially or wholly suspended for not less than ten (10) days, and for such longer period of time as the Contracting Officer deems appropriate to permit correction of such failure. A suspension shall not operate to extend the life of this contract and shall not be considered sufficient cause for the extension of any delivery time. During the period of any such suspension, the Government may procure from other sources, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies similar to those specified in the Schedule, and the Contractor shall be liable to the Government for any excess costs for such similar supplies. If the Contractor does not correct the failure to meet the sanitary standards, including bacteriological requirements, within any suspension period specified by the Contracting Officer, the Government may terminate the unexpired portion of this contract for default without allowing additional time for correction, notwithstanding paragraph (a)(2) of the clause entitled "Default (Fixed Price Supply and Service)."

(End of clause)

ALTERNATE I

If an indefinite quantity contract is used, rather than a requirements contract, the following shall be inserted in paragraph (c) of the basic clause after the third sentence:

The quantity of supplies designated in the Schedule as "Minimum" shall be reduced, in the event of a suspension, by an amount proportionate to the ratio between the number of days the Contractor's right to perform is suspended and the number of days in the contract period. The quantity of supplies designated as "Maximum" shall not be reduced.

252.217-7304 Remedies under delivery orders.

As prescribed at 217.7301-5(a)(5), insert the following clause:

REMEDIES UNDER DELIVERY ORDERS (APR 1967)

All rights and remedies afforded to the Government under the provisions of this contract may be exercised and enforced by the Government with respect to each written or oral delivery order placed under this contract.

(End of clause)

ALTERNATE I

If delivery orders are to be placed by an activity other than the activity which awarded the contract, the following may be added to the basic clause to establish authority in the ordering officer under the

Changes, Extras, Inspection, Default (Fixed Price Supply and Service), and Dispute clauses for the administration of individual delivery orders:

For the purpose of the exercise of the Government's rights and remedies under one or more individual delivery orders, the term "Contracting Officer" as used in the "Changes," "Extras," "Inspection of Supplies—Fixed Prices," "Default (Fixed Price Supply and Service)," and "Disputes" clauses, shall include the person executing or placing said order or orders.

252.217-7305 Examination and testing.

As prescribed at 217.7301-5(b)(1), insert the following clause:

EXAMINATION AND TESTING (DEC 1969)

(a) The Government examination and testing of dairy products shall be in accordance with the DoD Handbook No. H-57, "Supplement A—Procurement Quality Assurance for Fresh Dairy Products." The Contract agrees that a lot consists of a day's production of the type of product delivered or intended to be delivered. Whether sampling is conducted at origin or at destination, the Contractor agrees that the results of the tests performed using the samples selected in accordance with DoD Handbook No. H-57, Supplement A, will apply to the entire contract quantity of each type product delivered on the date specified at the time of sampling and that the results will be used in determining the weighted average of butterfat, milk solids non-fat, and total solids for the monthly period.

(b) The Government reserves the right to test all products to be delivered under the contract. Samples selected by the Government at origin shall be furnished at the expense of the Contractor and shall be considered to be representative of all the products delivered to the Government from the lot sampled. The Contractor shall certify the quantity of all products delivered from lots sampled at origin. Samples selected by the Government at destination shall be furnished at the expense of the Government and shall be considered to be representative of all of that type of product delivered to the Government on the date sampled.

(c) When samples are selected from containers of ½ gallon size or smaller, the entire content of the container shall constitute the sample; when samples are selected from containers larger than ½ gallon, a ½ pint sample shall be withdrawn for laboratory analysis.

(d) When the butterfat milk solids, non-fat or total solids of any type of product as determined by chemical analysis is less than required by this contract, the Contractor shall reimburse the Government for the deficiency in the amount determined pursuant to the clause entitled "Deficiency Adjustment." For this purpose the butterfat, milk solids non-fat, and total solids content of the entire quantity of each type of product delivered during a monthly period shall be deemed to be the weighted average of the result of the tests of all samples thereof selected during said period. If the butterfat, milk solids non-fat, or total solids content of any type of product in any monthly period, as determined by a chemical analysis of at least two (2) samples, is less than required by this contract, the Contractor shall reimburse the Government for the deficiency in an amount determined pursuant to the clause entitled "Deficiency Adjustment." Deficiencies so computed, totaling $25 or less during a monthly accounting period will not be assessed. Monthly periods commence on the first (1st) day of the contract period and on the same day of each succeeding calendar month thereafter. The butterfat, milk solids non-fat, and total solids contents of one type of product will not be averaged with or offset against the content of another type of product, and the content of products delivered in any one monthly period will not be averaged with or offset against the content of products delivered in any other monthly period. No payment will be made for butterfat, milk solids non-fat, and total solids content in excess of the amount required by this contract.

(End of Clause)

252.217-7306 Deficiency adjustment.

As prescribed at 217.7301-5(b)(2), insert the following clause:

DEFICIENCY ADJUSTMENT (DEC 1969)

(a) The amount to be paid by the Contractor to the Government as consideration for the acceptance of supplies deficient in butterfat, milk solids non-fat, or total solids, pursuant to the clause entitled "Examination and Testing," shall be determined in accordance with the following formulas:

(1) *Butterfat:* Subtract the total pounds of butterfat delivered from the total pounds of butterfat required to be delivered, and multiply the remainder by the butterfat value.

(2) *Milk solid non-fat.* Subtract the total pounds of milk solids non-fat delivered from the total pounds of milk solids non-fat required to be delivered, and multiple the remainder by the milk solids non-fat value.

(3) *Total solids.* To the total solids add any shortages for butterfat, milk solids non-fat, previously price adjusted and subtract from the total solids required to be delivered. Multiply the remainder by the milk solids non-fat value.

(B) The term "butterfat value" shall mean the average Chicago top "Wholesale Selling Price" of Grade A, 92 score butter during the monthly period for which the deficiency is computed, as reported in the Weekly Dairy Comments, Dairy and Poultry Market News, published by the Department of Agriculture, Consumer and Marketing Service, Chicago, Illinois, multiplied by 1.30. The term "milk solids non-fat value" shall mean the average Chicago top price for "Commercial sales, Extra Grade, Nonfat Dry Milk, Spray (bags)" during the monthly period for which the deficiency is computed, as reported in the aforementioned Weekly Dairy Comments, multiplied by 1.45.

(c) The Contractor shall certify the tare weights of all containers on the shipping documents, and furnish a copy thereof to the Government inspector(s) at destination(s). The tare weight of dispenser containers shall include all parts of the container delivered as a unit, including lids, tubes, and seals. If different types of containers with different tares are included in a single delivery, the Contractor shall furnish the tare weight and identifying characteristics of each type of container. Volume and net weight shortages of any line item, revealed by inspecting a representative sample of said line item, shall be adjusted for payment by the receiving installation for the entire quantity of the line item delivered on the day the shortage is discovered. For the purpose of determining net weight, the following will apply:

(1) The weight factor of 8.8 pounds per gallon will be used for chocolate flavored milk and chocolate flavored drink.

(2) The weight factor of 8.6 pounds per gallon will be used for milk whole fresh, buttermilk fluid, milk whole fresh cultured, and milk skim fresh.

(3) The weight factor of 8.5 pounds per gallon will be used for fresh cream eighteen percent (18%) butterfat or less, half-and-half fresh, and cream sour cultured.

(4) The weight factor of 8.4 pounds per gallon will be used for all creams with a butterfat percentage or more than eighteen percent (18%).

(5) Other items such as cottage cheese, butter and so forth, shall be weighed in accordance with the weight stated on the container.

(6) For ice cream and frozen desserts, weight shall be determined based on applicable commodity specification.

(d) The foregoing is an agreed method for the adjustment of prices of noncomplying products, and is without prejudice to the Government's right to terminate for default or to pursue any other remedy under this contract or as provided by law.

(End of clause)

252.217-7307 Warning.

As prescribed at 217.7301-5(b)(3), insert the following clause:

WARNING (DEC 1969)

The Government shall notify the Contractor orally or in writing of any failure to meet sanitary standards, or when two of the 1st four consecutive lots tested are nonconforming for the same specification requirement. Oral notifications will be confirmed in writing. When this notice is based on product nonconformance, it shall be in effect so long as two of the last four consecutive lots tested exceed the same limit of the specification. An additional sample shall be taken within fourteen (14) days of such notice, but not before three (3) days have elapsed.

(End of clause)

252.217-7308 Suspension.

As prescribed at 217.7301-5(b)(4), insert the following clause:

SUSPENSION (DEC 1969)

The Contractor's right to perform may be suspended when three out of the last five consecutive lots tested are nonconforming for the same specification requirement. This suspension shall not operate to extend the life of this contract and shall not be considered sufficient cause for the extension

of any delivery time. During the period of any such suspension, the Government may procure from other sources, upon such terms and in such a manner as the Contracting Officer may deem appropriate, supplies similar to those specified in the Schedule, and the Contractor shall be liable to the Government for any excess costs for such similar supplies. It is the responsibility of the Contractor to use the period of suspension to effect corrections of deficiencies and to notify the Government when such corrections are completed. Concurrently with initial notification, or any time after notification, but prior to correction of deficiencies and notification to the Government thereof, the Contractor's right to perform under this contract may be partially or wholly suspended immediately if such failure results in the production of a product which is considered to be a health hazard. Any suspension shall not exceed ten (10) days.

(End of clause)

ALTERNATE I

If an indefinite quantity contract is used, rather than a requirements contracts, the following shall be added to the basic clause:

The quantity of supplies designated in the Schedule as "Minimum" shall be reduced, in the event of a suspension, by an amount proportionate to the ratio between the number of days the Contractor's right to perform is suspended and the number of days in the contract period. The quantity of supplies designated as "Maximum" shall not be reduced.

252.217-7309 Default.

As prescribed at 217.7301-5(b)(5), insert the following clause:

DEFAULT (DEC 1969)

If the Contractor does not correct the deficiencies within this period of suspension, the Contracting Officer may terminate the unexpired portion of this contract for default without allowing additional time for correction; notwithstanding subparagraph (a)(2) of the clause entitled "Default (Fixed Price Supply and Service)."

(End of clause)

252.217-7310 Reinstatement.

As prescribed at 217.1703-5(b)(6), insert the following clause:

REINSTATEMENT (DEC. 1969)

When the Contractor's right to perform has been suspended for product nonconformances, this right may be reinstatement only after the Contractor certifies, in writing, that corrective action has been taken, and the Government has verified that the Contractor has taken corrective action to its satisfaction and has so notified the Contractor in writing.

(End of clause)

252.217-7311 Code dating.

As prescribed at 217.7301-5(c), insert the following clause:

CODE DATING (APR 1967)

A code may be used to comply with the requirement set forth in the Schedule or specifications of this contract for showing a date on the labels of items delivered hereunder, *provided* that, prior to the use of a code, a written explanation thereof is furnished to the Contracting Officer and approved by him in writing. No changes in the code symbols, code system or explanation thereof, shall be made without the advance written approval of the Contracting Officer.

(End of clause)

252.217-7312 Marking.

As prescribed at 217.7301-5(d), insert the following clause:

MARKING (APR 1967)

Notwithstanding any specification references to MIL-STD-129, commercial markings are acceptable.

(End of clause)

252.217-7313 Responsibility for containers and equipment.

As prescribed at 217.7301-5(e), insert the following clause:

RESPONSIBILITY FOR CONTAINERS AND EQUIPMENT (APR 1967)

The Contractor shall maintain all reusable containers and equipment in a sanitary condition and in a good state of repair and working order. At the time of each delivery, the Contractor shall remove from the premises of the Government all empty reusable containers, unless the Contracting Officer grants permission in writing for less frequent removal. The Government shall not be liable for any damage to, or loss or destruction of, containers and equipment furnished by the Contractor.

(End of clause)

252.217-7314 Containers and equipment.

As prescribed at 217.1703-5(f), insert the following clause:

CONTAINERS AND EQUIPMENT (APR 1967)

(a) Dispenser containers and filling equipment used by the Contractor in the performance of this contract, and any refrigerated bulk milk dispenser cabinets furnished by the Contractor, shall comply with MIL-STD-175, "Minimum Sanitary Standards for the Equipment and Methods for Handling of Milk and Milk Products in Bulk Milk Dispensing Operations," as amended.

(b) Any bulk milk dispenser cabinets required by the Schedule to be furnished by the Contractor shall be installed, serviced, and maintained to the satisfaction of the Contracting Officer. All responsibility for the supply, installation, maintenance, and removal thereof, including labor and material costs, and for any damage thereto or loss or destruction, shall remain with the Contractor.

(c) When, and for as long as, the Contractor fails to furnish bulk milk dispenser cabinets or milk dispenser containers as required in the Schedule, or does not properly service, maintain, and repair said dispenser cabinets, so that milk cannot be dispensed as needed by the Government, the Contractor shall deliver a sufficient quantity of milk in half-pint containers to satisfy orders for milk dispenser containers, at the price per gallon for milk dispenser containers.

(d) Any contamination, spoilage, leakage, or other loss of any contents of a dispenser container due to functional failure of the dispenser cabinets or dispenser containers, except for a general power failure at the Government installation, shall be replaced immediately by the Contractor without cost to the Government.

(e) The tare weight of dispenser containers required to be certified in accordance with paragraph (b) of the clause entitled "Examination and Testing" shall include all parts of the container delivered as a complete unit, including lids, tubes, and seals.

(End of clause)

252.219-7000 Small business and small disadvantaged business subcontracting plan (master plans).

As prescribed at 219.708(b), insert the following clause:

SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (MASTER PLANS) (APR 1984)

Master plans, referred to in FAR 52.219-9 must be approved by the contractor's contract administration office. (End of clause)

252.219-7001 Notice of combined small business-labor surplus area set-aside.

As prescribed at 219.502-70(d)(1), insert the following clause:

NOTICE OF COMBINED SMALL BUSINESS—LABOR SURPLUS AREA SET-ASIDE (JUN 1978)

(a) *General.*

(1) Offers under this procurement are solicited from small business concerns only and the procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of the Government procurement is placed with small business concerns. Offers received from firms which are not smll business concerns shall be considered nonresponsive and shall be rejected.

(2) Part of this procurement, identified in the solicitation as the "labor surplus area (LSA) set-aside portion," has been further set aside for award only to one or more LSA concerns, which are also small business concerns, and, to a limited extent, to small business concerns which do not qualify as LSA concerns. Award of the LSA setaside portion will be made after awards have been made on the non-LSA set-aside portion.

(b) *Definitions.*

(1) A "small business concern" is a concern, including its affiliates which is indepently owned and operated, is not dominant in the field of operation in which it is making on offer on Government contracts,

and can further qualify under the criteria set forth in the regulations of the Small Business Administration (CFR Title 13, section 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offer in his own name must agree to furnish in the performance of the contract, end items manufactured or produced by small business concerns; *provided*, that this additional requirement does not apply in connection with construction or service contracts.

(2) *Labor surplus area.* The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4 and Executive Order 10582."

(3) *Labor surplus area concerns.* The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

(c) *Procedures.*

(1) *Determining eligibility:*

(i) To be eligible to participate in the LSA set-aside portion of this procurement, a labor surplus area concern which is also a small business concern (or a small business concern to the extent indicated below) must submit a responsive offer on the non-LSA set-aside portion.

(ii) The Government reserves the right not to award to any concern submitting a token offer on the non-LSA set-aside portion or attempting by any other device to secure an unfair advantage over other offerors.

(2) *Determining priority for award:* Labor surplus concerns which are also small business concerns and other small business concerns eligible under (1) above will participate in the set-aside in the following order of priority:

Group 1. Small business concerns which are also labor surplus area (LSA) concerns.

Group 2. Small business concerns which are not labor surplus area (LSA) concerns. Within each of the above groups, offers on the LSA set-aside portion will be requested from concerns in the order of their offers on the non LSA set-aside portion, beginning with the lowest responsive offer. Concerns may offer less than the total LSA set-aside portion.

(3) *General rule.* Subject to the exceptions listed in (ii) and (iii) below, awards under the LSA set-aside shall be made at the highest unit price for each item awarded on the non LSA set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating offers on the non-LSA set-aside portion. The LSA set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-LSA set-aside award price.

(ii) *Award price involving foreign end products* (see FAR Part 25).

(A) When the highest award price on the non-LSA set-aside is established by an award for a foreign end product, the award price for the LSA set-aside portion shall be the award price on the non-LSA set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the LSA set-aside to concerns offering foreign end products, in which case the general rule applies.

(B) Award under the LSA set-aside to a concern offering a foreign end product, when the highest award price on the non-LSA set-aside portion is established by an award to a firm offering a domestic source end product, shall be at a price which, after application of the evaulation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non LSA set-aside portion, adjusted or reflect transportation and other factors considered in evaluating the offers.

(iii) *Obtaining offers and processing LSA set-aside awards.*

(A) When an unaccepted low offer is not involved: if there is no unaccepted low offer meeting the criteria in (B) below, eligible concerns in the order of priority in (2) above will be requested to offer on the LSA set-aside quantity at the highest unit price awarded in the non-LSA set-aside portion. Concerns may offer less than the total LSA set-aside portion. If any part of the LSA set-aside portion is not taken by eligible concerns, the partial LSA set-aside is automatically dissolved as to the unawarded portion. Such unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing reguations.

(B) When an unaccepted low offer is involved: if *a.* a responsive offer is submitted on the non LSA set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non LSA set-aside portion, but cannot be accepted (e.g., because of "all-or-none" or other quantity limitations, or because the offer is nonresponsible), and *b.* at the time of negotiation for the LSA set-aside portion, the offer could be accepted (e.g., because the LSA set-aside quantity is large enough that the quantity limitations could be complied with, or because the offeror has now become responsible), then the following procedures shall be followed.

Step one. Eligible concerns (in the order of priority in (2) above) will be requested to offer at the adjusted unit price of the unaccepted offer, a quantity of the LSA set-aside portion equal to the quantity of the unaccepted offer.

Step two. If no eligible concern is willing to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above) shall be requested to make offers on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step three.

Case 1. If the unaccepted offer was submitted by a concern not eligible to participate in the LSA set-aside, and if any of the quantity under Step Two is not awarded, then it and all other remaining quantities of the LSA set-aside portion must be withdrawn and resolicited. If the entire quantity under Step Two is awarded among eligible concerns, Steps Four, Five and Six are applicable to the remaining LSA set-aside portion.

Case 2. If the unaccepted offer was submitted by a concern eligible to participate in the LSA set-aside, Steps Four, Five and Six are applicable to the remaining LSA set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. However, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless the concern first accepts a quantity of the LSA set-aside portion equal to the entire quantity of its unaccepted offer at the adjusted price of its offer.

Step four. In case there is more than one unaccepted offer which meets the conditions of *a.* and *b.* above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer in turn, from lowest price to highest.

Step five. Eligible concerns in the order of priority in (2) above will be requested to offer, at the highest unit price awarded on the non-LSA set-aside portion on any quantity of the LSA set-aside portion, remaining after Steps One, Two, Three and Four have completed.

Step six. If the entire LSA set-aside portion is not taken by eligible concerns pursuant to Steps One through Five above, the partial LSA set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(d) *Agreement.* The offeror agrees that if awarded a contract as a small business LSA concern under the set-aside portion of this procurement, he will perform or cause to be performed a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of areas of performance.* Each offeror desiring to be considered for award as a LSA concern on the LSA set-aside portion of this procurement shall identify in Section — of his offer the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted this offer, the offeror may change the areas in which he proposes to perform, *provided*, that he so notifies the contracting officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" in Section — of the solicitation, the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50 %) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of costs to be incurred at each location in the space provided in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" set forth in Section — of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirements contract.* Only one award will be made for each item or sub-item of the non-LSA set-aside portion and only one award will be made for each item or sub-item of the LSA set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Combined Small Business-Labor Surplus Area Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-LSA set-aside Contractor and the LSA set-aside Contractor to whom the awards are made.

(End of clause)

252.219-7002 Notice of combined small business—labor surplus area set-aside—alternate.

As prescribed at 219.502-70(d)(2), insert the following clause:

NOTICE OF COMBINED SMALL BUSINESS—LABOR SURPLUS AREA SET-ASIDE—ALTERNATE (JUN 1978)

(a) *General.*

(1) Offers under this procurement are solicited from small business concerns only and the procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the Contracting Officer, alone or in conjunction with representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of the Government procurement is placed with small business concerns. Offers received from firms which are not small business concerns shall be considered nonresponsive and shall be rejected.

(2) Part of this procurement, identified in the solicitation as the "labor surplus area (LSA) set-aside portion," has been further set aside for award only to one or more LSA concerns, which are also small business concerns, and, to a limited extent, to small business concerns which do not qualify as LSA concerns. Award of the LSA set-aside portion will be made after awards have been made on the non-LSA set-aside portion.

(b) *Definitions.*

(1) A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is making an offer on Government contracts and can further qualify under the criteria set forth in the regulations of the Small Business Administration (CFR Title 13, section 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract, end items manufactured or produced by small business concerns; *provided,* that this additional requirement does not apply in connection with construction or service contracts.

(2) *Labor surplus area.* The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4B and Executive Order 10582."

(3) *Labor surplus area concerns.* The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

(c) *Procedures.*

(1) *Determining eligibility:*

(i) To be eligible to participate in the LSA set-aside portion of this procurement, a labor surplus area concern which is also a small business concern (or a small business concern to the extent indicated below) must submit a responsive offer on the non-LSA set-aside portion.

(ii) The Government reserves the right not to award to any concern submitting a token offer on the non-LSA set-aside portion or attempting by any other device to secure an unfair advantage over other offerors.

(2) *Determining priority for award:* Labor surplus concerns eligible under (1) above will participate in the LSA set-aside in the following order of priority:

Group 1. Small business concerns which are also LSA concerns. A concern in this group which has received an award on the non-LSA set-aside portion of an item shall first be requested to offer the same percentage of the LSA set-aside portion. If a percentage of the LSA set-aside portion of the item remains to be awarded, a drawing by lot shall determine the order of priority within this group for negotiations for the balance of the item.

Group 2. Small business concerns which are not LSA concerns. If a quantity of the item remains unawarded after negotiations with concerns in Group 1, the same procedure shall be followed for Group 2.

(3) *Determining the LSA set-aside award price:*

(i) *General rule:* Subject to the exceptions listed in (ii) and (iii) below, award under the LSA set-aside shall be made at the highest unit price for each item awarded on the non-LSA set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating offers on the non-LSA set-aside portion. When any one of separate quantities offered on an item cannot be accepted without awarding other quantities of that item at higher prices, the weighted average price shall be used to determine the highest unit price for award if the highest award of the non-LSA set-aside portion of an item was made on such a conditioned offer. When offers on the non-LSA set-aside portion tie-in two or more items so that an award cannot be made for a quantity on one item without a concurrent award of a quantity on another item, such tie-in conditions will be disregarded and the price offered for each quantity under each item shall be considered separately The LSA set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-LSA set-aside award price.

(ii) *Award price involving foreign end products (see Part 25 of FAR and DoD FAR supplement).*

(A) When the highest award price on the non-LSA set-aside is established by an award for a foreign end product, the award price for the LSA set-aside portion shall be the award price on the non-LSA set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the LSA set-aside to concerns offering foreign end products in which case the general rule applies.

(B) Award under the LSA set-aside to a concern offering a foreign end product, when the highest award price on the non-LSA set-aside portion is established by an award to a firm offering a domestic source end product, shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non-LSA set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(iii) *Obtaining offers and processing LSA set-aside awards.*

(A) When an unaccepted low offer is not involved: if there is no unaccepted low offer meeting the criteria in (B) below, eligible concerns in the order of priority in (2) above will be requested to offer on the LSA set-aside quantity at the highest unit price awarded on the non-LSA set-aside portion. Concerns may offer less than the total LSA set-aside portion. If any part of the LSA set-aside portion is not taken by eligible concerns, the partial LSA set-aside is automatically disolved as to the unawarded portion. Such unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations.

(B) When an unaccepted low offer is involved: if (I) a responsive offer is submitted on the non-LSA set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non-LSA set-aside portion, but cannot be accepted (e.g., because of "all-or-none" or other quantity limitations, or because the offeror is nonresponsible), and (II) at the time of negotiation for the LSA set-aside portion, the offer could be accepted (e.g., because the LSA set-aside quantity is large enough that the quantity limitations could be compiled with or because the offeror has now become responsible), then the following procedures shall be followed.

Step one. Eligible concerns (in the order of priority in (2) above) will be requested to offer at the adjusted unit price of the unaccepted offer, a quantity of the LSA set-aside portion equal to the quantity of the unaccepted offer.

Step two. If no eligible concern is willing to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above) shall be requested to make offers on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step three.

Case 1. If the unaccepted offer was submitted by a concern not eligible to participate in the LSA set-aside, and if any of the quantity under Step Two is not awarded, then it and all other remaining quantities of the LSA set-aside portion must be withdrawn and resolicited. If the entire quantity under Step Two is awarded among eligible concerns, Steps Four, Five and Six are applicable to the remaining LSA set-aside portion.

Case 2. If the unaccepted offer was submitted by a concern eligible to participate in the LSA set-aside, Steps Four, Five and Six are applicable to the remaining LSA set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. However, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the LSA set-aside portion equal to the entire quantity of its unaccepted offer at the adjusted price of its offer.

Step four. In case there is more than one unaccepted offer which meets the conditions of (I) and (II) above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer in turn, from lowest price to highest.

Step five. Eligible concerns in the order of priority in (2) above will be requested to offer, at the highest unit price awarded on the non-LSA set-aside portion on any quantity of the LSA set-aside portion, remaining after Steps One, Two, Three and Four have been completed.

Step six. If the entire LSA set-aside portion is not taken by eligible concerns pursuant to Steps One through Five above, the partial LSA set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(4) *Determining the LSA set-aside quantity:*

(i) The maximum quantity of an item which may be awarded to any eligible concern shall be determined by applying the percentage of the total non LSA set-aside portion of an item on which an offer was made to the total quantity of the LSA set-aside portion of that item.

(ii) If a concern offers on two or more items on the non LSA set-aside portion, but conditions its offer in such a manner that the total of all these quantities may not be awarded, or offers a quantity which, at the option of the Government, may be applied to one or more items, the overall maximum which can be offered on the LSA set-aside portion of the items affected will be determined by applying the percent of the total quantities of these items on the non-LSA set-aside portion that could have been awarded to the total of these items on the LSA set-aside portion.

(iii) Notwithstanding the foregoing, if the entire LSA set-aside portion of an item is not awarded after completion of the above steps, then the unawarded balance shall be offered to those concerns who were previously awarded quantities on the LSA set-aside portion but who were prevented from accepting additional quantities because of the quantity limitations stated above. The unawarded quantity will first be offered to that concern in the first priority which has received the largest quantity of the item. If two or more offerors in the first priority received an identical quantity, a drawing by lot shall determine their priority. If a balance still remains, this procedure shall be repeated with the offerors in each of the original priority groups in turn, to dispose of any balance of the item still remaining.

(d) *Agreement.* The offeror agrees that if awarded a contract as a small business LSA concern under the set-aside portion of this procurement, he will perform or cause to be performed a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of areas of performance.* Each offeror desiring to be considered for award as a LSA concern on the LSA set-aside portion of this procurement shall identify in Section K of his offer the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the areas in which he proposes to perform, *provided,* that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" in Section K of the solicitation, the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" set forth in Section K of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirements contract.* Only one award will be made for each item or sub-item of the non LSA set-aside portion and only one award will be made for each item or sub-item of the LSA set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Combined Small Business-Labor Surplus Area Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-LSA set-aside Contractor and the LSA set-aside Contractor to whom the awards are made.

(End of clause)

252.219-7003 Determining the set-aside award price.

As prescribed at 219.508(d), insert the following clause:

DETERMINING THE SET-ASIDE AWARD PRICE (APR 1984)

In determining the price for the set-aside portion when the clause at FAR 252.219-7, Notice of Partial Small Business Set-Aside, is included herein, the following procedures will be used:

(a) *General rule.* Subject to the exceptions listed in (b) and (c) below, awards under the set-aside shall be made at the highest unit price for each item awarded on the non-set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating offers on the non-set-aside portion. The set-aside award price shall be subject to the same discount terms used in the evalution of the highest non-set-aside award price.

(b) *Award price involving foreign end products (see Part 25 of the FAR and DoD FAR supplement.*

(1) When the highest award price on the non-set-aside is established by an award for a foreign end product, the award price for the set-aside portion shall be the award price on the non-set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the set-aside to concerns submitting foreign end products in which case the general rule applies.

(2) Award under the set-aside to a concern offering a foreign end product, when the highest award price on the non-set-aside portion is established by a domestic source end product, shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non-set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(c) *Obtaining offers and processing set-aside awards.*

(1) When an unaccepted low offer is not involved; if there is no unaccepted low offer meeting the criteria in (ii) below, eligible concerns in the order of priority in FAR 19.202-3 will be requested to offer on the set-aside quantity at the highest unit price awarded on the non-set-aside portion. Concerns may offer less than the total set-aside portion. If any part of the set-aside portion is not taken by eligible small business concerns, the partial set-aside is automatically dissolved as to the unawarded portion. Such unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations.

(2) When an unaccepted low offer is involved; if (i) a responsive offer is submitted on the non-set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non-set-aside portion, but cannot be accepted

(e.g., because of "all-or-none" or other quantity limitations, or because the offeror is nonresponsible), and (ii) at the time of negotiation for the set-aside portion, the offer could be accepted (e.g., because the set-aside quantity is large enough that the quantity limitations could be complied with, or because the offeror has now become responsible), then the following procedures shall be followed:

Step one. Eligible concerns (in the order of priority in FAR 19.202–3) will be requested to offer at the adjusted unit price of the unaccepted offer, a quantity of the set-aside portion equal to the quantity of the unaccepted offer.

Step two. If no eligible concern is willing to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in FAR 19.202–3) shall be requested to make offers on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step three.

Case 1. If the unaccepted offer was submitted by a concern not eligible to participate in the set-aside, and if any of the quantity under Step Two is not awarded, then it and all other remaining quantities of the set-aside portion must be withdrawn and resolicited. If the entire quantity under Step Two is awarded among eligible concerns, Steps Four, Five and Six are applicable to the remaining set-aside portion.

Case 2. If the unaccepted offer was submitted by a concern eligible to participate in the set-aside, Steps Four, Five and Six are applicable to the remaining set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. However, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the set-aside portion equal to the entire quantity of its unaccepted offer, at the adjusted price of its offer.

Step four. In case there is more than one unaccepted offer which meets the conditions of (c)(2) (i) and (ii) above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer, in turn, from lowest to highest.

Step five. Eligible concerns in the order of priority in FAR 19.202–3 will be requested to offer at the highest unit price awarded on the non-set-aside portion of any quantity of the set-aside portion remaining after Steps One, Two, Three and Four have been completed.

Step six. If the entire set-aside portion is not taken by eligible small business concerns pursuant to Steps One through Five above, the partial set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(End of clause)

252.219–7004 Eligibility for preference as a labor surplus concern.

As prescribed at 219.508(S–70), insert the following clause:

ELIGIBILITY FOR PREFERENCE AS A LABOR SURPLUS CONCERN (JUNE 1978)

Each offeror desiring to be considered for award as a labor surplus area (LSA) concern on the set-aside portion of this procurement, specified elsewhere in the schedule, shall indicate below the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price:

Name of Company:————————
Street Address:————————
City/County:————————
State:————————

(If more than one location is to be used, list each location and the costs to be incurred at each, stated as a percentage of the contract price.)

CAUTION: Failure to list the location of manufacture or production and the percentage, if required, of cost to be incurred at each location will preclude consideration of the offeror as a LSA concern.

(End of clause)

252.220–7000 Notice of labor surplus area set-aside.

As prescribed at 220.7003(b)(2)(i), insert the following clause:

NOTICE OF LABOR SURPLUS AREA SET-ASIDE (JUN 1978)

(a) *General.* Part of this procurement, identified in the Schedule as the "set-aside portion," has been set aside for preferential award to one or more labor surplus area (LSA) concerns, and, to a limited extent, to other business concerns which do not qualify as LSA concerns. Award of the set-aside portion will be made after awards have been made on the non-set-aside portion.

(b) *Procedures.*

(1) *Determining eligibility.*

(i) To be eligible to participate in the set-aside portion of this procurement, a concern must submit a responsive offer on the non-set-aside portion.

(ii) The Government reserves the right not to award to any concern submitting a token offer on the non-set-aside portion or attempting by any other device to secure an unfair advantage over other offerors.

(2) *Determining priority for award.* Labor surplus concerns and other business concerns eligible under (1) above will participate in the set-aside in the following order of priority:

Group 1. LSA concerns which are also small business concerns.

Group 2. Other LSA concerns.

Group 3. Small business concerns which are not LSA concerns.

Group 4. Other business concerns which are not LSA concerns.

Within each of the above groups, offers on the set-aside portion will be requested from concerns in the order of their offers on the non-set-aside portion, beginning with the lowest responsive offer. Concerns may offer less than the total set-aside portion.

(3) *Determining the set-aside award price.*

(i) *General rule.* Subject to the exceptions listed in (ii) and (iii) below, awards under the set-aside shall be made at the highest unit price for each item awarded on the non-set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating bids on the non-set-aside portion. The set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-set-aside award price.

(ii) *Award price involving foreign end products. (See Part 25 of the FAR and Part 225 of the DoD FAR supplement)*

(A) When the highest award price on the non-set-aside is established by an award for a foreign end product, the award price for the set-aside portion shall be the award price on the non-set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the set-aside to concerns offering foreign end products in which case the general rule applies.

(B) Award under the set-aside to a concern offering a foreign end product when the highest award price on the non-set-aside portion is established by a domestic source end product shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non-set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(iii) *Obtaining offers and processing set-aside awards.*

(A) When an unaccepted low offer is not involved: if there is no unaccepted low offer meeting the criteria in (B) below, eligible concerns in the order of priority in (2) above will be requested to offer on the set-aside quantity at the highest unit price awarded on the non-set-aside portion, *provided* that if any part of the set-aside portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 at prices no higher than the lower price awarded on the non-set-aside portion.

(B) When an unaccepted low offer is involved: if *a.* a responsive offer is submitted on the non-set-aside portion at a unit price which, when adjusted, is lower than the adjusted higher unit price awarded on the non-set-aside portion, but cannot be accepted (e.g., because of "all-or-none," or other quantity limitations, or because the bidder is nonresponsible), and *b.* at the time of negotiation for the set-aside portion, the offer could be accepted (e.g., because the set-aside quantity is large enough that the quantity limitations could be complied with, or because the bidder has now become responsible), then the following procedures shall be followed:

Step one. Eligible concerns (in the order of priority in (2) above), excluding Group 4 firms, will be requested to offer at the adjusted unit price of the unaccepted bid, a

quantity of the set-aside portion equal to the quantity of the unaccepted offer.

Step two. If no eligible concern will offer to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above), excluding Group 4 firms, shall be requested to offer on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step three. Steps Four, Five and Six are applicable to the remaining set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. *However,* the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the set-aside portion equal to the entire quantity of its unaccepted offer at the adjusted price of its offer.

Step four. In case there is more than one unaccepted offer which meets the conditions of *a.* and *b.* above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer in turn, from lowest price to highest.

Step five. Eligible concerns in the order of priority in (2) above will be requested to offer at the highest unit price awarded on the non-set-aside portion or any quantity of the set-aside portion remaining after Steps One, Two, Three and Four have been completed, *provided,* that if any part of the set-aside portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 beginning with the lowest offeror on the non-set-aside portion at prices no higher than the lowest price awarded on the non-set-aside portion.

Step six. If the entire set-aside portion is not taken by eligible concerns pursuant to Steps One through Five above, the partial set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(c) *Definitions.*

(1) "Labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4B and Executive Order 10582."

(2) "Labor surplus area concerns," means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus area. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract prices.

(3) "Small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is offering on Government contracts, and can further qualify under the criteria set forth in regulations of Small Business Administration (CFR Title 13, Section 121.3–8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract end items manufactured or produced by small business concerns; *provided,* that this additional requirement does not apply in connection with construction or service contracts.

(d) *Agreement.* The offeror agrees that if awarded a contract as a LSA concern under the set-aside portion of this procurement, he will perform or cause to be performed a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of areas of performance.* Each offeror desiring to be considered for award as a LSA concern on the LSA set-aside portion of this procurement shall identify in Section K of his offer the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the contract. If the Department Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the areas in which he proposes to perform, *provided,* that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled *"Eligibility for Preference as a Labor Surplus Area Concern"* in Section K of the solicitation, the address(es) when costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" set forth in Section K of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirements Contract.* Only one award will be made for each item or sub-item of the non-set-aside portion and only one award will be made for each item or sub-item of the set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Labor Surplus Area Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-set-aside Contractor and the set-aside Contractor to whom the awards are made.

(End of clause)

252.220-7001 Notice of labor surplus area set-aside—alternate.

As prescribed at 220.7003(b)(2)(ii), insert the following clause:

NOTICE OF LABOR SURPLUS AREA SET-ASIDE—ALTERNATE (APR 1984)

(a) *General.* Part of this procurement, identified in the Schedule as the "set-aside portion," has been set aside for preferential award to one or more labor surplus area (LSA) concerns, and, to a limited extent, to other business concerns which do not qualify as LSA concerns. Award of the set-aside portion will be made after awards have been made on the non-set-aside portion.

(b) *Procedures.*

(1) *Determining eligiblity.*

(i) To be eligible to participate in the set-aside portion of this procurement, a concern must submit a responsive offer on the non-set-aside portion.

(ii) The Government reserves the right not to award to any concern submitting a token offer on the non-set-aside portion or attempting by any other device to secure an unfair advantage over other offerors.

(2) *Determining priority for award.* Labor surplus concerns and other business concerns eligible under (1) above will participate in the set-aside in the following order of priority:

Group 1. LSA concerns which are also small business concerns. A concern in this group which has received an award on the non-set-aside portion of an item shall first be requested to offer the same percentage of the set-aside portion. If a percentage of the set-aside portion of the item remains to be awarded, a drawing by lot shall determine the order of priority within this group for negotiations for the balance of the item.

Group 2. Other LSA concerns. If a quantity of an item remains unawarded after negotiations have been completed with concerns in Group 1, the same procedure shall be followed for Group 2.

Group 3. Small business concerns which are not LSA concerns. If a quantity of an item remains unawarded after negotiations with concerns in Group 2, the same procedure shall be followed for Group 3.

Group 4. Other business concerns which are not LSA concerns. If a quantity of the item remains unawarded after negotiations with concerns in Group 3, the same procedure shall be followed for Group 4.

(3) *Determining the set-aside price.*

(i) *General rule.* Subject to the exception listed in (ii) and (iii) below, awards under the set-aside shall be made at the highest unit price for each item awarded on the non-set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating bids on the non-set-aside portion. When any one of separate quantities offered on an item cannot be accepted without awarding other quantities of that item at higher prices, the weighted average price shall be used to determine the highest unit price for award if the highest award of the non-set-aside portion of an item was made on such a conditioned offer. When offers on the non-set-aside portion tie-in two or more items so that an award cannot be made for a quantity on one item without a concurrent award of a quantity on another item, such tie-in conditions will be disregarded and price offered for each quantity under each item shall be considered separately. The set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-set-aside award price.

(ii) *Award price involving foreign end products (See Part 25 of the FAR and Part 225 of the DoD FAR supplement)*

(A) When the highest award price on the non-set-aside is established by an award for a foreign end product, the award price for the set-aside portion shall be the award price on the non-set-aside as adjusted in evaluating

the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the set-aside to concerns offering foreign end products in which case the general rule applies.

(B) Award under the set-aside to a concern offering a foreign end product when the highest award price on the non-set-aside portion is established by a domestic source end product shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non-set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(iii) *Obtaining offers and processing set-aside awards.*

(A) When an unaccepted low offer is not involved: If there is no unaccepted low offer meeting the criteria in (B) below, eligible concerns in the order of priority in (2) above will be requested to offer on the set-aside quantity at the highest unit price awarded on the non-set-aside portion. Concerns may offer less than the total set-aside portion, *provided* that if any part of the set-aside portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 at prices no higher than the lowest price awarded on the non-set-aside portion.

(B) When an unaccepted low offer is involved: If *a.* a responsive offer is submitted on the non-set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non-set-aside portion, but cannot be accepted (e.g., because of "all-or-none," or other quantity limitations, or because the bidder is nonresponsible), and *b.* at the time of negotiation for the set-aside portion, the offer could be accepted (e.g., because the set-aside quantity is large enough that the quantity limitations could be complied with or because the bidder has now become responsible), then the following procedures shall be followed:

Step one. Eligible concerns (in the order of priority in (2) above), excluded Group 4 firms, will be requested to offer at the adjusted unit price of the unaccepted bid, a quantity of the set-aside portion equal to the quantity of the unaccepted offer.

Step two. If no eligible concern will offer to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above), excluding Group 4 firms, shall be requested to offer on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step three. Steps Four, Five and Six are applicable to the remaining set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. *However,* the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the set-aside portion equal to the entire quantity of its unaccepted offer, at the adjusted price of its offer.

Step four. In case there is more than one unaccepted offer which meets the conditions of *a.* and *b.* above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer in turn, from lowest price to highest.

Step five. Eligible concerns in the order of priority in (2) above will be requested to offer at the highest unit price awarded on the non-set-aside portion of any quantity of the set-aside portion remaining after Steps One, Two, Three and Four have been completed, *provided* that if any part of the set-aside portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 at prices no higher than the lowest price awarded on the non-set-aside portion.

Step six. If the entire set-aside portion is not taken by eligible concerns pursuant to Steps One through Five above, the partial set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(4) *Determining the set-aside quantity.*

(i) The maximum quantity of an item which may be awarded to any eligible concern shall be determined by applying the percentage of the total non-set-aside portion of an item on which an offer was made to the total quantity of the set-aside portion of that item.

(ii) If a concern offers on two or more items on the non-set-aside portion, but conditions its offer in such a manner that the total of all these quantities may not be awarded, or offers a quantity which, at the option of the Government, may be applied to one or more items, the overall maximum which can be offered on the set-aside portion of the items affected will be determined by applying the percent of the total quantities of these items on the non-set-aside portion that could have been awarded to the total of these items on the set-aside portion.

(iii) Notwithstanding the foregoing, if the entire set-aside portion of an item is not awarded after completion of the above steps, then the unawarded balance shall be offered to those concerns who were previously awarded quantities on the set-aside portion but who were prevented from accepting additional quantities because of the quantity limitations stated above. The unawarded quantity will first be offered to that concern in the first priority which has received the largest quantity of the item. If two or more offerors in the first priority received an identical quantity, a drawing by lot shall determine their priority. If a balance still remains, this procedure shall be repeated with the offerors in each of the original priority groups in turn, to dispose of any balance of the item still remaining.

(c) *Definitions.*

(1) "Labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4B and Executive Order 10582."

(2) "Labor surplus area concerns" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

(3) "Small business concern" is a concern, including its affilitates, which is independently owned and operated, is not dominant in the field of operation in which it is offering on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (CFR Title 13, Section 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract end items manufactured or produced by small business concerns: *provided,* that this additional requirement does not apply in connection with construction or service contracts.

(d) *Agreement.* The offeror agrees that if awarded a contract as an LSA concern under the set-aside portion of this procurement, he will perform or cause to be performed by a first tier subcontractor a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of areas of performance.* Each offeror desiring to be considered for award as a LSA concern on the LSA set-aside portion of this procurement shall identify in Section K of his offer the geographical areas in which he proposes to perform, or cause to be performed a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the areas in which he proposed to perform, *provided,* that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" in Section K of this solicitation, the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" set forth in Section K of the solicitation will preclude consideration of the offeror as an LSA concern.

(f) *Requirements contract.* Only one award will be made for each item or sub-item of the non-set-aside portion and only one award will be made for each item or sub-item of the set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Labor Surplus Area Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-set-aside Contractor and the set-aside Contractor to whom the awards are made.

(End of clause)

252.222-7000 Potential application of the service contract act, As Amended (Fixed Price).

As prescribed at 222.1006(S-70), insert the following clause:

POTENTIAL APPLICATION OF THE SERVICE CONTRACT ACT, AS AMENDED (FIXED PRICE) (SEP 1979)

(a) The Contractor warrants that the prices set forth in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) In the event that during the performance of this contract, it is determined by appropriate authority that the provisions of the Service Contract Act of 1965, as amended, apply to any of the work covered by this contract, the Contracting Officer may unilaterally implement such determination by requiring payment of the appropriate wage and fringe benefit scale, and the Contractor agrees to comply with such implementation. In the event that compliance with the Contracting Officer's direction results in any increase in the labor rates paid under this contract, the Contractor agrees to enter promptly into negotiations to reflect such an increase. Such contract adjustment shall be limited to increases in wages or fringe benefits affected by the above determination, and the concomitant increases in social security and unemployment taxes and workmen's compensation insurance, but shall not otherwise include any amount for profit, or for general administrative costs or overhead.

(c) Within 30 days of receipt of the applicable wage and fringe benefit scale, the Contract will submit a proposal for any contract price change to the Contracting Officer. With the submission of his proposal for adjustment, the Contractor shall also submit, if requested by the Government, all necessary and pertinent data used by him in preparing the proposal upon which he received the original award of this contract. The Contracting Officer or his authorized representative shall be access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor until the expiration of 3 years after final payment under this contract.

(d) This clause shall be deemed to constitute the exclusive contractual remedy of the Contractor for adjustment arising out of the decision to apply the Service Contract Act, as amended, to work covered by this contract. Failure of the parties to reach an understanding as to such adjustment shall be considered a dispute subject to the Disputes clause of the contract.

(End of clause)

252.222-7001 Service Contract Act (SCA) minimum wages and fringe benefits.

As prescribed at 222.1006(S-71), insert the following clause:

SERVICE CONTRACT ACT (SCA) MINIMUM WAGES AND FRINGE BENEFITS (SEP 1979)

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor (DOL). If an SCA wage determination is not incorporated herein, the bidders/offerors shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent Contractor _____ and the _____ (union). Copies of the agreement can be obtained from the Contracting Officer. Pursuant to DOL Regulation, 29 CFR 4.1c the economic terms of that agreement (or any new CBA negotiated ten or more days prior to the opening of bids, or the commencement of the contract in the case of negotiated contracts, exercise of options, or extensions) will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined, after a hearing pursuant to section 4(c) of the SCA, that they are substantially at variance with the wages prevailing in the area.

(End of clause)

252.228-7000 Reimbursement for war hazard losses.

As prescribed at 228.305(e)(2), insert the following clause:

REIMBURSEMENT FOR WAR HAZARD LOSSES (JUL 1968)

(a) The Contractor's costs for assuming liability for employee protection against war hazard risks pursuant to paragraph (b) of the clause of this contract entitled "Workmen's Compensation and War Hazard Insurance" shall be an allowable cost under this contract, subject to the following:

(i) The Contractor shall submit proof of loss files to support payment or denial of each claim.

(ii) As soon as practicable, but no later than one year after the expiration or termination of this contract, unless the time shall be extended by the Contracting Officer, the Contractor shall convert each claim which has not been finally settled into a suitable arrangement under which the claim can be extinguished by the Contractor with a lump sum payment. Subject to approval by the Contracting Officer, the Contractor shall thereupon obtain necessary release documents and settle the claim by lump sum arrangement, taking into account any payments previously made.

(iii) As to any potential claim which is known to, or reasonably should be within the knowledge of, the Contractor at the time of final settlement under this contract, The Contractor shall, at that time, present to the Government a full report and evaluation, indicating as to each potential claim that a reasonable investigation of the circumstances has been made, the results thereof, an evaluation of the merits, and an estimate of the amount involved should the potential claim mature into a valid obligation.

(iv) The cost of insurance against a liability reimbursable under this clause shall not be an allowable cost or otherwise recoverable under this contract.

(b) The Government may require the Contractor to assign to the Government in the manner, at the times, and to the extent directed by the Contracting Officer all right, title and interest of the Contractor to any refund, rebate or recapture arising out of any claim settlement. The Government may handle such assigned entitlements in such manner as it deems appropriate and may recover any benefits related to claim settlements.

(c) The Contractor shall, as soon as practicable after an occurrence which appears to give rise to a claim under this portion of the contract, perform such investigations as may be appropriate and promptly notify the Contracting Officer in writing of any additional amount estimated to be necessary to be obligated on account of such claim or potential claim. In addition, the Contractor shall give the Government or its representatives immediate written notice of any suit or action filed, the cost or expense of which may be reimbursable to the Contractor under this clause. The Contractor agrees to render full assistance to the Government in connection with any third party suit or claim relating to this clause or its subject matter which the Government elects to prosecute or defend in its own behalf.

(End of clause)

252.228-7001 Ground and flight risk.

As prescribed at 228.306(a)(1), insert the following clause:

GROUND AND FLIGHT RISK (OCT 1975)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft "in the open", during "operation", and in "flight", as these terms are defined below, and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction, the risk of which is so assumed by the Government.

(b) For the purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule, the term "aircraft" means—

(A) Aircraft (including (I) complete aircraft, and (II) aircraft in the course of being manufactured, disassembled, or reassembled; provided, that an engine or a portion of a wing or a wing is attached to a fuselage of such aircraft) to be furnished to the Government under this contract (whether before or after acceptance by the Government; and

(B) Aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract; including all property installed therein, or in the process of installation, or temporarily removed from such aircraft; provided, however, that such aircraft and property are not covered by a separate bailment agreement.

(ii) The term "in the open" means located wholly outside of buildings on the Contractor's premises or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government shall be deemed to be in the open at all times while in Contractor's possession, care, custody, or control.

(iii) The term "flight" means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the . . .* With respect to land based aircraft "flight" shall commence with the taxi roll from a flight line on the Contractor's premises, and continue until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises; with respect to seaplanes, "flight" shall commence with the launching from a ramp on the Contractor's premises and continue until the aircraft has completed its landing run upon return and is beached at a ramp or the Contractor's premises; with respect to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continue until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged; and with respect to vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device on the Contractor's premises, provided, however, that aircraft off the contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contractor, or landings approved by . . .* in writing.

(iv) The term "Contractor's premises" means those premises designated as such in the Schedule or in writing by the . . .* and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(v) The term "operation" means operations and tests, other than on any production line, of aircraft, when not in flight, whether or not the aircraft is in the open or in motion during the making of any such operations or tests, and includes operations and tests of equipment, accessories, and power plants, only when installed in aircraft.

(vi) The term "flight crew member" means the pilot, the co-pilot and unless otherwise specifically provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defensive systems operator, when required, or assigned to their respective crew positions, to conduct any flight on behalf of the Contractor.

(c)(1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to subparagraph (3) below. Where the . . .* finds that any of such aircraft is in the open under unreasonable conditions, he shall notify the Contractor in writing of the conditions he finds to be unreasonable and require the Contractor to correct such conditions within a reasonable time.

(2) Upon receipt of such notice, the contractor shall act promptly to correct such conditions, regardless of whether he agrees that such conditions are in fact unreasonable. To the extent that the Contracting officer may later determine that such conditions were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs he incurred in correcting such conditions and the contract shall be modified in writing accordingly. Any dispute as to the unreasonableness of such conditions or the equitable adjustment shall be deemed to be a dispute concerning a question of the fact within the meaning of the clause of the contract entitled "Disputes".

(3) If the . . .* finds that the Contractor failed to act promptly to correct such conditions or has failed to correct such conditions within a reasonable time, he may terminate the Government's assumption of risk under this clause, as to any of the aircraft which is in the open under such conditions, such terminations to be effective at 12:01 A.M. on the fifteenth day following the day of receipt by the Contractor of written notice thereof. If the Contracting Officer later determines that the Contractor acted promptly to correct such conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (g) of this clause, be made in the contract price to compensate the Contractor for any additional costs he incurred as a result of termination of the Government's assumption of risk under this clause and the contract shall be modified in writing accordingly. Any dispute as to whether the Contractor failed to act promptly to correct such conditions, or as to the reasonableness of the time for correction of such conditions, or as to such equitable adjustment, shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(4) In the event the Government's assumption of risk under this clause is terminated in accordance with (3) above, the risk of loss with respect to Government-furnished property shall be determined in accordance with the clause of this contract, if any, entitled "Government Property" until the Government's assumption of risk is reinstated in accordance with (5) below.

(5) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government thereof. The Government may elect to again assume the risks and relieve the Contractor of liabilities as provided in this clause, or not, and the . . .* shall notify the Contractor of the Government's election. If, after correction of the unreasonable conditions the Government elects to again assume such risks and relieve the Contractor of such liabilities, the Contractor shall be entitled to an equitable adjustment in the contract price for costs of insurance, if any, extending from the end of the third working day after the Contractor notifies the Government of such correction until the Government notifies the Contractor of such election. If the Government elects not to again assume such risks, and such conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment for costs of insurance, if any, extending after such third working day.

(d) The Government's assumption of risk shall not extend to damage to, or loss or destruction of, such aircraft:

(i) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open, and during operation, in accordance with sound industrial practice (the term "Contractor's managerial personnel" means the Contractor's directors, officers, and any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of all or substantially all of the contractor's business, or all or substantially all of the Contractor's operations at any one plant or separate location at which this contract is performed, or a separate and complete major industrial operation in connection with the performance of this contract);

(ii) Sustained during flight if the flight crew members conducting such flight have not been approved in writing by the . . .*;

(iii) While in the course of transportation by rail, or by conveyance, on public streets, highways, or waterways, except for Government-furnished property;

(iv) To the extent that such damage, loss or destruction is in fact covered by insurance;

(v) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless such damage is the result of other loss, damage consists of reasonable wear and tear or deterioration, or results from inherent vice in such property, this exclusion shall not apply; or

(vi) Sustained while the aircraft is being worked upon and directly resulting therefrom, including but not limited to any repairing, adjusting, servicing or maintenance operation, unless such damage, loss, or destruction, is of a type which would be covered by insurance which would customarily have been maintained by the Contractor at the time of such damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e) With the exception of damage to, or loss or destruction of aircraft in "flight", the Government's assumption of risk under this clause shall not extend to the first $1,000 of loss or damage resulting from each event separately occurring. The Contractor assumes the risk of and shall be responsible for the first $1,000 of loss of or damage to aircraft "in the open" or during "operation" resulting from each event separately occurring, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel. If the Government elects to require that the aircraft be replaced or restored by the contractor to the condition in which it was immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) below shall not include the dollar amount of the risk assumed by the Contractor under this paragraph. In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $1,000 (or the amount of the loss is smaller) as directed by the Contracting Officer.

(f) A subcontractor shall not be relieved from liability for damage to, or loss or destruction of, aircraft while in his possession or control, except to the extent that the subcontract, with the prior written

approval of the Contracting Officer, provides for relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of such aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. Where a subcontractor has not been relieved from liability for any damage, loss, or destruction of aircraft and any damage loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for such damage to, or loss or destruction of, the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as may be otherwise authorized in this clause, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to, or loss or destruction of, aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under the provisions of this clause, whether or not such assumption may be terminated as to aircraft in the open.

(h) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect such aircraft from further damage, separate damaged and undamaged aircraft, put all aircraft in the best possible order and further, except in cases covered by (e) above, the Contractor should furnish to the . . . a statement of:

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) The insurance, if any, covering any part of the interest in such commingled property. Except in cases covered by (e) above, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing his obligations under this paragraph (h) and this contract shall be modified in writing accordingly.

(i) If prior to delivery and acceptance by the Government any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of such damage, loss or destruction, the Government shall either (1) require that such aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to such damage, or (2) shall terminate this contract with respect to such aircraft. In the event that the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and this contract shall be modified in writing accordingly. If, in the alternative, this contract is terminated under this paragraph with respect to such aircraft and under this clause the Government has assumed the risk of such damage, loss, or destruction, the Contractor shall be paid the contract price for said aircraft (or, if applicable, any work to be performed on said aircraft) less such amounts as the Contracting Officer determines (1) that it would have cost the Contractor to complete the aircraft (or any work to be performed on said aircraft) together with anticipated profit, if any, on any such uncompleted work, and (2) to be the value, if any, of the damaged aircraft or any remaining portion thereof retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damage, lost, or destroyed aircraft, or any remaining parts thereof; and, if additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due to the Contractor. Failure of the parties to agree upon an equitable adjustment or upon the amount to be paid in the event of termination of the contract with respect to any aircraft, shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(j) In the event the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under the provisions of this clause and for which the Contractor has been compensated by the Government, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the . . .*, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

(End of clause)

* In the foregoing clause, insert in contracts of the Department of the Army, the Department of the Navy, the Department of the Air Force, and in contracts to be administered by the Defense Contract Administration Services the activity designated in combined regulation identified as Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1A, Defense Logistics Agency Regulation 8210.1, dated 5 October 1971, subject: Requirements for Contractor Operating Procedures and Flights Crews, enclosure 1.

252.228–7002 Flight risks.

As prescribed at 28.307–2(S–70)(1), insert the following clause:

FLIGHT RISKS (OCT. 1975)

(a) Notwithstanding any other provision of this contract, and particularly subparagraph (g)(1) of the "Government Property" clause and paragraph (c) of the "Insurance—Liability to Third Persons" clause, the Contractor shall not (i) be relieved of liability for, damage to, or loss or destruction of, aircraft sustained during flight, or (ii) be reimbursed for liabilities to third persons for loss of or damage to property, or for death or bodily injury, which are caused by aircraft during flight, unless the flight crew members have previously been approved in writing by . . .*. (See footnote at end of clause.)

(b) For purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule, the term "aircraft" means any aircraft, whether furnished by the Contractor under this contract (either before or after acceptance by the Government) or furnished by the Government to the Contractor under this contract, including all Government Property placed or installed therein or attached thereto; *provided*, however, that such aircraft and property are not covered by a separate bailment agreement.

(ii) The term "flight" means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the . . .*. (See footnote at end of clause.) As to land based aircraft, "flight" shall commence with the taxi roll to a flight line; as to sea planes, "flight" shall commence with the launching from a ramp and continue until the aircraft has completed its landing run and is beached at a ramp; as to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off and continue until the aircraft has returned to the ground and rotors are disengaged; and for vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device and continue until the aircraft has been re-engaged to any launching platform or device.

(iii) The term "flight crew members" means the pilot, the co-pilot and, unless otherwise specifically provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defense systems operator, when required, or assigned to their respective crew positions, to conduct any flight on behalf of the Contractor.

(c) If any aircraft is damaged, lost, or destroyed during flight, and if the amount of such damage, loss, or destruction exceeds one hundred thousand dollars ($100,000) or twenty percent (20%) of the estimated cost (exclusive of any fee) of this contract, whichever is less, and if the Contractor is not liable for the damage, loss or destruction pursuant to the "Government Property" clause of this contract together with paragraph (a) above, then an equitable adjustment for any resulting repair, restoration, or replacement that is required under this contract shall be made (i) in the estimated cost, delivery schedule, or both, and (ii) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly; *provided*, in determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, his employees, or any subcontractor, which materially contributed to the damage, loss, or destruction shall be taken into consideration. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(End of clause)

* In the foregoing clause, insert in contracts of the Department of the Army, the Department of the Navy, the Department of the Air Force, and in contracts to be administered by the Defense Contract Administration Services the activity

designated in combined regulation identified as Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1A, Defense Logistics Agency Regulation 8210.1, dated 8 October 1971, subj: Requirements for Contractor Operating Procedures and Flight Crews, enclosure 1.

In the foregoing clause, the definition of "aircraft" may be appropriately modified in the Schedule if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft.

252.228–7003 Capture and detention.

As prescribed at 228.309(S–70), insert the following clause:

CAPTURE AND DETENTION (JUN 1968)

(a) As used in this clause:

(1) "Captured person" means any employee of the Contractor—

(i) Who is assigned to duty outside the United States for the performance of this contract, and

(ii) Who is found to be missing from his place of employment under circumstances that make it appear probable that his absence is due to the action of the force of any power not allied with the United States in a common military effort, or who is known to have been taken prisoner, hostage, or otherwise detained by the force of any such power, whether or not such person is actually engaged in his employment at the time of capture; *Provided* that at the time the person was captured and detained the person was either:

(A) Engaged in activity directly arising out of the course of his employment under this contract, or

(B) Captured in an area in which the captured person was present only because such presence was required in order to perform this contract;

(2) A "period of detention" begins with the day of capture and continues until the captured person is returned to his place of employment, or to the United States, or is able to be returned to the jurisdiction of the United States, or until his death is in fact established or legally can be presumed to have occurred by evidence satisfactory to the Contracting Officer, whichever shall occur first;

(3) "United States" comprises geographically the fifty states and the District of Columbia; and

(4) "War Risk Hazards Compensation Act" refers to the statute compiled in Chapter 12 of Title 42, U.S. Code (sections 1701–1717), as amended.

(b) If pursuant to an agreement entered into prior to the capture, the Contractor is obligated to pay and shall have paid benefits to a captured person, or his dependents, on account of his detention, the Government will reimburse the Contractor for such payments up to an amount which will equal the lesser of (i) the total wage or salary (computed at the rate being paid at the time of capture) due from the Contractor to the captured person for the period of detention, of (ii) that amount which would have been payable to such person if the detention had occurred under circumstances wherein the benefit provisions of the War Risk Hazards Compensation Act would have been applicable.

(c) The period of detention shall not be considered as time spent in the performance of this contract, and the Government shall not be obligated to make payment under this contract on account of such person for the period of the detention except as provided in this clause.

(d) The obligation of the Government to make payments provided for by this clause shall be applicable to the entire period of detention except that it is expressly conditioned upon and subject to the availability of funds from which payment can be made. The rights and obligations of the parties under this clause shall survive the earlier expiration, completion or termination of this contract.

(e) The Contractor shall not be reimbursed under the provisions of this clause for payments made to employees for a period of detention during which the employees were entitled to compensation for capture and detention under the War Risk Hazards Compensation Act, as amended.

(End of clause)

252.228–7004 Bonds or other security.

As prescribed at 228.103–2(a)(4), insert the following provision:

BONDS OR OTHER SECURITY (APR 1977)

A bid guarantee in the penal sum of $——— must accompany the bid. Within ten (10) days after receipt of a notice of award, the Contractor shall furnish a performance bond (Standard Form 25) in the penal sum of $——— and payment, in full, of any sum due the Government. The bond of any surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds will be accepted. Individual sureties will be accepted if each such surety deposits with the Contracting Officer cash, bonds, or notes of the United States, or certified check drawn to the order of the office designated for contract administration, or such other security as the Contracting officer may deem necessary, for the required amount of the guaranty, under the agreement that the collateral so deposited shall remain in the possession and control of the Treasurer of the United States until the completion of the contract. The formal contract and notice to proceed will be issued on receipt of an acceptable performance bond and payment of any sum due the Government.

(End of provision)

252.228–7005 Insurance.

As prescribed at 228.311(S–70), insert the following clause:

INSURANCE (JAN 1965)

(a) The Contractor shall procure and thereafter maintain such bonds and insurance in such forms and such amounts comments and for such periods of time as the Contracting Officer may require in writing and shall be reimbursed for the cost thereof.

(b) In every instance where this contract requires the United States to reimburse the Contractor for the payment of the premium on a bond or insurance policy, the bond or insurance policy shall contain an endorsement or other recital excluding by appropriate language any claim on the part of the insurer or obligor to be subrogated, on payment of a loss or otherwise, to any claim against the United States.

(c) The Contractors shall give the Contracting Officer or his representative immediate notice in writing of any suit or action filed against the Contractor arising out of the performance of this contract and of any claim against the Contractor the cost and expense of which are reimbursable under the provisions of the Clause entitled "Allowable Cost and Payment," and the risk of which is then uninsured or in which the amount claimed exceeds the amount of insurance coverage. The Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor. Insofar as the following shall not conflict with any policy or contract of insurance, and upon request to the Contracting Officer, the Contractor shall do any and all things to effect an assignment and subrogation in favor of the Government, of all Contractor's rights and claims except against the Government, arising from or growing out of such asserted claims, and if required by the Contracting Officer, shall authorize representatives of the Government to settle and/or defend any such claim and to represent or take charge of any such litigation affecting the Contractor.

(End of clause)

252.228–7006 Accident reporting and investigation involving aircraft, missiles, and space launch, vehicles.

As prescribed at 228.7101, insert the following clause:

ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (JAN 1969)

(a) The Contractor shall report promptly to the Administrative Contracting Officer all pertinent facts relating to each accident involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled under or in connection with this contract.

(b) If the Government elects to conduct an investigation of the accident, the Contractor will cooperate fully and assist the Government's personnel until the investigation is completed.

(c) The Contractor will include a clause in each of his applicable subcontracts to require subcontractor cooperation and assistance in accident investigation under this clause.

(End of clause)

252.228–7007 Safety precautions for ammunition and explosives.

As prescribed at 228.7102(a), insert the following clause:

SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (SEP 1970)

(a) As used in this clause:

(1) "Ammunition" and "explosives" shall have the meaning set forth in DoD

Contractors' Safety Manual for Ammunition, Explosives, and Related Dangerous Materials, DoD 4145.26M;

(2) "Accident" means an event causing damage or injury involving ammunition or explosives which results in one or more of the following:

(i) One or more fatalities,*

(ii) One or more disabling injuries,*

(iii) Ten or more non-disabling injuries,*

(iv) Damage to Government property exceeding $10,000,

(v) Production interruption exceeding twenty-four (24) hours.

(b) The Contractor shall comply with the DoD Contractor's Safety Manual for Ammunition, Explosives and Related Dangerous Materials (DoD Manual 4145.26M), in effect on the date of the solicitation for this contract, as it relates to ammunition and explosives, and any other additional or more stringent requirements included in the schedule of this contract.** If the Contracting Officer notifies the Contractor of any noncompliance with such Manual, or schedule provisions, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action within the time specified by the Contracting Officer, the Contracting Officer may at any time remove Government personnel whenever the Contractor is in noncompliance with the safety requirements of this clause. Either action by the Contracting Officer shall not entitle the contractor to an adjustment of the contract price or other reimbursement for resulting increased costs, or to an adjustment of the delivery or performance schedule. However, should direction to cease performance be issued or Government personnel be removed and it is later determined that the Contractor had, in fact, complied with the Manual, or schedule provisions, the Contractor shall be entitled to an equitable adjustment in delivery schedule, in contract price, or both, in accordance with the procedures provided for in the clause of this contract entitled "Changes".

(c) The Contractor shall immediately notify the Contracting Officer after an accident involving ammunition or explosives. The Contractor shall also, in accordance with this contract or as required by the Contracting Officer, conduct an investigation and submit a written report of the accident to the Contracting Officer.

(d) Neither the requirements of this clause nor any act or failure to act by the Government in surveillance or enforcement thereof shall affect or relieve the Contractor of responsibility for the safety of his personnel and his property and for the safety of the general public in connection with the performance of this contract, or impose or add to any liability of the Government for such safety. The Contractor is not entitled to rely on the requirements of this clause or on any Government surveillance or enforcement in accordance with DoD 4145.26M in discharging the Contractor's responsibility.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in every subcontract hereunder which involves ammunition and explosives as defined in (a) above.

(f) Nothing contained herein shall relieve the Contractor from complying with applicable federal, state, and local laws, codes, ordinances and regulations (including the obtaining of licenses and permits) in connection with the performance of this contract.

*As defined in American National Standards Institute, Safety Standard, entitled "USA Standard Method of Recording and Measuring Work Injury Experience, Z16.1", in effect on the date of the solicitation.

**The Contracting Officers shall not reference in the schedule of the contract ammunition and explosive safety publications of DoD components in their entirety. Contracting Officers shall select and identify in the schedule of the contract applicable paragraphs or portions of such publications. Where contract performance will occur on a military installation, Contracting Officers may also include necessary regulations of the installation covering ammunition and explosives applicable to performance on the installation.

(End of clause)

ALTERNATE I (SEP 1970)

As prescribed at 228.7102(d), add the following paragraph:

(g) The Contractor shall comply with the requirements for a shipper's certificate set forth in the manual entitled "Packaging and Handling of Dangerous Materials for Transportation by Military Aircraft" (U.S. Government Printing Office Catalog Number D 301.7:71/4/2, also identified as AFM 71-4/TM-38-250/NAVAIR 15-03-500-MCO P4030.10/DSAM 4145.3).

252.229-7000 Fixed-price, into-plane, fuel contracts at overseas locations.

As prescribed at 229.402-1(S-70), insert the following clause:

FIXED-PRICE, INTO-PLANE, FUEL CONTRACTS AT OVERSEAS LOCATIONS (JAN 1979)

(a) As used throughout this clause, the following terms shall have the meanings set forth below:

(1) The term "direct tax" means any foreign tax, duty, fee, or like charge, directly applicable to the completed supplies or service covered by this contract. It includes any foreign tax, duty, fee, or like charge, directly applicable to the importation, exportation, production, manufacture, distribution, transportation, storage, withdrawal from storage, handling, receipt, sale, or delivery of such supplies or services. The term does not include unemployment compensation taxes; social security taxes; income taxes; excess-profits taxes; capital stock taxes; property taxes, except such property taxes as are assessed either on completed supplies covered by this contract or on the Contractor's interest in or use of Government-owned property supplied under this contract; and such other taxes as are not within the definition of the term "direct tax" as set forth in this paragraph. If this contract provides for the furnishing of supplies in Puerto Rico, the term "direct tax" also includes the U.S. import tax on petroleum.

(2) The term "nonrefundable tax" means any direct tax which the Contractor is required to pay and, in respect to which, he s unable to obtain a refund or drawback.

(b) The contract prices do not include any direct tax.

(c) The Contractor shall use all reasonable efforts to collect all refunds or drawbacks due to the Contractor, either in its own right or under any rights and privileges arising out of this contract, of any direct tax which the Contractor is required to pay or bear the burden of.

(d) The Government shall reimburse the Contractor for any nonrefundable tax. Contractor invoices for such reimbursement shall be submitted separately on a monthly basis and, when applicable, shall show credit deductions for all refunds or drawbacks received by the Contractor.

(e) Prior to submitting an initial invoice for any nonrefundable tax, the Contractor shall furnish the Contracting Officer, for approval, a written statement in quadruplicate showing the nature of the refundable tax, the unit rate thereof in U.S., dollars per U.S. gallon, and the airport and grade of product involved. The Contractor shall notify the Contracting Officer by a written statement in quadruplicate of any changes in said unit rates and of any additional nonrefundable tax. The Contracting Officer will inform the Accounting and Finance Office of his approval or disapproval of the rates for which reimbursement is sought. All invoices for any nonrefundable tax submitted by the Contractor shall be forwarded by the Contractor directly to the Accounting and Finance Officer, Attn: Examination Section, DLA Administrative Support Center, Cameron Station, Alexandria, Virginia, 22314, who will certify the invoices for payment only in accordance with unit rates for such taxes as approved by the Contracting Officer.

(f) The provisions of this paragraph (f) shall apply only to the extent that this contract is performed within any of the following foreign countries: Australia, the Bahamas, Bahrain, Barbados, Belgium, Canada, Republic of China, Denmark (including Greenland), Ethiopia, Federal Republic of Germany (including West Berlin), France, Greece, Iceland, Iran, Italy, Japan, Republic of Kores, Luxembourg, the Netherlands, New Zealand, Norway, Panama, the Philippines, Portugal (including the Azores), Saudi Arabia, Spain, Thailand, Trinidad and Tobago, Turkey, the United Kingdom (including Anegada Island, Antigua Island, Ascension Island, Bermuda, British Indian Ocean Territories (Diego Garcia), Mahe Island, and Turks and Caicos Island), and Yugoslavia. The contract price, including the price in subcontracts, does not include any tax or duty which the Government of the United States and the Government of any of the foregoing countries have agreed shall not apply to expenditures in that country by the United States. If any such tax or duty has been included in the contract price through error or otherwise, the contract price shall be correspondingly reduced.

(End of clause)

252.231-7000 Supplemental cost principles.

As prescribed at 231.201, insert the following clause:

SUPPLEMENTAL COST PRINCIPLES (APR 1984)

When the allowability of costs under this contract are determined in accordance with Subpart 41.2 of the Federal Acquisition Regulation, the allowability of costs shall also be determined by the Contracting Officer in accordance with Subpart 231.2 of the DoD FAR Supplement in effect at the date of this contract.

(End of clause)

252.232-700 Invoices.

As prescribed at 232.111(S-70), insert the following clause:

INVOICES (OCT 1982)

(a) An invoice is a written request for payment under the contract for supplies delivered or for services rendered. In order to be proper, an invoice must include as applicable the following:

(1) Invoice date;

(2) Name of contractor;

(3) Contract number (including order number, if any), contract line item number, contract description of supplies or services, quantity, contract unit of measure and unit price, and extended total;

(4) Shipment number and date of shipment (bill of lading number and weight of shipment will be shown for shipments on Government bills of lading);

(5) Name and address to which payment is to be sent (which must be the same as that in the contract or on a proper notice of assignment);

(6) Name (where practicable), title, phone number and mailing address of person to be notified in event of a defective invoice; and

(7) Any other information or documentation requires by other provisions of the contract (such as evidence of shipment).

Invoices shall be prepared and submitted in quadruplicate (one copy shall be marked "original") unless otherwise specified.

(b) For purposes of determining if interest begins to accrue under the Prompt Payment Act (Pub. L. 97-177):

(1) A proper invoice will be deemed to have been received when it is received by the office designated in the contract for receipt of invoices and acceptance of the supplies delivered or services rendered has occurred;

(2) Payment shall be considered made on the date on which a check for such payment is dated;

(3) Payment terms (e.g., "net 20") offered by the Contractor will not be deemed a "required payment date;" and

(4) The following periods of time will not be included;

(i) after receipt of an improper invoices and prior to notice of any defect or impropriety, but not to exceed 15 days (or any lesser period established by this contract); and

(ii) between the date of a notice of any defect or impropriety and the date a proper invoice is received. When the notice is in writing, it shall be considered made on the date shown on the notice.

(End of clause)

252.232-7001 Advance payment pool.

As prescribed at 232.412(S-70), insert the following clause:

ADVANCE PAYMENT POOL (APR 1984)

Notwithstanding other provisions of this contract, advance payments will be made for the work called for hereunder in accordance with the Determinations, Findings and Authorization for advance payments dated ————. Payments made pursuant to this clause shall be governed by the terms and conditions of the Advance Payment Pool Agreement, as it may be amended from time to time, between the United States of America and ———— (insert the name of the contractor), which agreement is hereby incorporated by reference with the same force and effect as though fully set forth herein.

(End of clause)

252.232-7002 Disposition of payments.

As prescribed at 232.412(S-71), insert the following clause:

DISPOSITION OF PAYMENTS (APR 1984)

Payment will be by a dual payee Treasury check drawn payable to the contractor or the ———— (insert name of the disbursing officer designated in the advance payment pool agreement) and forwarded to the ———— (insert name of the disbursing office designated in the advance payment pool agreement) for appropriate disposition.

(End of clause)

252.232-7003 Progress payments for foreign military sales acquisitions.

As prescribed at 232.502-4(S-70), insert the following clause:

PROGRESS PAYMENTS FOR FOREIGN MILITARY SALES ACQUISITIONS (APR 1984)

If this contract includes FMS requirements, the contractor shall submit progress payment requests in accordance with the following:

(a) The contractor shall submit a separate progress payment request for each separate progress payment rate in this contract.

(b) The contractor shall submit a supporting schedule showing the amount of each request distributed to each country's requirements in the contract. This schedule shall also show the contract line items and total prices thereof applicable to each separate progress payment rate.

(c) Each progress payment request shall:

(1) Identify the contract requirements to which it applies, (i.e., FMS or U.S.).

(2) Be calculated on the basis of the prices, costs (including estimated costs to complete), subcontractor progress payments, and progress payment liquidations of the contract requirements to which it applies. The contractor in preparing these requests shall distribute costs among contract line items and countries in a manner acceptable to the Administrative Contracting Officer.

(End of clause)

252.232-7004 Flexible progress payments.

As prescribed at 232.502-4(S-71), insert the following clause:

FLEXIBLE PROGRESS PAYMENTS (APR 1984)

This contract is subject to flexible progress payment procedures. The progress payment rate of this contract is ——%, and this percentage applies in lieu of the uniform, standard progress payment rate and liquidation rate of the "Progress Payments" clause. The progress payment rate of this contract was determined by the DoD Cash Flow Computer Model, (dated ———), using five percent (5%) as the targeted rate for the Contractor's investment (as a weighted average of costs) in its work in process inventory over the life of the contract. If actual and projected case flow data generated during performances of this contract reveal that the progress payment rate will result in an investment in work in process inventory by the Contractor in excess of seven percent (7%), or less than three percent (3%), the progress payment rate shall be redetermined by using the DoD Cash Flow Computer Model. Unless it contained an error, the version of the DoD Cash Flow Computer Model that was used initially in this contract will be used for any redetermination permitted by this clause. In no event will the progress payment rate be less than the uniform, standard progress payment rate that would have applied to this contract absent flexible progress payment procedures, and in no event will the progress payment rate be greater than one hundred percent (100%).

(End of clause)

252.233-7000 Certification of requests for adjustment or relief exceeding $100,000.

As prescribed at 233.7000, insert the following clause:

CERTIFICATION OF REQUESTS FOR ADJUSTMENT OR RELIEF EXCEEDING $100,000 (FEB 1980)

(a) Any contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85-804, or other similar request exceeding $100,000 shall bear, at the time of submission, the following certificate given by a senior company official in charge at the plant or location involved:

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

(Official's Name)————————

(Title)————————

(b) The certification in paragraph (a) requires full disclosure of all relevant facts, including cost and pricing data.

(c) The certification requirement in paragraph (a) does not apply to:

(1) requests for routine contract payments; for example, those for payment for accepted supplies and services, routine vouchers under

cost-reimbursement type contracts, and progress payment invoices; and

(2) final adjustments under incentive provisions of contracts.

(d) In those situations where no claim certification for the purposes of Section 813 has been submitted prior to the inception of a contract dispute, a single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, will be deemed to comply with both statutes.

(End of clause)

252.235-7000 Indemnification under 10 U.S.C. 2354—fixed price.

As prescribed at 235.071(a), insert the following clause:

INDEMNIFICATION UNDER 10 U.S.C. 2354—FIXED PRICE (APR 1974)

(a) Pursuant to the authority to 10 U.S.C. 2354, notwithstanding any other provisions of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against:

(1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, bodily injury (including sickness or disease), or loss of, damage to, or loss of use of property;

(2) Loss of or damage to property of the Contractor, and loss of use of such property, but excluding loss of profit; and

(3) Loss of, damage to, or loss of use of property of the Government; to the extent that such a claim, loss or damage (i) arises out of the direct performance of this contract; (ii) is not compensated by insurance or otherwise; and (iii) results from a risk defined in this contract to be unusually hazardous. Any such claim, loss, or damage within deductible amounts of Contractor's insurance shall not be covered under this clause.

(b) The Government shall not be liable for any such claim, loss or damage that results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (1) all or substantially all of the Contractor's business, or (2) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (3) a separate and complete major industrial operation in connection with the performance of this contract. The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement (except for subcontracts which are covered by paragraph (d) below) unless such assumption of liability has been specifically approved by the Contracting Officer; (or in contracts with the Department of the Navy, *The Department.)*

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or his representative designated for such purpose. Such payments shall be made from funds as stated in 10 U.S.C. 2354. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of papers and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve sumilar indeminification of lower tier subcontractors upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall entitle the Contractor or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims. The Government shall indemnify the Contractor with respect to his obligation to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or persons to whom the subcontractors may be liable.

(e) If insurance coverage maintained by the Contractor on the date of the execution of this contract is reduced, the liability of the Government under this clause shall not, by reason of such reduction, be increased to cover risks theretofore insured, unless the Contracting Officer consents thereto in consideration of an equitable adjustment to the Government, if appropriate, of the price in a fixed-price contract, or the fee in a cost-reimbursement type contract, in such amount as the parties may agree.

(f) The Contractor shall (i) promptly notify the Contracting Officer of any occurence, action or claim he learns of that reasonably may be expected to involve indemnification under this clause, (ii) furnish evidence or proof of any claim, loss or damage in the manner and form required by the Government, and (iii) immediately furnish to the Government copies of all pertinent papers received by the Contractor. The Government may direct, paticipate in, and supervise the settlement or defense of any such claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required, in regard to such settlement or defense.

(g) The Contractor shall procure and maintain, to the extent available, such insurance against unusually hazardous risks as the Contacting Officer (or in contracts with Department of the Navy, *The Department)* may from time to time require or approve. All such insurance shall be in such form, in the amounts, for the periods of time, at such rates, and with such insurers, as the Contracting Officer (or in contracts with Department of the Navy, *The Department) may from time to time require or approve. The obligations of the Government under this clause shall not apply to claims, loss or damage to the extent that insurance is available and is either required or approved pursuant to this paragraph. The Contractor shall be reimbursed the cost of any such insurance in excess of that maintained by the Contractor as of the date of this contract, to the extent the cost thereof is properly allocable to this contract and is not included in the contract price.*

(End of clause)

252.235-7001 Indemnification under 10 U.S.C. 2354—cost reimbursement.

As prescribed at 235.071(b), insert the following clause.

INDEMNIFICATION UNDER 10 U.S.C. 2354—COST REIMBURSEMENT (APR 1974)

(a) Pursuant to the authority of 10 U.S.C. 2354, notwithstanding any other provision of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against:

(1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, bodily injury (including sickness or disease), or loss of, damage to, or loss of property;

(2) Loss of or damage to property of the Contractor, and loss of use of such property, but excluding loss of profit; and

(3) Loss of, damage to, or loss of use of property of the Government; to the extent that such a claim, loss or damage (i) arises out of the direct performance of this contract; (ii) is not compensated by insurance or otherwise; and (iii) results from a risk defined in this contract to be usually hazardous. Any such claim, loss, or damage within deductible amounts of Contractors's insurance shall not be covered under this clause.

(b) The Government shall not be liable for any such claim, loss or damage that results from willful misconduct or lack of good faith on th part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives who has supervision or direction of (1) all or substantially all of the Contractor's business, or (2) all or substantially all or the Contractor's operations at any one plant or separate location in which this contract is being performed, or (3) a separate and complete major industrial operation in connection with the performance of this contract. The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement (except for subcontracts which are covered by paragraph (d) below) unless such assumption of liability has been specifically approved by the Contracting Officer, (or in contracts with the Department of the Navy, *The Department).*

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or his representative designated for such purpose. Such payments shall be made from funds as stated in 10 U.S.C. 2354. The rights and obligations of the parties under this

clause shall survive the termination, expiration, or completion of this contract.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of papers, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of lower tier subcontractors upon the same terms and conditions. Subcontractors providing for indemnification within the purview of this clause shall entitle the Contractor or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims. The Government shall indemnify the Contractor with respect to his obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(e) If insurance coverage maintained by the Contractor on the date of the execution of this contract is reduced, the liability of the Government under this clause shall not, by reason of such reduction, be increased to cover risks theretofore insured, unless the Contracting Officer consents thereto in consideration of an equitable adjustment to the Government, if appropriate, of the price in a fixed-price contract, or the fee in a cost-reimbursement type contract, in such amount as the parties may agree.

(f) In addition to the Contractor's responsibilities under the "Insurance—Liability to Third Persons" clause of this contract, which are hereby made applicable to claims under this clause, the Contractor shall (1) promptly notify the Contracting Officer of any occurrence he learns of that reasonably may be expected to involve indemnification under this clause, (2) furnish evidence or proof of any claim, loss or damage covered by this clause in the manner and form required by the Government, and (3) to the extent required by the Government, permit and authorize the Government to direct, participate in, and supervise the settlement or defense of any such claim or action. The cost of insurance (including self-insurance), covering a risk defined in this contract as unusually hazardous, shall not be reimbursed either as a direct or indirect cost except to the extent that such Insurance has been required or approved under the "Insurance—Liability to Third Persons" clause hereof.

(g) The "Limitation of Cost" clause of this contract does not apply to the Government's obligations under this clause. Such obligations shall be excepted from the release required under the "Allowable Cost, Fee, and Payment" clause of this contract.

(h) For purposes of this clause, a claim, loss or damage shall be considered to have arisen out of the direct performance of this contract if the cause for such claim, loss or damage occurred during the period of performance of this contract or as a result of the performance of this contract.

(End of clause)

252.235-7002 Recovery of nonrecurring costs on commercial sales.

As prescribed in 235.071(c), insert the following clause:

RECOVERY OF NONRECURRING COSTS ON COMMERCIAL SALES (FEB 1980)

(a) Definitions.

(1) *Commercial sale* means a sale to a customer (either foreign or domestic) other than the U.S. Government by a defense contractor of products, technology, material, services, and/or development or production techniques that were originally developed, improved, or produced using DoD appropriations/funds.

(2) *Domestic organization* means any U.S. nongovernmental organization or private commercial firm.

(3) *Technology* means a collection of information of any kind that can be used or adapted for use in the design, production, manufacture, utilization, or reconstruction of articles or material. It may take a tangible form, such as a scale model, prototype, blueprint, or an operating manual, or may take an intangible form, such as technical advice.

(4) *Nonrecurring research, development, test, and evaluation (RDT&E) costs* are those costs funded by an RDT&E appropriation to develop or improve the product or technology under consideration. This includes costs of any engineering change proposal initiated prior to date of the contract with the customer, as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned. It does not include costs funded by either Procurement or Operations and Maintenance appropriations to improve the product.

(5) *Nonrecurring production costs* are those one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run from which delivery is to be made, which would normally be expensed against a production run. These nonrecurring costs include such costs as preproduction, special tooling, special test equipment, production engineering, product improvement, destructive testing, and pilot model production, testing, and evaluation.

(6) *"Special" RDT&E and nonrecurring production costs* are those incurred for and paid by an FMS customer in developing a special feature or unique requirement under a DoD Offer and Acceptance (DD Form 1513).

(7) *Fair market price of technology*, such as that sold or licensed under a licensing or technical assistant agreement, is a price negotiated between a buyer and seller when the monetary return to the seller is primarily determined by the buyer's need for the technology and the potential market for the product(s) produced from the technology.

(8) *Model* is the generic term applied to a basic item and all modifications to that item. The model can generally be identified by a basic alphanumeric designation, such as a ship hull series, an equipment or system series, an airframe series, or a vehicle series. Recoupment within a model series is identified by determining total nonrecurring investment (RDT&E or production, as appropriate) applicable to that model series estimated to be produced for DoD requirements, FMS, and commercial sales.

(9) *Major defense equipment*, as applicable herein, means any item of significant combat equipment on the United States Munitions List having a nonrecurring research and development cost of more than $50 million or a total production cost of more than $200 million.

(b) In the event the Contractor intends to enter into domestic or foreign commercial sales for items in this contract, or essentially similar items, or enter into license or technical assistance agreements for the technology developed under this contract, he shall promptly notify the Contracting Officer (or the original DoD Contracting Officer in the event the contract is closed) to obtain the applicable nonrecurring recoupment charge.

(1) The Contractor agrees that, with respect to (2) below, he will:

(i) Reimburse the U.S. Government for a fair share of U.S. Government expenditures for nonrecurring costs applicable to the items, or, in the case of technology, the Government's proportionate share of the fair market price of the technology for the commercial customer. In the event that the current charge is unavailable, the Contractor will submit information required to support the development of the appropriate charge.

(ii) Reimburse a fair share of nonrecurring costs related to a special feature or product paid by a foreign government or international organization under a U.S. Government Foreign Military Sales case where the Contractor enters into a commercial sale or license agreement for the same or similar special feature or product.

(2) The Government will require reimbursement under the provisions of this clause when:

(i) The Government's investment in research, development, test, and evalution (RDT&E) equals or exceeds $5 million.

(ii) The Government's investment in nonrecurring production costs equals or exceeds $5 million.

(iii) A foreign government's RDT&E and nonrecurring production costs for a special feature or product equal or exceed $5 million (when requested under an FMS case and agreed to by the U.S. Government).

(iv) Reimbursement for investment costs below the thresholds in (i) through (iii) are specifically approved by the Secretary of Defense or his designee.

(3) For each commercial sale of the item, the amount to be reimbursed to the U.S. Government for nonrecurring costs shall be determined by dividing the total nonrecurring costs incurred and projected to be incurred by the total production quantity of the item, past and projected, including the production quantity for the Department of Defense (or FMS purchaser in the case of special feature or product recoupment), and multiplying the result by the quantity involved in each

commercial sale or license agreement. In principle, for defense equipment for which several model designators exist, the nonrecurring costs and the total production quantity should be accumulated over the entire range of models and major subsystems that are basically similar to the model and subsystems being sold. In a combination FMS and commercial sale of a product, the Contractor agrees to reimburse the Government for the nonrecurring costs associated with the commercial portion of the customer's purchase.

(4) For each commercial sale of technology, these factors will be considered in determining fair market price: (i) the costs incurred by the Department of Defense in developing the technology being considered for sale; (ii) the costs that would be incurred by the buyer in independently developing the technology; and (iii) the estimated dollar value of the product(s) that will be produced by the buyer upon transfer of the technology. In the case of sale or license of technology to a domestic organization, the fair market price will be the lower of either a fair share of the DoD investment cost indentified to the development of the technology or a proportionate share of the fair market price for the technology based on demand or the potential monetary return on investment. For sales or licenses of technology to foreign commercial customers, this price will be the greater of these two alternatives. The foregoing domestic pricing criterion will only be applied if the prospective commercial purchases agrees that, in the event the technology is transferred from the prospective purchaser to a foreign recipient prior to its becoming generally available, the domestic purchases will provide further payment to the Government on the basis of the foreign pricing criterion.

(c) The determination by the Government of the amount to be reimbursed pursuant to this clause shall not be subject to the Disputes clause.

(d) In the case of a commercial sale to a foreign government or international organization that qualifies for U.S. Government Foreign Military Sales, the Contractor agrees to inform his customer that any Defense-furnished goods, services, and transportation (i.e., DoD support costs) can be provided only by means of a Foreign Military Sales case (DoD Offer and Acceptance, DD Form 1513) executed by the U.S. Government and the customer. The foreign government, at its option, may designate the Contractor to act as its agent in executing the Foreign Military Sales case and/or to receive possession or performance of the goods, services, or transportation.

(e) In the event of a commercial sale of items developed under this contract, or essentially similar items, or sale or license of technology relating thereto, the Contractor agrees to relieve the Government for any and all loss or liability that might result from the contractor's use of Government data, tooling, test equipment or facilities.

(f) Notwithstanding the provisions of the clauses of this contract entitled "Patent Rights—Retention by the Contractor" and "Rights in Technical Data and Computer Software," the Contractor agrees that his rights to enter into production for commercial sales of the items or essentially similar items, or to sell or license related technology, are expressly contingent upon compliance with the provisions of this clause, provided that the Secretary of Defense or his designee may waive the Government's rights under this clause, in whole or in part, whenever he determines that such action would be in the best interests of the Government.

(g) The substance of this provision shall be placed in all subcontracts for components, or items which can be sold commercially and which meet, or are expected to meet, the thresholds set forth herein.

(End of clause)

252.235-7003 Care of laboratory animals.

As prescribed at 235.071(d), insert the following clause:

CARE OF LABORATORY ANIMALS (APR. 1974)

(a) Before undertaking performance of any contract involving the use of laboratory animals the Contractor shall register with the Secretary of Agriculture of the United States in accordance with Section 6, Pub. L. 89-544, Laboratory Animal Welfare Act, 24 August 1966 as amended by Pub. L. 91-579, Animal Welfare Act of 1970, 24 December 1970. The Contractor shall furnish evidence of such registration to the contracting officer.

(b) The Contractor shall acquire animals used in research and development programs from a dealer licensed by the Secretary of Agriculture, or from exempted sources in accordance with the Public Laws enumerated in (a) above.

(c) In the care of any live animals used or intended for use in the performance of this contract, the Contractor shall adhere to the principles enunciated in the *Guide for Care and Use of Laboratory Animals* prepared by the Institute of Laboratory Animals Resources, National Academy of Sciences—National Research Council, and in the United States Department of Agriculture's regulations and standards issued under the Public Laws enumerated in (a) above. In case of conflict between standards, the higher standard shall be used. Contractor reports on portions of the contract in which animals were used shall contain a certificate stating that the animals were cared for in accordance with the principles enunciated in the *Guide for Care and Use of Laboratory Animals* prepared by the Institute of Laboratory Animal Resources, NAS-NRC, and/or in the regulations and standards as promulgated by the Agricultural Research Service, USDA, pursuant to the Laboratory Animal Welfare Act of 24 August 1966, as amended (Pub. L. 89-544 and Pub. L. 91-579).

Note: The Contractor may request registration of his facility an a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which his research facility is located. The location of the appropriate APHIS Regional Office as well as information concerning this program may be obtained by contacting the Senior Staff Office, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, Maryland 20782.

(End of clause)

252.235-7004 Frequency authorization.

As prescribed at 235.071(e), insert the following clause:

FREQUENCY AUTHORIZATION (OCT 1966)

(a) Authorization of radio frequencies required in support of this contract shall be obtained through the Contracting Officer by the Contractor or subcontractor in need thereof. Frequency management procedures prescribed in the Schedule of this contract shall be followed in obtaining radio frequency authorization.

(b) For any experimental, developmental or operational equipment for which the appropriate frequency allocation has not been made, the Contractor or subcontractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phases of contractural performance. DD Form 1494, "Application for Frequency Allocation", shall be used for this purpose and shall be prepared in accordance with instructions contained on the form.

(c) This clause including this paragraph (c), shall be included in all subcontracts which call for developing, producing, testing, or operating a device for which a radio frequency authorization is required.

(End of clause)

252.236-7000 Composition of contractor.

As prescribed at 236.571-1, insert the following clause:

COMPOSITION OF CONTRACTOR (JAN 1965)

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

(End of clause)

252.236-7001 Modification of proposals—price breakdown.

As prescribed at 236.571-2, insert the following clause:

MODIFICATION OF PROPOSALS—PRICE BREAKDOWN (APR 1968)

The Contractor, in connection with any proposal he makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a smiliar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Contracting Officer.

(End of clause)

252.236-7002 Contract drawings, maps and specifications.

As prescribed at 236.571-3, insert the following clause:

CONTRACT DRAWINGS, MAPS AND SPECIFICATIONS (JAN 1965)

(a) One set of sepia of large scale contract drawings, maps and specifications will be furnished the Contractor without charge except applicable publications incorporated into the technical provisions by reference. Additional sets will be furnished on request at the cost of reproduction. The work shall conform to the following contract drawings and maps, all of which form a part of these specifications and are available in the office of

(Address) _____

Title, File, and Drawing No.

(b) Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

(c) The Contractor shall check all drawings furnished him immediately upon their receipt and shall promptly notify the Contracting Officer of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large scale drawings shall in general govern small scale drawings. The Contractor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby.

(End of clause)

252.236-7003 Shop drawings:

As prescribed at 236.571-4, insert the following clause:

SHOP DRAWINGS (OCT 1976)

(a) The term "shop drawings" includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain detail specific portions of the work required by the contract.

(b) If this contract requires shop drawings, the Contractor shall coordinate all such drawings and review them for accuracy, completeness, and compliance with contract requirements and shall indicate his approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate his approval or disapproval of the shop drawings and if not approved as submitted shall indicate his reason therefore. Any work done prior to such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for compiling with the requirements of this contract, except with respect to variations described and approved in accordance with (c) below.

(c) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation(s), he shall issue an appropriate contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

(d) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated herein) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated herein) of all shop drawings will be retained by the Contracting Officer and one set will be returned to the Contractor.

(End of clause)

252.236-7004 Contract prices—bidding schedules.

As prescribed at 236.572-1, insert the following clause:

CONTRACT PRICES—BIDDING SCHEDULES (APR 1968)

Payment for the various items listed in the Bidding Schedule shall constitute full compensation for furnishing all plant, labor, equipment, appliances, and materials, and for performing all operations required to complete the work in conformity with the drawings and specifications. All costs for work not specifically mentioned in the Bidding Schedule shall be included in the contract prices for the items listed.

(End of clause)

252.236-7005 Salvage materials and equipment.

As prescribed at 236.572-2, insert the following clause:

SALVAGE MATERIALS AND EQUIPMENT (JAN 1965)

The Contractor shall maintain adequate property control records for all materials or equipment specified to be salvaged. These records may be in accordance with the Contractor's system of property control, if approved by the property administrator. The Contractor shall be responsible for the adequate storage and protection of all salvaged materials and equipment which are broken or damaged during salvage operations as the result of his negligence, or while in his care.

(End of clause)

252.236-7006 Misplaced material.

As prescribed at 236.572-3, insert the following clause:

MISPLACED MATERIAL (JAN 1965)

Should the Contractor during the progress of the work, lose, dump, throw overboard, sink, or misplace material, plant, machinery, or appliance, which in the opinion of the Contracting Officer may be dangerous to or obstruct navigation, the Contractor shall recover and remove the same with the utmost dispatch. The Contractor shall give immediate notice, with description and location of such obstructions, to the Contracting Officer or inspector, and when required shall mark or buoy such obstructions until the same are removed. Should he refuse, neglect, or delay compliance with the above requirements, such obstructions may be removed by the Contracting Officer, and the cost of such removal may be deducted from any money due or to become due to the Contractor, or may be recovered under his bond. The liability of the Contractor of the removal of a vessel wrecked or sunk without fault or negligence shall be limited to that provided in Sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 410 et seq.).

(End of clause)

252.236-7007 Identification of employee.

As prescribed at 236.572-4, insert the following clause:

IDENTIFICATION OF EMPLOYEES (JAN 1965)

The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Office. All prescribed identification shall immediately be delivered to the Contracting Officer for cancellation upon the release of any employee. When required by the Contracting Officer the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project.

(End of clause)

252.236-7008 Superintendence of subcontractors.

As prescribed at 236.572-5, insert the following clause:

SUPERINTENDENCE OF SUBCONTRACTORS (JAN 1965)

(a) The Contractor shall be required to furnish the following, in addition to the superintendence required by the general Provision entitled "SUPERINTENDENCE BY THE CONTRACTOR":

(i) If more than 50% and less than 70% of the value of the contract work is subcontracted, one superintendence shall be provided at the site and on the Contractor's payroll to be responsible for coordinating, directing, inspecting and expediting the subcontract work.

(b) If the Contracting Officer, at any time after 50% of the subcontracted work has been completed, finds that satisfactory progress is being made, he may waive all or part of the above requirement for additional superintendence subject to the right of the Contracting Officer to reinstate such requirements if at any time during the progress of the remaining work he finds that satisfactory progress is not being made.

(End of clause)

252.236-7009 Payment for mobilization and preparatory work.

As prescribed at 236.572.6, insert one of the following clauses:

(a) PAYMENT FOR MOBILIZATION AND PREPARATORY WORK, PAYMENT ITEM NO. ——— (MAR 1979)

(a) Payments will be made under this contact on the actual expenditures made by the Contractor for mobilization and preparatory work under payment Item No. ——— as follows: The Contractor may submit to the Contracting Officer certified accounts of the actual payments made by him for construction plant exceeding $10,000 in value per unit, as appraised by the Contracting Officer at the site of the work, acquired for the execution of the work; for the transportation of all plant and equipment to the site; for material purchased for the prosecution other contract, but not to be incorporated in the work; for construction of camps, access roads or railroads, trailer courts, mess halls, dormitories or living quarters, field headquarters facilities and construction yards, and for personal services and hire of plant on work preparatory to commencing actual work on the construction items for which payment is provided under the terms of the contract. Accounts so submitted must be accompanied by certificate of the Contractor, supported by receipted bills or certified copies of payrolls and freight bills, showing that he has acquired said construction plant and material free from all encumbrances and agreement that it will not be removed from the site and that structures and facilities prepared or erected of the prosecution of the contract work will be maintained and not dismantled prior to the completion and acceptance of the entire work without the written permission of the Contracting Officer. If the Contracting Officer finds that said construction plant, material, equipment and the mobilization and preparatory work performed are suitable and necessary to the efficient prosecution of the contract and that the said preparatory work has been done with proper economy and efficiency, payment, less the prescribed retained percentage, will be made therefore to the Contractor. Payment for construction plant, material and structures and facilities prepared or erected for prosecution of the contract work shall not exceed the cost thereof to the Contractor less the estimated value upon the completion of the contract as determined by the Contracting Officer. In no event shall such payment exceed 100% of the cost to the Contractor of any such items which have no appreciable salvage value and 75% of the cost to the Contractor of such items which have an appreciable salvage value. The findings of the Contracting Officer as to the suitability and value of the construction plant, equipment, materials, structures of facilities shall not be subject to appeal.

(b) Payments for mobilization and preparatory work will be made in accordance with (a) above, and such payments will be deducted from the contract price for Item No. ——— "Mobilization and Preparatory Work" until the total amount thus charged to this item reduces this item to zero after which no further payments will be made under this item. If the total of such payments made does not reduce this item to zero, the balance will be paid to the Contractor in the final payment under the contract. The retained percentage will be paid in accordance with the clause of this contract entitled "Payments to Contractor".

(End of clause)

(b)(1) MOBILIZATION AND DEMOBILIZATION PAYMENT ITEM NO. ——— (JAN 1965)

(a) All costs connected with the mobilization and demobilization of all of the contractor's dredging plant equipment will be paid for at the contract lump sum price for this item. ——— percent (——%) of the lump sum price will be paid to the Contractor upon completion of his mobilization at the work site. The remaining ——— percent (——%) will be included in the final payment for work under this contract.

(b) In the event the Contracting Officer considers that the amount in this item (——%), which represents mobilization, does not bear a reasonable relation to the cost of the work in this contract, the Contracting Officer may require the Contractor to produce cost data to justify this portion of the bid. Failure to justify such price to the satisfaction of the Contracting Officer will result in payment of actual mobilization costs, as determined by the Contracting Officer at the completion of mobilization and payment of the remainder of this item in the final payment under this contract. The determination of the Contracting Officer is not subject to appeal.

(End of clause)

(b)(2) MOBILIZATION AND DEMOBILIZATION, PAYMENT ITEM NO. ——— (OCT 1975)

(a) All costs connected with the mobilization and demobilization of all of the Contractor's dredging plant and equipment will be paid for at the contract lump sum price for this item. ——— percent (——%) of the lump sum price will be paid to the Contractor upon completion of his mobilization at the work site. The remaining ——— percent (——%) will be paid to the Contractor upon completion of demobilization.

(b) In the event the Contracting Officer considers that the amount in this item (——%), which represents mobilization and (——%) which represents demobilization, does not bear a reasonable relation to the cost of the work in this contract, the Contracting Officer may require the Contractor to produce cost data to justify this portion of the bid. Failure to justify such price to the satisfaction of the Contracting Officer will result in payment of actual mobilization costs, as determined by the Contracting Officer at the completion of mobilization, and actual demobilization costs, as determined by the Contracting Officer at the completion of demobilization, and payment of the remainder of this item in the final payment under this contract. The determination of the Contracting Officer is not subject to appeal.

(End of clause)

Note: The percentage of the lump sum price for mobilization and demobilization in paragraph (a) of the above clauses at 252.236-7009(b) (1) and (2), attributed to mobilization should generally be 60% and the remaining 40% considered to be the cost of demobilization. These percentages may be varied to reflect the situation contemplate under the particular contract, but in no event should mobilization exceed 80% of the payment item.

252.236-7011 Airfield safety precautions.

As prescribed at 236.572-8, insert the following clause.

AIRFIELD SAFETY PRECAUTIONS (APR 1968)

(a) The operation of all aground equipment (mobile or stationary), the placement of all materials, and the performance of all work, upon and in the vicinity of all airfields, shall be done in accordance with this clause. The requirements of this clause are in addition to any other safety requirements of this contract.

(b) For purposes of this clause the following definitions shall apply.

(1) "Landing Areas" means the following:

(i) The primary surfaces which are comprised of the surface of the runways, the runway shoulders, and the lateral safety zones (the length of each primary surface is the same as the runway length; the width of each primary surface is 2,000 feet (1,000 feet on each side of the runway centerline)*); (see footnote at end of clause)

(ii) The "clear zone" beyond the ends of each runway—i.e., the extension of the "primary surface" for a distance of 1,000 feet beyond each end of each runway;

(iii) All taxiways plus the lateral clearance zones along each side for the length of the taxiways (the outer edge of each lateral clearance zone is laterally 250 feet from the far or opposite edge of the taxiway, i.e., a 75-foot-wide taxiway would have a combined width of taxiway and lateral clearance zones of 425 feet); and

(iv) All aircraft parking aprons plus the area 125 feet in width extending beyond each such edge all around the aprons.

(2) "Safety precaution areas" means those portions of approach-departure clearance zones and transitional zones where placement of objects incident to contract performance might result in vertical projections at or above the approach-departure clearance surface or the transitional surface.

(A) The "approach-departure clearance surface" is an extension of the primary surface and the clear zone at each end of each runway, for a distance of 50,000 feet, first along an inclined (glide angle) and then along a horizontal plane, both flaring symmetrically about the runway centerline extended. The inclined plane (glide angle) begins in the clear zone 200 feet past the end of the runway (and primary surface) at the same elevation as the end of the runway, and continuous upward at a slope of 50:1 (one foot vertically for each 50 feet horizontally) to an elevation of 500 feet above the established

airfield elevation; at that point the plane becomes horizontal, continuing at that same uniform elevation to a point 50,000 feet longitudinally from the beginning of the inclined plane (glide angle) and ending there. The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the clear zone; thence it flares uniformly, reaching the maximum width of 16,000 feet at the end.

(B) The "approach-departure clearance zone" is the ground area under the approach-departure clearance surface.

(C) The "transitional surface" is a sideways extension of all primary surfaces, clear zones, and approach-departure clearance surfaces along inclined planes. The inclined plane in each case begins at the edge of the surface. The slope of the inclined plant is 7:1 (one foot vertically for each 7 feet horizontally), and it continues to the point of intersection with the innter horizontal surface (which is the horizontal plant 150 feet above the established airfield elevation) or the outer horizontal surface (which is the horizontal plant 500 feet above the established airfield elevation), whichever is applicable.

(D) The "transitional zone" is the ground area under the transitional surface. (It adjoins the primary surface, clear zone and approach-departure clearance zone.)

(c) The Contractor shall report to the Contracting Officer before initiating any work and shall notify him of proposed changes of locations and operations.

(d) Neither equipment nor personnel shall use any runway for purposes other than aircraft operation without permission of the Contracting Officer unless the runway is closed by order of the Contracting Officer and marked as provided in (e)(2) below.

(e)(1) The Contractor shall place nothing upon the areas without authorization of the Contracting Officer.

(2) Unless otherwise authorized by the Contracting Officer, the Contractor shall outline those landing areas hazardous to aircraft, with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) Before entering any landing area at an airfield where flying is controlled, additional permission must be obtained every time from the control tower operator, unless the landing area is marked as hazardous to aircraft in accordance with (2) above.

(4) All vehicles which the Contractor operates in landing areas shall be identified by means of a flag on a staff attached to and flying above the vehicle. The flag shall be three feet square and shall consist of a checkered pattern of international orange and white square of one foot on each side (except that the flag may vary up to 10 percent from each of these dimensions).

(5) Unless otherwise authorized by the Contracting Officer, all other equipment and materials in the landing areas shall be marked with red flags by day, and with electric, battery-operated low-intensity red flasher lights by night.

(6) Work shall be carried on so as to leave that portion of the landing area which is available to aircraft free from hazards, holes, piles of material, and projecting shoulders that might damage an airplane tire.

(f)(1) The Contractor shall place nothing upon the safety precaution areas without authorization of the Contracting Officer.

(2) Unless otherwise authorized by the Contracting Officer, all equipment and materials in safety precaution areas shall be marked with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) All objects placed in safety precaution areas, which project above the approach-departure clearance surface or above the transitional surface must be provided at night with a red light or red lantern.

(g) The Contractor shall keep all paved surfaces, such as runways, taxiways, and hardstands, clean at all times and, specifically, free from small stones which might damage aircraft propellers or jet aircraft.

(h) While work is actually being performed on the airfield by the Contractor, the operation of mobile equipment shall be governed by the safety provisions above. At all other times all mobile equipment shall be removed to locations approved by the Contracting Officer at a distance of at least 750 feet from the runway centerline plus any additional distance necessary to insure compliance with the other provisions of this clause.

(i) Only those trenches may be opened for which material is on hand and ready for placing therein. As soon as practicble after material has been placed and work approved, trenches shall be backfilled and compacted as required by the contract. Meanwhile all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause.

(End of clause)

252.236–7012 Contractor-prepared network analysis system.

As prescribed at 236.572–9, insert the following clause:

CONTRACTOR-PREPARED NETWORK ANALYSIS SYSTEM (APR 1968)

The progress chart to be prepared by the Contractor pursuant to the clause entitled "Schedules for Construction Contractor", shall consist of a network analysis system as described below. In preparing this system the scheduling of construction is the responsibility of the Contractor. The requirement for the system is included to assure adequate planning and execution of the work and to assist the Contracting Officer in appraising the reasonableness of the proposed schedule and evaluating progress of work.

(a) An example of one of the numerous acceptable types of network analysis systems is shown in Appendix I of Corps of Engineers Regulation ER 1–1–11 entitled "Network Analysis System", single copies of which are available to bona fide bidders on request. Other systems which are designed to serve the same purpose and employ the same basic principles as are illustrated in Appendix I will be accepted subject to the approval of the Contracting Officer.

(b) The system shall consist of diagrams and accompanying mathematical analyses. The diagrams shall show elements of the project in detail and the entire project in summary.

(1) Diagrams shall show the order the interdependence of activities and the sequence in which the work is to be accomplished as planned by the Contractor. The basic concept of a network analysis diagram will be followed to show how the start of a given activity is dependent on the completion of preceding activities and its completion restricts the start of following activities.

(2) Detailed network activities shown on detailed or subnetwork diagram shall include, in addition to construction activities, etc. submitted and approval of samples of materials and shop drawings, the procurement of critical materials and equipment, fabrication of special material and equipment and their installation and testing. All activities of the Government that affect progress and contract required dates for completion of all or parts of the work will be shown. The detail of information shall be such that duration times of activities will range from three (3) to thirty (30) days with not over two percent (2%) of the activities exceeding these limits. The activities which comprise the following separate buildings and features shall be separately identifiable by coding or use of subnetworks or both:

Building or feature ————————

Minimum number activities ————————

The selection and number of activities shall be subject to the Contracting Officer's approval. Detailed networks, when summary networks are also furnished, need not be time scaled but shall be drafted to show a continuous flow from left to right with no arrows from right to left. The following information shall be shown on the diagrams for each activity: preceding and following event numbers, description of the activity, cost, and activity duration.

(3) Summary Network. If the project is of such size that the entire network cannot be readily shown on a single sheet, a summary network diagram shall be provided. The summary network diagram shall consist of a minimum of fifty activities and a maximum of one hundred and fifty activities, and shall be based on and supported by detailed diagrams. Related activities shall be grouped on the network. The critical path shall be plotted generally along the center of the sheet with channels with increasing float placed towards the top or bottom. The summary network shall be time scaled using units of approximately one-half inch equals one week or other suitable scale approved by the Contracting Officer. Weekends and holidays shall be indicated. Where slack exists, the activities shall be shown at the time when they are scheduled to be accomplished.

(4) The mathematical analysis of the network diagram shall include a tabulation of each activity shown on the detailed network diagrams. The following information will be furnished as a minimium for each activity:

(i) Preceding and following event numbers (numbers shall be selected and assigned so as to permit identification of the activities with bid items);

(ii) Activity description:

(iii) Estimated duration of activities (the best estimated available at time of computation);
(iv) Earliest start date (by calendar date);
(v) Earliest finish date (by calendar date);
(vi) Scheduled or actual start date (by calendar date);
(vii) Schedules or actual finish date (by calendar date);
(viii) Latest start date (by calendar date);
(ix) Latest finish date (by calendar date);
(x) Slack or float;
(xi) Monetary value of activity;
(xii) Responsibility for activity (Prime contractor, subcontractors, suppliers, Government, etc.);
(xiii) Manpower required;
(xiv) Percentage of activity completed;
(xv) Contractor's earnings based on portion of activity completed; and
(xvi) Bid item of which activity is a part.

(5) The program or means used in making the mathematical computation shall be capable of compiling the total value of completed and partially completed activities and subtotals from separate buildings or feature listed in paragraph (b)(2).

(6) In addition to the tabulation of activities, the computation will include the following data:

(i) Identification of activities which are planned to be expedited by use of overtime or double shifts to be worked including Saturdays, Sundays and holidays;
(ii) On-site manpower loading schedule;
(iii) A description of the major items of construction equipment planned for operations of the project. [The description shall include the type, number of units and unit capacities. A schedule showing proposed time equipment will be on the job keyed to activities on which equipment will be used shall be provided]; and
(iv) Where portions of the work are to be paid by units costs, the estimated number of units in an activity which was used in developing the total activity cost.

(7) The analysis shall list the activities in sorts or groups as follows:

(i) By the preceding event number from lowest to highest and then in the order of the following event number;
(ii) By the amount of slack, then in order of preceding event number;
(iii) By responsibility in order of earliest allowable start dates; and
(iv) In order of latest allowable start dates, then in order of preceding event numbers, and then in order of succeeding event numbers.

(c) Submission and approval of the system shall be as follows:

(1) A preliminary network defining the Contractor's planned operations during the first sixty (60) calendar days after notice to proceed will be submitted within ten (10) days. The Contractor's general approach for the balance of the project shall be indicated. Cost of activities expected to be completed or partially completed before submission and approval of the whole schedule should be included.

(2) The complete network analysis consisting of the detailed network mathematical analysis (on-site manpower loading schedule, equipment schedule) and network diagrams shall be submitted within forth (40) calendar days after receipt of notice to proceed.

(d) The Contractor shall participate in a review and evaluation of the proposed network diagrams and analysis by the Contracting Officer. Any revisions necessary as a result of this review shall be resubmitted for approval of the Contracting Officer within ten (10) calendar days after the conference. The approved schedule shall then be the schedule to be used by the Contractor for planning, organizing and directing the work and for reporting progress. If the Contractor thereafter desires to make changes in his method of operating and scheduling he shall notify the Contracting Officer in writing stating the reasons for the change. If the Contracting Officer considers these changes to be of a major nature he may require the Contractor to revise and submit for approval, without additional cost to the Government, all or the affected portion of the detailed diagrams and mathematical analysis and the summary diagram to show the effect on the entire project. A change may be considered of a major nature if the time estimated to be required or actually used for an activity or the logic of sequence of activities is varied from the original plant to a degree that there is a reasonable doubt as to the effect on the contract completion date or dates. Changes which affect activities with adequate slack time shall be considered as minor changes, except that an accumulation of minor changes may be considered a major change when their cumulative effect might affect the contract completion date.

(e) The Contractor shall submit at intervals of fifteen (15) calendar days a report of the actual construction progress by undating the mathematical analyses. Revisions causing changes in the detailed network shall be noted on the summary network, or a revised issue of affected portions of the detailed network furnished. The summary network shall be revised as necessary for the sake of clarity. However, only the initial submission or completion revisions need be time scaled. Subsequent minor revision need not be time scaled.

(f) The report shall show the activities or portions of activities completed during the reporting period and their total value as basis for the Contractor's periodic request for payment. Payment made pursuant to the General Provision entitled "Payments to Contractor" will be based on the total value of such activities completed or partially completed after verification by the Contracting Officer. The report will state the percentage of the work actually completed and schedules as of the report date and the progress along the critical path in terms of days ahead or behind the allowable dates. If the project is behind schedule, progress along other paths with negative slack shall also be reported. The Contractor shall also submit a narrative report with the update analysis which shall include but not be limited to a description of the problem areas, current and anticipated, delaying factors and their impact, and an explanation of corrective actions taken or proposed.

(g) Sheet size of diagrams shall be 30 by 42 inches. Each updated copy shall show a date of the latest revision.

(h) Initial submittal and complete revisions shall be submitted in six (6) copies.

(i) Periodic reports shall be submitted in four (4) copies.

(End of clause)

252.236-7013 Government-prepared network analysis system (APR 1968).

As prescribed at 236.572-10, insert the following clause:

GOVERNMENT-PREPARED NETWORK ANALYSIS SYSTEM (APR 1968)

The progress chart prepared by the Contractor pursuant to the clause entitled "Schedules for Contruction Contracting" will include the following:

(a) The Contractor shall submit to the Contracting Officer a chart showing the initial progress schedule covering the first sixty (60) days of his construction operations within —— days after receipt by him of the Notice to Proceed.

(b) The Contractor shall submit a chart showing the construction progress schedule in accordance with the clause entitled "Schedules for Construction Contracting" for the entire work under this contract within —— days after receipt of the Notice to Proceed.

(c) In addition to the above information the Contractor will also provide information of the Government to prepare and maintain a surveillance system and verify progress payments using the network analysis system of scheduling as described in Appendix I of the Corps of Engineers Regulation, ER 1-1-11, entitled "Network Analysis System", single copies of which are available to bona fide bidders upon request. In preparing this data the scheduling is the responsibility of the contractor. The requirement is included to assure adequate planning and execution of the work and to assist the Contracting Officer in appraising the reasonableness of the proposed schedule and evaluating the progress of the work. The data shall include, but not be limited to:

(1) A description of the Contractor's detailed construction plan of the project including the cost or weighted value, the order and interdependence, and the estimated duration of the activities which make up the project. Data shall be in sufficient detail to permit preparation of the network and schedule analysis by the Government.

(2) Revisions and updating of the data on scheduling with reasons for the revisions, as required by the Contracting Officer, shall be furnished by the Contractor in a timely and progressive manner to assist the Government in keeping the network and schedule analysis in a current working status.

(d) Pursuant to the General Provision entitled "Payments to Contractor", progress payments will be made on the basis of weighted value or cost assigned to each activity or group of activities as related to the total contract cost of the activity.

(End of clause)

252.236-7014 Statement of work.

As prescribed at 236.573-1, insert the following clause:

STATEMENT OF WORK (JAN 1965)

The Contractor shall furnish all labor, materials, equipment, and services (except those furnished by the Government) for the construction of (insert a brief description of the project) in accordance with the drawings and specifications or instructions attached hereto as Appendix "A" and made a part hereof, or to be furnished hereafter by the Contracting Officer and subject in every detail to his supervision, direction, and instructions.

(End of clause)

252.236-7015 Estimated cost, performance period.

As prescribed at 236.573-2, insert the following clause:

ESTIMATED COST, PERFORMANCE PERIOD (JAN 1965)

It is estimated that the construction cost of work required under this contract will be ——— Dollars, ($———), exclusive of the Contractor's fee, and that the work herein contracted for will be ready for utilization by the Government on or before——19—. It is expressly understood, however, that neither the Government or the Contractor guarantees the correctness of either of these estimates.

(End of clause)

252.236-7016 Direct payments.

As prescribed at 236.573-3, insert the following clause:

DIRECT PAYMENTS (JAN 1965)

(A) *To Suppliers, Laborers, and Mechanics.* If bills for purchase of material, machinery or equipment, or payrolls covering employment of laborers or mechanics incurred by the Contractor or by any subcontractor hereunder are not paid promptly by the Contractor or subcontractor, as the case may be, the Contracting Officer may, in his discretion, withhold from payments otherwise due the Contractor an amount equivalent to the amount of any such bill or payroll. Should the Contractor neglect or refuse to pay such bills or payrolls or to direct any subcontractor to pay such bills or payrolls within five (5) days after notice from the Contracting Officer so to do, the Government shall have the right to pay such bills or payrolls directly, and in such event a deduction equal to five percent (5%) of the amount so paid directly shall be made from the Contractor's fee.

(b) *To Common Carriers.* The Government reserves the right to pay directly to common carriers any or all freight charges on construction plant, materials and supplies.

(End of clause)

252.236-7017 Approved construction plant.

As prescribed at 236.573-4, insert the following clause:

APPROVED CONSTRUCTION PLANT (JAN 1965)

Upon approval of the Contracting Officer, construction plant furnished by the Contractor will be shown in the attached Appendix "B" or modification thereto.

(End of clause)

252.236-7018 Option for supervision and inspection services.

As prescribed at 236.574, insert the following clause:

OPTION FOR SUPERVISION AND INSPECTION SERVICES (APR 1972)

At any time prior to six (6) months after satisfactory completion and acceptance of the work to be furnished hereunder, the Government at its option, may direct, by a written order, the Architect-Engineer to perform any part or all of the supervision and inspection services provided under Appendix A. Upon receipt of such direction, the Architect-Engineer shall proceed with such work and services.

(End of clause)

252.236-7019 Notice of approval of restricted designs.

As prescribed at 236.575, insert the following clause:

NOTICE OF APPROVAL OF RESTRICTED DESIGNS (APR 1972)

In the performance of this contract, the contractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer the contractor shall not, in the performance of the work called for by this contract, produce a design or specification such as to require in this construction work the use of structures, products, materials, construction equipment, or processes which are known by the contractor to be available only from a safe source. As to any such design or specification the Architect-Engineer shall report to the Contracting Officer giving the reason or reasons why it is considered necessary to so restrict the design or specification.

(End of clause)

252.236-7050 Patent indemnity.

(a) *Patent Indemnity.* As prescribed at 236.576, insert the following clause:

PATENT INDEMNITY (JUN 1974)

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be, for reasons of national security, ordered by the Government to be kept secret or otherwise withheld from issue) arising out of the performance of this contract or out of the use or disposal by or for the account of the Government of supplies furnished or construction work performed hereunder.

(End of clause)

(b) *Items excluded from patent indemnity.* As prescribed at 236.576, insert the following clause:

ITEMS EXCLUDED FROM PATENT INDEMNITY (APR 1966)

The "Patent Indemnity" clause of this contract shall not apply to the following (Specifically identify the items to be excluded).

(End of clause)

252.236-7051 Rights in shop drawings.

As prescribed at 236.577, insert the following clause:

RIGHTS IN SHOP DRAWINGS (APR 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower tier subcontractor pursuant to a construction contract, showing detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

252.236-7052 Architectural designs and data—government rights.

As prescribed at 236.578, insert one of the following clauses, if appropriate:

(a) GOVERNMENT RIGHTS (UNLIMITED) (MAR 1979)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the government a paid-up licence throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

(b) DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT (MAR 1979)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or contruction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three years after completion of the

project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

252.236-7081 Cost limitation.

As prescribed at 236.580-1, insert the following provision:

COST LIMITATION (1974 APR)

A bid which does not contain separate bid prices for the items identified as subject to a cost limitation may be considered nonresponsive. A bidder by signing his bid certifies that each price bid on items subject to a cost limitation includes an appropriate apportionment of all applicable estimated costs, direct and indirect, as well as overhead and profit. Bids may be rejected which (i) have been materially unbalanced for the purpose of bringing affected items within cost limitations, or (ii) exceed the cost limitations unless such limitations have been waived by the Under Secretary of Defense (Research and Engineering) prior to award.

(End of provision)

252.236-7082 Additive or deductive items.

As prescribed at 236.580-2, insert the following provisions:

ADDITIVE OR DEDUCTIVE ITEMS (1968 APR)

The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added if award thereon can be made within such funds. For example, when the amount available is $100,000 and a bidder's base bid and four successive additives are $85,000, $10,000, $8,000, $6,000 and $4,000, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because each of them would cause the aggregate bid to exceed $100,000. In any case, all bids shall be evaluated on the basis of the same additive or deductive bid items, determined as above provided. The listed order of priority need be followed only for determining the low bidder. After determination of the low bidder as stated, award in the best interests of the Government may be made to him on his base bid and any combination of his additive or deductive bid for which funds are determined to be available at the time of the award, *Provided* that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of provision)

252.237-7000 Statement of work.

As prescribed by 237.304(S-70), insert the following clause:

STATEMENT OF WORK (OCT 1976)

(a) The Contractor shall furnish all labor, material and equipment and perform all work required for the dismantling, demolition and removal, or both, of———(identify properly)———

(b) The work shall be commenced——— and shall be completed not later than———

(c) All property retained by the Government will be conditioned, handled and stored by the Contractor in such manner and place as prescribed in the specifications.

(End of clause)

ALTERNATE I (OCT 1976)

In accordance with FAR 37.302, where the contractor is required to furnish a performance bond or other security in an mount deemed adequate to assure completion of the work and to protect the Government against damage to adjoining property during the performance of the contract, the following paragraph (d) shall be added to the above clause:

(d) A performance bond or other security in the penal sum of ——— dollars ($———) shall be furnished by the Contractor.

252.237-7100 Award to single bidder.

As prescribed at 237.7103(a), insert the following provision:

AWARD TO SINGLE BIDDER (OCT 1965)

Subject to the provisions contained herein, award shall be made to a single bidder. Bids must include unit prices for each item listed in order that bids may be properly evaluated. Failure to do this shall be cause for rejection of the entire bid. Bids shall be evaluated on the basis of the estimated quantities shown, and award shall be made to that responsible bidder whose total aggregate price is low.

(End of provision)

252.237-7101 Award to single offeror.

As prescribed at 237.7103(b), insert the following provision: services:

AWARD TO SINGLE OFFEROR (OCT 1983)

Subject to the provisions contained herein, award shall be made to a single offeror. Offers must include unit prices for each item listed in order that offers may be properly evaluated. Failure to do this shall be cause for rejection of the entire offer. Offers shall be evaluated on the basis of the estimated quantities shown. Discussions may be held with those offerors determined to be within the competitive range, and award shall be made to that responsible offeror whose total aggregate offer is determined to be in the best interest of the Government.

(End of provision)

252.237-7102 Requirements.

As prescribed at 237.7103(c) and (d), insert the following clause:

REQUIREMENTS (OCT 1965)

(a) This is a requirements contract for the supplies or services specified in the Schedule, and for the period set forth in this contract. Delivery of supplies or performance of services shall be made only as authorized by orders issued in accordance with the clause entitled "Delivery Orders and Invoices." The quantities of supplies or services specified herein are estimates only and are not purchased hereby. Except as may be otherwise provided herein, in the event the Government's requirements for supplies or services set forth in the Schedule do not result in orders in the amounts or quantities described as "estimated" or "maximum" in the Schedule, such event shall not constitute the basis for an equitable price adjustment under this contract.

(b) The Government shall order from the Contractor all the supplies, services, and transportation set forth in the Schedule which are required to be purchased by the Government activity named herein, and the Contractor shall furnish to the Government such supplies, services, and transportation as may be ordered by the Contracting Officer. The Government, however, reserves the right not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other cogent reason. In the event of an epidemic or other emergency, the Contractor shall not be required to provide services in excess of the capacity of his facilities.

(End of clause)

252.237-7103 Area of performance.

As prescribed at 237.7103(c), insert the following clause:

AREA OF PERFORMANCE (APR 1974)

(a) The area of performance is specified in Attachment 1 to this contract. This contract includes taking possession of the remains at the place where they are located, transporting them to the Contractor's place of preparation, and transporting them thereafter to a place designated by the Contracting Officer. The Contractor shall not be entitled to reimbursement for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(b) If remains are located outside the area of performance, the Government may call on the Contractor or obtain the services elsewhere. If the Government calls on the Contractor, the Contractor shall be paid the amount per mile indicated in the Schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance. If the Government elects to

have the remains brought into the area of performance by some other means, it may require the Contractor to perform after the remains are within the area of performance.

(c) The Government may require the Contractor to deliver remains to any point within one hundred (100) miles of the area of performance. In this case, the Contractor shall be paid the amount per mile indicated in the Schedule for a number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

252.237-7104 Specifications.

As prescribed at 237.7103 (c) and (d), insert the following clause:

SPECIFICATIONS (OCT 1965)

Armed Services Specifications Care of Remains of Deceased Personnel, hereinafter referred to as "Specifications" are attached hereto and made a part of this contract.

(End of clause)

252.237-7105 Using activities.

As prescribed at 237.7103 (c) and (d), insert the following clause:

USING ACTIVITIES (OCT 1965)

Contracting Officers of the following activities may order services and supplies under this contract:

_____

_____

_____

(End of clause)

252.237-7106 Delivery orders and invoices.

As prescribed at 237.7103 (c) and (d), insert the following clauses:

DELIVERY ORDERS AND INVOICES (OCT 1965)

Delivery orders for supplies or services shall be issued by the Contracting Officer and shall set forth (i) the supplies or services being ordered; (ii) the quantities to be furnished; (iii) delivery or performance dates; (iv) place of delivery or performance; (v) packing and shipping instructions; and (vi) the address to which invoices for services rendered under this contract shall be sent. Amendments to delivery orders may be made by the Contracting Officer issuing the order. Each delivery order or change order shall cite the funds from which payment for the supplies or services ordered shall be made.

(End of clause)

252.237-7107 Delivery and performance.

As prescribed at 237.7103 (c) and (d), insert the following clause:

DELIVERY AND PERFORMANCE (OCT 1965)

Except as otherwise herein provided, the Contractor shall furnish the material ordered and perform the services specified in each case as promptly as possible but in no event later than thirty-six (36) hours after the Contractor has received notification to remove the remains, exclusive of the time necessary for the Government to inspect and check results of preparation. The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed seventy-two (72) hours from the time the remains are casketed and final inspection completed.

(End of clause)

252.237-7108 Subcontracting.

As prescribed at 237.7103 (c) and (d), insert the following clause:

SUBCONTRACTING (OCT 1965)

No contract shall be made by the Contractor with any other party for furnishing any of the work or services herein contracted for without the written approval of the Contracting Officer. This provision does not apply to contracts of employment between the Contractor and his personnel.

(End of clause)

252.237-7109 Additional default provision.

As prescribed at 237.7103 (c) and (d), insert the following clause:

ADDITIONAL DEFAULT PROVISION (OCT 1965)

(a) This clause supplements the "Default (Fixed Price Supply and Service)" clause of this contract.

(b) This contract may be terminated for default by written notice without the ten (10) day notice specified under (a)(2) of the "Default (Fixed Price Supply and Service)" clause if during the performance of this contract:

(1) The Contractor, through circumstances reasonably within his control or that of persons in his employ, performs any act or acts under or in connection with this contract, or fails in the performance of any service under this contract and such acts or failures may reasonably be considered to reflect discredit upon the Department of Defense in fulfilling its responsibility for proper care of remains;

(2) The Contractor, either by his own act or through persons in his employ, solicits relatives or friends of the deceased to purchase supplies or services not provided for under this contract. (The Contractor may furnish supplies or arrange for services not provided for under this contract, only where such other supplies or services are voluntarily requested, selected and paid for by the representatives of the deceased.);

(3) The services, or any part thereof, to be performed under this contract are, without the written authorization of the Contracting Officer, performed by an individual, partnership, corporation, or other person or business association whatsoever, other than the Contractor to whom this contract is awarded, his employees and members of the firm;

(4) The Contractor refuses to perform the services required for any particular remains; or

(5) The Contractor advertises in any way that he has a contract for mortuary services with the Government.

(c) All other provisions of the "Default (Fixed Price Supply and Service)" clause shall apply to a termination made pursuant to this "Additional Default Provision" clause.

(End of clause)

252.237-7110 Group interment.

As prescribed at 237.7103 (c) and (d), insert the following clause:

GROUP INTERMENT (OCT 1965)

Payments to the Contractor for supplies and services provided for remains to be interred as a group shall be made on the basis of the number of caskets furnished rather than on the basis of the number of persons in the group.

(End of clause)

252.237-7111 Professional requirements.

As prescribed at 237.7103 (c) and (d), insert the following clause:

PROFESSIONAL REQUIREMENTS (OCT 1965)

The Contractor shall meet all state and local licensing requirements and shall furnish the highest quality of professional services. Preparation and transportation of remains shall be performed in accordance with all applicable Federal, state, and local health laws, statutes, and regulations. The Contractor shall obtain and furnish all necessary health department and shipping permits at no additional cost to the Government, and shall insure that all necessary health department permits are in order for disposition of the remains.

(End of clause)

252.237-7112 Facility requirements.

As prescribed at 237.7103 (c) and (d), insert the following clause:

FACILITY REQUIREMENTS (OCT 1965)

The Contractor's building shall have complete facilities for maintaining the highest standards of solemnity, reverence, and assistance to the family, and for prescribed ceremonial services. The preparation room shall be clean, sanitary, and adequately equipped. The Contractor shall have, or be able to obtain, catafalques, church trucks and equipment for Protestant, Catholic, and Jewish services. The funeral home, furnishings, grounds and surrounding area shall be carefully maintained so as to present a clean and well-kept appearance.

(End of clause)

252.237-7113 Preparation history.

As prescribed at 237.7103 (c) and (d), insert the following clause:

PREPARATION HISTORY (OCT 1965)

For each body prepared, or in the case of group interment for each casket handled, the Contractor shall state briefly the results of the embalming process on a certificate furnished by the Contracting Officer.

(End of clause)

252.237-7200 Instruction to bidders (count of articles).

As prescribed at 237.7204(a), insert the following provision:

INSTRUCTION TO BIDDERS (COUNT OF ARTICLES) (OCT 1981)

(a) Bids must include unit prices for each item in a lot. Unit prices must include all costs to the Government of providing the services, including pickup and delivery charges. Failure to bid on any item in a lot shall be cause for rejection of the bid on that lot. Bids shall be evaluated on the basis of the estimated quantities stated in the invitation. Subject to the provision contained herein, award generally shall be made to a single bidder for all lots. The Government reserves the right, however, to award by individual lot when the Contracting Officer determines that this is more advantageous to the Government.

(b) Upon application to the Contracting Officer, types of articles to be serviced may be inspected prior to bidding.

(End of provision)

252.237-7201 Instruction to bidders (bulk weight).

As prescribed at 237.7204(b), insert the following provision:

INSTRUCTION TO BIDDERS (BULK WEIGHT) (OCT 1981)

(a) Bids must be submitted on a unit price per pound of serviced laundry. Unit prices must include all costs to the Government of providing the service, including pickup and delivery charges. Bids shall be evaluated on the basis of the estimated pounds of serviced laundry stated in the invitation. Subject to the provision contained herein, award generally shall be made to a single bidder for all lots. The Government reserves the right, however, to award by individual lot when the Contracting Officer determines that this is more advantageous to the Government.

(b) Upon application to the Contracting Officer, types of articles to be serviced may be inspected prior to bidding.

(End of provision)

252.237-7202 Count of articles.

As prescribed at 237.7204(c)(1), insert the following clause:

COUNT OF ARTICLES (APR 1967)

(a) The Contractor shall be liable for return of the number and kind of articles furnished for service under this contract, in accordance with the count of the Contracting Officer, or the number and kind of articles agreed upon as a result of a joint count by the Contractor and the Contracting Officer at the time of delivery to the Contractor.

(b) Delivery tickets in the number of copies required, and in the form approved by the Contracting Officer shall be completed by the Contractor at the time of his receipt of the articles to be serviced. One copy of each delivery ticket shall accompany the Contractor's invoice.

(End of clause)

ALTERNATE I (APR 1967)

As prescribed at 237.7204(c)(2), add the following paragraph (c) to the basic clause:

(c) Individual laundry bundle delivery tickets shall be provided by the Contractor as specified in the clause entitled "Individual Laundry" of the Contract Clauses of this contract.

252.237-7203 Loss or damage (count of articles).

As prescribed at 237.7204(d), insert the following clause:

LOSS OR DAMAGE (COUNT OF ARTICLES) (OCT 1981)

(a) The Contractor shall indemnify the Government for any property delivered to the Contractor for servicing under this contract which is lost, or which is damaged and, in the opinion of the Contracting Officer, cannot be repaired satisfactorily. In either of these events, the Contractor shall pay to the Government the value thereof in accordance with Federal Supply Schedule price lists. If the property is not on these price lists, the Contracting Officer shall determine a fair and just price. Credit shall be allowed for any depreciation in the value of the property at the time of loss or damage, and the parties hereto shall determine the amount of the allowable credit. If the parties fail to agree upon the value of the property, or fail to agree on the amount of credit due, the dispute shall be determined as provided in the clause hereof entitled "Disputes."

(b) In case of damage to any property which the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor shall repair the property at his expense in a manner satisfactory to the Contracting Officer.

(End of clause)

252.237-7204 Weight of articles (bag type).

As prescribed at 237.7204(e)(1), insert the following clause:

WEIGHT OF ARTICLES (BAG TYPE) (OCT 1981)

(a) The Contractor shall be liable for the return of the articles furnished for service under this contract.

(b) Delivery tickets in the number of copies required, and in the form approved by the Contracting Officer, shall be completed by the Contractor at the time of his receipt of the articles to be serviced. One copy of each delivery ticket shall accompany the Contractor's invoice.

(c) Prior to Contractor pickup of articles for service under this contract, the Contracting Officer shall ensure that each bag contains only articles within a single bag type as specified in the Schedule. The Contracting Officer shall ensure each bag is weighed and that this weight and bag type are identified on the bag. The bag shall always be included in this weight. This weight and the bag type shall be verified by the Contractor who shall record the verified weight and bag type on the delivery ticket. One copy of the delivery ticket shall be retained by the Government.

(d) At the time of delivery, the Contractor shall record the weight and bag type of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight and bag type are verified at time of delivery.

(End of clause)

252.237-7205 Weight of articles (unsorted).

As prescribed at 237.7204(e)(2), insert the following clause:

WEIGHT OF ARTICLES (UNSORTED) (OCT 1981)

(a) The Contractor shall be liable for the return of the articles furnished for service under this contract.

(b) Delivery tickets in the number of copies required, and in the form approved by the Contracting Officer, shall be completed by the Contractor at the time of his receipt of the articles to be serviced. One copy of each delivery ticket shall accompany the Contractors invoice.

(c) Prior to Contractor pickup of articles for service under this contract, the Contracting Officer shall ensure each bag is weighed and that this weight is identified on the bag. The bag shall always be included in this weight. This weight shall be verified by the Contractor who shall record the verified weight on the delivery ticket. One copy of the delivery ticket shall be retained by the Government.

(d) At the time of delivery, the Contractor shall record the weight of serviced laundry on the delivery ticket. The Contracting Officer shall ensure that this weight is verified at time of delivery.

(End of clause)

252.237-7206 Loss or damage (weight of articles).

As prescribed at 237.7204(e)(3), insert a clause substantially as follows:

LOSS OR DAMAGE (WEIGHT OF ARTICLES) (OCT 1981)

(a) The Contractor shall indemnify the Government for any property delivered to the Contractor for servicing under this contract which is lost, or which is damaged, and in the opinion of the Contracting Officer, cannot be repaired satisfactorily. In either of these events, the Contractor shall pay to the Government the value thereof in accordance with the price of ——* per pound. The Contractor shall only be required to pay the Government for any losses which exceed the maximum weight loss allowable by the clause hereof entitled "Maximum Weight Loss." If the parties fail to agree on the amount of credit due, the dispute shall be determined as provided in the clause hereof entitled "Disputes."

(b) In the case of damage to any property which the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor shall repair the property at his expense in a manner satisfactory to the Contracting Officer.

* Insert reasonable per pound price based on the average per pound value of the property to be serviced. When the contract requires laundry services on a bag type basis, reasonable per pound prices shall be identified by bag type.

(End of clause)

252.237-7207 Maximum weight loss.

As prescribed at 237.7204(e)(4), insert the following clause:

MAXIMUM WEIGHT LOSS (OCT 1981)

The maximum weight loss allowable in servicing the laundry is —— * percent of the weight recorded on delivery tickets, as set forth in the clause entitled "Weight of Articles," when the laundry is picked up. Any weight loss in excess of this amount shall be subject to the clause hereof entitled "Loss or Damage."

* Insert applicable percentage not to exceed eight percent (8%).

(End of clause)

252.237-7208 Individual laundry.

As prescribed at 237.7204(f), insert the following clause:

INDIVIDUAL LAUNDRY (APR 1967)

(a) The Contractor shall provide laundry service on both a unit bundle and on a piece-rate bundle basis for individual personnel when required by this contract. The total number of pieces listed in the column "Estimated Quantity" in the Schedule is the estimated amount of individual laundry for this contract, but does not constitute any representation as to the amount of individual laundry to be required. Individuals may elect whether they shall patronize the laundry services. Services covered by this provision shall be on a weekly basis, and the schedule for pickup and delivery shall be as specified elsewhere in this contract. Charges for individual laundry shall be on a per unit bundle or a piece-rate basis as indicated on the form, to be furnished by the Contractor, accompanying the bundle at time of pickup.

(b) The maximum number of pieces to be allowed per bundle is as specified in the Schedule and as follows: *

(1) Bundle consisting of twenty-six (26) pieces including laundry bag. This bundle shall contain approximately —— of outer garments which are to be starched and pressed. Outer garments shall include but not be limited to cotton shirts, trousers, jackets, dresses, coats.

(2) Bundle consisting of thirteen (13) pieces including laundry bag. This bundle shall contain approximately —— pieces of outer garments which are to be starched and pressed. Outer garments shall include but not be limited to cotton shirts, trousers, jackets, dresses, coats.

(c) Individual laundry bundles shall be accompanied by forms listing the items contained therein, prepared by the patrons concerned. Forms on individual laundry bundles shall clearly identify unit bundle or piece-rate bundle as applicable when both services are provided by this contract.

* The number of pieces and the composition of a bundle may be revised by the Contracting Officer prior to advertising to meet local conditions.

(End of clause)

252.237-7209 Special definitions of government property.

As prescribed at 237.7204(g), insert the following clause:

SPECIAL DEFINITIONS OF GOVERNMENT PROPERTY (APR 1967)

(a) The term "Government-furnished property," as used in this contract, means any supplies or facilities furnished to the Contractor by the Government for use in connection with the performance of this contract, but does not include the articles delivered to the Contractor to be laundered or dry cleaned.

(b) The term "Government-owned property," as defined in his contract, means all of the articles delivered to the Contractor to be laundered or dry cleaned, expressly including any articles which may actually be owned by individual Government personnel.

(End of clause)

252.237-7400 Definitions (communications).

As prescribed at 237.7413(a), insert the following clause:

DEFINITIONS (COMMUNICATIONS) (APR 1971)

(a) The term "Communication Service Authorization" (CSA) means an order for services or facilities under this contract.

(b) The term "Appropriate Governmental Regulatory Body" means the Federal Communications Commission, any state-wide regulatory body, or any body with less than state-wide jurisdiction when operating pursuant to state authority. Regulatory bodies whose decisions are not subject to judicial appeal and regulatory bodies which regulate a company owned by the same entity which creates the regulatory body are not "appropriate governmental regulatory bodies" for the purposes of this contract.

(End of clause)

252.237-7401 Patent indemnity (communications).

As prescribed at 237.7413(a), insert the following clause:

PATENT INDEMNITY (COMMUNICATIONS) (APR 1971)

The Patent Indemnity clause in this contract shall apply only to individual CSAs over $5,000 issued under this contract and covering those communications services and facilities which normally are or have been sold or offered for sale by the Contractor to the public, or which can be provided over commercially available equipment, or which involve relatively minor modifications thereto.

(End of clause)

252.237-7402 Access.

As prescribed at 237.7413(a), insert the following clause:

ACCESS (APR 1971)

(a) Subject to military security regulations, the Government shall permit the Contractor access at all reasonable times to contractor furnished facilities, provided that if by reason of military necessity the Governmment is unable to permit access, the Government at its own risk, and expense shall maintain these facilities and the Contractor shall not be responsible for the service involving any of these facilities during the period of nonaccess, unless the service failure results from the Contractor's fault or negligence.

(b) During periods when Contractor access is not permitted, cost attributable to loss of or damage to the equipment due to the fault or negligence of the Government shall be reimbursed to the Contractor at mutually acceptable rates. Failure to agree shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(End of clause)

252.237-7403 Amendment of contract.

As prescribed at 237.7413(a), insert the following clause:

AMENDMENT OF CONTRACT (APR 1971)

Upon thirty (30) days written notice, either party may request reconsideration of this contract for the purpose of revision to conform with requirements of law or to provide for mutually acceptable changes.

(End of clause)

252.237-7404 Obligation of the Government.

As prescribed at 237.7413(a), insert the following clause:

OBLIGATION OF THE GOVERNMENT (APR 1971)

The Government incurs no monetary liability under this instrument. The Government's liability shall arise, if appropriate, upon the issuance of a CSA pursuant to the terms of this instrument.

(End of clause)

252.237-7405 Authorization and Consent—Common Carriers.

As prescribed at 237.7413(b), insert the following clause:

AUTHORIZATION AND CONSENT—COMMON CARRIERS (APR 1971)

The Government hereby gives authorization and consent (without prejudice to its rights of indemnification, if these rights are provided for in this contract) for all use and manufacture, in the performance of any order placed under this contract for communication services and facilities for which rates, charges, and tariffs are not established by a governmental regulatory body, or any part thereof or any amendments thereto or any subcontract thereunder (including any lower tier subcontract), of any United States patented invention (a) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or (b) utilized in the machinery, tools, or methods

the use of which necessarily results from compliance by the Contractor or the using subcontractor with (1) specifications or written provisions now or hereafter forming a part of ths contract, or (2) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(End of clause)

252.237-7406 Continuation of orders.

As prescribed at 237.7413(b), insert the following clause:

CONTINUATION OF ORDERS (APR 1971)

All orders heretofore issued by ——— under Contract Number ———, dated ——— are transferred to this contract and shall continue in full force and effect as though placed under this contract. Orders currently in effect which were heretofore issued by the above Department under other contracts of that Department with the Contractor may likewise be transferred to this contract.

(End of clause)

252.237-7407 Facilities and services to be furnished—common carriers.

As prescribed at 237.7413(b), insert the following clause:

FACILITIES AND SERVICES TO BE FURNISHED—COMMON CARRIERS (APR 1971)

(a) The Contractor shall furnish any classes of services or facilities that he offers or furnishes under public tariffs.

(b) When it is mutually agreed that the Contractor shall furnish nontariffed services, such services may be ordered in the manner provided in the clause entitled "Ordering of Facilities and Services." These may include the engineering, installation, alteration or maintenance of facilities owned either by the Contractor or by the Government, and may be located on or off Government premises or at any of its establishments.

(c) The Contractor agrees to interconnect his facilities with any Government-owned or furnishesd communications equipment, facilities or transmission media, in accordance with established technical criteria for assuring continuity of service and/or traffic without damage to or degradation of commercial facilities, upon request of the Contracting Officer.

(End of clause)

252.237-7408 Ordering of facilities and services—common carriers.

As prescribed at 237.7413(b), insert the following clause:

ORDER OF FACILITIES AND SERVICES—COMMON CARRIERS (APR 1971)

All services and facilities furnished, as provided in the clause entitled "Facilities and Services to be Furnished—Common Carriers," shall be ordered by the Contracting Officer on numbered CSAs referring to this contract and specifying the services and facilities desired, the premises involved, the address where bills for service shall be sent, the Disbursing Officer, and any other pertinent details. Acceptance of orders by the Contractor shall be acknowledged by (a) commencing performance or (b) written acceptance by a duly authorized representative. The Contractor shall sign and promptly return the order to the Government when required by the Contracting Officer. Orders pursuant to this clause which are unacceptable to the Contractor shall be returned to the Contracting Officer within ——— days of receipt stating the reasons therefor.

(End of clause)

252.237-7409 Rates, charges, and services—common carriers.

As prescribed at 237.7413(b), insert the following clause:

RATES, CHARGES, AND SERVICES—COMMON CARRIERS (APR 1971)

(a) The services and facilities furnished hereunder shall be in accordance with all applicable tariffs, rates, charges, rules, regulations or requirements (1) lawfully established by an appropriate governmental regulatory body; and (2) applicable to service and facilities furnished or offered by the Contractor to the general public or his subscribers; or at rates, terms and conditions of service and facilities furnished or offered by the Contractor to the general public or his subscribers; or at rates, terms and conditions of service as may be agreed upon, subject, when appropriate, to jurisdiction of an appropriate governmental regulatory body. For nontariffed services which are furnished, the Government shall be charged at the lowest rate and under the most favorable terms and conditions for similar service and facilities offered to any other customer.

(b) Recurring charges for services and facilities furnished under this contract shall, in each case, commence with satisfactory establishment of service or provision of facilities or equipments and are payable monthly in arrears.

(c) Subject to the "Cancellation or Termination of Orders—Common Carriers" clause, the Government may discontinue the use of any service or facilities furnished hereunder at any time. Upon discontinuance, the Government shall pay to the Contractor all charges for services and facilities adjusted to the effective date of discontinuance.

(d) Expediting charges are expenditures necessary to secure services earlier than those services normally would be provided, such as costs of overtime pay, or special shipment. Expediting charges shall be paid only when (1) payment thereof is provided for in the tariff established by an appropriate regulatory authority or (2) such charges are specially authorized in an expediting CSA. When authorized, expediting charges shall be the additional costs incurred by the Contractor and the subcontractor.

(e) When the services normally provided are technically unacceptable and the requirement necessitates the development, fabrication or manufacture of special equipment, the Government may provide such equipment or may direct the Contractor to procure the equipment or facilities upon a competitive basis to the extent practicable.

(f) If any time the Government defers or changes its orders for any of the services hereunder but does not cancel or terminate them, the amount paid or payable to the Contractor for providing the services deferred or modified shall be equitably adjusted in accordance with applicable tariffs filed by the Contractor with the regulatory commission and in effect at the time of the deferral or change, or if no tariffs are in effect, by written agreement between the Government and the Contractor. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause.

(End of clause)

252.237-7410 Payment—common carrier.

As prescribed at 237.7413(b), insert the following clause:

PAYMENT—COMMON CARRIER (APR 1971)

The Government shall pay the Contractor, in arrears, upon submission of invoices for services and facilities furnished in accordance with the provisions of CSAs issued under this contract, the rates and charges for such services and facilities as set forth in the clause entitled "Rates, Charges and Service."

(End of clause)

252.237-7411 Tariff information.

As prescribed at 237.7413(b), insert the following clause:

TARIFF INFORMATION (APR 1971)

(a) A copy of the Contractor's current existing tariffs (including changes) shall be furnished promptly to the Contracting Officer upon request. As early as possible prior to the filing of any application to a Federal, state or any other regulatory agency seeking the establishment of, or changes in, rates, charges, services, or any other regulations relating to any tariff or any of the facilities or services to be furnished solely or primarily to the Government, the Contractor shall notify the Contracting Officer thereof and shall furnish a copy of the application. Upon request therefor, the Contractor shall furnish a copy of all information, material and data developed or prepared in support of or in connection with such application.

(b) The Contractor also shall notify the Contracting Officer of any such application which may be filed with an appropriate governmental regulatory body by anyone other than the Contractor which affects or will affect the rate or conditions of services rendered or to be rendered promptly after the Contractor himself learns of that application. The foregoing requirements shall apply also to all such applications pending on the effective date of this contract.

(End of clause)

252.237-7412 Cancellation or termination of orders—common carriers.

As prescribed at 237.7413(b), insert the following clause:

CANCELLATION OR TERMINATION OF ORDERS—COMMON CARRIERS (APR 1971)

(a) In the event the Government cancels, in whole or in part, any of the services which the Contractor is requested to provide under this contract, prior to the time such services are made available to the Government, or in the event that the Government terminates any of these services, in whole or in part, after they are made available to the Government, the Government shall reimburse the Contractor for the actual nonrecoverable costs which the Contractor has reasonably incurred in specially providing facilities and equipment the use of which is canceled or terminated and for which the Contractor has no foreseeable reuse. The amount of reimbursement shall be determined in the manner set forth in (b), (c) or (d) below.

(b) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this contract, in whole or in part, shall be determined in accordance with applicable tariffs governing cancellation and termination charges which are filed by the Contractor with an appropriate governmental regulatory body and are in effect on the date of termination, and which provide specific cancellation or termination charges for the facilities and equipment involved or set forth the manner in which such charges will be determined.

(c) The amount of the Government's liability upon cancellation or termination, in whole or in part, of any of the services ordered under this contract, which are not subject to an appropriate governmental regulatory body, shall be determined in accordance with a mutually agreed schedule as contained in the applicable Communication Services Authorization (CSA).

(d) If no such applicable tariffs are in effect on the date of cancellation or termination or set forth in the applicable CSA, the Government's liability shall be determined at the time of cancellation or termination of the facilities and equipment in accordance with the following settlement procedures:

(1) The Contractor agrees to provide the Contracting Officer, in such reasonable detail as he may require, certified inventory schedules covering all items of property or facilities in the Contractor's possession, the cost of which is included in the "Basic Cancellation or Termination Liability" for which the Contractor has no foreseeable reuse.

(2) The Contractor shall use his best efforts to sell such property or facilities when the Contractor has no foreseeable reuse or when the Department has not exercised its option to take title under the clause entitled "Title to Communications Facilities and Equipment." Any proceeds of such sale shall be applied in reduction of any payments to be made by the Government to the Contractor under a cancellation or termination settlement.

(3) Actual nonrecoverable costs shall be recorded in accordance with the established accounting procedures prescribed by the cognizant governmental regulatory authority or, if no such procedures have been prescribed, in accordance with generally accepted accounting procedures applicable to the provision of communication services for public use.

(4) The actual nonrecoverable costs are the installed costs of the facilities and equipment, less cost of reusable materials, and less net salvage. Installed costs shall include the actual cost of equipment and materials specifically provided or used, plus the actual cost of installing (including engineering, labor, supervision, transportation, rights-of-way, and any other items which are chargeable to the capital accounts of the Contractor) except any such costs for which the Government may have directly reimbursed the Contractor under the clause entitled "Special Construction and Equipment Charges." From the Contractor's installed cost, there shall be deducted the net salvage value (salvage value less cost of removal). In determining such net salvage, due consideration shall be given to foreseeable reuse by the Contractor of the facilities and equipment and due allowance shall be made for the cost of dismantling, removal, reconditioning and disposal of the facilities and equipment when necessary either to the sale of facilities or their reuse by the Contractor in another location.

(5) The "Basic Cancellation Liability" is defined as the actual nonrecoverable cost which the Government shall reimburse the Contractor at the time services are canceled. The "Basic Termination Liability" is defined as the nonrecoverable cost amortized in equal monthly increments throughout the liability period. Upon termination of services, the Government shall reimburse the Contractor for the nonrecoverable cost less such costs amortized to the date services are terminated. The liability period shall be established as mutually agreed to but will not exceed ten (10) years.

(6) When the "Basic Cancellation or Termination Liability" established by the CSA is based on estimated costs, the Contractor agrees to settle on the basis of actual cost at the time of termination or cancellation.

(7) The Contractor agrees that, if after settlement but within the termination liability period of the services, should the Contractor make reuse of equipment or facilities which were treated as nonreusable or nonsalvable in the settlement, the Contractor shall reimburse the Government for the value thereof.

(8) The Contractor agrees that in no event shall any costs be included which are not included in determining cancellation and termination charges under the Contractor's standard practices or procedures; and no cancellation or termination charge shall be made if such charge is not ordinarily made by the Contractor with respect to similar facilities or equipment furnished under similar circumstances.

(e) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments on account against costs incurred by the Contractor in connection with the canceled or termination portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments is within the amount to which the Contractor is entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest at the rate of six percent (6%) per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Govenment; *provided*, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of the cancellation or termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(f) Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

(End of clause)

252.237-7413 Reuse arrangements.

As prescribed at 237.7413(b), insert the following clause:

REUSE ARRANGEMENTS (APR 1971)

(a) When feasible, the Contractor shall reuse canceled or terminated facilities or equipment to minimize the charges to the Government.

(b) If at any time the Government requires that communications facilities or equipment be relocated within the Contractor's service area, the Government shall have the option of paying the costs of relocating the facilities or equipment in lieu of paying any termination or cancellation charge. The "Basic Termination Liability" applicable to the facilities or equipment in their former location shall continue to apply to the facilities and equipment in their new location. Monthly rental charges shall continue to be paid during the period.

(c) When there is another requirement or foreseeable reuse in place of canceled or terminated facilities or equipment, no charge shall apply and the basic cancellation or termination liability shall be appropriately reduced. When feasible, the Contractor shall promptly reuse discontinued channels or facilities, including equipment for which the Govenment is obligated to pay a munimum service charge.

(End of clause)

252.237-7414 Submission of cost or pricing data—common carriers.

As prescribed at 237.7413(b), insert the following clause:

SUBMISSION OF COST OR PRICING DATA—COMMON CARRIERS (APR 1971)

The Contractor agrees to provide certified cost or pricing data, as requested by the Contracting Officer whenever:

(a) the services are nontariffed services;

(b) a tariff, whether filed or contemplated to be filed, is for new services installed or developed primarily for Government use (and the data shall cover special construction charges in connection therewith);

(c) a tariff, whether filed or contemplated to be filed, in which specific rates and charges are not included;

(d) more than one commercial source (one or more of which is a common carrier) can offer the desired service but price competition is not considered adequate;

(e) required to support the reasonableness of special assembly rates and charges;

(f) required to support the reasonableness of special construction and equipment charges;

(g) required to support the reasonableness of those contingent liabilities which are fixed at the outset of the service; or

(h) required to support proposed cancellation and termination charges (pursuant to the clause entitled "Cancellation or Termination Orders") and reuse arrangements (pursuant to the clause entitled "Reuse Arrangements").

(End of clause)

252.237-7415 Audit and records—common carriers.

As prescribed at 237.7413(b), insert the following clause:

AUDIT AND RECORDS—COMMON CARRIERS (APR 1972)

(a) For the purpose of verifying the accuracy of the cost or pricing data submitted pursuant to the clause entitled "provision of Cost or Pricing Data—Common Carrier," the Contracting Officer or his authorized representative shall, (1) until the expiration of three (3) years from the date of the submission of the data which forms the basis for a recurring or nonrecurring charge, or (2) until the expiration of the period of contingent liability with respect to such contingent liability, have the right to examine those books, records, documents, and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were available to the Contractor as of the date of the certification of the data.

(b) The Contractor shall maintain such books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly the direct and indirect costs which were the basis for the pricing of the CSA. The foregoing constitute "Records" for the purpose of this clause.

(c) The Contractor shall insert the substance of this clause in subcontracts awarded hereunder which furnish the basis for charges referred to in (a) hereof, unless its omission is authorized by the Contracting Officer.

(End of clause)

252.237-7416 Term and termination of contract—common carriers.

As prescribed at 237.7413(b), insert the following clause:

TERM AND TERMINATION OF CONTRACT—COMMON CARRIERS (JUL 1976)

This contract shall be effective for an initial term commencing—— * and ending September 30, 19—— ** and shall continue in force thereafter from year to year, unless and until terminated by either party at any time upon not less than sixty (60) days' prior written notice to the other. Termination shall be applicable prospectively only and shall not operate as a cancellation of any orders previously issued or outstanding.

(End of clause)

252.237-7417 Special construction and equipment charges.

As prescribed at 237.7413(c), insert the following clause:

SPECIAL CONSTRUCTION AND EQUIPMENT CHARGES (APR 1971)

(a) Except to the extent provided in the clause of this contract entitled "Cancellation or Termination of Orders," the Government shall not directly reimburse the Contractor for charges based on the cost of constructing any facilities or providing any equipment unless such direct reimbursement is specifically authorized by the Contracting Officer. If, at any time, facilities or equipment for which the Government has directly reimbursed the Contractor in whole or in part are discontinued, the Contractor shall allow the Government such credit as may be appropriate for the value of the facilities or equipment attributable to the Government's contribution. The value of the facilities and equipment shall be determined on the basis of the foreseeable reuse of the facilities and equipment by the Contractor at the time their use is discontinued or on the basis of the net salvage value, whichever is greater. The Contractor shall promptly pay the Government the amount of any such credit.

(b) The amount of any direct special construction charge shall not exceed the actual costs to the Contractor, properly allocable to the services to be provided to the Government of specially constructing or providing the facilities or equipment involved. In no event shall the amount of any direct special construction charge include costs incurred by the Contractor which are covered by a cancellation or termination liability or by the Contractor's recurring or other nonrecurring charges. The Contractor represents that in establishing his recurring charges for the services, facilities and equipment involved, he has not included in his rate base any costs for which he has been reimbursed by the Government and that depreciation charges are based only on the cost of facilities and equipment paid by the Contractor and not reimbursed by the Government. If, due to circumstances beyond the control and without the fault of the Contractor, it becomes necessary for the Contractor to incur costs for the replacement of any facilities or equipment for which direct special construction charges were assumed by the Government or for which the Contractor was reimbursed by the Government beyond that provided as a part of the Contractor's recurring charges, the Government shall assume such costs or reimburse the Contractor for such replacement costs at rates mutually acceptable to both the Government and the Contractor. Prior to incurring such costs, the Government shall have the right to terminate such service in accordance with the clause entitled "Cancellation or Termination of Orders."

(End of clause)

252.237-7418 Title to communication facilities and equipment.

As prescribed at 237.7413(c), insert the following clause:

TITLE TO COMMUNICATION FACILITIES AND EQUIPMENT (APR 1971)

Notwithstanding payment by the Government of any of the Contractor's costs of constructing communication facilities and equipment, title to all Contractor furnished facilities and equipment used in providing communication services ordered under this contract shall remain in the Contractor except as may be specifically provided in a CSA issued and accepted hereunder, and the Contractor shall operate and maintain all such communication facilities and equipment.

(End of clause)

252.242-7000 Submission of commercial freight bill to the General Services Administration for audit.

As prescribed at 242.1403-2, insert the following clause:

SUBMISSION OF COMMERCIAL FREIGHT BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (FEB 1976)

When transportation costs are reimbursed to the Contractor, the Contractor is required to furnish to the

General Services Administration—FZATR
Chester A. Arthur Building
Washington, D.C. 20406

(or the ACO if specified) individual commercial freight bills (or equivalent shipment data and evidence of payment) for transportation charges in excess of $500.00.

(End of clause)

252.242-7001 Notice of cost/schedule control systems.

As prescribed at 242.302(S-71), insert the following provision:

NOTICE OF COST/SCHEDULE CONTROL SYSTEMS (APR 1974)

(a) The offeror shall submit a comprehensive plan for compliance with the attached criteria (DoDI 7000.2, Performance Measurement for Selected Acquisitions) for the internal Cost/Schedule Control Systems which are and/or will be operational for any contract resulting from this solicitation, and which includes the C/SCSC clause set forth at 252.242-7001 of the DoD FAR Supplement. The offeror shall identify his existing management systems separately from

* Insert the effective date of the contract.

** Insert the current fiscal year.

proposed modifications to meet the criteria. The plan shall:

(1) describe the management systems and their application in all major functional cost areas such as engineering, manufacturing and tooling, as related to development of the work breakdown structure, planning, budgeting, scheduling, work authorization, cost accumulation, measurement and reporting of cost and schedule performance, variance analysis, and baseline control;

(2) describe compliance with each of the criteria, preferably by cross-referencing appropriate elements in the description of systems with the items in the checklist for C/SCSC contained in AFSCP/AFLCP 173–5, DARCOM–P 715–5, NAVMAT P–5240, Cost/Schedule Control Systems Criteria Joint Implementation Guide;

(3) identify the major subcontractors, or major subcontracted effort in the event major subcontractors have not been selected, planned for application of the criteria;

(4) describe the proposed procedure for administration of the criteria as applied to subcontractors.

(b) If the Contractor is utilizing Cost/Schedule Control Systems which have been previously accepted, or is operating such systems under a current Memorandum of Understanding, evidence of such may be submitted in lieu of the comprehensive plan mentioned above. In such event, the Contracting Officer will determine the extent to which such systems shall be reviewed to assure continued compliance with the criteria.

(c) The offeror shall provide information and assistance as requested by the Contracting Officer for evaluation of compliance with the cited criteria.

(d) The offeror's plan for Cost/Schedule Control Systems will be evaluated prior to contract award. Upon acceptance of the Cost/Schedule Control Systems, a description of the accepted systems will be referenced in the contract.

(e) Subcontractor selection for application of the C/SCSC will be by agreement between the prime contractor and the Government. The prime contractor will contractually require the selected subcontractors to comply with the criteria. However, demonstrations and reviews of these selected subcontractors' management systems may be performed by the procuring authority when requested by either the prime or subcontractor.

(End of provision)

252.242–7002 Cost/schedule control systems.

As prescribed at 242.302(S–71), insert the following clause:

COST/SCHEDULE CONTROL SYSTEMS (MAR 1979)

(a) The Contractor shall establish, maintain and use in the performance of this contract Cost/Schedule Control Systems meeting the attached criteria (DoDI 7000.2, Performance Measurement for Selected Acquisitions). Prior to acceptance by the Contracting Officer and within ninety (90) (or as otherwise agreed to by the parties) calendar days after contract award, the Contractor shall be prepared to demonstrate the operation of his systems to the Government to verify that the proposed systems meet the established criteria set forth above. As a part of the demonstration, review and acceptance procedure, the Contractor shall furnish the Government a description of the Cost/Schedule Control Systems applicable to this contract in such form and detail as indicated by the AFSC/AFLCP 173–5, DARCOM–P 715–5, NAVMAT P–5240 Cost Schedule Control Systems Criteria Joint Implementation Guide, hereinafter referred to as the guide, or required by the Contracting Officer. The Contractor agrees to provide access to all pertinent records, data and plans as requested by representatives of the Government for the conduct of the review.

(b) The description of the management systems accepted by the Contracting Officer, identified by the title and date, shall be referenced in the contract. Such systems shall be maintained and used by the Contractor in the performance of this contract.

(c) Contractor changes to the accepted systems shall be submitted to the Contracting Officer for review and approval. The Contracting Officer shall advise the Contractor of the acceptability of such changes within sixty (60) days after receipt from the Contractor. When systems existing at time of contract award do not comply with the criteria, adjustments necessary to assure compliance will be effected at no change in contract price or fee.

(d) The Contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer or his duly authorized representative for the purpose of permitting Government surveillance to insure continuing application of the accepted systems to this contract. Deviations from accepted systems discovered during contract performance shall be corrected as directed by the Contracting Officer.

(e) The Contractor shall require that each selected subcontractor, as mutually agreed to between the Government and the Contractor and as set forth in the schedule of this contract, shall meet the Cost/Schedule Control Systems criteria as set forth in the guide and shall incorporate in all such subcontracts adequate provisions for demonstration, review, acceptance and surveillance of subcontractors' systems, to be carried out by the Government when requested by either the prime or subcontractor.

(f) If the Contractor or subcontractor is utilizing Cost/Schedule Control Systems which have been previously accepted, or is operating such systems under a current Memorandum of Understanding, the Contracting Officer may waive all or part of the provisions hereof concerning demonstration and review.

(End of clause)

252.243–7000 Engineering change proposals.

As prescribed at 243.205(S–70), insert the following clause:

ENGINEERING CHANGE PROPOSALS (APR 1984)

(a) The Contracting Officer may at any time, in writing, request the Contractor to prepare and submit an Engineering Change Proposal (ECP) as that term is defined in MIL–STD–480, within the scope of this contract, as hereafter set forth. Upon receipt of such request, the Contractor shall submit to the Contracting Officer the information specified by, and in the format required by paragraph 4 of MIL–STD–480.

(b) Any Contractor ECP shall set forth a "not to exceed" price* and delivery adjustment or a "not less than" price* and delivery adjustment, acceptable to the Contractor if the Government subsequently orders such ECP. If ordered, the equitable increase shall not exceed, nor shall the equitable decrease be less than, such "not to exceed" or "not less than" amounts.** This paragraph does not preclude any revision(s) or correction(s) of an ECP in accordance with paragraphs 4.10 and 4.11 of MIL–STD–480. Concurrently with the submission of any ECP under this contract in which the proposed aggregate cost is $500,000 or greater, the Contractor shall submit to the Contracting Officer a completed SF 1411. At the time of agreement upon the price of the ECP, the Contractor shall submit a signed Certificate of Current Cost or Pricing Data.

(End of clause)

ALTERNATE I (APR 1984)

As prescribed at 243.202–70(b), insert the following paragraph:

(c) If the price* adjustment proposed for any Contractor-originated ECP (excluding any Government-requested ECP or Value Engineering Change Proposal) is *** (percent of the contract price*) (or $***) or less, such change shall be made at no adjustment of the contract price*.

252.243–7001 Pricing of adjustments.

As prescribed at 243.205(S–71), insert the following clause:

PRICING OF ADJUSTMENTS (APR 1984)

When costs are a factor in any determination of a contract price adjustment pursuant to the Changes clause or any other clause of this contract, such costs shall be in accordance with Part 31 of the Federal Acquisition Regulation and the DoD FAR Supplement in effect on the date of this contract.

(End of clause)

252.246–7000 Material inspection and receiving report.

As prescribed at 246.370, insert the following clause:

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* Use term suitable to type of contract.

** In cost-reimbursement type contracts, replace this sentence with the following sentence: "Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost set forth in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the estimated cost."

*** To be negotiated.

MATERIAL INSPECTION AND RECEIVING REPORT (DEC 1969)

At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a Material Inspection and Receiving Report in the manner and to the extent required by Appendix I, "Material Inspection and Receiving Report" (see DoD FAR Supplement 46.670).

(End of clause)

252.246-7001 Warranty of data.

As prescribed at 246.770, insert the following clause:

WARRANTY OF DATA (NOV 1974)

(a) Technical data means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, product support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specification or related performance or design typed documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

(b) Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract and notwithstanding any provision of this contract concerning the conclusiveness thereof, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three (3) years after completion of the delivery of the line item of data (as identified in DD Form 1423) of which the data forms a part; or any longer period specified in the contract.

(c) The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) The following remedies shall apply to all breaches of the above warranty provided that the Government notifies the Contractor of the breach in writing within the warranty period.

(1) Within a reasonable time after the Contracting Officer notifies the Contractor of a breach of warranty, he may:

(i) by written notice, direct the Contractor to correct or replace at his expense the nonconforming technical data promptly; or

(ii) if he determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment in lieu of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under (1)(i) above, the Contracting Officer may, within a reasonable time of such refusal or failure:

(i) by contract or otherwise, correct or replace the nonconforming technical data and charge the Contractor the cost occasioned to the Government thereby; or

(ii) elect a price or fee adjustment in lieu of correction or replacement.

(3) The remedies set forth in this clause represent the exclusive means by which the rights conferred on the Government by this clause may be enforced.

(f) The provisions of this clause apply anew to that portion of any technical data which is corrected or furnished in replacement under (d)(1)(i) above.

(End of clause)

ALTERNATE I (NOV 1974)

As prescribed at 246.770, insert the following paragraph:

(3) In addition to the remedies specified under (d) (1) and (2) above, Contractor shall be liable to the Government for all damages sustained by the Government as a result of breach of the warranty specified in this clause; however, the additional liability under this subparagraph (3) shall not exceed 75% of the target profit. If the breach of the warranty specified in (b) of this clause is with respect to data supplied by an equipment subcontractor, the limit of the prime contractor's liability shall be 10% of the total subcontract price in the case of a firm fixed-price subcontract, 75% of the total subcontract fee in the case of a cost-plus-fixed-fee or cost-plus-award-fee subcontract, or 75% of the total subcontract target profit or fee in the case of a fixed-price or cost-plus-incentive-type contract. Damages due the Government under the provisions of this warranty shall not be considered as an allowable cost. The additional liability specified in this paragraph (3) shall not apply:

(i) with respect to the requirement under Category E or I of MIL-D-1000, provided that the data furnished by the Contractor was current, accurate at time of submission and did not involve a significant omission of data necessary to comply with such requirements; or

(ii) with respect to specific defects as to which the Contractor discovers and gives written notice to the Government before the error is discovered by the Government.

ALTERNATE II (NOV 1974)

As prescribed at 246.770, insert the following paragraph:

(3) In addition to the remedies specified under (1) and (2) above, the Contractor shall be liable to the Government for all damages sustained by the Government as a result of breach of the warranty specified in this clause; however, the additional liability under this subparagraph (3) shall not exceed 10% of the total contract price. If the breach of the warranty specified in (b) of this clause is with respect to data supplied by an equipment subcontractor, the limit of the prime contractor's liability shall be 10% of the total subcontract price in the case of a firm fixed-price subcontract, 75% of the total subcontract fee in the case of a cost-plus-fixed-fee or cost-plus-award-fee subcontract, or 75% of the total subcontract target profit or fee in the case of a fixed-price or cost-plus-incentive-type contract. The additional liability specified in this paragraph (3) shall not apply:

(i) with respect to the requirement under Category E or I of MIL-D-1000, provided that the data furnished by the Contractor was current, accurate at time of submission and did not involve a significant omission of data necessary to comply with such requirements; or

(ii) with respect to specific defects as to which the Contractor discovers and gives written notice to the Government before the error is discovered by the Government.

252.247-7000 Scope of contract.

As prescribed at 247.270-9(a), insert the following clause:

SCOPE OF CONTRACT (AUG 1964)

(a) *General.* The Contractor shall load and discharge cargoes and in connection therewith shall perform all the duties of a stevedore on any vessel which the Contracting Officer may designate at ——— upon the terms and conditions hereinafter set forth for the term of this contract, beginning ——— and ending ———; *Provided*, however, that any work started before and not completed by the expiration of this contract shall be governed by the terms of this contract unless otherwise directed by the Contracting Officer.

(b) *Contractor's Duties.*

(1) *Loading.* In loading vessel, the Contractor shall remove and handle cargo from place of rest on pier or in pier shed or within the cargo assembly area; also from open-top railroad cars, trucks and trailers alongside ship; also from barges, lighters, scows, car floats and open-top railroad cars on car floats alongside ship. The Contractor shall stow said cargo in any space in vessel, including bunker space, holds, 'tween decks, on deck, and deep tanks, in the order directed by and in a manner satisfactory to the Contracting Officer.

(2) *Discharging.* In discharging vessel, the Contractor shall remove and handle cargo from any space in the vessel, including bunker space, holds, 'tween decks, on deck, and deep tanks. The Contractor shall land said cargo at place of rest on pier or in pier shed or within the cargo assembly area; also on open-top railroad cars, trucks and trailers alongside ship; also on barges, lighters, scows, car floats and open-top railroad cars on car floats alongside ship. The Contractor shall perform such discharging in the order directed by and in a manner satisfactory to the Contracting Officer.

(3) *Handling Explosives.* In addition to (1) and (2) above, the following provisions are applicable to the loading and discharging of explosives:

(a) In loading explosives the Contractor shall perform all the stevedoring services

necessary for the breaking-out and discharging from railroad cars, trucks and/or lighters alongside ship or from place of rest on pier, transporting to the vessel, and property loading, stowing and normal securing and chocking in the vessel in a manner directed by applicable U.S. Coast Guard, Army, or Navy regulations.

(b) In discharging explosives the Contractor shall perform all stevedoring services necessary for discharging cargo from the vessel to place of rest on pier or the transporting to and loading into railroad cars, trucks and/or lighters. The Contractor shall also prepare and line the cars for handling the cargo (except the laying of new flooring) and shall brace, secure, cut bands, and lash the cargo in the cars in accordance with applicable regulations and shall place "explosives" placards on the cars prior to release, and shall close and seal all doors.

(c) The furnishing and preparation of gates, studs, new flooring, etc., for blocking railroad cars, as well as prefabrication of blocking in the vessel's hold, will be at the expense of the Government.

(d) The Contractor shall not be compensated for standby time when caused by slow-up or delay of one of his operations, which delay directly affects the other operations, such as delay in loading railroad cars, or in discharging from ship's hatches, unless such slow-up or delay was beyond the control and without the fault or negligence of the Contractor. This does not include the time required for shifting cars. No standby time will be allowed unless previously approved by the Contracting Officer.

(4) *Cargo Assembly Area.* The term "cargo assembly area" as used in this contract, is defined as ——— feet from either extremity of the vessel and for a distance ——— feet from the vessel inboard side.

(c) *Damage Reports.* In all instances where cargo, vessel, vessel equipment or Government equipment sustains damage through handling by the Contractor's employees, a full report of the fact and the extent of such damage shall be submitted by the Contractor to the Contracting Officer within twenty-four (24) hours following the occurrence of such damage.

(d) *Rigging and Unrigging.* When the ship's gear is used for handling cargo, the Contractor, at his own expense, shall rig and unrig all gear, including the rigging and unrigging of heavy-lift gear when the heavy-lift booms are used, and shall hoist, lower and secure hatch tents when necessary; *Provided,* however, that where any one set of gear is rigged for handling less than one hundred (100) payable tons of cargo on a commodity rate basis, the Contractor shall be compensated on an extra-labor basis for the rigging and unrigging of such set of gear. Rigging and unrigging shall include topping, lowering, and trimming of booms. When the Contractor is required to perform any rigging and unrigging services for the purpose of performing extra labor services or performs any such services at the request of the Contracting Officer for any purpose other than loading or discharging cargo on a commodity rate basis, he shall be compensated therefor at extra labor rates. When the Contractor is required to break out booms from collars or boom rest, or to reeve guys on topping lifts through blocks, he shall be compensated therefor on an extra-labor basis.

(e) *Opening and Closing Vessel.* The Contractor shall, at his own expense, remove and replace tarpaulins, battens, hatch covers, and beams with respect to all decks and deep tanks both during loading unloading operations and when necessary because of weather or working conditions, as directed by the Contracting Officer; *Provided,* however, that the opening and closing on any one hatch shall be performed on an extra-labor basis where less than one hundred (100) payable tons are to be loaded and/or discharged at the commodity rate on any hatch so worked, and also where the Contractor is required to open and close the vessel for the purpose of performing extra-labor services. The removing, handling, replacing, or setting of reefer plugs during the handling of cargo in any or all refrigerated or chilled space aboard the vessel is included in the basic commodity rate, except where the complete operation is on an extra-labor basis. When the Contractor is required to open or close reefer plugs more than once in any four (4) hour shift because of a change in orders or type of cargo, he shall be compensated therefor on the basis of fifteen (15) minute detention time for men in gangs, including equipment drivers and gang foremen.

(f) *Docking, Undocking and Shifting of Vessels.* The Contractor shall, when requested by the Contracting Officer, furnish men to handle lines for docking, undocking, and shifting of vessels, and the Government shall compensate the Contractor therefor on an extra-labor basis.

(g) *Shifting Barges, Lighters, Scows, and Car Floats.* Barges, lighters, scows, and car floats will be placed alongside the vessel without cost to the Contractor. When they are shifted from hatch to hatch, the Contractor shall do so at his own expense unless operational conditions make movement by ship's gear impracticable in which event the operation shall be at the expense of the Government.

(h) *Gear Supplied by Government.* The Government, at its own expense, shall furnish and maintain in good working order the following: blocks on booms, booms, heavy lift cranes, wire and rope falls rigged, gant-lines rigged on booms, hatch tents, lighters and floating derricks, lights on wharves and vessels, pallet boards, power and steam necessary, preventers on booms, and winches. Floating derricks and heavy lift dock cranes will not be used when, in the opinion of the Contracting Officer, the ship's equipment can be used satisfactorily.

(i) *Gear Supplied by Contractor.* The Contractor shall perform an efficient stevedoring operation and, except as provided in (h) and (j) of clause, shall at his own expense, furnish all necessary and proper gear, including the following: ammunition gear (when handling ammunition and explosives), roller conveyors, hooks, cargo nets, save-all nets, rollers, skids, chain slings, platform slings, wire and rope slings (except heavy-lift slings used in connection with shore or floating heavy-lift cranes), drag lines, spreaders, hand-trucks, machinery dollies, trailers, lift trucks, tractors, and tractor cranes; *Provided,* however, that the Contractor shall be compensated for furnishing mobile equipment in accordance with the applicable schedule in the "Schedule of Rates" clause of this contract, whenever such equipment is furnished in connection with services performed on an extra-labor basis.

(j) *Rental of Mobile Equipment.*

(1) The Contractor, when directed by the Contracting Officer to supply extra-labor services, shall upon request of the Contracting Officer also supply and maintain the necessary mobile equipment to the extent available, and the Contractor shall be compensated therefor at the rates set forth in the applicable schedule of the "Schedule of Rates" clause of this contract.

(2) Upon request, the Government will supply mobile equipment, if available, to the Contractor, and the Government shall be compensated therefor at the rates set forth in the applicable schedule of the "Schedule of Rates" clause of this contract.

(3) If the Government supplies mobile equipment to the Contractor for use in performing extra-labor services, no charge shall be made by the Government for the use of such mobile equipment.

(k) *Transportation of Gear by Contractor.* The Contractor will transport his own gear and equipment when necessary at his own expense, except transportation of said gear and equipment shall be at Government expense when the vessel is loading and unloading in stream, or at any other location inaccessible to trucks.

(1) *Tiering.* If cargo tiered on the pier or in the cargo assembly area is beyond the reach of the Contractor's equipment, the Government will break it down at the place of tiering so that it can be handled by the Contractor's equipment. No charge will be made by the Contractor for removing cargo from piles within the reach of his equipment. The tiering of cargo above reach of the Contractor's equipment will be at Government expense. When the Contractor is required to break down cargo tiered above the reach of his equipment or to tier cargo beyond the reach of his equipment, the Government will compensate the Contractor therefor on an extra-labor basis.

(m) *Dunnage.* The loading, shifting within the same hatch, and laying of all dunnage (including cordwood, tarpaulins, matting and reefer stripping) necessary to properly stow and secure the vessel's cargo and reverse the operation when discharging the vessel's cargo, is included in the basic commodity rate.

(n) *Other Work.*

(1) *Lashing and Securing.* The Contractor shall, at his own expense, lash and secure all cargo below deck when loaded on a commodity-rate basis, as directed by the Contracting Officer. Lashing and securing of cargo below deck which was loaded in an extra-labor basis and the lashing of all on-deck cargo will be done at extra-labor rates. The Government will supply lumber, wire, turn-buckles, and other equipment as may be required for dunnaging, securing, and shoring cargo in all instances.

(2) *Unlashing and Unsecuring Cargo.* When cargo is discharged on a commodity-rate basis the Contractor shall, at his own expense, unlash all cargo on deck and below deck and shall remove all tomming, chocking tank beds, and all types of double dunnage flooring, except false decks, as directed by the Contracting Officer. The unlashing and unsecuring of cargo on deck and below deck, if discharged on an extra-labor basis, will be done at extra-labor rates.

(3) *Carpenter Work, Welding and Burning.* All necessary carpenter work and welding and burning shall be at the expense of the Government.

(o) *Tonnage Figures and Invoices.* The weight ton referred to in this contract is a ton of two thousand two hundred forty (2,240) pounds, and the measurement ton is a ton of forty (40) cubic feet. Where rates are provided on both a weight and measurement basis, the Contractor shall be paid on the basis of a manifested ton, whichever produces the greater tonnage, the weight ton of two thousand two hundred forty (2,240) pounds or the measurement ton of forty (40) cubic feet. The maximum measurement tonnage upon which compensation is to be computed for any manifested item of cargo for any single lift shall be one hundred fifty (150) tons. The Government will furnish the Contractor a breakdown of cargo loaded or discharged according to the commodity list, or, at the option of the Contracting Officer, manifests will be furnished. Invoices of each vessel loaded or discharged will be submitted by the Contractor not later than ten (10) days after receipt of tonnage figures or manifests. Progress payments for services performed on each vessel may be made upon approval of the Contracting Officer, *Provided,* that such progress payments shall not exceed ninety percent (90%) of the direct labor cost to the Contractor of the services upon which payment is made, which cost shall be determined from evidence submitted by the Contractor and which must be such as to be satisfactory to the Contracting Officer. No services will be paid for by the Government other than those specifically enumerated herein and provided for in the rate schedule of this contract or elsewhere in this contract.

(p) *Hardship (Unusual Conditions).* If the Contracting Officer determines that due to unusual vessel, dock, or cargo conditions, the loading or unloading of any particular cargo at the basic commodity rates will work a hardship upon the Contractor, he may so certify in writing (in advance, if possible) and authorize the compensation to the Contractor for loading or unloading such cargo at the extra-labor rates set forth in the applicable schedule in the "Schedule of Rates" clause of this contract. Unusual conditions will include, but not be limited to, inaccessibility of ship's cargo gear to place of stowage, side port operations, and small quantities of cargo in any one hatch.

(q) *Detentions.*

(1) Detention (sometimes referred to as "stand-by time" or "waiting-time") is time lost as a result of the stoppage, or inability to start, of loading or discharging of cargo due to causes beyond the control and without the fault or negligence of the Contractor, including, but not limited to, a breakdown of the vessel's equipment or Government-furnished gear, bad weather, non-readiness of the vessel, non-arrival of cargo, or non-availability of equipment required to be furnished by the Government.

(2) When cargo is worked on a commodity rate basis the Contractor shall, without limitation, absorb each detention of minutes or less; but the Government shall pay the Contractor at detention rates for men in gangs, including equipment drivers and gang bosses, for each detention in excess of minutes including the first minutes thereof.

(3) When loading or discharging of cargo is performed on an extra-labor basis, the Government will pay the Contractor at extra-labor rates for the first minutes of each detention and will pay the Contractor on a detention rate basis for all time of each detention except the first minutes.

(4) Minimum time is defined as the time in addition to time actually worked for which the Contractor is required to pay his employees to comply with minimum time requirements of labor agreements applicable to the Contractor and his employees. The Government shall pay the Contractor for minimum time at detention rates.

(5) If any detention or minimum time, as defined in (1) and (4) above, is due to the fault of the Contractor or the failure of the Contractor to comply with proper instructions of the Contracting Officer, the entire time resulting therefrom shall be at the expense of the Contractor.

(r) *Extra Labor.* The Contractor shall, when directed by the Contracting Officer, supply extra labor for miscellaneous services when not occasioned by the fault or negligence of the Contractor, and shall be compensated therefor on an extra-labor basis. Among the miscellaneous services for which such extra labor may be required, but not by way of limitations, are the following: ammunition handling (when commodity rate does not apply); cleaning vessel's holds and decks; handling excess dunnage and debris; handling mail and baggage; rehandling, removing or shifting cargo; removing or securing tank lids when secured by more than four (4) bolts for each lid; handling ship's stores and material.

(s) *Overtime Rates.* The Contractor shall order out men for overtime work only with the approval of the Contracting Officer. When approved by the Contracting Officer, and in accordance with such approval, the Contractor shall be paid for all overtime services, in addition to the applicable commodity rates, or man-hour rates, at the overtime differential rates set forth in the applicable schedules of the "Schedule of Rates" clause of this contract. Overtime periods will be determined in accordance with the prevailing collective bargaining agreements applicable to the Contractor and his employees.

(t) *Penalty Rates.* Except where the applicable commodity rates or man-hour rates expressly include cargo penalties, the Contractor shall be compensated for penalties, where payable under applicable collective bargaining agreements, at the rates set out in the penalty rate schedule of the "Schedule of Rates" clause of this contract.

(u) *Traveling Time.* When the Contractor is required to pay traveling time to the men employed, the Contractor shall be compensated therefor at the rates specified in the applicable schedule of the "Schedule of Rates" clause of this contract.

(v) *Transportation of Men and Other Allowances.* When the Contractor is required by applicable collective bargaining agreements to pay allowance for subsistence, quarters, and rail, bus, or boat fares in transporting the men employed, the Contractor shall be compensated therefor at the rates specified in the applicable schedule of the "Schedule of Rates" clause of this contract, or, if the contract contains no such schedule, at the actual out of pocket cost to the Contractor.

(w) *Income for Handling Lighters, Cars, etc.* Any and all income derived from sources other than provided for in this contract for the handling of cargo direct to or from lighters, barges, scows, trucks, and railroad cars, and to or from ships under this contract, will be for the account of the Contractor and shall be collected by the Contractor. Collection of this income by the Contractor is reflected in the commodity rates.

(End of clause)

252.247-7001 Schedule of rates.

As prescribed at 247.270-9(a), insert the following clause:

SCHEDULE OF RATES (AUG 1964)

(a) *Commodity Rates.* The Contractor will be compensated for services, except those specified elsewhere in this contract, at the commodity rates listed herein which are based on straight time rates of pay only. The rates named in Columns A and B are based on normal operations involving use of ship's gear.

SCHEDULE I—COMMODITY TONNAGE RATES

Commodity List	Loading A Ship's Gear 2240# 40c/t	Discharging B Ship's Gear 2240# 40c/t

NOTE: List only commodities justifying a specific rate.

(b) *Miscellaneous Hourly Rate Schedules.*

TABLE OF SCHEDULES (RATE PER HOUR)

Rating	Extra Labor Straight Time Rate—Sched II	Travel Time & Detentions in Non-Explosive Area—Sched III	Overtime Differential—Sched IV	Explosive Straight Time Rate—Sched V	Travel Time & Detentions in Explosive Area—Sched VI	Explosive Overtime Differential—Sched VII	Premium Meal Hour Differential—Sched VIII	
							Non-Explos.	Explos.
Longshoremen								
Winch Drivers								
Hatch Tenders								
Fork-lift Operators								
Jitney Operators								
Crane Operators								
Ship Foremen								
Supercargoes								
Head Clerks								
Clerks								
Checkers								
Walking Bosses								
Asst. Ship Foremen								
Crane Foremen								

(c) *Stevedoring Cargo Penalty Rates-Schedule IX.* Penalty differentials relative to types of workers, cargo, and working conditions will be determined in accordance with the applicable collective bargaining agreements and the Contractor will be compensated therefor at the following penalty differential rates:

Cargo Carrying Straight Time Penalty of:	Rates per Man per hour		
	S/T	O/T	Premium Meal Hour

(d) *Equipment Rental-Schedule X.*

Type of Equipment	Rates per Hour*
Tractor	
Fork-lift trucks	
Cranes up to 10 tons with operator and oiler.	
Cranes from 10 to 20 tons with operator and oiler.	
Ross lumber carriers	
Miscellaneous small gear per gang.	Rates per gang per hour:

*Rates per hour include fuel, lubricants, and maintenance.

252.247-7002 Price escalation.

As prescribed at 247.270-9(b), insert the following clause:

PRICE ESCALATION (AUG 1964)

(a) The Contractor warrants that the prices set forth in this contract are based upon the wage rates, allowances, and conditions as set forth in the collective bargaining agreements between him and his labor employees which are in effect as of and which are generally applicable to the port where work under this contract is performed and are applicable to operations by the Contractor on non-Government work as well as under this contract. The Contractor further warrants that the prices herein do not include any allowance for any increase to his costs to perform the contract that may thereafter become effective pursuant to the terms of said collective bargaining agreements or that may result from the modification(s) of said collective bargaining agreements thereafter made effective.

(b) If, during the performance of this contract, there are from time to time increases or decreases in the wage rates, allowances, fringe benefits and conditions pertaining to its direct labor employees pursuant to the provisions of the aforesaid collective bargaining agreements or as a result of effective modifications thereto which increase or decrease his costs to perform this contract, the Contractor shall notify the Contracting Officer thereof within sixty (60) days of receipt of notice of such increase or decrease. Such notice shall include the Contractor's proposal for an adjustment in the contract commodity, activity, or man-hour prices to be negotiated in accordance with paragraph (c) below, and shall be accompanied by data, in such form as the Contracting Officer may require, explaining (i) the causes, (ii) the effective date, and (iii) the amount of the increase or decrease of the Contractor's proposal for such adjustment.

(c) Promptly upon receipt of any notice and data described in (b) above, the Contractor and the Contracting Officer shall negotiate an adjustment, and the effective date thereof, in the contract commodity, activity, or man-hour prices; provided, however, no adjustment upward in excess of percent per annum of the existing commodity, activity, or man-hour prices will be allowed, except as provided in the "Changes" clause of this contract. Increases or decreases in the contract prices shall reflect, in addition to the direct labor costs and variable indirect labor costs, the concomitant increases or decreases in the following costs: social security and unemployment compensation taxes and workman's compensation insurance. No adjustment may be made to increase the dollar amount allowances of the Contractor's profit. The agreed-upon adjustment, the effective date thereof, and the appropriately revised commodity, activity, or man-hour prices for services set forth in the schedule of rates, shall be set forth in a supplemental agreement to this contract. Failure of the parties to agree to an adjustment under this clause shall be deemed to be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract. Pending agreement on, or determination of, any such adjustment and its effective date, the Contractor shall continue performance.

(d) Notwithstanding the foregoing, there shall be no adjustment for any increase or decrease in the quantities of labor that the Contractor contemplated for each specific commodity except as may result from modifications of the collective bargaining agreements. For the purpose of administering this clause, the Contractor shall submit to the Contracting Officer, within five (5) days after award, the accounting data and computations used by the Contractor to determine his estimated efficiency rate in the performance of this contract, to include the Contractor's computation of the costs apportioned for each rate set forth in the schedule of rates.

(e) The final invoice submitted under this contract shall include a certification that the Contractor has not experienced a decrease in rates of pay for labor or that he has given notice of all such decreases in compliance with (b) above.

(End of clause)

252.247-7003 Revision of prices.

As prescribed at 247.270-9(c), insert the following clause:

REVISION OF PRICES (AUG 1964)

(a) *General.* The prices fixed in this contract are based on wages and working conditions established by collective bargaining agreements and on other conditions in effect on the date of this contract. Such prices may be increased or decreased in accordance with this clause.

(b) *Demand for Negotiation.* At any time, and from time to time, subject to the limitations specified in this clause, either the Government or the contractor may deliver to the other a written demand that the parties negotiate to revise the prices under this contract. No such demand shall be made before ninety (90) days after the date of this contract, and thereafter neither party shall make a demand having an effective date within ninety (90) days of the effective date of any prior demand; *Provided, however,* That this limitation shall not be applicable in the event that during any ninety (90) day period there is a "wage adjustment" as hereinafter defined. The term "wage adjustment," as used in this clause, means a change in the wages, salaries, or other terms or conditions of employment which shall

substantially affect the cost of performing this contract and which shall be generally applicable to the port where work under this contract is performed and shall be applicable to operations by the Contractor on non-Government work as well as to work under this contract. Each demand shall specify a date (identical with or subsequent to the date of the delivery of the demand) as to which the revised prices shall be effected as to services performed thereon and thereafter. This date is hereinafter referred to as the "effective date of the price revision." Any demand under this clause, if made by the Contractor shall state briefly the ground or grounds therefor and shall be accompanied by the statements and data referred to in paragraph (c) of this clause. If the demand is made by the Government, such statements and data will be furnished by the Contractor within thirty (30) days of the delivery of the demand.

(c) *Submission of Data.* At the time or each of the times specified or provided for in paragraph (b) of this clause, the Contractor shall submit:

(i) A new estimate and breakdown of the unit cost and the proposed prices for the services to be performed under the contract after the effective date of the price revision, itemized in connection with the original negotiations of the contract;

(ii) An explanation of the difference between the original (or last preceding) estimate and the new estimate;

(iii) Such relevant operating data, cost records, overhead absorption reports, and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate;

(iv) A statement of the experienced costs of performance hereunder to the extent that they are available at the time or times of the negotiation of the revision of prices hereunder; and

(v) Any other relevant data usually furnished in the case of negotiations of prices under a new contract.

The Government may make such examination of the Contractor's accounts, records, and books as the Contracting Officer may require and may make such audit thereof as the Contracting Officer may deem necessary.

(d) *Negotiations.* (1) Upon the filing of the statements and data required by (c) of this clause, the Contractor and the Contracting Officer will negotiate promptly in good faith to agree upon prices for services to be rendered on and after the effective date of the price revision. Negotiations for price revisions under this clause shall be conducted on the same basis, employing the same types of data, including without limitation, comparative prices, comparative costs, and trends thereof, as in the negotiation of prices under a new contract: *Provided however,* That if the prices in the contract were arrived at as a result of competitive negotiation, the contract prices shall not be revised upward except upon the basis of, and as justified by changes in conditions occurring after the contract was entered into.

(2) After each negotiation the agreement reached will be evidenced by a supplemental agreement stating the revised price to be effective with respect to services rendered on and after the effective date of the price revision (or such other later date as the parties may fix in such supplemental agreement).

(e) *Disagreements.* If, within thirty (30) days after the date on which the statements and data are required pursuant to paragraph (b) of this clause to be filed (or such further period as may be fixed by written agreement), the Contracting Officer and the Contractor fail to agree to revised prices, the failure to agree shall be disposed of in accordance with the "Disputes" clause of this contract, and the prices so fixed shall remain in effect for the balance of the contract notwithstanding any other provision of this clause.

(f) *Payments.* Until new prices shall become effective in accordance with this clause, the prices in force at the effective date of the price revision shall be paid upon all services performed, subject to appropriate later revisions made pursuant to (d) or (e) of this clause.

(g) *Retroactive Changes in Wages or Working Conditions.* In the event of a retroactive wage adjustment the Contractor or the Contracting Officer may request an adjustment in the prices fixed in this contract, and such adjustment will be made to the extent equitable: *Provided, however,* That the prices applicable to services performed subsequent to the date of the request for price adjustment shall not be adjusted under this paragraph, it being the intent that any price adjustment under this paragraph shall cover the period prior to such request. Such request by the Contractor shall be made within thirty (30) days of such retroactive wage adjustment and shall be supported by:

(i) An estimate of the changes in cost occasioned by the retroactive wage adjustment;

(ii) Completed information upon which such estimate is based; and

(iii) A certified copy of the collective bargaining agreement, arbitration award, or other document evidencing the retroactive wage adjustment.

Subject to the foregoing limitation as to the time of making a request hereunder, completion or termination of this contract shall not affect or impair the Contractor's right under this paragraph. Such adjustment shall be by mutual agreement between the Contracting Officer and the Contractor. The adjusted prices, and the manner of making adjustments with respect to services theretofore paid for, shall be incorporated in an amendment to this contract to be executed by the Contractor and the Contracting Officer. In case of disagreement concerning any question of fact including whether any adjustment should be made, or the amount of such adjustment, such disagreement will be resolved in accordance with the "Disputes" clause of this contract. The Contractor shall give written notice to the Contracting Officer of any request by or on behalf of the employees of the Contractor which may result in a retroactive wage adjustment. Such notice shall be given within twenty (20) days after such request, or if request has occurred prior to execution of this contract, at the time of execution of this contract.

(End of clause)

252.247-7004 Changes.

As prescribed at 247.270-9(d), insert the following clause:

CHANGES (AUG 1964)

The Contracting Officer may, at any time by written order, and without notice to the sureties, make changes within the general scope of this contract. If any such change causes an increase or decrease in the cost of the performance of any part of the work under this contract, an equitable adjustment shall be made in the contract price or in the applicable schedule or rates and the contract shall be modified in writing accordingly. Any claims by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

252.247-7005 Termination.

As prescribed at 247.270-9(e), insert the following clause:

TERMINATION (SEP 1978)

(a) This contract may be terminated at any time by either party hereto upon sixty (60) days, or such number or days as may be otherwise provided in the Schedule, notice in writing to the other. Termination under this clause shall not affect, or relieve any part of, any obligation or liability that may have accrued prior to such termination.

(b) Upon termination of the contract under (a) above, or as provided in the "Default" clause of this contract, the Contractor shall be paid any sum due the Contractor for services performed under this contract to the date of such termination, and in the event of partial termination shall be paid in accordance with the terms of this contract for any services furnished under the portion of the contract that is not terminated: *Provided, however,* any such payments shall be without prejudice to any claim which the Government may have against the Contractor under the "Default" clause of this contract or otherwise, and the Government shall have the right to offset any such claims against such payment.

(End of clause)

252.247-7006 Indefinite quantities—fixed charges.

As prescribed at 247.270-9(f), insert the following clause:

INDEFINITE QUANTITIES—FIXED CHARGES (AUG 1964)

The amount of work and services which the Contractor may be ordered to furnish and the Government to accept hereunder, shall be

the amount which shall from time to time be ordered hereunder by the Contracting Officer. In any event, however, the Government is obligated to compensate the Contractor the monthly lump sum specified in Schedule entited "Fixed Charges," for each month or portion thereof the contract remains in effect.

(End of clause)

252.247-7007 Indefinite quantities—no fixed charges.

As prescribed at 247.270-9(g), insert the following clause:

INDEFINITE QUANTITIES—NO FIXED CHARGES (AUG 1964)

The amount of work and services which the Contractor may be ordered to furnish and the Government to accept hereunder, shall be the amount which shall from time to time be ordered hereunder by the Contracting Officer. In any event, however, the Government shall order, during the term of this contract, work or services having an aggregate value at the prices listed in the schedules made a part hereof of not less than one hundred dollars ($100.00).

(End of clause)

252.247-7008 Employees of contractor.

As prescribed at 247.270-9(h), insert the following clause:

EMPLOYEES OF CONTRACTOR (AUG 1964)

All employees of the Contractor employed in performance of work under this contract shall be employees of the Contractor at all times and not of the Government. The Contractor shall comply with the Social Security Act, the Longshoremen's and Harbor Worker's Compensation Act, and such Workmen's Compensation Laws and Unemployment Insurance Laws of the state where the work is performed as shall be applicable to work performed hereunder and the Contractor shall comply with all other relevant legislation, state and Federal.

(End of clause)

252.247-7009 Removal of contractor's employees.

As prescribed at 247.270-9(h), insert the following clause:

REMOVAL OF CONTRACTOR'S EMPLOYEES (OCT 1965)

The Contractor agrees to utilize only experienced, responsible and capable people in the performance of the work. The Contracting Officer may require that the Contractor remove from the Government job employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interests of military security.

(End of clause)

252.247-7010 Liability and insurance.

As prescribed at 247.270-9(h), insert the following clause:

LIABILITY AND INSURANCE (JAN 1977)

(a) The Contractor shall be:

(i) Liable to the Government for loss or damage to property, real and personal, owned by the Government or for which the Government is liable;

(ii) Responsible for, and hold the Government harmless from, loss of or damage to property not included in (i) above; and

(iii) Responsible for, and hold the Government harmless from, bodily injury and death of persons, occasioned either in whole or in part by the negligence or fault of the Contractor, his officers, agents, or employees in the performance of work under this contract. For the purpose of this clause, all cargo loaded or unloaded under this contract is agreed to be property owned by the Government or property for which the Government is liable. The amount of the loss or damage as determined by the Contracting Officer will be withheld from payments otherwise due the Contractor. Determination of liability and responsibility by the Contracting Officer will constitute questions of fact within the meaning of the "Disputes" clause of this contract. The general liability and responsibility of the Contractor under this clause are subject only to the following specific limitations.

(b) The Contractor shall not be responsible to the Government for and does not agree to hold the Government harmless from loss or damage to property or bodily injury to or death of persons if:

(i) The unseaworthiness of the vessel or failure or defect of the gear or equipment furnished by the Government contributed jointly with the fault or negligence of the Contractor in causing such damage, injury or death, and the Contractor, his officers, agents, and employees, by the exercise of due diligence, could not have discovered such unseaworthiness or defect of gear or equipment, or through the exercise of due diligence could not otherwise have avoided such damage, injury, or death;

(ii) The damage, injury or death resulted solely from an act or omission of the Government or its employees or resulted solely from proper compliance by officers, agents, or employees of the Contractor with specific directions of the Contracting Officer.

(c) The Contractor shall at his own expense procure and maintain insurance during the term of this contract, as follows:

(i) Standard Workman's Compensation and Employer's Liability Insurance and Longshoremen's and Harbor Workers' Compensation Insurance, or such of these as may be proper under applicable state or Federal statutes. The Contractor may however, be self-insured against the risk of this subparagraph (i), if he has obtained the prior approval of the Contracting Officer. This approval will be given upon receipt of satisfactory evidence that the Contractor has qualified as such self-insurer under applicable provision of law.

(ii) Bodily Injury Liability Insurance in an amount of not less than $300,000 on account of any one occurrence.

(iii) Property Damage Liability Insurance (which shall include any and all property, whether or not in the care, custody, or control of the Contractor) in an amount of not less than $300,000 on account of any one occurrence.

(d) All policies of insurance required under the terms of this contract shall, by appropriate endorsement or otherwise, provide that no cancellation thereof shall be effective for such period as may be prescribed by the laws of the State in which this contract is to be performed and in no event less than thirty (30) days after written notice thereof has been given to the Contracting Officer.

(e) Satisfactory evidence of the required insurance endorsed as required in (d) above, shall be filed with the Contracting Officer prior to the performance of any work under this contract.

(f) The Contractor shall, at his own cost and expense, defend any suits, demands, claims, or actions, in which the United States might be named as a codefendant of the Contractor, arising out of or as a result of the Contractor's performance of work under this contract, whether or not such suit, demand, claim, or action arose out of or was the result of the Contractor's negligence. This shall not prejudice the right of the Government to appear in such suit, participate in defense, and take such actions as may be necessary to protect the interests of the United States.

(g) It is expressly agreed that the provisions contained in (c) through (f) of this clause shall not in any manner limit the liability or extent of liability of the Contractor as provided in (a) and (b) of this clause.

(h) In the event that the Contractor is indemnified, reimbursed, or relieved for any loss or damage to Government property, he shall equitably reimburse the Government. The Contractor shall do nothing to prevent the Government's right to recover against third parties for any such loss, or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(End of clause)

252.247-7100 Evaluation of bids.

As prescribed at 247.271-4(a)(1), insert the following provision:

EVALUATION OF BIDS (FEB 1983)

(a) Bids will be evaluated on the basis of total aggregate price of all items within an area of performance under a given schedule. A bidder must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that schedule. Any bid which stipulates minimum charges or graduated prices for any or all items shall be rejected for that area of performance within the schedule.

(b) In addition to other factors, bids will be evaluated on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards). For the purpose of making this evaluation, it will be assumed that the sum of $250 would be the administrative cost to the Government for issuing and administering each contract awarded under this invitation, and individual awards will be

for the items and combinations of items which result in the lowest aggregate to the Government, including such administrative costs.

(End of provision)

ALTERNATE I (FEB 1983)

As prescribed at 247.271–4(a)(1), insert the following paragraph:

(c) Notwithstanding (a) above, when "additional services" are added to any schedule, such "additional services" items will not be considered in the evaluation of bids.

252.247–7101 Award.

As prescribed at 247.271–4(a)(2), insert the following provision:

AWARD (APR 1977)

Award shall be made to the qualified low bidder by area under each of the specified schedules to the extent of his stated guaranteed daily capability as provided herein and the clause entitled "Estimated Quantities." The Government reserves the right to make an award of two or more areas to a single bidder if such award will result in an overall lower estimated cost to the Government. The Government also reserves the right to award additional contracts, as a result of this solicitation, to the extent necessary to meet its estimated maximum daily requirements.

(End of provision)

252.247–7102 Estimated quantities.

As prescribed at 247.271–4(a)(3), insert the following provision:

ESTIMATED QUANTITIES (MAY 1970)

(a) The quantities shown by area of performance for each item in this solicitation are the Government's estimates of requirements which may be ordered during the period of the contract.

(b) The Government's estimated maximum daily requirements, excluding Saturday; Sunday; National, State and local holidays are listed below by area of performance within each schedule. Bidders must complete the "Bidder's Guaranteed Daily Capability," which must equal or exceed the Government's minimum acceptable daily capability, for all items within an area of performance for which they submit bids. Failure to do so will render the bid nonresponsive.

	Government's Est Maximum Daily Capability	Government's Minimum Acceptable Daily Capability	Bidder's Guaranteed Daily Capability
Outbound (Schedule I) Area.	GCWT.....	GCWT.....	GCWT
Inbound (Schedule II) Area.	GCWT.....	GCWT.....	GCWT
Intra-City Area (Schedule III) Area.	GCWT.....	GCWT.....	GCWT

(Repeat for each area listed)

(End of provision)

252.247–7103 Schedule formats.

As prescribed at 247.271–4(a)(4), insert the following clause:

SCHEDULE FORMATS (APR 1984)

Schedule I—Outbound Services

Item 1. Complete Service-Outbound (HHGs). Services shall include premove survey, servicing of appliances, disassembly of furniture if required, preliminary packing, inventorying, tagging, wrapping, padding, packing and bracing of household goods in Government owned and furnished shipment containers (Shipping Container FED SPEC PPP–B–580 or Air Cargo) at owner's residence, or at Contractor's facility when ordered by the Contracting Officer, properly securing and sealing for shipment, weighing, obliterating old marking, strapping, and drayage of the container within area of performance. Service shall include loading of shipment on line-haul carrier's equipment at the Contractor's facility. When containers will not accommodate all articles of any lot, loose articles shall be packed in the said containers before any over-packed articles are placed therein. Overflow articles which require packing and containerization shall be paid for under Item 3.

AREA———

	Est Annual Qty	Unit	Unit Price	Total
a. At owner's residence:				
(1) Container, FED SPEC PPP–B–580.	.....	GCWT.....	.....	.....
(2) Air Cargo Container.	.....	GCWT.....	.....	.....
b. At Contractor's Facility:				
(1) Container, FED SPEC PPP–B–580.	.....	GCWT.....	.....	.....
(2) Air Cargo Container.	.....	GCWT.....	.....	.....

(Repeat a. and b. above for additional areas as needed.)

Item 2. Outbound (HHGs From Non-Temporary Storage). Service shall be the same as Item 1 except that: (i) Household goods shall be picked up at a non-temporary storage facility and transported to Contractor's facility; or (ii) household goods shall be delivered to Contractor's facility; and (iii) premove survey, servicing of appliances, preliminary packing and accessorial services shall not be provided. Overflow articles requiring containerization will be paid for under Item 3.

AREA———

	Est Annual Qty	Unit	Unit Price	Total
a. Pickup by Contractor:				
(1) Container, FED SPEC PPP–B–580.	.....	GCWT.....	.....	.....
(2) Air Cargo Container.	.....	GCWT.....	.....	.....

AREA———Continued

	Est Annual Qty	Unit	Unit Price	Total
b. Delivered to Contractor:				
(1) Container, FED SPEC PPP–B–580.	.....	GCWT.....	.....	.....
(2) Air Cargo Container.	.....	GCWT.....	.....	.....

(Repeat a. and b. above for additional areas as needed.)

Item 3. Complete Service-Outbound (HHGs-Overflow Articles and HHGs Shipments Requiring Other Than PPP-B-580 or Air Cargo Containers). Service shall be the same as Item 1 or Item 2 except that the loose articles may be drayed to Contractor's facility when ordered by the Contracting Officer for containerization in Government-approved, Contractor-furnished containers.

AREA———

	Est Annual Qty	Unit	Unit Price	Total
a. Overseas Pack:				
(1) Overflow and Oversize Articles*.	.....	GCWT.....	.....	.....
(2) Other Shipments.	.....	GCWT.....	.....	.....
b. Domestic Pack:				
(1) Overflow and Oversize Articles*.	.....	GCWT.....	.....	.....
(2) Other Shipments.	.....	GCWT.....	.....	.....

(Repeat a. and b. above for additional areas as needed.)

*The overflow box will be of lesser size than specified in FED Spec PPP–B–580 and must be limited to one per shipment. Oversize boxes are limited to use for items which exceed the dimensions of and cannot be accommodated in a household goods shipping container (Fed Spec PPP–B–580), therefore requiring a specially built box. One or more of this type may be required per shipment. These boxes will be constructed in accordance with Military Specification PPP–B–601, Style A or B and, in addition, will be caulked during assembly.

Item 4. Complete Service-Outbound (Unaccompanied Baggage). Service includes inventorying, packing in Government approved containers, weighing, strapping, obliteration of old marking and marking of unaccompanied baggage. Service shall be performed at owner's residence. (Service may be performed at Contractor's facility when ordered by the Contracting Officer.) Drayage, if required, will be ordered by the Contracting Officer.

AREA———

	Est Annual Qty	Unit	Unit Price	Total
a. Government-Furnished Containers:				
(1) Drayage Included.	.....	GCWT.....	.....	.....
(2) Drayage Not Included.	.....	GCWT.....	.....	.....
b. Contractor-Furnished Containers:				
(1) Drayage Included.	.....	GCWT.....	.....	.....
(2) Drayage Not Included.	.....	GCWT.....	.....	.....

Item 5. Outbound Service-Unaccompanied Baggage Packed by Owner. Service shall include weighing, strapping, banding, obliterating old markings, and marking. Service may include (when necessary) containerization in outer shipping containers as ordered by the Contracting Officer. Drayage, if required, will be ordered by the Contracting Officer.

AREA———

	Est Annual Qty	Unit	Unit Price	Total
a. Containerization Not Required:				
(1) Drayage Included.		GCWT		
(2) Drayage Not Included.		GCWT		
b. Containerization Required:				
(1) Drayage Included.		GCWT		
(2) Drayage Not Included.		GCWT		

(Repeat a. and b. above for additional areas as needed.)

Item 6. Goods of Extraordinary Value (Hi-Value). Service shall include inventorying (each item), packing in Government-approved, Contractor-furnished container(s), marking, banding, weighing, and cubing at owner's residence. In jurisdictions where local law prohibits the certification of portable scales, a weight certificate will not be required. Drayage, if required, will be ordered by the Contracting Officer.

AREA———

	Est Annual Qty	Unit	Unit Price	Total
a. Drayage Included.		GCWT		
b. Drayage Not Included.		GCWT		

(Repeat for additional areas as needed.)
See clause entitled "Drayage" for explanation.

Item 7. Storage. Storage of containerized articles shall be furnished when ordered by the Contracting Officer. Charges shall not commence earlier than the sixth (6) workday following date of transportation officer's receipt of notification of completion of containerization service. Storage charges apply for each 30-day period or fraction thereof. Date of release from storage shall not be considered in computation of storage charges.

AREA———

	Est Annual Qty	Unit	Unit Price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 8. Containers. Under this item, the Contractor shall supply the following types of containers when ordered:

AREA———

	Est Annual Qty	Unit	Unit Price	Total
Container, FED SPEC PPP-B-580.		GCWT		
Air Cargo, FED SPEC PPP-B-580.		GCWT		

(Repeat for additional areas as needed.)

Item 9. Remarking and Coopering Service.
a. *Remarking for Shipments for Reconsignment or Diversion.* Service shall consist of obliteration of all old markings and stenciling of necessary information on loaded shipping containers scheduled for reconsignment or diversion when ordered by the Contracting Officer.

AREA———

	Est Annual Qty	Unit	Unit Price	Total
		ea piece		

(Repeat for additional areas as needed.)

b. *Coopering.* Service shall consist of repair of containers not to exceed 30% of total area of shipping container or cost of repairs will not exceed 50% of the container replacement cost as necessary when ordered by the Contracting Officer. Minor repair, such as replacement of bolts, renailing and rebanding shall be accomplished at no expense to the Government.

AREA ———

	Est Annual Qty	Unit	Unit Price	Total
		ea piece		

(Repeat for additional areas as needed.)

Items 10–14 Reserved (See DoD FAR Supplement 247.271–4(a)(4).)

RECAPITULATION SCHEDULE I

Schedule Total—Area ——— $———
(Repeat for each area listed.)

SCHEDULE II—INBOUND SERVICES

Item 15. Complete Service-Inbound (HHGs). Service shall include drayage to owner's residence, decontainerization and unpacking of loaded containers of household goods and placing goods in appropriate rooms as directed by owner or his designated representative, servicing appliances, assembly of any disassembled articles and removing shipping containers, barrels, boxes/crates and debris from owner's residence and drayage of empty containers to Contractor's or Government facility as directed by Contracting Officer.

AREA ———

	Est Annual Qty	Unit	Unit Price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 16. Complete Service-Inbound (HHGs). Service shall be same as Item 15 except that drayage of shipment to residence is not required.

AREA ———

	Est Annual Qty	Unit	Unit Price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 17. Complete Service-Inbound (HHGs). Service shall be same as Item 15 except removal of items from outer container will be at the Contractor's facility and articles will be drayed to owner's residence. This service will be performed only upon order of the Contracting Officer.

AREA ———

	Est Annual Qty	Unit	Unit Price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 18. Inbound Service-Contractor Facility (HHGs). Service shall include removal of items from outer shipping container(s) at the Contractor's facility and delivery of articles to property owner, motor van carrier or commercial non-temporary storage Contractor at the Contractor's facility.

AREA ———

	Est Annual Qty	Unit	Unit Price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 19. Complete Service-Extra-ordinary Value Items. Service includes decontainerization and unpacking of containers at owner's residence, and removal of shipping containers and debris from the residence. Drayage, if required, will be ordered by the Contracting Officer.

AREA ———

	Est Annual Qty	Unit	Unit Price	Total
a. Drayage Included.		GCWT		
b. Drayage Not Included.		GCWT		

(Repeat for additional areas as needed.)

Note: See clause entitled "Drayage" for explanation.

Item 20. Complete Service-Inbound (Unaccompanied Baggage). Service shall include drayage of unaccompanied baggage containers to owner's residence, unpacking of containers and removal of all shipping containers and debris from the residence.

AREA ——

	Est Annual Qty	Unit	Unit Price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 21. Complete Service-Inbound (Unaccompanied Baggage). Service shall be same as Item 20 except that drayage to residence is not required.

AREA ——

	Est Annual Qty	Unit	Unit Price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 22. Inbound Service-Contractor Facility (Unaccompanied Baggage). Service shall include removal of unaccompanied baggage from outer shipping containers for pickup by the owner at the Contractor's facility.

AREA ——

	Est Annual Qty	Unit	Unit Price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 23. Storage. Storage of containerized articles shall be furnished when ordered by the Contracting Officer. Charges under this item shall not commence earlier than the sixth (6th) workday following date of notification to transportation officer of arrival of shipment. Storage charges apply for each 30-day period or fraction thereof. Date of release from storage shall not be considered in computation of storage charges.

AREA ——

	Est Annual Qty	Unit	Unit Price	Total
		GCWT		

(Repeat for additional areas as needed.)

Item 24. Remarking/Coopering Service.

a. *Remarking of Shipments for Reconsignment or Diversion.* Service shall consist of obliteration of all old markings and stenciling of necessary information on loaded shipping containers scheduled for reconsignment or diversion when ordered by the Contracting Officer.

AREA ——

	Est Annual Qty	Unit	Unit Price	Total
		GCWT		

(Repeat for additional areas as needed.)

b. *Coopering.* Service shall consist of repair of containers not to exceed 30% of total area of shipping container or cost of repairs will not exceed fifty percent (50%) of the container replacement cost as necessary when ordered by the Contracting Officer. Minor repair such as replacement of bolts, renailing and rebanding shall be accomplished at no expense to the Government.

AREA ——

	Est Annual Qty	Unit	Unit Price	Total
		ea piece		

(Repeat for additional areas as needed.)

Items 25–28 Reserved (See DoD FAR Supplement 247.271–4(a)(4).)

RECAPITULATION SCHEDULE II

Schedule Total—Area —— $——

SCHEDULE III—INTRA-CITY AND INTRA-AREA MOVERS

Item 29. Complete Service for Intra-City and Intra-Area Moves. Service shall include a premove survey, servicing of appliances, packing at owner's residence to protect household goods properly during transit, tagging of items, inventorying, loading, weighing, drayage, unloading, unpacking, and placing of each article in owner's residence (new) as directed by owner or his designated representative and removal of all empty containers and material from residence. Service shall be in conformance with provisions of MIL–STD–212D, except that all service shall be performed within times stipulated in clause entitled "Time Requirements."

AREA ——

	Est Annual Qty	Unit	Unit Price	Total
		NCWT		

(Repeat for additional areas as needed.)

Item 30. Storage. Storage of articles shall be furnished incident to services performed under Item 29 when ordered by the Contracting Officer. Storage charges apply for each 30-day period or fraction thereof. Date of release from storage shall not be considered in computation of storage charges.

AREA ——

	Est Annual Qty	Unit	Unit Price	Total
		NCWT		

(Repeat for additional areas as needed.)
(Insert when required.)

RECAPITULATION SCHEDULE III

Schedule Total-Area —— $——.
(Repeat for each area listed.)

(End of clause)

252.247-7104 Scope of contract.

As prescribed at 247.271–4(b)(1), insert the following clause:

SCOPE OF CONTRACT (APR 1977)

The Packing and Containerization Contractor, hereafter referred to as Contractor, shall furnish services and materials for the preparation of personal property (including servicing of appliances) for movement or storage, drayage and related services. Unless otherwise indicated in the Schedule, the Contractor shall (i) furnish all materials except Government-owned containers (Container, Federal Specification PPP–B–580 and Air Cargo), all equipment, plant and labor; and (ii) perform all work in accomplishing containerization of personal property for overseas or domestic movement or storage; stenciling; cooperage; drayage of personal property in connection with other services; and decontainerization of inbound shipments of personal property. Excluded from the scope of this contract is the furnishing of like services or materials which are provided incident to complete movement of personal property when purchased by the Through Government Bill of Lading method.

(End of clause)

252.247-7105 Period of contract.

As prescribed at 247.271–4(b)(2), insert the following clause:

PERIOD OF CONTRACT (MAY 1970)

This contract shall begin 1 January 19— and shall end 31 December 19—, both dates inclusive, *Provided,* however, that any work ordered before, and not completed by, the expiration of this contract period shall be governed by the terms of this contract. Orders requiring commencement of performance more than 15 days after the expiration date shall not be placed under this contract.

(End of clause)

252.247-7106 Ordering limitation.

As prescribed at 247.271–4(b)(4), insert the following clause:

ORDERING LIMITATION (MAY 1970)

Ordering for items of supplies or services required will be placed under this contract by the Government and performed by the Contractor holding the initially awarded contract, to the extent of his guaranteed maximum daily capability. However, the Contractor may accept an additional quantity in excess of his capability to accommodate a single order. Orders for additional requirements will be placed with and performed by the next higher Contractor to the extent of his guaranteed maximum daily capability in a like manner. This procedure will be repeated until the Government's total daily requirement is fulfilled. In the event this procedure does not fulfill the Government's total daily requirement, additional orders may be offered under the contract to Contractors without regard to their guaranteed maximum daily capability.

(End of clause)

252.247-7107 Contract areas of performance.

As prescribed at 247.271–4(b)(5), insert the following clause:

CONTRACT AREAS OF PERFORMANCE (MAY 1970)

(a) All areas of performance described in (b) below will be considered to include the Contractor's facility regardless of geographical location.

(b) Service shall be performed within the following defined areas of performance which include terminals identified therein: (Define each area of performance as required; see DoD FAR Supplement 247.271–2(b).

(End of clause)

252.247–7108 Requirements.

As prescribed at 247.271–4(b)(6), insert the following paragraph:

REQUIREMENTS (APR 1984)

(f) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order; and the rights and obligations of the Contractor and the Government respecting those orders shall be governed by the terms of this contract to the same extent as if completed during the effective period of this contract.

(End of clause)

252.247–7109 Facilities.

As prescribed at 247.271–4(b)(7), insert the following clause:

FACILITIES (DEC 1982)

(a) As the minimum standard for qualifications of a Contractor's warehouse, it must have either (i) an acceptable automatic sprinkler system; or (ii) a supervised fire detection and reporting system. Installed fire protective systems must be accredited by the cognizant fire insurance rating organization for insurance rate credit. Additionally, the facility will be protected by an adequate water supply for fire fighting and a fire department which is responsive 24 hours a day. Statements from the cognizant fire insurance rating organization, municipal fire department, or local authority, having jurisdiction, will be used as a basis for determining the sufficiency or adequacy of a fire fighting water supply and the responsiveness of a fire department to protect a facility.

(b) The following information shall be furnished by the Contractor upon receipt of award:

Evidence of the following kinds and minimum amounts of insurance covering work herein to be performed by the Contractor. The Contractor shall maintain at least the minimum coverage stated below* throughout the contract period. Each policy shall contain an endorsement that cancellation or material change in the policy shall not be effective until after a 30-day written notice is furnished to the Contracting Officer.

(1) Workmen's Compensation Insurance $*———.

(2) Comprehensive General Liability Insurance $*——.

(3) Automobile Liability Insurance $*———

(End of clause)

*The insurance coverage specified in FAR 28.307–2 is the minimum insurance required. Additional coverage and higher limits may be required by the Contracting Officer.

252.247–7110 Performance.

As prescribed at 247.271–4(b)(8), insert the following clause:

PERFORMANCE (APR 1977)

(a) The services called for hereunder shall be performed in conformance with the latest issue of MIL–STD 212, "Preparation of Household Goods for Shipment or Storage and Related Services," in effect on date of solicitation, for Schedules I and II, unless otherwise directed by the Contracting Officer. The following are desired minimum stowage factor standards in stuffing of shipping containers:

(1) For Federal Specifications PPP–B–580 containers—5.7 net lbs. per gross cubic foot of container cube.

(2) For air cargo containers—8.9 net lbs. per gross cubic foot of container cube. Failure to meet the above standards may be cause for rejection of the service performed unless the Contractor can demonstrate the standards cannot be met. (The term "stuffing" as related to containers means loading of personal property into shipping containers.)

(b) Labor employed to perform pickup and delivery, inventorying, packing, crating, weighing, marking, loading, drayage, unpacking, blocking, bracing, and other services described herein shall be competent in the performance of such services.

(c) Inventory of shipment shall be accomplished pursuant to provisions of the latest issue of MIL–STD 212 in effect on date of solicitation.

(d) All services shall be performed in accordance with the priority order established by the Contracting Officer.

(e) MIL–STD 212, "Military Standard-Preparation of Household Goods for Shipment and Storage and Related Services," and applicable specifications referred to therein are available for reference in the local procurement or transportation offices.

(f) When pickup of shipments is part of line-haul service, the Contractor shall perform loading on freight carrier's equipment at Contractor's facility.

(End of clause)

252.247–7111 Time requirements.

As prescribed at 247.271–4(b)(9); insert the following clause:

TIME REQUIREMENTS (MAY 1970)

(a) The Contractor shall commence containerization of household goods or unaccompanied baggage at owner's residence or Contractor's facility on the date specified by the Contracting Officer. If containerization is ordered at Contractor's facility, the household goods or unaccompanied baggage shall be picked up on the date and within the hours specified. Unless a longer period is authorized by the Contracting Officer, the maximum containerization time allowed at the Contractor's facility shall be three (3) working days following specified pickup date for household goods and two (2) working days following specified pickup date for unaccompanied baggage.

(b) The Contracting Officer or his designated representative shall normally give the Contractor notice to commence containerization or to pick up household goods or baggage shipments at least twenty-four (24) hours prior to the date specified.

(c) Delivery or removal of household goods or unaccompanied baggage to or from owner's residence, or containerization of household goods or unaccompanied baggage at owner's residence, shall commence between the hours of 8:00 a.m.–12m. (noon) or 12m (noon)–5:00 p.m. as specified, Monday through Friday, officially declared National, State or local holidays excluded. The Contracting Officer may authorize performance of services at other times when agreed to by the owner or his authorized agent and the Contractor.

(d) The Contractor shall accept and pick up inbound shipments of household goods, or unaccompanied baggage, effect delivery thereof to the destination, and shall unload and unpack the same on the date and within the hours specified by the Contracting Officer during the working hours set forth above. The Contractor will notify the Contracting Officer upon arrival of a shipment but not later than the morning of the next workday. Delivery shall be effected within two (2) working days following date of receipt or notification of arrival unless otherwise specified.

(End of clause)

252.247–7112 Demurrage.

As prescribed at 247.271–4(b)(10), insert the following clause:

DEMURRAGE (MAY 1970)

The Contractor shall be liable for all demurrage, detention, or other charges accruing as a result of his failure to load or unload trucks, freight cars, freight terminals, vessel piers, or warehouses within the free time allowed under applicable rules and tariffs.

(End of clause)

252.247–7113 Vans.

As prescribed at 247.271–4(b)(11), insert the following clause:

VANS (MAY 1970)

Vans used in transporting unpacked and uncrated furniture shall be of the closed type and shall be supplied with sufficient clean pads, covers, and any other equipment to protect personal property adequately during transit and delivery. Vehicles used in transporting containerized personal property may be the open type; *Provided*, a weatherproof tarpaulin is used to protect the shipment.

(End of clause)

252.247–7114 Drayage.

As prescribed at 247–271–4(b)(12), insert the following clause:

DRAYAGE (APR 1977)

(a) Drayage under the Schedules of Items in this contract shall include all outbound or inbound hauling of loose articles.

containerized shipments and empty Government containers within the area of performance as defined in the clause entitled, "Contract Areas of Performance." Each area includes the Contractor's facility, storage warehouse other than Contractor's facility, frequently used air and surface transportation terminals, military installation shipping offices and ocean or river terminals/piers. The price of each item of service includes drayage within the area awarded, unless otherwise provided in the item.

(b) Repositioning of empty Government containers within the contractual area of performance, shall be as directed by the Contracting Officer or his designated representative at no additional cost to the Government.

(End of clause)

252.247-7115 Liability.

As prescribed at 247-271-4(b)(13), insert the following clause:

LIABILITY (JUL 1980)

(a) "Article" means any shipping piece or package and its contents.

(b) If notified within one (1) year after delivery that the owner has discovered loss or damage to his property, the Contractor agrees to indemnify the owner for loss of or damage to the owner's property which arises from any cause while it is in the Contractor's possession as follows:

(i) Non-negligent Damage. The Contractor shall indemnify owners for any loss of or damage to their property which results from any cause, other than the Contractor's negligence, at a rate not to exceed sixty cents ($.60) per pound per article.

(ii) Negligent Damage. When loss or damage is caused by the negligence of the Contractor, he shall be liable for the full cost of satisfactory repair or for the current replacement value of the article. The Contractor shall make prompt payment to the owner of the property for any loss or damage for which the Contractor is liable.

(c) In the absence of evidence or supporting documentation which places liability on a carrier or another Contractor, the destination Contractor will be presumed to be liable for the loss or damage of which it is timely notified.

(End of clause)

252.247-7116 Erroneous shipments.

As prescribed at 247.271-4(b)(14), insert the following clause:

ERRONEOUS SHIPMENTS (MAY 1977)

(a) It shall be the responsibility of the Contractor at his expense to have articles of personal property which he inadvertently packed with goods of other than the rightful owner forwarded to the rightful owner by the quickest means of transportation, as selected by the Contracting Officer.

(b) Further, it shall be the responsibility of the Contractor to insure that all shipments have been stenciled correctly. When a shipment is forwarded to an incorrect address due to incorrect stenciling by the Contractor or his personnel, the shipment shall be returned with the least possible delay to its rightful owner by a mode of transportation selected by the Contracting Officer. The Contractor shall be liable for all costs incurred including charges for preparation, drayage and transportation.

(c) It shall be the responsibility of the Contractor to deliver to the designated air or surface terminal all pieces of a shipment, in one lot, at the same time. Pieces of one lot not included in delivery and remaining at Contractor's facility after the departure of the original shipment shall be forwarded to the owner with the least possible delay by a mode of transportation selected by the Contracting Officer or his designated representative. The Contractor shall be liable for all additional transportation costs incurred in excess of what it would have cost the Government had the entire lot been shipped at the same time.

(End of clause)

252.247-7117 Additional marking instructions.

As prescribed at 247.271-4(b)(15), insert the following clause:

ADDITIONAL MARKING INSTRUCTIONS (MAY 1970)

(a) All containers of professional books, papers or equipment shall be stenciled "Professional Books, Paper, Equipment" and their weights shall be shown separately on packing lists.

(b) Unaccompanied baggage containers shall be marked as such.

(End of clause)

252.247-7118 Weight certificates.

As prescribed at 247.271-4(b)(16), insert the following clause:

WEIGHT CERTIFICATES (MAY 1970)

A weight certificate, in triplicate, from a certified scale or weightmaster shall be submitted to the transportation officer for all outbound shipments.

(End of clause)

252.247-7119 Report of lost/damaged material.

As prescribed at 247.271-4(b)(17), insert the following clause:

REPORT OF LOST/DAMAGED MATERIAL (APR 1977)

It shall be the responsibility of the Contractor when making delivery to prepare a separate report listing all articles lost or damaged and describing such loss or damage. This report will be forwarded to the transportation officer within seven (7) working days after the delivery of the goods.

(End of clause)

252.247-7120 Subcontracting.

As prescribed at 247.271-4(b)(18), insert the following clause:

SUBCONTRACTING (MAY 1970)

The Contractor shall not subcontract without the prior written approval of the Contracting Officer. The facilities of any approved Subcontractor shall meet the minimum standards required by this contract.

(End of clause)

252.247-7121 Additional services.

As prescribed at 247.271-4(b)(19), insert the following clause:

ADDITIONAL SERVICES (APR 1977)

Additional services not included in the schedule, but required for satisfactory completion of services ordered under this contract shall be provided at a rate not in excess of the rate for like services as contained in applicable Military Rate Tenders or in the absence of a Military Rate Tender, applicable tariff in effect at time of order.

(End of clause)

252.247-7200 Ocean transportation of government-owned supplies.

As prescribed at 247.507(S-70), insert the following clause:

OCEAN TRANSPORTATION OF GOVERNMENT-OWNED SUPPLIES (NOV 1963)

The Contractor shall advise the Contracting Officer of any proposed transportation by ocean vessels of Government-owned property in the possession of the Contractor or his subcontractors (including property under which title will pass to the Government prior to such transportation). Such property shall subsequently be transported only on United States-flag vessels as directed by the Contracting Officer.

(End of clause)

252.249-7000 Special termination costs.

In accordance with 249.7003(a), insert the following clause:

SPECIAL TERMINATION COSTS (FEB 1975)

(a) Notwithstanding the Limitation of Cost/Limitation of Funds clause of this contract, the Contractor shall not include in his estimate of costs incurred or to be incurred, any amount for special termination costs, as herein defined, to which the Contractor may be entitled in the event this contract is terminated for the convenience of the Government. The Contractor agrees to perform this contract in such a manner that his claim for such special termination costs will not exceed $———. The Government shall have no obligation to pay the Contractor any amount for the special termination costs in excess of this amount. Special termination costs are defined as costs only in the following categories:

(1) severance pay as provided in FAR 31.205-6(g);

(2) reasonable costs continuing after termination as provided in FAR 31.205-42(b);

(3) settlement of expenses as provided in FAR 31.205-42(g);

(4) costs of return of field service personnel from sites as provided in FAR 31.205-35 and FAR 31.205-46(c); and

(b) In the event of termination for the convenience of the Government, this clause shall not be construed as affecting the allowability of special termination costs in any manner other than limiting the maximum

amount payable therefore by the Government.

(c) This clause shall remain in full force and effect until this contract is fully funded.

(End of clause)

252.251-7000 Ordering from government supply sources.

As prescribed at 251.107, insert the following clause:

ORDERING FROM GOVERNMENT SUPPLY SOURCES (APR 1984)

(a) Contractors placing orders under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules shall follow the terms of the applicable schedule and authorization and include with each order:

(1) A copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contractor) and

(2) The following statement:

This order is placed under written authorization from ———— dated ————. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract or Personal Property Rehabilitation Price Schedule contract, the latter will govern.

(3) The complete address(es) to which the contractor's mail, freight, and billing documents are to be directed.

(b) If a Federal Supply Schedule contractor refuses to honor an order placed by a Government contractor under an agency authorization, the contractor shall report the circumstances to the General Services Administration, FFN, Washington, D.C. 20406, with a copy to the authorizing office.

(c) Contractors placing orders under nonmandatory schedule contracts and requirements contracts issued by GSA, Office of Information Resources Management, for automated data processing equipment, software and maintenance, communications equipment and supplies, and teleprocessing services shall follow the terms of the applicable contract and the procedures in (a)(1), (2), and (3) above.

(d) Contractors placing orders for Government stock shall—

(1) Comply with the requirements of the contracting officer's authorization, using FEDSTRIP or MILSTRIP procedures, as appropriate;

(2) Use only the GSA Form 1948–A, Retail Services Shopping Plate, when ordering from GSA Self-Service Stores;

(3) Order only those items required in the performance of their contracts; and

(4) Pay bills from Government supply sources promptly upon receipt of billings.

(e) Authorizations for subcontractors to utilize Government supply sources shall be requested only by the prime contractor and shall not be granted without approval of the prime contractor.

(End of clause)

252.251-7001 Use of interagency motor pool vehicles and related services.

As prescribed in 251.205, insert the following clause:

USE OF INTERAGENCY MOTOR POOL VEHICLES AND RELATED SERVICES (APR 1984)

(a) Authorized contractors shall submit requests for interagency motor pool vehicles and related services in writing to the appropriate GSA regional Customer Service Bureau, Attention: Motor Equipment Activity; except that requests for more than five vehicles shall be submitted to General Services Administration, FTM, Washington, D.C. 20406, and not to the regions. Each request shall include the following:

(1) Two copies of the agency authorization to obtain vehicles and related services from GSA.

(2) The number of vehicles and related services required and period of use.

(3) A list of the contractor's employees who are authorized to request vehicles and related services.

(4) A listing of the make, model, and serial numbers of contractor-owned or leased equipment authorized to be serviced.

(5) Billing instructions and address.

(b) Contractors requesting unusual quantities of vehicles should do so as far in advance as possible to facilitate availability.

(c) Contractors authorized to use interagency motor pool vehicles and related services shall comply with the requirements of 41 CFR 101–39 and the operator's packet furnished with each vehicle.

(d) Contractors shall establish and enforce suitable penalties for their employees who use or authorize the use of Government vehicles for other than performance of Government contracts.

(e) The contractor shall assume, without the right of the reimbursement from the Government, the cost or expense of any use of motor pool vehicles and services not related to the performance of the contract.

(f) Authorizations for subcontractors to utilize interagency motor pool vehicles and related services shall be requested only by the prime contractor and shall not be granted without the approval of the prime contractor.

(End of clause)

252.270-7000 Warranty exclusion and limitation of damages.

As prescribed at 270.310(a), insert the following clause:

WARRANTY EXCLUSION AND LIMITATION OF DAMAGES (FEB 1983)

Except as expressly set forth in writing in this agreement, or except as provided in the Contractor Representation clause, if applicable, and except for the implied warranty of merchantability, there are no warranties expressed or implied. In no event will the contractor be liable to the Government for consequential damages as defined in the Uniform Commercial Code, Section 2–715, in effect in the District of Columbia as of January 1, 1973; i.e., Consequential damages resulting from the seller's breach include:

(a) Any loss resulting from general or particular requirements and need of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

(End of clause)

252.270-7001 Contractor representation.

As prescribed at 270.310(b), insert the following clause:

CONTRACTOR REPRESENTATION (APR 1984)

Unless the Contractor expressly states otherwise in his proposal, where functional requirements are expressly stated as part of the requirements of this solicitation, the Contractor, by responding, represents that in its opinion the system/item proposed is capable of meeting those requirements. However, once the system/item is accepted by the Government, contractor responsibility under this clause ceases. In the event of any inconsistency between the detailed specification and the functional specification contained in the solicitation, the former will control.

(End of clause)

252.270-7002 Fixed price options.

As prescribed at 270.310(c), insert the following clause:

(The data required for the "fill-ins" should be suitably highlighted, and inapplicable bracketed portions should be deleted.)

FIXED PRICE OPTIONS (APR 1984)

(a) This solicitation is being conducted on the basis that known requirements extend beyond the initial contract period (and exceed the basic quantity*) to be awarded, but due to the unavailability of funds, including statutory limitations on obligations of funds, the options cannot be exercised at the time of award of the initial contract. There is a reasonable certainty that funds will be available thereafter to permit exercise of the options. Because realistic competition for the option periods (and quantity*) is impracticable once the initial contract is awarded, it is in best interest of the Government to evaluate options in order to eliminate the possibility of a "buy-in".

(b) In order to safeguard the integrity of the Government's evaluation and because the Government is required to acquire ADPE and related items on the basis of fulfilling the systems-life requirement at the lowest overall cost, price and other factors considered, requirements for optional periods (and additional quantities*) as well as initial requirements will be evaluated for award on a fixed-price basis. Since the systems or items to be acquired under the solicitation have an expected life of ** months (hereafter referred to as "system life" or "item life", as appropriate), and since lowest system (item) life costs are synonymous with lowest overall costs, the contract resulting from a solicitation will contain options at fixed prices for renewals for subsequent periods based on fiscal years throughout the projected system (item) life (and options at fixed prices for all stated optional quantities of supplies or services not included in the initial requirements*). Despite the foregoing,

offerors are reminded that although the evaluation that will lead to contract award of the initial contract, as well as the exercise of the options, is dependent not only on the continued existence of the requirement and the availability of funds but also on an affirmative determination that each exercise of an option is in the best interest of the Government.

(c) Options included in offers submitted in response to this solicitation will be evaluated as follows:

(1) *Firm Fixed Prices.* To be considered acceptable under the solicitation, offerors must offer (i) fixed prices for the initial contract period for the initial systems or items being acquired, (ii) fixed prices or prices which can be finitely determined for each separate option renewal period, which prices must remain in effect throughout that period, and (iii) fixed prices or prices which can be finitely determined for all required option quantities.*

(2) *Evaluation of Prices.* Offers will be evaluated for purposes of award by adding the total prices of all optional periods (and all stated optional quantities*) to the total price for the initial contract period covering the initial system or items. These prices will be adjusted by the appropriate discount factors shown in *** of the solicitation document. Evaluation of option prices will not obligate the Government to exercise the options. Offers which do not include fixed or determinable system (item) life prices cannot be evaluated for the total systems-life requirement and will be rejected. Offers which meet the mandatory requirements will be evaluated on the basis of lowest overall cost to the Government, price and other factors considered. Evaluated optional features, if any, will also be evaluated.

(3) *Separate Charges.* Separate charges, in any form, are not solicited. Offers containing any charges for failure to exercise any option will be rejected.

(d) Selection of an offer shall be made on the basis of lowest overall cost, price and other factors considered, to the Government provided that the contract price reasonably represents the value of bona fide fiscal year requirements, rather than representing, to any extent, a portion of any other fiscal year's requirements. This determination with respect to the contract price shall be made after consideration of such factors as commercial catalog prices for short-term leases, offeror system startup expenses, multiyear price protection, assured system-life availability of equipment, software, and vendor support. If a determination is made that an offer does not meet these criteria, that offer cannot be accepted for award.

(e) Award of an initial contract will not obligate the Government to exercise any contractual option. Prior to exercising any option, the Government will make a determination that (i) funds are available, (ii) the requirement covered by the option fulfills an existing need of the Government, and (iii) the exercise of the option is the most advantageous method of fulfilling the Government's need, price and other factors considered.

(f) Failure to exercise an option shall not obligate the Government to pay any charges other than the contract price including exercised options.

(End of clause)

* Delete when inapplicable.

** Insert the specific number of months applicable to the solicitation.

*** Insert location in the solicitation where appropriate discount factors and the contemplated payment schedule are specified.

252.270-7003 Option to extend the term of the contract.

As prescribed at 270.310(d), insert the following clause:

OPTION TO EXTEND THE TERM OF THE CONTRACT (APR 1984)

This contract is renewable at the prices stated elsewhere in the contract, at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor by the first day of each fiscal year of the Government or within 30 days after funds for that fiscal year become available, whichever date is the later; *provided,* that the Contracting Officer shall have given preliminary notice of the Government's intention to renew at least **** days before this contract is to expire. Such a preliminary notice of intent to renew shall not be deemed to commit the Government to renewals. If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed ** months.

(End of clause)

** Insert the specific number of months applicable to the solicitation.

**** Insert 30 days unless a longer period is appropriate.

252.270-7004 Option for increased quantities.

As prescribed at 270.310(e), insert the following clause:

OPTION FOR INCREASED QUANTITIES (FEB 1983)

The Government may increase the items called for herein by the quantities stated and at the unit prices specified elsewhere in this contract. The Contracting Officer may exercise this option at any time within the period specified in the contract by giving written notice to the Contractor. Delivery of items added by exercise of this option shall be in accordance with the delivery schedule set forth elsewhere in this contract.

(End of clause)

252.270-7005 Discontinuance repricing.

As prescribed at 270.310(f), insert the following provision:

DISCONTINUANCE REPRICING (APR 1984)

(a) By the incorporation of this solicitation provision, the Government indicates its willingness to incorporate into the resulting contract the clause at 252.270-7006, Discontinuance of Rental and Repricing, which is an alternative to standard termination for convenience procedures in appropriate circumstances.

(b) The following example illustrates the operation of the clause:

—Monthly rental price for the period in which the discontinuance date falls for the discontinued item as stated in the contract. $90

—Monthly rental price for the item effective at the time of initial award of the system contract as stated in the vendor's ADP schedule contract (or the established commercial catalog price at the same time, if lower or if no ADP schedule contract effective. $120

—Months of rental prior to the discontinuance date during the initial or option contract period of performance in which the discontinuance date occurs. $10

—Rental charges earned during the applicable period of performance (10×$90) $900

—Discontinuance charges to be added at discontinuance date ($120−$90×10) $300

—Total rental charges plus discontinuance charges ($900+$300). $1,200

—Ceiling on total of rental changes and discontinuance repricing charges (12×$90). $1,080

—Total price during period for the discontinued item ($1,080 ceiling lower than total rental earned plus discontinuance charges). $1,080

(c) Offeror election. The undersigned offeror ——— agrees to, ——— declines, the incorporation of the Discontinuance of Rental and Repricing clause in any contract which may result from this solicitation.

(End of provision)

252.270-7006 Discontinuance of rental and repricing.

As prescribed at 270.310(g), insert the following clause:

DISCONTINUANCE OF RENTAL AND REPRICING (APR 1984)

(a) The Government may, in lieu of a termination under the Termination for Convenience of the Government clause of this contract, during the initial or any option period of performance of this contract, discontinue rental of any equipment or software on a date specified in a written notice provided to the Contractor not less than 30 days prior to the specified discontinuance date. The Government may discontinue the rental on shorter notice when agreed to by the Contractor.

(b) In the event of discontinuance of rental under (a) above, the Government shall pay termination repricing charges to the Contractor as computed in accordance with this paragraph (b). The charges shall be the remainder obtained by subtracting the contract monthly rental price effective at the discontinuance date for the discontinued equipment or software item from the monthly rental price for the item under the GSA/ADP schedule contract or the established commercial catalog price, whichever is less, effective at the time of award of the contract's initial period of performance, multiplied by the number of months the item was rented during the particular contract period of performance (initial or option) in which the discontinuance was effective.

provided, in no event shall the total of termination repricing charges and the contract rental price for the number of months the item was rented during the period in which discontinuance was effective exceed the contract price for the item for the entire period.

(c) The provisions of this clause shall prevail when notice pursuant to this clause is made.

(End of clause)

252.270-7007 Rights in privacy safeguards.

As prescribed at 270.904, insert the following clause:

RIGHTS IN PRIVACY SAFEGUARDS (APR 1984)

(a) The details of any and all safeguards that the Contractor may design or develop under this contract shall become and remain the property of the Government and shall not be published or disclosed in any manner without the express written consent of the Government.

(b) The details of any and all safeguards that may be revealed to the Contractor by the Government in the course of performing under this contract shall not be published or disclosed in any manner without the express written consent of the Government.

(End of clause)

252.270-7008 Access to contractor facilities and records—privacy safeguards inspection.

As prescribed at 270.904, insert the following clause:

ACCESS TO CONTRACTOR FACILITIES AND RECORDS—PRIVACY SAFEGUARDS INSPECTION (APR 1984)

(a) The Government shall, following presentation of advance written notice of ——— days be afforded full, free, and uninhibited access to all facilities and installations, and to all technical capabilities and operations, and to all documentation, records, and data bases for the purpose of carrying out a program of inspection to ensure continued efficacy and efficiency of safeguards against threats and hazards to data security, integrity, and confidentiality.

(b) In the event that new or unanticipated threats or hazards are discovered by either the Government or the contractor, or that existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party. Mutual agreement shall then be reached on changes or corrections to existing safeguards or institution of new safeguards with final determination of appropriateness being made by the Government. The cost of such changes or corrections shall be a matter of negotiation. The Government's liability is limited to an equitable adjustment of cost for such changes or corrections, and the Government shall not be liable for claims of loss of business, damage to reputation or damages of any other kind arising from discovery of new or unanticipated threats or hazards, or any public or private disclosure thereof.

(End of clause)

252.270-7009 American standard code for information interchange (ASCII) system requirements.

As prescribed at 270.1103(a)(1), insert the following clause:

AMERICAN STANDARD CODE FOR INFORMATION INTERCHANGE (ASCII) SYSTEM REQUIREMENTS (APR 1984)

The system, upon receiving a hardware or software command, shall accept data on magnetic tape, paper tape, or any other input media covered by an approved Federal Information Processing Standards Publication (FIPS PUB) in ACSII code and collating sequence prescribed in FIPS PUB 1–1 and in the format prescribed in FIPS PUBS 2, 3–1, 25, 50, or other applicable FIPS PUBS. Such data may be translated, if necessary, into a form that the proposed equipment can internally process provided that upon receiving a hardware or software command the proposed equipment can produce the processed data on magnetic tape, paper tape, and other output media in the ACSII code and collating sequence prescribed in FIPS PUB 1–1 and in the format prescribed in FIPS PUBS 2, 3–1, 25, 50, or other applicable FIPS PUBS.

(End of clause)

252.270-7010 Punched paper tape readers and punches.

As prescribed at 270.1103(a)(2), insert the following clause:

PUNCHED PAPER TAPE READERS AND PUNCHES (APR 1984)

Punched paper tape equipment shall be capable of reading and punching in the prescribed American Standard Code for Information Interchange (ASCII) code and format specified in FIPS PUBS 1–1 and 2.

(End of clause)

252.270-7011 Recorded magnetic tape for information interchange (800 CPI, NRZI).

As prescribed at 720.1103(a)(3), insert the following clause:

RECORDER MAGNETIC TAPE FOR INFORMATION INTERCHANGE (800 CPI, NRZI) (APR 1984)

All 9-track digital magnetic tape recording and reproducing equipment employing ½-inch wide tape at the recording density of 800 characters per inch (CPI), including associated programs, shall provide the capability to accept and generate recorded tapes in compliance with the requirements set forth in FIPS PUB 3–1.

(End of clause)

252.270-7012 Rectangular holes in 12-row punched cards.

As prescribed at 270.1103(a)(4), insert the following clause:

RECTANGULAR HOLES IN 12-ROW PUNCHED CARDS (FEB 1983)

All punching or reading equipment utilizing 12-row 3¼-inch punched cards used in data processing, communications, and similar operations shall be capable of punching and reading rectangular holes of a size and location specified in FIPS PUB 13.

(End of clause)

252.270-7013 Hollerith punched card code.

As prescribed at 270.1103(a)(5), insert the following clause:

HOLLERITH PUNCH CARD CODE (APR 1984)

All punching or reading equipment utilizing 12-row 3¼-inch wide, rectangular hole punched cards used in data processing, communications, and similar operations shall be capable of punching or reading the Code for Information Interchange, FIPS PUB 1–1, or one of the approved Subsets of the Standard Code for Information.

(End of clause)

252.270-7014 Subsets of the standard code for information interchange.

As prescribed at 270.1103(a)(6), insert the following clause:

SUBSETS OF THE STANDARD CODE FOR INFORMATION INTERCHANGE (APR 1984)

Printers; display devices; data acquisition, preparation, and transcription devices; data communication terminal devices; punched card equipment; and other data processing or communications equipment not requiring the 128-character set of the Federal Code of Information Interchange, FIPS PUB 1–1, shall conform to one of the approved character Subsets of the Standard Code for Information Interchange, FIPS PUB 15. Printers of the "chain" or "train" or other replaceable symbol technology may also be provided with optional subsets having a different number of characters from those specified in FIPS PUB 15 in order to increase the printer's repertoire of symbols or the printer's speed as required for local use, provided the ability to interchange information by the selected character subpart (FIPS PUB 15) is retained in the data processing system.

(End of clause)

252.270-7015 Flowcharts, symbols, and their usage in information processing.

As prescribed at 270.1103(a)(7), insert the following clause:

FLOWCHARTS, SYMBOLS, AND THEIR USAGE IN INFORMATION PROCESSING (FEB 1983)

All new information processing system documentation involving the use of flowcharts that may result from this solicitation shall comply with FIPS PUB 24.

(End of clause)

252.270-7016 Recorded magnetic tape for information interchange (1600 CPI, Phase Code 0).

As prescribed at 270.1103(a)(8), insert the following clause:

RECORDED MAGNETIC TAPE FOR INFORMATION INTERCHANGE (1600 CPI, PHASE CODE O) (APR 1984)

All 9-track digital magnetic tape recording and reproducing equipment and employing

½-inch wide tape at the recording density of 1,600 characters per inch (CPI) phase encoded, including associated programs, shall provide the capability to accept and generate recorded tape in compliance with the requirements set forth in FIPS PUB 25.

(End of clause)

252.270-7017 One-inch perforated paper tape for information interchange.

As prescribed at 270.1103(a)(9), insert the following clause:

ONE-INCH PERFORATED PAPER TAPE FOR INFORMATION INTERCHANGE (APR 1984)

All one-inch wide perforated paper tape and related 8-channel paper tape punch and reading equipment which are utilized in Federal information processing systems, communication systems, and associated terminals employing perforated paper tape equipment, shall provide the capability to accept and generate tape in compliance with the requirements set forth in FIPS PUB 26.

(End of clause)

252.270-7018 Take-up reels for the one-inch perforated tape for information interchange.

As prescribed at 270.1103(a)(10), insert the following clause:

TAKE-UP REELS FOR THE ONE-INCH PERFORATED TAPE FOR INFORMATION INTERCHANGE (APR 1984)

All one-inch perforated tape take-up reels and related devices employing such reels, including paper tape readers, punches, and related tape-handling equipment, which are used in Federal information processing systems and associated equipment employing such devices, shall provide the capability to accept one of the two types of reels specified in FIPS PUB 27.

(End of clause)

252.270-7019 Software summary for describing computer programs and/or automated data systems.

As prescribed at 270.1103(a)(11), insert the following clause:

SOFTWARE SUMMARY FOR DESCRIBING COMPUTER PROGRAMS AND/OR AUTOMATED DATA SYSTEMS (APR 1984)

All documentation of computer programs and/or automated data systems shall include completed Standard Form (SF 185) summaries as described by FIPS PUB 30.

(End of clause)

252.270-7020 Optical character recognition equipment.

As prescribed at 270.1103(a)(12), insert the following:

OPTICAL CHARACTER RECOGNITION EQUIPMENT (APR 1984)

All applicable Optical Character Recognition (OCR) equipment or services shall comply with the provisions of FIPS PUB 32-1. Applicable OCR equipment also includes data input devices such as typewriters, line printers, and CRT displays. Applicable services include date preparation and processing information represented in OCR form.

(End of clause)

252.270-7021 Character set for handprinting.

As prescribed at 270.1103(a)(13), insert the following clause:

CHARACTER SET FOR HANDPRINTING (APR 1984)

All applicable Optical Character Recognition (OCR) equipment or services which are capable of reading handprinted material shall comply with FIPS PUB 33. The applicable services include data preparation and processing of information represented in OCR form.

(End of clause)

252.270-7022 Code extension technique in 7 or 8 bits.

As prescribed at 270.1103(a)(14), insert the following clause:

CODE EXTENSION TECHNIQUE IN 7 OR 8 BITS (APR 1984)

All coded character sets which require control function and/or graphic symbols that are not included in the 128 characters of ASCII shall be implemented through the use of the code extension methods and techniques as described in FIPS PUB 35.

(End of clause)

252.270-7023 Graphic representation of the control characters of ASCII (FIPS PUB 1-1).

As prescribed in 270.1103(a)(15), insert the following clause:

GRAPHIC REPRESENTATION OF THE CONTROL CHARACTERS OF ASCII (FIPS PUB 1-1) (APR 1984)

All applicable equipment that prints or displays graphic representations of any or all the control characters of ASCII (FIPS PUB 1-1) or of the characters "space" or "delete" shall comply with the requirements set forth in FIPS PUB 36. This standard also applies to equipment that prints these graphic representations on media such as perforated tape, punched cards, or listings.

(End of clause)

252.270-7024 Data Encryption Standards (DES).

As prescribed at 270.1103(a)(16), insert the following clause:

DATA ENCRYPTION STANDARDS (DES) (APR 1984)

In the event that a data encryption requirement is specified, such encryption shall be accomplished in accordance with FIPS PUB 46. Implementations of the Standard embodied in products or services offered, that are asserted to have an encryption capability in conformance with FIPS PUB 46, shall have the capability validated by the National Bureau of Standards prior to being proposed. Arrangements for validation may be made with the Systems and Software Division, National Bureau of Standards, Washington, DC 20234.

(End of clause)

252.270-7025 Recorded magnetic tape for information interchange, 6250 characters per inch (CPI) (246 CPMM), group coded recording.

As prescribed in 270.1103(a)(17), insert the following clause:

RECORDED MAGNETIC TAPE FOR INFORMATION INTERCHANGE, 6250 CHARACTERS PER INCH (CPI) (246 CPMM), GROUP CODED RECORDING (APR 1984)

All applicable digital magnetic tape recording and reproducing equipment which employs ½-inch wide (12.7mm) magnetic computer tape at the recording density of 6250 characters per inch (246 characters per millimeter) group coded recording, including associated programs, shall provide the capability to accept and generate recorded tapes in compliance with the requirements set forth in FIPS PUB 50.

(End of clause)

252.270-7026 Magnetic tape cassettes for information interchange (3.810mm (0.150 inch) tape at 32 BPMM (800 BPI, PE).

As prescribed at 270.1103(a)(18), insert the following clause:

MAGNETIC TAPE CASSETTES FOR INFORMATION INTERCHANGE (3.810MM (0.150 INCH) TAPE AT 32 BPMM (800 BPI, PE) (APR 1984)

All magnetic tape cassette recording and reproducing equipment which employs 3.810mm (0.150 inch) wide magnetic tape at the recording density of 32 bits per millimeter (800 bits per inch) using phase encoding techniques, including associated programs, shall provide the capability to accept and generate recorded tapes in compliance with the requirements set forth in FIPS PUB 51.

(End of clause)

252.270-7027 Recorded magnetic tape cartridge for information interchange, 4-track, 6.30mm (0.25 inch), 63 BPMM (1600 BPI) phase encoded.

As prescribed at 270.1103(a)(19), insert the following clause:

RECORDED MAGNETIC TAPE CARTRIDGE FOR INFORMATION INTERCHANGE, 4-TRACK, 6.30MM (0.25 INCH) 63 BPMM (1600 BPI) PHASE ENCODED (APR 1984)

All magnetic tape cartridge recording and reproducing equipment which employs 6.30 millimeter (0.25 inch) wide magnetic tape with one, two, or four independent serial data tracks at recording densities of 63 bits per millimeter (1600 bits per inch) using phase encoding techniques, including associated software, shall provide the capability to accept and generate recorded magnetic tape cartridges in the code and format as specified in FIPS PUBS 1-1 and 52.

(End of clause)

252.270-7028 Description of computer magnetic tape file properties.

As prescribed at 270.1130(a)(20), insert the following clause:

DESCRIPTION OF COMPUTER MAGNETIC TAPE FILE PROPERTIES (APR 1984)

All magnetic tape used to transmit coded information to the Federal Government shall include completed Standard Form 277 describing magnetic tape file properties as set forth in FIPS PUB 53.

(End of clause)

252.270-7029 Computer output microform (COM) formats and reduction ratios, 16mm and 105mm.

As prescribed at 270.1103(a)(21), insert the following clause:

COMPTUTER OUTPUT MICROFORM (COM) FORMATS AND REDUCTION RATIOS, 16MM and 105MM (FEB 1983)

All applicable equipment or services that may result from this solicitation that produce computer generated microforms using plain-type faces shall be in compliance with FIPS PUB 54.

(End of clause)

252.270-7030 Input/output (I/O) channel interface.

As prescribed at 270.1103(a)(22), insert the following clause:

INPUT/OUTPUT (I/O) CHANNEL INTERFACE (APR 1984)

Unless otherwise excluded, as specified in FIPS PUB 60-1, or unless a waiver is granted following the waiver procedures specified in FIPS PUB 60-1, ADP systems and peripheral subsystems that may result from this solicitation, and for which operational specifications FIPS PUBS (such as FIPS PUBS 62 and 63) have been issued and are in effect, shall conform to FIPS PUB 60-1. The correct operation of these systems' conforming interfaces shall be verified before the acceptance of all applicable ADP equipment. The Government may, at its option, apply instrumentation and test equipment at any interface required to conform with the FIPS PUB 60-1 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 60-1. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of clause)

252.270-7031 Channel level power control interface.

As prescribed at 270.1103(a)(23), insert the following clause:

CHANNEL LEVEL POWER CONTROL INTERFACE (APR 1984)

Unless otherwise excluded as specified in FIPS PUB 61-1 by reference to FIPS PUB 60-1 or unless a waiver is granted following the waiver procedures specified in FIPS PUB 60-1, ADP systems and peripheral subsystems that may result from this solicitation, and for which operational specifications FIPS PUBS (such as FIPS PUB 62 and 63) have been issued and are in effect, shall conform to FIPS PUB 61-1. The correct operation of these systems' conforming interfaces shall be verified before the acceptance of all applicable ADP equipment. The Government may, at its option, apply instrumentation and test equipment at any interface required to conform to FIPS PUB 61-1 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 61-1. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of clause)

252.270-7032 Operational specification for magnetic tape subsystems.

As prescribed at 270.1103(a)(24), insert the following clause:

OPERATIONAL SPECIFICATION FOR MAGNETIC TAPE SUBSYSTEMS (APR 1984)

Unless otherwise excluded, as specified in FIPS PUB 62 by reference to FIPS PUB 60-1 or unless a waiver is granted following the procedures specified in FIPS PUB 62, ADP systems and magnetic tape subsystems that may result from this solicitation shall conform to FIPS PUB 62. The correct operation of these systems' conforming interfaces shall be verified before the acceptance of all applicable ADP equipment. The Government may, at its option, apply instrumentation test equipment at any interface required to conform to FIPS PUB 61-1 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 62. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of clause)

252.270-7033 Operational specifications for rotating mass storage subsystems.

As prescribed at 270.1103(a)(25), insert the following clause:

OPERATIONAL SPECIFICATIONS FOR ROTATING MASS STORAGE SUBSYSTEMS (APR 1984)

Unless otherwise excluded, as specified in FIPS PUB 63 by reference to FIPS PUB 60-1, or unless a waiver is granted following the waiver procedures specified in FIPS PUB 63, ADP systems and rotating mass storage subsystems that may result from this solicitation must conform to FIPS PUB 63. The correct operation of these systems' conforming interfaces must be verified before the acceptance of all applicable ADP equipment. The Government may, at its option, apply instrumentation and test equipment at any interface required to conform to FIPS PUB 63 before the acceptance of these ADP systems to ensure conformance with FIPS PUB 63. Waivers applicable to the requirements of this solicitation are identified elsewhere in this solicitation document.

(End of clause)

252.270-7034 BASIC language compilers.

As prescribed at 270.1103(a)(26), insert the following clause:

BASIC LANGUAGE COMPILERS (APR 1984)

BASIC compilers offered as a result of this solicitation shall implement Federal Standard Minimal BASIC, as well as any additional language elements as specified elsewhere in the requirements document (insert reference here).

(End of clause)

252.270-7035 FORTRAN language compilers.

As prescribed at 270.1103(a)(27), insert the following clause:

FORTRAN LANGUAGE COMPILERS (APR 1984)

FORTRAN compilers offered as a result of this solicitation shall implement all of the language elements of the level of Federal Standard FORTRAN specified elsewhere in this requirements document (insert reference here), as well as any additional language elements as specified elsewhere in this document (insert reference here). The compiler shall enable the user to monitor any statement appearing in the source program that does not conform syntactically to the specifications of Federal Standard full FORTRAN.

(End of clause)

252.270-7036 Magnetic tape labels and file structure information interchange.

As prescribed at 270.1103(a)(28), insert the following clause:

MAGNETIC TAPE LABELS AND FILE STRUCTURE INFORMATION INTERCHANGE (FEB 1983)

Information processing systems using 9-track tape drives and new tape label processing facilities that will be part of an information processing system shall be capable of generating and processing tape labels and file structures that conform to one of the four levels of FIPS PUB 79 if the information processing system either generates or accepts magnetic tapes for information interchange. Offerors shall specify the level of conformance and certify that a copy of the current users manual is on file with the National Bureau of Standards as required by FIPS PUB 79.

(End of clause)

252.270-7037 Data Encryption Standard (DES) modes of operation.

As prescribed at 270.1103(a)(29), insert the following clause:

DATA ENCRYPTION STANDARD (DES) MODES OF OPERATION (APR 1984)

Equipment and services that implement the Data Encryption Standard and are intended for use in the cryptographic protection of sensitive but unclassified computer data, shall use one or more of the modes of operation specified in FIPS PUB 81.

(End of clause)

252.270-7038 Microform readers.

As prescribed at 270.1103(a)(30), insert the following clause:

MICROFORM READERS (FEB 1983)

Microform readers offered as a result of this solicitation that display computer-generated microforms conforming to FIPS PUB 4 shall comply with the provisions of FIPS PUB 84.

(End of clause)

252.270-7039 Optical character recognition (OCR) inks.

As prescribed at 270.1103(a)(31), insert the following clause:

OPTICAL CHARACTER RECOGNITION (OCR) INKS (APR 1984)

Inks and preprinted forms shall be required to conform to the provisions of FIPS PUB 85 if they will be read by OCR techniques and if the interchange of machine-readable information between different systems may be required.

(End of clause)

252.270-7040 Optical character recognition (OCR) printers, readers and printed forms.

As prescribed at 270.1103(a)(32), insert the following clause:

OPTICAL CHARACTER RECOGNITION (OCR) PRINTERS, READERS AND PRINTED FORMS (APR 1984)

OCR printers, readers and printed forms shall conform to the provisions of FIPS PUB 89, when the interchange of machine sensible information between different systems is required as specified elsewhere herein.

(End of clause)

252.270-7041 Digital magnetic tape cassette equipment and associated programs.

As prescribed at 270.1103(a)(33), insert the following clause:

DIGITAL MAGNETIC TAPE CASSETTE EQUIPMENT AND ASSOCIATED PROGRAMS (APR 1984)

All digital magnetic data cassette recording and reproducing equipment which employ dual track, complementary return-to-bias (CRB), four-states recording techniques on 3.81mm (0.150 in) tape, including associated programs, shall provide the capability to accept and generate recorded tape cassettes in compliance with the requirements set forth in the Federal Standard as stated in FIPS PUB 91 and as may be specified elsewhere herein.

(End of clause)

252.270-7042 Acquisition and validation of COBOL compilers.

As prescribed at 270.1103(a)(34), insert the following clause:

ACQUISITION AND VALIDATION OF COBOL COMPILERS (APR 1984)

(a) COBOL compilers offered as a result of the requirements set forth in this solicitation shall be identified as implementing all of the language elements of at least one of the levels of Federal Standard COBOL as specified in FIPS PUB 21-1. Implementation must provide a facility for the user to optionally specify a level of Federal Standard COBOL for monitoring the source program at compile time. Monitoring may be specified for any level at or below the highest level for which a compiler is implemented and shall consist of an analysis of the syntax used in a source program against the syntax included in the level specified for monitoring. Any syntax not conforming to the specified level will be identified through a diagnostic message in the source program listing. The diagnostic message will contain at least the identification of the source program line number for each nonconforming syntax and identify the level of Federal Standard COBOL that supports the syntax or indicates that the syntax is nonstandard COBOL.

(b)(1) In addition to the specified mandatory COBOL compiler requirements stated in the specification portion of this solicitation, all COBOL compilers brought into the Federal inventory as a result of this solicitation, the most recent release of which has not been previously tested, shall be tested using the official COBOL Compiler Validation System (CCVS). The results of the validation shall be used to confirm that the compiler meets the specified requirements of the designated level of FIPS PUB 21-1, Federal Standard COBOL. To be considered responsive, the vendor shall:

(i) Certify in the proposal that all COBOL compilers offered in response to this solicitation have been submitted for validation; and

(ii) Agree to correct all deviations from the standard reflected in the Validation Summary Report (VSR) not previously covered by a waiver. All deviations shall be corrected within 12 months from the date of contract award unless a shorter period is specified elsewhere in the solicitation. If an interpretation of the standard is required that will invoke the procedures set forth in FIPS PUB 29, such requests for interpretation shall be made within 30 calendar days after contract award.

(2) Any corrections that are required as a result of decisions made under the procedures of FIPS PUB 29 shall be completed within 12 months of the date of formal notification of the interpretation to the contractor. Failure to make required corrections within the time provisions set forth above shall be deemed a failure to deliver required software. The liquidated damages as specified for failure to delivery either operating system or other software shall apply. In addition, such failure falls within the purview of the default clause. If the required corrections are not made within the time provisions specified above, subsequent proposals submitted to the Government offering the deficient COBOL compilers or subsequent uncorrected versions thereto shall be considered nonresponsive.

(End of clause)

252.270-7043 Acquisition of COBOL programs and/or programming services.

As prescribed at 270.1103(a)(35), insert the following clause:

ACQUISITION OF COBOL PROGRAMS AND/OR PROGRAMMING SERVICES (APR 1984)

Business-oriented computer application programs (i.e., those applications or programs that emphasize the manipulation of characters, files, and input/output as contrasted with those concerned primarily with computation of numeric values) offered or prepared as a result of the requirements set forth in this solicitation shall be written using one of the levels of Federal Standard COBOL as defined in FIPS PUB 21-1, including optional language elements, if any, as specified herein. If services provided include compilation(s), compilers used to perform these services shall be validated.

(End of clause)

252.270-7044 Delayed validation of compilers.

As prescribed at 270.1103(a)(36), insert the following clause:

DELAYED VALIDATION OF COMPILERS (APR 1984)

In addition to the compiler requirements specified elsewhere in this document, all compilers for Federal Standard programming languages brought into the Federal inventory as a result of this document and those compilers used by vendors to develop programs or provide services shall be tested using the official Compiler Validation System (CVS).

The results of the validation shall be used to confirm that the compiler meets the requirements of the applicable Federal Standard specified elsewhere in this document. To be considered responsive, the vendor shall:

(1) Certify in the proposal that all Federal Standard programming language compilers offered in response to this document have been submitted for validation or have been previously validated and listed in the latest Federal Software Testing Center (FSTC) Certified Compiler List. Proof of current validation will be provided in the form of a Certificate of Validation from the FSTC. Unless specified elsewhere in the requirements document, proof of submission for validation will be in the form of a letter from the FSTC scheduling the validation.

(2) Agree to correct all deviations from the applicable Federal Standard reflected in the Validation Summary Report (VSR) not previously covered by a waiver. All deviations must be corrected within 12 months from the date of contract award unless otherwise specified elsewhere in this document. If an interpretation of the Federal Standard is required that will invoke the procedures set forth in FIPS PUB 29-1, such a request for interpretation shall be made within 30 calendar days after contract award. Any corrections that are required as a result of decisions made under the procedures of FIPS PUB 29-1 shall be completed within 12 months of the date of formal notification to the contractor of the approval of the interpretation. Proof of correction in either case will be in the form of a Certificate of Validation from the FSTC for the corrected compiler. Failure to make required corrections within the time limits set forth above shall be deemed a failure to deliver required software. Any liquidated damages as specified for failure to deliver the

operating system or other software shall apply.

(End of clause)

252.270-7045 Interchange of machine processable data between and among agencies.

As prescribed at 270.1103(a)(37), insert the following clause:

INTERCHANGE OF MACHINE PROCESSABLE DATA BETWEEN AND AMONG AGENCIES (FEB 1983)

All application programs resulting from this solicitation that have been identified as those that will be interchanged, or that will record data that will be interchanged with Federal Agencies, state and local governments, industry, and the public, shall implement the following applicable approved Federal Information Processing Standards (FIPS):

FIPS PUB 4 Calendar Date.
FIPS PUB 5-1 States and Outlying Areas of the United States.
FIPS PUB 6-3 Counties and County Equivalents of the States of the United States and the District of Columbia.
FIPS PUB 8-4 Standard Metropolitan Statistical Areas.
FIPS PUB 9 Congressional Districts of the United States.
FIPS PUB 10-2 Countries, Dependencies, and Areas of Special Sovereignty.
FIPS PUB 58 Representations of Local Time of the Day for Information Interchange.
FIPS PUB 59 Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange.
FIPS PUB 66 Standard Industrial Classification (SIC) Codes.
FIPS PUB 70 Representation of Geographic Point Locations for Information Exchange.

(End of clause)

252.270-7046 Synchronous high speed data signaling rates between data terminal equipment and data communication equipment.

As prescribed at 270.1103(b)(1), insert the following clause:

SYNCHRONOUS HIGH SPEED DATA SIGNALING RATES BETWEEN DATA TERMINAL EQUIPMENT AND DATA COMMUNICATION EQUIPMENT (FEB. 1983)

All applicable equipment or services resulting from the solicitation that are employed with synchronous data communication equipment designed to operate on binary coded information over wideband communication channels shall comply with FIPS PUB 47/FED-STD 1001.

(End of clause)

252.270-7047 Bit sequencing of the code of information interchange in serial-by-bit data transmission.

As prescribed at 270.1103(b)(2), insert the following clause:

BIT SEQUENCING OF THE CODE OF INFORMATION INTERCHANGE IN SERIAL-BY-BIT DATA TRANSMISSION (FEB 1983)

All applicable equipment or services that may result from this solicitation, transmitting in a serial-by-bit, serial-by-character mode, shall be capable of bit sequencing as prescribed in FIPS PUB 16-1/FED-STD 1010 for the transmission of the Standard Code for Information Interchange, and FIPS PUB 1-1 at the interface between data terminal equipment and data communication equipment.

(End of clause)

252.270-7048 Character structure and character parity sense for serial-by-bit data communication in the code for information interchange.

As prescribed at 270.1103(b)(3), insert the following clause:

CHARACTER STRUCTURE AND CHARACTER PARITY SENSE FOR SERIAL-BY-BIT DATA COMMUNICATION IN THE CODE FOR INFORMATION INTERCHANGE (FEB 1983)

All applicable equipment that may result from this solicitation, transmitting in a serial-by-bit, serial-by-character mode synchronous or asynchronous mode, shall be capable of transmitting the character structure and sense of character partially prescribed in FIPS PUB 17-1/FEB-STD 1012 for the transmission of the Standard Code for Information Interchange, FIPS PUB 1-1 at the interface between data terminal equipment and data communications equipment.

(End of clause)

252.270-7049 Character structure and character parity sense for parallel-by-bit data communications.

As prescribed at 270.1103(b)(4), insert the following clause:

CHARACTER STRUCTURE AND CHARACTER PARITY SENSE FOR PARALLEL-BY-BIT DATA COMMUNICATION (FEB 1983)

All applicable equipment or services that may result from this solicitation, transmitting in a parallel-by-bit, serial-by-character mode, shall be capable of transmitting the character structure and sense of character parity prescribed in FIPS PUB 18-1/FED-STD 1012, when transmitting the Standard Code for Information Interchange, FIPS PUB 1-1, or an approved Federal subset (FIPS PUB 15) at the interface between data terminal equipment and data communication equipment.

(End of clause)

252.270-7050 Synchronous signaling rates between data terminal and data communication equipment.

As prescribed at 270.1130(b)(5), insert the following clause:

SYNCHRONOUS SIGNALING RATES BETWEEN DATA TERMINAL AND DATA COMMUNICATION EQUIPMENT (FEB 1983)

All applicable equipment or services resulting from this solicitation that are employed in conjunction with synchronous data communication equipment designed to operate on binary encoded information in either serial or parallel fashion over voice grade communication channels of nominal 4kHz bandwidth shall comply with FIPS PUB 22-1/FEB-STD 1013.

(End of clause)

252.270-7051 Data link control-synchronous bit-oriented data.

As prescribed at 270.1103(b)(6), insert the following clause:

DATA LINK CONTROL-SYNCHRONOUS BIT-ORIENTED DATA (APR 1984)

All equipment or services using synchronous, bit-oriented data communications offered as a result of this solicitation shall implement the class of procedures specified in FIPS PUB 71/FED-STD 1003A.

(End of clause)

252.270-7052 Time and frequency reference information in telecommunications systems.

As prescribed at 270.1103(c)(1), insert the following clause:

TIME AND FREQUENCY REFERENCE INFORMATION IN TELECOMMUNICATIONS SYSTEMS (FEB 1983)

All applicable telecommunications facilities and systems that are offered or used as a result of this solicitation shall be referenced to the time and frequency standard specified in FED-STD 1002.

(End of clause)

252.270-7053 Coding and modulation requirements for nondiversity 2400 bit/second modems.

As prescribed at 270.1103(c)(2), insert the following clause:

CODING AND MODULATION REQUIREMENTS FOR NONDIVERSITY 2400 BIT/SECOND MODEMS (FEB 1983)

All nondiversity 2400 bits per second modems offered as a result of this solicitation for use with 4kHz channels derived from either switched networks or dedicated lines shall comply with FED-STD 1005.

(End of clause)

252.270-7054 Coding and modulation requirements for 4800 bit/second modems.

As prescribed at 270.1103(c)(3), insert the following clause:

CODING AND MODULATION REQUIREMENTS FOR 4800 BIT/SECOND MODEMS (FEB 1983)

All 4800 bits per second modems (and equipment containing the 4800 bits per second modems) offered as a result of this solicitation for use with nominal 4kHz analog channels shall comply with FED-STD 1006.

(End of clause)

252.270-7055 Coding and modulation requirements for duplex 9600 bit/second modems.

As prescribed at 270.1103(c)(4), insert the following clause:

CODING AND MODULATION REQUIREMENTS FOR DUPLEX 9600 BIT/SECOND MODEMS (FEB 1983)

All duplex 9600 bits per second modems offered as a result of this solicitation for use by nominal 4kHz analog transmission channels shall comply with FED-STD 1007.

(End of clause)

252.270-7056 Coding and modulation requirements for duplex 600 and/or 1200 bit/second modems.

As prescribed at 270.1103(c)(5), insert the following clause:

CODING AND MODULATION REQUIREMENTS FOR DUPLEX 600 AND/OR 1200 BIT/SECOND MODEMS (FEB. 1983)

All two-wire duplex 600 bits per second and/or 1200 bits per second modems (except those to be acoustically coupled to telephone instruments) offered as a result of this solicitation for use with nominal 4kHz analog channels shall comply with FED-STD 1008.

(End of clause)

252.270-7057 Electrical characteristics of balanced voltage digital interface circuits.

As prescribed at 270.1103(c)(6), insert the following clause:

ELECTRICAL CHARACTERISTICS OF BALANCED VOLTAGE DIGITAL INTERFACE CIRCUITS (FEB. 1983)

All equipment using balanced voltage digital interface circuits that is offered as a result of this solicitation shall comply with the electrical characteristics addressed by FED-STD 1020A.

(End of clause)

252.270-7058 Electrical characteristics of unbalanced voltage digital interface circuits.

As prescribed at 270.1103(c)(7), insert the following clause:

ELECTRICAL CHARACTERISTICS OF UNBALANCED VOLTAGE DIGITAL INTERFACE CIRCUITS (FEB. 1983)

All equipment using unbalanced voltage digital interface circuits that is offered as a result of this solicitation shall comply with the electrical characteristics addressed by FED-STD 1030A.

(End of clause)

252.270-7059 Group 2 facsimile apparatus for document transmission.

As prescribed at 270.1103(c)(8), insert the following clause:

GROUP 2 FACSIMILE APPARATUS FOR DOCUMENT TRANSMISSION (FEB. 1983)

All Group 2 facsimile apparatus offered as a result of this solicitation for use with voice-band analog circuits shall comply with FED-STD 1061.

(End of clause)

252.270-7060 Protection against compromising emanations.

As prescribed at 270.1003(c), insert the following clause:

PROTECTION AGAINST COMPROMISING EMANATIONS (APR. 1984)

The Contractor shall certify in his bid/proposal that computer equipment, as specified by the Government, to be provided or used under this contract has been accredited to meet the appropriate security requirements of the National Communications Security Subcommittee on Compromising Emanations (SOCCE) National TEMPEST standards (NACSEM No. 5100 or NACSIM No. 5100A, "Compromising Enamations Laboratory Test Standard, Electromagnetics (U)") or other specified standard and, upon request of the contracting officer, shall provide documentation supporting this accreditation. Notwithstanding the existence of valid accreditations of equipment(s) prior to award of contract, the Government may, as part of its inspection and acceptance, conduct such additional tests at the installation site or contractor's facility to ensure that equipment/systems delivered or used under the contract satisfy the security standards of NACSEM 5100, NACSIM 5100A, or other approved standards as specified elsewhere in this solicitation/contract. Unless otherwise provided in this contract under the Warranty of Supplies or Warranty of Systems and Equipment clauses, the contractor shall correct or replace, at no cost to the Government, accepted equipment/systems found to be deficient within one year after proper installation. This applies regardless of f.o.b. point or the point of acceptance of the deficient equipment/systems. Should a modification to the delivered equipment be made by the contractor, the one-year period is applied to the modification upon its proper installation.

(End of clause)

PART 253—FORMS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 253.1—General

253.170 Forms for use in DoD acquisition.

This part contains illustrations of Department of Defense Acquisition Forms. The DoD Forms illustrated in this Part are presented in numerical order to provide a ready source of reference. Some DD Forms that were previously illustrated in the DAR have been converted to Standard Forms and are published in the FAR or are published in the FAR as DD Forms. A few have been deleted. The Table of Contents of this Part has been annotated with the status of all DD Forms previously published in the DAR. Except as may be otherwise indicated in this DoD FAR Supplement, all DD Forms illustrated in this Part may be continued on (a) bond paper, or (b) specially constructed continuation sheets (e.g., DD Form 250c). Continuation sheets shall be annotated in the upper right-hand corner with the number of the form being continued and the serial page number of the total pages being prepared (e.g. page 5 of 15).

Editorial Note: Department of Defense Acquisition Forms are not published in the **Federal Register** or the Code of Federal Regulations. A list containing DoD Form numbers and titles follows 253.270.

Subpart 253.2—Use of Forms

253.270 Use of Forms.

Pending final reorganization of the material that was in DAR Section XVI, that material shall be retained as is and used to the extent that it is not inconsistent with explicit instructions of the FAR or this Supplement.

Editorial Note: Department of Defense Acquisition Forms are not published in the **Federal Register** or the Code of Federal Regulations. For the convenience of the user, the list set forth below includes section numbers, form numbers and titles.

53.303-70-DD-250 DD Form 250: Material Inspection and Receiving Report.
53.303-70-DD-250c DD Form 250c: Material Inspection and Receiving Report—Continuation Sheet.
53.303-70-DD-250-1 DD Form 250-1: Tanker/Barge Material Inspection and Receiving Report.
53.303-70-DD-346 DD Form 346: Raw (Basic Processed) and Semi-Fabricated Stock Form.
53.303-70-DD-347 DD Form 347: Bill of Materials for—Sub-Contracted Parts—Purchased Parts—Government-Furnished Property.
53.303-70-DD-350 DD Form 350: Individual Procurement Action Report.
53.303-70-DD-375 DD Form 375: Production Progress Report.
53.303-70-DD-375c DD Form 375c: Production Progress Report (Continuation).
53.303-70-DD-375-2 DD Form 375-2: Delay in Delivery (Flash Notice).
53.303-70-DD-416 DD Form 416: Purchase Request for Coal, Coke or Briquettes.
53.303-70-DD-428 DD Form 428: Communication Service Authorization.
53.303-70-DD-448 DD Form 448: Military Interdepartmental Purchase Request.
53.303-70-DD-448-2 DD Form 448-2: Acceptance of MIPR.
53.303-70-DD-558-1 DD Form 558-1: Bidder's Mailing List Application Supplement.
53.303-70-DD-879 DD Form 879: Statement of Compliance.
53.303-70-DD-882 DD Form 882: Report of Inventions and Subcontracts (Pursuant to "Patent Rights" Contract Clause).
53.303-70-DD-1057 DD Form 1057: Monthly Procurement Summary of Actions $25,000 or Less.

53.303-70-DD-1114 DD Form 1114: Instructions for Use of Contract Termination Settlement and Inventory Schedule Forms.
53.303-70-DD-1131 DD Form 1131: Cash Collection Voucher.
53.303-70-DD-1149 DD Form 1149: Requisition and Invoice/Shipping Document.
53.303-70-DD-1155 DD Form 1155: Order for Supplies or Services/Request for Quotations.
53.303-70-DD-1155r DD Form 1155r: General Provisions.
53.303-70-DD-1155r-1 DD Form 1155r-1: Reverse of Order for Supplies or Services/Request for Quotations—Foreign.
53.303-70-DD-1155c-1 DD Form 1155c-1: Order for Supplies or Services (Commissary Continuation Sheet).
53.303-70-DD-1342 DD Form 1342: DoD Property Record.
53.303-70-DD-1348 DD Form 1348: DoD Single Line Item Requisition System Document (Manual).
53.303-70-DD-1348m DD Form 1348m: DoD Single Line Item Requisition System Document (Mechanical).
53.303-70-DD-1348-1 DD Form 1348-1: DoD Single Line Item Release/Receipt Document.
53.303-70-DD-1384 DD Form 1384: Transportation Control and Movement Document.
53.303-70-DD-1419 DD Form 1419: DoD Industrial Plant Equipment Requisition.
53.303-70-DD-1423 DD Form 1423: Contract Data Requirement List.
53.303-70-DD-1425 DD Form 1425: Specifications and Standards Requisition.
53.303-70-DD-1473 DD Form 1473: Report Documentation Page.
53.303-70-DD-1484 DD Form 1484: Post-Award Conference Record.
53.303-70-DD-1499 DD Form 1499: Report of Individual Contract Profit Plan.
53.303-70-DD-1507 DD Form 1507: Department of Defense Work Stoppage Report.
53.303-70-DD-1524-5 DD Form 1524-5: Pre-Award Survey of Offeror Part V—Monitor Report.
53.303-70-DD-1535 DD Form 1535: Request/Approval for Authority To Advertise.
53.303-70-DD-1547 DD Form 1547: Weighted Guidelines Profit/Fee Objective.
53.303-70-DD-1564 DD Form 1564: Pre-Award Patent Rights Documentation.
53.303-70-DD-1565 DD Form 1565: Request for Authorization of Additional Classification and Rate.
53.303-70-DD-1566 DD Form 1566: Statement and Acknowledgment.
53.303-70-DD-1567 DD Form 1567: Labor Standards Interview.
53.303-70-DD-1568 DD Form 1568: Labor Standards Investigation Summary Sheet.
53.303-70-DD-1592 DD Form 1592: Contract Cross Reference Data.
53.303-70-DD-1593 DD Form 1593: Contract Administration Completion Record.
53.303-70-DD-1594 DD Form 1594: Contract Completion Statement.
53.303-70-DD-1597 DD Form 1597: Contract Closeout Check-List.
53.303-70-DD-1598 DD Form 1598: Contract Termination Status Report.
53.303-70-DD-1635 DD Form 1635: Plant Clearance Case Register.
53.303-70-DD-1637 DD Form 1637: Notice of Acceptance of Inventory.
53.303-70-DD-1638 DD Form 1638: Report of Excess and Surplus Contractor Inventory.
53.303-70-DD-1639 DD Form 1639: Scrap Warranty.
53.303-70-DD-1640 DD Form 1640: Request for Plant Clearance.
53.303-70-DD-1641 DD Form 1641: Disposal Determination/Approval.
53.303-70-DD-1651 DD Form 1651: Industrial Equipment Modernization Program—Post Analysis Report.
53.303-70-DD-1653 DD Form 1653: Transportation Data for IFBs and RFPs.
53.303-70-DD-1654 DD Form 1654: Evaluation of Transportation Cost Factors.
53.303-70-DD-1659 DD Form 1659: Application for U.S. Government Bill(s) of Lading/Export Traffic Release.
53.303-70-DD-1660 DD Form 1660: Management Control Systems Summary List.
53.303-70-DD-1662 DD Form 1662: Report of Government (DOD) Facilities.
53.303-70-DD-1664 DD Form 1664: Data Item Description.
53.303-70-DD-1665 DD Form 1665: Solicitation, Offer, and Award (Overseas).
53.303-70-DD-1707 DD Form 1707: Information to Offerors or Quoters.
53.303-70-DD-1784 DD Form 1784: Small Purchase Pricing Memorandum.
53.303-70-DD-1861 DD Form 1861: Contract Facilities Capital and Cost of Money.
53.303-70-DD-2025 DD Form 2025: Packaging Change Recommendation/Approval.

SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

PART 270—ACQUISITION OF COMPUTER RESOURCES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

270.000 Scope.

This Part prescribes the policies and procedures for Department of Defense (DoD) and its contractors' acquisition of computers, computer components, software, maintenance services, certain other services, and computer supplies. Separate subparts address acquisition when the procurement authority is vested in the General Services Administration, or is within the provisions of 10 U.S.C. 2315, or when the acquisition does not fall within the scope of either General Services Administration or 10 U.S.C. 2315 authority.

Subpart 270.1—General

270.101 Procurement authorities.

(a) *General Services Administration.* Pub. L. 89-306, 40 U.S.C. 759, authorizes and directs the Administrator of the General Services Administration to provide for the economic and efficient purchase, lease, and maintenance of automatic data processing equipment (ADPE) (see Subpart 270.2) by Federal agencies, subject to the fiscal and policy control of the Office of Management and Budget (OMB). Policies and procedures for acquisitions for which procurement authority is vested in GSA are contained in Subpart 270.3.

(b) *10 U.S.C. 2315.* Section 908 of the DoD Authorization Act, 1982 (Pub. L. 97-86) added Section 2315 to Title 10, United States Code which provides that the provisions of 40 U S.C. 759 are not applicable to DoD procurements of ADPE systems, components, and services if the function, operation or use:

(1) Involves intelligence activities;

(2) Involves cryptologic activities related to national security;

(3) Involves the command and control of military forces;

(4) Involves equipment that is an integral part of a weapon or weapon system; or

(5) Is critical to the direct fulfillment of military or intelligence missions, excluding routine administrative and business applications (including payroll, finance, logistics, and personnel management applications). Policies and procedures for acquisitions under 10 U.S.C. 2315 are contained in Subpart 270.4.

(c) *Other acquisitions of computer resources.* Certain acquisitions do not fall within the scope of either (a) or (b) above. Such acquisitions include computer systems and components, including computer items modified to Government specifications at the time of production, which are specially designed (not configured) to the extent that:

(1) They cannot be used to process a variety of problems or applications; or

(2) They can only be used as an integral part of a non-computer system. In addition, acquisitions by DoD contractors, acquisition of printing services utilizing computer technology, acquisition of computers as an integral part of a non-computer system, and acquisition of computer support services fall within the scope of these "other acquisitions." Policies and procedures for these "other acquisitions" are contained in Subpart 270.6, FAR Part 8.8, or Subpart 270.5.

(d) *Software.* The authority to acquire commercially available software (see 270.200) is vested in the General Services Administration and shall be acquired in accordance with Subpart 270.3 unless within the scope of 10 U.S.C. 2315, in which case the commercially available software shall be acquired in accordance with Subpart 270.4. Acquisitions of all other software shall be in accordance with Subpart 270.5.

Subpart 270.2—Definitions

270.200 Scope of subpart.

The definitions in this subpart apply only to acquisition within the scope of Part 270.

"Automatic Data Processing Equipment (ADPE)" means general purpose, automatic data processing components and the equipment systems created from them, regardless of use, size, capacity or price, that are designed to be applied to the solution or processing of a variety of problems or applications and are not specially designed (rather than configured) for any specific application.

"ADP Fund" means a financing mechanism administered by GSA and which, subject to GSA approval, is available without fiscal year limitation for financing the acquisition of ADPE and related items by lease, purchase, transfer, or otherwise.

"Agency Procurement Request (APR)" means a request by a DoD component for GSA to contract for ADPE, commercially available software, or maintenance services or for GSA to delegate the authority to contract for these items.

"Benchmark" means a problem or series of problems used to evaluate the performance of computers and/or software relative to the contract specifications.

"Computer Equipment" means electronic devices which perform logical, arithmetic, or storage functions through the use of software.

"Commercially Available Software" means software developed at private expense and available in the commercial market through lease or purchase (including licensing arrangements) from a concern representing itself to have ownership and/or marketing rights in the software. Software which is furnished as part of the computer but, is separately priced from the computer, is included in this category.

"Conversion Costs" means those costs that are directly related to the conversion from installed computer resources to replacement computer resources. In addition to project management costs, conversion costs shall include, but are not limited to:

(a) Conversion of the following software by reprogramming, recoding, or translation:

(1) Existing software written in Federal standard or other ANSI standard higher-level language;

(2) Application software written in assembly or other nonstandard languages that will continue to meet essential agency mission needs without redesign, provided that continued use of the nonstandard software can be justified and the file is documented with the justification prior to incorporation into the software conversion study;

(3) Mission-essential application software to be developed for operational use before the replacement is installed (or before commercial computer services are procured), provided the software is written in Federal standard or other ANSI standard languages;

(b) Conversion of data bases, data base design changes, and data base management systems to the extent necessary to permit the continued use of existing application software;

(c) Firmware required solely to permit the continued use of application software;

(d) Site preparation and modifications to installed environmental controls;

(e) Parallel operation of the old system during the conversion process, including offsite data processing support;

(f) Travel and training expenses, including pay and fringe benefits of Government employees during attendance at formal classroom training courses; and

(g) Other general and user expenses directly related to the conversion effort; e.g., conversion planning, preparation and management, additional supplies, and any additional general-purpose software required to support the conversion.

"Delegation of Procurement Authority (DPA)" means a written notification from GSA to a DoD component in response to an APR, granting contracting authority to the DoD component.

"Equipment Technology Update" means an acquisition resulting from an obsolescence review of an ADPE system which establishes that it would be more economic and efficient over the remaining systems life to replace some or all components of that system. This type of acquisition does not necessarily require a current requirements analysis or software conversion study.

"Evaluated Optional Features" means those contractual conditions and technical requirements which are established in the solicitation but which do not have to be bid (offered) in order to be responsive (acceptable). Each evaluated optional feature in the solicitation must reflect its relative value to the Government.

"Maintenance Services" means those examination, testing, repair, or part replacement functions performed to:

(a) Reduce the possibility of malfunction (preventive maintenance);

(b) Correct a malfunction (remedial maintenance); or

(c) Modify in a minor way (field engineering change or field modification).

"Noncompetitive Procurement" means a procurement for which the minimum needs are so restrictive that there is only one known manufacturer capable of satisfying the minimum needs. Included in this type of procurement are:

(a) Sole source procurements; and,

(b) Specific make and model procurements (notwithstanding the fact that there may be more than one bid (offer) thus creating price competition).

"Obsolescence Review" means a review to determine whether existing computer resources are economically or technically obsolete. Indications of economic and technical obsolescence include:

(a) Maintenance service or parts are becoming unavailable or are no longer being provided by the original equipment manufacturer (OEM);

(b) An operating system is or will no longer be supported by the OEM;

(c) Degradation in equipment reliability;

(d) Maintenance costs are accounting for an increasingly greater portion of operating costs;

(e) Energy consumption, including necessary environmental control, is relatively high;

(f) System throughput and processing turn-around are too slow, and flexibility is limited for the mission requirement;

(g) The equipment is two or more production cycles behind the present product line.

"Remote Terminal Emulation" means a means of evaluating the teleprocessing performance of an ADPE system by use of components external to the ADPE system under evaluation. Workload is introduced to the ADPE system by components external to the ADPE system and the performance of the ADPE system is recorded for evaluation to determine the teleprocessing performance of the ADPE system.

"Software" means a series of instructions, in a form acceptable to a

computer, which causes a computer to perform specified operations.

"Software Conversion Study" means a study of the effort and costs required to convert software from the existing computer system to the replacement computer system.

"Specifications" means specifications for the acquisition of computer resources. Such specifications may consist of one or more of the following types:

(a) *Brand-name or equal.* The purchase description refers to one or more specific commercial products identified by brand name and make or model number or other appropriate nomenclature by which such products are offered for sale to the public by the particular manufacturer, producer, or distributor. These purchase descriptions should set forth those salient physical, functional, or other characteristics of the brand name product(s) which are essential to meet the needs of the Government. Prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of the Government in essentially the same manner as those referenced.

(b) *Equipment performance requirements.* A statement of those minimum use output requirements such as the amount of data that needs to be stored or processed within a given time and operational reliability, supplemented to the extent necessary with hardware factors (devoid of as much specific vendor orientation as possible) such as, cycle time, computing speed, tape read and/or write speed, printer speed, size of memory, expandibility (modularity), and related software which are a measure of the operating capability of equipment and which, when applied to the functional specifications, provided a quantitative measure of the operating time and capacity required to process the applications involved on that equipment.

(c) *Functional specifications.* The delineation of the objectives which the system is intended to accomplish and the data processing requirements underlying that accomplishment. A description of the data processing requirements should include a description of the data output and its intended uses, the data input, the data files and record content, the volumes of data, the processing frequencies, timing, and such other factors as may be necessary to provide a full description of the system.

(d) *Plug compatible.* A plug (plug-to-plug) compatible purchase description is similar to a brand name or equal purchase description. The purchase description refers to one or more specific commercial products identified by brand name and make or model number or other appropriate nomenclature and sets forth those salient physical, functional, or other characteristics of the brand name product(s) which are essential to meet the needs of the Government. Unlike an item offered under a brand name or equal purchase description, a plug compatible item need not perform its functions in essentially the same manner as the referenced product; however, it must perform the same functions as the referenced product.

(e) *Specific make and model.* A purchase description under which only a specific manufacturer's make and model (or other appropriate nomenclature by which such products are offered for sale to the public by the particular manufacturer, producer, or distributor) is acceptable.

"Systems or Items Life" means a forecast or projection of the period of time that begins with the installation of the systems or items and ends when the need for such systems or items has terminated. Systems or items life is established by the Government on the basis of requirements and is usually set forth in the solicitation. Systems or items life is not necessarily synonymous with the actual life of the systems or items.

Subpart 270.3—Acquisitions Under General Services Administration (GSA) Authority

270.300 Scope of Subpart.

This Subpart sets forth policies and procedures for contracting by the Department of Defense for automatic data processing equipment, commercially available software, maintenance services, and certain other services and supplies, when procurement authority is vested in the General Services Administration (GSA).

270.301 Policy.

(a) Pub. L. 89-306, 40 U.S.C. 759, authorizes and directs the Administrator of the General Services Administration to provide for the economic and efficient purchase, lease, and maintenance of automatic data processing equipment (ADPE) by Federal agencies, subject to the fiscal and policy control of the Office of Management and Budget (OMB). The statute specifically provides that the authority conferred upon the Administrator of the General Services Administration shall not be construed as to impair or interfere with the determination by agencies of their individual requirements or the use made of ADPE or components thereof by an agency.

(b) The authority cited in (a) above does not extend to those acquisitions described in 270.101 (b) and (c). These acquisitions shall be accomplished in accordance with 270.4 and 270.5.

270.302 Procurement authority.

This Section prescribes the applicable procedures when procurement authority is vested in the General Services Administration.

270.302-1 Application.

When a requirement exists for ADPE, commercially available software, or maintenance services, as defined in 270.2, an Agency Procurement Request (APR) must be submitted to the GSA prior to the initiation of any contract action, unless the requirement meets an exception set forth below. In response to an APR, the GSA may contract or issue a Delegation of Procurement Authority (DPA). For the procedures to be followed in submitting the APR, see 270.303-1. At the option of the DoD Component, abbreviated procedures promulgated by GSA may be substituted for those described herein.

270.303-2 Exceptions.

Contracts may be made without the prior approval of the GSA under the following conditions:

(a) *Automatic data processing equipment.* Except for contracts involving the GSA ADP Fund (see 270.321), excess leased ADPE (see 270.14), or the acquisition of hardware monitors for measuring computer system performance, DoD may contract for ADPE without prior approval of GSA, provided that at least one of the following conditions is met:

(1) The contract will occur by placing a delivery order against an applicable GSA requirements contract;

(2) The contract will occur by placing a delivery order against a GSA Schedule contract, provided that:

(i) The order is placed under the terms and conditions of the contract;

(ii) The order is within the maximum order limitation (MOL) of the applicable contract;

(iii) The total purchase price of the item(s) covered by the order does not exceed $300,000.

(Note: Even though the item(s) are to be rented or leased, the purchase price shall be used to determine if the dollar value of the order falls within the $300,000 threshold); and

(iv) The requirements set forth in 270.314 on the use of GSA Schedule contracts for ADP are met; or

(3) The value of the contract does not exceed:

(i) $2,500,000 purchase price, or $1,000,000 annual rental charge (including attendant maintenance costs) for a competitive procurement;

(ii) $250,000 purchase price, or $100,000 annual rental charge (including attendant maintenance costs) for a noncompetitive procurement.

(4) The acquisition is an "equipment technology update" (see 270.2) action resulting from a comparative cost analysis made in connection with an obsolescence review (see 270.2) if:

(i) The situation reviewed was limited to processing existing workload on installed old technology equipment;

(ii) The resulting technology update capability will not exceed the reviewed old technology capability by more than 50 percent;

(iii) An immediate increase in economy and efficiency can be realized without significant disruption in the continuing satisfaction of the need; and

(iv) Either (A) no new, replacement, or augmented equipment system is known or planned beyond the existing system life for the reviewed ADP equipment system or (B) a new, replacement, or augmented equipment system has been identified and is definitively planned for acquisition action on a competitive basis, but the contract award will be far enough in the future to allow significant economy and efficiency to be realized in the interim period.

(b) *Software.* After compliance with 270.1304, DoD may contract for commercially available software, including software performance monitoring packages, for use with ADPE without approval of GSA or the Federal Computer Performance Evaluation and Simulation Center (FEDSIM), provided that at least one of the following conditions is met:

(1) The contract will occur by placing a delivery order against an applicable GSA requirements contract;

(2) The contract will occur by placing a delivery order against an applicable nonmandatory GSA Schedule contract under the terms and conditions of that contract;

(3) The procurement is to be made by normal solicitation procedures and the total value of the procurement, for the specific software package(s), does not exceed:

(i) $1,000,000 for competitive acquisitions; or

(ii) $100,000 for noncompetitive acquisitions; or

(4) The software is provided with and is not separately priced from the ADPE.

(c) *Maintenance services.* The DoD may contract for maintenance services without approval of GSA when:

(1) Such services are available under the terms and conditions of an applicable GSA Schedule contract; or

(2) The maintenance charges do not exceed $1,000,000 annually for a competitive procurement, or $100,000 annually for a noncompetitive procurement.

(d) *Services.* GSA approval is not required for other services.

270.303 Contracting procedures.

This section sets forth the procedures for performing contracting when procurement authority is vested in the GSA. Prior to issuance of the solicitation, the contracting officer shall insure that a DPA has been obtained, or that the acquisition falls within one of the exceptions.

270.303-1 Submission(s) of agency procurement requests (APR).

If it is determined that the conditions of the contemplated contracting action are not covered by the blanket delegation of contracting authority provisions of 270.302, or if the conditions of the action change during the contracting process so that those provisions become inapplicable, two copies of the APR and other applicable documents shall be forwarded to the General Services Administration (KMA), Washington, DC 20405. The APR shall be signed by an official who has been authorized to initiate the acquisition action. In addition, the APR shall contain the name and telephone number of an individual within the DoD Component who shall act as the point of contact for GSA. The APR shall include, as applicable:

(a) *DoD component information.* DoD Component name, address, names and telephone numbers of appropriate officials.

(b) *Project title and description.*

(1) Name or designation of the ADPE system.

(2) Description of the requirement. Indicate whether it is a new, an addition to, or a modification of a current ADPE system.

(3) Estimated system/item life.

(4) Estimated system/item life cost.

(5) Locations (city and state) which require user access to the ADPE system or where the equipment is to be installed, if appropriate.

(6) Fiscal year and quarter during which the solicitation is expected to be released.

(7) Expected contract award date.

(c) *Contracting action planning.*

(1) Budgeted value of the acquisition in the request to OMB, indicating whether implicitly or explicitly described, including fiscal year involved.

(2) A summary of the alternatives considered to meet the requirement, the related costs and the basis for the alternative(s) selected.

(3) If the GSA Teleprocessing Services Program (TSP) is used as the source of supply, indicate the contracting arrangement contemplated (Multiple Award Schedule (MAS) or Basic Agreement (B/A), and type (full, interactive, or remote batch)).

(4) Conclusions of the performance evaluation for the currently installed ADPE system, when applicable.

(5) A statement that available resources have been screened and none are available to satisfy the requirement.

(6) Documentation regarding telecommunications, when applicable.

(7) Conclusions of the software conversion study, when applicable.

(8) Unique software, maintenance, and support requirements, if any.

(9) Evidence that site construction/modification by GSA is or is not required. One of the following statements shall be used for this purpose:

(i) The acquisition of this equipment will not require site construction or modification by GSA; or

(ii) The acquisition of this equipment will require site construction/modification by GSA which must be completed by (*date*) and notification and information, as applicable, has been/will be submitted to GSA on (*date*).

(10) One of the following statements regarding the Privacy Act of 1974:

(i) Equipment or services identified by this request will not be used to operate a system of records on individuals to accomplish an agency function.

(ii) Equipment or services identified by this request will be used to operate a system of records on individuals to accomplish an agency function and all applicable provisions of the Privacy Act have been complied with.

(11) A brief description of the primary agency programs that the equipment or services will support.

(12) Computer security requirements, where applicable, as certified by the responsible official.

(d) *Acquisition strategy.*

(1) Description of conversion management planning actions.

(2) Type of specification.

(3) The basis and documentation to support the use of brand name or equal, plug compatible, or specific make and

model specification, when applicable (see 270.2).

(4) The basis and documentation to support a contemplated noncompetitive action, when applicable. Specifically, the justification must address:

(i) The critical service, unique features, or mandatory requirements dictated by the intended use that limits the acquisition to a noncompetitive procurement (the overriding necessity of these competition-limiting requirements shall be clearly identified);

(ii) The steps taken which led to the conclusion that no other known or probable source of supply exists; and

(iii) The factors which preclude the development of specifications or the determination of the requirement in a form suitable for competition.

(5) The documentation to support a dedicated teleprocessing system strategy, when applicable.

(6) If the GSA TSP is used as the source of supply, source selection information, as follows:

(i) List of requirements (mandatory and evaluated optional features, if any);

(ii) Other elements to be evaluated;

(iii) Summary description of any benchmark and the method for developing cost information from the benchmark results, or a description of how cost information will be determined if a benchmark is not used; and

(iv) The method to be used for combining all cost elements to determine the lowest overall system-life cost.

(7) If remote terminal emulation is to be used, provide justification as set forth in 270.320.

(e) *Exceptions or deviations.* Provide a statement that all applicable regulations have been reviewed and complied with, or identify and justify deviations.

(f) *Remarks.* Provide additional information concerning any of the above items or other special conditions associated with the action deemed necessary for understanding of the APR.

(g) *References.* Provide references to relevant past GSA authorizations, meetings, telephone discussions, etc.

(h) *Supplemental submissions.* If, prior to award, the requirement or any of the contract planning or strategy elements of an APR change materially from data submitted in the APR, irrespective of whether before or after authorization is received from GSA to proceed, promptly provide a supplementary APR submission to GSA containing pertinent information and referencing the basic APR.

270.303-2 GSA action on APR.

(a) After review of the APR and the documentation submitted, and subject to the right of the DoD Component to determine its individual ADPE, commercially available software, and maintenance requirements, including the development of specifications for and the selection of the types and configurations of equipment needed, the Assistant Administrator for Information Resources Management, GSA or his designee, will:

(1) Delegate to the DoD Component authority to contract;

(2) Delegate to the DoD Component the authority to contract and provide for GSA participation in the contracting to the extent deemed necessary under the circumstances; or

(3) Provide for the contracting by GSA, or otherwise obtain the requirement on behalf of the DoD Component.

(b) A copy of the APR and the GSA response and other related documentation prescribed by the DoD Component shall be made a part of the contract file. Action will be taken by GSA within 20 workdays after receipt of full information contained in an APR or supplement thereto. Upon expiration of this 20-workday period, plus 5 calendar days for mail lag, the DoD Component may proceed with the acquisition as if a DPA had, in fact, been granted. This 20-workday period is subject to written modification by GSA in the event that, after review of the APR data, it is found not to contain the full information required. To establish a common understanding of the 20-workday period, GSA will provide written vertification within this period that identifies the date of receipt of the APR or supplemental data. In the event that unusual circumstances surrounding the acquisition dictate that a longer period of time is required for GSA to complete its appraisal, it will so notify the DoD Component and, under these circumstances, the automatic DPA rule shall not apply.

(c) APR submissions to GSA are not required to exercise a renewal option within the systems life of a previous authorization.

(d) Changes within the scope of a change provision in the contract do not require an additional DPA (including purchase orders under the Multiple Award Schedule (MAS) or contracts using the Basic Agreement (B/A) in the TSP). Any changes shall be within the systems life of the requirement as specified in the APR. A new DPA is required when requirements exceed the contract quantities (including options) by more than 25 percent.

270.303-3 GSA contracting for DoD.

When GSA acquires ADPE or related items for DoD, the contracting is a joint endeavor. In this case the DoD Component shall:

(a) Submit documentation to GSA including the requirement, systems or items life, the technical specification, and justification to support negotiated contracting;

(b) Prepare the technical portion of the solicitation and define any unique requirements;

(c) Provide necessary technical personnel (and contracting personnel, if desired) as members of the contract negotiating team;

(d) Prepare a selection plan and submit it to the GSA contracting officer prior to issuance of the solicitation;

(e) Evaluate proposals from a technical point of view and arrange for offerors' oral presentations, when appropriate;

(f) Provide copies of correspondence to the GSA contracting officer when authorized to communicate directly with offerors;

(g) Determine the technical capability of the items offered to meet the requiring activity's requirements, technical specifications, and systems or items life. This responsibility shall include the determination of whether the proposals are technically acceptable or unacceptable. The results of these determinations shall be transmitted to the GSA contracting officer to enable the contracting officer to take appropriate action with the offerors;

(h) Select the lowest overall cost item(s) and transmit this information with the necessary supporting documentation to the GSA contracting officer. In the event a conclusive judgment cannot be made on the basis of lowest overall cost, a determination and findings to this effect shall be prepared before any other factors are used as a basis for selection;

(i) Provide the following administrative information to the GSA contracting officer along with the data required in (h) above:

(1) Finance data (e.g., paying office, and fund citation);

(2) Contract distribution list and addresses; and

(3) Identity of the successor contracting office.

(j) Assist the GSA contracting officer in debriefing offerors, when debriefings are requested;

(k) If required, place the delivery order(s);

(l) Accomplish any other task not included above which will further the joint contracting objective or expedite

completion of the contract action at the DoD Component's discretion and with GSA concurrence; and

(m) Administer the contract in accordance with the terms and conditions thereof.

270.304 Small purchases.

The provisions of Part 213 apply when the aggregate amount of any one requirement for ADPE, commercially available software, or maintenance services does not exceed $25,000 annually. ADP schedule contracts may be used to procure FSC Group 70 items.

270.305 Restrictions on the use of simulation in the ADPE contracting process.

(a) Data structured for simulation purposes shall not be the only means of describing data processing requirements in solicitation documents. Simulation data shall be accompanied by a narrative description of the objectives, workload, and any available application logic diagrams.

(b) Solicitation documents should not be structured in such a way as to require offerors to use a specific computer system simulator in order to submit their offers. When offerors submit computer simulation as part of their offers, they shall be required to describe clearly the simulation use and the make and model of the computer on which the simulation was run.

(c) Offers should not be considered nonresponsive or unacceptable solely on the basis of simulation results.

(d) Procedures for simulation and computer performance evaluation services are prescribed in Departmental procedures.

270.306 Publicizing contract actions.

(a) To ensure that appropriate competition is obtained, synopses of proposed contracts for ADPE, commercially available software, and maintenance services shall be publicized in the Commerce Business Daily (CBD) in accordance with the provisions of FAR Part 5. Notwithstanding the exception under FAR 5.202, a requirement which may result in an order against a GSA ADP Schedule contract shall be synopsized in accordance with 270.314 and 270.315.

(b) The GSA centralized Bidders Mailing List (BML) for Federal Supply Classification (FSC) Group 70 may be used for competitive ADPE and commercially available software and maintenance service acquisitions. DoD Components may obtain the GSA BML by a written request to the General Services Administration (8BR), Building 41, Denver Federal Center, Denver, Colorado 80225. The request shall include the applicable class and BML code number(s), listed below:

7010–0001 ADPE Configuration
7020–0001 ADP Central Processing Unit (CPU, Computer), Analog
7021–0001 ADP Central Processing Unit (CPU, Computer), Digital
7022–0001 ADP Central Processing Unit (CPU, Computer), Hybrid
7025–0001 Memory-Magnetic Storage
7025–0002 Magnetic Tape Subsystems
7025–0003 Magnetic Disk Subsystems
7025–0004 Printers, High Speed (ADP)
7025–0005 Paper Tape Devices
7025–0007 Interactive Display
7025–0008 Interactive Graphics
7025–0009 Interactive Hard Copy
7025–0010 Other ADP Input/Output and Storage Devices
7030–0001 ADP Software—Operating System
7030–0002 ADP Software—Application Programs
7030–0003 ADP Software—Data Base Management Programs
7030–0004 Other ADP Software
7035–0001 ADP Accessorial Equipment
7040–0001 Punched Card Equipment
7045–0002 ADP Support Equipment
7050–0001 ADP Components

The GSA BML may be used for subsequent contracting for items in the class and BML code, provided the solicitation is released to industry within 90 days following receipt of the BML in question.

(c) 41 CFR 150 shall be cited as the authority for the request. For further information concerning the above classes, DoD Components should contact General Services Administration (KEC), Washington, DC 20405.

(d) To contract for ADP maintenance services, agencies may obtain the GSA BML for Standard Industrial Group 0739, BML Code 4, by written request to the addressee indicated in (b) above. 41 CFR 150 shall be cited as the authority for requesting the BML.

(e) Maximum advantages shall be taken of the latest technological advances in the ADPE field to ensure that the Government's needs are met at the lowest overall cost. To encourage industry to offer proposals which permit the Government to take full advantage of technology and to ensure that specifications are clear and complete, DoD Components may provide proposed specifications to industry for comment prior to formal solicitation. A copy should be furnished to all prospective offerors scheduled to receive the solicitation. Industry should be given a minimum of 30 calendar days to submit written comments and at least 60 days for complex acquisitions. Comments and the disposition thereof shall be retained in the contract file.

270.307 Evaluation factors.

(a) Solicitations shall identify all factors, including conversion costs, that will be considered in the evaluation of offers. The evaluation factors shall be applied to the mandatory technical requirements and the evaluated optional features (e.g., specific software packages, compatible input-output devices), where applicable. Where evaluated optional features are included in a solicitation, their value to the Government shall be expressed in dollars, points, or any other reasonable indicator as an evaluation factor.

(b) While acquisition price is usually considered to be the most significant factor, the circumstances of a particular acquisition may require that other additional factors be taken into consideration. These include, but are not limited to:

(1) Technical approach;

(2) Previous experience in complex acquisitions;

(3) Management organization;

(4) Prior success at satisfying technical and delivery requirements;

(5) Post-award support capability;

(6) Ability to deliver technologically current software; and

(7) Maintenance costs.

Contracting officers shall ensure that these and all other relevant factors, as required by other parts of this Subpart, are expressly stated in the solicitation.

(c) Unless waived in accordance with Departmental procedures and subject to the type of funds available (e.g., O&M, Procurement, etc.), the contracting officer shall solicit and evaluate, over the projected systems life, all forms of financing an acquisition. These include:

(1) Purchase.

(2) Lease: vendor retains title to the items throughout system's life.

(3) Lease With Option to Purchase (LWOP): the Government leases items with options to purchase at a later date.

(4) Lease to Ownership Plan: the Government leases items for a specified period in accordance with applicable funding statutes after which lease payments cease and title is transferred to the Government. When solicitation of these various financing methods is appropriate, offerors may submit any or all of them. The contract file shall be documented with the results of the analysis performed on the financing methods received.

(d) Other factors to be considered in evaluating proposals include:

(1) Residual value of purchased ADPE at the conclusion of systems life.

(2) Present value of money (discounted for the systems life) in

accordance with procedures established by the DoD Components.

270.308 Commercially available software contracts.

When acquiring commercially available software, contracting officers should have the following objectives:

(a) Avoid restrictive clauses that limit the use of the software to a specific system, installation, or organization;

(b) Incorporate a clause that will permit other Government agencies to obtain the software under the contract being negotiated;

(c) Obtain additional quantity discounts should any other Government agency acquire the same software under the contract; and

(d) Ensure that the contractor is contractually obligated to support and maintain the software in subsequent years.

270.309 Determination of selection factors.

The prices offered for the systems or items life and conversion costs, whether based on prices offered or a Government estimate, shall be included in determining the lowest overall cost. The following are examples of other factors to be considered:

(a) Economic benefits clearly attributable to increased productivity.

(b) Direct savings that would accrue from the release of rented ADPE, discontinuance of services, or reduction in energy or telecommunications costs.

(c) Indirect savings derived from reductions in other than ADPE or services cost, such as space and/or personnel support expenses.

(d) Benefits from implementing new applications which otherwise would have to be deferred.

(e) Economic advantages resulting from providing the capability to accommodate projected increases in workload without contracting for further augmentation, replacement of the ADPE, or acquisition services.

(f) Potential savings due to the availability of software already developed and available from the Federal inventory or commercial marketplace that could be used to meet additional requirements.

(g) Proven reliability of the equipment and operating system software in similar operating environments.

(h) The continued availability of operating system software support and maintenance services beyond the initial system/item life that would enhance the probability of reutilization of the ADPE within the Government.

(i) The potential for supporting other agencies through the ADP sharing program.

270.310 Contract clauses.

In addition to the other clauses required by the FAR on the DoD FAR Supplement, the clauses prescribed below shall be used in all solicitations and contracts for ADP equipment, software and maintenance services and certain other services for which GSA has delegated procurement authority either by DPA or by regulation.

(a) *Warranty exclusion and limitation of damages.*

The contracting officer shall insert the clause at 252.270–7000, Warranty Exclusion and Limitation of Damages, in solicitations and contracts for ADP equipment, commercially available software, maintenance, and related supplies, unless the contracting officer determines that a higher degree of protection is in the best interest of the Government.

(b) *Contractor representation.*

The contracting officer shall insert the clause at 252.270–7001, Contractor Representation, in solicitations and contracts for ADP equipment items or systems when the Government's requirement is set forth in whole or part by functional specifications and the contract amount is expected to exceed $100,000.

(c) *Fixed-price options.*

(1) The use of option(s) to extend the contract period and/or to acquire additional quantities may be in the best interest of the Government when the conditions of FAR 17.206 are met. The evaluation of options motivates price competition on a system/item life basis and eliminates the long-term effects of a buy-in. One-time charges (startup and other nonrecurring costs), such as documentation, manuals, initial training requirements, etc., may be significant for a particular solicitation. An offeror may intend to absorb some portion of these costs or may plan to recover (amortize) them in possible "follow-on" awards. Incumbent offerors could enjoy a competitive advantage since it may not be necessary to recover them in a single contract. In addition, offerors with relatively broader markets and/or stronger financial resources tend to have greater flexibility with respect to any one individual procurement action. The evaluation of system/item life prices promotes greater competition by evening out these advantages and encourages lower system/item life pricing.

(2) *Separate charges.*

(i) When considering options, care should be exercised in making the distinction between: (A) Discontinuance charges (i.e., termination settlement compensation including negotiated contractual payment provisions) for discontinuance during the initial contract period or during an exercised option period, (B) separate charges for the Government's failure to exercise an option to extend the contract term or to acquire additional quantities, and (C) contracting for evaluated optional features, which is outside the scope of this subsection.

(ii) A payment that reflects the addition of a separate charge to a contract price is illegal if the charge, when added to the contract price, exceeds the amount that reasonably represents the value of bona fide fiscal year requirements. (See 31 U.S.C. 665a, 31 U.S.C. 712a, and 41 U.S.C. 11.) To preclude the payment of these illegal charges (because of the nonexercise of options), when options are to be incorporated into a contract, separate charges in any form shall not be solicited and offers containing any charges for the Government's failure to exercise any option will be rejected as provided by the clause entitled "Fixed-Price Options" prescribed below.

(3) *Discontinuance of lease/rental of equipment or software.* When the Fixed-Price Options clause is used, the Government and the contractor may find it mutually advantageous to incorporate a special provision containing specific notice and settlement terms to cover discontinuance of rental of equipment or software during the contract period. The clause entitled "Discontinuance of Rental and Repricing" (see example at 252.270–7006) may be used for this purpose. The special "Discontinuance of Rental and Repricing" clause provides notice of discontinuance and settlement payment terms. A means is provided to determine those charges within a ceiling that ensures that the value of the discontinued requirement and the contract value of the requirement for the revised contract period are reasonable. It provides the opportunity for a lower price by covering the risk of discontinuance with specified repricing provisions. Neither the incorporation of this clause in the contract nor the calculation and comparison of potential discontinuance charges shall be considered an evaluation factor.

(4) The contracting officer shall insert the clause at 252.270–7002, Fixed-Price Options, in solicitations and contracts when a fixed-price contract is contemplated; the solicitation is for ADP equipment, commercially available software, or maintenance services

requirements that will extend beyond the initial fiscal year; and an option to extend the contract period and/or to acquire additional quantities may be in the best interests of the Government. When the Fixed-Price Options clause is used, the solicitation shall also specify:

(i) The system/item life;

(ii) The present-value-methodology, including payment schedule, that will be used for purposes of award evaluation; and

(iii) The option periods of performance and option quantities, as appropriate.

(d) *Options to extend the term of the contract.* The contracting officer shall insert the clause at 252.270–7003, Option to Extend the Term of the Contract, in solicitations and contracts when the clause at 252.270–7002, Fixed-Price Options, is used.

(f) *Options for increased quantities.* The contracting officer shall insert the clause at 252.270–7004, Option for Increased Quantities, in solicitations and contracts when the solicitation includes the provision at 252.270–7002, Fixed-Price Options, and the known requirements exceed the basic quantity to be awarded (also see FAR 17.2).

(g) *Discontinuance repricing.* The contracting officer may insert the provision at 252.270–7005, Discontinuance Repricing, in solicitations when a fixed-price contract is contemplated and conditions in 270.310(c)(3) are applicable. The provision contains boxes that provide the offeror an election to agree to or decline the inclusion of the clause at 252.270–7006, Discontinuance of Rental and Repricing.

(h) *Discontinuance of rental and repricing.* The contracting officer shall insert the clause at 252.270–7006, Discontinuance of Rental and Repricing, when the solicitation includes the provision at 252.270–7005, Discontinuance Repricing (also see 270.310(c)(3)).

270.311 Use of GSA regional support services contracts.

GSA establishes and makes available for the use of other agencies a variety of regional ADP support services contracts. These contracts may include such areas as software development and programming, production of computer-output microfilm, and data entry. DoD Components should consult with their GSA/OIRM regional office to determine the scope and availability of these contracts. These sources of supply should be used if it is determined that they will meet the user's need at the lowest overall cost, price and other factors considered. The following information is generally descriptive of these contracts:

(a) These regional requirements contracts are mandatory for the GSA and the contractor. They are optional for use by DoD Components whose requirements fall within the scope of these contracts.

(b) DoD Components that wish to use these contracts have the responsibility to develop, jointly with GSA regional personnel, a statement of their work and deliverables. The GSA regional personnel serve as contract administrators on the contracts.

(c) Task orders are negotiated by GSA and the Component with vendors based upon services and deliverables specified by the requesting component. GSA contract administrators ensure that contract provisions are met and services are delivered as negotiated.

(d) DoD Components reimburse GSA through the ADP Fund for services received under the requirements contracts.

270.312 Contracting for ADP supplies.

ADP supplies shall be contracted for in accordance with the following procedures:

(a) EDP tape and instrumentation tape—the provisions of FAR 8.404 apply.

(b) Tabulating machine cards—the provisions of FAR 8.404 apply.

(c) Marginally punched continuous forms—the provisions of FAR 8.802 apply.

(d) Other ADP supplies—the provisions of FAR 8.404 apply in the event the supplies are included in either mandatory or nonmandatory Federal Supply Schedules.

270.313 Use of GSA schedule contracts for certain ADP related equipment.

Certain specific key-strike function-limited office information resources equipment, not defined as ADPE, is available under GSA nonmandatory ADP schedule contracts. The provisions of 270.314 apply to these equipment items classified under Federal Supply Classification (FSC) 7435, except that a DAP is not required.

270.314 GSA nonmandatory schedule contracts.

A large number of items of ADPE, commercially available software, and maintenance service are available under nonmandatory GSA Schedule contracts, subject to the following:

(a) *General.* When a nonmandatory schedule contract is used, a specific Delegation of Procurement Authority from GSA is not required even though the order may be for a noncompetitive requirement; however, the existence of nonmandatory ADP Schedule contracts shall not eliminate the requirement for maximum practicable competition in acquiring ADPE, commercially available software or maintenance services. Requirements shall be synopsized in accordance with 270.315 (also see FAR part 5). Also, the availability of items under ADP Schedule contracts shall not detract from acquiring the items, including peripheral equipment or items for augmenting an existing system, from a number of different sources if this action is in the best interest of the Government. Suitable equipment must be considered whether or not this equipment is on an ADP Schedule contract. All schedule contracts that might satisfy the requirement shall be considered; or, the acquiring activity may choose to prepare a solicitation to secure goods or services at lower overall costs to the Government. Costs of the contracting process should be considered. If ADPE, commercially available software or maintenance services are acquired under an ADP Schedule at other than the lowest delivered price available for identical or similar items under any other ADP Schedule contract, DoD Components shall justify the action and retain the justification and supporting data in the contract file. The following are examples of factors that may be used in support of such justifications:

(1) Special features of one item, not provided by comparable items, are required for effective program performance.

(2) An actual need exists for special characteristics to accomplish identified tasks.

(3) It is essential that the item selected be compatible with items or systems already being used.

(4) Time of delivery in terms of actual need cannot be met by a contractor offering a lower price.

(5) Greater maintenance availability, lower overall maintenance costs, or the elimination of problems anticipated with respect to machines or systems, especially at isolated use points, will produce savings in the long run which are greater than the difference in prices.

(b) *Initial acquisition of ADPE.* Whether for purchase, lease or rental, orders for ADPE may be placed under ADP Schedule contracts, provided that:

(1) The purchase price of the items covered (even though they are rented or leased) does not exceed $300,000; and

(2) The intent to place an order with a purchase value in excess of $50,000, excluding maintenance, is synopsized in the CBD at least 15 calendar days before placing the order and the contract file is

documented with the results of the synopsis. If a written response is received from responsible sources that desire to compete on the requirement, the file also shall be documented with evidence that use of the selected ADP Schedule contract, including the method of financing (e.g., purchase, lease) is the lowest overall cost alternative, price and other factors considered. This process may require the issuance of a formal solicitation.

(c) *Continued lease or rental of installed ADPE and software.* GSA Schedule contracts may be used for the continued lease or rental of installed equipment and software, provided that:

(1) A DPA is obtained before issuing the annual renewal if the ADP Schedule purchase price exceeds $300,000 and the synopsis results indicate that equipment is available from a source other than the schedule contract. If the original requirement was evaluated and priced on a systems life basis (i.e., if the price of successive renewals was considered as an evaluated cost in the original acquisition selection), then renewals of installed equipment under an extended rental plan during the originally planned systems life do not require synopsizing or a DPA from GSA.

(d) *Conversion from lease to purchase of installed ADPE.* A specific delegation of procurement authority must be obtained from GSA before issuing an order to purchase ADPE with a net purchase order price of more than $300,000 when identical, i.e., specific make and model, or suitable substitute equipment is available from a source other than the schedule contractor. Requirements shall be synopsized for a least 15 calender days if the net value of the purchase option exceeds $50,000.

(e) *Acquisition of commercially available software and maintenance services.* Orders may be issued for these services, provided that the contract file supports use of the Schedule contract as being in the best of interest of the Government. Requirements shall be synopsized when the annual charges exceed $50,000.

270.315 Synopsis of GSA schedule actions.

(a) As a minimum, the synopsis shall include the description of the item(s) required, quantity, delivery date and location, period of lease/rental, if applicable, and any other information to assist vendors in responding to the synopsis. The synopsis shall indicate that no contract award will be made on the basis of quotation/proposals or other information received in response to the notice since the synopsis of intent to place a delivery order against a schedule contract cannot be considered a request for quotations/proposals. If, however, the only responses to a CBD notice of intent to place such an order are from vendors offering use of their schedule contracts, and technical acceptability can be established by examination of contractor literature, then the contracting officer may place a delivery order in accordance with 270.314.

(b) the schedule order synopsis technique provides DoD Components with both the GSA negotiated schedule prices (derived from discounting prices in the competitive commercial marketplace) and additional product and cost information as might be submitted by offerors in response to the CBD notification. It is critical that the synopsis process, if used to determine the feasibility of placing a delivery order against an ADP Schedule contract, elicit sufficient information for the contracting officer to determine the need to prepare a formal solicitation. If responses indicate that soliciting is desirable or required, the contracting officer:

(i) If solicitation is for the purpose of comparing proposals with ADP Schedule contracts, *shall ensure* that terms and conditions of the solicitation are substantially the same as those contained in the Schedule contract(s) contemplated for use. The vendor(s) having the ADP Schedule contract(s) shall be included as an addressee(s) of the solicitation since it often is interested in furnishing required items by use of locally awarded contracts. This procedure will permit the vendor(s) to further discount Schedule prices since GSA does not consider this to be a price reduction requiring subsequent adjustment of prices listed in the Schedule contract(s) for all future users.

(ii) *Shall evaluate* offers and ADP Schedule contracts equally. Some offerors may not accept solicitation terms and conditions similar to those that schedule vendors have incorporated into their GSA contracts. The contracting officer shall act in a manner most advantageous to the Government by either awarding a contract or placing an order against a GSA ADP Schedule contract. The contract file shall be documented to justify the action taken.

270.316 Use of GSA ADP requirements contracts.

GSA makes selected ADPE and commercially available software available through requirements contracts. When ADPE and software which satisfy requirements are available from GSA requirements contracts, this source shall be the primary source of supply in accordance with the provisions of the contract. Copies of the contracts are distributed to recipients of the GSA ADP Schedule for FSC Group 70, Part 1. Additional copies are available from the General Services Administration (8BR), Building 41, Denver Federal Center, Denver, Colorado 80225. Some of these requirements contracts specify that GSA is responsible for the allocation of ADPE or software. In these cases, authorization shall be obtained from GSA (KED), Washington, DC 20405, before placing an order. ADPE or commercially available software which is functionally similar to that on a requirements contract shall not be acquired from another source until the activity (a) documents the contract file as to why the requirements contract could not be used, and (b) obtains a delegation of procurement authority from GSA, unless the contract is within the exceptions noted.

270.317 Compatibility-limited requirements.

(a) Unless demonstrated by other circumstances, a requirement for an augmentation or replacement acquisition that is limited to ADPE and/or software compatible with the installed system shall be:

(1) Supported by a software conversion study (see 270.318), as applicable;

(2) Justified on the basis of mission-essential data processing requirements, and economy and efficiency; and

(3) Acquired in accordance with the requirements of this subpart.

(b) Compatibility-limited requirements tend to restrict competition and, therefore, shall not be made mandatory solely for reasons of economy or efficiency. When conversion and other costs associated with acquiring noncompatible offers from responsible offerors that will meet the requirement at the lowest overall cost, price and other factors considered, the evaluation shall determine if acquisition of compatible systems is most advantageous to the Government. Solicitation of noncompatible offers can be restricted under an equipment technology update justified by an obsolescence review (see 270.2).

(c) The following factors shall be considered in determining whether the incorporation of compatibility-limited requirements is justified for the replacement acquisition:

(1) The essentiality of existing software, without redesign, to meet critical mission needs. For example, the continuity of operations may be so

critical that conversion is not a viable alternative.

(2) The additional risk associated with conversion if compatibility-limited specifications are not used and the extent to which the Government would be injured, financially or otherwise, if the conversion to the new ADP system fails.

(3) The additional adverse impact of factors such as delay, lost economic opportunity, and less than optimum utilization of skilled professionals if compatibility-limited specifications are not used.

(4) The steps being taken to foster competitive conditions on the augmentation or replacement acquisition.

(5) The off-loading of selected applications programs to commercial data processing service facilities as an alternative to conversion.

(6) The extent of essential parallel operations, i.e., need to continue operations of the old system in parallel with the new system until it can fully support the mission needs.

(7) The continuation of ADP services for selected application programs with the present commercial ADP services contractor as an alternative to conversion of all programs in the present ADPE resource system.

(8) The feasibility of competing conversion requirements to be performed on a guaranteed basis under a competitive solicitation that couples the conversion effort and ADP services in a single contract, including consideration of the basis for and calculation of liquidated damages provisions for conversion performance failure.

(d) The justification that supports the use of compatibility-limited specifications (i.e., plug-compatible or brand name or equal purchase descriptions) shall be submitted with the APR in accordance with 270.303–1 when the use of these specifications is contemplated.

270.318 Software conversion studies.

(a) Software conversion studies are performed to ensure that the user's needs are met at the lowest overall cost, price and other factors considered. This includes cost and other factors associated with conversion activities. A software conversion study is not required when one of the following conditions exists:

(1) Initial acquisition where no software currently exists;

(2) Acquisition of computer peripherals only;

(3) Exercise of a purchase option under a lease; or

(4) Acquisition of a compatibility-limited replacement system as the result of a comparative cost analysis made in connection with an obsolescence review.

(b) A software conversion study shall be made for each augmentation or replacement ADPE acquisition when either one of the two following conditions exists:

(1) The estimated purchase price of the equipment system or the estimated system life cost is expected to exceed $2,500,000; or

(2) The cost of conversion is to be used as the primary justificaton for a noncompetitive requirement when the estimated value of the acquisition exceeds $300,000.

(c) A DoD component may elect to conduct its own comprehensive software conversion study, use contractual sources to accomplish the study, or request the GSA Federal Conversion Support Center (FCSC) to perform the study.

(d) The software conversion study shall be included in the contract file and shall be submitted with the APR to GSA.

(e) When contracting for a software conversion study, the statement of work shall provide the following as a minimum:

(1) Problem definition;

(2) Inventory of current system components;

(3) Description of the operating system environment;

(4) Inventory of application programs and data files to be converted;

(5) Feasible equipment contracting approaches (including acquiring plug-compatible or noncompatible equipment, as appropriate) with schedules for both the acquisition and conversion effort;

(6) General description of the target environment, including system hardware and software, performance requirements, and any constraints on the functional definition of the requirement;

(7) If applicable, approach to accomplish any eventual conversion; and

(8) A requirement for the contractor to recommend actions to be taken to reduce cost and risk in any future conversions.

(f) Studies for acquisitions below the thresholds stated in 270.318(b) above shall be based on Government estimates determined in accordance with Departmental procedures. The contract file shall be documented to record the estimates and the method of computation.

(g) Costs directly related to the conversion of the installed ADPE, software, data bases, files, and telecommunications software to the replacement system, and project management costs, shall include, but are not limited to:

(1) Conversion of the following software by reprogramming, recoding or translation:

(i) Existing software written in Federal standard or other ANSI standard higher-level language;

(ii) Application software written in assembly or other nonstandard languages that will continue to meet essential mission needs without redesign, provided that continued use of the nonstandard software can be justified and the file documented with the justification prior to incorporation into the software conversion study;

(iii) Mission-essential application software to be developed for operational use before the replacement is installed (or before commercial ADP services are procured), provided that the software is written in Federal standard or other ANSI standard language.

(2) Conversion of data bases, data base design changes, and data base management systems to the extent necessary to permit the continued use of existing application software;

(3) Firmware required solely to permit the continued use of application software;

(4) Site preparation and modifications to installed environmental controls;

(5) Parallel operation of the old system during the conversion process, including off-site data processing support;

(6) Travel and training expenses, including pay and fringe benefits of Government employees during attendance at formal classroom training courses; and

(7) Other general and user expenses directly related to the conversion effort; e.g., conversion planning, preparation and management supplies, and any additional general-purpose software required to support the conversion.

(h) The useful life of application software is limited by changes in data processing requirements, operating system software, and equipment technology. Generally, the life expectancy of this software, without redesign or reprogramming, is in the range of 5 to 10 years. Accordingly, the updating of application software for these reasons must be considered regardless of whether these programs are converted from one ADPE system architecture to another. The costs incurred for the redesign of application software in technology updating are not bona fide conversion costs and they

shall not be evaluated as such. These technology updating costs include:

(1) The conversion of existing software, data bases which are to be redesigned;

(2) Purging duplicate or obsolete software, data bases, and files;

(3) Development of documentation for existing application software; and

(4) Improvements in management and operating procedures.

(i) Standard cost factors, such as those contained in the OMB Cost Comparison Handbook (Supplement No. 1 to OMB Circular A-76), shall be used to the maximum practicable extent in preparing conversion cost studies and estimates. These cost factors may be supplemented by industry or Component-developed cost factors, as necessary.

270.319 Use of benchmarks in low-dollar ADPE systems acquisitions.

(a) Mandatory benchmarks shall not be used in solicitations for ADPE systems with a purchase value of less than $300,000 unless there is no other acceptable means of validation. When the use of benchmarks is necessary, solicitations shall not require the running of "worst case" benchmark programs (e.g., programs that require extensive reprogramming or conversion) unless these programs are representative of the using activity's actual or anticipated data processing needs.

(b) For ADPE systems with a purchase value of $300,000 or less, the following validating methods shall be considered:

(1) Validation of performance by the technical evaluation of proposed ADPE and software; or

(2) Evaluation of an operational ADPE installation processing a similar workload on comparable equipment.

270.320 Use of remote terminal emulation in ADPE systems acquisitions.

(a) Each Component shall determine whether or not to authorize use of remote terminal emulation during each ADPE system procurement and should use the GSA Handbook, "Use and Specifications of Remote Terminal Emulation in ADP System Acquistions," before making its determination.

(b) When remote terminal emulation is authorized in an ADPE system acquisition, the DoD Component:

(1) Shall follow all mandatory procedures contained in the GSA Handbook (the handbook may be obtained from the General Services Administration (KEC), Washington, DC 20405);

(2) Shall not require remote terminal emulation capabilities that are not explicitly defined in the GSA Handbook;

(3) May declare an offer unacceptable in an negotiated procurement if the offeror fails to provide the remote terminal emulation capabilities required by the solicitation; and

(4) Shall not require an offeror to conduct a bench mark test using remote terminal emulation at the component's site.

(c) Components shall not authorize the use of remote terminal emulation in ADP service contracting actions, except for:

(1) Dedicated teleprocessing requirements; and

(2) Unusually large and complex share-teleprocessing requirements.

(d) Authority to deviate from the requirements of (b) above shall be obtained prior to synopsis or release of the solicitation, in accordance with Departmental procedures.

(1) To request a deviation, requiring activities shall provide a detailed technical description and justification for each specific deviation desired.

(2) If authority to deviate is granted, the contracting officer shall promptly provide to potential offerors detailed instructions specifying all mandatory remote terminal emulation capabilities not defined in the GSA Handbook and the exact manner in which each emulation benchmark test must be conducted. A notice indicating the availability of these materials shall be published in the Commerce Business Daily (CBD) at least 60 calendar days before the release of the solicitation document.

270.321 ADP fund.

(a) The GSA ADP Fund is a revolving fund available for financing the purchase and, under certain circumstances, lease and maintenance of ADP equipment and/or commercially available software. When approved by GSA, the ADP Fund may be used to obtain maintenance services for ADPE leased from GSA through the ADP Fund.

(b) When an evaluation of offers indicates purchase as the lowest overall cost alternative, but the funds committed to the purchase are inadequate or are not of the proper type. The contracting officer shall notify the requiring or other Department-designated activity of the savings to be realized if items are purchased rather than leased. This activity, upon ensuring that funds are not available, shall make an inquiry to GSA for the use of the ADP Fund. If the ADP Fund is not available, the activity shall notify the contracting officer that the ADP Fund is not available and that the next lowest overall cost alternative should be selected.

(c) If the GSA ADP Fund is used, the activity shall negotiate and execute a payback arrangement with the GSA.

270.322 Exchange/"Sale" of ADPE.

(a) When it is determined that Government-owned ADPE should be replaced, exchange/"sale" should be considered. Exchange/"sale" is a means of transferring the equipment to be replaced to another Government agency, with reimbursement, or to the supplier of the replacement ADPE for a trade-in allowance on the contract price so that the proceeds can be applied in whole or in part payment for the replacement ADPE. "Sale" relates to the proceeds obtained from another Government agency whereas "exchange" relates to the trade-in allowance offered by contractors. The proceeds of "sale" or the exchange allowance shall be applied toward the acquisition of replacement ADPE. In addition to the requirements in this subpart, compliance with Subpart 217.70 and DOD Manual 7950.1–M is required.

(b) The contracting officer, working with the reutilization activity, is responsible for complying with the following conditions in completing an exchange/"sale" transaction.

(1) The ADPE system/item to be "sold" or exchanged must be similar to the ADPE system/item to be acquired;

(2) The ADPE system/item must be needed in the continuing satisfaction of the ADP requirement;

(3) One system/item must be acquired to replace another similar system/item, except in situations where lesser or greater number of systems/items must be acquired to perform all or substantially all of the functions which the trade-in system/item would otherwise perform; and

(4) A written administrative determination must be made by the requiring activity that the exchange allowance or the proceeds of the "sale" will be applied in acquiring the replacement ADPE and that the exchange/"sale" transaction will foster the economic and efficient accomplishment of a continuing requirement.

(c) The normal steps in the execution of an acquisition authorizing an exchange transaction are specified herein.

(1) Offers shall be solicited both on an exchange (trade-in for allowance) or no exchange (no trade-in) basis. The Government shall retain the option to

exercise any exchange offer at the time of award.

(2) The exchange ADPE shall be listed and described in the solicitation document with the following information included as a minimum: a brief description of each item of ADPE, name of manufacturer, equipment type, model number, and the appropriate condition code and a translation of that condition code. The contracting schedule must allow sufficient time for the screening of the exchange ADPE within the Government prior to contract award.

(3) Immediately upon receipt of offers, the highest exchange offer (if any) shall be determined and used to initiate screening pursuant to 270.14. Notification shall be given to the Defense Automation Resources Office (DARO) on SF 120, Report of Excess Personal Property. The following notation shall be displayed prominently on the original and 5 copies of the SF 120.

Exchange/"Sale" Property

A written administrative determination has been (will be) made to apply the exchange allowance or proceeds of sale to the acquisition of similar items.

The following additional information shall be submitted with the SF 120:

(i) The identity of the offeror of the exchange;

(ii) The type of replacement equipment;

(iii) The method of acquisition for the replacement equipment;

(iv) The anticipated purchase price for the replacement equipment;

(v) The DPA number assigned by GSA for the replacement equipment, if applicable; and

(vi) The name and telephone number of the contracting officer.

(4) Offers shall be evaluated using the solicitation criteria, including consideration of any exchange allowance offers. Award can be made irrespective of whether the replaced ADPE is exchanged.

(5) Before an award is made, the results of screening shall be considered. If another Government agency wishes to acquire the replaced equipment, the exchange shall not be made. In this event, the contract price will not include the exchange allowance since this amount will be realized by the sale of the equipment to the requesting agency. The actual sale price to the requesting agency will equal the exchange allowance (if any) of the successful offeror.

(6) If no Government agency wishes to acquire the replaced equipment, the contract price will include the exchange allowance (if any). If no exchange allowance was offered by the successful contractor, the replaced equipment shall be handled in accordance with 270.14.

270.323 Conflicts between this subpart and the DPA.

When contracting for ADPE, commercially available software, maintenance services, supplies, and certain other services under a DPA from the GSA, the provisions of the delegation shall take precedence over any conflicting provisions of this subpart and need not be processed as a deviation.

270.324 Acquisition assistance.

Assistance in any phase of the contracting process covered by this subpart may be obtained by contacting:

Army

U.S. Army Computer Systems Selection and Acquisition Agency, Alexandria, VA 22331

HQDA (DAMO–C4Z–K), The Pentagon, Washington, DC 20310

Navy

ADP Selection Office, Washington, DC 20374

Naval Data Automation Command, Code 11, Washington, DC 20374

Air Force

Air Force Computer Acquisition Center, Hanscom AFB, MA 01731

HQ USAF (AF/RDC), Washington, DC 20330

Defense Logistics Agency

Defense Logistics Agency, ADP/T (DARO), Cameron Station, Alexandria, VA 22314

Subpart 270.4—Acquisitions Under 10 U.S.C. 2315 Authority

270.400 Scope of subpart.

This subpart is applicable to acquisition of automatic data processing equipment or services if the function, operation, or use involves, as its primary purpose, one or more the following:

(a) *Intelligence systems.* Computer resources for the Intelligence community for the research and development of, or use in, its intelligence activities.

(b) *Cryptologic systems related to national security.* Computer resources for the research and development of, or use in, cryptologic activities authorized by the National Security Agency.

(c) *Command and control of military forces.* Computer resources for research and development of, or use in:

(1) The National Military Command System;

(2) Worldwide Military Command and Control System;

(3) DoD Component Command and Control Systems.

(d) *Integral part of a weapons system.* Computer Resources:

(1) Physically a part of, dedicated to, or essential in real time to, performance of the mission of weapon systems;

(2) Used for specialized training, diagnostic testing and maintenance, simulation, or calibration of weapons systems;

(3) Used for research and development of weapons systems.

(e) *Critical to the direct fulfillment of military or intelligence missions.* Computer resources in, or used in the research and development of:

(1) Systems that will deploy as mission support in a combat environment;

(2) War planning systems;

(3) Environmental systems supporting military missions, e.g., weather, oceanographic, or satellite systems;

(4) Projects the existence of which are classified;

(5) Warning, surveillance, reconnaissance and electronic warfare systems;

(6) Mapping, charting, and geodesy systems;

(7) Airlift, sealift, and port facilities systems;

(8) Military communication systems; or

(9) Logistics systems which provide direct support to operating forces or provide direct support to maintenance of weapons systems (e.g., organic supply, software support facilities for weapon systems, contracting, accounting, disbursement and budgeting, etc.).

270.401 Determination of applicability.

Determinations as to the applicability of this subpart shall be made in accordance with DoD Component procedures.

Subpart 270.5—Acquisition Under Other Authorities [Reserved]

Subpart 270.6—Acquisition of ADPE by DoD Contractors

270.600 Scope of subpart.

(a) This subpart is applicable to contractor acquired ADPE as defined in FAR 31.001, except as components of end items delivered to the Government.

(b) If a contractor acquires ADPE for the account of the Government or if title to the equipment will pass to the Government, the acquisition must be approved as provided in 270.601 and FAR Part 45.

(c) If a contractor leases ADPE, and the lease will not be for the account of the Government or title will not pass to the Government, and the total cost is to be allocated to one or more Government contracts requiring the determination or negotiation of costs, the acquisition must be approved in accordance with the procedures of 270.601 and FAR Part 45.

(d) If a contractor leases ADPE (see 270.2) with an annual cost in excess of $500,000 and more than 50 percent of the cost is allocated to Government contracts requiring the negotiation or determination of costs, the acquisition must be approved in accordance with the procedures of 270.603.

(e) The provisions of 270.602 relating to providing reused equipment to DoD Contractors are applicable regardless of the manner of acquisition or dollar amount.

270.601 DoD component approvals.

(a) Requests for approval of acquisitions of the types outlined in 270.600 (b) and (c) must be submitted through the administrative contracting officer (ACO) to the procuring contracting officer (PCO) who awarded the contract that gave rise to the need for the computer equipment. Prior to the submission to the PCO, the ACO shall comply with 270.602. The PCO will obtain any approvals required by DoD Component procedures.

(b) The supporting documentation for these acquisitions should clearly indicate the best method of financing the acquisition which is in the Government's best interests, that is:

(1) Leasing, either operating or capital, or

(2) Purchase.

(c) The PCO shall consider providing the computer equipment to the contractor as Government-furnished equipment. Factors to be considered include:

(1) Increased ability to realize economies, efficiencies, and to obtain greater competition;

(2) Timeliness;

(3) Impact upon the contractor's ability to perform his contract responsibilities, and

(4) Type of funds available.

The determination shall be made part of the contract file or, if required by DoD Component procedures, transmitted to the appropriate official for approval.

(d) Upon approval of the contractor's requirement, written confirmation shall be provided through the ACO to the contractor.

270.602 Providing reused computer equipment to DoD contractors.

(a) When DoD contractor has a requirement for computer equipment exclusively for use as facilities, special test equipment, plant equipment or material, under one or more Government contracts, the contractor shall submit a DD Form 1419 with documentation attached as required by 270.604 to the ACO.

(b) The ACO shall forward the approved requirements to the Defense Logistics Agency, Defense Automation Resources Office (DARO), Cameron Station, Alexandria, VA 22314 in accordance with DOD 7950.1–M. The DARO response shall be provided to the PCO.

270.603 Review and approval of contractor-acquired computer equipment used for commercial and government contracts.

(a) In accordance with FAR 31.205–2, if the total cost of leasing computer equipment at a contractor's plant, division, or cost center is expected to exceed $500,000 in any 12-month period and more than 50 percent is to be allocated to Government contracts requiring the negotiation or determination of costs, the ACO shall, prior to approving lease costs:

(1) Conduct an initial and an annual review thereafter of the contractor's system(s) for the purpose of evaluating:

(i) The reasonableness, from the technical standpoint, of the contractor's configuration;

(ii) The existing capability and need to continue leasing, regardless of whether the term of the lease was renewed or otherwise extended by the contractor (see 270.604 for documentation required); and

(2) Arrange for submission by the contractor to the ACO of any proposed lease of a new system and any proposed major change to an existing system, for advance determination of the reasonableness of the resulting cost (see 270.604 for documentation required). A "major change" is any addition or substitution of computer equipment which will result in a net annual cost increase in excess of $50,000.

(b) After the initial review of any proposed lease of a new system or major change, and after each annual review, the ACO shall either enter into an advance agreement with the contractor pursuant to FAR 31.109 to provide a basis for concurrence in the proposed lease, or, in the alternative, notify the contractor of the Government's nonconcurrence and of any consequent cost disallowance contemplated.

270.604 Contractor documentation.

This subsection specifies the documentation DoD contractors shall submit to support acquisitions of computer equipment. When the documentation has previously been submitted to DCAA, a copy of that submission may be used or, if voluminous, reference to it is acceptable. Documentation previously submitted does not have to be resubmitted; only updated as necessary. The ACO may waive specific documentation requirements below when they are not considered relevant to the acquisition.

(a) *Inventory and analysis of utilization of existing installed computer equipment.*

(1) List each component by manufacturer, type, and model number.

(2) Location(s).

(3) Furnish installation date(s) by component.

(4) Give type of acquisition, i.e., operating lease, capital lease, purchase, Government-furnished, or lease back.

(5) Furnish component reliability data for the past 12 calendar months. Indicate hours each component was available for use versus hours unavailable for use. Indicate preventive and remedial maintenance hours.

(6) Identify and describe each data system supported; indicate computer time for each system and the related contract(s) or task(s) involved.

(7) Identify any system which has been acquired to comply with a contract requirement. The contract number, clause identification and extract of wording requiring a specially configured or specific computer shall be available for Government review.

(b) *Documentation supporting and justifing need for and benefits to be derived from new system(s) or major change(s) to existing systems.*

(1) Furnish advance planning documentation covering useful life of these systems. This documentation shall provide information to support useful life decisions and also provide a basis for entering into advance understandings as provided at FAR 31.109.

(2) List specific objectives or requirements (generally in the form of a functional specification).

(3) At the option of the Government furnish functional block diagrams of the present and proposed configuration.

(4) Briefly describe the major applications to be processed and appropriate background information to explain the need.

(5) If applicable, list or summarize projects by short title and Research and Development (R&D) project number.

(6) Indicate estimated monthly main frame use hours for each major application or project for the expected retention period.

(7) Indicate software requirements.

(8) Indicate telecommunications requirements.

(c) *Competitive selection of computer equipment.* The following shall be submitted for new requirements which will be competitively acquired. It shall be made available for annual reviews.

(1) Show names and addresses of sources solicited, indicate those submitting proposals.

(2) Indicate which, if any, proposals were not acceptable and explain why.

(3) Show cost comparisons for operating lease, capital lease, lease-with-option-to-purchase, and purchase, for all acceptable proposals.

(4) Attach a copy of the solicitation, a copy of each acceptable proposal, a copy of each proposal's evaluation, and a copy of the selection report. When proposals are voluminous, a summary may be submitted to the Government; actual proposals will be kept on file and be available to the Government.

(5) State whether the selected computer equipment will provide the lowest overall cost to the Government over the useful life. If not, explain the rationale for its selection over that which would have provided the least cost.

(d) *Noncompetitive selection of computers.* Include alternatives considered or state why none are feasible. Show the equipment configuration selected including manufacturer, type, and model number of each component, feature, and device. Show cost comparisons for operating lease, capital lease, or purchase for the equipment configuration selected.

(e) *Cost.* State the resulting increase or decrease in monthly costs to the Government.

(f) *Lease versus purchase analysis.*

(1) Pursuant to FAR 31.205–2, provide a lease/purchase analysis by component for the selected computer equipment when an operating lease is the selected method of acquisition. A suggested format for this analysis is shown at the end of this subpart.

(2) The use of a realistic, Useful Life, Present Value and Residual Value analysis for each component is critical.

270.605 Contractor use of computers for non-government purposes.

The prior written permission of the contracting officer (or, the official prescribed in procedures of the DoD Components, if the expected cost is in excess of $500,000 for any 12-month period) is required for any non-Government use of computer equipment provided to the contractor which was acquired under one or more Government contracts negotiated on the basis of cost data. This approval may be granted if FAR 45.407(b) is satisfied and no additional costs are incurred by the Government.

270.606 Purchase option credits for contractor-acquired computers.

(a) When leased ADPE is used on a Government contract(s) and the total cost is charged to the Government under a cost-reimbursement contract(s), the contracting officer shall require the contractor to include a provision in the rental contract stating that the Government shall have the initial option to utilize any purchase credits or other benefits earned through rental payments. This applies regardless of whether the acquisition qualifies as an operating lease or capital lease.

(b) When leased ADPE is used on a cost-reimbursement type Government contract(s) requiring the determination or negotiation of costs, and less than 100 percent of the cost of the equipment is charged to the Government, the contracting officer should obtain for the Government at the time that the initial annual review is conducted, the right to accrued purchase credits if the contractor elects not to exercise its purchase option. Accordingly, negotiation objectives shall include the following when less than 100 percent of the cost of the equipment is absorbed by the Government:

(1) The contractor should be encouraged to incorporate in its equipment lease the right to assign accrued purchase credits to the Government;

(2) The contracting officer should obtain for the Government, if possible, the right of first refusal on accrued purchase credits if the contractor elects not to exercise its purchase option; and

(3) A 120-day advance notice should be provided to the ACO when the contractor intends to terminate its equipment lease if the Government has rights in accrued purchase credits.

(c) The ACO shall report the availability of such credits in accordance with the procedures for the reuse of computer equipment as prescribed by DoD Manual 7950.1–M and the respective DoD component implementations thereof.

(d) If the Government decides to take advantage of the benefits, the provisions of 270.1401(c) apply.

270.607 Reuse of computers, software, and associated spare parts.

Excess computers, software, and associated spare parts in the possession of contractors, whether leased or Government-owned, will be reported in accordance with Part 245 and DoD Manual 7950.1–M. Computers, software, and associated spare parts with an initial acquisition cost below $1,500 are subject to special procedures in DoD Manual 7950.1–M.

270.608 Technical assistance.

Technical assistance in implementing this subpart shall be provided as necessary to the contracting officer by the DoD component having CAS cognizance for the contractor.

Subpart 270.7—Telecommunications Resources

270.701 General.

Acquisitions of telecommunications resources by the DoD are governed by the Statement of Areas of Understanding Between the Department of Defense and the General Services Administration, dated November 27, 1950 which appears at 15 FR 8226, December 1, 1950. The text of that agreement is as follows:

Statement Of Areas Of Understanding Betweeen Department Of Defense and General Services Administration

(1) The areas of understanding herein set forth were worked out pursuant to order of the President of July 1, 1949, directed to the Secretary of Defense, the Director, Bureau of the Budget, and the Administrator of the General Services Administration.

(2) The areas of understanding with respect to communications services are:

(a)(1) As used in this statement, with respect to comunications services: "Area contracts" are contracts providing for the furnishing of a communication service to all, or substantially all, activities of the Government located within a specified area, executed by GSA or by another agency designated by GSA.

(a)(2) As appropriate for contractual and operational matters: "Department of Defense" means one or more of the military departments.

(b) The basic principle in the procurement of communications services is that all such services shall be procured or provided at the minimum total cost of the Government consistent with requirements for capacity, efficiency of operation, reliability of service, security, and programmed activities. These requirements must be determined by the using agency.

(c) Close coordination and cooperation between the GSA and the Department of Defense shall be maintained to obtain the maximum economy consistent with the requirements for service.

(d) Communications services for activities of the Department of Defense occupying properly controlled or operated by another Federal agency will be procured or provided by the General Services Administration or by the operating agency unless, in the opinion of the Department of Defense, the procurement or provision thereof by the Department of Defense is necessary in the interest of military operations, exercise of command and/or National Security.

(e) Communications services for the Department of Defense, in localities within an area where these services are or may become available under a General Services Administration contract, will be procured under a General Services Administration area contract when such a procedure is of benefit to the Government as a whole and does not adversely affect Military operations, exercise of command and/or National Security. In all other instances, communication services required by the Department of Defense will continue to be procured under a standardized National Defense contract. Copies of or data on contracts executed by the Department of Defense for communications facilities and services will be furnished to the GSA upon request unless distribution is inadvisable for reasons of security.

(f) Except as provided in paragraphs 2 (d) and (e) above, all communication facilities and services for activities of the Department of Defense will be provided or procured by the Department of Defense.

(g) The Department of Defense will provide for complete coordination of all communication services procured or provided by it for all activities of the Department of the Army, Navy (including Marine Corps) and Air Force, and for maximum economy consistent with requirements.

(h) Joint use of telephone facilities such as private branch exchanges is to be encouraged whenever such use will result in efficient and economical service: provided that, in the opinion of the Department of Defense, no interference with military operations or violations of military security will result.

(i) It is recognized that rapid written communications for the Government as a whole can best be obtained by independent military and civilian agency systems, with these systems cooperating with each other. These systems, however, may interchange traffic where such interchange is efficient, and economical and practicable, provided that in the opinion of the Department of Defense there is no interference with movement of military traffic, and the handling of civilian traffic does not necessitate the utilization of additional facilities and personnel by the Department of Defense.

(j) Except as otherwise provided herein, the GSA will represent Executive Agencies, including the Department of Defense, in proceedings involving communications before municipal, State and Federal regulatory bodies in all rate cases and matters associated therewith.

Exceptions

(1) In those instances where the Department of Defense has the sole Government interest in a proceeding involving communications before a regulatory body, the Department of Defense will conduct the representation on behalf of all Executive Agencies of the United States Government. The Department of Defense and the General Services Administration in pending or proposed proceedings will advise each other of action taken or to be taken that may have effect upon or be of interest or assistance to each other. Such representations conducted by the Department of Defense shall be subject to overall coordination by General Services Administration. This shall not preclude representation for the Department of Defense by the General Services Administration when such representation is requested by the Department of Defense and is mutually agreeable.

(2) In those instances where the Department of Defense does not have sole Government interest in a proceeding involving communications before a regulatory body, the Department of Defense will conduct the representation on behalf of all Executive Agencies whenever representatives of the Department of Defense and the General Services Administration agree that conduct of the representation by the Department of Defense is in the best interest of the Government. Such representation conducted by the Department of Defense shall be subject to overall coordination by the General Services Administration.

(3) Except as pertains to the applications of pertinent provisions of section 5, Pub. L. 211, 81st Congress.

(k) Liaison between the Department of Defense and the General Services Administration for all matters involving representation of Executive Agencies in proceedings involving communications before regulatory bodies shall be maintained between the Office of General Counsel, General Services Administration and the Office of General Counsel, Department of Defense.

(l) Liaison with respect to policy matters concerning this arrangement and matters pertinent thereto except as provided in paragraph k, will be maintained between the Chief, Public Utilities Branch, Public Building Service, General Services Administration and Chief, Electronics Division, Munitions Board of the Department of Defense and for operational and contractual matters between designated representatives of the General Services Administration and of the Department of Defense.

(m) This area of understanding is applicable to communications services within the Continental United States, Hawaii, Puerto Rico and the Virgin Islands. The Department of Defense shall be exempt from action taken by the Administrator with respect to communications services under Section 201(a) of Pub. L. 152 in other geographic areas.

270.702 Policy.

Acquisitions of telecommunications resources shall be accomplished in accordance with the Statement of Understanding set forth in 270.701.

Subpart 270.8—Use of the GSA Teleprocessing Service Program (TSP)

270.800 Scope.

The TSP is a GSA program that DoD Components may use to acquire remote data processing services through use of Multiple Award Schedules (MAS) (see 270.802–1) and Basic Agreements (BA) (see 270.802–2).

270.801 Applicability.

(a) When a requirement analysis indicates that remote data processing services are available in the commercial market to satisfy a requirement, the DoD Component should consider the TSP as a source of supply.

(b) DoD contractors or subcontractors may use the TSP.

(c) Covered TSP services include interactive, remote batch processing, and a combination of these (full services), as well as related support services incidental to the teleprocessing performed by commercial firms. These include:

(1) Training services that are limited to the unique features of a particular teleprocessing service;

(2) Technical Assistance/Analyst Services (TA/AS) specifically related to the firm providing teleprocessing services. Such services are limited to assisting users on network operations, special features that may influence application system design, communication interfaces with contractor networks, or other areas incidental to the use of the firm's software packages;

(3) Use of the TSP firm's premium (extra charge) software packages related to a teleprocessing requirement as limited in paragraph (e);

(4) Use of the TSP firm's data bases related to a teleprocessing requirement;

(5) Furnishing network documentation;

(6) Conversion of Government-controlled files and application programs when initiating performance or changing firms under a TSP contracting arrangement as provided in paragraph (g).

(d) *Excluded services.* Facilities management, the lease or purchase of ADPE and predominantly local batch processing services are excluded.

(e) *Limitations on TA/AS and premium software packages.* Technical assistance/analyst services and use of premium software packages (paragraphs (c) (2) and (3) above) have dollar limitations that are reflected in both the MAS and BA. Acquisition of these types of services, that exceed the established limitations, should be on a competitive

basis. The dollar limitations for each teleprocessing requirement are 10 percent of the total value of the requirement per fiscal year, not to exceed $100,000 per year for TA/AS and $25,000 per year per premium software package. The DoD Component shall obtain authorization from the GSA TSP contracting officer before placing a purchase order under a MAS or awarding a contract under a BA which includes requirements that exceed the above limitations.

(f) *Conversion under TSP.* Services associated with conversion of files and application programs may be included in a MAS purchase order or BA contract at the option of the DoD Component, provided that:

(1) A determination is made, when the conversion requirement is estimated to exceed $75,000, that more extensive competition is not practicable.

(2) Each participating firm, when the MAS method is selected and the teleprocessing requirement includes conversion services, is required to propose the conversion portion of the requirement or be eliminated from consideration.

(3) The description of an individual TSP conversion requirement identifies, as a minimum, the number of programs to be converted, source computer system, the number of lines of code to be converted by language, the number of files to be converted by organizational type (e.g., index sequential, sequential, random, DBMS), a description of the complexity and level of documentation of the files and programs, redocumentation requirements, training requirements, and specific testing and acceptance criteria for the converted programs and files.

(4) Offerors are provided an opportunity to inspect the available documentation of all programs and files pertinent to the conversion effort, subject to necessary limitations for the protection of personal, proprietary, or other sensitive data.

(5) Offers for conversion services are solicited and awarded on a separate line item, firm fixed-price basis. Under the MAS method, participating firms do not quote conversion services rates in their schedule pricelist; rather, a firm offer is made for each particular requirement.

(6) Order placements or contract awards, when teleprocessing requirements include conversion services, are based on lowest overall costs, price and other factors considered.

(g) *Software redesign or programming.* Software redesign or programming services are not always available in the MAS and BA. Programming of linkage or bridge routines between multiple software packages under $5,000 annually per requirement are generally available. Other application programming can be included in a TSP BA contract provided the DoD Component requests and receives specific authorization from the GSA contracting officer.

270.802 Methods of acquiring GSA TSP services.

The GSA TSP includes two methods of acquiring services, either of which may be used as appropriate. Neither of these methods allows cost-reimbursement contracting.

270.802-1 Multiple award schedule (MAS).

GSA periodically establishes a multiple award schedule which includes firm rates for services. The MAS provides for incremental discounts based on each firm's total MAS dollar volume of services delivered Government-wide. The MAS terms and conditions can only be modified by GSA. Under the provisions of the schedule, a firm may modify the services offered through a MAS amendment. The MAS may be used for justified noncompetitive requirements. Policies and procedures for using the GSA MAS are contained in the GSA TSP Handbook (see 270.802-4).

270.802-2 Basic agreement (BA).

(a) GSA periodically establishes a BA under which GSA negotiated terms and conditions are made available for use in soliciting proposals and awarding contracts for TSP services. The BA terms and conditions can be submitted only by GSA. Properly justified noncompetitive contracting actions may be conducted under the BA when a requirement within the TSP scope cannot be justified under the MAS.

(b) Dedicated teleprocessing systems requirements may be included in a BA solicitation under the TSP provided:

(1) The APR includes appropriate documentation to support a system requirement configuration, or a specific part thereof, which is to be solicited solely on a dedicated-system basis. This provision does not apply when a DoD Component expresses willingness to evaluate a dedicated-system alternative proposal to a proposal priced on a resources-used (unit rate) basis.

(2) When dedicated-system proposals are to be solicited and evaluated as an alternative to resources-used type proposals, evaluation criteria shall be sufficient to adequately compare a dedicated system pricing offer with resources-used (unit rates) offers. The solicitation documentation shall provide that an offeror submitting a dedicated-system proposal may submit a resources-used proposal. Contract awards made on a system-life basis shall provide for an annual Government review of workload and usage and reserve the right to select on a prospective basis the more favorable of the contractor's dedicated-system or resources-used pricing modes.

270.802-3 GSA TSP guidance.

(a) Guidance concerning the GSA TSP may be obtained from the General Services Administration (KED), Washington, DC 20405 or from any GSA regional office.

(b) The Teleprocessing Services Program (TSP) Handbook provides procedures to be followed by Federal agencies in acquiring services within the TSP scope. The handbook is not a regulation. A limited number of copies of the handbook are available without charge to all Federal agencies by written request to GSA (KED), Washington, DC 20405 or any GSA regional office. Major revisions or new editions of the handbook are announced in GSA bulletins.

270.803 Procedures for acquiring GSA TSP services.

(a) *Agency procurement requests.* DoD Components shall submit an APR to GSA to acquire GSA TSP services unless the acquisition is below $2,000,000 competitive, or $200,000 noncompetitive, annually.

(b) *Evaluation and source selection.* Source selection shall be based on a technical and a system-life cost evaluation.

(1) Technical evaluation factors shall be limited to mandatory service requirements and those evaluated optional features that have been assigned relative values (expressed in dollars, points, or any other reasonable indicators). Evaluated optional features should not exceed 20 percent weighting value in the total evaluation.

(2) The lowest overall cost shall be used in evaluation and source selection, price and other factors considered. Conversion cost shall be included in system-life evaluations. Contractor prices instead of Government estimates shall be used in the Government's overall estimate of conversion in computing the system-life costs.

(3) For requirements over $300,000 annually, benchmark results shall be used to determine costs for all technically qualified firms. The benchmark package should be available to offerors at least 45 calendar days before benchmark performance. The use

of benchmarks may be considered in selections under $300,000 annually because different amounts of connect, input/output and CPU time, for example, will be required by different contractor systems to accomplish the same work load. The selection of the benchmark work-load is critical to the source selection because it will evaluate the contractor's billing algorithm, a significant factor in cost determination. Under either the MAS or BA, a copy of the benchmark used for cost evaluation in the selection process shall be retained for periodic performance evaluation purposes over the system life of the requirement. If a benchmark is not used, the cost shall be derived by a calculation of the various categories of the work-load estimate or other adequate techniques. FEDSIM has developed a synthetic benchmark for remote batch applications called the "Resource Driver Program" which can be considered (see 270.12).

(4) Prices, rates, and discounts for MAS selections shall be obtained by contacting any GSA/OIRM regional office. Other costs for selections under the MAS shall be derived directly from the pricelists.

(c) *Low cost acquisition.* When the system-life estimated cost does not exceed $10,000 annually, the MAS method provides a simplified procedure that agencies use for selecting teleprocessing services.

270.804 GSA review of selections under the GSA TSP.

GSA reserves the right to review any TSP selection action under the MAS or BA, either before or after award. Consequently, contractor selection and contracting documentation shall be retained for a period of two years after selection.

Subpart 270.9—Privacy for Computer Systems

270.901 Applicability.

This subpart applies to computer systems acquired by a DoD Component or Government contractor.

270.902 Requirements.

FAR Part 24 prescribes policies and procedures for complying with the Privacy Act of 1974 (5 U.S.C. 552a).

270.903 DoD component responsibilities.

In addition to the requirements of FAR 24.103, contracting officers shall ensure that contracts subject to the Privacy Act require the submission of necessary reports and notices required by DoD Component implementation of OMB Circular A-108.

270.904 Contract clauses.

In addition to the clause at FAR 52.224-2, contracting officers may insert the clauses at 252.270-7007, Rights in Privacy Safeguards, and 252.270-7008, Access to Contractor Facilities and Records—Privacy Safeguards Inspection, in solicitations and contracts when acquiring equipment, software, or services subject to the Privacy Act.

Subpart 270.10—Security for Computer Systems

270.1000 Scope of subpart.

This subpart applies to all computer acquisitions regardless of the authority under which acquired.

270.1001 Policy.

(a) Specifications for the acquisition of ADPE, software, maintenance services, and supplies are required to be certified by the requiring agency as meeting the agency security needs in accordance with Departmental regulations. These requirements are in addition to provisions concerning protection of the privacy of individuals (see 270.9 and FAR 24.1).

(b) Specifications or other requirements statements for solicitations shall include, when applicable:

(1) DoD Component rules of conduct that a contractor and the contractor's employees shall be required to follow;

(2) A list of the anticipated threats and hazards that have been determined by risk analysis that the contractor must guard against;

(3) A description of the safeguards that the contractor is required to provide;

(4) The standard applicable to the contractual requirement (see 270.11);

(5) The test methods, procedures, criteria, and inspection system (or the requirement to submit proposals therefore) necessary to verify and monitor the operation of the safeguards during contract performance and acceptance and to discover and counter any new threats or hazards;

(6) The requirement for periodically assessing the security risks involved and advising potential users of the level of security provided;

(7) Proposed contractual clauses or provisions, as necessary, to provide for the foregoing; and

(8) A description of the personnel security requirements.

270.1002 Security program for automatic data processing facilities.

(a) DoD Components are required to organize and maintain an ADP system security program to ensure the protection, confidentiality, and integrity of the Government's investment in the ADP system, including associated ADPE, data, computer media, and software. This program should be applied to contractors as appropriate. DoD Components' internal directives and procedures for the physical security of computer facilities should consider the standards and guidelines that appear in the following Department of Commerce publications:

(1) FIPS PUB 31, Guidelines for Automatic Data Processing Physical Security and Risk Management;

(2) FIPS PUB 29, Glossary for Computer Systems Security;

(3) FIPS PUB 41, Computer Security Guidelines for Implementing the Privacy Act of 1974;

(4) FIPS PUB 46, Data Encryption Standard;

(5) FIPS PUB 48, Guidelines on Evaluation of Techniques for Automated Personnel Identification; and

(6) FIPS PUB 65, Guideline for Automatic Data Processing Risk Analyses.

(b) NBS Publications List 91 outlines a number of additional NBS computer security publications.

270.1003 Security against compromising emanations.

(a) If computer equipment to be acquired is to be used to process classified information, a determination as to whether or not the equipment is required to provide protection against compromising emanations, as required by Departmental procedures, shall be provided to the contracting officer by the requiring activity. If such protection is required, the contracting officer shall require that equipment delivered under the contract shall comply with an established National TEMPEST standard (e.g., NACSEM 5100, NACSIM 5100A) or a standard used by other authority, as identified by the requiring activity.

(b) If contracts are to be awarded which require the performance of ADP services involving classified data, programs, etc., the requiring activity shall advise the contracting officer on whether or not to require Defense contractors performing these services to use equipment meeting the requirements specified in (a) above. The requiring activity shall also provide information concerning any requirement for marking of TEMPEST-certified equipment (especially if to be reused), and the means of validating TEMPEST equipment compliance with required standards.

(c) *Contract clause.* The contracting officer shall insert a clause similar to the clause at 252.270–7060, Protection Against Compromising Emanations, in solicitations and contracts when acquiring computer equipment or systems to be used to process, transmit, store, retrieve or display information requiring protection under the National Security or Atomic Energy Acts, as amended. Other necessary material developed by DoD Components may be invoked in the clause as appropriate when a contractor is to perform automated services involving material requiring protection against compromise.

(d) The contracting officer shall insure that Section E of the contract (Inspection and Acceptance) requires validation of the equipment's TEMPEST compliance with the established standard. This is accomplished by one of three methods:

(1) Determining that the equipment is listed or certified for listing on the Preferred Products List (PPL) published quarterly by the Subcommittee on Compromising Emanations (SCOCE). This list is available from the local TEMPEST official;

(2) If compliance with a TEMPEST standard other than NACSEM 5100 or NACSIM 5100A is required, the requiring activity's cognizant TEMPEST official shall determine the compliance of the delivered equipment with the standard; or

(3) Actual testing and certification by the DoD Component's cognizant TEMPEST activity.

(e) In addition to the local TEMPEST official, information on the TEMPEST program, equipment qualification, etc., may be obtained from the following:

For the Army: TEMPEST Coordination Officer, Major Command Headquarters, or Commander, U.S. Army Intelligence and Security Command, ATTN: IAOPS–OP–P, Arlington Hall Station, Arlington, VA 22212.

For the Navy: Commander, Naval Security Group Command, ATTN: Code G65, 3801 Nebraska Avenue, N.W., Washington, DC 20390.

For the Air Force: TEMPEST Officer, Major Command Headquarters, or AFCSC/EPV, San Antonio, TX 78243.

For the Marine Corps: Commandant of the Marine Corps, Headquarters, Marine Corps, ATTN: Code CCTS, Washington, DC 20380.

For the office, Secretary of Defense and Defense Agencies not listed below: Office of the Joint Chiefs of Staff, ATTN: TC3S–JTR, The Pentagon, Washington, DC 20301.

For the Defense Intelligence Agency: Director, Defense Intelligence Agency ATTN: OS–2, Washington, DC 20301.

For the Defense Communications Agency: Mr. Wheeler W. Hatch, Defense Communications Agency, ATTN: B315, Washington, DC 20305.

For the Defense Logistics Agency: Director, Defense Logistics Agency, ATTN: Command Security Office (DLA–T1), Cameron Station, Alexandria, VA 22314.

For the Defense Nuclear Agency: Director, Defense Nuclear Agency, ATTN: ISSO, Washington, DC 20305.

For the Defense Investigative Service: Defense Investigate Service, Directorate for Industrial Security, ATTN: V0410, 1900 Half Street, N.W., Washington, DC 20324.

For the Defense Mapping Agency: Defense Mapping Agency, Building 56, USNOBS, Washington, DC 20305.

Subpart 270.11—Standards

270.1100 Scope of subpart.

This subpart provides for implementation of Federal Information Processing Standards (FIPS), Federal Telecommunications Standards (FED–STD) and Joint FIPS/FED–STD for computer equipment subject to Subpart 270.3. These standards may also be used for computer equipment subject to Subparts 270.4 and 270.5.

270.1101 Policy.

(a) Under the provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759(f) and Executive Order 11717), the Secretary of Commerce is authorized to establish uniform Federal Information Processing Standard Publications (FIPS PUB) to be met by Federal agencies, including the Department of Defense, in acquiring ADP equipment and software as defined in 270.2. Prior to the award of any contract for these items, contracting officers shall assure that the otherwise successful offeror satisfies the applicable FIPS PUB requirements specified in the solicitations.

(b) The Defense Communications Agency and the U.S. Army Communications-Electronics Command (CECOM) are responsible for developing and/or promulgating all guidance on communications standards, regardless of source or origin, applicable to DoD that Defense communications systems must meet when being acquired. These include NATO, international and national standards, industry, Federal and military standards. Acquisition shall be made only from those sources that comply with the communications standards contained in the solicitations.

(c) In order to maximize competition by promoting standardization and compatibility among vendors of commercially available automatic data processing equipment (ADPE), the National Bureau of Standards (NBS), Department of Commerce, has established and maintains listings of equipment that it has verified as having conformed to, or having been excluded from, certain FIPS. These standards apply to the acquisitions of:

(i) All new and replacement ADP systems not otherwise excluded in FIPS PUBS 60–1, 61, 62, and 63;

(ii) Computer peripheral equipment acquired to replace existing peripheral equipment or to augment ADP systems that employ interfaces conforming to the Input/Output Channel Interface Standards (FIPS PUBS 60–1, 61, 62, and 63); and

(iii) Peripheral equipment acquired to replace existing peripheral equipment or to augment ADP systems that do not conform to FIPS PUBS 60–1, 61, 62, and 63, but for which the hardware and software necessary to conform to these standards are commercially available.

(d) Though the NBS qualification procedures occur in advance and independent of any specific action, maximum practicable opportunity shall be given to prospective contractors to qualify products during the preaward process. Contracting officers may obtain both the lists of equipment which qualify as satisfying the NBS standards and those excluded from this verification procedure by writing the Director, Center for Computer System Engineering, Institute for Computer Science and Technology, National Bureau of Standards, Washington, DC 20234. Offerors may obtain verification procedures for compliance testing from this address, Attention: Verification of I/O Channel Level Interface Standards.

270.1102 Waivers.

(a) The waiver procedure for FIPS for computer equipment subject to 270.3 is set forth in the particular FIPS PUB. For some standards, a waiver approval is required from the Secretary of Commerce prior to issuance of solicitations.

(b) The waiver provisions of FAR 9.206–1(c)(3) do not apply to those items subject to (a) above. Waiver procedures are specified by the DoD components. Communication standards in the MIL STD 188-series are mandatory for use within DoD.

270.1103 Solicitation provisions and contract clauses.

(a) *Federal information processing standards.* The contracting officer shall insert the following provisions and clauses, as applicable (see 270.1101 above), in solicitations and contracts for automatic data processing equipment, software and supplies, unless a waiver has been obtained in accordance with DoD Component procedures (see 270.1102 above):

(1) 252.270–7009, American Standard Code for Information Interchange (ASCII) System Requirements; to specify the code and character set for use in information processing systems and associated communications and related equipment.

(2) 252.270–7010, Punched Paper Tape Readers and Punches; when acquiring equipment which punches or reads perforated tape.

(3) 252.270–7011, Recorded Magnetic Tape for Information Interchange (800 CPI, NRZI); when acquiring 9-track ½-inch wide, 800 characters-per-inch magnetic tape equipment.

(4) 252.270–7012, Rectangular Holes in 12-Row Punched Cards; when acquiring equipment or services involving the reading or punching of 3¼-inch cards.

(5) 252.270–7013, Hollerith Punched Card; when acquiring punched card machines (PCM) used to punch or read 12-row 3¼-inch wide cards utilizing rectangular holes.

(6) 252.270–7014, Subsets of the Standard Code for Information Interchange; when acquiring ADPE which does not require the full 128-character set required by FIPS PUB 1–1.

(7) 252.270–7015, Flowcharts, Symbols, and Their Usage in Information Processing; when flowcharts of information processing systems are part of the documentation to be delivered to the Government.

(8) 252.270–7016, Recorded Magnetic Tape for Information Interchange (1600 CPI, Phase Code 0); when acquiring tape drives as described in the clause.

(9) 252.270–7017, One-inch Perforated Paper Tape for Information Interchange; when acquiring one-inch paper tape or associated equipment.

(10) 252.270–7018, Take-up Reels for the One-inch Perforated Tape for Information Interchange; when acquiring one-inch perforated tape take-up reels or related equipment.

(11) 252.270–7019, Software Summary for Describing Computer Programs and/or Automated Data Systems; when the ADP acquisition involves documentation of computer programs and/or automated data systems.

(12) 252.270–7020, Optical Character Recognition Equipment; when acquiring Optical Character Recognition (OCR) equipment, or services relating thereto, except as described in 270.1103(a)(13) below.

(13) 252.270–7021, Character Set for Handprinting; when acquiring Optical Character Recognition (OCR) equipment requiring data entry of handprinted material.

(14) 252.270–7022, Code Extension Technique in 7 or 8 Bits; when the acquisition allows for the submission of coded character sets that are not included in the standard 128 characters of the American Standard Code for Information Interchange (ASCII).

(15) 252.270–7023, Graphic Representation of the Control Characters of ASCII (FIPS PUB 1–1); when acquiring equipment that prints or displays any of the control characters of the ASCII.

(16) 252.270–7024, Data Encryption Standard (DES); when (i) there is a requirement for data encryption, (ii) a DoD component decides that cryptographic protection is required, and (iii) the data are not classified according to either the National Security Act or the Atomic Energy Act.

(17) 252.270–7025, Recorded Magnetic Tape for Information Interchange, 6250 Characters Per Inch (CPI) (246 CPMM, Group Coded Recording); when acquiring tape drives as described in the clause.

(18) 252.270–7026, Magnetic Tape Cassettes for Information Interchange (3.810MM (0.150 Inch) Tape at 32BPMM (800 BPI), PE); when acquiring magnetic tape cassette equipment as described in the clause.

(19) 252.270–7027, Recorded Magnetic Tape Cartridge for Information Interchange, 4-Track, 6.30MM (0.25 Inch), 63 BPMM (1600 BPI) Phase Encoded; when acquiring magnetic tape cartridge equipment as described in the clause.

(20) 252.270–7028, Description of Computer Magentic Tape File Properties; when the acquisition involves delivery of coded information on magnetic tape.

(21) 252.270–7029, Computer Output Microform (COM) Formats and Reduction Ratios, 16MM and 105MM; when the acquisition involves computer generated microforms.

(22) 252.270–7030, Input/Output (I/O) Channel Interface; when an acquisition conforming to 270.1101(c) is effected, and FIPS PUB 60–1 controls.

(23) 252.270–7031, Channel Level Power Control Interface; when an acquisition conforming to 270.1101(c) is effected, and FIPS PUB 61–1 controls.

(24) 252.270–7032, Operational Specification for Magnetic Tape Subsystems; when an acquisition conforming to 270.1101(c) is effected, and FIPS PUB 62 controls.

(25) 252.270–7033, Operational Specifications for Rotating Mass Storage Systems; when an acquisition conforming to 270.1101(c) is effected, and FIPS PUB 63 controls.

(26) 252.270–7034, BASIC Language Compilers; when an acquisition includes a BASIC compiler.

(27) 252.270–7035, FORTRAN Language Compilers; when an acquisition includes a FORTRAN compiler.

(28) 252.270–7036, Magnetic Tape Labels and File Structure Information Interchange; when acquiring information processing systems that will either generate or accept magnetic tapes for information interchange.

(29) 252.270–7037, Data Encryption Standard (DES) Modes of Operation; when acquiring ADPE and ADP services subject to the GSA approval requirements contained in Subpart 270.3, and the Data Encryption Standard (DES) described at 270.1103(a)(16) above.

(30) 252.270–7038, Microform Readers; when acquiring microform readers to be used in conjunction with computer-generated microform conforming to the clause at 252.270–7029.

(31) 252.270–7039, Optical Character Recognition (OCR) Inks; when local purchase is authorized for optical character recognition (OCR) ink and preprinted forms that will be read by OCR techniques when the interchange of machine readable information between different systems will be required.

(32) 252.270–7040, Optical Character Recognition (OCR) Printers, Readers and Printed Forms; when acquiring optical character recognition (OCR) printers, readers and printed forms subject to the clause at 252.270–7020.

(33) 252.270–7041, Digital Magnetic Tape Cassette Equipment and Associated Programs; when acquiring magnetic tape casset equipment or associated programs specified in the clause.

(34) 252.270–7042, Acquisition and Validation of COBOL Compilers; when the acquisition includes a COBOL compiler.

(35) 252.270–7043, Acquisition of COBOL Programs and/or Programming Services; when the acquisition involves delivery of a program written in COBOL.

(36) 252.270–7044, Delayed Validation of Compilers; when delayed validation of compilers is necessary or advantageous.

(37) 252.270–7045, Interchange of Machine Processable Data Between and Among Agencies; when a contract will involve the acquisition of programs to be interchanged with state and local governments, industry and the public.

(b) *Joint Federal Information Processing/Federal Telecommunications Standards (FIPS–FED/STD).* The contracting officer shall insert the following clauses, as applicable, in solicitations and contracts for automatic data processing equipment

(ADPE), software and services subject to Subpart 270.3, *provided* that the requiring activity determines that no other standards apply to the telecommunication aspects of the requirements, and compliance with FIPS PUB 1–1 is required:

(1) 252.270–7046, Synchronous High Speed Data Signaling Rates Between Data Terminal Equipment and Data Communications Equipment; when an acquisition involves data terminal and ADPE which is (i) employed with synchronous data communication equipment, and (ii) designed to operate on binary encoded information over wideband communication channels having greater band width than the normal 4kHz commonly used in analog voice transmission.

(2) 252.270–7047, Bit Sequencing of the Code of Information Interchange in Serial-by-Bit Data Transmission; when acquiring equipment or services requiring the transmission of data in a serial-by-bit, serial-by-character mode.

(3) 252.270–7048, Character Structure and Character Parity Sense for Serial-by-Bit Data Communication in the Code for Information Interchange; when acquiring equipment where transmission of data is a serial-by-bit, serial-by-character synchronous or asynchronous mode is to occur.

(4) 252.270–7049, Character Structure and Character Parity Sense for Parallel-by-Bit Data Communication; when acquiring equipment or services for the transmission of data in a parallel-by-bit, serial-by-bit mode, in order to prescribe the character structure and sense of character requirements.

(5) 252.270–7050, Synchronous Signaling Rates Between Data Terminal and Data Communication Equipment; when acquiring equipment or services that are to employ voice communication facilities, in order to prescribe the transfer rate for binary coded information in synchronous serial or parallel form.

(6) 252.270–7051, Data Link Control-Synchronous Bit-Oriented Data; when acquiring equipment or services using synchronous, bit-oriented data communications, in order to prescribe data link control procedures.

(c) *Federal Telecommunications Standard.* The contracting officer shall insert the following clauses, as applicable, in solicitations and contracts involving acquisition of ADP and telecommunications equipment and software subject to Subpart 270.3, unless it is determined by the requiring activity that other standards are appropriate;

(1) 252.270–7052, Time and Frequency Reference Information in Telecommunications Systems; when acquiring telecommunications systems or facilities which are totally funded by one or more Government contracts.

(2)-252.270–7053, Coding and Modulation Requirements for Nondiversity 2400 Bit/Second Modems; when acquiring, by lease or purchase, 2400 bits per second (bps) modems for use over analog transmission channels other than those derived from high-frequency radio facilities.

(3) 252.270–7054, Coding and Modulation Requirements for 4800 Bit/Second Modems; when acquiring 4800 bits per second (bps) modems to be used with nominal 4kHz analog channels.

(4) 252.270–7055, Coding and Modulation Requirements for Duplex 9600 Bit/Second Modems; when acquiring duplex 9600 bits per second (bps) modems for use with "four-wire" nominal 4kHz analog transmission channels.

(5) 252.270–7056, Coding and Modulation Requirements for Duplex 600 and/or 1200 Bits/Second Modems; when acquiring duplex 600 and/or 1200 bits per second (bps) modems to be used with 4kHz analog transmission channels terminated by "two-wire" circuits.

(6) 252.270–7057, Electrical Characteristics of Balanced Voltage Digital Interface Circuits; when there is a requirement to acquire equipment which must satisfy the electrical characteristics of balanced voltage digital interface circuits employed for the interchange of serial binary information which is conveyed at the direct current (DC) baseband level at signaling rates of up to 10 megabits per second.

(7) 252.270–7058, Electrical Characteristics of Unbalanced Voltage Digital Interface Circuits; when there is a requirement to acquire equipment which must satisfy the electrical characteristics of unbalanced voltage digital interface circuits employed for the interchange of serial binary information conveyed at the direct current (DC) baseband level of signaling rates of up to 100 kilobits per second.

(8) 252.270–7059, Group 2 Facsimile Apparatus for Document Transmission; when acquiring Group 2 facsimile equipment.

Subpart 270.12—The Federal Computer Performance Evaluation and Simulation Center

270.1201 The Federal Computer Performance Evaluation and Simulation Center.

(a) *General.* The Federal Computer Performance Evaluation and Simulation Center (FEDSIM) is operated by the Department of the Air Force under a delegation of authority from the Administrator of the General Services Administration. It provides technical assistance, support, and services on a reimbursable basis for simulation, analysis, and performance evaluation of automatic data processing systems and is the primary source for those services.

(b) *Services available.*

(1) Services available nationally are comprised of FEDSIM resources and FEDSIM-monitored contractual services for computer services simulation and preformance evaluation. These services include simulation languages and packages for computer system simulations, software and hardware monitors for computer system performance evaluation, and special software programs designed to support computer system simulation and performance evaluation efforts, such an accounting systems analysis and workload modeling. The Center's services also include ADP support services such as those provided by simulation analysts.

(2) The services that the Center provides are intended to be temporary in nature and in response to specific questions or problems. A continuous simulation and performance evaluation program in support of individual user operations is not intended.

(c) *Policy for obtaining FEDSIM services.*

(1) FEDSIM shall be considered as the primary source of supply for ADP simulation and computer performance evaluation requirements, services, and products, including but not limited to, computer systems simulators and hardware and software monitors.

(2) The Center advises agencies whether (i) FEDSIM resources or FEDSIM contracts are available; (ii) and ADP schedule is available as a source of supply; or (iii) a new acquisition action is necessary.

(3) If the Center is unable to fulfill the requirement or if the requirement can be more economically fulfilled through commercial sources, the agency may acquire the services.

(d) *Procedures for obtaining FEDSIM services.*

(1) DoD components requiring ADP simulation, computer performance evaluation assistance, hardware performance monitors, software performance monitoring packages, or other computer performance evaluation products or services, shall contact the Center. The mailing address is: Department of the Air Force, Federal Computer Performance Evaluation and Simulation Center (FEDSIM), Washington, DC 20330.

(2) The Center, consistent with the lowest cost alternative or combination of alternatives, will take one of the following four actions:

(i) Provide services from its own resources on a reimbursable basis to the requesting agency.

(ii) Acquire, on a reimbursable basis, the necessary support from commercial sources for the requesting agency.

(iii) Advise the requesting agency's acquisition activity how to acquire necessary support from the ADP schedule or other existing contractual instruments or how to initiate an acquisition action for the services.

(iv) Recommend to GSA that GSA acquire required resources for the requesting agency (where unusual legal or acquisition policy issues so dictate).

(3) If no action involving a request for services is taken by the Center within 20 workdays after acknowledgment of receipt of full information from an agency, the agency may proceed without further references to the Center.

Subpart 270.13—Sharing of Computer Resources

270.1300 Scope of subpart.

This subpart provides direction relating to use of existing resources as an alternative to the acquisition of additional resources.

270.1301 Policy.

DoD Components are required to consider sharing and use of existing resources in accordance with DoD Manual 7950.1–M, Departmental procedures, and OMB Circular A–121 as an economical and efficient means of meeting their needs.

270.1302 Government-wide sharing procedures.

(a) DoD Components shall not initiate the process of selection and acquiring resources unless it has first made a reasonable effort to determine that the required capability cannot be met economically and efficiently by using existing resources on a shared basis. If the result of screening is unsuccessful, the basis for this determination shall be documented in the contract file.

(b) DoD Components are required to include a statement relative to this screening procedure when submitting agency procurement requests (APRs).

270.1303 Federal Data Processing Centers (FDPCs).

(a) *Services available from FDPCs.* FDPCs provide many ADP services and ADP support services. GSA, through informational bulletins, will announce the availability of specific services and associated costs.

(b) *Point of contact.* Activities that require any FDPC services that have not been provided through the procedures set forth in 270.1302 may contact General Services Administration (KMA), Washington, DC 20405, or the appropriate FDPC.

270.1304 Federal Software Exchange Program.

The Federal Software Exchange Program is operated by GSA or its authorized representative pursuant to the overall policy guidance and direction of GSA. The program applies to common-use software developed or revised by either Government or contractor personnel. It is not applicable to software that is classified, developed at private expense, or developed with revolving funds where reimbursement of all costs is required. It is not applicable to software to which the Government does not possess full rights of ownership. For the purpose of this subpart, common-use software is that which:

(a) Deals with problems common to many agencies, that would be useful to other agencies, and is written in such a way that minor variations in requirements can be accommodated without significant programming effort. Examples of such software are: management business applications, computer systems support and utility programs, simulators, scientific or engineering applications, programming aids which are application-independent, and bibliographic or textual programs;

(b) Has been tested and proven operational for at least 90 days and is maintained by or for a Federal agency; and

(c) Is composed of stand-alone subroutines, programs, or subsystems; i.e., not dependent on special or unique hardware options or software features unless such options or features can be readily translated or simulated for hardware other than the original and can be similarly useful on different hardware.

270.1304–1 Procedures.

(a) DoD Components having requirements for software that they plan to acquire from commercial sources shall screen existing Federal ADP software resources by reviewing the Federal Software Exchange Catalog or by obtaining assistance from the Federal Software Exchange Center (FSEC) to meet its software requirements.

(b) Programs or systems listed in the Federal Software Exchange Catalog are available through the FSEC, which will contact the contributing agency for the requested documentation and/or programs.

(c) The FSEC will make a copy of both the documentation and the program to be kept on file for future requests. The FSEC will provide the software package to the requesting agency at the published price.

270.1304–2 Federal Software Exchange Center.

The functions of the Federal Software Exchange Center (FSEC) include:

(a) Maintaining a central library of summary descriptions of common-use programs and systems, including a complete index of this inventory and master copies of requested programs, systems and documentation.

(b) Editing, screening, and compiling agency abstracts of common-use programs or systems submitted for exchange by Federal agencies.

(c) Functioning as a central point of contact with agencies for information and dissemination of available software.

(d) Publishing and distributing the basic Federal Software Exchange Catalog with periodic updates.

(e) Assisting Federal agencies in identifying currently available software to satisfy their requirements.

(f) Assisting agencies in obtaining information concerning technical problems with software released through FSEC.

(g) Notifying agencies of changes to software obtained through FSEC.

270.1304–3 DoD Components requirement.

DoD components are required to:

(a) Continually review software within the agency to identify programs or systems which would be of use to other agencies meeting the criteria set forth in 270.1304 and notify FSEC of changes and programs no longer maintained.

(b) Submit abstracts of programs meeting the criteria in 270.1304 to FSEC, National Technical Information Service, Springfield, VA 22151, on Standard Form SF 185, Federal Information Processing Standard Software Summary. Common-use programs and systems meeting the specified criteria will be described and reported to FSEC on a continuing basis.

(c) Notify FSEC, using SF 185, of changes to software previously reported. Such changes should have been adequately tested to ensure the effective performance of the software.

(d) Notify FSEC, using SF 185, of previously reported programs that the agency no longer maintains. (Reports shall be made within 30 days after terminating maintenance.)

270.1304-5 Federal Software Exchange Catalog availability.

The Federal Software Exchange Catalog of common-use programs and systems may be obtained from the National Technical Information Service, Springfield, VA 22151. Revisions of the catalog are published quarterly.

Subpart 270.13—Reuse of Equipment

270.1400 Scope of subpart.

This subpart sets forth policies and procedures regarding the reuse of computer equipment.

270.1401 Reassignment of computer equipment within DoD.

(a) The policies and procedures relating to the reassignment of computer equipment within the Department of Defense is contained in DoD Manual 7950.1-M, Defense Automation Resources Management Program.

(b) Installed Government-leased computer equipment need not be physically replaced by reassigned Government-owned computer equipment if retention of the leased computer equipment is more economical. In these circumstances, the agency should initiate action to return Government-owned computer equipment to the manufacturer/supplier in exchange for the title to the leased computer equipment.

(c) The reassignment of Government-leased computer equipment that is no longer required for the purpose and use for which it was originally acquired is a sole-source contracting action and, therefore, must be accomplished as such.

(d) The use of computer equipment for cannibalization for a parts source of supply shall not be made until excess reutilization requirements of other agencies are determined.

270.1402 Excess or exchange/"sale" computer equipment.

Each DoD component shall report Government-owned or -leased computer equipment that is excess to its needs or Government-owned computer equipment that is contemplated to be replaced pursuant to the exchange/"sale" authority in accordance with DoD 7950.1-M. Policies and procedures for reporting exchange/"sale" of computer equipment are contained in DoD 7950.1-M.

270.1403 Reutilization of excess and exchange/"sale" computer equipment.

(a) DoD components shall be responsible for determining whether their ADP requirements can be efficiently and economically satisfied by using excess ADP equipment. To obtain maximum reutilization and to minimize the acquisition of the new computer equipment, excess and exchange/"sale" computer equipment shall be made available for transfer to other Federal agencies in accordance with DoD 7950.1-M.

(b) Excess auxiliary or accessorial computer equipment with an original acquisition cost (OAC) of $1,500 or less shall be made available for transfer to other Federal agencies.

(c) Any need for excess (but not obsolescent-excess) computer equipment expressed by a Federal agency shall take precedence over surplus disposal, provided such need is made known prior to shipment, or delivery in case of donation, or prior to contract award in case of "sale".

(d) Without exception, holding agencies shall solicit both requesting agency "sale" and vendor exchange (trade-in) offers when using exchange/"sale" authority (see 270.322).

270.1404 Considerations for use of excess Government-owned or leased computer equipment.

(a) *Government-owned excess computer equipment.* DoD components shall consider excess Government-owned computer equipment as a replacement for installed leased computer equipment or in meeting new requirements if the excess Government-owned computer equipment has the capability to fulfill the requirement and represents the lowest overall cost to the Government. The reutilization of excess Government-owned computer equipment is not a contracting action.

(b) *Government-leased excess computer equipment.*

(1) The reutilization of excess leased computer equipment is an acquisition and requires that a sole-source justification be prepared or the equipment be selected as a result of a competitive solicitation.

(2) Since excess leased computer equipment accrues substantial purchase option credits, agencies shall consider this equipment as replacement for installed leased computer equipment which has accrued fewer credits to the Government. This type of replacement shall not be considered a contracting action.

270.1405 Use of the ADP fund.

(a) Government-owned excess ADPE systems or items with a GSA estimated fair market value of at least $250,000 will be screened by GSA for possible reutilization. GSA will incorporate appropriate systems or items in the availability list. These systems or items will be leased to agencies by the ADP Fund at 50 percent of the fair market value determined by GSA. Ownership of the equipment will remain with the GSA ADP Fund.

(b) When leased excess ADPE with purchase option credits can satisfy agency data processing requirements, GSA will consider using the ADP Fund to purchase the equipment for the requesting agency when purchase is in the best economic interest of the Government and the agency does not have purchase funds available.

(c) DoD components may seek use of the ADP Fund for acquisition of exchange/"sale" ADPE if it is determined that the acquisition is economically advisable, the following requirements are met, and the DoD component can certify that:

(1) It has complied with applicable provisions of 270.302;

(2) It does not have funds programmed, nor can it reprogram funds for this purpose; and

(3) It cannot divert funds planned for other ADPE acquisitions with lesser rates of return, if any, for this purpose.

(d) When a DoD component proposes to request transfer of exchange/"sale" ADPE which it desires to acquire through the ADP Fund, the requesting activity shall submit a letter of intent to the General Services Administration (KXM), Washington, DC 20405. This letter shall include the projected period of equipment use; the requested terms of reimbursement, e.g., quarterly reimbursement for 3 years; the agency point of contact (with address and telephone number); and the shipping address, instructions, and fund citations for transportation and ADP Fund reimbursement. In addition, the requestor shall submit certifications that demonstrate the agency's compliance with the conditions listed in paragraph (c) of this section.

(e) The use of the ADP Fund for acquisitions of exchange/"sale" ADPE must be approved by GSA before a holding agency may honor the requesting agency's hold.

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